



# Migrant Workers' Rights to Social Protection in ASEAN

Case Studies of  
Indonesia, Philippines,  
Singapore and Thailand



Principal Investigator:  
Andy Hall, Foreign Expert  
Mahidol Migration Centre



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# **Migrant Workers' Rights to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand**

Prepared for Migrant Forum in Asia and Friedrich-Ebert-Stiftung  
by the Mahidol Migration Centre, Institute for Population and Social Research,  
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## PREFACE

Social protection has, over the past few years, become a significant issue in many countries, including those countries in the ASEAN region. The world of work has become increasingly precarious for many workers, particularly for those working in the informal sector, many of whom are migrant workers. The global financial crisis has heightened the precariousness of work, and over the past few years we have witnessed the steady erosion of protections for workers all across the world.

Migrant workers are among the most adversely affected by this rollback of labour protections. Looked to as a pool of cheap, flexible, and exploitable labour, rights for migrant workers are often secondary to the economic benefits they bring to both countries of origin (by providing a cheap labour force) and countries of destination (through their considerable remittances).

The global financial crisis has heightened both the precarious nature of work for all workers in 'low-skilled' sectors, and has led to calls for governments to seriously consider the social protection mechanisms in place for workers. Migrant workers are often the least considered in discussions on social protection, despite the fact that as a workforce, they are some of the most vulnerable and exploited. Migrant workers have the fewest privileges and are the last considered when it comes to social protection.

Migrant Forum in Asia (MFA) has been looking at this issue for some time, particularly with respect to domestic workers, most of whom are women. Domestic workers are generally not covered under the labour laws of host countries, and as is the case for most migrant workers, social protection mechanisms are practically non-existent. This is the



first series of case studies that MFA has undertaken, and it begins to shed light on the significant need for social protection for migrant workers.

Our special thanks to Friedrich-Ebert-Stiftung – especially to the regional office in Singapore and the country office in Manila. FES has supported several activities and forums on the issues addressed in this study, and financially supported this publication.

**MFA**

**November, 2011**

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**Friedrich-Ebert-Stiftung**, which actively facilitates socio-political platforms in Asia, and regional migration regimes that promote the rights, welfare, and protection of migrant workers.



## ACRONYMS

<b>ACMW</b>	ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers
<b>AEC</b>	ASEAN Economic Community
<b>AICHR</b>	ASEAN Inter-Governmental Commission on Human Rights
<b>AIMW</b>	ASEAN Instrument on the Protection & Promotion of the Rights of Migrant Workers
<b>ALLM</b>	ASEAN Labour Ministers Meeting
<b>AMSC</b>	Average Monthly Salary Credit (Philippines)
<b>ASCC</b>	ASEAN Socio-Cultural Community
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>BCA</b>	Building & Construction Authority (Singapore)
<b>BOI</b>	Board of Investment (Thailand)
<b>BPJS</b>	Social Security Administering Agency (Indonesia)
<b>CARICOM</b>	Caribbean Community
<b>CITI</b>	Construction Industry Training Institute (Singapore)
<b>CMA</b>	Center for Migrant Advocacy
<b>CPF</b>	Central Provident Fund (Singapore)
<b>DPPMW</b>	Declaration on the Protection & Promotion of the Rights of Migrant Workers
<b>EC</b>	European Commission
<b>EC</b>	Employees' Compensation (Philippines)

<b>FES</b>	Friedrich-Ebert-Stiftung
<b>GCC</b>	Gulf Cooperation Council
<b>GSIS</b>	Government Service Insurance System (Philippines)
<b>ILO</b>	International Labour Organisation
<b>KTKLN</b>	Kartu Tenaga Kerja Luar Negeri (Overseas Worker Card) (Indonesia)
<b>MERCOSUR</b>	Mercado Comum do Sul/Common Southern Market
<b>MFA</b>	Migrant Forum in Asia
<b>MMC</b>	Mahidol Migration Centre, Institute for Population and Social Research, Mahidol University
<b>MOL</b>	Ministry of Labour (Thailand)
<b>MOM</b>	Ministry of Manpower (Singapore)
<b>MOPH</b>	Ministry of Public Health (Thailand)
<b>MSC</b>	Monthly Salary Credit (Philippines)
<b>NTUC</b>	National Trade Union Congress (Singapore)
<b>OECD</b>	Organisation for Economic Cooperation & Development
<b>OFW</b>	Overseas Filipino Worker
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OUMWA</b>	Office of the Undersecretary for Migrant Workers' Affairs (Philippines)
<b>SJSN</b>	Natonal Social Security System (Indonesia)
<b>SLOM</b>	Senior Labour Officials Meeting
<b>SSO</b>	Social Security Office (Thailand)
<b>SSS</b>	Social Security System (Philippines)
<b>UCS</b>	Universal Coverage Scheme (Thailand)
<b>UDHR</b>	Universial Declaration of Human Rights
<b>UN</b>	United Nations

**WCF** Workmen's Compensation Fund (Thailand)

**WHO** World Health Organisation



## FOREWORD

The UN estimates that there are 214 million migrants globally (IOM, 2010), making up 3% of the world's total population. Increasing rapidly, the number of migrants globally could exceed 400 million by 2050. Focusing in on Asia, estimates suggest this continent was, in 2010, home to more than 27.5 million migrants or 13% of the total global figure (IOM, 2010). In 2009 alone, the UN estimates that migrant workers formally remitted at least 414 billion US dollars, mostly to developing countries.

In 2010, the International Organisation for Migration (IOM) estimated the total number of migrants originating from Southeast Asia to be around 10.2 million. Of this figure 6.7 million people were working in other Southeast Asian countries, 3.2 million in the United States, and the rest moved to other regions, primarily to the Gulf countries (IOM, 2010). Philippines and Indonesia were key migrant sending countries, whilst Malaysia and Thailand were key migrant receiving countries. The largest numbers of labour migrants within ASEAN were found in Malaysia, Singapore, and Thailand, coming from Cambodia, Indonesia, Myanmar, and the Phillipines (Tamagno, 2008:41).

This population of mobile people has gained increasing global attention in recent decades at the domestic, regional and international levels. However, attention to this issue is not new given that at the founding of the International Labour Organisation (ILO), the Declaration of Philadelphia (1944) called for “protection of the interests of workers when employed in countries other than their own.” In January 2007, ASEAN adopted the *Declaration on the Protection and Promotion of the Rights of Migrant Workers* (DPPMW).



Protection of migrant workers' rights at work (labour rights) and basic human rights to prevent gross abuse and exploitation has been at the forefront of global, regional and domestic campaigns on migration. Often the focus has been on the prevention of migrant abuse at the workplace or in everyday living, particularly relating to official abuses of power and extortion/discrimination. Recently, remedying abuses against migrant domestic workers or workers in the fishing industry has seen increased global interest. However, detailed attention is neither given to the right to broader *social protection* for migrant workers, nor migrants' access to domestic social security systems in origin and destination countries. Discussion of migrants' rights to pensions, or women migrants' rights to maternity leave are relatively rare, despite increasing global interest in expanding social protection for all, particularly in the informal sector, and in light of recent economic crises and increased insecurity of work.

More discussion is given to social security when discussing migrant workers who suffer workplace accidents, and indeed many global campaigns for migrant rights have focused on gaining migrant access to work accident compensation, as seen in South Korea, Hong Kong, and Thailand. But the inability of any state's legal and social protection systems to provide justice and compensation to a migrant work accident victim, whether he/she is documented or undocumented, can only adequately be addressed as part of a wider debate on migrant access to social security, or of longer term and holistic social protection across nation state borders.

Many migrants migrate for economic reasons with plans to make a better life for themselves or their families, primarily through sending remittances home. The issue of social protection as a long-term protection measure for migrants is of crucial importance. Among many long-term protection issues is that of migrants' old age pensions, as it is necessary to ensure that migrants benefit from access to the social protection systems of their home country when they return after many years of non-contribution. Social protection concerns short term issues too, including the right to access to emergency health care and general health insurance (regardless of his/her immigration status), support for a pregnant migrant women (especially those who can no longer work or return home), and workplace accident rehabilitation and

compensation (in both the short and long term). Activism to guarantee greater protection for female migrant workers is widespread, but not so much attention has been given to the gender-specific social protection needs of women. Social protection needs of migrant families have rarely even been touched upon in the state discussions on social protection.

The informalisation of labour and the increasing insecurity of work across the world means that many of the origin and destination countries of migrant workers, particularly in the developing world and particularly for low skilled migrants in ASEAN, have a situation wherein the vast majority of the working population works in informal work sectors that are not fully covered by labour laws, let alone social protection measures. Social protection or social security primarily remains the domain of formal work in the private sector, where workers are well paid and secure, and in the public sector. In addition, the sending and receiving countries of low-skilled migrants, particularly in the developing world and as seen is ASEAN, have weak social protection or social security systems and organisations. These systems provide little effective coverage for workers in the case of loss of income or in emergency situations, and standards are ill enforced. Often families are the primary means of support for workers when things go wrong, rather than social protection or a welfare state. Samydorai (2009:9) suggests that up to 60% of workers in ASEAN fall within the informal sector with little or no social protection. It is not surprising therefore that social protection for migrants has not been prioritized as a key area of attention, despite the urgent need.

**Table: Estimated Numbers of Migrants in ASEAN****Table 6. Estimated number of migrants in ASEAN countries from other ASEAN countries (numbers in thousands)**

Country of origin \ Country of destination	BN	KH	ID	LA	MY	MM	PH	SG	TH	VN	Total	
Brunei	BN	--	<1	<1	<1	<1	3	<1	<1	<1	4	
Cambodia	KH	<1	--	3	1	<1	<1	4	<1	19	<1	27
Indonesia	ID	5	<1	--	<1	744	<1	138	29	<1	4	921
Lao PDR	LA	<1	<1	4	--	<1	<1	5	<1	29	<1	39
Malaysia	MY	57	<1	47	<1	--	<1	56	304	1	2	468
Myanmar	MM	<1	<1	14	<1	<1	--	18	<1	109	<1	142
Philippines	PH	11	<1	36	<1	308	<1	--	2	1	2	361
Singapore	SG	2	<1	12	<1	92	<1	15	--	<1	<1	124
Thailand	TH	9	90	25	2	92	<1	30	<1	--	<1	248
Viet Nam	VN	<1	109	17	10	1	<1	23	<1	8	--	170
<b>Total</b>		<b>85</b>	<b>201</b>	<b>158</b>	<b>13</b>	<b>1,238</b>	<b>1</b>	<b>294</b>	<b>336</b>	<b>169</b>	<b>10</b>	<b>2,505</b>

Source: DRC Migration 2007, Version 4

**Table taken from Tamagno (2008:41)**

This exploratory report on *Migrant Workers' Rights to Social Protection in ASEAN* was commissioned by Migrant Forum in Asia (MFA), funded by Friedrich-Ebert-Stiftung (FES), and prepared by the Mahidol Migration Center (MMC) in Thailand for presentation and discussion during the meeting of the *ASEAN Inter-Parliamentary Caucus on Labour Migration*, 15 to 17 September 2011 in Phnom Penh, Cambodia. Feedback was offered on the report at this meeting and adjustments to the first draft made. This report is hopefully just the first short stage of what will be longer term interest in migrant social protection within the ASEAN region.

As a desk review, the report briefly and succinctly lays out the international and ASEAN standards regarding social protection, migrants, and migrant social protection before exploring some of the general themes in the debate about migrant access to social protection globally. Four case studies on low- and medium skilled migrant access to social protection in the ASEAN region in Indonesia, Philippines, Singapore, and Thailand are then provided.

Due to lack of access to wider sources of information and individuals within the time allotted on the specifics of migrant social protection in the various countries, these case

studies remain basic or rudimentary discussions of the general situation regarding migrant social protection in each of the countries under study. Interviews and in-depth data collection was rarely possible for exploration of the situation. To get more detailed information, and to supplement this introductory report's findings, fieldtrips and detailed interviews, and engagement in the specific countries under study are required.

Despite these drawbacks in our research methods, this research points to a situation where migrant workers rarely gain access to social protection systems within the ASEAN region. Barriers to access to such protection vary from legal exemptions for migrants to bureaucratic or political obstacles. Whatever the barriers, all have the same effect: denying migrants access to social protection.

The report concludes with key recommendations to address the concerning lack of social protection for migrants within the ASEAN region. It is hoped that MFA, FES, parliamentarians from regions, and other key actors working on promoting safe, effective, and rewarding migration in ASEAN will consider and act upon these recommendations in the future. Key recommendations include the suggestion that action needs to be taken regionally by ASEAN itself to address social protection for migrant workers if the existing concerning lack of protection is genuinely and holistically to be remedied. Given their key roles as sending and receiving countries in ASEAN, this report suggests that Indonesia, Phillipines and Thailand take the lead on this issue, and that these countries should be the focal points for advocacy and campaigning given that these countries are best poised to take positive steps on this issue.

**Andy Hall, Mahidol Migration Centre**

**October 2011**



## DEFINITIONS: SOCIAL PROTECTION, SOCIAL SECURITY AND MIGRANT WORKERS

‘Social protection’ and ‘social security’ are used interchangeably but also are understood to have different and/or similar meanings depending on the context. It is difficult to ascribe to each term a universal meaning, and definitions often vary from one country or one international or regional instrument to another. According to the ILO’s recently published *World Social Security Report* (ILO, 2011)

Social protection... is often interpreted as having a broader character than social security (including protection provided between members of the family or members of a local community) but is also used in some contexts with a narrower meaning (understood as comprising only measures addressed to the poorest, most vulnerable or excluded members of society)... Social protection has the following aspects: (1) interchangeable with “social security;” (2) as “protection” provided by social security in case of social risks and needs (pg.13).

Social security covers all measures providing benefits, whether in cash or in kind, to secure protection from: (a) lack of work-related income (or sufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old age or death of a family member; (b) lack of access or unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents; and (d) general poverty and social exclusion... Social security has two main dimensions, namely “income security” and “availability of medical care...”<sup>1</sup> (pg. 13/14).

The ILO’s first proclaimed international standard for social security, the *Social Security (Minimum Standards) Convention 1952* (ILO C 102), identified nine specific kinds of

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<sup>1</sup> The report goes on to say that ‘income security schemes should relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost by reason of inability to work (including old age) or to obtain remunerative work or by reason of the death of a breadwinner’ and ‘a medical care service should meet the needs of the individual for care by members of the medical and allied professions and medical care should cover all members of the community’ (ILO, 2011: 14).

social security: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors' benefit. The ILO's 2011 *World Social Security Report* makes additional reference to disability protection, child support and general protection against poverty and social exclusion. Other international organisations, including the UN, the European Commission (EC), and the Organisation for Economic Cooperation and Development (OECD) discuss social security and social protection more expansively in the context of housing benefits and labour market programmes (ILO, 2011:20).<sup>2</sup>

The term '*migrant worker*' is likewise defined in different ways in different contexts. Migrants are generally understood to be those who travel across country borders to find work. The most authoritative definition of 'migrant worker' is that provided in the *United Nations International Convention on the Protection of the Rights of All Migrant Workers and Their Families* under Article 2(1), which states that a migrant worker is: "a person who is to be engaged, is engaged or has been engaged in a remunerative activity in a State of which he or she is not a national." Many definitions of migrant workers exclude diplomatic or state officials or officials posted to other countries, civil servants, refugees and stateless persons, and even seafarers. This study will not touch on issues of migrant workers' families.

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<sup>2</sup> See Tamagno (2008:6) for a simple summary of the different types of social security programmes, described by the author as consisting of social insurance, universal coverage, provident funds, individual private accounts, employer liability and social assistance.

## INTERNATIONAL AND ASEAN STANDARDS ON SOCIAL PROTECTION FOR MIGRANT WORKERS

International and regional legal, normative, and political structures have, for over half a century, firmly recognised and codified the ‘right’ to social security or social protection, and have focused specifically on migrant worker rights and migrant social security benefits. A plethora of standard setting agencies of the UN and regional political actors have prescribed in conventions, recommendations, and declarations the importance of promoting social protection mechanisms and of protecting migrant workers by ensuring non-discrimination.

### ***International Standards on Social Protection***

One of the first instances in which the importance of social security was recognised was in Article 3 of the *Declaration of Philadelphia* (1944), which preceded the founding Constitution of the ILO and laid down the ILO’s general aims and purposes. Articles 22, 23 and 25 of the *Universal Declaration of Human Rights* (UDHR) (1948) likewise outlines the universal right to social security and social protection of all human beings (both individuals and families) in all circumstances, including as a means of supplementing a daily living wage to ensure maintenance of a minimum standard of living. Discussion of social protection in the UDHR revolves around food, clothing, housing, medical care and the right to social services/security in the event of unemployment, sickness, disability, death of a spouse, old age, or motherhood/childhood.<sup>3</sup>

The ILO’s *Social Security (Minimum Standards) Convention 1952* (ILO C 102) was the first international standard to comprehensively address issues of social security or social

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<sup>3</sup> See also Articles 9 and 10 of the *International Covenant on Economic, Social and Cultural Rights*



protection. Since the founding of the ILO in 1919, the International Labour Conference has adopted 31 Conventions and 23 Recommendations addressing issues relating to social security.<sup>4</sup>

More recently, in 2001, the ILO adopted the *Global Campaign on Social Security and Coverage* prior to the 97<sup>th</sup> Session of the International Labour Conference, in which the *ILO Declaration on Social Justice for a Fair Globalisation* was adopted. The latter declaration stressed the need to further programmes globally whereby “full employment and raising of the standards of living, a minimum living wage and the extension of social security measures to provide a basic income to all in need” are gradually achieved (ILO, 2011:7). Finally, in light of the most recent 2008 global economic crisis, the UN adopted the *Social Protection Floor Initiative* in 2009, led primarily by the ILO, WHO and other UN agencies, to “support countries in efforts to plan and implement sustainable social transfer schemes and essential social services on the basis of the concept of a Social Protection Floor” (ILO, 2011:8).

### ***International Standards on Migrant Worker Rights***

The key international standard on migrant worker rights is the 1990 United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (UN Migrant Workers Convention), which entered into force in 2003. The Preamble of the ILO’s Constitution states that the ILO shall have the task of protecting “the interests of workers when employed in countries other than their own.” In 1998 the ILO adopted its *Declaration on Fundamental Principles and Rights at Work*, which made specific reference to the protection and promotion of the rights of migrant workers as being of pressing importance. In 2004 the ILO also adopted the *Resolution Concerning a Fair Deal for Migrant Workers in a Global Economy*. The key ILO conventions addressing the rights of migrant workers include the *Migration for*

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<sup>4</sup> The most important standards regarding social security include ILO Conventions 121, 128, 130, 168, and 183, and ILO Recommendations 67, 69, 121, 131, 134, 176, 191

*Employment Convention (Revised) 1949 (ILO C 97) and Migrant Workers (Supplementary Provisions) Convention 1975 (ILO C 143).*<sup>5</sup>

In 2007, the ILO agreed upon a *Multilateral Framework on Labour Migration* as a guide and set of best practices for ensuring the regulation and protection of migrant workers. Section 9 states that “All international labour standards apply to migrant workers, unless otherwise stated.” Finally, the *International Convention on the Elimination of All Forms of Racial Discrimination* contains an international framework of non-discrimination that applies directly to migrant workers and guarantees broad non-discriminatory access to rights similar to nationals in a host state.

### ***International Standards on Migrant Workers and Social Protection***

Resolution 40/144 of the UN’s General Assembly in 1985 (the *Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live*) states in Article 8 that:

Aliens lawfully residing in the territory of a State shall also enjoy, in accordance with the national laws, the following rights... (c) right to health protection, medical care, social security, social services, education, rest and leisure, provided that they fulfill the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State.

It is important to note that undocumented or irregular migrants are not discussed here.

Article 27 of the 1990 *UN Migrant Workers Convention* specifically deals with the rights of all migrant workers (documented and undocumented) to social security. However, the article also states:

(1) with respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties...;

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<sup>5</sup> Key ILO recommendations related to migrant workers include Recommendations 86 and 151.

(2) Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Similarly, Article 28 of the 1990 Convention states: “Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned...” Specifically with regard to documented migrant workers, Articles 43 and 45 mandate that states ensure equality of treatment for migrants and their families in relation to access to housing, social housing schemes, social and health services, unemployment benefits and unemployment services, providing conditions are met and subject to immigration terms.

The ILO’s *Resolution Concerning a Fair Deal for Migrant Workers in a Global Economy* stresses the need for “Comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour migration...” Entering into bilateral or multilateral agreements to provide social security coverage and benefits to all migrant workers, both regular and irregular, was promoted and the resolution encouraged facilitation of economic, social and cultural integration of migrant workers and their families into host societies. In addition, the ILO’s *Multilateral Framework on Labour Migration* suggests that, as a guideline, all states should consider “Entering into bilateral, regional and multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to regular migrant workers and, as appropriate, to migrant workers in an irregular situation...” (section 9.9) and “Adopting measures to ensure that migrant workers and accompanying members of their families are provided with access to health care” (section 9.10).

In terms of ILO standards dealing with migrant rights to social security, most of the key ILO social security conventions outlined in the previous section define the scope of coverage irrespective of nationality, whilst including general clauses on equality of treatment between nationals and foreign workers and non-discrimination sections, with

some exceptions and conditions.<sup>6</sup> In addition, the ILO has laid down standards specifically outlining the social security rights of migrant workers including, most importantly, the *Equality of Treatment (Social Security) Convention 1962* (ILO C118).

C118 requires a state party to guarantee equality of treatment of social security provisions for migrant workers for any or all of the 9 branches of social security that are in force in its territory and for which it agrees to be bound. The equality of treatment provision is dependent upon the home country of the migrant also being a party to C118, and to specific conditions regarding use of public funds. The Convention adopts specific standards to ensure migrants can maintain social security rights and export such rights out of a territory.

The *Maintenance of Social Security Rights Convention 1982 ILO* (C157) provides a model of an international system to ensure and promote maintenance of acquired social security rights (or rights in the course of being acquired) when workers move from one country to another, as well as to ensure that rights they have acquired can be exported to their home country (or another country in the case that they re-migrate). The convention promotes bilateral and multilateral social security agreements to ensure that such rights are realised and provides model provisions to assist states to conclude such agreements. As with C118, rights only apply to nationals of states that are also party to C157.

Finally, a more specific international standard on migrant social security is laid down in the *Equality of Treatment (Accident Compensation) Convention* (1925) (ILO C19), which ensures that migrant workers are not discriminated against in comparison to nationals of a host state in terms of work accident compensation rights, as long as the migrant's home state has also ratified the convention. The convention also contains provisions for the export of such benefits abroad. In addition, the *Maintenance of Migrants' Pensions Rights Convention* (1935) (C48) deals with specific issues relating to migrant workers and pension rights/portability.

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<sup>6</sup> See for instance section 68 of *ILO Convention 102: Social Security (Minimum Standards) Convention*

The ILO's key conventions addressing the rights of migrant workers, including the *Migration for Employment Convention (Revised)* (1949) (ILO C97) and *Migrant Workers (Supplementary Provisions) Convention* (1975) (ILO C143), also contain specific clauses on rights to social protection for migrant workers. Article 6 of C97 states that, with conditions as to the maintenance of rights and public funding:

Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which applies to its own nationals in respect of ... (a) (iii) accommodation; (b) social security.

Likewise, Articles 9 and 10 of C143 contain similar provisions for '*social security*.'

The ILO conventions and the 1990 UN Migrant Workers Convention take varying and sometimes unclear approaches as to whether the social rights granted through the conventions only apply to lawfully resident/documentated migrant workers or if they can be extended to irregular/undocumented workers (Schoukens, 2004; Schoukens and Pieters, 2004).

### ***ASEAN Standards on Social Protection***

ASEAN consists of three key pillars: the political-security pillar, the economic pillar, and the socio-cultural pillar. In March 2007, the ILO and ASEAN signed a cooperation agreement in which social security was specifically outlined as a priority area for developing programmes and working together. The ASEAN Charter, ratified in December 2008, states in Article 1 Paragraph 11 that ASEAN shall "enhance the well-being and the livelihood of the people of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice."

The year 2015 is the target for full integration of the ASEAN Economic Community (AEC). The AEC Blueprint (2007) envisions a single market and single production base with the free flow of goods, services, and investment. The *Vientiane Action Programme* (2004-2010), section 3.2 notes that economic integration of the ASEAN

countries/region would bring about a need to “promote social protection and social risk management systems.” To this end, section 3.2.2 of the AEC Blueprint recommended that ASEAN “(1) Establish an integrated social protection and social risk management system.... and (3) Strengthen systems of social protection at the national level and work toward adoption of appropriate measures at the regional level to provide a minimum uniform coverage for skilled workers in the region.”

Similarly, the ASEAN Socio-Cultural Community (ASCC) Blueprint (2009) cites social welfare and protection as one of its key characteristics. According to paragraph 18, “ASEAN is committed to enhancing the well-being and the livelihood of the peoples of ASEAN through alleviating poverty, ensuring social welfare and protection... and addressing health development concerns.” To this end, the ASCC envisions a

Social safety net and protection from the negative impacts of integration and globalization... to ensure that all ASEAN peoples are provided with social welfare and protection from the possible negative impacts of globalisation and integration by improving the quality, coverage and sustainability of social protection and increasing the capacity of social risk management.

Among the measures ASEAN has committed to undertake are: mapping of social protection regimes in ASEAN; exchange of best practices in social security systems; prioritization of social protection in ASEAN’s cooperation in progressive labour practices; establishment of a social insurance system to cover the informal sector; and creation of networks of social protection agencies.

The action plan of the *Roadmap for an ASEAN Community* (2009) was recently updated regarding the ASEAN social safety net and measures for protection from the negative impacts of integration and globalization. Two key actions were proposed: (1) Conduct a study by 2012 to assess the formal and informal mechanisms for social security and social protection, and, if necessary, modify those mechanisms with due attention to gender responsive aspects; and (2) Conduct studies focusing on identifying the impact of labour emigration on various industries as well as on identifying the specific needs of those industries.

The ASEAN Labour Ministers adopted a programme of work which, starting in 2001, included as one of the initial five broad priorities “strengthening social security and social protection,” a priority through which ASEAN would “work to improve national social protection systems to cover risks faced by workers of ill health, disability, and old age.” The European Union has shared studies on good social protection practices with ASEAN through the ASEAN Labour Ministers Meeting (ALLM) and ASEAN’s Senior Labour Officials Meeting (SLOM). The SLOM convened a meeting at which member states’ practices with regard to provision of health and/or disability insurance, and/or pensions were shared, case studies were discussed, and capacity building needs were identified. SLOM assigned the ASEAN Secretariat to compile country profiles on social protection with the aim that, eventually, ASEAN would develop national and regional follow-up plans on social security/protection systems. Consideration would be given as to how to extend some form of social insurance to those who are self- or informally employed.

As for the future work programme, as outlined in the *ASEAN Labour Ministers’ Work Programme 2010-2015*, ASEAN has committed to developing national and regional plans on social security/protection systems, conducting workshops to share experiences and strategies on how to extend social insurance to the self- or informally employed, and conducting seminars on unemployment insurance.

### ***ASEAN Standards on Migrant Workers***

The *Vientiane Action Programme* (2004-2010) section 1.1.4.6 mandated the elaboration of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (AIMW). In March 2007, the ILO and ASEAN signed a cooperation agreement in which labour migration was specifically outlined as one priority area for developing programmes and working together. Most importantly, in January 2007 ASEAN agreed to the *Declaration on the Protection and Promotion of the Rights of Migrant Workers* (DPPMW).

The AIMW was declared to be a means to strengthen all 3 pillars of the ASEAN Community by “promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member Countries.” The DPPMW mandated that member states increasingly cooperate on migrant worker issues, noting that, “nothing in this declaration shall be interpreted as implying the regularization of the situation of migrant workers who are undocumented.” Obligations and commitments in the AIMW are distinct for receiving countries, sending countries, and ASEAN but include promotion of rights, protection, capacity building, access to justice, provision of consular assistance, and regularization of recruitment services.

In July 2007, the ASEAN Foreign Ministers called for the establishment of an ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), which would report to the Senior Labour Officials Meeting (SLOM). The first meeting of the ACMW was held in 2008 and terms of reference and a work plan were outlined, consisting of 4 priorities:

1. enhancing the protection and promotion of the rights of migrant workers against exploitation and mistreatment;
2. strengthening the protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN Countries;
3. engaging in regional cooperation to fight human trafficking in ASEAN; and
4. working on the development of the AIMW.

As regards to the latter standard setting measure, key principles of the AIMW would be drawn up by representatives from two labour receiving states (Thailand and Malaysia) and two labour sending states (Indonesia and the Philippines). The draft has been stalled since December 2009, when proposals by Indonesia and the Philippines to institute a legally binding framework and to include undocumented migrants under protection mechanisms were opposed by Malaysia. ASEAN civil society organisations, through the *Task Force on ASEAN Migrant Workers* initiative, have continued to press the AIMW on this issue, preparing a lengthy and detailed model for the drafting



committee to consider and continually pushing for an ASEAN Response (TFAMW, 2009).

The AEC Blueprint (2007) envisions a single market and single production base with free flow of goods, services and investment by 2015. In regards to the free flow of labour, the Blueprint makes reference only to the free flow of 'skilled labour,' that is, "movement of natural persons engaged in trade in goods, services and investments." There is no mention of semi-skilled or low-skilled labour. The AEC laid down an action plan, which includes: (1) issuance of visas and employment passes for ASEAN professionals and skilled labour who are engaged in cross-border trade and investment related activities; (2) harmonisation and standardisation, with a view to facilitating movement of services within the ASEAN region; and (3) developing core competencies and qualifications for job/occupational and trainers with skills required in the priority services sectors (by 2009) and in other services sectors (from 2010 to 2015). The service sectors that ASEAN is first focusing on under the freedom of labour vision are engineering, nursing, architecture, surveying, accounting, medicine, and dentistry.

In 2009, the ASEAN Socio-Cultural Community (ASCC) Blueprint included social justice and rights as one of its key characteristics. Under this broad mandate, the ASCC outlined the promotion and protection of the rights of migrant workers as one of its priorities, in a manner consistent with the general principles of the DPPMW. This strategic objective, as outlined in paragraph 28, was "to ensure fair and comprehensive migration policies and adequate protection for all migrant workers in accordance with the laws, regulations and policies of respective ASEAN Member States as well as implement the DPPMW."

The ASCC envisioned a plethora of detailed actions to fulfill this objective, mostly centering on SLOM, the most important of which were to: operationalise the ACMW to implement the provisions of the DPPMW and work towards the development of an AIMW; institutionalise and convene on a regular basis the ASEAN Forum on Migrant Labour as a platform for broad-based discussions on migrant labour issues; promote fair and appropriate employment protection through training and information sharing

and provide abused migrant workers with adequate access to justice and consular services; facilitate data sharing; and strengthen policies and procedures regarding recruitment, deployment, repatriation and reintegration.

The *Roadmap for an ASEAN Community* (2009) most recently updated its action plan regarding protection and promotion of rights of migrant workers by proposing four key actions under both the political-security and ASCC frameworks: (1) cooperate closely with efforts of the sectoral bodies in the development of an AIMW; (2) strengthen ASEAN cooperation in protection female migrant workers; (3) provide advisory services for the purpose of developing member states' capacity to manage overseas employment programs; and (4) provide training/technical assistance/capacity building by 2011 towards the establishment of clear and easily accessible emigration/immigration procedures and documentation, with a view to aid safe and regular migration.

In 2001, shortly after the inception of the ASCC, the ASEAN Labour Ministers took up the ASCC objective of protecting and promoting the rights of migrant workers. Working by means of the ACMW, ALLM and SLOM, the focus of the ALLM was on getting the ACMW to continue to hold regional meetings with member states and stakeholders to expand areas of common ground. They also took up the following activities:

- public education efforts to inform stakeholders of migrant workers' rights, employers' responsibilities and government services to be implemented after adoption of the AIMW
- development of national protocols for migrant worker pre-departure education, a broadening of the dialogue to consider issues of ASEAN migrant workers' rights beyond the region
- work with IOM and ILO on "safe migration" campaigns
- action on smuggling and trafficking of persons as part of wider ASEAN regional cooperation

- work alongside the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and other relevant ASEAN bodies in protecting and promoting labour rights, including migrant workers' rights

As for the future work programme, as outlined in the *ASEAN Labour Ministers' Work Programme 2010-2015*, ASEAN would work through ACMW continue to conduct the ASEAN Forum on Migrant Labour on an annual basis.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009 with the appointment of AICHR representatives from each member state of ASEAN. In 2011 one of the thematic studies to be conducted by AICHR is on migration (migrant workers, refugees, and asylum seekers), but no clear information is available.

### ***ASEAN Standards on Migrant Workers and Social Protection***

The DPPMW refers generally to the issue of social protection for migrant workers, calling for an “[intensification of] efforts to promote the welfare of migrant workers” and for states to “facilitate access to ... social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfill the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties” as applied to sending countries. In addition, when discussing countries of origin, the DPPMW states that such countries should “Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin.”

The DPPMW also talks about increased cooperation, both amongst member states of ASEAN and also international bodies, on the promotion and protection of the rights of migrant workers, but these issues are phrased in general terms. As the AIMW drafting process has stalled, there continues to be 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.

The TFAMW model on the AIMW does deal in part with standards regarding access to health care for migrants, but does not cover in detail the issues of social protection and social security for such workers (TFAMW, 2009:22). Paragraph 168 of the model AIMW does however challenge ASEAN to address this issue, stating:

An important element of an economically integrated ASEAN will be a system of social protection devised for migrant workers to ensure they are not deprived of social security as a result of extended periods of time working outside their home country. ASEAN and its member countries should conduct research, possibly with technical support and assistance from the ILO, on the feasibility of bilateral and multilateral social security agreements that cover migrant workers and their families. This research could focus on both the mechanisms and the substantive content of possible future bilateral and multilateral social security agreements between sending and receiving countries (TFAMW 2009: 39).

There are currently no social security agreements or labour agreements within the individual ASEAN countries that make clear reference to social protection. However MOUs on labour do exist between some of the member states of ASEAN that provide for non-discrimination and equality in access to rights by migrants when working in a host state.



## **MIGRANT WORKERS AND SOCIAL SECURITY: AN OVERVIEW OF CHALLENGES**

Globally, migrant workers, particularly irregular or undocumented migrant workers, face significant challenges politically, legally, and administratively in gaining access to social protection before, during, and after periods of migration (see for instance Cholewinski, 2005; Cuddy et. al, 2006; ISSA, 2011; Kulke, 2006; Tamagno, 2008). Although these challenges may not be as outright as a denial of rights based on discriminatory legislation or practices, the effect of the challenges for migrants in accessing social protection can be such as to effectively deny them the rights they would otherwise be entitled to, and to which nationals of a state are generally entitled.

In much of the developing world, including ASEAN member states, such challenges of access to social protection for migrants fail to be addressed and/or prioritised for action. This is often because a large proportion of nationals in both sending and receiving countries of migrants remain with sporadic and minimal access to social protection services and mechanisms, often because they work in informal sectors not covered by such mechanisms—they are casual or seasonal workers, they work in small enterprises, and in some countries there is little sustained development of social security systems for workers and nationals of those countries (ISSA, 2011). States may take a ‘nationals first’ approach to extending social protection, neglecting to address the specificity required regarding expanding social protection for migrant and informal sector workers.

Migrant workers may either directly or indirectly be denied access to social protection by their home state or receiving country, or they may be employed in informal or other sectors of the economy that make them ineligible for full social protection. In addition, there is often a large gap between migrants having rights to social protection in theory,

and gaining access to those rights and benefits in practice. For instance, pro-active and strong enforcement of labour and social protection laws remains weak across the world, particularly in sectors and workplaces that hire the majority of migrants. Frequently, enforcement of social protection law takes the form more of re-active, self-regulatory, and informal means of enforcement. So even when migrant workers are eligible for social protection, government enforcement and employer stakeholders may undermine genuine access to these rights in practice through their actions or inactions.

In addition, important limitations to the ability of migrants to gain genuine protection and access to social protection rights occur when host or sending countries do not implement specific and targeted measures to ensure workers are able to access social benefits or protection that they may have acquired upon remigration or upon their return home. But in another way, states fail to ensure that migrant social protection rights are portable. As social protection may be long term, including that related to disability coverage, workplace accident compensation, disease benefits, or pensions, the country in which the right is realised may not be a worker's home country, and workers may be quite mobile, passing through a number of different social security systems over a short period of time. Hence, the circumstances of migrants require clear, tailored responses if rights are to be realised or maintained for the long term. Responses need to be taken both by sending and receiving countries of migrant workers to overcome these challenges, and this can be particularly difficult when the administrative capacity of social security organisations is weak and the political will to implement new policies is lacking.

### ***Legal Barriers to Social Protection for Migrant Workers***

Legislation enabling social protection in some countries automatically excludes migrant workers from protection based on a number of factors including: non-nationality of the country of residence; residence requirements for coverage in the home country or host state; documentation requirements; immigration requirements on length of permission to stay following unemployment or sickness; provisions in legislation that require contributions to social protection schemes for a certain period of time when migrants

cannot and/or do not remain in that country for such a length of time; and applicability of work sectors (this condition of access to social protection applies often equally to nationals and non-nations of a state, although migrant workers may be over represented in a particular sector not applicable for social protection) (Kulke, 2006: 2; Tamagno, 2008:1).

### ***Administrative Barriers to Social Protection for Migrant Workers***

Although a migrant worker may be entitled to pay into and access social protection mechanisms of a home or host state, administrative practices may limit their access to such protection in practice, in particular relating to: specificities in officially certifying documents to satisfy requirements; means by which money can be transferred; language difficulties; methods of payment of money overseas from a country where the benefit has been realised; and difficulties in satisfying documentary requirements in terms of passing on benefits to relatives or spouses when a migrant is deceased.

### ***Overcoming Challenges and Promoting Migrant Access to Social Protection***

Given the specific circumstances of migrant workers, different measures have been undertaken globally to promote migrant access to social protection. One such measure is the conclusion of social security agreements (more limited in scope than general labour agreements) between home states of migrant workers and receiving countries, or agreements that are much wider and multilateral in nature, so as to overcome both the legal and administrative barriers migrants would otherwise face in accessing social security. As the systems of the different countries vary extensively, means to create mechanisms by which migrant workers can fit into and benefit from social security schemes, given their specific situation, can be a complex task which is why such agreements can be useful in laying down the rules.

The primary objectives usually pursued in migrant worker social security agreements, and as highlighted in model agreements contained in ILO Recommendation 167 on *Model Provisions for the Maintenance of Social Security Rights*, as follows:



- **Equality of treatment** – such principles can overcome remaining nationality based restrictions of social security systems in a state so as to ensure their application to migrant workers and members of their families
- **Provision of benefits abroad** – some of the social protection a migrant is eligible for may need to be paid to them overseas in the future (disability/work accident compensation or pensions). A social security scheme may prohibit payment of benefits overseas, impose stringent administrative conditions for payment and/or require residence in a country. Social security agreements can find a means to overcome these barriers. Provisions may allow for export of benefits to an eligible worker in their home country or a third country.
- **Determination of the applicable legislation** – migrant workers may be eligible for coverage under both a sending and receiving country's programmes, so social security agreements can lay down clearly the application of the systems to workers to avoid double payments, particularly in the case of those who are self-employed, workers, or seafarers.
- **Totalising** – social security agreements can assist migrants to overcome otherwise burdensome qualifying periods for social protection, including periods of employment and/or necessity of affiliation to a scheme at the time the right comes to fruition (i.e. being a pensioner for old age pensions). As a result, migrants and members of their family are able to become eligible for social protection benefits in all countries where they have worked by adding together or totalizing periods of affiliation in all the countries that are party to the agreement to ensure qualifying periods are met.
- **Administrative Assistance** – administrative requirements and documentary issues can easily limit a migrant worker's ability to access social protection that they would otherwise be entitled to. Social security agreements can assist in that receipt of documents and evidence (medical records, application forms) can then flexibly be submitted in a number of different countries and official certification of documents can be simplified to meet the specific requirements of social security systems (Franssen, 2006: 7; Tamagno, 2008:9).

Most of the social security agreements that have been concluded are on a bilateral basis, but there are also several seemingly successful examples of multilateral social security agreements, as seen in the EU, CARICOM (Caribbean Community), the Gulf Cooperation Council (GCC), MERCOSUR (Argentina, Brazil, Paraguay and Uruguay), and in the Ibero-American Social Security Convention (Franssen, 2006:9; ISSA, 2011:2). Such multilateral agreements can introduce a uniform approach to social security, which, over time, can greatly reduce administrative burdens. That said, inequalities could arise among migrant workers of different nationalities residing and working in a country if that country has more than one social security agreement in place. In addition, as long as all states are party to similar agreements, there are instances in which migrant workers would be able to totalize periods of paying into social protection schemes in more than two countries (Tamagno, 2008:23).

There are some more innovative and progressive examples of means by which states have promoted migrant worker access to social security. These examples include: requiring recruitment agencies to pay social security contributions for migrants recruited overseas; voluntary contribution in national schemes for nationals going overseas; group insurance for workers going overseas; payment of retroactive contributions for nationals returning from period of work overseas; funds for overseas workers; waiving of lengthy contribution periods; reimbursement of medical fees; use of new technologies in remittance of social security contributions; and medical and other benefits for families of migrant workers left behind (Domingo, 2008; Hirose, 2007; ISSA, 2011:3; Kulke, 2006:7; Rosario, 2008).



## CASE STUDY ONE: INDONESIA

### *Population and Labour Market in Indonesia*

Indonesia is the fourth largest country in the world with an estimated population of 226 million and an annual population growth rate of 1.24 percent. The labour force consists of over 115 million persons (see table one).

**Table 1: Employment Indicators for Indonesia (August 2010)**

Population 15+	172,070,339
Labor force	116,527,546 (67.72%)
Working with main employment status	108,207,767
<i>Self Employed</i>	42,712,562
<i>Employer with Permanent Workers</i>	3,261,864
<i>Employee</i>	32,521,517
<i>Casual employee</i>	10,947,171
<i>Unpaid Worker</i>	18,764,653
Unemployment	8,319,779 (7.14%)

**Source: National Labour Force Survey 2010 (Badan Pusat Statistik Republik Indonesia (Statistics Indonesia))**

The flow of contract workers out of Indonesia began in the 1970s as a result of increasing labour demand from the Middle East for construction and domestic workers. Since the 1990s, the Indonesian Government has a clear labour migration policy so as to promote the sending of Indonesian workers overseas. By 2006, statistics suggest that

there were 712,160 Indonesian migrants formally deployed to work overseas, over three quarters of whom were female (IOM, 2008:3). The International Organisation for Migration's (IOM) estimates from 2007 indicate that the number of Indonesians overseas was at least 4 million when undocumented workers and those who migrated outside of formal deployment processes were included (IOM, 2008:3).

The top countries of destination for Indonesian migrants are Hong Kong, Kuwait, Malaysia, Saudi Arabia, Singapore, South Korea, and Taiwan. Most migrant workers from Indonesia work in low skilled or semi-skilled occupations overseas such as agriculture, construction, and manufacturing. The majority of Indonesian migrant women work as domestic workers or caregivers (IOM, 2008:2). Migrant workers from Indonesia make an important economic contribution to their country in the amount of foreign remittances sent home. According to the Bank of Indonesia, remittances from Indonesian workers abroad reached US \$6.6 billion in 2008, and this figure is projected to steadily increase over time (IOM, 2010:22).

**Table 2: Indonesian Migrants and Top Destination Countries (2009)**

Destination Countries	Total
Saudi Arabia	257,217
Malaysia	222,198
Taiwan province of China	50,810
Singapore	37,496
Hong Kong SAR	29,973
UEA	28,184
Kuwait	25,756

**Source: BNP2TKI (The National Authority for the Placement and Protection of Indonesian Overseas Workers) cited in (IOM 2010:9)**

### ***Social Protection System in Indonesia***

Social protection in Indonesia is largely limited to social insurance schemes that are available only to workers in the formal sector. Some welfare programmes have been put in place for informal sector workers on the basis of voluntary membership, but these programmes have extremely low levels of coverage (ILO, 2008b:18). Social security in Indonesia is provided in terms of access to health care and income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity, or loss of a main income earner. From 2004, Indonesia passed a National Social Security System Law (No. 40 of 2004), which stipulates an employer's obligation to enroll his/her employees in social security schemes. In addition, the government is required to provide social assistance to people in poverty. The scope of social security under this law focuses on five different programmes, namely: health insurance, employment injury, old age (provident fund), invalidity, and death benefits.

Prior to the enactment of the National Social Security System (SJSN), Law No. 3, passed in 1992 was in effect, relating to employee social security (Jamsostek). This law failed to provide welfare for all Indonesian people, and research showed low compliance and weak enforcement (Bambang, 2009:4-7). The social security system reform in 2004 came about as a result of these deficiencies. Additional pieces of legislation set out the social security systems for government employees, including civil servants, the military, and police personnel. For civil servants, Regulation No. 69 (1991) designated *Asuransi Kesehatan Sosial* (Askes) as the social security carrier to administer the social protection system and Law No. 11 (1969) designated *Tabungan Dan Pensiun Pegawai Negeri Sipil* (Taspen) as the pension plan carrier. Law No. 6 (1966) designated *Asuransi Sosial Angkatan Bersenjata Republik Indonesia* (Asabri) as the social insurance agency for military and police personnel (Bambang, 2009:6-7).

Law of No. 40 (2004) is a milestone in the development of Indonesia's social security system. The law was expected to build improved social security systems in Indonesia, and to mend the flaws of the previous law. With Law of No. 40, emphasis is on health insurance coverage for populations and pension plans to create a strong working

community (Bambang, 2009:11). However, to ensure effective social security systems, the effectiveness of social security agencies (carriers) and law enforcement is crucial. In the debates on the National Social Security System in Indonesia, the issue of responsibility of social security agencies or carriers has been widespread (Thabrany, 2011:3). Consequently, and in response to continued weaknesses in the existing social protection systems in Indonesia, the Bill on Social Security Administering Agency (BPJS) was drafted in order to improve the performance of Indonesia's national social security system.

This recent Bill is the product of an initiative of the Indonesian Parliament. However, talks in December 2010 between the Parliament and relevant ministers on regulating social security carriers to ensure transparent management of social security funds ended in deadlock (Thabrany, 2011:4). The crucial problem was disagreement with the government over changing the legal status of social security carriers, which are currently profited-oriented state enterprises (Thabraby, 2011:3). As information provided by one officer from a migrant NGO told the research team, deliberation on the bill deliberation was supposed to be completed after three hearings (by 15 July 2011). However, the Tatib Parliament extended the discussion until October 2011 due to public pressure. "BPJS discussion is still running and the discussion is still tough; activists are trying to ensure statutory provisions for the necessary delivery of health care services on a basis of non-discrimination and non-limited fulfillment for all citizens, including for migrant workers."<sup>7</sup>

As the situation stands, however, there are four existing social security schemes in Indonesia operating with different functions, namely Jamsostek, Taspen, Askes, and Asabri (ILO, 2008a:2). Jamsostek is the social insurance fund for private sector employers and their employees. The other three schemes cover public sector employees, civil servants, the armed forces, and police. For the majority of the population, particularly those in the labour market, Jamsostek plays an important role in providing health care and income security, hence, this paper focuses on this general scheme.

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<sup>7</sup> Email exchange between researcher and an officer from a migrant organisation in Indonesia

Jamsostek covers four different programmes, including health insurance, employment injury, old age (provident fund), and death benefits (ILO, 2008b:19). Under the scheme, employers and employees should make joint contributions to the social security programmes.

1. According to the regulations of the old age programme, an employer will pay 3.7 percent of a worker's salary as their contribution and 2 percent is to be paid by the worker. Members of this social security system will receive a lump sum consisting of both total employee and employer provident fund contributions plus accrued interest at the age of 55 (both men and women) regardless of retirement from employment or in the case of a worker's death, total or permanent disability, or a periodic pension can be paid to members in their provident fund account.
2. The employment injury programme provides work-related accident benefits to employees and their family following death or physical and mental disability incurred during work. Employers have to make contributions, varying according to five classes of risk: 0.24% of monthly payroll (class I); 0.54% (class II); 0.89% (class III); 1.27% (class IV); or 1.74% (class V). The health and safety of workers is the responsibility of employers under Indonesian law so employers have an obligation to pay the insurance accident premium which ranges from 0.24% - 1.74% depending on the type of business. Accident benefits include: transportation costs, the cost of both medical treatment and nursing up to Rp 12 million (approximately to US \$1,400), rehabilitation expenses such as prosthetic limbs or aids (wheelchairs), monetary allowances for partial permanent invalidity or total permanent invalidity, loss of functions (the formula for this calculation is based on the percentage of diminished function multiplied by 80 months' wage table), and death allowance (including funeral expenses of Rp 2 million (US \$233) plus periodic payment within two years with compensation of Rp 200,000 (US \$23.5) per month, or lump sum payment at 60% of the wage multiplied by 80 months).
3. The Survivor Programme provides benefits to the family of members of the deceased, but not in the case of death related to work accidents. Employers are obliged to bear the contribution to social insurance of 0.3 percent of monthly payroll.



The lump sum compensation is Rp 12 million (US \$1,400), consisting of Rp 10 million (US \$1,165) for the death and funeral costs, Rp 2 million and periodic payment of Rp 200,000 (US \$23.5) per month within 24 months.

4. Health insurance ensures the right of insured workers and their families to access to health care in case of health problems. Employers have an obligation to pay health care dues, at 3% of wage labor for single labour and 6% for family labour. All insured persons have a Health Care Card as proof of identity, allowing them access to health care. The health insurance programme provides support for all medical needs, including maternity services, outpatient services (health services performed by general practitioners or dentists in health centres, or examination and treatment performed by a specialist on the basis of a referral from a doctor in accordance with medical indications), services related to rehabilitation or benefits provided to restore bodily function, and medical emergencies.

According to the ILO (2010: 204), social security in Indonesia is statutorily very limited in its breadth and application. The coverage of Indonesian social security as provided in law under the Jamsostek scheme is only for employees of establishments with 10 or more employees or with a monthly payroll of at least Rp 1 million (US \$117). For employees of smaller establishments, membership in the social security scheme is voluntary, as is the case for workers in informal sectors such as family labourers, fisherfolk, and self-employed persons.

**Table 3: Social Security Coverage in Indonesia in 2007 (ILO, 2008:2-3)**

Coverage	Population (in thousands)	% of employed population
Labor force	108,131	
Employed population	97,583	100%
Jamsostek total members records held	28,814	30%
Jamsostek members	10,492	11%

Coverage	Population (in thousands)	% of employed population
Active members	7,720	8%
Voluntary members	91	1%
Construction program	2,682	3%
Civil services (other three schemes)	6,300	6%
Total	16,792	17%

In 2007, out of 36 million formal sector workers in Indonesia, only 16.8 million workers, or 47%, were actually contributing to the Jamsostek, Taspen, and Asabri schemes (ILO, 2008b:21). Formal social insurance fund membership is concentrated mainly amongst employees of larger private sector enterprises and the public sector. Workers in smaller enterprises and in informal sector jobs have very little coverage. Even within the formal sector, actual active membership<sup>8</sup> in social insurance funds is small (only 10% of 30% of recorded members in the Jamsostek scheme). Of all Indonesian workers, only 17% are covered under social security schemes.

Particularly for the health care programme, which is covered by two schemes, namely Jamsostek and Askes, coverage is expanded for workers and their families. The number of persons covered by the Jamsostek health care programme is 3.1 million (1.4 million are workers and 1.7 million are dependent family members). Askes covers 15.6 million (of whom 5.6 million are workers, 8.4 million are dependent family members, and 1.6 million are 'commercial' members). Only about 18.7 million people in Indonesia are covered by formal health insurance schemes.

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<sup>8</sup> Inactive members includes:

- Workers who are unemployed and working for less than five years
- Workers who change employers to ineligible employers, or who change employers and discontinue their contributions made in their previous position
- Workers who change their employment status to self employment without continuing their previous contribution to the fund
- Deceased workers and their families who have not claimed their entitlement

## ***Social Protection for Indonesian Migrant Workers***

Much work remains to be done in Indonesia to expand social protection. Existing social security systems exclude Indonesian overseas workers. In general, Indonesian migrant workers lack adequate and effective social protection support from both the Indonesian

Each year at least 450,000 Indonesian workers are working overseas, 70% women and 60% undocumented:

- 2001: 33 Indonesian workers died or were killed
- 2002: 177 Indonesian workers died or were killed
- 2005/2006: 300 Indonesian workers died or were killed
- 2008: 513 Indonesian workers died or were killed

Each year about 25,000 Indonesian migrants face physical abuse or rights violations  
(Prasetyohadi, 2011:3)

A survey conducted by an NGO in 2000 revealed that 48% of Indonesian female domestic workers employed in Hong Kong were underpaid despite the fact that a minimum wage for such workers is guaranteed by law and is stated in every standard employment contract (Sakdapolrak, 2002:7)

and host state governments. However, it is necessary to study the Indonesian legislative framework to consider the social protection provided for overseas workers. In addition, social protection systems of receiving countries also are relevant to understanding the situation of labour migrants, however, such systems are beyond the scope of this research project.

Basic statutory instruments related to Indonesian overseas migrant workers include:

- Act No. 39/2004 concerning the Placement and Protection of Indonesian Workers Overseas. This is the main statutory instrument related to social protection for Indonesian overseas migrant workers. The law sets out legal provisions related to placement procedures, such as pre-placement

training, per-departure health examinations, and financing; worker protection; dispute settlement; supervision of placement and protection activities for Indonesia overseas labour migrants (IOM, 2010:13).

- Presidential Instruction No. 6/2006 concerning Policy Reform on Placement and Protection System of Indonesian Overseas Migrant Workers. This instruction regulates detailed actions designed to make changes in terms of migrant placement services, quality improvement for placement of labour migrants, and strengthening the function of Indonesian representatives in providing protection to Indonesian labour migrants (INPRES, 2006).
- Presidential Regulation No. 81/2006 on Establishment of National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI). This regulation's mission is to improve security, protection and empowerment of overseas labour migrants (BNP2TKI, 1999).
- Regulation No. 28/2007 on the establishment of an Overseas Labour Market Agency (BKLN). This regulation, stemming from BNP2TKI, considers the obligation of employment agencies to provide protection for prospective Indonesian migrant workers and pre-placement training (BNP2TKI, 2007).

Indonesian migrant workers are provided limited social protection from their home government. Legally, support is provided at the *pre-departure* stage. Indonesian migrants should access training courses to aid them in improving their work skills, and to provide them with information about their destination countries. The training courses and pre-departure briefings are very important for labour migrants, in that they provide information on particular terms of deployment, laws and regulations of destination countries, where and how to access assistance, and how to handle insurance claims. The authorities also inspect employment agreements between recruitment agencies and labour migrants prior to departure (IOM, 2010:21-34).

Indonesian migrants are required to take out social insurance prior to departure to cover the time that they will be employed abroad. Every prospective worker has to pay a premium of IDR 400,000 (US \$47), however the government does not regulate the standard fee. Currently, two insurance companies provide this coverage: Konsorsium Jasindo and Bangun Askrida. This insurance programme can provide assistance to

workers in case of loss, damage, and violence<sup>9</sup> (IOM, 2010:36-31). In addition, according to Presidential Regulation No. 81 (2006), Indonesian embassies and consular offices are assigned to assist migrants, providing legal assistance, temporary accommodation, and counseling.

Upon their return, Indonesian migrants should be provided with special assistance in terms of transportation, medical assistance, legal aid or financial and psychological support when arriving at Terminal IV of Soekarno-Hatta International Airport (IOM, 2010:35). Also, the Indonesian government should provide assistance to returnee migrants to set up businesses so as to take advantage of their remittances. An initial support programme has been implemented—“Business Empowerment for Former Indonesian Labour Migrants”—offering assistance to former migrants in exercising business activities. However, while the system is formally in place, it has not been implemented in practice. The regional government also is involved in helping former migrants to manage money earned overseas (IOM, 2010:35-36).

A study by the IOM (IOM, 2010:XI) found a number of loopholes with regard to Law No. 39/2004 Concerning Placement and Protection of Indonesian Overseas Workers in terms of its implementation and enforcement. In particular, this law is weak in providing a legislative framework for social protection for Indonesian migrants. The law operates through a centralised system, with the result that there is a lack of effective coordination between central and regional governments. Article 5(2) of Law No. 39/2004 states that the central government can delegate its responsibilities to regional governments; however, problems experienced by Indonesian migrants, such as illegal recruitment, falsification of documents and the collection of excessive placement costs are more likely to occur at the regional level, and go unassisted (IOM, 2010:15). Government representatives in destination countries are also ineffective in providing social protection to migrants. Complaints regarding the Indonesian Embassy in Malaysia suggest it is slow and bureaucratic, and there is much corruption. Inhumane treatment of Indonesian migrants has also been reported (IOM, 2010: 49).

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<sup>9</sup> Unfortunately, there are few primary materials on the social insurance in English, which limits the ability of the researchers on this project to understand the scope of coverage and the benefits for labour migrants.

### ***Social Security Provided by Receiving Countries***

In addition to the national framework in Indonesia, the Government of Indonesia is cooperating with a number of destination countries in the placement of Indonesian migrants abroad. According to IOM (IOM, 2010:16), Indonesia currently has MOUs with: the Republic of Korea, Jordan, Kuwait, Taiwan Province of China, the United Arab Emirates, Qatar, Australia, and Malaysia. Indonesia is also in the process of negotiating MOUs on labour migration with Syria, Brunei, Darussalam, and Japan (IOM, 2010:16).

Social security and social protection provided to migrants differs considerably across destination countries. To study social protection for Indonesian migrants, it is critical to look in more detail than is possible here at social protection for migrant workers provided by host countries and bilateral cooperation on social protection for migrants. However, this desk research suggests that, in general, migrants from Indonesia are vulnerable due to gaps in protection in both the country of origin and destination.

In Malaysia, 50 percent of migrant workers are from Indonesia. Malaysian Immigration law categorizes migrants into three groups: (1) documented migrants who are mostly low-skilled employees; (2) expatriate workers who are employed in managerial and executive positions; and (3) irregular migrants who violate immigration laws by entering without authorization (IOM, 2010:42). Malaysia's Employment Act 1955 establishes the statutory benefits for labour migrants, including payment of wages, working hours, shift work, overtime, rest days, holiday pay, annual leave, and sick leave. The Workmen's Compensation Act 1992 provides some coverage related to work-related accidents for labour migrants.

Malaysia and Indonesia have signed labour migration MOUs covering short-term contract labourers and Indonesian domestic workers. However, Indonesian migrants, especially irregular migrants and domestic workers, continue to experience overcrowded accommodations, inadequate diets, improper health care, and physical and psychological abuse (IOM, 2010:46-47). The Indonesian Embassy in Malaysia assists in

providing protection for migrants, including shelters with a capacity of 70 people. The embassy also provides orientation programmes for new migrants arriving in Malaysia.

The MOUs between the Government of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers stipulate that Indonesian domestic workers should be protected under the Foreign Workers Compensation Scheme. This scheme stipulates an employer's obligation to pay compensation benefits to foreign workers who possess valid employment documents for injury or death. Compensation is up to RM 25,000 (US \$8,360) in the event of the death of the insured foreign worker resulting from personal injury due to accident in the course of employment, or RM 23,000 (US \$7,690) due to accidental death outside of working hours) or accidents out of or in the course of employment. For health insurance, employers are required to pay medical expenses for workplace accidents and medical examinations upon arrival into the country. Sufficient food, reasonable accommodations, adequate rest and non-deduction of monthly wages are mentioned in the MOU, but details are not provided on what would constitute 'sufficient' food and 'reasonable' accommodations. The MOU has been criticized as legalizing commoditization practices and for making Indonesian female migrant workers, particularly domestic workers, more vulnerable. In addition, the MOU provides no information or guarantees for adequate rest, and prohibits marriage and bringing spouses into the country. Prohibitions are also placed on the employment of those who are identified as having certain diseases, gatherings with workers' families, and for migrants to keep their own passports (Salma, 2006)

In Singapore, the majority of Indonesian migrants are employed in low-skilled jobs such as construction, manufacturing, or domestic work. Unlike Malaysia, Singapore has an immigration policy to strictly limit the number of irregular migrants in the country (IOM, 2010:53). The well-being of foreign workers, including Indonesian migrants, is more clearly stipulated in legislative frameworks related to foreign workers, including the Employment Act, Employment of Foreign Manpower Act, Work Injury Compensation Act, and Workplace Safety and Health Act. Protection under the laws that regulate the employers' obligations to their foreign workers cover medical treatment,

personal safety, proper housing, prompt salary payment, and adequate food and rest. The statutory responsibilities of employers hiring foreign workers can prevent the abuse of migrants. However, Indonesian migrants have still experienced inhumane working conditions, heavy workloads, and inappropriate compensation.

Between 1999 and 2005, at least 147 migrants, of whom 122 were Indonesian, died as a result of falling or jumping from their employers' apartments (Human Rights Watch, 2005; cited in IOM, 2010:55). Both the Singaporean Government and the Indonesian Embassy in Singapore have developed policy responses to labour migration issues. The Singapore Government provides compulsory safety courses for migrants, conducts inspection activities, and provides mandatory orientation programmes for employers of foreign domestic workers. Also, links among government and civil society organisations promote the protection of labour migrants. Indonesia, together with Singapore, provides 24 hour telephone hotline services, holds meetings with the Indonesian community in Singapore to hear their needs and seek solutions, and is seeking to upgrade shelter facilities to provide for the physical and psychological needs of migrant workers, referring them to health care settings if necessary (IOM, 2010:58-61).

In Saudi Arabia, Indonesian migrant workers are employed in both the formal and informal sector. Male workers usually work in informal sector jobs as personal drivers, delivery truck drivers, cleaners in government hospitals, garbage collectors, construction workers, bakers, restaurant employees, butchers, barbers, carpenters, and plumbers. Meanwhile, women primarily work as domestic workers (cleaning houses, cooking, caring for children), and in beauty salons and garment manufacturing<sup>10</sup>. Many migrant workers who work in the formal sector in Saudi Arabia return home with no complaints. But the women and men who work in the informal sector are often be subjected to abysmal and exploitative working conditions, and are the targets of sexual violence and other human rights abuses (The Jakarta Post, 2011). Though the Government of Saudi Arabia has a Labour and Workmen's Regulation (1969), which

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<sup>10</sup> Email exchange between researcher and Indonesian consular officer



deals with labour law and employee rights, this regulation does not cover workers in the informal sector (Sakdapolrak, 2002: 16).

### ***Implementation in Practice***

Here, we examine whether or not social protection for Indonesian labour migrants as laid out in the law differs from what is happening in practice. The analysis is based on information from key informants such as governmental officers, civil society organisations, and Indonesian migrant workers.

In general, Indonesian migrants are at high risk of maltreatment, human rights abuse, and exploitation with inadequate social protection from either origin or destination countries. Indonesian migrants are also at risk of trafficking (IOM, 2010: 18). Abuses of Indonesian migrants are widespread and occur at all stages of the migration process (Sakdapolrak, 2002: 6-10). They range from economic abuse from brokers and sponsors, and a variety of violations at the hands of employers and officials. In destinations countries, Indonesia migrants are confronted with a range of physical and psychological abuse such as poor living and working conditions, lack of access to medical treatment, verbal abuse, harassment, threats, punishment and even rape (IOM, 2003: 129). Malaysia is the country where the Indonesian migrant workers experience most problems, followed by Saudi Arabia (IOM, 2003: 129).

Despite some efforts by the Indonesian government to protect migrant labour rights, violations are still widespread. In regards to widespread abuse and maltreatment faced in Saudi Arabia, a 2011 Human Rights Watch report (cited in Yonatri Rilmania, 2011) notes that domestic workers from Indonesia and elsewhere who travel to Saudi Arabia “frequently endure forced confinement; food deprivation; and severe psychological, physical, and sexual abuse”. The same situation prevails in other countries: “For unskilled labor in some particular countries, we found that discrimination, working and living condition and exploitation are still appeared”<sup>11</sup>.

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<sup>11</sup> Email exchange with an Indonesian consular officer at the Indonesian Embassy in Thailand

Concerning social protection for migrant workers, in practice, there is ineffective governance of the systems intended to provide protection, and there are also inconsistent legislative systems. To provide further examples, the airport scheme and insurance for Indonesia overseas labourers are explored.

The airport scheme, which was initially expected to provide medical and other assistance when needed to returnee migrants, is a scheme which critics say results in serious extortion and abuse. According to activists from Indonesia's migrant networks, the airport scheme does not fulfill its functions in pre-departure services (such as data collection and clearance before Indonesia's labour migrants actually leave the country). Services for identity card provision for departing migrants and services for returning migrants are marred in corruption and bureaucratic red tape, and are difficult to navigate.

An example provided to the research team relating to the poor management of the airport scheme is the function to issue the "Kartu Tenaga Kerja Luar Negeri" (abbreviated: KTKLN, literally: Overseas Worker Card). This is an identity card for Indonesian migrant workers who have fulfilled all conditions and procedures for working overseas, as provided in Law No. 39/2004. Activists question the actual purpose of the card when migrants travelling overseas already have a passport to function as an ID card, so it remains unclear why another card is required. In addition, the research team was told that the necessary cooperation between authorities concerned and the Immigration Department in administration of overseas workers is non-existent. The services provided to migrants become bothersome and waste time, opening the door for brokers to get involved to make things easier, and resulting in variable fees charged differently at different service points. In addition, on departure, fines for workers who do not have the KTKLN vary from worker to worker.

Regarding services provided to migrants when returning to Indonesia, workers experience problems at the overseas employment service when reporting to "the Building for the Recording of Returning Migrant Workers of Selapajang." Problems are encountered both at general airport services as well as immigration services. Labour

migrants are exploited at the terminal more than other passengers. Workers are charged more for their travel fees to their villages than other travellers.

As happened in the earlier terminal, limited travel options are provided for workers for going home. Reports say that many migrant workers complain about car drivers who often take additional fees. Migrant workers are said to fear of this terminal when they return to Indonesia. In fact there are more complaints of exploitation than useful services for migrant workers when returning to Indonesia through this terminal (civil society activist).

Besides the airport scheme troubles, the research team was also informed that workers encounter corruption in accessing the mandatory insurance scheme, which must be purchased by workers before leaving Indonesia. This insurance reportedly rarely benefits the workers, in contrast to the intention of the insurance when implemented. According to email exchanges between the researcher and NGO officers in Indonesia, there is “systematic corruption” in this scheme. The research team found evidence of an official assessment of the Supreme Audit Agency of BPK, which investigated whether corrupt practices befall migrant workers in the insurance system, particularly relating to large percentage profit of the brokerage fees between overseas employment agencies and insurance agencies. Fees range from 20-50% of each insurance premium paid by all migrant workers (insurance fees were reported to be as much as Rp 400,000 [around US \$45] for each worker).

Activists report that problems such as those with insurance schemes, as well as airport services, result from the lack of synchronised governance in Indonesia to protect overseas workers. For example, Law No. 39/2004 mentions mandatory insurance for departing workers. In addition, Ministerial Regulation No. 7/2010 - Article 14(1c) stipulates that Insurance Holder Cards need to be granted to migrant workers. The regulation sets penalties on offences of insurance companies that do not produce and deliver the cards to the migrant workers (Art 37[3]). However, such provisions are not yet guaranteed with a certainty to be implemented in practice. *Suara Karya*, a local daily news agency, reported on 20 Sept 2010 that the insurance claims filed by 16,621 migrant workers between September 2008 and April 2009, worth Rp 365 billion (US

\$41.03 million), have not been processed by insurance companies. In another case, the Indonesian Migrant Workers Union found that about 470 migrant workers who reported massive unilateral employment dismissals had only received related insurance claims much lower than they should have, amounting only to Rp 3 million (US \$337.40) each.

Additionally, migrant workers are requested to present adequate materials to file their claims according to the 2010 ministerial regulations. Among the required materials are a work contract between the migrant worker and employer and an employment contract between the migrant worker and the relevant employment agency (Art 26 [4]).

However, the Law 39/2004 retains the provision that regulates the responsibility of employment agencies to prepare both documents (Art 44[4]; Art 32 [2]), while there is no provision that both documents must be handed over to the migrant worker.

Consequently, most of the workers fail to provide the documents required for their claims.<sup>12</sup>

There are many other barriers to providing effective social protection for Indonesian migrants. Of specific concern here is the situation of Indonesian domestic workers, the majority of whom are women. These workers are denied protections of the law in both Indonesia and some receiving countries (Sakdapolrak, 2002:7-16). As per the information provided by one informant, in some receiving countries, bias and discrimination against women is widely reported. In some countries, women are not allowed to live independently. This creates a barrier for women when they want to make complaints of abuse to the local police or to the Indonesian Embassy/Consulate. Using a telephone to make complaints to the police or Embassy/Consulate is also difficult, since workers often do not have access to telephones or mobile phones, and language barriers make communication difficult.

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<sup>12</sup> Information from email exchange between researcher and an officer of the Migrant Worker Desk

Irregular labour migrants from Indonesia are the most vulnerable to human rights violations because they do not fulfill the requirements for protection under the law (IOM, 2010:42-44).

However for other countries, common difficulties that we found for many unskilled labourers, they don't really have knowledge such as on culture, language and they don't register themselves at the embassy, sometimes embassy has difficulties to monitor them, though some announcement or direct approach in the field has been done. Illegal worker agents still exist and difficult to control them (Indonesian consular official).

The weakness of the legislative framework in providing social protection, and of MOUs between source and receiving countries, limit the ability of workers to access effective social protection. Indonesian social protection is very limited for irregular migrants and domestic workers anyway, and does not provide adequate assistance to migrants once they return to Indonesia and/or to family members of migrants. Article 1 of Law No. 39/2004, which is the main piece of legislation governing recruitment, placement, and protection of migrant workers (IOM, 2010:XI) clearly states that its provisions only cover Indonesian citizens who meet the requirement to work overseas for remuneration for a certain period of time. National labour migration laws and policies in Indonesia are still primarily concerned with reducing local unemployment and tend to focus more on facilitating the outflow of migrant labour rather than on creating protection mechanisms for these migrants (Ford, 2005:9).

## CASE STUDY TWO: PHILIPPINES

### ***Philippines Labour Market and Domestic Social Protection***

The Philippines had a total population of 88.57 million in 2007 (National Statistics Office, 2011). In the labour force survey, published in April 2011, the country's workforce consisted of 39.691 million people and the number of employed persons stood at 36.821 million (Bureau of Labour and Employment Statistics, 2011).

Philippines has both formal and informal sectors of work. The latest available data from 2005 shows that informal workers in the Philippines comprised 24,666,680 persons while the formal sector workers consisted of only 5,322,320 persons. Informal workers include home based workers, vendors, small farmers and fisherfolk, non-corporate construction workers, small transport operators, barangay health workers, waste collectors, and other service workers (Ofreneo, 2009).

Social protection in the Philippines is well defined in the formal sector, which is led by manufacturing and services firms and public agencies. Both private sector employees and government workers are covered by contributory (employer and employee) social insurance schemes covering industrial accidents, health, old age, and death. In the informal sector, there is no coverage, except for the self-employed, who contribute on a voluntary basis to social security schemes. Two major government institutions implement the Philippine social insurance programme for the employed formal sector: the Social Security System (SSS) for the private sector and the Government Service Insurance System (GSIS) for the public sector (Macaraya, n.d.).

The SSS was founded on 1 September 1957 following the passage of *Republic Act No. 1161* or the *Social Security Act 1954*. SSS is mandated to provide protection to insured

members and their beneficiaries for old age, disability, death, sickness, maternity, and other contingencies resulting in loss of income or financial burden. The SSS contribution rate is equivalent to 10.4% of a worker's monthly salary credit (MSC), effective from 1 January, 2007. This is shared by employer (7.07%) and employee (3.33%), while a self-employed or voluntary members are responsible for the entire amount of the contribution. The rate is applied to 29 MSC brackets, from a minimum of PHP 1,000 (US \$23.6) up to a maximum of PHP 15,000 (US \$353), except for overseas contract workers on whom a minimum MSC of PHP 5,000 (US \$118) is imposed. Thus, the monthly contribution per member ranges from PHP 104 (US \$2.45) to PHP 1,560 (US \$37) (Asian Social Security Association).

Coverage under the SSS is compulsory for all employers in the private sector and their employees who are not over 60 years of age, whether they have permanent or provisional employment status, including domestic helpers earning at least PHP 1,000 (US \$23.6) a month. All self-employed persons are also subject to mandatory coverage under the Regular Self Employed Programme for artists, entertainers, proprietors, and professionals, and the Expanded Self Employed Programme is for those with monthly earnings of at least PHP 1,000 (US \$23.6) regardless of trade, business, or occupation (e.g., unlicensed freelance workers, drivers, market vendors, other informal sector workers). Farmers and fisherfolk earning at least PHP 1,500 (US \$12) also fall under the self-employed category (SSS, 2011).

The SSS presently administers two programmes:

- Social security (SS), which includes maternity, disability, retirement, death, and funeral services. It provides replacement income for workers in times of death, disability, sickness, maternity, and old age.

Benefit	Qualifying Conditions	Benefits
Retirement Benefits	<ul style="list-style-type: none"> <li>• At least 120 monthly contributions prior to the</li> </ul>	The old age pension is the sum of the monthly pension and the dependents' pension. The

Benefit	Qualifying Conditions	Benefits
	<p>semester of retirement, and</p> <ul style="list-style-type: none"> <li>• The individual must have reached age 60</li> <li>• The individual must have ceased employment OR</li> <li>• The individual has reached age 65, whether employed or not.</li> </ul>	<p>monthly pension is guaranteed for 60 months and is the highest of the following amounts:</p> <ul style="list-style-type: none"> <li>• PHP 300 + 20% of the average monthly salary credit (AMSC) + 2% of the AMSC for each credited year of service in excess of 10 years</li> <li>• 40% of AMSC</li> <li>• PHP 1,200</li> </ul> <p>Schedule of payments consists of 13 per year, with the 13th pension equal to the most recent payment. The insured has the option to receive the first 18 monthly pensions as a lump sum, discounted at a preferential rate of interest.</p> <p>A dependant's pension is the higher of:</p> <ul style="list-style-type: none"> <li>• 10% of monthly pension</li> <li>• PHP 250</li> </ul> <p>The dependant's pension is paid for each dependant child up to a maximum of 5 children. This pension stops when any one of the following occurs to the dependant:</p> <ul style="list-style-type: none"> <li>• Reaches age 21</li> <li>• Marries</li> <li>• Finds employment</li> <li>• Death</li> </ul> <p>The minimum pension under new social security is PHP 1,200 per month if the member has at least 10 years of service, and PHP 2,000 if the member has at least 20 years of service. An employee</p>



Benefit	Qualifying Conditions	Benefits
		<p>who does not qualify for a pension is refunded with a lump sum amounting to the total contributions paid (employee and employer) plus interest.</p>
<p>Disability Benefits</p>	<p>A permanently partially or totally disabled member, if at least one monthly contribution has been paid prior to disability.</p> <p>Only totally disabled persons are entitled to a dependant's pension.</p>	<p>A monthly cash benefit equal to the old age pension is paid to a qualified permanently and totally disabled member who has paid at least 36 monthly contributions and a lump sum to a member who has not paid the required monthly contributions. The lump sum equals the monthly pension times the number of monthly contributions, or 12 times the monthly pension, whichever is higher.</p> <p>The lowest monthly pension depends on the years of service and amounts to:</p> <ul style="list-style-type: none"> <li>• Less than 10 years, monthly cash benefit PHP 1,000</li> <li>• 10-20 years, month cash benefit PHP 1,200</li> <li>• At least 20 years, monthly cash benefit PHP 2,400</li> </ul> <p>In addition to the monthly pension, a supplementary allowance of PHP 500 is paid to the pensioner with total or partial disability.</p>
<p>Death Benefits</p>	<p>The primary beneficiaries shall be entitled to a monthly pension upon the death of a member who has paid at least 36 monthly contributions prior to the death.</p>	<p>A monthly basic pension (13 payments per annum) equal to the old age pension is paid for life to the primary beneficiaries of a deceased member who was qualified.</p> <p>The monthly pension is paid for not less than 60 months and is</p>

Benefit	Qualifying Conditions	Benefits
		<p>the highest of the following amounts:</p> <ul style="list-style-type: none"> <li>• PHP 300 + 20% of the average monthly salary credit (AMSC) + 2% of the AMSC for each credited year of service in excess of 10 years</li> <li>• 40% of AMSC</li> <li>• PHP 1,000 for less than 10 accredited years of service (CYS), PHP 1,200 for 10-20 CYS or PHP 2,400 for more than 20 CYS.</li> </ul> <p>If the deceased member had not paid the required 36 months of contributions, the primary or secondary beneficiaries are entitled to a lump sum benefit equivalent to the monthly pension times the number of monthly contributions paid to the social security system, or 12 times the monthly pension, whichever is higher.</p> <p>PHP 20,000 is granted to help defray funeral expenses upon the death of a member, including permanently totally disabled members or retirees.</p>
Sickness Benefit	Has paid at least 3 monthly contributions in the 12 months before the sickness or injury and is confined for more than 3 days in hospital	Benefit is payable for up to 120 days per calendar year but not exceed 240 days for the same illness. It amounts to 90% of the average daily salary credit. The maximum compensation is PHP 15,000 per month
Medical/ Health Benefits	<p>The National Health Insurance Programme covers:</p> <ul style="list-style-type: none"> <li>• Those employed in government and private</li> </ul>	<p>Inpatient hospital care:</p> <ul style="list-style-type: none"> <li>• Room and board</li> <li>• Services of health care</li> </ul>

Benefit	Qualifying Conditions	Benefits
	sector <ul style="list-style-type: none"> <li>• Individually paying members- self employed, overseas Filipino workers, professionals in private practice.</li> <li>• Non-paying members: retirees and pensioners of GSIS and SSS</li> </ul>	professionals <ul style="list-style-type: none"> <li>• Diagnostic, laboratory and other medical examination services</li> <li>• Prescription drugs</li> <li>• Inpatient education packages</li> </ul> Outpatient care <ul style="list-style-type: none"> <li>• Services of health care professionals</li> <li>• Diagnostic, laboratory and other medical examination services</li> <li>• Personal preventive services</li> <li>• Prescription drugs</li> <li>• Emergency and transfer services.</li> </ul>
Maternity Benefits		100% of average daily wage payable for 60 days or 78 days in case of caesarean delivery for the first 4 children.

**Source: Swiss Life Network: Employee Benefits Reference Manual 2011**

- Employees' Compensation (EC) includes the following industrial injury-related services: income cash benefit for temporary total disability or sickness and permanent total disability, medical services appliances and supplies provided to the affected member beginning on the first day of injury or sickness, and rehabilitation services consisting of medical, surgical and hospital treatment. The EC programme, started in 1975, provides double compensation to the worker when the illness, death or accident is work-related. EC benefits are granted only to members with employers other than themselves.

Work Injury Benefit	EC programme may be enjoyed simultaneously with benefit under SS programme	<p>Medical services are limited to accredited hospital and physician ward services.</p> <p>Income cash benefits are provides for:</p> <ul style="list-style-type: none"> <li>• Temporary total disability or sickness: 90% of daily salary credit with maximum of PHP 200 per day for private workers and PHP 90 per day for government employee for the maximum of 120 consecutive days for the same disability, but may be extended for 240 days if additional treatment is required.</li> <li>• Permanent Partial Disability: EC provides a monthly pension equivalent to the pension for permanent total disability.</li> <li>• Death Benefit: A monthly pension, equal to the monthly income benefit paid for permanent total disability.</li> <li>• Funeral Grant: Maximum PHP 20,000</li> </ul>
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**Source: Swiss Life Network: Employee Benefits Reference Manual 2011**

The GSIS consists of compulsory and optional life insurance, retirement, separation and injury-related compensation benefits. Active GSIS members are entitled to the following loan privileges: salary, emergency and housing loans. In addition to government workers, the GSIS services members' dependents and beneficiaries, retirees and pensioners, and survivors of the deceased members or pensioners.

### Summary of Social Security Contribution Rates

		Employer	Employee
Social Security		7.07% of monthly salary credit	3.33% of monthly salary credit
Employee Compensation Programme (EC)	Monthly salaries below PHP 14,750 (US \$350)	PHP 10 (US \$0.24)	
	Monthly salaries above PHP 14,750 (US \$350)	PHP 30 (US \$0.71)	
National Health Insurance Programme	Min. PHP 100 (US \$2.40), max. PHP 750 (Total) (US \$18)	1.25 % of monthly salary credit	1.25 % of monthly salary credit

**Source: Swiss Life Network: Employee Benefits Reference Manual 2011**

Social security contributions are based on 29 salary brackets. The maximum monthly salary credit is PHP 15,000 (US \$355). The minimum monthly salary credit is PHP 1,000 (US \$24) as mandated by Act 8282 of the Social Security Act of 1997. EC contributions are fully employer paid. The salary brackets are the same as for Social Security. National Health Insurance Programme (PhilHealth) contributions are based on 27 salary brackets. The maximum monthly salary credit is PHP 3,000 (US \$71). The minimum monthly salary credit is PHP 4,000 (US \$95).

According to the Philippine Social Security System (2011), the actual membership as of March 2011 was as follows: (1) Employers 881,680 persons; (2) Employees 19,955,329 persons; (3) Self-Employed 5,728,300 persons; and (4) Voluntary 3,237,514 persons. The total members of GSIS is 1,381,695 people (GSIS, 2011).

### ***Overseas Filipino Workers (OFWs) and Social Protection***

The Philippines ranks third among top labour-sending countries (UN, 2008). The deployment of workers overseas started in the 1970s under former President Ferdinand

Marcos as one solution to unemployment. According to the Commission on Filipinos Overseas, of the total estimated population of 8.5 million Filipinos overseas, 92 percent are regular migrants, and of these, 47 percent are permanent migrants and 45 percent are temporary migrants (Commission on Filipinos Overseas, 2011).

Center for Migrant Advocacy – Philippines (CMA-Phils) stated that in 2009 there were 1,422,586 OFWs in 214 countries and territories, 77%, or approximately 1.1 million individuals, had land-based jobs and 23%, or 330,424, were seafarers. More than 3,800 OFWs are deployed overseas daily. The top 10 destination countries of Filipinos are: US, Saudi Arabia, Canada, UAE, Australia, Malaysia, Japan, UK, Hong Kong, and Singapore (Commission on Filipinos Overseas, 2011). These Filipino migrants sent over US \$17.35 billion to the Philippines in remittances in 2009. More than half a million (658,370) Filipinos overseas are considered by states of employment to be undocumented (Commission on Filipinos Overseas, 2011).

Migrant workers are hired from the Philippines in two ways – through the Philippine Overseas Employment Administration's (POEA) Government Placement Board or through private recruitment agencies. The POEA is expressly mandated to regulate recruiters and monitor their activities.

The Philippines has deployed a lot of migrant workers, but unlike local workers, these migrants do not automatically enjoy the benefits of social security while employed overseas because of the portability problem of benefits and lack of arrangements with host countries. The Government of the Philippines has tried to solve this problem by providing a Social Security System Programme to Overseas Migrant Workers on a voluntary basis under the self-employed category. The government has also attempted to negotiate and sign labour and social security agreements with other countries to promote social protection for migrant workers.

In some countries, migrants are allowed to join the social security system of their host countries, but when these migrants decide to permanently return to the Philippines, they encounter the problem of portability. As such, bilateral social security agreements are

necessary to enable migrants to enjoy their social security benefits. To date, the Philippines has bilateral social security agreements with 9 countries.

**Table 1: Philippine Agreements on Social Security**

Country	Date Signed	Date Ratified
1. Austria	01 Dec. 1980	01 April 1982
2. United Kingdom & Ireland	27 Feb. 1985	01 Sept. 1989
3. Spain	21 May 1988	01 Oct. 1989
4. France	07 Feb. 1990	01. Nov. 1994
5. Canada	09 Sept. 1994	01 March 1997
6. Quebec	23 Oct. 1996	01 Nov. 1998
7. Switzerland	17 Sept. 2001	04 March 2002
8. Belgium	07 Dec. 2001	04 March 2002
9. Korea	15 Sept. 2006	Pending Ratification
10. Netherlands		01 October 2003
11. Israel	23 March 2009	Pending Ratification
12. Greece –Draft SSA	20 May 2009	
13. Portugal –Draft SSA	28 May 2010	

**(Source: International Affairs Division, Social Security System, 2011)**

According to Go (2007), the salient features of these social security treaties include:

- Mutual assistance between the Philippines and the host country in the field of social security, as both covered members or beneficiaries may file their claims with the designated liaison agencies in the Philippines or the other country, which will extend assistance to facilitate the processing of claims
- Equality of treatment – a Filipino covered by social security, including his/her dependents and survivors, shall be eligible for benefits under the same conditions as the nationals of the other host country
- Export of social security benefits – a Filipino shall continue to receive his/her benefits wherever he/she decides to reside (in the Philippines, in the country of employment, or a third country)
- Totalization – Creditable membership periods in both the host country and the Philippines (excluding overlaps) shall be added to determine qualification for benefits

- Prorated payment of benefits – both the host country and the Philippines shall pay a fraction of the benefit due from their respective systems, in proportion to the actual contributions or creditable periods.

As of 2010, the Philippine government had signed 49 bilateral labour agreements with 25 countries and territories (CMA – Phils, 2010).

In order to protect their migrant workers overseas, the Philippine Government has mandated the establishment of the Office of the Undersecretary for Migrant Workers Affairs (OUMWA) at the Department of Foreign Affairs. In countries where there is a high concentration of OFWs, the law mandates the setting up of a Filipino Workers Resource Center. The Philippines has 67 embassies, 23 consulates, four permanent missions, one extension office, and 38 Philippine Labour Overseas Offices that assist Filipinos living and working abroad. To date, there are 15 SSS offices in 12 countries, namely, Hong Kong, Taipei (Taiwan), Brunei, and Singapore in Asia; Riyadh, Jeddah and Alkhobar (Saudi Arabia), Kuwait, Abu Dhabi (United Arab Emirates) and Doha (Qatar) in the Middle East; Rome and Milan (Italy) and London (UK) in Europe; San Francisco, California in the United States; and Sydney in Australia. These offices act as receiving, registration and information centres that offer immediate response to queries about SSS programmes and operations (Department of Foreign Affairs, 2011).

The SSS also introduced the Flexi-Fund programme exclusively for OFWs. In addition to the voluntary programme of the SSS, the Flexi-fund is a provident fund t scheme, featuring flexible payment terms and easy withdrawal of savings. Any amount contributed in excess of the maximum contribution of PHP 1,410 (US \$33.20) to the regular SSS programme goes to the worker's individual account. So when the OFW returns to the Philippines, he/she will have some income security with the higher than market interest rate, and will have the option to withdraw any amount from the accumulated balance (SSS, 2011).



### ***Migrant Access to Social Protection in Practice***

Although Philippine laws and government agencies provide support to Filipinos abroad, numerous cases of unfair treatment of migrant workers have been documented. These include nonpayment of wages, physical, mental, and sexual abuse, isolation and confinement in homes, lack of redress, and legal representation. In many cases, the labour and social laws of the states of employment provide limited assistance and protection.

From a brief email interview with the CMA, a leading migration activist in the Philippines reported that Filipino migrants encounter problems at every stage of migration:

- **Pre-departure:** exorbitant placement fees and medical examination costs; problems with contracts, passports, and document applications; prospects of separation with family; difficulties with recruitment agencies; inadequate knowledge of destination countries; inadequate socio-cultural adjustments
- **In destination country:** abusive employers; work-related issues -contract substitution, non-payment/underpayment/delayed payment of wages; long working hours; no days off/rest days; gender-based violence; abusive living and working conditions
- **Return and reintegration:** no savings, so social security, no pension, sickness, no employment prospects, family break-up, migrants get stranded

CMA also mentioned that even though the Philippine Government has signed many bilateral labour and social security agreements with other countries, these agreements are often poorly implemented and migrant workers do not really get the benefits promised. However, in some cases, social security provided to Filipino migrants in a host country is superior to that provided to Filipinos by the Philippines' SSS. In some cases, lump sum payments can be made to Filipino migrants upon leaving the host country.

One important issue mentioned by the CMA is that given high numbers of domestic workers leaving from the Phillipines, many of the host countries, even when there are labour agreements in place, do not provide protection to domestic workers, who are not classified formally as workers. Even if protection is provided, many of the systems set up are not migrant friendly, with systems that are difficult for OFWs to navigate, and benefits arrive very slowly and with much bureaucracy.



## CASE STUDY THREE: SINGAPORE

### ***Background: Migrant Workers in Singapore***

Since the 1970s, Singapore has become a receiving country of migrant workers from Southeast Asia. Singapore is one of the most affluent and highly internationalized countries in the region. In 2010, 66.2% of Singaporeans were participating in the labour force and the unemployment rate remained low, at 3.2%.

**Table 4: Employment Indicators in Singapore (2009)**

Total population	5,076,700	
Singapore Residents	3,771,700	
Resident Labour Force	2,047,300	66.2%
Employed	1,962,900	
Unemployed	84,400	3.2%
Foreign employment	1,113,200	

**Source: Department of Statistics, Singapore (Singstat, 2011:4-6)**

With a rapidly aging population, Singapore has become dependent on inward bound labour migration for its economic development. The number of foreign workers in Singapore has increased each year and there is a trend of using foreign labour in economic development policies.

**Table 5: Foreign Workers in Singapore 1970 to 2000**

Year	Total labor force	Number of foreign workers	% of total labor force who are foreigners
<b>1970</b>	650,892	20,828	3.2%
<b>1980</b>	1,077,090	119,483	7.4%
<b>1990</b>	1,537,000	248,000	16.1%
<b>2000</b>	2,094,800	612,200	29.2%

**Source: Adopted by Yeoh, B. (2007)**

According to Singapore's Department of Statistics, in 2011, the total population of Singapore reached 5,076,700 comprising 3,771,700 Singaporean residents and 1,305,000 non-residents (Singstat, 2011:4). The non-resident population includes foreigners (except tourists and short-term visitors) who were studying, working or living in Singapore but who were not granted permanent residency. Out of these, there are 1,113,200 foreign employees in Singapore (MOM, 2011:2)

Labour market statistics on migration in Singapore show that the majority of migrants working in Singapore, estimated at 856,000 persons in December 2009 (Solidarity for Migrant Workers, 2010), work in low or semi-skilled manual jobs. They are employed in the construction, maritime, manufacturing, and service industries as well as in domestic work, health care, retail, and entertainment (Solidarity for Migrant Workers, 2010). The countries of origin for migrants in Singapore are very diverse, often dependent on the kinds of jobs migrants engage in. Live-in domestic workers come mainly from Indonesia, the Philippines, and Sri Lanka. Smaller numbers come from India, Myanmar, Bangladesh, Thailand, Nepal, and Pakistan. Other low wage migrant workers employed in the construction, marine, and service sectors are mainly from Malaysia, China, Bangladesh, India, Thailand, and Myanmar.

To manage the large number of foreign migrants, the Singaporean Government has enacted clear migration policies and introduced visa categories for all skill levels. A

system is in place to impose fines on employers who employ people without official permits so as to limit the number of undocumented workers in the country (IOM, 2008:53).

### ***Social Protection System in Singapore***

Singapore has a long history of more than half a century in developing social security systems. The social security system in Singapore is the Central Provident Fund (CPF), which operates based on individual savings of joint contributions between employers and employees. The Central Provident Fund (CPF) was set up in 1955 as an old-age savings scheme for Singaporean workers. However, the scheme has evolved into a comprehensive social security savings system addressing not just retirement adequacy, but also health care, home-ownership, family protection, and asset purchase. Working Singaporeans and their employers make monthly contributions to CPF and this contribution goes into three accounts: (1) an ordinary account to finance the purchase of a home, approved investments, insurance and education; (2) a special account principally for old age savings such as for investment in retirement-related financial products; (3) a Medisave account to pay for medical treatment, hospital treatment, and medical insurance needs.

CPF performs five main functions including: (1) retirement - members at age of 55 can withdraw CPF savings, after setting aside a CPF Minimum Sum which is set at \$131,000 from 1 July 2011. From age of 62, monthly payments from the CPF Minimum Sum are provided to the member until his/her CPF Minimum Sum is exhausted; (2) health care (Medisave may be used to cover hospitalisation expenses for both members and their dependents); (3) home ownership (Ordinary Account savings may be used for full or partial payment of the property, as well as to service the monthly housing payments); (4) family protection (CPF savings can be used to purchase insurance for family members, housing protection and catastrophic medical insurance in the case of high cost treatment and serious illness); and (5) asset enhancement (Money from the Ordinary and Special accounts can be used to invest in insurance, bonds and treasury bills, shares, property funds, and gold).

This savings plan is mandatory for all employed people and self-employed persons who earn SG \$6,000 annually (US \$4,970). In general, coverage provided by CPF schemes in Singapore is relatively large. Eligibility is open to Singaporean residents, including Singaporean citizens and permanent residents.

In addition to the CPF scheme, there is a special government social assistance scheme to pay for medical costs in approved governmental hospitals. This scheme is for unemployed persons, disabled people, and the poor based on the results of means tested measures that aim to check whether or not the beneficiary's wealth and income meet the requirements (Singh, 2008:19).

The social protection system for working people in Singapore provides legal benefits besides those of the CPF. To protect workers' rights, legislative frameworks stipulate the obligation of employers providing employment injury compensation. Generally, Singapore's resident workers receive sickness, maternity, old age, invalidity, survivor, and employment injury benefits from the CPF scheme, employer liability, and government social assistance.

**Table 6: Social security coverage in Singapore**

Social Security Branches	No of Social security branches covered by statutory programmes	
	Covered	Uncover
<b>Sickness</b>	X	
<b>Maternity</b>	X	
<b>Old age</b>	X	
<b>Invalidity</b>	X	
<b>Family allowance</b>		None
<b>Survivor</b>	X	
<b>Employment Injury</b>	X	

Social Security Branches	No of Social security branches covered by statutory programmes	
	Covered	Uncover
<b>Unemployment</b>		None
<b>Total branches</b>	6	2

**Sources: ILO (2010:204)**

In terms of details of CPF benefits, the old age benefit is in the form of a provident fund, which covers employees, including most categories of public-sector employees, earning more than SG \$50 (US \$41) per month who are nationals or permanent residents of Singapore. Employees and employers make joint contributions. The contribution of the employee is divided among different types of individual accounts, and the amount depends on the fund member's age: 1% to 23% of total monthly wages to the ordinary account, 0% to 7% to the special account, and 7% to 9.5% to the medisave account. Employers have to pay up to 15% for monthly earnings of SG \$1,500 (US \$1,250) or more, depending on the employee's age. The lower contribution rate is for employees of more than 35 years of age, or monthly with earnings of less than SG \$1,500 (US \$1,250). At age 55, a lump sum (after setting aside the CPF Minimum Sum of \$131,000 for retirement and SG \$34,500 for Medisave) of total employee and employer contributions plus at least 2.5% compound interest is paid to fund members. From the Medisave account, members aged 55 and above can utilize this money for medical treatment for themselves or their dependants, subject to limitations. From the age of 62, monthly income is paid from the CPF Minimum Sum until the account is depleted (ISSA, 2010).

The invalidity benefit also falls under the provident fund, with mandatory coverage for employees, including most categories of public-sector employees, earning more than SG \$50 (US \$41) per month, and who are nationals or permanent residents of Singapore. Insured members receive a monthly benefit, which is financed from the funds in the member's CPF accounts. A lump sum of total employee and employer contributions is paid, plus at least 2.5% compound interest minus draw-down payments and minimum balances (the same as in the old age benefit). The lump sum payment is the balance in



the member's account after funds have been allocated for the monthly benefit and a minimum. Fund members can also purchase medical insurance for their dependents (ISSA, 2010).

Survivor benefits are paid from all accounts under the provident fund scheme. The benefit is the remaining balance in the deceased member's accounts, and any life insurance payouts or death benefit from the CPF Life (a new scheme providing a lifelong benefit to the elderly) annuity scheme (ISSA, 2010).

The sickness and maternity benefits are based on employer liability. Singaporeans and permanent residents also can use their provident fund for these benefits. Members can use their Medisave accounts to help pay for the medical expenses of their spouses, children, parents, and grandparents. Fund members can also use their Medisave accounts to pay for medical treatment. Employers must pay 100% of the female employee's gross wages for up to 16 weeks of maternity leave. The first 8 weeks of leave for the first two births is the responsibility of employer. The government reimburses employers for the additional 8-week leave period for the first two births, and pays for the entire 16-week leave period for subsequent births (up to SG \$20,000 (US \$16,570) each for the first two births and SG \$40,000 (US \$33,145) for each subsequent birth). Sickness benefit is the employer's liability, which is up to 14 days of paid sick leave per year, and up to 60 days if hospitalized. Those Singaporeans who are unable to pay for medical treatment in approved governmental hospitals can apply for financial aid from the social assistance fund of the government. The amount of financial aid provided depends on individual circumstances. Under the separate public assistance programme, individuals without employment or any source of income may be given free medical treatment at government hospitals and clinics (ISSA, 2010).

Employment injury compensation is also based on employer liability. Compulsory coverage is required for all manual employees (regardless of earnings) and non-manual employees with monthly earnings of SG \$1,600 (US \$1,326) or less (with the exception of exempted occupations including self-employment, domestic work, armed forces, etc.). Following an accident, beneficiaries of the scheme can receive a daily/monthly

benefit for temporary disability, a lump sum benefit for permanent disability and a lump sum survivor benefit. For example, for the survivor benefit, a lump sum is paid that varies according to the insured's age at the time of death and average monthly earnings, but the range is from a minimum of SG \$47,000 (US \$39,000) to a maximum of SG \$140,000 (US \$116,000). The programme excludes self-employed persons, and domestic and home workers (ISSA, 2010).

Health care for workers has received particular attention from the Singaporean Government. To ensure that employees' medical benefits continue even upon changing employers, the government encourages employers to enhance the portability of patient/hospitalization medical benefits by inviting higher tax deductions, offset upon the purchase of any of three portable medical benefit options: (1) Portable Medical Benefits Scheme (employer makes additional contribution—at least 1% of gross monthly salary, subject to a minimum contribution of SG \$16 per month—to employees' Medisave account every month); (2) Transferable Medical Insurance Scheme (hospitalisation & surgical insurance offers extension of inpatient coverage up to a maximum period of 12 months when an employee leaves employment); (3) Provision of Shield Plan (employer may pay the premium of the chosen Shield plan on behalf of his/her employees directly to the insurance company, or reimburse the amount of premium to his/her employees' Medisave accounts) (MOM, 2011e).

Particularly in relation to the Central Provident Fund, the coverage of Singaporean residents is relatively large.

**Table 7: The coverage of social security (CPF) December 2010**

Total Number of CPF Members <sup>13</sup>	3,340,000
Total Number of Active CPF Members <sup>14</sup>	1,700,000
Total Number of Active Employers <sup>15</sup>	118,940

**Source: CPF statistics, 2010**

While the gross contribution to the CPF has been impressive, the existence of a large number of pre-retirement withdrawals, particularly for housing, has meant that net contributions have been rather low. Thus, during the 1987-99 period, about 70 percent of contributions were withdrawn. Such high levels of withdrawals for non-retirement purposes, particularly for housing, have adversely affected the accumulation of balances (Mukul and Wasana, 2001).

### ***Social Protection for Migrant Workers in Singapore***

In Singapore, foreign workers have made crucial contributions to economic development. Migrant workers have met the needs of labour to keep the economy operating (Yeoh, 2007). Singaporeans are reported to have positive attitudes towards labour migrants (ILO, 2011 Press release). To create a safe environment, Singapore is a country that is said to have a more effective system and administration for the protection of migrant workers' rights (ILO, 2011).

Social security protections for migrant workers in Singapore are stipulated in the following laws and regulations:

- *The Employment Act (1968)* regulates employment rights and conditions for all employees under the contract of service with employers regardless of nationality.

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<sup>13</sup> CPF Member refers to a person (including self-employed) who has a positive balance in any of his/her CPF accounts.

<sup>14</sup> Active CPF Member refers to a person who has at least one contribution paid for him/her for the current or any of the preceding three months. The figure excludes self-employed who are not employees concurrently.

<sup>15</sup> Active Employers refer to employers who had made payments for PF contributions.

Domestic workers and seafarers are excluded from application of these provisions (MOM, 2011a).

- *Employment of Foreign Manpower Act (1990)* covers all migrant workers including foreign domestic workers (MOM, 2011b)
- *Work Injury Compensation Act (2008)* covers all employees except domestic workers, self-employed persons, and civil servants such as the armed forces and police forces (MOM, 2010d)
- *Workplace Safety and Health Act (2006)* legislates the occupational safety and health framework (MOM, 2011c)
- *Employment Agencies Act (1958)* regulates the obligation of employment agencies in employment service provision (MOM, 2011d)

The Ministry of Manpower (MOM) provides the employer-financed Medical Insurance Requirement for foreign workers in Singapore who hold work permits (S-Passes), and foreign domestic workers. The employers of migrant workers must purchase and maintain medical insurance with coverage of at least SG \$15,000 (US \$12,430) per 12-month period of employment for each worker's inpatient care and day surgery during his/her stay in Singapore (or shorter in accordance with the period of employment). Employers may consider purchasing the insurance plans from the National Trade Union Congress (NTUC) Income Insurance Co-Operative Ltd. and Great Eastern Life Assurance Co. Ltd., which work with MOM. Alternatively, employers can choose any other insurance plan available (MOM, 2010c:2). For foreign workers, available insurance plans include the Medical Insurance Scheme (providing inpatient care, surgery, 90 days pre- and 90 days post-hospitalisation diagnostic services, and treatment) and the Foreign Workers Group Hospital and Surgical Plan (the same benefit as the Medical Insurance Scheme plus funeral expenses of SG \$3,000). For Foreign domestic workers, available insurance plans include the Medical Insurance Scheme (the same for foreign workers) and Overseas Assurance Corporations's Maid Supreme plan (MOM, 2010c :2).

Employment Injury benefits are provided under the Employment Act (1968, Part 4) and Work Injury Compensation Act (2008, Part 3). According to the law, migrant workers will legally receive the following from employers following an accident or injury at work: medical leave wages with full pay up to 14 days for outpatient medical leave; full pay up to 60 days for hospitalization leave (beyond these two periods, two-thirds of a worker's salary is payable up to a maximum period of one year following the date of the accident); medical expenses incurred within one year from the date of accident and up to a cap of SG \$25,000 (US \$20,716); and lump sum compensation for permanent incapacity or death (as in the employment injury compensation scheme for Singaporean workers, discussed above).

The foreign worker levy, which employers have to pay for low skilled or lower skilled migrant workers is higher than the levy paid for employing skilled migrant workers, because the Singaporean Government controls the number of foreign workers in Singapore through pricing mechanisms. To hire employees holding Work Permits or S-Passes, employers are liable to pay monthly levies. For foreign workers who are granted Permanent Resident status, employers will make contributions to their CPF accounts instead of paying a levy. This strategy of pricing mechanism aims to encourage employers of migrant workers to provide their workers with the opportunity to attend vocational courses and to upgrade their employees' skills. For example, the Safety Orientation Course (construction industry only) and Orientation Course for foreign domestic workers are provided to provide basic knowledge and skills to respond to working the environment for workers. These sessions are organised and conducted by the MOM Occupational Safety and Health Training Centre and the Building and Construction Authority's (BCA) Construction Industry Training Institute (CITI) (NTUC, 2006:3).

For working and living conditions, under the law, migrant workers are protected from labour exploitation in terms of working hours and rest days. An employer can require a maximum of 14 hours a day with the employees' consent in writing. Officially, a worker is not supposed to work for more than 44 hours, with overtime limits of 72 hours per month and one whole day's rest every week. A safe working condition is regulated.

Participation in a half-day health and safety course in the native language of the foreign worker is mandatory for the construction sector to prevent workplace accidents (Piper, 2005:6). Employers are also required to ensure overseas workers' are provided with adequate accommodations, bedding, and sanitation facilities. All facilities are supposed to be investigated before use. The government has said it is encouraging and speeding up employers' actions to provide better working and living conditions to migrants. In March 1994, the government announced a scheme to provide land for big companies to build dormitories for migrant workers (NTUC, 2006).

Regarding social protection for migrant workers, the Foreign Manpower Act plays the most important role. This Act, along with Employment Agencies Act, provides regulations for strong protections for foreign workers by means of strict obligations and penalties that apply to both employers and employment agencies (Kwang Yeo, 2011). The Foreign Manpower Act is also the main statute ensuring the accountability of employers and all stakeholders relevant to issues of foreign labour forces in Singapore. However, in terms of social protection provisions, there are significant differences in the coverage available for migrant workers and local workers or permanent resident workers.

The social security scheme in Singapore, the CPF, is applied to Singapore citizens and permanent residents only. This system, as stated above, consists of a social security savings plan that provides safety and confidence within the overall scope of coverage of retirement income, health care (even for long-term and catastrophic medical care) for the member and their dependants, as well as for family protection services, including education and investment. But migrants who hold a legal work permit in Singapore are not eligible to apply for permanent residency, and hence they are excluded from the CPF scheme (Tamagno, 2008:33).

Cooperation between Singapore and the countries of origin of migrants are important in improving social protection for labour migrants in Singapore. However, there are no bilateral or multilateral labour or social security agreements between Singapore and the sending countries of its foreign workforce (Piper, 2005:10).

### ***Implementation in Practice***

This section aims to answer the question of whether social protection for labour migrants in Singaporean law is different from what is happening in practice. Information from key informants such as government officers, civil society organisations, and migrant workers in Singapore have been important in understanding the full situation. For Singapore, only one interview was conducted with a leader of a non-governmental organisation working in the field. However, we received support from Transient Workers Count Too in terms of literature and materials. Hence, this section has been developed through a review of materials and limited interview data.

The Singaporean Government is specifically aware of and sensitive to the situation of foreign domestic workers, given increased publicity and attention to this issue. As a result, the government has paid much more attention to providing protection to domestic workers, particularly foreign domestic workers. Over the years, Singapore has initiated a series of important steps, including a tighter and more effective framework of laws, outreach measurement activities, and intense training and education (Kwang Yeo, 2011:2). Foreign domestic workers, however, continue to face exclusion from main laws to protect migrants' rights in Singapore.

MOM and other organisations have made some positive efforts to provide more protection for foreign workers and to increase and improve awareness of their safety and welfare protection. This has been done through the following activities: setting up help-lines; implementing training courses for both first-time employers (a compulsory orientation programme) and foreign domestic workers (Employers' Orientation Program and Safety Awareness Course); developing guidelines and pamphlets; raising the requirement of qualifications for foreign domestic workers, such as raising the minimum age to 23, with eight years of formal education, and with an English test after arrival; and by conducting random interviews with foreign domestic workers during their initial months of employment (Piper, 2005:7). Employers can be placed on a blacklist for abuse and malpractices, and those who frequently change their foreign

domestic workers without satisfactory reasons will not be allowed to employ new workers.

According to information from Singaporean police, the number of abuse cases against foreign domestic workers decreased by more than 50% over 12 years (from 157 cases in 1997 to 60 in 2009). Such a trend is significant, given the increasing numbers of foreign domestic workers in Singapore (Kwang Yeo, 2011:2).

Besides the benefits for foreign workers that are stipulated by law, the Singaporean Government is also reported to provide means for social protection through strict regulations against abuse and violations. More than 700 workers were helped to regain ~ SG \$750,000 (US \$621,480) in the first half of 2010 after claims to employers for salary arrears, notice pay, and encashment of annual leave (MOM Press Release, 2010). The MOM also conducted continuous inspections of companies to ensure proper working and living conditions for migrant workers. A blacklist of employment agencies has been developed, and employer offenders are publicized on the MOM website. The Foreign Manpower Management Division (FMMD) was formed under the MOM in 2003 and is responsible for migrant worker welfare.<sup>16</sup>

Singaporean laws on social security protection for migrant workers have created some means to protect migrant workers' welfare. But there is a large variation in protection for migrants and protection for local workers under Singaporean law. Social security coverage based on nationality and residency (only nationals and permanent residents can apply for most protection) is a barrier to social security protection, because the majority of migrant workers in Singapore do not have the right to remain or to apply for permanent residency (Tamagno, 2008:33).

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<sup>16</sup> The Migrant Workers Center is one acknowledged effort by the Singaporean Trade Union and the Singaporean Government as an agency that responds to labour disputes between two parties, namely employers and employees. The Migrant Workers Center was officially established in September 2009 through an initiative of the National Trade Union Congress, Singapore National Employers' Federation, and MOM. The Migrant Workers Center has been given three main duties: (1) Providing humanitarian assistance to migrant workers in distress; (2) Raising awareness of employers as well as educating migrant employees on employment obligations and rights; (3) Promoting the integration of the migrant workforce into Singaporean society through programmes and initiatives targeting the divides in culture, language, and attitude between migrant workers and Singaporeans (SNTUC, 2011:1).



The difference between various economic sectors means some important sectors are deprived of coverage under government laws and regulations. Singapore has a general Employment Act covering all low- and lower-skilled workers, regardless of nationality, but this does not cover domestic workers and seafarers. The explanation for this is the different nature of working environments compared to that of a traditional factory/industrial workplace (Sakdapolrak, 2002:10). There is also no minimum wage for foreign workers, as is also the case with local workers; the rationale for this that minimum wages have the effect of making the labour market rigid (Kwang Yeo, 2011:3). The wage levels of domestic workers are affected by direct demand and supply factors. Trade union membership is, in principle, open to foreign workers, but in practice the membership of migrant workers is tied to certain sectors with domestic workers being left out because of their 'non-traditional' employment situations (Piper, 2005:8).

Section 11 of the Employment of Foreign Manpower Act (1991) states that any employer hiring a foreign worker is required to pay a levy imposed by the Minister of Labour. Employers must keep a register of all foreign workers. Section 24 of the Act, however, allows a foreign worker to claim wages and benefits from an employer for the period during which the employer has hired him/her to work without a valid work pass, if the worker can prove the employer had hired him/her. Migrant workers prefer to keep silent instead of filing their cases with authorities, as waiting times during court process make migrant workers exhausted. In general, the procedure for pursuing the court lasts up to 6 months. Some cases have been extended to as long as two years. During this time, workers are only allowed to remain in government shelters, and they do not have permission to work. Migrant workers often do not have the evidence required by the court, nor do they have the resources to go through these procedures. Additionally, Singapore's laws do not adequately address human trafficking, and under existing regulations trafficked people may be treated as offenders for violations of immigration laws, rather than as victims (Solidarity for Migrant Workers, 2010).

Welfare and occupational health and safety are concerns pertaining to accommodation, long working hours, and workplace hazards that affect migrant workers. The latter includes work-related injuries and accidents as well as physical/sexual abuse. For

instance, around 40% of the 1,460 workers' quarters inspected by the government between 2009 and 2010 were deemed "unacceptable," while the number of foreign workers living in overcrowded, squalid, and unsafe conditions has reportedly increased by three times since the beginning of 2009 (Aris, 2011:25).

In terms of exorbitant commissions, "Migrant workers have to pay a lot of money to employment agencies in their origin country. Many of them become debtors to come here (Singapore). So, they are afraid of being deported or interrupted their work. That is the reason for their hesitation to report employers' legal violations."<sup>17</sup> The MOM has implemented many investigations on employment agencies. It is reported that MOM revoked the licenses of 15 employment agencies in 2010, compared to 11 revocations last year (MOM, 2010). Those agencies violated regulations of the Employment Act and Employment of Foreign Manpower Act with the conviction of illegal employment of foreigners, helping to make false declarations in work permit applications, and abetting the operations of unlicensed employment agencies/agents (MOM Press Release, 2010).

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<sup>17</sup> Information from the discussion with TWC2 Singapore



## CASE STUDY FOUR: THAILAND

### *Introduction to Social Protection in Thailand*

In 2010, Thailand had a population of 63.88 million people with a labour force of 38.64 million. The total employment figure was 38.04 million, with 14.55 million people involved in agriculture (Bank of Thailand, 2011). Thailand remains a developing country with both a formal and an informal sector labour, but the majority of workers are engaged in the informal labour in the country. According to surveys by the National Statistical Office of Thailand, from 2005 to 2009, informal labour accounted for 60% of all workers, or about 24 million persons (National Health Commission Office of Thailand, 2011).

Social protection was first introduced in Thailand as ‘social security’ in 1932, at the same time as the country changed from an absolute to a constitutional monarchy. However, due to political instability, the first labour and social welfare policy introducing this measure could not be implemented.

In 1972, *Revolutionary Decree No.103* was announced, paving the way for the establishment of the first Workmen’s Compensation Fund (WCF) in 1974. The current WCF exists by means of the updated *Workmen’s Compensation Act 1994*. The WCF provided basic guarantees and protection for workers in the formal private and public sectors to protect workers from risks related to their work. It required employers to pay a minimal contribution to the WCF depending on the assessed risk status of their industry, or the history of accidents in their workplace. The fund would then provide compensation payments to an employee when he/she incurred an industrial accident, developed an illness related to work, or in the case of death at work.

Type of Benefits	Benefits
Sickness	<p>Medical care:</p> <ul style="list-style-type: none"> <li>• Medical care reimbursement at a maximum of 35,000 Baht (US \$1,207) for each injury</li> <li>• For complicated illnesses described by the rules, an additional reimbursement of 50,000 Baht (US \$1,724) for medical care can be made, with some higher amounts also allowed.</li> </ul> <p>Cash Compensation:</p> <ul style="list-style-type: none"> <li>• Compensation (60% of monthly wages) for injured workers who must be absent from work for at least three days. The floor and cap for the compensation are 2,000 Baht (US \$69) and 9,000 Baht (US \$310) respectively</li> </ul>
Disability	<p>Partial loss of organ:</p> <ul style="list-style-type: none"> <li>• Compensation (60% of monthly wages) not in excess of 10 years depending on the severity of the loss.</li> <li>• Medical and vocational rehabilitation (maximum 20,000 Baht or US \$690).</li> <li>• An operation for rehabilitation (maximum 20,000 Baht or US \$690).</li> </ul> <p>Permanent disability:</p> <ul style="list-style-type: none"> <li>• Compensation (60% of monthly wages) for a maximum of 15 years.</li> </ul>
Death and survivors' benefits	<ul style="list-style-type: none"> <li>• A lump sum payment of 100 times the highest minimum daily wage in Thailand for funeral arrangements.</li> <li>• Compensation (60% of monthly wages) payable to relatives (spouse, children, or parents) for 8 years at a maximum of 9,000 Baht (US \$310) per month.</li> </ul>

**Source: SSO Website**

The *Social Security Act of 1990* provides social protection to employees in case of accident, sickness, disability, or death not related to work. According to the Social

Security Act, benefits are provided for insured persons according to section 33 of the Act, covering seven types of benefits in total: illness or injury, maternity, disability, death, child allowance, old age pension, and unemployment with the contribution of 5% of the monthly salary by the employer and worker and additional contribution of between 2-3% by the government. Thailand is the only ASEAN country to have programmes for the nine internationally established branches of social security: medical care, cash benefits for old age, invalidity, survivors, sickness, maternity, employment injury, unemployment, and family benefits (Social Security Office, 2011).

In Thailand, formal sector employees are classified into two categories: employees in the private formal sector (i.e. workers in private enterprises) and employees in the public sector (i.e. state enterprise workers and civil servants). Employees in the formal sector are identified as those who are employed with social protection coverage by law and regulations. They have higher and regular incomes with long-term employment. The *Social Security Act* and *Workmen's Compensation Act* do not cover civil servants, other government employees such as soldiers, police officers, teachers, and university staff, or workers in state enterprises. Instead, civil servants and workers in state enterprises are eligible for quite generous benefits in terms of pension and compensation by providing health care and services for themselves and their family members (e.g. parents, spouse and/or children) (ILO, 2009).

Informal sector employees refer to those who work without an employment contract or without a legal employer as defined by labour laws. In the past, informal labour did not receive due care and protection from policies and laws of Thailand in relation to their demands for wages and welfare. Most informal workers depended on health services available in Thailand through the Universal Coverage Scheme (UCS), the only public health protection scheme for Thailand, which provides health care coverage to all Thai citizens who are not covered by any other public health protection scheme. Unlike the social security and work accident compensation systems, the UCS does not cover occupational health hazards (Mills et. al, 2005).

**Table 1 Social Security Coverage by Type of Benefit (Before 2010)**

	Health Care	Invalidity	Death, old age and survivor	Child allowance	Child Education	Unemployment
Private employees in non-agricultural sectors	√	√	√	√		√
Private school teachers	√	√		√	√	
Government employees	√	√	√	√	√	Permanent employment
State-enterprise employees	√	√	√	√	√	Permanent employment
Private employees in the agricultural sector	√					
Self-employed	√					
Other work cohorts	√					
People not in labor force	√					

**Source: TDRI, cited in Chandoevrit, 2006**

On 16 November 2010, the Royal Gazette announced the introduction of a law that increases the protection of people who work from home, effective from 16 May 2011. In addition, the previous cabinet of Prime Minister Abhisit Vejjajiva approved in principle universal social security for all Thai people to protect and offer, as an extension of existing practice and policy, social security to informal sector workers who face risks and income insecurity in their old age. The target of this policy announcement was self-employed people, farmers, housewives, members of community-based enterprises, taxi motorcyclists, and street vendors. There are more than 24 million people aged 15 to 60 years in this group. These informal workers were encouraged to voluntarily enter into the social security system of Thailand so that they would be eligible for the rights of social security in accordance with Section 40 of the *Social Security Act*, as workers without an employer. This policy offered such workers the following two choices for social security protection:

1. An informal worker contributes 70 Baht (US \$2.30) per month and the government pays 30 Baht per month to the Social Security Fund in exchange for protection for the worker and their families in three ways: sickness benefit (for free treatment paid by the National Health Security Office, as per the usual arrangement), disability benefit, and survivor's benefit on death of an insured person. In the event of sickness or accident resulting in hospitalization, the insured person will receive 200 Baht per day, but not for more than 20 days a year; in the event of disability, the insured can use a gold card for monthly payment of compensation for 15 years, and in the event of death, he/she will receive 20,000 Baht for funeral fees (Ministry of Labour, 2011).
2. An informal worker contributes 100 Baht (US \$3.30) per month and the government pays 50 Baht per month to the Social Security Fund in exchange for protection for the worker and their families in four ways: sickness benefit (for free treatment paid by the National Health Security Office, as per the usual arrangement), disability benefit, survivors benefit on death of an insured person, as well as a retirement pension. The retirement pension is paid in the form of a lump sum from savings plus interest when the insured reaches 60 years of age (a minimum savings of 50 Baht per month, the amount can be increased, but not over 100 Baht/month).

According to the social security laws, an insured person under Article 33 refers to a person who has an employer and makes contributions that provide entitlements to benefits under the Social Security Act B.E. 2533, amended by later Social Security Acts. Insured persons under Article 39 refer to any person who has been an insured person under Article 33, and whose insurance has subsequently ceased under Article 38 (2), and he/she notifies his/her intention to continue to be an insured person. Insured persons under Article 40 refer to any person who wants to be an insured person. According to the Social Security Office, the latest statistics of insured people under Article 33 include 9,019,343 people, and under 770,823 people under Article 39. Informal labourers nationwide who registered as of 15 August 2011 totaled 456,606 persons under Article 40 (Ministry of Labour, 2011).



### ***Migrant Workers in Thailand***

Thailand is categorized as both a sending and receiving country. During the 1970s and 1980s, Thailand was an important exporter of migrant workers to the Middle East, East Asia, and Singapore. After the mid-1980s, Thailand became a major receiving country in this region due to neighbouring countries' political instability (Hall, 2011:1).

Since the early 1990s, the Thai government has somewhat attempted to bring order to the influx of undocumented migrant workers who enter Thailand to fill low-skilled gaps in the labour market. Currently, there are almost 2 million registered migrant workers in Thailand, mostly from the neighbouring countries of Cambodia, Laos PDR, and Myanmar. Migrants are a crucial part of the Thai economy's success in recent decades, but their ability to access public health, safety, and security are quite limited (Hall, 2011).

**Table 2: Types of Insured Persons, Contributions and Benefits under the Thai Social Security System**

Condition	Article 33	Article 39	Article 40
Qualification of Insurer	1) Employee as stated by law	1) Insurer according to Article 33 not less than 12 months and left the job not more than 6 months	1) Age 15-60
	2) Age 15-60	2) Insurer within 6 months after leaving the job 3) Not beneficiary of SS in case of disability	2) Not insurer according to Article 33 (formal worker)
Salary base to calculate contribution	Lowest 1,650 Baht (US \$55) per month; Highest not over 15,000 Baht (US \$500) per month	One rate 4,800 Baht per month (US \$160)	No mention
Contribution	Payment for benefits for all 7 SS branches: (1) Accident or sickness	Insurer makes double contribution or 9% of salary base 4,800 Baht	(Option1) Contribution of 100 Baht per month: compensation for sickness, disability and

Condition	Article 33	Article 39	Article 40
	(2) disability (3) death (4) maternity (5) child allowance (6) old-age (7) unemployment	(432 Baht each month)	death expense
	Employer and employee each contribute 5% of the lowest wage 1,650 Baht and highest 15,000 Baht (lowest contribution is 83 Baht and highest contribution is 750 Baht)		Government subsidizes 30 Baht
	Government contributes 2.5%	Government pays one part	Insurer contributes 70 Baht
			(Option2) Contribute 150 Baht a month: benefit as option 1 but have lump sum payment for old age
			Government subsidizes 50 Baht
			Insurer contributes 100 Baht
Benefits for compensation and requirement to have right to compensation			
	(1) Accident or sickness: contribute not less than 3 months within 15 months before accident or sickness	The following month after acceptance from SS office	(1) Sickness/accident (medical treatment by Gold Card): Contribution not less than 3 months, receive severance pay of 200 Baht a day for 20 days/year, inpatient over 2 days
	(2) Disability: same conditions as sickness		(2) Disability in 4 cases: 1) contribute 6 months in 10 months, receive 500 Baht/month for 15 years; 2) contribute 12 months in 20 months, receive 650 Baht/month for 15 years;

Condition	Article 33	Article 39	Article 40
			3) contribute 24 months in 40 months, receive 800 Baht/month for 15 years; 4) contribute 36 months in 60 months, receive 1000 Baht/month for 15 years
	(3) Death: contribute not less than 1 month within 6 months before death		(3) Death: contribute not less than 6 months, receive 20,000 Baht
	(4) Maternity: contribute not less than 12 months within 36 months		(4) Old-age: Lump sum payment from saving plus interest when reaching 60 years old (minimum saving 50 Baht per month, the amount can be increased, but not over 100 Baht/month
	(5) Child allowance: contribute not less than 12 months within 36 months		
	(6) Old-age: Lump sum payment, contribute less than 180 months		
	Pension: contribute in full for 180 months		
	(7) Unemployment: contribute not less than 6 months within 15 months		

**Source: Thanachaiserthavudh, 2011**

To respond to migration issues, the Thai government has attempted to work out cooperation agreements with many neighbouring countries. The government has also routinely conducted regularisation of undocumented migrant workers from Cambodia, Laos PDR, and Myanmar due to large numbers of migrants entering Thailand in an undocumented or illegal status. The Thai government has continued to announce exemptions and establish procedures for registration of undocumented migrant workers every one or two years since 1996. Undocumented migrants from its three neighbouring countries have been allowed to register and work (Archavanitkul, 2011; Hall, 2011).

In 2004, the Royal Thai Government conducted an important nationwide migrant registration campaign, allowing undocumented migrant workers from Cambodia, Laos PDR, and Myanmar and their families to register with the Thai authorities their intention to reside temporarily and be employed in Thailand. Around 1.3 million migrant workers and their families registered. The most recent round of registrations for migrant workers and their dependents from Cambodia, Laos PDR, and Myanmar took place between 15 June and 14 July 2011. A total of 996,278 additional migrant workers registered during this time – 648,921 from Myanmar/Burma, 242,429 from Cambodia, and 104,928 from Lao PDR. The registration increased the total number of documented migrants in Thailand to almost two million (IOM, 2011).

In 2003, Thailand signed MOUs with Cambodia, Laos PDR, and Myanmar on guidelines and procedures for employment protection and return of workers to their respective countries upon completion or termination of contracts in Thailand. These MOUs are somewhat implemented, and officials of the three countries have sent officials to Thailand to work on nationality identification and issuance of travel documents for their document nationals currently working in Thailand half-legally (illegal entry, legal employment). Once workers complete the nationality verification process, they become fully legal, despite their original undocumented entry into the country. The total number of migrant who passed nationality verification processes as of March 2011 was 502,484 (Office of Foreign Workers Administration). Procedures for newly registered migrant workers in 2011 to acquire temporary passports/certificate of identity and legal work and stay status through nationality verification have not yet been clarified (IOM, 2011).

The MOUs also set up methods for migrant workers to enter legally into Thailand through import processes. However, the number of workers entering this way is quite insignificant.

Thailand's Ministry of Labour (MOL) now categorises migrant workers into four types:

1. Migrant workers who are granted non-immigrant visas to work temporarily in Thailand

2. Migrant workers who are recognized under the Board of Investment (BOI) scheme to promote foreign investment in Thailand
3. Migrant workers who are given a grace period according to the Article 12 of the Immigration Law who entered Thailand irregularly and are waiting to be deported. During the waiting time, they are allowed to work temporarily. At present, the MOL has announced that migrant workers who are under Article 12 can work in Thailand as long as they are from Cambodia, Lao PDR, and Myanmar.
4. Foreigners who are allowed to be permanent migrant workers – this is a special category of migrant workers who entered Thailand before 13 December 1972. They can work permanently in Thailand according to Revolutionary Announcement No. 322.

The first two types of migrants can work in various occupations, but the third type specifically refers to labourers or unskilled workers. The fourth type can work in their existing employment categories but without the possibility to change jobs. This report will focus on types 3 and 4 only.

In order to work in Thailand legally, migrants are supposed to hold a valid migrant work permit. Accessing these permits requires migrants to go through a lengthy and costly process. However, this work permit will not allow migrants to travel to other provinces. Since 2005 (and 2009 in case of workers from Myanmar), the migrant worker must then complete the Nationality Verification process, based upon the 2004 MOU signed by the Thai government and the governments of Cambodia, Laos PDR, and Myanmar. Once migrant workers are issued with a temporary passport, they are allowed legal residence and freedom of movement in Thailand and are regarded as legal workers in Thailand. Migrant workers who have received a temporary passport must then apply for a visa and a new work permit in Thailand. They will be allowed to remain and work in Thailand for two years, renewable for an additional two years. After having obtained a visa, the migrants need to notify their place of residence to the immigration office every 90 days (MAP Foundation, 2010).

According to Chalamwong (2006), these MOUs between Thailand and neighbouring

countries are designed to:

1. Institute proper procedures for employment of workers
2. Ensure the repatriation of workers, who have completed their employment or are deported by the authorities
3. Protect the rights and welfare of workers
4. Prevent and take action against illegal border crossings, trafficking of illegal workers and illegal employment of workers

A migrant's legal status is dependent on the employer because of the registration policy. A migrant can request to change employment only under certain conditions, such as the death of the employer, closure of business, and exploitation. In addition, migrants only have seven days to find a new employer and transfer the document from the old employer to the new one.

### ***Migrant Workers and Social Protection in Thailand***

Migrant workers in Thailand work in very dangerous conditions. In order to receive compensation from the *Workmen's Compensation Act* (1994), an injured worker must satisfy the following conditions: (1) possess a work permit (2) possess a passport or alien identity document (3) their employer must have paid contribution to the WCF (4) the worker has to pay income tax. If these above requirements are not met, responsibility is assigned to an employer to compensate an injured migrant worker. Numerous cases and campaigns have shown how migrants fail to gain access to these benefits and the inability of all migrants to access to the WCF has been challenged in many courts in Thailand, so far unsuccessfully. The denial of migrant access to the WCF has also been challenged at the ILO as a breach of ILO Convention C19 (Bangkok Post, 2011).

In the mean time, MOL is introducing an alternative system for registered migrant workers, who, despite having permission to temporarily stay and work in Thailand, are not eligible to receive benefits under the WCF, as they have not yet completed the Nationality Verification process. Migrant workers are generally able to access the

universal health care scheme of the Ministry of Public Health (MOPH) for the treatment of general ailments, but are not covered in cases of work-related injuries under this fund. This new private work accident insurance fund will provide coverage for migrant workers in cases of work related accidents or sickness, in addition to their rights to compensation under the old flawed system.

On 14 June 2011, the Thai Cabinet approved a resolution to establish a work accident insurance scheme for migrant workers from Cambodia, Laos, and Myanmar, which will be managed by a private insurance company. The private insurance company will be responsible for compensation payments to migrant workers suffering work-related injuries and illness. The compensation amounts have been announced to be equal to compensation entitlements of Thai workers and migrant workers under the *Workmen's Compensation Act* (1994). This insurance can be purchased by employers or migrants workers from the private insurance company for the migrant workers who have registered and possess civil registration certificates as well as work permits (SERC, 2011). Information on the scheme continues to be opaque however, as does the legal basis for its implementation and enforcement.

Migrants who pass the nationality verification process or are legally imported under the MOUs can access the WCF (Ministry of Labour, Ref. Ror Ngor 0204.1/3710). There remain, however, a considerable number of hurdles in accessing this compensation, as many migrants do not understand their rights to compensation and there appears to be no formal procedures or instructions as to how the family of a deceased worker should access survivors' benefits. Embassies remain uncooperative and migrants' capacities to navigate such systems are limited.

Only registered migrants can pay into the National Health Care system and access the national migrant health system treatment at a cost of 1,300 Baht (US \$45) per year, and with a 600 Baht medical examination fee annually (US \$21). Migrants are subject to certain restrictions in health care, including access to anti-retroviral treatment for HIV positive migrants under the National Health Care system (Pollock et. al, 2007).

However, under the Thai Government's policy of health care for all, even undocumented

migrants and their dependents can generally access emergency and general medical treatment utilizing hospital charitable funds and also through NGO or charity provisions. Once migrants pass the nationality verification process, they are no longer entitled to access to the national health care system and must subscribe to the Social Security Office (SSO) system.

Migrant workers are not automatically denied access to Thailand's social security protection schemes but, in order to gain access to the schemes, they must be in possession of a passport (having completed nationality verification or having migrated legally), and a work permit to allow them and their employer to contribute to the scheme, alongside the government. Migrant workers and their employers can each make a monthly contribution to the scheme, equivalent to 5% of each worker's income, in accordance with section 33 of the Social Security Act, the same as the rate that applies to Thai persons. However, the SSO scheme is only for formal sector workers, so agriculture, fisheries, and other informal sector workers are not covered—many migrants work in these sectors. The informal sector social protection options highlighted above do not seem to be open to migrant workers, but only to Thai informal workers.

Although Thailand's Ministry of Labour would not agree to meet with the research team to discuss issues of migrant social security during the preparation of this report, evidence from discussions with NGO activists and policy makers suggest that migrant workers seem to have difficulty taking advantage of the scheme as fully as Thai nationals are able to, as they often do not stay in the country long enough to enjoy the full benefits. For instance, on becoming unemployed, migrant workers are only entitled to stay in Thailand for seven days to find a new employer, and the Department of the Employer has said its work-seeking functions are only for Thais. A pension requires a minimum of 180 months' contribution, but once migrants pass nationality verification or come into Thailand legally under MOUs, they are only allowed to stay in Thailand for up to 48 months. It is unclear what will happen to their contributions at that time, particularly for Myanmar migrants whose official Kyat currency (official rate US \$1 =



Kyat 7, unofficial US \$1 = Kyat 700) would make any contributions paid back to them once in Myanmar almost worthless.

It is unclear whether pregnant migrant women are to take advantage of maternity provisions and child allowance benefits, as Thailand's policy regarding migrant workers having children is unclear. In addition, as a migrant worker's stay in the country is dependent on their working, it is unclear how they would be entitled to long-term disability for sickness benefits if this means they cannot work.

As part of this report preparation, the research team conducted in-depth interviews with migrant workers in Mahachai. Mahachai City is known as a migrant worker's city, with a population of migrants in excess of 200,000. Those interviewed were working in a variety of factories. All workers were legally registered and most had completed nationality verification. Even though the workers had registered legally and passed nationality verification, almost half of the workers did not yet have a social security card and have been told for some time now that their employer was in the process of getting their card. Most of the workers seemed very unclear about their social security rights and many did not understand the contribution rates and what deductions were being made from their salaries.

Migrants with whom the team discussed social security issues said that after having the social security card they felt more confidence to go to public hospital instead of the private clinic, and they would not have to pay anything to the hospital. They felt like they now had equal access to public health like Thai citizens. However, when asked about other benefits of the social security programme, the workers said they only knew that if they die someone is entitled to money.

According to the 21 August 2011 report in the Bangkok Post, less than 5% (20,000 people) of the 500,000 migrant workers who have already gone through the nationality identification process and obtained work permits now have access to the social security system in Thailand. However, neither the reporter nor the MOL would formally share statistics to support this assertion at the time of writing this report. The report was

related to the case in the media of the Myanmar worker Thu Win Ko who was discharged by a private hospital after they realised he was not a Social Security Fund member. He then died due to lack of treatment. Thu Win Ko had undergone the nationality verification procedure to prove his country of origin in January 2011, but his employer had not registered him for the Social Security Office Fund, leaving him both without access to social security protection and without access to the migrant health scheme for previously registered workers. Once workers pass nationality verification, they are no longer entitled to the migrant health scheme. This gap requires the urgent attention of relevant authorities.



## CONCLUSIONS AND RECOMMENDATIONS

There is an established set of international and regional (ASEAN) standards proclaiming the aspirations and rights for much greater access to social protection by all workers across ASEAN than is currently the case. Despite there remaining formidable challenges for informal national workers in gaining access to social protection systems that are in place in all ASEAN states, on paper if not in practice, integrated strategies and policies are seeing ever increasing numbers of persons accessing social security and social protection within these countries, even though recent estimates suggest still only 60% of workers in ASEAN are indeed covered by social protection. There are also clear standards on migrant worker rights and protections, particularly as enunciated in the ASEAN DPPMW, with ever increasing interest in the promotion of migrant worker rights in an era of migration. Finally, there are clear aspirational standards set out to increase migrant access to social security within ASEAN.

Despite these standards, access to social protection by migrant workers coming from and moving within ASEAN remains extremely limited. With the exception of the Philippines, which has reasonably robustly attempted to increase social protection of Filipino migrant workers overseas, despite its challenges faced in implementation in reality, Indonesia, Singapore, and Thailand lack clear practices to guarantee wider social protection for migrant workers in and leaving from their countries. Whilst generally and to varying standards protecting migrant workers in case of illness and providing universal emergency medical access, none of these three countries has moved forward to genuinely tackle the issue of wider social protection for migrant workers who travel across borders to work and live. Indonesia has MOUs in place that could provide a fertile area in which to explore this issue, but there seems to have been no genuine attempts to utilize this space. Much abuse of power remains, according to activists.

Singapore has generally failed to even address the issue of long-term migrant social protection.

Thailand is an interesting case, as it claims to have a non-discriminatory standard in allowing all fully 'legal' migrant workers who have passed nationality verification, or who have been formally imported, to gain access to the social security system; this comes after almost two decades of failing to address migrant social protection issues robustly beyond medical care and despite continuing in its failure to protect more irregular migrants even with basic rights access. However, the governments of the past have failed to achieve theoretical aspirations in practice, as the vast majority of migrants eligible for such social protection systems are not privy to information that would ensure access. In addition, the government has simply applied the existing social security systems for Thai workers directly to migrants, both in terms of contribution rates and protection (utilizing what they describe as a 'non-discriminatory' standard), whilst in no way seeking to make the system appropriate for 'migrant' workers or explaining how the rights for which migrants have started to pay for will be realised. This is in addition to problems with employers' lack of cooperation in signing workers up for the scheme, and a lack of enforcement in this regard. As the case study of the Philippines shows, the realization of social protection rights in practice can take up to a decade to work through with neighbouring countries to allow for the transfer of rights across borders once a migrant leaves for their home country. Much more is needed from Thailand if its words are to match its practice.

What is clear from this brief research project is that the issue of social protection for migrant workers in and from ASEAN requires commitment, both by individual states and the ASEAN region as a whole. Ensuring social protection for migrants is a complex process requiring both clear standards in place in a country, effective implementation of those standards, access to information, and enforcement. In addition, the mobile nature of migrant workers and the fact that a majority of these workers will not in the near future be granted permanent status in any of the countries in which they are resident and working means much more work is needed between nations and at an ASEAN level to ensure social protection rights are granted at the national level, and rights to which

migrants have paid, are then portable to move with them when they return to their home country or move on to another country. Given that there has so far been a dearth of bilateral or multilateral discussion on such issues, formidable challenges lie ahead for ASEAN countries in realizing the aspirations that the regional and international standards set out are the rights of every migrant worker.

Finally, and perhaps of primary importance, it is particularly difficult to even broach issues of migrant social protection, given that a significant proportion of migrants within ASEAN remain undocumented, and even ensuring basic human and labour rights to this population, in accordance with international standards, is challenging. Addressing the irregular nature of migration within ASEAN is of fundamental importance prior to and at the same time as developing migrant social protection mechanisms. But whether regular or irregular, guaranteeing the basic rights of workers remains paramount.

With the aim of assisting the realisation of the right to social protection of migrant workers the following recommendations are offered:

1. ASEAN member states and the countries to which ASEAN migrants travel to live and work must **devise models of regional multilateral frameworks/agreements and standards/principles relating to migrant social protection** based on research, inclusive policy development, good practice, and the international human rights, labour rights, and migrant rights standards of the UN and ILO. **Migrant social protection should be made an integral part of ASEAN's moves forward in drafting the regional migrant framework aspired to in the DPPMW on the basis that all migrant workers must have equality of treatment in access to and realization of social protection on par with national workers, whatever their residency or immigration status.** As three countries that seem most promising to this end, and given the expected commitment given their relative development status within ASEAN and the large number of migrants travelling to and from their territories, Indonesia, the

Philippines, and Thailand should take the lead on moving ASEAN forward in this regard.

2. Migrant worker networks, academics, trade unions, the ILO, IOM, civil society groups, and employer associations **should prioritise further research into and devise practical policy platforms for supporting ASEAN member states in the development of regional social protection systems for migrants. Good practices and experience sharing is crucial to this end**, and learning from the experiences of the EU and other regional groupings that have successfully adopted regional social security platforms for migrants will likely bring benefits and model standards from which to move forward. Assistance from international and regional social security groups and networks should be utilized to this end.
3. Given that such regional framework will take time to devise and implement, **all ASEAN member states and countries to which ASEAN migrants are travelling to reside and work should seek to utilize first existing MOU agreements, and where there are no agreements in place, seek to initiate such agreements and bilateral frameworks (as part of general labour agreements or separately as social security agreements), as a means to lay down clear policies, practices, and systems to ensure increased and realistic, portable migrant rights to social protection.** Such development of policies, practices, and systems should be based on research, inclusive policy development, good practice and international human rights, labour rights and migrant rights standards of the UN and ILO. Again, as three countries that seem most promising to this end in enabling migrant access to social protection, seeking in some ways to increase migrant access to social protection, and given the large migration flows involved, Indonesia, the Philippines, and Thailand should take the lead on the issue and seek to develop models of best practices for social protection of migrant workers to be shared with other ASEAN countries. Civil society should focus its efforts on these three countries also.
4. **Campaign strategies and research into expanding and creating migrant social protection systems regionally, bilaterally and domestically should be integrated within the wider platform of working towards increased**

**access to social protection and welfare in all of the countries of ASEAN for informal national workers and the creation of an ASEAN standard on social protection and welfare.** Expanded access to social protection for migrant workers needs to be realised alongside expanded access to social protection for all informal sector workers, migrant or otherwise, on the basis of developing equality of treatment. Migrant networks should seek to reach out to domestic and regional informal workers and social security networks. Migrant workers work in informal sectors also, and unless informal sector access to social protection is realised, migrants will also face formidable challenges in realizing such rights.

5. Key government officials/allies (not limited to social security officials/administrators, although they are key targets), politicians/parliamentarians, regional migrant networks, trade unions, academics, employer associations, and advocacy groups should seek **assistance from the ILO, IOM, and OHCHR to gain access through interactive workshops and experience-sharing of good models of migrant social protection globally to increase their interest in and understanding of migrant social protection frameworks. A focus of this capacity building should be on processes for negotiating social security agreements.**





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Migrant Forum in Asia is a regional network of grassroots non-government organizations, associations, trade unions, and individual advocates in Asia that are committed to protecting and promoting the rights and welfare of migrant workers and their families. MFA acts as a facilitator, a regional communication, and coordination point between member organizations and advocates, forging concerted action to address discriminatory laws and policies, violence against women migrants, unjust living conditions, unemployment in the homeland and other issues affecting migrant workers.

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