

Compendium of Practices to
the Capacity-building Manual on

**Establishment and Implementation
of a Migrant Welfare Programme
by African Countries**



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The research for and preparation of this compendium and accompanying documents benefited from inputs from the following (in alphabetical order): DEDOVIC Tanja, FREI Flurina, GIRMA Martha, JIMENEZ Fabio, KARARA Alice, MARTENS Jonathan, MATASHA Catherine, MULAT Netsanet, RIGHA Edwin, and WARN Elizabeth of IOM; BOLLY Odette, MOLOKWU Adaeze, NTSOBO Amohelang and OKENG'O Brian of the AUC; ILO colleagues as well as governmental and other stakeholders consulted for purposes of this manual.

Publisher: International Organization for Migration
17 route des Morillons
P.O. Box 17
1211 Geneva 19
Switzerland
Tel.: +41 22 717 9111
Fax: +41 22 798 6150
Email: hq@iom.int
Website: www.iom.int

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Confederaziun svizra



Swiss Agency for Development
and Cooperation SDC

Prepared by

Marius Olivier (consultant)

Director, Institute for Social Law and Policy (ISLP), Western Australia

Honorary Professor, Faculty of Law, Nelson Mandela University

Extraordinary Professor, Faculty of Law, North-West University – Potchefstroom

Adjunct Professor, Faculty of Law, University of Western Australia

Contents

Acronyms and abbreviations	vii
Scope and purposes of compendium	ix
MODULE A	1
Introduction: Conceptual framework and labour migration trends and characteristics . . .	1
1. Conceptual framework (Manual, par I.4)	1
1.1. Social protection, social security and national social protection floors (Manual, par I.4.1)	1
1.1.1. Social protection	
1.1.2. Social insurance and social assistance	
1.1.3. The value and importance of a multi-tiered/multi-pillared social security regime	
1.2. Migrant welfare programme, labour migration and migrant worker (Manual, par I.4.2) . . .	3
1.2.1. Labour migration and labour mobility	
1.2.2. Temporary migrant worker and temporary labour migration	
Key resources	3
MODULE B	5
Access to social protection and welfare support: Legal and factual considerations	5
1. Challenges/barriers faced by African migrant workers, including informal economy workers, in accessing social protection and welfare support (Manual, par II.4)	5
1.1. Adjusted legal and policy framework in GCC countries provide some measure of social protection for certain migrant workers	5
1.2. Low social protection coverage in Africa	7
2. Exposure to exploitation and maltreatment (Manual, par II.5)	7
2.1. The Kafala sponsorship system	7
3. Country-of-destination (CoD) obligations in relation to migrant workers: global and regional normative approaches (Manual, par II.6)	8
3.1. Beyond the principle of reciprocity – a human rights approach to extending social protection to migrants and migrant workers	8
3.2. African Union instrument emphasizing the extension of social protection to migrant workers and their families	9
3.3. Regularization of undocumented migrants – a pathway to improved social protection outcomes, including contributory social security	9
4. Bilateral and multilateral arrangements: value and constraints (Manual, par II.7)	11
4.1. Bilateral labour agreements (BLAs) and bilateral labour migration agreements/ arrangements (BLMAs)	11
4.1.1. General overview: scope and content of African BLAs	
4.1.2. United Nations Guidance on Bilateral Labour Migration Agreements (2022)	
4.1.3. African Union Guidelines on Developing Bilateral Labour Agreements (2022)	
4.1.4. African and other BL(M)As/MOUs containing social protection arrangements: an overview	
4.1.5. African BL(M)As/MOUs containing social protection arrangements	
4.1.6. Latin American BL(M)As/MOUs containing social protection arrangements	

4.1.7. Asian BL(M)As/MOUs containing social protection arrangements	
4.1.8. GCC countries' BL(M)As/MOUs containing social protection arrangements	
4.2. Bilateral social security agreements (BSAs)	22
4.2.1. Examples of BSAs involving African countries	
4.2.2. Examples of BSAs involving Asian countries	
4.2.3. Examples of BSAs involving European countries	
4.2.4. Examples of BSAs involving Latin America countries	
4.2.5. The need to strengthen capacity and understanding of negotiating social security agreements	
4.3. Multilateral social security agreements (MSAs)	31
Key resources.	36

MODULE C 41

Guiding principles.	41
1. Social protection as a human right (Manual, par III.4)	41
2. Key policy considerations (Manual, par III.5).	42
Key resources.	43

MODULE D 45

Establishment of a migrant welfare programme	45
1. Description, objectives and operational framework of a Migrant Welfare Programme (MWP) (Manual, par IV.4)	45
2. Evaluation of MWPs/MWFs: Achievements and challenges (Manual, par IV.5)	45
3. Need for establishing a MWP (Manual, par IV.6)	46
4. Design of a MWP and services/benefits to be provided (Manual, par IV.7).	47
5. Sources of funding, contributions and beneficiaries: specification (Manual, par IV.8)	48
Key resources.	49

MODULE E 51

Insurance-based arrangements	51
1. A dedicated framework required (Manual, par V.4).	51
2. Range and adequacy of social protection benefits available in country of destination (Manual, par V.5)	52
2.1. Reliance on informal social protection in CoDs.	52
3. Social protection risks to be provided via insurance-based arrangements (Manual, par V.6)	54
4. Modalities for extending country-of-origin insurance-based arrangements and ongoing social security benefits (Manual, par V.7)	55
4.1. A range of non-exhaustive policy modalities is available	55
4.2. Dedicated <i>insurance-based</i> arrangements	57
4.3. Extension of existing public scheme arrangements	59
4.4. Non-contributory support, including social assistance schemes.	60
4.5. Other arrangements	63
4.6. CoO unilateral portability.	64

5.	Compulsory coverage may strengthen social protection for migrant workers abroad, considering dual coverage challenges (Manual, par V.8)	65
6.	Protection for families of migrant workers abroad, and families staying behind in the country of origin (Manual, par V.10).	66
7.	Social protection arrangements for informal economy migrant workers (Manual, par V.11)	67
	Key resources.	71

MODULE F 75

Support services	75	
1.	Range of services provided by Migrant Welfare Programmes, including people-centred and gender-responsive support services (Manual, par VI.4)	75
2.	Access to health care, including sexual and reproductive health care (Manual, par VI.5)	77
3.	Access to legal services (Manual, par VI.6)	78
4.	Social protection in the light of pandemics (Manual, par VI.7)	79
4.1.	Protection extended by countries of origin during the COVID-19 pandemic.	79
4.2.	The need to revisit BLAs to ensure better protection for migrant workers affected by pandemics.	80
5.	Repatriation of migrant workers (Manual, par VI.8)	81
6.	Migrant worker orientation (Manual, par VI.9).	82
7.	Return and reintegration of migrant workers (Manual, par VI.10)	83
	Key resources.	85

MODULE G 87

Implementation	87	
1.	Regulations, institutions and operations (Manual, par VII.4)	87
1.1.	Existence of a policy and legal framework	87
1.2.	Institutional and operational capacity and arrangements.	89
1.2.1.	Overview: institutional framework	
1.2.2.	Institutional arrangements – public institutions	
1.2.3.	Institutional arrangements – contracting/subsidizing non-State actors	
1.2.4.	Operational arrangements	
	Key resources.	96

ACRONYMS AND ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
BLAs	Bilateral Labour Agreements
BSAs	Bilateral social security agreements
CEPGL	Economic Community of the Great Lakes Countries (by its French acronym)
CoD	country of destination
CoO	country of origin
ESCWA	United Nations Economic and Social Commission for Western Asia
GCC	Gulf Cooperation Council
MDWs	migrant domestic workers
MOU	memorandum of understanding
REC	renewable energy certificate
SADC	Southern African Development Community
SP	social protection



SCOPE AND PURPOSES OF COMPENDIUM

This Compendium contains examples representing good practices, in particular country-of-origin (CoO) practices in relation to social protection measures adopted by CoOs to support their migrant workers abroad and their family members. As such, the Compendium is informed by and expands on selective themes raised in the Manual on the Establishment and Implementation of a Migrant Welfare Programme by African countries. Resources used are indicated per Module description below.



MODULE A

Introduction: Conceptual framework and labour migration trends and characteristics

1. Conceptual framework (Manual, par I.4)

1.1. Social protection, social security and national social protection floors (Manual, par I.4.1)

1.1.1. Social protection

The term social protection has acquired different meanings, also within the multilateral framework. For **African Union** purposes, the broad definition contained in the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security*¹ is also supported by the understanding of social protection, as it appears from the *Social Policy Framework for Africa* (2009).

Social protection as depicted in the Social Policy Framework for Africa (2009)

30. The interventions falling under a social protection framework include social security measures and furthering income security; and also the pursuit of an integrated policy approach that has a strong developmental focus, such as job creation, equitable and accessible health and other services, social welfare, quality education and so on.

Source: African Union, 2009, par 30.

Paragraph 13 of the Social Policy Framework for Africa² describes the purpose of social protection in the following terms:

“... The purpose of social protection, according to the United Nations, is to ensure minimum standards of well-being among people in dire situations to live a life with dignity, and to enhance human capabilities. Social protection includes responses by the state and society to protect citizens from risks, vulnerabilities and deprivations. It also includes strategies and programmes aimed at ensuring a minimum standard of livelihood for all people in a given country. This entails measures to secure education and health care, social welfare, livelihood, access to stable income, as well as employment. In effect, social protection measures are comprehensive, and are not limited to traditional measures of social security.”

¹ Adopted by the Thirty-Fifth Ordinary Session of the Assembly, held in Addis-Ababa (Ethiopia), on 6 February 2022.

² See also the African Union Social Agenda 2063 (adopted by the African Union Executive Council in February 2020 (EX.CL/Dec.1074 (XXXVI))), which provides that: “In practice, social protection instruments are clustered around (a) the basic package of social protection to which all people are entitled across their life cycle, and (b) the protection and services that are targeted mainly at people who are vulnerable i.e. have high risk of falling into poverty and deprivation. These social assistance and social protection services are also referred to as social safety nets.” (par 148).

From the perspective of the **IOM**, according to the *IOM Glossary on Migration* (third edition) (2019), “social protection” can be defined as “The set of public and private policies and programmes aimed at preventing, reducing and eliminating economic and social vulnerabilities to poverty and deprivation”.³

1.1.2. Social insurance and social assistance

As explained in the Manual, entitlements to social security derive from either the payment of social security contributions (i.e. contributory schemes), or from non-contributory schemes, invariably funded from State resources. The former mainly relate to what have become known as **social insurance** arrangements, while the latter would typically include social assistance arrangements, amongst others. For African continental purposes, the *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security* (2022) define these concepts as follows:

“Social assistance” and “social insurance” as defined in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security (2022)

- “Social Assistance is a form of social security, funded from government revenue, which provides assistance in cash or in kind to persons who lack the means to support themselves and their dependants. It also includes universal payments financed from government revenue which are granted to designated categories deemed to have exceptional needs.” (Art 1(n))
- “Social Insurance refers to a contributory form of social security designed to protect income earners and their dependants against a reduction or loss of income as a result of exposure to risks.” (Art 1(o))

Source: African Union, 2022, Arts. 1(n) and (o).

1.1.3. The value and importance of a multi-tiered/multi-pillared social security regime

In the Manual, it is indicated that social risks to which people are exposed are typically addressed by a **mix** of contributory and non-contributory arrangements, in particular via a multi-pillar or multi-tier model. The advantages of adopting such an approach are indicated below.

Advantages of a multi-tiered/multi-pillared social security regime

“The design of a multi-tiered regime requires careful calibration of the different tiers or pillars, in order to avoid both duplication of and gaps in coverage; to ensure that incrementally coverage is extended to all of those affected by the particular life-cycle risk; to facilitate the reduction of poverty and meaningful protection by gradually implementing both a minimum and a higher-level, adequate benefit; and to cause the optimal use of financial resources, including public finances. Of course, when calibrating the different tiers, it is crucial to proceed in a way which will heed and

³ IOM *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse* (2019), p. 23 notes that common elements of social protection include “support for individuals, households, families and communities to prevent, manage and overcome the hazards, risks and stresses threatening their wellbeing, and contributions to reducing poverty, exclusion and inequality. Social protection programmes are designed to provide an income or livelihood to reduce the economic and social vulnerability of individuals or groups. Also called ‘social security’, it is a right articulated in the International Covenant on Economic, Social and Cultural Rights, which recognizes the role social security plays in securing human dignity. Groups typically targeted by social protection programmes include single-parent households, female- or child-headed households, the unemployed, or those living with illness or disability.”

achieve long-term social security objectives set by a country concerned. Some countries prefer that social insurance should constitute the main avenue of ensuring social security in the country.” Other countries adopt a more welfarist approach, according to which tax-based non-contributory arrangements constitute the essence of social security provision.

Source: Olivier, 2022, p. 56, par 126.

1.2. Migrant welfare programme, labour migration and migrant worker (Manual, par 1.4.2)

1.2.1. Labour migration and labour mobility

As noted in the Manual, the term “labour migration” is embedded in the support provided by CoOs to their workers abroad, and in particular in the cross-border context of the term, which is defined in the IOM’s Glossary on Migration (2019) as the “movement of persons from one State to another, or within their own country of residence, for the purpose of employment”. However, it is increasingly common to refer to “labour mobility” instead of labour migration. According to the Glossary, “labour mobility” is:

“... [m]ore frequently used nowadays to reflect the dynamic and multi-directional nature of modern migration, indicating that those who move for employment purposes may do so more than once, may move across different countries of destination and that their employment abroad may not necessarily result in settlement in another country, keeping their prime place of residence in their country of origin.”

1.2.2. Temporary migrant worker and temporary labour migration

Most migrant workers work abroad on a temporary basis, even if many do so repeatedly. This is an important factor to consider when CoOs design appropriate social protection and welfare measures to serve these and other migrants. As noted in the Manual, “temporary migrant workers” refer to “skilled, semi-skilled or untrained workers who remain in the receiving country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise.”

This, in turn, is related temporary labour migration, which is understood to mean: “Migration for a specific motivation and purpose with the intention to return to the country of origin or habitual residence after a limited period of time or to undertake an onward movement.” (See IOM (2019). *Glossary on Migration*; adapted from the European Migration Network (2014), *Asylum and Migration Glossary 3.0*).

Key resources

African Union (2022). Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security.

African Union (2020). Social Agenda 2063.

African Union (2009). Social Policy Framework for Africa.

European Migration Network (2014). *Asylum and Migration Glossary 3.0*. European Commission, Luxembourg.

IOM (2019). *Glossary on Migration*. International Migration Law, No. 34. IOM, Geneva.

IOM (2019). *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse*. IOM, Geneva.

Olivier, M. (2022). *Viet Nam Social Security Law Reform: An Integrated Framework*. ILO, Geneva.



MODULE B

Access to social protection and welfare support: Legal and factual considerations

1. Challenges/barriers faced by African migrant workers, including informal economy workers, in accessing social protection and welfare support (Manual, par II.4)

1.1. Adjusted legal and policy framework in GCC countries provide some measure of social protection for certain migrant workers⁴

As noted in the Manual, recently, there have been some attempts in certain Gulf and MENA countries to adopt laws and policies to relax restrictions on migrant workers and to provide some measure of social protection for previously excluded categories of migrant workers, including migrant domestic workers. Below we provide some examples of these developments:

- Social protection implications of dedicated domestic worker legislation: In the United Arab Emirates, the recent domestic worker law, Federal Decree-Law No. 9 of 2022 concerning Domestic Workers (2022), does not, as such, limit its application to national domestic workers; migrant domestic workers are therefore meant to be included. Building on the general objective of the law to “maintain a safe and healthy workplace in compliance with local laws and international agreements” (Article 2(2)), the law confirms a number of social protection obligations imposed on the employer, some of which could be covered through private insurance products. The social security risks areas include: (i) paid sick leave entitlement;⁵ (ii) costs of medical care;⁶ and (iii) compensation for work injuries and occupational diseases.⁷ Article 22 also provides for an end-of-service gratuity, which could be seen as partly dealing (to some extent) with the risk of unemployment or even old age. The new domestic worker law also stipulates that the employment contract must be in accordance with the unified standard contract of employment adopted by the relevant Ministry.⁸
- In Kuwait, the Domestic Worker Law (Law 68 of 2015), contains limited social protection provisions. The Law indicates that the employer is bound to provide the domestic migrant worker (DMW) with among others accommodation, medicine and medical treatment (Article 9). The DMW is entitled to these benefits, which must be included in the

⁴ Olivier, M. *Selected Perspectives on Social Protection Mechanisms in the Gulf Cooperation Council Countries: Extending Social Protection to Migrant Workers in the GCC countries* (forthcoming).

⁵ Government of the United Arab Emirates (2022). Federal Decree-Law No. 9 of 2022 concerning Domestic Workers, Article 10(6).

⁶ According to Article 11(5), the employer incurs the costs of the domestic worker’s medical care in accordance with the health system in effect in the State, or, alternatively, provide the domestic worker with appropriate health insurance in accordance with the laws and regulations governing the State’s health system.

⁷ Article 11(9) provides for “... prescribed compensation for work injuries and occupational diseases, as provided for Decree-Law No. 33 of 2021 regarding the regulation of labor relations referred to, and decisions issued in implementation thereof. Employers may not be relieved of this obligation unless the insurance company pays the compensation outlined herein”.

⁸ See Articles 1 (definition of “employment contract”), 6(1) and 7(1).

recruitment contract prepared by the Department of Domestic Labour (Article 22). The DMW is also entitled to end-of-service remuneration – this can be seen as partially providing in the need to deal with the DMW’s unemployment and/or retirement. These DMW entitlements are now included in the new unified contract (also referred to as the “Tripartite Model” contract) for domestic workers of all nationalities, issued in February 2020.⁹

- Unemployment insurance legislation. In Bahrain, the Unemployment Insurance Law (Decree 78 of 2006) provides for unemployment insurance to be extended to all workers, defined as “Every natural person who is employed by an employer under his management or supervision in consideration of a wage of any kind whatsoever.”¹⁰ However, in November 2020 the Bahraini Ministry of Labour and Social Development issued a clarification, stating that unemployment benefits are only paid to unemployed Bahrainis, while non-Bahrainis are only entitled to receive compensation in the event of arbitrary and unlawful dismissal from work.¹¹ This has been criticized on the basis that the law does not provide for this restriction, and that the significant contributions paid into the unemployment fund by migrant workers effectively subsidize unemployment benefits paid to Bahrainis, while non-Bahrainis would rarely be able to benefit.¹²
- Relaxed management of work permit system. Also, in Bahrain: “In 2019, the Labour Market Regulatory Authority (LMRA) of Bahrain launched a new modality for managing the work permits of migrants in the domestic workers categories, including domestic workers, gardeners, house guards, babysitters, drivers and cooks. The new Expatriate Management System allows employers or persons authorized on their behalf to handle the issuing and renewal of work permits, and adjust the occupation of foreign employees in a transparent one-stop shop service.”¹³
- Continued health coverage. In 2020 the United Arab Emirates moved to tie continued employment of migrant domestic workers (MDWs) over the age of 60 with a residency permit and who are in the country, to continued health coverage. The relevant Ministry issued a decision that would allow these MDWs to renew their employment contracts, provided that their employer covers health-related costs during the stay of the MDW in the country.¹⁴
- **Introduction of minimum wage arrangements.** Reforms aimed at introducing a minimum wage applicable to migrant workers to have the potential not only to increase migrant workers’ basic wage, but also to improve the value of those social protection benefits linked to the basic wage of the migrant worker concerned. **Qatar**, in 2020, adopted the *Law on Determining the National Minimum Wage for Workers and Domestic Workers* (Law No. 17 of 2020) on determining the minimum wage for workers and domestic workers – to be undertaken by the Minister, and to reviewed annually.

⁹ ESCWA (2022). *Situation Report on International Migration 2021: Building forward better for migrants and refugees in the Arab region*, p. 70; see also [What is new in the latest Unified contract for Domestic workers?](#)

¹⁰ Article 1(9) of Unemployment Insurance Law (Decree 78 of 2006).

¹¹ ESCWA (2022). *Situation Report on International Migration 2021: Building forward better for migrants and refugees in the Arab region*, p. 71.

¹² [Bahrain’s migrants pay into unemployment funds, but rarely access benefits.](#)

¹³ ESCWA (2022). *Situation Report on International Migration 2021: Building forward better for migrants and refugees in the Arab region*, p. 67.

¹⁴ *Ibid.*, p. 71.

1.2. Low social protection coverage in Africa

As indicated in the Manual, globally Africa has the weakest coverage in terms of social protection. The ILO's World Social Protection Report 2020–22 remarks as follows:

Low social security coverage in Africa – an effectively restricting coverage for migrant workers and their families as well

“In Africa, despite significant progress in extending social protection coverage, only 17.4 per cent of the population are effectively covered by at least one social protection cash benefit, with significant variation across countries. Owing to greater efforts to extend old-age protection, 27.1 per cent of Africa's older population now receive a pension, and some countries, such as Botswana, Cabo Verde, Lesotho, Mauritius and Namibia, have reached, or approached, universal pension coverage. However, significant coverage gaps remain across the region with respect to children, mothers with newborns, unemployed workers, persons with disabilities and vulnerable population groups.”

Source: ILO, 2021a, pp. 19, 47.

2. Exposure to exploitation and maltreatment (Manual, par II.5)

2.1. The Kafala sponsorship system¹⁵

Structural and factual impediments to coverage of migrant domestic workers – the Kafala (sponsorship) system: In the Manual, the challenges posed by and impact of the Kafala (employer) sponsorship system were highlighted. In fact, the inadequate legal protection afforded to MDWs is accentuated by and associated with the structural and factual impediments they face. Structurally, the employer-sponsored Kafala system puts MDWs and other foreign workers subject thereto at significant risk of violence, exploitation and abuse. As has been explained:

“The Kafala system primarily involves a sponsor who has the legal responsibility for a MDW during a contracted period, making the MDW's status in the country and overall livelihood dependent upon the sponsor. The system encompasses a number of administrative regulations, customary practices, and legal requirements which bind the worker to the recruiter [i.e. the employer] temporarily.”¹⁶

and

“In this system, a migrant worker's residency and work permit is tied to a specific employer. Kafala inhibits MDWs from seeking legal recourse through national labour laws and therefore seriously compromises their ability to leave exploitative or abusive working conditions ... Under kafala a worker's legal status is linked to one employer and the worker cannot unilaterally exit the employment relationship. The domestic workers' exclusion from labour legislation and social protection exacerbates the power imbalance. ...”¹⁷

¹⁵ Olivier, M. *Selected Perspectives on Social Protection Mechanisms in the Gulf Cooperation Council Countries: Extending Social Protection to Migrant Workers in the GCC countries* (forthcoming).

¹⁶ Diab, J.L. et al., (2022). *Acknowledged but Forgotten: The Gender Dimensions of Sexual Violence Against Migrant Domestic Workers in Post-Crisis Lebanon* (IMS Policy and Working Paper Series 2/2022). See also Legal Action Worldwide (2020). *The Kafala system in Lebanon: How can we obtain dignity and rights for domestic migrant workers?* (Policy brief).

¹⁷ ILO (2016). *Intertwined – A study of employers of migrant domestic workers in Lebanon*. ILO, Geneva.

However, recent reforms were undertaken in several GCC countries:

Recent reforms to the Kafala sponsorship system in GCC countries

Several Gulf States have implemented reforms to the Kafala sponsorship system, among other reforms impacting directly or indirectly MWV's entitlement and access to SP, but these have been minimal and have reportedly had limited positive effect on migrants.¹⁸ For example, Saudi Arabia announced that as from March 2021 it would ease some of the contractual restrictions, which give employers control over the lives of some 10 million migrant workers. These reforms would reportedly allow private sector workers to change jobs and leave the country without an employer's consent. They would also be able to apply directly for government services, and their employment contracts would be documented digitally. However, while these developments are significant, the Kafala sponsorship system is not abolished. Human Rights Watch comments that workers would appear to still require to have an employer act as their sponsor to enter Saudi Arabia, and that employers would retain the power to renew or cancel workers' residency permits at any time. Also, apparently the reform does not apply to domestic workers, who are some of the most vulnerable migrants in the country.¹⁹

Source: Olivier, forthcoming.

3. Country-of-destination (CoD) obligations in relation to migrant workers: global and regional normative approaches (Manual, par II.6)

3.1. Beyond the principle of reciprocity – a human rights approach to extending social protection to migrants and migrant workers²⁰

Older ILO Conventions relied on the principle of reciprocity, in that they required of ratifying Member States to extend the same social security protection available to their national workers to migrant workers of other ratifying countries, in the social security area covered by the particular Convention.²¹ Modern co-ordination instruments (especially bilateral and multilateral social security treaties) have reduced the role of citizenship and reciprocity. Increasingly, protection has been based on a human rights understanding of the need of migrant workers to be protected by social protection arrangements. This is informed by the considerations of migrants' humanity, their vulnerability status, and a human rights approach, reflected in particular in Article 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. This is also evident from the current international standards framework.²²

¹⁸ IOM (2019). *World Migration Report 2020*, p. 84.

¹⁹ Saudi Arabia eases 'kafala' system restrictions on migrant workers.

²⁰ See Olivier, M. (assisted by J. Mushomi and C. Kakuba) (2022). *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa*. IOM, Geneva, p. 13–14.

²¹ See, for example, ILO Convention 19 of 1925 (Equality of Treatment (Accident Compensation) Convention) and, of wider application, ILO Convention 118 of 1962 (Equality of Treatment (Social Security) Convention): this latter Convention requires of Member States to guarantee equality of treatment of social security provisions for migrant workers for any or all of the nine branches of social security that are in force in its territory and for which it agrees to be bound.

²² See among others Article 9 of the International Covenant on Economic, Social and Cultural Rights (1966) and the interpretation accorded to this Article by the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 19 on the right to social security (E/C12/GC/19 of 4 February 2008).

The general principle contained in international human rights instruments pertaining to non-citizens is that all persons, by virtue of their essential humanity, should enjoy all human rights unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective.²³ It has also been remarked that, “[A]ll current ILO social security standards define the personal scope of coverage irrespective of nationality and almost all contain similar clauses on equality of treatment between nationals and foreign workers in the host country, and most of them contain special non-discrimination clauses, such as, for example, Convention 102 of 1952.”²⁴ Therefore, the extension of equal treatment is in fact no longer dependent on reciprocity – a tendency which is also confirmed by recent United Nations and ILO instruments.²⁵ For example, ILO Recommendation concerning National Floors of Social Protection, 2012 (No. 202) suggests the extension, in principle, of a national social protection floor to “all residents”.

3.2. African Union instrument emphasizing the extension of social protection to migrant workers and their families

In addition to the African instruments supporting the extension of social protection to migrant workers, indicated in the Manual, mention should also be made of the African Union Ouagadougou +10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa (2015).²⁶ One of the six key Priority Areas of its Plan of Action is Key Priority Area 3 on Social Protection and Productivity for Sustainable and Inclusive Growth. Its Expected Outcome is to “Extend social protection floors coverage to the excluded” (including migrant workers). The Plan of Action also includes Key Priority Area 5 on Labour Migration and Regional Integration. Its Expected Outcome in this area (Outcome 4) includes:

“Social security extended to migrant workers and their families through access and portability regimes compatible with International Standards and good practice”.

3.3. Regularization of undocumented migrants – a pathway to improved social protection outcomes, including contributory social security

The importance of regularization as a means to improve the social protection (SP) plight of undocumented migrants is highlighted on several occasions in the Manual. In the Manual it is indicated that regular/documented migrant status provides not only in-principle access to the labour market in CoDs, but also pathways towards at least contributory social security and wider SP services in the CoD. It is therefore important to invest in regularization initiatives.

²³ Weissbrodt, D. (2003). *Final report on the rights of non-citizens* (United Nations Doc. E/CN.4/Sub.2/2003/23). In its General Comment 15 the United Nations Human Rights Committee explained that “the rights set forth in the Covenant [on Civil and Political Rights] apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness ... The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.”. See United Nations Human Rights Committee General Comment 15 on The Position of Aliens under the Covenant (Covenant on Civil and Political Rights) E/CN.4/Sub.2/2002/25/Add.1 paras 14, 50, 51, 63, 66.

²⁴ See Baruah, N. and R. Cholewinski (2006). *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*, pp. 154–155. OSCE, IOM and ILO, Vienna.

²⁵ See Article 27 of the 1990 United Nations International Convention on the Protection of Rights of all Migrant Workers and their Families. And yet, the position appears to be particularly nuanced: there is a discernible trend, confirmed by both international standards and State practice, towards affording enhanced protection to regular and long term migrant workers, often with reference to key principles operative in this domain, such as the lawful residence, lawful employment and means of subsistence criteria; Olivier, M. (2018). *Social protection for migrant workers in ASEAN: Developments, challenges, and prospects* (Report prepared for the ASEAN Secretariat, ASEAN Member States and the ILO) (2018), p. 120.

²⁶ Adopted by African Union Heads of State and Government in January 2015.

In fact, regularization is a key intervention to be pursued in relation to migrants in an irregular situation, according to Objective 5 of the United Nations Global Compact for Safe, Orderly and Regular Migration (2018) (Enhance availability and flexibility of pathways for regular migration).

Several worldwide examples present themselves, some of which include the following:

- **South Africa's** special dispensation (permit) regime for nationals in an irregular situation hailing from Angola, Lesotho and Zimbabwe serves as one example. The permit regime was designed in consultation and on the basis of MOUs with the governments of the CoOs concerned. In fact, from a domestic law perspective, holders of the permit are entitled to reside and work in South Africa, and are accorded (limited duration) permanent residence status, on the basis of the provisions of the Immigration Act 13 of 2002 – which may create discrepancies in comparison with the treatment in law, rights and entitlements of particular temporary categories of migrant workers, who often entered South African legally.²⁷
- Other examples of such regularization scheme interventions include **Thailand's** National Verification Process (NVP) (for nationals from Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam).²⁸ The NVP process in principle implies access to social protection in Thailand, although access may be hampered by practical considerations.²⁹
- In **Portugal**, given the COVID-19 context, the government decided to regularize all foreign workers who had pending residential visa requests, granting them access to the health system and the same social rights available to nationals.³⁰
- Countries of origin could play a significant role in the regularization of the status of migrant workers. The example of **Lebanon** is in particular noteworthy.

Some countries of origin provide significant support to their migrant workers in Lebanon

“Even though many of the migrant workers arriving in Lebanon may have left their country of origin (CoO) irregularly (for example, if they have left the country of origin in the wake of an employment ban imposed by the CoO – for example, the Philippines has instituted such a ban in relation to its nationals working in Lebanon) and often would hold irregular status in Lebanon (as they may not have obtained the necessary work permit to work in the country), some of the countries concerned, for example Bangladesh and the Philippines, provide support to their migrant workers in Lebanon. Part of the focus of their support is to assist with the regularization of the status of these workers, also with a view to enable them to qualify for the limited SP support that may be available in Lebanon, in addition to the specific forms of SP support these CoOs may in any event be providing for their migrant workers abroad.”

“Regularization of the status of migrants in an irregular situation is key to participation in public and even private SP arrangements in Lebanon, as well as (in many cases) benefiting from the full extent of country-of-origin SP support. This may require the dedicated involvement of several stakeholders – including (as is already being successfully done in a number of instances) embassies of countries of origin, NGOs, and the trade union movement. This may imply implementing dedicated interventions focused on rendering assistance with filling critical labour market skills needs in Lebanon and finding suitable employers, as this may result in ensuring access to the Lebanese contributory SP system. This may also necessitate acquiring and processing documentation required for the purpose of regularization. Return and repatriation of undocumented migrant workers should therefore find its

²⁷ See Olivier, M. (2021). *Bilateral labour migration arrangements in two Southern African Development Community corridors*. IOM, Geneva, and Bule, K. N. and L. B. Landau (2020). *A Drop in the Ocean: Labour Market Effects of South Africa's Special Dispensations for Southern African Migrants* (Report for the International Labour Organisation and the South African Department of Labour).

²⁸ See *Triangle in ASEAN, Quarterly Briefing Note, Thailand*.

²⁹ Olivier, M. (2018). *Social protection for migrant workers in ASEAN: Developments, challenges, and prospects*. ILO, Geneva, pp. 87, 90–91.

³⁰ United Nations (2020). *Social protection responses to the COVID-19 crisis in the MENA/Arab States region*, p. 20.

rightful place as only one, but not necessarily the only, or even the primary avenue of assisting such workers. In addition, migrant workers whose position has been regularized potentially add to the pool of National Social Security Fund (NSSF) contributors, thereby strengthening the resource basis of the NSSF.”

Source: Olivier, forthcoming.

4. Bilateral and multilateral arrangements: value and constraints (Manual, par II.7)

4.1. Bilateral labour agreements (BLAs) and bilateral labour migration agreements/arrangements (BLMAs)

4.1.1. General overview: scope and content of African BLAs

Regarding the scope and content of BLAs concluded in the African context, Wickramasekara concludes as follows:³¹

“Examining agreements concluded with and between African countries, one can identify two important developments: broad framework agreements with destination countries of Europe, such as those concluded in the context of the EU’s Global Approach to Migration and Mobility, and agreements with countries of the Middle East. There has been a shift from traditional BLAs aimed at organizing mass recruitment, such as those concluded in the 1960s by France with Morocco and Tunisia, to much broader frameworks of cooperation addressing a wide range of migration issues besides labour mobility to cover irregular migration, readmission, and migration and development linkages. They also envisage forms of cooperation such as exchange of visits and experts, exchange of materials and information, coordination of programmes, and frameworks for capacity building and training.”

4.1.2. United Nations Guidance on Bilateral Labour Migration Agreements (2022)

In Modules B and G of the Manual, reference is made to the importance of the United Nations Guidance on Bilateral Labour Migration Agreements (2022) as a critical normative and policy tool to help inform the (re)design of bilateral labour migration agreements involving African countries. This instrument has much to say about what BLMAs should provide for in terms of SP for migrant workers:

Guarantee equality of treatment and non-discrimination: In Section IIIA, on “Human rights, including labour rights”, it lists as one of the general principles to be reflected in BLMAs, the guarantee of equality of treatment and non-discrimination. Accordingly, BLMAs should provide that equality of treatment and non-discrimination should be extended to all migrant workers and members of their families regardless of sex, sexual orientation, gender expression and gender identity, race, colour, disability, language, religion, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, migration status, birth or other status. The equality of treatment principle must be applied in relation to, among other, working conditions and SP.³²

³¹ Wickramasekara, P. (2015). *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, p. 18 (authorities omitted).

³² United Nations Network on Migration (2022). *Guidance on Bilateral Labour Migration Agreements* (February 2022): Guideline A2.

- **Provide access to SP including health care on a par with nationals and facilitate the portability of social security benefits for migrant workers and members of their families:** In the same Section, Guideline F³³ suggests that BLMAs should reflect the following principles and provisions regarding SP for migrant workers and their family members:
 - *Equal treatment:* “The BLMA provisions on social security are formulated in terms of equal treatment with national workers in the destination country, including with respect to maternity protection, and, where available, access to childcare or care for dependent family member arrangements, and benefits for workers with family responsibilities.”
 - *Portability, separate BSAs/MSAs, and maintenance of acquired social security contributions/benefits:* “BLMAs can contain provisions for social security, which require the participation of national social security institutions, thus ensuring portability. Alternatively, access to social security can be covered in a separate bilateral or multilateral social security agreement. Instead of disbursement of a lump sum upon departure, the provision may be that the contribution to social security benefits could also be maintained in the country of origin.”
 - *Access to national health-care systems and services, and equal treatment in relation to injury compensation:* “BLMAs should ensure access to national health-care systems for migrant workers and their families. Further, BLMAs should guarantee that social security and health-care benefits are non-discriminatory and available and accessible to all migrant workers. Social security provisions should be comprehensive and go beyond injury compensation to cover also availability and accessibility of health-care services. The principle of equality of treatment with regard to injury compensation should be applied.”

4.1.3. African Union Guidelines on Developing Bilateral Labour Agreements (2022)

Also, African countries of origin should draw from the rich guidance provided in the African Union’s Guidelines on Developing Bilateral Labour Agreements (BLAs) (2022), and consider inclusion of the following social protection (SP) elements included in their bilateral labour agreements (BLAs) with countries of destination, in particular in the absence of any associated bilateral social security agreements. This instrument contains a standard model template for BLAs applicable also to all African BLMAs (paragraph 3). Paragraph 4 concerns the core content for rights-based and gender-responsive BLAs. The template standard provision on SP provides for the following:³⁴

- Access to and portability of social protection/social security including health coverage:
 - *Equality of treatment and migrant workers access to national SP schemes in respect all social security branches:* “This Article should elaborate as precisely as possible provisions on social protection consistent with international standards; the principle of equality of treatment – not less favourable for migrant workers than national workers with respect to social protection including health care; and migrant worker access to national social protection schemes with reference to the relevant branches of social security in the Social Security (Minimum Standards) Convention, 1952 (No. 102).^{35,36}

³³ United Nations Network on Migration (2022). *Guidance on Bilateral Labour Migration Agreements* (February 2022): Guideline F1. See also Table 4 for operational guidelines.

³⁴ African Union (2022). *Guidelines on Developing Bilateral Labour Agreements (BLAs)*: Article A.16.

³⁵ The nine branches of social security identified in ILO Convention 102 and detailed in other instruments are: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors’ benefits.

³⁶ Also note the suggested Article A.12, on *Non-discrimination and equality of treatment*, which stipulates as follows (emphasis added): “The Article should specify that: equality of treatment applies, without discrimination, to migrant workers and that migrant workers should at least enjoy equality of treatment in respect of wages, working and living conditions, social security, and trade union rights, on par with national workers in the destination country The Article should uphold application of the principle of equal treatment without discrimination based on nationality, race, religion or sex, between different groups of migrant workers; it should also specify the fundamental principle of equal remuneration between men and women for work of equal value. *The detailed application of the principle of equality of treatment in social security should be regulated through a separate bilateral social security agreement concluded between the CoD and the CoO.*”

- *Availability of SP floor coverage to all migrants:* “It should further reference what social protection floor coverage is available to all migrants.”
- *Provision of health insurance and coverage and work injury compensation and benefits:* “Specific delineation should be made for health insurance/coverage, that it should be provided as a function of employment, and that the employer should contribute to the cost of health insurance/health coverage, with inclusion of coverage for accidents and sickness “off the job” as well as at work, and work injury compensation and benefits, in accordance with the ILO Conventions on accident compensation.”
- *Portability of social security entitlements:* “Portability of social security entitlements (acquired or in course of acquisition) should also be spelled out and reference made to separate bilateral Social Security Agreements as may exist and, in the case of intra-African agreements, rights and modalities of access to, enrollment in and portability of social security coverage should be spelled out in conformity with continental and regional standards and, where applicable, African Union and REC Conventions, Protocols and other instruments regulating social security provisions.”
- *Facilitation of social security claims and disbursement of social security benefits and assistance:* “The Article should specify that migrant worker claims to and disbursement of social security benefits and assistance will be facilitated, including after return to the CoO.”
- *Equal treatment in the event of pandemics:* “Language should be included in this Article specifying that, in the case of a pandemic or other major health emergency, migrant workers will be treated equally with nationals in access to health care, prevention (such as vaccination), protection (such as protective equipment), and medical treatment.”
- **Contract of employment, including as applicable a Standard Employment Contract (SEC) (Article A.9):** According to this provision, “...[W]ith or without a SEC, this Article should specify that the individual employment contract shall include the details of the employer’s obligations concerning the worker’s wages and remuneration including overtime pay and paid annual leave; working hours including overtime; rest periods; *accommodation and its type, or the payment of accommodation allowance; and the medical treatment and access to social security coverage.*”
- **Employment and treatment of women workers:** The suggested Article 17 stipulates that: “Reference can be made to a specific SEC (Standard Employment Contract) for women domestic workers appropriately addressing issues of: equality of treatment, wage protection, rest periods, leave days, hours of work, privacy, right to communication, complaints mechanisms, prohibition of passport confiscation, maternity protection, and freedom from harassment and violence, in line with international instruments.” These provisions then need to be inserted into the actual employment contract between the employer and migrant workers.
- **Change of employment and facilitating mobility: Contribution recovery and portability of benefits:** According to the suggested Article 11, “Provision should be included regarding employee rights to recover own contributions to social security as well as portability of accumulated benefit.”
- **Return and repatriation:** The suggested Article 24 stipulates: “Provisions covering return and repatriation are essential components of any BLA, specifying migrant workers’ rights – regardless of migration status – to outstanding remuneration, severance pay, compensation for holidays not taken, *and reimbursement or transferability of social security contributions under certain conditions.* This Article should cover: procedures and treatment in cases of death, *disability, serious injury or illness, including care-in-place and repatriation as needed; situations in which a migrant worker ends up in an irregular situation, including regarding rights*

arising out of past employment in respect of remuneration, social security and other benefits; prohibition of arbitrary deportation and mass expulsions, with provisions that the cost of expulsion shall not be borne by the migrant worker and their family; negotiation of measures and solutions in emergency situations”

- **In respect of social protection, BLAs are complementary to other measures supporting social protection for migrant workers:** Paragraph 1 of the *Guidelines (on Bilateral Labour Agreements (BLAs))*, emphasizes that: “BLAs must be complementary to a range of measures including: adoption of legislation and regulations domesticating African and international standards; adoption of national migration policies; regulation of private recruitment agencies; extension of labour law to all migrant workers including domestic workers; adoption of bilateral social security agreements; unilateral measures such as minimum wages, extension of national insurance and social security schemes to migrant workers, and establishment of migrant welfare funds.³⁷
- **BLAs should be supported by data generation in respect of social security:** Paragraph 2 of the *Guidelines* concerns Guiding principles for development and implementation of BLAs. One of the principles is that BLAs should be knowledge-based and be informed by data in respect of, among others, social protection coverage.
- **Other SP dimensions to be included in BLAs:** According to the *Standard Model Template for BLAs applicable also to all African BLMAs* and the *Core Content for Rights-Based and Gender-Responsive BLAs* (see paragraph 3 and 4 respectively of the *Guidelines*), BLAs should also include other SP dimensions, namely:
 - Decent conditions of work including occupational health and safety (Article 13)
 - Protection of wages (Article 14)
 - Decent working conditions in relation to housing, nutrition and leisure (Article 15)

The need to lobby for protection of migration workers, also in relation to the extension of national social protection floors to migrant workers

Paragraph 6 of the *Guidelines, on Measures to support BLAs and enabling factors*, suggests as follows: “African countries should engage at international processes and forums including relevant African Union, REC, ILO and United Nations treaty monitoring bodies as well as implementation reviews for the Global Compact for Migration, the 2030 Sustainable Development Agenda, and lobby for protection of migrant workers, provision of social protection floors to migrant workers, minimum standards for BLAs and other arrangements, as well as effective implementation of agreements.”.

Source: African Union, 2022, par 6.

4.1.4. African and other BL(M)As/MOUs containing social protection arrangements: an overview³⁸

In the Manual, some examples of African BLAs/MOUs containing social security arrangements were indicated. Further examples are provided below – involving Latin American, African and Asian countries of origin, and countries of destination in North America, Asia, Africa, Europe and, in particular lately, also GCC countries of destination.

³⁷ See also par 6 of the *Guidelines (on Measures to support BLAs and enabling factors)*, which provides: “At the same time, African origin countries may have to supplement BLAs with unilateral initiatives as well. These relate to specification of minimum wages for selected categories of workers, extension of national social security cover to migrant workers, mobilization of social partner and civil society support, and selective bans to countries with persistent abuse & exploitation.”

³⁸ See also Olivier, M. Selected Perspectives on Social Protection Mechanisms in the Gulf Cooperation Council Countries: Extending Social Protection to Migrant Workers in the GCC countries (forthcoming).

A nuanced overall picture: In particular regarding temporary migrant workers, note could be taken of Wickramasekara’s assessment below, of a few years ago, but noting also that, as appears from the examples below, the picture is evolving and particularly nuanced, with recent trends suggesting an increasingly stronger emphasis on social protection in bilateral arrangements. This appears to be the position not only in terms of State practice, but also normatively and policy-wise. Wickramasekara noted (emphasis added):³⁹

“Temporary migrant workers are rarely entitled to social security provisions other than health care. To be considered a good practice, portability of social security contributions can also be considered for temporary workers. This good practice is found mainly in the *European and American agreements*. *South American agreements* in particular provide for social security and health benefits. The GCC countries abolished social security for migrant workers at the end of 1980s. Migrant workers have access therefore to only accident and health benefits. In *African agreements*, some references are to separate bilateral agreements that regulate these issues (Cape Verde-Portugal, Spain-Morocco, France-Tunisia) or to the national legislation of the destination country (Spain-Mauritania) while in others (Italy with Morocco, Egypt, and Mauritius) the reference is formulated in terms of equal treatment with the nationals of the destination country granted to all types of workers.”

4.1.5. African BL(M)As/MOUs containing social protection arrangements

As indicated in the Manual and a recent IOM report,⁴⁰ African BLAs rarely include SP arrangements. However, there are some important exceptions, especially more recently. In the Manual mention was made of the: (i) *France-Tunisia BLA regarding the recruitment of Tunisian workers in France*; and (ii) MOU between the Niger and Libya concerning workers exchange (i.e. *Memorandum of Understanding for Cooperation in the Field of Regulating and Facilitating the Mobility of Manpower (Labour) Exchange Cooperation between the Republic of the Niger and the State of Libya*). Other examples include⁴¹:

- *Bilateral Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland for Collaboration on Health Care Workforce (2021)*: Article 5.2 of the BLA provides that “The employment of Kenyan healthcare professionals shall be on the same terms or equivalent to those of healthcare professionals of similar ranking in the United Kingdom.”
- *Agreement between the Government of the Republic of South Africa and the Government of the Portuguese Republic regulating the employment of Portuguese workers from the Province of Mozambique on certain mines in the Republic of South Africa (1964)*: Article XIII provides for some measure of equality of treatment with South African nationals. It stipulates that “Notwithstanding the provisions of their contracts Portuguese workers shall not be treated less favourable than South African workers employed on the same kind of work especially in regard to ..., injuries sustained and occupational diseases contracted in the course of their employment...”. In addition, Article XXII allows for the cross-border payment of employment injury benefits. No provision is made in this BLA, or any of the other BLAs concluded by South Africa with neighbouring countries, for retirement or related disability benefits, including death benefits in favour of the dependants or survivors of migrant workers in South Africa and former migrant workers. Insufficient provision is

³⁹ Wickramasekara, P. (2015). *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (Report prepared for the Labour Migration Branch, International Labour Organization, March), pp. 30–31 (authority omitted).

⁴⁰ Olivier, M. (assisted by J. Mushomi and C. Kakuba) (2022). *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa*. IOM, Geneva.

⁴¹ Ibid.; IOM (2021). *Pre-departure Information Needs of Migrant Workers in the East and Horn of Africa-Gulf Corridor*. Background Report. IOM, Bahrain, pp. 34, 55.

made in the agreement concerning compensation procedures, required documentation, and informing mineworkers and former mineworkers of their social security entitlements. As has been noted, "... compensation authorities in South Africa have failed to disseminate culturally sensitive information about the autopsy process widely enough."⁴² Furthermore, the agreement also fails to provide appropriately for the tracking and tracing of beneficiaries to whom compensation or other payments are due, be it the mineworkers themselves or their dependents. Large sums of unclaimed money have consequently accumulated over the years – a matter of serious concern to both the Government of South Africa and the governments of countries of origin. Finally, health and safety guarantees and protection are largely absent from the agreement.⁴³

- *Other labour- and labour migration-related cooperation agreements and MOUs concluded by South Africa:* As is increasingly the case in certain other SADC countries as well, use is made of MoUs or other cooperation arrangements. Several of these arrangements have been concluded by South Africa; other SADC countries have followed suit. South Africa has concluded such arrangements with Lesotho (first in 2006, and again in 2013), Mozambique and Zimbabwe (replacing preceding MoUs of 2004 and 2009). The focus of these arrangements is on cooperation in the fields of employment and labour. Indicated areas of cooperation of relevance to labour migration usually include but are not limited to social security issues, often specified to also cover compensation in respect of occupational injuries and diseases and pension portability; occupational safety and health; and public employment services.⁴⁴
- *BLAs concluded by the United Republic of Tanzania:* It has been noted that (authority omitted; emphasis added): "Since 2011, the Government has required employers to issue contracts that meet minimum employment conditions and guarantee a minimum salary. It has also implemented contract verification support at its embassies in the United Arab Emirates and Oman. The United Republic of Tanzania has signed BLAs with Qatar, Saudi Arabia and the United Arab Emirates, however, access to social protection and other employment benefits in countries of destination varies depending on whether the countries of destination have ratified international laws protecting workers' rights. The Access to Information Act of 2016 requires Tanzanian government institutions in possession of information to provide that information to any citizen who demands it. This Act helps to ensure that employment contracts for Tanzanian migrant workers are valid, that they adhere to countries of destination and Tanzanian labour laws, and that their provisions are fully understood by the employee."⁴⁵

Policy and legal frameworks supporting SP provisioning via BLAs

There is an interesting trend of policy and also legal frameworks in Africa supporting SP coverage under BLAs. For example, the Ghana National Labour Migration Policy 2020-2024 among other recommends as strategy to enhance the SP of migrant workers the following strategy: "Ensure that social security provisions are included in temporary labour migration programmes or bilateral labour agreements"

Source: Government of Ghana, Ministry of Employment and Labour Relations (2020). See also Government of Ghana, Ministry of Foreign Affairs and Regional Integration, (2020), p. xi.

⁴² Boyko, R., S. Darby, R.C. Goldberg and Z. Millin (2014). *Fulfilling Broken Promises: Reforming the Century-old Compensation System for Occupational Lung Disease in the South African Mining Sector*. Yale Global Health Justice Partnership, p. 23.

⁴³ For further details, see Olivier, M. (2016). *Developing a Framework for a Redesignated Bilateral Labour Migration Regime between South Africa and Mozambique* (Report submitted to the IOM and Lawyers for Human Rights), pp. 20–22.

⁴⁴ See Olivier, M. (2021). *Bilateral labour migration arrangements in two Southern African Development Community corridors*. IOM, Geneva.

⁴⁵ IOM (2021). *Pre-departure Information Needs of Migrant Workers in the East and Horn of Africa-Gulf Corridor*. Background Report. IOM, Bahrain, p. 34.

4.1.6. Latin American BL(M)As/MOUs containing social protection arrangements

Canada-Mexico bilateral labour migration arrangement providing for social protection coverage supported by bilateral social security agreement

The *Canada Seasonal Agricultural Workers Program* (SAWP) concluded with Mexico in 1996 provides temporary workers with partial social protection coverage. This BLMA includes specific provisions ensuring access to health insurance (through enrolling in provincial health insurance systems) and contributions towards the Employment Insurance programme (providing regular benefits to individuals who lose their jobs through no fault of their own). Simultaneously, the BSA (*Agreement on Social Security between Canada and the United Mexican States*), concluded in 1996, provides for the principle of equality of treatment: Mexican Seasonal workers are entitled to the same social security benefits as those granted to Canadian citizens and permanent residents. This includes among others participation in the Canada Pension Plan. However, as has been noted, there may be a challenge "... the temporary nature of seasonal work prevents migrant workers from effectively accessing comprehensive social protection coverage as it constitutes an impediment to fulfilling qualifying conditions for entitlement to certain benefits. In the same vein, the precarious nature of seasonal work combined with the status of migrant and the lack of information and knowledge often prevent migrant workers from exercising their rights with regard to social security."

Source: Van Panhuys et al., 2017, pp. 15–17.

The *Canada-Mexico BSA* also provides for portability of benefits: Mexican workers can collect long-term benefits acquired in Canada after their return to Mexico. In the event that they return to a country other than Mexico, the payment of benefits in that country is guaranteed under the same conditions and to the same extent as would apply to nationals of Canada residing in that third State (Art. 5(2)). The Agreement further contains provisions ensuring the maintenance of acquired rights and rights in the course of acquisition.

4.1.7. Asian BL(M)As/MOUs containing social protection arrangements

There are several examples, in particular recent examples, of BLAs/BLMAs between Asian and other countries, which (increasingly) make provision for some social protection (SP) extension coverage to migrant workers from Asian CoOs – even if in several instances, the SP coverage is/ has to be provided by the employer on the basis of individual employer liability. Here a number of other examples may be given, captured in a number of recent reports submitted to the ILO and the IOM, by Wickramasekera and Runuhage,⁴⁶ and Olivier:⁴⁷

- *The Philippines–Lebanon MOU (2012)*: While the MOU mentions "the provision of an insurance coverage for the worker in accordance with the existing laws and regulations in the receiving country", it does not clarify whether it is the employer who will arrange this insurance in Lebanon.
- *The Philippines–Germany agreement on nurse hiring (2013)*: This agreement provides as follows as regards social security: "Filipino health professionals are subject to compulsory insurance in the German social security system (health and long-term care insurance, pension, accident and unemployment insurance)". This agreement is supported by a separate BSA

⁴⁶ Wickramasekera, P. and L.K. Runuhage (2018). *Good practices and provisions in multilateral and bilateral labour agreements and memoranda of understanding*. ILO, Bangladesh, pp. 52–53.

⁴⁷ Olivier, M. (assisted by J. Mushomi and C. Kakuba) (2022). *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa*. ILO, Geneva. See also Olivier, M. (2018). *Social protection for migrant workers in ASEAN: Developments, challenges and prospects*. ILO, Geneva.

that has also been concluded by the Philippines and Germany, which highlights key social security coordination principles: equality of treatment; export of benefits; maintenance of rights; applicable legislation; and administrative assistance.

- *India–Denmark MOU (2009)*: According to Article 1, Indian workers shall enjoy full rights and privileges accorded to any worker in Denmark in accordance with the provisions of the labour and social security laws of that country (as set out in Article 1.3).
- *BLAs concluded by Nepal*: Especially in recent years, BLAs/MOUs with a host of destination countries, including Jordan, Japan, Malaysia, Mauritius and the United Arab Emirates have been signed or renewed. These agreements contain strong worker-centric provisions, which include some SP provisioning, in particular: (i) health and accidental insurance and medical fees, to be borne by the employer; and (ii) (x) end of service benefits. Provision is also made for a Standard Employment Contract, as well as a separate more comprehensive version for domestic workers.⁴⁸

4.1.8. GCC countries' BL(M)As/MOUs containing social protection arrangements⁴⁹

BLAs with GCC countries differ in scope, objective and focus, with labour migration usually the central theme: Most of the BL(M)As concluded with GCC countries, in essence concerns labour migration, in particular labour migration to the GCC countries. However, these agreements do differ in scope, objective and focus. The following can be highlighted:

- (1) **Some of the agreements focus on cooperation in the domain of labour, with limited reference to SP:** At times SP is not specifically indicated as an area of collaboration; at other times it may indeed be indicated. These agreements should essentially be seen as framework agreements and may rather be in the form of a MOU than a formal agreement. They include the *Memorandum of Understanding in the fields of labour between the Kingdom of Saudi Arabia and the Hashemite Kingdom of Jordan* (2015). At times, however, a more specific focus is also indicated. For example, the Preamble of the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018) includes a "... focus on practical outcomes from an improved administration of the contract employment cycle of Indian workers in the United Arab Emirates". Often, general reference to workers' welfare is made. For example, the *Memorandum of Understanding Between the Government of the Republic of the Philippines and the Government of the State of Kuwait in the Field of Labor Cooperation* (2012), in its preamble, refers to: "Desiring to promote cooperation and co-ordination in the field of labour cooperation including preservation and development of workers' welfare in accordance with existing laws and regulations and international conventions to which both are parties." In addition, SP protection has to be inferred from a general reference to the specification for basic employment conditions and rights and obligations of the employer and the worker, "to be specified in the employment contract, in accordance with relevant laws and regulations."⁵⁰

⁴⁸ Government of Nepal, Ministry of Labour, Employment and Social Security (2020). *Nepal Labour Migration Report 2020*, pp. xvi, 65–69.

⁴⁹ See also Olivier, M. Selected Perspectives on Social Protection Mechanisms in the Gulf Cooperation Council Countries: Extending Social Protection to Migrant Workers in the GCC countries (forthcoming), from where this part has been taken.

⁵⁰ Article 5(5): *Memorandum of Understanding Between the Government of the Republic of the Philippines and the Government of the State of Kuwait in the Field of Labor Cooperation* (2012). See also Article 4(3) of the *Agreement on Labor Cooperation for General Workers Recruitment and Employment between the Department of Labor and Employment of the Republic of the Philippines and the Ministry of Labor and Social Development of the Kingdom of Saudi Arabia* (2017), which stipulate that the Government of the Kingdom of Saudi Arabia shall "[E]nsure that the rights of general workers employed in the Kingdom of Saudi Arabia are promoted and protected in accordance with the applicable law, rules and regulations."

Generally speaking, it seems that *older* BLAs involving GCC countries, and their attached standard/model employment contracts, did not incorporate social security benefits, even if broader SP benefits, such as accommodation, may have been mentioned.⁵¹

- (2) **Several of the BLAs or other bilateral arrangements make reference to SP in general terms:** Sometimes this is done in *rather general terms*. For example, Article 5.3 of the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018) mentions that it is one of the responsibilities of the United Arab Emirates Government to “... ensure the rights and promote the welfare of Indian workers in UAE pursuant to its laws”.
- (3) **However, in several cases SP coverage and benefits are mentioned more explicitly:** Again, the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018) requires that job applications shall include “...non-wage benefits, medical facilities, accommodation, transport, compensation in case of injury or death of the worker due to employment, as per prevailing UAE law, end-of-service entitlement...”. Social security-related benefits therefore include medical facilities, work-related injury and death compensation, and end-of-service entitlement (which could partially fulfil unemployment or even retirement needs). Other broader SP benefits, i.e. accommodation and transport, are also indicated. However, there is no mention that the coverage of the any of the mentioned SP benefits will be on the basis of equal treatment with the United Arab Emirates nationals.
- (4) **Many BLAs or other BLMAs incorporate a standardized offer of employment and/or a standard employment contract:** These BLAs/BLMAs include agreements regulating the recruitment and employment of migrant domestic workers – see below. A copy of the standard employment contract may even be attached to the BLA/BLMA.⁵² The BLAs/BLMAs require that the concrete employment contract involving the specific worker and their employer must reflect the (standardized) employment offer and/or contract, that the CoO has to verify/approve the concrete contract of employment,⁵³ and that the government of the CoD is responsible to enforce the concrete employment

⁵¹ See the *Agreement between the (Democratic) Republic of the Sudan and the Government of the United Arab Emirates on Employment of Sudanese Workers in the United Arab Emirates* (1981) and its annexed model employment contract. However, the position of CoO workers engaged in the *public service* of the CoD may indeed be covered under SP, on the basis of equality of treatment as regards nationals of the CoD: for example, the *Agreement between the Governments of Sultanate of Oman and the Democratic Republic of Sudan on Employment of Sudanese Manpower to work for the Government of the Sultanate of Oman* (1981) stipulates in Article 4 that: “The Sudanese employee, whether on secondment or on personal contract, is subject during his service with the Government of Oman to the public Service Law and its rules and regulations in place in the Sultanate and has all the rights and all the duties contained in that law and its rules and regulations applicable to Omani employees.”

⁵² This has been a long-standing practice. Even older BLAs often contained a provision to the effect that the conditions of employment of CoO workers in the CoD are governed by an individual contract between the worker and the employer, in accordance with the common model contract annexed to the agreement: see, for example, Article 6 of the *Agreement between the (Democratic) Republic of the Sudan and the Government of the United Arab Emirates on Employment of Sudanese Workers in the United Arab Emirates* (1981).

⁵³ In addition to example indicated below, see also Article 5(3) of the *Agreement on Labor Cooperation for General Workers Recruitment and Employment between the Department of Labor and Employment of the Republic of the Philippines and the Ministry of Labor and Social Development of the Kingdom of Saudi Arabia* (2017), which requires the Philippines Overseas Employment Administration (POEA) to approve the employment contract.

contract.⁵⁴ The *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018) serves as an example.⁵⁵ These are important provisions from a SP perspective, as critical SP benefits are often contained in the employment contract, either by reference to the labour laws of the CoD (which invariably impose certain SP obligations upon employers) or through explicit incorporation of SP obligations/benefits in the contract itself.

- For example, in the case of the *MOU between the United Arab Emirates and India* (2018), both the (template) Job Offer in the event of a Limited Term Employment Contract (JOLTEC) (as well the (template) Job Offer in the event of an Unlimited Term Employment Contract) (JOUTEC) and the associated (template) Standard Limited Term Employment Contract (SLTEC) provide for the following SP benefits, for which the employer bears an individual liability – some of the benefits/benefit levels provided for fall below the ILO minimum standard:
 - Costs of medical treatment and income benefits for the period of treatment, in the case of an occupational injury or disease;⁵⁶
 - Paid maternity leave;⁵⁷
 - Paid sickness leave benefits;⁵⁸
 - End-of-service indemnity (to be regarded as potentially serving as a partial unemployment, or even retirement, benefit);⁵⁹ and
 - Survivor's benefits in the event of death, or permanent or temporary disability resulting from an occupational injury or disease suffered by the worker.⁶⁰

Provision is also made for other SP benefits, beyond social security-specific benefits, such as accommodation benefits and depending on the location of the workplace, certain other benefits.⁶¹

(5) Several BLAs and other BLMAs deal specifically with migrant domestic workers (MDWs): These agreements/arrangements may be attached to the main agreement concerning labour migration collaboration or governance.⁶²

⁵⁴ See also Article 4(2) of the *Agreement on Labor Cooperation for General Workers Recruitment and Employment between the Department of Labor and Employment of the Republic of the Philippines and the Ministry of Labor and Social Development of the Kingdom of Saudi Arabia* (2017), which requires of the Government of the Kingdom of Saudi Arabia to enforce and implement "... the employment contract duly authenticated by the Saudi Government."

⁵⁵ *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018), Articles 2.2, 3.1, 3.2 and 5.2.

⁵⁶ JOLTEC and JOUTEC: Article 3(15) and (16); SLTEC: Clause 9(16) and (17) (Annexed to the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018)).

⁵⁷ JOLTEC and JOUTEC: Article 5(8); SLTEC: Clause 11(8) (Annexed to the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018)).

⁵⁸ JOLTEC and JOUTEC: Article 5(9); SLTEC: Clause 11(9) (Annexed to the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018)).

⁵⁹ JOLTEC and JOUTEC: Article 5(12); SLTEC: Clause 11(12) (Annexed to the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018)). The indemnity is payable after five years of service, and is capped at a maximum of two years of basic wages.

⁶⁰ JOLTEC and JOUTEC: Article 5(13) and (14); SLTEC: Clause 11(13) and (14) (Annexed to the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018)).

⁶¹ JOLTEC and JOUTEC: Article 3(18) and (19); SLTEC: Clause 9(19) and (21) (Annexed to the *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018)).

⁶² As is the case with the *Protocol on Domestic Workers Annexed to the Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower* (2018).

- At times the employment (conditions) and, indirectly if not directly mentioned, also their SP, may be specifically or in general terms governed by *legislation* adopted in a particular GCC country⁶³ and/or aligned to a (template) *standard contract of employment*.⁶⁴ For example, in the case of the *Agreement on Domestic Worker Recruitment between the Ministry of Labor of the Kingdom of Saudi Arabia and the Department of Labour and Employment of the Republic of the Philippines* (2013), the BLA foresees the adoption by the competent authorities of the two countries of a mutually-agreed standard employment contract for MDWs,⁶⁵ which shall be binding on all contracting parties, i.e. the employer, domestic worker, the Saudi Recruitment Office and the Philippine Recruitment Agency.⁶⁶ The Ministry of Labor of the Kingdom of Saudi Arabia has to ensure the implementation of the employment contract, while the Department of Labor and Employment of the Philippines shall “... perform, through the Philippine Embassy/Consulate General, verification of all employment contracts submitted by the Saudi recruitment office, company or agency for the hiring of Filipino domestic workers.”⁶⁷ The Agreement further provides, in general terms, that the Ministry of Labor of the Kingdom of Saudi Arabia shall “[E]nsure that the welfare and rights of domestic workers employed in the Kingdom of Saudi Arabia are promoted and protected in accordance with applicable laws, rules and regulations.”⁶⁸
- Some recent BLAs contain more pertinent provisions. For example, Article 2(2) of the *Agreement on Employment of Domestic Workers between the Government of the Republic of the Philippines and the Government of the State of Kuwait* (2018) lists as a specific responsibility of the Government of the State of Kuwait the following: “Ensure that the employer shall provide the worker with food, housing, clothing, and **registering the domestic worker in the health insurance system that covers her/his treatment in case of illness or injury due to work as well as being committed to compensate her/him for job injuries** and transporting the deceased body of the domestic worker to her/his country when she/he dies and paying the wages of the month in which the worker died and other rights as provided in the Kuwaiti Law.”

Other *examples* could also be mentioned. See in particular:⁶⁹

- *Sri Lanka–Bahrain MOU* (2008): Article 12 provides that the Bahraini employer should provide health and accident insurance coverage for the benefit of Sri Lankan employees as per regulations of the National Organization of Insurance in the Kingdom of Bahrain.
- *Sri Lanka–Jordan MOU* (2006): Article 7 stipulates that the guest workers shall enjoy fully the rights and privileges accorded to the workers by the hosting country, in accordance with hosting country’s labour and social security laws.

⁶³ Ibid., Article 1.5, 11.6. Article 11.9 requires the Parties to “[E]nsure the rights and promote the welfare of Indian workers in the United Arab Emirates pursuant to its laws.” According to Article 11.1, the employment offer has to mirror the provisions of the standard contract of employment.

⁶⁴ Ibid., Articles 1.5, 11.1 and 11.6.

⁶⁵ Article 3(2): *Agreement on Domestic Worker Recruitment between the Ministry of Labor of the Kingdom of Saudi Arabia and the Department of Labour and Employment of the Republic of the Philippines* (2013).

⁶⁶ Ibid., Article 4(3). Article 1(2) of the *Agreement on Employment of Domestic Workers between the Government of the Republic of the Philippines and the Government of the State of Kuwait* (2018) similarly foresees that “The recruitment and employment of Filipino domestic workers will be governed by a standard contract.”

⁶⁷ Ibid., Article 5(5). See also Article 3(7) of the *Agreement on Employment of Domestic Workers between the Government of the Republic of the Philippines and the Government of the State of Kuwait* (2018), which stipulates that: “The Philippine Embassy in Kuwait, through the Philippine Overseas Labor Office (POLO), shall verify all standard contracts signed by the parties.”

⁶⁸ Ibid., Article 4(2).

⁶⁹ See Wickramasekara, P. and L.K. Runuhage (2018). *Good practices and provisions in multilateral and bilateral labour agreements and memoranda of understanding*, ILO, Bangladesh, pp. 52–53, from where these examples were taken.

4.2. Bilateral social security agreements (BSAs)

Negotiating and concluding well-crafted and -implemented BSAs is a *critical means of ensuring social protection* for migrant workers and their families abroad. It therefore remains a key intervention that African CoOs should invest in.⁷⁰ Below, further examples of BSAs involving African, Asian, European and Latin American countries of origin are provided.

4.2.1. Examples of BSAs involving African countries

In the Manual, three examples of African BLAs–MOUs are indicated: (i) France–Tunisia BSA (2003); (ii) Zambia–Malawi BSA (2003); the Kingdom of the Netherlands–South Africa BSA (2001). It was also indicated that a relatively low number of BSAs involving African countries exist, and that few African countries have concluded BSAs with other African countries. These agreements are often also not readily accessible. Below we provide one further example of a BSA involving an African country, i.e. the BSA concluded between Spain and Morocco (1979).

Social Security Agreement between Spain and Morocco (signed on 8 November 1979; in force 1 October 1982)

It has been suggested that migrant workers under the BSA concluded between Spain and Morocco “... can benefit from comprehensive social protection coverage by virtue of the principle of equality of treatment, enshrined both in SSA [*Social security agreement*] and in Spanish legislation, which guarantees entitlement to benefits to all contingencies under the same conditions as those applied to nationals. Eligibility for healthcare and cash benefits is subject to holding a long-term residence permit or a temporary residence permit but does not require any minimum residence period (except for guaranteed minimum resources). While this requirement does not represent an obstacle for migrant workers in the formal sector, it is not the case for undocumented workers. With regard to coordination of schemes, it is addressed through [the] SSA. However, temporary migrant workers might be prevented from accessing certain contributory benefits due to the difficulty of fulfilling the minimum qualifying periods required (e.g. sickness cash benefits, maternity and paternity benefits, old-age pensions and benefits).”

Source: Van Panhuys et al., 2017, pp. 23.

In essence, the Spain–Morocco BSA:⁷¹

- Is *comprehensive* in respect of the *key social security principles and branches* (including health care, sickness cash benefits, maternity and paternity benefits, employment injury, unemployment and family benefits, invalidity, survivors’ and old-age benefits) and the groups of migrant workers covered;
- Applies to *workers* who are or have been subject to the social security legislation of either State and to their *dependents and survivors* (i.e. including dependent family members) (Art. 3(1));
- Includes *specific categories of workers* covered by the special schemes of Spain’s social security system, such as agricultural workers, coal miners, seafarers, domestic workers and self-employed workers (Art. 2(1A));

⁷⁰ See also Vintila, D. and J-M. Lafleur (2020). *The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlements, Consular Services, and Diaspora Policies*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States* vol. 3 (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 1–40 at 7 to the same effect.

⁷¹ Van Panhuys, C., S. Kazi-Aoul and G. Binette (2017). *Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements*. (ESS-Working Paper No. 57). ILO, Geneva, pp. 20–23.

- “Under the Spanish legislation, *access to health care* and other social security benefits is not subject to a minimum residence period. The only exception to that rule concerns non-contributory retirement pension (e.g. requires a legal residence of ten years) and non-contributory invalidity pension (e.g. requires a legal residence of five years) period”;
- In addition to (i) Preserving equal treatment (Art. 4), also *encompasses other key social security coordination principles*, including: (ii) The applicability of the law of the country where the migrant worker works (except that Moroccan employees temporarily posted to Spain by their employer for work purposes remain subject to the social security legislation of Morocco for a maximum period of three years) (Art. 6(1)(A)); (iii) Portability of contributory pensions, in principle even in the event where the migrant workers resides in a third country at the moment of collecting benefits (Arts. 6(1) and 7(2)); (iv) Maintenance of rights in the course of acquisition, and of acquired rights (Art. 14); (v) Aggregation of contributions applicable in the territory of both parties (Art. 5); and (vi) Pro rata sharing of benefit liability, in that each Party will pay the proportional amount of the cost of the benefit based on the period of contributions made in each country (Arts. 17 and 18).

4.2.2. Examples of BSAs involving Asian countries

The India–Japan BSA (*Agreement between the Republic of India and Japan on Social Security*) of 2016 provides an interesting example of a bilateral arrangement in favour of migrant workers where the countries concerned have *different social security systems*:

The Indian-Japan BSA (2016): coordinating two different social security systems

“While India has a national system that includes the Employee's Provident Fund (EPF), the Employee's Pension Scheme (EPS) and deposit-linked insurance scheme. Japan has a social insurance system based on, among other plans, a national pension programme with a flat-rate benefit and a pension insurance programme with an earnings-related benefit.”

“Differences between national social security systems present a coordination challenge with respect to, among other things, the totalization of contribution periods.”

“With regard to the Indian pension system, it is worth noting that for purposes of the totalization of pension benefits, the agreement does not apply to the EPF, which pays a lump-sum benefit at the time of retirement. The EPF, is however, subject to the provisions on the avoidance of dual coverage and on the payment of benefits. More specifically, Japan's old-age pension system requires 25 years of coverage; the coverage periods of workers who do not meet this requirement may be aggregated, provided that there are no overlapping periods between the two countries. On the other hand, the EPS requires a coverage period of ten years and allows workers who do not meet this requirement to add their periods of coverage under the Japanese pension system provided, once again, that there are no overlapping periods. Workers whose aggregated period of coverage in India and Japan is less than ten years are entitled to a lump-sum benefit under the EPS but may not totalize their EPS coverage period where the related benefits have already been paid. In addition to old-age benefits, the agreement authorizes the early withdrawal of EPF contributions paid by Japanese workers in India upon completion of assignment with the possibility of a direct refund deposited in their foreign bank accounts.”

Source: ILO, 2021b, pp. 76–77.

Other salient elements of the BSA include the following:⁷²

- “The agreement seeks to ensure that migrant workers do not pay social security contributions twice.”
- “It covers old-age, disability, and survivors’ pensions and provides for determination of the applicable legislation, equality of treatment, totalization of contribution periods, payment of benefits abroad and administrative collaboration.”
- “It is not a reciprocal agreement as the benefits provided by the two countries differ.”
- “The agreement also stipulates that in order to remain covered under the national social security system of the home country, employees must obtain a Certificate of Coverage and claim exemption from the host country’s social security legislation. The agreement regulates the situation of posted workers and provides that the Certificate of Coverage can be obtained for up to five years and may be extended for a maximum of three more years, provided the relevant authorities of the two countries agree.”
- “The crews of ships and aircraft are also regulated. Self-employed workers are not included in the agreement as India has no mandatory pension system for this category of workers.”

There is a fast-growing number of BSAs concluded by Asian countries across Asia and indeed with many countries in other parts of the world. Most of the BSAs involving ASEAN Member States have been concluded with countries outside ASEAN respectively. It has been suggested that the dramatic recent increase in the number of BSAs concluded by in particular five Asian countries, i.e. China, Japan, India, the Republic of Korea and the Philippines, and often supported by concomitant domestic regulation confirming, authorizing and mandating the conclusion of these agreements, is one of the most profound developments in the area of extending protection to Asian migrant workers abroad, and may hold particular value for African countries.

Role and impact of Asian BSAs

“Asian BSAs are effectively part of a twofold strategy to achieve effective (social) protection of the affected migrant workers – the other strategy being the adoption/utilization of country-of-origin schemes and measures to extend social security protection.”

“Of course, extending protection to Asian migrant workers abroad is not the only objective of these agreements. Essentially they enhance and facilitate labour migration, as they remove critical obstacles: the payment of double contributions (i.e. to the social security system of both the country of origin and the destination country) is avoided, periods of contributions or residence (where applicable) are aggregated to ensure access to benefits to which the beneficiary would otherwise not have been entitled to (the principle of totalization), and benefits are paid irrespective of whether the beneficiary resides in the country of origin or destination or, for that matter, in a third country. In addition, they have a major impact on employer payroll expenses and the considerable financial outlay (temporary) migrant workers may have to make in terms of contributing to the social security systems of host countries. Also, Asian BSAs serve the purpose of economic development and of strengthening bilateral trade and economic ties. They are meant to have long-term effect. Almost without exception, the duration of the BSAs is indicated as indefinite, terminable only upon notice by one of the contracting parties. From a regional perspective, Asian BSAs support the cause of regional integration.”

Source: Olivier, 2019, pp. 38–69 at 49.

⁷² Ibid. See also www.mea.gov.in/images/pdf/ssa-japan.pdf.

It has been indicated that Asian BSAs mirror international best practice and clearly reflect international standards and universally accepted social security coordination principles, and provide *best practice experience* to many other countries. It is clear that these BSAs compare well with their counterpart instruments adopted by countries with a long history of concluding BSAs.⁷³ Salient features of these agreements include the following:⁷⁴

- **Asian BSAs guarantee equal treatment, in respect of (an often extensive) range of benefits covered by the agreements and in respect of identified (and at times also an expanding range of) categories of beneficiaries**
 - Equal treatment under the agreement implies that nationality and other forms of *discrimination* are not allowed. This is of course subject to the provisions of the BSA itself, which may contain special provisions in relation to access to certain benefits or, frequently, *restrict the range of benefits* covered by the (material) scope of the agreement. This is in particular true of the provisions in relation to the portability of benefits and the totalization of insurable/creditable periods completed in both countries – with a few exceptions, in these cases the relevant benefits covered by almost all the Asian BSAs indicated above are restricted to long-term benefits: old age, disability and survivors' benefits. Otherwise, Asian BSAs often extend equality of treatment to large parts of their social security systems and, at times, even the whole of their systems for employed workers.⁷⁵
 - Typically, the BSAs cover *all persons*, or at times, *all nationals*, who are covered or have been subject to the legislation of either of the Contracting States, and other persons who derive rights from such persons – often, but not always, *dependant spouses and children* are specifically mentioned. Where nationals are indicated, the scope is sometimes extended to also include *permanent residents* (see the Japan–Switzerland and the draft the Republic of Korea–New Zealand BSAs) or even also *residents*, who have satisfied a minimum period of residence (e.g. the Republic of Korea–Australia BSA). Sometimes, *refugees and stateless persons* are specifically included – as is the case of, for example, the Republic of Korea–Belgium, the Republic of Korea–Denmark, the Philippines–Belgium and India–Austria BSAs. The India–Austria BSA extends the personal scope of coverage of the BSA to also include *nationals of the European Union*. Often, but not necessarily always, *self-employed persons* may be included under the scope of an Asian BSA.
 - Specific provision may be made for the *extension* of the range of beneficiaries and/or benefits. Asian BSAs often provide for *new beneficiary groups* identified in the legislation of a contracting party to be automatically included in the scope of the BSA,⁷⁶ although this possibility may be explicitly excluded (as is the case in, among others, the Republic of Korea–Australia BSA).

⁷³ See also Olivier, M. (2019). Recent developments concerning portability of social security benefits for skilled workers in Asian countries of destination: the impact of ILO standards and implications for Australian and New Zealand citizens and permanent residents (New Zealand Labour Law Society, Wellington, New Zealand, 15–16 November).

⁷⁴ Olivier, M. (2019). Portability of Social Security for Migrant Workers in Asia. In: ABDI-ILO-OECD *Building Partnerships for Effectively Managing Labor Migration – Lessons from Asian Countries*. Asian Development Bank Institute, Organisation for Economic Co-operation and Development, and International Labour Organization, pp. 49–55, from where the information below has been taken.

⁷⁵ At times, provision is made for indexation of benefits – see the India–Finland BSA.

⁷⁶ Provided for in several of the Indian BSAs, for example with Czechia, Denmark, Hungary, Quebec and Sweden.

- **Asian BSAs invariably provide (at least) for elimination of dual coverage, specify the legal regime applicable to different categories of workers/beneficiaries, and make special provision for posted/detached and other worker categories**
 - As far as *employees* are concerned, the BSAs typically indicate the *legal system of the host country* as the applicable system. This would also imply that, as a rule and unless the host country system provides otherwise, migrant workers would have to contribute to the social security system of the host country. This may not be appropriate in the case of a migrant worker who works in the host country for a limited duration. Therefore, with little exception, Asian BSAs stipulate that *detached/posted/seconded workers* who work in the host country for a specified period of time, would be exempted from contributing to the host country social security system (or at least certain host country social security schemes), as long as the worker remains covered under the system of the home country and has obtained a certificate to this effect from the home country social security authority (often referred to as a certificate of coverage).⁷⁷ Special arrangements are made for the position of self-employed persons, civil servants, members of diplomatic missions and consular posts, and persons employed on seagoing vessels.
 - Contributions towards *public social security schemes* are usually covered by Asian BSAs. Exceptionally however, employer-sponsored and private arrangements are also included, especially in the case of some of Japan's BSAs (e.g. with Belgium, France and the United States of America); however, in these cases the benefits may not be exportable. Usually the benefits are restricted to *cash benefits*; exceptionally non-monetary benefits may be included, such as rehabilitation benefits (see the Japan–Switzerland BSA), but may not be exportable.⁷⁸ Invariably however, *non-contributory (social assistance)* benefits are not covered by BSAs and are, consequently, not portable.
 - The avoidance of dualization provisions may apply to a *wide or a narrow range of social security benefits*. In the case of China, the schemes/benefits so covered are restricted to long-term benefits and (with the exception of the BSAs with Canada and Denmark) unemployment benefits. Whereas previously this exemption was also extended to Chinese health insurance benefits, this is seemingly no longer the case – expatriates in China invariably have to contribute to the Chinese health insurance system. Thus, the position is that an expatriate worker may be exempted from paying contributions to certain social security schemes in the host country, but has to participate in other schemes of the host country; *in addition, the worker could still be required to pay contributions towards certain social security benefits in their home country – which could render this particular area particularly complex and complicated to appreciate and manage, by workers and employers alike.*⁷⁹

⁷⁷ The period for which the exemption applies is specifically indicated in the BSAs and ranges from two to six years; in many cases the period may be extended for an indicated further period, or by agreement between the contracting parties.

⁷⁸ The India–Germany BSA explicitly provides that German employment promotion laws will apply to Germans working in the Republic of Korea.

⁷⁹ Being compelled to contribute to the system of a host country, either before the conclusion of the BSA or even as a result of the BSA, may cause the worker concerned not to be able to draw a benefit in case a minimum period of contributions to the host country social security scheme is required. In cases such as this, provision is at times made for contributions paid to be *refunded* – as is evident from among others the Japan–the United States of America, India–Switzerland and the Republic of Korea–Switzerland BSAs.

- **Most Asian BSAs provide for totalization of insurance (or otherwise creditable) periods, primarily in relation to long-term social security benefits**
 - With the exception of China, most of the BSAs concluded by Asian countries provide for totalization. The range of benefits are usually restricted to *long-term benefits*, in particular (contributory) old age, survivors' and disability benefits. While the totalization is, as a rule, effected on a *reciprocal* basis, this is not always the case. For example, the Japan–Switzerland BSA provides that totalization is only possible in relation to Japanese, and not Swiss benefit payments.⁸⁰
 - Of considerable importance is the approach adopted by Asian BSAs as regards the reality that some social security systems essentially provide *contribution-based benefits*, while others link benefit entitlements to periods of (employment-related) *residency, or presence*, in the country concerned. Other systems use a *pension points-based* framework for determining entitlement. This issue has typically arisen in the context of Asian BSAs with in particular Australia and (partly) Canada, but also in some respects in relation to Denmark, the Kingdom of the Netherlands and Norway.⁸¹
 - Detailed rules are contained in several Asian BSAs to appropriately match periods of *residence/presence*/"*working life residence*" and/or *pension points* with periods of contribution in the other contracting party – see in particular Japan's BSAs with Australia, Canada and the Kingdom of the Netherlands, India's BSAs with Australia, Canada, Denmark and Norway, and the Republic of Korea's BSAs with Australia and Denmark. Significant scope exists to expand these arrangements also to other benefit categories, in particular health-care benefits.
 - Equally important, also from the perspective of enhancing access to social security benefits for Asian migrant workers, are the provisions in the BSAs in relation to taking into account for purposes of totalization so-called *third country periods* – i.e. periods of contribution, or even residence, in countries other than the two contracting parties. Usually, the stipulation in this regard is that the liabilities that arise from social security instruments with third States will be taken into account in so far as these instruments determine aggregation of insurance for entitlement to pension.
 - These provisions aimed at arranging for third country periods to be taken into account have a particular application in the *European* context – as seemingly reflected in certain Asian BSAs with European Union countries (e.g. the India–Austria, India–Germany and India–Hungary BSAs). Through the operation of European Union-law, in particular the European Court of Justice-ruling in *Gottardo*,⁸² national agreements with third countries (i.e. BSAs with non-European Union Member States) must apply in the

⁸⁰ Importantly, Asian BSAs invariably indicate that totalization rules will only be invoked if the worker concerned does not qualify for a benefit from one of the contracting parties without recourse to matching periods completed in the other contracting party.

⁸¹ The Australian approach as regards access to Australian income support benefits has been aptly described in the following terms (Australia also has specific arrangements in place regarding health care benefits, contained in BSAs with countries with highly developed social security systems) (see Boucher, A. and T. Carney (2014). *Social Security for Migrant Workers and their Families in Australia*. In: *Social Security and Migrant Workers: Selected studies of cross-border social security mechanisms* (Blanpain, R., P. Ortiz, G. Vonk and M. Olivier (eds.)). Wolters Kluwer, Alphen aan den Rijn, pp. 187–214 at 208) (authority omitted): "Any portability of such rights depends principally on the provisions of bilateral agreements. Bilateral agreements operate on the 'totalization' model of recognising overseas residence or contributions as qualifying residence in Australia (and vice versa) Under the agreements, entitlements in each country are portable and payable pro rata in accordance with the respective proportion of the 'working life' spent in each country.... Bilateral social security agreements modify prior residence and portability rules under mutual arrangements for accessing and portability of those designated payments (sometimes just one payment) where such reciprocity proved acceptable to both countries, and subject to the specific modifications set in that agreement."

⁸² *Gottardo v Istituto nazionale della previdenza sociale (INPS)* ECJ January 2002, no. C-55/00, paras 33–34. See also Vonk, G. (2014). *Social security rights of migrants: Links between the hemispheres*. In: *Social Security and Migrant Workers: Selected studies of cross-border social security mechanisms* (Blanpain, R., P. Ortiz, G. Vonk and M. Olivier (eds.)). Wolters Kluwer, Alphen aan den Rijn, 47–68 at 60–61.

same manner to all persons covered by European Union Regulation 883/2004 on the coordination of social security among European Union Member States.⁸³

- It further has to be noted that the BSAs generally *prohibit the double counting of (overlapping) periods of contribution* to the host and home country social security systems (see, e.g. India's BSAs with Germany, Finland, Luxembourg and Norway). In fact, in certain BSAs it has been stipulated that where a beneficiary would be entitled to two benefits (i.e. a double benefit), the country effecting the payment will *reduce the benefit correspondingly* (see Japan's BSAs with Australia, Belgium and the United States of America and the India–Austria BSA). At times, it is indicated that *lump-sum benefits* are not to be considered for purposes of totalization (e.g. the Republic of Korea–Bulgaria BSA).
- Asian BSAs often require that totalization is only possible if the migrant worker concerned has contributed, or resided, for at least a *minimum period* of time in the country concerned (see among others the Japan–Spain, Japan–Hungary, India–Austria, India–Australia, India–Canada and India–Czechia BSAs) – as far as contributions are concerned, usually but not always, a minimum period of one year of contributions is required.
- With some exception, Asian BSAs provide for exportability of social security benefits
 - As a rule, Asian BSAs stipulate that benefits provided for under the BSA, and in particularly long-term benefits, are exportable to beneficiaries, irrespective of whether the beneficiary *resides in the host or home country* contracting party to the BSA. Invariably, this portability arrangement is extended to beneficiaries *even if they reside in other, i.e. third countries*. Portability of benefits to a third country may be made subject to verification procedures (e.g. that the person drawing a pension benefit is still alive) – see, among others, the India–Belgium and the India–the Kingdom of the Netherlands BSAs.
 - Some BSAs provide for benefits under national legislation to be exported *unilaterally* by the country of origin, even though these benefits may not necessarily be exportable on a reciprocal basis (see, e.g. the India–Quebec BSA).
- Asian BSAs foresee shared responsibility and cooperation, also in regard to implementation
 - The principle of shared/joint liability for the payment of benefits is reflected in Asian BSAs. The agreements contain (at times complex) arrangements for the calculation of *proportional benefit payments* to be made to beneficiaries.
 - *Administrative co-operation* is specifically provided for in all BSAs. Most Asian BSAs require the development of a *separate administrative arrangement* between the contracting parties, to guide the implementation of the BSA. In some cases, the arrangement has already been developed and attached as a *protocol or an annex* to the BSA itself – as in the case of, for example, the Philippines–Sweden, India–Czechia, India–Denmark, the Republic of Korea–China and the Republic of Korea–Denmark BSAs. Most Asian BSAs also explicitly provide for *data exchange*, qualified by the need to heed privacy concerns of affected individuals.

⁸³ The result is that European Union Member States must extend the benefit of taking into account periods of insurance in Asian and other third countries on the basis of totalization agreements, also to other persons who may be subject to the European Union social security coordination regime. This arrangement does not impose obligations on Asian and other third States, but is nevertheless an issue that needs to be carefully considered by Asian countries when concluding BSAs with members of the European Union – the effect of *Gottardo* is that it may also be of benefit to nationals of Asian countries that are residing in *other* European Union countries if they are subject to the European Union multilateral social security arrangement, and if the particular conditions in this regard (not discussed here) are satisfied. Asian BSAs with European Union countries could therefore, in principle, be of benefit to nationals of these Asian countries even if they reside in another European Union country.

- Finally, the specific establishment of *joint implementation, consultative and/or supervisory bodies* is not generally provided for in Asian BSAs. Exceptions include some of Japan's BSAs, in particular with Brazil, India and the Philippines. This is an area in which Asian countries can further meaningfully invest.

Remaining challenges: Asian BSAs

- It may take a very *long time*, in fact several years, for Asian BSAs that have been concluded to be *actually implemented*. The main problem in this regard appears to be administrative and other processes involved to support and ensure ratification of these instruments by the appropriate legislative bodies.
- There is need to ensure that the *administrative and technical capacity* is available, and the *cross-border cooperation mechanisms*, including linked databases, are in place and capable of streamlined operational interfacing.
- In some cases, migrant workers may be required to *contribute* to *host country* schemes as well as to *certain home country* schemes – this could make it a rather complex arrangement for employers and workers, and even for social security administrators.
- This complexity is made even more burdensome by the fact that Asian countries have been concluding a *host of BSAs*, which may all contain different technical and other provisions.
- More can be done to *enhance joint implementation, ongoing consultation and regular supervision and monitoring* of Asian BSAs.
- As a rule, only *long-term benefits* (in particular, old age, survivors' and disability benefits) are made subject to *totalization and portability arrangements*. There is ample scope for Asian countries to extend this range. For example, in several Asian countries health insurance arrangements have developed significantly, and could provide a basis for more elaborate inclusion in Asian BSAs.

Source: Olivier, 2019, p. 55.

ASEAN Declaration on Portability of Social Security Benefits and implementing Guidelines: In 2022 ASEAN adopted the *ASEAN Declaration on Portability of Social Security Benefits and implementing Guidelines*.⁸⁴ Amongst others, the Declaration is intended to promote further cooperation amongst ASEAN Member States towards portability of social security benefits for migrant workers. *ASEAN Guidelines on Portability of Social Security Benefits for Migrant Workers* are currently being developed, and will support the implementation of the *Declaration*.⁸⁵

4.2.3. Examples of BSAs involving European countries

BSAs between European Union countries are naturally subject to the European multilateral social security regime, discussed in the next part. For an example of a BSA between European countries, one an European Union member country and the other a non-European Union country, reference can be made to the interesting BSA between Slovenia, on the one hand, and Bosnia and Herzegovina, on the other.

⁸⁴ ASEAN Declaration on Portability of Social Security Benefits for Migrant Workers (2022).

⁸⁵ See www.ilo.org/asia/events/WCMS_877322/lang--en/index.htm.

BSA between Slovenia and Bosnia and Herzegovina (2007)

“The bilateral social security agreement between Slovenia and Bosnia and Herzegovina, signed in 2007, is a comprehensive instrument that covers several branches of social security, including healthcare, old age, disability, survivors’ pensions, occupational injury and illness, unemployment insurance, parental (including maternity leave) and child allowances. It contains provisions on determination of the applicable legislation, equality of treatment, the maintenance of rights in the course of acquisition (totalization), the maintenance of acquired rights and payment of benefits abroad, and administrative coordination. It also has provisions for posted workers, who are subject to the legislation of the State party where the employer is established if they stay for less than 48 months. Independent workers may remain subject to the legislation of the State party in which they carry out their activity if they stay for less than 24 months.”

“In an observation adopted in 2011, the CEACR [*ILO Committee of Experts on the Application of Conventions and Recommendations*] found that Slovenia’s application of the Agreement was not in full compliance with Convention No. 97 [*i.e. ILO Migration for Employment Convention (Revised), 1949 (No. 97)*]. Article 5 of the Agreement raised issues with regard to equality of treatment since the majority of migrant workers from Bosnia and Herzegovina were prevented from exercising their right to unemployment benefits because they were not permanent residents. As a result, the States parties amended the Agreement in 2011, enabling migrant workers from Bosnia and Herzegovina with temporary residence status to qualify for unemployment benefits in Slovenia.”

Source: ILO, 2021b, p. 76.

4.2.4. Examples of BSAs involving Latin America countries

Reference is made to the *Agreement on Social Security between Canada and the United Mexican States* (1996), discussed in the previous section on BLAs. Below two further examples are provided: Argentina and Ecuador.

Argentina’s experience with BSAs

“Argentina has also signed a number of international Social Security agreements granting privileged access to some social benefits for national citizens residing abroad or migrant workers coming to Argentina. Generally speaking, these agreements regulate the transfer of workers’ contributions between signatory States.⁸⁶ This mechanism allows workers to ask for an aggregation of contributions paid in each country to gain entitlement to contributory public (old age and invalidity) pension benefits in the country of residence. Some agreements also grant access to health care and family allowances for pension recipients (Chile or Italy), maternity leave and sickness benefits (Italy and Spain), and health care for temporary expatriate workers (MERCOSUR), etc.”

Source: Carmona Barrenechea et al., 2020, pp. 41–56 at 46.

⁸⁶ Certain categories of workers remain under the Social Security of the country of origin. In most cases, this applies for workers sent as expatriate to the other country by their employers for a limited period of time; sea and air transportation workers; civil and foreign service employees, etc.: Carmona Barrenechea, V., G.M. Messina and M. Straschnoy (2020). Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Argentina. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States* vol. 3 (Lafleur, J-M. and D. Vintila (eds)). IMISCOE Research Series. Springer, Cham, pp. 41–56 at 46.

4.2.5. The need to strengthen capacity and understanding of negotiating social security agreements

Negotiating BSAs requires a set of skills and clear understanding of the subject area. In her contribution on the Philippine experience, See indicates that a four-stage process is involved:⁸⁷

- **Conduct of exploratory meetings** between the delegations (comprising (information on) features of country scheme; profile of covered persons; initial preferences on social security agreement; and other queries or issues).
- **Conduct of formal negotiations** between delegations (comprising three stages: Prior: Draft agreement for discussion; Initial: Deliberate on each provision of the agreement; Succeeding: Finalize agreement for concurrence).
- **Signing and ratification** of the agreement by party-States (comprising the scheduling of the signing of the agreement; compliance with ratification requirements; and administrative meetings of liaison offices).
- **Entry into force and implementation.**

Tamagno in turn suggests that negotiation, approval and implementation of a social security agreement involves, generally speaking, an eight-step process:⁸⁸

- Preliminary discussions
- Preparation of a preliminary draft of an agreement
- Negotiations
- Review of the agreed text
- Signing of the agreement
- Approval of the agreement
- Conclusion of an administrative arrangement
- Entry into force of the agreement

4.3. Multilateral social security agreements (MSAs)

The Manual describes a number of MSA arrangements in Africa and elsewhere, including in:

- (i) **Africa:** The *ECOWAS General Convention on Social Security* (2012), the *CIPRES Multilateral Inter-African Convention on Social Security* (2006) as well as Southern African Development Community (SADC) and East African Community (EAC) multilateral arrangements;
- (ii) **European Union:** The multilateral social security coordination arrangements provided for in European Union Regulation 883/2004;
- (iii) **Caribbean countries:** The *CARICOM Agreement on Social Security* (1996); and
- (iv) **Latin America:** In particular, the *Ibero-American Social Security Convention* (2011), involving 18 Latin American and two European countries.

⁸⁷ See, J. (2016). *Negotiating bilateral social security agreements: The Philippine experience* (9th ASEAN Forum on Migrant Labour (AFML) held in Vientiane, the Lao People's Democratic Republic on 9 November, p. 11.

⁸⁸ Tamagno, E. (2008). *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements*. ILO, pp. 25–26 and Annex I.

Below two further MSA examples are discussed. Also, the European Union arrangement is elaborated in some detail, given key lessons that be learned from this, the oldest and most comprehensive, MSA in the world – with reference to, amongst others, its close linkages to freedom of movement in the European Union, and the incremental nature of its development, also concerning the range of benefits/contingencies and scope of persons covered.

- (1) **Africa:** General Convention on Social Security (Economic Community of the Great Lakes Region (CEPGL countries))

Africa – General Convention on Social Security (Economic Community of the Great Lakes Region (CEPGL countries) (1980)

Within the context of the CEPGL, the “La Convention Générale de Sécurité Sociale” (General Convention on Social Security) came into force in 1980. It involved three countries, i.e. Burundi, the Democratic Republic of the Congo and Rwanda, and is modelled according to international instruments, with the sole difference being that it does not extend its scope of application to family and maternity benefits. Among other it allows for the portability of benefits. Regular meetings were held to deal with common issues related to the practical application of social security coordination principles and to share information. A training centre for social security institutional staff has operated in Kinshasa, the Democratic Republic of the Congo. Though successful, practical problems were experienced, which largely stemmed from the divergent legal regimes of the countries concerned.⁸⁹

Source: Papa, 2008, pp. 7–9.

- (2) **Gulf Cooperation Council (GCC): Unified Law of Insurance Protection Extension for GCC State citizens working in other GCC countries (2006):**

In 2006 the six countries of the Gulf Cooperation Council (GCC) adopted the *Unified Law of Insurance Protection Extension for GCC State citizens working in other GCC countries*. It has been noted that this law has resulted in better pension protection and greater labour mobility (for Gulf countries’ citizens).⁹⁰ However, this is not a coordination arrangement, as its focus is on the *continuity of coverage of workers in the region*.⁹¹

Gulf Cooperation Council (GCC) – Unified Law of Insurance Protection Extension for GCC State citizens working in other GCC countries (2006)

“The Gulf Cooperation Council (GCC) consists of six countries bordering the Arabian/Persian Gulf, a region where there is a significant movement of workers. Yet, most countries in the region restrict social security coverage to their own nationals. To address this issue, the GCC implemented the *Unified Law on Insurance Protection Extension for Citizens of Gulf Cooperation Council States Working outside Their Countries in Any of the Council Member States* in 2006. Unlike other multilateral agreements which define specifically the terms and conditions of social security agreements, the Unified Law on Insurance Protection Extension of the GCC proposes social security models for possible consideration.”

⁸⁹ Papa, K.S. (2008). Migration and social security: The issue of social security for migrants in the Democratic Republic of Congo (paper presented at an international conference on Migration and Social Protection: Exploring Issues of Portability and Access, organized by the Sussex Centre for Migration Research, the Development Research Centre on Migration, Globalisation and Poverty, and the Institute of Development Studies (IDS), held at the University of Sussex, United Kingdom, 5-6 November), pp. 7–9.

⁹⁰ Van Ginneken, W. (2013). Social protection for migrant workers: national and international policy challenges. *European Journal of Social Security* (EJSS), vol. 13(5), pp. 209–221 at 215–216.

⁹¹ Ortiz, P. A. (2013). Social security protection for migrants: A need for legal intervention. In: Blanpain, R. et al. (eds.). *Social security and migrant workers: Selected studies of cross-border social security mechanisms*. Wolters Kluwer, Alphen aan den Rijn, pp. 31–45.

“The Unified Law includes provisions for *long-term benefits* for old-age and retirement, disability, sickness and death of a family member under the social security schemes of the GCC member States. Those who are entitled to this coverage are nationals of a GCC member-state, workers employed in another GCC member-state, individuals subject to the social security legislation of their country of work if they were nationals of that country, and individuals subject to the social security legislation of their country of nationality if the employment were performed in that country.”

“The Unified Law provides solutions for social security agreements in a region where a traditional multilateral agreement may not be feasible. Unfortunately, it has not overcome the difficulty of coverage for third-State nationals, composing the majority of the migrant work force of the region.”

Source: ILO, [Examples of multilateral social security agreements](#).

(3) **European Union:** EC Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems:⁹²

- **Rationale.** The first multilateral measures to coordinate social security within the European Union (then the nascent European Economic Community) came in 1958.⁹³ Of importance is the *rationale* behind the passage of these European Union regulations. The concern was *economic*, namely that a lack of social security coordination would inhibit *freedom of movement of persons* – one of the four pillars⁹⁴ of the European Union. This is because social security rights are usually related to periods of employment or contributions or residency. Since its inception, therefore, coordination of social security in the European Union has been closely related to the free movement of persons among the Member States. This is an important point to remember when considering the introduction of coordination rules in Africa, given the various free movement regimes operating in Africa. In fact, coordination is generally considered to be a necessary condition for free movement: in order to have genuine freedom of movement, labour migration within the common market should not lead to a loss of social security entitlements. As a result, article 48 of the Treaty of Lisbon assigns the European Council the task of unanimously adopting such measures in the field of social security as are necessary to provide freedom of movement for European Union workers.
- **Building on existing BSAs.** The European Union coordination regime *builds on the range of agreements* which were concluded bilaterally between individual European States. As noted by Tamagno:⁹⁵

“The EU regulations have largely replaced a complex set of bilateral agreements that had previously coordinated the social security systems of many, but not all, of the EU member-states. In doing this, the regulations have filled the gaps that existed when countries did not have bilateral agreements. The regulations have also instituted consistent provisions applicable to all the persons legally resident in the EU in place of provisions that varied according to many factors, particularly the nationality of the persons concerned.”

In fact, the bilateral arrangements are still applicable to the extent that they contain more favourable provisions than those of Regulation 883/2004.

⁹² See Olivier, M. (2018). *Social protection for migrant workers in ASEAN: Developments, challenges, and prospects* (Report prepared for the ASEAN Secretariat, ASEAN Member States and the ILO), pp. 123–125, from where the text below has been taken and adjusted (emphasis added; some authorities omitted).

⁹³ Regulation No. 3 (OJ 30, 16.12.1958), accompanied by its implementation regulation, Regulation No. 4 of 1958.

⁹⁴ The other three being free movement of goods, services and capital.

⁹⁵ Tamagno, E. (2008). *Strengthening social protection for ASEAN migrant workers through social security agreements*. ILO, Bangkok.

- **Comprehensiveness.** Today, the European Union arrangement is the *most comprehensive in the world*. One of its main characteristics is the *incremental development* of the European Union coordination regime – in particular concerning the scope of coverage. European Union regulations related to the *portability* of social security benefits and the coordination of European Union social security systems with a view to *equal access* to benefits are the most advanced examples of multilateral arrangements. European Union Regulation 883/2004 is an extensive legal provision that ensures *far-reaching portability* of social security entitlements and *access to social security* within the European Union.
- **Third country migrant workers.** When moving within the European Union, even *third-country migrant workers* (so called third country nationals (TCNs), including many documented African migrant workers in the European Union) enjoy the same rights as European Union nationals with respect to the portability of social security and benefit entitlements after five years of residence within the European Union (see below).
- **Special social security cooperation arrangements with Algeria, Morocco and Tunisia.** The European Union is also leading efforts to enhance *social security cooperation within the Euro-Mediterranean Partnership*. Social security agreements with *Algeria, Morocco, and Tunisia* have been concluded under this initiative. Outside this multilateral framework, many European Union Member States have also concluded BSAs with non-European Union countries, and have created an extensive global network of portability arrangements.

European Union–Morocco Mediterranean Agreement (2000)

In addition to bilateral relations, the protection of social rights of Moroccans in Europe is also affected by European harmonization processes. For instance, the *Euro-Mediterranean Agreement*, signed in 2000 by Morocco and the European Union Member States, also addresses the *social protection of Moroccans in European countries*. While primarily a trade agreement, Article 65 of the Euro-Mediterranean Agreement concerns social security. It establishes the principle of *equal treatment* of Moroccan nationals and the citizens of European Union Member States in the domain of social security, the principle of *exportability* of social rights from one country to another when nationals move, and the aggregation of activity periods of Moroccan nationals in different European Union Member States for the entitlement to and calculation of certain social security benefits. However, the Euro-Mediterranean Agreement's provisions *are not directly implementable* (since regulatory instruments are needed). To take effect, the agreement still needs to be endorsed by the Morocco–European Union Association Council. Notwithstanding, the *European Court of Justice* has ruled that the *non-discrimination principle* in social security is directly implementable anyway. Also, the principle of aggregation of the beneficiary's periods of activity in different Member States is effective yet.

Source: Mahieu, 2020, pp. 231–246 at 237–238.

- **Embedded coordination rules.** Regulation 883/2004, read with implementing Regulation 987/2009, contains detailed rules pertaining to the coordination of social security schemes, invoking coordination principles with reference to:
 - (1) Determining the applicable legal system to regulate the cross-border movement of the person concerned and their accrued rights and entitlements;
 - (2) The maintenance of accrued social security rights and entitlements;
 - (3) The totalization or aggregation of periods of contributions or insurance, irrespective of where the contributions were made;

- (4) The payment of social security benefits regardless of the (European Union) country of residence (i.e. exportability of benefits);
 - (5) Pro rata sharing of liability by the social security institutions of the countries to whom contributions were made, to pay for the benefits; and
 - (6) Administrative cooperation.
- **Incremental development.** As mentioned above, multilateral coordination within the European Union context has developed *incrementally*. The *scope of categories of persons and contingencies* covered have gradually expanded over the years, as is the case with the type of social security schemes falling under the purview of the European Union regulatory framework. Regarding the personal scope of the coordination rules, traditionally workers in an employed and self-employed capacity, as well as members of their families, were covered. However, the current Regulation 883/2004 *extends* the sphere of application to *all persons who are or have been subject to the social security legislation of the Member States and to the members of their families and to their survivors*. In addition, the Regulation also applies to *stateless persons or refugees* residing in one of the Member States.⁹⁶
 - **Material scope/contingencies covered.** Regarding the material scope of the coordination rules, Regulation 883/2004 applies to all legislation concerning the following branches of social security (see article 3):
 - sickness benefits;
 - maternity and equivalent paternity benefits;
 - invalidity benefits;
 - old-age benefits;
 - survivor’s benefits;
 - benefits in respect of accidents at work and occupational diseases;
 - death grants;
 - unemployment benefits;
 - pre-retirement benefits; and
 - family benefits.

Social and medical assistance is excluded from the material scope of the Regulation (see article 3(5)). However, the European Court of Justice interpreted the term “social assistance” narrowly, thereby effectively allowing for subsistence benefits designed for a specific risk – e.g. minimum income for the elderly or basis income of the disabled – to be covered. However, these special non-contributory benefits are not exportable to other Member States (see article 70). Yet, the material scope is limited to legislation on the above benefits. The implication is that collective labour agreements and supplementary pension schemes and private social security are all excluded from the scope of Regulation 883/2004.

- **Territorial scope.** Regarding the territorial scope of the coordination rules, the Regulation applies to the territory of the European Union. However, an extended application has been provided for.

⁹⁶ Regulation 883/2004, article 2.

Social security for Third Country Nationals (TCNs) in the European Union

It is also of particular interest – and importance – to consider the extension by the European Union of social security coverage to *migrant workers from third countries* (so called Third Country Nationals (TCNs)). There has been a gradual extension of European Union social security provisions, covering a growing number of categories of TCNs, informed in particular by the common immigration policy of the European Union contained in the *Treaty on the Functioning of the European Union (TFEU)* (see Article 79).

Amongst others, the European Union *Single Permit Directive (1998)*⁹⁷ compels host countries (i.e. European Union Member States) to extend both labour law and social security protection to lawfully residing migrants, in principle on the same basis of protection extended to their own nationals. The *Directive* guarantees access to a common set of rights on the basis of equality, including social security rights, if the migrant worker is working legally (lawful employment principle). However, restrictions are possible – Member States may exclude migrant workers employed on the basis of a contract of less than six months' duration. It is interesting to note that this *Directive* provides for two important social security coordination principles, i.e. totalization of insurance periods and portability principles.

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MODULE C

Guiding principles

1. Social protection as a human right (Manual, par III.4)

Evaluating progress with the United Nations *Global Compact for Safe, Orderly and Regular Migration*, read with (achieving) the United Nations Sustainable Development Goals (SDGs): The International Migration Review Forum (IMRF)

A primary means of ensuring improved social protection outcomes for migrants concerns evaluating progress with reaching the Objectives of the United Nations *Global Compact for Safe, Orderly and Regular Migration*, read with (achieving) the United Nations Sustainable Development Goals (SDGs). This would reinforce the appreciation of social protection as a human right accruing to migrants, given the human rights basis of both documents.

As has been noted, “In the Global Compact for Safe, Orderly and Regular Migration, Member States decided that the International Migration Review Forum will serve as the primary intergovernmental global platform to discuss and share progress on the implementation of all aspects of the Global Compact, including as it relates to the 2030 Agenda for Sustainable Development, and with the participation of all relevant stakeholders. The International Migration Review Forum shall take place every four years beginning in 2022. Each edition of the International Migration Review Forum will result in an intergovernmentally agreed Progress Declaration.” The *Progress Declaration* therefore serves as the key Global Compact for Migration follow-up mechanism.

Source: United Nations Network on Migration, 2022.

Objective 22 of the Global Compact for Migration (“Establish mechanisms for the portability of social security entitlements and earned benefits”) is of particular relevance. In terms of this Objective, States commit themselves to the following:⁹⁸

“38. We commit to assist migrant workers at all skills levels to have access to social protection in countries of destination and profit from the portability of applicable social security entitlements and earned benefits in their countries of origin or when they decide to take up work in another country.

To realize this commitment, we will draw from the following actions:

- (a) Establish or maintain non-discriminatory national social protection systems, including social protection floors for nationals and migrants, in line with the ILO Social Protection Floors Recommendation, 2012 (No. 202);
- (b) Conclude reciprocal bilateral, regional or multilateral social security agreements on the portability of earned benefits for migrant workers at all skills levels, that refer to applicable social protection floors in the respective States and applicable social security entitlements and provisions, such as pensions, health

⁹⁸ See par 38 of the United Nations (2018). *Global Compact for Safe, Orderly and Regular Migration*.

care or other earned benefits, or integrate such provisions into other relevant agreements, such as those on long-term and temporary labour migration;

- (c) Integrate provisions on the portability of entitlements and earned benefits into national social security frameworks, designate focal points in countries of origin, transit and destination that facilitate portability requests from migrants, address the difficulties women and older persons can face in accessing social protection, and establish dedicated instruments, such as migrant welfare funds in countries of origin, that support migrant workers and their families.”

The first *Progress Declaration*, issued after the first International Migration Review Forum (IMRF) highlighted a number of key SP matters, which would have to be considered by migration-concerned stakeholders as well:⁹⁹

- A deep concern that the COVID-19 pandemic has had a severe and disproportionate impact on migrants through restricted or lack of access to, among others, SP (par 8), and that safe access to among others SP often remained limited to migrants with a regular status, while migrants with irregular status remained in a situation of vulnerability (par 41) – noting that efforts to provide all migrants access to unemployment benefits and adequate SP, without risk of arrest, detention and deportation in the context of international migration, have been essential in the effective response to the COVID-19 pandemic, in particular at the local level (par 38);
- A further concern that, despite the fact that some Member States concluded and implemented bilateral and multilateral agreements to foster the portability of social security entitlements, coverage and portability of such entitlements remain limited due to exclusion, barriers to eligibility, lack of implementation of existing frameworks and limited cross-border cooperation (par 44);
- A commitment to promote the sustainable reintegration of returning migrants by providing them with equal access to social protection and services (par 66).

2. Key policy considerations (Manual, par III.5)

The relevance of migration in the context of development is firmly rooted in the introduction of the United Nations *2030 Agenda for Sustainable Development*:

The migration-development nexus a key growth and sustainable development consideration

“We recognize the positive contribution of migrants for inclusive growth and sustainable development. We also recognize that international migration is a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses. We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons. Such cooperation should also strengthen the resilience of communities hosting refugees, particularly in developing countries. We underline the right of migrants to return to their country of citizenship, and recall that States must ensure that their returning nationals are duly received.”

Source: United Nations, 2015.

⁹⁹ United Nations (2022). International Migration Review Forum. *Progress Declaration of the International Migration Review Forum* (Resolution adopted by the General Assembly on 7 June).

Key resources

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MODULE D

Establishment of a migrant welfare programme

1. Description, objectives and operational framework of a Migrant Welfare Programme (MWP) (Manual, par IV.4)

Migrant welfare programmes fulfil a critical role in extending welfare and social protection to migrant workers abroad and their family members, in particular in the absence of sufficient social protection measures available in countries of destination. However, as indicated below and in the Manual, these programmes have their limitations and are exposed to several challenges. It is, therefore, important to note that these programmes can never be the only, or the complete of final solution for better protection of migrant workers abroad and their family members. The critical role of bilateral labour agreements and of bilateral and multilateral social security agreements, as highlighted in the Manual and elsewhere in the Compendium, should again be emphasized. In addition, as suggested in an ILO publication:¹⁰⁰

“In the absence of state-led social protection mechanisms, migrant workers may decide to contribute to private insurance mechanisms, including community-based schemes such as health mutuals, and in some cases may opt for private insurance in order to complement their benefits under public social security schemes.”

2. Evaluation of MWPs/MWFs: Achievements and challenges (Manual, par IV.5)

An evaluation of the limitations and challenges associated with migrant welfare programmes/funds, as also alluded to in the Manual, could be summarized in the following terms: “While welfare funds aim to provide protection to migrant workers, this protection is often insufficient and may not take into consideration the needs and characteristics of migrant workers throughout the migration process.”¹⁰¹ A 2021 ILO publication indicate the following limitations and challenges, which need to be carefully considered in the design of new and revision of existing programmes or funds:¹⁰²

“The fee paid by beneficiaries of the scheme is often uniform, regardless of the variety of risk profiles across destinations, occupations, sectors, skill levels, contributory capacity, residence, or employment duration.

- In many cases, benefits can only be enjoyed by migrants upon their return to their country of origin.
- Benefits must often be claimed within a limited number of months after return to the country of origin.
- Some funds do not contain provisions for dependent family members who remain in the country of origin.

¹⁰⁰ ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 134.

¹⁰¹ *Ibid.*, p. 129.

¹⁰² *Ibid.*

- Beneficiaries are often not involved in the design, coordination and monitoring of the welfare fund.
- There is often a lack of information and communication on the available services and benefits and how to access them.
- Processing times may be lengthy and cumbersome.
- Conditions for repatriation support may be restrictive; for example, pregnancy alone may not be sufficient unless there is violence or harassment involved.
- Migrant workers who change employment or extend their contract may lose coverage or be charged a renewal fee.
- There are no in-depth impact evaluation studies of welfare funds.”

3. Need for establishing a MWP (Manual, par IV.6)

Several factors may influence the decision of a CoO to extend welfare and social protection to their nationals abroad. This may in turn influence the decision as to whether a Migrant Welfare Programme needs to be established. As has been indicated by Vintila and Lafleur, these factors include a range of *important considerations*:¹⁰³

(a) Demographic pressures: “Immigrants and emigrants thus count with varying levels of demographic visibility across these countries and their demands for inclusion in the welfare system of these states may also vary significantly. When these minority groups are *relatively small* in demographic terms, ensuring their access to welfare may have little costs for these countries as, a priori, few individuals would potentially qualify as eligible claimants. At the opposite pole, when these groups are *particularly sizeable*, granting them *access to welfare rights could be a costly decision*, although more meaningful in terms of impact.”

(b) Composition of migrant stocks: “Apart from size, the composition of migration stocks may also constrain states’ predisposition to ensure the access of mobile individuals to welfare. For instance, countries whose migrants come from or *go to more economically developed states* (especially high-income countries with more generous welfare regimes) *may have fewer incentives to address the social protection needs of these minority groups*.”

(c) Economic and political tensions/influence: “The size and composition of migrant stocks may influence states’ behaviour regarding the social protection of minority groups, but so is the *economic or political leverage* that these communities might have on national governments.” Important in this regard are, amongst others, the economic contribution resulting from *substantial remittance flows to the CoO*, and the *political leverage* of the diaspora (in particular, the extent of their ability to influence political processes or outcomes in the CoO).

(d) Nationality: Having acquired *nationality of the CoD*, even in the event of *dual nationality* of the CoO and CoD, “may trigger sending states to be less active in protecting their citizens abroad because of the assumption that the latter will be treated as nationals in the ... countries of settlement.”

¹⁰³ Vintila, D. and J-M. Lafleur (2020). *The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlements, Consular Services, and Diaspora Policies*. In: *Migration and Social Protection in Europe and Beyond (Volume 3)* (J-M. Lafleur, and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 1–40 at 17–29.

One of the main reasons why a CoO may not be inclined to extend social protection to their migrant workers and their family members abroad, relates to the fact that emigrants may not require, or even want such protection. The *British* example can be referred to in this regard:

Absence of policies aimed at facilitating access to social protection: United Kingdom

The UK Government has a *complete absence of policies to facilitate the access to social protection* of national residing abroad. This absence stems from the fact that British emigrants tend to be high skilled, prosperous, moving for high skilled work, and lifestyle migration. British emigration has long been *driven by positive pull factors* underpinned by voluntarism then, rather than negative push factors that might lead to deprivation in the sending State. Combined with assumptions that Britons living abroad do not want or need to engage with the homeland State, there has been *little incentive* for the government to *establish social protection policies*.

Source: Consterdine, 2020, pp. 433–452 at 442.

4. Design of a MWP and services/benefits to be provided (Manual, par IV.7)

The extensive range of services and benefits, which can be provided under a Migrant Welfare Programme is noted in the Manual. As noted in a 2021 ILO publication:¹⁰⁴

“Overseas welfare funds can provide services and benefits during all stages of the migration cycle and may include legal counselling, pre-departure orientation, training, loans, education grants, burial and repatriation support, repatriation and reintegration programmes, psychosocial counselling and consular support in countries of employment. They may also provide social protection benefits such as death, disability and survivors’ benefits and facilitate access to health insurance (such as PhilHealth in the Philippines) and other existing social protection schemes (such as the Sesetha Pension scheme in Sri Lanka). In certain cases, they also provide benefits to migrants’ dependents who remain in the country of origin; for example, the overseas welfare funds of Sri Lanka and the Philippines award scholarships to the children of migrant workers.”

¹⁰⁴ ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 128.

For example, the services and benefits provided by the *Philippines and Sri Lanka respectively* can be summarized as follows:¹⁰⁵

Welfare Funds	Services provided to Migrant workers
<p>Sri Lanka</p> <p>The Sri Lanka Bureau of Foreign Employment (SLBFE) and its Overseas Workers Welfare Fund (OWWF)</p>	<p>Pre-departure services (such as training, loan facility, orientation and registration); welfare assistance from the OWWF:</p> <ul style="list-style-type: none"> • Scholarships for children • Compensation to the family in the event of death • Compensation for partial and total disability • Repatriation
<p>The Philippines</p> <p>The Overseas Workers Welfare Administration (OWWA)</p>	<p>“Social benefits” (disability benefit for injuries sustained owing to an accident while working abroad, death benefits and burial benefits);</p> <p>Education and training benefits;</p> <p>Welfare assistance programmes (psychosocial counselling, conciliation, airport assistance, legal assistance);</p> <p>Repatriation and reintegration programmes.</p>

5. Sources of funding, contributions and beneficiaries: specification (Manual, par IV.8)

A 2021 ILO publication notes that migrant welfare funds are membership institutions and that registration requires the payment of a membership fee, usually by the migrant worker, but that they can also be financed from the initial capital investments or contributions of foreign employers, and recruitment agencies. Reference is then made to a comparison of membership fees for registration with migrant welfare funds, charged by the OWWA scheme in the Philippines and the OWWF scheme in Sri Lanka.¹⁰⁶

OWWA (the Philippines)	OWWF (Sri Lanka)
USD 25 contribution for 2 years	Contribution of up USD 75, depending on the prospective salary of the migrant
Mandatory contribution	Mandatory contribution
Renewal of membership after two years	Renewal of membership after two years while working for the same employer
	Fee to be paid before deployment

¹⁰⁵ Ibid., 129 (Figure 5.5 – adjusted).

¹⁰⁶ Ibid., p. 128.

Key resources

Consterdine, E. (2020). [Diaspora Policies, Consular Services and Social Protection for UK Citizens Abroad](#). In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States* (Volume 3) (J-M. Lafleur and D. Vintila, (eds.)). IMISCOE Research Series. Springer, Cham. pp. 433–452.

ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 126.

Vintila, D. and J-M. Lafleur (2020). [The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlements, Consular Services, and Diaspora Policies](#). In: *Migration and Social Protection in Europe and Beyond* (Volume 3) (J-M. Lafleur and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham.



MODULE E

Insurance-based arrangements

1. A dedicated framework required (Manual, par V.4)

In the Manual the *rationale* for relying on a dedicated social security scheme framework (by either creating a separate scheme, or extending the existing national scheme) is indicated. Experience of Migrant Welfare Funds/Programmes suggests that, by including social security arrangements for the benefit of migrant workers abroad and their families in these Funds or Programmes, the emphasis on addressing social protection needs is compromised. For this reason, several countries of origin increasingly make use of *either separate, dedicated social security schemes* to provide better social protection for their migrant workers abroad and their families, or have *extended mainline public schemes* to cover these workers and their families abroad.

Nepal provides a recent example of extending the existing public social security scheme to Nepali migrant workers abroad and their families, in addition to and separate from the existing migrant welfare fund arrangement. In fact, Nepal has for some time had a Foreign Employment Welfare Fund in place, to which migrants contribute. The Fund is utilized to support migrants in vulnerable situations, repatriation, medical support, grants to migrants who have some disability due to accidents, permanent disability or death compensation, repatriating dead bodies, education and or other support to the family members among others. The new arrangements include:¹⁰⁷

- In addition to this Fund, Nepal has now included Nepali workers abroad, including self-employed Nepali individuals abroad, into the contributory-based social security fund/scheme (i.e. the Social Security Fund), which was earlier reserved for workers in Nepal only. About four million Nepali workers and self-employed individuals abroad are meant to benefit from this arrangement.
- The scheme covers regular medical check-ups, health protection, maternity and paternity plans, accident and disability plans, dependent family support and old-age security plans.
- Migrant workers or self-employed persons will be required to *contribute* at least NPR2,002 (USD16.75) per month, with a discount offered to those paying more than six months' premiums in advance. The guidelines for informal sector workers and self-employed persons are yet to be announced.
- Payment can be made every month or in advance for months – *through e-banking/e-payment* apps by the migrant workers directly or *for them by their family members* in Nepal. More specifically, Nepalis working abroad with a valid work permit could enrol in the Social Security Fund via the online system established by the Department of Foreign Employment. In addition:¹⁰⁸

“To facilitate the registration process and contribution collection, the fund has made arrangements of call centres and social network accounts. Furthermore, with the recent agreement between the fund and the Non-Resident Nepali Association (NRNA), joining the fund has become even more accessible. The

¹⁰⁷ New SSF scheme to cover 4mn migrant workers.

¹⁰⁸ Ibid.

NRNA, with its vast network spanning over 80 countries, has pledged its support to assist individuals in enrolling in the programme. Efforts are currently underway to collect contribution amounts from Nepali banks and remittance offices located overseas. Even if they are residing abroad, individuals can still make contributions through their bank accounts located in Nepal.”

Tunisia provides an African example of a CoO that has established a dedicated social security scheme framework for residents working abroad:

Tunisia: dedicated social scheme for residents abroad

“There is a specific regime for Tunisian residents in countries that have not concluded social security agreements with Tunisia (Gulf, North America, Eastern Europe, etc.). The management of this regime is entrusted to the institutions of the Ministry at the Office of Tunisians Abroad (OTE) and the National Social Security Fund (CNSS). Contributors have access to the same benefits in Tunisia, but their health expenses in the host country are not covered. According to Maddouri, the affiliation to this regime is very low, which led the Government to think about ways to increase information, simplify procedures and give more incentives to increase the coverage among the target population.”

“The social protection regime for Tunisian workers abroad (known in French as *Régime de sécurité sociale aux travailleurs tunisiens à l'étranger*) is the institution that provides social security for Tunisians living abroad, following the Decree No. 89–107 of 10 January 1989 that extended the social security system to Tunisian workers abroad, whether employed or self-employed.”

Source: Gelb, 2020, pp. 363–374 at 368; Pouessel, 2020, 375–382 at 382.

2. Range and adequacy of social protection benefits available in country of destination (Manual, par V.5)

2.1. Reliance on informal social protection in CoDs

In reality, many migrants invariably resort to informal economy engagement and reliance on informal forms of social protection to ensure economic survival. For the majority of them, *mainstream social protection responses often may not be available or accessible*, especially if they happen to be undocumented. Also, for many nationals of the CoD, reliance on informal forms of social protection may be a constant reality, given lack of access to formalized contributory and non-contributory social security arrangements.

Various forms of informal social protection present themselves, including kinship-based, community-supported, faith-based and mutuality-based social protection modalities. Some of these modalities involve other stakeholders assisting with providing support; others are home-grown, autochthonous arrangements. The Lebanese experience may be cited as a good example of the variety of informal social protection mechanisms employed by migrant workers and their families, in the wake of weak social protection coverage in the CoD.

Informal social protection in Lebanon

It has been remarked that: “In lieu of a robust Government-led social protection system, there is a heavy reliance on services and informal social protection *provided by various civil society organizations*.”¹⁰⁹ A recent policy paper on social protection for migrants in Lebanon indicates that it is clear that national and international NGOs, and well as *faith-based institutions*, provide important but ad hoc social protection (SP) support to migrants, in particular as regards health care but also (at times) legal assistance and repatriation. *Informal community-based support arrangements* are also in place, usually on a nationality basis, but at times also via broader-based alliances, as in the case of domestic workers.¹¹⁰

“The critical importance of these arrangements is highlighted in the case of, for example, an institutionalized *community-based support structure for Sudanese migrants*. Given the variety of critical SP needs, the relevant organization (the Sudanese Club) is contemplating establishing a *formal fund framework* to provide more comprehensive support, including SP support, to Sudanese migrants. It remains to be said that while these developments confirm the inadequate extent and nature of support available under the public SP system, these institutions will *rarely be able to provide the broader-based comprehensive SP support* that may be needed by migrants concerned. It may also be important to add another caveat: it is important to be mindful of the fact that these groups have the potential to reinforce negative power dynamics within their nationality groups. Support to these groups should be based on clear and transparent communications and operations as well as an independent monitoring and feedback mechanism.”

The role of informal social protection in the case of *Senegalese* migrant workers abroad has been described in the following terms: “Self-help associations among Senegalese abroad and remittances from Senegalese abroad constitute one of the many informal social safety nets put in place by emigrants for themselves or for their relatives in Senegal in the absence of a state policy in this domain.”¹¹¹

In the *MENA region*, informal social protection support based on *faith-based arrangements* plays a particular important role:

Reliance on informal social protection in MENA countries

Amongst others, in the MENA region, “... also due to the limited coverage of formal social protection systems, important informal and semi-formal safety net modalities provide a crucial lifeline for individuals and households, and effectively for migrants too: these modalities rely on *notions of solidarity and redistribution* operating within the framework of *kinship-based and mutuality-based* forms of support. As noted by Jawad,¹¹² *nuclear and extended families* have always played a key role in social support; the family is also a last resort for financial support. In the last decade, however, the family in MENA region has become a less reliable source of social support due to the widespread incidence of poverty and the breakdown of family bonds. Also, their ability, and that of mutuality-based modalities, to address *covariant risks* caused by health pandemics or large-scale climate- or conflict-induced migration, including displacement, remains questionable.”

¹⁰⁹ Center for Studies on Aging, HelpAge International and Center for Inclusive Policy (2020). *Towards a Rights-Based Social Protection System for Lebanon*, p. 4.

¹¹⁰ Olivier, M. Strengthening migrants' access to social protection in Lebanon (policy paper). IOM, ILO, Geneva (forthcoming), par 2.3. Emphasis added.

¹¹¹ Smith, E. (2020). *Diaspora Policies, Consular Services and Social Protection for Senegalese Citizens Abroad*. In: *Migration and Social Protection in Europe and Beyond (Volume 3)* (J.-M. Lafleur, and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 289–304 at 301.

¹¹² Jawad, R. (2017). Is social protection becoming more solidary in the Middle East and North Africa? *Policy in Focus: Social Protection after the Arab Spring*, 14(3):15–18 at 16.

“Nevertheless, the most significant source of social protection for vulnerable populations – particularly for those employed in the informal sector – are *religious welfare organizations*. These include large welfare organizations such as Caritas and the important Zakat institution – the compulsory giving of a portion of one’s wealth to charity, considered a religious duty for all adult Muslims with a minimum standard of wealth: “Zakat is a major source of redistributive social transfers, either informal (as private charitable donations), semi-formal (collected and distributed by mosques) or formal (administered by the government)”.¹¹³ Much can be learned from countries such as the Sudan that has *incorporated Zakat into the formal social protection system*: the Zakat Fund in Sudan supported over 2.1 million families with cash transfers and other benefits in 2016. Also, the National Zakat Fund in Jordan is, after the National Aid Fund, “an important component of the national social protection system, offering cash transfers to poor people and other vulnerable groups such as orphans and people with disabilities”.¹¹⁴ Repurposing Zakat to serve the social protection needs of vulnerable migrants, inclusive of displaced populations and vulnerable hosting communities, therefore is important.”

Source: Olivier et al., 2022.

3. Social protection risks to be provided via insurance-based arrangements (Manual, par V.6)

Swiss unemployment benefits and assistance

“For Swiss nationals who move abroad, *unemployment benefits* can be paid abroad under certain circumstances and for a *maximum of 3 months*. After *registering* with the Swiss employment services, insured persons must *remain available* to the competent employment service for 4 weeks. Once their claim for export has been *approved*, insured persons *may move* to the country where they want to look for a job, notify the competent employment services of their arrival and comply with that country’s control procedures.

If the person does not find employment within 3 months, he/she can *return* to Switzerland and *continue to receive* unemployment insurance benefits. The CD of the FDFA provides a *special service* for Swiss nationals abroad who intend to return to the home country. In particular, the CD helps *preparing the job search* in Switzerland, forwarding job applications to the respective cantonal employment offices.”

Source: Piccoli, 2020, pp. 347–362 at 353-354.

¹¹³ Devereux, S. (2016). Social protection and safety nets in the Middle East and North Africa. *Policy in Focus: Social Protection after the Arab Spring*, 14(3):19–22 at 19-20; Lorenzon, F. *Social Protection in the Near East and North Africa Region: Regional Trends*. Food and Agriculture Organization of the United Nations (FAO), Cairo, pp. 5, 10.

¹¹⁴ Bilo, C. and C. Machado (2017). Child-sensitive non-contributory social protection programmes in the MENA region. *Policy in Focus: Social Protection after the Arab Spring*, 14(3):42–47 at 42-43; Jawad, R. (2017). Is social protection becoming more solidary in the Middle East and North Africa? *Policy in Focus: Social Protection after the Arab Spring*, 14(3):15–18 at 16; and van Diesen, A. (2017). Social protection for children and their families in the Middle East and North Africa: Where child rights meet smart economics. *Policy in Focus: Social Protection after the Arab Spring*, 14(3):23–26 at 25–26.

Extension of Jordanian long-term benefits

“Jordanian nationals employed abroad who *do not have mandatory coverage in the country of employment*, as well as *non-working nationals* (including housewives and students) who *live abroad*, are entitled to voluntary coverage (*old-age, disability and survivors’ benefits*) under Jordan’s social security system.”

Source: ILO, 2021, p. 126.

4. Modalities for extending country-of-origin insurance-based arrangements and ongoing social security benefits (Manual, par V.7)

4.1. A range of non-exhaustive policy modalities is available

A 2021 ILO publication comments on the *range of policy options* available to CoOs when considering extending social security coverage to migrant workers and their families as follows:

Range of non-exhaustive policy modalities available to CoOs

1. States can allow their nationals working abroad, together with their dependents, to *acquire or retain membership or maintain rights acquired in their country of origin*. Thus, countries of origin may wish to:
 - allow their nationals working abroad to join or retain membership in an *existing general social protection scheme on a voluntary basis*;
 - establish a *voluntary or mandatory specific scheme for certain groups of workers* (self-employed migrant workers) or for migrant workers alone;
 - establish a specific mechanism, such as a *welfare fund*, to provide certain social protection benefits and facilitate registration, and thus access to existing general or specific schemes;
 - ensure the payment of benefits abroad (*exportability*) to nationals and their dependents.
2.
3. States can give nationals who have *returned* to their country of origin access to their national *social protection floor* benefits.”

Source: ILO, 2021, p. 125.

In addition to the above policy modalities, *flexibility in the design of social security schemes and programmes* may be required to allow for the meaningful and tailor-made extension of coverage to migrant workers and their families. The same ILO publication suggests:

Flexibility in the design of social security schemes and programmes may be required

- "1.
2. States can be flexible in the design of the social security schemes to allow migrants to meet the qualifying conditions and minimum requirements by:
 - allowing migrants to make *retroactive payments* for missed contribution periods;
 - *exempting* migrants from the qualifying conditions¹¹⁵ and *minimum requirements* for social security;
 - authorizing *lump-sum payments or reimbursement of contributions for nationals* who move abroad and leave the scheme;
 - providing *subsidies* for certain categories of workers (such as returning migrants) to compensate for missed contribution periods."

Source: ILO, 2021, p. 125.

These matters are then further elaborated in the publication:¹¹⁶

- **Allowing migrants to make retroactive payment for missed contribution periods:** "For example, workers who receive a lump-sum payment of their accrued social security contributions upon leaving their country of employment can use it to make retroactive voluntary contributions for the missing periods, also known as 'buy back'. This option is also useful for workers who *move from a country with a provident fund system* to one with a *social insurance system*. In countries where the laws do not permit voluntary contributions, an exception to these provisions would prevent migrant workers from losing the total amount of their accrued benefits. This is particularly important in the absence of social security agreements."
- **Exemptions from qualifying conditions and minimum requirements for migrants:** "*Reduction of the minimum number of contributory or residence years* needed in order to qualify for certain benefits is common practice for certain categories of workers (such as those employed in sectors with challenging working conditions in terms of safety and health). These exceptions could also be considered for migrant workers, who may have worked and contributed for their entire working life without being able to benefit from a pension owing to the absence of social security agreements allowing them to totalize their contributory years. An *exception to the minimum number of contributory years* required would thus take into account the specific challenges that migrant workers face in their efforts to meet the qualifying conditions."
- **Lump-sum payments or reimbursement of contributions for nationals who move abroad and leave the scheme:** "This is particularly important for migrant workers who *permanently leave the country of origin* and establish themselves elsewhere or who *move from a country with a provident fund* to a country with a *social insurance scheme or vice versa*."

¹¹⁵ Migrant workers' "migration experience, type and length of contract, residence in the country of employment, length of stay and contribution period before departure or upon return may affect their access to or level of social protection benefits" – ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 129.

¹¹⁶ Ibid., p. 130.

- **Provision of subsidies for certain categories of workers (such as returning migrants) to compensate for missed contributions periods:** “Migrant workers may find it *financially challenging* to pay retroactively for missed contribution periods, even where this is allowed. It is important for countries of origin to ensure that all migrant workers have access to at least a minimum level of income security by allowing them to access non-contributory social protection benefits or *subsidizing contributions* to contributory schemes in line with the ILO Social Protection Floors Recommendation, 2012 (No. 202).”

4.2. Dedicated *insurance-based* arrangements

Several modalities present themselves when it comes to extending social insurance-based support to migrant workers and their families. India provides an example of a country that has established a national-level *specific insurance-based health care scheme* to make available health care to migrant workers.¹¹⁷

“The *Pravasi Bharatiya Bima Yojana (PBBY)* is a mandatory insurance scheme initiated in 2003 with the aim of safeguarding the interests of Indian emigrant workers, both working for Indian companies and companies owned by foreigners in a different country. The insured workers are covered for accidental death or permanent disability leading to loss of employment while abroad. The insurance also compensates for the costs of hospitalization. Coverage of repatriation for medically unfit/premature termination of employment, maternity expenses benefit to female emigrants and legal expenses related to emigrants’ overseas employment are some of the benefits covered through this scheme.”

Also, at the State level, under the Kerala Pravasi Welfare Board, the *Non-Resident Keralites’ Welfare Fund Act 2008* has developed some welfare schemes for the benefits of Non-Resident Keralites, such as several pension schemes.¹¹⁸

Morocco also, albeit on a much more limited scale, set up a specific programme called “Marhaba” that grants access to health care to citizens residing abroad who return temporarily to Morocco during the summer.¹¹⁹

¹¹⁷ Pellissery, S., Jain. S and Varghese, G. (2020). Access to Social Protection by Immigrants, Emigrants and Resident Nationals in India. In: Lafleur, J-M. and D. Vintila. *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (IMISCOE Research Series). Springer, Cham, pp. 148–162 at 153–154. It has been indicated that the PBBY scheme “...is a mandatory insurance scheme aimed at safeguarding the interests of Indian emigrant workers falling under *Emigration Check Required (ECR)* category going for overseas employment to ECR countries. This applies to the 18 official ECR countries: Afghanistan, Bahrain, Indonesia, Iraq, Jordan, Kingdom of Saudi Arabia, Kuwait, Lebanon, Libya, Malaysia, Oman, Qatar, South Sudan, Sudan, Syria, Thailand, the United Arab Emirates, and Yemen, of which, at the time of writing, departures to Libya, Sudan, Syria, and Yemen have been suspended because of the security situation in these countries. The scheme, initially launched in 2003, has been amended in 2006, 2008, and 2017 with the overarching objective of strengthening the coverage of emigrant workers.” – see Naujoks, D. (2020). *Diaspora Policies, Consular Services and Social Protection for Indian Citizens Abroad*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. (eds.)). IMISCOE Research Series. Springer, Cham, pp. 163–182 at 172.

¹¹⁸ Naujoks, D. (2020). *Diaspora Policies, Consular Services and Social Protection for Indian Citizens Abroad*, p. 172. At 174 it is remarked: “In the Indian state of Kerala, the Kerala Pravasi Welfare Board can provide financial assistance under its medical treatment, accident–cum–death insurance scheme. Under this scheme, a member Non-Resident Keralite (NRK) who is afflicted with critical illness is eligible for obtaining a maximum financial assistance of INR 50,000 (approximately USD730) during the entire period of his or her membership. The Welfare Board can also engage with national insurance companies to provide such services. Furthermore, through the Santhwana Financial Assistance scheme for returned NRKs in distress, financial assistance is provided to NRKs or their dependent family members in case of medical treatment expenses, death assistance or the acquisition of artificial limbs, crutches, wheel chair or other aids to overcome physical disability.”

¹¹⁹ Vintila, D and J-M. Lafleur (2020). *The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlements, Consular Services, and Diaspora Policies*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 1–40 at 30.

The Moroccan *Marhaba* programme

“During their stay in Morocco over summer, expatriate Moroccans can also benefit from the basic health care provided by the annual *Marhaba* operation. The Mohammed V Foundation is in charge of assisting them in this period, such assistance encompassing administrative, legal and medical help. In transit regions (air-ports, ports, stations) and throughout Morocco, 20 temporary support centres are equipped with around 800 medical staff members and social assistants. The medical aid provided concerns mainly first aid in case of emergencies occurring during expatriate Moroccans’ journey to Morocco (e.g. traffic incidents), including assistance to the victim’s family members.”

Source: Mahieu, 2020, pp. 231–246 at 240.

Spain has created a separate unemployment insurance scheme for returning Spanish nationals:

Spain: contributory unemployment benefit scheme for returning Spanish nationals

“As at 2019, Spain has a contributory unemployment benefit scheme for returning Spanish nationals who have contributed to the country’s social security scheme for a minimum of 360 days during the six years prior to departure.”

Source: ILO, 2021, p. 125.

The creation of a separate, dedicated social security scheme may hold certain *disadvantages and challenges*. An ILO publication comments on this as follows:

Disadvantages and challenges of a separate, dedicated social security scheme versus incorporation into a general social security scheme

“Countries of origin may decide to create a specific scheme for certain groups of workers (such as self-employed migrant workers) or for migrant workers in general. This has *certain disadvantages* over the incorporation of these workers into a general social protection scheme; experience has shown that the *larger the contribution base* of a social protection scheme, the more financially sustainable it will be. Moreover, it is essential to ensure that the (potential) beneficiaries have *confidence* in the proposed scheme, particularly where enrolment is voluntary. The small number of nationals working abroad; their types of contracts, jobs and working conditions; and their limited contributory capacity pose *challenges* in terms of the feasibility, proper functioning and sustainability of a scheme devoted solely to this group whereas a social protection scheme based on *solidarity and large risk pooling* is both consistent with the relevant international standards and more financially and administratively sustainable.”

Source: ILO, 2021, p. 127.

4.3. Extension of existing public scheme arrangements

Several countries of origin have opted not to establish separate social security scheme arrangements for their migrant workers abroad, but to *extend their mainline (public) social security system* to also cover these migrant workers. A recent example includes *Nepal*, as discussed earlier in the Compendium.

Recently, the *Indonesian* Manpower Minister issued a regulation that stipulates the advancement/updates on the Social Security Program for Indonesian Migrant Workers (BPJS) on 21 February 2023. The regulation arranges for increased benefits and additional risks coverage for migrant workers abroad, although some concerns were raised especially by the civil society organizations on a number of issues pertaining to the programme.¹²⁰ The regulation is meant to enhance the protection of migrant workers abroad.

Tunisia may be cited as a further example of a country in the global South that has extended its social security system to migrant workers abroad and their family members (see also the description earlier in the Compendium on this matter).

Tunisia: extending access to health care, pensions and family benefits

“Since 1989, Tunisian workers abroad have the possibility to *voluntary join their home country’s social security system*. This social protection regime concerns: salaried workers; non-wage earners; agricultural and non-agricultural workers; the unemployed; public officials; supplementary beneficiaries of the worker (*i.e. wife, children and other dependents*); and students who continue their studies. With this scheme, *Tunisian workers abroad and their family members residing in Tunisia can receive health benefits in kind*.”

“Consulates assist nationals living abroad with *access to healthcare* indirectly, providing information on rights to healthcare, types of insurance, documents needed for access to healthcare insurance and bilateral social security agreements through the website of the Ministry of Social Affairs. In *embassies and consulates*, a social service provides information on rights to pension and invalidity insurance and bilateral social security agreement on pension insurance between Tunisia and other countries.”

“The workers concerned by the social protection regime for Tunisian workers abroad benefit from the *old-age pension and invalidity benefits schemes*.”

“In Tunisia, family benefits are paid for children younger than 16 ... The social protection regime for Tunisian workers abroad and bilateral social security agreements *extend this right to Tunisian workers abroad*. Family allowances are granted to children who remain in Tunisia, up to a maximum of four children.”

Source: Pouessel, 2020, pp. 375–388 at 383, 384, 385.

In the Manual, reference is made to the limitations on the extension of welfare and social protection support by non-European Union countries. Here we focus on the general position in European Union Member States; further information on European Union countries’ engagement with non-contributory support is provided in the next section.

¹²⁰ Government of Indonesia, Minister of Manpower (2023). Ministerial Regulation No. 4/2023 (Permenaker No. 4/2023) on social security for Indonesian Migrant Workers.

European Union Member States: generally, limited social protection provisioning beyond nationals in other European Union countries

“... [W]hen it comes to the *provision role*, EU countries seem quite reluctant to extend welfare rights to their non-resident nationals. [R]egardless of diaspora's size or its economic and electoral leverage, EU Member States subscribe to a *restrictive pattern that disqualifies non-residents from in-kind or cash benefits*, as entitlement to most of these benefits remains conditional upon residence in the country. When *benefit exportability* is possible, this is generally driven by the EU legislation. As mentioned, thanks to the implementation of EU social security regulations, all Member States currently put forward at least a moderate level of engagement with their nationals abroad when it comes to the type of benefits granted to the diaspora. ... [W]ith the *exception of pensions* which are *generally exportable worldwide* (with few exceptions of countries which allow pension exportability only to EEA countries, unless otherwise stipulated in bilateral agreements), *very few Member States went beyond the EU legislation* in granting social rights to non-resident populations. Interesting examples of *pro-active diaspora engagement* initiatives come from *France and Belgium in the area of health care*. As explained in the country chapters, these two Member States have set up *special insurance schemes* for their nationals moving to non-EU countries, allowing them to receive medical treatment either abroad or at home.”

Source: Vintila and Lafleur, 2020, pp. 1–40 at 25.

There are several reasons why migrant workers may wish to retain membership in the social protection schemes of their countries of origin:¹²¹

- “Availability of schemes (for specific branches) may be limited in the country of employment.
- The conditions and benefit levels of the country of origin's scheme may be *more advantageous*; in such cases, migrants may wish to complement the insurance available in the employment country with additional insurance in their country of origin that provides higher benefit levels.
- Migrants, and particularly temporary, seasonal or circular migrant workers and workers who frequently move from one country to another, *may wish to benefit from continuity of service*.
- Migrants may wish to ensure that their *dependents living in the country of origin remain covered there*.
- Migrants who frequently move from one country to another may wish to *minimize administrative procedures*.”

4.4. Non-contributory support, including social assistance schemes

Countries of origin rarely provide non-contributory assistance, in particular non-contributory cash assistance to their migrant (workers) abroad, although sometimes exceptions are made in the case of emergency support. This appears to be the case even for *most European Union (origin) Member States*, although there are also important exceptions. The position has been summarized as follows:¹²²

¹²¹ ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 126.

¹²² See also Lafleur, J.-M. and D. Vintila (eds.) (2020). *Migration and Social Protection in Europe and Beyond (Volume 2): Comparing Consular Services and Diaspora Policies*. Springer, Cham, pp. 25–26.

“It is also interesting to note that, in the area of social assistance – which is not covered by the EU social security legislation –, most Member States have *not implemented* any financial assistance scheme for nationals abroad who are facing strong economic hardship beyond mechanisms of consular cash advances (sometimes non-reimbursable) usually designed to help citizens facing emergencies while temporarily abroad (e.g. tourists).

Yet, *France, Italy, Spain, Austria, and Portugal* also offer some conditional type of economic support for citizens permanently abroad to help them deal with unpredictable medical issues and/or economic hardship. This type of support usually takes the form of (either recurrent or non-recurrent) *non-reimbursable financial help*, although it varies substantially in its scope, aims and claim procedure. For instance, recurrent *non-contributory benefits* can be delivered by consular authorities, as it happens with Austria’s Fund for the Support of Austrian Citizens Abroad or *France’s* fixed-term social allowance. In some cases, only specific groups qualify for such exceptional financial assistance. As illustrated in this volume, this is the case of *Portuguese* pensioners abroad who do not meet minimum subsistence levels and can apply for the “Social support for the deprived elderly of the Portuguese communities”.”

Türkiye and the *United Kingdom* can be indicated as countries that do not provide social assistance (non-contributory) or social protection benefits to their citizens abroad.

Countries not providing social assistance to their nationals abroad

Türkiye: “Social assistance for the elderly forms the first tier of the system. It is means-tested pension income funded by the state for Turkish citizens over the age of 65 who earn less than one-third of the minimum wage. Hence, it can be considered as a guaranteed minimum income for the poor elderly. Turkish citizens living abroad and foreigners are not eligible for this support.”¹²³

United Kingdom: “Britons residing abroad cannot claim any UK means-tested or income-based benefits, and therefore there are no guaranteed minimum income benefits available for Britons residing abroad from the UK government.”¹²⁴

Some CoOs have set up *dedicated non-contributory schemes* to provide limited support to their migrants abroad. *India* serves as an example.

Dedicated non-contributory schemes: The Indian Community Welfare Fund (ICWF)

Since 2009, the Indian Community Welfare Fund (ICWF) has assisted Indian nationals abroad in times of distress and emergency in the “most deserving cases” on a means-tested basis:

“Beneficiaries do not have to repay the cost covered. It includes *legal and financial assistance* to Indian women who were abandoned, cheated, and/or abused; *emergency medical care* for accidents with serious life-threatening injuries; the payment for *small fines and penalties* in respect

¹²³ Aysan, M. (2020). *Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Turkey*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J.-M. and Vintila, D. (eds.)). IMISCOE Research Series. Springer, Cham, pp. 389–400 at 395, 397.

¹²⁴ Consterdine, E. (2020). *Diaspora Policies, Consular Services and Social Protection for UK Citizens Abroad*. In: *Migration and Social Protection in Europe and Beyond (Volume 3)* (J.-M. Lafleur and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 433–452 at 442–443, where it is also remarked: “The FCO [*The Foreign and Commonwealth Office*] is not funded to provide emergency assistance or any kind of in-cash benefits or any economic assistance in any capacity. If all other options have been exhausted and only in *exceptional circumstances* the FCO can provide an emergency loan to help a Briton (tourist or emigrant) return to the UK on a discretionary basis. In such cases, if the Briton is eligible they must sign a ‘*undertaking to repay*’ agreement with the FCO and secure their loan by giving up their passport to the FCO. However, this is discretionary and rarely deployed.”

of Indian nationals for minor offences/crimes, such as for 'illegal stay in the host country where *prima facie* the worker is not at fault', and assistance for *repatriation* of nationals abroad. The stated target groups are 'overseas Indian workers duped by unscrupulous intermediaries in the host countries, runaway house maids, those who become victim of accidents, deserted spouses of Overseas Indians or undocumented Overseas Indian workers in need of emergency assistance or any other Overseas Indian citizens who are in distress would be the main beneficiaries of the Fund.' The ICWF rules further allow consulates to pay for the *transportation of mortal remains* of deceased Indian national to India or local cremation/burial of deceased.

In the period 2009–2016, Indian consulates have provided support for 80,000 beneficiaries. Two-thirds of these funds were used to provide funds for flights and accommodation. However, this also includes large scale evacuations

Indian consulates have a large discretion as to whether the 'beneficiary deserves to be assisted.' Importantly, under ordinary circumstances, the funds are limited to Indian nationals who have entered the host country *legally*. The funds to provide such assistance have to be raised by Indian consulates by levying a Service Charge on Consular Services, as well as through voluntary contributions by the Indian community and budgetary support from the Government of India."

Source: Naujoks, 2020, pp. 163–182 at 172.

In other cases, especially in the event of some *welfare States*, the CoO may provide social protection, including *social assistance* support directly and/or via non-State actors. Switzerland is an interesting example of a country of origin that has adopted such a dual approach. Here the focus is only on publicly supportive social protection measures.

Switzerland's publicly arranged social assistance for Swiss nationals abroad

"Today, Article 22 of the *Federal Act on Swiss Citizens and Institutions Abroad* stipulates that "the Confederation grants *social assistance* to the Swiss Abroad who are in need". Swiss nationals abroad who find themselves *in need of social protection of any kind*, be it matters of *health, pension, unemployment, or minimum resources*, can contact the Swiss representation responsible for their place of residence abroad. This is part of an *official policy* called Social security for Swiss citizens abroad (*Sozialhilfe für Auslandschweizerinnen und Auslandschweizer*)".

Interestingly, according to Article 25 of the *Federal Act on Swiss Citizens and Institutions Abroad*, Swiss nationals might be *ineligible* for social assistance if they *have another nationality* that is considered preponderant. The internal guidelines of the ministry explain how to determine which of the nationalities is preponderant, namely: (i) the circumstances which led to the applicant's acquisition of the foreign nationality; (ii) the state where the applicant resided during childhood and training; (iii) the length of stay in the current State of residence; (iv) the applicant's relations with Switzerland. There are some specific situations when, even though the foreign nationality of the applicant is preponderant, social assistance can still be granted on an exceptional basis.¹²⁵

The persons in need *may be advised to return to Switzerland* if it is in their or their family's interests to do so. In such cases, the Federal Council shall *not or shall no longer pay social assistance* benefits abroad. In the event of a return to Switzerland, the Federal Council anticipates the expenses to cover the cost of the travel. It may also anticipate the expenses if the person in need decides to return to Switzerland of her/his own accord. The Federal Department of Foreign Affairs runs a counselling service on returning to Switzerland, providing information on entry and living conditions to Swiss nationals returning to Switzerland from abroad.

¹²⁵ "It may be that over time the predominant nationality changes. If social assistance has begun to be granted when Swiss nationality predominates, assistance benefits granted on a regular basis may be maintained even if, over time, the foreign nationality has become preponderant. If a person receiving social assistance acquires a foreign nationality, the payment of assistance benefits should be re-examined."

Article 35 of the *Federal Act on Swiss Persons and Institutions Abroad* establishes that social assistance recipients must repay the social assistance benefits if they no longer require them and are able to support themselves and their families.

Source: Piccoli, 2020, pp. 347–362 at 353–354.

Moroccan support programmes for older Moroccans living abroad

Beside the legal provisions regarding pensions, there are also support programs for old Moroccans living abroad. One of the Moroccan diaspora institutions, the Hassan II Foundation, considers the elderly as an important target group of its “Cooperation and Partnership program”. In this social programme (in place since 1998), NGOs or other institutions or individuals working with retired Moroccans abroad can request the support of the Foundation Hassan II for their projects (partial financial support or in-kind support). In some of the implemented projects, the aim was to enhance the access of Moroccan pensioners to their social rights, but many projects focus more broadly on the elderly’s well-being and their ties to Morocco.

Source: Mahieu, 2020, pp. 231–246 at 241–242.

Chile: Information campaigns launched by the Jesuit Service for Migrants

“In 2019, the Jesuit Service for Migrants, a Chilean NGO that promotes the social inclusion of migrant workers and refugees, conducted an *information campaign* on the social protection rights of migrant workers with a focus on the country’s national pension funds. The campaign, entitled “Social Protection without Distinction”, was funded by the Fund for Pension Education. Through tutorial videos, brochures in various languages, radio spots and a website with online resources, the campaign raised awareness of the importance of migrant workers’ social protection and of the principle of equality of treatment between nationals and non-nationals. It provided information on the existing legal framework and explained how to access social benefits and the benefits for migrants of paying contributions under the national social security system.”

Source: ILO, 2021, p. 134.

4.5. Other arrangements

The Chinese experience: CoO coverage restrictions, CoO employer engagement and contribution refund

“In parallel to the immigration of foreigners to China, a growing number of Chinese citizens also emigrate abroad, predominantly for employment, business, and study purposes. Most Chinese emigrants residing in developed societies have participated in the social security system of the destination country, although they may be subject to different levels of entitlement. Because the Chinese social security system is largely *employment- and hukou-based*, most non-resident nationals are *not covered in China*, their home country. *One notable exception is the expatriate personnel who may have their social security status (and contribution) kept by their employers in China*, leaving them access to benefits in spite of their overseas residence. In the event of *citizenship changes*, the individual is no longer eligible to claim social security benefits, regardless of his/her prior contribution history in China. Local social security authorities may *refund* the balance on his/her individual account as appropriate.”

Source: He, 2020, pp. 77–92 at 81.

In the Manual and elsewhere in the Compendium mention is made of the role and influence of *Zakat* arrangements, as a religious-based framework of social protection – which in many cases have also been institutionalized. Here reference can also be made to social protection support provided by a Turkish religious foundation, the *Diyanet* foundation.¹²⁶

Social protection support provided by religious foundations: The case of Türkiye

Regarding the most relevant social protection services, such as the in-cash and in-kind aids by the consulates or other diaspora institutions, *Türkiye* does not have any publicly announced policies. Indeed, the Consular Guide for Travellers Abroad prepared by the MFA clearly states that consulates and embassies do not have public funds for in-cash aids. Exceptional examples are the social aid programs organized by the *Diyanet* foundations in the host countries. For example, the Turkish Islamic Foundation in the Kingdom of the Netherlands (*Hollanda Diyanet Vakfi*) collaborates with Dutch NGOs such as the food banks to help the poor regardless of their religious and ethnic background.

Source: Aydin and Østergaard-Nielsen, 2020, pp. 401–418 at 410–411.

4.6. CoO unilateral portability

Unilateral portability of social security benefits by a CoO could be of immense benefit to a retired migrant (worker) residing overseas. This is especially important in the absence of a bilateral or multilateral agreement providing for portability on a reciprocal basis.

Unilateral portability of pension benefits: Chinese arrangements

“Chinese nationals residing/working abroad are normally excluded from the old-age pension system at home, with exception given to the expatriate personnel who may continue their contribution. A retiree residing abroad can still receive pension payment provide that he or she has made 15 years of contribution and remains a Chinese citizen, despite overseas residence. In collaboration with the Ministry of Foreign Affairs, the Ministry of Human Resources and Social Security has simplified the procedures for this group of Chinese retirees to claim pension overseas. An annual endorsement certifying the retired individual’s foreign residence status must be issued by the Chinese embassy or consulate office.”

Source: He, 2020, pp. 77–92 at 85.

Swiss arrangements: old-age, disability and survivors’ pensions

“Independently of the country where they reside, all Swiss citizens are entitled to a Swiss old-age pension if they have paid their pension contribution for at least 1 year. They are also entitled to a Swiss *invalidity pension* if they have paid their contribution for at least 3 years. The old-age and survivors’ insurance (OASI) and the disability insurance (DI) are compulsory only for individuals living in Switzerland. *Swiss nationals abroad* have the possibility, in principle, of joining the *optional OASI/DI scheme*. This optional insurance aims to avoid a situation where, in the event of an accident or at retirement age, they or their survivors, may not receive a pension at all or only receive one on the basis of the years of pension contribution paid under the compulsory pension insurance system and contributions paid as such. In fact, failure to pay one single year of contribution to the voluntary scheme leads, as a general rule, to a reduction of the pension. Those who wish to join the

¹²⁶ The mission of *Diyanet* foundations is “To give material and moral support to the people and institutions working for goodness to prevail [in] the world” (see <https://tdv.org/en-EN/about-us/>). Also, the *Türkiye Diyanet* Foundation is a foundation that works in the public interest by the Decision of the Council of Ministers and can collect aid without permission (<https://tdv.org/en-EN/>).

voluntary OASI insurance scheme should present their request to the Swiss Compensation Office (SCO) in Geneva. This request must be sent within 1 year of leaving the compulsory insurance scheme and the cost of the insurance depends on the employment condition – past and present – of the individual.”

Source: Piccoli, 2020, pp. 347–362 at 358.

The *United Kingdom* pension system allows for the transfer of a UK State pension to an overseas pension scheme, but regular indexing (uprating) of the pension benefit is not treated consistently:

The Transfer of a UK State pension to an overseas pension scheme, but regular indexing (uprating) arrangements differ

“Her Majesty’s Revenue and Custom (HMRC) – a non-ministerial department of the UK Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes including the national minimum wage – allows pensioners to transfer their UK state pension to an overseas pensions scheme if such scheme is on the recognized overseas pension scheme notification list (lists for each host state pension scheme are available online) ... Claimants may be asked to fill out a ‘life certificate’ to ensure they are eligible for UK state pension.

“The UK State Pension is payable overseas only uprated annually if the individual is resident in an EEA country or one with which the UK has a reciprocal social security agreement requiring this. UK pensioners in other countries – most notably Australia, Canada, New Zealand and South Africa – have their pension frozen i.e. paid at the same rate as it was when they first became entitled, or the date they left the UK if they were already pensioners then.”

Source: Consterdine, 2020, pp. 433–452 at 446–447.

5. Compulsory coverage may strengthen social protection for migrant workers abroad, considering dual coverage challenges (Manual, par V.8)

Many CoOs allow for *voluntary participation* of migrant workers abroad in the CoO pension and often also other social security schemes. For example, as regards *Türkiye*,

“Based on the Turkish Law on Retirement from abroad No. 3201, the attachés of the Ministry of Labour, Social Services and Family are responsible for providing assistance and information to Turkish nationals regarding access to home country pensions. According to this law, which dates back to 1985, nationals working abroad can pay SSI premiums to Turkey for the time they work abroad.”¹²⁷

and

“Non-resident citizens are also entitled to retirement benefits if they pay pension premiums in Turkey on a *voluntary basis*.”¹²⁸

¹²⁷ Aydın, S. and E. Østergaard-Nielsen (2020). *Diaspora Policies, Consular Services and Social Protection for Turkish Citizens Abroad*. In: Lafleur, J-M. and Vintila, D. *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (IMISCOE Research Series). Springer, Cham, pp. 401–418 at 413.

¹²⁸ Aysan, M. (2020). *Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Turkey*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and Vintila, D. (eds.)). IMISCOE Research Series. Springer, Cham, pp. 389–400 at 396 (emphasis added; authority omitted) – where it is also remarked: “The third tier is a defined contribution voluntary savings system available for working and non-working groups, including foreigners. There is no residence or citizenship requirement to buy individual pension insurance.”

Other countries that provide for voluntary association with the country-of-origin social security schemes, include Colombia, Mozambique, Myanmar, Switzerland, Tunisia and Ukraine.¹²⁹ The Colombian example has been explained as follows:

Colombia

In 2014, the Government of Colombia issued a decree on social protection mechanisms for nationals working abroad, which allows them to *enrol voluntarily* in the General Pension System as independent workers with a contribution of *two per cent of their monthly wage*. It also gives *members of their families who remain in the country of origin* access to some social benefits. The relevant administrative procedures must be performed through the compensation fund (Caja de Compensación) of the family's place of residence.

Source: ILO, 2021, p. 126.

6. Protection for families of migrant workers abroad, and families staying behind in the country of origin (Manual, par V.10)

Unique arrangements for Senegalese family members residing in Senegal

“In application of the 1974 *Franco-Senegalese bilateral convention on social security*, the Social Security Board of Senegal (CSS), through its dedicated Division for Social Security for Emigrants, is responsible for the payment of French family allowances to the *family members (spouse and children) in Senegal of Senegalese workers living in France (pre-birth, birth and family benefits for up to four children until 18 years old or 21 years old if students)*. The *French Family Allowances Office* transfers the allowances money to the Social Security Board of Senegal. This scheme requires the *yearly certification* of the family certificate by the Social Security Board of Senegal and the consulate general in Paris. Payment occurs in cash at the *regional offices* of the Social Security Board of Senegal. Additionally, four times a year, *mobile payment teams* circulate at the village level (10-day tours) for the three regions with most emigrants (Saint-Louis, Matam and Tambacounda). The Social Security Board of Senegal also cooperates regularly with its French equivalent for the transmission of *relevant documents and certificates*, which transit through the consulate general of Senegal in Paris. Moreover, *Senegalese in France* have access to a *personal account* on the online portal of the Social Security Board of Senegal, which has a specific section of its website dedicated to Senegalese in France (*Espaces émigrés*).”

“The consulate general in Paris is specifically tasked with providing relevant *information* for Senegalese workers in France about Senegalese family allowances for their family members residing in Senegal. It participates in the certification and transmission of relevant documents (*état de famille*-family certificate) to the Family Allowances Office in France and the Social Security Board in Sénégal.”

Source: Smith, 2020, pp. 289–304 at 301.

¹²⁹ ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 126–127.

Türkiye provides an example of a CoO that makes available a child benefit per child born to nationals abroad or in Türkiye.

Child benefits provided by Türkiye

Based on Decree No. 633 dating back to 2015, the Ministry of Family and Social Policies [from June 2018 on, the new Ministry of Labour, Social Services and Family] pays a one off child benefit per child born to nationals abroad or in Türkiye, as well as to the former Turkish citizens who are Blue Card holders. The amount is TRY 300 (around EUR 50) for the first child, TRY 400 (around EUR 65) for the second child, and TRY 600 (around EUR 100) for each of the following children. Applications by nationals abroad are made to the consulates and embassies with the birth certificate of the child and a petition.

Source: Aydin and Østergaard-Nielsen, 2020, pp. 401–418 at 414.

7. Social protection arrangements for informal economy migrant workers (Manual, par V.11)¹³⁰

The large numbers of migrant workers who are worldwide engaged in informal work activity, often on an irregular basis, necessitate the seeking of solutions to enhance their social security coverage and access. Their exclusion from coverage and access is due to many factors, including the fact that often only formal labour market engagement would open a pathway to contributory social security; also, where applicable, their irregular status in the CoD invariably excludes them from social protection coverage. In case they have left the CoO irregularly, e.g. in contravention of a ban on working in a particular country, or without having acquired the necessary CoO documentation or having complied with formal CoO exit procedures, their access to CoO SP arrangements can equally be restricted.

The enhancement of the social protection status of migrant workers in the informal economy is therefore a complex matter. Special coverage and access avenues may have to be explored, as the informality (and often also irregularity) of their work engagement rarely allows access to mainstream social security scheme arrangement. Of course, first and foremost, there is a need to ensure that these categories of workers are included in the domestic social security systems of both countries of origin and destination, either on a mainstreamed basis or via specialized arrangements.¹³¹ This is indeed a gradually unfolding and growing reality in several African countries, and is informed by a normative framework to this effect.

Normative framework informing social protection for workers in the informal economy: the role of global standards

Key standards and principles have been flowing from instruments such as ILO *Recommendation on National Floors of Social Protection, 2012* (Recommendation 202) and ILO *Recommendation on the Transition from the Informal to the Formal Economy, 2015* (Recommendation 204) and include: (i) International (United Nations; ILO) and regional standards confirm the right of all persons and

¹³⁰ See Olivier, M. (2022). Which welfare rights for platform workers. In: *Decent work in the digital age: European and Comparative Perspectives* (Gyulavári, T. and E. Menegatti (eds.)). Bloomsbury/Hart Publishing, pp. 165–184 at 178–182, from where the text below has been taken and adjusted.

¹³¹ See UNDP (2021). *Informality and Social Protection in African Countries: A Forward-looking Assessment of Contributory Schemes*, UNDP; Olivier, M. (2019). Social security protection for informal economy workers: Developing world perspectives. In: Westerfeld, M. and M. Olivier (eds.) *Social Security Outside the Realm of the Employment Contract – Informal Work and Employee-like Workers*. Edward Elgar Publishing Ltd., p. 2–29.

all workers, including informal economy workers, to social security protection; (ii) The adoption of an appropriate policy and legal foundation to inform, support and mandate the extension of (contributory) social security to informal (economy) workers is advised; (iii) Coverage extension should occur progressively via any one or combination of a non-exclusive list of modalities, including contributory and non-contributory arrangements; and (iv) Recent ILO instruments emphasize that contributory arrangements should be sensitive to the context and contributory capacity of these workers.

In recent years, in several countries, social security has seen significant developments towards the extension of coverage for informal economy workers. These developments can be summarized as follows:

- **(Re)conceptualization and adjusted legal frameworks:** Innovative and at times extensive conceptualization has been introduced to widen the application of social security, so as to also include those in the informal economy, through extensive redefinition(s) of the range of workers/persons and/or the occupations/industries¹³² and sectors covered by the enabling legislation (e.g. India,¹³³ the United Republic of Tanzania)¹³⁴ – via revisions to social security and labour laws.
- **Non-contributory arrangements:** Non-contributory schemes have been adapted to ensure inclusion of these workers – for example, through the introduction of universal pension arrangements (e.g. Namibia,¹³⁵ Nepal).¹³⁶
- **Contributory schemes:** Contributory schemes have been extended to achieve inclusion, at times even on a *compulsory* basis (e.g. domestic workers in South Africa),¹³⁷ and are increasingly supported through *government incentives*, including *government subsidies*; the introduction of *national health insurance schemes* also serves this purpose (e.g. Thailand,¹³⁸ Viet Nam).¹³⁹

¹³² For an example of the definitional extension occurring on an industry basis, see the Indian *Beedi and Cigar Workers (Conditions of Employment) Act* (Act 32 of 1996), which covers a person employed in the beedi industry (hand-rolled cigarettes) directly or through any agency and who is given raw materials by an employer or a contractor: in this way, outworkers and homeworkers are included.

¹³³ See the *Code on Social Security Act* (Act 36 of 2020) (India), which incorporates a vast number of worker categories within the framework of the law, including among other “platform workers” – defined as a person engaged in or undertaking platform work. “Platform work” is in turn defined to mean ‘a work arrangement outside of a traditional employer employee relationship in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment’ – see Article 2(60) and (61).

¹³⁴ Section 3 of the *Social Security (Regulatory Authority) Act* (Act 8 of 2008), defines the “informal” as the sector that includes workers who work informally and who do not work in terms of an employment contract or another contract contemplated in the definition of employee.

¹³⁵ Section 3 of the *National Pensions Act 1992* (Act 10 of 1992) extends various social assistance grants to all Namibian citizens resident in Namibia.

¹³⁶ In 1995, Nepal introduced the Senior Citizens Allowance (colloquially called Old Age Allowance, OAA), a universal non-contributory social pension (HelpAge International *The universal social pension in Nepal* (2009)). At that stage, this non-contributory social pension scheme was hailed as a scheme unique to Asia. See now Section 3 of the *Social Security Act 2075* (2018), which extends social security allowances to several categories of vulnerable Nepali citizens. The universal scheme must be understood against the background of Nepal’s new *Constitution* (2015), which guarantees social protection for the poor and vulnerable.

¹³⁷ Coverage of South African social security legislation has incrementally been extended to domestic workers: see Olivier, M. (2009). *Informality, employment contracts and extension of social insurance coverage* (ISSA Project on Examining the existing knowledge of social security coverage, Working Paper, no. 9, International Social Security Association (ISSA), Geneva, pp. 23–37. Recently, their exclusion from the scope of coverage of South Africa’s main employment injury system was found to be unconstitutional – see *Mahlangu v Minister of Labour (Commission for Gender Equality & another as amicus curiae)* (2021) 42 ILJ 269 (CC).

¹³⁸ Damrongplait, K. and G. Melnick (2009). Early results from Thailand’s 30-baht health reform: Something to smile about. *Health Affairs*, 28(3), p. 457.

¹³⁹ *Law on Health Insurance* (2008) (Law No. 25/2008/QH12); *Law amending the Law on Health Insurance* (2014) (Law No. 46/2014/QH13); Nguyen, Q. and N. Cunha (2019). *Extension of social security to workers in informal employment in the ASEAN region*. ILO, Geneva, pp. 58–59; Olivier, M. (2022). *Viet Nam social security law reform: An integrated framework*. ILO, Geneva, p. 56–59.

- **Comprehensive arrangements:** Some governments have introduced comprehensive arrangements to extend social security coverage to the whole of the informal economy. Examples include China,¹⁴⁰ India,¹⁴¹ Indonesia,¹⁴² Ghana¹⁴³ and Rwanda.¹⁴⁴
- **Sector-by-sector extension:** Some countries have included informal economy workers sector by sector, usually on the basis of separate or dedicated schemes. Examples include Ecuador,¹⁴⁵ Tunisia¹⁴⁶ and the Indian welfare funds modality.¹⁴⁷
- **Dedicated design framework:** Tailor-made design modalities have been introduced, including:¹⁴⁸
 - *Specialized contribution modalities* (e.g. flexible contribution options allowing workers to contribute according to their ability and at a frequency that reflects the reality of their income-generation, such as in the case of seasonal workers (Ghana,¹⁴⁹ the Philippines,¹⁵⁰ Viet Nam);¹⁵¹ the setting of realistic income baselines as a basis upon which contributions are calculated (Tunisia); and, importantly, the increasing tendency of government subsidies to support or even replace the contributions of poor informal economy workers (India (proposed)),¹⁵² Rwanda, Viet Nam);
 - *Relaxed entitlement criteria* (accessing benefits without complying with lengthy contribution periods or other onerous conditions);

¹⁴⁰ The voluntary rural and urban pension schemes were introduced in 2009 and 2011 respectively, and are (co)-funded by government via matching contributions. By the end of the first quarter of 2012, 376 million people were already participating in the two schemes, despite weak incentives to contribute above the minimum (see Dorfman, M., Wang, M., O’Keefe, P. and J. Cheng (2013). China’s pension schemes for rural and urban residents. In: Hinz, R., Holzman, R., Tuesta, D. and N. Takayaka (eds.) *Matching Contributions for Pensions*. World Bank, Washington, D.C., p. 217; Olivier, M. (2017). Social protection innovation and challenges in China and Africa: Selected comparative perspectives. 12 *Frontiers of Law in China*, p. 429.

¹⁴¹ See the *Code on Social Security Act* (Act 36 of 2020) (India); and Olivier, M. (2019). Social security protection for informal economy workers, pp. 19–23.

¹⁴² See the *National Social Security Law of Indonesia*, Act 40 of 2004.

¹⁴³ Through the Informal Sector Fund and other (private) arrangements: see Guven, M. (2019). [Extending Pension Coverage to the Informal Sector in Africa](#). *Social Protection & Jobs Discussion Paper* No. 1933, World Bank, p. 31; Douglas, K. (2016). [Ghana’s first pension fund targeting the informal sector](#), 6 December.

¹⁴⁴ In December 2018 Rwanda launched a long-term savings scheme named Ejo Heza (“Brighter Future”) which offers opportunity and incentives for all Rwandans to save a voluntary share of regular or irregular earnings to mitigate against the risk of old-age poverty. The scheme has been described as “the first national-level universal pension program in the world being launched by leveraging existing digital financial inclusion infrastructure in the true spirit of Public-Private Partnership”. See Rwigamba, E. (2018). An inclusive and integrated pension model for informal sector workers in Rwanda. In: Khana, P., Price W. and G. Bhardwaj (eds.). *Saving the Next Billion from Old Age Poverty: Global Lessons for Local Action*. Pinbox Solutions, Singapore, p. 157.

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¹⁴⁶ Economic and Social Commission for Western Asia (ESCWA) (2016). *Social Protection Country Profile: Tunisia*. United Nations, Beirut, p. 6; Chaabane, M. (2002). Towards the universalization of social security: The experience of Tunisia. *Extension of Social Security*, ESS Paper No. 4. ILO, Geneva, pp. 11–12.

¹⁴⁷ Indian welfare funds are financed through levies collected from selected employers and manufacturers, and provide a range of benefits, including social security-related benefits such as medical care and maternity assistance. Also at a State level, a tax (cess) is imposed by State governments on the aggregate output of selected industries (e.g. the Beedi Welfare Fund is financed by a tax on beedis): Olivier, M. (2009). *Informality, employment contracts and extension of social insurance coverage* (ISSA Project) (n. 62), p. 15.

¹⁴⁸ See above for the references in relation to the different country experiences.

¹⁴⁹ Provided for within the framework of the Ghana Informal Sector Fund, referred to above.

¹⁵⁰ In addition to compulsory arrangements, the Philippines Social Security System has adopted several flexible approaches to meet the requirements of informal sector workers who do not have access to formal banking arrangements and who are only able to contribute irregularly, by introducing specific social security programmes and (in the process) partnering with organized informal sector groups (ISGs) and Local Government Units (LGUs) (see Mines, J. (2015). [Moving towards inclusive growth: The Philippine Social Security System](#) (Philippine Social Security System).

¹⁵¹ Government subsidies are available in particular for more vulnerable categories of persons within the framework of both the social health insurance and the voluntary insurance schemes: see Olivier, M. (2022). *Viet Nam social security law reform*, p. 58.

¹⁵² According to the *Code on Social Security Act* (Act 36 of 2020), India, public social security schemes can be partly funded by the union and/or State governments.

- *Dedicated, context-sensitive benefit arrangements* addressing the key short-term and long-term needs of informal workers (Ghana¹⁵³ and Rwanda).¹⁵⁴

In addition to the above, it is clear that extending coverage to and enhancing social security-related protection of the informally employed cannot be achieved in isolation. The following supporting arrangements are of particular importance:¹⁵⁵

- **Stakeholder consultation:** firstly, there is need to ensure that appropriate stakeholder consultation takes place, to determine concrete options – and consider challenges and solutions – in relation to extending coverage to the informally employed and developing suitable protection modalities for them. Worldwide experience has shown that successful coverage extension and suitable forms of protection in social security terms for those who work informally have been preceded by thorough consultation with stakeholder groups and institutions. In fact, this appears to be called for also by prevailing international standards.¹⁵⁶
- **Communication:** secondly, as supported by evidence emanating from other countries where the self- and informally employed have been included in social security schemes, there has to be thorough communication of envisaged new arrangements. In particular, those who are affected by the new arrangements, including informally employed workers and, where relevant, their providers of work, have to be properly informed. Given the national relevance of such arrangements, awareness-raising interventions targeting the general public also have to be introduced.
- **Enabling framework:** thirdly, extending coverage and enhancing protection would require that a proper enabling framework has been established and is operational. Among others, steps that would enhance the ability in the informal economy to contribute to and access (contributory) social security, have to be considered and introduced. Fixing the minimum wage at a level that would enable them to contribute would be one such matter to be considered. Providing incentives in the form of government subsidies or contributions would be another.

¹⁵³ Under the Informal Sector Fund, informal economy workers contribute to two accounts: (a) a Retirement Account (a pension account, from which a member is permitted to withdraw only in the event of retirement, death or disability occurring); and (b) an Occupational Scheme Account, which serves as a form of a personal savings account, from which the contributor can withdraw after five months of initial contributions, provided the account has a credit balance (with rules for withdrawals before retirement, e.g. for education and business enhancement).

¹⁵⁴ It has been noted, with reference to the new long-term savings scheme, Ejo Heza, that: “Members of the scheme shall be expected to keep savings in their assigned account for a minimum pre-defined number of years. Upon completion of the minimum period, a member may be authorized to withdraw part of his/her benefits as a pre-retirement package. The pre-retirement package may be invested in housing and education or/and any other investment (for those with sufficient savings under the RSSB mandatory scheme). However, it should be noted that the amount of the authorized pre-retirement package will be capped to a maximum percentage of the total individual savings to ensure that the beneficiary retains sufficient funds under the scheme to cater for his/her retirement days”: Rwigamba, E. (2018). An inclusive and integrated pension model for informal sector workers in Rwanda, pp. 157–58.

¹⁵⁵ Largely taken from Olivier, M. (2019). Social security protection for informal economy workers, pp. 15–17.

¹⁵⁶ ILO Recommendation 204 (2015) (*The transition from the informal to the formal economy*) requires, in relation to the need to consult appropriately with institutions representing the interests of informal economy workers: “Consultation with the most representative employers’ and workers’ organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy” (emphasis added) (see in particular paras 6, 34, 38 and 39 of the Recommendation).

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MODULE F

Support services

1. Range of services provided by Migrant Welfare Programmes, including people-centred and gender-responsive support services (Manual, par VI.4)

Support services provided by CoOs could also be provided *outside the framework of a Migrant Welfare Programme* – including services directly provided by embassies/consulates, government ministries and/or other public or even private institutions.

Ecuador is a good example of a country that, through a *mix of consular office and government ministries' interventions*, provides extensive support services to Ecuadorians abroad, but also to returnees. Some of the services focus specifically on the Ecuadorian diaspora abroad, while others are targeted at returnees. In some cases the services are available across the board to both these and other groups, without distinction. The following summary may be helpful:¹⁵⁷

- **Supporting institutional framework:** "... [T]he Ecuadorian Government has been supporting Ecuadorians abroad through a wide variety of services offered in Ecuador by national governmental institutions such as ministries. In the past, the *Secretaría Nacional del Migrante* itself offered services to Ecuadorians abroad and their families. However, the new institutional framework in effect since the creation of the Vice Ministry of Human Mobility in 2013 has instead encouraged the inclusion and access of Ecuadorians abroad to services offered to all other Ecuadorian citizens, including returnees living in Ecuador as well."
- **Housing and related assistance:** "In this context, it is worth mentioning some of the services available in Ecuador to Ecuadorians abroad, their families, and returnees. These include access to mortgage loans and economic incentives granted by the national Government through the Ministry of Urban Development and Housing. Ecuadorian citizens living in Ecuador and abroad, immigrants, returnees, and refugees can apply to the allowance for construction of their own housing on their own land (*bono para construcción de vivienda*), the allowance for housing improvement (*bono para mejora de vivienda*) and the *Manuela Espejo* grant to persons with disabilities who are registered as such in the Ministry of Public Health of Ecuador, on the basis of the law and their critical or vulnerable socio-economic condition, in order to provide them with adequate housing for their needs and or to improve living conditions and accessibility."
- **Economic programmes:** "Regarding economic programs offered to all Ecuadorians living abroad, their families, and returnees, the "4x4 system" service aims to facilitate transfer of goods from Ecuadorians abroad to their families in Ecuador through a tax exemption system. Similarly, to facilitate the return of Ecuadorian migrants, the Ecuadorian Customs Service offers a "Tax-Exempt Household Goods" service (updated in 2018), aimed particularly at Ecuadorians who have lived abroad for at least 2 years and want to take household goods back to Ecuador."

¹⁵⁷ Adjusted from Bautista, C. (2020). *Diaspora Policies, Consular Services and Social Protection for Ecuadorian Citizens Abroad*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States* vol. 3 (Lafleur, J.-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 127–147 at 135–136.

- **Social participation:** “The consular offices also provide services and encourage the social participation of Ecuadorians living abroad through activities tailored to migrants’ needs and interests in their destination countries. In Spain, for instance, the *Centro Cultural Ecuatoriano* in Madrid, created by the Ministry of Foreign Affairs and Human Mobility and launched in December 2017, seeks to promote the cultural heritage of the country by developing activities related to Ecuadorian art, cinema and literature, as well as workshops to promote civic engagement.”

Education support for Ecuadorians abroad

“Although there is not a particular policy regarding non-formal education courses or workshops, training can be offered by consular offices but will depend on local needs and the consular offices’ resources. These courses are geared to providing skills for economic integration. For example, the *Escuela del Migrante* program in Spain offers free education and training for unemployed Ecuadorians and workshops to develop job search skills. Sales, computer literacy, entrepreneurship, tourism, and networking courses are also available for Ecuadorians living in Spain, Italy, and other countries.

Regarding formal education, Ecuadorians living abroad can take the exam *Ser Bachiller*, a standardized national exam required to access higher education in public institutions in Ecuador. In 2018, Ecuadorians abroad living in Chile, Colombia, Costa Rica, Cuba, El Salvador, Germany, Guatemala, Honduras, Italy, Panama, Peru, Spain, the United States, and Venezuela took the exam. Likewise, since 2018 the Ministry of Education has offered an online literacy, primary, and secondary education program for Ecuadorians who are residing in Italy, Spain, and the United States who are at least 3 years behind in their education or who are over 18 years old and have had no opportunity to complete high school. Once the courses are completed, Ecuadorians abroad can obtain a high-school degree, which will allow them to access higher education and technical certifications. For the Vice Ministry of Human Mobility, this service makes effective the portability of rights for Ecuadorians abroad, in accordance with the principle of universal citizenship.”

Source: Bautista, 2020, pp. 127–147 at 135–136.

Moroccan scholarship and school support programmes

“In 2010, a scholarship program was launched to support the school careers of Moroccan youngsters abroad. The Ministry Delegate to the Ministry of Foreign Affairs and International Cooperation, in charge of Moroccans Residing Abroad and Immigration Affairs (MDCMREAM), together with the Ministry of Higher Education, Academic Research and Professional Training offers *1000 university scholarships annually* to students in a “precarious situation”. Their candidacy is made via the local consulate and the selection process is done by a Commission including members of both Ministries. The scholarship is limited to one student per family and the monthly allowance is around 1000 Moroccan Dirham (= around €100). For Moroccan families living in Algeria and the Ivory Coast, there is another specific *school support program*. Deprived families can apply for financial support helping to cover their children’s school fee. The aim is to boost school attendance by this group. The MDCMREAM provides support to 1000 Moroccan families in Algeria and 120 in the Ivory Coast. The fee depends on the number of children in the family (one child: 1000 Moroccan Dirham per year, 500 Dirham extra per child, up to a maximum of 5 children).”

Source: Mahieu, 2020, pp. 231–246 at 242.

Consulates and embassies play a major role in extending social protection support. This appears to be the case even within the European Union, despite the comprehensive social security protection enjoyed by European Union citizens on account of the European Union regulatory framework. In addition, several countries within the European Union have moved to a more flexible model of consular service modalities, by also providing e-services and mobile services.

Consular roles concerning access to social protection, and the rise of e-services and mobile consular services: the European Union experience

“... [C]onsulates may play a *critical role* in their nationals’ access to social protection even within the EU. As discussed by Palop-García (this volume) or Nica and Moraru (this volume), the presence of *Romanian and Spanish social affairs attachés* in different consulates throughout the EU is a testimony of the relevance of such consular actors whose presence and activities aim to reduce practical inequalities in access to welfare. Second, consular services of many Member States are moving away from a model based on physical presence in destination countries to a more diverse offer that also includes *e-services and mobile consular services* (i.e. temporary detachment of consular personnel) in cities where no consulate is present.”

Source: Vintila and Lafleur, 2020, pp. 1–40 at 8.

Swiss consular support to migrants in need

“Consulates and embassies normally try to find ways to *include the person in the social welfare of the host country*, except for *emergency cases* like hospitalization, when the representation grants the essential emergency aid and notifies the Consular Directorate (CD). Most often, however, the person fills an *application* which is first reviewed and completed by the representation responsible for her/his place of residence abroad and transfers it together with a report and request to the CD at the FDFA in Bern. The CD decides whether to accept applications following a set of guidelines internal to the ministry. In urgent cases, the representation grants the essential emergency aid and notifies the CD. The CD may authorize representations to *grant additional social assistance* on their own initiative. In addition to *una tantum* financial help, this policy also allows for *continuous funding* over the years, provided that the individual stipulates a plan together with the CD. Every year, the CD submits to Parliament a budget, part of the broader budget for the FDFA.”

Source: Piccoli, 2020, pp. 347–362 at 354–355.

2. Access to health care, including sexual and reproductive health care (Manual, par VI.5)

Access to health care for Argentinian migrant workers

“Argentina does have a universal health system that offers free treatment to both national and foreigners. At present, a specific health policy for Argentines abroad does not exist but they can access public health when visiting the country for free (regardless of place of residency and socio-economic condition) unlike foreigners which, since 2018, are subject to medical fees except if they are legal residents proceeding from MERCOSUR member states as they are entitled to the same benefits as nationals. For Argentines residing in a major destination country ... that is also member of MERCOSUR, access to health coverage in the country of residency is therefore established in MERCOSUR’s Residency Agreement. Yet Argentines residing in ... other MERCOSUR countries are affected by the fact this organization is essentially intergovernmental, and ministries of health differ significantly in competences, organization, and funding which means that compromises are difficult to achieve and agreements are not always incorporated into domestic legal framework. Overall, because of the focus of MERCOSUR has been on disease control and epidemic prevention, the portability of health entitlements remains very underdeveloped. As a consequence, whereas some South American countries have incorporated the right to health coverage in their national migration legislation, implementation issues, cost or requirement to present valid ID often prevent effective access.”

Source: Margheritis, 2020, pp.. 57–75 at 68.

Conditional access to health care and pensions: Serbia

“The national social security system in Serbia is based on the social insurance model and financed mainly by *insurance contributions*. The entitlement for most social protection benefits in cash or in kind is based on employment period and/or payment of compulsory social insurance contributions. This also explains why *Serbian nationals residing abroad have limited access* to these benefits. They are able to access only two types of benefits – *healthcare*, and *pension and invalidity insurance* – and this under a special condition. This condition implies that they can be *compulsory insured in Serbia* in case they are *not insured in the country in which they live/work*. They can also be insured in case when they are *insured in the country abroad in which they live*, but this insurance *does not allow them* to access these benefits outside that country. The Ministry of Foreign Affairs has a *dedicated website* called “Guide for the Diaspora”, which provides information on the conditions under which these two types of insurance can be acquired by Serbian nationals residing abroad. National institutions in charge of managing healthcare and pension and invalidity insurance – the National Health Insurance Fund and the National Institute for Pension and *Invalidity Insurance* – *also provide this information on their websites*.”

Source: Popic, 2020, pp. 319–334 at 327.

Mexico: health-care provision available to migrant workers abroad and their family members

“In Mexico, there are two types of public healthcare scheme. The Mexican Social Security Institute (*Instituto Mexicano del Seguro Social (IMMS)*) operates a mandatory social insurance scheme for all Mexicans working in the formal sector. Migrant workers in the country, whether temporary or permanent residents, and *Mexicans working abroad can enrol on a voluntary basis*. The People’s Insurance (*Seguro Popular*) programme provides access to healthcare for households that have no members currently registered with a Mexican social security institution. It benefits unemployed and underemployed persons and workers in the informal economy and *allows the voluntary enrolment of nationals living abroad* and foreign nationals employed temporarily in Mexico; however, *health services must be provided in Mexico*, not abroad. Returning migrants can apply for membership in the programme locally and *Mexicans working abroad can register their family members who have remained in Mexico* at any Mexican consulate. The programme is free of charge for the poorest households; others must pay an annual fee. In practice, however, very few households pay a premium. While the programme is funded by the Federal Government and managed by State authorities, *health services are delivered by municipal governments*.”

Source: ILO, 2021, p. 131.

3. Access to legal services (Manual, par VI.6)

Legal assistance provided by Ecuadorian migrants abroad

As for legal advice, consular offices provide this service free of charge as part of their responsibilities. It is worth mentioning that Article 214 of the Constitution states that the Office of the Human Rights Ombudsman shall have delegations abroad to protect and safeguard the rights of Ecuadorians and provide assistance in cases of vulnerability. In general, the protection responsibilities of the Ombudsman are carried out within the framework of advice, informal negotiations, legal actions, strategic litigation, visits to detained persons in the host country in coordination with the Ecuadorian consular offices, assistance in cases of deportation, legal advice in cases of evictions and mortgages, and dialogue with human rights institutions in host countries, as well as with groups of Ecuadorians abroad to listen and attend to their particular needs, in keeping with the Ombudsman’s competences.

Legal advice provided by consular offices depends on resources, local immigration contexts, and migrants' needs in particular settings as well. For example, in Spain, consular offices deliver legal advice in events of unfair dismissals, evictions and mortgages (since 2012), and financial loans. They also offer legal support during the process of negotiations with financial institutions, family reunification efforts, alimony, detentions and/or expulsions. Likewise, Ecuadorians living in Spain can receive legal support in matters related to access to host country social protection services.¹⁵⁸ In Italy, protection services to Ecuadorian migrants include legal sponsorship and psychosocial support in cases of children and adolescents removed from their families, and talks and information about gender and family violence and the care and custody of children.

Source: Bautista, 2020, pp. 127–147 at 138.

4. Social protection in the light of pandemics (Manual, par VI.7)

4.1. Protection extended by countries of origin during the COVID-19 pandemic

An ILO publication highlights the unilateral short-term prevention, protection, treatment and informational measures, based on the principle of equality of treatment and non-discrimination, adopted by several countries of origin during the COVID-19 pandemic.¹⁵⁹

Access to health care: The publication notes that access to *quality health care* is of the utmost importance during a pandemic, particularly in the case of COVID-19 since testing and treatment is essential to the health of a country's population. It provides the following examples of measures adopted during the pandemic:

- “France and Spain have extended migrants’ residence permits for three additional months in order to ensure broad access to health care.
- Portugal has regularized the status of non-nationals, including asylum-seekers with pending applications, entitling them to, among other things, health care, social support, employment and housing. The Government has also given foreign residents equal access to treatment under the National Health Service on the same basis as regular beneficiaries.
- The province of British Columbia in Canada has given short-term migrant workers access to the country’s Medical Service Plan.
- Colombia is providing free medical consultations to migrants and refugees with COVID-19 symptoms, regardless of their migration status.
- Qatar is providing migrants with medical services, including COVID-19 testing and quarantine services, free of charge.”

Expansion of contributory and non-contributory schemes, provision of income support and raising awareness: The same publication further suggests that countries can also expand the scope of their contributory and non-contributory schemes, provide income support and ensure that migrant workers are aware of protection, prevention and treatment measures and of their social protection rights during the COVID-19 crisis. The following examples of measures introduced by countries of origin during the pandemic are indicated:

¹⁵⁸ “Affiliation to the Spanish social security regime is possible under the “Security Agreement between Ecuador and Spain” (2009). This agreement ensures the portability of rights for both Ecuadorians and Spanish living in both countries.” Bautista, C. (2020). *Diaspora Policies, Consular Services and Social Protection for Ecuadorian Citizens Abroad*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J.-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 127–147 at 138.

¹⁵⁹ ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 134 (authority omitted).

- “As part of its COVID-19 economic response package, New Zealand has announced that international seasonal migrant workers are entitled to government funding if they fall ill, must isolate themselves while working in New Zealand (from the start date of their contract) or cannot work because their employer’s business is affected by the lockdown.
- Italy’s online JUMA portal provides refugees and asylum-seekers with access to information on COVID-19 in 15 languages.
- Brazil is providing unemployed, self-employed and informal workers, including migrant workers with irregular status, with up to three months of emergency basic monthly income.”

4.2. The need to revisit BLAs to ensure better protection for migrant workers affected by pandemics

In the Manual, it is indicated that many of the measures adopted during the COVID-19 pandemic were effectively of a temporary nature, as they were discontinued after the pandemic. Yet, there is an evident need to revisit social security systems and approaches, as the pandemic has clearly brought to the fore the vulnerable position of migrant workers and their families in countries of destination (CoDs). Both CoDs and countries of origin (CoOs) should therefore take heed of the need for urgent intervention, also in relation to revisiting and drafting bilateral labour agreements. The *African Union Guidelines on Developing Bilateral Labour Agreements (BLAs) (2022)* suggests the following:

Revision of BLAs required as a result of the COVID-19 pandemic

Perspectives from the African Union Guidelines on Developing Bilateral Labour Agreements (BLAs) (2022)

“An immediate priority is to assess the COVID-19 impact on migration as it concerns existing BLAs and MOUs/other BLMAs. These should assess the situation of migrant workers in CoDs with which BLAs are in effect – including both CoO nationals addressed by the BLAs and those who are not – regarding: dismissals from work; provision or not of basic sustenance and healthcare for those remaining; health and safety situation of workers; whether dismissals and returns respected workers’ rights and proper procedures; whether returned migrants obtained earned wages and entitlements prior to departure; whether conditions and protections in existing BLAs have been respected for migrant workers deployed under those BLAs; whether the Joint Committees met during the crisis period; and whether the BLAs were actually invoked at any stage. The African Union Labour Migration Advisory Committee (LMAC) has called on African governments in the context of Covid “to carefully look at and renegotiate the different Labour Migration Agreements that they may have signed with the view of ensuring the enjoyment by migrant workers of adequate health and safety, social protection and portability, and other human and labour rights protections.”

Source: African Union, 2022, par 5.4.

5. Repatriation of migrant workers (Manual, par VI.8)

Countries of origin invariably have repatriation arrangements for migrants in place. As explained in the Manual, the modalities employed vary. Reference can be made to, amongst others, Ecuador's engagement with this issue:¹⁶⁰

“Concerning repatriation services, these are offered on a case-by-case basis as a function of vulnerability. As part of the key protection measures stipulated in the normative and policy documents, the *Organic Law on Human Mobility* grants priority attention to Ecuadorians abroad in *vulnerable situations*. The status of vulnerability is declared by the Vice Ministry of Human Mobility in Ecuador or through diplomatic missions or consular offices abroad. Exceptional cases for repatriation of people in vulnerable conditions are considered ...”

Repatriation arrangements: Morocco

As most Moroccan nationals abroad live in stable welfare democracies, repatriation in order to ensure the safety of national abroad is usually not at stake. However, Article 56 of the decree regulating consular activities defines that, if the citizen abroad is in need and does not receive any support yet by the receiving State, *cash or in-kind assistance* may be provided, including repatriation. However, the Moroccan State may demand a reimbursement for a period up to three years after the repatriation in the case the repatriated citizen (or the head of household of his/her family) turns out to have means in Morocco. Beside the consulates, also the Hassan II Foundation offers repatriation services to particular categories of vulnerable Moroccans. Sick persons or those in need can file a request with the Foundation for repatriation support. Under *exceptional circumstances* (such as civil war), repatriation is considered on a more collective basis. This has been the case for Moroccan nationals living in *Libya*. In 2011, the Ministry of Foreign Affairs established a “crisis cell” with the aim of following up political events in Libya and taking necessary measures, including potential repatriation of Moroccan nationals. In addition, there have been several “repatriation operations” for liberating Moroccan migrants incarcerated in Libya in the context of the European battle against clandestine migration to Europe and enabling them to return to Morocco.

Source: Mahieu, 2020, pp. 231–246 at 239.

Repatriation of the deceased or alternative arrangements – Switzerland

“If Swiss nationals die abroad, the foreign authority will inform the local Swiss representation in the country concerned. If this is not done, family members may give the foreign death certificate to a Swiss representation, which will send the document to the *deceased's municipality of origin*. If a person wishes to be buried in Switzerland, the Swiss representation will also prepare the necessary documents for *repatriation*. The Federal Council may cover the *costs of funerals* for Swiss nationals who die abroad and who are *without means*, provided neither their relatives nor the receiving state is willing to pay the costs.”

Source: Piccoli, 2020, pp. 355–356.

¹⁶⁰ Bautista, C. (2020). *Diaspora Policies, Consular Services and Social Protection for Ecuadorian Citizens Abroad*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States* vol. 3 (Lafleur, J.-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 127–147 at 138. Emphasis added.

6. Migrant worker orientation (Manual, par VI.9)

Several CoOs invest in developing and orientating the skill set of *prospective* migrant workers, in addition to pre-departure orientation programmes.

India: skills upgrading initiatives and pre-departure orientation

“While there are no specific policies and programmes that address unemployment of Indian nationals abroad, the Indian Government has created several *skills upgrading initiatives* that aim at increasing the employability of Indians abroad. Some of these programmes are specific programmes for *prospective migrants*, while others are part of general skill-upgrading endeavors for the Indian labour market. Specifically, the *Pravasi Kaushal Vikas Yojana* (PKVY) aims to enhance the skill sets of potential migrant workers and facilitate overseas employment opportunities. Launched ... in 2017, it involves programmes of 2 weeks to 1 month that engage in *capacity building* in the areas of development of skills standards, curricula, learning material, assessment of standards, testing and certification on par with global standards. Initially, it focuses on sectors that are in demand in the ECR [*Emigration Check Required*] countries, including domestic workers, drivers and construction workers. This programme is implemented by the MEA [*Ministry of External Affairs*] in collaboration with the Ministry of Skill Development and Entrepreneurship (MSDE). It is complemented by a *compulsory pre-departure orientation* (PDO), which prepares migrants for the journey to ECR countries. However, at the time of writing, the programme was still in the development stage, though the Government of India has allocated funds for it in 2018 ...

At the subnational level, there are no specific programmes for unemployed emigrants. However, there is a regional pre-departure programme and a skill enhancement program in the state of Kerala.”

Source: Naujoks, 2020, pp. 163–182 at 173–174.

Morocco provides an interesting example of an African CoO that proactively invests in the training of Moroccan nationals abroad to ensure their economic integration in the CoD.

Proactive investment in vocational training of Moroccan nationals abroad

“Beside these legal provisions, the Moroccan state has also adopted a more *proactive strategy* regarding unemployment among Moroccan nationals abroad: a *vocational training program* benefitting *young Moroccans abroad in a difficult social situation*. The program was launched in 2011 by the Ministry Delegate to the Ministry of Foreign Affairs and International Cooperation, in charge of Moroccans Residing Abroad and Immigration Affairs. It particularly targets young nationals abroad in a number of Arab and African countries (Algeria, Tunisia, Libya and Senegal), and aims at *stimulating their economic integration in the host societies*. Candidates are selected via the embassies and consulates in those countries. The program aims at the acquisition of vocational skills during a 6–8 months training in Morocco, and is implemented in cooperation with the Professional Training and Labour Promotion Office (OFPPT) and the Ministry of Crafts, Social and Solidary Economy. However, it is a small-scale program with only 30-40 beneficiaries each year.”

Source: Mahieu, 2020, pp. 231–246 at 240.

7. Return and reintegration of migrant workers (Manual, par VI.10)

In the Manual, salient aspects of the social protection context of the return and reintegration of migrant workers have been raised, and some examples of successful programmes in this regard provided (in particular, the Philippines and the Republic of Korea). Specific proposals have been made to improve the social protection regime relevant to African migrant workers abroad, with a view to supporting return migrants.

In addition, as is reflected on below, it is also necessary to also focus on key dimensions of *improving the legal, institutional and policy framework in relation to return migrants*. Also, fruitful guidance is contained in the African Union *Guidelines on the Development of a Migrant Welfare Programme/System* (2021), in relation to the following matters, as quoted below:

- Sustainable reintegration;
- Inclusion in development programmes;
- Measures adopted by CoOs;
- The importance of information sharing; and
- The need to overcome remaining challenges.

Improving the legal, institutional and policy framework in relation to return migrants

Interventions in the legal, institutional and policy domains may be called for to improve the regime African return overseas migrants and migrant workers are exposed to:

- **Modifications in the legal framework:** There is an evident need to adjust the legal framework to specify in detail the *commitments made by countries of origin*, with reference to the roles of the different institutional stakeholders, and to provide for access to the range of support services indicated above, as a matter of right and not discretion.
- **Institutional improvement:** It is recommended that, firstly, as is the case in other countries with sizeable numbers of overseas migrant workers (such as the Philippines), the establishment of a *dedicated single agency*, which could be a government unit, to engage effectively with return migrants and their reintegration into the origin country's labour market and society, should be considered. Secondly, there is need to ensure clarity is indicated, also in the legal framework, regarding the *respective roles and responsibilities* of the different institutions and entities involved in supporting return migrants and their integration – including also local authorities, intermediary institutions (such as recruitment agencies) and foreign employers. Thirdly, *dedicated consular services* should be focusing on supporting return and reintegration of migrant workers while they are still in the countries of destination, with information points established at, among other, large-scale employers.
- **A policy and implementing framework:** A stronger *policy framework* should inform and support the legal, institutional and operational arrangements concerning the improvement of the regime to which return migrants, in particular return migrant workers, are exposed to. A dedicated policy and *accompanying strategic plan* may be of particular assistance in this regard.
- **Inclusion of return and reintegration arrangements in bilateral labour and social security agreements:** Return and reintegration provisions and measures are currently weakly developed in the African bilateral instruments. Yet, the return to the country or origin and reintegration of these workers into the origin country's labour market and

society could be supported by *introducing provisions into bilateral agreements* with countries of destination provisions, which contain relevant return and reintegration arrangements – with reference to, among other, preparation for return, portability of social protection benefits, engagement with the national social security system upon return, and available assistance to facilitate return and reintegration.

Source: Adjusted from Olivier, 2022, pp. 219–220.

Return and reintegration of African migrant workers: African Union Guidelines on the Development of a Migrant Welfare Programme/System (2021) perspectives

Reintegration programmes “... encourage return migrants to *actively contribute to the economy and society*, mainly by helping them find business and employment opportunities. Successful reintegration considers the needs of migrants on several levels: economic (business creation, new employment, reskilling or skills upgrading) and psychosocial (adaptation after prolonged absence, reunification of the migrant family).”¹⁶¹ *Sustainable reintegration*, a concept introduced into the 2018 *Migration Policy Framework for Africa*, can be achieved when returnees can rely on expanded capabilities to attain a stable, safe and dignified life of economic self-sufficiency psychosocial well-being, political, social and civil inclusion, as a result of which they can respond to the drivers of irregular migration.¹⁶² The *ability to prepare for return* is a key factor to ensure successful reintegration. Also important is the *integration* of return, readmission and reintegration programming into *long-term development processes* in the CoOs. This requires inclusion of returnees in development programmes; data harmonization and common standards in this area; and the need for sustainable funding and timely administrative programme processes.

Measures adopted by CoOs include preferential access to start-up investment; loans for new businesses, e.g. at the local government level; entrepreneurship training, especially for migrant women; supporting private sector efforts to provide job-matching services to returnees; and supporting reintegration support services provided by civil society actors. Implementing and *making known return employment information platforms* could be effective means of providing information and hence improving the match of return migrant workers, in terms of skills use and labour market integration. Yet, *several challenges* need to be overcome: the need for financial education to manage overseas earnings and entrepreneurship support in origin countries; insufficient attention paid to reskill returnees and enhance placement services for them; limited social security portability possibilities; lack of legal and health support services upon return; and limited and underdeveloped social reintegration services. Also, the efficacy of targeted entrepreneurship and income generating schemes for returnees seems to be dependent on whether the returned migrant worker had already been exposed to business management during migration and could contribute co-financing capital.¹⁶³

Source: African Union, 2021a, par 35.

¹⁶¹ Agunias, D., C. Aghazarm and G. Battistella (2011). *Labour migration for Colombo Process countries: Good practices, challenges and ways forward*. IOM, Geneva, p. 66, 76. See also Wolff et al. (2016). *Diaspora Engagement on Country Entrepreneurship and Investment: Policy Trends and Notable Practices in the Rabat Process region*.

¹⁶² African Union (2021b). *Study on Return, Readmission and Reintegration Programmes in Africa*.

¹⁶³ Agunias, D., C. Aghazarm and G. Battistella (2011). *Labour migration for Colombo Process countries: Good practices, challenges and ways forward*. IOM, Geneva, pp. 66–70; Martin, I. and S. Makarayan (2015). *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin*. European Training Foundation, p. 56.

It is important to ensure the migrant workers who have returned and their family members are covered by national social protection floors established by the country of origin. These guarantees should be provided to at least all residents and children as defined in national laws and regulations, but subject to the country's international obligation. In accordance with paragraph 6 of ILO *Social Protection Floors Recommendation 2012* (No. 202), the following guarantees should, at least, be provided to migrant workers with residence status and to children, irrespective of their status and that of their parents or guardians:

- Access to essential health care, including maternity care;
- Basic income security for children and access to nutrition, education, care and any other necessary goods and services;
- Basic income security for persons of active age who are unable to earn sufficient income, particularly in the event of sickness, unemployment, maternity and disability; and
- Basic income security for older persons.

As has been noted, by implementing national social protection floors:¹⁶⁴

“[C]ountries of origin can provide the necessary guarantees to ensure that migrant workers and their families, including returning migrants and dependents living in a different country from the migrant breadwinner, have, at a minimum, access to essential healthcare and basic income security throughout their life cycle. This may help to reduce the need for migrant workers to rely on private social protection initiatives in order to support their families and communities back home.”

In order to ensure that family members of migrant workers staying behind in the country of origin are covered by, in particular, CoO health-care arrangements, migrant workers *could consider remitting a portion of their income to their relatives (and/or as a direct contribution to the country-of-origin health-care scheme)* in order to cover the costs of health care.¹⁶⁵ However, certain caveats need to be in borne in mind, amongst others that: “[E]xcessive reliance on remittances from both the country of origin and the families can place an additional burden on migrant who are already required to pay taxes and contributions under the host country's system.”¹⁶⁶

Key resources

African Union (2022). Guidelines on Developing Bilateral Labour Agreements (BLAs).

African Union (2021a). [Guidelines on the Development of a Migrant Welfare Programme/System](#).

African Union (2021b). *Study on Return, Readmission and Reintegration Programmes in Africa*.

Agunias, D., C. Aghazarm and G. Battistella (2011). *Labour migration for Colombo Process countries: Good practices, challenges and ways forward*. IOM, Geneva.

¹⁶⁴ ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, pp. 130–131.

¹⁶⁵ See ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 134, where it is remarked: “The ILO has carried out research on migrant workers’ remittances, microfinancing and the feasibility of using a portion of their remittances to develop health microinsurance products in countries such as Comoros, Mali and Senegal in order to see whether these initiatives can complement state-led measures and fill protection gaps for specific groups of migrant workers and their families.”

¹⁶⁶ Ibid.

Bautista, C. (2020). [Diaspora Policies, Consular Services and Social Protection for Ecuadorian Citizens Abroad](#). In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer. Cham, pp. 127–146.

ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva.

ILO (2012). *Social Protection Floors Recommendation* (No. 202).

International Organization for Migration (IOM) (2023). [Capacity-building Manual: Establishment and Implementation of a Migrant Welfare Programme by African Countries](#). IOM, Geneva.

Margheritis, A. (2020). [Diaspora Policies, Consular Services and Social Protection for Argentine Citizens Abroad](#). In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer. Cham, pp. 57–75.

Martin, I. and S. Makarayan (2015). *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin*. European Training Foundation.

Olivier, M. (assisted by J. Mushomi and C. Kakuba) (2022). *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa*. IOM, Geneva.

Piccoli, L. (2020). [Diaspora Policies, Consular Services and Social Protection for Swiss Citizens Abroad](#). In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer. Cham, pp. 347–362.

Popic, T. (2020). [Diaspora Policies, Consular Services and Social Protection for Serbian Citizens Abroad](#). In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer. Cham, pp. 319–334.

Vintila, D. and J-M. Lafleur (2020). [The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlements, Consular Services, and Diaspora Policies](#). In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 1–39.

Wolff, V., S. Opoku-Owusu and D. Bloe (2016). [Diaspora Engagement on Country Entrepreneurship and Investment: Policy Trends and Notable Practices in the Rabat Process region](#). International Centre for Migration Policy Development, Vienna.

MODULE G

Implementation

1. Regulations, institutions and operations (Manual, par VII.4)

1.1. Existence of a policy and legal framework

Migrant welfare funds and programmes, as is the case with CoO social security arrangements for the benefit of migrant workers and their families abroad, should ideally be encapsulated in the policy and legal framework of the CoO concerned. Several good practice examples exist. Below we focus on the extensive framework existing in *Bangladesh*.

- **A supportive legal framework exists.**¹⁶⁷ The Government of Bangladesh actively encourages labour migration in an attempt to deal with unemployment and the need for development in the country: the total remittance inflow in 2019–2020 amounted to USD 18.2 billion, contributing more than 60 per cent of the foreign currency reserve of the country. In 2020 twelve million Bangladeshis were working in 174 countries. Following the ratification by Bangladesh of the United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) in 2011, amended legislation has been adopted. The key laws are the *Overseas Employment and Migrants' Act* (2013) and, as indicated below, the *Wage Earners' Welfare Board Act* (2018). The *Overseas Employment Act* deals with salient matters regarding recruitment agencies, the registration of migrant workers, the employment contract, duties of labour focal points and labour attachés, bilateral agreements, the rights of migrant workers, penalties and monitoring and enforcement. Detailed regulations have been promulgated in a number of areas, and a Code of Conduct for private recruitment agencies has been developed.
- **Some but limited insurance-based and social protection benefits available to Bangladeshi migrant workers.** The Government of Bangladesh implemented a *subsidized compulsory insurance system* for aspirant migrant workers in November 2019.¹⁶⁸ The legal basis for the insurance scheme is contained in the *Wage Earners' Welfare Board Act* (Act 30 of 2018), which provides for the establishment of the *Wage Earners' Welfare Board* for the purpose of protecting migrants and their dependants. It provides for a range of support services, including some with a clear social protection focus, in particular “assistance in realizing *compensation for death of migrant workers and ailments* owing to workplace hazards, arrear salary, insurance and service benefits, and providing financial assistance to the *dependents*”. The *other support services* intended to be provided by the Board include:
 - (i) assistance to migrant workers, and, in appropriate cases, bringing them back home;
 - (ii) providing social and economic protection to returnee migrants and their rehabilitation;

¹⁶⁷ Government of the People's Republic of Bangladesh, Ministry of Expatriates' Welfare and Overseas Employment (2015). *Labour Migration Governance in Bangladesh*; Government of the People's Republic of Bangladesh, Ministry of Expatriates' Welfare and Overseas Employment (2020). *Voluntary GCM Review Survey Report*.

¹⁶⁸ Government of the People's Republic of Bangladesh, Ministry of Expatriates' Welfare and Overseas Employment (2020). *Voluntary GCM Review Survey Report*.

- (iii) establishment, operation and maintenance of pre-departure briefing centres for migrant workers;
- (iv) assisting migrant workers, and their rescue, “in case they are victims of torture, accident or are in distress owing to ailment or any other reasons, and, if need arises, providing of legal and medical [support]”;
- (v) assistance in bringing back bodies of migrant workers who die abroad and, if need arises, providing financial and other assistance for funerals;
- (vi) provision of scholarship to meritorious children of migrant workers and assistance for the welfare of handicapped children of migrants and dependants;
- (vii) adopting and implementation of projects intended for the welfare of the expatriates; and “any other welfare activity intended for the expatriates as may be prescribed by the Government”.¹⁶⁹

- **A dedicated policy framework exists.** The *Expatriates Welfare and Overseas Employment Policy* was adopted in 2016, followed by its *Action Plan* in 2019.¹⁷⁰ The *Policy* sets the following objectives: (i) Promoting safe migration; (ii) Protection of migrant workers and their family members; (iii) Benefits and welfare services for migrant workers; (iv) Migration of women workers; and (v) Governance of labour migration. Some of the key areas to be attended to, indicated in the *Policy* and the *Action Plan*, include the following:

- Extension of insurance-based protection to include among other maternity coverage
- Education and health services for children and family members of migrant workers, as well as housing support
- The need to develop a social protection policy and strategy to cater for the social protection of migrant workers and their families
- Rehabilitation and reintegration of returnee migrants, including poor and destitute returnee migrants, in terms of a Comprehensive Welfare Programme, as well as their social integration and integration into cooperatives; tax benefits to encourage local business entrepreneurship
- Setting up of Labour Welfare Resource Centres
- Establishment of a Department of Expatriate Welfare
- Maintain a labour market research unit
- Inclusion of labour migration in national planning and development strategies
- Creation of a labour migration information system
- Set up and strengthen and involve migrant workers abroad in social network activities
- Use Bangladeshi expatriates’ skills and expertise
- Attract investments from expatriates
- Use skills and experience of returned migrants to strengthen the economy – with an emphasis on the creation of a supportive database; skills development; employment creation; support to start small businesses; involvement of returned migrants in execution of development plans

¹⁶⁹ Government of the People’s Republic of Bangladesh (2019). *Wage Earners’ Welfare Board Act (Act 30 of 2018)*, Article 8; Khan, R. *Wage Earners’ Welfare Board Act 2018 – Salient Features*. ILO, Geneva.

¹⁷⁰ Government of the People’s Republic of Bangladesh, Ministry of Expatriates’ Welfare and Overseas Employment (2016). *Expatriates Welfare and Overseas Employment Policy*; Government of the People’s Republic of Bangladesh, Ministry of Expatriates’ Welfare and Overseas Employment (2019). *Action Plan for the Implementation of the Expatriates’ Welfare and Overseas Employment Policy, 2015*.

- Establish a Legal Aid Fund
- Mainstream gender sensitization in all operations, and include gender sensitivity arrangements in bilateral labour agreements and memorandums of understanding
- Invest in market-based research informing expansion of labour markets abroad
- Development of a standard employment contract, appropriately adjusted for female migrant workers
- Close examination of labour and social protection laws of countries of destination
- A well-planned skills development programme commensurate with the National Skills Development Policy
- Steps to be taken to ensure that private recruiting agents and recruiters in destination countries, as socially responsible institutions, conform to existing laws and rules while conducting business: emphasizing among other classification of recruiting agents and recruiters; the development of a Code of Conduct; and monitoring and evaluating their operations
- A Code of Ethical Conduct for all migration intermediaries

In *Sri Lanka*, “The Overseas Workers Welfare Fund (OWWF) is administered by the Sri Lanka Bureau of Foreign Employment (SLBFE), which has total responsibility for overseas employment and the social protection of migrants and is managed by a Board of Directors appointed by the Minister of Foreign Employment Promotion and Welfare.”¹⁷¹

The legal framework supporting the establishment of a Migrant Welfare Programme and the extension of CoO social security coverage, should specifically arrange for *extraterritorial application*. As noted by the ILO:

The supporting CoO legal framework should allow for extraterritorial application

Access to social protection in countries of origin may be legally restricted under the principle of territoriality, which limits the application of social security legislation to the national territory. In such cases, nationals working abroad are not covered by the relevant legislation and are therefore not entitled to benefits.

Source: ILO, 2021, p. 125.

1.2. Institutional and operational capacity and arrangements

1.2.1. Overview: institutional framework

A perusal of the literature on welfare and social protection support to migrants abroad confirms that several institutions play a prominent role in this support. These are both public and private institutions, and they play distinctive roles in relation to the support given to migrants abroad, often included under the broad term “diaspora”. Lafleur and Vintila remarks as follows, regarding *public* institutions and their overall role:

¹⁷¹ ILO (2021). *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. ILO, Geneva, p. 125.

Public institutions: role in extending support, including welfare and social protection support

First, there are *government-led* bodies such as ministries, subministries or agencies functioning as administrations which respond to the *specific needs* of populations abroad or *maintain a connection* (of economic, cultural or political nature) with non-residents. Second, *other bodies* function as *consultative or representative institutions* of the diaspora and often include members from the diaspora via election or appointment. Their function is generally to defend diaspora's interests in the home country's policymaking process. Sending States' institutions that enable citizens abroad to access *host or home countries' welfare benefits* have therefore often been overlooked in the literature.

Source: Lafleur and Vintila, 2020, pp. 1–32 at 11.

The same authors then draw a distinction between what they call “descriptive infrastructure” and “substantive infrastructure”. They describe “*descriptive infrastructure*” as follows:¹⁷²

“In our view, descriptive infrastructure captures the extent to which sending states create an institutional setting that specifically targets the diaspora in its scope and aims. This concept captures the “presence” of *homeland institutions that explicitly acknowledge the diaspora as main reason for their existence*, while formally being granted the *mission to act in its interests (including welfare-related interests)*. As discussed below, descriptive infrastructure may include a *sending country's consular network, but also ministries, sub-ministries, agencies or representative bodies that perform a public mission in the interest of the diaspora.*”

“*Substantive infrastructure*” can be operationalized via two dimensions:

The substantive role of CoOs: Providing welfare and social protection and facilitating access to welfare and social protection in CoOs and CoDs

We operationalize this concept via two dimensions: the role of sending States as social protection providers (i.e. *provision role*) and on the other hand, their function of facilitating access to welfare for non-resident nationals (i.e. *facilitation role*) ... We define sending States' *provision role* as their ability to maintain a form of State-sponsored solidarity with the diaspora, either by allowing non-resident nationals to remain eligible from abroad for homeland-based social protection schemes or by creating special schemes specifically designed to address the welfare needs of this population.

Source: Lafleur and Vintila, 2020, pp. 1–32 at 22.

The *facilitation role* refers to “policies by which homeland authorities support citizens abroad in the administrative procedures to access home or host country welfare entitlements. It is therefore a policy-based commitment to facilitate access to social protection and an explicit recognition by homeland authorities that holding formal welfare rights in the home or host country is often not sufficient to access those rights in practice.”¹⁷³ However, facilitating access to social protection goes beyond providing information on CoO or CoD welfare systems:

¹⁷² Lafleur, J.-M. and D. Vintila (2020). Do EU Member States Care About their Diasporas' Access to Social Protection? A Comparison of Consular and Diaspora Policies across EU27. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 2* (Lafleur, J.-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 1–32 at 11 (emphasis added).

¹⁷³ Ibid.

Facilitating access to social protection in CoOs and CoDs: Critical dimensions

“... [p]roviding information on home/host countries’ welfare systems via websites and brochures, in person at consulates or even the facilitation of contacts of local NGOs and institutions active in the field of welfare is a very *widespread practice* ... In our view, active support however entails an *intervention in citizens’ individual cases* by providing *personalized assistance and/or representation of interests* in administrative dealings with welfare authorities.”

Source: Lafleur and Vintila, 2020, pp. 1–32 at 22.

1.2.2. Institutional arrangements: public institutions

The extension of welfare and social protection support is usually supported by dedicated institutional and operational arrangements facilitating labour migration from the CoO. As a rule, *public* institutions are tasked with providing support, both in the CoO and at consular level.

Here we can elaborate, firstly, on the institutional framework set up by the Government of *Bangladesh*.

Institutional and administrative framework: Bangladesh

The core institutional and administrative framework is provided by the Ministry of Expatriates’ Welfare and Overseas Employment (MEWOE); other ministries and institutions also play a significant role. These include the Bureau of Manpower, Employment and Training (BMET); the Wage Earners’ Welfare Board (WEWB); the Probashi Kallyan Bank (PKB) (intended also to attract and channel diaspora investment); the Bangladesh Overseas Employment and Services Limited (BOESL) (business support enhancement); the District Employment and Manpower Office (DEMO) and the Technical Training Centre (TTC). A constantly increasing number of labour wings of Bangladeshi Missions abroad are playing an important role in executing migration support, also through diplomacy to ensure workers’ rights and protection. The contributions of the relevant government departments are coordinated through the National Steering Committee on Expatriates’ Welfare and Overseas Employment; a forum of stakeholders in the form of the National Migration Forum also exists. The overall aim is to base migration governance on the framework of ethical migration, espousing the principle of migration with dignity.

Source: Barkat et al., 2019, pp. 5, 123; Government of Bangladesh, 2020.

Secondly, reference can be made of the Swiss institutional framework assisting Swiss nationals abroad, under the mandate of the Federal Council, which is the highest executive authority in the country.¹⁷⁴

¹⁷⁴ The **Federal Council** comprises seven members, who are elected by the Federal Assembly. The Federal Council’s tasks are set out in the Federal Constitution.

Comprehensive institutional arrangements: Switzerland

“Historically, the Federal Council has actively worked towards *guaranteeing the social protection of Swiss abroad*. Since 1846, the main institution that is responsible for engaging with Swiss nationals abroad is the *Federal Department of Foreign Affairs* (FDFA, *Eidgenössisches Departement für auswärtige Angelegenheiten*). In addition to protecting Switzerland’s interests abroad, the FDFA has among its main tasks the *improvement of services for Swiss nationals living abroad* and the maintenance of the administrative register of the Swiss abroad E-VERA, which contains information on the Swiss nationals abroad

Within the FDFA, the Consular Directorate (CD, *Konsularische Direktion*) oversees the mobility of Swiss nationals abroad. In particular, the CD’s Delegate for Relations with the Swiss Abroad promotes the interests of Swiss nationals abroad and coordinates the working of the 170 embassies and consulates around the world, as well as 200 honorary consulates. *Honorary consulates* have, among their main tasks, the conduct of official relations with the authorities in the host country and information sharing. They can also provide advice to Swiss abroad and, in agreement with the embassy or consulate or with the FDFA, they can take the *appropriate measures* for Swiss abroad who are in a *situation of physical or financial risk and demand assistance*.”

“Social policies for Swiss nationals abroad revolve around the *institutionalization of a large network* that is: (i) overseen by the Federal Council, mainly the FDFA and, to a lesser extent, the Federal Office of Culture; (ii) coordinated by non-profit organizations funded to work together with the Federal Council, mainly the OSA and, in some specific domains, the Foundation for Young Swiss Abroad and *education-suisse*; (iii) implemented by the consulates and the embassies; (iv) complemented by the activities of the 750 Swiss associations, charities, and clubs around the world. This constitutes a *“guichet unique”* for what is, in fact, a broad range of policies and actors.”

Source: Piccoli, 2020, pp. 347–362 at 349, 360–361.

As indicated in the Manual, and as appearing from several examples quoted in this Compendium, consulates and embassies play an important role in extending welfare and social protection to migrants, including migrant workers and their families, abroad. Often, labour attachés and, at times, even social attachés (sometimes referred to as social welfare officers) are appointed to help fulfil this role. *Tunisia* may be cited as an example.

Social protection services provided by Tunisian embassies and consulates, also by social attachés

“To support Tunisian citizens abroad, embassies and consulates offer a number of *social services*. They *provide information* on social security coverage, *help* in the treatment of marital conflict, health problems, judicial and administrative difficulties in addition to counseling and information. *Social attachés* are key in this regard, as their job is to defend the interests of the Tunisian community abroad in the area of *social protection*. They are assigned to *every Tunisian consulate and embassy in Europe, Canada and the Arab world*. In addition to these services, Tunisians abroad can find *information about social risks* associated with living abroad and their welfare entitlements while living abroad on the *website* of the National Health Insurance Fund.”

“Lastly, the role of *social attachés* in consulates in the area of *unemployment* consists in the provision of *information on how to find a job or access unemployment benefits of the destination country*.”

Source: Pouessel, 2020, pp. 375–388 at 382, 383.

Even where consular assistance does not include the provision of social protection support to nationals abroad, embassies and consulates could still play an important facilitative role. The facilitative role could include assisting migrant workers abroad to access country-of-origin social security and social services arrangements – as is evident from the *Turkish* example:

“... Turkey’s social protection policies mainly *focus on helping the emigrants navigate the host country social protection procedures* and strengthening their economic, cultural and political ties with the homeland. Many consular social protection services such as in-kind, in-cash and repatriation aids are not present in the framework of social protection policies. *Attachés* of the Ministry of Family and Social Policies and the Ministry of Labour and Social Security, who work in consulates, mainly *concentrate on assistance with host country procedures*. In other words, Turkish authorities consider themselves as the *facilitator* of migrants’ access to the welfare entitlements of the *destination countries*.”¹⁷⁵

1.2.3. Institutional arrangements: contracting/subsidizing non-State actors

In some cases, non-State actors have been *contracted* by the CoO to provide support to nationals abroad, also in relation to social protection. This is true of, amongst others, *Switzerland*.

Switzerland’s reliance on non-State actors to provide support (1): Including in relation to social protection and education

“The Federal Council *actively supports institutions that promote relations and assist Swiss abroad*. Among these, the Organisation of the Swiss Abroad (OSA, *Die Auslandschweizer-Organisation*) plays a particularly prominent role. This non-profit organization was established during World War I, in 1916, under the umbrella of the New Helvetic Society (NHS, *Neue Helvetische Gesellschaft*), which had itself been created 2 years earlier to defend the unity of the young Helvetic Confederation. The OSA was initially operative abroad. It set up a permanent secretariat in Geneva in 1919, which was then moved to Fribourg in 1923, and then in Bern in 1928. In 1924, the OSA *started to receive financial support from the Federal Council*. Today, its activities are enshrined in Article 9.2 and Article 38 of the *Federal Act on Swiss Citizens and Institutions Abroad*. It has three main tasks: *providing services for Swiss nationals abroad, communicating with them, and representing them in Switzerland*. More specifically, the OSA provides *advice on all types of legal, social security insurance and training matters*; it publishes the bi-monthly magazine “Swiss Review” and promotes active cultural and educational programmes for young Swiss nationals abroad. The OSA also organizes the Congress for Swiss nationals abroad, which takes place every year in a different city of Switzerland. The directors of the OSA hold at least four official meetings with representatives of the CD every year and the OSA receives three million francs (approximately two million and sixty-five hundred euro) per year from the Swiss Federal Council to carry out its activities.”

“... *educationsuisse* also promotes the *training* of young Swiss abroad and works closely with Swiss *schools* abroad and with international schools where Swiss teachers teach. This non-profit organization was established in 1942 as “Help Committee for Swiss Schools Abroad” and was later on simply renamed as “Committee for Swiss Schools Abroad”. Since 2012, it is known as *educationsuisse* and, following the *Federal Act on the Diffusion of Swiss Education Abroad*, it is economically supported by the Federal Council, Office of Culture (OC, *Bundesamt für Kultur*).”

Source: Piccoli, 2020, pp. 347–362 at 349–350, 351.

¹⁷⁵ Aydin, S. and E. Østergaard-Nielsen (2020). *Diaspora Policies, Consular Services and Social Protection for Turkish Citizens Abroad*. In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States* vol. 3 (Lafleur, J.-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 401–418 at 416 (emphasis added; authority omitted). See also at pp. 415–416: “One of the most significant institutional developments in the area of family is the appointment of the Dusseldorf *attaché* of the Ministry of Family and Social Policies for the first time in 2015. With this step, the Ministry aims to work on *detecting and solving the problems faced by nationals abroad*, come up with suggestions on how citizens abroad can benefit more effectively from the *host country social services*, *defend the rights* of nationals abroad, *follow social security regulations in host countries* and collaborate with host country authorities. The Dusseldorf *attaché* addresses the problems of Turks in all parts of Germany until the opening of new similar offices in Hamburg, Stuttgart, Cologne and Munich, which was declared by the Ministry in 2017.”

Switzerland's reliance on non-State actors to provide support (2): Diverse association and cooperation with Swiss diplomatic missions

"In addition to these policies, the Federal Council supports institutions that promote relations between Swiss nationals abroad and their ties to Switzerland. Today, more than 750 Swiss associations and institutions overseas are affiliated to the OSA, including humanitarian groups, traditional Swiss clubs, sporting associations, choirs, charities, and family associations. These diverse associations constitute "micro-communities of *solidarity*, where Swiss identity can be easily transmitted". In Paris for example, the Swiss Society of Charity has been operating since 1820 and currently has around 20 volunteers who go to the aid of Swiss nationals who are *sick or lonely*, *help them with administrative matters and make hospital visits*. Some of these associations are representative of specific cantons ... These associations *work closely to Swiss diplomatic missions*: although they do not formally participate in the decision-making process, in some countries, they provide information that can help the missions deciding on whether *requests for welfare assistance* are legitimate. In a few countries, Swiss diplomatic missions rely on these associations to provide first hands-on support to Swiss nationals. While providing *social help*, these associations also ensure an enduring cultural connection between Swiss nationals abroad and the country of origin."

Source: Piccoli, 2020, pp. 347–362 at 356.

Ireland's policy of supporting Irish NGOs to provide welfare services to Irish nationals abroad

"In the main, however, the Irish Government's social protection policy as regards the Irish diaspora involves *offering support to Irish welfare, community and advocacy organizations which originate in the diaspora itself*. This is central to the approach of the Emigration Support Programme (ESP), managed and administered by the Irish Abroad Unit in partnership with Ireland's embassies and consulates. The premise of the ESP is that it cannot replace social welfare supports in Irish citizens' countries of residence. Instead, working with civil society partners, it can help people access those services to which they are entitled. The ESP ... was designed to extend social protection and welfare relief to vulnerable Irish citizens living abroad.

Welfare is central to the ESP and this primarily explains why the highest proportion of the funds are allocated to organizations in Britain, where the largest number of Irish-born people reside outside Ireland. Funds were dispensed to organizations in 23 countries [*in 2017*], the smallest allocation was €25,000 to Zimbabwe. In Britain, which has been the prime destination of Irish emigrants since the 1930s, many emigrants are ageing. Due to their previous occupations, they often live with a range of vulnerabilities from accommodation issues to social isolation to mental health issues. The *provision of advice and support for the elderly* is at the core of many grants which the ESP awards, for example, funding the organization, administration and quality assurance of a network of volunteers to provide regular home visits to those unable to leave their homes".

Source: Hickman, 2020, pp. 259–272 at 266–267.

1.2.4. Operational arrangements

Operationally, the Government of Bangladesh has formed a Vigilance Task Force to combat illegal and irregular migration. Also, to promote safety and security, the entire recruitment system and process relating to overseas employment has been *digitized*, including the issuing of a multipurpose smart card. Several bilateral labour agreements and memorandums of understanding have been concluded, while a *Migrants Welfare Bank* was established in 2010 to *provide loans* to migrant workers, including returned migrant workers, and to assist with investment and the sending of

remittances.¹⁷⁶ Comprehensive *skills* development training is provided to aspirant migrant workers, while legal aid is extended to migrant workers abroad. The Government also provides a two per cent cash incentive to all remitters to *encourage remittance inflows*.¹⁷⁷ Special arrangements were made to support Bangladeshi workers abroad during the COVID-19 pandemic.¹⁷⁸

In the Manual, secondly, the important role of labour attachés in providing social protection to support to migrant workers and their families is highlighted. The Manual suggests that, apart from funding constraints, *several other challenges* are experienced, in particular related to governance and institutional capacities at destination. These are highlighted here.

A 2014 study summarizes some of these challenges as follows:¹⁷⁹

“The challenges faced by the LAs [Labour Attachés] in rendering effective services were also identified. Physical distance in large countries such as Malaysia, lack of qualified personnel and resources, absence of laws pertaining to domestic workers in the Gulf states, the high cost of providing legal assistance, the presence of migrants with irregular and undocumented status, and the propensity of some workers to opt for industrial action that violates local laws, are some of the *major challenges* identified by the LAs during the study. Moreover, migrants interviewed as part of the study also pointed to a perceived lack of capacity among LAs’ offices, as well as differential treatment for low-skilled migrants, and limited opening times, which made accessing the services of LAs difficult.

The issue of coordination and coherence was also highlighted. The study suggests that authorities in the ministries do not always appoint the best-qualified personnel as LAs. The LAs’ performance at destination is often hampered by delays on decisions and actions by those in charge of the line agency or relevant ministry at home. In some instances, monitoring and evaluation mechanisms are weak. This working paper discusses the above findings and concludes with practical policy recommendations to address these issues.”

Information-sharing and virtual service delivery: the case of Ecuador

“Ecuadorians abroad can learn about their rights and the services provided by consular offices in host countries and national institutions in Ecuador through *different resources*. The Ministry of International Affairs and Human Mobility’s *website* provides general information on policies and rights, as well as documents related to the human mobility law and regulations. Additionally, the Ministry has launched the *online application* “Ecuador Contigo,” which allows migrants abroad to access information regarding services offered by consular offices, a list of 24-hour *contact telephone numbers* to reach out in emergencies, *information* about the *rights* of Ecuadorians in host countries, and *information* on how to *process* the returning migrant certificate (*certificado de persona ecuatoriana retornada*). As part of the contingency plan implemented to deal with migration challenges posed by securitization measures adopted by the United States, this app also provides *videos and digital bulletins* about migrant’s rights, legal advice, and general advice in case of detention. Through this

¹⁷⁶ A Vigilance Task Force oversees the fair recruitment process and conducts inspections at the offices of recruiting agencies and at ports of departure.

¹⁷⁷ Government of the People’s Republic of Bangladesh, Ministry of Expatriates’ Welfare and Overseas Employment (2020). *Voluntary GCM Review Survey Report*. The remittances are primarily used to support rural households and to purchase land.

¹⁷⁸ *Ibid.*: these have included the provision of telemedicine services; the establishment of an Emergency Support Fund and a Working Committee for return and reintegration; the provision of soft loans; the launching of a returnee database; the hosting of a platform website; the opening of an emergency hotline; and compensation through the Wage Earners Welfare Board; the provision of cash assistance.

¹⁷⁹ Abrar, C., S. Irudaya Rajan, L. Ruhunage and T. Siddiqui (2014). *Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, Indian and Sri Lanka* (Migrating out of Poverty, Research Programme Consortium, Working Paper 23) p. 6 (emphasis added).

app, Ecuadorians abroad can also access information about the *virtual consulate*, a tool included on the webpage of the Ministry of Foreign Affairs and Human Mobility that allows its users to apply for, request, and manage the different services offered by the consular offices, e.g. legalizations and notary records, certifications, travel documents, powers of attorney, last wills and testaments, and registration and certification of births, deaths, marriages and divorces. All the products and services provided through the virtual consulate may be *either fully online*, which means that they do not require the presence of the person at all, or *partially online*, which means that someone's presence will be required at some point after filing an application.

Each ministry or national institution in Ecuador often provides *information on special programs or benefits* for Ecuadorians living abroad and returnees. For instance, the Ecuadorian Social Security Institute's *webpage* provides concise information about *voluntary affiliation to the Ecuadorian Social Security Institute (IESS)* for Ecuadorians living abroad, retirement pensions, health insurance, maternity leave and stipends, healthcare subsidies, disability benefits, stipends for the elderly, and death-related benefits. In addition, the *consular offices' social media accounts* usually share news and updated information regarding services offered in Ecuador and local services and activities in host countries."

Source: Bautista, 2020, pp. 127–147 at 137–138.

Key resources

Abrar, C., S. Irudaya Rajan, L. Ruhunage and T. Siddiqui (2014). *Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, Indian and Sri Lanka* (Migrating out of Poverty, Research Programme Consortium, Working Paper 23).

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Pouessel, S. (2020). [Diaspora Policies, Consular Services and Social Protection for Tunisian Citizens Abroad](#). In: *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States vol. 3* (Lafleur, J-M. and D. Vintila (eds.)). IMISCOE Research Series. Springer, Cham, pp. 375–387.

Swiss Government. [The Federal Council](#).



International Organization for Migration
17 route des Morillons, P.O. Box 17, 1211 Geneva 19, Switzerland
Tel.: +41 22 717 9111 • Fax: +41 22 798 6150
Email: hq@iom.int • Website: www.iom.int