

# Protecting and Integrating Migrant Workers in ASEAN Social Security Systems

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**Abstract:** *This paper considers how social security systems in Southeast Asia may be adapted in order to improve the level of protection and integration of low-skilled migrant workers and to facilitate the mobility of workers, without negatively affecting the economic situation in the region. This involves a discussion of existing unilateral, bilateral and multilateral arrangements within the Association of Southeast Asian Nations (ASEAN). Best practices within ASEAN countries, such as the Philippines, and examples of bilateral agreements involving ASEAN countries containing social security provisioning, are examined against the backdrop of the developing international and regional standards framework. The role of countries of origin in providing social protection for migrant workers and the portability of benefits is also briefly discussed. It is submitted that a co-ordinated, integrated yet streamlined approach may be able to provide solutions and options for excluded categories of migrant workers and their family members, including informal economy workers and undocumented migrants. All of this needs to be supported by suitable regulatory and institutional arrangements which inform and facilitate the adoption of key interventions at a national, bilateral and regional level to enhance the social security position of ASEAN migrant workers and, to the extent required, their families.*

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## 1. Introduction

Migration continues to impact significantly on humankind. More than 247 million people (amounting to 3.4% of the world population) now live outside their countries of birth. In 2015, worldwide remittances exceeded US\$601 billion (World Bank Migration and Remittances Factbook, 2016).

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Southeast Asia is an important destination region for migrant workers. The International Organisation for Migration (IOM) estimated the total number of migrants originating from Southeast Asia to be approximately 10.2 million in 2010. Since 2010, however, there has been a decrease in migrant arrivals (OECD-UNDESA, 2013). Nevertheless, between 2000 and 2015, Asia added more international migrants than any other major regions (United Nations International Migration Report, 2016). Approximately 6.7 million migrant workers from Southeast Asian countries work in other Southeast Asian countries, intra-ASEAN migration having increased significantly from the 1.5 million migrants in this category in 1990 (Hall, 2011). Approximately 87% of migrant workers in ASEAN are either unskilled or low-skilled (Olivier, 2015). Philippines and Indonesia are key migrant sending countries in this region, whereas Malaysia and Thailand are key migrant receiving countries [the largest numbers of labour migrants within ASEAN were found by Tamagno (2008) to be in Malaysia, Singapore, and Thailand, coming from Cambodia, Indonesia, Myanmar and the Philippines]. In fact, 91% of workers in the ASEAN region seek employment in Malaysia, Thailand or Singapore. In many ASEAN countries, the majority of the working population are concentrated in the informal sector or informal economy and not protected by labour laws nor have access to social protection (Hall, 2013).

Migrant workers may be considered invaluable to the economic growth of ASEAN and contribute to its societies (Tamagno, 2008). Remittances to countries of origin provide the means of subsistence for households and are an important part of the capital required for national development. The IOM has pointed out that, globally, USD\$77 billion was remitted to countries of origin in 1997, whereas in 2015 it rose to USD\$601 billion, of which USD\$441 billion was received by developing countries (World Bank, 2016). For some ASEAN countries, particularly those that are the least economically developed, migration is critical for offering workers opportunities that are not available in their home countries (Tamagno, 2008). This is particularly important for poor countries such as the Philippines, where remittances totalled a reported USD\$28 billion in 2014, making the country the third largest remittance market in the world (“Philippines as a remittance destination”, 2015).

Some migrant workers may have access to better terms of employment and social security than in their home countries. Nevertheless, many of them also face long hours and poor working conditions compared with the citizens of their host countries (Van Ginneken, 2010). In particular, it has been noted that “South-South migrants have virtually no social security coverage.” There is also a gendered component to this situation. As the ILO (2010) suggests:

Migrant workers tend to be employed in sectors, such as construction, manufacturing, hotels and restaurants, health care, education, domestic work and agriculture in host countries. In these sectors, where working conditions are particularly flexible, many migrant workers, especially the low-skilled, can be the victims of abuse and exploitation. Women, who are leaving their home countries alone in increasing numbers, today account for almost half of all international migrants and face specific problems with regard to their protection (p. v).

Most countries draw crucial distinctions between, for example, the rights of citizens and migrants with permanent residence, on the one hand, and other categories of migrants, such as, temporary residents and irregular migrants on the other (Van Ginneken, 2010). Suffice to note, at this stage, that temporary migrants and irregular non-citizens typically enjoy few rights in most countries, with economic and social rights being particularly restricted. As Van Ginneken notes, distinctions and restrictions of rights based on the migrant's specific citizenship (e.g. in the EU context) and purpose of residence (such as work, study or asylum) are common, and contribute to "highly complex immigrations systems" (Van Ginneken, 2010).

The position of migrant workers in low-income regions such as ASEAN and other parts of the world is characterised by the following factors (Van Ginneken, 2010):

- Lack of information about the social protection status of immigrants in host countries in these regions;
- Generally weak social security systems that cover only a small portion of the total labour force;
- Large numbers of undocumented immigrants (who typically participate in the informal sector) with questionable social protection status;
- General exclusion of migrants from tax-financed social assistance benefits (which constitutes the bulk of formal social security provisioning);
- Insufficient access to justice – migrants experience difficulty in seeking legal remedies to address the exploitation they face, particularly in low-income countries; and
- Lack of access to basic health care and education;

With specific reference to ASEAN, there are several likely barriers to social protection for migrant workers, including (Olivier, 2013):

- Difficulties in respect of obtaining the requisite paperwork for purposes of accessing workers' compensation benefits in countries such as Thailand;
- Discriminatory practices on the part of state officials in their treatment of migrant workers and in respect of entitlement to particular social security benefits;
- Restrictions relating to the ability to contribute to national social security systems in countries of origin, and prohibitions in respect of transferring accrued contributions or entitlements between social security systems;
- Exclusionary practices regarding social assistance programmes or social pension schemes in host countries despite migrant worker contribution through work, consumption and taxation;
- Fragmented institutional arrangements and support mechanisms to assist Southeast Asian migrant workers when leaving countries of origin, during their stay in destination countries, and upon return.

Due to both legislative restrictions and access to some benefits (such as old-age pensions qualifying contribution periods), countries wishing to provide greater social security protection for migrant workers have generally opted for a reciprocal approach through social security agreements seeking to reduce and eliminate barriers to social security access (Tamagno, 2008). Practical difficulties exist, however, in this regard. For example, the ASEAN region contains a mix of provident funds and social insurance programmes. Practical challenges in relation to the coordination of these two types of social security programmes require resolution in order to strengthen the protection of migrant workers in the region.

Despite the existing international and regional standards framework (discussed below) and some notable progress in (certain) ASEAN countries, the social security position of migrant workers in this region is precarious; there is little social security coverage in case of loss of worker income, standards are generally poorly enforced, social protection agencies possess weak capacity and there is a lack of political will to address the plight of migrant workers. Problems include legal and administrative barriers (for example, there are many undocumented migrant workers in ASEAN) and weak bilateral and multilateral social security regimes in place. Multilateral agreements exist in, among others, the EU, CARICOM (Caribbean Community), the Gulf Cooperation Council (GCC), MERCOSUR (Argentina, Brazil, Paraguay and Uruguay) and in terms of the Ibero-American Social Security Convention.

This paper seeks to consider how social security systems in ASEAN may be adapted and extended in order to improve the level of protection and integration of low-skilled migrant workers, and to facilitate their without

negatively affecting the economic situation in the region. This necessitates a discussion of existing unilateral, bilateral and multilateral arrangements within ASEAN. Best practices within ASEAN countries, such as the Philippines and examples of bilateral agreements involving ASEAN countries and containing some social security provisioning, are considered against the backdrop of the developing international and regional standards framework. The role of countries of origin in providing social protection for migrant workers and the portability of benefits are also briefly discussed.

## **2. The International Standards Framework**

Various international instruments, most notably the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (UN Migrant Workers Convention) and the ILO Multilateral Framework on Labour Migration, have been developed and seek to ensure that international labour (and social security) standards and instruments are increasingly applicable to migrant workers. Prior to this, the Declaration of Philadelphia (1944), the Universal Declaration of Human Rights (1948) and the ILO Social Security (Minimum Standards) Convention 1952 (ILO C 102) laid a foundation for social security protection at the international level and, since 1919, the International Labour Conference has adopted over 50 Conventions and Recommendations addressing social security-related issues, of which the Social Protection Floor Initiative of 2009 is a recent development (Hall, 2013). The ILO Migration for Employment Convention (Convention 97, 1949) and the Migrant Workers (Supplementary Provisions) Convention (Convention 143, 1975), while relevant, have not been ratified by all countries. 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, which stresses the need for “comprehensive national approaches to improve social welfare and social inclusion and cohesion in the context of labour migration”, also through the promotion of bilateral and multilateral agreements. The International Convention on the Elimination of All Forms of Racial Discrimination contains relevant provisions for migrant workers, guaranteeing non-discrimination and equal treatment with nationals in a host state.

In 2007, the ILO agreed upon a Multilateral Framework on Labour Migration as a guide and a set of best practices for ensuring the regulation and protection of migrant workers, also supporting 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, where appropriate, to irregular migrant workers (Section 9.9).

Important principles emanating from international standards on migrant worker social protection rights include the following:

- “Aliens” lawfully residing in the territory of a State shall also enjoy, in accordance with the national laws, the rights to health protection, medical care, social security, social services, education, rest and leisure, provided that they fulfil the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State (Article 8 of the UN Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live Resolution 40/144, 1985);
- Migrant workers and members of their families should enjoy, in the State of employment, the same (social security) treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. 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 (Article 27 of the UN Migrant Workers Convention, 1990);
- 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 (Article 28 of the UN Migrant Workers Convention, 1990). States must ensure equality of treatment for (documented) migrant workers 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 (Articles 43 and 45 of the UN Migrant Workers Convention, 1990);
- States should 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 [Equality of Treatment (Social Security) Convention 1962 (ILO C 118)];
- Social security rights should be maintained when workers move from one country to another, and acquired rights should be exportable to home countries (or to countries to which migrant workers re-migrate), and bilateral and multilateral social security agreements should be

designed to support this [The Maintenance of Social Security Rights Convention 1982 (ILO C 157)].

International standards and principles emanating from the UN and the ILO (in the areas of employment and social security protection) are either not been sufficiently ratified or poorly implemented by Asian countries, (Olivier, 2013) making the implementation of regional standards even more important. In 2006, the UN General Assembly convened its first-ever High-level Dialogue on International Migration and Development, which resulted in the international community acknowledging that migration was an unavoidable reality and that it could benefit both the countries and the migrants concerned (IOM, 2013). Nevertheless, few countries have mainstreamed migration into national development plans or instruments (IOM, 2013).

### **3. ASEAN Initiatives**

As discussed above, the reasons for mass migration of workers from ASEAN to the Asia-Pacific region and beyond are varied, but a key motivator is the urgent need to improve livelihood and raise one's living standard (Olivier, 2013). Despite the considerable impact of migration and the predominantly economic orientation of migration within Asia and the Pacific, questions remain regarding the social protection of these migrants and their families and the need to adopt streamlined and coherent approaches. Informal coping strategies are the order of the day for migrant workers and their families, although innovative policy, regulatory and institutional responses have developed in the region (Hall, 2011).

It has been argued that "regional efforts may help to bring about change in the approach to social protection across borders; however, their impact may be limited for the same reasons that deter the implementation of comprehensive social security systems" (Van Ginneken, 2010). The ILO and ASEAN signed a cooperation agreement in 2007 that resulted in social security being outlined as a priority area for the developing of programmes and co-operation. The ASEAN Charter was ratified in 2008 and states 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" (ASEAN Charter, art. 1, para. 11). The ASEAN Economic Community Blueprint of 2007 also recommended the establishment of an integrated social protection and social risk management system, and the creation of strengthened systems of social protection at the national and regional level. More recently, the ASEAN Declaration on Strengthening Social Protection (2013) emphasised the principles of equitable access, gradual extension and progressive realisation

in addition to providing strategies and mechanisms to strengthen the implementation of social protection in the region (Olivier, 2016).

The Vientiane Action Programme (2004-2010) mandated the elaboration of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (AIMW). The drafting of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers has unfortunately stalled, meaning that there remains no standard enunciated in ASEAN on migrant social protection (Olivier, 2016). There are apparently also no social security agreements or labour agreements within the individual ASEAN countries that make reference to social protection, although Memoranda of Understanding on Labour do exist, providing for non-discrimination and equality in access to rights for migrants (Tamagno, 2008, as cited in Hall, 2013).

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (henceforth referred to as the Declaration) was adopted in 2007, and is particularly significant, calling on origin and destination countries to promote the full potential and dignity of migrant workers (Hall, 2013). The Declaration affirms the important contributions of migrant workers to society and the economies of both the host (receiving) and the sending states in ASEAN and recognises that co-operation between the states is essential to resolve cases of migrant workers who become undocumented due to no fault of their own. It also acknowledges that the fundamental rights of migrant workers and their families already residing in the destination country must be considered. The Declaration requires member states to increase cooperation on issues affecting migrant workers but notes, “nothing in this declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented” (ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007). The Declaration also calls for an “intensification of efforts to promote the welfare of migrant workers” and for destination countries to “facilitate access to ... social welfare services as appropriate”.

The following features of the Declaration are particularly significant (Wickramasekara, 2011):

- Protection and promotion of rights;
- Recognition of the obligations on sending states, receiving states and ASEAN;
- The call for the intensification of efforts to protect the fundamental human rights, promote the welfare and uphold the human dignity of migrant workers.
- The role of ASEAN in promoting decent, humane, productive, dignified and remunerative employment for migrant workers; and



- Proposals for the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.

In 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 reports to the Senior Labour Officials Meeting (SLOM). Four priority areas identified by the ACMW are:

- Enhancing the protection and promotion of the rights of migrant workers against exploitation and mistreatment;
- Strengthening the protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN Countries;
- Engaging in regional cooperation to fight human trafficking in ASEAN; and
- Working on the development of the AIMW.

Most recently, ASEAN heads of State adopted on 21 November 2015 the ASEAN Community Vision by 2025, and the Regional Framework and Plan of Action for Implementing the ASEAN Declaration on Strengthening Social Protection. The latter Plan has maintained migrant workers as part of the list of vulnerable groups. The ASEAN Socio-Cultural Community (ASCC) Blueprint 2025 sets as a strategic objective the promotion and protection of the rights of migrant workers, in a manner consistent with the laws, regulations and policies of respective ASEAN Member States and the general principles of the Declaration (Olivier, 2016).

It has been suggested that intra-ASEAN or intra-regional action to address the gaps in respect of social protection provisioning for migrant workers is vital. The lack of uniform, regional rules or standards governing entry, deployment and national treatment of migrant workers within ASEAN has given rise to confusions, conflicts and abuses, leading to a 'race to the bottom' (Ofreneo, 2008, as cited in Blanpain, 2014). Hall's work in this regard proposes that Indonesia, Philippines and Thailand should be the focal points for advocacy and campaigning, given their key roles as sending and receiving countries in ASEAN (Hall, 2011).

#### **4. Selected Unilateral Measures, Bilateral and Multilateral Agreements**

Hall's study of four ASEAN countries suggests that a significant number of migrants within ASEAN remain undocumented (with corresponding human rights challenges) and that different countries are at different stages of

implementing (unilateral) social protection measures for migrant workers. In fact, migrant workers are “doubly disadvantaged”, because they receive less social protection both at home and in their host country (ILO, 2015). While the Philippines have made some progress, as discussed below, Indonesia, Singapore and Thailand, according to Hall, have not demonstrated the required commitment (Hall, 2012).

The Philippines, in particular, appear to have successfully created institutions in order to manage migration properly, even in the absence of bilateral social security agreements. The country assists its migrants by, for example, regulating overseas employment recruitment, informing migrants of available resources abroad through a mandatory deployment process, providing protection and representation through a migrant welfare fund and absentee voting, and developing recording mechanisms to understand migrants’ needs (Ruiz, 2008). The innovation demonstrated by the Philippine government includes raising funds by charging fees to migrants, their employers and recruitment agencies, and developing partnerships with the private sector and NGOs.

In Malaysia (a migrant receiving country), 50 percent of migrant workers are from Indonesia (Hall, 2013). Malaysia’s Employment Act, 1955 establishes 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 also provides coverage for work-related accidents. Despite these examples of unilateral arrangements, it is true that the “large majority of migrant workers in ASEAN do not have the option of enrolling in their own national social security systems or that of the host country, or they cannot transfer the accrued contributions or entitlements between social security systems” (ILO, 2015).

Unilateral arrangements by sending and receiving countries aimed at enhancing employment and social security protection of Asian migrant workers and their families should ideally be integrated in bilateral treaties (Olivier, 2013). Bilateral social security agreements are still underdeveloped in ASEAN, with significant scope for improvement of, for example, cross-border portability arrangements. As Olivier has suggested, the legal systems of Asian sending countries may themselves need to be reformed, in order to ensure that provisions that unnecessarily discriminate on nationality basis are removed or appropriately qualified (Olivier, 2013). Countries of origin, such as the Philippines, Sri Lanka and the Republic of Korea, have already established supporting institutional frameworks, adopted streamlined recruitment, sending and re-integration arrangements, provided consular, technical and welfare support, and in some cases extended or tailor-made their social security arrangements to protect their (overseas) migrant workers (and their families). Practical challenges in this respect include the

significant differences among the social security systems of the ASEAN countries (in regard to both the branches covered and the types of programmes used). Four ASEAN countries, for example, have based their old age, invalidity and survivors' programmes on provident funds (Brunei, Indonesia, Singapore and Malaysia), and four (Lao PDR, Philippines, Thailand and Vietnam) have based theirs on social insurance. Coordination in this context is a challenging proposition, involving significant technical issues (Tamagno, 2008). In the absence of bilateral social security agreements, Brunei Darussalam, Indonesia, Malaysia and Singapore permit migrant workers to make lump-withdrawals of accrued pension contributions upon departure from their country (ILO, 2015).

Importantly, in September 2014, Germany and the Philippines signed a bilateral agreement ensuring that social security benefits would be guaranteed for migrant workers from both countries. Similar bilateral agreements have been entered into with Austria, Canada, France, the United Kingdom, Belgium, Switzerland and Spain. Once ratified by the President of the Philippines (with the concurrence of that country's Senate), the agreement is expected to benefit over 50,000 Filipinos (with over 80% of this group being permanent residents in Germany). In addition to fostering equality of treatment in the workplace, initial reports suggest that the bilateral agreement will improve the processing of claims and prevent dual coverage. Social security benefits will be totalised so that Filipino workers who have divided their career time between the Philippines and Germany will be able to combine the contributions they have made in both countries in order to meet eligibility requirements for social security benefits (including pension) in either or both countries. Furthermore, a Filipino worker in Germany, including the worker's dependants and survivors, will be eligible for social security benefits under the same conditions as German nationals in Germany and will continue to receive benefits irrespective of his or her decision to reside in the Philippines, Germany or another country. The key features of such agreements are consistent with the applicable ILO Conventions.

Malaysia and Indonesia have also signed labour migration MoUs, covering short-term contract labourers and Indonesian domestic workers, permitting these workers to enjoy protection under the Foreign Workers Compensation Scheme ("Philippines signs social security pact with Germany", 2014).

While bilateral labour agreements between sending and receiving countries are important, difficulties in respect of compliance and unscrupulous recruitment practices have resulted in a search for viable alternatives. The importance of international social security (bilateral and multilateral) agreements, in the context of the generally precarious position of migrant workers, has been well documented (Olivier, 2013). Such

agreements may ensure that social security rights acquired by migrant workers during their years of employment (and in the country of employment) are maintained and provide for the export of benefits from the country of employment to the country of origin (Van Ginneken, 2010). Bilateral social security agreements traditionally include provisions on non-discrimination between nationals and migrants in respect of social security and rules of cooperation between the social security institutions of the signatory countries (Van Ginneken, 2010). Most agreements refer specifically to long-term benefits (such as old-age, disability and survivor benefits), while health care and social assistance benefits are regulated to a lesser degree, or are explicitly exempt from portability.

According to Van Ginneken, there are increasing signs of international cooperation, also in terms of the development of multilateral social security agreements. The Gulf Cooperation Council (GCC) has, for example, adopted the Unified Law of Insurance Protection Extension for GCC State Citizens working in other GCC countries, which has apparently resulted in better pension protection and greater labour mobility (Van Ginneken, 2010). As noted earlier, ASEAN member countries have also started preparations for the establishment of a multilateral social security agreement, although this may take some time (Tamagno, 2008, as cited in Van Ginneken, 2010):

The development of a comprehensive network of ASEAN social security agreements – ideally in the form of a multilateral agreement – may take time. For most ASEAN countries, even the conclusion of the first social security agreement may take time. However, unless the process is begun, it will never be completed, and most ASEAN migrant workers will remain without social security protection...the greater integration of the ASEAN region...will be severely impeded. (p. vii)

Multilateral social security agreements within ASEAN are potentially significant, because of their ability to set a standardised basis for the content of bilateral agreements. They are, effectively, a recognition of intra-regional migration. Concluding a multilateral agreement in ASEAN could be particularly significant in terms of providing for a phased and incremental approach in relation to the types of schemes covered; the benefits provided for; the categories of persons covered by such an agreement; and the countries included in the agreement (Olivier, 2013). The importance of such an approach is amplified in the ASEAN context, as member states have vastly different social security regimes in place and each is at a different stage of development in its respective social security systems. The development of multilateral social security agreements, however, remains a tremendous challenge for ASEAN, despite the adoption of regional instruments emphasising the need for this (Olivier, 2013).

## **5. Analysis and Reflection**

Intra-ASEAN migration –prompted by hopes for a better future via better work opportunities, has resulted in a variety of economic benefits for the region. Despite this, the social security position of migrants from and in Southeast Asia remains, generally speaking, precarious. Temporary migrants and irregular non-citizens, in particular, have little access to socio-economic rights. As Tamagno (2008) argues:

In the majority of the world's countries, including many ASEAN members, the legislative barriers limiting migrant workers' access to social security benefits are compounded by the fact that social security systems cover only part of the labour force. Moreover, in some countries, migrant workers are often employed in sectors of the labour market that either are not covered by social security or in which compliance with social security laws is poorly enforced. Even when migrant workers are employed in covered sectors and social security laws are enforced, irregular migrant workers are usually disqualified from social security benefits due to the fact that they are undocumented. (p. vi).

As alluded to above, Southeast Asia has faced a range of problems in search for a comprehensive social security protection for migrant workers and alignment with international and regional standards, compounded by weak bilateral and multilateral social security regimes. The effect of the current position is that migrant workers rarely gain access to social protection systems within the ASEAN region as suggested by Hall (2011), "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" (p. 13).

In order to address these key policy challenges, Van Ginneken has suggested that social security for migrants should be seen as part of a larger framework that takes account of the multiple vulnerabilities facing migrants and their families, and that the focus should be on the following (Van Ginneken, 2013):

- Providing access to social security coverage for migrants in the country where they work, following review of existing national legislation;
- Provision of social protection for family members who remain in the country of origin, and to protect the existing (social security) rights of migrant workers in that country (i.e. to maintain any social security entitlements at the time when emigration occurs);

- Improving the portability of workers' occupational social security benefits (such as workers' compensation benefits, severance payments and payments from pension and provident funds); and
- Developing different forms of social protection for migrant workers who are not covered by formal social security schemes in host countries, a recommendation which is particularly relevant for South-South migrants who enjoy virtually no social security coverage.

In support of this, it is significant that international standards have been acknowledged and regional standards established in Southeast Asia in relation to social protection of workers. This has, for example, facilitated social protection of informal sector workers in ASEAN states (although estimates suggest that 40% remain unprotected) (Hall, 2012). Pursuant to various applicable UN/ILO international Conventions, Recommendations, Declarations and Frameworks (discussed briefly above), the ASEAN Declaration embodies clear standards in this regard, and reflects the commitment to increase social protection for migrant workers in the region. The rights-based approach adopted by the Declaration and the recognition of the obligations placed on sending states, receiving states and ASEAN is particularly important. Although the Declaration makes proposals for the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers, this is yet to become a policy. Some authors have suggested that particular ASEAN countries (such as Indonesia, Philippines and Thailand) ought to take the lead in respect of rectifying this situation, given their key roles as sending and receiving countries in ASEAN (Hall, 2011).

Given the difficulties associated with the establishment of a multilateral framework, the construction of appropriately tailored bilateral (social security-focused) agreements is crucial. In concluding multilateral or bilateral social security agreements among themselves, ASEAN countries should take note of the provisions of Conventions No. 118 and No. 157 and ensure that intra-ASEAN agreements conform to these standards (Tamagno, 2013). In this regard, Hall (2011) concludes:

Migrant social protection for workers in and from ASEAN requires commitment both by individual states and the ASEAN region as a whole. Increasing protection is a complex process, requiring clear standards in place, effective implementation of those standards, access to information and enforcement. In addition, the mobile nature of workers, along with the fact that few will be granted permanent status in the countries where they are working, means that benefits should be made portable. Given no bilateral agreements and little multilateral discussion, formidable challenges lie ahead for ASEAN countries in

ensuring migrant social protection... To assist the realization of the right to migrant social protection in ASEAN, member states and destination countries should devise regional multilateral frameworks, agreements and standards based on research, inclusive policy development, good practice and human rights standards (p. 13).

According to Olivier (2013), synergies and a streamlined approach are in order. In addition, policy development in the areas of labour migration, migration management, migration and development and social security for migrant workers is largely underdeveloped. There is indeed a need for integrated and coordinated approaches and the mainstreaming of policies in these areas into broader national developmental frameworks, and into bilateral and multilateral relations. The willingness of sending countries to revisit their approach towards the social security position of migrant workers is a necessary part of this process (as the experience of Philippines and Sri Lanka suggests). A streamlined approach may also be able to provide solutions and options regarding particular excluded categories of migrant workers and their family members, including informal economy workers and undocumented migrants. This needs to be supported by suitable regulatory and institutional arrangements which inform and facilitate the adoption of key interventions at a national, bilateral and regional level to enhance the employment and social security position of Asian migrant workers and, to the extent required, their families (Olivier, 2013).

It is suggested that key stakeholders, including Asian governments, trade unions and trade union federations, employers and employers' organisations, non-governmental institutions and regional and international organisations, advocacy groups and the scientific community, have a major role to play to help realise this. Thus, serious action on the part of civil society groups (including migrant worker networks, academics and trade unions) as well as further action on the part of international agencies (such as the UN and ILO), in supporting ASEAN member states in the development of regional social protection systems for migrants, is required (Olivier, 2013). Until multilateral arrangements are in place, bilateral frameworks may serve as a means to clarify policy, practices and systems designed to ensure "increased and realistic, portable migrant rights to social protection" (Hall, 2011, p. 34). Indeed, the agreements already entered into by countries such as the Philippines appear to hold significant benefits for migrant workers, and serve to highlight the conspicuous absence of bilateral arrangements within ASEAN countries.

Of potential significance, in addition to noting that a few countries within ASEAN (such as the Philippines) are able to demonstrate the implementation of best practice modalities in Asia, is the recommendation by Wickramasekara (2011) that the ASEAN Declaration would serve as a good

practice (regional) model for the South Asian Association for Regional Cooperation (SAARC). Viewed on a continuum, this implies that while there are weaknesses in ASEAN's promotion of migrant workers' social security rights, the situation in Southeast Asia remains preferable when compared with other parts of Asia, and could serve as a best practice model.

The World Migration Report of 2013 (the Report) contains important information that can be useful for ASEAN countries. Significantly, migrants are placed at the centre of the debate as a result of the approach adopted in the Report. Emphasising that development is about human well-being (a concept broader than happiness, health and income, including social relationships, security, work and the environment), the Report suggests a fresh approach towards migrant workers' social protection rights. It acknowledges that many migrants struggle to achieve satisfactory levels of well-being and that migrants in the South, in particular, tend to rate their lives as similar to, or worse than, those of 'matched stayers' in their home country (i.e. persons of a similar profile who did not migrate). In fact, migrants in the South tend to be the least optimistic about their lives and find it difficult to achieve a satisfactory standard of living. The Report also emphasises the migration is not merely a "south-north phenomenon" (thereby rejecting the notion that migration only occurs in the form of workers based in the so-called global south seeking to migrate for work purposes to countries situated in the so-called global north).

## **6. Conclusion**

The social security position of migrant workers in ASEAN remains precarious due to a multiplicity of factors. This article analysed various instruments that could be adapted in ASEAN to facilitate the mobility of workers and to enhance their level of social protection. In particular, unilateral measures, bilateral and multilateral arrangements have been considered as possible interventions to be pursued.

Against the backdrop of the international and regional standards framework, best practices such as those by the Philippines have been mentioned. It is significant that international standards have been acknowledged and an increasing variety of regional standards and interventions have been established in Southeast Asia (at least in part) in the social protection of migrant workers.

A synergised, yet streamlined, approach would appear to be ideal, and possibly significant for developments in other parts of Asia too. Suitable regulatory and institutional arrangements are required to inform and facilitate interventions at a national, bilateral and regional level so as to enhance the employment and social security position of ASEAN migrant workers and



their families. Continued engagement and interaction with broader civil society is imperative supported by international agencies.

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