

Social protection for migrant workers abroad: Addressing the deficit via country-of-origin unilateral measures?

Marius Olivier, Adjunct-Professor: University of Western Australia, Perth, Australia; Extraordinary Professor, Faculty of Law, Northwest University, Potchefstroom, South Africa; Director: International Institute for Social Law and Policy (IISLP)

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PART I

Challenges faced by migrant workers abroad in relation to access to social protection

Challenges faced by MW: Access to social protection

- ▶ Lack of or weak SP for MW in several host countries, due to –
 - In certain regions, in particular in Gulf countries, limited provision is made for extension of SP to MW
 - The SP systems of host countries may not be adequately developed
- ▶ Bilateral (social security) agreements are still new to large parts of the developing world; where they do exist, they often only cover a limited range of benefits, and only in relation to certain workers, in particular higher-skilled workers

Challenges faced by MW: Access to social protection

- ▶ Despite recent attempts to provide more extensive coverage of MW than before, there is a tendency, especially in ASEAN countries, to develop separate but inferior regimes for the coverage of migrant workers, in particular unskilled and lower-skilled migrant workers
- ▶ These separate schemes provide protection which is less beneficial in comparison with that available to nationals, and at times also higher skilled non-nationals

Challenges faced by MW: Access to social protection

- ▶ Generally, MW may not be covered by the SP system of either the host or the home country due to –
 - Lack of extra-territorial application of the laws (and SP systems) of the country of origin
 - Nationality requirements
 - Residence requirements
 - Work in the informal economy
 - Documentation and other administrative barriers

PART II

Developments concerning the extension of SP to MW by countries of origin

- (a) Historical approaches**
- (b) International standards?**
- (c) Developing State practice**

Developments concerning the extension of SP to MW by countries of origin: historical approaches

- ▶ Past European experience: Assuming responsibility for nationals/citizens living and working abroad
- ▶ The rise of co-ordination law, both in terms of earlier international standards and bilateral agreements: *reciprocity of unilateral solutions based on citizenship/nationality status*
- ▶ Modern co-ordination instruments: Reducing the role of citizenship and reciprocity – protection based on a *human rights understanding* of the need of MWs to be protected by SP arrangements

Developments concerning the extension of SP to MW by countries of origin: international standards

- ▶ No binding international standards framework
- ▶ Yet, increasingly reference to this is made in soft law and explanatory and implementing instruments, for example –
 - 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers: Origin countries are encouraged to set up policies and procedures to protect their workers when abroad
 - 2006 ILO Multilateral Framework on Labour Migration, which provides a comprehensive overview of principles and guidelines as to how labour protection for such migrant workers can be improved
 - 2008 UN General Comment No. 19 on the right to social security, (in relation to the UN International Covenant on Economic, Social and Cultural Rights)

Developments concerning the extension of SP to MW by countries of origin: developing State practice

- ▶ **Extended protection for national workers employed abroad**
 - In perhaps one of the most important and notable developments in recent years, several migrant-sending countries have introduced measures to provide some social security protection to their own workers abroad, invariably strengthened by an extensive raft of supporting measures, including a supportive, dedicated institutional and operational framework
 - For example, in ASEAN, 6 out of the 10 countries have now done so

Developments concerning the extension of SP to MW by countries of origin: developing State practice

- ▶ Measures have included the establishment of **Special Overseas Workers Welfare Funds** by national and even (in the case of India) state governments, extending protection to workers and at times also their families – e.g.:
 - Philippines: Establishment of (i) Social Security System (SSS) Programme to Overseas Migrant Workers – voluntary membership; (ii) Flexi-Fund Programme – on top of the voluntary SSS scheme – individual worker account
 - Sri Lanka: Contributory pension scheme for Sri Lanka’s 2 million overseas migrant workers; Contributions may be paid monthly or as a lump sum; Contributions subsidised by government (60% of costs); Scheme provides an old age pension at age 60 and survivors’ benefits

Developments concerning the extension of SP to MW by countries of origin: developing State practice

► Other measures have included –

- Voluntary (and at times compulsory) affiliation in national social insurance schemes, for example, those of Albania, Indonesia, Jordan, Mexico, Mozambique, the Philippines and the Republic of Korea
- Measures and schemes aimed at supporting the flow of remittances and social insurance contributions to the sending country
- (Unilateral) exportability of social security benefits and the provision of related services (e.g. medical care) abroad

Developments concerning the extension of SP to MW by countries of origin: developing State practice

- ▶ The extension has been among others **achieved via**:
 - **Constitutional guarantees and statutory frameworks** facilitating the protection of migrant workers abroad – such as the 1987 Constitution of the Philippines, the 2008 Constitution of Ecuador and the Migrant Workers and Overseas Filipinos Act of 1995
 - See Mexico's migration law and regulations: Article 2 sets guidelines for the formulation of migration policy, including: (i) respect for the rights of both Mexican and foreign migrants; (ii) facilitation of international mobility; (iii) complementarity of labour markets with countries in the region; and (iv) full equality between nationals and foreigners, particularly as it relates to civil liberties
 - **Provisions in bilateral treaties** providing for continued coverage of certain categories of migrant workers in the social security system of the labour-exporting country – e.g., the India–Belgium agreement of 2006 (posted workers working for periods of less than five years covered by country of origin system)

Developments concerning the extension of SP to MW by countries of origin: developing State practice

- ▶ These extension mechanisms are often supported by a **range of complementary measures**, including –
 - A dedicated emigrant Ministry and/or specialized statutory bodies to protect the interests of their citizens/residents in the diaspora (e.g., India, Philippines, Bangladesh, Sri Lanka, Nepal)
 - Information on recruitment contracts and consular support
 - Support services to migrant workers at three stages: pre-departure, at destination (i.e., in the host country) and upon return (e.g., via return settlement programmes)
 - Lobbying for the protection of migrant workers

Developments concerning the extension of SP to MW by countries of origin: developing State practice

► Philippines:

- Office of the Undersecretary for Migrant Workers Affairs (OUMWA) at the Dept. of Foreign Affairs
- Filipino Workers Resource Center
- SSS offices in several countries; consular support
- Screening of applicants; provision of information
- Regulating overseas recruitment
- Charging fees to migrants, their employers and recruitment agencies as fund raising, and developing partnerships with the private sector and NGOs

Developments concerning the extension of SP to MW by countries of origin: developing State practice

► Thailand:

- Establishment of several departments in various Ministries, as well as other agencies – playing a monitoring, supporting and protective role
- A wide range of services and benefits are at the disposal of Thai overseas migrant workers, including monetary benefits to compensate for among others illness, out of a Fund for helping Thai overseas workers – to which the workers contribute
- Also, in 2015 the Social Security Act was amended to ensure that Thai workers regularly working abroad would be covered under the Act

Developments concerning the extension of SP to MW by countries of origin: developing State practice

► Indonesia:

- Mandatory insurance programme for migrant workers – financial compensation for losses suffered by the migrant prior to, during and after the emigration process; new law to provide compulsory participation in national scheme
- Arrangement with Malaysia: Indonesia allowed to establish learning centers for Indonesian children whose parents are working in oil palm plantations in Malaysian Borneo.
- Setting labour conditions: in 2015, Indonesia unilaterally set the minimum monthly salary for domestic helpers in Malaysia at RM900 with plans to raise it further to at least RM1,000

PART III

Conclusions and recommendations

Conclusions and recommendations

- ▶ Unilateral measures by the COO are of relatively recent origin, but seem to be growing in extent and popularity
- ▶ They cover sizeable numbers of migrant workers – in the case of the Philippines, 8 million, and in the case of Sri Lanka, 2 million
- ▶ Yet, they appear to be particularly problematic, in the absence of appropriate and effective monitoring, enforcement and persuasion mechanisms

Conclusions and recommendations

▶ Other challenges include:

- Limitations of extra-territorial implementation – on-line transactions, using embassies as vehicles, and even arranging with host country institutions (see, e.g., the Netherlands) may be required
- Contributions often too low to provide meaningful coverage and may place too much burden on the MW – innovative funding solutions are needed, including allowing channelling of remittances
- Benefit range is often too unwieldy and goes beyond social security provision – a more focused arrangement is needed to enhance social security coverage

Conclusions and recommendations

- ▶ **Further challenges** include:
 - Weakly developed social security systems of some countries of origin
 - Absence of a statutory mandate and a policy and programme framework – these need to be developed
 - Lack of awareness of entitlements regarding the insurance contracted and complex claim mechanisms
 - These arrangements do not generally cover informal workers and undocumented migrants

Conclusions and recommendations

- ▶ Unilateral arrangements can never replace what should be the primary source of the protection of migrant workers' social security rights, i.e. coverage under the laws of the host country: unilateral measures remain measures of last resort
- ▶ On the other hand, unilateral arrangements emanating from countries of origin provide interesting and important avenues of coverage, protection and support. These arrangements and interventions can provide important forms of protection and may be easier to adopt than bi- and multilateral frameworks

Conclusions and recommendations

▶ Final recommendations:

- Considerable scope exists for North–South and South–South learning
- Many sending (and receiving) countries are in need of technical advice
- Developing a compendium of good practice examples may be of considerable assistance
- There is need to develop a framework of international standards and guidelines to inform and strengthen the use of COO unilateral measures