

AWCA Technical Seminar 2024

Employment Injury Benefits for Migrant Workers

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**International
Labour
Organization**

International Social Security Agreements

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1. WHY DO WE NEED SOCIAL SECURITY AGREEMENTS?



International Labour Standards

ILO Convention No. 102 on Social Security Minimum Standards (as well as other up-to-date Conventions in the field of social security) contain explicit non-discrimination clauses.

Article 68 of Convention No102 – which applies to all branches of social security covered by the Convention – sets forth **the principle that all non-national residents must have the same rights as national residents.**



The Challenge

Migrant workers are often denied social security protection because of:

- Restrictions to coverage based on nationality,
- Qualifying conditions (e.g. period of contribution for benefits).
- Restrictions on receiving benefits (payment to country of origin



Realizing Migrant Workers' Right to Social Security

Two of the key steps to realize migrant workers' right to Social Protection:

- ☐ Reduce the barriers for migrant workers participation in host countries SS systems
- ☐ Ensure they can enjoy their benefits (including after returning to their countries of origin)



2. WHAT ARE SOCIAL SECURITY AGREEMENTS?



What are bilateral/multilateral social security agreements?

Treaties intended to **coordinate** the social security schemes of two or more countries in order to overcome the barriers that might otherwise prevent migrant workers from receiving benefits under the systems of any of the countries in which they have worked.



Key principles of social security agreements

- Portability
- Reciprocity
- Equality of Treatment
- Payment of benefits abroad
- Determination of the applicable legislation
- Maintenance of rights in acquisition/acquired
- Aggregation/totalisation of qualifying (e.g., insurance) periods
- Administrative Cooperation



Obstacles and Challenges

- **Different levels of economic development** between countries
- High numbers of **migrants in an irregular situation**;
- Large proportion of workers working in the **informal economy**
- **Institutional and administrative capacity** to provide social protection benefits and implement the agreement
- **Significant differences in social security schemes**, for example, with regard to the design and level of benefits.



Negotiating Social Security Agreements



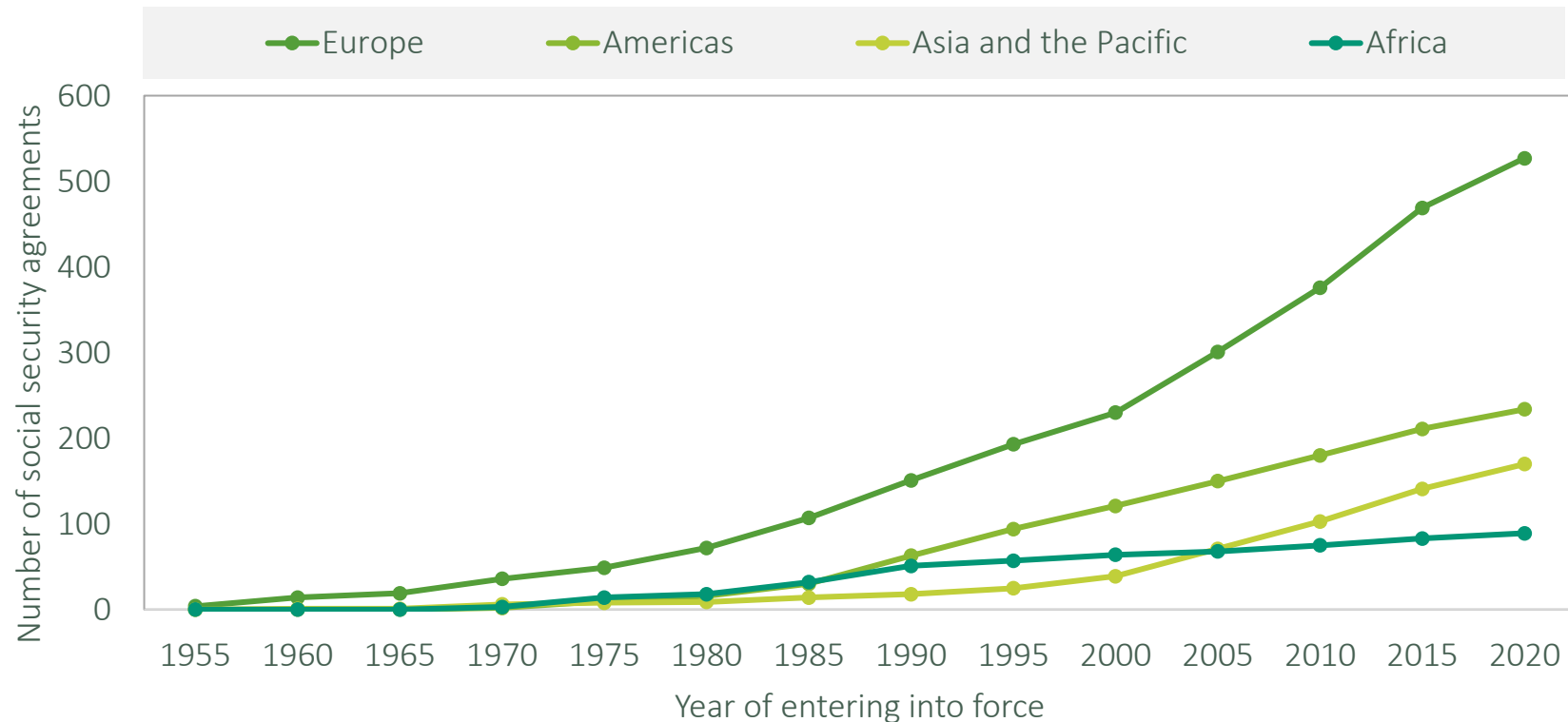
Source: ILO (2023): *Intervention Model: The eight-step process to negotiating a social security agreement* (Brief)

3. INTERNATIONAL STANDARDS AND BEST PRACTICES



Trends – ISSA Database

- From 100 SSA in 1980 to 660 in 2020.
- Almost 90% of the agreements focus on long-term benefits (old-age, disability and survivors' benefits)



Key policy documents and ILS calling for social security agreements

- The Multilateral Framework on Labour Migration - provides guidelines for a right-based approach to labour migration and calls for the conclusion of social security agreements.
- The Global Compact for Safe, Orderly and Regular Migration – Objective 22.
- The ILO's flagship Social Security (Minimum Standards) Convention, 1952 (No. 102). Social security agreements may include any of the nine branches of social security defined in C102.
- The Recommendation on the Maintenance of Social Security Rights, 1983 (No. 167) offers a model agreement in its annex.
- **GB paper March 2022 on Securing social protection for migrant workers and their families: Challenges and options for building a better future**



Southern African Development Community

The Portability of Accrued Social Security Benefits Policy Framework was adopted in 2016

- ❖ Covers nationals of the Member States
- ❖ Covers retirement, employee injury, unemployment insurance, health insurance and survivors' benefits
- ❖ Has provisions in the areas of equal treatment and maintaining social security rights
- ❖ No regional implementation mechanism has been adopted – it leaves it to the Member States to communicate with each other



CARICOM Agreement on Social Security (1996) (I)

- ❖ CARICOM adopted a labour law fundamental rights framework as well as the CARICOM Agreement on Social Security (1996).
- ❖ The Agreement is seen as key in facilitating the free movement of labour within the CARICOM Single Market.
- ❖ It applies to all persons who are moving to work or have worked in two or more countries that have implemented the Agreement.



CARICOM Agreement on Social Security (1996) (II)

The Agreement applies to migrant workers and self-employed persons (and others):

The agreement provides for the essential coordination arrangements, including exportability of benefits, the aggregation of periods of insurance which a migrant workers would have spent time in different countries, and the application of the law of the country where the person concerned is employed.

The CARICOM agreement focuses solely on long-term benefits (invalidity, disablement, old age, survivors' and death benefits)



European Union (I)

The Charter of Fundamental Rights of the EU

- First, non-legally binding in nature (2000)
- With Treaty of Lisbon (2009), this has been integrated into the Treaty of the European Union, and is therefore legally binding – but see the UK and Polish opt-outs

Legally binding effect, at least in relation to matters falling within EU law

- ✓ *Art 34 (social security and social assistance) - “Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices”*



European Union (II)

The 'traditional' branches of social security

- Sickness, maternity, invalidity, old-age, survivor's, unemployment, pre-retirement, family, accidents at work and occupational diseases, death grants (see ILO Convention No 102)
- Way of financing is not important
- Excluded: social and medical assistance

Only schemes based on legislation:

- No private insurances (sickness)
- No occupational schemes based on collective or individual agreements (occupational pension schemes)



MERCOSUR Multilateral Agreement on Social Security (2005)

- **Replaced previous bilateral agreements**
- It seeks to integrate MERCOSUR Members' social security systems through coordination mechanisms for workers moving between MERCOSUR States.
- Covers **healthcare, old age, disability and survivors' benefits**
- The principles of **equality of treatment and non-discrimination** are expressly incorporated
- The other key coordination principle are also incorporated
- It has **reduced the legal barriers to migrant workers' access to social protection in their host countries and has improved administrative coordination and the delivery of benefits** between MERCOSUR Member State.



France – Tunisia (2003)

- **All branches** with the exception of unemployment benefits.
- Tunisian workers in France are entitled to the same social security benefits as French citizens.
- **Posted workers.**
- **Maintenance of rights in the course of acquisition** through aggregation of the contributions applicable in the territory of each States party.
- Insurance periods of all contingencies can be totalized except in the case of employment injury benefits.
- Portability of benefits to the territory of the other State



Canada – Mexico (1996)

- ❑ **Equality of treatment** : Mexican workers granted same social security benefits as Canadian citizens and permanent residents.
- ❑ **Portability of benefits**: Mexican workers can collect long-term benefits acquired in Canada after their return to Mexico.
- ❑ Agreement includes provisions ensuring the **maintenance of acquired rights and rights in the course of acquisition.**



Germany – India (2017)

- ❑ **Germany:** Old age (statutory pension insurance), steelworkers' supplementary insurance as regards the export of benefits, farmers' old age.
- ❑ **India:** Old age for employed persons, survivors for employed persons, permanent disability for employed persons.
- ❑ **Principles:** Equality of treatment, Payment of benefits abroad, Applicable legislation, Maintenance of rights in the course of acquisition (totalization), and Mutual administrative assistance.
- ❑ Special provisions for detached workers and for diplomatic missions or consular posts



Australia – Republic Of Korea (2008)

- ❑ **Republic of Korea:** Old age pensions and lump sum refund
- ❑ **Australia:** Age pensions and superannuation guarantee
- ❑ **Principles:** Equality of treatment, Payment of benefits abroad, Applicable legislation, Maintenance of rights in the course of acquisition (totalization), and Mutual administrative assistance.
- ❑ **Self-Employed Workers** who are residents of the Republic of Korea are subject only to the legislation of the Republic of Korea.
- ❑ Special provisions for seconded workers, seafarers, diplomatic and consular workers.



Example of limited agreements: double contribution agreements

- ❑ These are agreements whose primary purpose is to prevent the payment of double contributions and do not contain totalization provisions.
- ❑ China: China–Denmark Agreement; China–Switzerland Agreement
- ❑ Republic of Korea: Korea–Italy Agreement; Korea–Switzerland Agreement
- ❑ United Kingdom: UK–Chile Agreement; UK–Japan Agreement; UK–Republic of Korea Agreement



Social Protection for Migrants in ASEAN

2013 ASEAN Declaration on Strengthening Social Protection:

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

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

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

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Cebu Declaration; DPPMW)



4. RECOMMENDATIONS



ILO's Strategy and Approach

A progressive and integrated approach combining several mutually reinforcing policy measures with the principle of equality of treatment as overarching framework:

- **Progressively building national social protection systems that are inclusive migrant workers;**
- Supporting the **ratification of relevant ILO standards** and new / revised social security laws and their concrete implementation (Unilateral measures)

Concluding **social security agreements (bi/multi)** between countries to ensure the **coordination and portability** of benefits across countries based on the equality of treatment principle;



Recommendations (I)

The importance of allowing for gradual approaches!

- Consider commencing with a non-binding instrument, moving towards a binding one, or alternatively, a binding instrument that allows for flexible approaches regarding implementation.
- Consider including (initially) only some contingencies/benefit types to be covered (E.g. those prevalent in most of the Member States).



Recommendations (II)

- Focus on long-term benefits, at least initially, and to allow short-term benefits to be later covered
- Consider applying only certain coordination principles first (particular, exportability of benefits and equal treatment);
- Others can follow later as experience is gained
- Categories of persons covered can be gradually expanded



Thank you



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