

# Social protection: Women migrant workers in ASEAN

This Policy Brief provides an overview of the social protection mechanisms available to women migrant workers in ASEAN, identifying good practices and making recommendations for improvements. The Policy Brief highlights the importance of the portability of social protection and the challenges for women migrant workers in claiming social protection from employers and states. The right to social protection is enshrined in the Universal Declaration of Human Rights (1948), Article 22, and recalled in the ASEAN Cebu Declaration on Migrant Workers, 2007.<sup>1</sup> Since the formation of the International Labour Organization (ILO) in 1919, there have been 31 Conventions and 24 Recommendations adopted to make social protection a reality for all. The most recent instrument is the Social Protection Floor Recommendation, 2012 (No. 202), which Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Thailand, and Viet Nam have already taken measures to implement. However, the reality of accessing social protection remains especially challenging for women migrant workers who have different needs to men and often work in undocumented and informal employment that is rarely covered by government social protection schemes.

## Basic definitions:<sup>2</sup>

*Social protection* has a wider meaning than *social security*, largely as it encompasses protection provided between members of a family or a local community. It is used interchangeably and to mean protection provided by social security.

*Social security* covers the provision of benefits, in cash or in kind, to secure protection from:

- lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member;
- lack of access or unaffordable access to health care;
- insufficient family support, particularly for children and adult dependents; and
- general poverty and social exclusion.

*Social transfers* make up social security benefits which are provided in cash or in kind (i.e. through

service provision). Transfers are provided through *contributory schemes* (those that are paid into, most often structured as social insurance arrangements), *universal schemes* (by way of official residence), *social assistance schemes* (a specific resources need), or *categorical schemes* (because the beneficiary has fulfilled an age criteria).

*The social protection floor* represents the minimum level of social protection for individuals and families, i.e. the basic rights, services and facilities that every global citizen should enjoy.

## What is gender responsive social protection?

Social protection is a core element of the ILO's Decent Work Agenda. The third objective of the Decent Work Agenda is to extend social protection by promoting, "both inclusion and productivity by ensuring that women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate

<sup>1</sup> The ASEAN Heads of State also committed to accelerating progress towards Universal Health Coverage in all ASEAN Member States. See, ASEAN: *ASEAN declaration on strengthening social protection*, (2013).

<sup>2</sup> ILO: *World social security report: Providing coverage in times of crisis and beyond* (Geneva, 2011), pp. 13-17.

## Good practices

- 1 Social security laws in **Indonesia** and the **Philippines** encompass migrant workers under a range of protections – as do the current draft laws in **Cambodia, the Lao People’s Democratic Republic, Myanmar** and **Viet Nam**.<sup>3</sup>
- 2 The **Philippines** incorporates equal access to social protection and portability of benefits in their bilateral agreements and Memoranda of Understanding (MOUs) on sending migrant workers.
- 3 **Thailand’s** social health protection scheme extends to documented and undocumented migrant workers.
- 4 In ratifying the Domestic Workers Convention, 2011 (No. 189), the **Philippines** has paved the way for domestic workers to enjoy the same benefits as formal employees, including equal access to social protection.<sup>4</sup>

health care”. Social protection is an integral part of the United Nations Sustainable Development Goals (SDGs) featuring in Goal 1 on ending poverty, Goal 5 on gender equality, and Goal 10 on reducing inequalities.

A gender responsive and rights based approach to social protection can ensure that the assessment of eligibility is fair and equitable, reflective of women’s needs and provides appropriate benefits and coverage. For example, more women than men in ASEAN work in the informal economy.<sup>5</sup> Informality limits workers’ ability to meet qualifying conditions (years of contribution) for social insurance schemes, leaving women particularly vulnerable, especially in old age. Gender responsive social protection schemes would recognise this reality and ensure that women have access despite their often informal employment status. Similarly, and as identified in Goal 5 of the SDGs, gender responsive social protection should recognize and value the unpaid care and domestic work that women regularly provide, especially in relation to care for children, the elderly and disabled. This care role should be recognised both in terms of the

<sup>3</sup> ILO and ADB: *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok, 2014), p. 99.

<sup>4</sup> N. Jones and M. Stavropoulou: *Resilience for all? Towards gender-responsive social protection in South-East Asia* (Bangkok, UN Women, 2013), p. 38

<sup>5</sup> *Ibid.*, p. 1.

<sup>6</sup> ILO and ADB: *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok, 2014), p. 98.

<sup>7</sup> *Ibid.*, p. 99.

<sup>8</sup> *Ibid.*

## Key policy recommendations

- 1 Remove administrative and legal obstacles for documented migrant workers registering for social insurance schemes.<sup>6</sup>
- 2 Integrate information on social protection eligibility and transferability into recruitment and training procedures.
- 3 Provide access to universal health care for migrant workers across ASEAN, including specific gender responsive packages.
- 4 Ensure equality of treatment concerning social security provisions between national and migrant workers.
- 5 Address the rights of undocumented migrant workers – including seasonal workers, domestic workers and those in informal sectors – who are excluded from social assistance and insurance schemes.<sup>7</sup>
- 6 Provide access to non-contributory schemes.
- 7 Harmonize ASEAN governments’ systems for social protection and social services.<sup>8</sup>
- 8 Develop and implement government-to-government agreements on migrant labour that are gender equitable and provide gender responsive portable social protection.
- 9 Implement bilateral social security agreements to enable migrants to access pension benefits and ensure portability.
- 10 Establish, in countries of origin, interim migrant welfare funds – state supported contributory schemes that provide protection to workers while they are overseas – to provide protection to migrants whilst issues of portability are being negotiated between states.
- 11 Undertake assessments and collect data on the needs and vulnerabilities of women migrant workers.
- 12 Include access of women migrant workers to social protection in National Plans and Strategies, and in the Socio-Economic Development Plans of origin and destination countries.

barrier it creates to women's access to employment and ability to qualify for social protection; and the contribution that this work provides in social protection terms, by facilitating the capacity of others to work outside the home. In order to respond to women's needs, gender responsive social protection must include maternity protections, parental support, health care (including social, reproductive healthcare and gender specific preventative care, e.g. breast cancer screening and human papilloma virus (HPV) vaccination), gender responsive education and training, adequate housing, and essential social services.<sup>9</sup> Gender responsive social protection schemes must also be accessed by women. While government-to-government labour migration agreements may include provisions for social insurance or social protection benefits, in reality these schemes are largely focused on the employment of men (directly or indirectly), meaning that migrant women commonly do not benefit.

## Do women migrant workers benefit from social protection?

While migration can offer multiple opportunities, migrant workers in ASEAN are disadvantaged by the numerous challenges they face in trying to access social protection. Because many migrants in ASEAN come from least developed countries (such as Cambodia, the Lao People's Democratic Republic and Myanmar), which have low levels of social protection available, access to social protection in the destination country can be their first experience of such benefits. Conversely and, as highlighted by the Special Rapporteur on the Human Rights of Migrants, migrants can lose their entitlement to social security benefits in their country of origin when they work overseas.<sup>10</sup> Any benefits accrued in countries of destination are likely to be non-transferable when the migrant returns home. Concurrently, migrants face restrictive conditions in accessing social security in

countries of destination, regularly due to requirements for minimum length of residency or minimum contributions.<sup>11</sup> Barriers to social protection can be legislative and/or administrative (practical), meaning that even where a migrant worker has a legislative right to protection, they may not have the documents to prove this, or may lack the information necessary to know what they are eligible for and how to access benefits. As a result of these barriers, as well as the discrimination they face, many migrant workers in the ASEAN region have no access to social protection.<sup>12</sup> Indeed, the barriers facing women and migrants intersect to amplify the challenge for women migrant workers in accessing social protection.

The absence of formal migrant and/or employment status creates a particular challenge for women migrant workers.<sup>13</sup> Notwithstanding their irregular status, however, these workers may be contributing to social protection schemes in countries of destination through indirect tax (such as GST/VAT);<sup>14 15</sup> though they are regularly unable to claim the associated benefits.<sup>16</sup> Migrant women who migrate regularly and work in the formal sector may contribute directly to schemes through taxes, and may even be eligible to draw benefits whilst in the country of destination, however their contributions are unlikely to be transferable when they return home, as such they will not be able to benefit from them in later years.

## What about particularly vulnerable women migrant workers?

Women migrants work in some of the more vulnerable sectors of work in ASEAN, in particular in the domestic and sex and entertainment sectors. These women migrant workers face unique challenges due to discriminatory practices resulting from the intersection of their gender, ethnicity, migrant status and specific work.<sup>17</sup> In particular women migrant workers cannot legally migrate into the entertainment and sex sectors and hence use irregular migration channels that limit access to social protection.<sup>18</sup> While domestic workers can be recruited through regular channels in some migration corridors, domestic work is largely unregulated and may not provide access to social protection where these schemes are restricted to 'employees' or 'workers', distinct from 'helpers', 'au pairs' or 'maids'. Malaysia, Singapore and Thailand – the key destination countries for domestic workers in the region – provide limited benefits for domestic workers.<sup>19</sup> Exclusion from social assistance and insurance schemes compounds the vulnerability of these women migrant workers, particularly to health risks and harmful working environments.<sup>20</sup>

<sup>9</sup> UN Women: *Managing labour migration in ASEAN: Concerns for women migrant workers* (Bangkok, 2013), p. 31.

<sup>10</sup> UN General Assembly, Human Rights Council: *Report of the Special Rapporteur on the human rights of migrants, Francois Crepeau*, A/HRC/26/35 (New York, 2014), p. 10.

<sup>11</sup> ILO: *Ensuring the right to social security for ASEAN migrant workers through social security agreements* (Bangkok, Social Security Extension in Asia, 2008), p. 2.

<sup>12</sup> ILO and ADB: *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok, 2014), p. 97.

<sup>13</sup> UN Women: *Managing labour migration in ASEAN: Concerns for women migrant workers* (Bangkok, 2013), p. 11.

<sup>14</sup> United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of their Families: *General comment No.2 on the rights of migrant workers in an irregular situation and members of their families*. CMWJ/C/GC/2 (Geneva, 2012), p. 19.

<sup>15</sup> Goods and Services Tax (GST) or Value Added Tax (VAT).

<sup>16</sup> ILO and ADB: *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok, 2014), p. 99.

<sup>17</sup> UN Women: *Managing labour migration in ASEAN: Concerns for women migrant workers* (Bangkok, 2013), p. 19.

<sup>18</sup> *Ibid.*, p. 21.

<sup>19</sup> *Ibid.*, p. 20.

<sup>20</sup> ILO and ADB: *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok, 2014), p. 99.

## Case 1: Aung, Myanmar domestic worker in Malaysia

Aung is a woman migrant working as a domestic worker in Malaysia. She was recruited in Myanmar under a contract and is a documented migrant. Aung's employment contract says that her employer will register her under Malaysia's Social Security Act national scheme. The employer fails to register Aung and Aung has no information and no one to contact to complain. Aung becomes pregnant, but she has no access to healthcare. When her employer finds out, Aung is fired and deported shortly afterwards. Aung is paid in full but has little support in Myanmar during her pregnancy and by the time the pregnancy comes to term, all of her money is gone. She gives birth at home in unsafe and unsanitary conditions.

### How do women migrant workers fill social protection gaps?

In addition to the contributions that women migrant workers make to social protection schemes in countries of destination through direct and indirect taxation, they also support social protection systems in other ways. In particular, women migrant workers' remittances are more likely to be spent on education, health and family development in countries of origin.<sup>21</sup> In this way, remittances are effectively substituting for weak social protection systems in countries of origin. Such remittances are also substitutes for pensions of elderly or infirm family members or to provide for unemployment or disability.<sup>22</sup> The need to generate income to support such family needs is indeed a common driver of migration.

The use of women migrant workers' remittances to subsidise social protection in countries of origin has two key effects. The first is that their earnings are not used for savings or investment,<sup>23</sup> making it harder

for the woman migrant to enjoy the development benefit of her earnings, either on a micro level or through the growth of her community or country.<sup>24</sup> The second effect is that where private remittance flows fund services that could also be considered the responsibility of the state to provide, there is a risk that the public becomes conditioned to paying for these basic services and does not demand them from their governments.<sup>25</sup>

Women's contribution to social protection is also evident in destination countries in the care sector, including care work that takes place within the home. Women migrant workers are increasingly responding to care gaps – the result of ageing populations and higher rates of female employment – that are not being met by national welfare systems. In outsourcing care to the private sector, governments are relieved of the burden of addressing increasing care needs through expanding government spending or welfare systems and public services.<sup>26</sup> Through the provision of low paid and undervalued work, women migrant workers fill this private sector need.

## Case 2: Sopheap, Cambodian domestic worker in Singapore

Sopheap is 26 and from Cambodia. She has a young daughter and elderly parents who receive no state support. She decides to migrate to Singapore as a domestic worker. Sopheap looks after the children of a woman who needs childcare to be able to work. Sopheap sends her earnings home to support her family. As a formal employee, she pays into Singapore's tax system. She has employer sponsored medical insurance but cannot access Singapore's comprehensive social protection scheme as she is not a permanent resident. With no alternative way to support her family, Sopheap stays working abroad for many years. Sopheap accrues no social protection benefits in either Cambodia or Singapore and notwithstanding a life of work, has no access to a retirement fund.

### What commitments to social protection have been made in ASEAN?

The 2009 ASEAN Socio-Cultural Community Blueprint committed to, "... ensure that all ASEAN peoples are provided with social welfare and protection from the possible negative impacts of

<sup>21</sup> UN Women: *Managing labour migration in ASEAN: Concerns for women migrant workers* (Bangkok, 2013), p. 8.

<sup>22</sup> A. Petrozziello: *Gender on the move: Working on the migration-development nexus from a gender perspective* (Santo Domingo, UN Women, 2012), p. 80; In a recent scoping study commissioned by the Swiss Agency for Development and Cooperation (SDC), it was proposed that around 25 per cent of the income of poor families in Cambodia, the Lao People's Democratic Republic and Myanmar are made up from remittances. SDC: *Scoping study report on enhancing contribution of labour migration in Mekong region to poverty reduction* (forthcoming).

<sup>23</sup> A. Petrozziello: *Gender on the move: Working on the migration-development nexus from a gender Perspective* (Santo Domingo, UN Women, 2012), p. 88.

<sup>24</sup> For more on this see, ILO and UN Women: *Valuing the contributions of women migrant workers in ASEAN*, (Bangkok, Policy Brief Series: Women's Labour Migration in ASEAN, 2015).

<sup>25</sup> A. Petrozziello: *Gender on the move: Working on the migration-development nexus from a gender Perspective* (Santo Domingo, UN Women, 2012), p. 88.

<sup>26</sup> *Ibid.*, p. 33.

globalisation and integration by improving the quality, coverage and sustainability of social protection and increasing the capacity of social risk management.”

This principle was also adopted in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007. Article 7 provides that States should “facilitate access to resources and remedies through... social welfare...” The commitment to social security in the region was further affirmed when the ASEAN Member States adopted a Declaration on Strengthening Social Protection in Brunei Darussalam in 2013. This Declaration set out that, “everyone, especially... migrant workers... are

entitled to have equitable access to social protection that is a basic human right...” Article 4 confirms that, “implementation of social protection should be based on... gender equality...”

In practice the ability of migrant workers to access social protection is very low in ASEAN. Table 1 shows how social security laws in Brunei Darussalam and Singapore do not cover migrant workers without permanent residency.<sup>28</sup> The labour laws of Singapore do require employers to purchase medical insurance for their workers, and there are provisions for medical leave where workers suffer accidents or injuries at work.<sup>29</sup> In Malaysia, migrant workers are covered under the Social Security Act 1969 but employers are not

**Table 1**

Coverage of migrant workers under social security by country and branch, 2014 <sup>27</sup>										
Country	Medical care	Sickness	Unemployment	Old age	Work injury	Family	Maternity	Invalidity	Survivors	Do these cover migrants?
<b>Main destination countries</b>										
Singapore	●	●		●	●		●	●	●	No
Brunei Darussalam	●	●		●	●		●	●	●	No
Malaysia	●			●	●			●	●	Yes <sup>(b)</sup>
Thailand	●	●	●	●	●	●	●	●	●	Yes
<b>Main origin countries</b>										
Cambodia <sup>(a)</sup>	●	●		●	●		●	●	●	Yes
Indonesia	●	●		●	●			●	●	Yes
Lao PDR <sup>(a)</sup>	●	●	●	●	●	●	●	●	●	Yes
Myanmar <sup>(a)</sup>	●	●	●	●	●	●	●	●	●	Yes
Philippines	●	●		●	●		●	●	●	Yes <sup>(b)</sup>
Viet Nam <sup>(a)</sup>	●	●	●	●	●		●		●	Yes

Note: Information is based on social security laws and acts but does not consider any sub-level decrees or regulations that might hold relevant provisions; (a) Social security laws have been adopted though the implementing legal texts are still in draft form. (b) Excludes medical care. “Yes” means migrant workers are covered equally with non-migrants. “No” means only nationals and/or permanent residents are eligible. “●” indicates a branch of social security is provided within a given country.

Source: ILO compilation from official national sources.

<sup>27</sup> ILO and ADB: *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok, 2014), p. 98.

<sup>28</sup> Ibid, p. 98.

<sup>29</sup> Mahidol University: *Migrant workers' right to social protection in ASEAN: Case study of Indonesia, Philippines, Singapore and Thailand*, (Bangkok, Mahidol Migration Centre, 2011), p. 59.

obliged to register them under national schemes.<sup>30</sup> In any event, available coverage does not provide for pregnancy or coverage for families.

Although the Thai Social Security Act 1990 does include migrant workers, it is in conflict with existing migration laws, providing a loophole and making social protection often ineffective.<sup>31</sup> Thailand has, however, made efforts to address social protection for migrant workers. In August 2013, Thailand's Ministry of Public Health announced a new social health protection scheme that covers all migrant workers offering the same benefit package as under the Universal Coverage Scheme but on a contributory basis.<sup>32</sup> This scheme is available to both documented and undocumented migrant workers, meaning it is particularly beneficial for migrant women.

The Philippines is the only country of origin in the region to address the issue of social protection for migrant workers through the establishment of the Social Security System Programme for Overseas Migrant Workers. This system includes a voluntary contribution scheme and a flexi-fund programme that provides social security overseas and also income security on return.<sup>33</sup>

the portability of social protection, some countries have established migrant welfare funds: in the Philippines the Overseas Workers Welfare Administration undertakes welfare services for its members, who are legally recruited migrants who pay US\$25 for every contract. The welfare services provided include insurance, social work assistance, legal assistance, cultural services, and remittance services.<sup>35</sup>

## Portability of protection

The presence of and access to social protection schemes in countries of origin or destination is one issue, the second issue is portability. Even where a worker does have access to social protection in destination countries, their contributions and benefit may not be transferable to their country of origin. In other words, the benefit may only be accessed in the country in which it is accrued. This can be addressed through bi- or multi-lateral social security agreements (as clauses within agreements on regular migrant workers schemes, or as standalone agreements) to ensure portability of social protection contributions and benefits for migrant workers. However, as at 2008, no such agreements have been finalised within ASEAN; indeed, the Philippines is the only ASEAN country to make such agreements, in this case with countries outside ASEAN.<sup>34</sup> In the absence of formal agreements on

<sup>30</sup> ILO and ADB: *ASEAN Community 2015: Managing integration for better jobs and shared prosperity* (Bangkok, 2014), p. 98.

<sup>31</sup> *Ibid.*, p. 98.

<sup>32</sup> *Ibid.*, p. 99.

<sup>33</sup> Mahidol University: *Migrant workers' right to social protection in ASEAN: Case study of Indonesia, Philippines, Singapore and Thailand*, (Bangkok, Mahidol Migration Centre, 2011), p. 49.

<sup>34</sup> ILO: *Ensuring the right to social security for ASEAN migrant workers through social security agreements*, p. 2.

<sup>35</sup> Overseas Workers Welfare Administration: "OWWA Mandate" (2015). Available at: <http://owwa.gov.ph/?q=content/owwa> [accessed 23 Oct. 2015].

International standards on social protection		
	Ratifications in ASEAN	Provisions related to social protection
UN Convention on the Elimination of All Forms of Discrimination against Women, 1979.	Ratified by all ASEAN Member States.	<p>Article 11 provides that states parties shall eliminate discrimination against women in the field of employment in order to ensure the same rights to social security, particularly in cases of retirement, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.</p> <p>Article 12 eliminates discrimination in the field of health care and access to health care.</p> <p>General Recommendation No. 26: Paragraph 24 provides that states parties should: (d) require employers to purchase medical insurance for women migrant workers; and (i) ensure comprehensive socio-economic, psychological and legal services aimed at facilitating migrant women's socio-economic reintegration.</p> <p>Paragraph 26 requires that states parties: (i) ensure that linguistically and culturally appropriate health care services are available; and (j) ensure access to health services, including for undocumented migrant women, for pregnant and breastfeeding mothers as well as women in ill health.</p>
UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990.	Ratified by Indonesia and the Philippines, with Cambodia as a signatory.	<p>Article 27 states that migrant workers and their families should enjoy the same treatment with regards social security or, where they are not allowed benefit, reimbursement of any contributions made.</p> <p>Article 28 states that migrant workers and their families should have the right to receive urgent medical care.</p> <p>Article 67 states parties shall cooperate for orderly return, with a view to promoting adequate economic conditions for resettlement and facilitating durable social and cultural reintegration.</p>
ILO Recommendation on Social Protection Floors, 2013 (No. 202).	Adopted by the 10 ASEAN Member States (Ministries of Labour, unions and employers representatives) at the 101st International Labour Conference in June 2012.	<p>Article 1 provides guidance to members to: (a) establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems; and (b) implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible...</p> <p>Article 3 states that members should apply the following principles of: (d) non-discrimination, gender equality...; and (e) social inclusion, including of persons in the informal economy.</p> <p>Article 15 stipulates that social security extension strategies should apply to persons both in the formal and informal economy and support the growth of formal employment and the reduction of informality.</p>
ILO Domestic Workers Convention, 2011 (No. 189).	Ratified by the Philippines.	Article 14(1) states that each member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

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#### ILO-UN Women collaboration: 'Preventing the exploitation of women migrant workers in ASEAN'

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