

## ► Thematic Brief

### Africa – Arab States Interregional Tripartite Meeting on Labour Migration

November 2021

## Extending social protection to migrant workers in the Arab States region <sup>1</sup>

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### Introduction

The Arab States region hosts 24.1 million migrant workers <sup>2</sup> and constitutes the subregion with the highest proportion of migrants in its labour force, which stood at 41.4 per cent in 2019 compared to just 4.9 per cent globally (ILO 2021a, 11, 31, 33). Migrant workers are especially prominent in the Gulf Cooperation Council (GCC) countries, where they make up the vast proportion of the labour market, particularly in the private sector (UN ESCWA and IOM 2020). Clearly, migrant workers play a key role in the labour markets of the region <sup>3</sup>, particularly in sectors such as construction, domestic work, agriculture and food production, hospitality, services, and healthcare. In general, migrant workers have limited access to social protection in host countries owing to their migration and/or employment status and the sectors in which they work, but also to the lack of social security agreements. This brief reflects on the importance of extending social protection to migrant workers from the vantage point of international standards, and underlines options to extend coverage for migrant workers.

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<sup>1</sup> This thematic brief was developed by Lea Bou Khater to further discussions during the Africa – Arab States Interregional Tripartite Meeting on Labour Migration. It does not reflect the views of the ILO or the African Union Commission (AUC) and all errors rest with the authors.

<sup>2</sup> The term “migrant worker” is used throughout this thematic brief in accordance with international standards, in particular, Article 2 of the International Convention on the Protection of all Migrant Workers and Members of their Families (1990), which defines a “migrant worker” 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 national”. Similar definitions are found in the ILO Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). It is important to note that governments in the Arab States view most labour migration as temporary and tend to prefer to use the terms “temporary foreign contract labourers” or “temporary expatriate workers”.

<sup>3</sup> Bahrain, Iraq, Jordan, Kuwait, Lebanon, Oman, Occupied Palestinian Territory, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates and Yemen.

## Overview: Social security schemes

In the Arab States region, only 40 per cent of the population is covered by at least one branch of social security. The region is characterized by segmented and exclusionary social insurance schemes that rely on the public sector and the social insurance of formal employment, coupled with underinvestment in a fragmented non-contributory system. Women, young and non-national workers – including refugees – suffer from the largest social protection coverage gaps, which are mainly due to low labour force participation, unemployment and informal employment (ILO 2021b, 47). Compared to nationals, migrant workers face additional challenges in accessing their social protection rights, which encompass legal barriers that stem from the legal framework of the origin or destination countries as well as practical impediments that hamper the effective enjoyment of their rights (ILO 2021c).

A closer look reveals some variations in effective coverage among Arab States. While effective coverage reaches around 70 per cent in Saudi Arabia, this figure stands below 20 per cent in Lebanon. Across the GCC countries, 61 per cent of the population is protected through some form of social protection. However, the level of coverage within GCC countries varies – for example, less than 10 per cent of the population in Qatar is covered, as opposed to more than 60 per cent in Bahrain. These variations in coverage among GCC countries likely reflect the degree of coverage extended to non-nationals in each country as well as the share of non-nationals in the population of each country.<sup>4</sup>

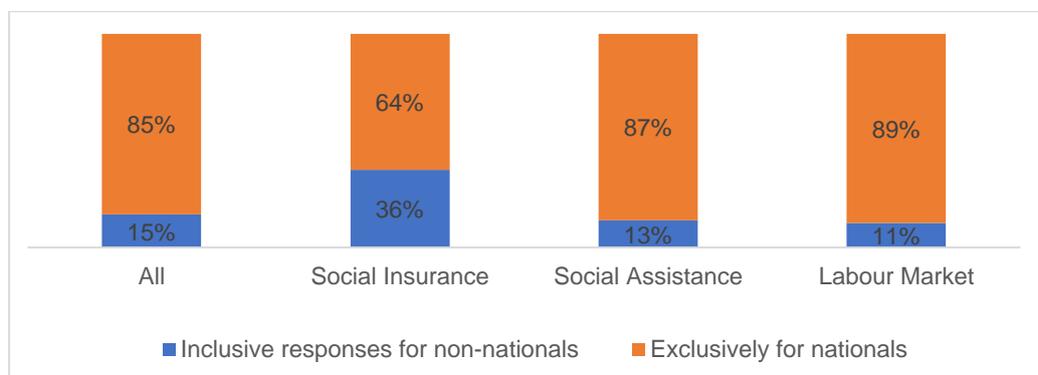
The outbreak of the COVID-19 pandemic has exacerbated existing inequalities and magnified the coverage gaps resulting from fragmented social protection systems. In particular, the crisis has exposed the need to extend protection to workers who are not covered by social insurance or eligible for existing social assistance schemes. Migrant workers and their dependents have generally been excluded from the national social protection response to the pandemic in the broader region. Out of 162 governmental social protection responses in 20 Middle East and North Africa (MENA) countries<sup>5</sup> only 24 (15 per cent) guaranteed some access to non-nationals (see the figure below). Immediate inclusive measures included free access to COVID-19 testing and healthcare, payment of salaries during quarantine periods, and direct social assistance (food transfers) (Satos et al. 2021).

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<sup>4</sup> Bahrain and Saudi Arabia display higher effective coverage rates, as they are the only two countries in the GCC that provide – limited – social insurance coverage to non-national workers. As per: ILO, “World Social Protection Report: Arab States”, ILO Working Paper, forthcoming.

<sup>5</sup> Algeria, Bahrain, Djibouti, Egypt, Islamic Republic of Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Occupied Palestinian Territory, Oman, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen.

► **Proportion of governmental responses to COVID-19 that included some social protection coverage to non-nationals in the MENA region**



Source: Satos et al. 2021.

The exclusion of migrant workers from national social security schemes is predominant and often accompanied by an over-reliance on employer-liability based solutions that are not based on solidarity in terms and whereby workers are compensated directly by employers, private sector insurance schemes, and unilateral welfare provisions that offer limited protection. Employer-funded liability solutions – such as end-of service indemnities and occupational injury insurance – are largely inefficient solutions, as they are characterized by several challenges, including: coverage being limited to salaried work; minimal provisions for benefits and services; low enforceability; and the risk of employers’ bankruptcy and consequent incapacity to offer compensation. In the case of end-of-service benefits, the lump sum payments cannot provide migrant workers with long-term protection. Migrant workers also rely on private-sector-based insurance solutions that are cost-inefficient, unregulated and inequitable. Such schemes that provide coverage on a voluntary basis are also characterized by limited coverage. Nonetheless, countries such as Bahrain, Jordan and Saudi Arabia have been shifting towards a more inclusive social protection approach. Recent reforms in Jordan have extended unemployment insurance to non-national workers (ILO, n.d.).

### **Extending social protection to migrant workers**

“Development gains from labour migration and the protection of the rights of migrant workers are inseparable” (ILO 2010, 215). Migrant workers contribute significantly to promoting development and reducing poverty in their countries of origin as well as to supporting the economic activity of destination countries. Nonetheless, the development benefits of labour migration should not come at the expense of the protection of migrant workers. Compared to workers who live and work in their home country, migrant workers and their dependents encounter additional *de jure* and *de facto* obstacles in accessing their social protection rights (ILO 2021c). Many migrants are often not covered by social security and social protection programmes in either their country of employment or their country of origin, or they may lose their rights/entitlements when they move across borders.

In light of the COVID-19 pandemic, there is now widespread acceptance that comprehensive social protection systems serve as social and economic stabilizers and that they can support recovery and build resilience in case of future crises (ILO 2020). The pandemic has amplified the importance of extending social protection to migrant workers, given the benefits to individuals and their families, communities, and societies, as well as to economic growth, sustainable development and social cohesion.

First, ensuring that migrant workers' social security rights are guaranteed is essential to steer away from the predominant development paradigm based on low wages and low productivity. By providing proper access to comprehensive social protection coverage, such policies will contribute to the **promotion of decent work and productive employment** as well as guaranteeing an environment conducive to sustainable enterprises (ILO 2021b, 211).

Second, the guarantee of social protection rights to migrant workers promotes the **formalization of the labour market** and reduces unfair competition and perverse incentives for employers to recruit migrant workers as "cheap and unprotected" labour. It can also promote internal labour mobility for both national and foreign workers. Moreover, formalization may reduce the exploitation of migrant workers, who are omnipresent in the informal economy.

Third, providing equality of treatment between nationals and non-nationals in respect of social protection solidifies **social cohesion**. Covering as much of the population as possible, including migrant workers, and ensuring that parts of the population are not excluded may reduce inequalities and inhibit the rise of social tensions and conflicts.

Fourth, the extension of coverage to migrant workers has the potential of **strengthening social protection systems**. Participation of migrant workers in national social insurance schemes can help improve the overall financial health of contributory systems as migrant workers can contribute to improving demographic ratios (that is, the ratio between active contributors and dependent insured members in contributory schemes). Moreover, access to contributory social insurance benefits reduces pressure on tax-funded social protection mechanisms, both in countries of destination and countries of origin (upon the return of migrant workers, including for dependent family members remaining in countries of origin).

Finally, in addition to the fulfilment of social protection rights, such policies will facilitate migrant workers' **safe international mobility**, including their return to the country of origin at any point in time.

### International legal framework

Every person has the fundamental right to social security. This is an important element to ensure the well-being of workers, their families, and communities, while contributing to the functioning of national labour markets. The Universal Declaration of Human Rights (1948) establishes that everyone has the right to social security and to an adequate

standard of living.<sup>6</sup> The International Covenant on Economic, Social and Cultural Rights (1966) protects “the right of everyone to social security, including social insurance” (Article 9); while the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) stipulates that “with respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties” (Article 27(1)). Despite these international provisions the right to social protection is far from being a reality for all.

Achieving “the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care” is at the heart of the ILO’s mandate.<sup>7</sup> A number of international labour standards include provisions related to the social security rights of migrant workers. These instruments provide guidance on how to extend social protection to migrant workers and establish important social security principles:

- **Equality of treatment** between national and non-nationals, whereby migrants have the same rights and obligations as nationals in the destination country;
- **Maintenance of acquired rights and payment of benefits abroad**, whereby any acquired right should be guaranteed to the migrant worker in one territory even if it has been acquired in another;
- **Maintenance of rights in the course of acquisition**, whereby the completion of a benefit-related qualifying period should account for periods served in each country;
- **Determination of the applicable legislation** to ensure that the social security of a migrant worker is governed at any time by the legislation of one country only;
- **Reciprocity** whereby a party to an agreement undertakes to apply the same mechanisms as every other party to make its social security benefits more accessible to migrant workers (Hirose, Nikač, and Tamagno 2011, 8).
- **Mutual administrative assistance**.

The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), is the only international instrument that sets global minimum standards for all nine branches of social security.<sup>8</sup> Furthermore, Convention No. 102 contains clear provisions dedicated to the equality of treatment of non-national residents. The principle that all non-national residents must have the same rights as national residents is clearly articulated in the Convention (Article 68).

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<sup>6</sup> Article 22: “Everyone, as a member of society, has the right to social security.”

<sup>7</sup> As per Article III(f) of the Declaration Concerning the Aims and Purposes of the International Labour Organization, 1944 (also referred to as the Declaration of Philadelphia).

<sup>8</sup> The nine branches of social security for which Convention No. 102 makes provision comprise: medical benefit; sickness benefit; unemployment benefit; injury benefit; old-age benefit; invalidity benefit; family benefit; maternity protection; and survivor’s benefit.

Another important step towards the right to social security for migrant workers and their families is the ILO Social Protection Floors Recommendation, 2012 (No. 202). The Recommendation outlines four basic social security guarantees, which include access to essential healthcare as well as access to income security for children, persons in active age who are unable to earn sufficient income, and older persons (Para. 5).

The International Labour Conference of the ILO has also adopted specific instruments on the social security rights of migrant workers and their family members. The Conference adopted the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), which provides that any Member State that ratifies the Convention must guarantee to nationals of any other Member State that has ratified the Convention, and who suffer personal injury due to work accidents, equality of treatment with national workers without any condition as to residence. The Equality of Treatment (Social Security) Convention, 1962 (No. 118), sets forth the right to equality of treatment between national and non-national workers and their family members with a view to specifically addressing the situation of migrant workers in relation to social security. The adoption of the Maintenance of Social Security Rights Convention, 1982 (No. 157), provides for the maintenance of migrant workers' acquired social security rights or rights in course of acquisition (Hirose, Nikač, and Tamagno 2011).

### **Status of ratification of international standards relevant to the social protection of migrant workers in the Arab States Region**

The first step towards the domestication of international standards on social protection of migrant workers is the ratification and application of relevant Conventions and Recommendations. The table below presents the state of ratification by Arab States of key Conventions relevant to social protection of migrant workers and their families, as of October 2021.

#### **► Number of ratifications of ILO Conventions relevant to social protection of migrant workers and their families in the Arab States**

<b>ILO Convention</b>	<b>Number of ratifications</b>
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	4 (Iraq, Lebanon, Syrian Arab Republic, Yemen)
Social Security (Minimum Standards) Convention, 1952 (No. 102)	1 (Jordan)
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	3 (Iraq, Jordan, Syria)
Maintenance of Social Security Rights Convention, 1982 (No. 157)	–

– = nil.

Source: [ILO NORMLEX database](#).

The low number of ratifications in the Arab States region implies limited willingness to apply international standards on social protection to migrant workers. Moreover, this low level of ratification is coupled with the fact that only a few States in the Arab States region ensure equality of treatment between migrants and nationals with respect to social security. A review of legal provisions in 120 countries revealed that out of eight surveyed Arab States, only three have legal provisions on equality of treatment with respect to social security and one with respect to access to healthcare (van Panhuys, Kazi-Aoul, and Binette 2017). Nonetheless, the ratification of Conventions remains the best route towards the application of standards around and respect for the social security rights of migrant workers.

### **Social security agreements**

In the absence of the ratification of ILO Conventions for the protection of the social security rights of migrant workers, countries may resort to bilateral or multilateral agreements. The 2006 ILO Multilateral Framework on Labour Migration calls for the conclusion of social security agreements, which constitute one of the most effective policy solutions for extending social protection to migrant workers. Bilateral and multilateral social security agreements (BSSAs and MSSAs) are treaties designed to coordinate the social security schemes of two or more countries to overcome barriers that might otherwise prevent migrant workers from receiving benefits under the systems of any of the countries in which they have worked (Hirose, Nikač, and Tamagno 2011, 19). Such agreements ensure that the social security rights acquired or in the course of acquisition are maintained. They also allow for the payment of benefits abroad. These agreements are binding once in force and establish a legal framework to coordinate social security schemes between countries.

However, the effective coverage of existing agreements continues to be relatively limited (ILO 2021c). In the same vein, the Overseas Development Institute has estimated that only 23 per cent of migrants are covered by a bilateral or multilateral social security agreement (ILO 2021b, 64). Most migrant workers in the Arab States are not covered by such agreements. As of March 2017, only two Arab States had concluded bilateral social security agreements: Oman has signed a bilateral social security agreement with Nepal; and there is an MOU between Yemen and Syria that was adopted in 2009<sup>9</sup>. Since 2006, a multilateral agreement between GCC countries provides for a Unified Law on Insurance Protection Extension for citizens of the GCC region working outside their home country in any other of the GCC Member States.

In addition, social security provisions can be incorporated into bilateral labour agreements (BLAs) in line with international labour standards.

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<sup>9</sup> See [Syrian Arab Republic Decree No. 144/2009 ratifying the Cooperation Memorandum in the Field of Social Security signed with the Government of Yemen](#).

## Conclusion

The COVID-19 pandemic has confirmed the indispensable role of social protection for migrant workers in the Arab States. Migrant workers continue to face legal and practical impediments to exercising their fundamental right to social security. Ensuring social protection to migrant workers and their dependents is essential given the benefits to individuals and their families, communities, and societies, as well as to economic growth, sustainable development and social cohesion.

The Arab States region has made progress to close the coverage gap for non-national workers, but continued efforts are needed to make the right to social security a reality for all in the region. In this regard, the following set of reforms could be considered (ILO 2021b, 54):

- Ratification and implementation of relevant ILO Conventions and Recommendations;
- Conclusion and effective implementation of bilateral and/or multilateral social security agreements to enhance social security coordination between origin and destination countries;
- Inclusion of social security provisions in BLAs;
- Adoption of unilateral measures, including the establishment of social protection floors, to extend coverage to migrant workers and their dependents;
- Setting forth complementary measures specific to identified administrative and organizational barriers to effective coverage, including: the design of migrant-sensitive measures that consider the specific needs of migrant workers and their dependents; communication and awareness campaigns; simplification and facilitation of registration procedures; pre- and post-departure training; and the publication of materials and guidelines in relevant languages.

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