



SOCIAL PROTECTION FOR MIGRANT WORKERS

What is at stake?

A growing number of individuals move across borders in search of better lives and employment opportunities. Today, an estimated 232 million people live outside their country of origin. While responding to increased demand for labour from globalised labour markets, international migration poses significant challenges for migrants and their families in terms of social security coverage.

Although “everyone as a member of society has the right to social security” (Universal Declaration of Human Rights (1948), art. 22), in reality, compared to nationals working their entire lives in one country, migrants face huge challenges in exercising their rights to social security. They can be denied access or have limited effective access to social security coverage in their host country because of their status, nationality or the insufficient duration of their periods of employment and residence. Their access may further be curtailed due to a lack of knowledge about and awareness of their rights and obligations. At the same time, they can lose their entitlements to social security benefits in their country of origin because of their temporary absence.

The principle of territoriality and the principle of nationality are inherent and problematic features of the national legislation of many countries. The lack of coordination mechanisms between countries can prevent migrants from obtaining coverage under social security schemes. Moreover, where bilateral and multilateral social security agreements exist, they will mostly cover formal workers, leaving migrant workers in irregular situations and/or working in the informal economy unprotected.

Overcoming the difficulties faced by migrant workers and their families with respect to social security coverage is an important challenge that needs to be addressed urgently. The International Labour Organization (ILO) is mandated to extend social security to all in need of such protection as embedded in the Declaration of Philadelphia (1944) and recently reaffirmed in the Social Protection Floors Recommendation, 2012 (No. 202) and its resolution.

The ILO's approach

1. To promote the **ratification and application of ILO Conventions and Recommendations** containing standards relevant to migrant workers and their social protection, notably equality of treatment. This will imply that social security laws, regulating both social insurance and social assistance schemes, cover migrant workers.
2. To support the **conclusion of social security agreements** (bilateral/multilateral): treaties which coordinate the social security schemes of two or more countries to provide equality of treatment in respect of social security, as well as access to and preservation and/or portability of social security entitlements (ILC 2011 Conclusions¹), using the Annex of the Maintenance of Social Security Rights Recommendation, 1983 (No. 167) as a model Agreement for the coordination of bilateral or multilateral social security instruments .
3. To support **unilateral measures: countries of employment** can unilaterally provide equality of treatment between nationals and non-nationals as regards social security coverage as well as the payment of benefits abroad. Also, **countries of origin** can provide a basic level of protection to their nationals working abroad through voluntary insurance.

¹ Resolution and conclusions concerning the recurrent discussion on social protection (social security), ILC, 100th Session, Geneva, 2011.

4. To promote the inclusion of social security provisions in **temporary labour migration programmes or bilateral labour agreements** using the Annex of the Migration for Employment Recommendation, 1949 (No. 86) as a model agreement.
5. To support the establishment of **national social protection floors (SFP)** to ensure basic social security guarantees to all, including migrants and their families and palliate the lack of coordination arrangements between countries in respect of any branch of social security.
6. To explore community-based mechanisms when implementing social protection schemes for migrant workers.

ILO action

The ILO is providing support to its Member States by:

- **Advising and assisting in the drafting and implementation of social security agreements** including bilateral and sub-regional instruments (Mauritius, the East African Community, the Economic Community of West African States).
- **Advising and providing technical input in the development of national social security strategies, design and implementation of social security schemes**, that will also include migrant workers (Senegal, Mozambique, European Union).
- **Strengthening institutional capacities** of entities responsible for planning and implementing national social security extension strategies to migrant workers and their families through targeted training courses (various countries in Africa and Romania).
- Assessing the social protection situation of countries. In collaboration with other UN Agencies and partners, the ILO has developed a methodology, the **Assessment-Based National Dialogue on Social Protection** that helps all stakeholders to identify social protection gaps and draw recommendations to establish at least a social protection floor in the country. The cost of establishing a SPF and needed fiscal space can be estimated. Migrant workers' access to social security is also part of this assessment exercise.
- **Advocating and assisting in reforming social security laws** to ensure equality of treatment between nationals and non-nationals.
- **Promoting the integration of social services and benefits delivery**, as to provide comprehensive information and assistance to migrant workers in issues related to employment and social protection rights and obligations, in a coordinated and effective manner.
- **Building a knowledge base on social security for migrant workers** e.g. via publications (such as *Social Security for Migrant Workers: A rights-based approach* - a policy guide for the international coordination of social security - and various studies at national, sub-regional and regional level) and by facilitating South-South exchange of experiences (e.g. ASEAN, ECOWAS, SADC, MERCOSUR).
- **Exploring the feasibility of using a portion of migrant workers' remittances to finance health microinsurance mechanisms** protecting migrant workers' families in origin countries (feasibility studies implemented in Senegal, Mali and Comoros²).

In focus: Work with the European Union



In 2011, the ILO provided technical input to the work of European Union institutions on two draft EU Directives on labour migration. ILO technical input was especially relevant to the final text of Directive 2011/98/EU, which was adopted in December 2011. The Directive provides for equal treatment between lawfully resident migrant workers from non-EU countries and nationals of the EU Member State where they reside in respect of a number of matters, including social security. The ILO prepared a note that was reflected in an amendment to a provision in this Directive which guarantees that when such migrant workers (or their survivors) return home or move to another country outside of the EU, they can receive the old-age, invalidity and death pensions to which they have previously contributed under the same conditions and at the same rates as the nationals of the EU Member States concerned.

² For more information, please consult: <http://www.microinsurancefacility.org/projects/lessons/feasibility-resource-mobilization-migrant-health>

ILO standards and tools



To safeguard migrant workers' social security, **key principles** are laid down in the **ILO Conventions and Recommendations** which make provisions for the social security rights of migrant workers and their families.

ILO social security instruments

The Convention on Social Security (Minimum Standards), 1952 (No. 102) sets global minimum standards for all nine branches of social security. Part XII of Convention No. 102 (article 68) is devoted to equality of treatment of non-national residents.

Equality of Treatment (Social Security) Convention, 1962 (No. 118) sets forth the *equality of treatment* principle between national and non-national workers and their families.

Maintenance of Social Security Rights Convention 1982 (No. 157) calls for the *maintenance of rights in the course of acquisition* by providing for the totalisation of qualifying periods completed in different countries.

Maintenance of Social Security Rights Recommendation, 1983 (No. 167) sets out in its Annex a Model Agreement for the Coordination of Bilateral or Multilateral Social Security Instruments.

Social Protection Floors Recommendation, 2012 (No. 202) sets *four basic social security guarantees to all residents and children*: i) access to a nationally defined set of goods and services constituting essential health care including maternity care; ii) basic income security for children, at least at a nationally defined minimum level; iii) basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income; iv) basic income security, at least at a nationally defined minimum level, for older persons. Migrants and their families should have access to these basic social security guarantees in the State where they reside, as well as in their home country.

ILO migrant-specific instruments

Migration for Employment Convention, 1949 (No. 97) establishes the principle of equality of treatment in respect of social security (article 6).

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) addresses migrant workers in irregular situations and their rights to equality of treatment in respect of rights arising out of past employment with regards to remuneration, social security, and other benefits (article 9).

The ILO Multilateral Framework on Labour Migration (2006) calls for the conclusion of social security agreements to ensure the portability of social security entitlements (Guideline 9.9. p. 18).

Additional ILO resources can be found at: <http://www.ilo.org/labourmigration>.



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