

Social Protection & Migration in ASEAN

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INTRODUCTION



Despite considerable economic impact of labour migration, social protection for migrant workers is generally weak, partly as a result of weak provisions in national systems, and also in absence of bilateral arrangements.

Need to adopt streamlined responses across ASEAN, requiring coordination of immigration, labour and social security legal and policy frameworks and administrative practice.

Report commissioned by the ILO Regional Office for Asia and the Pacific.

- Focus is on intra-ASEAN migrant workers
- Provides an overview of the topic, with particular reference to relevant developments, challenges, and prospects

Outflows from selected Asian countries



	2007	2010	2015	2016	2015/16 % change
Philippines	716	1 124	1 438	1 328*	-8%*
Pakistan	282	358	947	839	-11%
Bangladesh	820	391	556	788	42%
India	809	641	781	521	-33%
PRC	372	411	530	494	-7%
Nepal	205	294	500	419	-16%
Sri Lanka	218	268	263	243	-8%
Indonesia	690	567	276	235	-15%
Viet Nam	64	86	116	126	9%

Note: PRC = People's Republic of China.

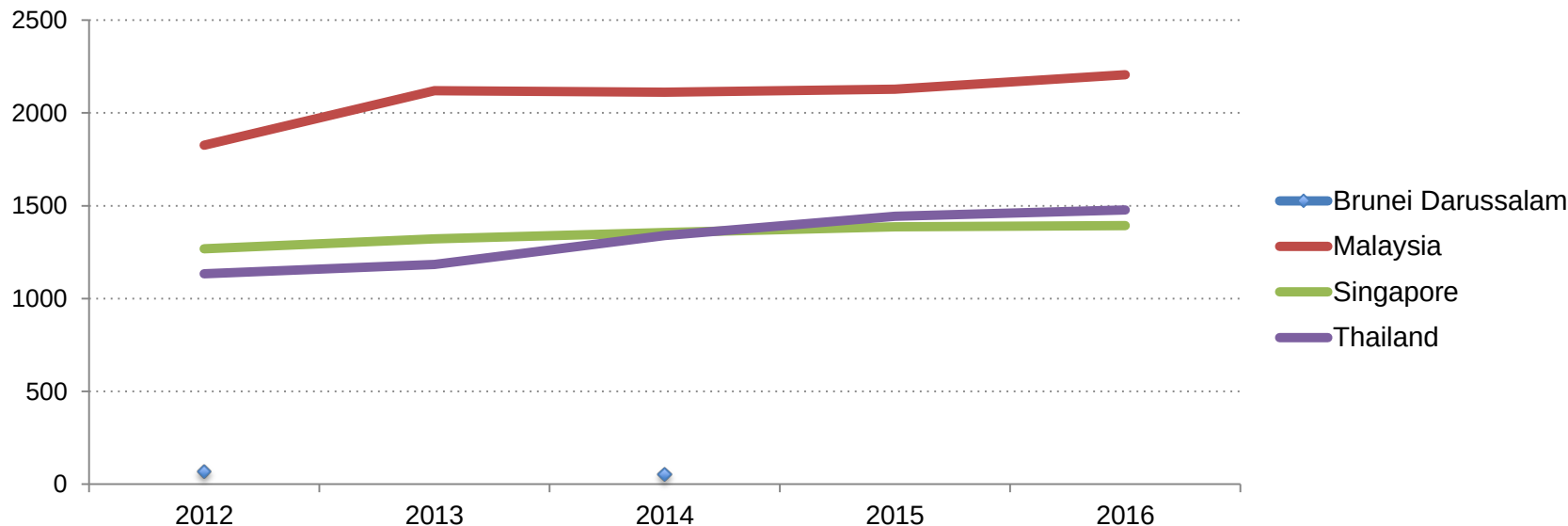
* Philippines estimates are based on the change in stock 2015/2016 applied to 2015 flows.

Source: ADBI-OECD-ILO, 2018.

Total migrants workers in ASEAN destination countries (in thousands), 2012-2016*



- ASEAN labour receiving countries had increasing numbers of migrant workers from 2012 to 2016.



Note: *For Brunei, data points used were 2011 and 2014.

Data source: ILMS in ASEAN Database (Brunei: Population and Housing Census 2011, Labour Force Survey 2014; Malaysia: Labour Force surveys 2012-2016; Singapore: Administrative records of the Ministry of Manpower; Thailand: Administrative records of the Office of Foreign Workers Administration).

ASEAN trends



Deployment of migrant workers from ASEAN Member States, total deployment and deployment to ASEAN (total number and per cent)

AMS	Total Deployment (2016)	Deployment to ASEAN		Average annual deployment (2012-2016)		Deployment of women migrant workers (2016)	Average deployment of women (2012-2016) %
		Total	%	Global	ASEAN		
Cambodia	85 489	16 499*	66.8	41 683	18 913 ¹	34 652	37.3
Indonesia	234 451	113 503	48.4	389 367	160 836	145 392	57.1
Myanmar	145 870	137 349	94.2	88 239	82 681	49 502	19.6 ¹
Philippines	1,430,842*	203 249*	14.2	1,445,062 ¹	233 285 ¹	...	...
Thailand	114 437	15 398	13.5	123 174	20 215	22 913	19.1
Vietnam	126 296	2 109	1.7	103 518	10 551	46 029	35.4
Lao PDR	58 301	...	...	29 454	...	30 085	50.8

Note:

*2014 data

1. 2012-2014 data only

... indicates data not available

Source: International Labour Migration Statistics (ILMS) 2017 (forthcoming) Database for ASEAN, ILOSTAT

ASEAN trends



Employed migrants in destination countries by country of origin and sex

ASEAN Member State	Stock		
	Total	from ASEAN %	% women
Brunei Darussalam (2014)	52 161	79.5	35.8
Malaysia (2016)	2 205 300	56.4 (2013)	30.4
Thailand (2016)	1 476 841	89.8	...

Source: International Labour Migration Statistics (ILMS, 2017) Database in ASEAN (forthcoming), ILOSTAT
... indicates data not available

ASEAN Community perspectives: Establishment of the ASEAN Community



- To create a single market and production base ... in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents **and labour**; and freer flow of capital (ASEAN Charter)
- Restrictive scope of beneficiaries of the free/facilitated movement framework: ASEAN AEC Blueprint foresees free movement of **professionals and skilled labour**, and emphasises certain **priority sectors**
- Enhanced social protection as a means to protect ASEAN peoples against negative effects of regional integration

Enhancement of social protection



2013 ASEAN Declaration on Strengthening Social Protection: Equitable access, gradual extension, progressive realisation

- Everyone [...] at risk, [including] migrant workers, and other vulnerable groups, are entitled to have equitable access to social protection that is a basic human right

ASEAN Community Vision by 2025, and the Regional Framework and Plan of Action for implementing the Declaration

- The Plan of Action has maintained **migrant workers** as part of the list of vulnerable groups

Protection of migrant workers: social protection and related perspectives



- ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (AIMW) mandated – slow progress
- Bilateral agreements and national legislation make insufficient/no provision
- Up to 60% of workers in ASEAN fall within the informal sector with little or no social protection

Legal and policy overview of ASEAN Member States' systems



- **Retirement schemes:**

- About half of them are provident funds; the other half provide a regular income
- Coverage often restricted to nationals and permanent residents (other migrant workers thus excluded)
- Exportability of benefits is invariably allowed, but could of course only benefit the (relatively few) migrants who are included in these schemes
- Varying minimum periods for eligibility apply, stressing the need to develop appropriate coordinating mechanisms

Legal and policy overview of ASEAN Member States' systems



- Access to (mostly) contributory-based schemes often restricted to schemes *separate from* the mainline schemes set up for nationals (and at times permanent residents), to which usually *only employees* contribute, and which provide *inferior benefits* in comparison with mainline schemes
- Almost no access to social assistance schemes
- Increasingly comprehensive arrangements have been put in place to extend welfare protection to a Member State's own migrant workers, also through the creation of migrant worker welfare funds

Recommendations



- Building on current exportability initiatives, strengthen national legal systems and address legal deficiencies:
 - Ensure an appropriate mandate in national legal systems for
 - The conclusion of bi- and multilateral agreements, and
 - For these agreements to take precedence over provisions in the laws
 - Remove provisions amounting to nationality discrimination
- Capture (unilaterally provided) exportability arrangements also in bilateral agreements with countries of destination

Recommendations



- Consider carefully the adoption and implementation of core international instruments relevant to portability (even if not adopted), and consider in this regard in particular the following, relying also on technical advice of the ILO, etc.:
 - With reference to comparative practice, reliance on key principles such as lawful residence, lawful employment and means of subsistence criteria
 - Coordination principles (including portability principles) embedded in international instruments and applied in several multilateral agreements
 - Ensure **compliance with standards embedded in ratified international instruments** – e.g., compliance with ILO Equality of Treatment (Accident Compensation) Convention – see the Thai and Malaysian experience

Recommendations



- **Appreciate the rationale for cross-border access to and portability of social security benefits, and coordination of social security schemes**
- **Consider carefully the implications of ASEAN objectives, undertakings and standards:**
 - **Implications flowing from regional integration & free movement**
 - The need for and possibilities of and ASEAN ring-fenced regime of social security portability and coordination arrangements – i.e. a special and preferential regime for ASEAN migrant workers
 - **Implications flowing from provisions contained in ASEAN instruments and agreed work-plans**
 - **Extended social protection**
 - A **finalised instrument** ensuring appropriate access to social security benefits (and portability) for migrant workers

Recommendations



- **The importance of allowing for gradual approaches (1) –**
 - (1) Consider commencing with a non-binding instrument, moving towards a binding one, or alternatively, a binding instrument that allows for flexible approaches regarding implementation (see below)
 - (a) **Comparative experience**: Some of the comparative instruments are binding, others non-binding in nature; in some cases - non-binding instruments **developed into binding ones**
 - (b) Consider also whether merely a **framework document** is regionally developed (see the recent SADC Framework), or one that contains and prescribes the application of **specified coordination criteria**
 - (c) In any event, ensure that the multilateral instrument provides **sufficient guidance** for and promotes the **conclusion of bilateral social security agreements** between ASEAN Member States

Recommendations



- **The importance of allowing for gradual approaches (2) –**
 - **(2) Contingencies/Benefit Types:** Consider including (initially) only **some contingencies/benefit types** to be covered – (a) E.g. **those prevalent in most of the Member States** (e.g. employment injury – 6 Member States have ratified ILO Convention 19 of 1925) or those that can more easily be implemented
 - (b) It may also be possible to focus on **long-term benefits**, at least initially, and to allow **short-term benefits** to be later covered
 - (c) Note the significant extent to which coordination and portability principles apply to **retirement, invalidity, survivors and occupational injury benefits**
 - (d) Note the **special arrangements** put in place to coordinate –
 - **Asymmetrical retirement schemes** (see above)
 - **Asymmetrical criteria** – e.g. contribution-based versus residence-based
 - (e) Note also the **complexities** involved in making **unemployment and health benefits portable**

Recommendations



- **The importance of allowing for gradual approaches (3) –**
 - **(3) (Legal) nature of scheme types**: Important questions include:
 - Should only **public schemes** be covered? And only **statutory schemes**?
- **The importance of allowing for gradual approaches (4) –**
 - (4) Consider that also the **categories of persons** covered can be gradually expanded – e.g., initially certain categories of migrant workers, which can be expanded –
 - Could commence with including skilled workers, to be expanded to include other migrant workers (see the ASEAN Charter provisions)
 - Later, even self-employed persons and other categories can be included (e.g. students); consider family members as well
 - Note the gradual scope extension of persons covered under other (multilateral and even bilateral) schemes
 - Ensure the coverage of temporary migrant workers in a way that does not create anomalies for them – and others

Recommendations



- **The importance of allowing for gradual approaches (5) –**
 - **(5) Also the countries covered and/or participating can be gradually expanding – could commence with countries:**
 - That share geographical borders and/or experience large cross-border flows
 - That already have an **underlying labour agreement or similar arrangement** in place – see, for example, Thailand and Cambodia, Myanmar, Laos and Viet Nam; or Malaysia and Indonesia
 - That are able/equipped to coordinate their systems regarding particular benefit categories (this can be done bilaterally as well)
- **The importance of allowing for gradual approaches (6) –**
 - **(6) Incremental unfolding of various coordination principles:**
 - Consider applying only **certain coordination principles first** (in particular, exportability of benefits and equal treatment);
 - Others **can follow later** as experience is gained

Recommendations



- The question of how to deal with irregular migrants
 - In a regional context, where freedom of movement regime prevails, the relevance of this issue is less pronounced
 - In those cases, where irregular migration is indicated, there are certain international minimum standards/good practices applicable
 - Irregular migrant workers are entitled to at least emergency health care
 - Merely losing employment should not imply irregular status and loss of work permit in the case of legally residing migrants (ILO Convention 143)
 - Past contributions made by the irregular migrant workers concerned should be repaid to him/her (UN Migrant Workers Convention)
 - All migrant workers, also and in particular irregular migrant workers, are vulnerable and subject to abuse
 - There is need for a not too strict definition/description of when a migrant worker would be regular/irregular, to balance immigration control and social protection objectives

Recommendations



- Focus also, and in particular initially, on the conclusion of bilateral social security agreements – most of the above issues arise here as well
- Capacity-building is crucial –
 - E.g., institutional, human and technical capacity (e.g., in relation to supporting data environment)
 - Of particular importance is the need to establish cross-border cooperation as well as interfaced systems, with reference to among others documentation, data exchange (e.g. the need to verify records), etc.

Recommendations



- Consider whether there is a need to establish a **centralised cross-border agency** to facilitate/support Member States and to render a streamlined service
- Joint **monitoring and evaluation** is crucial
- Arrange for an **implementing (i.e. an administrative) instrument** to be adopted – particularly important in the event of a multilateral arrangement

Recommendations



- A range of **supporting studies** may be required, to inform evidence-based arrangements
- Pay particular attention (especially at Member States level) to **synchronising social security, immigration, labour law and trade** legal and policy frameworks

Thank you

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