

**SOCIAL SECURITY FOR  
OVERSEAS FILIPINO WORKERS IN THE  
TOP TEN COUNTRIES OF DESTINATION**

**A Survey of Social Protection Mechanisms and  
Recommendations for Reform**

**Center for Migrant Advocacy**

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**The Center for Migrant Advocacy – Philippines** is an advocacy group that promotes the rights and welfare of overseas Filipinos –land- and sea-based migrant workers, Filipino immigrants and their families. The Center works to help improve the economic, social and political conditions of migrant Filipino families through policy advocacy, information dissemination, networking, capacity-building, and direct assistance.

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*The Center for Migrant Advocacy Philippines takes full responsibility for the contents of this publication.*

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## List of Acronyms

BLA	Bilateral Labor Agreement
BSP	Bangko Sentral ng Pilipinas
CPF	Central Provident Fund
CPP	Canadian Pension Plan
EoSB	End of Service Benefits
GCC	Gulf Cooperation Council
HSW	Household Service Worker
ICESCR	International Covenant on Economic, Social & Cultural Rights
ILO	International Labor Organization
ILS	Institute for Labor Studies
INPS	National Social Security Agency (Italy)
JLC	Joint Labor Conference
KSA	Kingdom of Saudi Arabia
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NRCO	National Reintegration Center for OFWs
OFW	Overseas Filipino Worker
OFW-RP	Overseas Filipino Worker – Reintegration Program
OWP	Overseas Workers Program (PhilHealth)
OWWA	Overseas Workers Welfare Administration
POEA	Philippine Overseas Employment Administration
PR	Permanent Resident
RWO	Regional Welfare Office
SSA	Social Security Agreement
SSS	Social Security System
TFW	Temporary Foreign Worker
TWC2	Transient Workers Count Too
UAE	United Arab Emirates
UN	United Nations
WB	World Bank

## 1. Executive Summary

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In the last four decades labor migration has come to serve as the backbone of the Philippine national economy. Workers cross borders to gain access to employment and income with which to support themselves and their families. On a national level, labor migration has also assumed a central role in the country's economic development plan. With over 8 million Filipinos living and working in 214 countries and territories, remittances of Overseas Filipino Workers (OFWs) are an unofficial centerpiece of the national economy. Data from the *Bangko Sentral ng Pilipinas* (BSP) shows that OFWs sent home \$20.12 billion in 2011<sup>i</sup>, helping to stabilize the currency and keep the country afloat amidst a global economic crisis.<sup>ii</sup>

In the process of moving between jurisdictions and countries, migrant workers often fall between the cracks. They are routinely denied access to many of the social protection mechanisms available to nationals in host countries and lack the support networks which are available back home. According to the International Labor Organization, the most common reasons for denial of social security to migrant workers are:

- access to benefits is restricted based on nationality or residency;
- restrictions on portability of benefits (payment to country of origin);
- minimum qualifying conditions (e.g. lengthy period of contribution before entitlement to benefits); economic sector of employment not covered by the social security system (i.e. domestic workers);
- consequences associated with the non-documentation of workers.

While the Philippine government has stepped in to help fill the gap by extending social security coverage to OFWs, the contexts in which many OFWs work make these well-intentioned programs inaccessible to many of them. This is especially true for low skilled migrants, domestic workers, and migrants with an irregular status.

Therefore, a concerted effort is needed to extend social security benefits to Overseas Filipino Workers (OFWs). This report surveys the existing protective mechanisms in the top ten destination countries of OFWs, as well as the social security schemes available to OFWs from the Philippine government. The report both shows existing gaps and also suggests ways to increase access to social security for OFWs and their families.

The key recommendations of this policy paper fit into two categories, general as well as country and program-specific.

## **A. General**

### ***1. Negotiate comprehensive bilateral agreements with governments in countries of destination***

- According to the ILO, bilateral social security agreements are the most effective way to improve migrant workers' access to social security benefits. Recommendations on how to structure social security agreements in a way that effectively protects the rights of migrant workers are outlined below and further elaborated in the concluding recommendations.<sup>iii</sup>
  - *Include the ILO-recommended provisions on equality of treatment, provision of benefits abroad, determination of the applicable legislation, maintenance of rights in the course of acquisition, and administrative assistance,*
  - *Ensure inclusion of domestic workers in bilateral agreements*
  - *Include gender-oriented provisions*
  - *Address jurisdictional gaps and inconsistencies in bilateral agreements*
  - *Create inter-agency cooperation mechanisms*

### ***2. Ensure access to social protection in the Philippines and country of destination***

- *Open access to national social security programs in the countries of destination*
- *Allow migrant workers to opt-out of social security schemes and/or withdraw contributions:* While access should be available, the option of opting out of a social security scheme, and of withdrawing contributions are in line with international standards on social security for migrant workers and should be replicated. This option may be best for migrant workers with coverage in the Philippines.

### ***3. Extend Social Security coverage to migrant workers free of cost***

A mechanism should be devised to minimize the financial burden of coverage, especially for more vulnerable workers such as domestic workers. As POEA and DOLE move forward with discussions on mechanisms that would require

SSS coverage prior to deployment, it is imperative that it includes a provision providing for coverage at little or no cost to the migrant worker.

#### **4. *Develop a comprehensive information/communication and outreach plan***

Migrant workers need to be aware of their rights and potential benefits. Many migrant workers do not access the benefits to which they are entitled because of a lack of information and/or because of other challenges. Pre-departure orientation seminars should include country-specific information outlining social security schemes (where they exist) and procedures for accessing these schemes.

### **B. Country and Program Specific**

#### **1. Gulf Cooperation Council (GCC) Countries:**

- ***Provide better oversight of recruiters:*** To better translate the existing rights of workers in the area of social security protection into practice, and to begin to move forward with the extension of additional rights, better oversight of recruiters and employers is needed. There also needs to be more reliable and accessible recourse to state agencies. Labor departments need to be more effective in following up with cases filed.
- ***Raise Awareness of Migrant Workers' Rights and Make Services Accessible.*** Awareness of their legal rights and entitlements should be raised among the migrant worker and connections should be made to existing support services. This would be a first step towards strengthening such linkages and support services, both overseas and with migrants' rights groups back home. It would also help to increase pressure on the host government to more effectively implement the legal rights and entitlements of migrant workers, including access to speedy and transparent mechanisms to resolve wage disputes; and help protect the rights of migrant workers.
- ***Develop a program in Gulf Cooperation Council Countries that improves access to Long-Term Benefits for Temporary Migrants.*** GCC countries do not provide pension benefits for temporary migrants, but all have end-of-service benefit (EoSB) arrangements of about one month per year worked. To provide for better long-term security, the EoSB arrangements could be transformed into a funded defined contribution program for all temporary workers. Alternatively, for rehired migrants, it could be supplemented with a voluntary funded defined contribution scheme in which contributions by employees are matched by employers (with a ceiling) and with a default option in which temporary migrants are automatically enrolled with a basic contribution (around 5%) unless they opt out.<sup>iv</sup>

## 2. Singapore

- ***Make social and public assistance available to migrants.*** Migrant workers help to fund public welfare programs in Singapore through their tax contributions yet cannot avail of social and public assistance programs. Since S-pass and E-pass holders are paying into the system, they should be entitled to social assistance benefits.
- ***Amend the law allowing for unilateral cancellation of work permit.*** In Singapore, employers can unilaterally cancel the work permit of a foreign worker without any explanation or justification, effectively forcing the worker to return home early. This means that, in practice, the provision against wrongful termination in the Employment Act does not apply to foreign workers. Workers should be able to object to arbitrary dismissal. Any worker who is dismissed before the expiry of a work permit should be allowed to seek work within the remaining period without the current employer's consent.<sup>v</sup>
- ***Extend Coverage of the Employment Act.*** Without coverage under the Employment Act, domestic workers and seafarers experience increased vulnerability and insecurity in the workplace. Domestic workers should at least be covered by the Employment Act.
- ***Implement a national minimum wage.*** There is no minimum wage in Singapore. There is a prescribed wage for each category of work permit but not a minimum wage. A national minimum wage should be implemented in the interest of all workers.
- ***Improve enforcement of existing laws.*** Legally, domestic workers have access to certain rights; however this often fails to translate into practice. As an example, employer liability for injury of domestic workers at work falls under the scope of clause 3 of the Work Permit conditions, which establishes that the employer shall be responsible for and bear the costs of the worker's upkeep and maintenance. This includes the provision of adequate food, as well as medical treatment. However, the requirements set out in clause 3 are often ignored and enforcement is weak – much depends on the conscience of individual employers and many injured workers are simply deported.<sup>vi</sup> Better oversight of employers is needed to translate legal protections into practice.
- ***Increase access to pension benefits and/or end-of-service benefits.*** Migrant workers do not have access to pension benefits or end-of-service benefits for contracts less than three years. Even if they have access to redundancy payments, the amount is negligible and does not provide for long-term security. Migrant workers in Singapore



effectively do not have access to a long-term benefit scheme, except to the extent that they are contributing to SSS in the Philippines.

- ***Use foreign worker levy to benefit migrant workers.*** There is a levy on foreign workers, which, it is argued, was imposed to keep the demand for foreign workers down. Currently, the rate for domestic workers is \$265 per month (normal); \$170 per month (concession). Total levy income is more than S\$1 billion every year. Workers do not pay this levy themselves. Rather, their employers do, and it is absorbed into the general budget of the government. Non-governmental organizations (NGOs) in Singapore argue that the levy has the effect of depressing migrant worker incomes, since employers evaluate the cost of hiring a worker on the basis of salary plus levy plus other charges like insurance, and this makes them more resistant to raising wages. NGOs in Singapore have argued for levy money to be used wholly or in part for the benefit of migrant workers.

### 3. Hong Kong

- ***Domestic workers should be allowed to apply for permanent residency.*** While non-Chinese nationals can obtain residency after working in Hong Kong for seven years, immigration rules exclude migrant domestic workers from seeking permanent residency. With the right of abode comes the right to vote, to change employer, welfare and other social services. This policy was challenged in court by a Filipino migrant domestic worker and several others. In September 2011, the lower Court of Hong Kong ruled in favor of the petition. However, it was overturned in March 28, 2012 by a 3-member High Court of Hong Kong. The case will be appealed to the Hong Kong Final Court of Appeals.
- ***Conduct further studies.*** Further studies are needed to compare:
  - a) the entitlements or non-entitlements vis-à-vis social security of foreign domestic workers with those of locals (looking at which entitlements are universal entitlements and how access to social security for foreign domestic workers compares with locals working as domestic workers), and;
  - b) comparing the entitlements / non-entitlements of foreign domestic workers with other employed foreigners. This would help to identify the gaps in social security provision for migrant workers, and migrant domestic workers in particular.

#### 4. Taiwan

- ***Broaden access to healthcare.*** Practices that perpetuate unequal access to healthcare on the basis of nationality (even though all workers in Taiwan are equally paying into the healthcare system) should be ended.
- ***Increase the salaries of domestic workers.*** Since 2007, the minimum wage has increased by 17.53%, while migrant domestic workers (who are not protected by the Taiwan Labor Standards Act) have not seen a salary increase in 14 years.<sup>vii</sup> Domestic workers should not be excluded from the Labor Standards Act and should have their salaries increased to be on par with other categories of local workers.
- ***Include domestic workers in the Labor Standards Act.*** Domestic workers are not protected against gender discrimination. Since domestic workers are not covered by the Labor Standards Act, employers can terminate a worker's employment due to pregnancy. Domestic workers should be included in the labor legislation of Taiwan. Advocacy groups should continue to flag the discrimination that this exclusion perpetuates.
- ***Coordinate governmental efforts to solve placement fee problem.*** While the Philippine government requires employers and recruitment agencies to shoulder expenses related to deployment, governments in many destination countries do not. The workers then have to wait until they return to the Philippines to file a complaint against the recruiters for violating Philippine law. At that point, it is extremely difficult to recover the funds to which the worker is entitled.<sup>viii</sup> Governments need to coordinate policies around placement fees. As suggested in DOLE's 2011 Report to Congress, the Joint Labor Conference (to be held each year between the Manila Economic and Cultural Office, the POEA, and the DOLE and the Taipei Economic and Cultural Office and the Council of Labor Affairs) should be used as a venue to initiate policy reforms.

#### 5. Italy

- ***Forge a Social Security Agreement with Italy.*** There is no social security agreement in place between the Philippines and Italy. Social security agreements are necessary to ensure the "portability of acquired rights to achieve eligibility through totalization of insurance periods across countries."<sup>ix</sup> Without a social security agreement, a migrant worker cannot total their periods of contribution to the pension schemes of each country that is party to the agreement in order to meet the required minimum years of contribution in one of the two countries to collect benefits. Without totalization, OFWs who return to the Philippines after years of working in Italy and paying into their social security system, but without meeting the minimum number of years required to qualify for benefits, would only have the option of withdrawing these contributions. A social security agreement must be concluded between Italy and the Philippines.

- ***Repeal the law allowing healthcare personnel to report undocumented migrants, increase access to healthcare, and improve living/working conditions.*** The law allowing health care personnel to report undocumented migrants who seek their services to the authorities should be repealed. This law is problematic, as it discourages undocumented migrants from seeking medical care, and also conflicts with their human right to health.

## 6. Canada

- ***Increase the scope of employment and labor legislation.*** All migrant workers should be both covered by Employment Standards and labor legislation; and also protected against working overtime without remuneration or working under hazardous conditions. Provinces that exclude certain categories of migrant workers from protection, or that provide a lower threshold of protection for certain categories of workers, should amend their employment legislation to provide the same protection for all workers.
- ***Increase access to benefit schemes for which migrants are paying.*** Migrant workers have been shown to be unable to avail of benefit schemes, such as employment insurance, as a result of administrative requirements. As such, requirements for accessing the scheme should be reconsidered. If migrant workers are helping to fund a social security scheme they should be able to avail of the benefits which they have been paying for in times of need.

## 7. Philippines

### A) SSS OFW Coverage

- ***Identify mechanisms to cover the costs of SSS coverage.*** A mechanism should be devised to improve an OFW's access to coverage without additional financial burden, prior to deployment. A different arrangement could be created for OFWs that aims to decrease their monthly payments, while addressing their unique social security concerns. A smaller monthly contribution rate could be considered. Alternatively, a mechanism could be devised to compel the employer to shoulder a portion of the contribution or payments could be subsidized by the Philippine government (at least for low-income and vulnerable sectors, such as domestic workers).
- ***Revive the Kabayanihan project.*** To better coordinate the provision of the social welfare services and programs and to reduce remittance fees, the Kabayanihan project could be revived. This was a DOLE initiative to coordinate the services of SSS, PhilHealth, PagIBIG, and POEA by establishing a one-stop-shop for OFW

social and welfare services at the Philippine Overseas Labor Offices. Through Kabayanihan, payment of fees for all agencies and programs could be coordinated, so that only one remittance fee would be charged to the OFW. The one-stop-shop would also provide a centralized and accessible agency through which OFWs could easily learn about the programs and services of which they may avail.

- ***Require mandatory membership only if OFW does not shoulder cost.*** Unless a mechanism can be devised to reduce the financial burden of OFWs, SSS membership should not be mandatory. While OFWs would benefit from improved access to social security, many OFWs would end up making the required initial payment and then let their payments lapse. The proposal of mandatory registration without mandatory membership is more appropriate, giving the OFW the final decision on whether or not they will activate their membership by making an initial payment.

#### **B) Pag-IBIG**

- ***Identify mechanisms to cover the cost of PAG-IBIG coverage.*** Similar to monthly SSS contributions, it would be beneficial if a mechanism could be devised to lighten the burden, on the OFW, that arises out of paying not only their portion of the Pag-IBIG monthly contribution, but also their employer's portion.
- ***Conduct further analysis*** in order to assess whether the program is responsive to the needs of low-income and vulnerable sectors.

#### **C) OWWA**

- ***Improve the OFW Reintegration Program (OFW-RP).*** There are many reports about the difficulty in accessing funds, inadequate information on the program, and the absence of a comprehensive plan for OFW reintegration.

#### **D) PhilHealth**

- ***Increase awareness of PhilHealth.*** This initial assessment suggests that there is a significant lack of awareness about PhilHealth benefits for OFWs and their families
- ***Further research*** would be helpful to determine if membership in PhilHealth should be mandatory for OFWs. The research could include years of payment, overseas location of the OFW during these years, and if overseas employers provide health insurance. If such a study were carried out, proper recommendations could be made. These may include:

- Devising new ways to increase awareness of PhilHealth benefits with the goal of increasing the number of claims made;
- Allowing OFWs who are covered by another plan to opt out of PhilHealth;
- Reducing the financial burden of premium payments on OFWs by coordinating remittance payments with other agencies, or by allowing OFWs to apply for subsidies.

## **2. Rationale for Report**

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In the last four decades, labor migration has come to serve as the backbone of the Philippine national economy. With over 8 million Filipinos living and working in 214 countries and territories, remittances of Overseas Filipino Workers (OFWs) are a centerpiece of the national economic development plan. Data from the *Bangko Sentral ng Pilipinas* (BSP) shows that, in 2011, OFWs sent home \$20.12 billion<sup>x</sup>, helping to stabilize the currency amidst a global economic crisis.<sup>xi</sup>

Yet, despite the central role played by OFWs in national economic development, they are provided with inadequate social protection for themselves and their families. They are often explicitly excluded from social security or labor legislation in destination countries, or are effectively denied access to protective mechanisms as a result of administrative requirements.

While the Philippine government has stepped in to help by extending social security coverage to OFWs, the contexts in which many OFWs work are such that these well-intentioned programs are inaccessible to a significant segment of the labor force. This is especially true for low skilled migrants, domestic workers, and migrants with an irregular status. The fact that only about “28% of the labor force falls under the formal Social Security System (SSS) and its public sector counterpart, the Government Service Insurance System (GSIS)” is telling of the difficulties that many workers face in accessing social security.<sup>xii</sup>

With this context, there is a need to improve access to social security for OFWs. CMA has undertaken the following study on social security for this purpose. It surveys the legislative regimes in the top ten countries of destination for Filipino migrant workers and assesses the effectiveness of these regimes in providing social security to OFWs and their families. The study also surveys and assesses social protection mechanisms available to OFWs from the Philippine government, both while they are away and when they return home. A list of recommendations is then compiled. The overall goal of the publication is to inform advocacy initiatives and policy decisions that can improve access to social security for Filipino migrant workers.

### 3. Conceptual Framework

#### 3.1 Social Security and Social Protection

Social security can be construed broadly or narrowly. A broad construction would encompass various social protection mechanisms, including informal support networks provided by the family and community organizations. A more narrow construction would be limited to formal, legally mandated schemes providing benefits in cash or in kind to secure protection in the areas of income security and health care.<sup>xiii</sup> This includes security in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a main income earner.<sup>xiv</sup>

Following the ILO definition of social security, we will define social security as:

“The protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from”.<sup>xv</sup>

##### 9 Branches of Social Security:

- |                      |                                |
|----------------------|--------------------------------|
| 1. Sickness          | 6. Medical care                |
| 2. Maternity         | 7. Subsidies for families with |
| 3. Employment injury | children                       |
| 4. Unemployment      | 8. Old age                     |
| 5. Invalidity        | 9. Death                       |

(Source: ILO. 1984. *Introduction to Social Security*)

#### 3.2 Types of Social Security Programs

These 9 branches of social security can be provided for under different programs. There are generally 6 types of programs. These are:<sup>xvi</sup>

##### Types of Social Security Programs:

1. Universal benefits schemes (financed by government revenues)
2. Social Insurance (financed by employers and workers)
3. Provident funds (mandatory saving schemes)
4. Mandatory retirement saving schemes (individual contributions)
5. Employer liability schemes (employer is obliged to provide benefits to

### 3.3 Overseas Filipino Workers and Temporary Contract Workers

As per Republic Act 10022, an Overseas Filipino Worker (OFW) is defined as:

“a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes, or on an installation located offshore or on the high seas. A “person to be engaged in a remunerated activity” refers to an applicant worker who has been promised or assured employment overseas ”.<sup>xvii</sup>

This definition is broader than the previous one set out in RA 8042, which excluded permanent residents and immigrants. Despite this broad definition, the reality remains that in many of the top destination countries, especially countries from the Gulf Cooperation Council, work contracts are two years in length and there is no access to permanent residency, even after years of work. As a result, our focus will be on temporary contract workers, as opposed to permanent residents or immigrants. This focus is further justified by the unique difficulties that such workers face in accessing social security protection. While permanent residents are often given access to benefits in the host country on par with citizens, temporary contract workers are often denied such access.

The fact that we are focusing on temporary migrant workers has a significant bearing on our recommendations pertaining to social security provisions. Migrant workers who have left their families behind, and who likely plan to return to the Philippines have unique social security interests as compared to other categories of migrant workers. They will likely be interested in ensuring portability of benefits, access to social security for their families left behind, wage equality, and maximizing their remittances.

#### *Profile of OFWs*

The Philippines is one of the top countries of origin of migrant workers. OFWs can be found in 214 countries and territories around the world. There are particularly high numbers of OFWs in the Middle East and Asia, with 684,060 or 61% of the 1.1 million OFWs deployed in 2010 having been deployed to the Middle East, and 280,808 or 25% having been deployed to Asia.<sup>xviii</sup> The top eleven destination countries for OFWs in 2011 were

- 1) Kingdom of Saudi Arabia
- 2) United Arab Emirates
- 3) Singapore
- 4) Hong Kong
- 5) Qatar
- 6) Kuwait

- 7) Taiwan
- 8) Italy
- 9) Bahrain
- 10) Malaysia
- 11) Canada

Collectively, OFWs sent home \$20.12 billion in remittances in 2011.<sup>xix</sup>

Country	Permanent (2010) (CFO)	Temporary (2010) (CFO)	Undocumented (2010) (CFO)	Total (2010) (CFO)	Total deployment 2010 (POEA)	Total deployment 2011 (POEA)
<b>Saudi Arabia</b>	354	1,482,185	30,000	1,512,539	292,945	316,736
<b>UAE</b>	1,711	606,443	28,000	636,154	201,214	235,775
<b>Singapore</b>	44,000	67,420	48,600	160,020	70,251	146,613
<b>Hong Kong</b>	23,509	141,240	5,000	169,749	101,340	129,575
<b>Qatar</b>	16	290,315	15,000	305,331	87,813	100,530
<b>Kuwait</b>	502	160,604	8,000	169,106	53,010	65,603
<b>Taiwan</b>	8,437	88,077	2,885	99,399	36,866	41,896
<b>Italy</b>	33,055	77,124	13,200	123,379	25,595	31,704
<b>Bahrain</b>	85	49,775	4,000	53,860	15,434	18,230
<b>Malaysia</b>	26,004	90,269	200,000	316,273	9,802	16,797
<b>Canada</b>	581,095	80,444	6,135	667,674	13,885	15,658

(Sources: Commission on Filipinos Overseas (CFO), stock estimates 2010; POEA 2010 and 2011 Deployment data)

### **Characteristics of OFWs**

- *Permanent ‘Temporary’ Migrants:* Most OFWs deployed are land-based workers working under a standard two-year contract. Contracts are often renewed so that the worker, who is officially ‘temporary’, actually returns year after year to work for the same employer. This creates a pattern of migration and a dependency on remittances at both the family and national levels. Of the 1,123,676 land-based Filipino workers deployed in 2010, 76% (or approximately 1.1 million) had land-based jobs and 24% (or 347,150) were seafarers.<sup>xx</sup> 341,966 (or 30%) of the total were New Hires, and 781,710 (70%) were Rehires.<sup>xxi</sup> Of the New Hires, the majority (322,198) were deployed through a private recruitment agency.<sup>xxii</sup>
- *Domestic Workers & Gendered Migration:* Migration for work is highly gendered. In a 2012 presentation on the latest statistics in gender and employment, the Institute for Labor Studies (ILS) reported that of the 2.043 million OFWs who were working or had worked abroad during the past 6 months in 2010, 1.068 million (52.3%) were men and 975,000 (47.7%) were women.<sup>xxiii</sup> Additionally, the number of women being



deployed is increasing. In the same year, 185,602 of the Land-based New Hires were women, while only 154,677 were men.

The type of work for which OFWs are hired is also gendered. 72.8% of the newly hired women in 2010 were domestic workers, while 63.1% of the newly hired men worked in production, as transport equipment operators, and as laborers.<sup>xxiv</sup> This is a particular concern when speaking of access to social security, since in most countries, domestic workers who are predominantly women are excluded from labor laws, occupational health and safety legislation, and other protective mechanisms afforded to most workers.

- *Many OFWs are Undocumented:* More than half a million Filipinos overseas are undocumented. Most of them are in Malaysia, Europe, and the United States.<sup>xxv</sup> These workers are vulnerable because they are not covered by labor legislation or other protective mechanisms in their country of destination. Undocumented workers often do not have legal recourse when they are faced with exploitative working conditions. They face detention and deportation if they are discovered by the authorities. Consequently, they are more likely to go underground and experience abuse and exploitation in their work and daily lives.
- *OFWs move between borders and jurisdictions:* Although it may seem obvious, it is important to flag the cross-border nature of migration. OFWs move between borders, crossing a number of jurisdictional boundaries, which makes regulating their conditions of employment difficult. Within the various jurisdictions there is a plurality of legal institutions, objectives, and techniques aimed at regulating migration. This is especially relevant when considering access to social security for OFWs. Solutions to improve access must consider how to work within and between these overlapping and competing jurisdictions.
- *OFWs return home:* The transitional nature of temporary migration creates special social security concerns for OFWs. Foremost is the portability of benefits and eligibility for long-term benefits, in recognition of long-term work. As it stands, migrants may be working overseas for many years but not qualify for long-term benefits (such as old-age, disability and survivors' pensions, and health care) in either their home or host country as a result of eligibility requirements tied to length of service (often at least 10 years). Without mitigating bilateral agreements providing for portability of accrued rights, a migrant worker who pays into a social security scheme in their host country is effectively paying a wage tax, and subsidizing the social security system for nationals. Ironically, at the same time they are increasing their own insecurity due to lost wages and no accrued benefits.

**Common reasons for denying social security to migrant workers:**

- Access to benefits is restricted based on nationality or residency;
- Restrictions on portability of benefits (payment to country of origin);
- Minimum qualifying conditions (e.g. lengthy period of contribution before entitlement to benefits);
- Economic sector of employment not covered by the social security system (i.e. domestic workers); and
- Consequences associated with the non-documentation of workers.

(Source: Vaillancourt-Laflamme, C (2012, March 27). ILO and the Role of Social Security in Protection of Migrant Workers. Social Security Protection for OFWs: An Urgent Agenda. Power Point Presentation conducted from Philippines Migrants Rights Watch, Manila.)

Considering their profile, OFWs and their families have unique social security interests, which are not appropriately addressed within existing national frameworks. These include:

- Access to social security benefits (including health care benefits) for families left behind
- Access to short-term benefits and work-related benefits and rights, including wage equality with local workers
- Maximization of remittances to support families left behind
- Portability of accrued rights and long-term benefits from the host-country and coverage in the Philippines
- Access to suitable end-of-service benefits or pensions that will facilitate reintegration and provide for long-term security upon return to the Philippines and upon retirement
- Mechanisms to ensure that excessive fees are not charged to OFWs, reducing their remittances, potentially leading to debt bondage
- Mechanisms to ensure that OFWs are able to practically use their rights

National laws and bilateral and multilateral agreements must be responsive to the particular circumstances of OFWs and to the vulnerabilities that these circumstances give rise to. Special attention needs to be devoted to how local, national, regional, and international initiatives can respond to the unique social security concerns of migrant workers.

### 3.4 Typology of OFWs

OFWs are not a uniform group of workers. They are characterized by different interests and priorities, and access to social protection mechanisms. For the purposes of this study we have grouped OFWs into four categories:

*Undocumented/Irregular Migrant Workers:* This category of migrant worker includes migrant workers who do not have the appropriate work or residency permits. They have either left the country without the appropriate papers (for example on a tourist visa), or have become undocumented while working overseas. Workers can fall into an irregular situation for a variety of reasons. Their contract may expire while they continue to work overseas; or they may run away from an abusive or exploitative employer, leaving behind their documents in the process (as many domestic workers in the Gulf Cooperation Council do). Regardless of the reason for their irregular status, this category of worker experiences unique social security concerns, heightened as a result of their exclusion from the legislative protections offered to documented workers.

Although it is beyond the scope of this study to address social security for undocumented workers, it is imperative that access to social security be extended to these workers. This would have to be premised on universal access, not contingent on appropriate documentation. A framework for the extension of social security to undocumented workers could be the topic of a further study.

*Documented domestic workers:* While domestic workers can be classed as low- to medium-skilled OFWs, we have created a separate analytical category for them because they are so prominent amongst OFWs. In 2010, of 340,279 newly deployed land-based OFWs, 96,538 were ‘household service workers’, most of whom were female.<sup>xxvi</sup> Even more workers fall into the category of domestic workers when one considers that many caregivers work in the sphere of the private home.<sup>xxvii</sup>

Domestic workers have unique social security concerns as a result of living and working in their employer’s home. This is also due to their exclusion from the protection of employment and labor legislation in many countries. Migrant domestic workers are rarely protected against working overtime without remuneration or in hazardous conditions, and the limited rights that they have are poorly enforced due to the difficulties in regulating their workplace. Many of these workers are temporary migrants and do not enjoy the right to become permanent residents in their host country nor the right to circulate without restriction in the labor market.<sup>xxviii</sup> Where access to social protection schemes is different for domestic workers than for low- to mid-skilled workers, their exclusion is noted and the alternate scheme (if any) to which they have access is outlined.

*OFWs in low- to medium-skill work:* This category of worker is characterized by temporary migrants hired to fill permanent positions in low-tech industries experiencing labor shortages.<sup>xxix</sup> Included in this category are construction workers and laborers. This type of scheme is non-transitional, in that it does not allow for permanent migration. Although

workers may be rehired year after year, effectively entrenching permanent ‘temporary’ migration, they are hired on a contractual basis and do not move any closer to achieving permanent residency. Yet, Gulf countries, and some East Asian countries such as Singapore, rely heavily on low-to mid-skilled migrants for their service and construction industries.<sup>xxx</sup>

*OFWs working towards permanent residency in mid- to high-skill jobs.*<sup>xxxii</sup> This category of migrant workers includes mid- level technicians, high-level professionals, students, academics and investors/entrepreneurs.<sup>xxxiii</sup> For workers in this category, temporary labor migration schemes often offer the possibility to stay permanently in high-income destination countries. In some cases, low-skilled migrants can also work towards permanent residency, as is the case with Live-in Caregivers in Canada.

### 3.5 Bilateral Agreements

Bilateral agreements and Memorandums of Understanding (MOUs), related to labor migration and social security, can be used to help structure labor migration and protect the interests of OFWs. Bilateral agreements are more formal, binding, specific, and action-oriented than MOUs. MOUs are agreements that provide a broad framework to address common concerns.<sup>xxxiii</sup> Bilateral agreements and MOUs can help to create the platform and pre-conditions to better manage migration by “attributing a concrete role to governments of partner countries.”<sup>xxxiv</sup>

***Social Security Agreements:*** Social security agreements are of particular relevance in the context of our discussion on access to social security. These agreements are tools that set mechanisms and guidelines for facilitating access to social security for citizens and residents of the two countries that are party to the agreement. These agreements set out the roles and responsibilities of duty-bearers (state and non-state actors) and claim holders (migrants).<sup>xxxv</sup> Their focus is on access to long-term benefits, such as disability, old-age and survivor pensions. Generally, SSAs do not cover short-term benefits such as sickness and maternity benefits because existing gaps in national provision are better dealt with through BLAs.<sup>xxxvi</sup>

#### ***Types of Bilateral Agreements:***

- Bilateral labor agreements
- Memorandums of understanding (MOU - common in Asia)
- Statements of mutual labor cooperation or informal assurances
- Bilateral social security agreements
- Anti- trafficking agreements
- Agreements/MOUs between labor-sending countries (i.e. MOU between Philippines and Indonesia on Migrant Workers)
- Model employment contracts

Source: Wickramasekara, P. (Director) (2006, February 17). Labor Migration in Asia: Role of Bilateral Agreements and MOUs. JIPLT workshop . Presentation conducted with ILO, Tokyo.

### Features of Social Security Agreements

In working towards the provision of long-term benefits to migrant workers, SSAs should include the following features based on ILO Convention 157 on the Maintenance of Social Security Rights:

- **Equality of treatment:** extends to migrants the same entitlement to benefits as is enjoyed by nationals
- **Portability:** allows benefits to be paid to the worker's country of residence
- **Determination of the applicable legislation:** rules to determine which country's system will apply to the migrant worker
- **Totalization:** maintenance of rights in the course of acquisition that allows periods of membership or contribution in both home and host country to be added together to determine eligibility for benefits; and
- **Administrative assistance:** guarantees the co-ordination of liaison offices to extend assistance to covered workers and implement the provisions of the agreement

The Philippines has seven social security agreements in place; however, they are all with Western countries. Within the top destination countries surveyed, the Philippine government only has a social security agreement in place with Canada.

**Bilateral Labor Agreements:** Bilateral Labor Agreements (BLAs) are accords between two states that formalize each side's commitment to ensure that migration takes place in accordance with agreed principles and procedures. They can facilitate inter-state cooperation towards the protection of migrant workers, match labor demand and supply, manage irregular migration, and regulate recruitment.<sup>xxxvii</sup> As of 2011, the Philippine government has signed 49 bilateral labor agreements with 25 countries and territories.<sup>xxxviii</sup>

Within the top ten destination countries that are under review, the Philippine government has the following active bilateral labor agreements:

Country	Title/Subject of Agreement	Date
UAE	Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the United Arab Emirates in the Field of Manpower	April 9, 2007
	MoU between RP and UAE in the Field of Manpower (Arabic)	
Qatar	Agreement Between the Government of the Republic of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar	May 10, 1997
	Additional Protocol to the Agreement between the Government of the Republic of the Philippines and the	Oct 18, 2008

	Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar signed on 10 March 1997	
<b>Kuwait</b>	Memorandum of Understanding on Labor and Manpower Development Between the Government of the Republic of the Philippines and the Government of the State of Kuwait	Sept 14, 1997
	Memorandum of Understanding Between the Department of Foreign Affairs of the Republic of the Philippines and the Ministry of Foreign Affairs of the State of Kuwait on the Establishment of Bilateral Consultations	Sept 14, 1997
<b>Taiwan</b>	Memorandum of Understanding between the Manila Economic and Cultural Office (MECO) in Taipei and the Taipei Economic and Cultural Office (TECO) in the Philippines regarding the Special Hiring of Workers	Sept 3, 1999
	Memorandum of Understanding on Special Hiring Program for Taiwan Between the Manila Economic and Cultural Office in Taipei (MECO) and the Taipei Economic and Cultural Office (TECO) in the Philippines	Jan 12, 2001
	Memorandum of Understanding on Special Hiring Program for Taiwan Between the Manila Economic and Cultural Office (MECO) in Taipei and the Taipei Economic and Cultural Office (TECO) in the Philippines	March 20, 2003
<b>Bahrain</b>	Memorandum of Agreement Between the Republic of the Philippines and the Kingdom of Bahrain on Health Services Cooperation	April 24, 2007
<b>Canada</b>		
• Alberta	Memorandum of Agreement Between the Republic of the Philippines (DOLE) and The Ministry of Employment and Immigration of Alberta (E&I) Concerning Cooperation in Human Resource Deployment and Development	October 1, 2008
	Draft of Implementing Guidelines for the Memorandum of Understanding with British Columbia and Alberta	
• British Columbia	Memorandum of Understanding Between the Department of Labor and Employment of the Government of the Republic of the Philippines (Department Of Labor and Employment - DOLE) and The Ministry of Economic Development of the Government of British Columbia, Canada (ECDV) Concerning Co-Operation in Human Resource Deployment and Development	January 29, 2008
• Manitoba	Memorandum of Understanding Between The Department of Labor and Employment of the Government of the Republic of the Philippines (DOLE) and The Department of Labour and Immigration of the Government of Manitoba, Canada (LIM) Concerning: Co-Operation in Human Resource and Deployment	February 8, 2008
• Manitoba	Memorandum of Understanding Between The Department of	Sept 21, 2010

	Labor and Employment of the Republic of the Philippines (DOLE) and The Department of Labor and Immigration of the Government of Manitoba, Canada Concerning: Co-Operation in Human Resource Deployment and Development	
• Manitoba	Guidelines for the Implementation of the Memorandum of Understanding Between The Department of Labor and Employment of the Republic of the Philippines (DOLE) and The Department of Labor and Immigration of the Government of Manitoba, Canada Concerning: Co-Operation in Human Resource Deployment and Development	Sept 21, 2010
• Saskatchewan	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and Her Majesty The Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment (AEE) Concerning Cooperation in the Fields of Labor, Employment and Human Resource Development	December 18, 2006

(Source: POEA. Bilateral Labor Agreements. Available at [http://www.poea.gov.ph/lmi\\_kiosk/labor\\_agreements.htm](http://www.poea.gov.ph/lmi_kiosk/labor_agreements.htm))

### 3.6 International Standards on Social Security for Migrant Workers

***Social security as a human right:*** The right to social security is recognized as a human right in the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), as well as in other international and regional legal instruments.

- **Article 22 of the Universal Declaration of Human Rights:** *“Everyone, as a member of society, has the right to social security...”*
- **Article 25 of the Universal Declaration of Human Rights:** *“Everyone has the right to ... necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”*
- **Article 9 of ICESCR:** *“The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”*
  - 160 United Nations member States have ratified or acceded to Article 9 of the ICESCR, agreeing to guarantee the right to social security for *everyone* within their national boundaries.

***International Labor Organization & United Nations Conventions:*** Since 1919, the ILO has adopted 31 Conventions and 23 Recommendations in the area of extending social security to all.<sup>xxxix</sup> ILO Convention 143 (1975), Convention 97 (1949), and Convention 189 (2011) are

particularly relevant to migrants' rights. C 97 has been ratified by 49 countries, and aims to regulate and protect migrants through fair hiring procedures, non-discrimination in wages and social benefits, and by allowing migrants to join unions. C 143 has been ratified by 23 countries, and goes a step further - calling for sanctions on employers who recruit unauthorized migrants and for equal treatment in wages and social benefits for all migrants, including those who are undocumented. C 189 was recently adopted and, as of writing, has only been ratified by Uruguay<sup>1</sup>. C 189 is specifically aimed at protecting the rights of all domestic workers. The Philippines ratified C 189 on September 5, 2012, signalling its entry into force in 2013.

International standards for the protection of the rights of migrant workers are also set out in the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990). Of particular relevance to our discussion on social security is the right to receive social benefits under social security systems to which migrants contribute or to receive refunds of their contribution upon departure.<sup>xi</sup> The Convention also contemplates equal rights for migrants, equal wages and working conditions for documented and undocumented migrants, and equal access to employment services, public housing and institutions.<sup>xli</sup>

Beyond the aforementioned conventions, the ILO has adopted a non-binding rights-based Multilateral Framework on Labor Migration that identifies policies and best practices aimed at respecting the standards set out in the Conventions. The framework considers the interests of all the stakeholders – including migrants, sending countries, and receiving countries - in the formulation of a mutually beneficial global system of migration management. The policy instruments recommended centre around three instruments or courses of action:

- 1) *Information*: inform migrants of their rights, duties and available social benefits, and provide counselling on administrative and legal issues related to overseas employment.
- 2) *National Legislation*: Ensure that national legislation is in compliance with the standards set out in the ILO/UN Conventions.
- 3) *Bilateral/Multilateral Agreements*: Bilateral, regional or multilateral agreements can be used to provide social security coverage and benefits, and to ensure portability of social benefits (including health and pension benefits), for regular migrant workers and, when appropriate, to irregular migrants.

Annex 1 outlines the ratification of conventions related to social security for migrant workers in the top destination countries for OFWs plus the Philippines. The Philippine government has ratified most of these conventions (7 of the 8 surveyed), reflecting their interest, as a country of origin, in protecting the rights of migrant workers. Conversely, ratification is very low among countries of destination. In the top three destination countries (the Kingdom of Saudi Arabia, the United Arab Emirates, and Singapore) none of the surveyed Conventions

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<sup>1</sup> As of end of October, a total of 4 States Parties have ratified C189, being Uruguay, Philippines, Mauritius and Nicaragua. It enters into force in 2012 as it has met the minimum requirement of at least 2 ratifications.



on social security have been ratified. Of the destination countries for OFWs, Italy has ratified the most Conventions - having ratified 5 out of the 8 Conventions related to social security for migrant workers.

## **4. Social Security in Top Ten Destination Countries**

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### **4.1 General Findings**

- Gulf Cooperation Council (GCC) countries do not provide pension benefits to migrant workers. End-of-Service benefits often act as a proxy for a pension in GCC countries (about one month of wage for each year worked).
- End-of-Service benefits lack many of the strengths of pension schemes and are not as effective at providing for long-term savings. They do not offer a reasonable replacement rate when compared against pension schemes and they are paid out as a lump-sum, which is unlikely to be used for long-term retirement savings.
- If a worker is paying into a defined benefit scheme, a bilateral social security agreement is needed to provide for portability of accrued rights. However, portability agreements are far from being systematically entered into or implemented. Situations still exist where migrant workers contribute to a social security scheme for years in their host country, but cannot access benefits when they return home because of the absence of a bilateral social security agreement.
- Administrative requirements can disable migrants from availing of social security benefits under the schemes that they are paying into.
- In most surveyed countries, domestic workers are excluded from labor legislation, and corresponding social protection mechanisms,.
- If OFWs are paying into a social security scheme in a host country, mechanisms need to be devised to facilitate a lump-sum payment upon departure or ensure that the benefit is accessible upon return to the Philippines.

## 4.2 Gulf Cooperation Council (GCC) Countries

### Profile of OFWs in the GCC and the Labor Migration Scheme

Country	Total deployment 2011 (POEA)
1. Saudi Arabia	316,736
2. UAE	235,775
5. Qatar	100,530
6. Kuwait	65,603
9. Bahrain	18,230

Among the top ten destination countries for OFWs, five are Gulf Cooperation Council (GCC) countries. As outlined below, GCC countries represent countries 1, 2, 5, 6, and 9 for the deployment of new and rehired OFWs. Since the GCC countries have similar social security and labor migration schemes, they have been grouped together. At the same time, the scheme in each country is separately noted to highlight its uniqueness.

**Occupational Categories:** Migrant workers can access various types of visas in GCC countries: employment visas, house work visas (for domestic workers) and farming visas. Common occupational categories for OFWs in GCC countries include construction workers, domestic workers, and engineers,<sup>xlii</sup> although occupations vary slightly across the GCC countries. In Kuwait many migrant workers are service-workers, software-developers, soil experts, and architects.<sup>xliii</sup>

In all GCC countries within the top 10, except for Saudi Arabia, the occupational category under which the highest number of OFWs was deployed in both 2010 and 2011 was Service Worker (which includes domestic workers). In Saudi Arabia, the highest number of deployed workers was Production Workers, followed by Professional and Technical Workers, and then Service Workers. As a percentage of total deployment in 2011, Kuwait had the most OFWs employed as Service Workers (47%). Deployment through the POEA is listed below by occupational type.

## Deployment of OFWs by Hiring and Skill Type: 2010-2011

### SAUDI ARABIA

Deployment of OFWs to Saudi Arabia by Type of Hiring and Skills: 2010-2011

	2010	2011*	% Change
<b>Total</b>	<b>292 945</b>	<b>312 590</b>	6,71
<b>Rehires</b>	<b>173 670</b>	<b>204 088</b>	17,51
<b>New Hires</b>	<b>119 275</b>	<b>108 502</b>	-9,03
Administrative and Managerial Workers	228	248	8,77
Agricultural Workers	576	592	2,78
Clerical Workers	2 603	2 482	-4,65
Production Workers	54 238	51 824	-4,45
Professional and Technical Workers	23 568	26 974	14,45
Sales Workers	1 738	1 250	-28,08
Service Workers	35 080	23 656	-32,57
Not Stated	1 244	1 476	18,65

### UNITED ARAB EMIRATES (UAE)

Deployment of OFWs to United Arab Emirates by Type of Hiring and Skills: 2010- 2011

	2010	2011*	% Change
<b>Total</b>	<b>201 214</b>	<b>235 775</b>	17,18
<b>Rehires</b>	<b>154 043</b>	<b>162 756</b>	5,66
<b>New Hires</b>	<b>46 779</b>	<b>66 504</b>	42,17
Administrative and Managerial Workers	193	323	67,36
Agricultural Workers	85	71	-16,47
Clerical Workers	3 886	5 419	39,45
Production Workers	9 048	14 069	55,49
Professional and Technical Workers	3 289	4 369	32,84
Sales Workers	3 376	3 601	6,66
Service Workers	26 586	38 203	43,70
Not Stated	316	449	42,09

**5. QATAR**

Deployment of OFWs to Qatar by Type of

Hiring and Skills

Year 2010 – 2011

	2010	2011	% Change
<b>Total</b>	<b>87 813</b>	<b>100 530</b>	14,48%
<b>Rehires</b>	<b>50 604</b>	<b>55 460</b>	9,60%
<b>New Hires</b>	<b>37 209</b>	<b>45 070</b>	21,13%
Administrative and Managerial Workers	71	134	88,73%
Agricultural Workers	10	18	80,00%
Clerical Workers	1 736	1 570	-9,56%
Production,Transport, Operators, Laborers	15 684	13 981	-10,86%
Professional and Technical Workers	3 293	4 326	31,37%
Sales Workers	796	1 046	31,41%
Service Workers	14 796	20 598	39,21%
Not Stated	823	3 397	

**6. KUWAIT**

Deployment of OFWs to Kuwait by Type of

Hiring and Skills: 2010-2011

	2010	2011	% Change
<b>Total</b>	<b>53 010</b>	<b>65 603</b>	23,76%
<b>Rehires</b>	<b>25 702</b>	<b>30 529</b>	18,78%
<b>New Hires</b>	<b>27 308</b>	<b>35 074</b>	28,44%
Administrative and Managerial Workers	25	60	140,00%
Agricultural Workers	17	22	29,41%
Clerical Workers	749	766	2,27%
Production Workers	1 820	1 258	-30,88%
Professional and Technical Workers	702	1 046	49,00%
Sales Workers	415	379	-8,67%
Service Workers	23 368	30 681	31,29%
Not Stated	212	862	306,60%

*Note: Data for 2011 is preliminary;**Source: Philippine Overseas Employment Administration (POEA)*

**Work contracts:** The *Kafala* sponsorship defines the labor migration scheme in the GCC. Under this system, employment is tied to a particular employer and employers hold their workers' passports to regulate their residency. This gives employers near-total control over their workers. Release of sponsorship is not a legal right of the worker and the employer has the right to grant or withhold release from the sponsorship.<sup>xliv</sup> Employers retain this right in order to "safeguard their business interests."<sup>xlv</sup> Needless to say, the sponsorship system gives the employer a significant amount of control over the worker. All fees pertaining to the recruitment of foreign workers must be borne by the employer. This includes fees for the residence permit and work permit,<sup>xlvi</sup> exit and re-entry visas, and return tickets to the worker's home country. Daily transportation is also the responsibility of the employer.<sup>xlvii</sup>

**Private Employment Agencies (PEAs):** The movement of migrant workers from their countries of origin to their destination countries is mostly undertaken by private employment agencies, which can be recruitment agencies in the countries of origin and placement agencies in destination countries. This is especially the case for migrant domestic workers. Lack of information, dishonesty, and the illegal charging of fees as salary deductions are often reported as PEA practices. An annual report by the US Department of State on Trafficking in Persons has put pressure on the governments of the region to end such practices. Some countries have passed legislation to regulate PEAs, such as Kuwait and United Arab Emirates. However, authors of *The Situation of Migrant Domestic Workers in Arab States: A Legislative Overview*, Carole Kerbage and Simel Esim, explain that labor inspection systems often lack the capacity to monitor the agencies. Consequently, PEAs have assumed a central role in setting conditions of employment, like wages and rest days, and in the settlement of labor disputes between employers and workers.<sup>xlviii</sup> The effective regulation of PEAs is a key challenge for policy makers at the international and national levels.<sup>xlix</sup>

**Length of Contracts:** In GCC countries, migrant workers who are employed in low or semi-skilled professions will likely be deployed on short-term contracts. In Saudi Arabia, work contracts for semi-skilled workers are for two years and there is a probationary period of 3 to 6 months. During that time, a contract of employment may be terminated. If a contract is terminated during the probationary period, the employee will get their salary for the period of time they worked and a return air ticket.<sup>i</sup> Conversely, in the United Arab Emirates, work contracts can be one of two types and are accessible to all categories of workers. The first is a fixed-term contract, which cannot be in excess of four years. The second is an unlimited contract.<sup>ii</sup> In the GCC countries it is most common for workers to be deployed on temporary two year contracts, which may be renewed in subsequent years.

**Scope of Labor Laws:** Not all workers are protected by the labor laws in GCC countries. For example, domestic workers and other categories of workers, like agricultural laborers, fishermen, and ship crews, do not fall under the scope of labor law in KSA. These categories of workers do not fall under the jurisdiction of Labor Offices<sup>lii</sup> and are largely excluded from access to social benefits. As Carole Kerbage and Simel Esim explain "[Women migrant

domestic workers] are still not being regarded as workers with rights as other workers in Arab States<sup>liii></sup>. In the UAE, even for other classes of workers, there are reports that labor laws are not rigorously enforced. In 2007, the UAE Ministry of Labor released its first annual report, *The Protection of the Rights of Workers in the UAE*, which acknowledges that “more needs to be done to expand capacity to enforce labor laws and fully protect the rights of workers in the country.”<sup>liv</sup>

Bahrain is currently creating new legislation in order to extend labor protections to domestic workers. The law has been approved by Parliament and is waiting for the approbation by King Hamad bin Isa Al Khalifa, who declared that they “will be entitled for proper labor contract which will specify the working hours, leave and other benefits”<sup>lv</sup>. Bahrain would be the first of the GCC countries to pass this kind of comprehensive legislation protecting the rights of domestic workers. If it passes, it will give migrant domestic workers access to employment and labor rights; concretely, they will be free to join trade unions, and will also be eligible for unemployment benefits and vacation pay.<sup>lvi</sup> However the draft still excludes domestic workers from the application of many of its provisions, citing the special relationship between the domestic worker and the employer in the household sphere, and a common reluctance among the governments of the region to regulate the employment relationship taking place within the household as the reasons for this.

Other GCC countries are also in the process of regulating domestic work. Kuwait, Qatar, Saudi Arabia and the United Arab Emirates are in the draft or discussion stage of creating specific labor regulations concerning migrant domestic workers.<sup>lvii</sup>

### 4.3 GCC Countries' Social Security Systems

All GCC countries provide social security benefits to specific segments of their population. Saudi Arabia's social security system provides old age, disability and survivor benefits for its employed and self-employed nationals. In the UAE, as per the 1977 Social Security law, certain groups of people are entitled to financial support, including the disabled, those on a limited income, widows, unmarried women, divorced women, women separated from their husbands, and those married to foreign nationals. The Public Institution for Social Security in Kuwait includes old age, sickness, disability and death insurance for citizens.

Conversely, foreign workers are excluded from social security systems in GCC countries. Foreign workers do not have access to the main social security systems in any of the GCC countries within the top ten. The social-protection schemes that are available to migrant workers in each country are outlined below.

## Kingdom of Saudi Arabia (KSA)

### A. *Short-Term Benefits*

**Health Care Benefits:** All documented workers, with the exception of domestic workers, have access to mandatory employer sponsored medical insurance. Workers receive free treatment and medication, with coverage ranging from 100,000 Saudi Riyal (SR) (minimum) to 330,000 SR (maximum), and an average of 200,000SR.<sup>lviii</sup> Compared to other GCC countries, this is good coverage.

Domestic Workers are not covered by the mandatory medical insurance and are not covered by the Saudi Labor law (Article 7). However, provided that they are documented, any domestic worker (like a household service worker, driver, or gardener) may be treated free of charge in any government hospital. To access treatment, a worker must show their *Iqama* (residence permit) prior to treatment.<sup>lix</sup> Undocumented workers do not have access to health care.

**Work-Injury Benefits/Sick Pay:** Documented workers are covered by Occupational Health and Safety legislation. The Occupational Hazards Branch of GOSI (General Organization for Social Insurance) applies to all Saudis and non-Saudis.<sup>lx</sup> In the event that a non-Saudi contributor sustains an injury, they will be compensated with a lump sum.<sup>lxi</sup>

Domestic Workers are excluded from protection in the areas of work-related injuries or death. Article 5 of the *Social Insurance Law* states that, “domestic servants” are among the workers excluded from the application of its provisions, along with agricultural workers and others. As per Article 7 of the *Saudi Labor Law*, “domestic helpers” (as well as agricultural workers, fishermen, and ship crew) are exempt from the law. Article 7 provides that the Ministry shall, in coordination with the authorities, draft regulations for domestic workers and the like to govern relations with employers and specify the rights and duties of each party.<sup>lxii</sup>

**Maternity Leave/Parental Leave:** Workers covered by Saudi Labor Law receive maternity and parental leave. Since domestic workers are not covered by Saudi Labor Law, they do not get maternity or parental leave.

### B. *Work-Related Benefits*

**Employment Standards, Wage Equality & Unemployment:** There is no minimum wage in KSA, nor is there wage equality with national workers. Vacation is provided to workers who fall under Labor Laws; which excludes domestic workers). The prevailing practice is to give unskilled workers 21 vacation days per year with full pay and 30 days per year to semi-skilled workers after having completed 5 consecutive years of service.<sup>lxiii</sup> Unemployment benefits are not available to migrant workers.

**Severance Pay/End-of-Service Benefits:** Article 84 of the Labor Law provides for an end-of-service award due at the end of employment, no matter the reason of termination (retirement,

end of a fixed term contract, or resignation).<sup>lxiv</sup> The end-of-service award amounts to half a monthly salary for each of the five first years and one month's salary for each of the subsequent years. After 20 years of employment, severance pay for redundancy dismissal is 78.5 weeks of salary.<sup>lxv</sup> Severance shall be calculated on the basis of the last wage.<sup>lxvi</sup> The award is reduced in cases of resignation.<sup>lxvii</sup> It is common for an employer to try to deny a worker the severance pay to which they are entitled- this is a common source of labor disputes post-employment.<sup>lxviii</sup>

#### **KSA End of Service Benefits in Relation to Length of Service**

≥ 6 months: <b>0.25 month(s)</b>	≥ 4 years: <b>2 month(s)</b>
≥ 9 months: <b>0.33 month(s)</b>	≥ 5 years: <b>2.5 month(s)</b>
≥ 1 year: <b>0.5 month(s)</b>	≥ 10 years: <b>7.5 month(s)</b>
≥ 2 years: <b>1 month(s)</b>	≥ 20 years: <b>17.5 month(s)</b>

(Source: ILO DIALOGUE; Industrial and Employment Relations Dept.)

### **C. Long-Term Benefits**

**Pension Benefits (old age/disability/survivor):** As in other GCC countries, migrant workers are not allowed to participate in KSA's public pension scheme. Such schemes are reserved for nationals. A pension-benefit proxy is provided through their end-of-service benefits described above.

## **United Arab Emirates (UAE)**

### **A. Short-Term Benefits**

**Health Care Benefits:** The new Health Insurance law which took effect in January 2007 states that it is mandatory for all expatriates living and working in the Emirate of Abu Dhabi to have health insurance provided by the employer or sponsor.

Recognizing the many heat-related injuries experienced by workers in the construction industry, in 2006 the government passed a law mandating a break during the hottest hours, 12:30 and 3:00 pm; however this law was largely ignored by companies and was not enforced by the government.<sup>lxix</sup>

**Work-Injury Benefits/Sick Pay:** Under UAE Labor Law, workers are granted work-injury benefits and sick pay. Articles 142-153 stipulate that workers are entitled to free treatment. They will receive their full salary for the first 6 months and half their salary for the succeeding months until their recovery. Partial disability benefits must be approved by the Ministry of Health. Permanent disability benefits are equivalent to 24 months' salary, provided that it will not be less than 18,000 Dirhams and not more than 35,000 Dirhams.<sup>lxx</sup>



Domestic workers, who are excluded from labor laws, are not entitled to sick pay or work-injury benefits.

**Maternity Leave/Parental Leave:** Workers covered by UAE Labor Law receive maternity leave but not parental leave. Maternity leave is 45 days of full pay, including before and after delivery, provided that the worker has served for at least one year. The worker is granted half pay if they have not completed one year of service.

Since domestic workers are not covered by UAE Labor law, they do not get maternity or parental leave.

## **B. Work-Related Benefits**

**Employment Standards, Wage Equality & Unemployment:** There is no minimum wage and foreign workers do not have wage equality with national workers. There is vacation pay. The worker receives a basic wage and a housing allowance, if any, for the days of annual leave.<sup>lxxi</sup> If the work circumstances require that the worker continues to work during annual leave, the employer must pay the leave allowance.<sup>lxxii</sup> There are no anti-discrimination measures in UAE Labor Law. In January 2011 the Ministry of Labor announced the introduction of minimum wages for its professional workforce (which makes up at least 20% of the total workforce) – minimum wages for these categories of workers are based on their skill level. There are 3 levels. Level one salary should not be less than \$3,333 (Dirham 12,000), level two \$1,944 (Dh 7000), and level three 1,388 (Dh 5,000).<sup>lxxiii</sup> There is no minimum wage for low- to medium-skilled workers. There are no unemployment benefits.

**Severance Pay/ End-of-Service Benefits:** Severance pay, or “gratuity at the end of service”, is provided for by UAE Labor Law. According to Article 132 of Federal Law No. 8 on the Regulation of Labor Relations [FLLR], a worker who has completed one year or more of continuous service is entitled to severance pay (“end of service gratuity”) at the end of their employment.<sup>lxxiv</sup>

Article 132 specifies that workers who have completed at least one year of service get 21 days’ wage for each of the first five years of service, and 30 days’ wage for each additional year of service.<sup>lxxv</sup> The aggregate amount of severance pay must not exceed two years’ wage. Severance pay for redundancy dismissal after 20 years of employment is 79.3 weeks of salary.<sup>lxxvi</sup>

A worker is also entitled to severance pay for any portion of a year worked, provided that he/she has completed at least one year of continuous service (Article 133 FLLR).<sup>lxxvii</sup>

There is no entitlement to severance pay if the employee is terminated for one of the reasons set out in Article 120 of the Labor Law (those entailing summary dismissal) (Article 139 FLLR).<sup>lxxviii</sup> Therefore, if an employee is fired for cause, they are not entitled to any end-of-service pay. If an employee is terminated for economic reasons, however (such as redundancy), they are entitled to benefits.

**UAE End of Service Benefits in Relation to Length of Service**

≥ 6 months: <b>0 month(s)</b>	≥ 4 years: <b>84 day(s)</b>
≥ 9 months: <b>0 month(s)</b>	≥ 5 years: <b>105 day(s)</b>
≥ 1 year: <b>21 day(s)</b>	≥ 10 years: <b>255 day(s)</b>
≥ 2 years: <b>42 day(s)</b>	≥ 20 years: <b>555 day(s)</b>

(Source: ILO DIALOGUE; Industrial and Employment Relations Dept.)

As compared to Saudi Arabia, UAE has little (or no) benefits for shorter-serving employees, but more benefits for longer-serving employees.

### **C. Long-Term Benefits**

#### ***Pension Benefits (old age/disability/survivor)***

As in other GCC countries, migrants are not allowed to participate in UAE's public pension scheme. Such schemes are reserved for nationals. A pension-benefit proxy is provided through their end-of-service benefits described above.

## **Qatar**

### **A. Short-Term Benefits**

**Health Care Benefits:** Medical and dental treatment is heavily state-subsidized for expatriates. Residents and visitors are required to apply for a Qatar Riyal (QR) 100 health card. With this card, workers pay small charges for a variety of tests and consultations plus a nominal fee for inpatient care.<sup>lxxxix</sup>

**Work Injury Benefit / Sick Pay:** Employees are entitled to work-injury benefit at the cost of the employer. In case of illness, workers are entitled to two weeks sick leave per year with full pay, and half pay for another four weeks. After 12 weeks of sick leave the employee can be dismissed.<sup>lxxx</sup> Article 82 of Qatar Labor Law states that sick leave shall not be granted until an employee has been working for three months.

**Maternity Leave:** Any female worker who has been employed for a year is entitled to maternity leave with full pay for fifty days.<sup>lxxxi</sup>

### **B. Work-Related Benefits**

**Employment Standards, Wage Equality & Unemployment:** As in other GCC countries, domestic labor law clearly favors the employer, but does provide some labor rights to the worker. According to Article 69 of Qatar Labor Law, workers are entitled to an annual leave which shall not be less than three weeks for the worker whose service is less than five years and four weeks for the worker whose service is more than five years<sup>lxxxii</sup>. The worker shall receive her/ his usual wage during this period of time. There is no minimum wage in Qatar. Additional employment rights provided for in the Labor Law are summarized below:

***Obligation of Employer to Support Worker - Article 44:*** an “employer shall undertake to enable the worker to perform the work and to provide him with all things necessary therefore”

***Workers’ Right to Refuse Work - Article 45:*** an “employer may not ask the worker to perform other than the work agreed upon unless necessity so requires”.

***Workers’ Right to Terminate - Article 51:*** “the worker is entitled to terminate the contract before its expiry but only under very limited circumstances. Appeal provisions are similarly limited, requiring the employee, before recourse to a Department of Labor tribunal, to first lodge an appeal with the employer. (Article 64) If a dismissal is deemed in violation of the law, the Department can either annul the dismissal, order the worker to return to work and payment of his wages for the period he was not allowed to work or payment of a suitable compensation. There is no mention in the legislation of the possibility of awarding further damages to the worker.”

***Obligation of Employer to Provide Safe Work Space - Article 103:*** employer must take “measures capable of securing the hygiene and good ventilation in the places of work”. However, this provision does not extend to the living quarters of migrant workers.

***Right to Organize - Article 118:*** “provides for the establishment of unions referred to as 'Workers Organizations' authorized to take “care of the interests of their members and protection of their rights and their representation in all matters related to the affairs of the work.” The *Georgetown Voice* noted, however, there are no unions or strikes in the country. Organizers of strikes are summarily deported.”

Qatar has an international obligation under ILO Convention No.111 (which it ratified in 1976) to cease employment discrimination.

--J. Ocean Dennie. *Modern Slavery: The Plight of Foreign Workers in Qatar*.

### **The Kafala system and ineffective labor law for migrant workers**

“The status of migrant workers under Qatari legislation, including both labor and human rights law is not dissimilar to the status afforded illegal aliens. Labor laws offer little protection because of lax enforcement, while foreign embassies of developing countries do little besides offer refuge to their nationals, for fear of jeopardizing the flow of remittances workers send to their families back home. Labor laws in [GCC] states are usually in favour of protecting the employer who is a citizen of the state rather than the foreigner who is not, which leaves the treatment and well-being of these workers to the will of the employer. What contributes to this employer-biased mind-set is that many labor-receiving countries such as Qatar end up tying migrant visas to their employers, making it all but impossible to switch employers when they experience abuse. These countries also exclude domestic workers from the labor laws, leaving them open to abuse with few avenues for redress.”

--J. Ocean Dennie. *Modern Slavery: The Plight of Foreign Workers in Qatar*.

***Severance Pay/End-of-Service Benefits:*** The worker is entitled to a three-week wage as an end-of-service benefit for every year of employment upon completion of first year.

Severance-pay is available for redundancy dismissal after 20 years of employment in the amount of 60 weeks of salary.<sup>lxxxiii</sup>

Article 56 of Labor Law provides that “the employer who maintains a retirement system or a similar system which secures for the worker a greater benefit than the end of service gratuity to which the worker is entitled under the provisions of Article (54) of this law shall not be obligated to pay to the worker the end of service gratuity in addition to the benefit available to the worker under the said system.”

### **C. Long-Term Benefits**

**Pension Benefits (old age/disability/survivor):** Foreign workers are not included in the pension scheme. Rather, the end-of-service benefit acts as a pension proxy.

## **Kuwait**

As in other GCC countries, domestic workers in Kuwait (as well as workers on temporary contracts of less than six months) are excluded from the scope of the private sector Labor law.<sup>lxxxiv</sup>

### **A. Short-Term Benefits**

**Health Care Benefits:** Since April 2000, health insurance has been mandatory for expatriates. No residence is renewed unless the premium for health insurance is paid and the renewal period is also linked to the period of health insurance coverage. Kuwait is beginning to pressure companies to provide medical insurance for their employees to reduce the burden on state healthcare programs. In addition, private medical insurance is recommended for most foreigners. Expatriates holding health insurance from local private insurance companies will be allowed to renew their residence for the period of validity of the insurance. Expatriates are charged for certain non-emergency procedures, though emergency and outpatient services are free for expatriates. They are not charged for medication provided by government hospital pharmacies on prescriptions from hospital doctors.

**Work Injury Compensation / Sick pay:** Compensation varies with the severity of an injury. In case of death: 1500 days’ pay for survivors; total permanent disability: 2000 days’ pay; partial permanent disability: employee gets a percentage of what would be due for total permanent disability.<sup>lxxxv</sup>

In the case of sickness, an employee is entitled to sick leave for the first six days of illness on full pay, the next six days on three-quarters pay, the next six days on half pay, the next six days on quarter-pay, and the next six days without pay. This is the total entitlement for one year.<sup>lxxxvi</sup>

**Maternity Leave:** The maximum maternity leave is 30 days prior to delivery and 40 days after delivery on full pay. A new mother is allowed to be absent from work for up to 100 consecutive or non-consecutive days. The annual leave entitlements of a woman who makes

use of her maternity for leave privileges in any year are forfeited on a day-per-day basis until her annual leave entitlement for that year is extinguished.<sup>lxxxvii</sup>

### ***A. Work-Related Benefits***

***Employment Standards, Wage Equality & Unemployment:*** There is no minimum wage in Kuwait. An employee with up to five years of continuous service is entitled to 14 days leave a year on full-day leave, provided he/she has completed one year of service, and to 21 days after more than 5 years of continuous service. Unemployment benefits do not apply to foreign workers.<sup>lxxxviii</sup>

***Severance Pay:*** As in other GCC countries, severance pay and end-of-service benefits serve as a proxy for a pension. Severance pay for redundancy dismissal after 20 years of employment is 75.8 weeks of salary.

***End-of-Service Benefits:*** Article 51 of New Kuwaiti Private Sector Labor Law provides that the employee has the right to receive end-of-service pay as follows:

- *Wage earners:* Indemnity is equal to ten days salary every year during the first five years, and 15 days during the following years. Total payment may not exceed one-year's salary for employees who get paid on a daily, weekly, hourly or per job basis.
- *Salaried employees:* Indemnity of 15 days for the first five years, and one month's salary for the following years. Total payment may not exceed one and a half years of salary for employees who are paid on monthly basis.

### ***C. Long-Term Benefits***

There are no state pension schemes in Kuwait for foreigners. Certain state institutions and some international companies have corporate pension schemes.

## Bahrain

### The importance of social security in times of unrest

The importance of social protection for migrant workers has been highlighted as a result of recent political turmoil and economic instability. In Bahrain, for example, the *Foreign Post* reported to Congress that as a result the economic downturn that followed political turmoil beginning 14 February 2011, several OFWs were laid off or sent back home by their employers due to a significant drop in business profits. The particular industries that were most severely impacted were tourism, hotel industries, retail business, construction, engineering, and other services.

As the *Foreign Post* reported, “The anti-government protests in the Kingdom had directly affected the employment status of Asian expatriate workers, including OFWs, who represent 79% of the labor force in the private sector.” The unrest caused the Philippine government to impose a total travel ban to Bahrain. This was lifted on 1 June, 2011, when the Bahraini government lifted their state of national safety and curfew hours in light of the improving security situation.

**The Contribution Model:** Social Insurance contributions are levied on all businesses with more than 10 employees, and all employees are entitled to the protections offered by the Labor Law, which deals with hiring, termination, hours of work and entitlements to annual leave. It is now optional for businesses with less than 10 employees to register with the Social Insurance Organization (SIO).<sup>lxxxix</sup>

The Social Insurance Organization (SIO), previously known as the GOSI (General Organization for Social Insurance (GOSI)) is responsible for social insurance in Bahrain. For Bahraini employees the current rate of contribution is 19%, while for expatriate employees the rate of contribution is 4%.<sup>xc</sup>

For Bahrainis, employers pay 12% of basic pay towards social insurance and employees pay 7%. This covers old age, disability, death and unemployment. For expatriates, employers pay 3% of the basic pay towards social insurance, while the employees pay 1%. This goes towards unemployment benefits and work injury.<sup>xc</sup>

If the company employs over 50 expat staff, there is an additional 4% to be paid to SIO, which is utilized for training Bahrainis. Therefore, for employers with 50 or more expat staff, the total contribution to SIO is 9%. Further, every company can claim back from SIO 75% of the additional 4% paid to SIO to train Bahrainis in order to train their own Bahraini staff.<sup>xcii</sup>

### A. Short-Term Benefits

**Health Care Benefits:** Bahrain’s healthcare system includes in-patient, outpatient, dental, pediatric, maternity and orthopedic care. Within the state system, most primary and secondary treatment is available free to nationals and at a subsidized cost for expatriates.<sup>xciii</sup> For expatriate workers to access medical services, they must hold a valid Central Population Card (CPR).<sup>xciv</sup>

According to a study by the World Health Organisation (WHO), healthcare in Bahrain has improved over the last three decades. Expats will find a solid healthcare infrastructure with options for treatment in the public and quasi-public systems.

**Work Injury Compensation / Sick pay:** Article 124 of the Labor Law provides that “The injured worker shall receive treatment in a Government Medical Institution or private medical institution at the discretion of the employer concerned”. The employer is also responsible for the cost of medicines and the transportation expenses incurred. As per Article 127 “The injured worker shall be paid full wages during the period of treatment determined by the doctor”. If the length of the recovery exceeds 6 months, the worker will be paid at the rate of half his/her wage. The migrant worker also shall be entitled to compensation for his/her injury. Those clauses also apply in cases of illness if the worker contracts an “occupational disease”. The benefits can only be provided for illness contracted in/because of the professional sphere.<sup>xcv</sup> Domestic workers are not covered by those clauses.

**Maternity Leave:** Each female employee can be granted maternity leave of forty-five days with full pay. This period may be extended by a further fifteen days without pay. On her return to work, she will be entitled to an additional hour each day for nursing for a period of two years from the date of birth.<sup>xcvi</sup>

## **B. Work-Related Benefits**

**Employment Standards, Wage Equality & Unemployment:** There is no officially mandated national pay scale, nor a minimum wage in Bahrain, although orders are issued from time to time setting minimum wages in particular industry sectors.<sup>xcvii</sup> Consequently, salaries, wages and benefits in Bahrain vary widely. Benefits may include free accommodation or allowances, air fare, educational allowances, shipments of personal expenses, extraordinary medical expenses protection, etc. Unless mandated in the Labor Law, such benefits are subject to negotiation. There is no income tax in Bahrain.

Migrant workers, including domestic workers, are to be extended access to unemployment insurance, as per a new Bahraini labor law soon to be passed. However, migrants’ rights organizations are sceptical about its implementation. To receive unemployment insurance benefits for unfair dismissal, a worker needs a court order stating that the dismissal was indeed unfair. This may make access to unemployment benefits inaccessible in practice.<sup>xcviii</sup>

**Holidays and weekly days of rest:** An employee cannot be required to work for more than six days in any given week and Fridays are the weekly day of rest on full pay. All employees are entitled to a minimum of 21 days paid annual leave, increasing to 28 days after 5 years of service. An employee may not waive this entitlement, postpone it, or receive payment in lieu except in accordance with the law and on termination of employment.<sup>xcix</sup>

**Severance Pay/End-of-Service Benefits:** Following article 107 of Bahrain Labor Law, “The party terminating a contract without giving the required notice shall pay to the other party compensation equivalent to the amount of wages payable to the worker for the period of such notice or the unexpired portion thereof”. In respect of domestic workers, the law in preparation, mentioned above, will grant them an unemployment benefit in case of unfair dismissal, equal to 60 per cent of their basic salary.<sup>c</sup> This initiative is new within GCC countries.

A leaving indemnity is payable on termination of employment of a non-Bahraini national. It is calculated by reference to a statutory formula depending on the length of service and whether the employment has been terminated by the employer or the employee.

### ***C. Long-Term Benefits***

***Pension Benefits (old age/ disability/ survivor):*** Pension payments are only given to Bahraini nationals,<sup>ci</sup> although some state institutions and international companies have corporate pension schemes.

## **GCC Countries: Assessment and Recommendations**

As explained above, there is a framework for accessing some social security in the GCC countries; however this is an incomplete framework. The legal rights and entitlements of migrant workers in areas such as health care, employment standards and wages, occupational health and safety, severance pay, maternity, and others are often not respected, especially for low-skilled workers and domestic workers. According to Human Rights Watch, a non-governmental organization dedicated to defending human rights worldwide, complaints of “unpaid wages, excessive working hours, heavy debt burdens from exorbitant recruitment fees, isolation and forced confinement resulting in physical and psychological abuse” are prevalent in GCC countries.<sup>cii</sup>

What is more, many workers are unaware of their rights or are unable to enforce them. A culture of fear and silence, combined with the weak presence of NGOs and human rights advocates, perpetuates this problem. An activist who spent time in Qatar offers some ideas on the causes of this problem:

### **Causes of Mistreatment of Migrant Workers**

“The underlying causes that have contributed to this situation are similarly difficult to delineate with any degree of accuracy, however, certain trends can be extrapolated and offered forth as factors. Implicit in these factors are quite obvious differences between employer and employee involving national identity, class and language. Laborers hired through recruitment agencies in other countries such as Bangladesh or Nepal, arrive in Qatar with very little understanding of the culture or labor rights in the country. These workers usually originate from uneducated and impoverished classes, lured by desperation into working abroad in order to improve their lives and support family members back home. There is a tremendous sense of honor in accepting such employment abroad. This can be compounded by severe pride where workers frequently lie to their families about their living conditions. With that comes an awful degree of pressure to continue with unfavourable circumstances rather than facing the defeat of returning home empty-handed. Again, this culture of fear is driven by a lack of knowledge on available legal rights, remedies and redress. Workers are often afraid to even raise issues of employer wrongdoing, for in the words of one such laborer, the “company will take action...if they hear I’m talking”, while another worker echoed his concern: “If we make a mistake, we get sent back.””

--J. Ocean Dennie. *Modern Slavery: The Plight of Foreign Workers in Qatar*.



Difficulties experienced by migrant workers are exacerbated by exploitative business practices of recruitment agencies. Contract substitution is common, whereby a worker agrees, or is forced to agree, to accept a much lower salary than is stated on the official POEA work contract. Poor monitoring of recruitment agencies exacerbates such practices. *Due to this exploitative context, the following recommendations exist:*

**1. *Improve implementation and oversight.*** To better translate existing rights of workers in the area of social security protection into practice, and to begin to move forward with the extension of additional rights, better oversight of recruiters and employers is needed. There also needs to be more reliable and accessible recourse to state institutions. For example, in Qatar, although the National Human Rights Committee has been established to promote human rights within the country and address violations, their resources are limited and their services are not well publicized.<sup>ciii</sup> Qatari Labor Law provides that complaints can be filed with the Labor Department, but few such cases are filed and the ones that are filed do not make it very far.

**2. *Raise awareness of migrants' rights and make connections.*** It is essential that awareness be raised among the migrant worker population of their legal rights and entitlements and that the connections be made to existing support services, as limited as they may be. This would be the first step towards strengthening such linkages and support services, both overseas and with migrants' rights groups back home. It would also help to increase pressure on the host government to more effectively implement the legal rights and entitlements of migrant workers, including access to speedy and transparent mechanisms to resolve wage disputes, and help protect the rights of migrant workers.

**3. *Develop a program in Gulf Cooperation Council countries that improves access to Long-Term Benefits for Temporary Migrants.*** GCC countries do not provide pension benefits for temporary migrants, but all have end-of-service benefit (EoSB) arrangements of about one month per year worked. To provide for better long-term security, the EoSB arrangements could be transformed into a funded defined contribution program for all temporary workers. Alternatively, for rehired migrants, it could be supplemented with a voluntarily funded contribution scheme in which contributions by employees are matched by employers (with a ceiling) and with a default option in which temporary migrants are automatically enrolled with a basic contribution (around 5%) unless they opt out.<sup>civ</sup>

## 4.4 Singapore

Deployment of OFWs to Singapore by Type of Hiring and Skills:  
2010-2011

	2010	2011	% Change
<b>Total</b>	<b>70,251</b>	<b>146,613</b>	108.70
<b>Rehires</b>	<b>63,707</b>	<b>128,545</b>	101.78
<b>New Hires</b>	<b>6,544</b>	<b>18,068</b>	176.10
Administrative and Managerial Workers	253	321	26.88
Agricultural Workers	7	13	85.71
Clerical Workers	211	383	81.52
Production, Transport, Operators, Laborers	731	831	13.68
Professional and Technical Workers	1,565	2,090	33.55
Sales Workers	255	468	83.53
Service Workers	3,271	11,576	253.90
Not Elsewhere Classified	251	2,386	850.60

*Note: data for 2011 are preliminary*

*Source: Philippine Overseas Employment Administration (POEA)*

### Profile of OFWs and the Labor Migration Scheme in Singapore

As of December 2011, there were 146,613 OFWs in Singapore.<sup>cv</sup> Many of these workers are undocumented workers and domestic workers. In June 2010 there were an estimated 52,360 undocumented migrant workers<sup>cvi</sup> and 70,060 documented domestic workers in Singapore. Other common occupations of OFWs are information technology (IT) workers/computer programmers, nurses and health care assistants, engineers, and architects.<sup>cvi</sup>

OFWs are part of a broader contingent of the nearly one million low-wage migrant workers in Singapore. As Transient Workers Count Too (TWC2) (a Singapore-based migrant advocacy organisation) reported, migrant workers “make up about 20% of the total population and are mostly employed in construction, shipyards, sanitation services, manufacturing and domestic work.”<sup>cvi</sup> The Singapore Ministry of Manpower reported that “as of Dec 2011, there were approximately 1.19 million foreigners in our workforce and this included approximately 289,000 EP and S Pass holders, and 908,000 Work Permit holders (including FDWs).”<sup>cix</sup>

**Work Permit/R-Pass (for Semi/Low-Skilled Workers):** The R-Pass is a work permit issued to semi/low-skilled workers. It is for workers with a monthly salary of not more than \$2,000. Access to the scheme is employer-based with a foreign-worker levy (tax on employer). With the exception of domestic workers, the number of foreign workers an employer may hire under Work Permits depends on the number of local workers s/he employs and on the

industry.<sup>cx</sup> For a domestic worker, an employer must simply argue that s/he requires the services of a domestic worker (to look after children, an elderly person, a disabled person, etc.). There is no condition of having to employ Singaporeans first or as well.<sup>cxii</sup>

Contracts for R-Pass holders are 1-2 years and are renewable as long as the worker remains employed. There is no access to permanent residency for R-Pass holders.<sup>cxii</sup>

***S-Pass (for Mid-Level Skilled Workers):*** The S-Pass is the work pass issued to mid-level skilled workers with a monthly salary of at least \$2,000.<sup>cxiii</sup> The S-Pass is meant to increase the flexibility and responsiveness of the foreign labor policy and meet industries' demand for mid-level skilled workers.<sup>cxiv</sup> Access is based on a combined point-system and employer-demand. As with the R-Pass, there is a foreign workers levy for hiring S-Pass workers. Companies can have no more than 25% of their total workforce comprised of S-Pass holders.<sup>cxv</sup> Contracts are usually 1-2 years and are renewable as long as the workers remain employed. S-Pass holders may be eligible for permanent residency.<sup>cxvi</sup> Those earning over \$2,800 per month may apply for their dependents to join them.<sup>cxvii</sup>

***Employment Pass (EP for High-Level Skilled Workers):*** Employment Passes are for high-skilled migrant workers who earn a fixed monthly salary of at least \$3,000 and possess certain degrees, professional qualifications or specialist skills.<sup>cxviii</sup> There are two types of Employment Passes: P and Q Passes. These workers have access to permanent residency and may bring their families to live with them in Singapore.<sup>cxix</sup> perhaps need to define Q pass as well since it is mentioned

***Work Contract Duration & Renewability, & Access to Permanent Residency:*** Contracts are usually 1-2 years and are renewable as long as the worker remains employed. Only S-Pass holders and Employment Pass-holders (mid-level to high-level skilled workers) are eligible for permanent residency.<sup>cxx</sup> R-Pass holders (unskilled workers) may only stay in Singapore while employed under a temporary work contract and may not apply for permanent residency.

***Scope of Singaporean Labor Law:*** Domestic workers are not covered by the Employment Act, the key act regarding labor protection, and so they do not have the same legal protections as other workers. Domestic workers were specifically excluded in 1986 when the Act was adopted. The source of the limited rights they do enjoy is the Employment of Foreign Manpower Act, under which work permit conditions are established.<sup>cxxi</sup>

## Overview of the Singaporean Social Security System

***Central Provident Fund:*** The social security system in Singapore is based on a Central Provident Fund (CPF), a compulsory, comprehensive social security savings plan. It operates based on individual savings of joint contributions between employers and employees.<sup>cxxii</sup> It provides for retirement savings, health care, home-ownership, family protection, and asset purchase.<sup>cxxiii</sup> The monthly contributions of Singaporean workers and their employers go into three accounts:

- (1) an Ordinary Account (OA) to finance housing, approved investments, CPF insurance and education;
- (2) a Special Account (SA), principally for old age and investment in retirement-related financial products; and
- (3) a Medisave Account (MA) to pay for medical treatment, hospitalization, and approved medical insurance. A Retirement Account (RA) is created when one turns 55 using the savings in OA and SA to meet basic needs during old age.<sup>cxxiv</sup>

The CPF is exclusively for Singapore residents, which includes both citizens and permanent residents. People on S-Passes or Employment Passes may, after a while, become permanent residents, while those on work permits are barred from becoming permanent residents.<sup>cxxv</sup> Thus, the social protection mechanisms outlined below are provided for temporary migrant workers through other schemes.

***Social Assistance and Taxes on Income:*** In addition to the CPF scheme, Singapore has various social and public assistance programs available to citizens and permanent residents. For example, the Public Assistance (PA) scheme is a long-term assistance scheme available to citizens and permanent residents in Singapore who “are unable to work due to old age, illness or disability, have limited financial means to sustain basic living, and have no or very little family support.”<sup>cxxvi</sup> There are also medical benefits for low-income people and other benefits available through social assistance. This system excludes foreigners, including migrant workers. The exclusion of foreigners from social assistance benefits is problematic, since their tax contributions help fund the system. Therefore categories of migrant workers who pay income taxes are subsidizing the welfare system of Singaporeans without being able to draw on it themselves.

It is important to note, however, that the tax threshold in Singapore is relatively high (\$20,000), so work permit holders would likely not pay income tax. S-Pass holders would pay income taxes, since they are meant to earn at least \$2000 a month (though many are illegally paid much less while still getting taxed as though they are earning their declared income).<sup>cxxvii</sup> Migrant workers also pay for goods and services in Singapore on which GST (General Service Tax) is levied.

***Foreign Worker Levy Keeping down Migrant Workers’ Incomes:*** There is a levy on foreign workers, which, it is argued, was imposed to keep down demand for foreign workers. Workers do not pay this levy themselves, rather their employers do and it is absorbed into the general budget of government. NGOs in Singapore argue that the levy has the effect of depressing migrant worker incomes, since employers evaluate the cost of hiring a worker on the basis of salary plus levy plus other charges like insurance, and this makes them more resistant to raising wages.

NGOs in Singapore have argued for levy money to be used wholly or in part for the benefit of migrant workers, but without success. Government spokespeople have argued on occasion that migrant workers benefit from some things the money is spent on - good roads, street lighting, clean water, etc. Levy rates change from time to time. Currently, the rate for domestic workers is \$265 per month (normal); \$170 per month (concession). Total levy income must be significantly over S\$1 billion every year.

(Source: Gee, John, Exco member and immediate past president of Transient Workers Count Too, Singapore. Email interview. 6 June 2012. )

**Health Care Benefits:** There is no statutory requirement to provide private health insurance benefits to employees in Singapore under the *Employment Act*.<sup>cxxviii</sup> Singapore citizens or permanent residents are automatically provided with a low-cost medical insurance through Medishield, paid for through the Medisave Account of the Central Provident Fund.

Although it is not covered in the *Employment Act*, the *Employment of Foreign Manpower Act* (1990) requires employers to purchase medical insurance for their employees. Employers are required to purchase and maintain Medical Insurance (MI) for inpatient care and day surgery.<sup>cxxix</sup> Purchasing insurance is necessary to be issued a work pass. The insurance coverage must be at least \$15,000 per year.<sup>xxxx</sup> Since the insurance covers inpatient care only (surgery, hospital treatment, hospital stay), and not outpatient care, in the event of a worker suffering serious injury coverage would be quickly exhausted.<sup>xxxxi</sup>

The *Employment of Foreign Manpower Act* also stipulates that the employer must bear all the costs of medical treatment for domestic workers, and most of the costs of medical treatment for other Work Permit (R-Pass) holders and S-Pass workers.<sup>xxxxii</sup>

**Access to Healthcare in Practice:** For some classes of workers, it is questionable whether or not provisions in the *Employment of Foreign Manpower Act* mandating access to medical care are followed. John Gee, Exco member and immediate past president of Transient Workers Count Too (TWC2), a Singapore-based organization dedicated to assisting low-wage migrant workers, found that employers are often reluctant to shoulder the cost of medical care for their workers beyond a very basic level. In his experience, employers would be well advised to take out more comprehensive coverage than the minimum required by law. (1)

Furthermore, according to Bridget Lew Tan, founder and executive director of Singaporean-based Humanitarian Organization for Migration Economics (HOME), injured domestic workers are simply deported instead of being given access to the medical treatment to which they are legally entitled. (2) John Gee of TWC2 confirmed this, reporting that many injured and chronically ill workers are deported instead of being given access to treatment. In his words, “the employer does not need to give a reason for sending them home and there are no effective procedures in place for blocking them from doing so.”(1) It may be more difficult for an employer to do this when a worker is hospitalised due to the extent of their injuries. In this case male workers may seek Work Injury Compensation (WIC) or sue their employers; however, the WIC Act does not cover domestic workers, leaving them more vulnerable to their employers and more apt to being deported if injured.

What is more, an employer can simply cancel the work permit of a domestic worker, saying they are unfit to work, and have them deported.(2) The *Employment of Foreign Manpower Act (1990)* specifies that “the foreign employee shall undergo a medical examination by a Singapore registered doctor as and when directed by the Controller. If the foreign employee is certified medically unfit, the Work Permit of the foreign employee shall be revoked.”(3) These mechanisms make domestic workers’ theoretical access to health care contingent on the employer’s ‘good will’. If the employer decides that they would prefer to end the contract of employment, it is within their grasp to do so and the worker has little recourse. The Ministry of Manpower Website clearly lays out how an employer would go about cancelling a domestic worker’s Work Permit.(4)

*Sources:*

1. Gee, John (Exco member and immediate past president of Transient Workers Count Too, Singapore). Email interview. 6 June 2012;
2. Tan, Bridget (Exec director and founder of HOME). Personal interview. 15 Apr. 2012;
3. Ministry of Manpower. “Employment of Foreign Manpower (Work Passes) Regulations.” *Employment of Foreign Manpower Act (Chapter 91A)*. Available at: <http://www.mom.gov.sg/Documents/services-forms/passes/WPSPassConditions.pdf> >;
4. Ministry of Manpower. *Work Permit (Foreign Domestic Worker) Pass Cancellation*. Web. May 20, 2012. Available at: <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/cancellation-renewal/Pages/pass-cancellation.aspx>

**Work-Injury Benefits:** The *Work Injury Compensation Act (2008)* covers all employees except for domestic workers, self-employed persons, and civil servants such as the armed forces and police forces.<sup>cxxxiii</sup>

Domestic workers are excluded from the *Work Injury Compensation Act of 2008*. Consequently their employer is not liable if they injure themselves at work. Moreover, as outlined above, injured domestic workers are often deported instead of being given access to the medical treatment to which they are entitled.<sup>cxxxiv</sup> This exclusion is very problematic and perpetuates the failure to recognize domestic work as work and domestic workers as workers deserving of the same rights and entitlements as other workers.

**Occupational Health and Safety:** Domestic workers are effectively excluded from the *Workplace Safety and Health Act (2006)*.<sup>cxxxv</sup> Per Section 4(1) of the Workplace Safety and Health Exemption Order (for Occupiers of domestic premises exempted), “Any person who is an occupier of any domestic premises, not being premises which are used (whether wholly or partly) by the occupier for the purpose of the conduct of any business or undertaking of the occupier, is hereby exempted from the provisions of the Act.”<sup>cxxxvi</sup> Since domestic workers work in the homes of their employers, they are not protected by occupational health and safety legislation. As with other exclusions, this heightens the power asymmetry that already exists between them and their employer.

**Sick pay:** Migrant workers are only entitled to sick pay if they are covered by the *Employment Act*. This excludes domestic workers and seafarers from entitlement to sick pay. For other workers who are covered by the provisions of the Act, they are entitled to 14 days of outpatient sick leave per year and 60 days of hospitalization leave if she/he has worked with the same employer for at least 3 months.<sup>cxxxvii</sup>

**Inaccessible Sick Pay:** Even workers covered by the Employment Act, need to get a Medical Certificate to justify their days off work. John Gee of TWC2 has reported to CMA that “TWC2 and HOME have encountered cases where doctors paid by companies deliberately issues ‘short Medical Certificates’ to injured men (i.e., less than three days) so that the companies’ accident record would look good. TWC2 has seen a man with crushed knees and several with severed fingers who were given two days MC.”

### ***Maternity Leave/ Parental Leave:***

**R-Pass Holders:** The Employment of Foreign Manpower Act specifies that a female foreign worker shall not become pregnant or deliver any child in Singapore during the validity of her work permit.<sup>cxxxviii</sup>

Therefore, even though Singapore’s Employment Act gives workers the right to maternity leave, childcare leave, and unpaid leave for infant care, foreign workers on a work permit (R-Pass) are unable to enjoy these benefits because the Employment of Foreign Manpower Act (EFMA) stipulates that foreign workers are not allowed to get pregnant or give birth in Singapore.<sup>cxxxix</sup> The EMFA also stipulates that if a foreign worker is certified medically unfit,

his/her work permit shall be revoked. Hence, foreign workers on a work permit are not only denied maternity benefits, but will be deported if they get pregnant. Their other option is to have an abortion. Some do this without the employer's knowledge, and even with their encouragement.<sup>cxl</sup>

**S-Pass and Employment Pass Holders:** An employee covered by the Employment Act, and who is not an R-Pass holder on a temporary work permit, is entitled to 14 days of outpatient sick leave per year and 60 days of hospitalization leave if she/he has worked with the same employer for at least 3 months.<sup>cxli</sup>

### ***Work-Related Benefits (Singapore)***

***Employment Standards/ Wage Equality/ Vacation/ Anti-Discrimination:*** Workers covered by the *Employment Act* are entitled to wage equality with local workers and are to be paid annual leave if they have worked for at least three months for the same employer. They are entitled to 7 days for 12 months of continuous service and one additional day for every 12 months of continuous service up to a maximum of 14 days.<sup>cxlii</sup>

Until recently, domestic workers, who are not covered by the *Employment Act*, were not entitled to even a single day off per week. Recently, domestic workers won a legally mandated day off, to take effect for new workers and those renewing their contracts from January 1<sup>st</sup>, 2013. While the new measure has significant shortcomings (such as allowing workers and employers to 'agree' on the worker giving up their days off in return for financial compensation), it represents a step towards recognizing domestic work as work and grounding their rights in legislation.

***Severance Pay/End of Service Benefits:*** There are no provisions on severance pay in the Employment Act. For dismissal based on non-economic reasons, workers are not entitled to statutory severance pay. For economic dismissal there are no statutory provisions on redundancy, or end-of-service, payments. The EA stipulates that employees with less than 3 years of service shall not be entitled to redundancy payment (Article 45 EA).<sup>cxliii</sup>

The Tripartite Guidelines on Managing Excess Manpower (as updated in 2009), specify that the amount of retrenchment payment for employees with over 3 years of service is set out in the contract of employment or collective agreement. In the absence of such a provision, it is subject to negotiation between the employee and employer. The norm is to pay a retrenchment benefit between 2 weeks to one month's salary per year of service.<sup>cxliv</sup>

### ***Long-Term Benefits (Singapore)***

***Pension Benefits (old age/ disability/ survivor):*** Migrant workers do not have access to pension benefits because they do not pay into the Central Provident Fund. Considering that there are poor provisions regarding end-of-service benefits (which can serve as a pension proxy), migrant workers in Singapore effectively do not have access to a long-term benefit scheme, except to the extent that they are contributing to SSS in the Philippines.

## **Singapore: Assessment and Recommendations**

***1. Migrant Workers help fund Public Welfare Programs but are excluded.*** Although migrant workers cannot avail of social and public assistance programs, they help to fund them through tax contributions. As Aris Chan notes in *Hired on Sufferance: China's Migrant Workers in Singapore*, “the Singaporean government allows employers to deduct up to 50% of an employee’s salary in one salary period [although there are a wide range of experiences in terms of the amount of deductions employers make, with most making some deductions for food and accommodation]<sup>cxlv</sup>. It also allows employers to deduct income tax from foreign workers who work more than 183 days and hence are taxed at the same rate as residents.”<sup>cxlvi</sup> While those who earn less than S\$20,000 a year should not be taxed at all, as Chan reports, this is not always followed.

- ***Recommendation:*** Since S-pass and E-pass holders are paying into the system, they should be entitled to social assistance benefits. Even work-permit holders, who are generally under the tax threshold, contribute enormously to the system but do not have access to benefits. The system benefits enormously from their employment as a general subsidy to Singapore and via the levy paid by employers.<sup>cxlvii</sup>

***2. Right of Employers to Unilaterally Terminate Violates Employment Law.*** Employers can unilaterally cancel the work permit of a foreign worker without any explanation or justification. This means that, in practice, the provision against wrongful termination in the Employment Act does not apply to foreign workers. Other rights regarding the number of working hours, overtime payments and annual leave are routinely ignored by employers, and under the existing system, workers are unlikely to file a complaint.

- ***Recommendation:*** In support of TWC2, CMA affirms that “workers should be able to lodge an objection to arbitrary dismissal; also that any worker dismissed before the expiry of the duration of a work permit should be allowed to seek work within the remaining period, without the consent of the existing employer.”<sup>cxlviii</sup> TWC2 sets this out in a series of proposals on amending Employment of Foreign Manpower Act last year, and they recently reiterated these proposals during the public consultation on



EFMA revision.

**3. *Discrimination against Domestic Workers perpetuated by exclusion from Employment Act.*** Without coverage under the Employment Act, domestic workers and seafarers experience increased vulnerability and insecurity in the workplace. They are left without legal recourse when employers do not give them rest periods, time-off, maternity leave, or overtime pay, or when an employer terminates their contract of employment unfairly. Exclusion from such basic and essential protection of rights at work goes against international human rights standards.

- **Recommendation:** Domestic workers should at least be covered by the Employment Act (although there are also many basic human rights that domestic workers and other workers should have access to that are not covered by Singapore's law).

Furthermore, it is recommended that Singapore ratify ILO Convention 189, the Convention on Domestic Workers, 2011. This convention specifies that “Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.”<sup>cxlix</sup> Ratifying this convention would represent an important first step towards protecting the rights of domestic workers in Singapore

**4. *Lack of National Minimum Wage Violates Rights of all Workers.*** There is no minimum wage, even for locals, residents or E-pass holders. There is a prescribed wage for each category of work permit but not a minimum wage. The prescribed wage is higher for E-Pass holders than for S-pass holders, but it is not always followed. A national minimum wage should be implemented in the interest of all workers.

**5. *Injury at Work Leads to Deportation.*** Domestic workers are excluded from the Work Injury Compensation Act, 2008. Instead employer liability for injury at work falls under the scope of clause 3 of the Work Permit conditions, which establishes that the employer shall be responsible for and bear the costs of the worker’s upkeep and maintenance. This includes the provision of adequate food, as well as medical treatment. Despite this, the requirements set out in clause 3 are often ignored and enforcement is weak – much depends on the conscience of individual employers.<sup>cl</sup> According to Bridget Lew Tan, founder and executive director of Humanitarian Organization for Migration Economics (HOME), many injured workers are simply deported. John Gee, of TWC2 said that employers who follow the law on this point are a minority.<sup>cli</sup>

- **Recommendation:** The exclusion from the Work Injury Compensation Act is problematic and perpetuates the failure to recognize domestic work as work, and

domestic workers as workers deserving of equal protection in relation to all other workers. Although employer liability is set out in the Work Permit conditions, enforcement must be significantly strengthened.

**6. No Long-Term benefit scheme perpetuates insecurity.** Migrant workers do not have access to pension benefits or end-of-service benefits for contracts less than three years. Even if they have access to redundancy payments, the amount is negligible and does not provide for long-term security. Migrant workers in Singapore effectively do not have access to a long-term benefit scheme, except to the extent that they are contributing to SSS in the Philippines.

**7. Singapore is not following the Convention on the Elimination of Discrimination against Women (CEDAW), of which it is a signatory.** The CEDAW has provisions for the protection of women migrants and coverage of protection on anti-trafficking. Singapore should live up to its international commitments and follow the provisions of this Convention, implementing and enforcing protective mechanisms for women migrants, including domestic workers.

**8. Foreign worker levy keeping down migrant workers' incomes.** The foreign worker levy depresses migrant worker incomes, since employers evaluate the cost of hiring a worker on the basis of salary plus levy plus other charges like insurance, and this makes them more resistant to raising wages.

- **Recommendation:** Levy money should be used wholly or in part for the benefit of migrant workers.

## 4.5 Hong Kong

Deployment of OFWs to Hong Kong by Type of Hiring and Skills  
Year 2010 – 2011

	2010	2011	% Change
<b>Total</b>	<b>101,340</b>	<b>129,575</b>	27.86%
<b>Rehires</b>	<b>72,502</b>	<b>91,096</b>	25.65%
<b>New Hires</b>	<b>28,838</b>	<b>38,479</b>	33.43%
Administrative and Managerial Workers	12	15	25.00%
Agricultural Workers	2	-	-100.00%
Clerical Workers	2	1	-50.00%
Production, Transport, Operators, Laborers	7	122	1642.86%
Professional and Technical Workers	95	261	174.74%
Sales Workers	1	1	0.00%
Service Workers	28,602	27,925	-2.37%

Not Stated

117

10,154

*Note: data for 2011 are preliminary*

*Source: Philippine Overseas Employment Administration (POEA)*

### **Profile of OFWs and the Labor Migration Scheme in Hong Kong**

In 2011 there were 129,575 new and rehired OFWs deployed to Hong Kong, up from 101,340 in 2010.<sup>clii</sup> The estimated total number of Filipinos in Hong Kong in 2011, including temporary and permanent migrants, was 157,467.<sup>cliii</sup> Of these, 138,933 were domestic workers and 5,000 were professionals.<sup>cliv</sup>

Pre-termination of contract, placement fees, forced loan, poor living and working conditions, contract violation, and debt are the most common problems experienced by OFWs in Hong Kong, as reported by the Post.<sup>clv</sup>

- *No Access to Permanent Residency for Domestic Workers:* While non-Chinese nationals can obtain residency after working in Hong Kong for seven years, immigration rules exclude migrant domestic workers from seeking permanent residency. With the right of abode comes the right to vote, to change employer, welfare and other social services. This policy was challenged in court by a Filipino migrant domestic workers and several others. In September 2011, the lower Court of Hongkong ruled in favor of the petition. However, it was overturned in March 28, 2012 by a 3-member High Court of Hongkong. The case will be appealed to the Hongkong Final Court of Appeals.

*See*<sup>clvi</sup>

### **Overview of the Social Security System in Hong Kong**

The social security system in Hong Kong is a multi-tiered scheme, consisting of a basic component covering all residents and an occupational scheme. The scheme is non-contributory and is administered by the Social Welfare Department of the Government of the Hong Kong Special Administrative Region. It includes the Comprehensive Social Security Assistance Scheme, Social Security Allowance Scheme, Criminal and Law Enforcement Injuries Compensation Scheme, Traffic Accident Victims Assistance Scheme and Emergency Relief.<sup>clvii</sup>

## *Social Security for Migrant Workers in Hong Kong*

### *A. Short-Term Benefits*

**Healthcare:** Health insurance is mandatory and paid by the employer<sup>clviii</sup> for all migrants working under an employment contract. Domestic workers are thus given access to this benefit<sup>clix</sup>. All of them are covered by medical, dental treatment and hospitalization.

**Work Injury / Sick pay:** Employers are required to pay compensation if a worker is injured or incapacitated in an accident arising out of and in the course of employment, or if the worker suffers from a prescribed occupational disease. This includes domestic workers. While they are under an employment contract, migrant workers in Hong Kong can access paid sick leave.<sup>clx</sup>

**Maternity Leave/Parental Leave:** All foreign workers are entitled to maternity leave. Foreign domestic workers, who have been employed for at least four continuous weeks are entitled to 10 weeks maternity leave. A worker taking leave must give a notice of pregnancy to their employer. She may also be eligible for maternity leave pay, in the amount of four-fifths of her normal wages. To be eligible for maternity leave pay, certain conditions must be satisfied, including working for more than 40 weeks immediately prior to the start of the leave.<sup>clxi</sup>

### *B. Work-Related Benefits*

**Wages:** The Legislative Council introduced a minimum wage of HK\$28 (US\$3.60) per hour for all workers in July 2010. Prior to this, there had also been a fixed minimum wage for foreign domestic workers of HK\$3,740/month.<sup>clxii</sup>

**Vacation pay:** Workers are entitled to one rest day for every seven days and 12 statutory holidays per year. Migrant workers have a right to paid annual leave<sup>clxiii</sup> under the following conditions:

Years of Employment	No. of Days for Annual Leave
1	7
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9 and above	14

*Source: The Mission for Migrant Workers HK*

**Severance pay:** In Hong Kong, workers are entitled to severance pay if:

- a) they are dismissed, or
- b) their employer refuses to renew their contract of employment upon its expiration because of redundancy and they had worked for their employer for at least 24 months immediately before the dismissal.<sup>clxiv</sup>

**Long-Service Pay:** In Hong Kong, a worker is entitled to long-service pay if s/he has worked for the same employer for at least five years and:

- resigned because of old age (65 or above)
- resigned because of permanent unfitness
- was dismissed for reasons other than redundancy or summary dismissal
- the employer refused to renew the contract upon its expiration.<sup>clxv</sup>

Both severance pay and long service pay are equivalent to two-thirds of the worker's last month's wages for each year s/he has worked. For example: If the worker's salary is HK\$3,270 each month and s/he has worked for the same employer for 8 years, s/he would be entitled to:  $\$3,270 \times \frac{2}{3} \times 8 \text{ years} = \$17,439.99$ .<sup>clxvi</sup>

If an OFW, or other foreign domestic worker, dies after working for the same employer for at least five years, his / her family is legally entitled to the long service payment.

### **C. Long-Term Benefits:**

**Pension Benefits (old age/disability/survivor):** Migrant workers have the possibility to opt out of the pension system of their host country, either voluntarily or if they can prove that they continue to pay contributions to a pension system in their home country or another country. Further, Hong Kong allows foreigners who leave Hong Kong for good to withdraw the contributions they made into the Hong Kong system as a lump sum payment.

## **Hong Kong: Assessment and Recommendations**

**1. Opting-out and withdrawal of SS contributions as positive measure.** The option of opting out of the Hong Kong Pension scheme and of withdrawing contributions are in line with international standards on social security for migrant workers and should be replicated.

**2. Domestic Workers should be able to access permanent residency.** As in other countries surveyed, foreign domestic workers do not have the same entitlements vis-à-vis social security in relation to locals. This is largely related to their inability to access permanent residency. While non-Chinese nationals can obtain residency after working in Hong Kong for seven years, immigration rules exclude domestic workers from seeking permanent residency.

- **Recommendation:** *Migrant workers should continue their advocacy to demand right to residency in Hongkong just like any other non-Chinese nationals if they meet the requirements and qualifications set forth in the law.*

**3. Further Studies:** Further studies are needed to compare a) the entitlements or non-entitlements vis-à-vis social security of foreign domestic workers with those of locals (looking at which entitlements are universal entitlements and how access to social security for foreign domestic workers compares with locals working as domestic workers); and, b) comparing entitlements/non-entitlements of foreign domestic workers with other employed foreigners. This would help to identify the gaps in social security provisions for migrant workers, and migrant domestic workers in particular.

## 4.6 Taiwan

Deployment of OFWs to Taiwan by Type of Hiring and Skills  
Year 2010 – 2011

	2010	2011	% Change
<b>Total</b>	<b>36,866</b>	<b>41,896</b>	13.64%
<b>Rehires</b>	<b>9,021</b>	<b>9,935</b>	10.13%
<b>New Hires</b>	<b>27,845</b>	<b>31,961</b>	14.78%
Administrative and Managerial Workers	-	-	
Agricultural Workers	-	1	
Clerical Workers	-	-	
Production, Transport, Operators, Laborers	21,038	24,843	18.09%
Professional and Technical Workers	320	450	40.63%
Sales Workers	1	2	100.00%
Service Workers	6,486	6,617	2.02%
Not Stated		48	

*Note: data for 2011 are preliminary*

*Source: Philippine Overseas Employment Administration (POEA)*

### Profile of OFWs and the Labor Migration Scheme in Taiwan

Taiwan has been a major labor-importing country since the 1990s. At that time, the country and region experienced an economic boom and there was a rapid expansion of employment

opportunities for short-term contract workers in Asia.<sup>clxviiclxviii</sup> Initially migrant workers were recruited by the government in 1989 to work on fourteen key national construction projects.<sup>clxix</sup> Migrant workers subsequently began to be employed in manufacturing industries and as caregivers to support economic development in Taiwan, helping the manufacturing industry remain competitive and allowing both parents to work outside the home while live-in-caregivers look after their families.

As a major labor sending country, many of the migrant workers who came to work in Taiwan were from the Philippines. As of 2011 there were 41,896 land-based OFWs deployed to Taiwan making it the number 7 destination country worldwide for the deployment of land-based OFWs.<sup>clxx</sup> Most of these workers fell into either the ‘highly skilled’ (19,957) or ‘domestic help’ (17,975) category.<sup>clxxi</sup>

The Taiwan government has a managed migration system. Migrant workers are tied to their employer and can only transfer to another employer under certain conditions.

**Working Conditions:** The DOLE reports that the working conditions of OFWs in Taiwan have improved in recent years. Foreign workers are included in the Labor Standards Act, National Health Insurance System, Labor Insurance, and Employment Service Act (which specifically regulates the employment of foreign workers).<sup>clxxii</sup> But caregivers and domestic workers in private households are not covered by Labor Standards nor by labor insurance. If they have an occupational accident they do not receive any salary while recovering from their injuries, and are not entitled to disability compensation.

DOLE reports that the number of workers’ complaints has gone down significantly in recent years. The remaining complaints are related to workers being asked to work in a place other than that stated in their contract, not being paid overtime, cases of abuse, lack of a rest period, and excessive charges by brokers.

The charging of excessive placement fees is the most prevalent issue. This can lead to debt bondage, with some OFWs finding that they return home with less money than they had when they arrived in Taiwan.<sup>clxxiii</sup>

**Bilateral Agreements:** The Philippine government signed an MOU with the Taiwan government, which allows the direct hiring of Filipino domestic workers through the POEA. This avoids exorbitant recruitment agency fees and enables POEA to set further requirements.<sup>clxxiv</sup> However, a POEA representative has reported that most Taiwanese employers still go through a recruitment agency to hire foreign workers.<sup>clxxv</sup>

## Overview of the Taiwanese Social Security System

Employees in the ‘productive industries’ are covered by the Labor Standards Law. This excludes caregivers and domestic helpers, who must rely on the contract with their employer for the protection of their rights.<sup>clxxvi</sup>

The social security system in Taiwan is a social insurance and mandatory individual account program. The social insurance system consists of a flat-rate benefit under the national pension

program and earnings-related benefits under the labor insurance program. In 2005, a system of individual accounts (Labor Pension Fund) was established for all new entrants to the labor force or workers that changed employers.<sup>clxxvii</sup> The Labor Pension Fund will replace the labor insurance program that was under the Labor Standards Law. While foreigners were covered under the old pension scheme, they are excluded from the new one.<sup>clxxviii</sup>

### **A. Short Term Benefits**

**Health Insurance:** All migrant workers in Taiwan are covered by the National Health Insurance, provided that they are properly documented. All employers must enrol their workers in the National Health Insurance Plan and a medical card is issued one week after enrolment. The employer pays 60% of the premium, the worker pays 30% and the government pays 10%.<sup>clxxix</sup> The worker's monthly healthcare payment is 1.33% of the monthly salary.<sup>clxxx</sup> Under this system, should a worker be hospitalized, the healthcare scheme covers 90% of the medical bill.<sup>clxxxi</sup>

**Lack of access to Health Care:** Migrant workers contribute many dollars to the healthcare system, but are often denied access to it in times of need. In a study on migrant domestic workers in Taiwan domestic workers were said to pay US\$7.30 (210 New Taiwan Dollars – NTD) per month into the healthcare scheme despite being denied access when upon contracting certain illnesses, and deported rather than treated. At the time of writing, in June 2011, Fr. Peter O'Neil found that "the 190,000 migrant domestic workers are contributing US\$16.6 million annually into the Taiwan healthcare system, and the other 197,000 migrant workers working in the industrial, construction and fisheries sectors are contributing US\$20 million annually." In total, migrant workers "are contributing nearly 37 million dollars every year to help support the scheme." Yet, they are not given equal access for the following reasons:

- All migrant workers have to undergo a medical examination three days after arrival, and after the 6<sup>th</sup>, 18<sup>th</sup>, and 30<sup>th</sup> month in Taiwan. However the health insurance does not cover the cost of these compulsory examinations. Each medical examination costs US\$70 (2,000NTD).
- Migrant workers are deported if they contract tuberculosis, which is quite prevalent in Taiwan. This effectively denies them access to the healthcare services they have paid for.

Similarly, if a migrant worker is diagnosed with a terminal illness and needs to stop work to undergo treatment, the employer can terminate the contract of employment and have the worker deported.

*Source: O'Neill, P. (2011). The Importance of Social Security for Migrant Domestic Workers. Migrant Forum in Asia. Parallel event to the 17th session of the UN HRC. Tuesday, 7 June 2011.*



**Work injury/sick pay:** In case of sickness, every worker covered by the Labor Standards Law has a right to a sick leave of 30 days with half pay, as well as to an occupational accident leave with full salary during medical treatment and recuperation.<sup>clxxxii</sup>

**Maternity leave:** Since 2002, migrant workers who become pregnant no longer have to leave Taiwan. Their employer cannot repatriate them as a result of their pregnancy. Workers who are covered by the Labor Standards Law can request to be transferred to lighter work during the pregnancy and have the right to 8 weeks maternity leave with full pay.<sup>clxxxiii</sup>

### ***Discrimination against Migrant Domestic Workers***

Since migrant domestic workers are not covered by the Labor Standards Act, employers are not forbidden from terminating a worker's employment due to pregnancy. While other female workers are protected against being fired due to pregnancy, and may request to be transferred to lighter work while pregnant, migrant domestic workers do not enjoy such protection. Rather, their employment contracts may be terminated if they cannot continue to perform their duties as domestic workers. Domestic workers should be included in the labor legislation of Taiwan.

*Source: O'Neill, P. (2011). The Importance of Social Security for Migrant Domestic Workers. Migrant Forum in Asia. Parallel event to the 17th session of the UN HRC. Tuesday, 7 June 2011.*

### ***B. Work-Related Benefits***

**Wages:** Since 1997 migrant domestic workers in Taiwan have been receiving a monthly salary of US\$550 (15,840 New Taiwan Dollars – NTD).<sup>clxxxiv</sup> This positions Taiwan as one of a few countries within the top ten where Filipino domestic workers are paid over US\$400 per month. The monthly minimum wage will increase to NT\$18,780 (US\$651.67) from the current NT\$17,880, the Council of Labor Affairs (CLA) said.

However, compared to the salaries of other occupational groups in Taiwan, which must at least meet the minimum wage of US\$620 per month, migrant domestic workers are significantly underpaid. In 2007 the minimum wage increased by 9% from US\$550 (15,840NTD) to US\$600 (17,280NTD), in January 2010 it increased by 3.5% to US\$620 (17,880NTD) and effective January 1, 2012 minimum wage increased by 5.03% to US\$ 652 (18,780NTD).<sup>clxxxv</sup> In total, since 2007, the minimum wage has increased by 17.53%, while migrant domestic workers have not seen a salary increase in 14 years.<sup>clxxxvi</sup>

Moreover, excessive placement fees remain a persistent problem for migrant workers in Taiwan. This exacerbates the insecurity of migrant workers, and can lead to debt bondage or reduce the remittances that a worker is able to send home.

**Vacation pay:** Workers are entitled to one day off for every seven days worked. There is a paid leave of seven days a year after the first year of work.<sup>clxxxvii</sup> Both are rights for workers covered by the Labor Law as well as for domestic workers.

**Severance/End-of-Service Benefits:** Workers who have worked for an employer for at least one year are entitled to severance pay equal to one month of average wage for each year of service. Severance payment shall be paid in proportion to months of service not comprising a full year. Any fraction of one month shall be deemed to be one month.

### ***C. Long-Term Benefits***

**Pension Benefits (old age/ disability/ survivor):** Foreign workers are not covered under the new Pension scheme. Unless OFWs in Taiwan are covered by the SSS in the Philippines, they do not have access to long-term benefits.

## **Taiwan: Assessment and Recommendations**

**1. Payment of Health Insurance without Access.** Practices outlined above that perpetuate unequal access to healthcare on the basis of nationality (even though all workers in Taiwan are equally paying into the healthcare system) should be stopped.

**2. Wage Inequality.** Since 2007, the minimum wage has increased by 17.53%, while migrant domestic workers (who are not protected by the Taiwan Labor Standards Act) have not seen a salary increase in 14 years.<sup>clxxxviii</sup>

- **Recommendation:** Domestic workers should be included from the Labor Standards Act and should have their salaries increased to be on par with other categories of local workers.

**3. Domestic workers not protected against Gender Discrimination.** Since domestic workers are not covered by the Labor Standards Act, employers can terminate a worker's employment due to pregnancy.

- **Recommendation:** Domestic workers should be included in the labor legislation of Taiwan. Advocacy groups should continue to flag the discrimination that this exclusion perpetuates.

**4. Coordination is needed between the Governments to Stop Overcharging of Fees.**

Placement fees are a significant cause of debt and financial hardship for migrant workers in

Taiwan. Governments need to coordinate policies around placement fees. As the Post recognized in DOLE's 2011 Report to Congress,

Solving the placement and service fee problem is a strategic response that the governments of the Philippines and Taiwan could take if they are truly serious at qualitatively improving the long-term welfare of our workers in Taiwan.<sup>clxxxix</sup>

The Post went on to suggest that the Joint Labor Conference to be held each year between the Manila Economic and Cultural Office, the POEA, and the DOLE; and the Taipei Economic and Cultural Office and the Council of Labor Affairs should be used as a venue to initiate policy reforms. As example of an area where coordination is needed is with regards to fees. While the Philippine government requires employers and recruitment agencies to shoulder the expenses related to deployment, many governments in destination countries do not. The workers then have to wait until they return to the Philippines to file a complaint against the recruiters for violating Philippine law. At that point, it is extremely difficult to recover the funds to which the worker is entitled.<sup>cxc</sup>

The Hope Workers' Center has reported that, although overseas, migrant workers are now encouraged and empowered to file complaint of excessive placement fees while they are still in Taiwan<sup>cxc</sup>, there is much to be done. For policies and laws to be more effective, better coordination is needed among governments to protect the interests and rights of migrant workers.

## 4.7 Italy

Deployment of OFWs to Italy by Type of Hiring and Skills  
Year 2010 – 2011

	2010	2011	% Change
<b>Total</b>	<b>25,595</b>	<b>31,704</b>	23.87%
<b>Rehires</b>	<b>24,287</b>	<b>26,615</b>	9.59%
<b>New Hires</b>	<b>1,308</b>	<b>5,089</b>	289.07%
Administrative and Managerial Workers	-	1	
Agricultural Workers	1	9	800.00%
Clerical Workers	4	9	125.00%
Production, Transport, Operators, Laborers	63	57	-9.52%
Professional and Technical Workers	1	8	700.00%
Sales Workers	-	2	
Service Workers	1,234	4,673	278.69%
Not Stated	5	330	6500.00%

*Note: data for 2011 are preliminary*

*Source: Philippine Overseas Employment Administration (POEA)*

## **Profile of OFWs and the Labor Migration Scheme in Italy**

Italy is the number 8 destination country for OFWs, with the number of new hires and rehires deployed having increased from 25,595 in 2010 to 31,704 in 2011.<sup>cxcii</sup> According to CFO stock estimates, in 2010 there were 123,379 total OFWs in Italy, including permanent, temporary and undocumented migrants.<sup>cxci</sup> Most of the workers deployed to Italy are women, accounting for approximately 80% of all migrants in the country. Over 90% are employed in the service sector, mainly as private domestic workers.<sup>cxci</sup> All workers in Italy are covered by Labor Law.

**Domestic Workers:** Italy has one of the oldest populations in Europe, and 18.3% of the citizens over age 65 are in need of full or part-time assistance.<sup>cxci</sup> This has led to an increase in demand for foreign workers working in the field of “family assistance.”<sup>cxci</sup> As Interlinks reported in their 2010 report on migrant care workers in Italy, “the National Social Security Agency calculated that between the years 2000 and 2007 the numbers of foreigners working in the field of ‘family assistance’ had increased by 173%.”<sup>cxci</sup>

This is confirmed in the 2010 Report to Congress submitted by the Consulate General in Milan. In this report, the Post outlines the factors that have led to female-led migration in Italy. The integration of women into the labor market “left households in need of caregivers for the young and the elderly.”<sup>cxci</sup> Many Filipino women have filled this demand. Often these women have a university degree, but due to difficulty with accreditation, work as domestic workers.<sup>cxci</sup>

**Undocumented Workers:** There are a significant number of undocumented migrant workers in Italy. The Commission on Filipinos Overseas (CFO) estimates that in 2010 there were 13,200 undocumented workers.<sup>cc</sup>

The Italian government has implemented periods of regularization in the past years. During these periods, employers and/or migrant domestic workers are allowed to declare regular employment, without being punished, and receive a regular residence and working permit<sup>cci</sup> During the first period of regularization in 2002 about 330,000 immigrants (around 48% of all people declaring) indicated that they had a job in the field of personal and home care.<sup>ccii</sup> “Between 2002 and 2009 at least 900,000 (about 1.5% of the Italian population) family assistants were regularised.”<sup>cciii</sup>

**Consular Relations and Social Security Agreements:** There is no Social Security Agreement between Italy and the Philippines. However, there are two Memorandums of Understanding (MOUs) in place:

- 1) MOU on Social Security which was signed in Rome on 17 June 1988 during the visit of President Corazon Aquino.
- 2) MOU on Social Security of Filipinos which was signed in Manila on 30 October 1991.

The MOU on Social Security (1988) declares the intention of both parties to negotiate a social security agreement “as soon as possible”.<sup>cciv</sup> However, some 24 years later such an agreement has not been negotiated. The MOU states that:

“the Government of the Philippines and the Government of Italy desiring of further strengthening their friendly relations and mutual cooperation, being conscious of the importance of their citizens living in the territory of the other State, have decided that between the Republic of the Philippines and the Republic of Italy an agreement on social security should be negotiated.”<sup>ccv</sup>

In 2004, discussions on negotiating SSAs were initiated with Italy, among other countries, however these discussions have not led to the signing of an SSA.<sup>ccvi</sup> Italy reportedly withdrew, as political, legal and financial support eroded.<sup>ccvii</sup>

## Overview of the Italian Social Security System

The Italian social insurance system provides benefits for unemployment, sickness and maternity, accidents at work and occupational diseases, as well as old-age, invalidity and survivor’s pensions, and family allowances.<sup>ccviii</sup> The National Health Service (*Servizio Sanitario Nazionale/SSN*), is funded from general taxation.

Social and health insurance are compulsory. For salaried employees, the employer will take care of registration. Self-employed persons must register themselves.<sup>ccix</sup> Evidently, this is contingent on having a valid permit of stay or residency papers. A general scheme managed by the Istituto Nazionale della Previdenza Sociale (INPS) covers the majority of workers in the private sector, while INPDAP covers public sector workers. INPS does not administer the national health system, which is managed by separate entities.<sup>ccx</sup> Domestic workers enjoy the same protection as employees (except for sickness benefits).

***Access to Social Security in Practice:*** In theory, all people in Italy can access benefits under the Italian social security system. As in other European Union countries, migrant workers pay insurance and tax contributions and should be able to access associated benefits. However, claiming such benefits endangers their resident status. As Holzmann et al report,

“In particular the requirement for minimum income and adequate housing in order to execute the right for family reunification decreases the potential of migrant workers to claim welfare benefits, as meeting these requirements effectively requires that migrant families can subsist without claiming welfare benefits.” (Koettl 2005).

*Source:* Holzmann, R., Koettl, J., & Chernetsky, T. Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices. *World Bank*. p.10

**Healthcare:** The Italian National Health Service (Servizio Sanitario Nazionale (SSN)) was established in 1978 and introduced universal coverage, replacing an insurance-based scheme that had been set up after the Second World War.<sup>ccxi</sup> The aim of this reform was to implement a tax-based public health-care system, with only marginal private contributions. The “SSN provides free or low-cost health care to all residents and their families plus university students and retirees (including those from other EU countries) and emergency care to visitors, irrespective of their nationality.”<sup>ccxii</sup> While universal coverage has been achieved, regions across Italy show a significant disparity in health expenditure, with a clear north-south divide.<sup>ccxiii</sup> Undocumented migrant workers also face significant barriers in accessing health care.

**Access to Health Care for Undocumented Migrants:** Since 1998, irregular or undocumented migrants have a right to urgent or primary hospital and outpatient treatment in case of sickness or accidents as well as for preventative treatments. This extension of emergency/urgent care to undocumented migrants followed the implementation of legislative decree no. 286, *Consolidated Act of Provisions concerning immigration and the condition of third country nationals*. Since the implementation of this act, undocumented migrant workers (who are not registered with the National Healthcare System) are guaranteed access to the following services:

- parental and maternity care;
- health care for minors;
- vaccinations;
- preventative medicine programs;
- prevention, diagnosis and treatment of infectious diseases.

There are also three categories of undocumented patients who are covered by law and can be treated in cases other than emergency/urgency:

- minors up to 18 years
- pregnant women up to 6 months after birth
- patients with diagnosed infectious diseases

In February, 2009 the Italian Senate approved to modify legislation so that health care personnel are now free to report undocumented migrants who seek their services to the authorities. This is problematic, as it discourages undocumented migrants from seeking medical care and conflicts with their human right to health.

Source: Healthcare for Undocumented Migrants in the EU: Concepts and Cases. *International Organization for Migration* (2009). Brussels.

***Agricultural workers and inaccessibility of health care:*** Doctors without Borders have found extreme cases of neglect of seasonal migrant workers since they began working in Southern Italy in 2003. The seasonal agricultural workers' appalling living conditions heighten their vulnerability to contracting respiratory infections, osteo-muscular pain and gastroenteritis. This is an example of a group of migrants for whom legal access to health care (if they are documented) or at least urgent care (if they are undocumented) is vacuous. The reality of their working and living conditions are such that legal access does little to protect their right to health care.

*Source: Violence in Southern Italy Exposes Extreme Neglect and Exploitation of Seasonal Migrant Workers. Doctors Without Borders. Retrieved June 19, 2012*

***Work injury / Sick pay:*** The Labor Law allows sick employees to retain their position, seniority and, for some categories of workers, regular pay for a period of up to 6 months or more, depending on the applicable collective labor agreement.

## ***B. Work-Related Benefits***

***Wage Equality and Unemployment:*** Allasino, Reyneri, Venturini and Zincone state that "the wage differentials between Italian nationals and foreigners is small, although it varies from one sector to another".<sup>ccxiv</sup>

According to Law 189/02 Article 22.11, a loss of work, through dismissal or even through self-dismissal cannot lead automatically to withdrawal of the stay and work permits. For the remaining period of validity of the stay permit, a dismissed worker can remain in Italy and enrol in the unemployed persons' register.

***Severance Pay/End-of Service Benefits:*** Italy requires an end-of-employment contract indemnity (TFR: Trattamento di fine rapporto: sec. 2120 CC) comprised of a portion of the salary set aside each month to be paid to each employee upon termination of employment.<sup>ccxv</sup>

***Anti-discrimination:*** The 1970 Workers' Act extends the rules against discrimination of strikers and supporters of trade unions to "discrimination on grounds of politics, religion, race, language or sex". The Act states that discriminatory acts on such grounds which may happen within the workplace are illegal. The worker can thus initiate legal proceedings against discriminatory acts suffered at work.

***Vacation:*** Italian Labor Law guarantees everyone the right to one rest day per week (usually Sundays). Every employee is entitled to an annual vacation period of 4 weeks.

## ***C. Long-Term Benefits***

***Pension Benefits:*** According to Law 189/2002 Article 18, clause 13, foreign workers (except seasonal workers who are not provided with pension maintaining arrangements) maintain

pension and social security benefits that they have gained in Italy in the case that they return to their country of origin, even in the absence of specific agreements. Non-EU workers who leave the Italian territory may apply for the reimbursement of compulsory social security contributions paid on their behalf, calculated with an interest rate of 5% per year.<sup>ccxvi</sup>

Still, a social security agreement would allow for harmonization of the Italian and Philippine schemes. With such an agreement in place, migrant workers could combine total years of contribution made under each scheme together in order to qualify for benefits under one of the two schemes.

### **Italy: Assessment and Recommendations**

**1. Implications of no SS Agreement for pension benefits.** Social security agreements are necessary to ensure “portability of acquired rights to achieve eligibility through totalization of insurance periods across countries.”<sup>ccxvii</sup> In other words, without a social security agreement, a migrant worker cannot total their periods of contribution to the pension schemes of each country that is party to the agreement in order to meet the required minimum years of contribution in one of the two countries to collect benefits. Without totalization, OFWs who return to the Philippines after years of working in Italy and paying into their social security system, but without meeting the minimum number of years required to qualify for benefits, would only have the option of withdrawing these contributions.

- **Recommendation:** A social security agreement should be concluded between Italy and the Philippines.

**2. Health care should be made more accessible.** For groups of workers who have difficulty accessing healthcare, such as undocumented workers and agricultural workers, healthcare should be made more accessible.

- **Recommendation:** The law allowing health care personnel to report undocumented migrants who seek their services to the authorities should be repealed. This law is problematic, as it discourages them from seeking medical care and conflicts with their human right to health.
- Living and working conditions of agricultural migrant workers should be immediately and drastically improved.



## 4.8 Canada

Deployment of OFWs to Canada by Type of Hiring and Skills  
Year 2010 – 2011

	2010	2011	% Change
<b>Total</b>	<b>13,885</b>	<b>15,658</b>	12.77%
<b><i>Rehires</i></b>	<b>10,859</b>	<b>10,517</b>	-3.15%
<b><i>New Hires</i></b>	<b>3,026</b>	<b>5,141</b>	69.89%
Administrative and Managerial Workers	16	24	50.00%
Agricultural Workers	66	98	48.48%
Clerical Workers	86	155	80.23%
Production, Transport, Operators, Laborers	437	544	24.49%
Professional and Technical Workers	81	46	-43.21%
Sales Workers	13	21	61.54%
Service Workers	2,229	3,178	42.58%
Not Stated	98	1,075	

*Note: data for 2011 are preliminary*

*Source: Philippine Overseas Employment Administration (POEA)*

### Profile of OFWs and the Labor Migration Scheme in Canada

Until recently, Canada was the number ten destination country for OFWs. Although the number of OFWs in Canada continues to rise, it is now the number 11 destination country, having been surpassed by Malaysia in 2011. In 2011 there were 15,658 land-based new hires and rehires deployed to Canada.<sup>ccxviii</sup> In 2010 there were approximately 667,674 OFWs in total in Canada, including permanent residents, temporary migrant workers, and undocumented migrants.

Many of the OFWs deployed to Canada work as live-in caregivers, and are admitted to Canada through the Live-in Caregiver program under the Temporary Foreign Worker Program.<sup>ccxix</sup> The Philippines supplies approximately 95% of the migrant workers admitted under the Live-in Caregiver program.<sup>ccxx</sup>

The Canadian federal government has been moving towards increased promotion of temporary migration, while ensuring that Canadians have priority access to jobs.<sup>ccxxi</sup> The total number of entries (including new entries and re-entries) of temporary foreign workers into Canada between 2007 and 2011 increased from 163,543 to 190,769.<sup>ccxxii</sup> In their 2012 Budget Plan the Canadian government affirmed that, going forward, the Government will continue to consider additional measures to ensure that the Temporary Foreign Worker Program supports

our economic recovery and growth by better aligning the program with labor market demands, and where there are acute needs in the labor market that are not easily filled by the domestic labor force, temporary foreign workers are an important resource for Canadian businesses.<sup>ccxxiii</sup>

The language of the 2012 Budget Plan shows that the thrust of the Temporary Foreign Worker program is the promotion of economic growth. As in other destination countries, labor-migration to Canada is employer-driven and is structured to meet labor market demands. Mechanisms for the promotion and protection of these workers' rights are poorly coordinated and monitored, while mechanisms through which employers can hire migrant workers are being streamlined and made more efficient.<sup>ccxxiv</sup> Without the protective shield of Canadian citizenship, migrant workers encounter numerous obstacles at the confluence of different jurisdictions and legislative regimes that make accessing and enforcing their rights difficult.

**Categories of Workers in the Temporary Foreign Worker Program:** As of May 2012, there were 7 streams of the Temporary Foreign Worker Program. These are:

- Agricultural Workers (which can be further subdivided into 4 streams):
  - Seasonal Agricultural Worker Program
  - Agricultural Stream of the Pilot Project for Occupations Requiring a Lower Level of Formal Training
  - Low Skilled Occupations - Pilot Project for Occupations Requiring a Lower Level of Formal Training
  - High Skilled Occupations Stream
- Live-in Caregivers
- Exotic Dancers
- Low Skilled Occupations - pilot project for occupations requiring a lower level of formal training
- Academics
- High Skilled Occupations
- High Skilled Occupations Supporting Permanent Immigration (Arranged Employment Opinion)

**Bilateral Labour Agreements:** There are also various labour agreements in place between the Philippines and Canadian provinces. These include a Memorandum of Agreement with the Alberta Ministry of Employment and Immigration Concerning Cooperation in Human Resource Deployment and Development; Memorandums of Understanding with the British Columbia Ministry of Economic Development, and with the Manitoba Department of Labour and Immigration, both Concerning Co-Operation in Human Resource Deployment and Development; and with Saskatchewan Concerning Cooperation in the Fields of Labour, Employment and Human Resource Development

(Source: Service Canada. Infosheet on the Agreement on Social Security between Canada and the Philippines. 2010. Web. June 5, 2012. Available at: <http://www.servicecanada.gc.ca/eng/isp/pub/ibfa/philippines-i.shtml>)

**Access to Permanent Residency:** As in other destination countries, different classes or categories of migrant workers receive different and unequal entitlements and are confronted with different requirements for admittance into Canada.

**High Skilled Occupations:** Not surprisingly, it is easier for those classed as high skilled migrants to enter Canada as temporary foreign workers and achieve permanent residency. Both the point-based immigration system and programs such as the Canadian Experience Class favour accepting high skilled workers as permanent residents over low skilled workers.\* Accommodations are also made for high skilled workers that fast-track the path to permanent residency.

**Low Skilled Occupations:** For low-skilled occupations, achieving permanent residency is difficult to impossible. This reflects an unstated policy decision by the government to entrench ‘permanent temporary migration’ among low skilled workers, supporting economic growth in Canada without increasing immigration. This entrenchment of temporary migration is especially marked in the Seasonal Agricultural Workers Program (SAWP), through which many migrants return to Canada year after year without ever moving any closer to achieving permanent residency. Agricultural workers do not have the right type of experience to be part of the ‘Experience Class’ and be granted permanent residency. Such low skilled migrants are positioned to support the Canadian economy, as the backbone of the agricultural industry, without the option of acquiring citizenship rights that are so quickly made accessible to the high skilled class.

**Live-in Caregiver Program:** Unlike the SAWP, which mostly hires migrants from Mexico year after year on short-term contracts, the Live-in Caregiver program presents a unique path to permanent residency. After two years of working as a caregiver in the home of their employer, a worker may apply for permanent residency. However there are still more restrictions on these workers than on high skilled migrants. For example, high skilled workers are issued open work permits, as opposed to ones tied to their employer, and are encouraged to bring their families with them to Canada; while live-in caregivers almost always have to leave their families behind and their residency is tied to one employer. Still, for many OFWs the Live-in Caregiver program is the only viable option for immigration to Canada.

**Bilateral Agreements:** There are various bilateral agreements in place between Canada and the Philippines. Canada is the only country within the top ten destinations with which the Philippines has a bilateral social security agreement. The SSS reported that they focus their efforts on forging bilateral social security agreements with countries where there are more permanent residents, since long-term benefits are a particular issue for residents who have been paying into two social security systems long-term.

The Agreement on Social Security between Canada and the Philippines came into force on March 1, 1997. A Supplementary Agreement amending that Agreement came into force on July 1, 2001.

The Agreement states that OFWs qualify for Canadian and Philippine old age and disability benefits if they resided in Canada and in the Philippines or if they contributed to the Canada Pension Plan and the Philippine Social Security System/the Philippine Government Service Insurance System. The Agreement may also help an OFW’s family qualify for Canadian and Philippine survivor benefits.

The Agreement facilitates access to benefits by allowing for totalization of periods of contribution and portability of accrued rights. If an OFW does not meet the minimum requirements to qualify for a pension under one scheme, s/he may add together years of contribution under both schemes in order to meet the requirements for a pension.

## Overview of the Canadian Social Security System

Social programs in Canada include a broad spectrum of government programs designed to give assistance to citizens. Since Canada is a federation, many of the programs are provincially run. Federal programs include unemployment insurance and old age security. Provincial programs include social assistance and universal health care.

Contributions to the social security system come from automatic income deductions from the salaries of all workers in Canada. Contribution rates vary from province to province.

In order to work in Canada and have access to government services and benefits, one needs a social insurance number (SIN).<sup>ccxxv</sup> Temporary residents need to send their work permit and another form of ID, such as their passport, birth certificate or marriage certificate, to Service Canada to be issued a 9-digit SIN number.

***Social Security for Migrant Workers in Canada:*** Migrant workers have different access to social security benefits. The policy paper, *Making a Case for Reform: Non-Access to Social Security Measures for Migrant Workers* states that “temporary foreign workers do not enjoy the same access to social security benefits, particularly employment insurance, as Canadians and permanent residents.” Below some programs are canvassed and their inclusiveness or exclusiveness is assessed.

### A. Short-Term Benefits

***Health Care Benefits:*** Temporary foreign workers are generally covered by provincial Health Care if their work permits are valid for over one year. In Alberta, for example, “foreign workers with a work permit valid for 12 months or more are eligible to apply for immediate Alberta Health Care coverage.”<sup>ccxxvi</sup>

If a worker is not eligible for Health Care, the employer must provide health insurance at no cost to the foreign worker upon his/her arrival in Canada for the duration of the employment contract or until s/he becomes eligible for provincial health care.<sup>ccxxvii</sup>

### ***Work-Injury Benefits/Occupational Health and Safety/Sick Pay***

***Work-Injury Benefits:*** Temporary foreign workers are legally protected under workers’ compensation legislation. However a report entitled *Canadian Temporary Foreign Worker Program: Do short-term needs prevail over human rights concerns* states that this legal coverage often does not translate into practice. It says:

“few injured [temporary foreign] workers...report claims to Alberta’s Workers’ Compensation Board (WCB), and those who do report a claim may find that the protection offered them, although “the same” as that offered every other Albertan, looks quite different because of work permit restrictions and their temporary status.”<sup>ccxxviii</sup>

***Occupational Health and Safety:*** Domestic workers are covered by Occupational Health and Safety legislation. However, agricultural workers in Alberta are not covered by Occupational

Health and Safety Legislation. Agricultural workers in British Columbia were only recently brought under the protection of this legislative regime.<sup>ccxxix</sup>

## ***B. Work-Related Benefits***

***Employment Standards:*** Employment law falls under provincial jurisdiction in Canada, and thus the protective regimes for Temporary Foreign Workers' employment rights vary slightly between jurisdictions. While migrant workers are protected in all provinces, there is a general trend towards providing Temporary Foreign Workers with fewer employment-related entitlements than other workers (i.e. less overtime pay, longer maximum hour of work, and exemptions to vacation pay). Agricultural workers and domestic workers are among those who are consistently provided less protection than other workers in Employment Standards legislation. Caregivers are given reduced employment-related entitlements, as per Part 3, Division 9 of the Employment Standards Regulations. They have longer maximum hours of work, and less overtime pay, among other things. Similar exceptions can be found for construction workers and agricultural workers across the provinces.

***Employment Insurance (EI):*** Employment Insurance is a federal social security scheme that “provides temporary financial assistance to unemployed Canadians who have lost their job through no fault of their own, while they look for work or upgrade their skills.”<sup>ccxxx</sup> The programs include:

- Regular Benefits
- Maternity and Parental Benefits
- Sickness Benefits
- Compassionate Care Benefits
- Fishing Benefits

TFWs, like local workers, have EI and pension contributions deducted from every paycheque. Both workers and employers pay into EI – one-third and two-thirds, respectively. Since they pay into the scheme, TFWs should also have the right to draw benefits from the EI fund under the same criteria for Canadians.

In theory, TFWs do have access to EI. “According to the Employment Insurance Act, anyone residing in Canada can apply for EI, including new entrants to the labor market, as long as they are available, capable and willing to work in Canada, and meet other transparent requirements (i.e. have worked a minimum number of hours of gainful employment in Canada, etc.).”<sup>ccxxxi</sup> This is confirmed by information on the HRSDC website for the Temporary Foreign Worker Program.<sup>ccxxxii</sup>

TFWs are able to access certain benefits without significant difficulty. They can access maternity benefits and compassionate care benefits, provided they meet the eligibility requirements. Moreover, workers can receive these benefits whether or not they stay in

Canada (however, an agreement must exist between Canada and the country in question on the portability of benefits for maximum benefits to be assessed).

Yet most workers who apply for regular EI benefits (i.e. temporary financial assistance after being laid off through no fault of their own) are denied. As Focal reports, “some reports have put the proportion of TFWs who have accessed these benefits at less than 1%.”<sup>ccxxxiii</sup> A reason for this systemic denial of EI that has been identified by migrant advocacy groups is that migrant workers’ work permits are tied to one employer. This means that if they were laid off, they would not be able to work in Canada.

While TFWs legally have access to EI, the administrative process effectively keeps them from availing of the benefits they have paid for.

The authors of *Making a Case for Reform: Non-Access to Social Security Measures for Migrant Workers* compiled an approximation of the sum of EI contributions of temporary foreign workers: Over a 12 month period it was found that all TFWs in Canada and their employers would be paying an aggregate of over \$300 million in EI premiums each year, \$126 million and \$176 million respectively.

**Severance/End-of Service Benefits:** Severance pay and end-of service benefits are set provincially under provincial employment standards legislation.

### **C. Long-Term Benefits**

**Canadian Pension Plan:** The Canadian Pension Plan (CPP) is a joint federal-provincial (Quebec excepted) universal public retirement income plan. It is run by the government of Canada and, with very few exceptions, every employed person in Canada over the age of 18 must pay into it.<sup>ccxxxiv</sup> The costs of contributions are shared by the employee and employer, who each pay half of the contributions.<sup>ccxxxv</sup>

**Access to CPP by Migrant Workers:** TFWs have CPP contributions deducted from every paycheck. For migrant workers who do not contribute to the Canadian Pension Plan for a sufficient amount of time to avail of benefits, social security agreements can fill the gap. These agreements allow periods of contribution in each of the countries party to the agreement to be totalled so that a migrant worker is not disadvantaged in terms of retirement savings as a result of moving between two national territories. Such an agreement exists between Canada and the Philippines. OFWs who move to Canada temporarily can still gain benefits from their years of contributions to CPP when they return to the Philippines by combining these contributions with their SSS contributions to meet the eligibility requirements in terms of number of years of contributions.

## Canada: Assessment and Recommendations

### ***1. Provide all Categories of Migrant Workers Access to the Same Protective Mechanisms:***

All migrant workers should be covered by Employment Standards legislation and protected against working overtime or in hazardous conditions. Provinces that exclude certain categories of migrant workers from protection, or that provide a lower threshold of protection for certain categories of workers, should amend their employment legislation to provide the same protection for all workers.

***2. Revisit Administrative Requirements for Availing of Benefits:*** Where migrant workers have been shown to be unable to avail of certain benefits (as is the case with EI for example), requirements for accessing the scheme should be reconsidered. Where migrant workers are helping to fund a social security scheme, they should be able to avail of the benefits they have been paying for in times of need.

## 5. Social Security Programs in the Philippines

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### 5.1 Social Security System (SSS)

The Philippine Social Security System (SSS) is a social insurance program for Filipino workers. It was established in 1989 and provides various types of benefits to its members, including sickness, maternity, retirement, disability, death and funeral benefits. Its primary program is its retirement program, which provides members with a monthly pension. Members of the SSS can also take out salary and calamity loans.

#### **Overseas Filipino Workers Coverage Program**

Overseas Filipino Workers (OFWs) can avail of SSS while working abroad under the voluntary Overseas Filipino Workers Coverage Program. For the purposes of SSS, an OFW is defined as “a Filipino recruited in the Philippines by a foreign-based employer for employment abroad; having a source of income in a foreign country; and permanent resident in a foreign country.”<sup>ccxxxvi</sup>

- **Coverage:** The OFW program covers all OFWs not over 60 years old, whether they were previous members or not.<sup>ccxxxvii</sup> To date, membership in SSS for OFWs is voluntary; however discussion is underway about making membership mandatory. Coverage takes effect upon payment of the first monthly contribution and membership is lifetime (although access to most benefits is tied to length and frequency of payments).

- *Contributions:* The monthly contributions are based on the OFW's earnings as declared at the time of registration and range from PhP (Philippine Pesos) 520 to PhP 1,560 monthly, depending on the worker's salary. The current monthly contribution rate is 10.4% of the monthly salary and the salary ceiling is PhP15,000. However, a proposal is being considered to increase the monthly contribution rate for all members to 11% and the ceiling to PhP20,000. If the rate were increased, benefits and the life of the pension fund could also be increased. However the immediate effect would be to raise monthly payments. Contributions may be paid at certain accredited banks and remittance centres.<sup>ccxxxviii</sup>
- *Cost shouldered by the OFW:* While SSS contributions for local workers are shared by the worker and their employer. OFWs are responsible for paying the entire monthly contribution. This adds an additional financial burden to OFWs who wish to avail of SSS. For sea-based workers, SSS membership is already mandatory with shared contributions from the manning agency and the workers. This is by virtue of an arrangement between the SSS, manning agencies and the POEA.
- *The Flexifund Program:* OFWs have access to certain unique programs designed to meet their needs. The Flexifund program allows OFWs to contribute additional money, beyond the monthly minimum, to their account in order to save for the future.
- *Member Loans:* OFW members may also avail of certain loan programs. Salary loans, housing loans, and house repair and improvement loans available to actively paying members who meet certain requirements. The direct housing loan (of up to PhP 1 million) is only available to OFW members, not to regular members. This is meant to incentivize SSS membership for OFWs.

**Benefits Overview:** To date, participation of OFWs in SSS is voluntary. However, OFWs are encouraged to maintain membership in SSS while working overseas. As membership in SSS is lifetime, and is mandatory for Filipino workers working in the Philippines, many who go overseas are already SSS members. Even with lapses in payments, OFWs who are members can avail of certain benefits – albeit access to benefits for irregularly paying members is restricted. Below are the requirements to avail of SSS benefits:

- *Disability:* Disability payments require at least one monthly contribution to have been made prior to the semester of disability. A monthly pension will be paid if at least 36 monthly contributions have been made prior to the semester of disability. The pension amount depends on the number of years of contribution. If less than 36 monthly contributions have been made, a lump sum will be paid.
- *Retirement:* Retirement benefits can be collected even if there are significant lapses in payments, but at least 120 monthly contributions must have been made prior to retirement (which may begin by age 60, but must begin by age 65) to receive a



monthly pension. Again, the amount of benefit depends on how much has been paid into the scheme. If less than 120 contributions have been made, a member will receive a lump sum payment of the total contributions plus interest.

- *Maternity and Sickness:* Similar to disability, lapses in payments can disqualify a member from receiving maternity benefits and sickness benefits. For both maternity and sickness benefits at least 3 monthly contributions within the 12 month period immediately prior to the semester of childbirth or sickness must have been made to qualify.
- *Death and Funeral Benefits:* The only benefits for which SSS members are immediately qualified (after only one monthly payment) are death and funeral benefits. Funeral benefits are fixed at PhP 20,000. Death benefits will depend on how much has been paid into the scheme and will be made as a lump sum payment, rather than as monthly payments, if fewer than 36 monthly contributions have been made prior to the semester of death.<sup>ccxxxix</sup>

## SSS efforts to extend OFW coverage

**1. Mandatory Membership:** Various initiatives have been pursued and contemplated to improve OFW access to social security. SSS has contemplated making membership mandatory for OFWs, including a proposal of mandatory coverage for OFWs as an amendment to the SSS Charter. Under this proposal, membership in the SSS would be a requirement of deployment. The POEA would have to ensure that OFWs were enrolled in the SSS before going overseas. This would require payment of at least one contribution prior to departure.<sup>ccxi</sup>

**2. Mandatory Registration with SSS:** In the absence of mandatory coverage, the SSS has been discussing with the POEA an arrangement whereby, prior to departure, OFWs will have to sign up for SSS instead of activating their membership.<sup>ccxli</sup> Since membership does not become active until the first payment is made, this mechanism is seen by SSS as a first step to engage OFWs. If this agreement is implemented, all OFWs would be registered in the SSS system and could activate their membership at any point by paying an initial contribution. SSS is also discussing with POEA potentially requiring existing members to pay at least one contribution prior to departure.<sup>ccxlii</sup>

**3. Including SSS in Pre-departure Orientation Seminars (PDOS):** SSS is working with OWWA on refining the PDOS. SSS would like the PDOS module to include information on the SSS program under the financial literacy portion of the seminar.<sup>ccxliii</sup>

**4. Promotion of UMID ID:** Another initiative being promoted by the SSS is the Unified Multi-Purpose Identification Card (UMID). This card serves as an ID card for those who have PhilHealth, Pag-IBIG, and SSS membership. To get the ID, one must have posted at least one contribution to SSS.

**5. Outreach at POEA:** SSS is also engaged in outreach initiatives at the POEA so that workers are encouraged to drop by the SSS counters at the POEA building.

### **Assessment of the SSS OFW Coverage Program**

**1. Lack of Access to SSS:** Many OFWs are not covered under the social security programs for different reasons:

- For many OFWs, overseas employment is their first job. These workers will not have been required to register in the SSS system as local workers.<sup>ccxliv</sup>
- OFWs are not covered by SSS because of more systemic issues related to a broad lack of social security coverage in the Philippines. The predominance of the informal economy, among other things, has created a situation where “only about 28 per cent of the [...] labor force [falls] under the formal Social Security System (SSS) and its public sector counterpart, the Government Service Insurance System (G.S)”.<sup>ccxlv</sup> Therefore, many OFWs who were employed in the Philippines before going overseas are not, and have never been, covered by the SSS.
- Lapses in contributions can also mean that SSS members do not have access to many of the available benefits.
- Foreign employers do not contribute to OFWs monthly payments. Hence enrolment and payment to SSS becomes an additional financial burden for some OFWs.

### **2. Problems with Proposed Mandatory Coverage**

- *Financial responsibility of OFWs:* Since the foreign employer cannot be compelled to make monthly contributions to SSS, the entire payment would have to be shouldered by the OFW.<sup>ccxlvi</sup> This is in addition to the expenses that OFWs pay prior to deployment. OFWs pay a mandatory \$25 membership fee to OWWA even though it is supposed to be borne by the employer. PhP 600 mandatory membership fee for Pag-IBIG fund; PhP 900 to PhilHealth for mandatory health insurance (which will increase more than twice over soon); and a PhP 100 processing fee. All of these fees must be paid to get an Overseas Employment Certificate (OEC) from the POEA, which is a requirement for deployment of OFWs.<sup>ccxlvii</sup> Adding the cost of mandatory SSS membership on top of this, which is between PhP 520 and PhP 1560 depending on the OFWs salary, would further burden OFWs (especially if the monthly contribution rate were increased to 11% thereby increasing total monthly payments).
- *Lack of guarantee in accessing Social Security:* An SSS representative said that OFWs who submit a one month payment prior to departure may not be able to pay the succeeding payments for various reasons. The worker would then have access only to death and funeral benefits. Alternative mechanisms would be needed to ensure SSS

coverage. One option is to require overseas employers to contribute to the workers coverage. Although an SSS representative commented that this arrangement would not be feasible, it could be included in bilateral agreements.

**4. High costs of Remittances:** Attorney Sylvette Sybico, who works with the SSS OFW Program, identified the high cost of remittances as one concern of OFWs. This could be addressed by coordinating with PagIBIG, PhilHealth, and an accredited bank about all remittance charges for all three services.<sup>ccxlvi</sup>

### Initial Recommendations

- ***Employer or Recruiter Should Shoulder Cost of SSS Coverage:*** A mechanism should be devised to improve OFWs' access to coverage without adding an additional financial burden prior to deployment. A different arrangement could be created for OFWs that aims to decrease their monthly payments, while addressing their unique social security concerns. A smaller monthly contribution rate could be considered. Alternatively, a mechanism could be devised to compel the employer to shoulder a portion of the contribution. Another option is for payments that are subsidized by the Philippine government (at least for low-income and vulnerable sectors, such as domestic workers).
- ***Revive the Kabayanihan project:*** To better coordinate the provision of the social welfare services and programs and to reduce remittance fees, the Kabayanihan project could be revived. This was a DOLE initiative to coordinate the services of SSS, PhilHealth, PagIBIG, and POEA by establishing a "one-stop-shop" for OFW social and welfare services at the Philippine Overseas Labor Offices (POLOs). Through Kabayanihan, payment of fees for all agencies and programs could be coordinated, so that only one remittance fee would be charged to the OFW. The "one-stop-shop" would also provide a centralized and accessible agency through which OFWs could easily learn about the programs and services of which they may avail.
- ***Membership as mandatory only if the OFW does not shoulder the cost:*** Unless a mechanism can be devised to reduce the financial burden on OFWs, SSS membership should not be mandatory. While OFWs would benefit from improved access to social security, many OFWs would end up making the required initial payment and then let their payments lapse. The proposal of mandatory registration without mandatory membership is more appropriate, giving the OFW the final decision on whether or not they will activate their membership by making an initial payment.

## 5.2 Pag-IBIG (Home Development Mutual Fund)

Pag-IBIG was established in 1978 by virtue of Presidential Decree No. 1530 to provide a national savings program and facilitate access to affordable housing loans for the average Filipino worker.<sup>ccxlix</sup> Membership in the fund was mandatory for government workers and workers in the private sector. In 2009 Congress passed a law providing for universal coverage, thereby expanding coverage to all Filipinos, including OFWs. RA 9679 stipulated that OFWs who are “formally employed by a foreign employer” now must be members of the Fund.<sup>ccl</sup> Undocumented OFWs may choose to become members by registering voluntarily.

In late 2010, POEA began to collect Pag-IBIG contributions from OFWs prior to departure.<sup>ccli</sup> Initially POEA collected PhP 600, covering 6 months of contributions. However, following protest among the OFW community in July 2011 this was reduced to just one mandatory monthly contribution of PhP 100 prior to departure.<sup>cclii</sup>

Pag-IBIG contributions are fully vested. All contributions are accredited to a member’s account and they continue to earn dividends. Total accumulated savings will be returned upon maturity, which is after 240 months (or 20 years) of contributions. Members may also access their funds earlier for specified reasons, such as retirement, reaching the age of 60, disability, or separation from service for health reasons. The main feature of Pag-IBIG is the housing loan program, which facilitates access to low-interest rate loans for blue-collar workers. There are plans to further reduce interest rates from their current window of 6%-11.5% down to as low as 4.5%.<sup>ccliii</sup> There are also plans to amend guidelines for availing of housing loans, so that OFWs who have not been contributing for the 24 months necessary to avail of a loan, may make a lump-sum payment to meet the 24 month-threshold. Both of these amendments will make loans more accessible to low-income Filipinos.

***Benefits of Pag-IBIG Membership to OFWs:*** Extending coverage to OFWs is meant to help these members save, borrow short term loans, and access low-interest-rate housing loans. It has been found by Pag-IBIG that these loans fill a financial gap for Filipino workers in times of need.<sup>ccliv</sup> It has also been reported by OFWs that these loans are more accessible and easier to avail of than SSS loans.<sup>cclv</sup>

OFWs are quickly becoming a major borrowing contingent at Pag-IBIG, especially in the area of housing loans. While OFWs only make up 9% of total Pag-IBIG membership, last year they represented 26% of the loan portfolio.<sup>cclvi</sup> This means that a large portion of OFW members are making use of the available housing loan to fill this important social security need - access to affordable housing.

To cater to the specific housing needs of OFWs, Pag-IBIG has conducted studies into what types of housing OFWs are requesting and what their affordability levels are.<sup>cclvii</sup> In this way, housing is made accessible to OFWs to whom it would otherwise be inaccessible.

Of great significance to OFWs is the fact that the Pag-IBIG membership is fully portable. Upon proof of permanent residency, an OFW can withdraw their total accumulated savings if they choose to. They may also continue membership in the fund, even after they become permanent residents in another country.

**Reaching Out to OFWs:** Since Pag-IBIG is mandatory, it is imperative that OFWs know what benefits are available to them. To try to raise awareness on this front, Pag-IBIG participates in the Pre-Departure Orientation Seminar for OFWs and reaches out to workers at other venues, both in the Philippines and abroad. Presently there are 18 overseas desks, including at least one desk in each of the top ten destination countries.<sup>cclviii</sup>

Community organizations are well positioned to disseminate information about Pag-IBIG to OFWs. In Saudi Arabia, Pag-IBIG disseminates information about their programs over the radio, which is commonly listened to by OFWs.<sup>cclix</sup> In the Middle East, Pag-IBIG also disseminates information through top employers such as Duty Free Dubai. In Taiwan, where companies provide lodging, Pag-IBIG disseminates information by making arrangements with dormitory heads. Pag-IBIG also prints regionally-specific ads in local, free newspapers consumed by the OFW community, and airs ads on TV programs tuned into by OFWs.<sup>cclx</sup> The significant percentage of OFWs who are availing of housing loans is telling of the outreach program's success.

Pag-IBIG's OFW program, focuses on membership registration and maintenance; remittance facilitation; and delivery of services.<sup>cclxi</sup> Pag-IBIG is currently working with SMART telephone company to process SMS remittance payment, and set up an online payment facility, where OFWs can save on remittance fees. Other initiatives include multi-purpose loans to cover other expenses such as tuition costs or needs after a calamity; and releasing a (forthcoming) loyalty card so that members can access discounts.<sup>cclxii</sup>

### **Assessment and Recommendations: Pag-IBIG for OFWs**

Pag-IBIG provides access to loans and affordable housing. Many OFWs avail of the housing loans, though it would be helpful for the purposes of this analysis to see which contingent of the OFW community is able to avail of the loans. Considering that membership is mandatory, it would be helpful to know if all categories of workers, especially those working in low-skill and more vulnerable sectors, are able to make use of the program they are paying into.

#### **Shortcomings of the Pag-IBIG OFW Program**

*OFWs shoulder the entire cost of contributions:* Foreign employers cannot be compelled to make contributions to the Fund. Therefore OFWs have to shoulder the entire cost of monthly contributions. Locally, the cost is shared by employers and workers, except in the case of the self-employed and those working in the informal sector. Having to shoulder the entire contribution can be a difficult burden for OFWs.

#### **Initial Recommendations**

- Similarly to monthly SSS contributions, it would be beneficial if a mechanism could be devised to lighten the burden on the OFW that arises out of paying both their portion of the Pag-IBIG monthly contribution and their employer's portion.

- Further analysis should be undertaken into which contingents of the OFW community are availing of Pag-IBIG loans in order to assess whether the program is responsive to the needs of low-income and vulnerable sectors.

### 5.3 Overseas Workers Welfare Administration (OWWA)

OWWA is a national government agency under the Department of Labor and Employment (DOLE). It is tasked to protect and promote the welfare and well-being of Overseas Filipino Workers (OFWs) and their dependents.<sup>cclxiii</sup> It is a membership institution, and so its programs and projects are geared towards safeguarding the interests of its members. This means that OWWA generally does not extend assistance to undocumented workers – leaving this to the Office of the Undersecretary for Migrant Workers Affairs (OUMWA) of the Department of Foreign Affairs (DFA), which is also mandated to take charge of assisting all workers.<sup>cclxiv</sup>

Prior to departure, OFWs must pay a mandatory contribution of US\$25 to the OWWA Funds. This cost should be borne by the employer and collected through the recruitment agency. However it is often passed on to the worker, and particularly to rehires. As there is no enabling mechanism to compel foreign employers to pay the OWWA contribution, except when OFWs go through recruitment agencies, rehired OFWs must pay the OWWA fee. For sea-based workers, the OWWA contribution is shared by the worker and the manning agency. Members are entitled to accidental and death benefits, repatriation, scholarships, and livelihood loans alongside an annual 14% interest rate.

*Reintegration:* For OFWs, reintegration is an integral component of social security. To facilitate reintegration, the DOLE developed a Reintegration Program which is administered by OWWA and the National Reintegration Center for OFWs (NRCO).

Both active and inactive OWWA members and all other categories of OFWs may access loans under the OFW Reintegration Program (OFW-RP). As a component of the OFW-RP, OFWs and their families may apply for low-interest-rate loans from the National Reintegration Program Fund to support the development of small business enterprises. The Fund is comprised of PhP1 billion from Land Bank and PhP1 billion from the Development Bank, with a PhP1 billion guarantee fund from OWWA<sup>cclxv</sup>.

To apply for a loan under this program, OFWs must complete the Entrepreneurial Development Training conducted by NRCO and OWWA RWOs in cooperation with the Department of Trade and Industry / Philippine Trade Training Center / Bureau of Micro, Small and Medium Enterprise Development. To be approved, projects must be viable and capable of generating a net monthly income of at least PhP 10,000.00. The loan-able amount is between PhP 300,000.00 and PhP 2 million and cannot amount to more than 80% of the total project cost. The interest rate is 7.5% per annum, fixed for the term of the loan based on diminishing balance. Interested OFW borrowers must go to the nearest OWWA-Regional

Welfare Offices to attend an orientation on the program, have their OWWA membership certified, and complete Entrepreneurial Development Training.<sup>cclxvi</sup>

Significant problems have been noted in the implementation of OFW-RP, including the difficulty in accessing funds, inadequate information on the program, and the absence of a comprehensive plan for OFW reintegration. Recognizing the need for a stronger informational campaign, OWWA developed a number of outreach initiatives to raise awareness of the program. OFW information desks were set up in Local Government Units throughout the Philippines to disseminate information about this program and other programs for families of OFWs; for example, scholarships available for college.<sup>cclxvii</sup>

## 5.4 PhilHealth

PhilHealth is the national health insurance program. Since 2005, when medical coverage for OFWs was transferred from OWWA to PhilHealth, mandatory coverage has been extended to OFWs. Premiums are Php900 per year, and one annual premium must be paid by an OFW prior to deployment. The program covers 30% of the medical bill. To make a claim, a worker must submit their statement of account to PhilHealth for reimbursement. Reimbursement must be through an address in the Philippines.<sup>cclxviii</sup>

Sea-based OFWs are enrolled in PhilHealth under the ‘employed’ category with their manning agencies based in the Philippines acting on behalf of the principals or employers, while land-based OFWs are enrolled as individually paying members. This means that sea-based OFWs and those employed in the Philippines share premium payments with their employers, with each being responsible for paying half the contribution.<sup>cclxix</sup> Employed members are also eligible to apply for indigent status so that they may still have access to health insurance even if they are unable to make monthly contributions.

All OFWs must be enrolled as individually paying members.<sup>cclxx</sup> This can be a difficult financial burden for many OFWs, especially for workers such as domestic workers, who are significantly underpaid. For some OFWs, mandatory membership can also create unnecessary overlaps, since their employer is already legally required to purchase medical insurance for their workers as a condition of employment.

Statistics on OFW benefits claims reveal that the program is under-utilized. While the number of OFW members has grown drastically, from 1,187,105 in 2006 to 2,571,457 in 2011<sup>cclxxi</sup>, the number of OFW members and OFW dependents who received paid claims has been small. As of September, 2011, 5 million of the 78.31 million PhilHealth members and their dependents were under the Overseas Workers Program. This means that OFWs and their families made up 9% of the total membership. Yet, only 94,056 claims were paid to OWP members between January 1 and September 30, 2011, representing only 3% of total benefits paid. Likewise, OWP members only paid 3% of premiums collected.<sup>cclxxii</sup> In fact, only 25-

30% of OWP members are actively paying.<sup>cclxxiii</sup> This shows that the program is significantly underutilized and that payments often lapse.

Recognizing the need for increased awareness of their programs, PhilHealth has engaged in informational campaigns abroad and in the Philippines. In 2007, it set up a mobile office at the Philippine Consulate in Hong Kong. It was closed however in 2012. While there was an increase in membership registration in Hong Kong during this period, there was no significant increase in the utilization of benefits.<sup>cclxxiv</sup>

### **PhilHealth: Assessment and Recommendations**

- This initial assessment suggests that there is a significant lack of awareness of PhilHealth benefits for OFWs and their families, or there are other barriers keeping them from accessing the available benefits.
- Further research would be helpful in determining if membership in PhilHealth should be mandatory for OFWs. The research could include years of payment, overseas location of the OFW during these years, and if the overseas employer provides health insurance. If such a study were carried out, proper recommendations could be made. These may involve one or more of the following:
  - Devising new ways to increase awareness of PhilHealth benefits with the goal of increasing the number of claims made;
  - Allowing OFWs who are covered by another plan to opt out of PhilHealth;
  - Reducing the financial burden on OFWs of premium payments by coordinating remittance payments with other agencies or by allowing OFWs to apply for subsidies.



## 6. Recommendations and Conclusion

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### 6.1 Recommendations

#### A. Negotiate comprehensive bilateral agreements with governments in countries of destination

According to the ILO, bilateral social security agreements are the most effective way to improve migrant workers' access to social security benefits. Recommendations on how to structure social security agreements which protect the rights of migrant workers are outlined below:<sup>cclxxv</sup>

- **Include the ILO provisions** on (1) the equality of treatment, which extends to migrants the same entitlement to benefits as are available to nationals, (2) the provision of benefits abroad, which allows benefits to be paid in the workers' country of residence, (3) the determination of the applicable legislation, which consists of rules to determine which country system will apply to the migrant worker, (4) the maintenance of rights in the course of acquisition that allows periods of membership in both countries to be combined to determine eligibility of benefits and (5) administrative assistance, a provision which guarantees the co-ordination of liaison offices to extend assistance to covered workers and implement the provision of the agreement.<sup>cclxxvi</sup>
- **Ensure inclusion of domestic workers in bilateral agreements.** Provisions have to make sure that there is an adequate and accessible social security scheme and define labor standards around this specific activity in the host countries. Special attention must be given to the enforcement of the standard employment contract for domestic workers, since domestic workers are routinely underpaid.
- **Include gender-oriented provisions** in social security agreements and in monitoring mechanisms. The matters of gender equality, reproductive and sexual health issues, and parental leave should be given particular attention.
- **Address jurisdictional gaps and inconsistencies in bilateral agreements-** Migrant workers exist in several overlapping and competing jurisdictions – both internationally and within their host country. This is especially the case with domestic work. Is domestic work a matter of family law or employment law; does the regulation of migration fall within the purview of immigration law or labor law? Governance frameworks have to be

created in order to govern transnational domestic workers, who exist inside a “jurisdictional conundrum” (Judy Fudge; 2011).

- **Create inter-agency cooperation mechanisms** in order to monitor the agreements’ implementation, and support migrants in accessing information and navigating procedural requirements to avail of benefits.

### **Province of Manitoba**

In Canada, the terms and conditions of domestic workers' employment fall within the authority of the provinces and territories, while immigration is State-regulated. The global juridical environment is very likely to be overlapping, and regulations under one jurisdiction can be rendered ineffective by regulations and policies in competing jurisdictions. The Canadian province of Manitoba created a comprehensive control framework. Manitoba's *Worker Recruitment and Protection Act (WRPA)* creates a registration system that covers the workers, the employers of migrant workers and foreign recruiters. It makes it compulsory for employers seeking to hire migrant workers to register with the provincial employment standards branch, so any person engaged in recruiting foreign workers is licensed. Linking provincial registration to the federal immigration process bridges the jurisdiction gap between immigration and employment protection. This is not only a way to ensure that agencies are not asking for recruiting fees, but it is also a scheme to deploy a province-led inspections and investigations in the domestic work sphere.

## **B. Ensure access to social protection in the country of origin and country of destination**

### ***1. Open access to national social security programs in the countries of destination***

“The same treatment as nationals” principle needs to be implemented. Initiatives following a multilateral approach have the advantage of generating common standards and regulations, and removing discrimination against migrants from different source countries as a result of being granted differing rights and entitlements through varying bilateral agreements. Furthermore, a multilateral approach eases the bureaucratic procedures by setting a common standard for administrative rules that implement the agreement.<sup>cclxxvii</sup> Below are some examples of programs and initiatives that could be adapted.

### Canada's Seasonal Agricultural Worker Program

"In Canada the Charter of Rights and Freedoms mandates that government action should be free of discrimination on the basis of non-citizenship but permits residency-based eligibility requirements for public benefits programmes.

Canada's flagship migrant worker programme is the Commonwealth Caribbean and Mexican Seasonal Agricultural Worker Program (CCMSAWP), under which between 20,000 and 25,000 workers enter annually.<sup>?</sup> The Program was established in 1966 to employ Caribbean, and later also Mexican, workers in Canada's horticulture industry.

Requests for workers are made by farmers and sending countries respond by inviting workers to apply for screening and selection. The process is coordinated by sending countries' labour ministries and Human Resources and Skills Development Canada (HRSDC) (Downes, 2007). The Program offers an example of best practice for several reasons.

First, the rules surrounding it give migrants rights to social protection that are similar to those of Canadian workers. Second, the Government involves employers in designing and implementing the programme, and gives administering agencies discretion in implementing the rules (Martin, 2008). Lastly, Canadian law treats non-citizen status as an issue for anti-discrimination law, giving migrants the same status as other expressly protected groups. Migrant workers under this scheme generally have the same right to health insurance as Canadians, and where this is not true, coverage is coordinated with the province by the Mexican Government. Because workers often return to work for the same employer more than once, they become eligible for old-age and disability pensions, both of which are portable. They are also eligible for family allowances."

*Source : Sabates & Wheeler*

**CAUTION:** It is important to note that although the CCMSAWP is regarded as a 'best practice', there are numerous problems with its implementation. NGOs and other concerned groups have noted the often atrocious, overcrowded living conditions on many of the farms where seasonal agricultural workers live and work. There are also reports of workers having difficulty accessing benefits to which they are entitled; and there is no access to permanent residency for these workers, despite years of contribution to the Canadian economy. This highlights the need for improved regulation of programs, and potential reforms, even for programs regarded as 'best practices'.

### The European Model for Multilateral Agreements

The "most far-reaching multilateral agreement in existence, both in terms of the number of persons covered and the comprehensiveness of the coordination,<sup>cclxxviii</sup> are those between European countries. The key regulation is EC regulation 1408/71, which entered into force on 1 October 1971.

Regulation 1408/71 responds to the objectives of equality of treatment, provision of benefits abroad, exportability of benefits, determination of the applicable legislation, totalization, and administrative assistance. It covers all branches of social security.

Originally, regulation 1408/71 applied only to nationals of EU member-states and to some nationals of non-EU countries living in the EU. Regulation 859/2003 entered into force on 1 June 2003 extending the coverage of regulation 1408/71 to all persons, irrespective of nationality, who reside legally in the EU. Taken together, regulations 1408/71 and 859/2003 ensure complete social security protection for all legal migrant workers in the EU.

Those EU regulations "have replaced a complex set of bilateral agreements and 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.<sup>cclxxix</sup> However, in this scheme, "the coverage of health care outside the EU is much less developed, as well as the pension portability issue."<sup>cclxxx</sup>

*Source: Edward Tamagno*

### *Italian legislation*

Approximately 90 per cent of the 98,000 seasonal workers Italy welcomes each year are from non-EU countries, and are therefore not included in the EU's recently established portability provisions (OECD, 2008).

Since 1998, Italy has passed several laws to facilitate the social protection of those migrant workers. "Possibly the most wide-ranging piece of legislation, so-called "influx decrees" entitle seasonal workers to pensions, health benefits, and sickness and maternity leave, along with general insurance coverage under the provisions of INAIL, the National Employment Accident Insurance Institute. It also offers family allowances for those living below a defined income threshold, on the same basis as those offered to citizens. (...) Italy has been innovative in offering pension portability to non-EU workers: since 2002, employers have paid social security contributions for migrant workers separately from their citizen employees, through the National Social Insurance Institute (INPS), which then transfers their contributions to the social security authorities in the migrants' countries of origin. The law also covers the families of permanent resident foreign workers, and offers survivorship or transferred pensions, which are portable across national borders and can be claimed at the Italian retirement age of 65, regardless of national laws. Moreover, in order to offer information about these schemes to migrants, who may be mobile or may not speak Italian, "welcoming centers" offer orientation, assistance and information services, and a Contact Centre is reachable by a call-free number, with services in seven languages.<sup>cclxxxi></sup>

*Source: Sabates & Wheeler*

## ***2. Develop a program in Gulf Cooperation Council Countries that improves access to Long-Term Benefits for Temporary Migrants.***

GCC countries do not provide pension benefits for temporary migrants, but all have end-of-service benefit (EoSB) arrangements of about one month per year worked. To provide for better long-term security, the EoSB arrangements could be transformed into a funded defined contribution program for all temporary workers. Alternatively, for rehired migrants, it could be supplemented with a voluntary funded contribution scheme in which contributions by employees are matched by employers (with a ceiling) and with a default option in which temporary migrants are automatically enrolled with a basic contribution (around 5%) unless they opt out.<sup>cclxxxii</sup>

### 3. *Extend Social Security coverage to migrant workers free of cost.*

- A mechanism should be devised to minimize the financial burden of coverage, especially for more vulnerable workers such as domestic workers. As POEA and SSS move forward with discussions on mechanisms that would require SSS coverage prior to deployment, it is imperative that it includes a provision providing for coverage at little or no cost to the migrant worker. Below are some possible options:
- ***The employer/recruitment agency covers SSS and other Contributions:*** A provision could be included in the agreement establishing that it is the duty of the employer or recruitment agency to extend coverage to migrant workers under the SSS, PhilHealth, and PagIBIG Fund, unless otherwise provided in multilateral or bilateral agreements entered into by the Philippine government with other countries. This would follow the Seafarers' Standard Employment Contract:

***SSS Coverage for Seafarers as a Model:*** Through the joint efforts of the SSS and DOLE, an agreement was reached to include mandatory SSS coverage as a component of the Standard Employment Contract of seafarers. As per Section 1 (Duties), Part A (Duties of the Principal/Employer/Master/Company) of the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships, it is a duty of the principal/employer/master/company:

*to extend coverage to the seafarers under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Employees' Compensation Commission (ECC) and Home Development Mutual Fund (Pag-IBIG Fund), unless otherwise provided in multilateral or bilateral agreements entered into by the Philippine government with other countries.*

A similar model could be followed for land-based migrant workers. This would be a way to extend social security coverage to migrant workers, without additional financial burden to the workers.

If this option was pursued, a mechanism would have to be implemented to better monitor recruitment agencies in order to ensure that the cost was not simply passed onto the worker. This should be a part of a broader effort to improve regulation of recruitment agencies.

- ***Government Subsidized Coverage:*** SSS, Pag-IBIG, and PhilHealth coverage could be subsidized by the government (at least for the most vulnerable categories of migrants). The government could either subsidize the employer portion of contributions that migrants are covering themselves, or cover the entire cost of contributions. This would be an especially important program for more vulnerable migrants, such as domestic workers. Subsidizing social security coverage for domestic

migrant workers, and potentially for other migrant workers, would be a step in the right direction.

### ***C. Develop a comprehensive information/communication and outreach plan***

Migrant workers need to be aware of their rights and potential benefits. Many migrant workers do not access the benefits to which they are entitled because of a lack of information and/or because of other challenges. Pre-departure orientation seminars should include country-specific training outlining social security schemes (where they exist) and procedures for accessing these schemes.

Initiatives such as the creation of resource centers, help-lines, and informational campaigns (broadcast in migrants' preferred media and in their native language) should be undertaken. Both governments and NGOs can take up the task of raising awareness about migrant workers' rights.

It is also imperative that support be extended to relevant research initiatives and to assist with the implementation of programs aimed at improving migrant workers' access to social security. For instance, the ILO has offered assistance to social security institutions in ASEAN countries in the areas of: training on social security agreements for senior officials; supporting technical discussions on the coordination of a provident fund and a social insurance scheme; and the development of ASEAN "model provisions" for social security agreements. Such initiatives should continue to be pursued in the interest of making migrant workers' right to social security a reality.

## **6.2 Conclusion**

As the Center for Migrant Advocacy report indicates, many existing social security benefits are inadequate or inaccessible to OFWs and their families. Government stakeholders, both nationally and abroad, must study existing mechanisms, advocate for new ones, and implement them as soon as possible. Given that social security benefits are necessary to ensure the safety of the millions of OFWs working abroad, their pursuit is significant to their families, the Filipino nation, and the many nations within which OFWs toil.

Hopefully this publication can assist existing advocacy efforts for social security for OFWs, provide useful information to OFWs, and be used as a reference by policy makers in origin and destination countries.

## Annex 1: Ratification of Conventions Related to Social Security for OFWs by the top eleven destination countries for OFWs and the Philippines

Country	ILO C19 Equality of Treatment (Accident Compensation) Convention, 1925	ILO C97 Migration for Employment Convention	ILO C118 Equality of Treatment (Social Security) Convention, 1962	International Covenant on Economic, Social and Cultural Rights, 1966	ILO C143 Migrant Workers (Supplementary Provisions) Convention (1975)	ILO C157 Maintenance of Social Security Rights Convention (1982)	ILO C168 Promotion and Protection against Unemployment Convention (1988)	UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
Saudi Arabia	X	X	X	X	X	X	X	X
UAE	X	X	X	X	X	X	X	X
Qatar	X	X	X	X	X	X	X	X
Singapore	YES	X	X	X	X	X	X	X
Kuwait	X	X	X	YES	X	X	X	X
Italy	YES	YES	YES	YES	YES	X	X	X
Bahrain	X	X	X	YES	X	X	X	X
Malaysia								
Canada	X	X	X	YES	X	X	X	X
Philippines	YES	YES	YES	YES	YES	YES	X	YES

## Annex 2: Comparisons of Access to Social Security for OFWs in Top Ten Countries

Country	Short-term benefits			Work-related benefits			Long-term benefits
	Health care	Work injury/sick pay	Maternity	Wage equality with locals / Vacation Pay/ Anti-discrimination measures	Unemployment Benefits	Severance pay/ end-of-service benefits	Pension Benefits / Portability provisions
<b>KINGDOM OF SAUDI ARABIA</b>	YES	YES	YES	NO / YES / NO	NO	YES/YES	NO/NCU
<b>UNITED ARAB EMIRATES</b>	YES	YES	YES	NO / YES / NO	NO	YES/YES	NCU/NC
<b>SINGAPORE</b>	YES	YES	YES	NO / YES / NO	NO	YES/NC	NO
<b>HONG-KONG</b>	YES	YES	YES	NC/YES/ NC	NO	YES/YES	YES/YES
<b>QATAR</b>	YES	YES	YES	NO / YES / NO	NO	NC/YES	NC/NC
<b>KUWAIT</b>	YES	YES	YES	NO / YES / NO	NO	YES/YES	NC/NC
<b>TAIWAN</b>	YES	YES/YES	YES	NO/YES/YES	NO	YES/ NC	NO/NC
<b>ITALY</b>	YES	YES/YES	YES	YES/YES/YES	YES	NO/YES	YES/YES
<b>BAHRAIN</b>	YES	YES	YES	NO / YES / NO	YES	YES/YES	NO/NC
<b>CANADA</b>	YES	YES/YES	YES	YES/YESYES	NO	YES/YES	YES/YES



**Clarifications/Caveats:**

- Our data reflects the existence of a right to access any health care scheme in the host country. It is not necessarily the same health care system as the one which is provided to national citizens.
- Our data reflects what is available to foreign workers according to each country's Labor Law. It does not take into account the potential shortcomings in its implementation.
- Domestic Workers are sometimes included into the Labor Law, but are often excluded. For instance, Domestic Workers in Kingdom of Saudi Arabia are not covered by the mandatory medical insurance since they are not in the scope of the Labor Law. Thus, this chart does not reflect their specific situation.

**Sources:**

- **Figures in grey:** Robert Holzmann and Yann Pouget, “ Social Protection for Temporary Migrant Workers: Conceptual Framework, Country Inventory, Assessment and Guidance”, Study prepared for the Global Forum of Migration and Development, World Bank and Marseille Center for Mediterranean Integration, Marseille, October 27, 2010.
- **Figures in green:** from additional sources compiled for the present report.

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Amado Isabelo Dizon III, Vice President for Pag-IBIG International Operations Group, 3 May, 2012.

Elryn Salcedo, Social Health Insurance Officer, OWPLMP segment, PhilHealth, 2 May, 2012

Sylvette Sybico, Attorney, Temporary OFW Program, Social Security System, 20 April, 2012.

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