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Social Security for Migrant Labour in the Greater Mekong Subregion

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Abstract

The paper examines the labour migration trends in ASEAN and in the Greater Mekong Subregion (GMS), in particular, and analyses the ASEAN regional labour-related initiatives that seek to improve the protection of migrant workers. It discusses social protection and the access status of GMS migrant workers, as well as the legislative and legal barriers in accessing social security in host countries. Existing national social security schemes in ASEAN countries and how losses from lack of portability can be addressed, especially through social security agreements, are also discussed.

JEL Code: F15, F22, H55

Key words: Social security, social protection, Greater Mekong Subregion, portability, ASEAN, labour migration

1. Introduction

This paper provides a background on labour migration in ASEAN and particularly in the Greater Mekong Subregion (GMS) and looks particularly at the social protection access of migrants in the region, with particular focus on social security. What types of social security do labour-receiving countries offer its migrant workers? Do migrants have access to host countries' social security? Can they enjoy the benefits from their contribution when they return to their home states? These are some of the questions that this paper attempts to answer.

The paper is organized as follows. Section 2 discusses the labour migration trends in ASEAN and in the GMS, in particular, and analyses the ASEAN regional labour-related initiatives that seek to improve the protection of migrant workers. Section 3 discusses social protection and the access status of GMS migrant workers, the legislative and legal barriers in accessing social security in host countries and tries to distill some lessons and insights for the GMS economies. The last section presents the challenges at both the national and regional levels to improve social protection of migrant workers.

2. Labour Migration Trends in ASEAN

Labour migration data are generally known to have some serious limitations and need to be analyzed with caution. They do not capture a large part of migration flows – the undocumented migrant workers, and data quality is highly variable across countries. Uniform definitions do not exist – for example, some countries include skilled professionals in the administrative data, while other countries which do not require clearances for skilled professionals tend not to track their emigration. Country data are hard to compare because of varying definitions. Some governments, especially those facing large foreign immigration flows, are moreover not transparent about those information to down national sensitivities. With this caveat, this section discusses various estimates of labour migration in ASEAN to note changing patterns and directions.

2.1. Intra-ASEAN labour mobility: trends and patterns

Buoyed by fast growth in Asia, migrant labour have steadily increased in the region since the 1980s while a decade before, Asian workers have mostly gone to the Middle East. The high-income countries in Asia such as Japan, Republic of Korea, Taiwan, China, and Hong Kong, China, are now among the top destination for Asian workers, but some countries in ASEAN too have become net labour-receiving economies. Singapore and Malaysia (as well as Brunei

Darussalam) are major destination countries for workers from Indonesia and the Philippines,² while Thailand, especially beginning in 1990, is the hub in the Mekong river states with Cambodia, Lao PDR, Myanmar, and Viet Nam as labour suppliers.³ Singapore had only about half a million immigrants in 1960, but by 2010, this number has swelled to almost two million (Table 1) on the back of high and sustained economic growth, low population growth and aging population. Malaysia's documented foreign workers also grew to more than two million in 2010, most of whom are from neighboring Indonesia (about 51% of foreign workers), followed by 7% from Myanmar; 4% from Viet Nam; and 5% from Cambodia, the Philippines and Thailand combined (Asian Development Bank Institute - Organisation for Economic Co-operation and Development, 2011) (see Table 1).

Table 1. Stock and growth of immigrants in ASEAN labour-receiving countries

(in thousands)

	1960	1990	2005	2010	Compound Annual Growth Rate		
					1960–1990	1990–2005	2005–2010
Malaysia	56.9	1,014.20	2,029.20	2,357.60	10	5	3
Singapore	519.2	727.3	1,494.00	1,966.90	1.2	5	5.6
Thailand	484.8	387.5	982	1,157.30	(...)*	6.5	3.5
Source: United Nations (2008)							
*(...) data not available							

Most migrant workers are admitted as temporary guest workers; their contracts are mostly fixed for 2 to 3 years, with possibilities for extension. Admission for permanent settlement remains limited to family reunification although Singapore has been offering possibilities for permanent settlement to highly skilled and professional workers. Of the 4.8 million populations in Singapore, 11% are foreigners with permanent resident status. As of 2008, most of the other foreign nationals are temporary unskilled migrant workers holding work permits (645,000) and professionals or those with tertiary education holding employment passes (110,000) (Pasadilla and Abella, 2012).

²Malaysian workers also migrate or commute in large numbers to Singapore, while Thai farmers in the southern provinces have traditionally crossed over to Malaysia, often for seasonal work (Pasadilla and Abella, 2012).

³ Of course, Thai and Vietnamese workers are also present in other Mekong countries, especially in Cambodia.

A significant number of foreign workers in some countries, notably Thailand and Malaysia, are in an illegal or undocumented situation, subject to periodic mass repatriation. Despite the preference for admitting skilled professionals in official policy, the preponderant majority of migrant workers are still employed in semiskilled and low-skill occupations in agriculture, construction, and domestic services. A significant “feminization” of migrant workers is also evident in the large number of female workers working as domestic help.⁴

Table 2 shows the intra-ASEAN migration based on estimates from the World Bank. The data shows that five countries – Singapore, Malaysia, Brunei Darussalam, Cambodia, and Thailand - have more in-migrants from ASEAN than out-migrants to other ASEAN countries (i.e., they have ratios less than 1 in Table 2). Of these five, Malaysia and Thailand, with ASEAN out-migrants to in-migrants ratio of 0.63 and 0.59 respectively, can be considered as both importers and exporters of ASEAN labour, while Brunei Darussalam, Cambodia, and Singapore are more significantly labour importers of ASEAN workers. On the other hand, among ASEAN countries that are net labour exporters, Myanmar and the Philippines host the least number of ASEAN migrants.

With regard to the origin of total in-migrants, majority in Cambodia, Lao PDR, Malaysia, and Singapore are from ASEAN (Table 2) while in the rest of ASEAN, in-migrants from ASEAN relative to total in-migrants accounts less than 50%.

⁴ In contrast, Republic of Korea has mostly admitted male workers for construction activities.

Table 2 Intra-ASEAN migration

	Intra-ASEAN			Total Migration			Share of Intra-ASEAN to Total Migration (%)	
	Outward Migration	Inward Migration	Ratio of	Outward Migration	Inward Migration	Ratio of out-	Outward Migration	Inward Migration
			out-			in-		
			migrants/ in-migrants			migrants/ in-migrants		
Brunei Dar.	9,313	120,578	0.08	24,343	148,123	0.16	38.26	81.4
Cambodia	53,722	320,573	0.17	350,485	335,829	1.04	15.33	95.46
Indonesia	1,518,687	158,485	9.58	2,504,297	397,124	6.31	60.64	39.91
Lao PDR	82,788	10,134	8.17	366,663	18,916	19.38	22.58	53.58
Malaysia	1,195,566	1,882,987	0.63	1,481,202	2,357,603	0.63	80.72	79.87
Myanmar ^a	321,100	814	394.47	514,667	98,008	5.25	62.39	0.83
Philippines	335,407	9,096	36.87	4,275,612	435,423	9.82	7.84	2.09
Singapore	122,254	1,162,960	0.11	297,234	1,966,865	0.15	41.13	59.13
Thailand	262,721	448,218	0.59	811,123	1,157,263	0.7	32.39	38.73
Viet Nam	221,956	21,511	10.32	2,226,401	69,307	32.12	9.97	31.04
Total	4,123,515	4,135,357	1	12,852,027	6,984,461	1.84	32.08	59.21

Source: Author's computation based on estimates from World Bank's Global Bilateral Migration Database

^a Myanmar data were based on earlier estimates by the World Bank, i.e., 2007, while the rest are from data released in 2010.

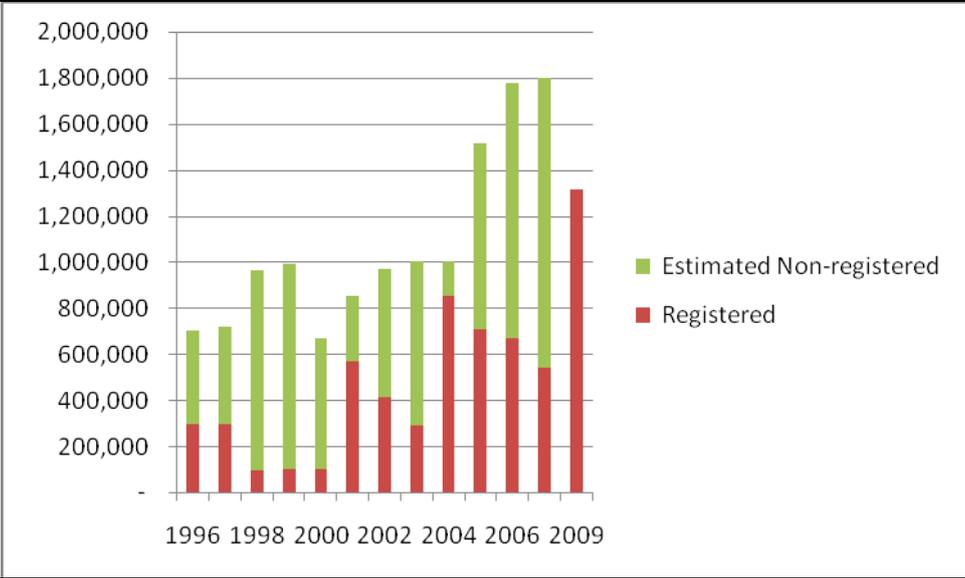
2.2. Labour migration in GMS

Thailand is the hub of migration in the Greater Mekong Subregion (GMS). Factors that support migration to Thailand include the Thai aging population, expectations of continued rapid economic growth, large wage differentials, and slow growth of the Thai labour force.⁵ The GMS migration is characterized by the presence of huge undocumented or illegal workers coming mainly from Cambodia, Lao PDR and Myanmar (see figure 1). Total migrants from these three Mekong River states in 2007 was 1.8 million, of these only 30% are registered (Martin, 2007). Spurts in the number of registered migrant are due to amnesties granted by Thailand for illegal workers. In 2009, as a result of the government's regularization program, the number of registered migrants jumped from half a million in 2007 to 1.3 million (Vasuprasat, 2010), majority of them are from Myanmar. Legal migrants are usually of the unskilled and semi-skilled categories working in agriculture, fishing, factories, or as domestic

⁵ Thailand's labour force has grown only 1.4% a year since 2000.

household help. Contracts are of a temporary nature, usually for two years with a possibility of another two-year extension.

Figure 1. Foreign workers in Thailand from Cambodia, Lao PDR, Myanmar



Sources: Author’s based on data from Martin (2007) and Vasuprasat (2010).

Lao People’s Democratic Republic: The Government of the Lao PDR entered into a bilateral agreement with Thailand, a memorandum of understanding (MOU), in 2004 for the legal migration of workers (Deelen and Vasuprasat, 2010). Under the program, according to the Lao PDR’s Ministry of Labour and Social Welfare, 7,521 Lao PDR migrant workers have migrated through one of the nine licensed recruitment agencies in the Lao PDR since 1 January 2006. They work in domestic services (31.7%); agriculture (16.9%); construction (8.5%); and the rest on board fishing boats, in fish processing plants, and in informal trade.

Cambodia: Cambodian workers are the largest group of foreign labour in Thailand next to Myanmar. Many of them cross the Thai borders clandestinely. In response to an amnesty program in 2004, some 180,000 Cambodians registered with the Thai authorities; 110,000 were given work permits and allowed to work for 2 years. Most Cambodian migrants in ASEAN are employed in fishing, agriculture and construction, and domestic services. At the same time, several thousand workers from neighboring countries, notably Thailand and Viet Nam, are employed in Cambodia.

Myanmar: With per capita income barely a fifth of that of neighboring Thailand, a land border of 1,800 kilometers separating the two countries, and compounded by civil strife, large cross-border movement from Myanmar to Thailand is inevitable. From the 2004 amnesty program in Thailand, it was estimated that over 1 million migrants from Myanmar crossed over to Thailand for refuge or work or both. In spite of several amnesties and regularization programs, only a very small proportion of these migrants have legal status in Thailand because of cumbersome, costly, and unrealistic procedures adopted under the agreement between the countries.⁶ Vasuprasat (2010) reported that as of 5 March 2010, only 41,770 migrants from Myanmar have passed the verification process, equivalent to about 4% of the registered migrants in 2009. Workers from Myanmar also go to Malaysia and other destinations such as Taiwan, China but in much smaller numbers.

Viet Nam: In contrast to Cambodia, Myanmar, and Lao PDR, Vietnamese exodus of migrant workers has been to more countries and territories. In Southeast and East Asia, they can be found in Malaysia (90,000); Taiwan, China (80,000); and the Republic of Korea (45,000). Vietnamese workers can also be found in large numbers in Cambodia, China, Indonesia, and the Philippines, but there are no reliable estimates. Temporary contract labour migration going through official channels in 2000–2005 averaged 65,000 workers a year, but has increased since 2009 to about 85,000 a year, 33% of whom go to Taiwan, China, 14% to Malaysia; and 10% to the Republic of Korea (Pasadilla and Abella, 2012).

2.3. ASEAN social protection initiatives

Concern for the social protection and welfare of ASEAN people is enshrined in various ASEAN documents such as the ASEAN Charter or the AEC Blueprint⁷, but social protection issues are specifically under the purview of the ASEAN’s Senior Labour Officials’ Meeting (SLOM). According to the ASEAN Secretariat website, the SLOM has established four

⁶ According to Vasuprasat (2010), the MOU called for verifying the nationality of the undocumented migrant. After verification by Myanmar authorities, migrant workers receive a temporary passport valid for 3 years; they can then apply for a nonimmigrant visa and work permit in Thailand. The cost of the whole process is supposed to be B5,000–B7,500 per person, but many workers have paid far more.

⁷ See for example, ASEAN Charter (2008) Article 1, Paragraph 11; ASEAN Economic Community (AEC) Blueprint (2007) Section 3.2.2 which recommends that ASEAN establish an integrated social protection and social risk management...strengthen systems of social protection at the national level...and provide minimum uniform coverage for skilled workers in the region; and ASEAN Socio-cultural Community Blueprint (2009).

subsidiary bodies. First, the Working Group on Progressive Labour Practices to Enhance Competitiveness of ASEAN focuses efforts on human resources, social security, industrial relations, skills development and networking, skills recognition, labour laws, labour statistics and decent work. Second, the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) established in July 2007 with one of its most important thrusts the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers. The other two SLOM working groups are focused on occupational safety and health; and on HIV prevention and control in the work place.⁸ The adoption of the Cebu Declaration on the Protection and Promotion of the Rights of Migrant Workers (DPPMW) in January 2007 is the most significant step in strengthening the social protection of migrant workers in ASEAN. Though the Declaration is mainly aspirational, it does provide the framework for concrete action affecting mobile labour and mandates cooperation of ASEAN members – both labour-receiving and labour-sending countries - on migrant worker issues. In July 2007, the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), one of the working groups under the SLOM, was established with the following four priorities: 1) Enhance the protection and promotion of the rights of migrant workers against exploitation and mistreatment; 2) Strengthen the protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries; 3) Engage in regional cooperation to fight human trafficking in ASEAN; and 4) Work on the development of ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (AIMW).

With regard the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (AIMW), Malaysia and Thailand, representing labour-receiving states, and Indonesia and the Philippines, representing labour-sending countries, have met to draw up the AIMW. The effort has, however, stalled due to sensitivities regarding undocumented migrants, i.e.,

⁸ The working group on ASEAN Occupational Safety and Health Network (OSHNET) aims to promote cooperation in improving safety and health in the workplace in the ASEAN region. It also serves as a platform to exchange experience and information in the field of occupational safety and health standards, training, research, inspection and national framework. The working group on HIV prevention and control seeks to facilitate policy dialogue and information sharing among Member States on good practices and strategic actions on issues and areas related to HIV/AIDS in the Workplace. For more information on the different functions of the working group, see the ASEAN Secretariat website, www.aseansec.org.

whether they should be included under social protection mechanisms. Thus, to date, there are no standards enunciated in a multilateral document or agreement within ASEAN on migrant workers and social protection other than those adopted by each country and through bilateral agreements (Hall, 2007). Besides the stalled efforts at drawing up the AIMW, there are also a number of limitations in the ASEAN work on migration and social protection. First, ASEAN gives priority to the movement of skilled labour rather than the unskilled. In many of the agreed documents touching upon labour mobility in the region, what is specifically highlighted is skilled labour mobility. Unskilled labour is hardly mentioned, let alone illegal migration. In general, ASEAN defer to national policies on regularization of undocumented migrant labour. Yet, most of regional migration flows are unskilled and semi-skilled labour.

Second, ASEAN seems to treat social security as an unessential part of migrant workers' social protection. For example, the topic of social security is handled by the Working Group on Progressive Labor Practices to Enhance the Competitiveness of ASEAN and not by the Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW). This placement of social security in a different working group from those dealing with migrants' protection suggests that the ASEAN Labor Ministers (ASLM) consider protection of migrants mostly in terms of preventing abuse or trafficking, safety of migrant workers, and other similar type of protection, divorced from discussions on social security. This significantly narrows the social protection that migrant workers in ASEAN deserve.

Third, though one of the ASLM working groups includes among its focus the development of social security systems in the region, the efforts are mainly geared towards the development of national systems. Nowhere is there any mention in any ASEAN document of any regional plan or vision for a regional agreement on social security which, arguably, is a concrete mechanism to give effect to the obligations under the Cebu Declaration on the Protection and Promotion of Migrant Workers.

At the bilateral level, however, labour agreements exist between some ASEAN member states, providing for non-discrimination and equality in access to basic rights by migrants.

3. GMS Migrant Labour's Access to Social Protection

The ADB includes in its definition of social protection both contributory (e.g. social insurance) and non-contributory programs (e.g. social assistance).⁹ This section will focus specifically on one area of social protection which is social security or social insurance.

3.1 Status of access in GMS countries

There is a difference in access to social protection between workers from GMS countries with regular status and those who are undocumented or illegal. Access to social protection is often possible for workers with regular status but rarely for undocumented workers who, ironically, are the most vulnerable and in need of it. In most cases, irregular migrants survive through the charity of a network of social relations –relatives, friends, village-mates, neighbors, or fellow migrants.

Specifically, regarding social security, access to the scheme usually requires registration or membership which means that foreign workers should possess the proper migration documents. This automatically excludes workers who entered the host states illegally. A discussion below on social security therefore focuses primarily on the right to social security of “regular” migrant workers. In addition to having a regular status, social security coverage normally includes only those working in the formal sector, except in some national schemes that try to include as much of the informal sector workers as possible.

3.1.1. Existing social security coverage for migrant workers

This subsection discusses the existing social security coverage of GMS migrant workers in three major labour-receiving countries in ASEAN – Singapore, Malaysia, and Thailand. Based on the estimates by the World Bank, these three have a stock of 3.5 million ASEAN in-

⁹Social insurance refers to programs where people receive benefits or services in recognition of contributions to an insurance program. These services typically include provision for retirement pensions, disability insurance, survivor benefits and unemployment insurance. When one talks of social security, one usually refers to social insurance schemes, although as will be discussed in this section, social security can also be provided through other schemes such as through provident funds. Social assistance is also sometimes referred to as basic social security, but the latter is different from social insurance in that it is non-contributory and the beneficiaries benefit usually on the basis of need (e.g. old age poverty or adverse health). In World Bank's terminology, social assistance refers to the zero-pillar of social security; social insurance, the first pillar; and provident fund is a second pillar of social security. This is the reason why social protection and social security are very often interchangeably used. In this paper, we use social security as either referring to social insurance or provident funds, the former are usually defined-benefit schemes while the latter are so-called defined contribution systems.

migrants (Table 2), equivalent to 84% of total intra-ASEAN migration. This section discusses the available social security schemes as well as the condition for access in these countries.

Table 3a and 3b show that Thailand has a social insurance (or defined benefit) scheme, Singapore has provident fund (or defined contribution system), and Malaysia has both provident fund and social insurance. Provident funds do not have minimum period of contribution to obtain benefits from their contribution but social insurance schemes generally do.

Table 3a. Social security schemes in selected labour-receiving countries in ASEAN

	Malaysia		Singapore	Thailand
Schemes	Provident Fund	Social Insurance	Provident Fund	Social Insurance
Branches covered:				
Old age	✓		✓	✓
Invalidity	✓	✓	✓	✓
Survivor	✓	✓	✓	✓
Coverage limited to nationals and/or permanent residents	No	Yes	Yes	No ^a
Export of benefits allowed	Yes	Yes	Yes	(...)
Minimum period for eligibility (years)	No	Yes	No	Yes (15)
Source: Tamagno (2008)				
a/ Excludes temporary and seasonal workers				

In Thailand, migrant workers can, theoretically, access social insurance which includes provisions for old age pension, invalidity and survivor benefits. However, it needs a minimum of 15 years contribution which is unattainable for most migrant workers from GMS countries. Under the MOU of Thailand with each of the three GMS countries, temporary work in Thailand is allowable for only a maximum of 4 years (2 years initial contract with the possibility of another two years extension). Workers from Cambodia, Myanmar and Lao

PDR (so-called CML) can re-enter Thailand but only after three years since their last departure. Under this scenario, the exportability feature of Thailand’s social insurance is irrelevant considering that CML migrants will not qualify for the benefits anyway. There is no provision in the MOU for the return of the migrant workers’ contribution to the social security system in Thailand.¹⁰

In Singapore, migrant workers from GMS and other countries do not have access to the provident fund unless they have become permanent residents.

In Malaysia, GMS migrant workers have no access to the social insurance system but they can contribute in the provident fund on a voluntary basis. Moreover, they can bring with them their contribution to the provident fund anytime they return to their home countries.

Other benefits under the social security systems include medical care, sickness and maternity cash benefits and employment injury but each country has varied available benefits. Table 3b shows that while Malaysia covers medical care (mostly in-kind benefit), it provides no cash benefit for maternity and sickness. Singapore too, has in-kind medical care but sickness and maternity cash benefits as well as employment injury are the responsibilities of the employers. Thailand, in contrast, covers all three health-related benefits.

Table 3b. Social security schemes in selected labour-receiving countries in ASEAN

	Malaysia		Singapore	Thailand
Schemes	Provident Fund	Social Insurance	Provident Fund	Social Insurance
Other benefits				
Medical care	√		√	√
Sickness and maternity (cash benefit)	X	x	employer liability	√

¹⁰Migrant workers have to contribute to a ‘deportation fund’ (a scheme that is distinct from social security) during the duration of their stay in Thailand. The contribution is equivalent to 15% of monthly salary, but the fund (with interest) will be returned to them within 45 days of their return to their home countries. They forfeit their right to their contribution if they become “irregular” migrant workers and do not go back upon termination of their employment contract.

Employment injury	employer liability	√	employer liability	√
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Source: ILO (2007)

Could migrant workers from GMS who cannot access social security in host states, at least rely on social security from their home countries? In ASEAN, only the Philippines have a voluntary system of contribution for their overseas Filipino workers which takes care of their old age and other benefits when they return. In the GMS, only Viet Nam followed the voluntary system of contribution in the Philippines. This system allows an uninterrupted year of membership and contribution by the migrant workers even if they are out of their country thus facilitating their meeting the minimum required contribution period.

If and when they return home and find work in the formal sector, do CML migrant workers have a social security scheme where they can give contributions? Table 4 shows the social security benefits available in Lao PDR, Myanmar, and Viet Nam. These three countries have a social insurance (defined benefit) schemes which provide old age, invalidity and survivor benefits, along with medical care, sickness and maternity, as well as employment injury. Myanmar's social insurance, however, covers only government employees. In contrast to these three countries, Cambodia has no social security scheme whatsoever.

Table 4. Social security schemes in GMS countries

	Lao PDR	Myanmar	Viet Nam
Schemes	Social Insurance	Social Insurance	Social Insurance
Branches covered:			
Old age	√	Government employees only	√
Invalidity	√	x	√
Survivor	√	x	√
Other benefits			
Medical care	√	√	√
Sickness and maternity (cash benefit)	√	√	√
Employment injury	√	√	√

Source: ILO (2007)

3.1.2. Legislative and administrative barriers

The above discussion of social security systems in selected labour-receiving countries in ASEAN unveils some legislative and administrative barriers in migrant labour's access to social security, whether they come from the GMS or from other countries in ASEAN. First, some schemes exclude migrant access on the basis of nationality and residency requirements. For example, membership in Singapore's Central Provident Fund is reserved for nationals and permanent residents. Second, exclusions from social security schemes also depend on the sector where migrants work. For example, in Thailand, social security is not applicable to those in domestic work, or in agriculture, or fishing. Such exclusions, moreover, apply to both nationals and non-nationals working, usually, in the informal sector.

Third, apart from access and membership, legal and administrative barriers also exist in the enjoyment and availment of benefits. For example, as mentioned above, Thailand's required minimum number of years of contribution to the social security fund is 15 years which is impossible for migrant workers from GMS to reach given the temporary nature of their work contracts. Fourth, documentation requirements¹¹ and the costs of preparing them, along with language difficulties, add another dimension to the problems of obtaining social protection benefits (Hall, 2011).¹²

3.1.3. Liberalization and other economic opening measures

In the area of social security, no legal and administrative barrier has yet been liberalized, neither bilaterally nor regionally. But in the recruitment process and sending and receiving of migrants, especially in the Mekong subregion, much had changed since 2002 when Thailand signed Memoranda of Understanding (MOU) with Laos PDR and with Cambodia in 2003. The most significant change this brought about is the formal recruitment of labour into Thailand through proper channels, i.e. through licensed recruitment agencies. All countries involved developed national guideline on procedures for formal recruitment to abate illegal

¹¹ For example, in terms of passing on benefits to relatives or spouses if a migrant dies in the host state.

¹² Arguably, the weak financial infrastructure in the GMS adds another barrier for enjoying social security benefits in the GMS because of the difficulty of making benefits payments across borders, assuming that the country allows benefits to be exported.

migrants flow and ensure that recruited labourers have the right information and access to basic protection.

Thailand also unilaterally regularized the situation of many illegal migrants in Thailand. Thus by June 2007, the number of regularized migrant workers from Cambodia and Lao PDR numbered 58,589, while the migrants that passed under the drafted MOU guidelines was 6,792 (Chantavanich, 2008). Thai banks also facilitated the opening of bank account for both regular and irregular migrant labour who were already in Thailand by making their documentary requirements less stringent.

In ASEAN at large, the labour liberalization effort at the regional level is an important pillar under the AEC Blueprint (2007) of a single market and single production base with free flow of goods, services, and investments. Labour liberalization under the Blueprint, however, refers only to free flow of skilled labour, that is, “movement of natural persons engaged in trade in goods, services, and investments” (Hall 2012). Toward this end, ASEAN countries facilitate visa issuance and employment passes for ASEAN professionals and skilled labour who are engaged in cross-border trade and investment related activities. Under the ASEAN Framework Agreement for Services (AFAS), ASEAN has signed mutual recognition agreements (MRAs) for specific skilled professions such as engineering, accounting, nursing, dentistry, and others. The MRAs are aimed at facilitating the free movement of these skilled professionals across ASEAN by providing guidelines on the recognition of professional qualifications.

3.2. Lessons and insights for the GMS

Having bilateral MOUs is a good step toward the protection of migrant workers. At a minimum, the MOU helps both sending- and labour-receiving countries be keenly conscious of their respective responsibilities in promoting safe cross-border labour movement as well as in promoting basic assistance for migrants in host states. However, bilateral MOUs can still be improved by including social security agreement in the bilateral talks. For example, in the case of Thailand where regular GMS migrants in some sectors make social security contributions, a bilateral MOU which includes social security in the agreement can help migrant workers enjoy some of the benefits from their contribution.

How may a bilateral social security agreement in the GMS look like and what could be its components? This section will first discuss general features of a social security agreement and how they help protect migrant labour before proceeding to discuss how to apply it in the GMS.

3.2.1. Social security agreement: general features and practices

Various ILO Conventions have established five basic principles of bilateral and multilateral agreement on social security.¹³ On the basis of these principles, various social security agreements typically cover some or all of the following:¹⁴

- *Equality of treatment*, which addresses nationality-based restrictions for access. Countries may agree to do away with residency or nationality requirements for access, for example;
- *Export of benefits*, which addresses questions like whether export of benefits outside the host state to another country (whether a party to the agreement or not) is allowed, whether social assistance is excluded from the benefits, and other related concerns;
- Dealing with *double coverage* or dual tax;
- Administrative assistance for facilitating claims and verification of eligibility; and, very importantly,
- “*Totalization*” or the adding together of periods of contribution or affiliation in all the

¹³ Hirose, et. Al (2011) summarize these principles as follows:

• “*Equality of treatment*, which means that a migrant worker should have, as far as possible, the same rights and obligations as the nationals of the destination country;

• *Determination of the applicable legislation* to ensure, by establishing the rules for determining the applicable legislation, that the social security of a migrant worker is governed at any onetime by the legislation of one country only; (This is akin to preventing double taxation of migrant labour’s income)

• *Maintenance of acquired rights and provision of benefits abroad*, which means that any acquired right, or right in course of acquisition, should be guaranteed to the migrant worker in one territory, even if it has been acquired in another, and that there should be no restriction on the payment, in any of the countries concerned, of benefits for which the migrant has qualified in any of the others; (This is the ‘exportability’ feature of social security)

• *Maintenance of rights in course of acquisition*, which means that where a right is conditional upon the completion of a qualifying period, account should be taken of periods served by the migrant worker in each country; (This touch upon ‘totalization’ of number of periods of contribution in different jurisdictions)

• *Reciprocity*, which is an underlying principle, means that each country which is a party to an agreement undertakes to apply the same mechanisms as every other party to make its social security benefits more accessible to migrant workers. Reciprocity also means that there is a reasonable degree of comparability in the obligations that each party assumes as a result of an agreement. A country, which refuses equal treatment to workers from another country, cannot expect that the other country will grant equal treatment to its own workers in return.”

¹⁴ See Pasadilla (2011).

countries that are parties to the agreement to allow the migrant worker to meet the qualifying period. This part of the agreement may contain third-state totalizing provisions even if it is a bilateral agreement. The “totalization” features of the social security agreement allow migrants to enjoy any accrued benefits they would have otherwise forfeited because of their inability to meet the minimum qualifying period.

In practice, however, some bilateral or multilateral social security agreements (SSA) do not cover all the ‘ideal’ and recommended features. Some countries may only cover the administrative assistance for facilitating claims and verification of eligibility. Mercosur’s social security agreement is an example of this type because it is mainly an agreement to manage the pension requests of individuals who worked in the four member countries of Argentina, Brazil, Paraguay, and Uruguay.

Other agreements like the European Union system of social security is more elaborate and covers all the major features of an SSA. Other bilateral SSA may only tackle equality of treatment, exportability, as well as the double “tax” coverage issue; while others may contain a different combination, usually on those SSA objectives on which mutually acceptable solutions have been found. These “limited” agreements can at least remove some of the barriers that migrant workers would otherwise face, while at the same time becoming a foundation for a broader agreement in the future.

3.2.2. Applications in GMS

Obviously, a social security agreement in the GMS which includes all the five objectives is far-fetched at this time. In the first place, the national social security system still need to be strengthened in its administration of both funds and membership records, to improve its domestic coverage of labour, as well as enhance funding and sustainability. Other countries like Cambodia still need to establish its own social security system. Strong national security systems in the GMS countries are bedrock for the reciprocity principle on which SSA depends upon.

Nonetheless, a ‘limited’ form of social security agreement may be possible with Thailand at this time. Such an agreement, for example, can make a determination on what to do with GMS migrant labour’s contribution in the Thai social security system. “Totalization” may be out of the question but partial reimbursements of contribution can be on the table. Likewise, discussion of equality of treatment (already present in current MOUs) may be explored further

to consider the possibility of exemption from social security contribution on the basis of temporary migrants' inability to enjoy its benefits anyway.

For labour-sending countries that already have an existing social security system, the important task at hand is the strengthening and ensuring the sustainability domestic social security. Furthermore, to provide GMS migrant labour the social security they need, particularly if they work in countries where they are excluded from the host state's social security scheme, a voluntary system of membership should be developed which allows them to contribute even when they are out of the country. The Philippines provides voluntary social security system membership option for its overseas workers.¹⁵ In addition, it developed a supplementary pension savings (SSS Flexi-Fund) (a program a kin to a defined contribution) and the Overseas Workers Program of the Philippine Health Insurance Corporation (Philhealth) to cover some medical care. Such voluntary programs are easier to develop and implement since it does not need the concurrence of other sovereign states. Its only downside is that the voluntary member has to pay both his and the employer's share which can make his contributions expensive.

4. Challenges

The increased integration of ASEAN economies is expected to fuel more labour mobility across the region. The ASEAN leaders' decision to put particular attention to the promotion and protection of migrant workers through the Cebu Declaration is in recognition of this inevitable trend. While the social protection of migrant labour can be broad in scope, encompassing emergency aid and other social welfare assistance, one important aspect of it deserves special attention: social security, particularly when the migrant labour reach old age, become disabled, and return to their home countries. This paper has highlighted some of the labour-related initiatives at the ASEAN level that touch upon social security. Particularly, in the case of GMS labour migration, the paper has discussed the existing social security benefits in labour-receiving ASEAN countries, the legal and administrative barriers to such access, and the role that social security agreement can play in improving social security of migrant workers. This section summarizes some of the challenges working towards this end.

¹⁵ The voluntary option is also open to those who work domestically but are in the informal sector, including non-working spouses.

4.1 Challenges at the national level

The immediate challenge at the national level is still to stem the flow of undocumented migrant labour and prevent human trafficking and abuse. To this end, GMS countries have ongoing efforts to strengthen border control, improve recruitment regulations and having pre-departure training on safety and access to information as well as on financial education.

Over and above access to basic social welfare benefits, the more long-term challenge is the development of national social security systems which can take care of a growing aging population. Countries in the GMS, especially the CMLV countries have either non-existent social security scheme (Cambodia) or weak social security systems. The large majority of the population in these countries, specifically those in the informal sector, is not covered by social security. Better governance and efficient administration of the national schemes are also called for. In all the various aspects of running a national social security program, from administration of records and payment of benefits to the investment management of large funds, a huge capacity building effort in GMS is imperative.

As part of the objective of increasing social security of migrant workers, GMS countries can consider the development of voluntary membership programs in their national social security schemes. By allowing voluntary contributions to the home country's social insurance, migrant workers are able to satisfy the minimum required vesting periods without needing to rely on any social security agreement. Of course, the disadvantage in voluntary membership is that migrant workers cannot depend on any employer's share in the social security contribution. There are lessons to be learned from other countries in ASEAN and elsewhere which had introduced such options that may be worth including in capacity building initiatives (see Box 1).

Box 1. Voluntary Membership in Social Insurance

Among the ASEAN countries, the Philippines and Viet Nam allow voluntary membership in their national insurance schemes. The rationale for voluntary membership is to increase the coverage of the social security system which previously excluded the majority of the labour force, particularly those in the informal sector. Under the voluntary membership programs, those working in the informal sector, including domestic help and non-working spouse can avail of the benefits from social security by paying a voluntary monthly contribution. In the Philippines, overseas Filipino workers (OFWs) can avail of the voluntary membership program by sending their contribution either electronically or by asking a family member to make the regular contribution on their behalf in local banks back home. In addition, the SSS has a special supplementary saving scheme designed exclusively for them– the SSS Flexi-fund which is a provident fund for OFWs. The SSS Flexi-fund gives OFWs an additional saving vehicle which acts at the same time as a pension plan.

In Viet Nam, the number of voluntary members is only 0.12% of the labour force. In the Philippines, the number of self-employed and voluntary members is close to 30% of total SSS members. The number of voluntary paying members exceeds 3 million or more than 10% of total members.

As a corollary to the development of the national social security system, the deepening and greater stability of the financial infrastructure in GMS need to go hand in hand. Indeed, the development of social security scheme is intertwined with the growth and development of the financial sector. Efficient financial system can facilitate the collection of social security membership, the payment of benefits, the investment of social security funds, and the recycling of savings, just to cite a few linkages. Microfinance infrastructure is also important as it offers flexible savings products that migrant labour, especially unskilled and semi-skilled, can take advantage of.

4.2 Challenges at the regional level¹⁶

At the regional level, there is a need for increased awareness that social security is part of migrant workers' protection that ASEAN leaders seek to promote. Hence, senior officials' discussion of social protection and human resources should also pay particular attention to social security. The

¹⁶ This section draws heavily from Pasadilla and Abella (2012).

two working groups dealing separately with migrant workers protection on one hand and competitiveness and human resources issues (under which social security topics are discussed) on the other hand should get together to compare notes and coordinate their programs.

In the future, regional social security agreement can be put in the agenda to address the pension and related needs of mobile workers. Earlier sections had discussed the importance of having a social security agreement to ensure the portability of social security benefits which, in the end, will support the labour and economic integration in ASEAN. The big challenge, however, remains, particularly in how to coordinate, through a social security agreement, the diverse social security schemes in ASEAN.

Many difficulties can be cited for ASEAN to have a social security agreement. First, unlike the European Union, ASEAN's social security system is as diverse as the levels of economic development of its members. The European Union's relatively similar social security models make it easy to connect and coordinate, especially with regard to complex actuarial transactions. Their well-developed systems also make administration of the agreement feasible, particularly as coordination requires good record-keeping and tracing of contributions for executing actuarial operations such as the "totalization" of benefits.

The asymmetric flows of labour in ASEAN provide less incentive, especially for net labour-importing countries, to sign social security agreements. For them, the cost of portability may exceed the benefits, especially if ASEAN members merely consider the narrow view of focusing on the projected cost of implementing the agreement and comparing whether these are about the same for each country. In the European Union, where the cross-border flows of labour are more symmetric, obligations arising from social security agreements might balance out and not be too burdensome on net labour recipient countries.

An ILO study of possibilities for providing social security protection for migrant workers in ASEAN pointed to the asymmetrical results of "totalization" as the stumbling block to agreement among the countries (Tamagno, 2008). Through aggregation, the country with social insurance would be obligated to pay pensions that would not otherwise be payable under its program alone (i.e., pensions to persons who qualify only as a result of totalizing periods in the two countries), and the additional cost of those new pensions would be financed entirely from the scheme's own funds. However, the country with the provident fund would

never be obligated to pay new benefits because either there is no minimum qualifying period or other such eligibility requirement for which totalizing would be needed or the scheme fully funds accordingly and prorates its benefits depending on the number of periods of contribution. The study concluded that a workable solution is to develop terms for implementing transfers between their respective schemes.

The transfer of money between the two schemes may be as follows:¹⁷

- 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? What interest rate should it use to compute the withdrawable amount?

¹⁷From Tamagno (2008).

The above ILO suggestions are workable but it depends very much on the political willingness of ASEAN members to work on such arrangement. In the short-term and perhaps for a start, ASEAN can, meanwhile, adopt the social insurance coordination system that MERCOSUR countries have put in place to facilitate the exchange of information and the processing of benefits. Subsequently, a social security agreement may be feasible for those countries with similarly designed social security systems, especially ASEAN countries with a social insurance type of system. Among them (e.g., the Philippines, Thailand, and Viet Nam), it may be possible to agree on equality of treatment of migrant workers, the removal of double taxation, exportability of benefits, as well as “totalization” of benefit. A “totalization” agreement may include third parties, i.e., years of work in other ASEAN countries that are not party to the social security agreement. The experience in other countries shows that this type of third party inclusion for “totalization” purposes is possible and beneficial for the migrant worker.

In ASEAN countries that have contributory social insurance and defined contribution (DC) systems (provident fund), migrants should be allowed to contribute to the relatively more portable DC scheme without mandating any contribution to the social insurance. Indonesia and Malaysia already have this voluntary system, but Singapore does not. While there are valid concerns about the future adequacy of benefits from DC systems, its advantage is that its benefits are much more portable even if ASEAN does not (yet) have any social security agreement.

As a gesture of goodwill and in the spirit of regional integration, ASEAN can work on an agreement that tax on exported social security benefits from either provident funds or social insurance should be removed.

4.2.1 Final remarks

While many improvements are needed in the depth and effective coverage, as well as adequacy in the benefits of the ASEAN members’ national social schemes, ASEAN countries should embark on their pension reform agenda already taking the welfare of migrant workers into their reckoning because more intra-regional labour flows will take place as the region further integrates. If ASEAN is serious about regional integration and facilitating labour mobility, then ensuring portability and exportability of benefits is an important program to pursue. Besides, in addition to the efficiency gains from greater labour mobility in the region, social security agreements can be a tool for managing migration. Improving the portability of rights in social security will most likely increase circular forms of migration and motivate migrants in the informal sector to join the formal labour

sector. Having a social security agreement is one way to improve portability of social security benefits which would be useful even for the net labour importing countries. For these reasons, and to protect the rights of migrant workers to equal treatment, the promotion of a multilateral agreement on social security should be on the ASEAN agenda.

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