

# ▶ Social protection and Myanmar migrants Brief 1

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## ▶ 1. International law, social protection and Myanmar migrant workers

### Key points

- ▶ Social protection is a labour right and a human right
- ▶ Social protection increases the benefits of migration for all
- ▶ The Social protection floor provides for access to social protection for migrant workers
- ▶ The ILO Multilateral Framework on Labour Migration provides guidance on extension of social protection to migrant workers
- ▶ Over 4 million Myanmar people live abroad. Myanmar migrants' access to social protection abroad mostly depends on the policies of countries of destination, with limited uptake of the voluntary Social Security scheme in Myanmar and no other coverage by Myanmar

### Social protection, labour migration and rights

The ILO has produced this series of briefing papers to explore the current situation of migrant workers from Myanmar and their access to social protection. Through highlighting some of the successes, challenges and opportunities the series aims to generate further discussion and policy development involving all related stakeholders.

At least 4.25 million Myanmar migrants<sup>1</sup> live abroad; 70 per cent in Thailand, 15 per cent in Malaysia, 5 per cent in China, 4 per cent in Singapore and smaller numbers in other countries. Access to social protection is a human right enshrined in: the Universal Declaration of Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights (1966) and the Declaration of Philadelphia (1944). However many migrants face challenges in accessing services or benefits, which leaves migrants and their families more vulnerable to the impacts of unexpected emergencies. At present, Myanmar migrants have limited access to social protection in Myanmar as well as countries of destination. Laws in some countries of destination cover migrants in social security systems access is typically on a sliding scale depending on migration and work status, while a lack of portability arrangements or continuity of coverage by Myanmar means accessing acquired benefits on return to Myanmar is extremely difficult.

### Social protection for safe migration and sustainable development

Migration can bring many benefits to women and men migrants and their families, as well as to the development of Myanmar. Migrants learn new skills, which can improve productivity at home, while official remittances to Myanmar, at US\$ 3.5 billion, make up 5 per cent of GDP.<sup>2</sup> Remittances are generally

<sup>1</sup> 2014 Myanmar Population Census

<sup>2</sup> World Bank. 2016. Migration and Remittances Factbook 2016: Third Edition. Available at: <https://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/4549025-1450455807487/Factbookpart1.pdf> (checked April 23rd 2020)

spent by families on necessities such as food, clothing and medicine. <sup>3</sup> Should poverty levels of migrant households in Myanmar decrease, uses of remittances may shift from consumption to investment, for example in children's education. <sup>4</sup> However the impacts of the Covid 19 pandemic may mean that poverty reduction trends are likely to reverse. Between March and September 2020 over 150,000 international migrants returned to an uncertain future in Myanmar. An ILO survey of returnees found that 58 per cent planned to re-migrate, however while Covid related travel restrictions and economic slowdowns persist, migrants and their families must find replacement income, or use savings. With reduced income, families will be driven to reduce consumption, further increasing poverty. Child poverty is projected to increase by 10 per cent as a result of Covid 19. <sup>5</sup>

Without full access to social protection, migrants and their families are at greater risk of exploitation in the workplace, and of falling into poverty in times of hardship. Social protection can reduce income inequality, promote gender equality, and will be an increasingly important tool in a just transition to green economies.

## ILO strategy for achieving social protection for all

### Building social protection floors

Social protection for all is one of the four strategic objectives of the ILO's Decent Work Agenda. The Myanmar Decent Work Country Programme (2018-2021) also prioritizes the extension of social protection coverage for all, especially vulnerable workers and populations (see Brief 2 in this series). The ILO's Decent Work Agenda outlines a two-dimensional strategy to achieve the objective of social protection for all:

- Establishing and maintaining social protection floors ensuring at least minimum levels of income security and access to essential health care (horizontal dimension); and
- Progressively ensuring higher levels of protection to as many people as possible (vertical dimension).

Social protection is addressed in a number of international labour standards, with two conventions directly relating to migrant workers (Box 1). Myanmar has yet to ratify the Conventions.

#### Box 1: ILO standards addressing social protection for migrant workers

##### ILO migrant-specific instruments

- The Migration for Employment Convention (Revised), 1949 (No. 97) establishes the principle of equality of treatment in respect of social security (Article 6).
- The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) addresses migrant workers in irregular situations. It holds that where a migrant cannot regularize their situation, they and their family still enjoy equality of treatment in terms of remuneration, social security, and other benefits for rights arising out of past employment (Article 9).

The goal of universalizing social protection was elaborated further in the ILO Social Protection Floors Recommendation, 2012 (No. 202). It recommends that States provide at least the following nationally defined basic security guarantees to children and residents: essential health care, including maternity care, basic income security for children, basic income security for persons unable to earn sufficient income due to sickness, unemployment, maternity and disability, and basic income security for older persons.

<sup>3</sup> UNCTAD.2013. Maximizing the Development Impact of Remittances. Available at: [https://unctad.org/en/Docs/ditctncd2011d8\\_en.pdf](https://unctad.org/en/Docs/ditctncd2011d8_en.pdf) (checked April 23rd 2020)

<sup>4</sup> International Growth Centre (IGC). 2017. Myanmar Remittances. Available at: <https://www.theigc.org/wp-content/uploads/2018/06/Akee-and-Kapur-2017-Final-report.pdf> (checked April 23rd 2020)

<sup>5</sup> Overcoming child poverty in Myanmar, UNICEF, 2020. <https://www.unicef.org/myanmar/media/5806/file/Overcoming%20Child%20Poverty%20in%20Myanmar.pdf>

Guarantees should be provided to all residents and children, in line with national laws and international obligations, meaning migrants and their families should have access to basic social security guarantees in their country of residence and their home country.

## The ILO Multilateral Framework on Labour Migration

In 2006, ILO issued the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration. The aim is to provide practical guidance to maximize the benefits of labour migration for all parties. It aims to assist governments, social partners and stakeholders in their efforts to regulate labour migration and protect migrant workers.

<b>Multilateral Framework on Labour Migration principles on social protection for migrant workers</b>	
<b>Principle 9: All international labour standards apply to migrant workers (9.a). . . The protection of migrant workers requires a sound legal foundation based on international law (9.b). . .</b>	
<b>Guideline 9.5</b>	Governments should: adopt measures to ensure migrant workers who leave the country of employment are entitled to outstanding remuneration and benefits
<b>Guideline 9.9</b>	Governments should: enter 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 irregular situations.
<b>Guideline 9.3</b>	Governments should: adopt national policy to ensure equality of treatment of regular migrant workers and nationals under national labour law and access to social protection
<b>Guideline 9.8</b>	Governments should: adopt measures to ensure that national labour legislation and social laws and regulations cover all male and female migrant workers, including domestic workers
<b>Guideline 9.10</b>	Governments should: adopt measures to ensure that migrant workers and accompanying family members are provided with access to health care and, at a minimum, with access to emergency medical care (9.10).
<b>Principle 12: an orderly and equitable process of labour migration should be promoted in both origin and destination countries to guide men and women migrant workers through all stages of migration. . . by:</b>	
<b>Guideline 12.1</b>	facilitating safe migration by providing information in a language migrants understand
<b>Guideline 12.2</b>	facilitating return and reintegration to the country of origin
<b>Guideline 12.6</b>	promoting recognition and accreditation of migrant workers' skills and qualifications
<b>Guideline 12.8</b>	setting up effective consular services in countries of destination, with, where possible, both women and men staff to provide information and assistance to women and men migrant workers
<b>Guideline 12.10</b>	considering establishment of a welfare fund to assist migrant workers and their families, for example in the case of illness, injury, repatriation, abuse or death

The Multilateral Framework on Labour Migration outlines a number of principles, including in relation to social protection; and provides guidelines on how to realize those principles. Section V on the protection

of migrant workers holds that “the human rights of all migrant workers, regardless of their status, should be promoted and protected” (Principle 8). Furthermore, in formulating national law and policies concerning the protection of migrant workers, governments should be guided by the underlying principles of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151 particularly those concerning equality of treatment between nationals and migrant workers in a regular situation and minimum standards of protection for all migrant workers (Principle 9b).

## Social protection is a human right

Core international human rights treaties uphold the right of everyone, without distinction, to social security. Migrant workers and their families are covered under the Universal Declaration of Human Rights, which states: “Everyone, as a member of society, has a right to social security.” (Article 22). Its universality means rights are held by migrants at all stages of the migration cycle, in both the country of origin and destination. Myanmar, along with all UN member states, has pledged to realize the human rights and fundamental freedoms enshrined in this foundational document. The International Covenant on Economic, Social and Cultural Rights, which Myanmar has not ratified, recognizes “the right of everyone



Figure 1 Market stall holders learn about their rights

to social security, including social insurance.” (Article 9). The International Convention on the Elimination of All Forms of Racial Discrimination, not yet ratified by Myanmar, again underscores the right of everyone, without distinction as to race, colour, or national or ethnic origin, to social protection including public health, medical care, social security and social services. While the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Myanmar in 1997, requires State parties to eliminate discrimination against women in order to ensure the same rights to social security as men. General Recommendation 26 states that regardless of the immigration status of undocumented women migrant workers, State parties have an obligation to protect their basic human rights. In terms of social protection, receiving states are obliged to ensure undocumented women migrant workers have access to legal remedies and justice in cases of risk to life and of cruel and degrading treatment; if they are coerced into forced labour; or in times of health emergencies or pregnancy or maternity (Article 26 (I)).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their

Families (CMW) has not yet been ratified by Myanmar. It specifically addresses the rights of migrant workers to social security. It holds that irrespective of immigration status, migrant workers and members of their families “shall at least 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” (Article 28 of CMW). The CMW also provides for equal treatment of migrant workers and their families in access to social security; in line with national and international requirements, for example regarding contributory periods (Article 27). Where migrants are not entitled to access a benefit, Article 27 requires States to examine the possibility of reimbursement. This may be the case if a migrant has not made social security contributions for enough years to qualify for an old age pension. In this case, full or partial contributions could be returned as a lump sum to the migrant. Where bilateral agreements are in place, pension contributions can be totalized, to take into

account years of work in sending and destination countries. In addition, the CMW provides that migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of unemployment benefits (Article 54) when they fulfil the requirements provided for by the applicable legislation of that State (Article 27).

## Social protection and international development goals

The Sustainable Development Goals, which commit to leave no one behind, aim to achieve appropriate social protection for all; a key strategic objective of the ILO's Decent Work Agenda (see Brief 2). Myanmar committed to achieve the SDGs along with all members of the UN in 2015; and committed to progressive extension of social protection coverage in its Decent Work Country Programme (2018-2021). These goals involve countries of origin and destination, and in combination with commitments to international human rights and labour law provide clear principles and foundations to extend social protection to migrant workers at all stages of the migration cycle.

### Box 2: Sustainable development goals, social protection and the migration cycle

SDG 1.3 Implement nationally appropriate social protection systems and measures for all, and by 2030 achieve substantial coverage of the poor and the vulnerable.

SDG 10.7 Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.

## The Global Compact for Migration

The UN General Assembly adopted the Global Compact for Safe, Orderly and Regular Migration (GCM) in 2018. Myanmar voted along with 152 UN member states in favour of the GCM. The non-binding document is a framework for comprehensive international cooperation on human mobility recognizing that no country can address the challenges and opportunities of migration alone. It contains 22 objectives aiming to address all aspects of international migration. Objective 22 is to establish mechanisms for the portability of social security entitlements and earned benefits. Portability refers to mechanisms which allow migrants, who have contributed to a social security scheme for some time in one country to maintain acquired benefits when moving to another country. To realize this objective, member states committed to establish or maintain non-discriminatory national social protection systems, including social protection floors for nationals and migrants, in line with the ILO Social Protection Floors Recommendation, 2012 (No. 202). They also aim to conclude reciprocal bilateral, regional or multilateral social security agreements on the portability of earned benefits; and to integrate portability provisions into national social security frameworks.

## Key resources

[ILO. 2006. The Multilateral Framework on Labour Migration.](#)

[ILO. Social protection floor portal.](#)

## Social Protection and Myanmar migrants: ILO Brief Series

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1. International law, social protection and Myanmar migrant workers
2. Social security system in Myanmar and migrant workers
3. Social security for Myanmar migrants in top destination countries



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