

Online Discussion Summary



International
Labour
Organization



Access and Portability of Social Protection Entitlements for Migrant Workers

Moderator:
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International Migration Programme

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1. Introduction

1.1 Asia Pacific Migration Network (AP-MagNet)

The Asia-Pacific Migration Network is an online community of practice initiated by the International Labour Organization's (ILO) Regional Office for Asia and the Pacific. This online platform, at www.apmagnet.ilo.org, provides a forum for professionals and practitioners to share and leverage technical and practical knowledge on migration, debate and discuss migration-related issues and strengthen a common agenda for managing migration for decent work in the region.

AP-MagNet was first conceived in 2010, and joined the ILO's four other existing regional communities of practice on Youth Employment, Green Jobs, Skills and Employability and Industrial Relations. It currently has more than 370 members from around the globe and holds a continuously expanding library of approximately 500 knowledge resources on migration-related topics.

One of the key ways in which this community of practice contributes to ongoing debates and discussions on migration is by hosting regular online discussions on topics of interest. While this paper provides a summary of the March 2013 discussion on *Access and Portability of Social Protection Entitlements for Migrant Workers*, past discussions have also examined issues such as: (i) key issues with labour mobility in Asia; (ii) circular migration of health workers; (iii) the improvement and regulation of recruitment practices in Asia and the Pacific; (iv) public attitudes to migrant workers; and, (v) the return and reintegration of workers.¹

1.2 Online Discussion on Access and Portability of Social Protection Entitlements for Migrant Workers

People who cross borders for purposes of work face multiple disadvantages because of lack of information about the conditions in the countries they go to; inability to work in a language they understand; discrimination and social exclusion; limitations on their rights to mobility as a condition for their admission; being in occupations not covered by labour laws of the host country; and, exclusion from key elements of social protection such as membership in social security.

The territorial nature of social security systems, designed in times where labour was mostly confined within the boundaries of one country, and the various requirements associated with entitlements (such as nationality and minimum qualifying period of contributions) create particular hurdles for migrant workers to avail themselves of their rights. Migrants are often excluded by laws of destination countries from basic entitlements to social protection because of their nationality, the occupations they are employed in, and the conditions under which they have been admitted under immigration laws.

Guest workers are especially disadvantaged by being excluded from social insurance on account of the temporariness of their employment, lack of bilateral agreements that would enable portability of benefits, and absence of administrative arrangements for insuring that benefits are actually delivered when a migrant returns home.

In order to address these critical issues, AP-MagNet hosted a two-week online discussion on the topic of *Access and Portability of Social Protection for Migrant Workers*, from Monday 11 March to Friday 22 March 2013. The broad aim of this discussion was to build the technical and practical knowledge base on this issue, and seek good practice examples on how to effectively address key challenges. The online discussion was moderated by Manolo Abella, former Director of the ILO International Migration

¹ For further information on past discussions, including background papers and consolidated replies, see <http://www.apmagnet.ilo.org/discussions>

Programme. The discussion was sponsored by both the EU-funded *Decent Work Across Borders* project² and the CIDA-funded *TRIANGLE* project.³

The discussion received a total of 19 comments from 15 participants from around the globe, from countries including Australia, Bangladesh, Canada, India, Japan, Malaysia, Philippines, Singapore, Thailand and Sri Lanka. Participants came from a variety of backgrounds, including government and non-government organizations, United Nations organizations, national NGOs and academia⁴.

1.3 Podcast on Social Protection for Migrant Workers

In order to support a robust online discussion on the issue of Social Protection for Migrant Workers, AP-Magnet also recorded a podcast on this topic in the weeks prior to the online discussion. During this 30 minute programme, three expert panelist, including Manolo Abella – our online discussion moderator; Valerie Schmitt, ILO Social Security Specialist, East Asia, South East Asia and the Pacific; and Celine Peyron Bista – ILO Technical Advisor on Unemployment Insurance, ASEAN, discussed many of the issues related to Social Protection for Migrant Workers. This podcast was sponsored by the CIDA-funded ASEAN TRIANGLE Project and is available for download on the AP-Magnet website.⁵

2. Online Discussion Summary

2.1 Introduction

The two week online Discussion was initially framed around the following three questions:

- *How can disadvantages faced by migrant workers be minimized or mitigated?*
- *What practical measures can be taken to address the biggest risks and contingencies?*
- *How can stakeholders, including governments, trade union, employers and other civil society organizations be mobilized to amend laws that currently exclude migrants from enjoying basic social protection?*

While the full discussion thread can be viewed on the Ap-MagNet website⁶, following is a summary of participants' contributions.

2.2 Summary of participant contributions

Migration is a journey of hope, one that millions embark on every year despite all the pitfalls that lie on their path, because of their desire to uplift the conditions of their families. While many do get rewarded with higher incomes the sad fact is that these are often earned at a high cost which in our modern age could easily be avoided with appropriate social protection policies and safety nets.

The online discussion has underscored the very meagre results so far achieved in extending to migrant workers those benefits already enjoyed by national workers under existing national social insurance programmes. This is the harsh reality in Asia in spite of the existence of many examples in other parts of the world of unilateral, bilateral as well as multilateral schemes for covering migrant workers under social protection. Because of the short term duration of their employment in foreign countries migrants are unable to benefit from their contributions to social security unless countries have agreements on

²For further information, see: http://www.ilo.org/asia/whatwedo/projects/WCMS_173607/lang--en/index.htm

³ For further information, see: http://www.ilo.org/asia/whatwedo/projects/WCMS_145664/lang--en/index.htm

⁴ For full list of participant details, see Annex II of this report

⁵ See <http://apmagnet.ilo.org/podcast>

⁶ See <http://apmagnet.ilo.org/discussions>

totalization and the portability of entitlements and establish administrative mechanisms for transferring benefits. Possible schemes to protect migrant workers against well-known risks in recruitment have yet to be considered, nor how to cover migrant workers against the risks of becoming unemployed through no fault of their own while in a foreign country.

All the contributors to the online discussion agreed on the need to have laws and regulations that include migrant workers under social protection systems and they lamented the discrimination and exclusion often faced by migrants. Migrant workers, according to Mr Dyul Julius Caiglet, Vice-President Advocacy for the Federation of Free Workers in the Philippines, in fact need more protection since they do not enjoy the natural safety nets usually provided by families and friends at home. Ms Irene Fernandez, Director of Tenaganita, a Malaysian-based NGO protecting and promoting the rights of women, migrants and refugees, points out that the absence of social protection and unregulated labour markets are not sustainable. She points out that the right of migrants to equal treatment cannot be compromised and governments should realize that exclusion will have a negative impact on the community.

In the opinion of Sister Josephine Amala Valarmathi, of the National Domestic Workers Movement/Migrant Forum in Sri Lanka, migrant workers need to be protected under the various branches of social security, particularly old age pensions, medical care, unemployment insurance, and death benefits. While migration per se is not a risk factor for HIV, Marta Vallejo, HIV Programme Specialist at UNDP Asia-Pacific Regional Centre in Thailand, points out that the difficult working conditions that migrants find themselves in and the new found freedoms, may put them in vulnerable situations or at risk of infection. There is a need to ensure that there will be enhanced services available for migrants, including prevention, voluntary counseling and testing (VCT) and monitoring across borders.

Several contributors, including Sister Josephine Valarmathi, Ms Gina Yap from the Batis Centre for Women in the Philippines, and Professor John Skrentny, Director and Professor of Sociology at the University of California's Center for Comparative Immigration Studies, stressed the plight of the low-skilled workers who often face discrimination in social protection. Professor Skrentny says the lack of protection is faced not so much by the highly skilled who are in demand everywhere and thus get offers of comprehensive protection, but by the low-skilled who may be crucial to the economy of receiving states but nonetheless face discrimination simply because they are easily available. Sister Josephine Valarmathi pointed to the injustice of the situation when one considers the immense contributions made by low skilled workers to the countries they work in and to their origin countries.

Ms Nana Oishi, Associate Professor of Sociology at Sophia University in Japan, adds however that even highly skilled migrants may lose protection because countries have no agreements on social security. She mentions that in Japan they have been losing a huge amount of their social security contributions (as well as their employers' contributions) when they return home.

There is much more disagreement among the contributors on what can be done. Mr Mohammad Ashadul Islam, Additional Secretary in the Economic Relations Division of the Bangladesh Ministry of Finance, claims that the idea of social protection is not yet generally accepted in some countries even for their own citizens, let alone for migrants. Introducing and running a system of social security protection for migrants demands institutions and capabilities which many countries at early stages of development still do not have. In his view the more practical approach is to include specific safeguards in employment contracts. For his part, Mr John Gee, immediate past President of Transient Workers Count Too (TWC2) in Singapore, is skeptical that low-paid workers would even consider becoming members of social insurance since coverage costs money and poor migrants have other more pressing needs. In his view progress can be made if insurance schemes are voluntary, stretches over the long term to cover the future needs of the migrants and their families, and greater efforts are exerted to convince migrants of the merits of state-backed insurance.

Even where systems are already in place for including migrant workers in social protection they still often fall through the cracks. Ms Celine Peyron Bista, Technical Advisor on Unemployment Insurance in the ILO Regional Office for Asia and the Pacific, attributes the problem to the fact that many migrant workers are employed informally (such as domestic workers); are not always registered by their employers even when employed in the formal economy, and even when registered, immigration laws may be such that it becomes impossible for them to acquire or recover their entitlements to social security.

What can be done?

In order for trade unions would lobby on behalf of migrant workers for their inclusion in social security Mr Dyul Julius Cainglet advised that migrant workers join unions. In the opinion of Mr Binod Chapagain, PhD candidate at the Australian National University, equipping migrants with sufficient information about their job, pay, working conditions, and services available in the countries of employment is the starting point for protection since these are necessary for making informed decisions. He also underscored the responsibility of origin and receiving governments to adopt appropriate policies and to provide services and facilities for the protection of migrants' rights, the need for bilateral agreements, and for international agencies like the UN to encourage member states to ratify international conventions and to monitor and enforce compliance.

Ms Peyron Bista advocated building national "social protection floors" which would provide the migrant workers and their families access to essential health care and basic income security throughout their life or at least while they are in foreign countries. Once such minimum protection can be guaranteed and social insurance schemes are in place, governments should enter into social security agreements to ensure that migrant workers moving to another country or back to his or her home country will be able to maintain accrued pension entitlements. Ms Peyron Bista adds that assessment of the social protection at country level to identify barriers to access to social protection and to design solutions will be important to negotiation of social security agreements.

Mr Warren McGillivray, former ILO Social Security Advisor and Policy Associate at the Caledon Institute of Social Policy, points out that since the administrative requirements of a bilateral agreement are considerable, receiving countries may not be confident of the institutional administrative capacity in a sending country. Moreover he worries that migrant workers themselves may be unenthusiastic over bilateral arrangements if they lack confidence in the operations and adequacy of their national retirement benefits scheme. Reflecting on practical issues usually faced in organizing proper arrangements for extending social security coverage for migrant workers Mr McFillivray points out that while "indexed defined benefit pension schemes" provide better retirement protection than do "defined contribution schemes" (such as provident funds), a worker's balance in a "defined contribution scheme" is portable. It could be paid in a lump sum to a migrant worker when he/she ceases employment in a receiving country.

Mr McGillivray offered his views on how to deal with the other risks raised in the background paper. With respect to pre-employment risks such as fraudulent recruitment there should be a system that enables the migrant to recover funds that he or she has paid to the broker. Independent of any court action which might be taken against a defaulting broker, he suggests exploring whether the responsible national authority could operate a mandatory insurance scheme which would reimburse a migrant worker for documented funds he/she paid to a defaulting broker. The objective would be prompt and certain reimbursement to the worker. There are good examples of such arrangements such as government-run deposit insurance funds which insure bank deposits in case of a bank failure. Premiums for deposit insurance are paid by participating banks. In vehicle insurance policies there are also uninsured motorist clauses normally included providing for coverage in the event the other driver is responsible for the

accident and is not (or is inadequately) insured. The premium for uninsured motorist coverage is paid by the vehicle insurance policy-holder.

Mr McGillivray goes further to suggest what issues need to be looked into in designing insurance against the various risks that have been raised in the background paper which have yet to enter into discussions of social protection for migrant workers, including:

A. Identification of specific risks to be covered

- (i) When is the migrant worker's pre-employment insurance terminated (e.g. when he/she takes up employment in the destination country)?
- (ii) Monetary limit(s) of coverage.
- (iii) Rating the risks (What rating factors should be taken into account? – e.g. nature of overseas employment, destination country, integrity of broker, ...) How much data will be available?
- (iv) Who should pay the premium, the migrant worker or the broker? (If the broker pays the premium, the broker will simply pass the cost on to the migrant worker, but individual rating of brokers, might encourage good behaviour on their part.

B. On risks faced during employment (other than work injuries and diseases) Mr McGillivray suggests that policy makers look closely at the following implementation issues:

- (i) Insurance scheme to cover the repatriation of migrant workers who lose their jobs for one reason or another (and the sponsor is unable to arrange for another job) or for those who run away from abusive employers. Setting up such an insurance scheme would be more complicated than a scheme covering pre-employment risks. Unemployment and abusive employment qualifying for repatriation must first of all be defined. The insurance is subject to 'moral hazard' (possible lack of honesty or prudence on the part of a migrant worker). While premiums should be mandatory for all migrant workers, it is likely to be impossible to enforce collection. A supplementary charge could be added to the premium for the pre-employment scheme (i.e. to cover cost of return ticket).
- (ii) If such a scheme is set up, sponsors are apt to cease paying for repatriation.
- (iii) While the scheme could provide funds to facilitate repatriation, it cannot deal with destination country issues (e.g. release papers).

Annex I: Background note to the discussion**BACKGROUND PAPER****For online discussion on
Access and Portability of Social Protection for Migrant Workers**Hosted at: <http://apmagnet.ilo.org/discussions>

Monday 11 March – Friday 22 March 2013

*To register with AP-MagNet please follow this link <http://apmagnet.ilo.org/@@register>****Migrant workers face multiple disadvantages***

People who cross borders for purposes of work face multiple disadvantages because of lack of information about the conditions in the countries they go to, inability to work in a language they understand, discrimination and social exclusion, limitations on their rights to mobility as a condition for their admission, being in occupations not covered by labour laws of the host country, and exclusion from key elements of social protection such as membership in social security. The territorial nature of social security systems, designed in times where labour was mostly confined within the boundaries of one country, and the various requirements associated with entitlements (such as nationality and minimum qualifying period of contributions) create particular hurdles for migrant workers to avail of their rights.

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Introduction

This brief is intended to serve as a background paper for an on-line discussion on the situation of millions of Asian migrant workers who, for one reason or another, also suffer the disadvantage of not being able to enjoy benefits from social protection already being enjoyed by national workers. Of particular interest is the question of “portability” of entitlement to social security since most Asian migrants are on short-term contracts and temporary work visas. The conditions of their admission as guest workers in foreign countries seldom, give them the opportunity to earn entitlement to a wider range of social protection.

The online discussion is sponsored by both the EU-funded Decent Work Across Borders project⁷ and the CIDA-funded TRIANGLE project⁸.

What is meant by social protection?

Social protection is defined by the ILO as the set of public policy measures that a society provides for its members to protect them against social and economic distress that would be caused by the absence or a substantial reduction of income from work as a result of various contingencies (sickness, maternity, employment injury, unemployment, invalidity, old age, and death of the breadwinner); the provision of health care; and the provision of benefits for families with children.⁹ ILO’s concept of social protection focuses on threats to living standards and human rights while other agencies focus on other forms of vulnerabilities such as income and consumption instability (the World Bank), health and physical vulnerability that affect consumption (IADB) and risks and deprivation which are deemed socially unacceptable (ODI).¹⁰

The above-cited ILO definition of social protection is the latest stage of the evolution of the concept as societies changed. Initially it meant public assistance to keep people out of poverty by guaranteeing a minimum income to meet basic needs. Over time social protection began to cover a wider range of risks, such as unemployment, invalidity due to age, workplace accidents or injury. At the same time the idea of pooling of risks developed to cover socio-economic risks for all. Coverage expanded from being limited to certain types of workers to universal coverage.

Public programs for delivering social protection

The means of action typically taken to provide social protection usually take three forms: **social insurance, social assistance, and public services**. Social insurance programs such as pensions and health care are usually financed through wage or salary-based contributions by workers and their employers, or in some countries they are financed out of payroll taxes. Social assistance, on the other hand, is financed from general public revenues and usually takes the form of transfers to economically-deprived groups in society. The third, public services, is financed from general tax revenues and comprise a wide range of programs aimed at reducing the vulnerabilities themselves. Examples of these services in the case of migrants, as will be explained later, include actions against fraud in recruitment and bilateral labour agreements.

In the economically-advanced countries represented by the OECD the programs to provide social protection are typically in nine major areas:

⁷ http://www.ilo.org/asia/whatwedo/projects/WCMS_173607/lang--en/index.htm

⁸ http://www.ilo.org/asia/whatwedo/projects/WCMS_145664/lang--en/index.htm

⁹ Bonilla, A. and Gruat, J.V. (2003) “Social protection: a life cycle continuum investment for social justice, poverty reduction and development” ILO Geneva

¹⁰ Sabates-Wheeler, R. and M. Waite (2003) Migration and Social Protection: A Concept Paper, Institute of Development Studies, Working Paper T2, Sussex University

- 1.) old age
- 2.) survivors
- 3.) incapacity related
- 4.) health
- 5.) family
- 6.) active labour market programmes
- 7.) unemployment
- 8.) housing
- 9.) other social policy areas

The program areas include typical social insurance schemes as well as active labour market programs which are *preventive* in nature since they are intended to enhance employment and income stability and thus reduce the need for social services.

In the following we look at the specific risks faced by migrants where existing forms of social protection are often deficient.

Socio-economic risks typically faced by Asian migrant workers

There are at least four types of risks that the typical Asian workers face when they migrate for employment. One is what may be called a “pre-employment” risk associated with fraud and abuses in recruitment. To a second category belong those risks that migrant workers face when they are already at work in the countries of destination. To the third category belong those risks that they face when they lose their jobs for one reason or another including civil conflicts, disputes with their employers or the closure of the business due to bankruptcy. And a fourth category of risks are those faced by workers who are in an irregular situation either because they entered the foreign country clandestinely, entered under the guise of tourism but work illegally, or because they overstayed the period of their authorized stay. These four categories of risks may be looked at as constituting different stages in a “**migration cycle**” from pre-departure to return.

Pre-employment risks

Contemporary movements of workers from Asia have been largely organized by private intermediaries or job brokers and marked by high incidence of fraud and abuses. In origin countries with high levels of unemployment people seeking to work abroad often have to pay intermediaries huge sums of money as they compete with each other to be given priority. Even with such payments many still find themselves in foreign countries with falsified work visas and travel documents, or in jobs that they did not agree to do. Governments have sought to curb abuses by setting legal limits to fees and severe penalties for fraud but simple regulations seldom make any difference particularly when there is an excess supply of workers wanting to go abroad. Unfortunately it is the less skilled who often have to pay more than the more skilled to get jobs.

Risks during employment

These include those also faced by local workers but migrant workers are more likely than native workers to be at the so-called “3D” jobs (dirty, dangerous, and demeaning). Many are employed in construction where risk of injury is higher than in other industries. Many are assigned to work in unsafe working environments (plantations where pesticides and herbicides are regularly sprayed), to handle dangerous or toxic chemicals (such as dyeing fabrics), or in ocean-going ships where dangers to safety are due to weather as well as to criminal activities. These industries tend to employ foreign workers precisely because native workers leave them to avoid the risks they pose to their health and safety.

Risks faced when workers lose jobs

The third category of risks, those that migrants face when they lose their jobs, includes some of the most difficult ones to insure against. The profitability of the recruitment business in some countries is such that there is a tendency for the markets to generate an excess supply of migrant workers. In the Gulf region, in particular, sponsors (the *khafeels*) who get the authorization to import foreign workers find it in their interest to bring in as many workers as they can regardless of whether they can be gainfully employed or not. The consequence has been severe on migrant workers who find themselves in the foreign country but without a regular job. When construction projects are left unfinished because the real estate market has collapsed thousands of construction workers may be left high and dry by their employers, and made to fend for themselves without a source of income. Others who get into trouble with their employers (because they complain of their conditions or of violation of their contracts) may be accused of violating their contracts and laid off prematurely. There are likewise many women domestic helpers who leave their employers due to maltreatment or sexual harassment. They often end up in distress since they have nowhere to go unless their embassies offer them food and shelter and they cannot even return home without the release papers signed by their employers.

Risks faced by workers in an irregular situation

The fourth category of risks arises from violating immigration laws of the country of destination. The risk of being apprehended and put in jail is very real, just as the risk of getting killed while trying to enter another country using dangerous means of transport. Those who manage to enter and work without authorization are in turn very vulnerable to exploitation and abuse from unscrupulous employers who take advantage of their situation. These workers cannot appeal to the authorities when they are not paid promised wages, when they are forced to work in unsafe environments, when they are physically abused and harassed, or are made to work very long hours and denied a chance to rest. It is highly unlikely that states would support a scheme to insure potential migrants against such risks but public services to reduce them are absolutely necessary, as well as social services for those who become victims.

Many of these risks faced by migrant workers are not covered by conventional measures of social protection. With varying degrees of success governments of origin countries have taken measures to reduce the various risks faced by migrants. Most countries now require recruitment agents to post guarantee bonds before they can obtain their licenses, and these bonds can be garnished to pay back the workers for their losses. The number of workers recorded to have received compensation through these arrangements appears to be insignificant compared to the apparent incidence of fraud in recruitment. In some countries many workers simply give up on going through with their complaints because of litigious processes involved in obtaining settlement through the regular courts.

Unlike the case of insurance against work related illness or injuries no system has so far been developed to pool the risks associated with pre-employment. Can some form of social insurance be designed to cover workers against such risks for a modest premium? What should be the level of protection? What principles should underpin such social insurance? To make it feasible would it have to state-sponsored and universal in coverage?

The gap in protection is most severe for **undocumented or irregular migrant workers**. However there remain some issues even for those who are formally protected under existing social security systems. A typical problem arises when the injury leads to long-term disabilities and the affected foreign workers are forced to return home. Workers who cannot work because of the disabilities they suffered would normally be entitled to receive some regular compensation until they are able to work again, but systems

for effecting such compensation are often lacking since only a few Asian countries have succeeded in entering into bilateral agreements with receiving countries on such matters. The Philippines and India are by far the most successful among Asian countries in having bilateral agreements on social security with key receiving countries in Europe and North America.

There is no unemployment insurance for migrants who lose their jobs

Except for Vietnam there is no Asian origin country that has unemployment insurance for workers who lose their jobs at home. It is thus not surprising that no system exists for insuring against losing a job abroad. The financial dislocation suffered by a migrant who loses his or her job is however far more severe than those who lose their jobs at home because of the high costs entailed in migration. A Vietnamese worker usually incurs as much as US\$ 6300 to land a job in Taiwan which is equivalent to about a whole year's salary. Many have to borrow money at usurious rates in order to raise the needed amount. Bangladeshi workers going to work in Dubai or Kuwait are also reported to be paying the equivalent of 6 to 9 months' salary to pay recruitment fees. There are thousands of Indian construction workers who lost their jobs when the construction boom in Dubai collapsed a few years ago and their employers (Indian sub-contractors) went into bankruptcy. Many of these workers remained in Dubai in the hope that they can still manage to pay back their debts at home and recover their investments.

Losing job abroad is a major risk that cries out for social protection. What can be done to provide for such contingencies? Can such risks be pooled?

Existing systems for employment injury insurance should be able to take care of the risks during employment. All countries of employment now obliges employers to cover their foreign workers with insurance against employment related sickness or injuries. Those who go through regular channels and have work permits are usually covered by mandatory insurance which provide for compensation in the event that they suffer work-related sickness, injuries, or death. The rest of this paper is devoted to looking at the **gaps in social insurance** coverage for migrant workers especially where some action, like negotiating bilateral agreement between origin and destination countries, can fill the gap by increasing the portability of benefits.

Box 1: ILO and UN Conventions on Social Protection

On the multilateral level, the International Labour Organization (ILO) and the UN have adopted a series of conventions concerning social protection for international migrants, most notably the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families. The Convention was adopted by the UN General Assembly in 1990, but came into force only after 13 years, with just 22 ratifying states. Similarly, the ILO adopted a number of conventions dealing with nondiscrimination and equal opportunity for migrants in their host countries, in particular the 1949 Convention No. 97 and the 1975 Convention No.143. The 1982 ILO Convention No. 157 on the Maintenance of Social Security Rights is the only convention specifically aimed at enhancing portability, but was ratified by only three states, namely the Philippines, Spain, and Sweden. Multilateral approaches to enhance portability seem to lack sufficient backing of countries to make them effective, with the notable exception of the EU.

Most Asian migrants have no access to portable social security benefits.

In a report to the Global Commission on International Migration (GCIM) on portability regimes of pensions and health care benefits for international migrants Holzmann et al¹¹ offered a helpful classification of different regimes under which international migrants may fall especially with respect to portability of the benefits they earn. They distinguish 4 regimes namely:

Regime I: Access to social security benefits and advanced portability regulated by bilateral agreements between the migrant-sending and receiving country. Migrant workers are given equal treatment with regards to social security benefits, and transferability of acquired rights are guaranteed.

Regime II: Access to social security benefits in the absence of bilateral agreements. In this case, the national social law of the migrant-receiving country alone determines if and how benefits can be accessed after the return to the home country.

Regime III: No access to portable social security benefits. In particular, migrants cannot even on a voluntary basis contribute to long-term benefits like old-age pensions in the host country. Access to short-term benefits like health care might be granted, but no provisions for the portability of those short-term benefits exist.

Regime IV: Undocumented but also legal migrants who participate in the informal sector of the host country have very limited access to social protection, if at all, and typically have no acquired and portable rights to long-term benefits.

Because there are very few bilateral agreements on social security between Asian origin countries and the countries of employment only a few Asian migrant workers fall under Regime I, the regime where migrants enjoy equal treatment as national workers and are guaranteed transferability of acquired rights because it is already explicitly covered in bilateral agreements.

A considerable number of Asians are employed in countries which provide access to their social security benefits (many EU states, US, Canada, Australia, Japan, Korea, HK, Taiwan) even in the absence of agreements but exportability of benefits is not guaranteed and varies by country. The number of Asia-born migrants (workers and family members) residing in countries where they have such access is estimated at 8 million (see table 1 below). They include people born in Asia who have already settled long ago in one of the EU states, US, Canada, Australia, Japan, Korea, Hong Kong, and Taiwan, Philippines and Thailand).

¹¹ Holzmann, R. Johannes Koettl, and Taras Chernetsky (2005) "Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices" World Bank.

Table 1: Asian migrants distributed according to region of residence and access to social protection

Social Protection Regime	Asian migrant workers in Asia	Asian migrant workers in Gulf States	Asian migrants in OECD countries
I. With access to social security benefits and advanced portability regulated by bilateral agreements	-		0.5 Md
II. With access but without social security agreement	2.5 Ma		8 M
III. Without access to social protection	3.4 Mb	9 M	
IV. Undocumented migrants	7- 9 Mc	1.5 M	

^a Mostly Asian migrant workers in Japan, Korea, Thailand; ^b Mostly migrant workers in Malaysia, Singapore, Thailand; ^c There are many undocumented migrants in India (6 M+), Pakistan (2.8 M), Thailand (2M +) and Malaysia (1M +), Japan, Korea, and Taiwan. Numbers should be taken as very rough approximations of workers; ^d Only the Philippines, India, Pakistan and Sri Lanka have bilateral agreements on social security with OECD countries

Sources: Pasadilla and Abella; OECD International Migration Outlook 2012

Portability of benefits require coordination and administrative arrangements

Many countries suspend the payment of benefits to migrant workers who reside abroad, even though they export benefits to their own nationals residing abroad (See Hirose, Nikac and for actual transfers to be made to a member who leaves the country where he has contributed to social security, there is no guarantee that one will actually receive the benefits that he or she is entitled to.

Foreigners working in GCC countries are excluded from the public social security system.

In Bahrain, Lebanon, Oman, and Saudi Arabia migrants are not obliged to pay social security contributions, and hence no portability issues arise. Migrants who work in this region may opt for private schemes for long-term benefits, or continue to contribute to the social security system of their home country.¹² They fall under Regime III just as workers in Singapore and Brunei who have no access to portable social security benefits. Contract workers admitted to these countries do get covered under employment injury compensation programs, a requirement that employers must fulfill when they employ foreign workers, but migrant workers are excluded from other benefits.

Australia, where migrants have access to social protection even in the absence of agreements, has a foreign-born population of 5.5 million from all over the world out of whom some 1.7 million are from Asia. Hong Kong has a migrant stock of 2.7 million most of them from China mainland and Southeast Asia. Malaysia has 2.3 million largely from Indonesia and Bangladesh, and smaller numbers from Nepal, India, Myanmar, the Philippines, and Thailand. The country with the largest proportion of immigrant stock in its population is Singapore with a stock of immigrants of almost 2 million in 2010 representing over 40 percent of its total population. Thailand has a reported stock of 1.15 million migrants, a much smaller number than the over 2.5 million legal and illegal migrants recently mentioned in Thai Government reports. Other countries are New Zealand with almost 1 million foreign born immigrants and the Republic of Korea with over half a million.¹³

¹²Holzmann, R. Johannes Koettl, and TarasChernetsky(2005)"Portability Regimes of Pension and Health Care Benefits for International Migrants:An Analysis of Issues and Good Practices" World Bank

¹³These estimates came from the World Bank's Development Indicators 2011.

Box 2: Restrictions of Migrants' Social Security Rights due to lack of social security coordination

Some countries completely prohibit the payment of benefits abroad, while others make the export of benefits conditional on the conclusion of reciprocal social security agreements with the countries of residence. Still others may only offer a lump-sum benefit in place of a pension if the insured person leaves the country. Such limitations may be due to monetary restrictions or to administrative problems (e.g. benefits in kind such as medical services cannot be provided directly by the competent social security institution outside of its area of competence), but may also be based on the underlying conception that a State is only responsible for those persons living within its own borders.

In the absence of coordination between national legislations, migrant workers face the risk of losing their social security rights when they are successively or alternately covered by schemes of two or more countries. In almost all countries, the payment of benefits, with the exception of employment injury benefits, is conditional upon a qualifying period of contributions, employment, or residence. While such qualifying periods tend to be relatively short for short-term benefits, they can be significantly longer (up to 15 years or more) for long-term benefits. Due to these qualifying periods, migrant workers risk losing their entitlement to benefits if they do not accrue the required periods of coverage in each country and, consequently, fail to qualify for benefits in any of the respective countries of employment.

In this respect, bilateral and multilateral social security agreements are essential in ensuring that periods of employment in other signatory countries are taken into account in granting the right to benefits conditional upon the completion of a qualifying period. Many countries allow migrant workers to accumulate social security rights only when bilateral or multilateral social security agreements have been concluded with the workers' country of origin. Moreover, most countries make the export of benefits abroad dependent on the ratification of international conventions or the conclusion of social security agreements with the countries of residence in order to control the ongoing entitlement to benefits of insured persons.

Generally, multilateral agreements are considered to have the advantage of generating common standards and regulations, thus avoiding discrimination among migrants from various sending countries who might otherwise be granted different rights and entitlements through different bilateral agreements. On the other hand, bilateral agreements have the advantage of providing greater flexibility and a possibility to take into account specific situations of the countries concerned. In addition, it requires less time and procedures to reach a mutual consent of the two parties. For these reasons, bilateral agreements are the most widely used instrument for social security coordination.

Source: Hirose, K., M. Nikac, and E. Tamagno

Access of Asian migrants to social protection

Table 2 below shows some estimates of the stock of international migrants abroad by Asian country of origin, the main destination regions/countries, and information on bilateral agreements that they may have with destination countries on social security.

Table 2: Estimated Emigrant Stock and Main Destinations of Migrant Workers

	Estimated Emigrant Stock (2000)	Main Worker Destinations	Social Security Agreements with
China	6 M	US/Can, E Asia, ASEAN	Germany, Korea
India	9.1 M	GCC, US/Can, EU	Belgium, Denmark, France, Germany, Luxembourg, Netherlands, Switzerland
Indonesia	2 M	ASEAN, GCC, EAP	
Pakistan	3.8 M	GCC, EU	Denmark, Libya
Bangladesh	4.9 M	GCC, EU, US	
Philippines	3.7 M	GCC, US/Can, EU, EAP	Austria, Belgium, France, Ireland, Netherlands, Spain, Switzerland, UK, Canada
Vietnam	1.7 M	US, EU, EAP	
Thailand	0.7 M	ASEAN, EAP, US	
Myanmar		ASEAN	
Nepal	0.7 M	GCC, EU, ASEAN	
Sri Lanka	0.8 M	GCC, EU, EAP	UK
Cambodia	0.3 M	EU, ASEAN	
Lao PDR		EU, ASEAN	
<p><i>Sources: ILO Migration Survey, 2003, ILO Geneva; various reports of ILO Social Security Department</i></p> <p><i>Abbreviations: EAP – East Asia and Pacific (Australia and NZ), GCC – 5 Gulf Cooperation Council States</i></p>			

For third-country nationals in the EU portability of social security benefits depends on status of residence.

According to Holzmann et al "the attempts to incorporate the special needs of migrant workers, in particular from non-EU member states (so-called third-country nationals), into the welfare systems have remained scattered and uncoordinated." Full equality of treatment to third country nationals only comes when a migrant is awarded long-term or permanent residence status but how one qualifies for it varies across Europe. In the Scandinavian countries migrant workers may be granted permanent status after only two years but in others longer resident periods are required. Hence, qualifying for such benefits still elude most temporary or guest workers even in the EU unless their origin countries succeed in negotiating bilateral agreements.

Agreements of a few Asian countries offer models

The potential losses faced by guest workers who contribute to social security but do not stay long enough in any one country to earn entitlement to certain benefits particularly to old age benefits (pensions) have been addressed in agreements between a few Asian and some EU countries. These agreements address the issue of double coverage and provide for "totalization" of credits when the workers move from one country to another provided these are countries which are parties to the EU-wide treaty on social security. Social security agreements entered into by the Philippines and India, for example, with EU countries cover the classic branches of social security such as sickness, maternity, invalidity, pensions, accident-at-work benefits, occupational disease, unemployment, and family allowances and provide for equality of treatment, exportability, totalization, administrative support, and treatment of double coverage. However, unemployment benefits may be exported only up to 3 months (or 6 months if the paying country extends it. (Pigeon, 2004).¹⁴

In major East Asian receiving countries migrant workers have access to social security systems but it takes many years to gain eligibility to old age benefits Table 3 below shows a comparison of the benefits covered under the social security systems of China, Hong Kong, the Republic of Korea, Japan, and Taipei (China). Most offer old age, invalidity and survivors' benefits. Except in Taipei where the social insurance system is limited to nationals and permanent residents, all the other countries do not have such exclusions. The biggest hurdle however is the length of the period required for eligibility to old age benefits (10 years in Korea and 25 years in Japan). Moreover provisions for the export of benefits vary from country to country.

Japan offers lump-sum withdrawal payment Foreigners enrolled in Japan's social security system who do not come from countries with which Japan has a social security agreement are only entitled to receive a lump-sum withdrawal payment within 2 years after leaving Japan (assuming they contributed for at least 6 months but have not yet qualified for a pension). In **Korea** all residents, including foreign nationals (except diplomats and students) from 18 to 59 years of age, regardless of their income, are covered under its National Pension Scheme. Pension benefits are available from age 60 provided that the individual has contributed for 10 years or more.

¹⁴ Pigeon, C. 2004. Reforms in the Coordination of Social Security Systems for People who Move within the European Union. Paper presented at the International Social Security Association European regional meeting on Migrants and Social Protection. Oslo, 21-23 April

Table 3: Comparative Benefits Covered Under Social Security in East Asia

	PRC		Hong Kong, China			Republic of Korea	Japan	Taipei, China	
	Social Insurance	Individual Account	Universal Benefit	Provident Fund	Employer Liability	Social Insurance	Social Insurance	Social Insurance	Individual Account
Branches covered:									
Old age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invalidity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Survivor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sickness					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Maternity					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Coverage limited to nationals and/or permanent residents	No	Yes	No						
Export of benefits allowed	No	Yes	No	Yes	(...)	Yes	Yes	(...)	(...)
Minimum period for eligibility (years)	15	15	7	7	None	10	25	15	None

Intra ASEAN migrants have greater access to social security even in the absence of agreements

Of about 4 million intra-ASEAN migrants Pasadilla and Abella (2012)¹⁵ estimated that about 2.5 million are in countries (Indonesia, Malaysia, Thailand and Philippines), where they are not excluded from enrolling in provident fund or social insurance. What excludes them is their migration status. Those in an irregular status in Thailand and Malaysia cannot enroll, and in Singapore and Brunei Darussalam only permanent migrants are permitted to enroll in the provident fund.

¹⁵ Pasadilla, G. and M. Abella (2012) Social Protection for Migrant Workers in East Asia, ADBInstitute, Tokyo.

Table 4: Comparative Benefits Covered Under Social Security in ASEAN

	Brunei Darussalam		Indonesia	Lao PDR	Malaysia		Philippines	Singapore	Thailand	Viet Nam
	Universal scheme	Provident Fund	Provident Fund	Social Insurance	Provident Fund	Social Insurance	Social Insurance	Provident Fund	Social Insurance	Social Insurance
Branches covered:										
Old age	<input type="checkbox"/>									
Invalidity	<input type="checkbox"/>									
Survivor	<input type="checkbox"/>									
Coverage limited to nationals and/or permanent residents	Yes	Yes	No	(...)	No	Yes	No	Yes	No ^a	(...)
Export of benefits allowed	No	Yes	Yes	(...)	Yes	Yes	Yes	Yes	(...)	(...)
Minimum period for eligibility (years)	Yes	No	No	5	No	Yes	10/15 ^b	No	15	15

Asian contract workers are growing fast in numbers and are employed in many parts of the world

Asian workers have been leaving their countries in large numbers to seek better-paying employment elsewhere. Table 5 shows the rapid growth in the numbers of migrant workers registered by national authorities in 9 major Asian origin countries as having left their countries with formal contracts of employment between 2001 and 2009. The volume of emigration of contract workers from these countries reached over 4.5 million in 2007. Most are on 1 year contracts of employment but many are able to stay on for a few more years by renewing their contracts. These numbers do not include those who emigrated clandestinely such as Indonesian and Filipino workers in Malaysia. Also not included are other significant countries of origin such as China, Myanmar, Laos and Cambodia. The latter three have large numbers of their nationals working just across the border in Thailand, while Chinese workers are known to be working in large numbers in many parts of the world.

Table 5: Deployment of Migrant Workers from Asian Countries to all Destinations

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Bangladesh	188,965	225,256	254,190	272,958	252,702	366,954	832,609	875,055	
India	278,664	367,663	466,456	548,853	676,912	809,453	848,601	610,272	641,356
Nepal				107,000			217,000	249,000	
Pakistan	127,929	147,422	214,039	173,824	142,135	183,191	287,033		
Sri Lanka	184,007	203,773	209,846	213,453	231,290	201,498	218,459	250,499	247,119
Indonesia			293,694	380,690	473,310	680,000	696,746		
Philippines	662,648	682,315		933,588	988,615	1,062,567	1,077,623	1236,013	1,422,586
Thailand	170,000	165,000	148,000	150,000	141,000	163,000	164,000	163,000	150,000
Vietnam	28,386	32,931	45,931	30,303	47,810	78,855	85,020	86,990	73,028

Issues for Discussion

The last three decades have seen an exponential growth of mobility of Asian workers within the region and to other parts of the world. It is likely that this growth will continue because of the progressive integration of the economies (i.e. ASEAN) and demographic trends particularly declining fertility and rapid ageing which together act to bring about declining stocks of young workers. Since migrants are likely to make up an increasing proportion of the region's workforce the challenges of providing them with adequate social protection are surely going to mount. As we have seen at the beginning of this briefing note migrants are confronted with a variety of risks that current systems of social protection have not yet taken into account.

How can prospective migrants be protected against risks of fraud in recruitment?

Will improvements in public services be sufficient to address such contingencies or are principles of social insurance equally relevant? If so, what principles should apply in designing social protection schemes to meet such contingencies?

Migrant workers are more at risk of being in dangerous jobs than native workers. Those migrants on a regular status generally are covered by employment injury and sickness insurance but lack of portability and problems with exportability of benefits still pose problems for many who obtain legal entitlement to benefits.

What are the obstacles to portability and how can they be removed?

In the absence of agreements access to social security is not guarantee that migrants would receive the benefits that they are entitled to. Unless they are able to stay for the number of years required to become eligible and unless there are agreements that provide for *totalization* and *portability* migrant workers can at best only hope to get a lump sum upon completion of their contracts. Migrants contributing to an old-

age pension scheme in their host country could lose part of their contributions and benefits when returning to their home country. Can the **ASEAN countries develop a multilateral treaty** to provide migrants from other member states not only to gain access to social security but also to make arrangements for totalization and portability of benefits? What are keeping more Asian countries from negotiating **bilateral agreements with destination countries in other regions** like Europe? How can the ILO assist countries in this regard?

Migrants who, through no fault of their own, lose their jobs in destination countries face very serious risks not only involving financial dislocation but also in terms of violation of their rights and loss of freedom. **How can these workers be provided not only with social assistance but with some kind of social insurance?** Should the cost of such insurance also be shouldered by foreign employers?

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