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Social protection for migrant workers in ASEAN: Developments, challenges, and prospects

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Social protection for migrant workers in ASEAN: Developments, challenges, and prospects

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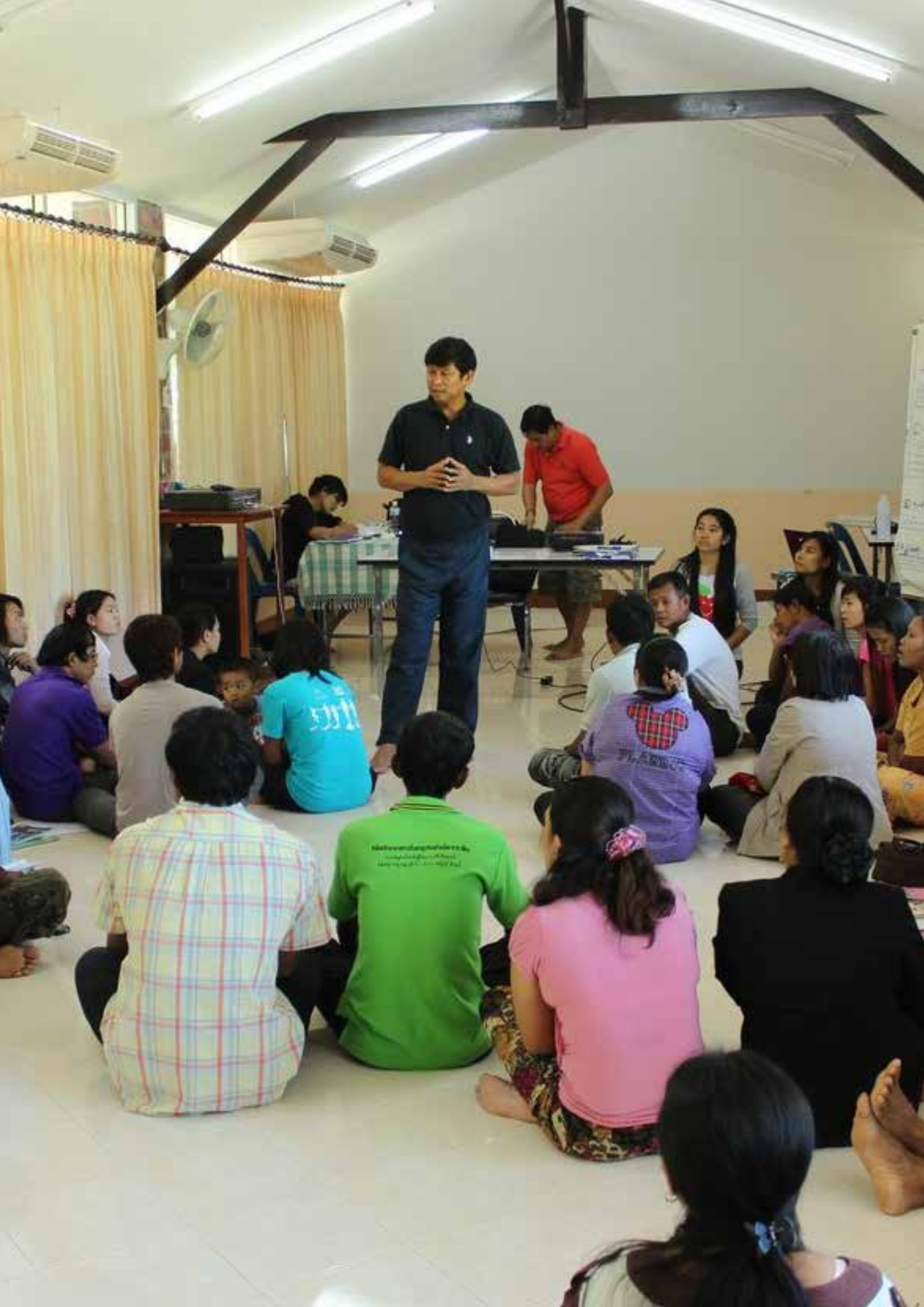

Foreword

The ten Member States of the Association of Southeast Asian Nations (ASEAN) form a dynamic and rapidly emerging region with some 635 million residents. Development in the region has been fuelled by increased intraregional migration, which has multiplied fivefold since 1990. According to the most recent United Nations Department of Economic and Social Affairs (UNDESA) figures, some 20.2 million ASEAN nationals live outside their country of birth. Some 6.9 million of them have migrated within the region. Women account for 47.8 per cent of all migrants within ASEAN.

Migration can benefit migrant workers, their communities, and their countries of destination and origin. However, migrant workers are often at risk of exploitation, abuse and exclusion with limited access to social protection for unemployment, sickness, and disability.

The 2030 Agenda for Sustainable Development, adopted by the UN General Assembly in 2015, includes a global joint commitment of countries to "implement nationally appropriate social protection systems for all, including floors". While ASEAN Member States have made significant progress in extending legal coverage over the past decade, effective access to social protection remains a challenge for a large majority. Although the 2013 ASEAN Declaration on Strengthening Social Protection recognizes migrants as a vulnerable category of workers, research shows that they remain among the least protected in the region.

The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and the 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers call on ASEAN Member States to promote the full potential and dignity of migrant workers, and place certain obligations in this respect on receiving and sending States. Some progress in the area of social protection has been made, embedded in the operational activities of mandated ASEAN institutional frameworks, in particular the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers.

Labour migration is a key feature of our region's labour market and is expected to continue to increase over the years. The projected growth and governance of migration are part of the global debate on the future of work. As the ILO is to mark its 100th anniversary in 2019, this report supports the research efforts of the organization for the delivery of social justice for all in the 21st century. And beyond its findings, it is also a call to all ASEAN member states to implement fair labour migration systems that respond equitably to the interests of governments, employers and migrant workers.

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Abbreviations and acronyms

4PS	*Pantawid Pamilyang Pilipino Program* [Philippines]
ACMW	ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers
AEC	ASEAN Economic Community
AFAS	ASEAN Framework Agreement on Services
AFML	ASEAN Forum on Migrant Labour
AFTA	ASEAN Free Trade Area
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
ASEAN-OSHNET	ASEAN Occupational Safety and Health Network
AUC-RECs	African Union Commission/Regional Economic Communities
BLA	bilateral labour agreement
BNP2TKI	*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia* [National Agency for Placement and Protection of Indonesian Overseas Workers
BPJS	*Badan Penyelenggara Jaminan Sosial* [Social Insurance Administration Organization – Indonesia]
BSA	bilateral social security agreement
CARICOM	Caribbean Community
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
Cebu Declaration	ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
CFP	Central Provident Fund [Singapore]
CIPRES	*Conférence Interafricaine de la Prévoyance Sociale* (Inter-African Conference on Social Insurance)
CLMV	Cambodia, the Lao People's Democratic Republic, Myanmar, and Viet Nam
CMHI	Compulsory Migrant Health Insurance [Thailand]
CSO	civil society organization
EAC	East African Community
ECHR	European Convention on Human Rights, 1950

ECOWAS	Economic Community of West African States
EPF	Employees Provident Fund [Malaysia]
FWCS	Foreign Workers Compensation Scheme [Malaysia]
GCC	Gulf Cooperation Council
ILO	International Labour Organization
MFN	most favoured nation
MOLIP	Ministry of Labour, Immigration, and Population [Myanmar]
MOLISA	Ministry of Labour, Invalids and Social Affairs [Vietnam]
MOLVT	Ministry of Labour and Vocational Training [Cambodia]
MRA	mutual recognition agreement
MYR	Malaysian ringgit [currency]
NSSF	National Social Security Fund [Cambodia]
NVP	nationality verification process [Thailand]
OFW	Overseas Filipino Worker
OHCHR	Office of the High Commissioner for Human Rights
OWWA	Overseas Workers Welfare Administration [Philippines]
PhilHealth	Philippines Health Insurance Corporation
PHP	Philippines peso [currency]
POEA	Philippines Overseas Employment Administration
SGD	Singaporean dollar [currency]
SLOM	Senior Labour Officials Meeting [ASEAN]
SLOM-WG	Senior Labour Officials Meeting Working Group on Progressive Labour Practicies to Enhance the Competitiveness of ASEAN
SOCSO	Social Security Organization [Malaysia]
SPIKPA	*Skim Perlindungan Kesihatan Pekerja Asing* [Health Insurance Protection Scheme – Malaysia]
SSS	Social Security System [Philippines]
TCN	third country national
TKI	*Tenaga Kerja Indonesia* [Indonesian migrant worker]
TOEA	Thailand Overseas Employment Administration
UCS	Universal Coverage Scheme [Thailand]
WCA	Workmen's Compensation Act, 1952 [Malaysia]
WCF	Workmen's Compensation Fund [Thailand]

Executive summary

Introduction

Despite the considerable economic impact of labour migration on individuals, households, countries of destination, and countries of origin in ASEAN, the social protection afforded to migrant workers and their families is generally weak, partly as a result of weak provision in national policy frameworks and legal systems, and also in absence of applicable bilateral arrangements. As a result, there is a need to adopt streamlined and coherent responses to this issue across ASEAN Member States, which will require the coordination of immigration, labour, and social security legal and policy frameworks and administrative practices. Even so, innovative policy, regulatory, and institutional responses have been developed in the region.

This report has been commissioned by the ILO Regional Office for Asia and the Pacific. Much of its focus falls on intra-ASEAN migrant workers, as this appears to be the predominant form of migration to ASEAN countries. Nevertheless, the conclusions drawn and recommendations made are equally applicable to migrant workers in ASEAN countries who originate from outside the region. The report provides an overview of the topic, with particular reference to certain relevant developments, challenges, and prospects.

ASEAN Community perspectives

The ASEAN Charter envisaged enhanced regional cooperation and economic integration. Among the purposes behind the foundation of ASEAN is the aim of creating a single market and production base, one which would include facilitated movement of business persons, professionals, talents, and labour, and to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare, and justice. However, several subsequent ASEAN instruments restrict intra-ASEAN movement for this purpose to business persons, skilled labour, and talents, thereby excluding the majority of intra-ASEAN migrant workers, in particular unskilled and semi-skilled migrant workers.

The ASEAN Community Vision 2025 emphasizes respect for the human rights and fundamental freedoms of specified groups in need of such protection, including migrant workers. In addition, the various ASEAN Community Blueprints as well as the ASEAN Declaration on Strengthening Social Protection and its associated Regional Framework and Plan of Action stress the extension of social security coverage and access, including to migrant workers. The ASEAN Declaration on Strengthening Social Protection recognizes that social protection is a basic human right to which everyone is entitled to have equitable access, and maintains migrant workers as part of the list of vulnerable groups. It is understood that enhanced social protection is required as a means to protect ASEAN peoples against negative effects of regional integration.

In turn, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Cebu Declaration) and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (the Consensus) call on ASEAN Member States to promote the full potential and dignity of migrant workers, and place certain obligations in this respect on receiving and sending States. The Cebu Declaration and the Consensus are sensitive to the fundamental rights of migrant workers and family members already residing with them in countries of destination; preserve the legitimate concerns of countries of origin and destination; and recognize the respective obligations imposed on sending and receiving States. Some progress in the area of social protection has been made, embedded in the operational activities of mandated ASEAN institutional frameworks, in particular the Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).

ASEAN operational activities and plans of action also support the enhancement of social protection, including in relation to migrant workers. Expanded social protection, including to migrant workers, have been highlighted as a key result area in the ASEAN Labour Ministers' Work Programme 2016–2020, with detailed activities planned. In particular the ACMW Work Plan 2016–2020 includes projects and activities to promote the social protection of migrant workers. Further support in this regard appears in the ASEAN Human Rights Declaration. It is clear, however, that a need still exists for a dedicated regional, standard-setting instrument that will provide a framework for the social protection of migrant workers in ASEAN.

Intra-ASEAN labour migration: Characteristics and trends

Between 1990 and 2015, intra-ASEAN migration increased from 1.5 million to 6.9 million. About 87 per cent of migrant workers in ASEAN are either unskilled or low-skilled. Malaysia, Thailand, and Singapore are the destinations of 91 per cent of intra-ASEAN migrant workers. ASEAN has noticed the extensive impact of remittances sent by migrant workers to their countries of origin. There are several push and pull factors that promote cross-border worker movement within ASEAN: a particularly

youthful population in certain ASEAN countries in search of job opportunities; the need for livelihood support; ageing populations (e.g. in Thailand); labour market growth in several ASEAN Member States; economic disparities and wage differentials in the region; and the political process of regional integration.

Challenges faced by ASEAN migrant workers

Migrant workers' access to social protection in the ASEAN region is fraught with challenges and shortcomings. 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. In some ASEAN countries, migrant workers are often employed in sectors of the labour market that are either not covered by social security or in which compliance with social security laws are poorly enforced. A worker's specific immigration status (including when a person is an undocumented migrant worker) may make them ineligible for accessing benefits. It may also be that the worker is not covered by social security systems of either the host or the home country, as a result of any or a combination of the following factors:

- lack of extra-territorial application of domestic laws;
- nationality and/or residence requirements;
- a contribution period required for long-term (e.g., retirement) benefits;
- worker is employed in the informal economy; and
- documentation and other bureaucratic/administrative barriers.

Migrant workers are often exposed to discrimination in the laws and practices of both countries of origin and destination. In addition, portability arrangements may not exist, while protection of their rights in the country of destination may be lacking.

ASEAN Member States: Legal and policy overview

While social security coverage of migrant workers over a wider range of social security benefits has expanded considerably over the last two decades, several ASEAN Member States have developed separate but inferior regimes for the coverage of migrant workers, in particular unskilled and lower-skilled migrant workers. These separate schemes provide protection that is less beneficial in comparison with those that are available to nationals, and at times also to higher skilled non-nationals. Generally speaking, ASEAN countries have been slow to adopt UN and ILO instruments that help promote social security protection, in particular instruments that cover migrant workers. Compliance with the standards embedded in these instruments has often been weak. In the process, overall ASEAN objectives, including regional integration on the basis of equal treatment, are not being adequately and actively pursued. Following concerns expressed by international supervisory and investigative bodies, some ASEAN Member States have responded by allowing certain migrant worker categories to have increased access to certain social security benefits.

Seven out of the ten ASEAN Member States have introduced measures to provide some social security protection to their own workers abroad, invariably strengthened by an extensive raft of supporting measures, including a supportive, dedicated institutional and operational framework. Coverage extension has been achieved via the establishment of welfare funds and/or compulsory or voluntary contributions to existing and/or special social security schemes of the country of origin. However, despite their importance, these schemes invariably extend protection that is inferior to those provided to national workers in the countries of origin.

In keeping with developments elsewhere in the world, several ASEAN Member States are increasingly using bilateral agreements and MOUs with countries beyond the ASEAN region as the basis for ensuring increased social security protection of their workers abroad – although not yet with other ASEAN countries. Much can be learnt from several good practice examples of countries that are effective in achieving proper social security coverage for their nationals working abroad, often achieved via dedicated bilateral social security agreements. The example of the Philippines can in particular be mentioned. Providing for social security entitlement and access on the basis of a multilateral arrangement can have even greater effect. Both bilateral and multilateral arrangements can be developed incrementally, to allow for the flexibility needed by the concrete context of countries and their social security systems.

Several factors impede the extension of social security coverage to migrant workers. Some of these factors relate to treatment that migrant workers receive in destination countries (at times leading to a moratorium imposed by certain countries of origin). Other factors include legal restrictions relating to the scope of application of protective legislation, as well as factors impacting directly and indirectly on migrant workers. These include:

- exclusion or exemption of categories of workers from protection (in particular domestic workers);
- exclusion of smaller employers;
- the inability of migrant workers to meet the eligibility criteria for accessing certain social security benefits, in particular long-term benefits such as an old-age pensions;
- the inadequate time that a migrant worker has to finalize social security benefit payments upon termination of employment; and
- the large-scale absence of portability arrangements in the legal systems of ASEAN countries of destination and countries of origin.

In most ASEAN Member States there are a large variety of measures applicable to various categories of migrant workers regarding access to social security benefits. Access may, for example, depend on the migrant status of the person concerned, whether the migrant worker has access to generally applicable social security measures in the country of destination or is compelled to rely on a more restricted dedicated migrant worker scheme in that country, whether the migrant worker falls within a class or category of employees excluded or exempted from protection, the type of employer involved, or whether a migrant worker may voluntarily contribute to a national social security scheme, if membership is not compulsory. The multiple, non-uniform considerations at play confirm the need for and importance of overhauling, streamlining, and simplifying the approach to social security benefit entitlement based on the status of migrant workers, and of consolidating the different avenues through which migrant workers could access social security benefits.

Pointers for the development of a more streamlined approach

Pointers for the development of a more streamlined approach involve international standards; unilateral measures introduced by the country of origin and the destination country respectively; bilateral arrangements; and multilateral arrangements.

International instruments contain standards that require equal treatment with regard to social security among nationals and non-nationals. This includes the right to receive any medical care that is urgently required. A human rights approach to the welfare entitlements of migrant workers commences with an appreciation of the vulnerable status of these workers, and stresses the prioritization of their

needs. Comparative experiences are particularly nuanced: there is a discernible trend, confirmed by both international standards and State practice (including national laws), towards affording enhanced protection to regular and longer-term migrant workers, often with reference to key principles operative in this domain, such as lawful residence, lawful employment, and means of subsistence criteria.

International instruments relating to social security have been poorly ratified by ASEAN Member States. Yet, the fact that six Member States have ratified the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) emphasizes their being bound by the (equal treatment) provisions of this Convention, and provides an opportunity to start with ensuring occupational working injury protection for migrant workers at least in six ASEAN countries. It also constitutes a basis for inclusion of this risk category in bilateral agreements involving any of the ratifying States, and in principle also a multilateral agreement.

Unilateral measures to be taken by migrant-receiving ASEAN countries include the need to remove nationality discrimination provisions impacting on social security access, in view of the regional integration and free movement agendas obtained in the ASEAN region. There is also a need to revisit overly strict immigration law and policy frameworks, and to use the significant scope that exists for the cross-border payment of benefits and the provision of social security services. With regard to ASEAN countries of origin, the unilateral extension of social security and supporting measures is a growing reality given the weak protection generally available to migrant workers in receiving ASEAN countries. These unilateral extensions take various forms and include the establishment of overseas workers' welfare funds and/or voluntary or mandatory affiliation in national social security schemes. Many ASEAN countries have also rolled out accompanying support services, including the regulation of overseas recruitment, protection in destination countries, and reintegration measures. Indonesia, the Philippines, and Thailand in particular have done much to invest in this area.

Nevertheless, it needs to be indicated that unilateral arrangements cannot effectively provide for the full extent of social security protection that a host country would be able to extend. In addition, reliance usually has to be placed on contributions by employees only, which could make participation in these arrangements costly or subject to reduced benefit entitlement.

Bilateral social security agreements constitute universal worldwide best practice, especially if supported by an overarching multilateral agreement, and they are strongly advocated for in international instruments. These agreements help to streamline the social security position of an individual who migrate (for work) to another country, and are usually based on the following principles:

- the choice of law principle, identifying the legal system that is applicable;
- equal treatment (in the sense that discrimination based on nationality is prohibited);
- aggregation/totalization of insurance periods (in that all periods taken into account by the various national laws are aggregated for the purposes of acquiring and maintaining an entitlement to benefits, and of calculating such benefits);
- maintenance of acquired benefits (benefits built up by the person are retained);
- payment of benefits, irrespective of the country in which the beneficiary resides (the "portability" principle);
- administrative cooperation (between the social security institutions of the parties to the agreement); and
- sharing of liability to pay for the benefit (i.e., pro-rata liability of the respective institutions).

To date no bilateral social security agreement has been concluded between any two ASEAN countries, although some countries are currently considering them, including for example the Philippines and Thailand. Bilateral labour agreements make insufficient provision for welfare/social security protection; hence the need for dedicated social security agreements. One of the matters that such an agreement would have to attend to concerns the asymmetrical nature of retirement provisioning and portability payments in ASEAN, as indicated above. Different solutions have been offered as to how to deal with this complexity.

Several bilateral social security agreements necessarily result in a highly complex and hardly administrable set of provisions on the portability of social security benefits. Common standards emanating from a multilateral agreement could assist in this regard. Furthermore, cooperation between cross-border social security institutions is required, while it may be necessary to incrementally develop (and/or progressively implement) the scope and content of these agreements.

Multilateral agreements have the advantage that they generate common standards and regulations and so avoid discrimination among migrants from various countries. Such an agreement can establish a standardized framework for more detailed, context-sensitive, and country-specific bilateral agreements between countries. Multilateral agreements are effectively a recognition of intra-regional migration and are closely associated with freedom of movement, regional integration, and equal treatment of residents. In particular, concluding a multilateral agreement could imply an approach that adopts specific (i.e., more preferable) arrangements for migrants from ASEAN than for migrant workers from elsewhere. In the area of social security, this could best be achieved by the adoption of an appropriate multilateral social security agreement. Importantly, provision could be made for a phased and incremental approach in relation to: (i) the types of schemes covered; (ii) the benefits provided for; (iii) the categories of persons covered by such an agreement; (iv) the countries included in the agreement; and (v) the social security principles covered.

Several comparative examples of such regional agreements exist, and could be of value for the development of an ASEAN-specific multilateral instrument. These examples are discussed in chapter 6 below.

Conclusions

Given the weak social security protection available to migrant workers in ASEAN, it is necessary to appreciate and introduce the complementarity of unilateral, bilateral, and multilateral interventions. Of primary importance is the development of a comprehensive network of intra-ASEAN social security agreements, ideally in the form of a multilateral agreement. There is a need to adopt overarching regulatory instruments and to introduce suitable institutional mechanisms to facilitate implementation, monitoring, and evaluation.

Mutually supportive measures to enhance migrant workers' access to social security should be in place – relating among others to access to social security and health coverage for migrants in the country where they work, and improving the portability of workers' compensation and retirement benefits. There is also a need to better regulate the superimposition of immigration law on social security entitlements, in support of migrant workers' social security entitlements. The precarious position of migrant workers in ASEAN indeed requires appropriate responses.

1. Introduction

Despite the considerable economic impact of labour migration for individuals, households, countries of destination, and countries of origin in the Association of Southeast Asian Nations (ASEAN), the social protection of migrant workers and their families is generally weak – particularly given the weak provisions in national policy frameworks and legal systems, and the absence of applicable bilateral arrangements. This is the case from both a labour and especially a social security rights perspective. This stresses the need to adopt streamlined and coherent responses across ASEAN Member States, which require the coordination of legal and policy frameworks around immigration, labour, and social security as well as administrative practice. The majority of migrant workers and their dependants currently have to rely on informal coping strategies: families are often the primary means of support for workers when things go wrong, rather than social protection or a welfare state (Hall, 2011). Migrant workers may often share this experience with nationals in ASEAN Member States, but the difference is that migrant workers enjoy much less protection in social security law and in practice than their national counterparts. Yet, as shown in this report, innovative policy, regulatory, and institutional responses have developed in the region.

This report has been commissioned by the International Labour Organization (ILO) Regional Office for Asia and the Pacific. Much of the focus of this report falls on intra-ASEAN migrant workers, as this appears to be the predominant form of migration to ASEAN countries.[1] Nevertheless, the conclusions drawn and recommendations made here are equally applicable to migrant workers in ASEAN countries

[1] About two-thirds of ASEAN's migrants today are from within the region itself. More than 90 per cent of intraregional migrants within ASEAN are hosted by Malaysia, Singapore, and Thailand (ILO, 2015d).

who originate from outside the region. This is largely the result of the absence thus far of specialized arrangements that give preferential treatment in social security terms to intra-ASEAN migrant workers – with the exception of extremely limited provisions in a few bilateral agreements.

In preparing this report, the author undertook the following:

- an analysis of ASEAN official documents regarding policies, strategies, and vision to highlight the importance given to social protection in the ASEAN community integration process;
- a desk review of legal and policy texts of the ten ASEAN countries, as well as bilateral labour and social security agreements between ASEAN countries where they exist;
- a desk review of existing reports dealing with social protection for migrant workers in ASEAN; and
- a review of relevant international and regional experiences for improving social protection of migrant workers (social security – comprising social insurance and social assistance – and access to health care).

Based on the above review, this report provides an overview of the social protection of migrant workers in ASEAN, with particular reference to certain relevant developments, challenges, and prospects, and reflects on this topic from different perspectives:

- Chapter 2 briefly discusses ASEAN Community perspectives, as these appear in ASEAN instruments, documents, and strategies. These perspectives are discussed from the point of view of the establishment of the Community, the protection of migrant workers, and the enhancement of social protection.
- In Chapter 3, the characteristics of and trends in intra-ASEAN (labour) migration are reflected on.
- Chapter 4 deals with challenges faced by migrant workers in ASEAN in relation to access to social protection, in particular the protection available under labour law and social security systems in ASEAN countries.[2]
- Chapter 5 contains an overview of legal and policy measures adopted by ASEAN Member States pertaining to the social security position of migrant workers (i.e., with reference to access to contributory, non-contributory, and health-care benefits).
- Pointers for the development of a more streamlined approach are contained in Chapter 6 of the report. This chapter deals with the relevance of international and human rights standards; unilateral standards (originating from both the country of origin and the country of destination); bilateral arrangements, including bilateral agreements that may have been concluded in relation to intra-ASEAN migrants in particular; and multilateral arrangements.
- Some conclusions are drawn and recommendations made in Chapter 7 of the report.

It needs to be stressed that the discussion in Chapter 5 reflects the widely varied experiences among the ten ASEAN Member States concerning the existence, availability, and accessibility of relevant information. A comprehensive study on Thailand on this topic was undertaken and made available to the author (Monrawee, 2016), as was the case with a report on Viet Nam too (Huong, 2016). Limited materials on other ASEAN Members States have also been made available to the author. This is clearly an area that requires further investigation and elaboration.

[2] Challenges flowing from migrants immigration status are discussed, as are the provisions of labour and social security laws and policies in ASEAN countries, and the contents of bilateral agreements and memoranda of understanding between ASEAN Member States. Mention is made of relevant international standards and comparative good practices from within ASEAN and beyond.

Finally, some clarification should be given in relation to the scope of this report and certain concepts used in the report. For the purposes of this report, "social protection" is restricted to:

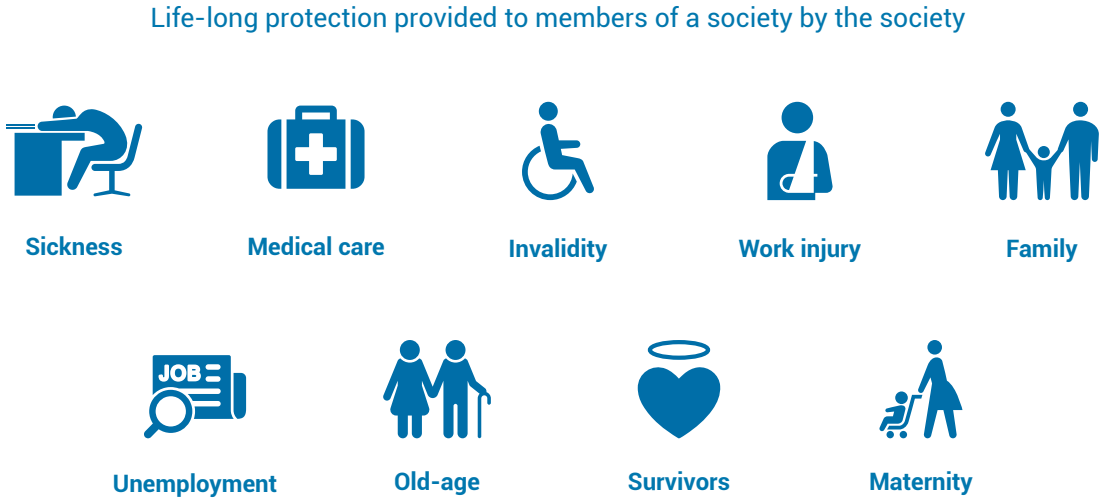
(i) non-contributory schemes provided by the State via budgetary allocations, including universal and social assistance schemes (e.g., cash transfers made to needy parts of the population, such as the aged, vulnerable children, or persons with disabilities, and universal programs such as tax funded national health services or universal pensions);
(ii) benefits emanating from schemes to which employers, and often also employees, and occasionally governments contribute (social insurance – e.g., public pensions or unemployment schemes); and
(iii) access to health care.

The report focuses on regular migrant workers, with some reference to irregular workers, including migrant workers involved in some kind of regularization process, as well as migrant workers in informal contexts (i.e., migrant workers in the informal economy, or in the formal economy but without a formal contract).

For purposes of this report, the term "migrant worker" is that provided for in the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Their Families. According to Article 2(1) of that Convention, a "migrant worker" is defined as "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." This definition excludes diplomatic or state officials posted to other countries, refugees/stateless persons, "internal migrants", and even seafarers.

This report takes into account developments in ASEAN Member States until the end of September 2017, to the extent that these developments were accessible or indicated to the author of the report. As regards developments at the ASEAN regional level, adoption of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers on 14 November 2017 has been taken into account.

Figure 1: What is social protection?



2. ASEAN Community perspectives

2.1 Establishment and vision of the ASEAN Community

On 22 November 2015 the leaders of the ten Member States of the ASEAN signed a declaration formally establishing the ASEAN Community, comprising 635 million people with a combined trade value of US$2.3 trillion, thereby effectively creating the world's sixth-largest economy and Asia's third largest economy. In 2015, ASEAN had the third-largest population in the world (after China and India), with more than half that population being under the age of 30 and 47.7 per cent living in urban areas (ASEAN, 2015b).

The ASEAN Charter, which entered into force in 2008, envisaged enhanced regional cooperation and economic integration, in particular by establishing an ASEAN Community resting on three pillars: the ASEAN Political-Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community (ASEAN, 2008a). One of the ASEAN Community's central purposes is indicated as follows:

> To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment 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, 2008a, art. 1.5).

Other purposes related to social protection specifically provided for in the Charter include:

- the alleviation of poverty and narrowing of the development gap (article 1.6);
- the promotion of sustainable development and a high quality of life of its peoples (article 1.9);
- equitable access to opportunities for human development, social welfare, and justice (article 1.11); and
- the promotion of a people-centred ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community-building (article 1.13).

Article 2 of the Charter lists the following relevant principles, to which ASEAN and its Member States are expected to adhere, including:

(i) adherence to the rule of law and good governance;

(ii) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

(iii) upholding the UN Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States; and

(iv) adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards the elimination of all barriers to regional economic integration, in a market-driven economy.

The ASEAN Economic Community Blueprint (2009–2015) of 2009 again envisions a single market and single production base, and is aimed at accelerating regional integration in the priority sectors, including facilitating movement of business persons, skilled labour, and talents (ASEAN, 2008b). It therefore foresees the free flow of ASEAN professionals and skilled labour, allowing for "managed mobility or facilitated entry for the movement of natural persons engaged in trade in goods, services, and investments, according to the prevailing regulations of the receiving country" (ASEAN, 2008b, para. 33).[1]

In November 2015, at the occasion of the establishment of the ASEAN Community 2015, the Heads of State/Government of the various ASEAN Member States, in the Kuala Lumpur Declaration on ASEAN 2025, adopted further foundational instruments and documents covering the period up to 2025, effectively succeeding (but also building on) the Blueprint(s) of the 2009–15 period. These include the ASEAN Community Vision 2025, the ASEAN Political-Security Community Blueprint 2025, the ASEAN Economic Community Blueprint 2025, and the ASEAN Socio-Cultural Community Blueprint 2025, which together constitute the ASEAN 2025: Forging Ahead Together (ASEAN, 2015g. para. 2).

The 2015 Kuala Lumpur Declaration stresses again the "future direction for a politically cohesive, economically integrated, socially responsible and a truly rules-based, people-oriented, people-centred ASEAN" (ASEAN, 2015g, preamble).[2] The ASEAN Community Vision 2025 elaborates on the vision for ASEAN in the following terms:

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[1] Paragraph 34 of the Blueprint states in this regard: "In facilitating the free flow of services (by 2015), ASEAN is also working towards harmonization and standardization, with a view to facilitate their movement within the region." It therefore foresees the following actions: (i) Enhance cooperation among ASEAN University Network members to increase mobility for both students and staff within the region; (ii) Develop core competencies and qualifications for job/occupational and trainers skills required in the priority services sectors (by 2009), and in other services sectors (from 2010 to 2015); and (iii) Strengthen the research capabilities of each ASEAN Member Country in terms of promoting skills, job placements, and developing labour market information networks among ASEAN Member States.

[2] Paragraph 15 concludes: "We pledge to our peoples our resolve to realise a rules-based, people-oriented, people-centred ASEAN of 'One Vision, One Identity, One Community'".

> We resolve to consolidate our Community, building upon and deepening the integration process to realise a rules-based, people-oriented, people-centred ASEAN Community, where our peoples enjoy human rights and fundamental freedoms, higher quality of life and the benefits of community building, reinforcing our sense of togetherness and common identity, guided by the purposes and principles of the ASEAN Charter (ASEAN, 2015c, para. 4).

The ASEAN Community Vision 2025 further confirms the vision of ASEAN having "vibrant, sustainable and highly integrated economies" (para. 5), and acknowledges the complementarity of the United Nations Sustainable Development Goals (para. 6). The document then reflects on the key elements of the three communities. Particularly relevant for this report are the following key undertakings:

- respect for the human rights and fundamental freedoms of ASEAN peoples,[3] and specifically of specified groups in need of such protection, including migrant workers;[4]
- in support of a highly integrated and cohesive regional economy, the pursuit of "deeper integration in trade in services, and a more seamless movement of investment, skilled labour, business persons, and capital" (para. 10.2);
- achievement of a "resilient, inclusive, people-oriented and people-centred community" (para. 10.4); and
- the promotion, via a sustainable community, of social development through effective mechanisms to meet the current and future needs of ASEAN peoples (para. 12.3).

2.2 ASEAN regional policies and frameworks on social protection, with particular reference to migrant workers

The ASEAN Charter's emphasis on social protection has been strengthened by explicit provisions in the Vientiane Action Programme on the need to enhance social protection. This emphasis is confirmed by a range of other ASEAN instruments and documents discussed below.

2.2.1 ASEAN Community blueprints

The ASEAN Socio-Cultural Community (ASCC) Blueprint (2009–2015) cites social welfare and protection as one of its key characteristics. According to paragraph 18, "ASEAN is committed to enhancing the well-being and the livelihood of the peoples of ASEAN through alleviating poverty, ensuring social welfare and protection … and addressing health development concerns." This is then specifically linked to social protection for migrant workers, making it clear that migrant workers constitute a vulnerable and marginalized group, whose rights and welfare need to be promoted and mainstreamed. Paragraph 26 states:

> ASEAN is committed to promoting social justice and mainstreaming people's rights into its policies and all spheres of life, including the rights and welfare of disadvantaged, vulnerable and marginalized groups such as women, children, the elderly, persons with disabilities and migrant workers.

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[3] "An inclusive and responsive community that ensures our peoples enjoy human rights and fundamental freedoms as well as thrive in a just, democratic, harmonious and gender-sensitive environment in accordance with the principles of democracy, good governance and the rule of law" (para. 8.2).

[4] "An inclusive community that promotes high quality of life, equitable access to opportunities for all and promotes and protects human rights of women, children, youth, the elderly/older persons, persons with disabilities, migrant workers, and vulnerable and marginalised groups" (para. 12.2).

Among the measures foreseen in the ASCC Blueprint 2009–2015 and which ASEAN has committed to undertake are:

- mapping of social protection regimes in ASEAN;
- exchange of best practices in social security systems;
- prioritization of social protection in ASEAN's cooperation in progressive labour practices;
- establishment of a social insurance system to cover the informal sector; and
- creation of networks of social protection agencies.

Reference is also made to the need to take action to address the social protection context of a specific migrant worker group: "Strengthen ASEAN cooperation in protecting *female migrant workers*" (ASEAN, 2009, para. 20, emphasis added).

The ASEAN Socio-Cultural Community (ASCC) Blueprint 2025 (adopted in 2015) notes the rise in intra-ASEAN migration as well as the prevalence of extreme poverty in ASEAN, despite achievements in terms of declining poverty overall.[5] It stipulates that at the heart of the ASCC is the commitment to lift the quality of life of its peoples through cooperative activities that are people-oriented, people-centred, environmentally friendly, and geared towards the promotion of sustainable development.[6] It therefore lists, as part of the aims of the ASEAN Community the realization of the following aim:[7]

> An inclusive community that promotes high quality of life, equitable access to opportunities for all and promotes and protects human rights of women, children, youths, the elderly/older persons, persons with disabilities, migrant workers, and vulnerable and marginalised groups (ASEAN, 2015f, para. 5.2).

It is important to note the particular emphasis placed by the ASCC Blueprint 2025 on firstly, social protection and human rights protection in the ASEAN context; and secondly, social protection and other forms of protection that should also be available to migrant workers in particular. The following should be noted in this regard:

- Section II of the ASCC Blueprint, presents five "characteristics and elements" meant to apply to the ASEAN Community, with "key result areas" that correspond to each characteristic. As part of the "inclusive" characteristic, the ASCC Blueprint (citing the "inclusive growth agenda" of the ASEAN Economic Community) indicates a focus on addressing the concerns of all peoples of ASEAN on matters related to welfare, social protection, women's empowerment, gender equality, promotion and protection of human rights, equitable access to opportunities, poverty eradication, decent work, education, and information.[8] In this regard the ASCC Blueprint 2025 emphasizes in particular the promotion and protection of the human rights of migrant workers, as well as women, children, youths, the elderly/older persons, persons with disabilities, ethnic minority groups, and vulnerable and marginalized groups, "throughout their life cycles, guided by a life-cycle approach and adhering to rights-based principles in the promotion of ASEAN policies and programmes in the ASCC Pillar."[9]
- Therefore, under the key result area of "reducing barriers", the ASCC Blueprint 2025 suggests the reduction of inequality, promotion of "equitable access to social protection, and enjoyment of human rights by all" as well as the need to develop and implement frameworks, guidelines, and mechanisms toward the "elimination of all forms of discrimination, violence, exploitation, abuse and neglect."[10] Indeed, the promotion of non-discriminatory laws, policies,

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5 ASEAN, 2015f, para. 3.
6 Ibid., para. 1.
7 Ibid., para. 5.2.
8 Ibid., para. 11, read with para. 12(B).
9 Ibid., para. 10(B).
10 Ibid., para. 13(B.1.i).

and practices is further stressed as a separate strategic measure under the key result area of "empowered people and strengthened institutions" (under the characteristic "engages and benefits the people").[11]

- "Strengthened social protection" for migrant workers is indicated as a specific strategic measure under the "resilient" characteristic.[12]
- The key result area of "promotion and protection of human rights" (under the "inclusive" characteristic) reiterates the importance and relevance of the above. It stipulates of the following strategic measures:
    - Generally, support for the accelerated implementation among ASEAN Member States to extend coverage, accessibility, availability, comprehensiveness, quality, equality, affordability and sustainability of social services, and social protection.[13]
    - Specifically, the enhancement of "regional initiatives in accordance with the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers to improve the protection and promotion of the rights of workers and migrant workers."[14]
    - Also, the promotion of the elimination of all forms of discrimination – institutionalized or otherwise – against migrant workers.[15]

The other ASEAN Community blueprints reiterate and support many of the sentiments expressed above in the two ASCC blueprints and other ASEAN foundational documents. For example, the ASEAN Political-Security Community (APSC) Blueprint 2025 confirms the vision of ASEAN as a rules-based and inclusive community in which ASEAN peoples enjoy human rights, fundamental freedoms, and social justice, on the basis of being a rules-based, people-oriented, and people-centred community.[16] Key characteristics and elements, as well as their supporting strategic measures, include and require effective implementation of the ASEAN Charter; upholding the principles of international law; and promoting awareness.[17] Under the key element of "promote and protect human rights, fundamental freedoms and social justice to ensure our peoples live with dignity, in peace, harmony and prosperity", the APSC Blueprint 2025 lists the following strategic measures (among others):

- Strengthen domestic legislation and institutions;[18]
- Encourage Member States to ratify or accede to core international human rights instruments and ensure their effective implementation;[19]
- Strengthen the implementation of the ASEAN Human Rights Declaration (briefly reflected on in section 2.2.5 below);[20] and
- Cooperate closely with the relevant Sectoral Bodies to expedite the work of the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers in developing an instrument to ensure the rights of migrant workers are well protected within the region, in accordance with the laws, regulations, and policies of respective ASEAN Member States.[21]

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11 Ibid., para. 6(A.2.iv).
12 Ibid., para. 19(D.4). Note also the emphasis on the provision of guidelines for quality care and support for, among others, migrant workers (para. 13(B.1.ii).
13 Ibid., para. 13(B.3.ii).
14 Ibid., para. 13(B.3.ix).
15 Ibid., para. 13(B.3.vii).
16 ASEAN, 2015e, paras 3 and 5.1. See also para. 7(A.1.5).
17 Ibid., para. 7(A.1.1.i); para. 7(A.1.3); and para. 7(A.1.5).
18 Ibid., para. 7(A.2.5.i).
19 Ibid., para. 7(A.2.5.ii).
20 Ibid., para. 7(A.2.5.vi).
21 Ibid., para. 7(A.2.5.xv).

The ASEAN Economic Community (AEC) Blueprint 2025, in turn, emphasizes the following:

- Achievements made regarding services trade liberalization and the facilitation of skilled labour mobility, as well as with regard to regional economic integration;[22]
- A vision of ASEAN that includes the creation of a deeply integrated and highly cohesive ASEAN economy;[23] and widening ASEAN connectivity through regional and sub-regional cooperation projects that facilitate the movement of capital as well as skilled labour and talents;[24]
- The broadening and deepening of services integration, with reference to the ASEAN Framework Agreement on Services;[25] and
- Facilitation of the movement of skilled labour and business visitors by expanding and deepening commitments under the ASEAN Agreement on the Movement on National Persons where appropriate, and if necessary, considering further improvements to existing mutual recognition agreements (MRAs) and the feasibility of additional new MRAs to facilitate the mobility of professionals and skilled labour in the region.[26]

Two overarching observations relevant to the theme of social protection for intra-ASEAN migrant workers should at this stage be made.

First, the restrictive scope of beneficiaries of the free/facilitated movement framework: It is clear that the perspectives on the movement of workers that are found in the 2009 and 2015 AEC blueprints and in other ASEAN foundational instruments are more limited than what is envisioned in the ASEAN Charter. The blueprints foresee free/facilitated movement of professionals and skilled labour, and emphasize certain priority sectors.[27] Similar sentiments are expressed in other ASEAN instruments/documents. In particular, the ASEAN Agreement on the Movement of Natural Persons of 2012 (see section 6.1.2 below) contains explicit provisions and mechanisms for the temporary entry or temporary stay of the following categories of natural persons of an ASEAN Member State into the territory of another Member State: (i) business visitors; (ii) intra-corporate transferees; (iii) contractual service suppliers; and (iv) other categories as may be specified by the relevant Member State.[28] Provision is made for a review of the Member States' commitments made under the Agreement to achieve the further liberalization of movement of natural persons.[29] The ASEAN Charter, however, casts the net wider, as it envisages the facilitated movement of business persons, professionals, talents, as well as labour.

The implication is that only a small minority of intra-ASEAN migrant workers (according to some sources, about 2.5 per cent) are covered by the free movement arrangement, given the fact that the large majority of those who migrate within ASEAN for work are unskilled or low-skilled. Also not covered by these arrangements are irregular migrants, who reportedly constitute 40 per cent of the total intra-ASEAN migrant flow (Kneebone, n.d.). Perhaps one could see developments in this

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22 ASEAN, 2015d, paras 1–2.
23 Ibid., para. 6(i).
24 Ibid., para. 6(v).
25 Ibid., para. 11.
26 Ibid., paras 19–21(A.5).
27 According to the Declaration on the AEC signed on 22 November 2015, eight groups of professionals will be able to work more easily throughout the region: engineers, architects, nurses, doctors, dentists, accountants, surveyors, and tourism professionals (ABC News, 2015). Existing MRAs underpin the intra-ASEAN mobility of these eight groups of professionals.
28 See article 2(1) of the ASEAN Agreement on the Movement of Natural Persons, 2012, read with the preamble, as well as articles 1(a) and 1(b) and article 4. Article 3 contains comprehensive definitions of the categories of natural persons indicated in (i) to (iii). However, compliance with visa requirements may still be required by the receiving Member State, per article 2(4). The Agreement further provides for mechanisms to facilitate the mutual recognition of education or experiences obtained, requirements met, and licenses or certifications granted in other ASEAN Member States (article 13).
29 Ibid, art. 7.

regard as incremental or gradual: steps would have to be taken to ensure that in the medium term to long term effect is given to the ASEAN Charter vision of a free flow of labour that extends beyond professionals and business persons. As has been remarked: "Top-down labour mobility is a sharp contrast to existing realties, since most intra-ASEAN labour migrants are low-skilled workers" (ILO, 2015n, p. 5).

Second, it is evident that ASEAN foundational documents are mindful of the need to enhance social protection, in part with a view toward protecting people from the potentially negative effects of regional integration. The Vientiane Action Programme (2004–2010), section 3.2 notes that economic integration of the ASEAN region would bring about a need to "promote social protection and social risk management systems." To this end, paragraph 3.2 of the Programme and associated measures indicated in Programme annex 3 recommend that ASEAN "[e]stablish an integrated social protection and social risk management system … and [s]trengthen systems of social protection at the national level and work toward adoption of appropriate measures at the regional level to provide a minimum uniform coverage for skilled workers in the region."[30] Similarly, the ASCC Blueprint of 2009 sets these activities as strategic objectives to provide protection against possible negative impacts of globalization and integration, with the ultimate goal of ensuring that all ASEAN peoples are provided with social welfare by improving the quality, coverage, and sustainability of social protection and by increasing the capacity of social risk management.[31]

2.2.2 ASEAN Declaration on Strengthening Social Protection and Regional Framework and Plan of Action

In 2013 ASEAN Member States adopted the ASEAN Declaration on Strengthening Social Protection. Some of the core principles on which this declaration rests need to be emphasized, particularly in view of their importance for the social protection of migrant workers:

- The Declaration emphasizes equitable access to social protection as a basic human right, including in relation to migrant workers[32] and other vulnerable groups;[33]
- It stresses gradual extension of social protection coverage in terms of persons covered, availability, quality, equitability, and sustainability;[34] and
- It highlights that the task to progressively realize social protection in ASEAN Member States is primarily a governmental responsibility, for which adequate resources should be made available.[35]

Strategies and mechanisms to be adopted with a view to improved quality, coverage, and sustainability of social protection in ASEAN Member States include:

- "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";[36]

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30 Vientiane Action Programme, annex 3, ref. no. 3.2.2.

31 ASEAN, 2015f, para. 20.

32 It needs to be noted that migrant workers are still listed as a vulnerable group under the Regional Framework and Plan of Action to Implement the ASEAN Declaration on Strengthening Social Protection. However scope for action is limited by the following reference under the "definition of social protection": "Definitions of migrant workers and applicability of social protection schemes shall be in accordance to the prevailing national laws, policies and regulations of ASEAN Member States" (ASEAN, 2015k, p. 2).

33 ASEAN, 2013, para. 1.

34 Ibid., paras 2 and 12.

35 Ibid., para. 5.

36 Ibid., para. 1.

- adoption of national policies, strategies, and mechanisms to strengthen implementation of social protection;[37]
- extension of coverage, including the expansion of social insurance to the informal sector;[38]
- the need for results- and evidence-based assessments;[39]
- capacity strengthening and the development of appropriate data tools;[40]
- progress towards universal health coverage;[41] and
- multi- and inter-sectoral collaboration.[42]

In this regard, ASEAN Heads of State adopted on 21 November 2015 the Regional Framework and Plan of Action to Implement the ASEAN Declaration on Strengthening Social Protection. It has to be noted that the Regional Framework and Plan of Action:

- Includes as one of its stated objectives the achievement of inclusion and enhancement of equitable access of migrant workers (and others) to "opportunities and social protection";[43]
- Reiterates the principles that everyone, especially vulnerable groups such as migrant workers, is entitled to have equitable access to social protection as a basic human right and "on a rights-based/needs-based, life-cycle approach and covering essential services as needed";[44]
- Includes, under its definition of "social protection", interventions that consist of policies and programmes designed to reduce poverty, inequalities, and vulnerability by assisting vulnerable groups – such as migrant workers – to "enhance their capacities to better manage risks and enhance equal access to essential services and opportunities on a rights based/needs based approach";[45]
- Foresees the development of assessment tools and regional statistical indicators, including the establishment of an ASEAN social protection monitoring framework;[46] and
- Envisages, as part of its associated policy and programme development, a study on the portability of social insurance for documented migrant workers and their immigrant families, specifically the feasibility of its transferability across ASEAN Member States.[47]

2.2.3 ASEAN Declaration and Consensus on the Protection and Promotion of the Rights of Migrant Workers

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Cebu Declaration) was signed by ASEAN Leaders in 2007, and is particularly significant, calling on sending and receiving States to promote the full potential and dignity of migrant workers. The Cebu Declaration affirms the important contribution migrant workers make to the societies and economies of both countries of origin and destination in ASEAN; recognizes the legitimate concerns of migrant workers; and recognizes that cooperation is required in order to resolve cases wherein migrant workers become

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37 Ibid., para. 11.
38 Ibid., para. 12. Extension of coverage to the informal sector is also specifically addressed in the subsequent Vientiane Declaration on Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN (2016c).
39 ASEAN, 2013, para. 13.
40 Ibid., para. 13.
41 Ibid., paras 17–18.
42 Ibid., para. 19.
43 See ASEAN, 2015k, p. 1.
44 Ibid., para. 1.
45 Ibid., para. 10.
46 Ibid., para. 14.
47 Ibid., par 16(c).

undocumented due to no fault of their own. Later in 2007, ASEAN's Foreign Ministers called for the establishment of the Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).[48]

The Cebu Declaration also acknowledges that the fundamental rights of migrant workers and their family members already residing with them in the destination country must be considered. The Declaration requires Member States to cooperate increasingly on migrant worker issues, but notes, "nothing in this declaration shall be interpreted as implying the regularization of the situation of migrant workers who are undocumented."[49] The Declaration further calls for an intensification of efforts to "promote the welfare of migrant workers" and for destination countries to "facilitate access to ... social welfare services as appropriate".[50]

The following features of the Declaration have been highlighted as being particularly significant (Wickramasekara, 2011, p. 41):

- Emphasis on protection and promotion of rights;
- Recognition of the obligations on sending states, receiving states, and ASEAN Member States generally:[51]
    - Receiving states have to ensure access to resources and services for migrant workers – including the legal and judicial system – and have to promote employment protection;
    - Sending states need to 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 have to facilitate migration from their countries through policies and procedures covering recruitment, protection while abroad, and return; and
    - ASEAN Member States have to develop human resource and reintegration programmes for returning migrant workers, prevent and curb human trafficking and smuggling, and facilitate data-sharing;
- The call for the intensification of efforts to protect the fundamental human rights, promote the welfare, and uphold the human dignity of migrant workers; and
- The role of ASEAN Member States in promoting decent, humane, productive, dignified, and remunerative employment for migrant workers.

Of crucial importance was the task given in the Cebu Declaration to ASEAN bodies to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers.[52] After years of negotiation among the ten Member States, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers was signed by ASEAN leaders at the 31st ASEAN Summit in Manila in November 2017 (ASEAN Secretariat, 2017).

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[48] Four priorities were identified by the ACMW:
- Enhancing the protection and promotion of the rights of migrant workers against exploitation and mistreatment;
- Strengthening the protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries;
- Engaging in regional cooperation to fight human trafficking in ASEAN; and
- Working on the development of the ASEAN instrument on the protection and promotion of the rights of migrant workers.

[49] ASEAN, 2007, para. 4.

[50] Ibid., paras 5 and 7.

[51] See ASEAN, 2007, paras 4–14.

[52] Ibid., para. 22.

Building on the Cebu Declaration, the Consensus brings protection and promotion of the rights of migrant workers a step forward. It explicitly establishes rights for migrant workers and members of their families (as non-binding principles), and increases and expands the obligations of sending and receiving States in many important areas. Implementation of the Consensus will be guided by an action plan, which will be developed by the ACMW to translate the Consensus into concrete actions. Singapore, as 2018 ACMW Chair, will lead ASEAN Member States to create and finalise the action plan to implement the ASEAN Consensus within 2018.

2.2.4 ASEAN Labour Ministers' Work Programme 2016–2020 and work plans of the subsidiary bodies

ASEAN operational activities and plans of action also support the enhancement of social protection in ASEAN, including in relation to migrant workers. ASEAN cooperation on labour is led by the ASEAN Labour Ministers Meeting, which meets every two years and is supported by the Senior Labour Officials Meeting (SLOM). The SLOM has established three subsidiary bodies, namely:

- Senior Labour Officials Meeting Working Group on Progressive Labour Practices to Enhance the Competitiveness of ASEAN (SLOM-WG);
- ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW); and
- ASEAN Occupational Safety and Health Network (ASEAN-OSHNET).[53]

The ASEAN Labour Ministers adopted a programme of work which, starting in 2001, included as one of five broad priorities "strengthening social security and social protection," a priority through which ASEAN would "work to improve national social protection systems to cover risks faced by workers of ill health, disability, and old age" (Hall, 2011, p. 24). In the ASEAN Labour Ministers' Work Programme and the work plans of the three subsidiary bodies, ASEAN has committed itself to developing national and regional plans on social security/protection systems, conducting workshops to share experiences and strategies on how to extend social insurance to the self- or informally employed, and conducting seminars on unemployment insurance. Also, the SLOM convened a meeting at which Member States' practices with regard to provision of health and/or disability insurance, and/or pensions were shared, case studies were discussed, and capacity building needs were identified (Hall, 2011).

The ASEAN Labour Ministers' Work Programme 2016–2020 indicates "expanded social protection" as one of the key result areas. The corresponding thematic areas highlighted in the Work Programme include:

- expansion of coverage of social protection to all workers (responsible body: SLOM-WG);
- social protection of migrant workers in ASEAN (responsible body: ACMW); and
- protection and promotion of the rights of migrant workers (responsible body: ACMW).

[53] For more information about each subsidiary body, see http://asean.org/asean-socio-cultural/asean-labour-ministers-meeting-almm/overview/.

Also, with regard to the key result area of "expanded social protection", the ASEAN Labour Ministers' Work Programme 2016–2020 indicates the following as intermediate targets to be achieved by 2020:[54]

- strengthened social protection systems;
- raised awareness on social protection;
- expanded coverage, affordability, availability, quality, equitability, and sustainability of social protection; and
- reduced incidence of workers in vulnerable situations, including forced labour, in ASEAN Member States (ASEAN, 2016a, p. 2).

Under the thematic area "expansion of coverage of social protection to all workers", which is under the purview of the SLOM-WG, the following projects are among others indicated in the SLOM-WG Work Plan 2016–2020:

- build network and collaboration with the ASEAN Social Security Association in areas of mutual interest, including updating the compilation of national profiles of social security schemes (2016 onwards); and
- regional studies to support capacities of ASEAN Member States with regard to situational analyses of ASEAN Member States, viable models for within and outside ASEAN, as well as recommendations on:
    - sustaining financing mechanisms for social insurance, including social pensions (2017); and
    - expanding coverage of social insurance to the informal sector (2017) (ASEAN, 2016a, pp. 25–26).

To address the thematic areas of "social protection of migrant workers in ASEAN" and "protection and promotion of the rights of migrant workers", the ACMW Work Plan 2016–2020 details the following projects:

Thematic area: social protection of migrant workers in ASEAN –

- study on portability of social security for migrant workers across ASEAN Member States (2018); and
- collaboration with Senior Officials Meeting on Health Development to address health risks of migrant workers, including those affected by emerging infectious diseases (2016–2020) (ASEAN, 2016a, p. 32).

Thematic area: protection and promotion of the rights of migrant workers –

- finalization of the ASEAN instrument on the protection and promotion of the rights of migrant workers (2016–2017);[55]
- research on migrant workers rights-based on standard employment contracts (2017–2018);
- research on gender dimensions of migration (including exploitation and mistreatment) (2018–2019);
- seminar/conference to socialize results to ASEAN Member States and beyond;
- public campaign on safe migration (2017–2019); and
- repository of legislations and policies on migrant workers of ASEAN Member States (2016–2020) (ASEAN, 2016a, pp.33–34).

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[54] Immediate targets of the ASEAN Labour Ministers' Work Programme 2016–2020 are those to be achieved through the work of the SLOM, SLOM-WG, ACMW, and ASEAN-OSHNET.

[55] The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers was signed by ASEAN leaders at the 31st ASEAN Summit in Manila in November 2017.

2.2.5 ASEAN Human Rights Declaration

Mention should be made of the provision in paragraph 30(1) of the ASEAN Human Rights Declaration of 2012, to the effect that, "Every person shall have the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence." Paragraph 29(1) in turn provides, "Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities."

The strengthening of the implementation of the ASEAN Human Rights Declaration is indicated as a strategic measure under the ASEAN Political-Security Community Blueprint 2025.[56]

2.2.6 Other developments, including work done by and recommendations of the ASEAN Forum on Migrant Labour

One of the ASEAN structures involved in the protection and promotion of the rights of migrant workers is the ASEAN Forum on Migrant Labour (AFML), institutionalized and operating under the auspices of the ACMW. The AFML gathers annually to discuss and share experiences, as well as to develop joint recommendations on issues related to the protection and promotion of the rights of migrant workers. The AFML brings together key labour migration stakeholders in the ASEAN region, including each ASEAN Member States' nominated tripartite constituents – government, employers' organizations, and workers' organizations – as well as the ASEAN Secretariat, nominated national and regional CSOs, and relevant international organizations. In the course of its annual meetings the AFML has been dealing with a range of labour migration-related themes, including return and reintegration, labour migration data collection, regulation of recruitment, complaint mechanisms, and protection during employment.

Some of the recommendations adopted by the AFML have a direct bearing on social security for ASEAN migrant workers. For example, the 4th AFML (2011) recommended the development of bilateral and multilateral agreements for portability of social security benefits and better implementation of existing schemes, and the 7th AFML (2014) recommended strengthened cooperation between countries of origin and destination in providing assistance to migrant workers with health concerns[57] in order to ensure access to treatment and relevant social welfare services (ILO, 2015q; 2015p).

The important recommendations of the 9th AFML on "Better Quality of Life for ASEAN Migrant Workers through Strengthened Social Protection" (2016) should in particular be referenced. The Forum's recommendations cover two main areas of actions to promote and ensure social protection for migrant workers: (i) extending social protection for migrant workers in ASEAN; and (ii) working towards the portability of social security for migrant workers in ASEAN. As regards the extension of social protection for migrant workers in ASEAN, the following Recommendations came out of the 9th AFML:[58]

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[56] See section 2.2.2 above for details.

[57] Of course, tax-funded provisions are not only limited to health care. Also important in this regard is access to a non-contributory social pension for non-nationals above the statutory age residing in the destination country. Another example relates to the exclusion of child allowances, where the exclusion is based on nationality criteria.

[58] *Ibid*, paras 1-10.

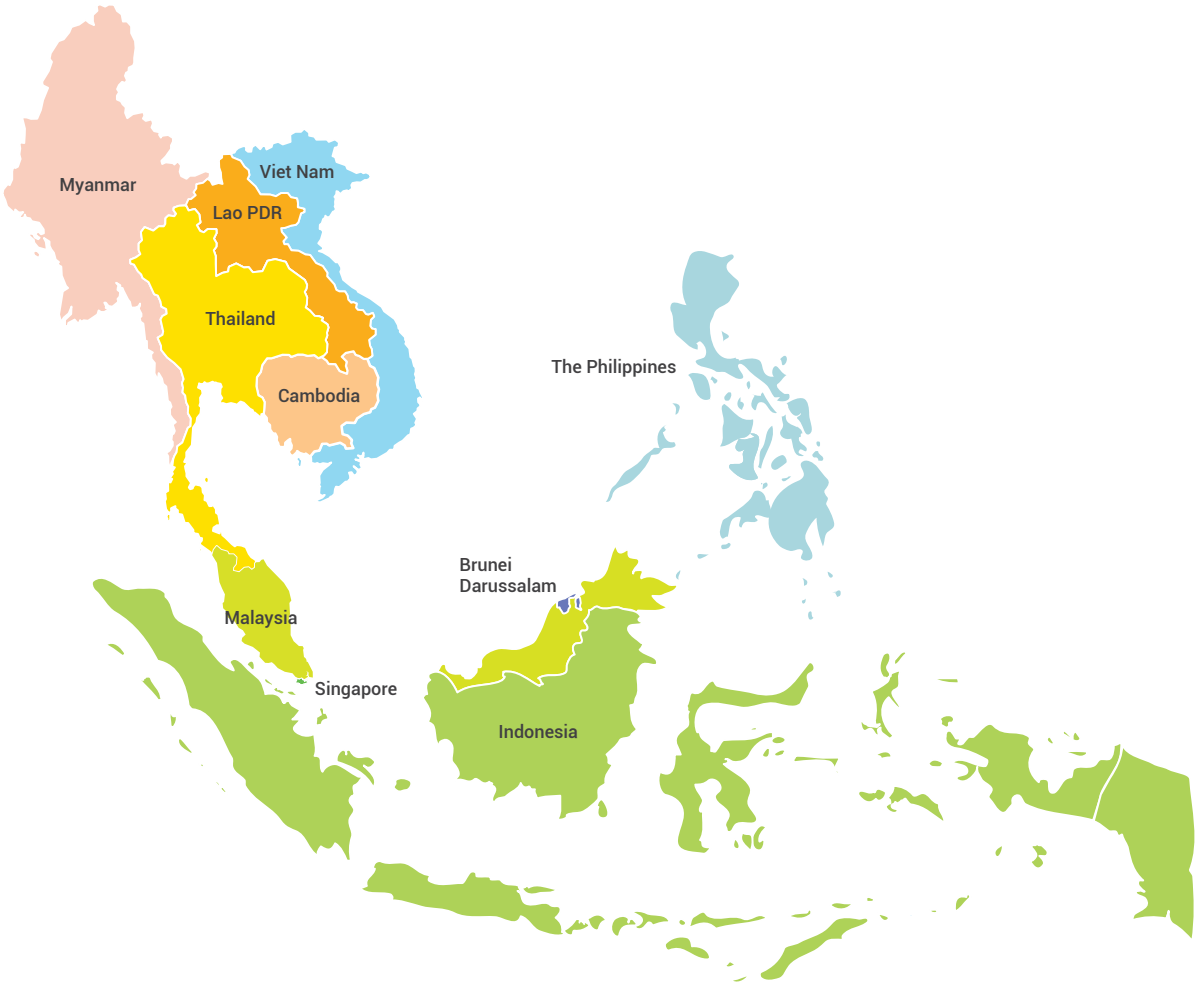
1. Promote equal treatment between nationals and non-nationals in accessing nationally defined social protection in ASEAN Member States.
2. Take measures as appropriate to adopt and implement in each ASEAN Member State a progressive plan, with a clear timeframe, towards ensuring equitable access to social protection for migrant workers keeping in mind the following priorities: working injury insurance, medical care, sickness and maternity benefits, old-age, invalidity and survivors' pensions and death benefits.
3. Take into account the need to provide social protection to migrant workers' families, including but not limited to migrant workers' children's access to education.
4. Provision to all migrant workers and their family members access to emergency health care.
5. Review relevant national laws in view to extend access to social protection to migrant workers.
6. Remove discriminatory practices in labour and social protection laws, immigration policies, and administrative obstacles that prevent migrant workers' access to social protection benefits (e.g. with regard to domestic workers).
7. Strengthen national and regional database on social protection programmes, including data on migrant workers, disaggregated by gender and migration status as needed.
8. Include applicable and gender-responsive social protection provisions in written employment contracts or other appropriate written document in a language understandable to migrant workers.
9. Provide information on social protection including available schemes, rights and obligations, to migrant workers during pre-employment, pre-departure, post-arrival orientation seminars and during the employment, in a language understandable to migrant workers.
10. Strengthen capacity building, awareness and education programmes for policy makers and other stakeholders as well as sharing of knowledge and good practices among ASEAN Member States on social protection for migrant workers (ASEAN, 2016b, paras 1–10).

With reference to working towards the portability of social security for migrant workers in ASEAN, the recommendations emphasize the following:

11. Identify knowledge gaps on portability of social protection for migrant workers from existing studies to be addressed in future studies, and ensure that findings and recommendations of the studies are widely disseminated to all relevant stakeholders and sectors.
12. Explore and assess the feasibility of developing bilateral or regional agreements or arrangements on portability of social protection for migrant workers between Sending States and Receiving States, either as a specific agreement and/or include in Memorandum of Understanding or Bilateral Labour Agreement.
13. Support implementation of the ASEAN Declaration on Strengthening Social Protection and its Regional Framework and Action Plan particularly with reference to extending social protection coverage to all migrant workers through inter-sectoral cooperation.
14. Engage multi- and cross-sectoral stakeholders in raising awareness and implementing social protection for migrant workers as relevant.
15. Ensure timely remittance of social protection contributions and benefits to migrant workers and their families that are due to them.
16. Promote and support exchange of information and good practices on social protection and portability of social security for migrant workers within ASEAN as well as other regions (ASEAN, 2016b, paras 11–16).

ASEAN stakeholders' increased awareness and interest in exploring portability of social protection has manifested in the inclusion of this topic in the agendas of various ASEAN dialogues outside the annual AFML. For example, the 7th Regional Tripartite Social Dialogue for Growth, Employment and Sound Industrial Relations in the Services Sector in ASEAN on "Managing Labour Market in an Integrated ASEAN", held in Malaysia on 12–13 October 2015, called for continued collaboration at national and regional levels among social partners to explore how social protection for all can be developed and strengthened in ASEAN.[59]

Figure 2: Map of ASEAN Member States



[59] This call should of course also be understood in the light of the broader changes to economies and the operation of the free movement principle. The Forum therefore concluded that: "We take note that the ASEAN program under the AEC Blueprint is playing a decisive role in facilitating structural changes in the economy of each ASEAN Member State and in the region as a whole. In particular, the ASEAN is developing into a services-led economy, with the cross-border trading of services becoming a central organizing feature of one ASEAN economy. The freer movement of service providers -- from the semi-skilled migrant workers to middle-level skilled workers and professionals up to the high-echelon corporate managers and executives – has also become a central reality in the evolving ASEAN labor market. These changes are likely to continue and deepen as ASEAN strives to become a truly one ASEAN Economic Community, ASEAN should develop policies and programs to help address these changes."

2.3 The need for a regional framework for the social protection of migrant workers in ASEAN

2.3.1 Overview and background

Developments regarding the protection of migrant workers from a social security perspective can be summarized as follows: The Cebu Declaration and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (henceforth, the Consensus) call on ASEAN Member States to promote the full potential and dignity of migrant workers, and place certain obligations in this regard on receiving and sending States. The Cebu Declaration and the Consensus are sensitive to the fundamental rights of migrant workers and their family members already residing with them in countries of destination, preserve the legitimate concerns of countries of origin and destination, and recognize the respective obligations imposed on sending and receiving States. Some progress in the area of social protection has been made, however, embedded in the operational activities of mandated ASEAN institutional frameworks, in particular the ACMW.

There are also no social security or labour agreements amongst the individual ASEAN countries that deal comprehensively with social security for migrant workers, although memoranda of understanding (MOUs) on labour do exist, providing generally for non-discrimination and equality in access to rights for migrants (Tamagno, 2008 as cited in Hall, 2012). It should be added that some ASEAN Member States are currently considering the conclusion of bilateral social security agreements, including for example Philippines and Thailand.

In many instances, as discussed later in this report, the national legislation and practices of receiving countries provide inadequate access to social security for migrant workers. More recently, some sending countries have introduced innovative measures to extend social security to their migrant workers; however, these measures remain limited in scope and impact.

Families, therefore, are often the primary means of support for migrant workers in need of social (security) support, rather than social protection or a welfare state, and up to 60 per cent of workers in ASEAN fall within the informal sector with little or no social protection. Informal coping strategies are the order of the day for migrant workers and their families, although innovative policy, regulatory, and institutional responses have developed in the region (Hall, 2011).

2.3.2 Rationale for adopting a regional framework for the social protection of migrant workers in ASEAN

There are several reasons why it is imperative to have a regional instrument that would provide a guiding framework to assist ASEAN Member States in carving out a streamlined approach to the social security position of migrant workers. Among those reasons are the sheer extent of migration to ASEAN Member States, particularly intra-ASEAN migration, and the free movement regime and regional integration objective foreseen by the ASEAN Charter and other ASEAN instruments, as explained above.

As indicated later in this report, it is acknowledged worldwide in international labour standards that appropriate access to social security, on the basis of equality of treatment of migrant workers and nationals, is required to give full effect to free movement regimes. Even though, as is indicated later

in this report, such an instrument should allow for sufficient flexibility, it should nevertheless provide the basis for fair treatment of migrant workers across a particular region bound together by free movement and regional integration principles.

In summary, the rationale for adopting a dedicated regional instrument flows from the following considerations:

- It will help to set standards for the region-wide treatment of migrant workers on a consistent basis and will give clarity to governments, employers, and workers.
- It will give expression to the principles of regional integration and free movement, as foreseen by the ASEAN Charter – and not merely provide a modality for protecting ASEAN peoples against the so-called negative effects of regional integration.
- Without such an instrument setting the required standards, millions of migrant workers and potentially their family members will be left without a proper regulatory framework that gives appropriate recognition to their human rights in a streamlined fashion and which respects the need for suitable border management. Such an instrument will also allow migrant workers and their family members to access social protection, and to be covered by and benefit from acquired social security rights in the course of acquisition. Furthermore, adopting such an instrument and setting up the appropriate supportive legal, institutional, and administrative arrangements will assist with prompting migrant workers not to become irregular, as they will enjoy guaranteed protection under such an instrument if they avoid migrating irregularly.
- The significant uptake in recent years of intra-regional labour migration within ASEAN makes it imperative to adopt such an instrument.
- Other regions of the world have been establishing such regulatory regimes to properly deal with the position and protection of migrant workers, including unskilled and semi-skilled workers, while simultaneously serving regional imperatives of developing regional labour markets, enhancing regional integration, supporting freedom of movement, etc.Developing an ASEAN instrument will and should naturally also reflect the close correlation between migration and development. Migration within ASEAN poses considerable development challenges but also significant opportunities. This has also been recognized at the international level, at least as far back as 1994, at the occasion of the UN-driven Cairo Population Conference (UN, 1995).[60]
- According to the 2009 UN Development Programme Human development report, there is a range of evidence about the positive impacts of migration on human development (that is, putting people at the centre of development), through such avenues as increased household incomes and improved access to education and health services.
- Worldwide, evidence of this emphasis on migration and development is to be found in important national-level initiatives relating to the adoption of migration and development policies and strategies; the streamlining of remittance transfers; engagement with diasporas through development-oriented interventions in or for the benefit of the country of origin; and the conclusion of labour-exporting agreements between countries experiencing skills shortages and countries that have excess human capacity available (generally countries from the Global South).

[60] Within UN, 1995 see the Conference's Programme of Action, Plan of Action, Title X, para. A: International Migration and Development. This prompted the UN to set up a High Level Dialogue on Migration and Development in 2006; the General Assembly adopted by consensus a resolution on International Migration and Development. A follow-up High Level Dialogue on Migration and Development took place in October 2013.

- Recently developed policy frameworks in many countries are a testament of the growing sensitivity of the role that migration plays in the human and economic development of both host and home countries. The example set by these countries is worthy of being followed by other countries, as migration and development arrangements embedded in these policies evidently support regional integration and typically provide for enhanced social security support via unilateral, bilateral, and multilateral interventions – as discussed in chapter 6 below.

2.4 Some conclusions

Social protection, including the social protection of migrant workers in ASEAN, is essentially a human rights issue – The common thread running through the various documents discussed above is that social protection in itself, including the social protection of migrant workers, is a human rights issue. This is strengthened by an understanding that migrant workers constitute a category of vulnerable people. The ASEAN Human Rights Declaration of 2012, also emphasizes this in paragraph 4, that "[T]he rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms." In fact, the ASEAN Human Rights Declaration makes it clear that while ASEAN Member States may determine the extent to which they would guarantee to non-nationals the economic and social rights found in the Declaration, this determination has to be made "with due regard to human rights" (para. 34). In addition, as indicated above, similar sentiments have been expressed in other ASEAN instruments, including the ASEAN Declaration on Strengthening Social Protection and its Regional Framework and Action Plan. In particular, the Declaration states:

> Everyone, especially those who are poor, at risk, persons with disabilities, older people, out-of-school youth, children, migrant workers, and other vulnerable groups, are entitled to have equitable access to social protection that is a basic human right and based on a rights-based/needs-based, life-cycle approach and covering essential services as needed (ASEAN, 2013, para. 1).

The need to develop a standard-setting instrument – It is suggested that action needs to be taken at the regional level by ASEAN itself in order to address gaps with respect to social protection provisioning for migrant workers, and to give effect to the overarching goal of regional integration. The lack of uniform, regional rules or standards governing entry, deployment, and national treatment of migrant workers within the ASEAN region has given rise to confusion, conflicts, and abuses, and leading to a "race to the bottom". Bearing in mind the pronouncements made in various ASEAN foundational documents and the discussion above, it is suggested that the new instrument should, among other things:

- Build on the ASEAN-specific free movement regime and offer a welfare protection framework for intra-ASEAN migrant workers.
- Cover a range of beneficiaries in incremental fashion, extending the scope beyond the currently foreseen high-skilled employees and business investors, to capture low-skilled workers as well – in accordance with the ASEAN Charter provisions in this regard.
- Where appropriate, provide for equal treatment of (in particular) regular migrant workers regarding access to social security in countries of destination, both in law and in practice.
- Provide for countries of origin to offer access to social security for migrant workers, in the event of weak protection in countries of destination. As indicated later in this report, certain ASEAN Member States have already taken steps to give effect to this principle, including Indonesia and the Philippines.

- Make special arrangements for the coverage of informal workers.
- Pay special attention to the position of irregular/undocumented workers.
- Stress the importance and applicability of relevant international standards.

Correlation between free movement and social protection of migrant workers – As mentioned above, the central lesson learnt from most other regions of the world where free movement regimes are in place, is that protecting the social security position of migrant workers covered by said regime, providing for their equal treatment, regulating the (ex)portability of their social security benefits, and coordinating the social security schemes of affected countries are intrinsically linked to free movement. For this reason, ASEAN would also have to introduce an instrument that appropriately regulates the social protection of migrant workers.

Social protection for migrant workers not subject to a free movement regime – It is evident from both international standards and the range of foundational ASEAN documents, that those migrant workers not subject to ASEAN's free movement regime are also entitled to treatment in accordance with human rights requirements. From an international law perspective, this implies equal treatment of regular migrants in relation to social protection/security coverage and access. For irregular migrants this implies at least essential/emergency health care and basic assistance.

The restrictive scope of beneficiaries within ASEAN's free/facilitated movement framework, and the need to incrementally include low-skilled migrants – As indicated above, steps need to be taken to extend – even if only gradually – the scope of migrant workers who should benefit from the ASEAN free movement regime. Effect should be given to extend the scope, where possible, to include migrant workers other than professionals and skilled labour – as foreseen by the ASEAN Charter but not included in the ASEAN Economic Community Blueprint.

Enhanced social protection as a means to protect ASEAN peoples against negative effects of regional integration – As indicated above, the absence of appropriate social protection coverage would expose ASEAN migrant workers to unequal treatment – and even abuse.

3. Intra-ASEAN labour migration: Characteristics and trends

According to a recent World Bank Brief (2015a), the number of international migrants worldwide was expected to exceed 250 million in 2015, and their savings and remittances are expected to continue to grow.

Labour migration is a growing reality in South-East Asia. Some ASEAN countries are both sending and receiving countries: it has been estimated that Thailand receives 3.5 million migrants annually, while 150,000 Thai "contract" labourers per year work outside the country.

Between 1990 and 2015, intra-ASEAN migration increased from 1.5 million to 6.9 million (UNDESA, 2016). Similarly, the intra-ASEAN share of ASEAN nationals living abroad rose from 20.3 per cent to 34.6 per cent over the same period (ILO and ADB, 2014). However, given the current state of data and data collection in ASEAN, this does not allow a realistic picture of the extent of labour migration. As has been noted, "The underlying data are often too discrepant in the range of methodologies and definitions they use in order to be comparable across different countries. A truly accurate picture of labour migration in ASEAN is still, unfortunately, a long way off" (ILO and ADB, 2014). Nevertheless, it has been suggested that about 87 per cent of migrant workers in ASEAN are either unskilled or low-skilled (Nadaraj, 2015). As indicated above, it has also been suggested that 60 per cent of intra-ASEAN migrant workers work informally.

According to data reported in 2015 and quoted by the ILO, Malaysia, Singapore, and Thailand are the destinations for 91 per cent of intra-ASEAN migrant workers – Malaysia and Thailand get 35 per cent each and Singapore 21 per cent (Nadaraj, 2015). According to some estimates, Indonesia deploys 500,000 migrant workers each year; 6.5 million Indonesian migrant workers (known as *Tenaga Kerja Indonesia*, or TKIs) are said to be officially working overseas in 142 countries. In the case of Myanmar, it has been suggested that about 2 million nationals are living abroad – approximately 70 per cent (1.4 million) in Thailand. The extent of migration from Myanmar is also illustrated by the fact that about one quarter of the population of certain townships lives abroad (ILO, 2015a).

There are several drivers of intra-ASEAN migration. The pull and push factors involved include a particularly youthful population in certain ASEAN countries who are in search of job opportunities. Other considerations include the need for livelihood support, population ageing (e.g., in Thailand), labour market growth in several ASEAN Member States, economic disparities and wage differentials, and the political process of regional integration (ILO, 2015a; Nadaraj, 2015). Pasadilla and Abella (2012, p. 9) summarize the most relevant driving forces in the following terms:

> This brief review of migration and demographic trends in countries of ASEAN suggests some common forces are at play that will lead to increasing migration flows in the coming decades. In the region's most dynamic economies, many economic sectors have come to depend on regular supplies of foreign labor to maintain their global competitiveness. Growing economic affluence has enabled many of the new entrants to the workforce to attain higher levels of education and reject certain types of jobs. More women are leaving their traditional domestic functions, which are assumed by foreign domestic helpers. Policies to liberalize admission of foreign workers are already featuring prominently among the solutions to the problems posed by rapid aging in several societies, whether these be in terms of maintaining productivity or supporting the needs of growing cohorts of aged population. As shown… old age support ratios are projected to drop below 2 in less than four decades in Singapore (as well as in Japan and Hong Kong [China]). The decline will also be fast in the Republic of Korea and Thailand.

They also highlight the asymmetrical nature of labour flows in the ASEAN region:

> [U]nlike in the more integrated European Union (EU), there is not yet symmetry in labor flows across Southeast Asian countries. Countries such as Brunei Darussalam, Malaysia, Singapore, and Thailand have a disproportionate share of total migrants from the region, while countries like Indonesia, Lao [People's Democratic Republic], Myanmar, and the Philippines are net labor exporters. [T]he three major labor importing countries, along with Cambodia and Thailand, have a greater stock of in-migrants from ASEAN than their out-migrants in the others. Malaysia and Thailand, with a ratio of out-migrants in other ASEAN countries to in-migrants from other ASEAN countries closer to 1.0, may be considered to be both labor importers and exporters. Brunei Darussalam, Cambodia, and Singapore have significantly more in-migrants from other ASEAN countries than out-migrants in the others. On the other hand, among ASEAN countries that are net labor exporters, the Philippines hosts the least number of ASEAN migrants, next only to Myanmar." (Pasadilla and Abella, 2012, p. 10)

Note should also be taken of the considerable impact of remittances. Globally, the official recorded remittance flows to low- and middle income countries are estimated to have reached US$466 billion in 2017, an increase of 8.5 percent since 2016 (World Bank, 2018). It is evident that remittances also play a major role in ASEAN:

> The gross personal remittances received in the Philippines and Viet Nam in 2014, however, accounted for rather significant gains of 10.0 per cent and 6.4 per cent of GDP, respectively – more than $28 billion and about $12 billion – indicating the significant economic contribution personal remittances currently bring to both countries.

In the Philippines, personal remittances received overtook ODA (Overseas Development Assistance) and aid even in the early 1990s and now represent one of the biggest nominal remittances gains of any country worldwide. In Indonesia and Viet Nam, the turning point occurred around 2005 with personal remittances continuing to grow rapidly since then." (ILO, 2015a, pp. 19–20)

4. Challenges faced by migrant workers in ASEAN

A myriad of challenges face migrant workers with regard to protecting their welfare generally, and ensuring their access to social security benefits more specifically. This chapter will address the broader challenges with reference to recent pronouncements by the ILO and migration researchers. The chapter will then provide a brief explanation of some specific challenges, with reference to particular experiences in the ASEAN region.

> "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, 2008, pp. 1–2)

4.1 Legal barriers

Migrant workers are often legally excluded from accessing social security. This could be as a result of a migrant worker's specific immigration status (e.g., they may be undocumented migrant workers), which makes them ineligible for accessing benefits. In Brunei Darussalam and Singapore, as a rule only permanent residents have access to most forms of contributory social security, which may not be relevant for migrant workers working in these countries for limited periods.

Alternatively, a social security law might specifically exclude migrant workers generally or exclude specific categories of migrant workers, as well as other categories of non-nationals, such as the family members of migrant workers and those who do not work (the elderly, for instance). Migrant workers' family members may or may not be covered depending – among other considerations – on the migrant worker's specific status (e.g., being a permanent resident as opposed to a temporary worker). The social security legislation in question may include laws providing for the contributory context (i.e., social insurance law) or laws regulating welfare access (i.e., social welfare/social assistance law).

The absence of bilateral social security agreements between ASEAN Member States add to the legal exclusion of migrant workers. Such agreements invariably provide for equality of treatment of nationals and non-nationals as far as access to those social security benefits covered by the agreement are concerned. In addition they generally provide for portability of benefits and other social security coordination principles. To date, the bilateral labour agreements concluded by ASEAN Member States do not provide for these social security arrangements.

4.2 Challenges related to labour market status

Migrant workers can fall within a category of workers who are not at all covered by the social security law or social security system of the country of destination. The following issues are of particular significance in ASEAN:

- Certain categories of migrant workers may be explicitly excluded from social security coverage. These exclusions may apply only to migrant workers in certain categories of work, or as is the case in some ASEAN countries, coverage is denied to all workers – including national workers – in a specified category of work. An example would be domestic workers in Indonesia.
- Informal workers often fall outside the scope of social security laws, as these laws often only cover workers in the formal economy (working for an employer in an identifiable employment relationship), at least as far as contributory social security is concerned. This is particularly problematic in ASEAN, given that 60 per cent of intra-ASEAN migrant workers work informally.
- Undocumented migrant workers are generally disqualified from accessing social security benefits. This could have fairly dramatic consequences for undocumented migrant workers, for example, in the event of an occupational injury or disease. However, there are also examples in ASEAN of progress made in this regard. For instance, initially the Thai authorities had refused to extend coverage to migrant workers who had entered the country irregularly but had subsequently been allowed to stay and work in Thailand. In 2015, the Supreme Administrative Court in Thailand rescinded a circular issued by the Social Security Office being deemed as setting out an unlawful practice and discriminative treatment against such migrant workers and their access to the Workmen's Compensation Fund (WCF) (HRDF, 2015).

- Non-contributory forms of social security support are by and large restricted to citizens. Permanent residents may also be eligible in relation to a few social assistance benefits in a country such as Singapore.

4.3 Administrative practice, immigration policy, language, and related obstacles

Examples of obstacles under this heading include:

- Regarding access to workers compensation benefits in Thailand, it has been indicated that there can be several impediments to access, even if workers are legally qualified to receive benefits. This is the result of the fact that a passport or nationality registration document is invariably required by Thai authorities, which not all migrant workers have ready access to. In addition, to receive workers compensation benefits, the employers of the workers in question must have registered and paid into the workers compensation scheme (Monrawee, 2016a).
- Restrictions may be imposed on the ability of migrant workers to change employers. As a number of civil society organizations in Thailand noted in a 2011 submission to the UN Human Rights Council:

  > Documented migrants' are not allowed to freely change employer.[1] If the employer allows the change, migrants with annual registration must file with the Department of Employment Services and find a new employer within seven days, while those under the MOU are given only three days. If a migrant does not register the change of employer or does so without the employer's permission, they forfeit their registration status and become "illegal" (Raks Thai Foundation et al., 2011, p. 3).

  In losing their legal status, migrant workers may no longer have access to social protection benefits.
- Closely related to the previous point is the broader issue that migrant workers whose employment contract has come to an end often have to leave the destination country within a short period of time. The result is that these workers invariably fail to access social security benefits because of time constraints, even in instances where they may otherwise be entitled to such benefits. This highlights the need to ensure better alignment between immigration law and policy, on the one hand, and social security protection, on the other.[2]
- Some countries with retirement provident fund schemes allow migrant workers who may be eligible to receive benefits to make lump-sum withdrawals of accrued pension contributions upon departure from the country.[3] It needs to be pointed out that this provides for limited protection, as lump sum payments do not ensure regular pension payments.

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1 Permission to change employer in Thailand is automatic only under extreme conditions such as the closing of the business, the death of the employer, or rights abuses by the employer according to the practice guidelines under the MOUs within the Ministry of Labour.

2 In Thailand, for example, migrant workers have to leave the country within seven days of losing their job. This does not allow them time to go through the process of declaring their new status (unemployed) to the Department of Employment and the Social Security Office, nor to report back to the Department of Employment every month, as required under the unemployment scheme. Moreover, the Department of Employment in practice only accepts applications from Thai citizens, thereby excluding all migrant workers. A Ministry of Labour working group has been established to determine the appropriateness (and accessibility) of Thai social security benefits for migrant workers and to find ways to better align policies and practices regarding migrant workers across the Department of Employment and the Social Security Office.

3 In addition to Singapore, this is also true for Brunei Darussalam, Indonesia, and Malaysia. See Ong and Peyron Bista, 2015, p. 51.

- Some ASEAN countries have adopted alternative measures for the social security coverage of migrant workers. Three scenarios in particular may be mentioned.

    1. Some countries provide voluntary coverage schemes. In Malaysia, for example, migrant workers can opt to contribute to the Employees Provident Fund, in which case, both employee and employer will be liable to make monthly contributions from then on (Ong and Peyron Bista, 2015). Of course, voluntary coverage is incomplete coverage – in the absence of compulsion workers, including migrant workers, are unlikely to contribute, among others due to financial considerations; migrant workers are therefore left without appropriate coverage.
    2. Regular (or regularized) migrant workers, when compared to nationals, may experience different treatment in social security terms. In recent years, the main receiving ASEAN countries – Brunei Darussalam, Malaysia, Singapore, and Thailand – have reduced public subsidies for foreign nationals at public healthcare facilities, to better reflect the scarcity of health services.[4] Nonetheless, in Singapore, documented migrants will not be denied essential healthcare. Also, in some countries, separate but less beneficial schemes have been established for migrant workers. In Malaysia, for example, non-permanent resident migrant workers do not qualify for work injury and invalidity protection under the mainline scheme administered by the Social Security Organization (SOCSO), but instead, are obliged to be insured under the lesser Foreign Workers Compensation Scheme (FWCS) (Ong and Peyron Bista, 2015). It has to be noted that Malaysia is one of the six ASEAN Member States (out of ten) to have ratified the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), which requires equal treatment of national and foreign workers.
    3. As far as health insurance (which is provided by several ASEAN countries) is concerned, migrant workers are at times excluded or compelled to belong to separate, less beneficial schemes – as has been noted in relation to Thailand[5] and Malaysia[6].

- Also, although equality of treatment for accident compensation may be formal recognized as policy, in reality most migrant workers in many ASEAN Member States, are often not insured for occupational injuries and diseases. This may be due to their undocumented status, the non-compliance of employers, migrants' lack of awareness of their rights, language barriers, onerous administrative procedures, and other factors (Ong and Peyron Bista, 2015).

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4 In the case of Singapore, it has been remarked that this was done to better reflect the scarcity of health services. Nonetheless, in Singapore, documented migrants will not be denied essential health care, according to feedback received from SLOM Singapore, July 2017. According to Ong and Peyron Bista (2015, p.52), in these countries the adjustment was achieved by reducing hospital subsidies for foreign nationals or obliging mandatory take-up of private insurance.

5 "Thailand's tax-financed Universal Coverage Scheme excludes migrant workers, ethnic minorities, and displaced or stateless persons who do not possess a national identity document. Nevertheless, social health insurance coverage is available for documented migrant workers in the formal economy (i.e. those under Section 33 of the Social Security Act). Those from Cambodia, Lao People's Democratic Republic, and Myanmar who do not qualify are obliged to take up the Compulsory Migrant Health Insurance (CMHI) to access public health care facilities" (Ong and Peyron Bista, 2015, p. 52).

6 "In Malaysia where public health care providers are tax-financed, the Foreign Workers Health Insurance Protection Scheme (SPIKPA) by private medical insurance was implemented between 2011 and 2013 to reduce the government subsidization of migrant workers' health care. Similar to Malaysia, Singapore obliges employers to purchase mandatory private insurance for their (non-permanent resident) migrant workers and to bear any excess medical expenses. Migrant workers who are Permanent Residents in Singapore are covered under the compulsory medical savings and opt-out insurance schemes but receive less health care subsidies than Singapore citizens. More recently in 2015, mandatory take-up of private insurance for non-permanent resident migrant workers was introduced in Brunei Darussalam. On a positive note, Indonesia now permits the enrolment of migrant workers who have worked in the country for at least 6 months under its new national health insurance scheme (JKN)" (Ong and Peyron Bista, 2015, p. 52).

4.4 Other shortcomings

There are also other challenges facing migrant workers generally, and in ASEAN specifically, including:[7]

- Maltreatment in the host country, in the sense of non-recognition of or lack of enforcement of labour and social security rights;
- Until recently, there has been little focus on social security for migrants in ASEAN;
- Migrant workers are often not covered by the social security systems of either the host or home country as a result of any of or any combination of the following factors:
  - Lack of extra-territorial application of domestic laws;
  - Nationality and/or residency requirements;
  - Contribution period required for long-term (e.g., retirement) benefits;
  - Work in the informal economy and irregular work; or
  - Documentation and other administrative barriers.
- Discrimination seems to be prevalent in the laws and practices of both countries of origin and destination countries;
- Social security portability arrangements seem to be either completely lacking or inadequately developed – see also the discussion later in this report;
- National labour, migration, and related policies, as well as the associated legal frameworks, do not capture the social protection plight of migrant workers and their families sufficiently;
- Impacting on this is also the inadequate regulation of:
  - exit arrangements (including regulation of private recruitment agencies);
  - protection while abroad; and
  - arrangements for returning migrants;
- Bilateral labour agreements and memoranda of understanding make limited provision for employment protection while largely ignoring the social security protection of migrant workers;[8]
- One or more multilateral arrangements at the regional level are, despite the worldwide eminence of such arrangements, sorely lacking in South-East 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, with some notable exceptions (e.g., the UN International Covenant on Economic, Social and Cultural Rights, 1966) rarely been ratified by ASEAN Member States (see also the discussion below), and the norms and standards embedded in these instruments are poorly implemented.

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[7] See, among others, Van Ginneken, 2013, p. 3.

[8] For a recent reflection, see C van Panhuys *et al Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements* (ESS- Working Paper No. 57, ILO, 2017) 43.

4.5 Some conclusions

It has been suggested that migrant workers are doubly disadvantaged because they receive less social protection both at home and in the host country. In destination countries, they are often excluded from tax-financed schemes, such as social assistance programmes or social pension schemes, despite contributing to the host country economy through work, consumption, and taxation (Ong and Peyron Bista, 2015, pp. 51–52).

Recognising these issues, the Philippines has moved to compensate for this shortfall among its large labour population working abroad. Overseas Filipino Workers (OFWs) are covered for invalidity and death risks by the Philippine Overseas Workers Welfare Administration (OWWA) schemes and can optionally enrol under the Philippine Social Security System (SSS) (Ong and Peyron Bista, 2015, p. 53). The Philippine arrangement is discussed in more detail below. However, despite important developments in this regard (e.g., the Philippines and Indonesia), there is still considerable scope for the extension of social security protection by most ASEAN countries of origin to their own migrant workers.

Institutional arrangements and supporting mechanisms to assist South-East Asian migrant workers – when leaving, during sojourn in the destination countries, and upon return – have consequently been established in many ASEAN countries of origin. This is a matter that is also discussed in more detail later in this report. 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. Still, the large majority of migrant workers "do not have the option of enrolling in their own national social security systems or that of the host country, or they cannot transfer the accrued contributions or entitlements between social security systems (see also the Maintenance of Social Security Rights Convention, 1982 (No. 157))." (Ong and Peyron Bista, 2015, p. 53)

5. ASEAN Member States: Legal and policy overview

5.1 Overview

In this chapter, we provide an overview of measures adopted by selected ASEAN Member States in relation to their legal and policy frameworks pertaining to the social security position of migrant workers (i.e., with reference to access to contributory, non-contributory, and healthcare benefits). In this immediate section, we provide in table 1 a summary of the coverage of migrant workers under social security by country and branch in 2017. Table 1 adopts a high-level approach, and is not able to present the different nuances of coverage – which will be dealt with more comprehensively in the subsequent sections.

Section 5.2 will present an explanatory narrative reflecting on the legal and policy positions in all ten ASEAN Member States – obtained via a secondary literature review. Finally, common policy gaps and implementation issues across ASEAN countries will be raised in section 5.3.

Table 1: Coverage of migrant workers under social security by country and branch, 2017

	Medical care		Sickness		Unemployment		Old age		Work injury		Family		Maternity		Invalidity		Survivors benefit		National workers abroad?
	Nationals	Non Nationals	Nationals	Non Nationals	Nationals	Non Nationals	Nationals	Non Nationals	Nationals	Non Nationals	Nationals	Non Nationals	Nationals	Non Nationals	Nationals	Non Nationals	Nationals	Non Nationals	
Brunei Darussalam	✓	✓*[1]	✓**	✓**	–	–	✓	✓*	✓**	✓**	–	–	–✓	✓*	✓	✓*	✓	✓*	No
Cambodia	✓	✓	✓**	✓**	–	–	✓	✓	✓	✓	–	–	✓	✓	✓	✓	✓	✓	No
Indonesia	✓	✓	✓**	✓**	–	–	✓	✓	✓	✓	–	–	✓**	✓**	✓	✓	✓	✓	Yes
Lao PDR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	–	✓	✓	✓	✓	✓	✓	Yes[2]
Malaysia	✓	✓***	✓**	✓**	–	–	✓	✓***	✓	✓***	–	–	✓**	✓**	✓	✓***	✓	✓***	No
Myanmar[3]	✓	✓	✓	✓	✓	–	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Yes[4]
Philippines	✓	✓	✓	✓	–	–	✓	✓	✓	✓	–	–	✓	✓	✓	✓	✓	✓	Yes
Singapore	✓	✓*[5]	✓**	✓**	–	–	✓	✓*	✓**	✓**	–	–	✓**	✓**	✓	✓**[6]	✓	✓**[6]	Yes[7]
Thailand	✓	✓[8]	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Yes
Viet Nam[9]	✓	✓	✓	✓	✓	–	✓	✓	✓	✓	–	–	✓	✓	–	–	✓	✓	Yes

Note: * – permanent residents only; ** – employer liability; *** – separate scheme

1 Universal coverage – permanent residents; employer liability – other migrant workers (insurance-based).

2 Via a Labour Fund.

3 Not applicable to establishments with fewer than five employees. Such employees can register voluntarily.

4 Voluntary contribution possible.

5 For those who are not permanent residents, employer-based/employer-insured provision is available.

6 This includes foreign domestic workers as well as work injury-related cases, through mandatory insurance coverage – feedback received from SLOM Singapore, July 2017.

7 In relation to Medishield Life – the Singapore Government provides for continued contribution to Medishield Life even while overseas.

8 Undocumented non-nationals (except for those who completed the National Verification Process) are covered under a separate scheme.

9 2018 position indicated here: as from 1 January 2018, regular migrant workers will be covered by compulsory social insurance.

5.2 ASEAN Member States

5.2.1 Brunei Darussalam

Background: An extensive range of both contributory and non-contributory social security benefits are available to permanent residents of Brunei Darussalam. However, other migrant worker categories have only limited access to certain social security benefits, which essentially have to be provided on the basis of individual employer liability. No provision is made for the social security protection of migrant workers from Brunei Darussalam abroad. According to available data:

- There were 206,000 migrants in Brunei Darussalam in 2013, accounting for about 50.1 per cent of the total population of 0.4 million (ILO 2015d; 2015b),[1] making Brunei one of the 15 top immigration countries in the world in 2015, in terms of the percentage that immigrants constitute of the total population (Ratha, Plaza, and Dervisevic, 2016). However, most of these migrants do not come from other ASEAN countries: the intra-regional share of total migrants in Brunei Darussalam was only 15.6 per cent in 2013. Also from a labour migration perspective, Brunei Darussalam is one of the main receiving countries in ASEAN: in 2011, there were 68,000 employed migrants, accounting for 37 per cent of it's the country's working population (184,000 in 2011) (ILO, 2015d). However, as indicated above, most of these employed migrants do not come from other ASEAN countries.[2]
- Approximately 43,000 persons from Brunei Darussalam were living as migrants abroad in 2013.[3] According to World Bank data, only 2.7 per cent of these migrants went to other ASEAN countries in 2013 (ILO, 2015d).
- Large outflows of remittances, from Brunei Darussalam, highlight the importance of remittance transfers by migrant workers. It has been estimated that US$739 million was sent as remittances from Brunei Darussalam to other countries in 2015, with Japan ($450 million), Thailand ($131 million), India ($55 million), and the Republic of Korea ($26 million) being the major recipient countries (Pew Research Center, 2016).[4] No data is available concerning remittance inflows to Brunei Darussalam (Pew Research Center, 2016; World Bank, 2016b).

Migrant workers in Brunei Darussalam: The 1959 Constitution, as amended does not make specific reference to social security coverage, or the protection of migrants.

Two contributory public retirement schemes, to which employers and employees contribute, provide for old age and related benefits. The Employee Trust Act established under Tabung Amanah Pekerja Board Order, 2016, is a trust that covers both public servants and private sector employees.[5] It provides for old age benefits, permanent disability benefits, and survivors' benefits (ISSA and SSA, 2017). According to the definition of "employee" in the Employee Trust Act (section 2), citizens and permanent residents of Brunei Darussalam are covered by the provisions of the law. As a rule, benefits can be accessed at age 55; however, a lump sum is paid to a member at any age if they

1 International migrants' share of the total population in Brunei Darussalam has increased by about 20 percentage points since 1990 (ILO, 2015b).
2 In 2014, about 11,000 migrant workers came from Indonesia, 12,000 from the Philippines, and less than 2,000 from Thailand (ILO, 2015d).
3 While most ASEAN Member States compile relevant data on their nationals abroad for employment, Brunei Darussalam (and Malaysia) appear not to do so (ILO, 2015d).
4 Remittances from Brunei Darussalam were equivalent to a full 4.1 per cent of its GDP in 2009 (ILO, 2015d).
5 See the Employee Trust Act, 1992, section 2, read with the provisions of the Employee Trust Act (Definition of Employees) Order, 1992.

will be emigrating permanently from the country.[6] The Supplemental Contributory Pension Trust also established under Tabung Amanah Pekerja Board Order, 2016 is a defined contribution pension scheme to which employers and employees contribute,[7] and which essentially provides for a regular pension. It provides for a pension benefit as well as survivors' benefits, including a derivative benefit, i.e., the transfer of the balance available in the account of the member upon death to their eligible beneficiaries.[8] As is the case with the provident fund arrangement,[9] citizens and permanent residents of Brunei Darussalam are covered. Similarly, a lump sum payment can be made for a member leaving Brunei Darussalam permanently.[10] Otherwise, stringent criteria must be met for accessing old age benefits: the pensionable age of 60 must have been reached, and contributions must have been paid for a period of 420 months. No provision is made for portability of benefits under any of these two schemes; migrant workers who have not obtained permanent residence status cannot contribute to or benefit from these two schemes.

A comprehensive public healthcare system is entirely tax-financed and universal. It provides for outpatient and inpatient care by registered physicians and in approved hospitals (ISSA and SSA, 2017), and reportedly covers all citizens and permanent residents (ILO, 2015b). For mainstream migrant workers, healthcare benefits are essentially an employer responsibility. Section 83(1) of the Employment Order, 2009, makes it clear that medical attention and treatment and medical transportation are benefits to be extended by the employer to the "immigrant employee" concerned: the cost of maintenance and treatment in a hospital or health facility has to be borne and paid by the employer. If the employee is residing on the place of employment, and provided that the employee (i.e. a "workman") remains in employment and that the employer pays the employee concerned at least 50 per cent of their usual salary while they (and their dependants) are in hospital, the employer can deduct therefrom the cost of maintenance in a hospital. Also, if the "workman" or their dependant has been admitted to a Government hospital or health facility, the cost of maintenance and treatment – and in the case of death in hospital, any reasonable burial expenses incurred – shall be recoverable from the employer by the healthcare institution.[11] Generally, funeral expenses are also for the account of the employer, in the event of burial of the deceased worker and their dependants.[12] In 2015, the Department of Labour of the Ministry of Home Affairs announced that employers of foreign workers are required to take out private medical insurance, to ensure appropriate coverage of these workers.[13] The Employment Order, 2009, also contains stipulations regarding several other social security benefits that are to be extended by employers to employees on the basis of individual employer liability. The employees so affected evidently include migrant workers, as neither the definition of "employee" nor that of "workman"[14] excludes foreign workers, and as specific reference is made to "immigrant employees".[15] Migrant workers could therefore benefit from the provisions in the Employment Order concerning paid sick leave,[16] a retirement benefit for employees who have

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6 Employee Trust Act, 1992, section 17(1)(e).

7 But not public officers employed on the pensionable establishment and certain other categories of public servants: see the Supplemental Contributory Pensions (Non-Employee Trust Order), 2010.

8 See Supplemental Contributory Pension Trust Order, 2009, sections 21–23.

9 Definition of "employee", in section 2(1) of the Supplemental Contributory Pension Trust Order, 2009.

10 Ibid., section 19(c).

11 Employment Order, 2009, section 83(3) and (4).

12 Ibid., section 84. Section 85 stipulates that the employer, or a group of employers, could be instructed to construct and maintain a hospital.

13 See http://www.buruh.gov.bn/Lists/Announcement/DispForm.aspx?ID=1&Source=http%3A%2F%2Fwww%2Eburuh%2Egov%2Ebn%-2FLists%2FAnnouncement%2FAllItems%2Easpx&ContentTypeId=0x0104004A76E08F5BE02945A3ED72DB6611A56F [16 Apr. 2017].

14 Employment Order, 2009, section 2.

15 Ibid., section 2 (see definition of "immigrant employee") and sections 112–117. Section 11 stipulates that the employment contract must define the rights and obligations of the parties, also in relation to measures to be taken to provide for the welfare of the employee and any dependant who may accompany him under the terms of the contract of service, and must contain repatriation conditions.

16 Ibid., section 72.

been in continuous service with an employer for less than five years,[17] and paid maternity leave,[18] which includes dismissal protection.[19] An additional period of maternity leave is available if the person concerned is a citizen or permanent resident of Brunei Darussalam (Department of Labour, n.d.; ISSA and SSA, 2017).[20] Protection of domestic workers is, however, more limited as Regulation for Domestic Workers (Employment (Domestic Workers) Regulations, 2009) states that only Section 83(1) of Employment Order on medical care and treatment applies to domestic workers. In addition, since 2015, a new amendment on medical insurance requires that all immigrant employees including domestic workers must be covered with medical insurance by their employer.

Employment injury benefits are regulated in the Workmen's Compensation Act, 1957 (Cap. 74) (revised edition 1984). The law covers a person who is a "workman", the definition of which does not exclude migrant workers (and therefore their dependants).[21] The employer is required to insure against any liability that they would incur to any workmen they employ and maintain insurance under one or more approved policies.[22] In the main, the benefits available under this law include temporary disability benefits, permanent disability benefits, workers' medical benefits, and survivors' benefits (ISSA and SSA, 2017). A workman receiving a periodical payment, who intends to leave Brunei Darussalam to reside in another country, may agree with the employer to have their benefits exported to the new country of residence, in the absence of which the periodical payment may be commuted into a lump sum.[23]

An extensive range of tax-based social assistance (non-contributory) benefits are provided for in Brunei Darussalam. As a rule, these benefits are not available to migrant worker categories, except for those who have acquired permanent resident status. These benefits include:

- Incapacity pension;
- Blind pension;
- Old Age pension;
- Allowance for the Clinically Insane;
- Allowance for Leprosy; and
- Self-reliance scheme benefits.

Brunei Darussalam may have incurred international obligations regarding coverage of migrant workers. However, the country has not yet ratified any of the ILO migration or social security-specific Conventions,[24] nor the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990. For some years a draft labour MOU between Brunei Darussalam and Indonesia has been considered (Chin, 2016); it is not clear to what extent access to social security would be covered by the envisaged instrument.

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17 Ibid., section 74.
18 Ibid., section 91.
19 Ibid., section 98; see also Department of Labour, n.d.
20 Under the Maternity Leave Order 2011, paid maternity leave stipulated under Employment Order has been extended from 8 to 13 weeks, with the additional weeks of benefits being tax funded (ILO, 2015b).
21 Workmen's Compensation Act, 1957, section 1.
22 Ibid., section 27; see also Department of Labour, n.d., p. 16.
23 Workmen's Compensation Act, 1957, section 19.
24 See http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103308 [accessed 16 April 2017]; Ong and Bista, 2015: 51).

Migrant workers from Brunei Darussalam abroad: No specific provision has been made to extend social security protection to migrant workers from Brunei Darussalam who are working abroad. As indicated above, limited provision is made for the exportability of employee injury benefits, or for a worker leaving Brunei Darussalam to receive their contributory (pension) benefit in the form of a lump sum.

5.2.2 Cambodia

Background: Migrant workers to Cambodia are in principle covered by the contributory social security arrangements existing in Cambodia, although access to specific benefits is effectively restricted by the absence of portability arrangements.

Certain arrangements do exist to protect Cambodian migrant workers working abroad. In the case of Cambodian workers in Thailand, the protection is mainly based on the provisions of a bilateral MOU between the two countries, particularly with regard to securing access to workers compensation protection in Thailand. An MOU has also been concluded with Malaysia to grant access to migrant worker-specific workers' compensation as well as health insurance schemes for migrant workers generally, while a separate MOU provides some social security protection to domestic workers.

According to available data:

- There were 76,000 migrants in Cambodia in 2013,[25] around 0.5 per cent of the total population of 15.4 million. Although Cambodia appears not to compile statistics on the stock or the inflows of migrant workers, it has been estimated that there are about 50,000 migrant workers in Cambodia (ILO, 2015d).
- The 2015–2018 Policy on Labour Migration for Cambodia summarizes the emigration of Cambodian workers in the following terms:

> The main country of destination for regular and irregular Cambodian migrant workers is neighbouring Thailand. Due to the relative ease of border crossing, less than 10 per cent of people migrate through the legal channel established under the Memorandum of Understanding (MOU) between the two countries in 2003. Since 2010, the Republic of Korea has become the second most popular destination. The number of migrant workers going to Malaysia peaked in the period from 2009 to 2011, despite the lack of an MOU in place, but this number dropped dramatically after the suspension of sending domestic workers through regular channels. Cambodia also concluded an MOU with Japan, but far fewer migrants travel there for work, due to the technical requirements through the Industrial Training Program and Technical Internship Program.
>
> Cambodia has yet to develop a comprehensive policy strategy on how to maximize the opportunities of greater labour mobility of workers within the ASEAN region with the ASEAN Economic Community (AEC) coming into effect in 2015. Currently, only one per cent of the Cambodian workforce qualifies for the freer movement of professional workers for which mutual recognition arrangements (MRAs) exist. It is expected that greater regional integration

[25] UNDESA estimates a figure of 103,117 for 2013 (ILO, 2015d). Some decades ago, Cambodia had much larger numbers of migrants: "Accounting for the slight drop in intra-ASEAN migration during the 1970s is the almost total exodus of migrants from Cambodia during its Civil War and the conflicts that followed. Between 1970 and 1980, it is estimated that some 164,000 Vietnamese, 135,000 Thais, and practically all of every other foreign nationality left Cambodia. Cambodia's total migrant stock fell from 321,000 in 1970 to merely 4,000 by 1980. Today Cambodia is one of the smallest host countries in ASEAN – besides the Lao People's Democratic Republic and Viet Nam – with only an estimated 76,000 international migrants in 2013"(ILO, 2015d, p. 15.

will also lead to increased mobility for semi-skilled workers. The continued demand for low- and medium-skilled migrant workers within the major destination countries in ASEAN is projected to remain high, with 80 per cent of inter-ASEAN migration flowing to Malaysia, Singapore and Thailand (MOLVT and ILO, 2014).

- According to World Bank estimates, 350,485 Cambodian workers migrated abroad for employment in 2010. However, the actual number is believed to be much greater, given that approximately 700,000 Cambodian migrants with irregular status registered with the Thai authorities from July to October 2014 (MOLVT and ILO, 2014).[26]
- About 1,119,000 Cambodians were living as migrants abroad in 2013, which makes Cambodia one of the key sending countries in ASEAN (ILO, 2015d).[27] In fact, according to the World Bank, in 2013 Cambodia was one of the top ten emigration countries in East Asia and the Pacific; and Cambodia–Thailand migration constituted one of the ten top migration corridors in this region (Ratha, Plaza, and Dervisevic, 2016). Intra-ASEAN migration constitutes the hallmark of migration by Cambodians – approximately 69 per cent of all Cambodian emigrants (almost 800,000) migrated to other ASEAN countries (2013 figures) (ILO, 2015d; 2015c). The vast majority of Cambodian migrants are found in Thailand, and according to 2013 UNDESA figures, Cambodians made up 20.2 per cent of the international migrant stock in Thailand (ILO and ADB, 2014). It has been reported that since 1990, intra-ASEAN migration from Cambodia, the Lao People's Democratic Republic, and Myanmar has risen in each case by about 40 percentage points in terms of their total nationals abroad (ILO and ADB, 2014).
- Large amounts of remittances, both from and to Cambodia, highlight the importance of remittance transfers by migrants in Cambodia and by Cambodian emigrant workers. It has been estimated that US$280 million was sent as remittances from Cambodia to other countries in 2015, with Thailand ($141 million), Viet Nam ($123 million), and China ($9 million) being the major recipient countries.[28] About $397 million was sent to Cambodia from other countries in 2015, with Thailand ($233 million), the United States ($85 million), France ($28 million), Australia ($15 million), Canada ($10 million), and Malaysia and the Republic of Korea (both at $6 million) being the major countries from whence remittances were sent (Pew Research Center, 2016).[29]

Migrant workers in Cambodia: The 1993 Constitution does not make specific reference to social security coverage of foreigners. Chapter III of the Constitution, which deals with fundamental rights and with obligations, only refers to "Khmer citizens" in its title. Under this chapter, article 38 addresses social security benefits and stipulates: "Every Khmer citizen shall have the right to obtain social security and other social benefits as determined by law." Similarly, while article 72 stipulates that the health

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[26] This is the position despite the initial mass exodus of 250,000 Cambodian migrant workers from Thailand in June 2014, prompted by fear of arrest by Thai authorities and the unstable political situation in Thailand (MOLVT and ILO, 2014). Cambodia's Policy on Labour Migration notes: "In mid-2011, Thai authorities' commenced registration, and Thai and Cambodian authorities together commenced [nationality verification] processes to facilitate the regularization of workers who either migrated through irregular channels, or whose regular migrant status had lapsed. In late June 2014, following the exodus of Cambodian workers from Thailand, the Thai National Committee for Peace and Order (NCPO) opened a new registration window for irregular migrant workers, until 31 October 2014. As of October 2014, 693,630 migrant workers and 42,395 dependents had registered through the OSSCs – One Stop Service Centres. The procedures and timing for [nationality verification] is currently in discussion between the Thai Government and countries of origin" (MOLVT and ILO, 2014, p. 17).

[27] The ratio of total nationals abroad to total migrants is 14.8 in Cambodia. This is fuelled partly by the high poverty incidence, despite a dramatic reduction in poverty between 2007 and 2011: 41 per cent of the population still live on less than US$2 per day (ILO, 2015d; 2015c).

[28] Cambodia was one of the top 10 remittance sending countries in the East Asia and the Pacific Region in 2014. This is true in overall terms, but also as a percentage of GDP and from the perspective of low-income countries and least developed countries (Ratha, Plaza, and Dervisevic, 2016).

[29] Cambodia was one of the top 10 remittance recipients in the East Asia and the Pacific Region in 2014; both in absolute terms and from the perspective of least developed countries (Ratha, Plaza, and Dervisevic, 2016).

of “all people” shall be guaranteed, it restricts free medical consultation in public hospitals and other public health facilities to “poor citizens”.

The Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law, 2002, is silent on the coverage of non-nationals, as is the implementing instrument, the Sub-Decree concerning the Establishment of the National Social Security Fund of 2007. However, since the coverage of the Law on Social Security Schemes extends only to persons covered under the Labour Law, it could be inferred that foreigners, in particular migrant workers and their dependants are in principle also covered. Separate social security schemes exist for public servants and for veterans (ILO, 2015c).[30] Article 1 of the Law on Social Security Schemes specifically provides for two types of schemes, while allowing for other contingences to be determined by later sub-decrees. The two scheme types are: (1) a pension scheme and related old age, invalidity, and survivors’ benefits, and (2) an occupational risk scheme providing for employment injury and occupational disease benefits. Under this latter category, provision is made for medical care, a daily allowance in the event of temporary disability, a pension allowance in the event of permanent disability, funeral benefits, and a survivors’ pension.[31]

In principle, coverage of non-nationals under the provisions of the Law on Social Security Schemes is not excluded. This follows from the non-discrimination provision contained in article 4, which prohibits discrimination on the basis of nationality. However, even so, migrant workers may for several reasons not be appropriately covered.[32] This applies in particular in relation to old age and the related invalidity/disability and survivors’ benefits, due to the eligibility conditions set for access to these benefits. Old age benefits, for example, can as a rule only be accessed after 20 years of registration with the National Social Security Fund (NSSF) and provided that at least 60 months of contributions have been paid within the 10 years preceding the date of pension eligibility.[33] Invalidity or disability benefits in the event that retirement has not yet been reached, require five years of NSSF membership;[34] while survivors can only access benefits if the principal member qualified for a pension or invalidity/disability benefits has made contributions for at least 180 qualifying months.[35]

The picture that emerges is clear: even if migrant workers (and their dependants) may in principle be covered by the provisions of the Law on Social Security Schemes, they would effectively not be able to gain access to some of the benefits provided for in that law, particularly when one considers the absence of portability arrangements in the Cambodian legal instruments or in bilateral agreements with other countries.

In 2016, under the auspices of the NSSF, social health insurance has been introduced.[36] A phased implementation has been foreseen, with 1 May 2016 being the launch date.[37] Again, all workers covered by the Labour Law are included.[38] Contributions are paid by employers, workers, survivors,

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30 The National Social Security Fund for Civil Servants covers civil servants and their dependants, providing maternity, old age, invalidity, and survivors’ benefits, and the National Fund for Veterans covers war veterans and members of the Royal Cambodian Armed Forces and the National Police Force.

31 Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law, 2002, articles 15–16.

32 Article 4 also provides that a separate prakas (ministerial order) will provide for the social security position of seasonal and occasional workers – several migrant workers may be affected by this provision.

33 Ibid., article 8(1). Article 8(4) provides for a lump sum payment in the event that all the conditions have not been met – the details of this arrangement do not appear in the law itself.

34 Ibid., article 9.

35 Ibid., article 10.

36 See Sub-decree on Establishment of Social Security Scheme “Health Care Scheme” for Persons Defined by the Provisions of the Labor Law, Sub-decree No. 01 RNKr.BK, 6 Jan. 2016.

37 See *Prakas* No. 093/16.E, on Determination of Phase and Date of the Implementation of the Social Security Schemes on Health Care, articles 1–5.

38 See article 1 of the *Prakas* on Health Care Benefits, No. 109 LV and article 1 of the *Prakas* on Determination of Contribution Rate and Formality of Contribution Payment on Health Care, No. 220 LV, of 13 June 2016.

and persons receiving pensions.[39] An extensive range of benefits and services is provided for, with reference to healthcare benefits, health benefit packages, health prevention service, medical care service, medical service, para-clinic service, rehabilitation, and maternity leave.[40] Certain services are excluded, and chronic disease services are only offered at public health facilities.[41] Certain criteria must be met in order to qualify for medical care services and for a daily allowance.[42]

The Labour Law of 1997 covers migrant workers who have legally entered Cambodia; irregular migrants are therefore not included.[43] Article 1 stipulates that the Labour Law applies to parties, regardless of nationality. Article 3 in turn defines "workers" to include every person, irrespective of nationality. Note should be taken, however, of article 12, under which the prohibition on discrimination regarding the granting of social benefits is made subject to provisions relating to the entry and stay of foreigners. The Labour Law also excludes domestic workers for the most part.[44] As indicated below, special arrangements have been established for seasonal workers, who are deemed to be casual workers.[45] The law is applicable to all public and private enterprises.[46]

The Labour Law provides for some benefits in principle on the basis of employer liability, without stipulating the precise details. It stipulates that the definition of "wage" includes an amount of money paid by the employer to the workers during disability and maternity leave, but excludes healthcare and family allowances.[47] Paid leave includes sick leave (period not indicated in the law),[48] maternity leave, and leave for purposes of family responsibility. According to articles 182 and 183, maternity protection is available to workers for a period of 90 days at half the wage earned, provided that one year of uninterrupted service in the enterprise has been completed. Provision is also made for light work (for two months) after returning to work, as well as for breastfeeding arrangements.[49] Agricultural workers are additionally entitled to among other family benefits (daily allowance of rice), housing, water, and funeral benefits.

Regarding employee injury benefits, the Labour Law foresaw the establishment of the NSSF, which would then regulate these benefits.[50] Until that stage, employers were individually liable to pay an annuity in the event of permanent disability or death.[51] Article 254 provides for medical assistance (i.e., benefits in kind, medical treatment, and medication). Enterprises and establishments with more than 50 workers must have a permanent sick bay/hospital facility, run by at least a physician.[52]

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39 *Prakas* 220 LV, article 4.

40 *Prakas* 109 LV, article 2. Medical care benefits comprise inpatient, outpatient, emergency, physiotherapy and related services, delivery, prenatal and postnatal services, and rehabilitation services(article 3). The term "medical service" refers to outpatient and inpatient consultation – see article 2.

41 Ibid., Articles 3 & 4.

42 Ibid., Articles 6 & 7.

43 Labour Law, 1997, article 261.

44 Ibid., article 1.

45 Ibid., articles 9–10.

46 Ibid., article 2.

47 Ibid., articles 102–103.

48 According to ILO feedback received, sick leave is indicated in a standard internal regulation issued by the Ministry of Labour and Vocational Training (MOLVT), according to which enterprises have to apply the following: in the first month of sick leave, the employer shall pay 100 per cent of wage; in the second and third months, 60 per cent of wage; in the fourth to sixth months, no payment has to be made but seniority has to be kept; and after six months, the employer may consider whether to terminate employment or to keep seniority.

49 Labour Law, 1997, articles 183–185.

50 Ibid., article 256.

51 Ibid., articles 249 and 252.

52 Ibid., article 242.

Regarding disability generally, the Law on the Protection and the Promotion of Rights of Persons with Disabilities[53] of 2009 – which is said to apply to "persons with disabilities" and therefore draws no distinction between Cambodians and non-Cambodians – stipulates that the State shall develop supportive policies and allocates an annual budget in order to assist specific categories of persons with disabilities who are very poor and have no support. This would include those who: (1) have severe disabilities, or (2) are elderly, or (3) have had serious accidents.[54] Article 19 provides that the "policies on support, healthcare services, treatments and physical rehabilitation for persons with disabilities who have severe disabilities, are very poor and have no support shall be determined by Sub-decree."[55] Article 46 arranges for a Fund to be created also to serve this purpose.[56]

Social assistance in Cambodia largely comprises programmes for children – Ministry of Education, Youth and Sports scholarships, Food Scholarship Take-Home Ration, School Meal Programme, Maternal and Child Health Nutrition Programme, etc. – with many of these initiatives being implemented by international partners. A few other social welfare programmes exist, such as the Rural Investment and Local Governance Project, the food-for-work programme, and cash-for-work programme. These programmes usually service a limited number of beneficiaries, and although no specific exclusions of non-nationals are made, it is understood that coverage is limited to Cambodian citizens.

Cambodia may have incurred international obligations regarding coverage of migrant workers. Cambodia has not yet ratified any of the migration or social security-specific ILO Conventions,[57] but has taken steps to implement ILO Social Protection Floors Recommendation No. 202 (2012) (ILO and ADB, 2014). However, Cambodia did accede to the 1966 UN International Covenant for Economic, Cultural and Social Rights in 1992. Article 9 of this UN instrument grants the right to social security to everyone, and does not draw a distinction on the basis of nationality. The article also does not require reciprocity – in other words, it is not a requirement that another country must be willing and able to grant equal protection before the ratifying country (e.g., Cambodia) will be bound to provide social security protection to migrant workers.

Finally, MOUs concluded with other countries could also have a bearing on the access that nationals of those countries could have to Cambodian social security benefits – see in this regard the discussion on the Thailand–Cambodia MOU below.

Cambodian workers abroad: As mentioned above, certain arrangements exist to protect Cambodian migrant workers, and must be seen against the background of the 2015–2018 Policy on Labour Migration for Cambodia, which highlights the importance of labour emigration as a potential tool to strengthen Cambodia's human resources:

> "Importantly, the Government aims to ensure that migration is a choice, not a necessity … Labour migration is also streamlined into the National Strategic Development Plan 2014–2018, framing emigration as a potential tool to strengthen Cambodia's human resources, and the Rectangular Strategy Phase III 2013–2018 that demonstrates a Government commitment to promote employment and institute a policy framework so that productive employment generation and economic development occur in tandem. Support must be available for Cambodians to make informed decisions about migration, and opportunities for them to migrate safely, legally and into decent work (MOLVT and ILO, 2014, p. 11).

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53 Law on the Protection and the Promotion of Rights of Persons with Disabilities (July 2009).
54 Ibid., Article 12.
55 Ibid., Article 19.
56 Ibid., Article 46.
57 See http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103055 [accessed 12 Apr. 2017]; Ong and Bista, 2015, p 51; ILO and ADB, 2014, p 95.

These arrangements are provided for partly in Cambodian regulatory instruments and partly in MOUs concluded with several countries of destination, including Thailand (see below), Japan, Kuwait, and Qatar,[58] as well as in a separate Cambodian legal instrument relating to the Republic of Korea.[59] Two MOUs with Malaysia have also been finalized, covering the sending of domestic workers and the sending of "general" workers (see more below).[60] The Cambodian policy and regulatory framework makes limited provision for welfare or social security arrangements. The current framework essentially covers:

- Regulation of overseas labour migration (with particular reference to the regulation of recruitment agencies);
- A supportive institutional framework; and
- Equipment and protection at the pre-departure stage and in the country of destination, including the establishment of complaints and compensation measures and mechanisms (MOLVT and ILO, 2014).

However, little specific provision is made for extending Cambodian social security benefits in favour of Cambodian migrant workers, or otherwise providing the social security needs of Cambodian migrant workers. The 2015–2018 Policy on Labour Migration for Cambodia envisages that the Government will participate in bilateral and regional discussions on social security transfers and portability, and that portability is to be included in the terms of standard employment contracts for Cambodian migrant workers.

A feasibility study initiated by the ILO through the ASEAN Triangle Project was undertaken to investigate modalities for the establishment of a Migrant Welfare Fund or equivalent, for the benefit of Cambodian migrant workers. At a validation meeting held in May 2015, it was agreed, "where possible", to support measures that will lead to the establishment of such a Fund or its equivalent in the countries concerned (ILO, 2015e).

As far as Cambodian workers in Malaysia are concerned, the MOU covering "general workers" (i.e., those other than domestic workers) provides in the attached draft contract of employment that the worker "shall be insured under the Foreign Workers Compensation Scheme (FWCS) under the Workmen's Compensation Act 1952 [*Act 273*] and if applicable, the Foreign Workers Health Insurance Scheme (SPIKPA)" – an obligation that is placed on the employer.[61] The draft contract of employment effectively constitutes the minimum basis on which workers have to be appointed.[62] In other words,

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58 As has been noted: "The MOU between the Kingdom of Cambodia and the Japan International Training Cooperation Organization (JITCO) on the management of the sending of Cambodian Trainees to Japan has resulted in 601 Cambodian migrant workers being deployed since 2007. The MOUs with the State of Qatar and the Government of the State of Kuwait were signed in 2011 and 2009 respectively but, as yet, no Cambodian migrant workers have been sent through these channels" (MOLVT and ILO, 2014, p. 18).

59 "Sub-decree No. 70 issued in July 2006, on the Creation of the Manpower Training and Overseas Sending Board (MTOSB), is a Government-to-Government system designed specifically to regulate the sending of Cambodian workers to the Republic of Korea. The MTOSB oversees the recruitment, training, and sending of workers to the Republic of Korea through the EPS, which allows Korean small and medium-sized enterprises who have not been able to recruit local workers to recruit internationally in the manufacturing, construction, agriculture and livestock, fishing, and service industry sectors" (MOLVT and ILO, 2014, p. 19).

60 The MOU between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment of Workers (dated 10 December 2015), and the MOU between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment of Domestic Workers (dated 10 December 2015).

61 See clause 9 of the Contract of Employment (appendix A of the MOU between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment of Workers (2015), read with clause A (vi) of appendix B (Responsibilities of the Employer) and clause B(viii) of appendix B (Responsibilities of the Worker).

62 See article 4(1) of the MOU, read with clause 22 of the draft contract of employment (appendix A).

Malaysian employers are not free to opt out of these insurance obligations. The MOU further provides that the labour and other laws of Malaysia also govern the employment relationship between the Cambodian migrant worker and Malaysian employer, and in particular that the employee is entitled to paid sick leave.[63]

The domestic worker-specific MOU between Cambodia and Malaysia places the responsibility to provide some measure of social security protection directly on the employer. In particular, it stipulates that the employer shall provide the domestic worker with insurance to cover medical treatment expenses and risk compensation.[64]

In the case of Cambodian workers in Thailand, protection is mainly based on the provisions of two MOUs with Thailand concluded on 19 December 2015, effectively replacing an older 2003 MOU.[65] Of these two agreements, the general MOU – on labour cooperation – provides for the right to "fair treatment in the workplace subject to national laws, regulations, and policies of the receiving country".[66] The specific MOU – on the employment of workers – further stipulates:

- "Workers are entitled to obtain legal protections in accordance with the employment contract and shall abide by laws of the other Party";[67]
- The "recruitment of workers and their entry into the territory of the other Party shall be regulated in accordance with relevant laws, rules and procedures of both countries";[68] and
- "Workers who entered the territory of the receiving country for employment under this Agreement shall be entitled to the same fair treatments as enjoyed by local workers based on the basic principles of non-discrimination and equality, regardless of gender, ethnic and religious differences."[69]

However, this MOU contains limited provisions that may have a bearing on (Thai) social security entitlements of Cambodian migrant workers in Thailand. It contains generally formulated provisions to the effect that "The workers shall contribute to the funds, if any, in pursuant to the laws and regulations of both countries",[70] and that the competent authorities of both countries shall ensure that workers have fulfilled pursuant to the laws and regulations of the receiving country, inter alia, requirements in relation to "health insurance or health services as required."[71]

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63 See generally article 4(1) of the MOU, read with clauses 12 and 25 of the draft contract of employment (appendix A). Other provisions of the MOU and its appendices leave the employment period open (i.e., no fixed period is indicated as such), and stipulate that the worker shall not change employment during the duration of the contract of employment or carry out or do other business.

64 See clause A(vii) (Responsibilities of the Employer) of appendix A of the MOU between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment of Domestic Workers (2015), read with clause 4(d) of appendix B (Contract of Employment) of the MOU.

65 See article 1 of the MOU between the Government of the Kingdom of Cambodia and the Government of Kingdom of Thailand on Labour Cooperation (2015). The earlier 2003 MOU on cooperation in the employment of workers was contained little in terms of specific provisions on Cambodian workers entitlement to Thai social security benefits. It did provide for a "savings" fund (to be used for administrative expenses incurred by banks and for purposes of deportation) to which Cambodian workers had to contribute 15 per cent of their salary, to be repaid to them 45 days after their employment had terminated (articles 11, 12, and 16). Apparently, though, it was decided by the Thai authorities in 2014 to repeal the policy on collections for the savings fund (ILO, 2015o).

66 MOU between the Government of the Kingdom of Cambodia and the Government of Kingdom of Thailand on Labour Cooperation (2015).

67 Article 1 of the Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of Kingdom of Thailand (2015).

68 Ibid., article 4(1).

69 Ibid., article 5(1).

70 Ibid., article 4(3).

71 Ibid., article 10.

Access to Thai social security benefits under the legal and policy framework of Thailand can be summarized as follows (Hall, 2012):

- In order to receive compensation under Thailand's Workmen's Compensation Act, 1994, an injured migrant worker must satisfy the following: (1) possess a work permit; (2) possess a passport or alien identity document; (3) have an employer that paid contributions to the Workmen's Compensation Fund (WCF); and (4) have paid income tax.
- Therefore, migrants who pass the nationality verification process (NVP) or are legally imported under the MOUs can access the WCF.
- However, if these requirements are not met, responsibility is assigned to an employer to compensate an injured worker.
- In 2011, the Cabinet approved a resolution to establish a work accident insurance scheme for workers from Cambodia, the Lao People's Democratic Republic, and Myanmar who are registered and possess civil registration certificates and work permits, but have not yet passed the NVP. The scheme is managed by a private insurance company that is responsible for compensation payments to workers suffering work-related injuries and illness. The compensation amounts were announced as equal to the Workmen's Compensation Act, 1994.
- Migrant workers are generally able to access the universal healthcare scheme for the treatment of general ailments. Only registered migrants can pay into the national healthcare system and access treatment at a cost. However, even undocumented migrants and their dependents can access emergency and general medical treatment utilizing hospital charitable funds and NGO provisions.
- Migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar who do not qualify are obliged to take up Compulsory Migrant Health Insurance (CMHI) to access public healthcare facilities (Ong and Peyron Bista, 2015).
- Migrant workers are not denied access to Thailand's social security benefits, but in order to gain access to the schemes, they must be in possession of a passport and a work permit.
- Workers and their employers should make a monthly contribution to the scheme, equivalent to 5 per cent of each worker's income.[72] However, the compulsory social security scheme is only for formal sector workers, so agriculture, fisheries, and other informal sector workers are not covered. The voluntary contributions available to Thai workers that are not included under the compulsory coverage are not open to migrant workers.

Apparently, migrants in Thailand may have difficulty in accessing their due social security benefits, as they often do not stay in the country long enough to enjoy the full benefits. In particular, migrants are entitled to remain in Thailand for two periods of two years, i.e., four years, but may re-apply for employment in Thailand after a 30-day break in their country of origin.[73] Yet, a pension requires a minimum of 180 months' contribution (i.e., 15 years) (Hall, 2012). Nevertheless, although not part of the MOUs, the Thai Government has indicated that migrant workers' contributions to pensions and unemployment insurance can be refunded in a lump-sum at the end of their contract – as they are not entitled to these benefits in practice (Hall, 2012).[74] A recent ILO (2015o) publication remarked

[72] The total contribution rate is made up as follows: 12.75 per cent of reference earnings (5 per cent from employers, 5 per cent from employees, and 2.75 per cent from the Government). The SSO then allocates the total contribution received as follows: four benefits (sickness, disability, maternity, and death): 4.5%; two benefits (old-age and child allowance): 7 per cent; and unemployment: 1.25 per cent.

[73] See article 7 of the Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015). See also ILO, 2015o.

[74] Also, on becoming unemployed, migrant workers are only entitled to stay in Thailand for seven days to find a new employer.

that while the number of migrant workers with social security coverage is increasing (451,537 as of October 2014 according to the Social Security Office of Thailand), the majority are still without sufficient access.

5.2.3 Indonesia

Background: Extensive provision is made for the coverage of migrant workers to Indonesia to access available social security benefits, in particular if they have worked in Indonesia for at least six months and have paid contributions. Indonesia also comprehensively covers Indonesian migrant workers overseas through a range of modalities/options and associated benefits. This includes the operation of a special insurance scheme for Indonesian overseas workers. Provision for cross-border portability of benefits, however, is not made in existing bilateral labour agreements. According to available data:

- In 2013, there were 295,000 migrants in Indonesia, less than 0.1 per cent of the total population of 251 million (ILO, 2015d).[75] Of these, 98,900 were migrant workers in 2014 (ILO, 2015d).
- 4,117,000 Indonesians were migrants abroad in 2013 (ILO, 2015d), although other sources have put this figure in excess of six million.[76] More than 1.2 million (about 30 per cent) of these migrated to other ASEAN countries, while the rest migrated predominantly to the Gulf Cooperation Council (GCC) States (ILO, 2015d). Already in the 1980s and 1990s, the growing stock of Indonesian migrants in Malaysia was one of the factors accounting for the rapid rise in intra-ASEAN migration (ILO, 2015d).[77] In fact, in 2013 the vast majority of Indonesian migrants in ASEAN can be found in Malaysia: approximately 1,075,000 ILO, 2015d).[78] The Indonesia–Malaysia corridor was one of the 10 top migration corridors in East Asia and the Pacific in 2013. According to the World Bank, in 2013, Indonesia was one of the top 15 emigration countries worldwide (with 4.1 million Indonesian nationals oversea); one of the top ten emigration countries in East Asia and the Pacific; and one of the top ten emigration countries among middle-income countries (Ratha, Plaza, and Dervisevic, 2016). The ratio of total nationals abroad to total migrants to Indonesia is particularly significant: 13.9 (ILO, 2015d).
- Considerable remittance flows – both from and, in particular, to Indonesia – highlight the importance of remittance transfers by migrant workers in Indonesia and Indonesians overseas. It has been estimated that US$832 million was sent as remittances from Indonesia to other countries in 2015, with China ($351 million), Thailand ($88 million), Japan ($72 million), the Republic of Korea ($68 million), and Australia ($44 million) being the major recipient countries (Pew Research Center, 2016). The amount of remittances sent makes Indonesia one of the top remittance senders in the world, and one of the biggest sources of remittance among middle-income countries (Ratha, Plaza, and Dervisevic, 2016). More than US$9.63 billion was sent to Indonesia from other countries in 2015, with Saudi Arabia ($3.66 billion), Malaysia

[75] ILO, 2015h indicates a population total of 252.8 million in 2014.

[76] ILO, 2015g states: "The [Indonesian] Government supported the placement of a total of 429,872 migrant workers abroad in 2014, accounting for approximately the 0.4 per cent of the economically active population in Indonesia. In addition, there were more than 6 million nationals living abroad in 2014 across 178 countries." See also ILO, 2015: 60i, which notes that the majority of Indonesian migrants overseas are women. Also, while 73 per cent of Indonesian nationals working abroad were employed in the informal economy in 2010, this figure fell to 47 per cent in 2014, mainly due to the moratorium imposed on sending Indonesian migrant workers to work in the informal economy in Jordan, Kuwait, Malaysia, Saudi Arabia, and the Syrian Arab Republic (ILO, 2015i).

[77] One ILO (2015f) brief indicates a number of 127,827 Indonesians migrating to Malaysia in 2014.

[78] According to the World Bank, in 2013 more than 150,000 Indonesian migrants could be found in Singapore (Ratha, Plaza, and Dervisevic, 2016).

($2.28 billion), the United Arab Emirates ($813 million), Singapore ($409 million), and the Netherlands ($332 million) being the major countries from where remittances were sent (Pew Research Center, 2016).[79] In 2015, Indonesia was one of the 15 top recipient countries of recorded remittances in the world. It was also one of top ten remittance receivers in East Asia and the Pacific, as well as one of the top ten recipients among middle-income countries (Ratha, Plaza, and Dervisevic, 2016). Since 2004, official personal remittances received have increasingly exceeded net overseas development aid and other aid received (ILO, 2015d).

Migrant workers in Indonesia: The 1945 Constitution of the Republic of Indonesia provides specifically for the right to social security, and does not draw a distinction in this regard between nationals and non-nationals. Article 28H(3) stipulates: "Every person shall have the right to social security in order to develop oneself fully as a dignified human being." In chapter 9 dealing with the national economy and social welfare, article 34 stipulates as follows:

(1) Impoverished persons and abandoned children shall be taken care of by the State.
(2) The state shall develop a system of social security for all of the people and shall empower the inadequate and underprivileged in society in accordance with human dignity.
(3) The state shall have the obligation to provide sufficient medical and public service facilities.
(4) Further provisions in relation to the implementation of this Article shall be regulated by law.

More generally, provision is also made for everyone to have the right to obtain medical care.[80] It also stipulates that every person shall have the right to equal treatment before the law.[81]

The Act Concerning Human Rights, 1999, (Act No. 39) strengthens and amplifies the rights basis of Indonesian social protection, including in relation to non-nationals. It achieves this partly by emphasizing the legally binding nature of international human rights instruments ratified by Indonesia[82] (see also the discussion below); partly by indicating the Government's explicit duties and obligations;[83] and partly by confirming access to justice for this purpose: "Everyone has the right to use all effective national legal means and international forums against all violations of human rights guaranteed under Indonesian law, and under international law concerning human rights which has been ratified by Indonesia."[84] While chapter 3 of the Act, dealing with "Human rights and freedoms" grants certain rights only to citizens; other rights, including particular welfare rights,[85] accrue to non-nationals too. These include:

- the right of everyone to an adequate standard of living;
- the right of everyone to the social security necessary for an adequate existence and for the development of their well-being; and
- the rights of the disabled, elderly, pregnant women, and children to special facilities and treatment.[86]

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79 See Pew Research Center *Remittance Flows Worldwide in 2015* (2016), accessed at http://www.pewglobal.org/interactives/remittance-map/ on 20 April.
80 Constitution of the Republic of Indonesia, 1945, as amended, article 28H(1).
81 Ibid., article 28D(1).
82 Act Concerning Human Rights, 1999, article 7(2): "Provisions set forth in international law concerning human rights ratified by the Republic of Indonesia, are recognized under this Act as legally binding in Indonesia." See also the provisions of article 71, quoted in the next footnote.
83 Ibid., chapter 5 – concerning government's duties and obligations: Article 71 states, "The Government shall respect, protect, uphold and promote human rights as laid down in this Act, other legislation, and international law concerning human rights ratified by the Republic of Indonesia." Article 72 provides that: "The duties and responsibilities of the government as referred to in Article 71, include measures towards effective implementation in law, politics, economics, social and cultural aspects, state security, and other areas."
84 Ibid., article 7(1).
85 Ibid., section 7 of chapter 3.
86 Ibid., articles 40–41.

Also in other areas of human rights protection related to social security, no distinction is drawn between nationals and non-nationals. For example, in section 9 of the Act, concerning women's rights, particular reference is made to the following: "The special rights to which women are entitled arising from their reproductive function are guaranteed and protected by law."[87] Furthermore, in relation to children's rights,[88] the Act stipulates: "Every child has the right to access to adequate health services and social security as befits his physical, emotional and spiritual needs."[89]

The Indonesia National Medium Term Development Plan 2015–2019 highlights the need for the protection of the rights and safety of migrant workers (Indonesian Government, 2015).[90] Most of the relevant targets, as well as policy directions and strategy in this regard, concern Indonesian migrant workers abroad, and are discussed below in more detail.

Two major public schemes extend social security coverage to the bulk of the Indonesian population. These are: (1) BPJS *Kesehatan* [BPJS Health], a health insurance scheme that provides healthcare benefits; and (2) BPJS *Ketenagakerjaan* [BPJS Employment] an employment-based scheme that provides for:

- the risk categories of old age (both as a provident fund and a pension scheme arrangement, and for related disability and death);
- death of the breadwinner; and
- employment injury.

As has been noted:

> The progressive implementation of the National Social Security Law (Law No. 40/2004) and the Social Security Service Providers Law (Law No. 24/ 2011) aims to contribute to extending social security coverage for the whole population in the areas of health, work injury, old age, and death of the breadwinner. The National Social Security Law follows a staircase approach with non-contributory schemes for the poorest people, contributory schemes (with nominal contributions) for the self-employed and informal economy workers, and statutory social security schemes (with contributions set at a percentage of wages) for formal sector workers and their dependents (ILO, 2015h, p. 1).

Labour law arrangements provide for cash sickness benefits and maternity benefits, as well as (severance) benefits in the event of unemployment, under certain conditions. Labour law arrangements also provide for some contingencies in relation to worker categories not covered by public social security schemes – this affects temporary migrant workers in particular.

Two key laws provide for the public social security system outlined above – the framework defining Law Concerning the National Social Security System, (Law No. 40 of 2004) and the Law Concerning the Social Security Administrative Body (Law No. 24 of 2011) (ILO, 2015h).[91] Five social security programmes are provided for: health insurance, work accident insurance, old age pension, public pension (and associated disability and survivors' pension), and life insurance.[92] The gradual implementation of the

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87 Ibid., article 49(3).
88 Ibid., section 10.
89 Ibid., article 62.
90 See para. 6.1.5 of the Plan. The Plan was issued under issued under Presidential Decree No. 2 of 2015.
91 Specific regulations provide for the implementation of components of the overall system – see, among others, Government Regulation No. 44 of 2015 on Administration of Occupational Accident and Death Insurance Program, and Government Regulation No. 46 of 2015 on Old-Age Program Administration.
92 See Law Concerning the National Social Security System, article 18, and Law Concerning the Social Security Administrative Body, article 6.

public social security system is envisaged, providing for different stages of application, depending on the size of the employer, whether the environment is State or non-State, and whether the individual concerned is employed or self-employed.[93]

Foreign nationals who have worked for at least a six month period in Indonesia and who have paid contributions are entitled to be covered by the Indonesian Social Security System. This flows from the definitions of the concepts of "participants"[94] and "employee"[95] in both of the social security laws above. According to article 3 of Law Concerning the Social Security Administrative Body, the aim of BPJS (the Social Security Administrative Body) is to guarantee the fulfilment of basic life needs adequately for every participant and/or their family members.

Based on the provisions of these two laws, foreign workers (and/or their family members) who have worked for at least six months and have paid contributions, are entitled to the following benefits provided for by the public social security system, of which they are compelled to be a member (voluntary coverage is available for self-employed persons, except for life insurance, which remains mandatory):[96]

- lump-sum old age benefit, and associated disability benefit, and survivor benefit;
- old-age pension, and associated disability pension and survivor pension (available in the form of a spouse's pension, and orphan's pension and a parent's pension (if there is no eligible spouse or child);
- death grant and funeral grant (mandatory life insurance);
- medical benefits, comprising primary and specialist outpatient care, hospitalization, medicine and certain other medical benefits, including dependents' medical benefits; and
- work injury benefits, in the form of temporary and permanent disability benefits, workers' medical benefits, and survivor benefits (including a lump sum survivor benefit, a death grant, and a funeral grant).

It has to be noted that migrant workers may not be able to draw a full benefit. For example, a regular old age pension will only be paid in full in the case of 180 months' contribution (ISSA and SSA, 2017). Also, while the principle of portability of benefits within Indonesia is recognized,[97] no provision is made for cross-border portability of benefits. However, benefits under the public social security scheme shall be paid to the participant when the participants leaves Indonesia permanently.[98]

Certain other social security benefits are regulated in Indonesia's labour law, the Act Concerning Manpower (Act No. 13 of 2003). These benefits also apply to migrant workers. This flows from the wide connotation accorded to the term "worker", defined as every person who works for a wage or other forms of remuneration.[99] It also follows from the provisions of the law concerning equality and equal treatment. Article 5 states, "Every person available for a job shall have the same opportunity to get a job without discrimination." While article 6 stipulates, "Every worker/labourer has the right to

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93 See Presidential Regulation No. 109 of 2013 on Gradual Stages Procedure for Social Security Program.

94 "Participants" is defined to mean "all people, including expatriates who have worked for at least 6 (six) months in Indonesia, who have paid contributions" – see article 1(8) of Law No. 40 of 2004, and article 1(4) of Law No. 24 of 2011.

95 "Employee" is defined to mean "anyone who works for a salary, wage or other of remuneration" – see article 1(11) of Law No. 40 of 2004, and article 1(8) of Law No. 24 of 2011.

96 See also ISSA and SSA, 2017, pp. 100–103.

97 According to the Law Concerning the Social Security Administrative Body (Law No. 24 of 2011), article 4(f), read with the explanatory memorandum accompanying the Law (Elucidation on the Law on the Social Security Administrative Body), the principle of portability refers to the principle, "which provides continuous security despite changes in Participant's job or residence within the boundary of the Unified States of the Republic of Indonesia."

98 See Government Regulation No. 46 of 2015 on Old-Age Program Administration, article 26(1)(d).

99 Act Concerning Manpower, article 1(3).

receive equal treatment without discrimination from their employer." It might be that the law applies to regular/documented foreign workers, in view of the specific provisions in chapter 8 related to the employment of foreign citizens. Note should in particular be taken of the provisions of article 42, which stipulates:

(1) Every employer that employs workers of foreign citizenship is under an obligation to obtain written permission from Minister.
(2) An employer who is an individual person [not a corporate] is prohibited from employing workers of foreign citizenship.

Generally, article 99 of the Act Concerning Manpower stipulates that workers/labourers are entitled to social security for employees, in accordance with prevailing legislation. Also, according to article 100, an employer is obliged to provide welfare facilities.

Based on the specific provisions of the Act Concerning Manpower, migrant workers – including migrant workers who have worked for less than six months and who may not be able to access benefits under the social security laws indicated above – are entitled to the following benefits:

- maternity protection, in the form of paid maternity leave (total of three months), breastfeeding opportunities, and protection against dismissal;[100]
- sick leave and cash sickness benefits, calculated according to the indicated scale, and including protection against dismissal;[101]
- paternity leave;[102] and
- severance pay, calculated according to the indicated scales, and payable in the event of resignation, redundancy-related reasons, the death of the employer, having reached pensionable age, or in the event of permanent disability following a work-related accident (among others).[103]

Also, in those few instances where migrant workers in Indonesia may be subject to the (reciprocal) provisions of bilateral agreements between Indonesia and their country of origin, the provisions of those agreement(s) will apply. However, these agreements invariably confirm the application of the labour laws of the country of destination (Indonesia, in this case).

Finally, in accordance with the Ministerial Regulation Concerning Foreign Manpower Utilisation, No. 16 of 2015, foreign workers are required to have insurance from an Indonesian insurance company.

As has been noted, social assistance is provided through a number of social welfare programmes delivering access to free basic education until grade nine (a school assistance programme called BOS); income security for families with children (conditional cash transfer and scholarship programmes); food security (Raskin); and social infrastructure and employment opportunities (PNPM, BLK) (ILO, 2015h). No specific provision is made for the application of these and other social assistance benefits to migrant workers and their families. It would appear that these programmes are in fact not available to these workers and their families.

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100 Ibid., articles 76(2), 82–84, and 153(1)(e).
101 Ibid., articles 93(2)(a), 93(3), and 153(1)(a).
102 Ibid., article 93(2)(c) and 93(4)(e).
103 Ibid., articles 156, read with articles 162–167 and 172. Article 153(1)(j) also provides for protection against dismissal in the event of absence due to a work-related accident.

Indonesia has ratified one ILO social security Convention, namely the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). It has not, however, ratified any of the key ILO migration Conventions, nor has it ratified the ILO Domestic Workers Convention, 2011 (No. 189).[104] Indonesia has taken steps to implement the ILO Social Protection Floors Recommendation, 2012 (No. 202) (ILO and ADB, 2015). Indonesia acceded to the 1966 UN International Covenant for Economic, Cultural and Social Rights in 2006. Article 9 of this UN instrument grants the right to social security to everyone, and does not draw a distinction on the basis of nationality. The article also does not require reciprocity – in other words, it is not a requirement that another country must be willing and able to grant equal protection before the ratifying country will be bound to provide social security protection to migrant workers. Indonesia also ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) in 2012, and is therefore bound by the provisions of that Convention dealing with social security.[105] Indonesia has also concluded a range of bilateral labour agreements, in which some provision is made for social security arrangements, a matter that we turn to below.

Indonesian workers abroad: Comprehensive provision is made for the welfare protection of Indonesian overseas migrant workers. A vast array of regulatory instruments inform the social security coverage of these migrant workers and the supporting legal, institutional, and operational framework.

From a policy and strategic perspective, mention should be made of the National Medium Term Development Plan 2015–2019. As indicated above, the Plan highlights the need for the protection of the rights and safety of migrant workers (Indonesian Government, 2015).[106] One of the targets set in the Plan is the making of regulations that protect migrant workers. As one of its policy directions and strategy, the Plan mentions that the protection of migrant workers can be enhanced by strengthening the framework of cooperation in international forums related to migration – effectively emphasizing the relevance of bilateral agreements and multilateral arrangements. Effective insurance schemes for returning migrant workers are indicated as yet another policy direction/strategy. Emphasis is also placed on the realization of recruitment and placement mechanisms that protect migrant workers. In addition, as noted by the ILO (2015f), skilled migration is being prioritized, with the goal to increase the number of Indonesian migrant workers who have skills and expertise in line with market needs. Generally speaking, the Government of Indonesia is aware of the need to improve the employability of and employment opportunities for Indonesians in the Indonesian labour market, as part of an appropriate labour migration strategy (ILO, 2015i).

Significant statutory expression has been given to the above-stated policy and strategic direction. The 2004 Act concerning the Placement and Protection of Indonesian Overseas Workers provides the key legislative framework,[107] supported by a vast range of supporting and implementing regulatory instruments.[108] This law appears to only deal with the position of regular migrant workers, not irregular/undocumented/illegal workers.[109] The law acknowledges the need for respecting the dignity, human rights, and legal protection of Indonesian migrant workers abroad, and it confirms Indonesia's obligation to guarantee and protect all these workers. In addition, the law recognises the need for

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104 See http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102938 [accessed 27 April 2017].

105 See in particular article 27 of that Convention.

106 See para. 6.1.5 of the Plan.

107 Apparently the Government has been reviewing the current law (ILO, 2015f).

108 See IOM, 2013 for a list of regulatory instruments predating 2014.

109 Act concerning the Placement and Protection of Indonesian Overseas Workers (Act 39 of 2004), article 1 defines "Indonesian worker" as an "Indonesian citizen who met the requirements to work overseas in an employment relation for a certain period with payment". A "prospective Indonesian worker" is similarly defined as an "Indonesian citizen who met the requirements as job seeker who will work overseas and is registered in [the] District/Municipality Administration agency that [is] responsible for manpower". See also ILO, 2015g).

the placement of Indonesian workers abroad to be conducted in an integrated way involving the participation of government agencies at the central, local, and community level.[110] The Act therefore indicates the following as the aims of placing and protecting current and prospective migrant workers:

(a) Empower and employ workers optimally and humanely;
(b) Ensure and protect prospective worker/worker in home country, destination country, until return to point of origin in Indonesia; and
(c) Improve the prosperity of the worker and their family. [111]

Article 5 stipulates that the Government shall arrange, develop, implement, and control the placement and protection of workers abroad; duties that can be delegated to local administration bodies. Article 6 in turn stipulates that the Government shall be responsible to improve efforts aimed at the protection of workers abroad. The Act consequently requires of Government to:

1. Ensure compliance with the rights of workers/prospective workers, including both those who departed via the intervention of a work placement institution (e.g., private recruitment agencies) or independently;
2. Establish and develop an information system on the placement of prospective workers in destination countries;
3. Provide diplomatic services to ensure optimal compliance with and protection of migrant workers' rights; and
4. Protect the worker during the period before departure, during placement, and post placement.[112]

Indonesia has been extending considerable support to Indonesian workers abroad. One of the key components of this support has been the establishment of a wide-ranging compulsory insurance scheme for overseas Indonesian workers (known as TKI insurance),[113] largely informed by several supportive regulatory instruments.[114] The lead provision in this respect is article 68 of the 2004 Act concerning the Placement and Protection of Indonesian Overseas Workers. It stipulates that private recruitment agencies are obliged to insure workers abroad through an insurance programme to be regulated by ministerial decree.[115] The insurance premium is paid by the recruitment agency, but this cost is then recovered from the workers, as neither recruitment agencies nor employers are obliged by law to bear any part of the cost (ILO, 2015g).

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110 Ibid. See in particular paragraphs (b), (d), and (f) of the preamble.
111 Ibid., Article 3.
112 Ibid., Article 7.
113 See Ministry of Manpower, 2016, and ILO, 2015g. Presently, TKI insurance is managed by a consortium of private insurance companies. The migration of TKI compulsory insurance to BPJS-Employment is currently under consideration.
114 For example, the Law on Placement and Protection of Indonesian Workers Abroad, 2004; Law on the Ratification of International Convention on the Protection of the Rights of All Migrant Workers and their Families, 2012; Ministerial Law on TKI Insurance, 2010, along with its amended Ministerial Law on TKI Insurance, 2012; Ministerial Law on the Implementation of the Placement and Protection Indonesian Overseas Workers, 2014; Ministerial Decree No. 212 on TKI Insurance Consortium JASINDO, 2013; Ministerial Decree No. 213 on TKI Insurance Consortium ASTINDO, 2013 (amended by 2014's Ministerial Decree No. 20 on the Amendment of Ministerial Decree No. 213 of 2013); and Ministerial Decree No. 214on appointment of TKI Insurance "MITRA TKI, 2013.
115 See in this regard Ministerial Law No. PER-07/MEN/V/2010 on TKI insurance and its amended version: Ministerial Law on amended Ministerial Law on TKI Insurance, 2012.

The insurance provided for by the law covers three stages: pre-placement, during placement, and after placement (Ministry of Manpower, 2016). At the pre-placement stage the coverage related to the following risks is provided for a period of five months:

1. death;
2. sickness and disability;
3. accidents;
4. failure to depart due to no fault of the prospective migrant; and
5. physical violence and rape/sexual assault.

During placement, the coverage is extended for the following risks for a period of 24 months (which can be extended):

1. death;
2. illness and disability;
3. accidents inside and outside of working hours;
4. termination of employment (PHK) individually or in mass prior to the expiration of labour agreements;
5. unpaid wages;
6. problematic deportations;
7. legal problems;
8. physical violence and rape/sexual harassment;
9. insanity;
10. transfer of migrant workers to another workplace/other places not in accordance with the placement agreement; and
11. failed placement through no fault of the migrant worker.

For the period after placement, one month of coverage is provided for the following risks:

1. death;
2. illness;
3. accident; and
4. actions of others during the return trip to the area of origin, such as physical violence, rape/sexual assault, or loss of property.

The insurance coverage can be extended if the labour contract is extended. A one-year extension attracts a premium of 40 per cent of the (initial) insurance amount, while a two-year extension attracts an additional 80 per cent of the insurance amount (Ministry of Manpower, 2016).

It should be noted that at the pre- and post-placement stages, it is possible to be a registered member of and paying contribution to the BPJS schemes – indeed, it could be imperative, especially if the Indonesian worker works in the formal sector. The provisions in relation to the BPJS schemes, outlined in the previous section, would in these circumstances be applicable to the worker concerned.

In addition to the regulatory framework discussed above, through which Indonesia extends protection and support to Indonesian migrant workers on a unilateral basis, mention should also be made of welfare protection emanating from Indonesia's bilateral labour agreements. These bilateral agreements have been concluded with several countries where Indonesians work, primarily in Asia and Europe. Some of them provide for (limited) social security coverage of affected migrant workers:

> The efforts deployed include also Memorandums of Understanding (MoUs) with the main countries of destination of the Indonesian migrant workers (Malaysia, [Republic of] Korea, Japan, United Arab Emirates, Taiwan [China], Jordan, Kuwait, Qatar, Timor-Leste and Lebanon). Some of these MOUs include provisions for insurance covering the workers. For instance the MoU on placement and protection of Indonesian domestic workers in Jordan states that "the employer shall obtain and pay a life insurance policy for the benefit of the Indonesian domestic worker". The life insurance should be valid for two years, issued at an accredited and registered insurance company. The MoU with Malaysia stipulates the "right to equal treatments as of national workforce" and makes it mandatory for employers to affiliate the worker under the Foreign Worker Compensation Scheme (FWCS) and the Foreign Workers Health Insurance Scheme (ILO, 2015g, p. 2).

These bilateral agreements have mostly been concluded with other governments, although some of them involved recruitment placement agencies or private sector firms.[116] However, as indicated, limited provision has been made for social security coverage.

The weak enforceability of the MOUs has been noted. It has been suggested that the Government should explore the feasibility of negotiating bilateral social security agreements with the main destination countries to ensure the portability of social security rights (ILO, 2015g).

Several supporting measures have been adopted to extend protection to Indonesian migrant workers. These include a range of institutional and, as mentioned, regulatory measures.[117] In general terms, and in order to increase the placement of migrant workers in occupations in the formal economy with formal skill requirements, the Indonesian Government is providing competency based training, assessment, and certification services for migrant workers. Also, the Government is trialling the introduction of standardized salaries and working conditions in selected sectors and countries in order to improve the quality of migrant workers' jobs (ILO, 2015f).

From a domestic perspective, stringent measures aimed at vetting, regulating, and supervising private employment agencies have been introduced. Also, several pre-departure arrangements have been put in place. These include the (compulsory) offering of training and information-sharing to prospective migrant workers, as well as the conclusion of an employment contract with the foreign employer before the migrant worker leaves to take up work abroad (Ministry of Manpower, 2016).[118] Furthermore, the compulsory insurance scheme put in place for the benefit of Indonesian migrant workers also covers the pre-departure phase, as indicated above.

From an overseas perspective, interventions to ensure greater protection include the posting of labour attachés to countries where sizeable numbers of Indonesians reside; bilateral, regional, and multilateral cooperation; the rendering of legal assistance; continued supervision of private employment agencies; complaint management and the regulation of brokerage services; the development and operation of Citizen Service Centres by Indonesian embassies in main destination countries;[119] and, generally, support to migrant workers in accordance with the rights accruing to them per the employment contract or the laws of the country of destination (Ministry of Manpower, 2016).[120]

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116 See http://apmigration.ilo.org/search?SearchableText=mou+indonesia [accessed 1 May 2017], for a list and copies of relevant agreements.

117 In particular, Presidential Regulation 81 of 2006 Concerning the National Agency for the Placement and Protection of Indonesian Migrant Workers arranged for the establishment of the said Agency, also known as BNP2TKI. For more, see IOM, 2013, pp. 15–17, and ILO, 2013, p. 20.

118 See also Act concerning the Placement and Protection of Indonesian Overseas Workers, 2004, articles 27–72, 87–93; and ILO, 2015f, p. 3.

119 "The Centers provide temporary shelter, facilities and protection for migrant workers who face problems in the destination country and choose to leave their employers. They also provide vocational skills training programmes, languages training and computer literacy as well as legal assistance" (ILO, 2013, p. 21).

120 See also the Act concerning the Placement and Protection of Indonesian Overseas Workers, 2004, articles 79–80.

Provision is also made for return arrangements. The Indonesian Government has been providing training on financial education for workers and their families to support the empowerment of migrant workers when they return home (ILO, 2015f).

The protection indicated above is strengthened by areas of direct intervention by the Indonesian Government. The first of these concerns restrictions and conditions placed on worker placement abroad. Article 27 of the Act concerning the Placement and Protection of Indonesian Overseas Workers, 2004, stipulates that worker placement abroad may only be conducted in destination countries whose governments have concluded an agreement with the Indonesian Government, or countries which have regulations providing for the protection of foreign workers. Based on these considerations, as well as security considerations, the Indonesian Government may declare certain countries entirely closed for worker placement, or alternatively for worker placements in certain job positions.[121] The Government has indeed, on a number of occasions, placed a ban on the placement of Indonesian domestic workers in certain countries. Since 2015 such a ban has been in place regarding certain Middle Eastern countries. In fact, the Government had previously indicated that the exporting of all domestic workers would be terminated in 2017 (*Asia One*, 2016; *Reuters*, 2016). This blanket prohibition was ultimately not put in place, but the Middle Eastern ban remains in place (Yi, 2017).

The second area of direct interventions concerns measures adopted by the Indonesian Government to stipulate minimum conditions – including conditions of employment – applicable to Indonesian migrant workers. For example, Indonesia invariably sets minimum wages payable to domestic workers in Malaysia, usually within the context of Joint Working Group meetings with Malaysia (Ahmad et al., 2015). Similarly, in 2015 it was announced by the President of the Republic of Indonesia, via the National Agency for Placement and Protection of Indonesian Overseas Workers (BNP2TKI), that Indonesia was looking to extend its education-related social programmes to children of Indonesian workers in Malaysia through the school operational assistance programme (BOS) and the conditional cash transfer programme for children of school age (6–21 years) attending school/courses (Smart Indonesia Card, or KIP) (Praditya, 2015; Christy, 2015). These arrangements are a clear expression of the Indonesian Government trialling the introduction of standardized salaries and working conditions in selected sectors and countries in order to improve the quality of migrant workers' jobs (ILO, 2015f; 2015i).

5.2.4 Lao People's Democratic Republic

Background: The omnibus social security law of the Lao People's Democratic Republic, i.e., the Law on Social Security, 2013, does not explicitly cover migrant workers in the Lao People's Democratic Republic.

Certain arrangements do exist to protect Lao migrant workers abroad. In the case of Thailand, this protection is mainly based on the provisions of a bilateral MOU, particular with regard to Lao migrant workers' access to workers' compensation protection in Thailand. According to available data:

- There were 22,000 migrants in the Lao People's Democratic Republic in 2013, equivalent to 0.2 per cent of the total population of 6.9 million. However, the total number of migrant workers in the Lao People's Democratic Republic cannot be calculated from the available sources (ILO, 2015d).

[121] Act concerning the Placement and Protection of Indonesian Overseas Workers, articles 27 and 81.

- An estimated 1,294,000 Lao were migrants abroad in 2013 (ILO, 2015d), which makes the Lao People's Democratic Republic one of the key sending countries in ASEAN.[122] In fact, according to the World Bank, the Lao People's Democratic Republic was one of the top 10 emigration countries in East Asia and the Pacific in 2013; and Lao–Thailand migration constituted one of the top ten migration corridors in the region in that year (Ratha, Plaza, and Dervisevic, 2016). Intra-ASEAN migration constitutes the hallmark of migration by Lao – approximately 72 per cent of all Lao emigrants (or approximately 931,000 individuals as of 2013) migrated to other ASEAN countries (ILO, 2015d; 2015j).[123] The vast majority of Lao migrants are found in Thailand. The high recorded number of Lao migrants in Thailand – 926,000, including 220,450 Lao workers (ILO, 2015d) – can be at least partially ascribed to the fact that in 2010, 2011, and 2013 the Lao Government sent a team of officers into Thailand to register Lao nationals who had previously entered the country through irregular channels for work and were residing there at that time. This "nationality verification process" (NVP) resulted in much higher numbers of migrant workers being registered (ILO, 2015d).
- It has been estimated that $63 million was sent as remittances from Lao People's Democratic Republic to other countries in 2016, with Viet Nam ($38 million), China ($17 million), and Thailand ($7 million) being the major recipient countries. Conversely, an estimated $60 million in remittances was sent to the Lao People's Democratic Republic from other countries in 2016, with Thailand ($40 million), the United States ($12 million), Bangladesh ($3 million) and France ($2 million) being the major countries from where remittances were sent (Pew Research Center, 2016). There is therefore an overall net outflow of remittances, which accounted for a fractional share of GDP in the Lao People's Democratic Republic in 2013 (ILO, 2015d).

Migrant workers in the Lao People's Democratic Republic:[124] The current Lao People's Democratic Republic Constitution provides that foreigners and those who do not have Lao citizenship have the right to be protected with regard to their rights and freedoms as stated by the laws; enjoy equal rights; make claims for fairness from relevant state organizations; and have the obligation to respect the Constitution and laws of the Lao People's Democratic Republic.[125] The Law on Social Security, 2013 makes provision for most of the classical social security risks covered by the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102). The types of benefits covered by the Law on Social Security are: health-care benefits;[126] maternity or miscarriage benefit; employment injury, occupational diseases, or other accident that causes the loss of working capacity or invalidity; sickness benefit; pension benefit; death grant; survivor's benefit; and unemployment benefit.[127] It is unclear from the explicit provisions of this law as to whether migrant workers are – or could be – covered by the social security system provided for by the law. The relevant provisions of the law indicating the range of

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122 The ratio of total nationals abroad to total migrants is a striking 59.4 in the Lao People's Democratic Republic (ILO, 2015d). This is fuelled partly by the high poverty incidence. Despite a dramatic reduction in poverty between 1993 and 2013, 62 per cent of the population still lives on less than US$2 per day (ILO, 2015d; 2015j).

123 The Lao People's Democratic Republic was also one of the top ten emigration countries among least developed countries in 2013; though it should be noted that the Lao People's Democratic Republic is now regarded as a middle-income country (Ratha, Plaza, and Dervisevic, 2016).

124 See generally the Arrival, Departure and Management of Foreigners in Lao PDR Law, (Law No. 79 of 2014).

125 (Amended) Constitution of Lao People's Democratic Republic (2003), Article 50; information provided by ILO Lao People's Democratic Republic.

126 The Lao People's Democratic Republic has in place several health-care schemes, including contributory-based social health insurance for formal economy employees. It is in the process of merging existing schemes and implementing a national health insurance system, with a target of universal coverage by 2020 (Ong and Peyron Bista, 2015).

127 Article 9. See also article 2, which stipulates, "Social Security is a set of guarantee[s] to ensured person[s] provided by the National Social Security Fund in case of health care, maternity or miscarriage, employment injury, occupational diseases, invalidity, sickness, pension death, survivor's benefit and unemployment." For more, see Ong and Peyron Bista, 2015, p. xvi.

persons covered by the social security system do not contain any reference to nationality.[128] Article 7, which lays out the general provision on the law's scope of application, indicates that all employers, employees and their dependants, self-employed persons, and voluntarily employed persons "across the nation" are covered by the system. However, if the provisions of the Law on Social Security are read with those of the Labour Law of 2014 (see below), it is clear that foreign workers are indeed covered by the benefit regime provided under the Law on Social Security.[129]

The Labour Law applies to foreign workers as well.[130] Article 134(3) explicitly states that there is an obligation to create conditions wherein the employee and members of their family can access information, education, health care, and social insurance. Importantly, the Labour Law obliges every labour unit and employee to be insured and to make payments into the National Social Security Fund to receive social security benefits of any kind as determined in the Law on Social Security.[131] For employees who have not contributed to the National Social Security Fund or have contributed but are not yet entitled to the benefits, employers will be responsible "according to the law and regulations".[132]

Article 72 of the Labour Law provides for retirement age and entitlement for retirement benefits. It is assumed that migrant workers would be entitled to a lump sum payment in this regard, as they would not be able to meet the requirement of a full 15 years' worth of contributions, in view of the fact that they are allowed to work in the Lao People's Democratic Republic for a period of five years only.[133] Maternity protection and support are also provided for, including maternity leave before and after giving birth.[134]

Section VIII of the Labour Law contains comprehensive protection in relation to occupational safety and health. This entails (among others) medical support[135] and an annual medical examination.[136] Section VII also stipulates liability on the part of the employer or the social insurance implementation agency for treatment and rehabilitation costs in the event of an occupational injury or disease, and (where relevant) for funeral costs and survivor benefits or compensation to victims, in accordance with the Law on Social Security.[137] Provision is also made for continued salary payment or, where relevant, survivor benefits in the event of an accident or disease other than an occupational accident or disease.[138] Furthermore, migrant workers are also entitled to sick leave; however, the provisions in this regard do not apply to sick leave as a result of labour accidents or occupational diseases.[139]

Generally speaking, provision is made in the Labour Law for the creation of a labour fund, which aims to assist migrant employees (and others) working in the Lao People's Democratic Republic.[140]

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128 See (a) the definitions accorded to "employee", "employer", "family member", "insured person", "self-employed", and "voluntary insured [person]" in article 3 of the law; and (b) article 10, which indicates the target groups for coverage.

129 See generally ILO and ADB, 2015, p. 98.

130 Labour Law, 2014, article 6. Article 68 further stipulates: "Foreign labor working in the Lao [People's Democratic Republic] will be protected and administered in accordance with this law and other relevant regulations of the Lao [People's Democratic Republic]." According to article 69, foreign workers enjoy legal protection according to the laws of the Lao People's Democratic Republic, and are entitled to treatment equal to that of Lao workers. See also article 133.

131 Ibid., article 71.

132 Ibid.

133 See Labour Law, article 74, read with articles 45, 72, and 73.

134 Ibid., articles 97–100.

135 Ibid., article 124.

136 Ibid., article 126.

137 Ibid., article 128. The English version of the Article refers to the "Law on Social Insurance". Presumably the Law on Social Security is intended.

138 Ibid., article 129.

139 Ibid., article 56.

140 Ibid., article 136.

The Lao People's Democratic Republic may have incurred international obligations regarding coverage of migrant workers. Article 5(1) of the Law on Social Security stipulates compliance with international conventions and treaties as one of the basic principles of social security.[141] The Lao People's Democratic Republic has not yet ratified any of the ILO migration- or social security-specific Conventions,[142] but it has taken steps to implement ILO Social Protection Floors Recommendation, 2012 (No. 202) (ILO and ADB, 2015). However, the Lao People's Democratic Republic did accede to the 1966 UN International Covenant for Economic, Cultural and Social Rights in 2007.[143] Article 9 of this UN instrument grants the right to social security to everyone, and does not draw a distinction on the basis of nationality. Article 9 also does not require reciprocity – in other words, it is not a requirement that another country must be willing and able to grant equal protection before the ratifying country (in this case, the Lao People's Democratic Republic) will be bound to provide social security protection to migrant workers.

Finally, MOUs concluded with other countries could also have a bearing on the access that nationals of those countries could have to Lao social security benefits – see in this regard the discussion on the Thailand–Lao People's Democratic Republic MOU below.

Lao workers abroad: As mentioned above, certain arrangements exist to protect Lao migrant workers, and must be seen against the background of the revised policy on labour, which now provides that "The State promotes employment among Laotian labour both domestically and sending labour abroad".[144] These arrangements are provided for partly in Lao regulatory instruments and partly in an MOU with Thailand. The Lao regulatory framework makes limited provision for welfare or social security arrangements. The current framework essentially covers:[145]

- Regulation of overseas labour migration (with particular reference to the regulation of recruitment agencies).
- Prohibitions or restrictions imposed on Lao citizens – in particular, the State does not permit the sending of Lao labour overseas for employment in vocations or areas that are dangerous to health and safety; contrary to Lao customs and traditions, or the laws of the Lao People's Democratic Republic; or any country in which safety cannot be guaranteed.[146]

However, no specific provision is made for extending Lao social security benefits in favour of Lao migrant workers. Article 132 of the 2014 Labour Law stipulates that "the rights and obligations of migrant labour exiting the country are in accordance with the employment contract and the rules of the relevant country". Generally speaking, article 136 provides for the creation of a labour fund to assist Lao employees working abroad. The labour fund is financed in part by employees working abroad, who have to pay 5 per cent of one month's salary or wages into this fund.[147] A feasibility study, initiated by the ILO through the ASEAN TRIANGLE Project and with the concurrence of the Government of Lao People's Democratic Republic as lead country, was undertaken to investigate modalities for the establishment of a migrant welfare fund or equivalent (ILO, 2015e).

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141 Several provisions of the law also emphasise the importance of international cooperation in the field of social security, and impose duties in this regard on a range of institutions tasked with implementing the law, i.e. the National Social Security Fund Board Directors, the Ministry of Labour and Social Welfare, and the Provincial and Capital Labour and Social Welfare section: see articles 8, 62(8), 78(13), and 79(8).

142 See http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103060 [accessed 12 Mar. 2017].

143 See http://indicators.ohchr.org/ [accessed 12 Mar. 2017].

144 See article 4 of the Labour Law, 2014. Articles 66 and 67 impose a range of duties on the Ministry of Labor and Social Welfare in support of Lao foreign workers.

145 See the Labour Law, 2014, and the earlier Decree on the Dispatching of Lao Labour to Work Abroad (Decree 68 of 2002).

146 Labour Law, 2014, article 38.

147 Ibid., article 137(3).

With regard to Lao migrant workers in Thailand, protection is mainly based on the provisions of a bilateral MOU with that country. On 18 October 2002, an MOU on employment cooperation was concluded between Thailand and the Lao People's Democratic Republic.[148] The agreement contains little in terms of specific provisions on Lao workers' entitlement to Thai social security benefits. The MOU does provide for a deportation fund to which Lao workers have to contribute 15 per cent of their salary, to be repaid to them 45 days after their employment has terminated.[149] Apparently, though, it was decided by the Thai authorities in 2014 to repeal the policy on collections for the savings fund (ILO, 2015o). The MOU further stipulates that the parties "will apply national laws to protect the rights of workers (to whom this MOU applies)"[150], and that "workers will receive wage and benefits at the same rate applied to national workers based on the principles of non-discrimination and equality on the basis of gender, ethnic identity and religious identity."[151]

Migrant workers' access to Thai social security benefits under the legal and policy framework of Thailand can be summarized as follows (Hall, 2012):

- In order to receive compensation under Thailand's Workmen's Compensation Act, 1994, an injured migrant worker must satisfy the following: (1) possess a work permit; (2) possess a passport or alien identity document; (3) have an employer that paid contributions to the Workmen's Compensation Fund (WCF); and (4) have paid income tax.
- Therefore, migrants who pass NVP or are legally imported under the MOUs can access the WCF.
- However, if these requirements are not met, responsibility is assigned to an employer to compensate an injured worker.
- In 2011, the Cabinet approved a resolution to establish a work accident insurance scheme for workers from Cambodia, Lao People's Democratic Republic, and Myanmar who are registered and possess civil registration certificates and work permits, but have not yet passed the NVP. The scheme is managed by a private insurance company that is responsible for compensation payments to workers suffering work-related injuries and illness. The compensation amounts were announced as equal to the Workmen's Compensation Act 1994.
- Migrant workers are generally able to access the universal health-care scheme for the treatment of general ailments. Only registered migrants can pay into the national health-care system and access treatment at a cost. However, even undocumented migrants and their dependents can access emergency and general medical treatment utilizing hospital charitable funds and NGO provisions.
- Migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar who do not qualify are obliged to take up Compulsory Migrant Health Insurance (CMHI) to access public health care facilities (Ong and Peyron Bista, 2015).
- Migrant workers are not denied access to Thailand's social security benefits, but in order to gain access to the schemes, they must be in possession of a passport and a work permit.

[148] See file:///C:/Users/user/Downloads/Thai_Laos%20MOU%20_October%2018-%202002%20(1).pdf [accessed 18 Mar. 2017].
[149] MOU between the Royal Thai Government and the Government of the Lao People's Democratic Republic on Employment Cooperation, articles 11–12.
[150] Article 17.
[151] Article 18.

- Workers and their employers should make a monthly contribution to the scheme, equivalent to 5 per cent of each worker's income.[152] However, the compulsory social security scheme is only for formal sector workers; so agriculture, fisheries, and other informal sector workers are not covered. The voluntary contributions available to Thai workers that are not included under the compulsory coverage are not open to migrant workers.

Apparently, migrants in Thailand may have difficulty in accessing their due social security benefits as they often do not stay in the country long enough to enjoy the full benefits. In particular, migrants are entitled to remain in Thailand for two periods of two years, i.e., four years. Thereafter, they have to wait another three years before they can work in Thailand again.[153] However, under other recent MOUs between Thailand and certain ASEAN countries, migrant workers may re-apply for employment in Thailand after a 30-day break in their country of origin.[154] Also, recruitment/registration is, on the basis of bilateral arrangements, reportedly allowed irrespective of the three year provision (ILO, 2015o). Yet, a pension requires a minimum of 180 months' contribution (i.e., 15 years) (Hall, 2012). Nevertheless, although not part of the MOUs, the Thai Government has indicated that migrant workers' contributions to pensions and unemployment insurance can be refunded in a lump-sum at the end of their contract – as they are not entitled to these benefits in practice (Hall, 2012). A recent ILO (2015o) publication remarked that while the number of migrant workers with social security coverage is increasing (451,537 as of October 2014 according to the SSO of Thailand), the majority are still without sufficient access.

5.2.5 Malaysia

Background: Malaysia provides limited social security coverage for migrant workers, and tends to do so (where provision is made) via separate schemes that make available less advantageous benefits in comparison with Malaysian nationals. The large numbers of foreign domestic workers[155] are particularly affected by this disparity in coverage, as they are effectively excluded from most social security benefits.[156] The country has also not developed a dedicated framework aimed at the social security protection of Malaysian migrant workers abroad. According to available data:

- By 2014, there were 2.1 million documented foreign workers in Malaysia, constituting 13 per cent of the labour force. However, recent (2015) migrant worker figures provided by the Government of Malaysia indicate a number of 6.7 million, with the balance of approximately 4.6 million being undocumented workers. This figure would translate to migrant workers accounting for an estimated 27 per cent of the Malaysian workforce (ILMIA, 2015; Raman, 2016). In 2013, 61.2 per cent of migrants in Malaysia originated from other ASEAN countries (ILO, 2015k).

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152 The total contribution rate is made up as follows: 12.75 per cent of reference earnings (5 per cent from employers, 5 per cent from employees, and 2.75 per cent from the Government). The SSO then allocates the total contribution received as follows: four benefits (sickness, disability, maternity, and death): 4.5%; two benefits (old-age and child allowance): 7 per cent; and unemployment: 1.25 per cent.

153 See article 9 of the MOU between Thailand and Lao People's Democratic Republic.

154 See, for example, article 7 of the Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015).

155 According to Harkins (2016), there are 300,000–400,000 migrant domestic workers employed in Malaysia.

156 Per Harkins (2016, pp. 21–22): "…social security coverage, mandatory medical insurance and workers' compensation benefits do not apply to their [migrant domestic workers'] employment."

- Regarding undocumented migrants, in 1999 and 2004, the Malaysian Government issued an amnesty that allowed undocumented migrants to leave without being prosecuted, and then to return if their employer wanted to recruit them legally. In Sabah State, the Government allowed employers to register 312,000 foreigners (one-third were workers, the rest were dependents), primarily from Indonesia and the Philippines. However, these regularization and amnesty exercises were perceived as weakness on the part of the Government with regard to controlling irregular migration, and officials have declared that amnesty will no longer be granted.
- About 1,683,000 Malaysians were migrants abroad in 2013, approximately 61 per cent of whom were residing in other ASEAN countries (ILO, 2015d). Malaysians constituted the largest immigrant group in Singapore (ILO, 2015k).
- It has been estimated that $8.1 billion in remittances was sent from Malaysia to other countries in 2014, equivalent to 2.4 per cent of Malaysia's GDP and making Malaysia one of the top 10 remittance senders in the world for 2014 (Ratha, Plaza, and Dervisevic, 2016). Three ASEAN countries were among the major recipient countries for those remittances, i.e., Indonesia, the Philippines, and Thailand (Pew Research Center, 2016). Remittances received totaled $1.7 billion in 2015, emanating primarily from Singapore, Bangladesh, and Australia (Ratha, Plaza, and Dervisevic, 2016; Pew Research Center, 2016).

Migrant workers in Malaysia: The Constitution of Malaysia of 1963 does not explicitly provide for social security, save for listing this as an area falling within the federal legislative competency. The Constitution generally extends protection to foreigners on the basis of equality, even though the prohibited grounds of discrimination indicated in the Constitution do not, per se, include nationality. Section 8(1) of the Constitution stipulates that "All persons are equal before the law and entitled to the equal protection of the law". Section 8(2) provides: "Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law."

Mention should also be made of several initiatives introduced by the Government of Malaysia to regularize the legal status of irregular migrant workers in Malaysia. As has been indicated:

> Since 1992, ten Government initiatives have been launched with the intent of regularizing the legal status of irregular migrant workers in Malaysia (ILMIA, 2013)[157]. In several cases, these programmes were successful at providing documents to hundreds of thousands of workers but the number of migrants without legal status has generally remained high because of the obstacles to full participation.
>
> To address the issue of irregular migration more comprehensively, the [Ministry of Home Affairs] implemented the broadest amnesty policy it has ever attempted in 2011. Referred to as "6P", the Programme included measures for amnesty, registration, legalization, supervision, enforcement and deportation of migrants.
>
> During a two-month period, a total of 2.3 million migrant workers had registered under 6P, including 1 million regular and 1.3 million irregular workers (ILMIA, 2013). However, the process remained fraught with difficulties, particularly in terms of effective communication with workers and employers, and has not significantly reduced the number of undocumented migrant workers in Malaysia. (Harkins, 2016, pp. 16–17)

[157] ILMIA, 2013, cited in original text refers to Institute of Labour Market Information and Analysis (ILMIA): *Immigration in Malaysia: Assessment of its economic effects, and a review of the policy and system* (World Bank, 2013).

The Malaysian statutory social security system covers an extensive range of social security risk areas. Regarding retirement benefits, migrant workers can opt to contribute voluntarily to the provident fund system, the Employees Provident Fund (EPF);[158] nationals have to contribute on a compulsory basis (Ong and Peyron Bista, 2015). Foreign workers who are not Malaysian citizens and are about to leave Malaysia may withdraw their accumulated savings or their contributions.[159] However, unlike Malaysian workers, they are not entitled to take up an insurance policy (i.e., an annuity) or to indicate nominated beneficiaries.[160] Note should, however, be taken of several categories of workers who are excluded from the definition of "employee"[161] under the Act. These exclusions are contained in the First Schedule to the Employees Provident Fund Act; some of these exclude major categories of foreign workers either directly or indirectly:

- domestic servants;
- out-workers;
- A foreigner who, in accordance with their conditions of service, or if they have obtained approval of the Employees Provident Fund Board, participated in a provident fund or similar scheme established or administered outside Malaysia.

Concerning access to employment injury and invalidity pensions, since 1 April 1993, foreign workers other than permanent residents have been exempted from the provisions of the Employees Social Security Act, 1969 (as per the Employees' Social Security (Exemption of Foreign Workers) Notification 1993). Two social security schemes operate under the auspices of SOCSO:

- Pension Scheme providing protection to all eligible workers against the contingencies of invalidity and death from whatever cause; and
- The Employment Injury Insurance Scheme providing protection to all eligible workers against the contingencies of industrial accident, occupational disease, and commuting accident (no employee contribution).

Foreign workers (excluding domestic foreign workers) were initially covered by the Workmen's Compensation Act of 1952 (amended in 1996). In 1993 a separate scheme was initiated for them – the Foreign Workers Compensation Scheme (FWCS). The introduction of this separate scheme had a bearing on the equal treatment of foreign workers, and effectively removed the possibility of portable employment injury benefits, as noted in a recent ILO review of labour migration policy in Malaysia:

> Compounding the problem of a higher risk of injury faced by migrant workers in Malaysia, the remedies available to them for workplace accidents remain systematically unequal. The social security scheme that provides insurance coverage to nationals who suffer accidents at work also covered migrant workers from its establishment in 1971 until 1993. In that year, however, a decision was made that

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158 Contributions made under the terms of the Employees Provident Fund Act, 1991 (Act 452). In 2007 the liability for foreign workers to contribute was terminated: "Beginning 1 September 2007, the liability to make EPF contributions for foreign workers will end on the last two (2) months as follows:
1. Before the expiry date of the employee's work permit, or
2. Before the expiry date of the employee's work extended work permit. (EPF, 2007)"
According to the EPF (2014; n.d.) the following categories of persons are allowed to elect to make a contribution:
1. A domestic servant working in a residential home and employed by a private individual (owner of the residence). A notice of option may be made using Form KWSP 16 to be submitted to the EPF with a copy to the employer.
2. Foreign citizens who are employed and whose country of domicile is outside Malaysia and who enter and stay in Malaysia temporarily under provisions of any written laws relating to immigration. A notice of option may be made using Form KWSP 16B to be submitted to the EPF with a copy to the employer.

(Note: When an employee listed above has opted to make a contribution, both such employee and his/her employer shall be liable to contribute and the option may not be revoked.)

159 Employees Provident Fund Act, 1991, sections 53B(2)(d), 54(1)(e), and 70C.

160 Ibid., sections 58B(3) and 70D respectively.

161 Ibid., section 2 (definition of "employee").

> the administrative burden of issuing periodic payments to workers after return to their countries of origin was too great to continue to offer equal benefits. Instead, the Workmen's Compensation Act was amended to establish the Foreign Workers Compensation Scheme, which offers lump sum payments for permanent disability or death at much lower amounts (Harkins, 2016, p. 21).

Malaysia ratified ILO Convention No. 19 – which requires equal treatment of national and foreign workers – in 1957 (Peninsular Malaysia) and 1964 (Sarawak). However, this is not reflected in the current statutory regulation. Section 26(2) of the Workmen's Compensation Act, 1952 (WCA) makes it mandatory for every employer to insure their foreign workers under an "approved insurance scheme". However, as indicated above, migrant workers (excluding foreign domestic workers) are covered under the FWCS, which is managed by private insurers. The benefits provided to migrant workers under the FWCS are less advantageous to those provided to Malaysian nationals under the publicly managed SOCSO scheme operating under the WCA. Foreign workers are not entitled, for example, to benefit from SOCSO's Return-to-Work Programme. The ILO has reprimanded Malaysia for failing to comply with Article 1 of Convention No. 19 (at the 101st International Labour Conference Session in 2012).[162] There has been an ongoing discussion as to whether migrant workers should continue to be covered under the private-insurer managed FWCS or be reintroduced to coverage under the publicly managed SOCSO scheme. The Ministry of Human Resources has indicated its commitment to provide "equal" protection to foreign workers.[163]

Regarding health insurance benefits, since 1 January 2011 migrant workers have been covered by the separate Health Insurance Scheme for Foreign Workers (SPIKPA) administered by the Ministry of Health.[164] Under SPIKPA, private medical insurance through the Hospitalisation and Surgical Scheme for Foreign Workers was made mandatory for all migrant workers (ILO, 2015k). This health policy apparently results in higher medical fees for migrants than for citizens, who are covered under a different, subsidized mainstream health insurance scheme. As far as SPIKPA is concerned, employers of plantation workers and domestic workers are required to finance the insurance policies; while other foreign employees are required to undertake the payment of premiums. Abiding by this insurance obligation has been a condition for the renewal of a foreigner's work permit. Furthermore, it has been noted that there is a need to strengthen the position of domestic workers in Malaysia, and to protect them against abuse (Harkins, 2016).

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[162] Also, based on the Report of International Labour Standards 2016, the Committee of Experts on the Application of Conventions and Recommendations made the following comment:
The committee hopes that the technical consultation with the ILO will be organized in the very near future so as to enable the Government to proceed with the modification of the Employees' Social Security Scheme (ESS) in line with the principle of equality of treatment of foreign workers and asks the Government to report on progress made in its next report due in 2016.

[163] As stated by Harkins (2016, p. 21): "In response to this policy, the ILO's Committee of Experts on the Application of Conventions and Recommendations has issued several observations that Malaysia is not upholding its obligations under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). At the 100th session of the International Labour Conference in June 2011, the Committee noted that:
"Since 1 April 1993, when foreign workers employed in Malaysia for up to five years were transferred from the Employees' Social Security Scheme, which provided for periodic payments to victims of industrial accidents, to the Workmen's Compensation Scheme, which guaranteed only a lump sum payment of a significantly lower amount, the Malaysian social security system has contained inequalities of treatment which run counter to the provisions of the Convention.

Answering the request for a report on this issue, the Malaysian Government indicated that it is in the process of conducting an actuarial study of three options for providing accident compensation to migrant workers. Upon completion of the study, the Government said that it would consult with the relevant stakeholders to make a decision. However, a follow-up report still had not been received as of the 104th Session of the International Labour Conference in June 2015, leading the Committee to repeat its observation."

[164] All foreign workers are required to have an insurance policy under the Foreign Workers Hospitalisation and Surgical Scheme with a yearly insurance premium of 127 Malaysian ringgit (MYR) for every worker. The scheme provides health insurance protection of MYR10,000 per year for hospitalization costs. Employers in the plantation sector and domestic maid employers bear the premium insurance costs, while in other sectors, it is up to employers and the foreign workers to decide who bears the cost. See ILO *Request for the International Labour Organisation (ILO) assistance on workshop to discuss Convention 19 – Equality of treatment (Accident Compensation) and the way forward* (16–17 May 2016).

Maternity and sick leave benefits are provided for in the Employment Act of 1955, and are based on the principle of employer liability. Generally speaking, no distinction is made between Malaysian nationals and foreign workers as far as these benefits are concerned. However, domestic workers are excluded from maternity and sick leave benefits;[165] this may affect many foreign workers in Malaysia.

Social assistance benefits are only available to Malaysians. The same applies to related allowances and programmes, such as the "universal" schooling grant (*Bantuan Sekolah*).[166]

Finally, the position of migrant workers may be affected by the terms and conditions of bilateral agreements concluded with certain ASEAN Member States and other countries. Since 1984 Malaysia has negotiated bilateral MOUs to manage labour migration; most recently, MOUs have among others been signed with Cambodia,[167] Indonesia, Thailand, and Viet Nam (Harkins, 2016). However, as has been remarked about these MOUs in a recent ILO publication:

> In many cases, however, problems with abuse and deception have persisted despite the existence of a formal process for labour migration, contributing to diplomatic tensions and even moratoriums on placement of workers. Exploitation of domestic workers is a key issue that the MOUs have sought to address, with the Philippines, Indonesia and Cambodia all halting deployment at various points.[168] While increasing protection for some groups of domestic workers in Malaysia, a fundamental problem with using these agreements as an instrument for change is that they apply on the basis of nationality rather than for the sector as a whole. Therefore, they can have the unintended effect of institutionalizing discriminatory practices towards certain nationalities of domestic workers, rather than enabling the more egalitarian improvements that could be achieved through national legislation.
>
> Filipino domestic workers are generally considered to have the most rights and highest pay as a result of the strong negotiating position of their Government when signing MOUs. They represent a minority of the workers employed within the sector, as 71 per cent of registered domestic workers came from neighbouring Indonesia in 2013. The trend in recent years has been towards increased national diversification in the recruitment of domestic workers as a result of government suspensions and the ratification of additional bilateral agreements (Harkins, 2016, pp. 13–14).

Malaysian workers abroad: Malaysia does not have a dedicated policy or other framework arranging for the social security protection of its own citizens employed abroad. However, Malaysian migrant workers may contribute to the EPF, and are also allowed to contribute voluntarily upon return to Malaysia, even if they have withdrawn all of their savings under the Leave the Country Withdrawal Scheme.[169]

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165 Employment Act 1955, first schedule, item 2(5), read with section 2(1) definitions of "domestic servant" and "employee".

166 Information provided by C.B. Ong, ILO associate, on 11 December 2015.

167 Two recent MOUs with Cambodia have been finalised, respectively covering the sending of domestic workers and "general" workers (i.e., workers in sectors other than domestic work). See section 5.2.2 above for a discussion of these instruments.

168 In several cases these bans have been used as a temporary measure, and reversed once guarantees of protection have been given.

169 See http://www.kwsp.gov.my/portal/en/web/kwsp/member/member-responsibility/contribution/self-contribution [accessed 5 June 2017] for more.

5.2.6 Myanmar

Background: Even if migrant workers to Myanmar are in principle covered by the contributory social security arrangements existing in Myanmar, access to benefits may be effectively restricted for a variety of reasons. In addition there is also the absence of portability arrangements.

Limited social security arrangements exist to protect Myanmar migrant workers abroad. In the case of Myanmar migrant workers in Thailand, protection is mainly based on the provisions of an MOU with that country, in particular as far as access to Thailand's workers compensation protection is concerned. According to available data:

- There were 103,000 migrants living in Myanmar in 2013, or about 0.1 per cent of the total population of 51.5 million (ILO, 2015d; 2015l). According to the World Bank, in 2013 Myanmar was one of the top ten migrant-receiving countries among least developed countries worldwide, and also among the top 10 in South-East Asia as well as the larger East Asia and the Pacific region (Ratha, Plaza, Dervisevic, 2016).
- An estimated 3,140,000 Myanmar migrants were residing abroad in 2013,[170] which makes Myanmar one of the key sending countries in ASEAN (ILO, 2015d).[171] In fact, according to the World Bank, in 2013 Myanmar was one of the top ten emigration countries in East Asia and the Pacific, and the Myanmar–Thailand migration constituted one of the top ten migration corridors in this region, as well as one of the top ten emigration countries among least developed countries worldwide (Ratha, Plaza, and Dervisevic, 2016). Intra-ASEAN migration is a hallmark of migration by people from Myanmar – approximately 63 per cent of all Myanmar emigrants (i.e., almost 2 million) emigrated to other ASEAN countries (2013 figures) (ILO, 2015d; 2015l). The vast majority of migrant workers from Myanmar are found in Thailand – with Myanmar migrant workers accounting for approximately 1.3 million of the total 1.9 million migrant workers in Thailand in 2010 (ILO, 2015d). It has been reported that since 1990, intra-ASEAN migration from Myanmar, the Lao People's Democratic Republic, and Cambodia has risen for each country by about 40 percentage points in terms of the total number of nationals abroad (ILO, 2015d).
- Considerable amounts of remittances, both from and (in particular) to Myanmar, highlight the importance of remittance transfers by immigrants in country and Myanmar workers abroad. It has been estimated that $399 million was sent as remittances from Myanmar to other countries in 2015, with China ($265 million), India ($124 million), and Pakistan ($7 million) being the major recipient countries (Pew Research Center, 2016).[172] In 2014 and 2015, Myanmar was one of top ten remittance receivers in East Asia and the Pacific, and one of the top ten remittance receivers among least developed countries worldwide (Ratha, Plaze, and

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170 This is according to ILO, 2015d. The figures contained in Myanmar's 2014 Population Census are significantly less, however, presenting a total of 2,021,910 emigrants. In the foreword of the Ministry of Labour Immigration and Population's *Thematic report on migration and urbanization*, the Minister of Labour, Immigration, and Population, H.E. U. Thein Swe, remarked:
According to the 2014 Census, approximately 4 per cent of the population, or 2.02 million persons, of Myanmar were reported to be residing abroad. This number is very likely to be less than the actual number who are living outside of Myanmar, partly due to the method of data collection, and because some household heads may have been unwilling to provide details of undocumented migrants. Of the two million emigrants, approximately 1.4 million were reported to be living in Thailand and 304,000 were living in Malaysia, with less than 100,000 residing in any of the other seven countries listed (MOLIP, 2016).

171 This is fuelled partly by the high poverty incidence: the headcount poverty rate was 25.6 per cent in 2010 (ILO, 2015d).

172 Myanmar was one of the top 10 remittance-sending countries in East Asia and the Pacific in 2014, both in absolute terms and as a percentage of GDP. In that same year, Myanmar was also one of the top ten remittance sending countries all low-income countries and least developed countries worldwide (Ratha, Plaza, and Dervisevic, 2016).

Dervisevic, 2016). An estimated $3.47 billion in remittances was sent to Myanmar from other countries in 2015, with Thailand ($1.85 billion), Saudi Arabia ($954 million), the United States ($189 million), Bangladesh ($143 million), Malaysia ($92 million), and Pakistan ($72 million) being the major countries from where remittances were sent (Pew Research Center, 2016).

Migrant workers in Myanmar:[173] The 2008 Constitution does not cover the issue of social security rights or for that matter the position of migrant workers coming to Myanmar. Article 380, however, envisages in principle protection for Myanmar migrants abroad. It stipulates: "Every citizen who has relations with foreign countries shall have the right to seek protection of the Union at home or abroad." The Constitution also obliges the Union (i.e. the State) to guarantee any person the enjoyment of equal rights before the law, and the provision of legal protection on the basis of equality.[174] It further stipulates that every citizen shall have the right to have health care.[175] Schedule One of the Constitution[176] indicates the following competencies as falling within the legislative jurisdiction of the State:

- Social security; and
- Welfare of children, the youth, women, the disabled, the aged, and the homeless.

In 2012, the Government adopted a new Social Security Law. This new law provides for an extended, contributory-based social security scheme[177] with a more extensive range of social security contingencies and benefits; higher levels of cash benefits; progressive extension of mandatory registration to also cover smaller enterprises (currently there is a threshold of five employees); and voluntary registration for sectors not covered by mandatory registration. Steps have been taken to implement the new contribution and benefit levels for the existing benefits (medical care, sickness, maternity, funeral, and work injury) as well as the collection of contributions for family benefits. Old-age, disability, and survivors' benefits, as well as unemployment insurance, have not yet been implemented. Funeral benefits are paid. The Social Security Law stipulates that registration is compulsory for establishments covered by the law; it also indicates establishments to which the law is not applicable.[178] However, in the event that registration is not compulsory, voluntary registration is possible[179] – this could affect workers, including migrant workers, employed at establishments with fewer than five employees, NGOs, international organizations, and independent workers and farmers.

The Social Security Law does not explicitly state whether migrant workers are in principle included/covered. The definition of "worker" in the law does not exclude them. There are some indications in the law that they could be meant to be included – for example, a provision to the effect that if the worker earns wages in foreign currency, contributions and benefits will have to be paid in foreign currency as well.[180] And yet, access to (claiming) certain benefits requires submission of the so-called citizen scrutiny card.[181]

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[173] As per communication by the ILO, there are currently two draft laws–, i.e. the Law Concerning Foreigners and the Foreign Workers Law – neither of which have been through the Assembly of the Union yet. Both laws are concerned only with professional workers and not with semi-skilled workers or labourers.

[174] Constitution of the Republic of the Union of Myanmar, article 347.

[175] Ibid., article 367.

[176] Read with article 96.

[177] Another separate scheme exists for the public sector: the Civil Servant, Military, and Political Personnel Pension Schemes. This scheme is based on the Civil Service Law and Rules 2013 and the Political Pension Law and Rules, and it provides for invalidity, survivor, and old age pensions for retired civil servants, military personnel, political personnel, public enterprises, and their dependents. Apparently the scheme is currently financed from the government budget. However, it is being reformed to become a contributory system.

[178] Social Security Law, 2012, Articles 11(a) and 12(a).

[179] Ibid., articles 12(c), 20, and 48(b).

[180] Ibid., article 102; see also article 202 of the Social Security Rules, issued in terms of the Social Security Law.

[181] Articles 75(b), 147(1), 151(d), and 198(c) of the Rules.

Of particular importance are two provisions of the Social Security Rules, issued in terms of the Social Security Law. Article 202(a) of the Rules stipulates: "The foreigners who are working at the establishments applied by the Law and obtain the wages or salary in foreign currency or Myanmar kyat shall be applied by the provisions on health and social care insurance system and employment injury benefit insurance system contained in the Law."

Article 202(b) states: "The associate citizens and permanent residents of the Republic of the Union of Myanmar who are working at the establishments applied by the Law and obtain the wages or salary in foreign currency or Myanmar kyat shall be applied by all insurance systems contained in the Law except benefits relating to social security housing."

However, it has to be remembered that non-nationals may be excluded if they work in establishments with fewer than five employees, or if the establishment is otherwise not covered by the sphere of application of the Law (see above). In such cases, voluntary registration/coverage is possible. However, irrespective of whether registration/coverage is compulsory or voluntary, migrant workers working in Myanmar for only a few years will not qualify for a full benefit with regard to family benefits, disability cash benefits, superannuation benefit, survivors' benefit, and unemployment benefit.[182]

According to Social Security Law 2012, a migrant worker whose registration period is only within one month and who has not paid contribution has the right to enjoy the medical treatment, temporary disability benefit, permanent disability benefit (lump sum or periodically payment) and survivors' benefit for decease owing to occupation under the Employment Injury Benefit Insurance System. And a migrant worker can be entitled maternity benefit, maternity expense, paternity benefit, paternity expense, miscarriage benefit and funeral benefit if they have the qualified conditions according to Social Security Law, 2012. These include having worked a minimum of one year at the relevant establishment before enjoying leave and having paid contribution for a minimum of six months within the said one year.[183]

No provision is made for portability of benefits in the event that a migrant worker terminates their employment. In fact, in some cases the Social Security Law stipulates specifically that benefits are terminated should the worker leave Myanmar for good.[184] Otherwise, given the particular applicable provisions, the worker may be entitled to withdraw the benefit upon termination of employment/membership of the fund concerned, with such a withdrawal potentially resulting in a significantly reduced benefit.

Workers, including migrant workers, not covered by the provisions of the 2012 Social Security Law, may be covered under other laws, as well as regulations, notices, policies, and practices of the Ministry of Labour, Immigration, and Population (MOLIP). For example, MOLIP is drafting a new Workmen's Compensation Law to be in line with the current context.[185] Also, the Employment and Skill Development Law, 2013, provides that any employment contract must be registered, and has to contain provisions regarding leave and medical treatment (among others).[186]

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182 See Social Security Law, 2012, articles 26, 31(a)(i), 31(a)(ii), 32, 33, 35, 36 and–37.
183 Information provided by SLOM (Senior Labour Officials Meeting), Myanmar, November 2018.
184 Social Security Law, 2012, articles 24(f) and 40(e) on sickness and unemployment benefits.
185 This will address the position obtaining under article 49 of the Social Security Law, 2012, which stipulates that the Workmens' Compensation Act, 1923, applies if the Social Security Law does not.
186 Employment and Skills Development Law, 2013, article 5(b).

A vast range of social assistance/non-contributory cash and in-kind benefits, services, and facilities are available to different categories of persons in Myanmar. It would appear that non-nationals do not have access to these.

Myanmar may have incurred international obligations regarding coverage of migrant workers. Myanmar has not yet ratified any of the ILO migration Conventions related to the protection of migrant workers, although it has ratified a number of social security-specific Conventions (primarily related to employee injury benefits).[187] Myanmar has taken steps to implement ILO Social Protection Floors Recommendation, 2012 (No. 202) (ILO, 2015s; ILO and ADB, 2015). Myanmar ratified the 1966 UN International Covenant for Economic, Cultural and Social Rights in 2017. Article 9 of this UN instrument grants the right to social security to everyone, and does not draw a distinction on the basis of nationality. Article 9 also does not require reciprocity – in other words, it is not a requirement that another country must be willing and able to grant equal protection before the ratifying country will be bound to provide social security protection to migrant workers. Myanmar has not yet ratified or signed the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

Finally, bilateral MOUs concluded with other countries could also have a bearing on the access that nationals of those countries could have to Myanmar social security benefits – see in this regard the discussion on the Thai–Myanmar MOU below.

Myanmar workers abroad: The in-principle constitutional protection available to Myanmar migrant workers abroad, mentioned above, is to some extent further strengthened by the provisions of the Law Relating to Overseas Employment, 1999. This law, which is currently being revised, states as one of its objectives: "to ensure that there is no loss of the rights and privileges of workers and that they receive the rights they are entitled to".[188] The law requires overarching institutional structures[189] and recruitment agencies (the so-called "service agents" in the law) to be actively involved in providing support and protection to the Myanmar workers abroad.[190] The law further extends the following rights to Myanmar migrant workers abroad:

- the right to claim through the Service Agent full compensation or damages to which they are entitled for injury sustained at a foreign worksite; and
- the right to take civil or criminal action for loss of rights and privileges relating to overseas employment.[191]

However, the law does not contain concrete social security entitlements. The welfare protection of Myanmar migrant workers is an issue that has been indicated as a key issue in both the National Labour Migration Policy, and the National Plan of Action for the Management of International Labour Migration (2013–2017) (Naing, n.d.). The Social Security Law, 2012, contains a provision to the effect that persons working abroad may contribute voluntarily to the funds provided for in this law.[192] More specific arrangements are, however, not made. In particular, portability of benefits is not provided, neither in the Law Relating to Overseas Employment nor in the Social Security Law (ILO, 2015s).

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187 See Ong and Peyron Bista (2015, p.51).
188 Law Relating to Overseas Employment, 1999, article 3(c).
189 That is, the Overseas Employment Central Committee and the Supervisory Committee, both situated within the MOLIP.
190 Law Relating to Overseas Employment, 1999, Articles 6(c)(c), 8(b) and 25(d).
191 Ibid., Article 24.
192 Social Security Law, 2012, article 20(c).

Apart from the regulatory arrangements indicated above, other arrangements with social security implications are also contained in MOUs concluded with countries of destination for Myanmar migrants, including with Thailand. On 12 June 2003 a MOU on cooperation in the employment of workers was concluded between Thailand and Myanmar,[193] which was replaced by a new MOU, dated 24 June 2016.[194] The 2003 agreement contained little in terms of specific provisions on Myanmar workers' entitlement to Thai social security benefits. It did provide for a "savings" fund (to be used for administrative expenses incurred by banks and for purposes of deportation) to which Myanmar workers have to contribute 15 per cent of their salary, to be repaid to them seven days after their employment has terminated.[195] Apparently, though, it was decided by the Thai authorities in 2014 to repeal the policy on collections for the savings fund (ILO, 2015o). The 2003 MOU further stipulated that the parties in the employing countries "shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country"[196] and that "Workers of both Parties are entitled to wage and other benefits due for local workers based on the principles of non-discrimination and equality of sex, race and religion."[197] The 2016 MOU, read with an associated MOU on Labour Cooperation,[198] also dated 24 June 2016, reiterates several of these provisions, and essentially provides for:

- Non-discrimination with regard to fair treatment in comparison to that enjoyed by local workers;[199]
- Protection, rights, and benefits in accordance with the employment contracts, labour laws, and regulations in force in the receiving country;[200]
- An employment contract can be concluded for an initial two-year period and may be extended for another two years, subject thereto that the worker returns to their country of origin for a period of 30 days before extension of the contract;[201]
- The employer is liable for medical care and compensation according to the laws of the receiving country in case of accident, serious illness, or death of an employee during the terms of the employment contract;[202]
- Employees concerned may change employers under restricted circumstances only – i.e., the employer could not protect the worker according to the existing laws, or the closing down of the business as a result of financial failure, natural disaster, or any other means;[203]
- Employees can transfer their money and rightful property;[204]
- Information exchange in order to prevent illegal recruitment of manpower and of human trafficking for employment;[205] and
- Skills development in order to upgrade the skill of manpower and to enhance labour productivity.[206]

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193 See http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_160932.pdf [accessed 17 Apr. 2017].

194 Agreement on the Employment of Workers between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar, 2016.

195 MOU between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation on the Employment of Workers, 2003, articles XI, XII, and XVI.

196 Ibid., article XVII.

197 Ibid., article XVIII.

198 Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Labour Cooperation, 2016.

199 Agreement on the Employment of Workers between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar. 2016, article 5(1).

200 Ibid., Article 5(2). (See also article 5 of the MOU on Labour Cooperation, 2016.)

201 Ibid., article 6 (1).

202 Ibid., article 6(3).

203 Ibid., article 6(2).

204 Ibid., article 1(c).

205 MOU on Labour Cooperation, article 2(c).

206 Ibid., article 3.

Migrant workers' access to Thai social security benefits under the legal and policy framework of Thailand can be summarized as follows (Hall, 2012):

- In order to receive compensation under Thailand's Workmen's Compensation Act, 1994, an injured migrant worker must satisfy the following: (1) possess a work permit; (2) possess a passport or alien identity document; (3) have an employer that paid contributions to the Workmen's Compensation Fund (WCF); and (4) have paid income tax.
- Therefore, migrants who pass NVP or are legally imported under the MOUs can access the WCF.
- However, if these requirements are not met, responsibility is assigned to an employer to compensate an injured worker.
- In 2011, the Cabinet approved a resolution to establish a work accident insurance scheme for workers from Cambodia, Lao People's Democratic Republic, and Myanmar who are registered and possess civil registration certificates and work permits, but have not yet passed the NVP. The scheme is managed by a private insurance company that is responsible for compensation payments to workers suffering work-related injuries and illness. The compensation amounts were announced as equal to the Workmen's Compensation Act 1994.
- Migrant workers are generally able to access the universal health-care scheme for the treatment of general ailments. Only registered migrants can pay into the national health-care system and access treatment at a cost. However, even undocumented migrants and their dependents can access emergency and general medical treatment utilizing hospital charitable funds and NGO provisions.
- Migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar who do not qualify are obliged to take up Compulsory Migrant Health Insurance (CMHI) to access public health care facilities (Ong and Peyron Bista, 2015).
- Migrant workers are not denied access to Thailand's social security benefits, but in order to gain access to the schemes, they must be in possession of a passport and a work permit.
- Workers and their employers should make a monthly contribution to the scheme, equivalent to 5 per cent of each worker's income.[207] However, the compulsory social security scheme is only for formal sector workers; so agriculture, fisheries, and other informal sector workers are not covered. The voluntary contributions available to Thai workers that are not included under the compulsory coverage are not open to migrant workers.

Apparently, migrants in Thailand may have difficulty in accessing their due social security benefits as they often do not stay in the country long enough to enjoy the full benefits. In particular, migrants are entitled to remain in Thailand for two periods of two years, i.e., four years, and have to leave the country for a period of at least 30 days before they can work in Thailand again.[208] However, recruitment/registration is on the basis of bilateral arrangements allowed irrespective of the waiting period provision.[209] Yet, a pension requires a minimum of 180 months' contribution (i.e., 15 years) (Hall, 2012). Nevertheless, although not part of the MOUs, the Thai Government has indicated that migrant workers' contributions to pensions and unemployment insurance can be refunded in a lump-sum at the end of their contract – as they are not entitled to these benefits in practice (Hall, 2012).[210] In accordance with an amendment introduced in 2015, a non-Thai national who ceases to be insured

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[207] The total contribution rate is made up as follows: 12.75 per cent of reference earnings (5 per cent from employers, 5 per cent from employees, and 2.75 per cent from the Government). The SSO then allocates the total contribution received as follows: four benefits (sickness, disability, maternity, and death): 4.5 per cent; two benefits (old-age and child allowance): 7 per cent; and unemployment: 1.25 per cent.

[208] See Article 6(1) of the 2016 MOU on the Employment of Workers.

[209] ILO *Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries* 22.

[210] Also, on becoming unemployed, migrant workers are only entitled to stay in Thailand for seven days to find a new employer: Hall, 2012: 31-32.

and does not wish to reside in Thailand will be entitled to old-age compensation in the form of a lump sum. This effectively constitutes an emigration grant and does not, as such, amount to portable old-age benefits.[211] A recent ILO (2015o) publication remarked that while the number of migrant workers with social security coverage is increasing (451,537 as of October 2014 according to the SSO of Thailand), the majority are still without sufficient access.

Finally, a feasibility study, initiated by the ILO through the ASEAN Triangle Project, was undertaken to investigate modalities for the establishment of a Migrant Welfare Fund, or equivalent, for the benefit of Myanmar migrant workers (ILO, 2015e).

5.2.7 The Philippines

Background: Extensive provision is made for the coverage of migrant workers to the Philippines so they can access most of the available social security benefits. The Philippines also comprehensively covers overseas Filipino migrant workers through a range of modalities/options and associated benefits. This includes the regulation of access to and portability of certain social security benefits on the basis of bilateral social security agreements. According to available data:

- In 2015, there were 213,000 migrants residing in the Philippines, equivalent to 0.2 per cent of the total population of 101 million (ILO, 2015d). According to the World Bank, in 2013 the Philippines was one of the top ten migrant destination countries in East Asia and the Pacific, and one of the top ten migrant destinations among least developed countries worldwide (Ratha, Plaza, and Dervisevic, 2016).
- An estimated 6,002,000 Filipinos were migrants living abroad in 2013, according to the ILO (2015d); Philippine sources indicate a much higher figure. According to stock estimates by the Commission on Filipinos Overseas, there were a total of 10.24 million Filipinos residing abroad, of which 9.87 million (96 per cent) were land-based and 367,166 were sea-based. Of the land-based, 4.87 million (49 per cent) were permanently outside the country as immigrants and legal permanent residents; while 3.84 million (39 per cent) were temporarily overseas through contract-based employment; and 1.16 million (12 per cent) were deemed to be irregular or undocumented migrants with no valid stay or work permit abroad (See, 2016). It has also been reported that almost 4,000 Filipinos leave the country daily in search for better employment opportunities overseas (CMA, 2010). However, the bulk of the out-migration is not to other ASEAN countries: even in 1990, intra-ASEAN migration accounted for only 7 per cent of Filipino total nationals abroad and that proportion has diminished further since. The main destination countries for Filipino migrants are the Arab Gulf States, East Asia, Europe, and North America (ILO and ADB, 2015; ILO, 2015d).[212] The Philippines' active support and facilitation of labour migration is evident from the considerable interest among Filipinos in overseas employment: "Between 2000 and 2007, the Philippines registered some 14–15 nationals to work abroad each year out of every 1,000 of its working-age population. By 2014 it had risen to 22.8" (ILO, 2015d, p. 44).

[211] Introduced by the Social Security Act (No 4) B.E. 2858 (2015). See also IOM, 2015.

[212] Most of the intra-regional migrant workers from the Philippines work in Malaysia: 410,149 out the indicated total of 449,339, according to 2013 World Bank data (ILO, 2015d).

- Considerable remittance flows both from and (in particular) to the Philippines highlight the importance of remittance transfers by immigrants in the Philippines and Filipino workers abroad. It has been estimated that $528 million was sent as remittances from the Philippines to other countries in 2015, with China ($201 million), the United States ($80 million), Japan ($60 million), India ($38 million), and Australia ($19 million) being the major recipient countries. The Philippines was one of the top remittance receivers in East Asia and the Pacific in 2014. Nearly $28.5 billion in remittances was sent to the Philippines from other countries in 2015, with the United States ($9.68 billion), the United Arab Emirates ($3.5 billion), Saudi Arabia ($3.2 billion), Canada ($2.08 billion), and Malaysia ($1.67 billion) being the major countries from which remittances were sent (Pew Research Center, 2016). In 2015, the Philippines was one of the three top recipient countries of recorded remittances in the world, with only the much more populous India and China receiving higher amounts.[213] The remittance flow to the Philippines constitutes 10 per cent of its GDP (Ratha, Plaza, and Dervisevic, 2016; ILO, 2015d).[214]

Migrant workers in Philippines: The 1987 Philippine Constitution contains general provisions in relation to social security. In the part of the Constitution dealing with the "Declaration of Principles and State Policies", it lists two important state undertakings, namely: "to protect and promote the right to health of the people and instil health consciousness among them"[215] and "to protect the rights of workers and promote their welfare".[216] Article XIII, dealing with social justice and human rights, also contains specific undertakings in relation to fostering a comprehensive approach to health provisioning.[217] Article XV, on the family, stipulates in section 4 that: "The family has the duty to care for its elderly members but the State may also do so through just programs of social security." While many of the constitutional rights and privileges are accorded to citizens only, there is no indication that the Constitution intends to generally exclude non-nationals and immigrant workers from constitutional protection. In fact, Article III, which contains the Bill of Rights, explicitly stipulates that: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."[218]

The Philippines contributory-based social security system provides for most (i.e., seven) of the traditional ILO social security contingencies and related benefits, including medical care, sickness, old age, employment injury, maternity, invalidity, and death (survivors' benefits). The system does not provide for the final two traditional benefits: a national system of unemployment and family benefits (Ong and Peyron Bista, 2015).[219] These arrangements are contained in the Social Security Act, 1997;[220] the National Health Insurance Act, 2013;[221] and the Labor Code (revised edition, 2015).[222]

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213 As has been noted: "In the Philippines, personal remittances received overtook net ODA and aid even in the early 1990s and now represent one of the biggest nominal remittances gains of any country worldwide" (ILO, 2015d, p. 20.

214 "Measured in nominal terms, remittances received per capita in the Philippines will have risen from just $77 in 1995 to over $270 today" (ILO, 2015d, p. 19).

215 Constitution of the Republic of the Philippines, 1987, article II, section 15.

216 Ibid., Article II, section 18.

217 Ibid., Article XIII, section 11.

218 Ibid., Article III, section1.

219 However, limited provision is made to cover a period of unemployment via employer's liability under the national Labour Code (including company sick leave and severance pay provisions) (Ong and Peyron Bista, 2015). See also below.

220 Social Security Act, 1997 (Republic Act No. 8282). This Act amends and effectively replaces the preceding Social Security Law of 1954 (Republic Act No. 1161).

221 National Health Insurance Act, 2013 (Republic Act No. 10606), which amends the National Health Insurance Act, 1995 (Republic Act No. 7875).

222 The Labor Code of the Philippines Renumbered, 2015.

The Social Security Act, 1997, provides for the following contingencies: retirement; death (i.e., survivors' benefits plus funeral grant); disability; injury or sickness; and maternity.[223] The law does not exclude migrant workers residing in the Philippines. According to section 2, on the "Declaration of Policy", it is the policy of the State to establish and maintain a system "suitable to the needs of the people" and that "the State shall endeavour to extend social security protection to workers and their beneficiaries." The definition of "employee" does not contain a nationality exclusion.[224] The law also covers foreign employers,[225] and is meant to have extra-territorial application: Filipino workers working for foreign-based employers abroad may be covered by the Social Security System (SSS), provided for under the law, on a voluntary basis.[226] Also important is the qualified provision made for cross-border portability of benefits under this law, inserted by way of a proviso to section 15 entitled "Non-transferability of benefits". Portability is effectively made subject to reciprocal treatment extended by the particular foreign country, of which the beneficiary is a national. Section 15 stipulates in this regard that:

> [Provided, further,] that the beneficiary who is a national of a foreign country which does not extend benefits to a Filipino beneficiary residing in the Philippines, or which is not recognized by the Philippines, shall not be entitled to receive any benefit under this Act: Provided, further, That notwithstanding the foregoing, where the best interest of the SSS will be served, the Commission may direct payments without regard to nationality or country of residence.

Migrant workers in the Philippines are therefore compelled to contribute to the SSS under the provisions of the Social Security Act, 1997, including those who are self-employed persons.[227] Self-employed persons are regarded as both employee and employer at the same time,[228] and therefore have to pay both the employer and employee contributions.[229] The specific benefits available to migrant workers and migrant self-employed persons, and their dependants, are:[230]

- old age pension, or an old age lump-sum benefit should the minimum contributory period of 120 months not be met;[231]
- disability pension, or a disability lump-sum benefit should the minimum contributory period of 36 months not be met, in the event of permanent disability;
- survivors' pension, or a survivors' lump-sum benefit if the minimum contributory period by the deceased of 36 months prior to death has not been met;[232]
- funeral grant;
- sickness benefit in the form of cash allowances, subject to qualifying conditions; and
- maternity benefit in the form of cash allowances, subject to qualifying conditions.

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223 Social Security Act, 1997, section 8(l), definition of "contingency".
224 Ibid., section 8(d).
225 Ibid., section 8(c).
226 Ibid., section 9(c).
227 Ibid., section 9A.
228 Ibid., sections 8(c) and 8(d). See the definitions of "employer" and "employee".
229 Ibid., section 19A. See also ISSA and SSA, 2017, p. 197.
230 Social Security Act, 1997, sections 11 and 11A, 12, 12A and 12B, 13, 13A and 13B, 14 and 14A.
231 Notice should, however, also be taken of a provision in section 4(1)(2) of the Social Security Act that empowers the Social Security Commission of the SSS to "establish a provident fund for the members which will consist of voluntary contributions of employers and/or employees, self-employed and voluntary members and their earnings for the payment of benefits to such members or their beneficiaries, subject to such rules and regulations as it may promulgate and approved by the President of the Philippines".
232 Provision is also made for a dependent's supplement, paid for each of the deceased's five youngest unmarried, unemployed children younger than age 21 (no age limit if disabled) conceived on or before the date of death (ISSA and SSA, 2017, p. 198).

The Philippines has a contributory-based social health insurance system, which is heavily subsidized in favour of the poor. Specific targets were set for achieving universal coverage by 2016 (Ong and Peyron Bista, 2015)[233] – a goal that has not yet been met.[234] A perusal of the National Health Insurance Act, 1995, read with the amending provisions of National Health Insurance Act, 2013, makes it clear that coverage under the health insurance system is compulsory.[235] This much appears from the statutory provisions regarding the objectives of the law,[236] the definition of the "National Health Insurance Program",[237] the establishment and purpose of the programme,[238] and the coverage of the programme.[239] Through a 2017 amendment, foreign nationals are now also included under the health insurance system.[240] Migrant workers to the Philippines may also have access to medical care in the Philippines in the circumstances foreseen in the Labour Code (see below).

The Labor Code provides for only a limited number of social security-related matters. This is in part due to that fact that other regulatory instruments are now providing for specific matters previously dealt with by the Labor Code – such as maternity protection. The Labor Code contains some provisions dealing specifically with what is referred to as the employment of non-resident aliens.[241] However, these provisions ultimately do not affect the coverage of migrant workers in the Philippines. That said, several provisions do support the inference that the Labor Code does cover immigrant workers. For example, section 6 of the Code stipulates that all rights and benefits under the Code shall apply equally to all workers, and the definition of "workers" provided in the Code refers to "any member of the labour force, whether employed or unemployed".[242] In the portion of the Labor Code dealing with employee injury benefits, an "employee" is defined as any person who is compulsorily covered by the Social Security System (SSS),[243] as provided for under the Social Security Act, 1997, and as noted above, the SSS also covers immigrant workers.

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233 The system extends social health insurance coverage to the poor and socially disadvantaged through premium subsidisation and simplified enrolment procedures (Ong and Peyron Bista, 2015).

234 According to ILO comments on a previous version of this country profile, and with reference to Philippine Department of Health data, 8 million Filipinos are still not covered by PhilHealth. Apparently the Department is pushing for augmentation of the PhilHealth budget in order to achieve universal healthcare coverage in 2017.

235 See also ILO and ADB, 2015, p. 98.

236 See the National Health Insurance Act, 1995, section 3(a): "Provide all citizens of the Philippines with the mechanism to gain financial access to health services".

237 Ibid, section 4(v).

238 Ibid, section 5.

239 Ibid, section 6: "All citizens of the Philippines shall be covered by the National Health Insurance Program." See further section 2 on Declaration of Principles and Policies, in particular section 2(b) and 2(l).

240 See PhilHealth, 2017. The foreigners who are now explicitly included are:

- foreign retirees or former Filipino nationals registered to PRA and their qualified dependents who are holders of Special Resident Retiree's Visa (SRRV) and granted permanent residency status pursuant to Section 9 (d) of Executive Order No. 1037 dated July 4, 1985;
- Citizens of other countries working and/or residing in the Philippines and holders of valid Alien Certificate of Registration Identity Card (ACR I-Card).

See also PhilHealth, 2013.

241 Labor Code of the Philippines Renumbered, 2015, sections 40 - 42, partly superseded by subsequent specific regulatory instruments.

242 Ibid, section 13(a).

243 Ibid., section 173.

From a social security perspective, migrant workers in the Philippines are therefore entitled to the following social security and social security-related benefits under the provisions of the Labor Code:

- Emergency medical and dental services: Workers are entitled to free services provided by the employer.[244]
- Employee injury benefits: Migrant workers in the Philippines are compulsorily covered by a national employer-funded scheme run by the State Insurance Fund, which bears exclusive liability for benefit provisioning.[245] The benefits provided include medical benefits, temporary and permanent disability benefits, and death (i.e., survivors') benefits.[246]
- Severance benefits, in the event of the retrenchment of immigrant workers.[247]

As mentioned above, limited provision is made for cross-border portability of benefits. This provisioning is also restricted to benefits under the Social Security Act, 1997. However, as discussed below, the Philippines has concluded a number of social security agreements that also provide for portability of benefits.

Generally speaking, a wide range of social assistance/non-contributory benefits are provided by the State in the Philippines.[248] These include, among others:

- the *Pantawid Pamilyang Pilipino Program* (4Ps): a conditional cash transfer programme providing immediate financial support and investment in human capital to the poorest households in poor municipalities;
- universal health coverage for children below five years of age;
- Supplementary Feeding Program;
- Social Amelioration Program: provides a cash bonus, death benefit, maternity benefit, and a socio-economic grant (e.g., an educational scholarship) to mill and field workers involved in sugar production, small farm cultivators, and migratory sugar workers;
- *Kapit-Bisig Laban sa Kahirapan* (Comprehensive and Integrated Delivery of Social Services – a National Community Driven Development Program): aimed at developing essential public services, encouraging community empowerment, and inclusion, and reducing poverty;
- DOLE Integrated Livelihood and Emergency Employment Program: aimed at supporting persons with disabilities, poor, marginalized, and vulnerable workers, as well as informal sector workers;
- Cash-for-work and Food-for-work projects: short-term support interventions made available to persons over 15 years of age who have been affected by disasters, as well as internally displaced persons who are willing and able to work;
- Sustainable Livelihood Program: aimed at enhancing people's access to basic social services, improving their standard of living, and expanding their livelihood assets – meant for poor households without access to formal credit; and
- Social Pension for Indigent Senior Citizens: providing a monthly pension and other forms of social assistance support to vulnerable and indigent older persons.

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244 Ibid., sections 162-164.

245 Ibid., sections 172–174.

246 Ibid., book four, chapters V–VII. Employment-related disability or death income benefits and medical related benefits are provided under the Employees' Compensation Program, which is administered by the SSS.

247 Ibid., section 298.

248 For an overview of policy and strategic direction regarding non-contributory benefits, services and facilities, see the Social Protection Operational Framework and Strategy, approved in 2012. Some of the cash benefit programmes are tied to obligations such as ensuring school attendance and/or health check-ups, as is the case with the *Pantawid Pamilyang Pilipino Programme* (4Ps) in the Philippines . Also, apart from providing income security at the minimum wage level, the public employment programme in the Philippines has also promoted skills development and *access to social insurance* and workplace safety (Ong and Peyron Bista, 2015).

Although in the case of some of the above-mentioned programmes, guidelines are silent on whether they are for Filipino citizens only, the assumption is that many, if not all, of these benefits are restricted to Filipino citizens only. Indeed, this assumed restriction is sometimes made explicit in the provisions of relevant statutory instruments. For example, the Social Pension for Indigent Senior Citizens is only available to "any resident citizen of the Philippines at least sixty (60) years old".[249] Generally confirming the assumption that Filipino citizenship is required to receive social assistance/ non-contributory benefits from the State is hindered, however, by the fact that in many cases the particular non-contributory programme may lack an explicit statutory or other regulatory instrument basis. In these cases a government policy or programme would inform the initiation and maintenance of the programme; at times internal instruments, but no statutory framework, would regulate these programmes, such as Administrative Orders issued by the responsible line Ministry.

The Philippines has ratified some of the ILO social security Conventions, as well as all the key ILO migration Conventions and the ILO Domestic Workers Convention, 2011 (No. 189), [250] and has taken steps to implement the ILO Recommendation No. 202 (ILO and ADB, 2014). The Philippines ratified the 1966 UN International Covenant for Economic, Cultural and Social Rights in 1974. Article 9 of this UN instrument grants the right to social security to everyone, and does not draw a distinction on the basis of nationality. Article 9 also does not require reciprocity – in other words, it is not a requirement that another country must be willing and able to grant equal protection before the ratifying country will be bound to provide social security protection to migrant workers. The Philippines also ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, in 1995, and is therefore bound by the provisions of that Convention dealing with social security.[251]

Philippine workers abroad: Comprehensive provision is made for the welfare protection of overseas migrant workers, commonly referred to as Overseas Filipino Workers (OFWs). A vast array of regulatory instruments inform the social security coverage of OFWs as well as the supporting legal, institutional, and operational frameworks for that coverage.

The most recent policy pronouncement regarding the extension of social security protection to OFWs – at least with regard to legislation – appears in the Overseas Workers Welfare Administration Act, 2015.[252] Section 2 of that legislation stipulates: "It is the policy of the State to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all. Towards this end, it shall be the State's responsibility to protect the Overseas Filipino Workers (OFWs)."

A fundamental shift has been seen regarding the value attached to and objectives to be attained by supporting employment of Philippine workers abroad. Initially considered to essentially be a means for dealing with unemployment at home, views shifted to the extent that a presidential announcement in 2008 stated that it is incumbent on the Philippine Overseas Employment Administration (POEA) to "execute a paradigm shift by refocusing its functions from regulation to full-blast markets development

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249 See the Expanded Senior Citizens Act, 2010 (Republic Act No. 9,994), section 3.

250 As has been noted (see Ong & Bista, 2015: 54)In 2013, the Philippine Government enacted Republic Act 10361, otherwise known as the Domestic Workers Act (Batas Kasambahay), to institute policies for the protection and welfare of domestic workers working in the country, which includes enhanced access to and coverage in social protection schemes. As indicated by these authors (ibid., 62), the enactment of the Domestic Workers Act not only helped formalise the employment arrangements of domestic workers in the Philippines, it also mandated their coverage (with a minimum of one month's work) under the national Social Security System (SSS) and social health insurance scheme, PhilHealth. Contributions are shared equally between employers and workers except in the case of domestic workers earning below 5,000 Philippine pesos (PHP) a month.

251 See in particular Article 27 of that Convention.

252 An Act Governing the Operations and Administration of The Overseas Workers Welfare Administration, 2015 (Republic Act No. 10,801).

efforts, the exploration of frontier, fertile job markets for Filipino expatriate workers."[253] The recently announced 8-Point Labor and Employment Agenda again emphasizes the need to continuously strengthen the protection and security of overseas Filipino workers, against the ultimate policy goal to "create an environment that will generate enough decent and adequately remunerated work for every Filipino here in our own country so that no one will have to seek overseas work as a matter of compulsion or necessity" (DOLE, 2016).[254]

Before dealing with the several specific modalities existing for the social security coverage of OFWs, mention should be made of the extra-territorial application of certain labour and social security laws. The Labor Code has extra-territorial application, in that it contains a large number of provisions aimed at extending protection to overseas Filipino workers.[255] Important also are the 2013 amendments made to the National Health Insurance Act, 1995, which incorporate Filipino migrant workers abroad:

- A definition of "migrant workers" has been added, which includes both documented and undocumented migrant workers "who are engaged in a remunerated activity in another country of which they are not citizens".[256]
- The powers and functions of the Philippine Health Insurance Corporation (PhilHealth) have been expanded to include also the following: "To establish an office, or where it is not feasible, designate a focal person in every Philippine Consular Office in all countries where there are Filipino citizens. The office or the focal person shall, among others, process, review and pay the claims of the overseas Filipino workers (OFWs)."[257]
- The composition of the Board of the Directors of PhilHealth has been expanded to also include a "permanent representative of Filipino migrant workers".[258]

There are several specific modalities existing for the social security coverage of OFWs, in addition to any private arrangements an OFW can make. Some of these are overlapping; relying on a particular modality may depend on, in particular, the way in which the OFW has been recruited. The modalities can be summarized as follows:

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253 Administrative Order No. 247 of 2008, section 1. See also CMA, 2010, pp. 15–16; and Ofreneo and Sale, 2014, pp. 182–83.

254 See also the Philippine Labor and Employment Plan 2011–2016 (DOLE, 2011, pp. 39–40 and 45–46), which put forward the following as desired strategies:

Ensure protection of overseas Filipino workers, including those in vulnerable occupations, which include, among others, the following actions –

- Enactment of laws and regulations as well as signing of bilateral agreements on the protection of migrant workers upon proper consultation with various stakeholders;
  - Review of bilateral and multilateral agreements toward the crafting of standard employment contracts as well as making such agreements binding to the extent possible;
  - Review the implementation in law and in practice of Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990; and;
- Expand social protection for Filipino migrant workers and review the continued deployment of workers to countries that are high- and medium-risk and also deployment in high-risk occupations, which includes, among others, the following actions –
  - Monitor strict compliance to the social protection provisions of RA 8042 as amended by RA 10022 (e.g., compulsory insurance coverage, certification, etc.);
  - Explore mandatory SSS coverage for land-based OFWs similar to sea-based OFW arrangement;
  - Dialogue with social security agencies and social partners on the following:
    - unemployment insurance;
    - amendment of Executive Order 182 to include as dependent of single OFWs his or her parents who are below 60 years of age;
    - mandatory coverage for war-risk insurance; and
    - portability arrangements for social security benefits with host countries.

255 It should be noted that many of these provisions in the Labor Code of the Philippines Renumbered, 2015, have been superseded by a range of specific statutory and other regulatory measures and instruments. See the discussion below.

256 National Health Insurance Act, 1995 (Republic Act No. 7875), section 4(xx), amendment introduced via section 3 of Republic Act No. 10606.

257 Ibid., section 16(u), amendment introduced via section 10 of Republic Act No. 10606 of 2013.

258 Ibid., section 18(a), amendment introduced via section 12 of Republic Act No. 10606 of 2013.

- Filipino workers recruited by foreign-based employers abroad may be covered by the SSS, provided for under the Social Security Act, 1997, on a voluntary basis.[259] In fact, Filipino migrant workers have two layers of social security protection under the SSS (See, 2016):
    - A defined-benefit, social insurance scheme providing a basic pension as a safety net – This is the same regular coverage programme available to local workers in the Philippines. It has been noted that voluntarily insured persons pay the combined insured person and employer contributions of 11 per cent of gross monthly earnings, according to 31 income classes.[260]
    - A defined-contribution, individual account scheme serving as a supplemental pension-savings plan – This is the so-called SSS Flexi-Fund Program, a provident fund offered exclusively to Filipino migrants.
- Coverage also flows from registration with the Overseas Workers Welfare Administration (OWWA), which has been granted a key institutional role in the provision of benefits and services, including social security services to OFWs.[261] Registration (on a two-year basis) is compulsory for OFWs whose employment contracts have been processed at the POEA and voluntary for nationals who left as non-contract workers and later acquired foreign employment. Social security benefits available against the payment of a contribution include, among others:[262]
    - death benefits;
    - disability (including total disability benefit in the event of a permanent disability) and dismemberment benefits;
    - burial benefit; and
    - health-care benefits (to be developed within a two-year period, taking into consideration the health-care needs of women).
- Compulsory insurance cover is to be provided and paid for by licensed recruitment agencies, should the OFW have been recruited by an agency. Social security benefits are provided for by Republic Act No. 10022 of 2009,[263] which amended the Migrant Workers and Overseas Filipinos Act, 1995,[264] and they include:[265]
    - accidental death;
    - permanent total disablement;
    - medical evacuation and medical repatriation; and
    - a subsistence allowance during the course of a case or litigation for the protection of an OFWs' rights in the receiving country.

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259 Social Security Act, 1997, section 9(c). It has to be noted that compulsory coverage is only for sea-based OFWs. ILO comments on a previous version of this country profile indicated that, based on the ABND discussions, one of the gaps identified for the SSS is that there are limited number of land-based OFWs covered under the SSS because of the voluntary membership policy. It would appear necessary to address the gap by covering land-based OFWs as compulsory members of the SSS.

260 According to ISSA and SSA (2017), the minimum monthly earnings used to calculate contributions are PHP 5,000 for voluntarily insured overseas workers; the maximum monthly earnings used to calculate contributions are PHP16,000.

261 The Overseas Workers Welfare Administration Act, 2015, stipulates in section 34, which deals with "Guiding Principles", as follows:
Pursuant to its mandate, the OWWA shall provide gender-responsive reintegration programs, repatriation assistance, loan and credit assistance, on-site workers assistance, death and disability benefits, health care benefits, education and skills training, social services, family welfare assistance, programs and services for women migrant workers and other appropriate programs that provide timely social and economic services.
Nothing in this Act shall be construed as a limitation or denial of the right of an OFW to avail of any benefit plan which may be adopted in the employment contract, or offered voluntarily by employers, or by the laws of the receiving country, over and above those provided under this Act.

262 Ibid., section 35(3).

263 An Act amending Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, further improving the standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes.

264 Migrant Workers and Overseas Filipinos Act, 1995 (Republic Act No. 8042).

265 Ibid., section 37A, amendment introduced by section 23 of Republic Act No. 10022 of 2009.

- Social security benefits or insurance are provided for in the employment contract between the foreign employer/principal and the OFW, again in the event that the OFW has been recruited by a licensed recruitment agency, and for which the employer/principal and the recruitment or placement agency incur joint and several liability.[266]
- Social security benefits are also provided through bilateral social security agreements between the Philippines and receiving countries. It has, for example, been reported:[267]

  Qatar is an example of a country that has recently agreed to a bilateral labor agreement which included social security benefits for migrant workers. The 2008 agreement entitled "Additional Protocol to the Agreement between the Government of the Republic of the Philippines and the Government of the State of Qatar" amends the original agreement, signed in March of 1997. The additional protocol includes a model contract which incorporates "Medical Care and Social Welfare" that specifies the employer's obligation to provide medical treatment and compensation for work-related accidents. This agreement could lead to future SSA [Social Security Agreement] negotiations (CMA, 2010, p. 45.).

In fact, bilateral social security arrangements are an important avenue for ensuring that OFWs enjoy appropriate social security benefits in the receiving country, and for arranging for portability of benefits. Negotiating such agreements is part of the two-pronged approach to protecting Filipino migrants; the other part of the approach relates to the extension of the SSS coverage programme, as indicated above. These bilateral agreements are negotiated in collaboration with the Philippine Department of Foreign Affairs. By November 2016, 10 such agreements were in place, but none with another ASEAN country or for that matter any country outside the Gulf countries. Six further agreements – two of which involve other Asian countries (the Republic of Korea and Japan) – have been signed, but are awaiting finalization and entry into force (See, 2016). Regarding the content and scope of these agreements, it has been reported that:

> Equality of treatment (right to benefits under same conditions as nationals), export of benefits (payment of benefits to migrant worker's country), totalization of coverage periods (combining periods of membership to determine eligibility), and mutual administrative assistance (coordination to extend assistance to workers and implement agreements) are among the major elements of the agreements. As to scope of coverage, the agreements aim to put in place long-term benefits for permanent residents and, at least, short-term benefits for temporary workers (Ofreneo and Sale, 2014, p. 172).

Several other legal, institutional, and operational measures and interventions support the extension of social security support to OFWs. These include the stipulation that POEA is only allowed to issue permits of deployment abroad to receiving countries where the rights of Filipino migrant workers are protected. In this regard, the Migrant Workers and Overseas Filipinos Act, 1995, recognizes any of the following as a guarantee on the part of the receiving country that the rights of OFWs will be protected:[268]

1. It has existing labour and social laws protecting the rights of workers, including migrant workers;
2. It is a signatory to and/or a ratifier of multilateral conventions, declarations, or resolutions relating to the protection of workers, including migrant workers; and
3. It has concluded a bilateral agreement or arrangement with the Philippines Government on the protection of the rights of OFWs.

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[266] Ibid,. section 10, amendment introduced by section 7 of Republic Act No. 10022 of 2009.
[267] Center for Migrant Advocacy *Bilateral Labor Agreements and Social Security Agreements* (2010) 45.
[268] Migrant Workers and Overseas Filipinos Act of 1995, section 4, amended by section 3 of Republic Act No. 10022 of 2009.

Other legal, institutional, and operational arrangements aimed at providing a broader contextual framework to support the extension of social security benefits to OFWs include the following:[269]

- regulating and monitoring recruitment/placement agencies;
- legal assistance;
- hearing of and deciding upon OFWs' money claims;
- ascribing and delineating the roles of a large number of government departments and other (in particular public) institutions, such as:
    - Departments of Health; Labour and Employment; and Interior and Local Government; and
    - POEA, OWWA, the National Reintegration Center for OFWs, Migrant Workers and Other Overseas Filipinos Resource Centers; local government units, and an inter-agency committee to implement a shared government information system for migration.
- a large number of SSS offices – 21 offices in 16 countries (seven in Asia and the Pacific);
- tailor-fit systems supporting the registration of OFWs, contribution modalities, and benefit payment arrangements; and
- a range of user-friendly service channels made available by the SSS to Filipino migrants, including overseas e-payment centres, online access to records, SSS social media sites, a unified multi-purpose ID, and a dedicated contact centre.

5.2.8 Singapore

Background: Singapore provides social security support to migrant workers who are also permanent residents. However, migrant workers who are not permanent residents have limited social security support.[270] The country has also not developed a dedicated framework aimed at the social security protection of Singaporean migrant workers abroad. According to available data:

- There were 2.32 million migrants in Singapore in 2013, constituting about 43 per cent of the country's total population of 5.5 million, with 52.9 per cent originating from other ASEAN countries. This makes Singapore the third-largest migrant-receiving country in ASEAN from a migrant stock perspective (after Thailand and Malaysia) (ILO, 2015d; 2015m).[271] More recent Singaporean national data from 2016, however, reflect lower numbers of migrants. According to Singaporean statistical data, the total number of employed workers in Singapore was 3,673,100 in 2016, of whom 2,280,100 workers were local workers (62.1 per cent) and 1,393,000 foreign workers (37.p per cent.[272] The number of permanent residents is 524,000 (i.e., about 9 per cent of the total population; or 13 per cent of the resident population).[273]

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269 See in this regard See, 2016 and the Omnibus Rules and Regulations implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022.

270 For the different kinds of work passes and permits available under the Singaporean immigration regime, see http://www.mom.gov.sg/passes-and-permits [accessed 6 June 2017].

271 More than 90 per cent of intraregional migrants within ASEAN are hosted by Malaysia, Singapore, and Thailand (ILO, 2015d). It has been suggested that Malaysians constitute the largest immigrant group in Singapore, accounting for 45.0 per cent of the country's migrant stock in 2013 (Ong and Peyron Bista, 2015).

272 Data provided by the Ministry of Manpower's Manpower Research and Statistics Department – information provided by SLOM Singapore, July 2017. According to Singaporean administrative records, the corresponding figures in 2013 were 1,322 million employed migrant workers in Singapore, comprising 37.8 per cent of the total number of 3,494 million employed workers (ILO, 2015d). In 2013, 48.5 per cent of migrant workers worked in industry and 51.2 per cent in the services sector; agriculture accounted for just 0.3 per cent (ILO, 2015d).

273 See http://www.singstat.gov.sg/statistics/latest-data#17 [accessed 5 June 2017].

- An estimated 282,000 Singaporeans were living as migrants abroad in 2013; of these the proportion residing in other ASEAN countries is somewhere between 20 per cent to 30 per cent (ILO, 2015d).
- No reliable data on remittance inflows is available, as Singapore does not report data on remittances inflows (Ratha, Plaza, and Dervisevic, 2016). It has been estimated that nearly $6.1 billion in remittances was sent from Singapore to other countries in 2015, with China ($2.79 billion), Malaysia ($1.05 billion), India ($828 million), Pakistan ($456 million), and Indonesia ($409 million) being the major recipient countries (Pew Research Center, 2016).

Migrant workers in Singapore: The Singapore Constitution guarantees that all persons are equal before the law and entitled to the equal protection of the law.[274]

The Singaporean statutory social security system covers an extensive range of social security risk areas, providing benefits in eight of the nine areas indicated in the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) – unemployment benefits being the one area that are not provided for (Ong and Peyron Bista, 2015). The Central Provident Fund (CPF) is the core of social security provisioning in Singapore.[275] The CPF describes itself as a "comprehensive social security system that enables working Singapore Citizens and Permanent Residents to set aside funds for retirement", and which "also addresses healthcare, home ownership, family protection and asset enhancement" (CPF Board, n.d. 1).[276] Under the CPF, employees and their employers make compulsory monthly contributions (the self-employed can contribute voluntarily), which are allocated to three accounts:

- Ordinary Account – for housing, insurance, investment, and education;
- Special Account – for retirement and investment ; and
- Medisave Account – for hospitalization and approved medical insurance.

A fourth account, the Retirement Account, is automatically created at age 55 (using the savings in the Ordinary Account and Special Account) to meet basic needs in old age (CPF Board, n.d. 1). Since 2013, Singapore citizens and permanent residents who turn 55 have been eligible to participate in CPF LIFE, an annuity scheme that provides life-long monthly payouts in retirement. CPF LIFE annuities are purchased using savings in the Retirement Account.[277] In addition, but subject to the retention of certain minimum amounts, members can withdraw their CPF savings.[278]

Therefore, as far as retirement provision is concerned, participation in the CPF is only possible for non-nationals who have permanent residence status. This also applies to voluntary contributions by self-employed persons – they also have to be either citizens or permanent residents of Singapore.[279] Provision has, however, been made for a voluntary retirement scheme called the Supplementary Retirement Scheme (SRS) to complement the CPF. Foreigners can participate in the SRS, and SRS

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274 Constitution of the Republic of Singapore, 1999 (revised), article 12(1). However, the constitutional grounds of prohibited discrimination do not specifically include nationality, seearticle 12(2).

275 It has been suggested that the CPF "acts as a savings and investment fund for directly financing health care, retirement, education, and housing, alongside indirect financing of benefits via social insurance and government-regulated private insurance schemes such as Medishield for health care, Eldershield for old-age disability, and the Dependents' Protection Scheme (DPS) for permanent incapacitation and death" (ILO, 2015m, p. 1).

276 The replacement rate offered by the CPF is slightly above 40 per cent of the average earnings of a median wage male worker in Singapore. It should be noted, however, that due to their lower average lifetime wage and higher engagement rate in the informal economy (or unpaid work), women tend to have lower income replacement rates in the provident fund systems of Indonesia, Malaysia, and Singapore (Ong and Peyron Bista, 2016, citing OECD authority).

277 Information provided by SLOM Singapore, July 2017.

278 See https://www.cpf.gov.sg/Members/Schemes [accessed 26 Nov. 2016].

279 Central Provident Fund Act, 1955 (as amended), section 13B.

members can contribute a varying amount to SRS (subject to a cap) at their own discretion. The contributions may be used to purchase various investment instruments, and offer attractive tax benefits (Ministry of Finance, n.d.).

Finally, when considering income support for the elderly, mention should be made of the fact that Singapore has institutionalized such support by providing legal recourse for elderly parents to seek maintenance from their children via the Maintenance of Parents Act, 1996. According to section 3 of this Act, parents who can apply for maintenance orders under the Act are persons who are domiciled and resident in Singapore; who are 60 years of age or above; and who are unable to maintain themselves adequately. An application may be made against a child, including an illegitimate child, an adopted child, or a step-child.[280] Migrant workers who are domiciled and resident in Singapore could make an application under the Act, which is not restricted to those with permanent resident status. Also, as explained below, Singapore has introduced public forms of care for the elderly, including tax incentives to encourage familial arrangements for elderly care. To a limited extent some of these are available only to migrant workers who are permanent residents (see below).

Concerning health coverage for Singapore Citizens and Permanent Residents, Singapore has a unique mixed-financing health system with multiple tiers of protection (Ong and Peyron Bista, 2015).[281] The first tier consists of heavy government subsidies across all public health-care settings (e.g., acute, inpatient, and outpatient care, as well as medical drugs) to make health care affordable (Ministry of Health, 2012). The second tier is a mandatory individual savings account for health, Medisave, which is part of the CPF and is co-funded by workers' and employers' contributions.[282] Being part of the CPF, Medisave is available to citizens and permanent residents. The third tier is a mandatory social health insurance scheme called Medishield Life (introduced in November 2015 to replace the previous Medishield scheme), which provides coverage to all Singaporean citizens and permanent residents. A final, fourth tier consists of Medifund, a medical endowment fund for the needy who do not possess further resources for their health expenditures.[283]

With regard to migrant workers, employers are fully responsible for all medical expenses incurred by migrant workers in general in their employ, per the Employment of Foreign Manpower (Work Passes) Regulations. In addition, section 25(6)(c) of Singapore's Employment of Foreign Manpower Act, 1990 (as amended) mandates employers to procure and maintain medical insurance with a minimum coverage of $15,000, for the same group of foreign employees.[284]

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280 Maintenance of Parents Act, 1996, section 2.

281 Subsequent paragraphs in the report text also reflect information emanating from SLOM Singapore, July 2017.

282 Intra-family redistribution is permitted under the second tier as immediate family members have access to each other's Medisave accounts. To prevent overconsumption of health care and premature depletion of Medisave savings, the Ministry of Health imposes strict guidelines on the type and level of health-care expenditure covered under Medisave (Ong and Peyron Bista, 2015).

283 See https://crms.moh.gov.sg/FAQ.aspx [accessed 26 Nov. 2016].

284 See also section 2 of the Employment of Foreign Manpower Act, 1990, definition of "foreigner" read with definition of "foreign employee". There are specific arrangements for different groups of migrant workers. For example, for a domestic worker issued with in-principle approval for a work permit, or where the work permit has been issued, the employer is required to purchase and maintain medical insurance of a prescribed minimum coverage value for the domestic worker's in-patient care and days surgery (Item 2 of Part II of First Schedule and item 4 of Part II of the Fourth Schedule respectively of the Employment of Foreign Manpower (Work Passes) Regulations, 2012). Similar arrangements exist for migrant workers who are not domestic workers, and who have been issued with in-principle approval of a work permit, or with the work permit itself, except that in this case the employer is also allowed to purchase a group medical insurance that provides the same prescribed minimum coverage value for each individual worker (Item 2 of Part IV of First Schedule and item 4 of Part IV of Fourth Schedule respectively of the Employment of Foreign Manpower (Work Passes) Regulations, 2012). This latter arrangement also applies to mid-level e foreign employees (Item 1 of Part II of Second Schedule and item 6 of Part II of Fifth Schedule respectively of the Employment of Foreign Manpower (Work Passes) Regulations, 2012).

Employee injury benefits are provided in Singapore on the basis of employer liability: employers are obliged to take out private insurance on behalf of their employees to cover the risk of work injury and illnesses. The Work Injury Compensation Act, 2009, covers all employees regardless of salary, age, and nationality against accidents at work, with some exceptions, such as independent contractors, the self-employed, domestic workers, and uniformed personnel.[285]

In addition, the Employment Act, 1968 (as amended) places an obligation on employers to provide for sickness benefits. This obligation applies to all employees, except managers or executives with a monthly salary of more than 4,500 Singapore dollars (SDG), seafarers, domestic workers, and public servants.[286] Groups not covered under the legislation above are covered by other legislative instruments. For example, foreign domestic workers are covered under the Employment of Foreign Manpower Act, which requires employers to purchase personal accident insurance with a minimum coverage of SDG 60,000. Foreign domestic workers are also covered under the Employment of Foreign Manpower (Work Passes) Regulations, which require employers of foreign domestic workers to bear the cost of their medical treatment.[287]

Invalidity benefits and dependants' benefits are provided under section 36 and Part V of the Central Provident Fund Act, 1955. Given the eligibility restrictions applicable to that law, incapacity benefits are only payable to citizens and permanent residents, while the nominated dependants of these categories of workers could benefit.

The Interim Disability Assistance Programme for the Elderly (IDAPE) is a government assistance scheme providing financial help to needy and disabled elderly Singaporeans who were not eligible to join ElderShield when it was launched in 2002 because they had exceeded the maximum entry age or have pre-existing disabilities.[288]

Similarly, maternity benefits are an employer obligation according to Part IX of the Employment Act, 1968, and section 9(1) of the Child Development Co-Savings Act, 2001. Again, domestic workers are excluded, but they remain protected under the Employment of Foreign Manpower (Work Passes) Regulations for any necessary medical treatment incurred. Provision is made for an additional government-paid maternity benefit, to which all working women, including self-employed and foreign women, have access, provided that the child is a Singaporean citizen.[289]

Singapore is one of a few ASEAN countries that make public provision for family assistance in the form of social security benefits. As Ong and Peyron Bista (2015, p. 45) noted:

> In at least two ASEAN Member States – Singapore and Thailand – tax incentives are in place to encourage the familial arrangements for elderly care. Tax reliefs for parental care of up to THB30,000 (THB60,000 if the care recipient has disability) per parent and for parent's health insurance of up to THB15,000 are available in Thailand. A similar tax relief amounting between SGD4,500 and SGD14,000 is offered to Singaporean taxpayers with low-income live-in and/or dependent parent(s) aged 55 years and above with an annual income not exceeding SGD4,000 (Inland Revenue Authority of Singapore, 2015). A higher tax relief is given for live-in parent(s) and for parents with physical or mental disability (the age criterion is waived for disability).

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[285] See the Fourth Schedule to the Work Injury Compensation Act, 2009; Ministry of Manpower, n.d.; information provided by SLOM Singapore, July 2017

[286] Section 89 of the Employment Act, 1968, read with section 2(1) of the Act (definition of "employee"); information provided by SLOM Singapore, July 2017

[287] Information provided by SLOM Singapore, July 2017.

[288] For more see https://www.moh.gov.sg/content/moh_web/home/costs_and_financing/schemes_subsidies/Interim_Disability_Assistance_Programme_For_The_Elderly.html [accessed 26 Nov. 2016].

[289] Section 9(1A) of the Child Development Co-Savings Act, 2001; information provided by SLOM Singapore, July 2017.

Singapore has several other innovative policies to ensure long-term elderly care. Within Singapore's public housing allocation, a quota-based priority is given to parents and married children who wish to live in close proximity to one another under the Married Child Priority Scheme. Since 2002, all citizens and permanent residents with mandatory medical savings accounts (Medisave) are covered under the old-age disability insurance scheme (Eldershield) from the age of 40. The scheme is operated by private insurers and provides a monthly cash benefit of SGD400 to older persons with severe disability to cover out-of-pocket care expenses for up to 72 months.

Social assistance is generally available to Singaporean citizens only, and by exception to permanent residents. Among the large number of social assistance schemes, permanent residents appear to be eligible for the following benefits, alongside Singaporean citizens:

- Caregivers Training Grant;[290] and
- Several Community Care Endowment Fund (ComCare) benefits, including the benefit for Student Care Subsidies[291]

Singapore has ratified a few ILO Conventions relating to social security, in particular the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), and the Maritime Labour Convention, 2006 – and has specified for purposes of the latter Convention the following branches of social security: medical care; employment injury benefit, and invalidity benefit. Singapore has not ratified any of the migration-related Conventions of the ILO, nor has it ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It has also not ratified the UN International Covenant on Economic, Social and Cultural Rights, 1966.

Singaporean workers abroad: As indicated above, subject to limited exception, a dedicated framework aimed at the social security protection of Singaporean migrant workers abroad does not currently exist. Limited provision for exportability of retirement benefits has been made. In the absence of bilateral social security agreements, Singapore allows persons/workers who were citizens or permanent residents to make lump-sum withdrawals of accrued pension contributions upon departure from the country.[292] However, this is only possible if the person concerned is about to leave or have left permanently with no intention of returning for employment or residence: the person concerned must have renounced their Singaporean citizenship or permanent residency (CPF Board, n.d. 2).

Mention should also be made of special arrangements related to continued medical cover for overseas Singaporeans. Medishield Life is regarded as a universal health insurance scheme that provides protection to all Singaporeans for life. Overseas Singaporeans also contribute into the scheme, remain covered under Medishield Life, and can benefit from Medishield Life whenever they seek medical treatment in Singapore. However, overseas Singaporeans who live outside Singapore permanently with no intention to reside in Singapore can apply for and be granted a suspension of Medishield Life premium collection.[293]

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290 For more see https://www.silverpages.sg/sites/silverpagesassets/SilverPages%20Assets/Application%20Forms%20(Financial,%20Care%20Services)/CTG%20Application%20Form.pdf [accessed 26 November 2016].

291 For permanent residents, at least one immediate family member in the household must be a Singapore Citizen. For more see https://app.msf.gov.sg/ComCare/Find-The-Assistance-You-Need/ComCare-Student-Care-Subsidies [accessed 26 Nov. 2016].

292 See section 20(1)(a) of the Central Provident Fund Act, 1955 (as amended). See also Pasadilla, 2011, as referenced in Ong and Peyron Bista, 2015, p. 51.

293 For more see https://www.moh.gov.sg/content/moh_web/medishield-life/about-medishield-life/medishield-life-coverage-for-overseas-singaporeans0.html [accessed 26 Nov. 2016].

5.2.9 Thailand

Background: Extensive but fragmented provision is made for the coverage of migrant workers residing in Thailand to access most of the available social security benefits, although at times via separate schemes specially set up for migrant workers.

Thailand also increasingly covers its own overseas migrant workers through a range of modalities/options and associated benefits. Limited provision is made for access to social security benefits for these workers, and no provision is made for the portability of certain social security benefits. According to available data:

- In 2015, there were 4,491,000 migrants in Thailand (ILO, 2015d),[294] measured against a total population of 68.8 million (ILO, 2016). The number of migrants, in absolute terms and also as a percentage of the total population, has been constantly rising. In 2013 international migrants were estimated to have made up 5.6 per cent of the total population of Thailand (ILO, 2015d; 2016). According to the World Bank, in 2013 Thailand was one of the top ten fifteen migrant receiving countries in the world, as far as developing countries are concerned, and the number one immigration country in East Asia and the Pacific (Ratha, Plaza, and Dervisevic, 2016). The Myanmar–Thailand corridor was one of the top twenty migration corridors in the world in 2013 (1.9 million migrants). It was also one of the top 10 migration corridors in East Asia and the Pacific, as was the case with the Lao People's Democratic Republic–Thailand and the Cambodia–Thailand corridors (Ratha, Plaza, and Dervisevic, 2016).

  Concerning intra-ASEAN migration, during the 2000s and onwards the most significant increases in the region came from the growing stocks of Cambodian, Lao, and Myanmar migrants in Thailand (ILO, 2015d). In 2015, according to the World Bank, there were 750,911 Cambodian migrants in Thailand, 926,427 Lao migrants, and 1,892,480 Myanmar migrants (ILO, 2015d).[295] It has been noted:[296]

  > Spurred by regional wage disparities, Thailand is one of the main receiving countries in intra-regional migration. In 2013, almost all of its immigrants (96.2 per cent)[297] originated from other ASEAN countries, in particular Myanmar, Lao PDR, and Cambodia. Labour immigrants are disproportionately low- and medium-skilled[298] (ILO, 2015r).

  Together with Malaysia and Singapore, Thailand accounts for approximately 90 per cent of the region's total migrants and 97 per cent of intra-ASEAN migrants (ILO and ADB, 2014).

  It was estimated in 2016 that there are currently 3.25 million migrants working in Thailand, comprising 8.5 per cent of the country's labour force of 38.3 million (ILO, 2016). A small proportion of migrants enter Thailand on the basis of bilateral MOUs with four ASEAN

[294] It has been estimated that for the period 2009–10, there were 1,445,000 unregistered migrants in Thailand coming from Cambodia, the Lao People's Democratic Republic, and Myanmar (ILO and ADB, 2014).

[295] All told, 50.8 per cent of all intra-ASEAN migrants in Thailand are from Myanmar (ILO and ADB, 2014).

[296] Reliable figures are not always readily available. It was suggested that in 2013, 3.6 million migrants in Thailand hailed from other ASEAN countries: ILO, 2015d.

[297] This figure may be on the high end (see, however, ILO and ADB, 2014, to the same effect). Another ILO report (2015d) indicated that, according to 2015 World Bank estimates, among the key receiving countries in ASEAN, Thailand's intraregional share of total migrants is the biggest at 80.6 per cent (i.e., 3,618,400) – virtually all of them coming from Myanmar, the Lao People's Democratic Republic, and Cambodia.

[298] This much appears also from Thailand's labour force data. However, see ILO, 2015d, p. 41, concerning contradictions in the available Thailand administrative data.

countries: Cambodia, the Lao People's Democratic Republic, Myanmar, and Viet Nam. By August 2016, 350,185 migrants had come to Thailand via the MOU process,[299] while 964,130 migrants had completed the nationality verification process (NVP), a procedure whereby the status of irregular migrants is regularized, as discussed below[300] (ILO, 2016). By the same date, 1,049,326 migrants had registered through One Stop Service Centres[301] (ILO, 2016). As has been noted, the "nationality verification process resulted in much higher numbers of migrant workers being registered despite the fact that many of them might not necessarily have migrated in the years in which they were registered" (ILO, 2015d, p. 44). While further detailed statistics are provided below, note should be taken of recent labour registration data from Thailand's Ministry of Labour:

> [A]ccording to labour registration data of the Ministry of Labour as of December 2016, there were total 2,681,391 migrant workers who have registered themselves including 897,828 workers who have undergone nationality verification and [have] been issued with valid travel documents, 392,749 workers inducted by virtue of bilateral agreements between Thailand and its neighbours including Myanmar, [the Lao People's Democratic Republic] and Cambodia, 1,325,126 workers (including workers at the sea fisheries and seafood processing sector) allowed to temporarily stay and work in Thailand to complete National Verification and 65, 688 workers allowed to work at the border areas. Since 2015, Thailand has begun to manage migrant workers from Viet Nam and has adopted procedure to register migrant workers from Viet Nam. There are 1,569 Vietnamese workers allowed to stay and work (MWG, 2017).

- According to the World Bank, there were 1,007,000 Thai migrants abroad in 2015; 190,400 of these migrated to other ASEAN countries, the majority (93,635) migrated to Malaysia (ILO, 2015d). Many of these are migrant workers: in 2015, 117,291 Thai nationals departed for work abroad, primarily to other countries within Asia, but with limited numbers (about 20 per cent) migrating to other ASEAN countries for work (ILO, 2016; 2015d). Approximately 120,000 Thai migrants were registered to work abroad in 2014; the majority were men (96,499) (ILO, 2015d).
- Considerable remittance flows, both from and to Thailand, highlight the importance of remittance transfers by immigrants within Thailand and Thai emigrant workers abroad. It has been estimated that $4.52 billion was sent as remittances from Thailand to other countries in 2015, with Myanmar ($1.85 billion), China ($840 million), Japan ($352 million), France ($260 million), and Cambodia ($233 million) being the major recipient countries (Pew Research Center, 2016). The amount of remittances sent in 2014 made Thailand one of the top ten remittance senders among middle-income countries worldwide, as well as one of the top ten remittance senders in East Asia and the Pacific in 2014 (Ratha, Plaza, and Dervisevic, 2016). An estimated $5.22 billion was sent to Thailand from other countries in 2015, with the United States ($1.45 billion), Germany ($493 million), Malaysia ($449 million), Australia ($297 million), and Japan ($236 million) being the major countries from which remittances were sent (Pew Research Center, 2016). In 2015, Thailand was one of top ten remittance receivers in East Asia and the Pacific (Ratha, Plaza, and Dervisevic, 2016. The remittance flow to Thailand constitutes 1.5 per cent of its GDP (ILO, 2015d).

[299] With 49 per cent from Myanmar, 40 per cent from Cambodia, and 11 per cent from the Lao People's Democratic Republic.
[300] With 82 per cent from Myanmar, 11 per cent from Cambodia, and 7 per cent from the Lao People's Democratic Republic.
[301] With 42 per cent from Myanmar, 45 per cent from Cambodia, and 13 per cent from the Lao People's Democratic Republic.

Migrant workers in Thailand: The most recent (draft) version of the Constitution signed by the King – the 1997 Draft Constitution of the Kingdom of Thailand –in chapter III on the "Rights and Liberties of the Thai People", provides for equal treatment of all persons. It stipulates, "All persons are equal before the law and shall enjoy equal protection under the law", and outlaws unjustified discrimination on certain specified grounds, but also on "any other ground", which should include nationality.[302] The Constitution also makes specific provision for social security, again ostensibly without discriminating between nationals and non-nationals. Section 74, contained in chapter VI, dealing with "Policies of the State", provides:

> The State shall enhance people to be capable of carrying out the work suitable to their capacities and ages and of obtaining employment. The State shall ensure the protection of work safety and hygiene for workers and the receipt of income, welfare, social security and other benefits appropriate for their livelihoods, and shall provide or promote the savings for their retirement.

Section 178 of the Constitution (in chapter VIII on the Council of Ministers) appears to have a bearing on international agreements that contain social security provisions. It provides that treaties which may have an impact on the economic or social security, or the trade or investment of the country, shall be approved by the National Assembly.

A Strategic Action Plan on Migrant Workers Management 2017–2021 was approved by the Thai Cabinet on 25 October 2016. It aims to systematically and effectively improve migrant worker management in Thailand; regulate and promote safe migration; standardize the employment of migrant workers; and provide as well as monitor and evaluate effective migrant worker management (Ministry of Foreign Affairs, 2017).

The current policy framework applicable to allowing the immigration of foreign workers into Thailand needs to be understood against the background of Thailand's economic growth and its labour market needs, particularly the insufficient human resources available in the labour market to fill certain positions (in particular lower-skilled positions) and the expected imminent shrinking of its labour force.[303] The statutory regime has given effect to this context in a particular way. Thailand's Immigration Act, 1979 – read with the Alien Working Act, 2008 – generally prohibits the entry and employment of unskilled foreign workers.[304] In addition, as a rule, foreign workers are only allowed to be employed in certain occupations. However, section 17 of the Immigration Act allows for exceptions to this general ban. It stipulates: "In certain special cases, the Minister, by Cabinet approval, may permit any alien or any group of aliens to stay in the Kingdom under certain conditions, or may [impose] conditions, or may consider exemption from being [in] conformity with this Act."

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302 See section 27 of the (Draft) Constitution of the Kingdom of Thailand, 2016/2017.The provision prohibiting unjustified discrimination states: "Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view that does not violate the provisions of this constitution, or any other ground shall be prohibited." See also section 3 of the National Human Rights Commission Act B.E. 2542 (1999), which defines "human rights" as "human dignity, right, liberty and equality of people which are guaranteed or protected under the Constitution of the Kingdom of Thailand or under Thai laws or under treaties which Thailand has obligations to comply".

303 According to ILO and ADB (2014, p. 92–93) projections, "Thailand's labour force will start to shrink around 2022 and continue to do so at an increasing rate. Correspondingly, the demand for migrant workers is projected to increase over this period, with the greatest demand being for low- and medium-skilled workers. Based on these projections, labour migration will be an important feature of Thailand's sustained growth and development in the short and medium-term. As such, Thailand will have to implement adequate policies to better manage and truly benefit from labour mobility."

304 See Immigration Act B.E. 2522 (1979), particularly section 12; and the Alien Working Act B.E. 2551 (2008).

Section 17 has effectively constituted the basis for the development of a migrant worker policy and the admission of millions of such workers into Thailand, particularly migrant workers coming from neighbouring ASEAN countries, i.e. Cambodia, the Lao People's Democratic Republic, Myanmar, and more recently Viet Nam (CLMV countries).[305] This has led to a raft of regulatory and executive instruments dealing with the context of a range of migrant worker categories, including the social security context. However, an overarching immigration policy framework that brings together the many different provisions and developments that have accrued over time has yet to materialize.

Within the context of social security access for migrant workers, the policy fragmentation caused by the development of separate, detailed provisions targeting various unique migrant worker categories is compounded by the fact that the social security status of migrant workers in Thailand is inextricably linked to their immigration status. In broad terms, the immigration law framework, when viewed against all of the exceptions and qualifications introduced over the years, has given rise to several distinct categories of regular and irregular migrant workers, resulting in a diverse array of impacts on migrant workers' social security status depending on the category into which they are slotted. In particular, it is necessary to differentiate between:

- Migrant workers whose entry into and stay and employment in Thailand is regular. This includes migrant workers who entered into Thailand on the basis of MOUs or bilateral labour agreements with sending countries, especially the CLMV countries, as well as migrant workers from the CLMV countries who have undergone the NVP.[306] [307]
- Irregular migrant workers, who would include:[308]
    - Irregular migrant workers who have made illegal entries into the country, but who have been allowed to temporarily stay in Thailand as per the Immigration Act, 1979, and have been allowed to work as per the Alien Working Act, 2008; and
    - "Migrant workers who have entered the country illegally and concealed themselves and have not presented themselves to seek the right to temporarily stay and work in Thailand."

In addition, specialized arrangements exist for particular occupational categories of migrant workers, including those involved in the sea fisheries industry.

Though fragmented, Thailand has a comprehensive social security system, covering all nine classical social security risks provided for in ILO instruments (Ong and Peyron Bista, 2015).[309] In essence, but subject to qualification, migrants are also covered under these arrangements (ILO and ADB, 2014). In fact, the central piece of legislation, the Social Security Act, 1990, does not exclude migrant workers. However, incompatibility with existing migration laws has been noted, often rendering the legal coverage of migrants ineffective (ILO and ADB, 2014).

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[305] See also Monrawee, 2016b.

[306] These migrant workers have subsequently been issued with temporary passports or personal status documents and work permits. See the judgment of the Supreme Administrative Court in the matter of *Joe and others v The Social Security Office (SSO)* (judgment of 9 September 2015).

[307] Other regular migrant worker categories include temporary or general permit migrants; permanent resident or lifetime permit migrants; migrant workers who work in Thailand on strength of investment promotion laws; and so-called migrant border workers.

[308] See the judgment of the Supreme Administrative Court in the matter of *Joe and others v The Social Security Office (SSO)* (judgment of 9 September 2015).

[309] With regard to fragmentation, special systems are in place for judges, civil servants, employees of state enterprises and private-school employees (ISSA and SSA, 2017).

The Social Security Act, 1990, contains a comprehensive contributory social insurance scheme, which essentially provides coverage to:

- regular employees in the formal sector (compulsory coverage; employers, employees, and government contribute) (see section 33 of the Act);
- workers previously covered as employees under section 33, and who are newly self-employed and willing to continue being insured under the Act (voluntary coverage; fixed worker contribution) (see section 39 of the Act); and
- informal economy workers (voluntary coverage; fixed worker and government contribution) (see section 40 of the Act).

Central to the coverage of migrant workers is the definition of "employee" in section 5 of the Social Security Act, 1990. According to this section, "employee" means "a person agreeing to work for an employer in return for wages irrespective of designation but excluding an employee who is employed for domestic work which does not involve in business". The implication is that for regular migrant workers working in the formal sector, the following benefits can be accessed on the basis of compulsory coverage:[310]

- injury or sickness benefits;
- maternity benefits;
- invalidity benefits;
- death benefits, including a funeral grant (available to a dependant);
- child benefits;
- old-age benefits; and
- unemployment benefits (also available in the event that the employer temporarily ceases operations due to force majeure).[311]

Migrants who have been regularized in accordance with the NVP and (to the extent relevant) their dependants are deemed to be regular employees, and should therefore, in principle, also be able to access these benefits. There are, however, other impediments, as discussed below. Self-employed migrant workers, who meet the requirements of section 39, can therefore be covered under the Act, but would not be able to access unemployment benefits. Informal migrant workers who join voluntarily may be able to access benefits under one of two options – the first one inclusive of sickness, disability, and survivors'/death benefits, and the second one inclusive of these benefits as well as old age benefits.[312] Also, in accordance with an amendment introduced in 2015, a non-Thai national who ceases to be insured and does not wish to continue residing in Thailand will be entitled to old-age compensation in the form of a lump sum. This effectively constitutes an emigration grant and does not, as such, amount to portable old-age benefits.[313]

[310] Social Security Act B.E. 2533 (1990) section 54.
[311] Addition introduced by the Social Security Act (No 4) B.E. 2858 (2015).
[312] See Royal Decree on Rules, Rate of Contribution, Contingencies and Eligibilities to receive benefits of Insured Persons B.E. 2554 (2011), read with Royal Decree on Rules, Rate of Contribution, Contingencies and Eligibilities to receive benefits of Insured Persons B.E. 2558 (2015). See also ISSA and SSA, 2017, p. 243.
[313] Introduced by the Social Security Act (No 4) B.E. 2858 (2015). See also IOM, 2015.

Despite all of these possibilities for migrant workers to benefit from the national social insurance scheme, severe restrictions need to be noted:

1. The majority of immigrant workers, especially those from the CMLV countries, work in industries or occupations effectively excluded from the scope of the Social Security Act, 1990. Categories effectively excluded from access to voluntary coverage under the national social security scheme include agricultural, forestry, and fishery employees, as well as temporary and seasonal workers (ISSA and SSA, 2017).[314] In fact, it has been estimated that 60 per cent of all informal economy workers are excluded from the scope of the Act (ILO and UN, 2013). It is debatable whether domestic workers qualify for coverage as employees, given the scope of the definition of "employee" indicated above, and the interpretation thereof.
2. A migrant worker who has lost their job or left the employ of an employer may not be able to find a new employer in the short time allowed to do so (seven days). They also may not have time to arrange for the payment of unemployment benefits. As has been explained:
3. [M]igrants with annual registration must file with the Department of Employment Services and find a new employer within seven days, while those under the MOU are given only three days. If a migrant does not register the change of employer or does so without the employer's permission, they forfeit their registration status and become "illegal." This means migrant workers have to leave the country within seven days after losing their job. This does not allow them to go through the process to declare their new status (unemployed) to the Department of Employment and the Social Security Office, nor to report back to the Department of Employment every month, as required under the unemployment scheme (Monrawee, 2016b).
4. Migrant workers may not be able to draw a full benefit. For example, a regular old age pension will only be paid in full in the case of 180 months' contribution.[315]
5. Finally, it has been reported that, practically, the Ministry of Labour's Department of Employment only accepts applications from Thai citizens, thereby excluding migrant workers (Monrawee, 2016b).

In addition to the compulsory insurance under the national scheme highlighted above, Thailand has established two further voluntary retirement provisioning frameworks to enhance adequate coverage in old age.

The first one, the provident fund system, was established in 1983 (and again in 1987) to encourage long-term savings by formal sector employees. Provident funds aim to provide income security for employees and their families in case of retirement, disability, or unemployment: "Firms' fund committees select provident funds, which are managed by registered fund management companies" (ILO and UN, 2013, p.8).[316] Migrant workers in the formal sector do not appear to be excluded: this follows from the definition of "employee" (and the corresponding definition of "employer") contained in the Provident Fund Act, 1987. According to the legislation, an employee is "a person who agrees to work for the employer and receives wages, notwithstanding whether or not there is a written contract."[317]

[314] See Royal Decree on Rules, Rate of Contribution, Contingencies and Eligibilities to receive benefits of Insured Persons B.E. 2554 (2011).
[315] Social Security Law, 1990, section 77.
[316] See in particular Provident Fund Act B.E. 2530 (1987) read with, among others, the Amendment to the Provident Fund Act B.E. 2558 (2015)
[317] Section 3 of the Provident Fund Act B.E. 2530 (1987).

The second one concerns the National Savings Fund, which was set up for workers in the informal sector who are not covered by another old-age pension scheme.[318] Workers and government contribute. In principle it should be possible for informal migrant workers to join the Fund; however, it is unclear whether in practice migrant workers are excluded as a result of the government subsidy involved.

Regarding health care, Thailand has a comprehensive health-care framework. As has been noted:

> By law, all Thai citizens belong to one of the country's social health protection systems, which include: (i) the Civil Servant Medical Benefit Scheme, for central government employees and other public servants; (ii) the Social Security Scheme, for private employees; and (iii) the Universal Coverage Scheme (UCS),[319] which covers 76.0 per cent of the population, including those working in the informal economy. Thailand reached near-universal health coverage in 2002 (ILO and ADB, 2014, p. 13).

Migrant workers in the formal sector, whose stay and work in Thailand is regular, in principle have access to the health-care benefits available under the Social Security Fund, as regulated by the Social Security Act, 1990. This applies to both employees (see section 33 of the law above) and newly self-employed persons who were previously workers covered as employees under section 33 of the law (ILO and UN, 2013).

At the core thereof is the universal health-care system, referred to as the Universal Coverage Scheme (UCS).[320] This is a tax-funded system regulated by the National Health Security Act, B.E. 2545 (2002).It is restricted to Thai nationals, and is intended to provide:

> … healthcare for persons who are not covered by the CSMBS [Civil Servant Medical Benefit Scheme], SSS [Social Security Scheme], or other schemes provided by the government. Although Section 5 of the [National Health Security] Act stipulates that "every person" shall be entitled to the health service under this Act, "the person" is interpreted to be a person of Thai nationality who possesses a 13-digit government ID number. Therefore, ethnic minorities, stateless persons, and migrant workers are not covered by this scheme (ISSA and SSA, 2017, p. 27).

Migrant workers, including undocumented migrant workers enjoy health-care protection on the basis of a separate, contributory scheme:

> In August 2013, Thailand's Ministry of Health announced a new social health protection scheme that covers all migrant workers (including undocumented migrant workers as well as refugees). The scheme offers the same benefit package as under the Universal Coverage Scheme but on a contributory basis. It is aimed at migrant workers who work or live in Thailand without a work permit and therefore do not contribute to the Social Security Fund (ILO and ADB, 2014, p. 99).

The new scheme is known as Compulsory Migrant Health Insurance (CMHI)[321],which "targets undocumented migrant workers and does not cover dependents. CMHI registration is a prerequisite for workers to apply for work permits or grace periods to stay in Thailand temporarily" (ILO and UN, 2013, p. 28). Workers contribute a fixed amount to the insurance scheme, but also pay an additional amount per hospital visit. A fairly extensive health-care benefit package is provided.[322]

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318 See the National Savings Fund Act B.E. 2554 (2011).

319 Universal health coverage was eventually achieved by switching from the pure contributory system approach to a mixed approach with tax revenues used to extend health-care coverage to the large informal economy: see Ong and Peyron Bista, 2015, p. xvii.

320 Health-care benefits include health promotion services, preventive and curative care, maternity care, hospitalisation, transportation, rehabilitation, basic dental care, prescriptions drugs, and traditional or alternative medical services. See ISSA and SSA, 2017, p. 247.

321 The CMHI scheme was originally established on the basis of a ministerial announcement from 2009: The Announcement of Ministry of Public Health on Health Check-up and Health Insurance for Irregular Migrant Workers from Myanmar, Lao People's Democratic Republic and Cambodia, 1 July B.E. 2552 (2009).

322 The benefit package includes a compulsory health screening, a health insurance component (capitation, fund managed by the hospital), and a health reinsurance component for high cost diseases (ILO and UN, 2013).

Workers compensation benefits are essentially available under the Workmen's Compensation Act, B.E. 2537 (1994). This law obliges any employer who has at least one employee in any type of business to contribute to the Workmen's Compensation Fund (WCF). "Employee" is defined widely within section 5 of the law (as is an "employer"), but the definition excludes domestic workers: "A person agreeing to work for an employer in return for wages irrespective of designation but excluding an employee who is employed for domestic work which does not involve in business". The Act also does not apply to, among others, employers as specified in ministerial regulations.[323] As a result, agricultural, forestry, and fishery employees, as well as self-employed persons and domestic workers are excluded from the operation of the law (ISSA and SSA, 2017).

Outside the exclusions just mentioned, employees in the formal sector and regular migrant workers are therefore assumed to have access to the WCF (ILO and UN, 2013). In principle this includes migrant workers whose position has been regularized as a result of the NVP. However, although migrant workers are covered in principle, in practice most of them cannot satisfy the two conditions enacted by Circular RS0711/W751 (issued on 25 October 2001): (1) migrant workers must possess a passport or foreign registration documents; and (2) their employers must have registered them and paid a contribution to the WCF (ILO and UN, 2013). These conditions also affect the position of irregular migrant workers, including those who have been allowed to temporarily stay in Thailand, and those who have entered the country illegally but not presented themselves to seek the right to temporarily stay and work in Thailand. These administrative exclusions have met with criticism from ILO and UN supervisory bodies (Monrawee, 2016b).

In 2011, the Cabinet approved a resolution to establish a work accident insurance scheme for workers from Cambodia, the Lao People's Democratic Republic, and Myanmar who are registered, possess civil registration certificates and work permits, but have not yet passed the NVP. The scheme was managed by a private insurance company that is responsible for compensation payments to workers suffering work-related injuries and illness. The compensation amounts were announced as being equal to those offered under the Workmen's Compensation Act, 1994 (Hall, 2012).

However, in a judgment of the Supreme Administrative Court on 9 September 2015:

> [The Court] affirms the legal principle regarding the Workmen's Compensation Laws which aims to provide protection to all employees who suffer from injuries, disabilities, disappearance or death relating to the work or while serving the interest of their employer or get sick with causes relating to the characteristics or nature of the work or work-related diseases, for which the employer shall be held liable to their employee. Therefore, the "Workmen's Compensation Fund" has been established as a fund and guarantee for the provision of such compensation to the employee on behalf of the employer who is supposed to pay contributions to the Fund. The protection is intended to cover all employees without any discrimination or categorization of the employees.[324]

The Court further held:

> The migrant workers whose personal information has been documented by the state including detail needed to ensure national security, and such information can be presented as evidence to compel the enforcement of laws concerning workmen's compensation. Therefore, the three plaintiffs, the migrant workers who have entered the country illegally, but have been allowed to temporarily stay and work in Thailand, are entitled to protection as provided for by the 1994 Workmen's Compensation Act."[325]

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[323] Workmen's Compensation Act, 1994, section 4(5).

[324] In the matter of *Joe and others v The Social Security Office (SSO)* (judgment of 9 September 2015), English text from HRDF, 2015 See also the case law referred to in MWG, 2017

[325] Ibid.

Finally, the Court found that entitlement to benefits under the Workmen's Compensation Act is not affected by the fact that the employer failed to pay contributions to the WCF.[326]

It would therefore seem that, although the Court did not specifically address the situation of migrant workers who have entered the country illegally and not presented themselves to seek the right to temporarily stay and work in Thailand, all migrant workers who are not otherwise explicitly excluded from the scope of application of the Act, are indeed covered by the Act's provisions. This implies that migrant workers are entitled to the benefits provided for by the Act, including:

- temporary disability benefits;
- permanent disability benefits;
- medical benefits; and
- survivor benefits, including a funeral grant.

Mention should be made of the position of some of the categories of migrant workers referred to above who are seemingly excluded from the scope of coverage of the Workmen's Compensation Act, as well as the Social Security Act, 1990. Regarding domestic workers, limited social security protection is available to these workers. In 2012, a ministerial regulation extended several rights and protections to registered migrant domestic workers under the Labour Protection Act, 1998. These included paid sick leave, among others. However, the ministerial regulation continues to exclude domestic workers from other provisions of the Act, including social security coverage, rights to paid maternity leave, and job security in case of pregnancy (ILO and ADB, 2014).[327]

Limited social security protection is also extended to sea fishery and agricultural workers, including migrant workers employed in these industries. The Maritime Labour Act, 2015, which effectively translates the provisions of the recently ratified ILO Maritime Labour Convention, 2006, into Thai domestic law. It imposes liability on ship owners to provide the following social security benefits and services to seafarers:

- sick leave;[328]
- maternity leave;[329]
- medical care;[330]
- compensation for occupational injuries and diseases;[331]
- death and funeral benefits;[332] and
- disability benefits.[333]

Also, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) obliges employers to provide to sea fishery workers with medical supplies, among others. Furthermore, the Ministerial Regulation to Protect Agricultural Workers B.E. 2557 (2014) provides agricultural workers with paid sick leave.

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326 Ibid.
327 Ministerial Regulation No. 14 B.E. 2555 (2012) offers domestic workers a weekly rest day and additional paid leave provisions, including sickness (ILO, 2015r).
328 Maritime Labour Act B.E. 2558 (2015), section 57 and 81.
329 Ibid., section 63.
330 Ibid., sections 78–80.
331 Ibid., section 81.
332 Ibid.
333 Ibid.

A raft of recent measures have been introduced to further extend protection to migrant workers in Thailand. Some of these make reference to welfare protection as well. The measures affect both particular sectors and certain vulnerable migrant categories, as well as the general framework of protection available to migrant workers. The sectors and migrant categories affected include the fisheries sector, children, and victims of human trafficking. According to a recent statement issued by the Department of European Affairs of the Ministry of Foreign Affairs of Thailand (2017), the measures adopted concerning migrant workers generally include:

- Royal Ordinance on Fisheries (14 November 2015): Penalties for vessel and factory owners who violate the labour protection law and who employ migrant workers without valid work permits.
- NCPO Order imposing a ban on labour transhipment at sea (9 September 2016).[334]
- Royal Ordinance concerning Rules on Bringing Migrant Workers to work with Employers in Thailand B.E. 2559 (16 August 2016): Further regulating recruitment agencies, reducing the cost and complexity of the recruitment process, and eliminating labour brokers. Thirteen related secondary laws were issued and entered into force on 18 November 2016. The Ordinance significantly increases the amount of the security deposit required by recruitment agencies to guarantee a more effective remedy to migrant workers. Migrant worker recruitment agencies must apply for a license and comply with labour protection laws (thereby filling a gap in legislation). The ordinance also specifically regulates the required fees to be paid by Thai employers who wish to employ migrant workers through the agency recruitment process. This law covers in essence the responsibilities and obligations of recruitment companies in relation to the importation of migrant workers from neighbouring countries. This includes imposing stricter sanctions for companies that hire foreign workers and who will be held accountable for taking care of the welfare benefits and legal protections owed to migrant workers.
- Draft of the Royal Ordinance on the Management of Foreign Workers Employment:

  > Complementary to the Royal Ordinance on Fisheries, this new draft Royal Ordinance aims to regulate the use of migrant workers in all aspects, putting together existing laws and regulations related to the work of the migrant workers in Thailand. The draft law imposes more obligations on employers to provide care and assistance to migrant workers with the increase of punishments and hefty fines for violations. It also updates some outdated provisions to better suit the current situation. On 7 March 2017, the Thai Cabinet has, in principle, approved the drat Royal Ordinance. It is currently under the review of the Office of the Council of State. Then, the reviewed version shall be approved again by the Cabinet before being publicized in the Royal Thai Government Gazette to enter into force (Ministry of Foreign Affairs, 2017).

- Greater flexibility for migrant workers to change employers.
- Pre-screening interviews with migrant workers in the fisheries industry to identify potential victims of human trafficking.
- Enhancing workers' awareness on their rights.
- Increased protection for victims of human trafficking, e.g. through a policy of non-deportation and government-run shelters, where among others legal aid and medical care are provided.
- Establishment of Migrant Workers Assistance Centres to support workers.
- Implementation of ratified ILO Conventions and preparatory steps to ratify additional migrant-related Conventions (see the discussion below).

[334] Order of the National Council for Peace and Order (NCPO) No. 53/2559, 9 September 2016.

- (Further) regularization of undocumented migrant workers: This was carried out together with the NVP. According to the Ministry of Foreign Affairs, in 2015–16 the registration of migrant workers in the fisheries sector resulted in the registration of 52,083 sea fishery and 149,662 seafood processing migrant workers. As of March 2017, 13,854 sea fishery and 54,575 seafood processing migrant workers have their nationalities verified.
- Bringing in more migrant workers through the channels provided in the MOUs with the CLMV countries.
- A draft Joint Declaration on Safe Migration was concluded between Thailand and the CLMV countries in November 2016, to enhance cooperation on bilateral MOUs concerning the employment of migrant workers within CLMV countries and Thailand.
- Strategic Action Plan on Migrant Workers Management 2017–2021 (see above).
- According to (draft) MOUs with the CMLV countries, migrant workers might be allowed to work in Thailand for a total of eight years without leaving the country and be allowed to renew their stay and work permit (Monrawee, 2016b).

A wide range of social assistance/non-contributory benefits are provided by the State in Thailand.[335] These include the Universal Non-Contributory Allowance for Persons with Disabilities,[336] the Universal Non-contributory Allowance for People with HIV/AIDS,[337] and the various forms of service, support, and protection provided to older persons.[338] It would appear that, as far as could be established, these benefits are only available to Thai nationals (ILO and UN, 2013). For example, article 3 of The Act on Older Persons stipulates that "older persons" means "persons who have attained the age of at least sixty years and are of Thai nationality".

Thailand has ratified a few ILO Conventions with social security implications, but has not ratified any of the key ILO migration Conventions.[339] It has also taken steps to implement the ILO Social Protection Floors Recommendation, 2012 (No. 202) (ILO and ADB, 2014). Thailand has also acceded to the 1966 UN International Covenant for Economic, Cultural and Social Rights in 1999. Article 9 of this UN instrument grants the right to social security to everyone, and does not draw a distinction on the basis of nationality. The article also does not require reciprocity – in other words, it is not a requirement that another country must be willing and able to grant equal protection before the ratifying country will be bound to provide social security protection to migrant workers. Thailand has neither ratified nor signed the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990.

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335 For additional social welfare programmes beyond those discussed in this paragraph, see ILO and UN, 2013, p. 15.

336 See the Quality of Life Promotion Act for Persons with Disabilities B.E. 2550 (2007) and supporting Regulations.

337 See the Decentralization Act B.E. 2554 (2011) and the Ministry of Interior's Regulation for Disbursement of the Subsistence Allowance by the Tambon Administration Organization (TAO), 2003.

338 See in particular The Act on Older Persons B.E. 2546 (2003). According to section 11, these include (among others) medical and public health services; appropriate subsidies for transport fares; and maintenance allowances.

339 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102843 .The relevant ILO Conventions ratified by Thailand are the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), and the Maritime Labour Convention, 2006 (Title 4 of this latter Convention deals with health protection, medical care, welfare, and social security protection). Thailand also ratified in 2016 the ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). However, Thailand has not ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which prohibits distinctions, exclusions, or preferences made on the basis of a person's race, colour, sex, religion, political opinion, national extraction (including nationals' place of birth, foreign origin, or ancestry), or social origin. The ratification of other Conventions is being considered – including the ILO Work in Fishing Convention, 2007 (No. 188) and the other fundamental labour law Conventions not yet ratified by Thailand (Ministry of Foreign Affairs, 2017).

Thailand has also concluded a range of bilateral labour agreements/MOUs in its capacity both as a sending and as a receiving country. Here mention is only made of agreements related to its position as a receiving country. Bilateral agreements have been concluded with Cambodia, the Lao People's Democratic Republic, Myanmar, and Viet Nam. During 2015, the MOUs were revised to broaden cooperation on labour issues, highlighting also skill development and re-employment.[340] The term of employment specified in the MOUs is four years with a 30 day interim period.[341] Migrant workers from these countries are predominantly employed in low-skilled jobs in fishing, agriculture, construction, manufacturing, domestic work, and other services; comparatively higher wages offered in Thailand constitutes the main pull factor (ILO, 2016).

A recent ILO (2016, p. 1) publication, however, comments as follows on the relative ineffectiveness of the attempts to regularize migration to Thailand through the use of bilateral MOUs:

> Past MOUs have been relatively ineffective in regularizing migration to Thailand. Registrations for irregular migrants have been carried out on a semi-regular basis; issued by cabinet resolutions, these policies provide short-term amnesty to migrant workers in violation of Thailand's immigration laws. This process stops short of granting full legal status to migrants, in essence allowing employers to request a temporary reprieve from deportation. Completion of a lengthy nationality verification process allows registered migrants to receive temporary passports from countries of origin and provides access to social security benefits (excluding several informal sectors of employment such as domestic work) and other rights. Regardless of status, many migrants remain vulnerable to exploitation in Thailand. In recent years, increasing reports of forced labour and other unacceptable forms of work in the fishing sector have received particular concerns from the international community.

And as mentioned, only a small proportion of migrants enter Thailand through the MOU process due to the complicated, lengthy, and expensive procedures involved (ILO, 2016).[342]

Thai workers abroad: An extensive framework for the protection of Thai migrant workers abroad has been put in place. The welfare protection available in this regard is perhaps less pronounced, but has been steadily developing. In particular, Thai nationals whose employers have offices abroad or who regularly travel to work abroad are now able to voluntarily participate in the national contributory social insurance scheme provided for under the Social Security Act, 1990, following a legislative amendment in 2015.[343]

Various modalities for moving overseas exist,[344] although many Thai migrant workers migrate irregularly (Monrawee, 2016b). One of the channels involves the range of bilateral labour agreements/memoranda of understanding concluded between Thailand and other countries/regions – including Brunei Darussalam, Israel, Japan, the Republic of Korea Malaysia, Taiwan (China), and the United Arab Emirates.[345]

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340 The MOUs are in two parts: a cooperation framework and an agreement on the employment of workers. See, for example, with regard to Cambodia, the MOU between the Government of the Kingdom of Cambodia and the Government of Kingdom of Thailand on Labour Cooperation (2015) and the Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of Kingdom of Thailand (2015), as well as the discussion of these instruments in section 5.2.2 above.

341 Sectors of employment permitted under the MOU are not specified and are to be determined through bilateral discussions.

342 Namely: 49 per cent from Myanmar, 40 per cent from Cambodia, and 11 per cent from Lao People's Democratic Republic.

343 Social Security Act (No 4) B.E. 2858 (2015).

344 These include migration via recruitment agencies; self-managed migration; via the Department of Employment/Ministry of Labour procedure; employers sending migrant workers abroad; employers sending migrant workers abroad for training; and based on the provisions of government-to-government arrangements.

345 Due to the unavailability of these agreements at the time of writing, it is not clear to what extent provision is made for social security protection by either the host country – or by Thailand – in favour of the affected Thai migrant workers.

Of particular importance though is the assistance available under the fund established to help Thai overseas workers, known as the Fund for Job-Seekers Working Abroad. The fund was established under the provisions of chapter VI the Employment and Job-Seeker Protection Act B.E. 2525 (1985). The following benefits are provided by the fund:

- health care, including health care for accidents that occur before leaving Thailand;
- disability compensation caused by accidents either inside or outside of Thailand; and
- death benefits.[346]

An extensive range of measures to support Thai overseas workers have been put in place over the years. Of particular importance is the institutional framework of support that has been rolled out, including:

- The Thailand Overseas Employment Administration (TOEA) is in charge of supervising and facilitating the process for Thai workers wishing to work overseas; coordinating with host countries; and providing a protective framework via the Fund for Job-Seekers Working Abroad. TOEA has also established several Labour Affairs Offices, located mostly in Thai embassies, to provide information and assistance to Thai workers.
- The Protection of Thai Nationals Abroad Division within the Department of Consular Affairs, Ministry of Foreign Affairs, is responsible for providing assistance to Thai nationals in distress, and for promoting and protecting Thai workers abroad.
- The Office of International Peoples' Rights Protection is responsible for giving legal advice; and for collaborating with the Ministry of Foreign Affairs and the Ministry of Labour to provide legal assistance to Thai nationals.[347]

5.2.10 Viet Nam

Background: Viet Nam has a history of incrementally rolling out social protection, in particular social security support, to migrant workers in Viet Nam and Vietnamese migrant workers abroad. This is partly a reflection of the relatively sizeable numbers of migrant workers so affected. It has been estimated that:[348]

- There were 83,585 foreign workers in Viet Nam in 2015, compared to 63,557 workers in 2011, an average annual increase of 6.5 per cent (or approximately 5,000 foreign workers per year). Most of these foreign workers are involved in highly skilled and professional positions, and represent a small portion of Viet Nam's total population of 92 million, and total working population of approximately 53.98 million.[349] According to 2015 World Bank data, approximately 25,600 of these migrant workers came from other ASEAN countries (ILO, 2015d). Recent Vietnamese data indicate that foreign workers in Viet Nam have come from 110 countries, with 71.6 per cent coming from Asia; 22.7 per cent from Europe; and 5.75 per cent from elsewhere (Nam, 2017).[350] In 2015, Viet Nam was one of the top 10 migrant-receiving countries in East Asia and the Pacific (Ratha, Plaza, and Dervisevic, 2016).

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346 Monrawee, 2016b: 32-33.
347 Ibid., 28–30.
348 For a general overview, see Minh, 2016.
349 Information provided by the Ministry of Labour, Invalids and Social Affairs (MOLISA), Viet Nam, July 2017, with reference to General Statistics Office of Viet Nam 2015 data and 2016 data emanating from the Bureau of Employment, MOLISA. See also Nam, 2017.
350 Nam (2017) also indicates that 83.7 per cent of foreign workers in Viet Nam are male, and 86 per cent are 30 years or older.

- According to Vietnamese data, during the period 2011–15 Viet Nam on average sent 95,000 workers each year to work abroad under contract, with that figure climbing to 115,000 per year for the period 2014–16.[351] Currently there are over 500,000 Vietnamese workers working abroad in 40 countries and territories. The majority of Vietnamese workers work in Taiwan (China) (175,000), Malaysia (60,000), Japan (60,000), the Republic of Korea (51,000), and Saudi Arabia (20,000). A small number of workers are working in Thailand and Cambodia (7,000).[352] Since 2015, Thailand has begun to manage migrant workers from Viet Nam, and has adopted a procedure to register Vietnamese migrant workers (MWG, 2017).[353] With regard to the rest of ASEAN, Vietnamese migrants have a low intra-regional presence: according to World Bank data, only about 3.6 per cent (95,000) of the Vietnamese migrants abroad were found to be in other ASEAN countries in 2015 (ILO, 2015d). International data indicate that as many as 2.6 million Vietnamese were residing outside Viet Nam in 2013 (ILO, 2015d), making Viet Nam one of the ten emigration countries in East Asia and the Pacific (Ratha, Plaza, and Dervisevic, 2016). In fact, in 2013, the ratio of the total number of Vietnamese abroad to total number of migrants residing in Viet Nam was 38.0 to 1. Vietnam has also been ranked among the top 15 countries in the world for emigration by migrants with a tertiary education, with 522,000 such individuals living abroad in 2010–11 (Ratha, Plaza, and Dervisevic, 2016).
- Remittances play a major role in the development of Viet Nam. The country has been receiving considerable amounts of remittances – in 2015 these amounted to $13.2 billion, the main sending countries being the United States ($7.45 billion), Australia ($1.12 billion), Canada ($923 million), and Germany ($714 million) (Pew Research Center, 2016). This made Viet Nam one of the top ten remittance-receiving countries among developing countries in the world in 2015 (Ratha, Plaza, and Dervisevic, 2016). The remittance flow to Viet Nam have grown rapidly, especially since 2005, and constituted 6.4 per cent of its GDP in 2015.[354] Limited amounts of remittances were sent from Viet Nam in 2015 – a total of $108 million, the main receiving countries being China ($48 million), India ($14 million) and Myanmar ($8 million) (Pew Research Center, 2016).

Migrant workers in Viet Nam: The Constitution of the Republic of Viet Nam, 2013, contains several provisions relevant to migrant workers both coming to and leaving from Viet Nam. Article 59(2) stipulates that the State "shall create equal opportunities for the citizen to enjoy social welfare, develop a system of social security, exercise a policy assisting old people, disabled, poor people, and people with other difficult circumstances." Article 58 contains provisions regarding, among others, universal health care and protection for mothers, children, and the family:

1. The State shall make investment in the development of the protection and care of the people's health, exercise health insurance for entire people, and exercise a priority policy of health care for highlanders, national minorities, islanders, and people living in extremely difficult economic and social conditions.
2. It is the responsibility of the State, society, the family and the citizen to ensure care and protection for mothers and children and to carry into effect the family planning.

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351 Information provided by MOLISA, July 2017, with reference to 2016 Department of Overseas Labor Administration data. According to these data, the figure rose from 88,300 in 2011 to 119,500 in 2015.

352 Ibid.

353 According to recent labour registration data from Thailand's Ministry of Labour, there are 1,569 Vietnamese workers currently allowed to live and work in Thailand.

354 It has been estimated that remittances received per capita have risen from just $17 in 1995 to almost $100 in 2011 (ILO, 2015d).

Article 16 of the Constitution guarantees equality of treatment in the following terms:

1. All citizens are equal before the law.
2. No one shall be discriminated in his or her political, civic, economic, cultural, and social life.

Apparently, the constitutional guarantees to have the right to social insurance[355] and to be entitled to health care and protection[356] are afforded only to citizens. Nevertheless, it should be noted that, generally, foreigners enjoy constitutional protection as well. Article 48 determines: "Foreigners residing in Viet Nam must obey the Constitution and law of Viet Nam; they shall receive State protection with regard to their lives, possessions and legitimate interests in accordance with the provisions of Vietnamese law."

From 1 January 2018, employees who are foreign citizens working in Viet Nam with work permits or practice certificates or practice licenses granted by competent Vietnamese agencies are to be covered by compulsory social insurance.[357] According to article 4 of the Law on Social Insurance, 2014, compulsory social insurance covers the following benefits/risks:

- sickness;
- maternity;
- labour accident and occupational disease;
- retirement; and
- survivorship allowance.

Furthermore, with regard to health insurance, according to article 12(1)(a) of the Health Insurance Law, 2008, (as amended by the 2014 Law amending the Law on Health Insurance),[358] employees on indefinite contracts or contracts of at least a full three month's duration, as well as salaried business managers and officials and civil servants (collectively referred to as "employees") are covered by the law. As foreign workers complying with these criteria are not explicitly excluded in the law, they must be regarded as included.

Chapter VI of the Law on Employment, 2013, provides for unemployment insurance. Certain categories of "workers" are included within the scope of this chapter (see article 43(1)). However, although chapter VI, article 43(3) obliges "foreign agencies and organizations" to contribute to unemployment insurance, article 3(1) restricts the term "worker" to Vietnamese citizens. The implication is that foreign workers are excluded from contributing to and benefiting from unemployment insurance.

No provision is made for the coverage of foreign workers under Viet Nam's social assistance regime.

Except for the Maritime Labour Convention, 2006, Viet Nam has not ratified any social security-specific ILO Conventions. It should be noted that the Maritime Labour Convention does specify the following branches of social security: medical care, old-age benefits, and employment injury benefits. Viet Nam has also not ratified any of the ILO migration-related Conventions;[359] nor has it ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of

[355] Constitution of the Socialist Republic of Viet Nam, article 34.
[356] Ibid., article 38.
[357] See article 2(2) of the Law on Social Insurance, 2014, and Vietnam Law and Legal Forum, 2016.The employee will have to pay 8 per cent of their monthly wage while the employer will have to pay 18 per cent of the full pensionable wage, making a total 26 per cent contribution to the social insurance fund. The issuance of working visas and work permits is regulated by the provisions of the Labour Code, 2013. See now also Decree No. 11/2016/ND-CP and Circular No. 40/2016/TT-BLDTBXH, which further regulate the issuing of work permits, indicating also that the validity of a work permit is limited to two years.
[358] See Law No. 46/2014/QH13 amending the Law on Health Insurance.
[359] Ibid., 5.

their Families, 1990. It has been suggested that Viet Nam should review this situation with a view to the possible ratification of these ILO and UN instruments.[360] However, Viet Nam did ratify the 1966 UN International Covenant on Economic, Social and Cultural Rights in 1982, and is therefore bound by the provisions of that instrument related to the right to social security and associated fields, such as the right to health.[361] At present, Viet Nam is in the process of studying to develop conditions for signing framework agreements with a number of sending countries on social insurance policy for migrant workers, especially foreign workers working in Viet Nam, and on protection and promotion of the rights of migrant workers.[362]

Vietnamese workers abroad: Protection extended to Vietnamese abroad is first and foremost a matter of constitutional regulation. The Constitution of 2013 stipulates that "overseas Vietnamese make up an inseparable part of the Vietnamese nationalities community",[363] and that "The Socialist Republic of Viet Nam encourages and creates conditions for Vietnamese residing abroad to preserve the Vietnamese cultural identity, maintain close ties with their families and native land, and to contribute to the construction of the native land and the nation."[364]

As a deliberate policy measure, the Social Economic Development Strategy of Viet Nam (2011–2020) focuses on increasing the quality and effectiveness of sending Vietnamese guest workers abroad. This is supported by a social security protection regime available to Vietnamese overseas workers. The overarching law here is the Law on Vietnamese Contract-based Workers Abroad. Article 17 of this law requires that the key contents of "manpower supplying contracts" (i.e., agreements meant to facilitate the overseas movement of Vietnamese labour) should include social insurance coverage; the contract of employment with the foreign employer should also reflect this.

According to Minh (2017), article 22 of Decree 88/2015/NĐ-CP (7 October 2015) (i.e. the Decree stipulating administration penalty in labor, social insurance, sending Vietnamese workers to work abroad under a contract) extends compulsory social insurance under the Social Insurance Law of 2014 to Vietnamese workers working abroad, at least for the purpose of two regimes: retirement benefits and death benefits.[365]

Regarding health insurance, Decree No. 105/2014/ND-CP (15 November 2014),which details and provides guidance on the implementation of a number of articles of the Health Insurance Law, stipulates in article 2(2) that: "An employee who attends a training course or goes on a working mission overseas is not required to pay health insurance premiums; the training or working period shall be regarded as the health insurance premium payment period till the date the employee receives a decision of his/her agency or organization receiving him/her back to work."

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360 Comment provided by MOLISA, July 2017.
361 See Articles 9 and 12 of the Covenant, respectively.
362 Information provided by MOLISA, July 2017.
363 Constitution of the Socialist Republic of Viet Nam, article 18(1).
364 Ibid., article 18(2).
365 Minh (2017) also indicates the following flexible arrangements provided for:
- level of the premium rate: equivalent to one month's salary before going abroad or to two times of basic salary.
- Method of premium payment: Payments made once every 3 months, 6 months, or 12 months, or in a lump sum within the time limit stated in the contract for sending employees to work abroad.
- Payment is to be made directly to social insurance agencies of the locality where the worker resided before going abroad or via the enterprise or non-business organization that have sent them to work abroad.

Concerning access to social assistance, it has been indicated that:

> Social assistance is only applicable for Vietnamese people who are belonging [to] disadvantaged groups including the poor; people living in remote, mountainous and ethnic minority areas; workers in rural areas and informal sector; unemployed workers; the disabled; children; old-age and sick people; and those affected by natural calamities and other force-major risks. Therefore, social assistance such as family allowances, non-work related invalidity only apply for disadvantaged groups and [are] not yet applied for Vietnamese guest oversea[s] worker[s] (Houng, 2016, p. 20).

However, it has been noted that in practice there are policies to assist overseas Vietnamese workers when they are at risk. This support emanates from the Overseas Employment Assistance Fund (in accordance with the provisions of the Law on Vietnamese Contract-based Workers Abroad), and is meant to cover Vietnamese workers working overseas when they are at risk (death, occupational accidents, and other objective risks such as loss of employment, etc.).[366]

The above statutory regime is supported by bilateral agreements, which Viet Nam has concluded with a number of countries. This includes a 2015 bilateral agreement with Thailand.[367] During 2015, the MOUs concluded by Thailand were revised to broaden the cooperation on labour issues, highlighting also skill development and re-employment.[368] The term of employment for migrant workers is specified in the MOUs as four years with a 30-day interim period between work periods.[369] Migrant workers moving between Vietnam and Thailand are predominantly employed in low-skilled jobs in fishing, agriculture, construction, manufacturing, domestic work and other services; comparatively higher wages offered in Thailand constitute the main pull factor for Vietnamese migrant workers (ILO, 2016). However, it should be noted that this MOU does not contain specific provisions concerning social protection coverage. Important in this regard is that, at present, Viet Nam is in the process of negotiating bilateral agreements on social insurance with Germany and the Republic of Korea.[370]

From the above it can be inferred that there is an increasing emphasis on protection of migrant workers' rights in Viet Nam. The above description of the forms of coverage and protection provided to both migrant workers residing in Viet Name and Vietnamese workers abroad clearly demonstrates the acknowledgement on the part of Viet Nam that labour migration is an inevitable trend, and that the role of migrant workers should be appreciated. Viet Nam has increasingly paid attention to the rights of migrant workers, especially their right to social protection.[371] As has been noted, and in line with the constitutional pronouncement to this effect indicated above, the Vietnamese Government "considers Vietnamese overseas as [an] integral part of the Vietnamese people. This community plays an important role in the economic development of the country" (Van Dinh, n.d.).

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366 Information provided by MOLISA, July 2017. See also the "Scheme for supporting poor districts to improve sending workers to work overseas to make contribution to sustainable poverty reduction 2009–2020", approved in Decision No 71/2009/QD-TTg, dated 29 April 2009.

367 For more see MOLISA, 2015; ILO, 2016.

368 The MOUs are in two parts: a cooperation framework and an agreement.

369 Sectors of employment permitted under the MOU are not specified and are to be determined through bilateral discussions.

370 Information provided by MOLISA, July 2017).

371 See Minh, 2016.

5.3 Common policy gaps and implementation issues

Social security protection has been extended in host country social security systems, but it has been partially channelled into separate but inferior arrangements – There are two somewhat conflicting overall impressions left by recent developments in the social security systems of ASEAN destination countries. The first is that social security coverage of migrant workers over a wider range of social security benefits has expanded considerably over the last 10–20 years. ASEAN Member States have been adopting legal and other measures, or extended the reach of existing measures, to also cover migrant workers in their social security systems. And yet, almost paradoxically, several ASEAN Member States have developed separate but inferior regimes for the coverage of migrant workers, particularly with regard to unskilled and lower-skilled migrant workers. These separate schemes provide protection that is less beneficial in comparison with that available to nationals, and at times also to higher skilled non-nationals.

Limited adoption of international instruments and insufficient application of international and regional standards – With some notable exceptions, ASEAN countries have been slow to adopt UN and (in particular) ILO instruments that provide for social security protection, in particular for migrant workers. Migrant-specific instruments also have not been widely ratified. Compliance with the standards embedded in these instruments has often been weak, as is evident from the increasing trend to provide separate, inferior social security regimes to major categories of migrant workers, as outlined above. In the process, overall ASEAN objectives, including regional integration on the basis of equal treatment, are not being adequately and actively pursued. International supervisory and investigative bodies, in particular the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), have been noting non-compliance even with instruments ratified by some ASEAN Member States. It should be noted that in some cases (e.g., jurisprudential responses in Thailand regarding the extension of workers' compensation to undocumented migrant workers) the call for reform towards non-discriminatory treatment has been heeded.

Extended protection for national workers employed abroad – In perhaps one of the most important and notable developments in recent years, several ASEAN Member States – in fact seven out of the ten countries – have introduced measures to provide at least some social security protection to their own workers abroad, invariably strengthened by an extensive raft of supporting measures, including a supportive, dedicated institutional and operational framework. The social security protection extended to these workers is provided for in a variety of ways: for example, through the establishment of welfare funds and/or compulsory or voluntary contributions to existing and/or special social security schemes of the country of origin. Benefits usually remain restricted to certain social security risk areas and are at times inferior to those provided to national workers in the countries of origin concerned. This development highlights the inadequate provision often made in the social security regimes of destination countries, but also the limitations that are inherent in the unilateral extension of social security protection by countries of origin, as discussed later in this report. Nevertheless, this remains a core component of increasing protection of migrant workers abroad, and needs to be reflected more explicitly in the framework of international and regional standards.

Bilateral and multilateral arrangements as the primary vehicle for providing social security coverage to migrant workers – In keeping with developments elsewhere in the world, several ASEAN Member States are increasingly using bilateral agreements and MOUs with countries beyond the ASEAN region as the basis for ensuring increased protection of their workers abroad. This protection also extends to social security provision and is often embedded in bilateral labour agreements and MOUs. However, with regard to bilateral agreements made with other ASEAN Member States, social security protection – if provided for – remains weak and inadequate. As is indicated later in this report, much can be learnt

from several good practice examples of countries that are effective in achieving proper social security coverage for their nationals working abroad, often achieved via dedicated bilateral social security agreements. The example of the Philippines can in particular be mentioned. Of course, adopting a multilateral approach to social security coverage, especially via a multilateral agreement to provide social security protection to migrant workers, will have the greatest impact in the ASEAN region, as is indicated in several worldwide examples of effective multilateral social security agreements. As is discussed later in this report, both bilateral and multilateral arrangements can be developed incrementally, to allow for the flexibility needed by the concrete context of the countries involved and their social security systems. The fact that several countries in the ASEAN region may already have signed and ratified a particular ILO or UN instrument providing for social security protection of migrant workers could be a rallying point for developing the initial framework of implementation and operationalization of bilateral agreements and even a multilateral agreement.

Addressing legal and other constraints on migrant workers' access to social security benefits – There are several factors that impede the extension of social security coverage to migrant workers. Some of these factors relate to treatment that migrant workers receive in destination countries, and some are a function of terms under which they can gain access to the social security benefits of these countries. This has caused several migrant-sending ASEAN countries to place a moratorium on employment of their nationals in certain sectors (in particular the domestic work sector) in specified receiving countries. However, the factors impeding access to social security benefits also include legal restrictions relating to the scope of application of protective legislation, as well as other factors impacting directly and indirectly on migrant workers. These include:

- the exclusion or exemption of categories of workers from protection (in particular domestic workers), or the exclusion/exemption of smaller establishments;
- the inability of migrant workers to meet the eligibility criteria for accessing certain social security benefits, in particular long-term benefits such as an old-age pension, due to the limited period for which most migrant workers are allowed to work in the destination country;
- the inadequate time that a migrant worker has to finalize social security benefit payments should their period of employment terminate and they would have to leave the country – a problem that is linked to unfamiliarity with available benefits and the claims process;
- the absence of tax-funded (i.e., social assistance) support for migrant workers, except for certain benefits for permanent residents in a few ASEAN Member States (in particular Singapore); and
- the current large-scale absence of portability arrangements in ASEAN, with some notable exceptions. The absence of such arrangements appears from both the prevailing legal systems in countries of destination and countries of origin, as well as the provisions of bilateral arrangements between the countries concerned. As discussed later in this report, there is worldwide evidence of best practices in relation to providing appropriately for portability, either unilaterally or bilaterally.

The need for a streamlined, coordinated, and consolidated national approach to social security coverage of migrant workers – In most ASEAN Member States there are a large variety of measures applicable to various categories of migrant workers, as far as access to social security benefits is concerned. Access may depend on:

- The migrant status of the person concerned, in terms of the immigration category within which they may fall. As is evident from the ASEAN country profiles above, when it comes to accessing social security benefits, vast distinctions exist in some ASEAN Member States between permanent residents and several other migrant (worker) categories. Indeed, further distinctions may also exist among these other migrant (worker) categories.
- Whether the migrant worker has access to the national framework of protection in the country of destination (i.e., the framework open to nationals), or has to fall back on the more restricted dedicated migrant worker schemes in that country (see the discussion above).
- Whether the migrant worker falls within an excluded or exempted class of employees, or works within a class of establishment that is excluded or exempted.
- The possibility that a migrant worker may voluntarily contribute to a (national) scheme providing one or more social security benefits, if membership is not compulsory.

All of the above considerations confirm the need for and importance of overhauling, streamlining, and simplifying the predominantly migrant category approach to social security benefit entitlement. There is also a need to consolidate the various avenues for migrant workers to access social security benefits for migrant workers.

6. Pointers for the development of a more streamlined approach to social security protection for migrants

6.1 International standards[1]

6.1.1 Overview of scope and content of key international instruments and standards

For the broad scope of international instruments, see generally, among others:

- ILO Conventions and Recommendations as well as UN Conventions;[2]
- ILO Multilateral Framework on Labour Migration;

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1 See M. Olivier and A. Govindjee, "Protecting and integrating migrant workers in ASEAN social security systems" *Institutions and Economies* (Vol 4, No 8, Oct. 2016) 59-76.

2 The main international instruments include the list below, with the first three placing emphasis on migrant workers' rights, and the last three focus on promoting equal treatment of migrants:
- ILO Migration for Employment Convention (Revised), 1949 (No. 97) and accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86);
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and accompanying Migrant Workers Recommendation, 1975 (No. 151);
- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990;
- ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19);
- ILO Equality of Treatment (Social Security) Convention, 1982 (No. 118); and
- ILO Maintenance of Social Security Rights Convention, 1982 (No. 157).

- UN ECOSOC General Comment No. 19 on the right to social security (2008);
- ILO Recommendation No. 202: social protection floor to be extended to "all residents" (a so-called "soft law" non-binding, yet influential instrument); and
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (UN Migrant Workers Convention).

The scope of the relevant international standards can in general terms be summarized as follows:

- International labour standards set out by ILO Conventions and Recommendations are "minimum labour standards that have been universally agreed upon at the international level" and do not make a distinction between workers based on nationality (Ong and Peyron Bista, 2015, p. 68). This is also the position within UN instruments. For example, both Article 22 of the Universal Declaration of Human Rights, 1948, and Article 9 of the International Covenant on Economic, Social and Cultural Rights, 1996, confirm that social security is a human right, and neither instrument restricts this rights-based protection to documented migrants only.
- "Aliens" lawfully residing in the territory of a State shall also enjoy, in accordance with the national laws, the rights to health protection, medical care, social security, social services, education, rest and leisure, provided that they fulfill the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State.[3]
- Migrant workers and members of their families should enjoy, in the State of employment, the same (social security) treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.[4]
- Migrant workers (including undocumented migrant workers) and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned.[5] States must ensure equality of treatment for (documented) migrant workers and their families in relation to access to housing, social housing schemes, social and health services, unemployment benefits, and unemployment services, providing conditions are met and subject to immigration terms.[6]
- States should guarantee equality of treatment of social security provisions for migrant workers for any or all of the nine branches of social security that are in force in its territory and for which it agrees to be bound.[7] This is also explicitly acknowledged in Article 68 of ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), in particular in relation to contributory schemes. Article 68(1) stipulates: "Non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes."

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3 Article 8 of the UN Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live, 1985.
4 UN Migrant Workers'' Convention, 1990, Article 27.
5 Ibid., Article 28.
6 Ibid., Articles 43 and 45.
7 Equality of Treatment (Social Security) Convention, 1962 (No. 118). This provision is dependent upon the home country of the migrant also being a partyto Convention No. 118, and to specific conditions regarding use of public funds.

A further reflection on the international standards framework reveals that from a human rights perspective, States must respect, protect, promote, and fulfil the human rights of non-citizens (including those in an irregular situation) and governments that exercise their ability to defend the sovereignty of their State are required to do so in full respect of their human rights obligations to migrants (OHCHR, 2012).[8]

> A rights-based approach constitutes a framework of action, as well as a set of guidelines and tools for migration policy-makers, for developing the capacity of duty bearers to meet their obligations and for enabling rights holders to claim their rights: "Using a human rights-based approach will therefore enable policy-makers to identify who are the most vulnerable groups within their society, and to target their policy actions towards alleviating this vulnerability and promoting empowerment" (OHCHR, 2012).

Migrants are particularly vulnerable because they are outside the legal protection of their countries of nationality, often unfamiliar with national language(s), laws, and practices and lacking familiar social networks, making them less able than others to know and assert their rights. Migrants in an irregular situation are even more vulnerable, as they can be denied access to public services in law, or are unable to access such services in practice through fear of detection (OHCHR, 2012: 15). The Office of the High Commissioner for Human Rights (OHCHR) has argued as follows in this regard:

> While governments may be compelled to take decisive action to improve their economic situation, they should take great care not to introduce measures that impact on rights of those of the most vulnerable, including minorities, migrants and the poorest sectors of society who were already struggling to make ends meet (OHCHR, 2012, p. 3).

Guidelines adopted by the UN Human Rights Council (2012, para. 86) support this type of inclusive reading of the right to social security for everyone, with particular prioritization for marginalized persons. This is echoed by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 19[9] on the right to social security, which is enshrined in Article 9 of the International Covenant on Economic, Social and Cultural Rights, 1966.[10]

In the Southern African Development Community (SADC), a representative developing world context, note should be taken of South African constitutional case law, which has employed the right to human dignity and the vulnerability of non-citizens as key concepts informing the extension of protection to migrants generally and to certain categories of non-citizens in particular.[11] Furthermore, subject to some qualification, the right of non-citizens to equal treatment is also included in human rights instruments. The general principle contained in international human rights instruments pertaining to non-citizens is that all persons, by virtue of their essential humanity, should enjoy all human rights unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective (Weissbrodt, 2004). The latter part of previous sentence may in principle allow for differential treatment of different categories of migrants.

In its General Comment No. 15 the UN Human Rights Committee explained that "the rights set forth in the Covenant [on Civil and Political Rights] apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness… The general rule is that each one of the rights

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8 See further Olivier and Govindjee, 2013, para. 4.2.2.

9 E/C12/GC/19 of 4 February 2008.

10 See General Comment No. 19, paras 23, 28, 38, 51, 59(b) and (e), 64, 68, 81, and 83.

11 See in particular *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development* 2004 6 BCLR 569 (CC) paras 46–47; Lawyers for Human Rights v Minister of Home Affairs 2004 7 BCLR 775 (CC); 2004 4 SA 125 (CC).

of the Covenant must be guaranteed without discrimination between citizens and aliens."[12] It has also been remarked that, "[A]ll current ILO social security standards define the personal scope of coverage irrespective of nationality and almost all contain similar clauses on equality of treatment between nationals and foreign workers in the host country, and most of them contain special non-discrimination clauses, such as, for example, Convention [No.] 102 of 1952" (Baruah and Cholewinski, 2006).

The extension of equal treatment is in fact no longer dependent on reciprocity – a tendency which is also confirmed by the reference in a recent international ILO instrument – ILO Social Protection Floors Recommendation, 2012 (No. 202), which suggests the extension, in principle, of a national social protection floor to "all residents". And yet, the position appears to be particularly nuanced: there is a discernible trend, confirmed by both international standards and state practice (including national laws), towards affording enhanced protection to regular and longer-term migrant workers, often with reference to key principles operative in this domain, such as lawful residence, lawful employment, and means of subsistence criteria.[13] Again in the SADC context, the constitutional case law emanating from South Africa accepts that the right to equality accrues to non-citizens, while simultaneously acknowledging that certain distinctions may be drawn, also for purposes of access to social assistance between, for example, permanent and temporary residents.[14]

Nevertheless, a human rights approach demands that all migrants, including irregular migrants, are entitled to at least basic forms of protection. In the words of the Global Commission on International Migration:

> Entering a country in violation of its immigration laws does not deprive migrants of the fundamental human rights provided by human rights instruments… nor does it affect the obligation of States to protect migrants in an irregular situation (ILO, 2006, paras 9–10).

In Europe, for example, the human rights approach (with reference to the European Convention on Human Rights) has been narrowly construed to imply some State responsibility in extreme cases of severity (e.g., a life-threating situation). The non-binding ILO Multilateral Framework on Labour Migration (paras 9–10) confirms that minimum access to emergency health care should be provided to irregular migrants, while regular migrants should benefit from all medical care services. Indeed, it has been noted that the provision of basic forms of social assistance and emergency health care to undocumented/irregular migrants is clearly developing to be seen as the mainstream intervention (Kapuy, 2011).

At least two specific, related legal principles (coupled with related considerations, as explained below) have developed in order to assist States in managing the complex inter-relationships described above:

- First, the principle of "lawful residence" has been utilized by countries in order to differentiate between the (enhanced) protection offered to "lawful residents", on the one hand, and the lesser recognition afforded to the rights of irregular/undocumented residents, on the other.[15]
- Second, even though this is not couched in the form of an international standard, the principle of requiring a "minimum level of subsistence" on the part of migrants (also referred to as a "means of subsistence test") has permitted many countries to develop their own financial criteria for purposes of granting lawful residence status to migrants, implying that

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12 See E/CN.4/Sub.2/2002/25/Add.1 paras 14, 50–51, 63, and 66.
13 See Olivier and Govindjee, 2013, para. 4.2.2.
14 See section 2.3 above.
15 Reference to this test is found in international and regional conventions, such as the European Convention on Social and Medical Assistance and the UN Convention on the Status of Refugees.

migrants who are unlikely to be able to support themselves and their dependants will be refused admission to that country and will be unable to enter that country lawfully. Similarly, (temporary) migrants who become dependent on State support, may on the basis of this principle be refused continued residence[16] (Olivier and Govindjee, 2013).

A third principle often applied is a requirement that a migrant be lawfully employed in order to access certain rights. For example, at the European Union level, the EU Single Permit Directive 2011/98 (i.e., the EU Single Application Procedure) guarantees access to a common set of rights on the basis of equality, including social security rights, if a migrant worker is working legally (lawful employment principle). However, restrictions are possible – EU Member States may exclude migrant workers employed on the basis of a contract of less than six months' duration. It is interesting to note that this directive provides for two important social security coordination principles: (1) totalization of insurance periods; and (2) portability principles. For a reflection on these principles, see below.

While it is not possible to discuss all of these matters in full here, it should be noted that each of these principles may decisively influence the outcome of the particular social security situations of various categories of non-citizens. The application of the principle of lawful residence may, for example, also be combined/qualified with the ancillary consideration of "tenuousness", so that non-nationals who have a more established relationship with a country because of the lengthy duration of their lawful residence in that country may enjoy additional entitlements[17] – as has also been recognized in constitutional jurisprudence in South Africa, with reference to access to social assistance benefits (Olivier, 2012). With regard to social insurance, such principles may also be considered in conjunction with a requirement of lawful employment before (social insurance) benefits accrue to specified categories of non-citizens.[18]

6.1.2 Impact of specific GATS rules under the World Trade Organization (WTO): Skilled professionals and business persons?

As noted earlier, in the ASEAN context, freedom of movement seems to be particularly stressed, if not prioritized, for skilled professionals and business persons.[19] Internationally, freedom of movement for skilled professionals and business persons is often provided for in free trade and trade-in-services instruments. At the global level, such freedom of movement is informed by GATS (General Agreement on Trade in Services) rules.

For the ASEAN context, this may be relevant in view of the 1995 adoption of the ASEAN Framework Agreement on Services (AFAS), which came two years after ASEAN launched its initiative to work towards an ASEAN Free Trade Area (AFTA) through the Agreement on Common Effective Preferential Tariff Scheme for the AFTA. AFAS is based closely on the provisions of GATS. Free flow of services is an essential element in building the ASEAN Economic Community (AEC), as envisaged to be realized in

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16 The test is directed towards ensuring that a person does not become a burden on a State of which they are not a citizen, serving as a barrier that prevents financially unstable persons from entering a country on a temporary basis and as a basis to exclude and remove financially dependent persons from the country.

17 This resonates with the concept of "habitual residence" as used by countries such as the United Kingdom and Ireland as a qualifications criterion for receiving social security benefits. A further distinction of this sort may be drawn between the position of residents and workers while they are lawfully resident in the country, and the position of these people when they are outside the boundaries of the country.

18 This principle may, for example, be inferred from the Migration for Employment Convention (Revised), 1949 (No. 97). Also, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, while providing a range of rights for all migrant workers, contains a special part that provides additional rights for regular/lawfully employed migrants.

19 See section 2.1 above.

year 2020.[20] Also in this regard, the ASEAN Agreement on the Movement of Natural Persons of 2012, which builds on the AFAS, contains explicit provisions and mechanisms for the temporary entry or temporary stay of the following categories of natural persons of a Member State into the territory of another Member State: (1) business visitors; (2) intra-corporate transferees; (3) contractual service suppliers; and (4) other categories as may be specified by the relevant Member State.[21] Provision is made for a review of the Member States' commitments made under the Agreement to achieve the further liberalization of the movement of natural persons.[22]

However, the social security implications, such as portability of social security benefits and coordination of social security, have not yet been developed. In fact, some of these portability implications are fraught with complexity – particularly when one bears in mind the emphasis placed on and likely operation of the most favoured nation (MFN) and national treatment principles embedded in ASEAN trade-in-services instruments. This is a debate that is already taking place at the global level within the framework of the GATS rules, and may be similarly applicable to the intra-ASEAN context. As noted in Olivier, Andrianarison, and McLaughlin (2013), the relationship between the GATS rules operating under the WTO's auspices and national social security systems is a complex one. GATS is a framework agreement containing general rules and obligations applicable to all members of the WTO and to services sectors as well.[23] One of the applicable rules is the MFN rule, which requires WTO member States to grant equal treatment to services and service suppliers of different member States (GATS, article II). One of the obligations imposed on member States is the national treatment principle: member States must accord to services and service suppliers treatment no less favourable than they accord to their like services and service suppliers (GATS, article XVII).

On the face of it, public social security provision, such as a national pension scheme operated by a public institution, appears to be excluded from the purview of GATS rules and obligations.[24] Nevertheless, due to a lack of WTO guidelines and a lack of clarity in the definitions used, it appears that introducing a private element in social security provisioning – such as the opportunity to opt out of a public scheme, or utilizing private service providers – may render the relevant scheme subject to the MFN rule and the national treatment obligation, and may prove to be irreversible from a WTO/GATS perspective. This would have the consequence of opening up the supply of social security services to competition from outside the country concerned.

Also, problems may be experienced if a country's bilateral social security agreements contain different provisions for different member States, for example in providing for the exportability of social security payments to select countries of origin. On the other hand, operation of the national treatment obligation may be of assistance to a temporary migrant worker who contributes to the social security system of a host country: i.e., the migrant worker may be entitled to equal treatment with nationals of the host country, in terms of access to social security (see Yeates, 2005).

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[20] Envisaged by the ASEAN Heads of States/Governments through the Declaration of Bali Concord II@, issued in 2003. See further ASEAN (2015i, p.1), which further notes: "Free flow of services is an essential element in building the ASEAN Economic Community (AEC)... The subsequent decision at the 11th ASEAN Summit in December 2005 to accelerate the liberalisation of trade in services by 2015, re-affirms the seriousness of ASEAN to further integrate its services sector and deepen its economic integration process."

[21] ASEAN Agreement on the Movement of Natural Persons, 2012, article 2(1) read with the Preamble, articles 1(a) and (b), and article 4. Article 3 contains comprehensive definitions of the categories of natural persons indicated in (1) to (3). However, compliance with visa requirements may still be required by the receiving Member State, per article 2(4). The Agreement further provides for mechanisms to facilitate the mutual recognition of education or experiences obtained, requirements met, and licenses or certifications granted in other ASEAN Member States, per article 13.

[22] Ibid., article 7.

[23] The GATS pertains to international trade in services and to measures concerning, among others, subsidies, grants, licencing standards, qualifications, and local content provisions that have an effect on the international supply of a service at the points of production, distribution, marketing, sale, and delivery, per GATS, article XXVIII. For more, see Yeates, 2012, and Raja, 2012.

[24] This follows from the exemption of the following public services: government procurement and the direct supply of services by government (Yeates, 2012). In addition, the Annex on Financial Services to GATS formally excludes social security from the scope of GATS, on the basis that it constitutes a "service supplied in the exercise of governmental authority".

6.1.3 Weak ratification record of ASEAN Member States

Employment and social security protection international standards and principles emanating from the UN, including the ILO, have either not been sufficiently ratified or are poorly implemented by ASEAN countries (Olivier, 2013), making the implementation of regional standards even more important. In particular, no ASEAN Member State has ratified the main ILO social security instrument, i.e. the Social Security (Minimum Standards) Convention, 1952 (No. 102).[25] The ratification of migrant worker-specific ILO instruments by ASEAN Member States can be depicted as follows below.

Six ASEAN Member States – Indonesia, Malaysia,[26] Myanmar, the Philippines, Singapore, and Thailand – have ratified the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), which provides occupational injury protection for non-national workers.[27] This is the only one of the key Conventions to be ratified by a majority of ASEAN Member States. This being so, three matters need to be raised in particular:

- Since these countries have ratified Convention No. 19, they are bound to comply with the provisions contained in the Convention. However, the CEACR regularly reports that this has not been the case for Malaysia and Thailand.
- Ratification of Convention No. 19 offers an opportunity to start with ensuring the delivery of occupational injury protection for migrant workers in at least six countries of ASEAN.
- The ratification by six Member States also provides a basis for inclusion of occupational injury protection in bilateral agreements concluded between these countries. Also, it provides a starting point for a multilateral arrangement involving these six Member States or perhaps all ten Member States.

Progress with respect to other migrant worker-related Conventions (see table 2 above) or bilateral social security agreements between ASEAN Member States has been less promising (Ong and Peyron Bista, 2015).

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[25] Certain other social security standards, not addressed in this section, also have provisions that are relevant for migrant workers, including the Employment Injury Benefits Convention, 1964 (No. 121); the Medical Care and Sickness Benefits Convention, 1969 (No. 130); the Social Security (Seafarers) Convention (Revised), 1987 (No. 165); and the ILO Maritime Labour Convention, 2006. The ratification of the latter Convention by several ASEAN Member States is addressed in chapter 5 above.

[26] Convention No. 19 has been ratified only by Peninsular Malaysia and the State of Sarawak, while the Malaysian State of Sabah has instead ratified the Migration for Employment Convention (Revised), 1949 (No. 97), which overlaps with Convention No. 19.

[27] This Convention has interim status and is currently open for denunciation.

Table 2. Ratification of key International Conventions related to migrant workers

	Migrant workers' rights			Equal treatment in social protection[1]		
Country	Convention No. 97[a]	Convention No. 143[b]	ICMW, 1990[c]	Convention No. 19[d]	Convention No. 118[e]	Convention No. 157[f]
Brunei	–	–	–	–	–	–
Cambodia	–	–	2004[i]	–	–	–
Indonesia	–	–	2012	1950	–	–
Lao PDR	–	–	–	–	–	–
Malaysia	1964[g]	–	–	1964	–	–
Myanmar	–	–	–	1927	–	–
Philippines	2009[h]	2006	1995	1994	1994[j]	1994
Singapore	–	–	–	1965	–	–
Thailand	–	–	–	1968	–	–
Viet Nam	–	–	–	–	–	–

– = Convention not ratified.

Note:

[1] It has to be noted that both ILO Conventions 97 and 143, categorized here under the heading of "Migrant workers' rights", also provide for equality of treatment.

[a] Migration for Employment Convention (Revised), 1949 (No. 97)

[b] Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

[c] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

[d] Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

[e] Equality of Treatment (Social Security) Convention, 1982 (No. 118)

[f] Maintenance of Social Security Rights Convention, 1982 (No. 157)

[g] only Malaysia-Sabah (also excludes the provisions of Annexes I to III).

[h] excludes the provisions of Annexes II and III.

[i] year of signature (yet to be ratified).

[j] includes branches (a) to (g) only.

Source: ILO and ADB, 2015, p. 95

6.2 Unilateral measures

6.2.1 Migrant-receiving countries: The need for core reforms

Several reforms in the legal and policy domain of ASEAN migrant-receiving countries appear to be required.

In the first place – and this applies to both migrant destination and origin countries in ASEAN – there are clear indications of nationality discrimination in the social security (and related) laws and practices of some ASEAN countries. This nationality discrimination is difficult to justify, given the emphasis on regional integration in ASEAN's foundational instruments, and the need to develop appropriate bilateral and multilateral arrangements on the basis of reciprocity and equal treatment. However,

there appears to be an awareness of the need to draft social security legislation in some ASEAN Member States, and that these legislative instruments should be aligned with international standards, including recognition of the right of migrant workers to equal treatment.

Second, there is a need to revisit the overly strict immigration law frameworks in many ASEAN countries and their impact on the social security domain. The reality of the magnitude and nature of intra-ASEAN migration – a reality that includes porous borders and large-scale informal and undocumented cross-border activity – necessitates a cooperative and flexible approach. This also applies to the policy of forced departure from sending countries after a very short space of time following termination of employment, which makes it impossible for many returning migrant workers to make the necessary social security arrangements.

Third, significant scope exists for the cross-border payment of benefits and provision of social security services by host country social security institutions. At present, only limited provision is made for the exportability of social security benefits within the region. Also, there is need to assess service delivery problems and deficiencies, which are apparently experienced by migrant workers and their survivors as a result of the policy, institutional, and operational fragmentation in destination country social security systems as well as the lack of cooperation among social security institutions in the destination country and their counterpart institutions in countries of origin.

Fourth, it appears necessary, that the host country policy, legislative, and operational frameworks impacting cross-border social security payments need to be reconsidered. In this regard, existing exchange control, public finance, and associated transaction costing arrangements would have to be reconsidered with a view to enhancing beneficiaries' access to accrued social security benefits.

As indicated elsewhere in the report, the adoption in 2011 of the EU Single Permit Directive[28] provides an important example of a supra-national arrangement that compels host countries (i.e., EU Member States) to extend both labour law and social security protection to lawfully residing migrants, in principle on the same basis of protection extended to their own nationals. This Directive establishes a single application procedure for third-country nationals to reside and work in the territory of a Member State, together with a common set of rights (including decent basic working conditions and access to social security) for third-country workers legally residing in a Member State.[29] Third-country nationals will specifically be granted treatment equal with that of EU nationals in matters concerning pay and dismissal; health and safety at work; the right to join trade unions; and access to public goods and services, if they are working legally in Europe.[30] As has been noted elsewhere in this report, equal treatment is also provided with regard to social security, but subject to some restrictions, e.g., EU Member States are permitted to apply social security restrictions to third-country workers with contracts of less than six months' duration. The Directive essentially guarantees, with reference to the principle of lawful employment, that "all persons working legally in Europe must have the same rights as European workers" (Migration Policy Group, 2011, p.1). It is also important to note that this Directive appears to adopt an integrated approach towards labour law and social security coverage and application, which is potentially relevant for the construction of a more coordinated legal response to the challenges associated with migrant work.

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[28] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

[29] Article 12 of the Directive. See Migration Policy Group, 2011.

[30] Ibid.

6.2.2 Country of origin involvement: Extension of coverage and the provision of institutional and other forms of support[31]

Extending social security coverage unilaterally to citizens living and working abroad provides another avenue for ASEAN countries of origin. Some migrant-sending countries in Asia and elsewhere in the developing world have taken stock of the vulnerable social and economic position of their citizens living and working abroad. This is in particular true of ASEAN, as no less than seven ASEAN Member States have adopted unilateral approaches to providing at least some form of social security coverage to citizens abroad.

The vulnerable position of migrant workers in destination countries flows partly from weak social protection coverage in these countries, and partly from the lack of bilateral social security coordination arrangements between many migrant-sending countries and host countries. Bilateral social security agreements are still new to large parts of the developing world; where they do exist, they often only cover a limited range of benefits, and only in relation to certain workers, in particular higher-skilled workers. In many destination countries migrant workers are faced with a lack of or weak social protection coverage. The reasons for this may be manifold. In certain regions, especially in Gulf countries, limited provision is made for the extension of social protection to migrant workers. In some destination countries, the social protection systems available may not be adequately developed in general. This latter scenario may be faced by ASEAN migrant workers who migrate to countries within less developed regions of the world, where limited provision is made for social protection.

Also, as has been discussed elsewhere in this report, there is a tendency, especially in ASEAN countries, to develop separate but inferior regimes for the coverage of migrant workers, in particular unskilled and lower-skilled migrant workers. The protection so provided is less beneficial in comparison with that available to nationals, and at times, also that which may be available to higher skilled non-nationals.[32] Generally, migrant workers may find themselves to not be covered by the social protection system of either the host country or their home country due to any one or a combination of the following: (1) lack of extra-territorial application of the laws (and social protection systems) of the country of origin; (2) nationality requirements; (3) residence requirements; (4) being a worker in the informal economy; and/or (5) documentation and other administrative barriers (Van Ginneken, 2013).

As a result, some countries of origin have sought to extend some form of social security protection to their citizens employed as migrant workers, and have also created a supportive framework for the employment of these workers in host countries. Below the report reflects in some detail on measures adopted by the Philippines, Indonesia, and Thailand, building on the respective country case studies in chapter 5 above, and also presents some examples of actions taken by other traditional countries of origin around the world. These countries of origin seek to protect the rights and interests of migrant workers abroad through specific interventions. The interventions are

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[31] See also M. Olivier "Social Protection for Migrant Workers Abroad: Addressing the Deficit via Country-of-Origin Unilateral Measures?" in M McAuliffe and M Klein Solomon (Conveners) (2017) *Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (IOM: Geneva, 2017) 79-90, from where the text below has largely been taken.

[32] Malaysia can be cited as an example. In the area of employment injury benefits, a separate scheme was initiated for migrant workers (the Foreign Workers Compensation Scheme) in 1993. This removed the equal treatment of foreign workers, as well as the possibility of portable employment injury benefits. Regarding health insurance benefits, since 1 January 2011 migrant workers in Malaysia are covered by the separate Health Insurance Protection Scheme (SPIKPA). This health policy provides for a higher medical fee for migrants compared to citizens, who are covered under a different, subsidised mainstream health insurance scheme (Harkins, 2016).

guided either by the countries' respective Constitutions or via a statutory framework providing for such protection. The extension of social security protection to migrant workers abroad via unilateral arrangements has been achieved through a variety of means, including:[33]

- The adoption of constitutional guarantees and statutory frameworks facilitating the protection of migrant workers abroad. For example, the 1987 Constitution of the Philippines[34] and the 2013 Constitution of Viet Nam; the Migrant Workers and Overseas Filipinos Act, 1995; and the more recent Filipino Overseas Workers Welfare Administration Act, 2015 (addressed in greater detail in section 5.2.7 above;[35] and the Law on Vietnamese Contract-based Workers Abroad (Viet Nam) (discussed in section 5.2.10 above). For an example outside of ASEAN, one may examine the Constitution of Ecuador, which essentially provides for a "universal citizenship" irrespective of where a person may reside.[36]
- Comprehensive migration laws and regulations, which include those governing the entry, stay, and transit of foreigners, and the exit and return of nationals, with clear provisions on migrants' rights. An example is Mexico's migration law and its accompanying regulations. Article 2 of the law, for example, sets guidelines for the formulation of migration policy, including: (1) respect for the rights of both Mexican and foreign migrants; (2) facilitation of international mobility; (3) complementarity of labour markets with countries in the region; and (4) full equality between nationals and foreigners, particularly as it relates to civil liberties.
- Provisions in bilateral social security treaties providing for continued coverage of certain categories of migrant workers in the social security system of the country of origin. An example might be the Indian–Belgian agreement of 2009, which requires that workers posted abroad be covered by the social security legislation of their country of origin and that they pay social security contributions to their country of origin's social security system, as long as the period of posting does not exceed five years.[37] Other, more recent bilateral social security agreements concluded by India, as well as several recent bilateral social security agreements concluded by China contain similar provisions.[38]
- Establishing special overseas workers' welfare funds by national and even (as in the case of India) state governments that extend protection to workers and (at times) also their families (as in the case of India, the Philippines, and Sri Lanka). Examples abound:
    - Philippines: Establishment of the (1) Social Security System (SSS) Programme to Overseas Migrant Workers, based on voluntary membership; and the (2) Flexi-Fund Programme, on top of the voluntary SSS scheme, providing for individual worker accounts. Further details are presented below.

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[33] The list of unilateral social security protection arrangements by the selected countries of origin is derived from the author's own knowledge in this field, relevant constitutional and statutory frameworks, information contained in the country profiles discussed in this report, and the following sources: Van Ginneken, 2013: Hall, 2011; del Rosario, 2008; Ruiz, 2008. See also Ofreneo and Sale, 2014.

[34] According to Olivier (2010, paras 489–491): "The 1987 Constitution of the Republic of the Philippines lays down the basic policy framework. It requires the State to provide full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all." For more, see Constitution of the Republic of the Philippines, 1987, article XIII, section 3; and Ofreneo and Sale, 2014.

[35] Section 2 of the Overseas Workers Welfare Administration Act of 2015 stipulates: "It is the policy of the State to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all. Towards this end, it shall be the State's responsibility to protect the Overseas Filipino Workers (OFWs)."

[36] According to the Ecuadorian Constitution, every person is equal and shall possess the same rights, duties and opportunities, and nobody shall be discriminated against on any grounds, including his/her migratory condition (Constitution of the Republic of Ecuador, 2008, Article 11(2)). See also Articles 416(6) and (7)). The constitutional imperative to protect Ecuadorians abroad is further reflected in the country's policies. The National Plan of Foreign Policy (Plan Nacional de Política Exterior) 2006–2020 establishes 'protection to emigrants' as one of the priority axes of Ecuadorian foreign policy. It also puts an emphasis on the development of 'economic and cultural ties' between expatriates and their motherland."

[37] Agreement on social security between the Kingdom of Belgium and the Republic of India, 2009, article 8.

[38] See Olivier, M Strengthening the protection of Asian migrant workers through portability of social security (ABDI-OECD-ILO, 2018) (forthcoming).

- Sri Lanka: Contributory pension scheme for Sri Lanka's 2 million overseas migrant workers. Contributions may be paid monthly or as a lump sum, and contributions are subsidized by the Government (60 per cent of costs). The scheme provides an old age pension at age 60 and survivors' benefits.

- Voluntary affiliation in national social insurance schemes; for example, those of Albania, Jordan, Mexico, Mozambique,[39] the Philippines, and the Republic of Korea.
- Measures and schemes aimed at supporting the flow of remittances and social insurance contributions to the sending country.
- Exportability of social security benefits and the provision of related services (e.g., medical care) abroad.[40]

These extension mechanisms are often supported by a range of complementary measures, including a dedicated emigrant ministry and/or specialized statutory bodies to protect the interests of their citizens/residents in the diaspora (e.g., Bangladesh, India, Nepal, the Philippines, Sri Lanka); gather information on recruitment contracts; and provide consular support (Van Ginneken, 2013; Vonk and Van Walsum, 2013). The Philippines, for example, has established the Office of the Undersecretary for Migrant Workers Affairs at the Department of Foreign Affairs; the Philippines Overseas Employment Administration (POEA); the Overseas Workers Welfare Administration (OWWA); the Filipino Workers Resource Center; Social Security System offices in several countries; and an extensive network of labour attachés at diplomatic missions, in addition to investing in the screening of and provision of information to potential migrants. Generally, other support services are made available 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); and include lobbying for the protection of migrant workers.

6.2.2.1 An evaluation of the effectiveness of unilateral measures by countries of origin to extend social security protection to nationals abroad

The unilateral measures developed by countries of origin to extend social security protections to their citizens working abroad tend to be of relatively recent origin, but they seem to be growing in extent and popularity. Indeed, at the moment they already cover sizeable numbers of migrant workers – 8 million in the case of the Philippines, and 2 million in the case of Sri Lanka.

International standards and instruments do not regulate this particular phenomenon; yet it is interesting to note that reference to these actions by countries of origin is increasingly being made in what can be regarded as "soft law" and explanatory and implementing instruments. For example, the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers encourages countries of origin to set up policies and procedures to protect their workers when abroad. Of particular relevance is also the ILO Multilateral Framework on Labour Migration, which provides a comprehensive overview of principles and guidelines as to how labour protection for such migrant workers can be improved (ILO, 2006).

The remainder of this section will provide an evaluation of these unilateral measures in general, including areas that may present cause of concern.[41]

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[39] Mozambican workers abroad who are not covered by the compulsory social security system of the host country may register for compulsory social security in Mozambique, but the more limited scheme for self-employed persons will be applicable to them (article 14.4 of the Law on Social Protection 4 of 2007, read with article 18.2).

[40] The legislation of countries, especially countries that conclude bilateral social security agreements, often regulates the exportability of social security benefits.

[41] For more, see Olivier, Dupper, and Govindjee, 2013.

Unilateral arrangements emanating from host countries appear to be particularly problematic in the absence of appropriate and effective monitoring, enforcement, and persuasion mechanisms. Indeed, unilateral arrangements by countries of origin cannot effectively provide for the full extent of social (security) protection that a host country would be able to extend, and therefore, they can never replace what should be the primary source of the protection of migrant workers' social security rights, i.e., coverage under the laws of the destination country. In fact, the effectiveness of unilateral measures is often constrained by the weakly developed social security systems of less-developed countries of origin. It should be noted that these arrangements and interventions imply a shift of the social security burden to the country of origin and its structures, despite the fact that migrant workers also contribute to the development of the country of destination.

On the other hand, unilateral arrangements emanating from countries of origin provide interesting and important avenues of coverage, protection and support. These arrangements and interventions can provide some protection and may be easier to adopt than bilateral and multilateral frameworks. As has been noted, such promotional measures would principally affect those involved in circular and temporary migration, and could be defined and strengthened through international migration agreements (Van Ginneken, 2013).

Moreover, reliance often has to be placed on contributions by workers only, which could make participation in these arrangements costly or subject to reduced benefit entitlement. Furthermore, contributions are often too low to provide meaningful coverage and may place too much of a burden on migrant workers while they are living and working abroad. This is particularly the case in instances where they are required to also contribute to the social security system of the country of destination, despite the fact that they may often not be able to benefit from these contributions. Innovative funding solutions are needed, including allowing the channelling of remittances to help fund contributions to social security schemes of countries of origin.

In addition, the benefit range provided for by these arrangements is often too unwieldy and goes to areas beyond social security provision – such as repatriation costs. Therefore, a more focused arrangement is needed to ensure and enhance appropriate social security coverage. Unilateral arrangements are also associated with limitations of extra-territorial implementation – therefore, on-line transactions, using embassies as vehicles, and even arranging with host country institutions (like what the Netherlands has been doing in relation to many of its social security beneficiaries abroad) may be required. Furthermore, at this stage affiliation with social security institutions in and access to social security arrangements of the country of origin are mostly of a voluntary nature. Evidently this has an impact on the efficacy of unilateral mechanisms. In addition, these arrangements do not generally cover informal workers and undocumented migrants. As a result unilateral arrangements emanating from the country of origin do not guarantee a rights basis for the treatment of these vulnerable categories.

Finally, with some important exceptions (e.g., Indonesia, the Philippines and Viet Nam), from a domestic perspective, a statutory mandate and often also a policy and programme framework may be absent. These need to be developed to provide clarity to beneficiaries and to those who have to implement the measures, and to provide the necessary rights basis for enforcement. Associated with this requirement is the need to address the lack of awareness regarding the insurance contracted, and to address complex claim mechanisms.

It is therefore argued that unilateral measures, important as they are, should remain measures of last resort, to be available to the extent that bilateral and other arrangements do not make the necessary provision. Nevertheless, whenever these measures are required, much can be done to improve the extension thereof by migrant-sending countries, by learning from the experience of other countries of origin, in both the global South and the global North.

It is also clear that many sending (and receiving) countries are in need of technical advice to develop and implement an appropriate framework for country-of-origin unilateral measures. A well-developed compendium of good practice examples may be of considerable assistance. Also, there is an evident need to develop a framework of international standards and guidelines to inform and strengthen the use of country of origin unilateral measures.

6.3 Bilateral arrangements

6.3.1 Rationale, content, and characteristics of bilateral social security agreements[42]

It is often said that bilateral social security agreements (BSAs) (in particular when supported by an overarching multilateral agreement) constitute universal, worldwide best practice.[43] The first such agreement in 1904,[44] which recognized the principle of equal treatment in the area of employment injury benefits, implied a radical departure from the territorial restriction on access to welfare and supported the notion of a personal entitlement to benefits, which follows the person/worker concerned, irrespective of their geographical location.

Pursuant to the 1904 agreement, BSAs have extended their scope to cover a range of social security benefits for a variety of beneficiaries, on the basis of certain social security principles (often referred to as coordination principles). Since the Second World War, the number of BSAs has expanded significantly, totalling more than 2,000 today (Sabates-Wheeler and Koettl, 2010).

International instruments also support the conclusion of bilateral agreements. As has been noted, "the first global [C]onvention which calls upon countries to enter into bilateral social security agreements and which includes general standards on the protection of migrants' rights dates back to 1925"[45] (Vonk, 2015, p. 466). Later social security-related Labour Conventions strengthen this approach. In particular, Article 4(1) of ILO Convention No.157 suggests that ILO member countries may give effect to their obligations under relevant parts of the Convention via bilateral or multilateral instruments, under conditions to be determined by mutual agreement between the member countries concerned. More recently, the International Labour Conference in 2011 called upon ILO member States to consider the conclusion of agreements to provide equality of treatment, as well as access to and the preservation and/or portability of social security entitlements for migrant workers.[46]

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42 For more, see Olivier, Dupper, and Govindjee, 2013.

43 See Holzmann, Koettl, and Chernetsky (2005, p. 32), who remark: "The administrative approach to achieve the portability for both pension and health care benefits seems to be reasonable cost-effective after a bilateral or multilateral agreement has been successfully concluded."

44 A BSA between France and Italy on social insurance application and worker's protection for nationals of both contracting States. However, note should be taken of an earlier agreement concluded between France and the Dukedom of Parma in 1827, which guaranteed the payment of pensions from one State to nationals of the other State according to the principle of reciprocity and without the conditions of residence on the territory of the State providing the pension (Strban, 2009).

45 See Article 2 of ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).

46 ILO, 2011, Resolution 33(g), para. 35(d).

BSAs focus on appropriate social security arrangements for migrant workers, and are utilized in part because most bilateral labour agreements (BLAs) only make partial provisions for such arrangements. BSAs generally provide for the aggregation of insurance periods (in that all periods taken into account by the various national laws are aggregated for the purpose of acquiring and maintaining entitlement to benefits and of calculating such benefits) and the payment of benefits, irrespective of the country in which the beneficiary resides (i.e., the "portability" principle).

Lack of portability of host country social security benefits may lead to a loss or substantial reduction of these benefits and may, in fact, impede labour migration. As a result, the return of migrants to their countries of origin may be undermined, while these origin countries (many of them developing countries) may be deprived of beneficial development effects (Holzmann, Koettl, and Chernetsky, 2005).

In the absence of an agreement, it might happen that a person may not be covered under the social security system of either the host country or country of origin – or they may be doubly covered. Coordination arrangements help to resolve this problem. Also, targeted, country-specific cross-border bilateral agreements between States have the advantage of incorporating regulations and standards that pertain specifically to the unique migratory patterns that may exist between the two States as well as catering to the specifics of their respective national social security schemes and associated legal systems. Furthermore, the establishment and enhancement of an appropriate array of bilateral arrangements is particularly significant given the extended length of time that is generally necessary to develop comprehensive multilateral agreements.

The general principles that constitute the content of bilateral and multilateral social security arrangements, usually relate to:[47]

- the choice of law principle (i.e., identifying the legal system that is applicable);
- equal treatment (in the sense that discrimination based on nationality is prohibited);
- aggregation/totalization of insurance periods (in that all periods taken into account by the various national laws are aggregated for the purposes of acquiring and maintaining an entitlement to benefits, and of calculating such benefits);
- maintenance of acquired benefits (benefits built up by the person are retained);
- payment of benefits, irrespective of the country in which the beneficiary resides (the "portability" principle);
- administrative cooperation (between the social security institutions of the parties to the agreement); and
- sharing of liability to pay for the benefit (i.e., the pro-rata liability of the respective institutions).

For the reasons given, one of the core principles is portability. Portability in this context has been defined as "the ability to preserve, maintain, and transfer vested social security rights or rights in the process of being vested, independent of nationality and country of residence" (Avato, Koettl, and Sabates-Wheeler, 2010, p. 456). Portability is important for two reasons: (1) to prevent financial losses on the part of the migrant (e.g., when they contribute in the host country to a pension scheme and then stand to lose part of their contributions and benefits when they return to country of origin); and (2) actuarial fairness (the returning migrant benefits from social security or the health-care system in the country of origin after returning despite having lived most of their productive life in the host country and contributing to the system of the host country) (Avato, Koettl, and Sabates-Wheeler, 2010).

[47] See Article 4(1) of ILO Convention No. 157; Article 8 of ILO Convention No. 118.

Portability must be distinguished from exportability, however. Exportability requires no such cooperation, as the social security institution of one country alone determines eligibility and the level of benefit[48] (Sabates-Wheeler and Koettl, 2010). Nevertheless, benefits could in principle also be payable, and hence exportable, to other countries.

Regarding the content of these agreements, there is no prescribed framework; it may also be difficult to discern fixed patterns worldwide (apart from the fact that the coordination principles indicated above are relied on).

The personal spheres of coverage can differ widely – it is not uncommon for both permanent and temporary migrants to be covered. Often but not always, family members and dependants are covered.

Regarding the material scope, the practice varies. It has, for example, been reported that:

- Indian BSAs generally cover long-term benefits and health (Pellissery, Biswas, and Sengupta, 2014);
- BSAs concluded by the Philippines cover both long- and short-term benefits for permanent residents, and short-term benefits for temporary residents (Ofreneo and Sale, 2014);[49] and
- Regarding the Netherlands, their BSAs with countries of immigration (i.e., origin countries for migrants to the Netherlands) cover long- and short-term Dutch benefits; while in the case of BSAs with countries of emigration (i.e., destination countries for emigrants from the Netherlands) long-term benefits are covered Often these agreements would contain "open clauses", which would allow the parties to widen or limit the personal and/or material scope by agreement (van Everdingen, Fehliing, and Werner-de Buck, 2014).

6.3.2 The ASEAN experience with bilateral agreements

To date no bilateral social security agreement has been concluded between any two ASEAN countries, although some countries are currently considering taking this step, including for example Philippines and Thailand. However, some ASEAN countries do have experience negotiating such agreements with countries outside of the region. The Philippines, for example, already has nine such agreements in place, while a few other countries have concluded a more modest number. Viet Nam is apparently upgrading its national laws to enable it to commence BSA negotiations with Germany and the Republic of Korea.

Extensive use, however, is made of BLAs and MOUs in ASEAN countries. The principled aims of these agreements are to regulate labour migration flows and extend employment rights. However, these BLAs/MOUs do often not fulfil the purpose for which they were set up. For example, a recent ILO study in relation to Thailand's MOUs with Cambodia, the Lao People's Democratic Republic, and Myanmar found there is widespread acknowledgement that the MOUs are outdated. It is being suggested that

[48] The principle of "exportability" is firmly established in the EU, providing that a person who is entitled to specifically defined benefits (those covered by article 4 of Council Regulation (EEC) No 574/71) and who resides in another Member State is entitled to have the money (benefit) transferred to their foreign bank account (minus the cost of transferring the amount, such as postal and bank charges).

[49] The Philippines is an example of a developing country that has concluded several such agreements with other countries of destination. In September 2014, for example, the Philippines concluded a bilateral agreement with Germany, which is meant to benefit about 55,821 Filipinos in Germany, of whom 45,647 are permanent residents and 10,174 are temporary residents, and which makes provision for totalisation (aggregation) and export of benefits. It has been indicated that the Philippines has also entered into similar bilateral agreements with Austria, Belgium, Canada, France, Spain, Switzerland, and the United Kingdom that are now being implemented. Bilateral agreements with Portugal and Denmark have also been signed and submitted to the Philippines Senate for ratification (ABS-CBN News, 2014).

the MOUs should move from a reflexive model that relies on crisis response towards a framework for regular migration that is coherent and comprehensive, while still adaptable to context through regular and structured reviews (ILO, 2015o). Also, it is evident that the focus of these BLAs/MOUs is on regulating the flow of migrant labour; welfare/social (security) protection is mostly absent or merely treated as a by-product.

Considerable scope exists for the conclusion of bilateral social security agreements within ASEAN. However, as indicated by Tamagno (2008), note should be taken of particular challenges with the ASEAN context. First, it is difficult to coordinate provident funds with social insurance (retirement) schemes, given their asymmetrical nature. Second, the administrative and technical capacity to conclude such agreements may be lacking. Third, the principle of reciprocity needs to be honoured – i.e., the origin and destination countries should extend same protection on a basis of reciprocity and equality. Currently, this is not often the case in ASEAN countries.

Ways to deal with the asymmetrical nature of portability between a provident (lump sum) fund and a regular pension fund scheme have been suggested, and are in fact also provided for in other regions in the world – for example, in the Economic Community of West African States (ECOWAS). This has been summarized by Pasadilla and Abella (2012, p. 25) as follows:

> If a migrant worker moves from a country with a provident fund to a social insurance country, the worker could have the amount in their provident fund account transferred to the social insurance system of the latter country, and the worker could use this amount to "buy back" periods under the latter system. "Buy back" means making retroactive voluntary contributions covering all or part of the period during which the worker was a member of the provident fund. The terms of the buyback would be governed by the social security laws of the social insurance country (if those laws allow voluntary contributions, which many do not) or by specific provisions included in the social security agreement between the two countries.
>
> A migrant worker who moves from a country with social insurance to one with a provident fund, and who has not yet fulfilled the minimum qualifying period for a pension under the social insurance scheme of the first country, could have her or his contributions and those of the employer transferred from the social insurance scheme to the provident fund. The social security agreement between the two countries would specify the method for calculating the amount to be transferred. This is, however, more complex than transfers from provident fund systems to social insurance systems because, in the first place, how is a social insurance scheme to compute how much to transfer to the provident fund scheme in a new country. Should the social insurance scheme just allow withdrawals of the member contribution without the employer's share?

6.3.3 Evaluation and challenges

Although entering into bilateral social security agreements is generally seen as the preferred way to guarantee social security entitlements of migrants, this practice, as noted by Holzmann, Koettl and Chernetsky (2005, p. 25), "necessarily results in a highly complex and hardly administrable set of provisions on the portability of social security benefits". In addition, such agreements may end up granting differing rights and entitlements to migrants, which could undermine regional integration.

One way to counteract this is to establish common standards in a regional or multilateral framework against which all bilateral agreements can be measured. This is the case in the EU. Despite the multitude of bilateral agreements that exist in the EU, the fact that they are all based on a single legal source, namely EU Regulation 883/2004,[50] ensures some degree of convergence.

[50] Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

In order to achieve full portability, some cooperation between the social security institutions of the origin country and the host country is required. Cooperation is required to ensure a joint determination of benefit levels for a particular migrant. However, the administrative and technological capacity to achieve this may be lacking, particularly in (but not restricted to) developing countries (Sabates-Wheeler and Koettl, 2010).

There may also be compatibility problems regarding similar social security schemes in the countries concerned, a matter discussed below.

Furthermore, while equality of treatment is a core principle, it should be noted that this principle generally operates within the framework of, and for purposes of, giving effect to the bilateral agreement. Only those (potentially) covered by the terms of the agreement – and, as a rule, only to the extent of the agreement – can benefit from the operation of the equality of treatment principle. In other words, bilateral agreements do not provide a general guarantee of equal treatment for migrants in the social security system of the host country.

Flowing from this, these agreements do not create a foundation for invoking a human rights basis for the treatment of migrants, including particularly vulnerable migrant groups such as informal workers and undocumented migrants. In fact, in the developing world, given the preponderance of informal workers, bilateral agreements are unlikely to extend any meaningful coverage to these vulnerable groups.

In essence, though bilateral social security agreements may constitute an important legal technique for coverage and protection where there is relatively substantial cross-border migration (even if only uni-directional), their effectiveness may be seriously hampered by:

- key problems related to their operationalization/implementation; and
- their typically focused and exclusionary impact.

Also, BLAs generally, and particularly in the developing world, do not extend comprehensive labour law protection to migrants, and are as a rule not aligned to the social security context of those migrants covered by said agreements.

Nevertheless, considerable scope exists for the conclusion of BSAs within ASEAN. In this regard, ASEAN Member States could build on their experiences concluding BLAs, as well as the experiences of some ASEAN countries in concluding BSAs with States outside the region.

Importantly, it should be possible to follow an incremental approach, and to commence with a social security component that is prevalent in all ten ASEAN Member States: employment injury benefits (see also section 6.4 below). Six of the ten ASEAN Member States have already adopted minimum international standards for employment injury benefits, as they have all ratified ILO Convention No. 19. This should help to inform and support the conclusion of bilateral agreements between different countries and also potentially a multilateral arrangement.

6.4 Multilateral arrangements

6.4.1 Context and background

ASEAN's migrant-oriented, multilateral labour agreements are conspicuous by their absence, as is the case with multilateral social security agreements. As with BSAs discussed above, a key principle in relation to multilateral social security arrangements is the coordination with regard to social security, primarily aimed at eliminating the restrictions that national social security schemes place upon the rights of migrant workers to access such social security.[51] Coordination rules leave national schemes intact and only supersede such rules where they are disadvantageous for migrant workers (Chen, Jhabvala, and Lund, 2002; Pennings, 1993). The Court of Justice of the European Union has confirmed this on numerous occasions, emphasizing that EU regulations coordinating Member States' social security systems do not in any way affect the freedom of Member States to determine the content of their own social security schemes "as long as cross border-elements do not play a role" (Cornelissen, 2009, p. 11). This is confirmed by the latest regulation, namely Regulation (EC) No 883/2004.

Therefore, multilateral social security agreements do not set minimum standards for the treatment of migrant workers other than for purposes of coordinating social security schemes and migrants' entitlements flowing from such coordination. It is not even required that social security schemes be harmonized for purposes of coordination, although it could be argued that there should at least be some compatibility of social security schemes to render coordination effective.

Multilateral social security agreements have a more recent origin than BSAs. The first such agreements were entered into soon after the end of the Second World War (Roberts, 2009).

6.4.2 Rationale, content, and characteristics[52]

According to Baruah and Cholewinski (2006, p. 156), multilateral agreements "have the advantage that they generate common standards and regulations and so avoid discrimination among migrants from various countries who otherwise might be granted differing rights and entitlements through different bilateral agreements."

As such, multilateral frameworks/agreements can address the very shortcomings of BSAs, in relation to problems experienced with a plethora of such bilateral agreements, as discussed above. A multilateral approach also eases the bureaucratic procedures by setting common standards for administrative rules implementing the agreement (Baruah and Cholewinski, 2006). Furthermore, a multilateral agreement can establish a standardized framework for more detailed, context-sensitive, and country-specific bilateral agreements between countries. It has been remarked that:

> Such a multilateral instrument, which draws its principled framework from international and regional standards, should from an overall perspective and in framework fashion stipulate the overarching and generally applicable principles, standards, institutional mechanisms and channels to guarantee entitlements, rights and obligations, and facilitate and streamline portability of benefits and the implementation of other common arrangements. A multilateral agreement therefore effectively undergirds bilateral agreements, which should contain specific and appropriate cross-country arrangements (Olivier, 2010, para. 495).

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[51] Pennings (1993, p. 6) defines coordination as follows: "Coordination rules are rules intended to adjust social security schemes in relation to each other (as well as to those of other international regulations), for the purpose of regulating transnational questions, with the objective of protecting the social security position of migrant workers, the members of their families and similar groups of persons."

[52] For more, see Olivier, Dupper, and Govindjee, 2013.

Multilateral agreements are effectively a recognition of intra-regional migration. Of particular relevance for the debate on social security for ASEAN migrants is the fact that multilateral agreements can serve the purpose of regional integration, and the values and core principles associated therewith, such as freedom of movement and equal treatment of residents of the region. Regional adjudicative bodies have held that instruments that draw a distinction between nationals of particular countries bound together in a regional framework (such as the European Union) are, in principle, permissible. This is on the basis that member States of a particular regional entity form a special legal order, which has effectively established its own "citizenship".[53]

This could imply that an approach which adopts specific (i.e., more preferable) arrangements for migrants from ASEAN might be acceptable. In the area of social security, this could best be achieved by the adoption of an appropriate multilateral social security agreement.

These agreements reflect the same internationally recognized social security cross-border coordination principles discussed above in relation to BSAs. Besides establishing a standardized framework for bilateral agreements, another important advantage of such a multilateral framework agreement is that it can provide for a phased and incremental approach in relation to:

1. the types of schemes covered – commencing with coordinating employment injury benefit schemes has been indicated as a starting point;[54]
2. the benefits provided for;[55]
3. the categories of persons covered by such an agreement;[56] and
4. the countries included in the agreement.[57]

This may be particularly relevant in a context where social security may be underdeveloped in a particular region, or as in ASEAN, countries within the region may have vastly different social security regimes in place, or may be at different stages of development with their respective social security systems.

In addition, core social security coordination principles may be introduced, or implemented, progressively, rather than all at once, if a rationale for doing this exists in a particular region.[58]

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[53] For more on this matter, see Weissbrodt, 2004, p. 10; C. *v. Belgium*, Eur. Ct. H.R., Reports 1996-III (1996) (European Court of Human Rights); *Belgian Linguistic Case*, 6 Eur. Ct. H.R. (ser. A) (1968) (European Court of Human Rights); Advisory Opinion on the Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica (OC 4/84) (Advisory Opinion of the Inter-American Court on Human Rights); and Communication 964/2000, CCPR/C/74/D/965/2000 (2002) cited in E/CN.4/Sub.2/23/Add.1 (2003) paras 27–29 (Human Rights Committee).

[54] See Ortiz, 2004, p. 45.

[55] For example, it could provide for the payment/portability of those benefits that may be common to a number of countries in a particular region. It is suggested below that within the framework of an ASEAN multilateral agreement, employment injury benefits could first be covered, due to the fact that this is a matter of particular concern in the ASEAN context, and since this is a benefit provided by all ASEAN Member States. In addition, six Member States have ratified ILO Convention No. 19.

[56] At the beginning, certain categories of persons – for example, migrant workers and their dependants – could be beneficiaries of the cross-border social security arrangements. This could over time be extended to include other categories of non-citizens, for example, self-employed workers – as is the custom in most other regions where a multilateral agreement is in operation, such as in the EU and in the Caribbean. In fact, as noted below, the personal sphere of coverage in the EU has widened significantly over time.

[57] It might be advisable to initially include within the sphere of operation of a multilateral agreement those countries which at an initial stage have the most urgent need to enter into appropriate arrangements. From the perspective of a multilateral ASEAN agreement, it may be that migrant-sending countries have much in common regarding lack of access for their migrant workers to certain social security benefits offered in destination countries, to justify their inclusion within a multilateral framework. Other Member States could from time to time be added as the need to do so arises.

[58] For example, the absence of pension-oriented public retirement fund schemes in a region may render it prudent to provide for the principle of aggregation/totalization of insurance periods/contributions in relation to the public social security schemes of the various countries, but to postpone the operationalization and implementation of this principle until such time that the social security reform processes obtaining in the relevant countries have converged in the establishment of, for example, pension-oriented public retirement fund schemes, which are amenable to cross-border coordination.

Currently, worldwide a number of multilateral social security agreements exist. We briefly reflect on some of them, from a comparative perspective.

European Union – As mentioned before, the first multilateral measures to coordinate social security within the EU (then the nascent European Economic Community) came in 1958.[59] Of importance is the rationale behind the passage of these EU regulations. The concern was economic, namely that a lack of social security coordination would inhibit freedom of movement of persons – one of the four pillars[60] of the EU. This is because social security rights are usually related to periods of employment or contributions or residency (van Ginneken, 2010).

Since its inception, therefore, coordination of social security in the EU has been closely related to the free movement of persons among the Member States. This is an important point to remember when considering the introduction of coordination rules in ASEAN.

In fact, coordination is generally considered to be a necessary condition for free movement: in order to have genuine freedom of movement, labour migration within the common market should not lead to a loss of social security entitlements. As a result, article 48 of the Treaty of Lisbon assigns the European Council the task of unanimously adopting such measures in the field of social security as are necessary to provide freedom of movement for EU workers.

Today, the EU arrangement is the most comprehensive in the world. One of its main characteristics is the incremental development of the EU coordination regime – in particular concerning the scope of coverage. EU regulations related to the portability of social security benefits and the coordination of EU social security systems with a view to equal access to benefits are the most advanced examples of multilateral arrangements.

EU Regulation 883/2004 is an extensive legal provision that ensures far-reaching portability of social security entitlements and access to social security within the European Union. When moving within the EU, even third-country migrant workers enjoy the same rights as EU nationals with respect to the portability of social security and benefit entitlements after five years of residence within the European Union (see below). It needs to be noted that Regulation 883/2004 is accompanied by an implementation regulation, Regulation 987/2009 – without which it was not possible to give effect to the provisions of Regulation 883/2004.

The EU is also leading efforts to enhance social security cooperation within the Euro-Mediterranean Partnership. Social security agreements with Algeria, Morocco, and Tunisia have been concluded under this initiative. Outside this multilateral framework, many EU Member States have also concluded BSAs with non-EU countries, and have created an extensive global network of portability arrangements.

The EU coordination regime builds on the range of agreements which were concluded bilaterally between individual European States. As noted by Tamagno (2008, p. 23):

> The EU regulations have largely replaced a complex set of bilateral agreements that had previously coordinated the social security systems of many, but not all, of the EU member-states. In doing this, the regulations have filled the gaps that existed when countries did not have bilateral agreements. The regulations have also instituted consistent provisions applicable to all the persons legally resident in the EU in place of provisions that varied according to many factors, particularly the nationality of the persons concerned.

[59] Regulation No. 3 (OJ 30, 16.12.1958), accompanied by its implementation regulation, Regulation No. 4 of 1958.
[60] The other three being free movement of goods, services, and capital.

In fact, the bilateral arrangements are still applicable to the extent that they contain more favourable provisions than those of Regulation 883/2004. Regulation 883/2004, read with implementing Regulation 987/2009, contains detailed rules pertaining to the coordination of social security schemes, invoking coordination principles with reference to:

1. determining the applicable legal system to regulate the cross-border movement of the person concerned and their accrued rights and entitlements;
2. the maintenance of accrued social security rights/entitlements;
3. the totalization or aggregation of periods of contributions or insurance, irrespective of where the contributions were made;
4. the payment of social security benefits regardless of the (EU) country of residence (i.e., exportability of benefits);
5. pro rata sharing of liability by the social security institutions of the countries to whom contributions were made, to pay for the benefits; and
6. administrative cooperation.

As mentioned above, multilateral coordination within the EU context has developed incrementally. The scope of categories of persons and contingencies covered have gradually expanded over the years, as is the case with the type of social security schemes falling under the purview of the EU regulatory framework. Regarding the personal scope of the coordination rules, traditionally workers in an employed and self-employed capacity, as well as members of their families, were covered. However, the current Regulation 883/2004 extends the sphere of application to all persons who are or have been subject to the social security legislation of the Member States and to the members of their families and to their survivors. In addition, the Regulation also applies to stateless persons or refugees residing in one of the Member States.[61]

It is also of particular interest – and importance – to consider the extension by the EU of social security coverage to migrant workers from third countries – so called third country nationals (TCNs).

Regarding the material scope of the coordination rules, Regulation 883/2004 applies to all legislation concerning the following branches of social security (see article 3):

- sickness benefits;
- maternity and equivalent paternity benefits;
- invalidity benefits;
- old-age benefits;
- survivor's benefits;
- benefits in respect of accidents at work and occupational diseases;
- death grants;
- unemployment benefits;
- pre-retirement benefits; and
- family benefits.

Social and medical assistance is excluded from the material scope of the Regulation (see article 3(5)). However, the European Court of Justice interpreted the term "social assistance" narrowly, thereby effectively allowing for subsistence benefits designed for a specific risk – e.g., minimum income for the elderly or basis income of the disabled – to be covered. However, these special non-contributory benefits are not exportable to other Member States (see article 70). Yet, the material scope is

[61] Regulation 883/2004, article 2. See Pennings, 2014, pp. 122–23.

limited to legislation on the above benefits. The implication is that collective labour agreements and supplementary pension schemes and private social security are all excluded from the scope of Regulation 883/2004 (Pennings, 2014).

Regarding the territorial scope of the coordination rules, the Regulation applies to the territory of the European Union. However, an extended application has been provided for (Pennings, 2014).

Third country nationals (TCNs) – Specific EU instruments have also been adopted, which regulate the social security position of TCNs. There has been a gradual extension of EU social security provisions, covering a growing number of categories of TCNs, informed in particular by the common immigration policy of the EU contained in the Treaty on the Functioning of the European Union, which states in article 79:

> The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

Council of Europe – Migrant workers in Europe can in principle also rely on the protection provided by instruments developed under the auspices of the Council of Europe. Set up as a body to spearhead the process of European construction, the Council of Europe has become the continent's leading human rights organization. It has 47 member States, 28 of which are members of the European Union.[62]

Instruments aimed at regulating the social security position of member State nationals moving to other member States, include: the European Convention on Social and Medical Assistance, 1953; the European Code of Social Security, 1964; the European Convention on Social Security, 1972; and the European Social Charter, 1961.

Of particular significance is the European Convention on Human Rights, 1950 (ECHR), ratified by all member States, and the interpretation given to this instrument by the European Court of Human Rights in relation to migrant workers from outside who live and/or work in any of the member States.

Increasing protection of social security interests has been granted under the ECHR, despite its being a civil and political rights instrument. However, a cautious approach has been adopted by the European Court of Human Rights. Member States are entitled to adjust schemes and benefits, and to exclude irregular migrants, subject to restrictions, Yet, " …the Court's case law did indicate that states had to change the personal scope of their social security schemes (e.g., to include non-nationals and non-residents or to delete differences between men and women) or had to provide benefits to vulnerable asylum seekers present on their territory" (Slingenberg, 2015, p. 82).

These protections have been achieved via article 14 of the ECHR – enjoyment of ECHR rights and freedoms without discrimination on any ground. Nationality is therefore a prohibited ground. Article 14 is an overarching and accessory guarantee, and not a free-standing provision' it complements other substantive provisions of the ECHR. It is the impact of this article on other substantive provisions that has resulted in increasing social security protection.

[62] See http://www.coe.int/en/web/about-us/who-we-are [accessed 16 July 2016].

Conclusions – EU and Council of Europe – Beyond serving as a model for a multilateral approach to extending social security coverage in a regional context, it might be said that there is a moral and persuasive value of these European developments. Bearing in mind the importance of immigration control and the demands of the local labour market, these developments reflect a growing appreciation of the need to protect the rights of migrant workers, even short-term migrant workers. Protection in the EU and Council of Europe regions has been based on context-sensitive, recognized grounds, e.g., regular residence/lawful residence/lawful employment, linked to a rights-based approach. Consequently, temporary migration for work of a significantly short term may justify exclusion from or limited access to social security benefits. However, other considerations are also relevant: for example, whether the migrant worker concerned contributes to social security provisioning or is/has to be associated with a social security scheme.

Of importance is not only access to social security benefits, but also the operation of other social security coordination principles, including portability of benefits and totalization of contributions.

Caribbean countries – CARICOM Agreement on Social Security – In 1996 the countries of the Caribbean Community (CARICOM) entered into the CARICOM Agreement on Social Security.[63] The Agreement is seen as key in facilitating the free movement of labour within the CARICOM Single Market, but it applies to all persons who are moving to work or who have worked in two or more countries that have implemented the Agreement (CARICOM Secretariat, 2010). The Agreement applies, among others, to migrant workers and self-employed persons. In fact, according to Article 3(1) it "shall be applied to insured persons who are or have been subject to the applicable legislation of one or more Contracting Parties as well as to their dependants or survivors". Special provision is made for certain workers, i.e., persons employed in transnational enterprises, itinerant employed persons, persons employed in international transport; and persons employed on ships (see articles 7–10). Barring certain provisions, the Agreement allows for contributions to voluntary insurance schemes to be taken into account.

The agreement provides for the essential coordination arrangements, including exportability of benefits; the aggregation of periods of insurance that migrant workers would have spent in different CARICOM Member States; and the application of the laws of the country where the person concerned is employed.

Unlike the European Union regulation, the CARICOM agreement does not cover short-term benefits, as it provides for the coordination and portability regime to be applicable to invalidity, disablement, old age, survivors', and death benefits.

Latin America, including the Ibero-American Social Security Convention of 2011 – Latin American countries are involved in several multilateral social security agreements. This includes the more limited (in terms of geographical scope) Mercosur Multilateral Social Security Agreement of 2004 and, most recently, the Ibero-American Social Security Convention of 2011 (Fernandez, 2014).

This latter agreement is particularly noteworthy as it involves 18 Latin American countries and two European countries (and EU members), Portugal and Spain. Regarding its personal scope, the Ibero-American Social Security Convention is applicable to persons who are or were subject to the legislation of one or several Member States, as well as their family members, beneficiaries, and rights

[63] See Tamagno (2008, p. 23), who notes: "Historically, there has long been a significant movement of migrant workers within the English-speaking Caribbean. Since the first states in the region gained their independence from the United Kingdom in the 1960s, all have established social security systems, most of which are based on a social insurance model and contain similar provisions regarding the types of benefits and eligibility requirements." The agreement does not apply to CARICOM Member States Haiti and Suriname. In the case of Suriname, the reason is that it does not have a comparable social security system.

holders, referring both to dependent and non-dependent workers. Regarding the material scope, the Convention covers disability, old age, survivors and employee injury benefits (occupational injuries and diseases) benefits, but excludes health-care benefits and non-contributory benefits. In instances where both the multilateral Convention and a bilateral agreement are applicable, the provisioning which is the most favourable for the beneficiary will apply.

Noteworthy is the fact that the Convention includes countries with vastly different social security models; "there are individual capitalization systems, PAYG systems and mixed systems applying both schemes – but also between nations where the coverage, scope or intensity of benefits vary greatly, all of which makes coordination of legislations extremely difficult" (Fernandez, 2014, p. 73). In the event of individual capitalization systems, all accumulated balances in the personal accounts finance the corresponding pension. However, the Convention does not provide for exportability of benefits in this case, although Member States could conclude bilateral agreements and mechanisms for this purpose (Fernandez, 2014). For the rest, the Convention employs various coordination principles discussed in this report.

Africa – Several initiatives in Africa require mentioning, including the 15 French-speaking countries in western and central Africa and the Indian Ocean are bound together in what is known as the Inter-African Conference on Social Insurance, also referred to as CIPRES (*Conférence Interafricaine de la Prévoyance Sociale*). CIPRES was instituted by a treaty adopted in Abidjan on 21 September 1993. The treaty has entered into force. The objectives of the treaty are, among others:

1. to establish common management rules; and
2. establish a surveillance of social security organs with the aim of rationalizing their functioning and guaranteeing the interest of beneficiaries, including migrant workers.

CIPRES can conclude cooperation and assistance agreements with member States or international organizations. Under the auspices of the Conference, 14 CIPRES member States concluded the CIPRES Multilateral Inter-African Convention on Social Security in 2006. However, this instrument is not yet in force (Ortiz, 2014).[64] The Convention is devoted to the protection of the rights of the migrant workers who are covered by the national laws of one or more member States, as well as members of their families and their survivors. It recognizes that the objective of the CIPRES treaty on economic and social integration cannot be achieved without protecting the rights of migrant workers. To this effect, the Multilateral Inter-African Convention on Social Security affirms two basic principles:

- the principle of equality of treatment between nationals and non-nationals from member States with regard to the social security law of each country; and
- the principle of maintenance of acquired rights and maintenance of rights in course of acquisition.

The Convention covers both long- and short-term benefits, namely:

- old age, invalidity, and survivors pensions;
- family and maternity benefits;
- occupational injuries and diseases; and
- sickness benefits.

[64] According to the ILO *Examples of Multilateral Social Security Agreement*, available at http://www.socialsecurityextension.org/gimi/ShowWiki.action?wiki.wikiId=953 [accessed 31 July 2018], only 5 of the 14 member States have ratified this instrument.

Significantly, in West Africa the 2012 ECOWAS General Convention on Social Security – supported and informed by the 1979 ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment – provides for a comprehensive coordination and portability regime. However, the implementation instrument for the Convention still needs to be adopted. The Convention covers a wide range of long- and short-term benefits, including health-care benefits (article 2), and applies the usual principles of coordination.

The wide material scope of the coordination arrangements under the Convention derives from article 2, paras 2–4 as follows:

> (2) This Convention shall apply to the general and special compulsory regimes of a contributory nature of the Contracting Parties, including employers' contributions and provident fund schemes in respect of the benefits referred to in the preceding paragraph. Bilateral or multilateral agreements between two or more contracting parties shall determine, whenever practicable, the conditions under which the Convention shall be applied to the provident schemes or funds instituted by collective agreements rendered compulsory by governments.
>
> (3) This Convention shall also apply to all legislations that codify, supplement or amend the social security legislation in force on the date of ratification of this Convention in the territory of each Contracting Party.
>
> (4) The application of this Convention shall be extended to all social security schemes that shall be ultimately established under the legislation of each Contracting Party."

Regarding the Convention's personal scope of application, the provisions are:

> " … applicable to workers who are, or have been, subject to the legislation of one or more of the Contracting Parties and who are nationals of one of the Contracting Parties, or refugees or stateless persons who have acquired social security rights in the territory of a Contracting Party and are resident in the territory of a Contracting Party and are nationals of a Contracting Party**,** as well as members of their family and their survivors (article 3).

Also of importance is the now defunct but successful multilateral agreement which operated in Africa's Great Lakes region between 1980 and 1987.[65]

Discussions on the introduction of a multilateral arrangement for the East African Community (EAC), within the context of the EAC Common Market Protocol, are ongoing. The Common Market Protocol of 2009 gives concrete effect to the treaty provisions, and for purposes of entitlement to social security benefits, the Protocol links the free movement principle to equal treatment. The Protocol also grants an entitlement to workers, based on the free movement principle, to enjoy social security rights and benefits on the basis of equality with workers of the host State. An annex to the Protocol, in the form of binding regulations, implements the provisions of article 10 of the Protocol, which stipulates that Partner States must ensure equality of treatment to citizens of other EAC Partner States, including in relation to contributions to social security schemes.[66]

Progress in this area has been extremely slow, despite the clear political commitment expressed in the foundational instruments indicated above, and the indication in the 4th EAC Development Strategy that the coordination of social security systems in the EAC was a strategic objective to be attained over the period 2014–15 (EAC, 2011). One of the challenges appears to be the ostensible incompatibility of the Ugandan private/individual account pension system and the public retirement schemes obtaining in the other EAC Partner States.

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[65] For more on this arrangement, see Papa, 2008.

[66] The East African Community Common Market (Free Movement of Workers) Regulations, 2009, annex II, regulation 13(1)(d).

In the Southern African Development Community (SADC), several developments need to be noted:

- The non-binding Code on Social Security, adopted in 2007, does not allow disparate treatment of foreigners, and encourages Member States to ensure that all lawfully employed immigrants and self-employed persons are protected through the promotion of certain core principles. Member States are encouraged, by way of national legislation and bilateral or multilateral arrangements, to introduce cross-border coordination principles, such as maintenance of acquired rights, aggregation of insurance periods, and exportability of benefits.[67] A monitoring and evaluation tool, intended to gauge compliance with and identify challenges posed by the Code provisions, and to facilitate the preparation of status reports and the taking of corrective measures, was developed with the assistance of the ILO and was recently piloted in the SADC region (ICMPD, FIAPP, and IDEP, 2013).
- Realizing that the time has come to adopt a binding instrument in the area of labour, employment, and social security, the Employment and Labour Sector of SADC more recently spearheaded the development and adoption of the SADC Protocol on Employment and Labour. This Protocol, adopted in 2014 but not yet in force,[68] contains extensive provisions on labour migration and migrant workers, including provisions requiring coordination on both social security schemes and portability of benefits. The Protocol enjoins Member States to ensure that fundamental rights are accorded to non-citizens, including social protection rights, and to establish an autonomous regional agency to address cross-cutting issues, such as the streamlining and facilitation of portability of social security benefits across borders.[69]
- The final SADC Labour Migration Action Plan (2013) provided for the harmonization of pensions and social security benefits in public and private schemes.[70]
- Commissioned by the ILO, a Labour Migration Policy Framework was subsequently endorsed by tripartite stakeholders in 2014. It identifies as a policy area the harmonization of social security schemes and portability of benefits, and expects Member States to ensure that bilateral and multilateral agreements provide for portability of social security benefits for migrant workers.[71]
- More recently, a draft SADC Cross-Border Portability of Social Security Benefits Framework has been developed (2016).

Finally, mention needs to be made of the new medium-term African Union Commission/Regional Economic Communities (AUC-RECs) joint initiative on labour migration (Joint Labour Migration Programme), recently endorsed by the African Union heads of state and developed with technical support from the United Nations Economic Commission for Africa (UNECA), the ILO, and the International Organization for Migration (IOM), under the title "Labour Migration Governance for Development and Integration in Africa: A bold new initiative". This programme follows a dual structure: (1) strengthen effective governance of labour migration in Africa; and (2) support implementation of labour migration standards and policy. Portability of benefits in the ILO Convention sense of the word (which includes broader coordination principles) is specifically provided for.

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67 Code on Social Security in the SADC, 2007, article 17.
68 Ten Member States ratifications are required for the Protocol to officially enter into force.
69 SADC Protocol on Employment and Labour, 2014, article 17.
70 SADC Labour Migration Action Plan 2013/2015, outcome 6.
71 SADC Labour Migration Policy Framework, 2014, sections 5.1.4 (xi) and 5.2 (x).

In addition, the recently adopted AU Protocol to the Treaty establishing the African Economic Community relating to the Free Movement of Persons, Right of Residence and Right of Establishment (2018) makes provision in Article 19 for the facilitation of portability of social security benefits to nationals of another Member State residing or established in that Member State, also through multilateral arrangements.

Arab States – In 2006 the six countries of the Gulf Cooperation Council (GCC) adopted the Unified Law of Insurance Protection Extension for GCC State citizens working in other GCC countries. It has been noted that this law has resulted in better pension protection and greater labour mobility (van Ginneken, 2013). However, this is not a coordination arrangement, as its focus is on the continuity of coverage of workers in the region (Ortiz, 2014).

Asia – Multilateral arrangements appear to be limited in Asia. In the ASEAN region, as reflected on above, Member States have agreed to the Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007 and the Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017). However, there is no multilateral agreement containing social security portability and other coordination principles yet existing in ASEAN (Hall, 2011). The need for a multilateral social security framework in Asia is also endorsed in the 2005 Baku Declaration (ISSA, 2005 – particularly article 7).

6.4.3 Evaluation and challenges

A multilateral social security agreement could effectively extend some forms of coverage and protection available under the system of the host country to migrants abroad. However, in their current format, focus, and orientation, multilateral social security agreements do not, as such, constitute standard-setting arrangements. In this regard, it should be emphasized again that multilateral social security agreements are limited to the extent that they do not set or create minimum social security standards outside the coordination framework. What these agreements effectively do is set a framework for region-wide coordination of social security schemes and for bilateral agreements (to be) concluded within the regional context covered by the multilateral agreement, thereby giving expression to considerations of regional integration, and when designed with flexibility in mind, allowing for incremental extension and implementation.

However, the challenges facing BSAs in relation to administrative and technological capacity, the limited applicability of the principle of equality of treatment, and the absence of a broader human rights focus are equally relevant here. For these reasons in particular, multilateral social security agreements are unlikely to extend any meaningful coverage to informal workers and undocumented migrants.

To this it may be added that effective multilateral social security agreements – as is the case with bilateral agreements – would require that the relevant social security schemes forming the subject of entitlements should be compatible, at least to some extent. This may pose particular challenges in the ASEAN context. For example, it would be difficult to develop a coordination regime for the portability of retirement benefits if some countries covered by the agreement have pension-oriented arrangements in place, while others may provide for lump-sum payments. Similar considerations apply to health-care benefits.

Of course, the asymmetrical nature of certain social security benefit regimes obtaining in ASEAN might be the very reason why an incremental approach regarding the countries and types of schemes and benefits covered by the agreement is called for.

There are several other challenges associated with multilateral social security agreements. These include the following:

- These agreements are time-consuming to develop, as they involve multiple countries, the need to set standards for a whole region, and the need to deal with the coordination of a large number of social security systems.
- Political determination on the part of all contracting parties is crucial for the successful negotiation, conclusion, and adoption of a multilateral agreement.
- As indicated, the freedom of movement principle is crucially linked to coordination of social security schemes. Of course, the challenge in ASEAN is that, with the exception of the ASEAN Charter, this principle is currently not recognized with regard to unskilled and semi-skilled migrant workers.
- the principle concerning the prohibition of nationality discrimination is also crucial. However, nationality discrimination still appears in the legal systems of several ASEAN Member States, and constitutes an impediment to the successful conclusion and implementation of an ASEAN-wide coordination regime.
- The need to develop the required institutional capacity has to be addressed. It may also be necessary to consider the establishment of an autonomous regional agency to assist with the streamlining and facilitation of portability of social security benefits across borders.

It may also be necessary to consider the following:

- As indicated above, developing a ring-fenced regional approach, which introduces a more favourable framework regarding social security access and portability for migrants and migrant workers from ASEAN moving within ASEAN, is clearly aligned with international practice.
- From a regional perspective, it may be helpful to consider the conclusion of bilateral arrangements as a first step, which could then develop into/give rise to multilateral arrangements – as happened in some other regional jurisdictions (e.g., the EU).
- There are also clear examples of initially limited multilateral arrangements developing into more comprehensive arrangements – e.g., Mercosur, the Ibero-American agreement; and EU coordination expansion.
- At the levels of international standards, bilateral arrangements, and multilateral arrangements, ample scope exists for drawing distinctions between different migrant (worker) categories.
- There is need to ensure the adoption of implementing provisions to give effect to any multilateral agreement that may be concluded in the ASEAN context.

Besides establishing a standardized framework for bilateral agreements, another matter to consider regarding an ASEAN multilateral framework agreement is that it can provide for a phased and incremental approach in relation to:[72]

1. **The types of schemes covered** – As indicated above, the existence of occupational injury schemes in all ASEAN countries, and the presence of common elements within these schemes make them the ideal first candidate for coordination. A multilateral agreement could initially cover such schemes, and be extended as and when sufficient convergence/compatibility with respect to other schemes (e.g., pension-oriented public retirement fund schemes) occurs.

[72] See also Olivier, 2012, para. 158.

2. **The benefits provided for** – It might be that monetary benefits that are, in principle, portable should enjoy priority status. This also applies to employment injury benefits, due to the fact that workmen's compensation pension payments are a matter of particular concern in the ASEAN context, and are provided by all ASEAN countries. Related benefits, such as health care and integration services, could be incrementally introduced, as institutional and professional capacity to render these services develops.
3. **The categories of persons covered by such an agreement** – Provision could initially be made for extending the benefits of cross-border social security arrangements to certain categories of persons only (for example, lawfully residing/employed migrant workers and their dependants), which could over time be extended to include other categories of persons (for example, self-employed workers), as is the custom in most other regions where a multilateral agreement is in operation.
4. **The countries included in the agreement** – Given the political, administrative, and other difficulties involved in the establishment of multilateral agreements, it might be necessary to initially include within the sphere of operation of a multilateral agreement those countries which at this stage have both the capacity as well as the most urgent need to enter into appropriate arrangements. For example, it may be prudent to initially cover the main receiving countries in the region as well as the main migrant-sending countries within such a multilateral framework. The latter countries all have much in common in terms of access to certain social security benefits emanating from the receiving countries to justify their inclusion within a multilateral framework. Other countries could from time to time be added as the need to do so arises.
5. **The social security principles covered** – In addition, certain core social security coordination principles may be introduced, or implemented, progressively, rather than at once, assuming that a rationale for doing this exists in the ASEAN region. For example, the current absence of pension-oriented (public) retirement fund schemes in several ASEAN countries may render it prudent to provide for the principle of aggregation/totalization of insurance periods/contributions, in relation to the public social security schemes of the different countries, but to postpone the operationalization and implementation of this principle until such time that the social security reform processes obtaining in the relevant countries have converged in the establishment of, for example, pension-oriented public retirement fund schemes, which are amenable to cross-border coordination.

The suggested incremental approach may be particularly relevant in the prevailing ASEAN context, given the underdeveloped state of social security systems in some countries and the (to some extent) vastly different social security regimes in place, especially in the areas of health insurance and retirement provision.

With ASEAN Economic Community integration now becoming a reality, decent work conditions for migrant workers and a multilateral social security agreement as proposed in the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers would be indispensable to responsibly managing intra-regional migration.

7. Conclusions

1. Given the weak social security protection available to migrant workers in ASEAN, it is necessary to appreciate and introduce the complementarity of unilateral, bilateral, and multilateral interventions to increase meaningful coverage. Regarding unilateral measures, much can be learnt from good practices in certain ASEAN Member States.

2. It is of primary importance to encourage the development of a comprehensive network of intra-ASEAN social security agreements, ideally in the form of a multilateral agreement. This 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, p. 56). It may well be that an incremental approach needs to be adopted in terms of the development and scope, as well as the implementation, of a multilateral agreement.

3. There is need to encourage the adoption of overarching regulatory mechanisms. This implies:
    - the adoption and implementation of international and regional instruments and standards;
    - an appropriate legal framework that mandates and regulates unilateral measures, and the adoption and domestic application of bilateral and multilateral arrangements; and
    - the introduction of suitable institutional mechanisms to facilitate implementation, monitoring, and evaluation.

4. It may be opportune to encourage the focus on the following mutually supportive measures to enhance migrant workers' access to social security:

   - Providing access to social security and health coverage for migrants in the country where they work, following review of existing national legislation;
   - Providing social protection and health coverage to family members who remain in the country of origin, and protecting the existing (social security) rights of migrant workers in that country;
   - Improving the portability of workers' social security and retirement benefits; and
   - Developing different forms of social protection for migrant workers who are not covered by formal social security schemes in host countries. This includes the extension of contributory social security arrangements to lawful migrant workers on the basis of equality with national workers, as is indicated in the range of international standards discussed above.[1] Also in keeping with international standards, regular and longer-term migrant workers (i.e., migrant workers whose links with the destination country cannot be regarded as tenuous) should be afforded enhanced, non-contributory, tax-funded (social assistance) protection, for example on the basis of satisfying a required period of lawful and actual residence. As explained above, this principle has been recognized and applied in the EU context,[2] as well as in the constitutional jurisprudence in a country such as South Africa.[3]

5. There is a clear need for synergy to be attended to. In this regard, the following should be encouraged:

   - Recognizing but regulating the superimposition of immigration law on labour law and the social security entitlements of migrant workers:
     - operation of important guiding principles, including lawful residence, means of subsistence tests, lawful employment, and recognition of an overarching human rights framework;
     - complementarity of unilateral, bilateral, and multilateral arrangements;
     - incorporation of unilateral arrangements in bilateral agreements; and
     - adopting multilateral agreements to set regional standards for bilateral treaties.
   - The need for an integrated labour law/social security approach, as the same workers are affected by both regimes:
     - at the national level: see, for example, the 2011 EU Single Permit Directive; and
     - at the regional level: deal with the silo approach of labour agreements, either by expanding labour agreements to fully incorporate social security protection, or by developing streamlined and labour agreement-aligned social security agreements

6. The value of appropriate bilateral and multilateral arrangements – It is evident that multilateral and bilateral agreements play a profound role in cementing the protection of certain migrants' social security entitlements. To illustrate the point, had it not been for the incorporation of the portability principle in most multilateral and bilateral agreements, fewer than the 30 per cent of migrants worldwide who return to their home country would have done so (Paparella, 2004). This could have important implications for both host and home countries in ASEAN.

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1 See section 6.1.1 above.
2 See sections 6.1.1 and 6.4.2 above.
3 For more, see Olivier, 2012, pp. 109–12.

- And yet, these agreements have a limited material and personal scope. They deal with coordination of social security schemes only, and do not consider the social security protection of migrant workers in wider terms. In addition, they hardly cover or operate to the benefit of irregular and informally employed migrants (Olivier and Govindjee, 2013).
- For these reasons, unilateral arrangements emanating from the country of origin are important to achieve meaningful protection and coverage. This is true despite their shortcomings, including the voluntary nature of some of the arrangements made by countries of origin, and the absence of an international instrument that provides standards in this regard. In fact, there may indeed be a clear need for one or more international instruments that contain a clear set of norms to be adopted and applied unilaterally by both destination countries and countries of origin, and that are applicable to both social security and, to the extent relevant, labour law.
- Perhaps the adoption of the EU Single Permit Directive[4] provides an important example of a supra-national arrangement that compels host countries (i.e., EU Member States) to extend both labour law and social security protection to lawfully residing migrants, in principle on the same basis of protection extended to their own nationals. See the discussion in chapter 6.

7. Rationale for a range of mutually supportive social security measures – The rationale for appropriate measures to extend social security protection to migrant workers and their families in ASEAN Member States is self-evident:

    - This flows from, among other factors:
        - the vast and growing extent of migration within ASEAN and the impact these migration streams have had on household (social) and national (economic) development;
        - the extensive human rights basis for protection, supported by binding and non-binding international standards, and also reflected in ASEAN regional instruments, as well as by comparative best practice; and
        - the imperative of regional integration and freedom of movement.
    - Yet the challenges and reform needs are significant, as can be seen in:
        - the entrenched forms of nationality discrimination in the law and practice of some ASEAN Member States;
        - the need to adjust the rigid immigration and policy regimes of Member States to reflect a sensitivity to the human rights and international social security standards prescripts; and
        - the need to introduce innovative country of origin measures and develop appropriate bilateral and multilateral mechanisms.

8. It is suggested that further progress in these areas in ASEAN is dependent not only on political will, which seemingly is developing, but on the adoption of suitable policy and strategic frameworks, supported by appropriate legislative design.

    - This is also required by international and regional instruments. In particular, United Nations General Comment No. 19 on the right to social security (para. 41) requires that States parties develop a national strategy for the full implementation of the right to social security, and allocate fiscal and other resources at the national level.

[4] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

- This national strategy and plan of action to realize the right to social security should, inter alia, take into account the rights of the most disadvantaged and marginalized groups – therefore including categories of non-citizens as well.[5]
- Action in this regard, especially concerning the conclusion of a multilateral framework, is supported by several high-level decisions by ASEAN apex institutions, as well as recent work plans of these institutions.

9. Precarious position of migrant workers requiring appropriate responses:
    - In 1977 the ILO had already listed the expulsion of migrants without regard to social security rights arising out of past employment or residence, as one of the ten most exploitative practices in the world (Vonk, 2014).
    - There is an evident need across all ASEAN Member States to consider the extension of social protection support to migrant workers, including, as indicated above: (1) contributory; and (2) non-contributory support. Accessing non-contributory (i.e., social assistance) benefits in particular could be made dependent on satisfying lawful residence criteria – for example, on the basis of meeting a required period of lawful and actual residence.
    - In short, the precarious position of migrant workers and their families[6] in ASEAN demands an appropriate response, also in the form of special protection embedded in multilateral, bilateral, and unilateral arrangements, and supported (at a national level) by a proper policy framework.
    - Several building blocks need to be in place. From a country of origin perspective, much can be achieved in terms of institutional monitoring and oversight by establishing institutions that are competent to deal with the affairs of citizens outside the borders of the home country. Some examples are already in existence, including elsewhere in the developing world, as discussed in chapter 6.
    - Resources such as these could liaise with relevant institutions in countries of destination, and ease contact and communication between migrants and institutions in both the country of origin and country of destination. These resources could also assist with the implementation and/or monitoring of compliance with social security agreements, and with portability arrangements.

10. Removing nationality discriminatory provisions – ASEAN Member States should remove unnecessary restrictions in their legal systems and ensure proper alignment with the ethos and specific requirements of international and regional standards pertaining to both migration and social security. There is an evident need to encourage support for the ratification of relevant UN and ILO standards and instruments.

11. In summary, there is an evident need for a bilateral and portability regime in ASEAN.
    - However, it is also clear that there are several matters that need to be factored in and attended to in order to arrive at contextualized, informed, and integrated arrangements enshrined in bilateral treaties, and possibly also in a limited multilateral agreement capable of being successfully implemented.
    - An incremental approach may be called for.

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[5] General Comment No 19 on the right to social security, para. 68.

[6] Holzmann, Koettl, and Chernetsky (2005) maintain that special protection is needed, given the atypical lifecycle of migrant workers.

- First and foremost, the focus and orientation of these agreements should be on migrant access to the social security benefits of the host country, linked with suitable portability arrangements. Secondly, it has to be considered how extensive the scope of the agreement(s) should be, with reference to; (a) the range of benefits covered; (b) the categories of persons to be covered; and (c) the extent to which social security cross-border coordination principles other than mere portability arrangements should be included in the agreement(s).
- As regards the first issue, it is evident that lack of access to workmen's compensation benefits (i.e., occupational injuries and diseases benefits) is an area of concern that is common to many countries in ASEAN, and needs to be covered in the agreement(s) concerned. Workmen's compensation benefits could serve as the initial benefit category to be covered in these agreements.
- Furthermore, such agreements should cover lawfully residing and employed migrant workers, to be gradually extended to other categories of workers, such as self-employed persons.
- And, finally, while portability of benefits requires priority attention, other social security coordination principles should find their way into the relevant treaties.[7] This applies in particular to the principle of equal treatment, given the reciprocal nature of such agreements. For this reason also, the current nationality restrictions contained in many ASEAN social security laws need to be revisited.
- Also, in order to achieve full portability, some cooperation between the social security institutions of the origin and the host counties is required. Cooperation is required to ensure a joint determination of benefit levels for a particular category of migrant. However, the administrative and technological capacity, in some of the ASEAN countries, to achieve this may be lacking (Sabates-Wheeler and Koettl, 132. There may also be compatibility challenges regarding social security schemes in the countries concerned – a matter discussed in section 6.4.
- Although not yet fully ratified by ASEAN countries, international labour standards related to social protection and labour migration, can serve as guidance to further strengthen or develop the social security systems of ASEAN Member States and their coverage of migrant workers.

[7] See Olivier, 2012, pp. 152–58 for a detailed discussion.

Bibliography

ABC News. 2015. "ASEAN leaders agree to economic 'Community' at summit shadowed by terrorism worries", 22 Nov. Available at: http://www.abc.net.au/news/2015-11-22/asean-creates-economic-community-at-summit/6962286 [10 Nov. 2018].

ABS-CBN News. 2014. "Philippines inks social security pact with Germany", 29 Sep. Available at: http://news.abs-cbn.com/business/09/29/14/philippines-inks-social-security-pact-germany [14 Jul. 2016].

Ahmad, R.; Sukumaran, T.; Tan, C.; Trisha, N. 2015. "RM900 for Indonesian maids", in *The Star Online*, 31 Oct. Available at: http://www.thestar.com.my/News/Nation/2015/10/31/RM900-for-Indonesian-maids-Indonesia-sets-minimum-salary-and-plans-to-increase-it-in-the-future/ [1 May 2017].

Association of Southeast Asian Nations (ASEAN). 2004. Vientiane Action Programme *(2004–2010)* (Jakarta).

—. 2007. *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration).* Available at: http://asean.org/?static_post=asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-2 [10 Nov. 2018].

—. 2008a. *Charter of the Association of Southeast Nations.*

—. 2008b. *ASEAN Economic Community Blueprint.*

—. 2009. *ASEAN Socio-Cultural Community Blueprint (2009–2015).*

—. 2013. *ASEAN Declaration on Strengthening Social Protection.* Available at: http://www.fao.org/fileadmin/templates/rap/files/meetings/2014/141208_4_ASEAN_Declaration_on_SP.pdf [31 Oct. 2017].

—. 2015b. *ASEAN Economic Community at a glance*, factsheet. Available at: http://asean.org/storage/2012/05/Binder-AEC-at-a-Glance.pdf [31 Oct. 2017].

—. 2015c. "ASEAN Community Vision 2025", in ASEAN Secretariat: *ASEAN 2015: Forging ahead together* (Jakarta), pp. 13–18. Available at: http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf [3 Nov. 2017].

—. 2015d. "ASEAN Economic Community Blueprint 2025", in ASEAN Secretariat: *ASEAN 2015: Forging ahead together* (Jakarta), pp. 59–102. Available at: http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf [4 Nov. 2017].

—. 2015e. "ASEAN Political-Security Community Blueprint 2025", in ASEAN Secretariat: *ASEAN 2015: Forging ahead together* (Jakarta), pp. 19–58. Available at: http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf [4 Nov. 2017].

—. 2015f. "ASEAN Socio-Cultural Community Blueprint 2025", in ASEAN Secretariat: *ASEAN 2015: Forging ahead together* (Jakarta), pp. 103–122. Available at: http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf [4 Nov. 2017].

—. 2015g. "Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together", in ASEAN Secretariat: *ASEAN 2015: Forging ahead together* (Jakarta), pp. 9–12. Available at: http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf [31 Oct. 2017].

—. 2015h. *Managing labour market in an integrated ASEAN*, conference declaration of the 7th Regional Tripartite Social Dialogue for Growth, Employment and Sound Industrial Relations in the Service Sector in ASEAN, Kuala Lumpur, 12–13 Oct.

—. 2015i. *ASEAN integration in services* (Jakarta). Available at: http://www.asean.org/wp-content/uploads/2015/12/ASEAN-Integration-in-Services-(Dec%202015).pdf [15 July 2016].

—. 2015k. *Regional Framework and Plan of Action to Implement the ASEAN Declaration on Strengthening Social Protection.* Available at: http://www.asean.org/images/2015/November/27th-summit/ASCC_documents/ASEAN%20Framework%20and%20Action%20Plan%20on%20Social%20ProtectionAdopted.pdf [10 Nov. 2018].

—. 2016a. *ASEAN Labour Ministers' Work Programme 2016–2020* (Jakarta).

—. 2016b. *Recommendations: The 9th ASEAN Forum on Migrant Labour, 9–10 November 2016, Vientiane, Lao PDR.* Available at http://www.ilo.org/asia/publications/WCMS_535048/lang--en/index.htm [3 Nov. 2017].

—. 2016c. *Vientiane Declaration on Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN.* Available at: http://asean.org/storage/2016/09/Vientiane-Declaration-on-Employment.pdf [4 Nov. 2017].

ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW). 2016. *Work Plan 2016–2020* (s.l., n.p.).

ASEAN Secretariat. 2017. ASEAN Leaders commit to safeguard the rights of migrant workers, media release, 14 Nov. Available at: http://asean.org/asean-leaders-commit-safeguard-rights-migrant-workers [3 Nov. 2018].

Asia One. 2016. "Indonesia to stop exporting maids by 2017", 16 May. Available at: http://apmigration.ilo.org/news/indonesia-to-stop-exporting-maids-by-2017 [29 Apr. 2017].

Avato, J.; Koettl, J.; Sabates-Wheeler, R. 2010. "Social security regimes, global estimates, and good practices: The status of social protection for international migrants", in *World Development*, Vol. 38, No. 4, pp. 455–66.

Baruah, N.; Cholewinski, R. 2006. *Handbook on establishing effective labour migration policies in countries of origin and destination* (Vienna, OSCE, IOM, and International Labour Office).

Cambodian Government. 2014. *National Strategic Development Plan 2014–2018* (s.l., n.p.).

Caribbean Community (CARICOM) Secretariat. 2010. *Social security in CARICOM* (Bridgetown).

Center for Migrant Advocacy (CMA). 2010. *Bilateral labor agreements and social security agreements: Forging partnerships to protect Filipino migrant workers' rights* (Quezon City).

Central Provident Fund Board (CPF Board). n.d. 1. *CPF overview.* Available at: https://www.cpf.gov.sg/Members/AboutUs/about-us-info/cpf-overview [26 Nov. 2016].

—. n.d. 2. *CPF withdrawals on other grounds.* Available at: https://www.cpf.gov.sg/Members/Schemes/schemes/other-matters/cpf-withdrawals-on-other-grounds [25 Nov. 2016].

Chen, M.; Jhabvala, R.; Lund, F. 2002. *Supporting workers in the informal economy: A policy framework, Employment Sector Working Paper on the Informal Economy, No. 2002/2* (Geneva, ILO).

Chin, D. 2016. "Indonesia pushes for labour MoU", in *The Brunei Times*, 15 Oct. Available at: http://www.ei.gov.bn/Lists/Industry%20News/NewDispForm.aspx?ID=192 [3 Nov. 2017].

Christy, N. 2015. "Migrant worker deal expands education to thousands of kinds in Malaysia", in *Jakarta Globe*, 13 Feb. Available at: http://jakartaglobe.id/news/migrant-worker-deal-expands-education-thousands-kids-malaysia/ [1 May 2017].

Cornelissen, R. 2009. "50 Years of European social security co-ordination", in *European Journal of Social Security*, Vol. 11, No. 1–2, pp. 9–45.

Council of Europe. N.d. *Who we are*. Available at: http://www.coe.int/en/web/about-us/who-we-are [3 Nov. 2017].

Damrongplasit, K.; Melnick, G. 2009. "Early results from Thailand's 30-baht health reform: Something to smile about", in *Health Affairs*, Vol. 28, No. 3, pp. 457–66.

del Rosario, T. 2008. *Best practices on social insurance for migrant workers: the case of Sri Lanka*, ILO Asian Regional Programme on Governance of Labour Migration Working Paper No. 12 (Bangkok, ILO).

Department of Labour [Brunei Darussalam]. n.d. *Guide to Brunei employment laws*. Available at: http://www.buruh.gov.bn/Download/GUIDE%20TO%20BRUNEI%20EMPLOYMENT%20LAWS%20-%20english%20version-3.pdf [16 Apr. 2017].

Department of Labour and Employment (DOLE) [Philippines]. 2011. *The Philippine Labor and Employment Plan 2011–2016: Inclusive growth through decent and productive work* (Manila).

—.2016. "Bello bares 8-point labour and employment agenda", 17 Aug. Available at: https://www.dole.gov.ph/news/view/3220 [5 June 217].

Diallo, Y. 2015. *Key indicators of labour migration "2015 Labour Migration Statistics in Africa Report"* (Addis Ababa, ILO).

Dijkhoff, T. 2015. "Supervision of social security standards: Between law and politics", in F. Pennings and G. Vonk (eds): *Research handbook on European social security law* (Cheltenham, Edward Elgar Publishing), pp. 170–200.

Dioh, A. 2011. *Migration flows and the access to social security rights for nationals and resident migrant workers in West Africa*, publication of the ICMPD & FIIP Meeting of Experts on the Social Rights of Migrants and their Portability under a Transnational Framework, (s.l., n.p.).East African Community (EAC). 2011. *EAC development strategy (2011/12 – 2015/16): Deepening and accelerating integration* (s.l.).

Employees Provident Fund (EPF) [Malaysia]. 2007. *Termination of liability to contribute for foreign workers*. Available at: http://www.kwsp.gov.my/portal/en/employers/employers-responsibility/contribution/termination-of-liability-to-contribute-for-foreign-workers [5 June 2017].

—. 2014. *Liability*. Available at: http://www.kwsp.gov.my/portal/en/web/kwsp/employers/faq/employer/liability [5 June 2017].

—. n.d. *Option to contribute*. Available at: http://www.kwsp.gov.my/portal/en/web/kwsp/employers/employers-responsibility/contribution/option-to-contribute [5 June 2017].

Fall, C.; Tounkara, C.T. 2016. *Analysis of ECOWAS Member States' social security systems and their consistency with the ECOWAS General Convention on Social Security* (s.l., Free Movement of Persons and Migration in West Africa).

Fudge, J. 2015. "Migration and sustainable development in the EU: A case study of the Seasonal Workers Directive", in *International Journal of Comparative Labour Law*, Vol. 31, No. 3, pp. 331–49.

Hall, A. 2011. *Migrant workers' rights to social protection in ASEAN: Case studies of Indonesia, Philippines, Singapore and Thailand* (Singapore, Migrant Forum in Asia and Friedrich-Ebert-Stiftung).

—. 2012. "Migrant workers and social protection in ASEAN: Moving towards a regional standard?", in *Journal of Population and Social Studies*, Vol. 21, No. 1, pp. 12–38.

Harkins, B. 2016. *Review of labour migration policy in Malaysia* (Bangkok, ILO).

Holzmann, R.; Koettl, J.; Chernetsky, T. 2005. *Portability regimes of pension and health care benefits for international migrants: An analysis of issues and good practices*, Social Protection Discussion Paper No. 0519 (Washington, DC, World Bank).

Houng, P. 2016. *Laws and policies for providing social insurance tonon-citizens working in Vietnam*, unpublished draft report submitted to the ILO.

Human Rights and Development Foundation (HRDF). 2015. *The Supreme Administration Court rules to rescind a circular issued by the Social Security Office (SSO) being deemed as setting out unlawful practice and discriminative treatment against migrant workers and their access to the Workmen's Compensation Fund (WCF),* press release, 9 Sep. Available at: http://hrdfoundation.org/?p=1410&lang=en [10 Nov. 2018].

Indonesian Government. 2015. *The Indonesia National Medium Term Development Plan (RPJMN) 2015–2019* (Jakarta). Available at: http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=50077 [28 Apr. 2017].

Institute of Labour Market Information and Analysis (ILMIA). 2015. *A study on developing leading and lagging indicators for human capital development game changers for 11th Malaysia Plan* (Kuala Lumpur).

International Centre for Migration Policy Development (ICMPD); Foundation for International and Ibero-American Administration and Public Policies (FIAPP); African Institute for Economic Development and Planning (IDEP). 2013. *MME on the move: A stocktaking of migration, mobility, employment and higher education in six African regional economic communities* (Brussels, ICMPD).

International Labour Organization (ILO). 1997. *Protecting the most vulnerable of today's workers*, Discussion paper, Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration (Geneva).

—. 2006. *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva).

—. 2008. S*trategies to promote transition to formality in Africa*, contribution to the Joint African Union/ILO Workshop on the Informal Economy in Africa, Dakar, 20–22 Oct.

—. 2010. *International labour migration: A rights-based approach* (Geneva).

—. 2011. *Resolutions adopted by the International Labour Conference at its 100th* Session (Geneva).

—. 2013. *10 years of work on labour migration in Indonesia* (Jakarta).

—. 2014. *ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2014, regarding Malaysia's suggested non-compliance with its obligations in this regard under the Migration for Employment Convention (Revised), 1949 (No. 97), Malaysia-Sabah*.

—. 2015a. *Myanmar citizens abroad: What the 2014 census tells us about migration*, GMS TRIANGLE Project Information Not (Bangkok).

—. 2015b. *Brunei Darussalam country fact sheet* (Bangkok).

—. 2015c. *Cambodia country fact sheet*.

—. 2015d. *Analytical report on the International Labour Migration Statistics Database in ASEAN: Improving data collection for evidence-based policy-making* (Bangkok).

—. 2015e. *Establishing migrant welfare funds in Cambodia, Lao PDR and Myanmar*, Policy Brief No. 3 (Bangkok).

—. 2015f. *Indonesia: Decent work for Indonesian migrant workers*, Fact sheet (Jakarta).

—. 2015g. *Social protection for Indonesian migrant workers: Efforts and challenges*, Brief (Jakarta).

—. 2015h. *Indonesia country fact sheet* (Jakarta).

—. 2015i. *Labour and social trends in Indonesia 2014–2015: Strengthening competitiveness and productivity through decent work* (Jakarta).

—. 2015j. *Lao PDR country fact sheet* (Bangkok).

—. 2015k. *Malaysia country fact sheet* (Bangkok).

—. 2015l. *Myanmar country fact sheet* (Bangkok).

—. 2015m. *Singapore country fact sheet* (Bangkok).

—. 2015n. *Guide on measuring migration policy impacts in ASEAN* (Bangkok).

—. 2015o. *Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries* (Bangkok).

—. 2015p. *Progress of the implementation of Recommendations adopted at the 3rd – 6th ASEAN Forum on Migrant Labour meetings: Background paper to the 7th AFML* (Bangkok).

—. 2015q. *The ASEAN Forum on Migrant Labour (AFML): Background information booklet*, 2nd ed. (Bangkok).

—. 2015r. *Thailand country fact sheet* (Bangkok).

—. 2015s. *Social protection assessment based national dialogue: Towards a nationally defined social protection floor in Myanmar* (Yangon).

—. 2016. *Triangle II Quarterly Briefing Note:Thailand, July–Sep.* (Bangkok).

International Labour Organization (ILO); Asian Development Bank (ADB). 2014. *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok).

International Labour Organization (ILO); United Nations (UN). 2013. *Social protection assessment based dialogue: Towards a nationally defined social protection floor in Thailand* (Bangkok).

International Organization for Migration (IOM). 2013. A*n assessment of migrant worker recruitment monitoring in Indonesia* (Jakarta).

—. 2015. *Migrant Information Note*, Issue No. 28, Dec. (Bangkok). Available at: http://thailand.iom.int/sites/default/files/document/publications/Migration%2BInformation%2B28%2BEnglish.pdf [13 May 2017].

International Social Security Association (ISSA). 2005. *ISSA Declaration of the International Social Security Association and the International Association of Pension and Social Funds on "Social protection of migrant workers in Eurasia" (Yerevan).*

International Social Security Association (ISSA); Social Security Administration (SSA) [United States]. 2017. *Social security programs throughout the world: Asia and the Pacific* (Washington, DC).

Kapuy, K. 2009. "European and international law in relation to the social security of irregular migrant workers" in D. Pieters and P. Schoukens (eds): *The social security co-ordination between the EU and non-EU countries* (Cambridge, Intersentia), pp. 115–55.

—. 2011. *The social security position of irregular migrant workers: New insights from national social security law and international law* (Cambridge, Intersentia).

Katrougalos, G. 2015. "Social security in the 'case law' of the Social Rights Committee", in F. Pennings and G. Vonk (eds): *Research handbook on European social security law* (Cheltenham, Edward Elgar Publishing), pp. 84–102.

Klaaren, J.; Rutinwa, B. 2004. *Towards the harmonisation of immigration and refugee law in SADC*, MIDSA Report No. 1 (Cape Town, Idasa).

Klosse, S. 2013. *External aspects of social security coordination*, MISSOC Analysis 2013/2 (MISSOC).

Kneebone, S. n.d. *ASEAN, migrant workers and human rights protection*, PowerPoint presentation (s.l., n.p.)

Lamarche, L. 2014. "Human rights, social security and migrant workers", in R. Blanpain et al. (eds): *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Alphen aan den Rijn, Wolters Kluwer), pp. 9–30.

Letts, K.; Thuy, T. 2015. *Regular and irregular migrant workers in North Central Viet Nam: Findings from household surveys*, Viet Nam Country Brief, July (Hanoi, ILO).

Martin, I. 2011. *Bilateral labour agreements in practice: Issues and challenges*, Background note (Geneva, IOM). Available at: www.academia.edu/2067682/_2011_Bilateral_Labour_Agreements_in_Practice_Issues_and_Challenges [10 Nov. 2018].

Mesa-Lago, C. 2008. "Social protection in Chile: Reforms to improve equity", in *International Labour Review*, Vol. 147, No. 4, pp. 377–402.

Migrant Working Group (MWG). 2017. *Thailand: Civil society report on the implementation of the ICCPR (Replies to the List of Issues CCPR/C/THA/Q/2)*, report for the Review of the Second Periodic Report of Thailand (CCPR/C/THA/2) at the 119th session of the Human Rights Committee, Geneva, 6–29 Mar. Available at: at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26534_E.pdf [12 May 2017].

Migration Policy Group. 2011. "EU single permit directive granting third-country workers rights passes final hurdle", in *Migration News Sheet*. Available at: http://www.migrationnewssheet.eu/eu-single-permit-directive-granting-third-country-workers-rights-passes-final-hurdle [12 May 2017].

Minh, T. 2016. *Upgrading national laws for improved social protection of migrant workers*, presentation by the International Cooperation Department of the Ministry of Labor, Invalids and Social Affairs [Viet Nam] at the 9th ASEAN Forum on Migrant Labour, Vientiane, 9 Nov.

Ministry of Finance [Singapore]. n.d. *Supplementary Retirement Scheme (SRS)*. Available at: https://www.mof.gov.sg/MOF-For/Individuals/Supplementary-Retirement-Scheme-SRS [26 Nov. 2016].

Ministry of Foreign Affairs [Thailand], Department of European Affairs. 2017. *Highlights of progress on labour related issues in Thailand's fisheries sector*, 21 Apr. Available at: http://thaiembassy.se/minmapp/PDF/1704282.pdf [11 May 2017].

Ministry of Health [Singapore]. 2012. *Revised healthcare subsidy rates for permanent residents.* Available at: https://www.moh.gov.sg/content/moh_web/home/pressRoom/pressRoomItemRelease/2012/revised_healthcaresubsidyratesforpermanentresidents0.html [16 Nov. 2016].

Ministry of Labour and Vocational Training [Cambodia] (MOLVT). 2014. *Policy on labour migration for Cambodia* (Phnom Penh, MOLVT and ILO).

Ministry of Labour, Immigration and Population (MOLIP), Department of Population [Myanmar]. 2016. *Thematic report on migration and urbanization*, Census Report, Vol. 4-D (Nay Pyi Taw).

Ministry of Labour, Invalids, and Social Affairs (MOLISA) [Viet Nam]. 2015. *MOU on labour between Vietnam and Thailand*, 19 Sep. Available at: http://www.molisa.gov.vn/en/Pages/Detail-news.aspx?IDNews=2247 [6 June 2017].

Ministry of Manpower [Indonesia]. 2016*. Indonesian workers protection policy through TKI Insurance Program*, presentation. (n.d.) Available at: http://www.ilo.org/jakarta/WCMS_533051/lang--en/index.htm [28 Apr. 2017].

Ministry of Manpower [Singapore]. n.d. *Who is covered in accordance with WICA*. Available at: http://www.mom.gov.sg/workplace-safety-and-health/work-injury-compensation/who-is-covered [26 Nov. 2016].

Monrawee, L. 2016a. *Social protection for migrant workers: Thailand as a receiving and sending country*, Report (s.l., n.p.).

—. 2016b. *Report that reviews law, policies, programmes related to social protection of migrant workers in Thailand*, unpublished report for the ILO on file with author.

Nadaraj, V. 2015. "Migrant workers in ASEAN: The hidden and neglected workforce", in *The Establishment Post*, 26 May. Available at: http://apmigration.ilo.org/news/migrant-workers-in-asean-the-hidden-and-neglected-workforce [30 Oct. 2017].

Naing, S. n.d. *Policies and programs on migration management system in Myanmar*, (s.l., n.p.). Available at: http://library.pcw.gov.ph/sites/default/files/Annex%2026%20-%20Policies%20and%20Programs%20on%20Migration%20Management%20System_Myanmar.pdf [17 Apr. 2017].

Nam, T.H. 2017. *Policies on compulsory SI for the employees who hold citizenship of foreign country and work in Viet Nam*, presented at ILO/ASEAN Experts' Meeting on Extending Social Protection to Migrant Workers in ASEAN, Bangkok, 4 July.

Office of the High Commissioner for Human Rights (OHCHR). 2012. *Out of the shadows: A human rights perspective on irregular migration and development* (Geneva).

Ofreneo, R.; Sale, J. 2008. "Strengthening migrant protection in an integrating ASEAN", in *Philippine Journal of Labor and Industrial Relations*, Vol. 28, Nos. 1–2, pp. 97-104.

—. 2014. “Social security and migrant workers in the Philippines: Social protection for the country’s economic protectors”, in R. Blanpain et al. (eds): *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Alphen aan den Rijn, Wolters Kluwer), pp. 167-186.

Olivier, M. 2010. *Reflections on the feasibility of a multilateral SADC social security agreement involving South Africa and Lesotho, Mozambique, Swaziland and Zimbabwe*, Unpublished report submitted to the ILO.

—. 2012. “Social security: Framework”, in *LAWSA (The Law of South Africa) – Labour Law and Social Security Law*, Vol. 13, Part 2 (Durban, LexisNexis).

—. 2013. *Streamlining social protection for Asian migrant workers: The need for a co-ordinated policy, regulatory and institutional response*, paper presented at University of the Philippines Diliman School of Labor and Industrial Relations Conference: From Anti-colonialism to Anti-neoliberalism: The Working Class Struggle for Social and National Emancipation in Asia and the Pacific, Quezon City, 23–25 Oct.

—. 2014. *Labour migration management assessment: Uganda*, unpublished report submitted to the International Organization for Migration and the Government of Uganda.

—. 2015a. *Portability of migrants’ social benefits in the Tripartite*, unpublished report prepared for the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand.

—. 2015b. *Social protection for migrant workers in ASEAN: Developments, challenges and prospects – Methodology, outline framework and matrix template*, unpublished report submitted to the ILO.

—. 2016a. *Migration in Namibia: A country profile 2015* (Geneva, IOM).

—. 2016b “Rights-based perspectives on access to social security for temporary migrants in Australia: Pointers emanating from the European experiences”, in *Revista Internacional y Comparada de Relaciones Laborales y Derecho del Empleo*, Vol. 4, No. 3, pp. 5–29.

—. 2016c. *Regional arrangements for the protection of migrant workers’ rights: Selected comparative perspectives,* paper presented at the Senior Labour Officials’ Special Meeting to finalise the draft ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers, Jakarta, 1 Sep.

—. 2017a. *Ratifications for Brunei Darussalam*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103308 [17 April 2017].

—. 2017b. *Ratifications for Cambodia*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103055 [12 May 2017].

Olivier, M.; Andrianarison, F.; McLaughlin, M. 2013. *Study on social protection in sub-Saharan Africa: An assessment of existing programmes*, final report (Brussels, European Commission).

Olivier, M.; Dupper, O.; Govindjee, A. 2013. “Enhancing the protection of transnational migrant workers: A critical evaluation of regulatory techniques”, in E. Ales and I. Senatori (eds): *The transnational dimension of labour relations: A new order in the making?* (Turin, Giappichelli), pp. 291–343.

Olivier, M.; Govindjee, A. 2013. “Labour rights and social protection of migrant workers: In search of a co-ordinated legal response”, paper presented at the Inaugural Conference of the Labour Law Research Network (LLRN), Barcelona, 13–15 June.

—. 2015. “A critique of the Unemployment Insurance Amendment Bill, 2015”, in *Potchefstroom Electronic Law Journal*, Vol. 18, No. 7, pp. 2 738–66.

—. 2016. “Protecting and integrating migrant workers in ASEAN social security systems”, in *Institutions and Economies*, Vol. 4, No. 8, pp. 59–76.

Olivier, M.; Kalula, E. 2004. *Social protection in SADC: Developing an integrated and inclusive framework* (Johannesburg, Centre for International and Comparative Labour and Social Security Law (CICLASS) and Institute of Development and Labour Law).

Ong, C.B.; Peyron Bista, C. 2015. *The state of social protection in ASEAN at the dawn of integration* (Bangkok, ILO).

Organisation for Economic Co-operation and Development (OECD). 2009. *Promoting pro-poor growth: Social protection* (Paris).

Ortiz, P.A. 2014. "Social security protection for migrants: A need for legal intervention", in R. Blanpain et al. (eds): *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Alphen aan den Rijn, Wolters Kluwer), pp. 31–45.

Papa, K.S. *Migration and social security: The issue of social security for migrants in the Democratic Republic of Congo*, paper presented at an international conference on Migration and Social Protection: Exploring Issues of Portability and Access, organised by the Sussex Centre for Migration Research, the Development Research Centre on Migration, Globalisation and Poverty, and the Institute of Development Studies, Brighton, 5–6 Nov.

Paparella, D. 2004. *Social security coverage for migrants: Critical aspects,* paper presented at the ISSA European Regional Meeting: Migrants and Social Protection, Oslo, 21–24 Apr.

Pasadilla, G.; Abella, M. 2012. *Social protection for migrant workers in ASEAN*, CESifo Working Paper No. 3914 (Munich, CESifo Group).

Pellissery, S.; Biswas, S.D.; Sengupta, M. 2014. "Social security for migrants in a segmented economy: The case of India", in R. Blanpain et al. (eds): *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Alphen aan den Rijn, Wolters Kluwer), pp. 153–66.

Pennings, F. 1993. *Introduction to European social security law* (Alphen aan den Rijn, Kluwer Law International).

—. 2006. *Introduction to social security* (Dordrecht, Springer).

—. 2014. "Coordination of social security within the EU context", in R. Blanpain et al. (eds): *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Alphen aan den Rijn, Wolters Kluwer), pp. 117–32.

—. 2015. "Principles of EU coordination of social security", in F. Pennings and G. Vonk (eds): *Research handbook on European social security law* (Cheltenham, Edward Elgar Publishing), pp. 321–43.

Pew Research Center. 2016. "Remittance flows worldwide in 2015". Available at: http://www.pewglobal.org/interactives/remittance-map/ [13 Apr. 2017].

Pfleiderer, C. 2013. S*ocial protection in developing countries: Reforming systems* (Oxon, Routledge).

Philippine Health Insurance Corporation (PhilHealth). 2013. *The Revised Implementing Rules and Regulations of the National Health Insurance Act of 2013* (s.l.).

—. 2017. *Enrollment of foreign nationals under the Informal Economy Program of the NHIP*, PhilHealth Circular 2017-0003 (Pasig City). Available at: https://www.philhealth.gov.ph/circulars/2017/circ2017-0003.pdf [5 June 2017].

Plender, R. 1998. *International migration law* (Leiden, Martinus Nijhoff).

Praditya, I.I. 2015. "*Pemerintah bakal beri jaminan sosial anak TKI di Malaysia*" [Government will give social security to TKI children in Malaysia], in Liputan6, 24 Sep. Available at: http://bisnis.liputan6.com/read/2325056/pemerintah-bakal-beri-jaminan-sosial-anak-tki-di-malaysia [1 May 2017].

Raja, K. 2012. "The WTO impasse and the possible roads ahead – A development perspective", in *Southnews*, No. 17, 1 Nov. Available at: http://www.southcentre.org/index.php?option=com_content&view=article&id=1867%3Asb68&catid=144%3Asouth-bulletin-individual-articles&Itemid=287&lang=en[12 May 2017].

Raks Thai Foundation; MAP Foundation; Foundation for AIDS Rights; Human Rights and Development Foundation; Friends of Women Foundation; Pattanarak Foundation, AIDSNet Foundation; Labour Rights Protection Network. 2011. *Thailand: A joint submission on migrant workers and their families in Thailand for the 12th Session of the Universal Periodic Review, October 2011.* Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS4-JointSubmission4-eng.pdf [12 May 2017].

Raman, P. 2016. *Social protection for foreign workers in Malaysia*, unpublished document on file with author.

Ratha, D.; Plaza, S.; Dervisevic, E. 2016. *Migration and remittances factbook* (Washington, DC, World Bank).

Reuters. 2016. *Indonesia wants to stop women going abroad as maids after abuse–media*, 17 Feb. Available at: http://www.reuters.com/article/us-hongkong-maid-indonesia-idUSKBN0LK15X20150216 [1 May 2017].

Roberts, R. 2009. "A short history of social security co-ordination", in Y. Jorens (ed.): *Fifty years of social security co-ordination: Past – present – future* (s.l., European Commission), pp. 8–28.

Ruiz, N. 2008. *Managing migration: Lessons from the Philippines*, World Bank Migration and Development Brief No. 6, 11 Aug (Washington, DC, World Bank).

Sabates-Wheeler, R.; Koettl, J. 2010. "Social protection for migrants: The challenges of delivery in the context of changing migration flows", in *International Social Security Review*, Vol. 63, Nos. 3–4, pp. 115–44.

Samson, M. 2013. *Nepal senior citizens' allowance: A model of universalism in a low-income country context*, One Pager No. 219 (s.l., International Policy Center for Inclusive Growth and ADB).

See, J. 2016. *Negotiating bilateral social security agreements: The Philippine experience*, presentation at the 9th ASEAN Forum on Migrant Labor (AFML), Vientiane, 9–10 Nov.

Segatti, A. 2016. *Regional guidelines for the development of bilateral labour agreements (BLAs) in the Southern African Development Community*, unpublished draft report submitted to the IOM and SADC.

Singapore Government. Central Provident Fund Board. n.d. CPF overview. Available at: https://www.cpf.gov.sg/Members/AboutUs/about-us-info/cpf-overview [17 May 2017].

Sivakumaran, S. 2004. "The rights of migrant workers one year on: Transformation or consolidation?", in *Georgetown Journal of International Law*, Vol. 36, pp. 113-153.

Slingenberg, L. 2015. "Social security in the case law of the European Court of Human Rights", in F. Pennings and G. Vonk (eds): *Research handbook on European social security law* (Cheltenham, Edward Elgar Publishing), pp. 23–83.

Strban, G. 2009. "The existing bilateral and multilateral social security instruments binding EU States and non-EU States", in D. Pieters and P. Schoukens (eds): *The social security co-ordination between the EU and non-EU countries* (Cambridge, Intersentia), pp. 85–113.

Sugiyarto, G.; Mendoza, D.V. 2014. *A 'freer' flow of skilled labour within ASEAN: Aspirations, opportunities and challenges in 2015 and beyond*, Issue in Brief No. 11, Dec. (s.l., IOM and Migration Policy Institute).

Tamagno, E. 2008. *Strengthening social protection for ASEAN migrant workers through social security agreements* (Bangkok, ILO).

Taylor, O. 2003. "The Jamaican Labour Relations and Labour Dispute Act (LRIDA): A critical assessment", in N. Cowell and C. Branche (eds): *Human resource development and workplace governance in the Caribbean* (Kingston, Ian Randle Publishers), pp. 426–450.

Thailand Government. 2016. *Strategic Action Plan on Migrant Workers Management 2017–2021* (Bangkok).

United Nations (UN). 1995. *Report of the International Conference on Population and Development*, *Cairo, 5-13 September 1994* (New York).

—. 2013. *Crucial importance of strengthening link between migrants, post-2015 development agenda stressed as General Assembly adopts declaration,* 13 Oct. Available at: http://www.un.org/News/Press/docs//2013/ga11434.doc.htm [17 May 2017].

—. 2014. *The road to dignity by 2030: Ending poverty, transforming all lives and protecting the planet*, synthesis report of the Secretary-General on the post-2015 sustainable development agenda, submitted at 69th session of the General Assembly, 4 Dec. Available at http://www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E [14 Nov. 2017].

United Nations Department of Economic and Social Affairs (UNDESA). 2013. *Trends in international migrant stock: The 2013 revision*. (s.l.)

—. 2016. *International migration report 2015 – Highlights* (New York, UN). Available at: http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf [17 Nov. 2016].

United Nations Development Programme (UNDP). 2009. *Human development report: Overcoming barriers: Human mobility and development* (New York).

United Nations Human Rights Council. 2012. *Poverty and social security guidelines* (s.l.).

Van Dinh, P. n.d. *International migration and return migrants in Viet Nam*, Available at: https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/return_migration_development_070708/pres_dinh.pdf [17 Nov. 2016].

Van Everdingen, M.; Fehliing, P.; Werner-de Buck, T. 2014. "Bilateral treaties in the Netherlands", in R. Blanpain et al. (eds): *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Alphen aan den Rijn, Wolters Kluwer), pp. 215–63.

Van Ginneken, W. 2013. "Social protection for migrant workers: National and international policy challenges", in *European Journal of Social Security*, Vol. 13, No. 5, pp. 209–21.

Van Panhuys, C.; Kazi-Aoul, S.; Binette, G. 2017. *Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements,* ESS- Working Paper No. 57 (s.l., ILO).

Vazhynska, O. 2016. *Expanding social security coverage to migrant domestic workers*, Global Action Programme on Migrant Domestic Workers and the Families Research Series Briefing Note (Geneva, ILO). Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/briefingnote/wcms_467719.pdf [17 May 2017].

Verschueren, H. 2009. "Social security co-ordination in the agreements between the EU and Mediterranean countries, in particular Turkey and the Maghreb countries", in D. Pieters and P. Schoukens (eds): *The social security co-ordination between the EU and non-EU countries* (Cambridge, Intersentia), pp. 19–55.

Vietnam Law and Legal Forum. 2016. *Foreign employees to pay social insurance premiums from 2018*, 8 Jan. Available at: http://vietnamlawmagazine.vn/foreign-employees-to-pay-social-insurance-premiums-from-2018-5168.html [17 Nov. 2016].

Von Benda-Beckmann, F. 1997. "Indigenous support and social security: Lessons from Kenya", in J. Midgley and M. Sherraden (eds): *Alternatives to social security: An international inquiry* (Westport, CT, Auburn House), pp. 105–20.

Vonk, G. 2014. "Social security rights of migrants: Links between the hemispheres", in R. Blanpain et al. (eds): *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Alphen aan den Rijn, Wolters Kluwer), pp. 47–68.

—. 2015. "Social security protection of migrants from outside Europe", in F. Pennings and G. Vonk (eds): *Research Handbook on European Social Security Law* (Cheltenham, Edward Elgar Publishing), pp. 446–67.

Vonk, G.; Van Walsum, S. 2013. "Access denied: Towards a new approach to social security for formally excluded migrants", in *European Journal of Social Security*, Vol. 15, No. 2, pp. 124–50.

Weissbrodt, D. 2004. *Final report on the rights of non-citizens*, UN Doc. E//CN.4/Sub.2/2003/23 (New York, UN). Available at: http://www1.umn.edu/humanarts/demo/noncitizenrts-2003.html [15 May 2017].

Wickramasekara, P. 2011. *Labour migration in South Asia: A review of issues, policies and practices*, International Migration Paper No. 108 (Geneva, ILO).

—. 2015. *Bilateral agreements and memoranda of understanding on migration of low skilled workers: A review* (Geneva, ILO).

World Bank. 2013. *Immigration in Malaysia: Assessment of its economic effects, and a review of the policy and system* (Washington, DC).

—. 2015a. *Migration and remittances: Recent developments and outlook – Special topic: Financing for development*, Migration and Development Brief 24, 13 Apr. Available at: http://pubdocs.worldbank.org/en/773611444756855376/MigrationandDevelopmentBrief24.pdf [17 Nov. 2016].

—. 2015b. *Remittances growth to slow sharply in 2015, as Europe and Russia stay weak; pick up expected next year*, press release, 13 Apr. Available at: http://www.worldbank.org/en/news/press-release/2015/04/13/remittances-growth-to-slow-sharply-in-2015-as-europe-and-russia-stay-weak-pick-up-expected-next-year [17 Nov. 2016].

—. 2016a. *Migration and remittances factbook* (Washington, DC).

—. 2016b. *Remittance data inflows Oct. 2016*. Available at: https://www.knomad.org/data/remittances?page=1 [13 Apr. 2017].

—. 2018. *Record high remittances to low- and middle-income countries in 2017*, press release, 23 Apr. Available at: https://www.worldbank.org/en/news/press-release/2018/04/23/record-high-remittances-to-low-and-middle-income-countries-in-2017 [12 Nov. 2018].

Yadeta, N.N. 2015. *An in-depth study of the nature, trend and magnitudes of female migrant domestic workers from Ethiopia to Gulf Co-operation Council (GCC) states, Lebanon and Sudan*, unpublished zero draft study report submitted to UN Women Representative to Ethiopia, AU and UNECA.

Yazid, M. 2015. "*TKI akan wajib jadi perserta BPJS Ketenagakerjaan*" [TKI will be required to be a participant of BPJS Employment], in *Kontan*, 16 Oct. Available at: http://nasional.kontan.co.id/news/tki-akan-wajib-jadi-peserta-bpjs-ketenagakerjaan [14 July 2016].

Yeates, N. 2005. "The General Agreement on Trade in Services (GATS): What's in it for social security?", in *International Social Security Review*, Vol. 58, No. 1, pp. 3–22.

—. 2012. "The General Agreement on Trade in Services (GATS): What's in it for social security?", in *International Social Security Review*, Vol. 58, No. 1, pp. 3–22.

Yi, B. 2017. "Government 'to continue' to send domestic workers abroad", in *The Jakarta Post*, 22 Mar. Available at: https://www.pressreader.com/indonesia/the-jakarta-post/20170322/281603830287638 [1 May 2017].

Appendix I. International agreements, instruments and related measures

ASEAN

2004	Vientiane Action Programme (2004–2010)
2007	ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
2008	Charter of the Association of Southeast Nations
2008	ASEAN Economic Community Blueprint
2009	ASEAN Socio-Cultural Community Blueprint
2012	ASEAN Agreement on the Movement of Natural Persons
2012	ASEAN Declaration of Human Rights
2013	ASEAN Declaration on Strengthening Social Protection
2016	Vientiane Declaration on Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN

Intra-African Conference on Social Security Provision (CIPRES)

2006	Multilateral Convention on Social Security

Caribbean Community (CARICOM)

2010	Caribbean Community Secretariat Social security in CARICOM

Council of Europe

1950	European Convention on Human Rights (ECHR):
1961	European Social Charter
1996	Revised European Social Charter

East African Community (EAC)

1999	Treaty for the Establishment of the East African Community
2009	East African Community Common Market (Free Movement of Workers) Regulations (Annex II)
2010	Protocol on the Establishment of the East African Community
2011	East African Community (EAC) Technical meeting of social security experts to discuss the way forward on the co-ordination of social security benefits within the EAC Common Market/develop terms of reference for the consolidation of a regional actuarial study
2011	Development Strategy (2011/12 – 2015/16) – Deepening and accelerating integration: one people, one destiny

Economic Community of West African States (ECOWAS)

1979 Protocol A/P.1/5/79 relating to free movement of persons, residence and establishment

1993 General Convention on Social Security

1993 Revised Treaty

2008 Common Approach on Migration

2009 Labour and Employment Policy

2013 Administrative Arrangement for the Application of the General Convention on Social Security by Member States of the Economic Community of West African States

2013 General Convention on Social Security of Member States of ECOWAS

European Court of Justice (ECJ)

1992 Case C-206/91 *Poirrez v CAF* [1992] ECR I-06685

1994 *Aldewereld v Staatssecretaris van Financiën*, C90/1963 (ECJ 29 June 1994)

1996 *Boukhalfa v Bundesrepublik Deutschland*, C-214/94 (ECJ 30 April 1996)

1996 *El-Yassini v Secretary of State for Home Department*, Case C-416/96 (ECJ 2 March 1996)

1999 *Sürül v Bundesanstalt für Arbeit*, case 262/96 (ECJ 4 May 1999)

2001 *Khalil* (C-95/99), *Chaaban* (C-96/99) and *Osseili* (C-97/99) *v Bundesanstalt für Arbeit* and *Nasser* (C-98/99) *v Landeshauptstadt Stuttgart* and *Addou* (C-180/99) *v Land Nordrhein-Westfalen* Joined cases C-95/99 to C-98/99 and C-180/99 (ECJ 11 October 2001)

2002 *Gottardo v Instituto nazionale della previdenza sociale (INPS)* ECJ January 2002, no. C-55/00

European Court of Human Rights (ECHR)

1968 *Belgian Linguistic Case*, 6 Eur. Ct. H.R. (ser. A) (1968)

1996 *C. v. Belgium*, Eur. Ct. H.R., Reports 1996-III (1996)

1996 *Gaygusuz v Austria* Case No. 39/1995/545/632, *Reports* 1996-IV, 1129 (judgement of 16 September 1996)

2003 *Koua Porrez v France* App no 40892/98 (ECHR, 30 September 2003)

European Union (EU) instruments

2003 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

2004 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

2004 Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems

2004 Regulation 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

2005 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research

2009 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card directive)

2010 Regulation (EU) no 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality

2011 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

2011 Global Approach to Migration and Mobility COM(2011) 743 final

2012 The External Dimension of EU Social Security Coordination (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2012) 153 final (30.3.2012)

2012 Treaty on the Functioning of the European Union (TFEU) 2012/C 326/01

2013 EU Communication on the Maximising the Development Impact of Migration COM(2013) 292

2015 European Agenda on Migration COM(2015) 240 final

European Social Rights Committee

2004 *International Federation of Human Rights (FIDH) v. France,* Complaint No. 14/2003, Decision on the merits, paras 33–37 (November 2004)

Ibero-American

2011 Ibero-American Social Security Convention

Inter-American Court on Human Rights

1984 Advisory Opinion on the Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica (OC 4/84) (19 January 1984) (Advisory Opinion)

International Labour Organization (ILO)

Unemployment Convention, 1919 (No. 2)

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)

Migration for Employment Convention (Revised), 1949 (No. 97)

Social Security (Minimum Standards art 68, Convention 102 of 1952

Discrimination in Respect of Employment and Occupation, Convention 111 of 1958

Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Maintenance of Social Security Rights Convention, 1982 (No. 157)

Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach in labour migration (2006)

Coordination of Social Security Systems in the European Union: An explanatory report on EC Regulation No 883/2004 and its Implementing Regulation No 987/2009

Domestic Workers Convention, Convention, 2011 (No. 189)

International labour migration: A rights based approach (2010)

Resolutions adopted by the International Labour Conference at its 100th Session, Geneva, June 2011

South African Development Community (SADC)

2003	Charter of Fundamental Social Rights in SADC (the Social Charter)
2006	Draft Protocol on the Facilitation of Movement of Persons
2007	Code on Social Security in the SADC
2009	Consolidated Text of the Treaty of the Southern African Development Community, as amended
2013	SADC Labour Migration Action Plan 2013/2015
2014	SADC Labour Migration Policy Framework
2014	SADC Protocol on Employment and Labour
2015	SADC Revised Regional Indicative Strategic Development Plan (RISDP) (2015–2020) in relation to the Employment and Labour Sector (ELS)
2016	Record of the Employment and labour meeting of Ministers and Social Partners, 12 May 2016, Gaborone, Botswana
2016	SADC Cross-Border Portability of Social Security Benefits Policy Framework SADC/ELSM&SP/1/2016/3 (2016)

United Nations

1951	Convention Relating to the Status of Refugees
1966	UN International Covenant for Economic, Cultural and Social Rights
1985	UN Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live (Resolution 40/144)
1990	UN International Convention on the Protection of Rights of all Migrant Workers
2008	General Comment No 19 on the right to social security

Bilateral agreements and memoranda of understanding

Belgium & India Agreement on social security between the Kingdom of Belgium and the Republic of India, 2009

Brunei MOU with Thailand

MOU between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Cooperation in the Employment of Workers, 2003

MOU between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Cooperation in the Employment of Workers, 2015

MOU between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation, 2015

MOU between the Royal Thai Government and the government of Lao PDR on Employment Cooperation

MOU between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment and Employment of Workers, 2015

MOU between the Government of Malaysia and the Government of the Kingdom of Cambodia on the Recruitment and Employment of Domestic Workers, 2015

MOU between Malaysia, Cambodia, Indonesia, Thailand and Viet Nam

Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Labour Cooperation, 2016

Joint Declaration on Safe Migration between Thailand and the CLMV countries, 2016

Thailand MOUs with Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV)

Legislation

Brunei

1957	Workmen's Compensation Act
1959	The Constitution of Brunei Darussalam
1992	Employee Trust Act
2009	The Employment Order
2009	Supplemental Contributory Pension Trust Order
2010	Supplemental Contributory Pensions (Non-Employee Trust Order)

Cambodia

1993	The Constitution of the Kingdom of Cambodia
1994	Workmen's Compensation Act
1997	Labour Law
2002	Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law
2007	Sub-Decree concerning the Establishment of the National Social Security Fund
2009	The Law on the Protection and the Promotion of Rights of Persons with Disabilities
2014	Policy on Labour Migration for Cambodia
2016	Sub-decree on Establishment of Social Security Scheme "Health Care Scheme" for Persons Defined by the Provisions of the Labor law, Sub-decree No. 01 RNKr.BK
2016	Prakas on Health Care Benefits, No. 109 LV and Article 1 of the Prakas on Determination of Contribution Rate and Formality of Contribution Payment on Health Care, No. 220 LV, of 13 June 2016

Indonesia

1945	Constitution of the Republic of Indonesia
1999	The Act concerning human rights
2003	Indonesian Labour Law (Act concerning Manpower), Act no. 13 of 2003
2004	National Social Security Law (Law No. 40/2004)
2004	Act concerning the Placement and Protection of Indonesian Overseas Workers
2011	Law Concerning the Social Security Administrative Body (Law No. 24 of 2011)
2013	Presidential Regulation No. 109 of 2013 on Gradual Stages Procedure for Social Security Program
2013	Ministerial Decree No. 212 of 2013 on TKI Insurance Consortium JASINDO; Ministerial Decree No. 213 of 2013
2016	Indonesian Workers Protection's Policy through TKI Insurance Program

Lao People's Democratic Republic

1994 Workmen's Compensation Act (1994)
2002 Lao Labour to Work Abroad, Decree 68 of 2002
2013 Law on Social Security, 2013
2014 Labour Law of 2014

Malaysia

1952 The Workmen's Compensation Act of 1952
1955 Employment Act of 1955
1963 Federal Constitution of Malaysia, 1963
1991 Employees Provident Fund Act, 1991

Mexico

2011 Migration Law

Mozambique

2007 The Law on Social Protection 4 of 2007

Myanmar

1923 Workmens' Compensation Act, 1923
1994 Workmen's Compensation Act (1994)
1999 Law Relating to Overseas Employment, 1999
2008 The 2008 Constitution
2012 Social Security Law, 2012
2013 Employment and Skill Development Law, 2013

Philippines

1954 Social Security Law, 1954
1987 Constitution of the Republic of the Philippines
1995 Filipinos Act of 1995
1995 Migrant Workers and Overseas Filipinos Act of 1995
1995 National Health Insurance Act, 1995
1997 The Social Security Act, 1997
2010 Senior Citizens Act (Republic Act No. 9994 of 2010
2013 National Health Insurance Act, 2013
2013 Domestic Workers Act (Batas Kasambahay)
2015 Labor Code (revised edition, 2015
2015 Overseas Workers Welfare Administration Act of 2015.
2016 Republic Act No. 10801

Singapore

1955	Central Provident Fund Act, 1955
1968	Employment Act, 1968
1990	Employment of Foreign Manpower Act, 1990
1996	Maintenance of Parents Act, 1996
2001	Child Development Co-Savings Act, 2001
2009	Work Injury Compensation Act, 2009

Thailand

1985	Employment and Job-Seeker Protection Act, 1985
1987	Provident Fund Act, 1987
1990	Social Security Act, 1990
1994	Workmen's Compensation Act, B.E. 2537 (1994)
1997	Draft Constitution of the Kingdom of Thailand
2002	National Health Security Act, B.E. 2545 (2002)
2003	The Act on Older Persons B.E. 2546 (2003)
2007	Act for Persons with Disabilities B.E. (2007)
2011	Royal Decree on Rules, Rate of Contribution, Contingencies and Eligibilities to receive benefits of Insured Persons B.E. 2554 (2011)
2011	National Savings Fund Act B.E. 2554 (2011)
2014	Ministerial Regulation to Protect Agricultural Workers, 2014
2015	Amendment to the Provident Fund Act B.E. 2558 (2015)
2015	Maritime Labour Act, 2015
2015	Ministerial Regulation concerning Labour Protection in Sea Fishery Work, 2015
2015	Royal Ordinance on Fisheries (14 November 2015)
2016	Royal Ordinance concerning Rules on Bringing Migrant Workers to work with Employers in Thailand B.E. 2559 (16 August 2016)
2016	Order of the National Council for Peace and Order (NPCO) No. 53/2559, 9 September 2016

Viet Nam

2008	Health Insurance Law, 2008
2014	Law on Social Insurance, 2014

Social protection for migrant workers in ASEAN: Developments, challenges, and prospects

Labour migration is a key feature of the ASEAN labour market and is expected to continue to increase over the coming years. It has a significant economic impact on individuals, households and countries of destination and origin. Yet, access to social protection for migrant workers remains limited due to lack of portability arrangements, legislative barriers, discrimination, and poor compliance with existing social security laws.

This report provides an overview of the developments, challenges, and prospects of social protection for migrant workers in ASEAN. Based on extensive analysis of national and regional legal and policy measures, and a review of relevant international and human rights standards, unilateral standards, and bilateral and multilateral arrangements, it emphasizes the need for a comprehensive network of intra-ASEAN social security agreements.

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