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# Migration and Social Protection in Europe and Beyond (Volume 3)

A Focus on Non-EU Sending States

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Editors

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Liege, Belgium  
15 May 2020

Jean-Michel Lafleur  
Daniela Vintila

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# Chapter 1

## The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlements, Consular Services, and Diaspora Policies



Daniela Vintila and Jean-Michel Lafleur

### 1.1 Introduction

In recent years, the topic of migrants' access to social protection has increasingly become an issue of concern amongst scholars, policy makers and citizens alike (Ruhs and Palme 2018). Yet, this interplay between migration and welfare has gained much more salience in some world regions than in others, being intensively discussed especially in the European Union (EU). The rising interest on how European welfare states adapt to international mobility is due to a combination of factors that points towards the peculiarity of this region. On the one hand, it can be seen as a direct effect of the accelerated migration inflows that EU countries have witnessed during the last decades, coupled with worrying levels of vulnerability faced by migrant populations, especially in times of economic crisis (Vintila and Lafleur 2020 in volume 1 of this series). On the other hand, the rising societal opposition towards migrants' access to welfare in Europe and the increasing politicisation of this topic in some EU destination countries (Lafleur and Stanek 2017; Ruhs and Palme 2018; Schmidt et al. 2018) have further contributed to the academic and political attention to the openness or closure of European social protection systems to mobile individuals.

Consequently, an extensive body of literature has examined how EU countries treat international migrants in terms of their access to welfare. Some pieces of work have focused exclusively on welfare-related dynamics among intra-EU migrants. In

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doing so, they aimed to examine the articulation between free movement and social policy in a context in which the EU's supranational legislation on non-discrimination and social security coordination has progressively facilitated mobile Europeans' access to welfare in their EU home and host countries (Martinsen 2005; Blauberger and Schmidt 2014; Kramer et al. 2018; Schmidt et al. 2018, among others). Additionally, recent studies have also paid attention to third-country nationals residing in the EU, a group that faces not only higher risk of poverty and social exclusion, but also more institutional barriers for accessing welfare benefits in EU destination countries (European Migration Network 2014; Lafleur and Vintila 2020a).

Despite these rich theoretical and empirical contributions regarding the interplay between mobility and welfare, the existing literature on this topic still faces major limitations. First, by mainly examining how the host country's welfare configuration treats international migrants, past studies have often neglected the fact that mobile individuals can also benefit from certain levels of social protection from their origin countries. The diaspora literature shows that home countries often develop a wide repertoire of policy initiatives to keep links with their nationals abroad (Agunias and Newland 2012; Collyer 2013; Ragazzi 2014; Delano 2018; Gamlen 2019). In some cases, this also covers specific policies and programs aiming to ensure the social protection of non-resident nationals, especially those facing strong economic hardship (Lafleur and Vintila 2020b). Second, in the attempt to measure migrants' access to welfare, past studies have mainly adopted a Eurocentric perspective by closely examining the real and anticipated consequences of human mobility on European social protection systems. However, the historical development and recent achievements of European welfare states make them a unique case study; and many socio-economic and welfare-related dynamics witnessed across European democracies may not be easily generalizable worldwide. In fact, the way in which non-European welfare states respond to international mobility still stands out as a grey area in migration and social policy literature, as very few studies have focused on the nexus between migration and welfare beyond the EU context. Even when extending the scope of the analysis beyond the EU, most studies have rather explored informal strategies and practices of transnational social protection of non-EU migrants in European countries and their families left in the homeland, rather than systematically analysing how they access welfare benefits from origin countries (see Boccagni 2011; Sainsbury 2012; Merla and Baldassar 2011; Lafleur and Vivas Romero 2018).

This volume seeks to address this research gap by taking the perspective of non-EU countries on migrant social protection. In doing so, we address the following research questions: What type of social protection policies do non-EU sending countries adopt for their nationals abroad, including those residing in EU Member States? Do non-EU countries grant a differentiated access to social benefits for their emigrant populations when compared to foreign or national citizens residing in their territory? In other words, do non-EU states treat immigrants and emigrants differently when it comes to social protection? By providing an in-depth analysis of these questions, this volume thus complements the other two books included in this series (Lafleur and Vintila 2020a, b) that closely examine the interplay between migration and social protection in Europe and beyond.

Our analysis focuses on a sample of 12 sending countries for migrants residing in the EU (Argentina, China, Ecuador, India, Lebanon, Morocco, Senegal, Serbia, Switzerland, the Russian Federation, Tunisia, and Turkey), plus the United Kingdom (UK) after the Brexit referendum. This sample of 12 non-EU countries is particularly relevant for our purposes for several reasons. To begin with, these countries are distributed across different world regions (first step of our case selection process) and they count with a population of more than three million individuals (second step, aiming to exclude from the analysis very small states which may put forward rather distinctive social policy and migration patterns). These countries also have significant shares of nationals abroad (their diaspora worldwide accounts for more than 1% of their total population- third step) and a substantial segment of their diaspora (more than 40%) resides in the EU (fourth step). Their diaspora has a significant presence across several EU Member States, by being in the top five foreign nationalities in at least two EU countries (fifth step). Finally, these 12 countries are stable states (with a score of 10 or less in the 2016 State Fragility Index and Matrix- sixth step),<sup>1</sup> while also counting with sufficient variation in the historical development of their welfare regimes (seventh selection criterion). The United Kingdom that was, until recently, an EU Member State, was added to this volume as it represents a quite peculiar case. Just like other countries analysed in this book, the UK counts with a significant diaspora abroad, although a smaller share of its non-resident population (around 25%) lives in EU countries. Nevertheless, UK citizens are in the top five foreign nationalities residing in more than a half of current EU Member States (Lafleur and Vintila 2020c); and interesting changes in access to social protection of the UK diaspora in the EU and of EU citizens in the UK are likely to occur in the future.

Two chapters are dedicated in this volume to each one of these 13 countries. For each country, the first chapter focuses on access to social benefits across five core policy areas (health care, unemployment, old-age pensions, family benefits, guaranteed minimum resources) by highlighting the type of social protection policies offered to national residents, non-national residents, and non-resident nationals. For each policy area, we look at a rather broad array of social benefits including: benefits in kind and cash in case of sickness, invalidity benefits, unemployment insurance and assistance benefits, contributory and non-contributory old-age pensions, maternity, paternity, parental and child benefits, and social assistance programs (see Vintila and Lafleur 2020 for a more detailed description of these benefits). The second chapter for each case study discusses the role of three key actors (consulates, diaspora institutions, and home country ministries/agencies responsible for specific social policy areas) through which non-EU countries interact with their nationals abroad across the five policy areas previously mentioned (see further details in Lafleur and Vintila 2020c).

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<sup>1</sup> This index was developed by the Integrated Network for Social Conflict and Research (INSCR) and it covers all independent countries in the world with a population of more than 500,000 in 2016. For each country, the fragility score takes into account aspects related to effectiveness and legitimacy across four performance dimensions: security, political, economic and social. See: <https://www.systemicpeace.org/inscrdata.html>. Accessed 16 March 2020.

For each country, the data for both chapters are based on two surveys with national experts (one survey for the first chapter on access to social protection and another survey for the second chapter on diaspora policies and institutions). The surveys were conducted in the framework of the ERC-funded project “Migration and Transnational Social Protection in (Post) Crisis Europe” (MiTSoPro);<sup>2</sup> and they included standardised questions to ensure the comparability of our findings across countries counting with different welfare and migration features. For each survey (see details in the introductory chapters of volumes 1 and 2 in this series), national experts were asked to provide objective information regarding the eligibility conditions for accessing social benefits (first survey) and diaspora policies and initiatives for nationals abroad (second survey).

## 1.2 Social Policy Developments in Non-EU Contexts

Broadly speaking, the development of welfare and social policies in non-European contexts has historically followed a quite different path when compared to the EU (for an overview of EU countries, see Lafleur and Vintila 2020a). This has attracted an increasing scholarly interest on how non-European welfare regimes have the potential to challenge or redefine different typologies of ideal social policy models that have emerged after the seminal work of Esping-Andersen (1990) on the Three Worlds of Welfare Capitalism (see Ferrera 1996; Bonoli 1997; Österman et al. 2019, among others). However, the variation across non-EU social protection schemes—sometimes closely linked to very distinctive historical, economic, political or societal traits than the ones observed in the EU—makes their categorization into existing “ideal” social policy models rather difficult (see Rudra 2007 or Mkandawire 2016 for more detailed discussions on how existing typologies overlook varieties of welfare capitalism in developing countries). This is particularly the case considering that “one size fits all” typologies strongly clash not only with the diversity of welfare institutions and provisions between different regions around the globe, but also with increasing cross-country differences even within the geographical boundaries of the same world region.

Currently, there are still major differences across non-EU countries between those counting with rather generous welfare regimes (mostly present in wealthier high-income states) and the welfare state of developing countries that often remains hybrid, heavily fragmented and relatively fragile. The latter is observable especially across countries in more volatile economic contexts with significant macro-economic imbalances in which specific benefits rather generalised across EU welfare states either do not exist or have been replaced by different (often less institutionalised)

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<sup>2</sup><http://labos.ulg.ac.be/socialprotection/>. Accessed 16 March 2020. The survey was conducted between April 2018–January 2019 and several rounds of consistency check were centrally conducted by the MiTSoPro team. Given the period in which the survey was conducted, the country chapters included in this volume focus mainly on the policies in place at the beginning of 2019.

social protection initiatives. In many of these countries (including several of the countries analysed in this volume), the development of welfare institutions and provisions has often encountered similar socio-economic challenges, including rising levels of poverty and increasing income and class-related disparities. As we will explain in this book, policy makers have sometimes attempted to address these challenges via processes of policy diffusion or, more broadly, policy convergence, with some countries implementing welfare schemes previously institutionalised in other contexts, by adapting them to the specificities of domestic receiving environments.

By way of example, Barrientos (2009) argues that until the 1980s, the development of welfare institutions in Latin America was largely influenced by the conservative welfare regime of several European countries, particularly when it comes to the support offered to families in protecting male breadwinners via occupationally stratified insurance schemes. However, unlike their European counterparts, Latin American welfare regimes restricted the level of protection and insurance only for workers engaged in formal employment. Given this distinguishable peculiarity, until the 1980s, the Latin American welfare state was considered as rather hybrid or conservative-informal (see also Carmona Barrenechea et al. [this volume](#)). Nevertheless, as Barrientos (2009) points out, recent reforms shifted this paradigm towards a “liberal-informal” social policy model operating in a context of increasing unemployment rates, poverty and income inequalities in the region. Additionally, in response to poverty reduction targets, new social assistance programs have recently emerged, thus introducing new forms of protection disconnected from the labour market. Yet, these similar social policy influences or developments did not automatically lead to a harmonization of welfare regimes across Latin American states, as significant cross-country variations still exist (Riesco 2009). Franzoni (2008) mapped out 18 Latin American countries into three main clusters of welfare regimes, showing that the two Latin American states analysed in this volume respond to quite different social policy features. On the one side, Argentina shows higher decommodification, stronger formalisation of labour and income levels, higher public expenditure and a system targeting the poor, with many of these features being also present in other Latin American cases, such as Chile. On the other hand, Ecuador (together with Colombia, Peru or Guatemala, among others) has been characterised for a long time by low decommodification of the labour force, limited levels of occupied salaried workers, limited Gross Domestic Product (GDP) per capita, low social policy expenditure and a largely informal labour market in which families play a significant role for risk management. As also discussed in this volume, Ecuador reshaped its domestic social policy since 2007, with the consolidation of labour protection and a series of executive decrees aiming to secure immediate investments for education and health care, thus shifting towards a more universal model.

Certain welfare-related similarities and European-driven influences can also be found across other countries in the Global South. In many of them, the development of welfare arrangements has been shaped after social protection schemes already operating across European countries, often as a direct consequence of colonial interference or more indirect colonial legacies, in general. India received strong colonial influences in the development of its welfare regime, with many of its current social

security arrangements and labour regulations being influenced by the country's colonial past. Although the country has experienced strong economic growth and managed to reduce the ratio of people living in extreme poverty,<sup>3</sup> social inequality and uneven access to social protection persist. As highlighted in this volume, the Indian welfare system remains highly fragmented, with formal workers receiving more generous social security arrangements following the colonial legacy; and a large share of the labour force working in the informal sector without access to social security schemes.

On the other hand, countries from the Middle East and North Africa, such as Morocco or Tunisia, have witnessed for a long time populist state welfare provisions in which the state provided for its citizens in return for their loyalty to the regime (Harrigan and El-Said 2014). The first modern type of social security schemes emerged in Tunisia when the country was under the French protectorate, but significant reforms have been implemented after the independence (Gelb and Marouani *this volume*). These reforms led to substantial progress in terms of strengthening state's role in social provisioning with high social spending, a development of social security institutions, and the adoption of new social protection schemes for the unemployed and the poor (Cheikh 2013; Harrigan and El-Said 2014). Yet, economic growth and high employment rates continue to be concentrated in specific areas only (Amara and Ayadi 2013); and informal economy— together with limited social coverage mainly affecting low-income and vulnerable individuals— remains a top priority to be addressed via structural policy reforms (Cheikh 2013). As explained in this book, Morocco also maintains some welfare arrangements and institutions strongly influenced by its past as French protectorate. One of the main challenges faced by the Moroccan welfare state is the inadequacy of its social assistance program for the most vulnerable, despite recent reforms incentivized by the International Monetary Fund and the World Bank, aiming to reduce the poverty rate (Harrigan and El-Said 2014). The situation is even more complicated in Senegal. This country has been characterised as a “cash crop economy” (Mkandawire 2016) in which social protection is often informal and community-based, with limited public spending on welfare. As shown in this volume, the Senegalese welfare system is actually a legacy from France, with its first pillars being established long before the 1960 independence.

Certain social policy developments strongly influenced by the EU or with significant similarities with other European welfare states can also be observed in Turkey, Switzerland, and the UK. The Europeanisation process has strongly affected the development of social policy arrangements in Turkey. As highlighted in this book, the country has witnessed significant welfare reforms, especially since the mid-2000s. In light of these changes (including the attempts to implement a single pension system, the adoption of a universal health insurance, the unification of social security institutions or the restructuring of social assistance programs), Aybars and Tsarouhas (2010) evaluate the Turkish social policy model as a rather

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<sup>3</sup> See: <https://www.worldbank.org/en/country/india/overview>. Accessed 16 March 2020.



hybrid one. They argue that Turkey combines important elements of the Middle Eastern welfare regime (with religion playing a significant role and social policies following more the idea of nation-building, rather than the one of social citizenship rights) and the South European one (with low social expenditure, strong reliance on families for welfare provision, and fragmented welfare delivery). On the other hand, the well-developed Swiss and UK welfare regimes share significant social policy traits with EU Member States. The Anglo-Saxon welfare regime in the UK is usually defined by weak universalism, free health care services, and social benefits for individuals in need in which means-testing plays a significant role. Many of these social policy features can also be observed in Ireland and, to a lesser extent, in Malta (Vintila and Lafleur 2020). In turn, Switzerland, unlike other European countries, implemented social insurance programs relatively late (Trampusch 2010). Until the 1970s, the Swiss welfare regime was considered as a liberal one, although subsequent reforms shifted the country towards a conservative and continental welfare state that still preserves important features of a liberal social policy model (Armingeon 2001).

The rest of the countries analysed in this volume also put forward significant diversity in the development and main rationale of their welfare systems. Russia— which has witnessed strong economic performance and recent social policy reforms aiming to introduce residual, neo-liberal welfare arrangements- has been categorised by Cerami (2009) as an oil-led welfare state in which high oil and gas prices have significantly shaped the contemporary social protection system. Most of the welfare-related reforms implemented since 1989 targeted the privatisation of provisions, management decentralisation, strengthening the social insurance principle and the implementation of a residual unemployment protection scheme coupled with basic safety nets (Cook 2000; Cerami 2009). China has also experienced impressive economic growth since the market-oriented reforms initiated in the 1980s, up to the point that today, it represents the second largest world economy. This economic performance is reflected in indicators such as the increase of the GDP or workers' wages. Yet, significant challenges including regional and class disparities or strong inequalities in accessing basic education or health care (especially in rural areas) remain to be addressed (London 2014; He [this volume](#)).

Finally, Serbia and Lebanon also respond to rather distinct social policy models. Social policy development in Serbia has been strongly influenced by the legacy of the communist welfare regime. The post-communist Serbian welfare system has been characterized by reduced social spending during the transition, high share of private sources in health care, low social assistance coverage and high number of pension beneficiaries, with facilitated early retirement aiming to solve increasing unemployment rates (Stambolieva 2013). As shown in the country chapters in this volume, most attempts to reform the Serbian welfare system took place especially since the 2000s, although some of them were rather unsuccessful. As for Lebanon, the development of its welfare regime highlights the importance of non-state actors (religious charities, sectarian parties) in a context of fragile state-related welfare institutions, fragmented social protection schemes, minimal public provisions and

increasing socio-economic challenges of human impoverishment (Jawad 2002; Cammett and Issar 2010; Tabar et al. [this volume](#)).

This diversity in social policy developments across the 13 countries included in our sample is also reflected in their varying levels of social protection expenditure (Table 1.1) and effective coverage (Table 1.2). As shown in Table 1.1, total social protection expenditure as share of the GDP still varies widely across these countries, with some of them (India, Lebanon, Senegal) allocating 5% or less on social protection. This is in clear contrast with countries such as Serbia, Switzerland, the UK or the Russian Federation in which social protection expenditure accounts for more than 15% of the GDP. By type of schemes, the expenditure ratio is generally higher for older persons. For instance, Argentina, Russia, Serbia or Turkey spend 8% or more of their GDP for the protection of the elderly, whereas the resources dedicated to this group in Senegal, Ecuador, Lebanon, China or Morocco are much lower. Public expenditure for children or individuals in active age (including expenditure for unemployment, labour market programs, sickness-related benefits or social assistance) is usually more reduced than for old-age; and generally higher in Serbia, Argentina, Switzerland, the UK, and Russia. Across these 13 countries, public expenditure is extremely limited especially for sickness and maternity (0.3% of the GDP or less in India, Senegal, Turkey, Ecuador) and general social assistance (0.3% or less in Morocco, Senegal, Ecuador, China, Turkey).

In any case, a higher allocation of public resources for specific groups does not necessarily mean that these groups are well secured against vulnerability or social risks, as social protection expenditure may still be insufficient to cover a large number of persons in need. Table 1.2 compares the social protection effective coverage across the selected countries. India and Ecuador report a very limited effective coverage, especially when compared to Switzerland, the UK or Russia. By specific groups, effective coverage tends to be higher for older persons (except for Senegal, Lebanon, India, Turkey, Morocco or Tunisia) and children (except for China or Senegal, from the countries for which the data is available), when compared to unemployed or other vulnerable groups.

As discussed in several chapters in this book, this rather limited social protection coverage, especially for individuals in working age, is often linked to high levels of informal employment. This structural problem of informality has serious implications on (national and foreign) workers' formal access to welfare. Informal employment reaches very high rates especially in Senegal, India, and Morocco, where informality is 80% or more of employment (Fig. 1.1). Thus, very limited segments of the population of these countries can actually benefit from social protection policies linked to formal employment status. Ecuador, Tunisia, China, and Argentina also return very high shares (more than 40%) of informal employment, thus also excluding significant proportions of the population from employment-based welfare entitlements. Informal employment is much more limited in Serbia, Switzerland, and the UK. Turkey returns the highest difference by gender, with the share of female workers in informal employment being much higher when compared to their male counterparts.

**Table 1.1** Public social protection expenditure by guarantee (% of the GDP)

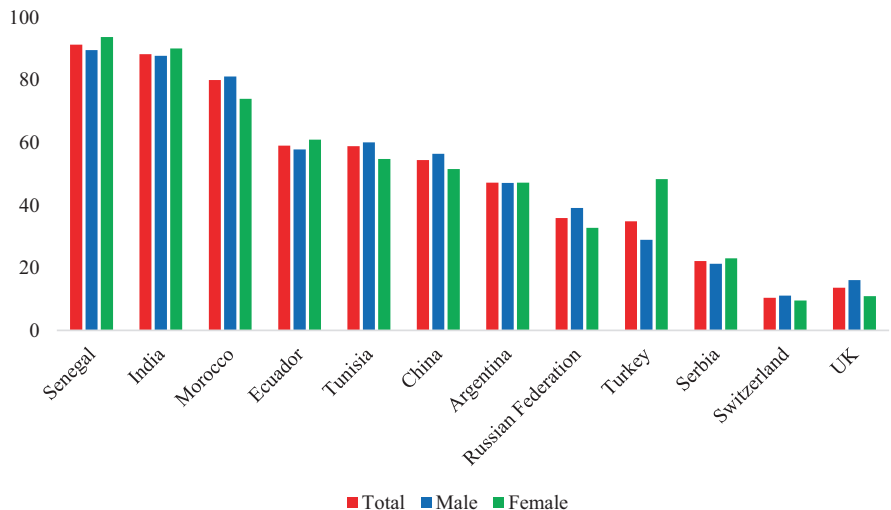
	Total SP expenditure including health	Expenditure for old persons (excl. health)	Expenditure for persons of active age (% of GDP, without health)					Expenditure for children (excl. health)
			Expenditure for active age (excl. social assistance)	Unemployment	Labour market programme	Sickness, maternity, work injury, disability	General social assistance	
Morocco	6.6 (2010)	3.0 (2012)	1.5 (2010)	n.a.	...	1.5 (2010)	0.1 (2010)	0.1 (2010)
Tunisia	10.4 (2011)	5.2 (2015)	3.4 (2010)	...	...	2.4 (2010)	0.7 (2010)	0.2 (2010)
Senegal	5.3 (2010)	1.9 (2015)	0.2 (2010)	n.a.	...	0.2 (2010)	0.1 (2010)	0.2 (2015)
Argentina	...	9.0 (2015)	5.1 (2009)	0.1 (2015)	...	5.1 (2009)	2.0 (2009)	1.6 (2015)
Ecuador	7.8 (2014)	0.2 (2012)	0.2 (2010)	n.a.	...	0.2 (2010)	0.0 (2010)	0.2 (2014)
Lebanon	2.1 (2015)	2.7 (2013)	...	...	...	...	...	...
China	6.3 (2015)	3.7 (2015)	0.4(2015)	0.1 (2015)	0.1 (2015)	1.6 (2009)	0.3 (2013)	0.2 (2014)
India	2.7 (2014)	4.3 (2011)	0.6 (2010)	...	0.4 (2013)	0.1 (2010)	0.4 (2013)	0.1 (2010)
Serbia	23.4 (2014)	12.7 (2014)	2.4 (2014)	0.6 (2014)	...	1.8 (2014)	0.5 (2014)	1.3 (2014)
Switzerland	19.6 (2015)	6.6 (2013)	3.6 (2013)	0.8 (2013)	0.6 (2013)	2.3 (2013)	0.8 (2013)	1.6 (2013)
Russian F.	15.6 (2015)	8.7 (2015)	2.6(2015)	0.2 (2010)	...	2.7 (2010)	1.8 (2010)	0.6 (2015)
Turkey	13.5 (2014)	8.3 (2013)	0.5 (2013)	0.1 (2013)	0.0 (2013)	0.3 (2013)	0.2 (2013)	0.4 (2013)
UK	21.5 (2015)	6.6 (2013)	2.5 (2013)	0.3 (2013)	0.2 (2013)	2.0 (2013)	1.8 (2013)	3.8 (2013)

Source: Own elaboration based on ILO (2019). *World Social Protection Report*, <https://www.social-protection.org/gimi/guess/ShowWiki.action?id=594#tabs-3>. Last accessed 16 March 2020

**Table 1.2** Social protection effective coverage, by groups (latest available data)

	Population covered (in at least one area)	Children	Mothers & new-borns	Persons with severe disabilities	Unemployed	Older persons	Vulnerable groups
Morocco	...	...	...	...	...	39.8	...
Tunisia	...	...	...	5.1	...	33.8	...
Senegal	...	4.0	...	...	...	23.5	...
Argentina	67.0	84.6	34.0	...	7.2	89.3	45.3
Ecuador	31.7	6.7	...	34.5	...	52.0	11.3
Lebanon	...	...	...	...	...	0.0	...
China	63.0	2.2	15.1	...	18.8	100.0	27.1
India	19.0	...	41.0	5.4	...	24.1	14.0
Serbia	...	...	...	...	8.8	46.1	...
Switzerland	92.7	100.0	100.0	100.0	60.7	100.0	70.2
Russian F.	90.4	100.0	69.0	100.0	68.2	91.2	54.5
Turkey	...	...	...	5.0	1.4	20.0	...
UK	93.5	100.0	100.0	100.0	60.0	100.0	76.6

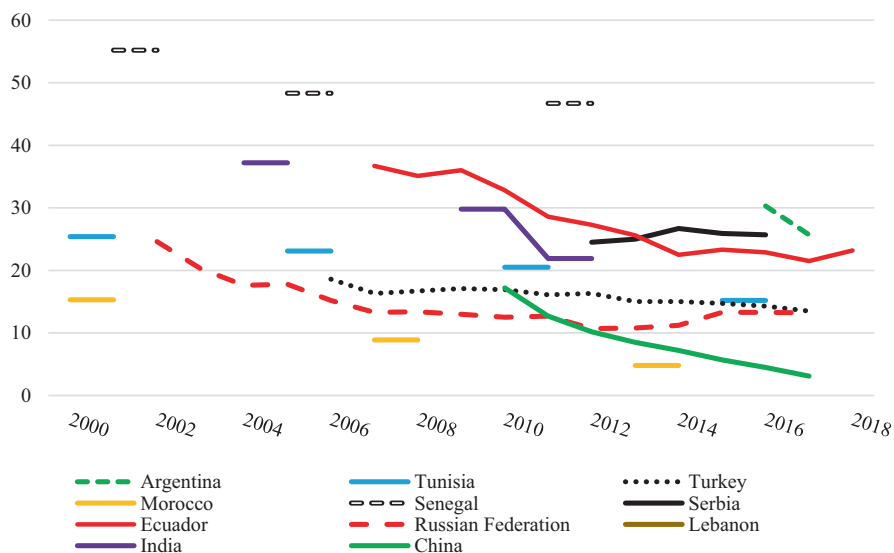
Source: Own elaboration based on ILO (2019). *World Social Protection Report: <https://www.social-protection.org/gimi/gess/ShowWiki.action?id=594#tabs-3>*. Accessed 16 March 2020



**Fig. 1.1** Share of informal employment in total employment (%), by gender. (Source: Own elaboration based on ILO (2018). *Women and men in informal economy. A statistical picture (third edition)*, [https://www.ilo.org/global/publications/books/WCMS\\_626831/lang%2D%2Den/index.htm](https://www.ilo.org/global/publications/books/WCMS_626831/lang%2D%2Den/index.htm). Accessed 16 March 2020. The data for Lebanon is not available)

Apart from their welfare and labour market characteristics, the countries analysed in this book also vary widely in the Human Development Index ranking (HDI, Table 1.3) and poverty levels (Fig. 1.2). Switzerland, the UK, Argentina, and Russia score quite high in the Human Development Index. Unsurprisingly, Switzerland returns a very high gross income per capita and higher life expectancy and years of schooling than any other country analysed here. Turkey, Serbia, Lebanon, Ecuador, China, and Tunisia also rank high in this index (top 100), although their gross national income is substantially smaller when compared to Switzerland, the Russian Federation, the UK or Argentina. Finally, Morocco and India report only a medium human development score, whereas Senegal occupies the last position in this rank among the 13 selected countries.

Important variations are also observable when looking at the evolution of the poverty headcount ratio at national poverty lines (as percentage of the population) across these countries (Fig. 1.2). In general, the share of those living below poverty lines has significantly decreased over time across all countries analysed, but especially so in India, Tunisia, Russia or China, due to reforms adopted during the past years. Yet, the poverty headcount ratio still reaches worrying levels especially in Senegal and Lebanon (46% and 27% respectively in 2012), but also in Argentina, Serbia, Ecuador or India (more than 20% in each case). On the other hand, both



**Fig. 1.2** Poverty headcount ratio at national poverty lines (% of population), 2000–2018. (Source: Own elaboration based on the data from the Global Poverty Working Group of the World Bank (<https://data.worldbank.org/indicator/SI.POV.NAHC>, accessed 16 March 2020). The figures for Switzerland and the UK are not available. The data for Tunisia, Morocco, Senegal, and India are available only for specific non-consecutive years, but the dots are connected for consecutive years only for illustration purposes)

**Table 1.3** Selected non-EU countries by Human Development Index

	Human Development Index (HDI)	Life expectancy at birth	Mean years of schooling	Gross national income (GNI) per capita	HDI rank	Human development
Switzerland	0.944	83.5	13.4	57,625	2	Very high
UK	0.922	81.7	12.9	39,116	14	Very high
Argentina	0.825	76.7	9.9	18,461	47	Very high
Russian Federation	0.816	71.2	12.0	24,233	49	Very high
Turkey	0.791	76.0	8.0	24,804	65	High
Serbia	0.787	75.3	11.1	13,019	66	High
Lebanon	0.757	79.8	8.7	13,378	82	High
Ecuador	0.752	76.6	8.7	10,347	84	High
China	0.752	76.4	7.8	15,270	86	High
Tunisia	0.735	75.9	7.2	10,275	96	High
Morocco	0.667	76.1	5.5	7340	122	Medium
India	0.640	68.8	6.4	6353	129	Medium
Senegal	0.505	67.5	3.0	2384	165	Low

Source: Own elaboration based on the Human Index Development of the United Nations Development Programme, <http://hdr.undp.org/en/composite/HDI>. Accessed 16 March 2020

Morocco and China have reduced their poverty headcount ratio at less than 5% according to the latest data available in each case.<sup>4</sup>

Finally, it is also worth mentioning that certain types of benefits rather generalised across EU countries (Vintila and Lafleur 2020) have not yet been implemented in some non-EU states (see also Fig. 1.7 in Sect. 1.4 of this chapter). An evident example is in the area of guaranteed minimum resources. Most countries examined here (Argentina, Ecuador, India, Lebanon, Senegal, Morocco, Tunisia or Russia) have not adopted yet general (non-categorical) social assistance schemes for the most vulnerable, although some of them do offer categorical social assistance programs for specific groups such as children or the elderly. Similar examples can be found in the area of unemployment or family benefits. As discussed by Dioh (this volume), Senegal (which also returns the highest share of informal employment) has not adopted yet any formal mechanism to deal with the risk of job loss. Lebanon also lacks a formal unemployment insurance or assistance scheme, the only provision available being an end-of-service benefit for those affiliated to the social security system. In the area of family benefits, although all these countries offer maternity benefits for female employees, some of them have not implemented yet specific paternity benefits schemes, whereas parental benefits exist as such only in few cases such as Serbia or Russia. Moreover, not all these countries offer child benefits (see the chapters on China, India or Turkey); and in some of them, these benefits are not granted to all families with children (as it is often the case in the EU), but only to the most vulnerable ones. As an illustration, the Human Development Bonus in Ecuador is granted only to heads of families with children under the age of 18 who live in conditions of extreme poverty.

Secondly, as mentioned before, some of these countries have recently adopted important social policy reforms with certain benefits being introduced only in the last years. Argentina adopted its unemployment insurance scheme in 1991, the Universal Child Allowance in 2008 and it renationalised the pension system in 2008. A social assistance scheme aiming to provide a safety net for the poor was introduced in China only in 1999 for the urban areas and in 2004 for the rural parts of the country. Similarly, India introduced its unemployment scheme in 2005, Ecuador did so in 2016, whereas Turkey experienced an important social security reform in 2006.

Thirdly, and even more importantly, despite recent attempts to introduce new social policy reforms, many of these countries still face major challenges to ensure individuals' access to social protection, regardless of their nationality. As explained in the chapters, some states still put forward very stratified social protection regimes that protect only those formally affiliated to the social security system via employment or voluntary contributions. While employment is a crucial element for

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<sup>4</sup>The data on the evolution of the poverty headcount ratio at national poverty lines is not available for the UK and Switzerland. However, Eurostat data shows that in 2018, 17.4% of individuals residing in Switzerland and 23.1% of those residing in the UK were considered at risk of poverty and social exclusion (compared to 21.6% for EU27). See: [https://ec.europa.eu/eurostat/data-browser/view/sdg\\_01\\_10/default/table?lang=en](https://ec.europa.eu/eurostat/data-browser/view/sdg_01_10/default/table?lang=en). Accessed 16 March 2020.

accessing welfare in many countries (including EU Member States, as shown by Vintila and Lafleur 2020), this condition becomes highly problematic in certain non-EU contexts in which the informal economy has a considerable weight. As discussed, many of the countries analysed here return very high proportions of informal workers. Since inclusion in social protection schemes derives from formal employment, this directly excludes high proportions of the population- nationals and foreigners alike- from accessing welfare. Consequently, even when specific welfare schemes exist- such as the ones for unemployment or old-age pensions-, informal workers are a priori excluded given their lack of contributions; and the pool of potential beneficiaries of these programs implicitly becomes quite limited. As in more than a half of the countries analysed here up to 40% of the labour force is engaged in informal employment, this leads to a significant exclusion of both national and foreign residents from accessing formal programs to protect them against specific risks. Additionally, even when employment or prior contribution requirements are met, the benefit levels are sometimes too limited to ensure an effective protection. As discussed by He (this volume), the amount received for unemployment benefits in China is so low that it does not guarantee an adequate protection of those who lose their jobs. Similarly, the chapter of Popova (this volume) on the Russian case shows that, despite the fact that government transfers cover a rather large segment of the population, most cash benefits do not actually reach the subsistence level, the adequacy of the coverage offered by these programs thus remaining quite limited.

Overall, this differentiated institutionalization and development of the welfare regimes of the 13 countries analysed here could significantly shape their responsiveness to the inclusion of immigrant or diaspora populations in their national social protection systems. Countries counting with limited resources and fragile welfare arrangements face considerable difficulties to ensure a sufficient and efficient coverage of the socio-economic needs of their resident nationals. Given these high pressures that already exist on their domestic welfare systems, the social protection of migrants may not be a top national priority, especially when compared to the much larger group of national residents in need. On the other hand, having a more generous and well-developed welfare regime is not necessarily expected to act as a guarantee that a country would be more inclined to ensure migrants' social protection. More developed welfare states may actually adopt a rather protectionist approach in trying to limit the number of beneficiaries potentially entitled to claim generous social benefits.



### 1.3 Non-EU Welfare States and the Immigration-Emigration Nexus

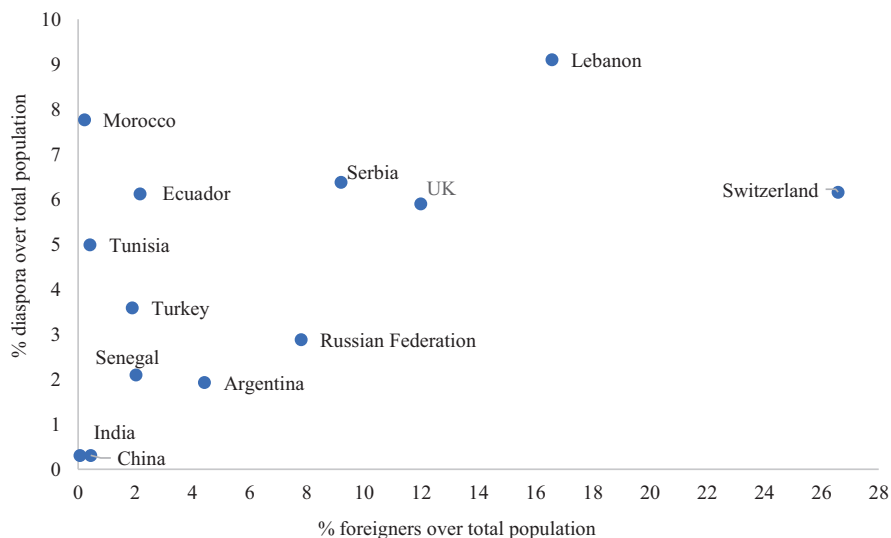
As noted by Adamson and Tsourapas (2019), migration studies have often looked at the development of migration policies in the Global South by using analytical frameworks designed to understand migration regimes in the Global North. Consequently, migration policies of advanced economies such as EU Member States tend to be depicted primarily as guided by their role of immigrant receiving areas, while states in the Global South are mostly perceived as countries whose migration policies exclusively ought to deal with departure and transit. In volume 2 of this series (Lafleur and Vintila 2020b), we questioned this representation by showing how EU Member States also engage with citizens abroad in the area of welfare and beyond. Similarly, this volume discusses the case of non-EU countries that— while they represent important sending states of migrants coming to the EU— are also frequently receiving immigrants. In other words, the articulation between the engagement of non-EU sending states with their diaspora and the way in which they protect foreigners residing in their territory remains largely understudied.

Unlike this volume, past attempts at examining this nexus between emigration and immigration policies have usually focused on single case studies that highlight contradictions in the way sending states treat citizens abroad and foreign residents. In Europe for instance, Zincone (2006) noted that Italy's nationality law combined very generous features for emigrants' descendants with strict criteria for immigrants' descendants born in Italy. Similarly, other scholars also underlined in cases such as Mexico (Delano 2018) or Morocco (Cherti and Collyer 2015) that discourses on immigration and policies for foreigners residing in those states do not necessarily match with the protective stance towards citizens abroad.

In this volume, we aim to push the analysis of the immigration-emigration nexus further by examining the inclusiveness of non-EU states' welfare policies towards two categories of individuals in situation of international mobility: nationals residing abroad and foreigners residing in these countries. Before comparatively discussing our main findings for the 13 case studies, it is however important to distinguish them along demographic, political, and economic characteristics that are likely to create tensions— and possibly, contradictions- in the way these states treat emigrant and immigrant populations.

#### 1.3.1 *Demographic Pressures*

The 13 countries included in our sample vary substantially in their historical migration trajectories, which could potentially constrain the way in which they define the access of minority populations to domestic welfare systems. As mentioned, all of them are relevant origin states for third-country nationals residing in the EU. Some



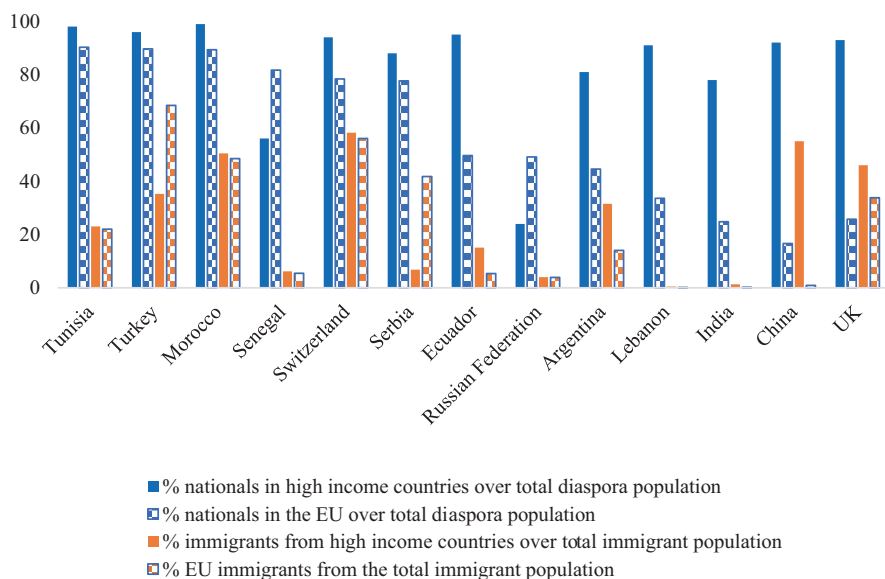
**Fig. 1.3** Selected non-EU countries, by share of foreigners and diaspora over total population. (Source: Own elaboration. The data on stocks of foreign residents are from the UN dataset on International Migrant Stock, <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates17.asp> (accessed 16 March 2020). The data on diaspora stocks are from the DIOC-E 2010/2011 dataset (<https://www.oecd.org/els/mig/dioc.htm>, accessed 16 March 2020), covering emigrant population across 91 destinations (34 OECD countries and 57 non-OECD states). The percentages are calculated based on the total population data from the UN dataset on World Population Prospects, <http://data.un.org/Data.aspx?q=population&d=PopDiv&f=variableID%3a12>, accessed 16 March 2020. For both immigrants and emigrants, the reference year for the data is 2010)

also host sizeable immigrant communities due to continuous inflows for a prolonged period. Figure 1.3 illustrates this diversity by capturing the demographic weight of immigrants and emigrants in each selected country. Although all countries return rather large foreign and diaspora populations in absolute terms, the relative shares that these groups represent from the total population still vary widely, as some states have much larger populations in general.

Two clusters emerge for each group (immigrants and emigrants). In the case of the diaspora, the first cluster groups countries (Argentina, China, India, Russia, Senegal, Tunisia, and Turkey) in which nationals abroad constitute a rather limited segment of the total population (5% or less). Hence, the non-resident populations of these countries have a more reduced demographic visibility, although in some cases— e.g. India-, the diaspora is very sizeable in absolute numbers. The countries included in the second cluster (Ecuador, Switzerland, Serbia, the UK, Morocco, and Lebanon) return much higher shares of nationals abroad, up to 9% of the total population in Lebanon. As for immigrants, in half of the countries analysed (China, Ecuador, India, Morocco, Senegal, Tunisia, Turkey), their share is still quite limited— less than 3%. The fraction of foreigners is much higher in the second cluster

comprising the rest of the countries analysed, reaching up to 12% in the UK, 16.6% in Lebanon, and 26.6% in Switzerland, respectively.

Immigrants and emigrants thus count with varying levels of demographic visibility across these countries and their demands for inclusion in the welfare system of these states may also vary significantly. When these minority groups are relatively small in demographic terms, ensuring their access to welfare may have little costs for these countries as, a priori, few individuals would potentially qualify as eligible claimants. At the opposite pole, when these groups are particularly sizeable, granting them access to welfare rights could be a costly decision, although more meaningful in terms of impact (for a similar argument, see Vintila and Lafleur 2020). In addition, states such as Lebanon, Switzerland, the UK or Serbia, which count with large numbers of immigrants and emigrants alike, may also have to ponder to which one of these groups they give preference to in terms of access to welfare.



**Fig. 1.4** Migrants coming from or going to high income countries and EU Member States from the total immigrant and emigrant population of the 13 non-EU countries. (Source: Own elaboration. The share of nationals residing in EU countries is calculated based on the DIOC-E 2010/2011 dataset (<https://www.oecd.org/els/mig/dioc.htm>, accessed 16 March 2020) covering emigrant populations across 91 destinations (34 OECD countries and 57 non-OECD states). The shares of nationals residing in high income countries and the shares of immigrants originating from the EU and from high income countries are calculated based on the UN dataset on Migrant stocks by origin and destination (<https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates17.asp>, accessed 16 March 2020). For all groups, the reference year for the data is 2010)

### 1.3.2 *Considerations Regarding the Composition of Migrant Stocks*

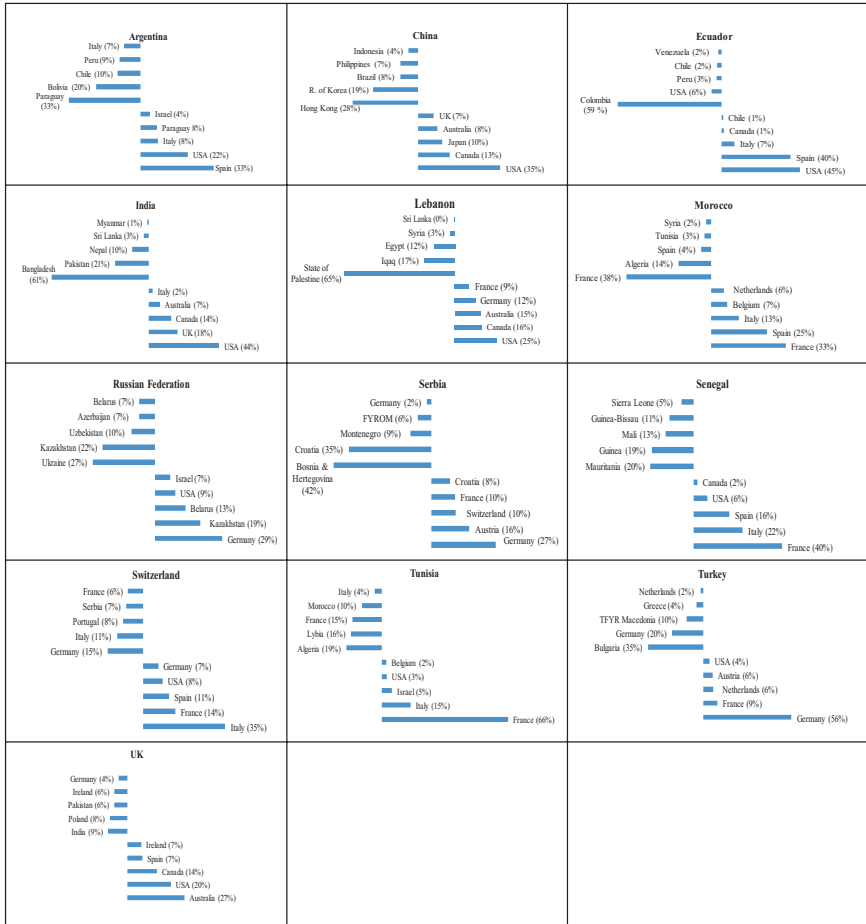
Apart from size, the composition of migration stocks may also constrain states' predisposition to ensure the access of mobile individuals to welfare. For instance, countries whose migrants come from or go to more economically developed states (especially high-income countries with more generous welfare regimes) may have fewer incentives to address the social protection needs of these minority groups. Figure 1.4 shows that more than a half of the emigrant populations of almost all states analysed here resides in high-income countries, up to more than 90% for Tunisia, Turkey, Morocco, Switzerland, Ecuador, Lebanon, the UK, and China. Consequently, policy makers in the homeland may be less reactive to these diaspora communities if they assume that their welfare needs may be better addressed by the (sometimes more developed) social protection regimes of their host countries, provided they have legal residence in the latter.

Furthermore, more than a half of the diaspora population of Tunisia, Turkey, Morocco, Senegal, Serbia, and Switzerland resides in EU countries, up to more than 90% for Tunisia. The share of non-resident nationals living in the EU is more moderate- but still significant- for Ecuador, Russia, and Argentina (more than four out of 10 emigrants from these countries reside in EU Member States); but substantially smaller for the UK, India or China. The case of Argentina, in particular, also allows us to underline another important element regarding the potential effect of the composition of migrant stocks on states' responsiveness to migrants' welfare. As shown by Gallo et al. (2006) with recent Argentine immigration to Southern Europe, a varying share of these migrants coming to the EU are dual nationals who already possess the nationality of an EU Member State prior to arriving in Europe or have facilitated access to such nationality upon arrival. As also discussed by Margheritis (this volume), such situation may trigger sending states to be less active in protecting their citizens abroad because of the assumption that the latter will be treated as nationals in the EU countries of settlement. More generally of course, the legal status (or undocumented status) of individuals in situation of international mobility— whether they are immigrants or emigrants— equally shapes the perception of state authorities about the necessity to intervene in favour of these populations.

Turning the scope to immigrants, only in Morocco, Switzerland, and China, 50% or more of foreign residents originate from high-income countries,<sup>5</sup> this share being substantially smaller (less than 10%) for Senegal, Serbia, Russia, Lebanon, and India. In fact, in the latter two countries, only 1% of all immigrants come from high-income origin countries. The data also shows that, apart from Turkey and Switzerland in which half of all immigrants originate from EU Member States, in

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<sup>5</sup>Besides the inflows of documented migrants, some of these countries have also received important irregular flows, as it is the case with migrants from sub-Saharan Africa in Morocco (see, for instance, the CARIM Migration Profile for Morocco, [https://cadmus.eui.eu/bitstream/handle/1814/22441/MP\\_Morocco\\_EN.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/22441/MP_Morocco_EN.pdf?sequence=1&isAllowed=y), accessed 16 March 2020).



**Fig. 1.5** Main origin countries of immigrants residing in the 13 non-EU countries (left side) and main destination countries of their nationals abroad (right side). Share over total immigrant and emigrant population of each non-EU country analysed. (Source: Own elaboration. The data on top destinations for the diaspora is from OECD (2015) “Connecting with emigrants: a global profile of diasporas 2015” and it refers to emigrants (defined as foreign-born individuals by country of birth and their children born in destination countries) aged 15+ across 84 selected destinations (33 OECD countries and 51 non-OECD states)- reference year 2010/2011. The data on top origin countries of foreigners is from the UN dataset Trends in international migrant stock (reference year 2010), <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates17.asp>, accessed 16 March 2020)

all others, the majority of foreigners have a non-EU background (up to 99% for Lebanon, India or China).

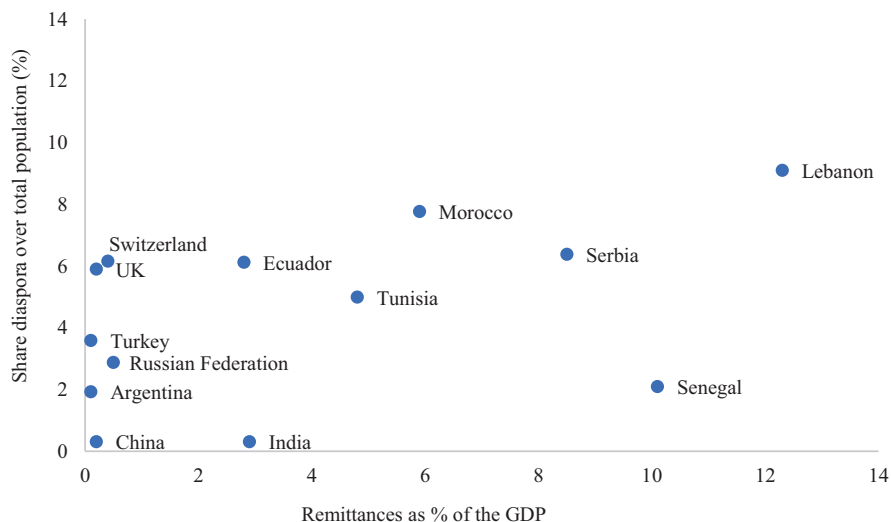
This variation in migration flows to and from Europe compared to other regions is also visible when looking at the specific origin countries of immigrants residing

in these selected non-EU states, as well as the specific destination countries of their nationals abroad (Fig. 1.5). Unsurprisingly, among non-European destinations, the United States of America (USA), Australia or Canada stand out as the most important host countries for the emigrant populations of the 13 countries analysed here. Significant outflows are also oriented towards EU destinations, mainly Italy, Spain, France, Germany, Belgium or the Netherlands. For Morocco and Serbia in particular, the main five destination countries of their diaspora are European countries. Figure 1.5 also confirms the tendency already highlighted for European diaspora populations (Lafleur and Vintila 2020c) of a high concentration of emigrants in particular destination countries only. For instance, the first two host countries of Argentinean, Ecuadorian, Indian, Moroccan, Senegalese, Tunisian or Turkish nationals already sum up more than a half of the total diaspora of these countries, with more than 50% of all non-resident Tunisian or Turkish citizens being concentrated in one country in particular. In some cases, a common language and/or past colonial ties (the case of Indians in the UK, Argentines and Ecuadorians in Spain, UK citizens in Australia and the USA, or Moroccans in France) facilitate this selection of specific destination countries. Regardless of the reasons for diaspora's geographical concentration in particular destinations, having a high share of nationals abroad residing in a specific state may also incentivize origin countries to become more attentive to the needs of that particular group.

The situation is more diverse when looking at the main origin countries of immigrants residing in these 13 countries. In China, Ecuador, India, Lebanon, Russia, and Senegal, the main immigrant groups originate from non-EU countries; and in Ecuador, India, and Lebanon, more than a half of all foreigners come from a single country. In Argentina, Morocco, Serbia, and Turkey, the first two migrant communities account for more than 50% of all immigrants, the demographic concentration of foreigners being more evenly distributed across different groups in the other countries analysed. Often, the most sizeable immigrant communities originate from neighbouring states (see the cases of India, Senegal, Serbia or Russia). In other cases, the presence of specific communities is due to strong migratory ties with origin countries (Italians in Argentina, Germans in Turkey, Indians and Pakistanis in the UK, or French nationals in Morocco).

### ***1.3.3 Economic and Political Tensions***

The size and composition of migrant stocks may influence states' behaviour regarding the social protection of minority groups, but so is the economic or political leverage that these communities might have on national governments. The example of diaspora populations helps us illustrate this point. As mentioned, based on the size of the diaspora, we can identify two clusters of countries. First, there are those counting with a relatively small diaspora in which nationals abroad account for 5% or less of the population (Argentina, China, India, Russia, Senegal, Tunisia, and



**Fig. 1.6** Non-EU countries by share of diaspora (vertical axis) and remittances as share of the GDP (horizontal axis). (Source: Own elaboration. The data on remittances are from the World Bank dataset on Migrant Remittances Inflows (reference year 2018, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=SN>, accessed 16 March 2020). See detailed sources for diaspora data in Fig. 1.3)

Turkey). The second cluster includes countries with more sizeable diaspora groups (Ecuador, Switzerland, Serbia, the UK, Morocco, Lebanon).

The first group of countries may not be particularly pro-active when it comes to diaspora's inclusion into domestic welfare systems not only because of its relatively small size, but also given that nationals abroad make a rather limited financial contribution to the homeland via remittances. As illustrated in Fig. 1.6, their remittances usually represent 0.5% or less of the GDP (higher in India and Tunisia). The clear exception from this first group is Senegal: although the Senegalese diaspora is relatively small, its impact for the homeland economy is particularly high since remittances sent from abroad account for more than 9% of the GDP. This, in turn, may raise awareness amongst policy makers in Senegal about the importance of the diaspora, thus making them more likely to become attentive to the needs of this population. At the opposite pole, policy makers in countries included in the second cluster are already faced with a strong demographic visibility of diaspora groups; and their responsiveness may be further incentivised by the economic leverage of non-residents. This is particularly the case for Morocco, Serbia, and Lebanon, countries in which an important share of the GDP is due to diaspora's remittances. This external financial help plays a relevant role in boosting income in the homeland, including that of the most vulnerable groups of the population (Harrigan and El-Said 2014; Tabar and Denison [this volume](#)).

Diaspora's economic contribution may thus shape how sending states behave towards this group; and this is even more likely to happen when nationals abroad also count with voting rights in homeland elections. All countries analysed here, except for China and India,<sup>6</sup> grant voting rights to their non-resident citizens for national legislative and/or presidential elections (with important restrictions in the UK). As shown in past studies, emigrant turnout in homeland elections is influenced by different factors (party mobilization, voter registration requirements, etc.), but usually tends to be lower than that of domestic voters (Lafleur and Sánchez-Domínguez 2015; Ahmadov and Sasse 2016; Østergaard-Nielsen and Ciornei 2019). Yet, as demonstrated in the Turkish case, parties in sending states may try to appeal to voters abroad by developing policies to address specifically their needs (Mencutek and Baser 2018).

Similar economic and political constraints could also shape states' inclusiveness towards immigrants. For instance, Switzerland stands out in our sample as the state with the highest share of immigrants, reaching up to 27% of the population. Overall, foreign-born individuals constitute 32% of all employees in Switzerland, with a high share (47%) working as managers, professionals, or technicians and associate professionals.<sup>7</sup> Their strong economic leverage is further complemented by the fact that, in some Swiss cantons, foreigners also have the right to vote in local and regional legislative elections and referendum, as well as in local mayoral and regional presidential elections.<sup>8</sup> At the opposite pole, in Turkey, for instance, foreigners account for a rather small share of the population. They also face rather unfavourable conditions in terms of labour market mobility, while being excluded from political participation as they cannot join political parties, cannot vote nor have their own associations or media unless one of the directors is a Turkish citizen.<sup>9</sup> Consequently, this configuration of factors may reduce the likelihood of Turkish authorities to become particularly responsive to their needs, including their social protection needs.

Drawing on these initial expectations, the next section maps out some of the main findings of the country chapters included in this volume regarding the way in which non-EU states respond to the inclusion of immigrant and emigrant populations in their domestic welfare regimes.

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<sup>6</sup> Despite ongoing discussions regarding the implementation of proxy voting, India allows non-resident nationals to vote only if they travel back to India during the election day (see the diaspora chapter in this volume).

<sup>7</sup> Eurostat data on Employees by migration status, educational attainment level, occupation and working time, <http://appsso.eurostat.ec.europa.eu/nui/setupDownloads.do>. Accessed 16 March 2020.

<sup>8</sup> <http://globalcit.eu/conditions-for-electoral-rights/>. Accessed 16 March 2020.

<sup>9</sup> See MIPEX results for Turkey, <http://www.mipex.eu/turkey>. Accessed 16 March 2020



## **1.4 What Kind of Social Protection for Mobile Individuals Moving from/to Non-EU Countries?**

### ***1.4.1 Access to Social Protection for Foreigners: Between Equal Treatment and (In)Direct Disentitlement***

The analysis of the 13 countries included in this book points towards interesting patterns of convergence in how they define the link between migration and welfare in social policy legislations. Figure 1.7 comparatively maps the type of access that non-national residents and non-resident nationals have to specific social benefits, when compared to national residents.

The figure confirms the pattern previously discussed according to which both immigrants and emigrants are sometimes excluded from certain welfare schemes (which are quite generalised across the EU) simply because the countries analysed here have not implemented yet such programs, not even for their resident nationals. Examples of such general grounds of exclusion that affect migrants and non-migrants alike can be identified in the area of unemployment benefits (especially unemployment assistance), non-contributory old-age pensions, social assistance, and family-related benefits (especially parental benefits, but also- less frequently- paternity and child benefits). The absence of such social protection schemes is particularly visible in Lebanon, which has not implemented yet specific programs for unemployment benefits, sickness cash benefits, social assistance or several family-related benefits. To a lesser extent, this is also the case for China (still failing to provide sickness benefits in cash or paternity, parental, and child benefits) and Senegal (which has not integrated yet unemployment schemes or general social assistance programs for the most vulnerable).

Apart from these general limitations applicable to all groups, when it comes to immigrants in particular, our findings show that the contributory logic generally prevails over nationality in access to welfare. In most countries and for almost all benefits— regardless of their contributory/non-contributory nature –, nationality becomes an irrelevant factor once the wage-earning criterion is fulfilled. This confirms the trend of employment-driven inclusion of foreign workers in domestic welfare systems already identified for other countries (see Vintila and Lafleur 2020 for EU Member States).

Yet, country chapters in this volume also discuss how different migration and labour-market conditions may still hinder foreign workers' access to welfare even when national legislations do recognize them as eligible claimants. To begin with, the strong labour market informality across many countries analysed here stands out as an important obstacle for immigrants' access to welfare. Secondly, foreigners may find it more difficult than nationals to comply with the period of prior employment that often conditions access to cash benefits, especially if we consider how language barriers or labour market discrimination practices could hinder their



**Fig. 1.7** Access of national residents, non-national residents and non-resident nationals to social benefits. (Source: Own elaboration based on the MiTSoPro dataset (policies in place at the beginning of 2019). A value of “2” indicates that the benefit exists in the country and the groups analysed here are entitled to access it upon fulfilment of the general eligibility conditions. A value of “1” indicates that the benefit exists, but only certain categories of individuals (such as only those originating from specific countries in the case of foreigners or only those affiliated to special schemes reserved for citizens abroad in the case of diaspora) can access it, instead of being open to all individuals from each group (i.e. all immigrants and emigrants, in general). A value of “0” indicates that individuals do not have access to a specific benefit. When all three groups analysed return the value “0” for a specific benefit, it means that the benefit does not exist in that specific country. In the case of the guaranteed minimum resources scheme, there are cantonal differences in Switzerland)

possibility to find stable jobs. Thirdly, since several benefits granted by these non-EU countries cover formal workers only, migrants may find it hard to obtain this status in the first place especially since, unlike non-migrants, foreigners must first regularise their immigration status and obtain the right to work. As explained in

several chapters, the acquisition of the right to work sometimes requires a rather complicated administrative procedure (see chapters on Argentina and Tunisia; or the case of Ecuador where foreigners' right to work in the private sector is conditioned by the obtainment of a certificate from the Labour Ministry stating that their employment does not affect the national policy on employment and human resources).

Country chapters also illustrate instances of direct exclusion of foreigners from specific types of welfare rights. In some countries, non-national residents are not entitled to claim certain benefits, whereas in others, they must comply with additional eligibility conditions which do not apply for national residents. For instance, Bertolini and Clegg ([this volume](#)) discuss in this volume how non-EEA citizens who are subject to immigration control in the UK are excluded by the terms of their visas from claiming social benefits that fall under the legal definition of 'public funds', including demogrants, means-tested benefits and tax credits. Similarly, foreigners are not entitled to claim social assistance in Serbia or China, as cash benefits for individuals in need are offered only to citizens of these countries. In the area of family benefits, the birth grants granted by Turkey are exclusively reserved for national citizens, the same applying for the late maternity leave in China or the cash parental allowance in Serbia. Unlike their national counterparts, foreigners can access the Universal Child Allowance in Argentina only after three years of residence. In other countries, access to family benefits is allowed only for specific groups of foreigners as it happens in Lebanon, where only foreigners originating from countries that maintain a reciprocal treatment for Lebanese nationals can receive maternity and child benefits.

A similar tendency of restrictiveness towards foreigners' access to social assistance or certain family benefits was also found across EU countries (Vintila and Lafleur 2020). Yet, some non-EU states show that this restrictiveness can be further extended to other policy areas in which foreigners generally benefit from equal treatment in the EU. One example is in the area of unemployment. Although foreigners can generally claim unemployment benefits under the same eligibility requirements as nationals in most countries analysed here, in Russia, they are still excluded as potential beneficiaries of cash benefits in case of job loss, thus being entitled only to job search services. Similarly, foreigners residing in India cannot claim the recently introduced Unemployment Assistance Scheme, as this program is exclusively reserved for Indian citizens; whereas in Turkey, unlike their national counterparts, non-nationals must have resided for at least a year to qualify for unemployment benefits.

Certain instances of direct exclusion of non-national residents are also detected in the area of old-age pensions. As explained for the Indian case in this volume, foreigners cannot access the national pension scheme, whereas the chapter on Lebanon discusses how foreigners (except Palestinians with a valid work permit) are excluded from accessing the Lebanese end-of-service indemnity. Russia also excludes temporary foreign residents as potential beneficiaries of a contributory pension, and only those holding the permanent residence status (which can be claimed within three years after having obtained the temporary residence permit)

qualify for this pension. In some cases, access to non-contributory pensions is also restricted. By way of example, foreigners cannot access this pension in India, whereas the Turkish social assistance scheme for the elderly is reserved only for resident Turkish nationals. Carmona Barrenechea et al. ([this volume](#)) also show how non-contributory pensions in Argentina are granted to Argentine citizens or naturalised migrants with at least 10 years of prior residence, or to foreigners with a minimum of 20 years of residence who continue to live in Argentina once the pension is granted. In other countries, only specific groups of foreigners are entitled to claim non-contributory pensions. For instance, Switzerland restricts the access to this pension only to nationals of EU or European Free Trade Association (EFTA) countries who are permanent residents; whereas in Russia, only foreigners who are permanent residents and have lived in the country for at least 15 years can claim this pension.

Such examples demonstrate that many of these non-EU countries have opted for a more protectionist and restrictive stance when defining who is legally entitled to claim welfare, this implicitly leading to more frequent instances of exclusion of foreigners when compared to EU countries. Overall, India and Lebanon seem to put forward a more exclusionary approach towards immigrants, as the latter are entitled to claim very few of the welfare provisions implemented in these countries. The Indian case is particularly noteworthy as apart from maternity benefits, foreigners do not qualify as eligible applicants for any of the other social protection schemes offered by the Indian government. At the opposite pole, in Morocco, Senegal or Tunisia, foreigners always have legal access to the welfare entitlements analysed here although, as discussed, some of these countries—especially Senegal—*a priori* have fewer social protection schemes when compared to other countries. Yet, even when foreigners do have access to welfare under equal conditions as national residents, in some cases, the take-up of such benefits may have negative consequences. As explained in this volume, the Russian Federal Migration Service may recall a previously issued residence permit for foreigners who cannot provide for themselves or their families at a level that is higher than the regional poverty line. Similarly, foreigners living in Switzerland may lose their residence permits if receiving social aid. As shown in this book, as a result of a popular vote in 2014, new provisions now stipulate that Swiss residence permits are not issued to foreigners who apply for non-contributory benefits paid for old-age, survivors or disability via the federal complementary scheme, while foreign jobseekers (except for EU/EFTA) are excluded from claiming social assistance.

Despite of that, some country chapters also provide interesting examples of how certain states sometimes privilege specific migrant groups in their national legislations regulating access to welfare. This preferential treatment of certain nationalities operates either indirectly—by facilitating their access to residence permits and, implicitly, to work and welfare rights—, or directly—by granting them easier access to social benefits compared to other foreign nationalities. In some cases, this facilitated access derives from cooperation initiatives at the supranational level; in others,

it is the result of special (historical, political or strategical) ties with origin countries. By way of example, Argentina is part of the MERCOSUR Multilateral Agreement on Social Security<sup>10</sup> with Brazil, Uruguay, and Paraguay. This agreement covers access to health care, old-age and disability benefits and grants migrant domestic workers pension portability rights. MERCOSUR nationals residing in Argentina are also granted longer temporary residence permits compared to other nationalities, while also benefiting from lower visa fees. Similarly, Switzerland is part of the Agreement on Free Movement of Persons and the EFTA Convention aiming to coordinate various national social security systems, offering equal treatment of nationals of the other signatory partners with Swiss citizens and covering a wide array of social insurance benefits. Until recently an EU Member State, the UK has granted access to most welfare rights to foreigners originating from EEA countries under the EU law; although many changes in this group's access to social rights are likely to be introduced in the future. Preferential treatment of certain nationalities is also observed in Lebanon, where Palestinians are exempted from paying the work visa fees and, unlike other foreigners, they can also receive the end-of-service indemnity. This case is particularly interesting, especially since Lebanon stands out as the non-EU country from our sample that mostly restricts the pool of foreign residents who can access social protection. As explained in this volume, only foreigners originating from countries which provide equal treatment to Lebanese citizens based on a reciprocity clause are eligible to enroll in the National Social Security Fund that is the main provider of health care, end-of-service indemnity, and family benefits. However, this currently applies only for citizens of France, the UK, Belgium, and India. Finally, Russia also favours specific nationalities by granting them equal access to social security benefits (except for pensions). This applies to nationals of Belarus (based on a bilateral agreement) and nationals of countries of the Eurasian Economic Union (including Belarus, Kazakhstan, Armenia, and Kyrgyzstan).

#### ***1.4.2 The Case of Non-Resident Nationals: Formal Exclusion from the Home Country's Welfare Regime, with Some Exceptions***

As mentioned, individuals' employment status is a key element ensuring their access to social protection across the 13 countries analysed in this book. Often, this also implies residence in these countries, a requirement that directly excludes nationals living abroad as potential beneficiaries of welfare provisions from their countries of nationality. As discussed in the country chapters, when deciding to move abroad permanently, citizens of most of the countries examined here

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<sup>10</sup> See: <https://www.mercosur.int/>. Accessed 16 March 2020.

generally lose their entitlement for social benefits from the homeland. Residence in the country is usually mandatory to receive unemployment benefits, non-contributory pensions, and (most) family benefits, reason for which non-residents cannot access them from abroad. The same form of exclusion also operates in the area of social assistance: when specific social assistance programs exist (Fig. 1.7), they tend to be strictly linked to the residence principle (for instance, in Serbia) or even to local residence in particular areas of the country that grants them (see the example of China). Overall, sending states' restrictiveness towards diaspora's access to welfare seems particularly visible in Lebanon, Senegal and, to a lower extent, also in Turkey and China where non-residents can claim very few welfare benefits.

Yet, there are three important exceptions from this general trend of restrictiveness towards diaspora populations. First, there are certain policy areas for which exportability is more frequently stipulated in national legislations. Figure 1.7 shows that all selected countries— except for Lebanon<sup>11</sup>— allow their nationals living abroad to continue receiving a contributory pension despite their physical absence. However, in some cases, there are certain limitations. For instance, exportability of contributory pensions from Serbia is allowed only when included in bilateral agreements with destination countries. In Ecuador— which allows its nationals abroad to voluntarily contribute to the Ecuadorean pension scheme—, contributory pensions are not technically exportable, but they can still be accessed from abroad as long as the beneficiary keeps a bank account in Ecuador where the pension will be paid. Similar regulations apply for invalidity benefits, which represent the second most important exception to the strong link between welfare and residence in a country. States such as Argentina, Morocco, Russia (only for the contributory disability pension), the UK (with restrictions) or Serbia (only when covered by bilateral agreements) allow for the exportability of invalidity benefits. In any case, this flexibility of states in allowing the exportability of old-age pensions or invalidity benefits is not peculiar to these countries, being frequently observed also among EU Member States (Vintila and Lafleur 2020).

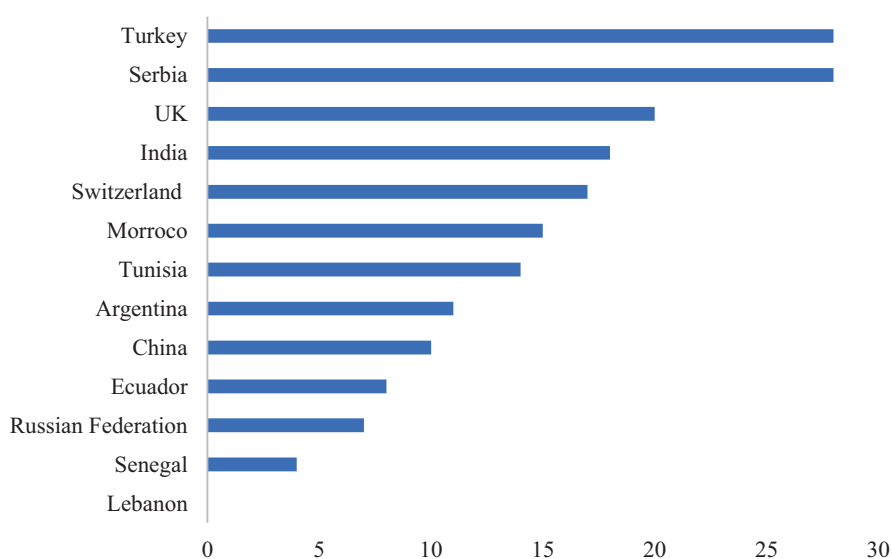
A second relevant exception rests in a series of policy innovations that several non-EU states have developed in the attempt to respond to the social protection needs of their diaspora. Such policies often consist in facilitating non-residents' access to the homeland social protection regime. Figure 1.7 highlights a clear example in this regard in the area of health care. Most non-EU countries analysed here authorize their non-resident citizens to maintain some type of health coverage in the homeland, mainly by allowing them to continue paying contributions from abroad that open access to the healthcare system back in origin countries. Such policy innovations can also refer to the design of ad-hoc schemes for citizens abroad, that are different from the general welfare programs accessible to residents. In the field of health care, India recently introduced a specific insurance scheme— the *Pravasi Bharatiya Bima Yojana*- aiming to ensure the protection of

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<sup>11</sup>As explained in the country chapters, the Lebanese public pension schemes only covers a very limited segment of non-resident nationals, namely civil servants and those working in the military.

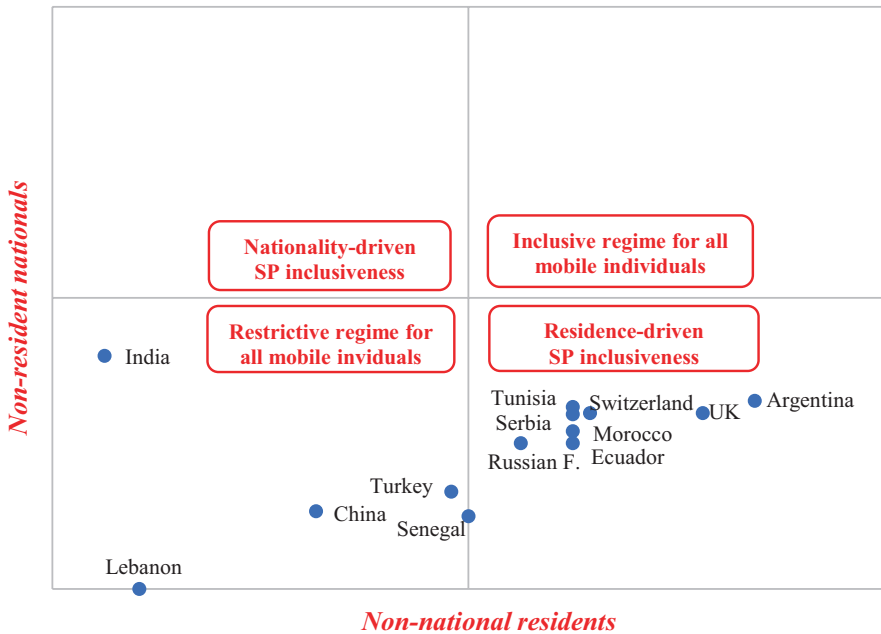
Indian workers abroad in destination countries where they have limited welfare rights (e.g. Gulf countries). This scheme covers insured workers for accidental death, permanent disability leading to loss of employment while abroad, repatriation, and reimbursement of hospitalisation costs. India also created the Indian Community Welfare Fund (ICWF), a means-tested social assistance initiative aiming to respond to exceptional hardship faced by nationals abroad. Other countries also put forward similar schemes specifically designed to address diasporas' social risks. For instance, Tunisia created a program that allows its citizens who work in destination countries with which Tunisia has not signed a social security agreement to voluntarily join the Tunisian insurance system. This provides health coverage to both the Tunisian worker living abroad (during temporary stays in Tunisia, for instance) and to family members remaining in Tunisia. On a much more limited scale, Morocco also set up a specific program called "Marhaba" that grants access to health care to citizens residing abroad who return temporarily to Morocco during the summer. In the field of pensions, Serbian authorities have responded to the needs of Serbian citizens who work abroad and are not compulsory insured in destination countries by allowing them to voluntarily join the Serbian pension insurance scheme. As for social assistance, Switzerland created a separate scheme for non-resident nationals who are in a situation of need and cannot support themselves.

Thirdly, beyond general exportability and/or specific social protection schemes for the diaspora, country chapters in this volume also show how sending states' responsiveness to nationals abroad is often reflected in the bilateral or multilateral



**Fig. 1.8** Number of bilateral social security agreements signed by non-EU countries. (Source: Own elaboration based on the MiTSopro dataset)

social security agreements they engage in. Such agreements usually grant certain migrant groups with an extra layer of protection when compared to what domestic social security legislations provide to all migrants in general (Sabates-Wheeler and Koettl 2010). Regarding multilateral forms of cooperation, the examples of MERCOSUR (for Argentina) and the EFTA Convention and the Agreement on Free Movement of Persons (for Switzerland) clearly illustrate how multilateral social security arrangements can improve the access to social protection of nationals of signing partners. As for bilateral arrangements, Fig. 1.8 shows that Turkey, Serbia, the UK, India, and Switzerland have been particularly pro-active in engaging in bilateral social security cooperation, whereas Senegal and Lebanon signed very few conventions in this area. However, the country chapters also show that there is still substantial variation in the types of benefits that these agreements actually cover; as well as in the way these states managed to secure social security agreements with the main destination countries of their diaspora.



**Fig. 1.9** Non-EU sending states’ welfare inclusiveness for immigrant and emigrant populations. (Source: Own elaboration based on MiTSopro data. The horizontal axis captures states’ inclusiveness towards immigrants, whereas the vertical axis refers to emigrants. Both axes are calculated based on the average values of inclusiveness/restrictiveness of access that they return for each policy area (see details in Fig. 1.7))



### 1.4.3 *Protecting Immigrants and Emigrants: A Trade-Off for Welfare States?*

Figure 1.9 summarises our comparative findings regarding the inclusiveness of the selected non-EU states regarding the access of migrant populations to their domestic welfare systems. In terms of general social protection provision, our findings indicate that none of these countries have put forward very inclusive social protection regimes for both immigrants and emigrants at the same time. Almost all of them— except for India- actually seem more inclined to grant access to social benefits for their non-national residents when compared to non-resident nationals. The principle of territoriality remains a key element conditioning welfare entitlement in these countries; and it generally seems to be a more relevant factor for accessing social protection than nationality. Moreover, the fact that most of these countries usually allow their diaspora to access very limited welfare provisions from the homeland could also be linked to the fact that, as explained above, a significant share of their nationals abroad reside in high-income destination countries which often have strong welfare regimes.

Figure 1.9 also allows us to identify two clusters of countries. A first cluster includes states that put forward a rather restrictive approach to both immigrants and emigrants alike, as they offer few welfare benefits to mobile individuals. This group includes Lebanon, India, Turkey, China, and Senegal. With the exception of Lebanon (which returns a very sizeable foreign community, with immigrants representing 16.6% of the population), the rest of the countries in this first cluster host relatively few foreigners, with non-national residents accounting for less than 2% of the population. In Lebanon and Senegal, this rather restrictive attitude *vis-à-vis* immigrants' access to welfare— and their implicitly protectionist approach regarding the social protection of resident citizens- is perhaps unsurprising considering that these countries a priori have rather fragile social protection systems and limited resources to be allocated to the area of welfare. As mentioned, both countries return quite low levels of social protection expenditure. Senegal also stands out by its high share of informal employment, worrying poverty levels, and limited gross national income per capita; although it still adopts a more inclusive stance towards immigrants' access to benefits when compared to Lebanon. Although India also falls in this first cluster- and it shares certain socio-economic features with Senegal or Lebanon, such as the high labour market informality and poverty levels-, this country still scores slightly higher than other non-EU states in terms of welfare provisions offered to its population residing abroad.

The remaining non-EU states included in this volume form a second cluster. They share a common denominator in the fact that seem more inclusive towards immigrants than emigrants when it comes to granting them access to the domestic welfare system. Many of these states allow foreigners (especially foreign workers) to claim social benefits, but they remain reluctant to extend such benefits to their nationals residing abroad. Within this second group, Argentina, the UK, and Switzerland seem the most inclusive countries towards immigrants' access to social

protection. As discussed by Margheritis ([this volume](#)), Argentina has been historically considered as an immigration country, this approach being closely linked to Argentina's state and nation-building processes. On the other hand, both the UK and Switzerland stand out in our sample as countries returning high shares of foreigners in the total population. As previously mentioned, Serbia and Russia also report quite sizeable non-national groups; and, in general, they are relatively inclusive when it comes to allowing foreigners to access their social protection system.

Going back to diaspora populations, our findings indicate that most non-EU sending states return rather moderate or even limited responsiveness to non-residents' social protection. The majority of them have not even developed specific policies by which their consular authorities (or other homeland institutions) are required to assist citizens abroad when applying for home or host country welfare benefits. Among these, China and Morocco, however, have an explicit policy of financially supporting not-for-profit organizations which assist nationals abroad in the area of social protection. On the other hand, Switzerland and Tunisia do have formal policies that clearly identify— but only in very general terms— a formal responsibility for homeland authorities to support citizens abroad in their application process for accessing welfare. Such homeland assistance is even stronger for Ecuador and Turkey, as both states identify specific missions of social protection assistance. As discussed in this volume, Ecuador created the position of representative of the Office of the Human Rights Ombudsman that advises and supports citizens abroad to access rights in the home and host countries; whereas Turkey has created the position of *attaché* of the Ministry of Family and Social Policies in consulates, with the aim of assisting citizens abroad to access welfare.

In addition to what they provide to nationals abroad or how they facilitate non-residents' access to welfare, some of these countries have also put forward a quite extensive institutional framework to engage with diaspora populations. While this framework may not appear, at first sight, as directly related to welfare concerns, the existence of such institutions provides us an indication of the visibility of diaspora issues in homeland politics. In our introduction to the second volume of this book series (Lafleur and Vintila 2020c), we used the concept of descriptive infrastructure to describe the set of “home country institutions that explicitly acknowledge the diaspora as main reason for their existence, while formally being granted the mission to act in its interests (including specific social protection interests)”. More precisely, we identified three types of institutions: consulates (excluding honorary consulates), governmental institutions (at the ministry and sub-ministry levels, specifically acknowledging the diaspora in their name, while also acting in emigration-related issues) and interest-representation institutions (members of Parliament elected by citizens abroad and official consultative bodies and mechanisms allowing the diaspora to voice its concerns).

Looking at the existence of such institutions across the 13 non-EU countries analysed here, we observe a quite mixed picture. Table 1.4 shows us that not all these countries count with an equal representation abroad. The two countries with a long history of post-war emigration to the EU— Morocco and Turkey— return the strongest consular presence in their top five destination countries. However, as

**Table 1.4** Diaspora institutional framework of non-EU selected states

Country	N consulates in top five destinations	Ministry-level institution	Sub-ministerial institutions	Reserved seats national Parliament	Diaspora representation (consultative)
Argentina	19	No	Yes	No	No
China	28	No	Yes	No	Yes
Ecuador	23	Yes	Yes	Yes	Yes
India	12	No	Yes	No	Yes
Lebanon	12	Yes	Yes	No	Yes
Morocco	41	No	Yes	No	Yes
Russian F.	17	No	Yes	No	Yes
Senegal	14	Yes	Yes	Yes	Yes
Serbia	15	No	Yes	No	Yes
Switzerland	17	No	Yes	No	Yes
Tunisia	15	No	Yes	Yes	No
Turkey	33	No	Yes	No	Yes
UK	28	No	No	No	No

Source: Own elaboration based on MiTSoPro data

discussed in this volume, the quality of the assistance offered by Moroccan consulates abroad has often been questioned by its beneficiaries, this triggering Morocco's attention and efforts in trying to improve its consular services. As previously shown in Fig. 1.5, the Moroccan diaspora is more evenly distributed across different EU countries (for instance, 33% of all Moroccans living abroad reside in France, 25% in Spain and 13% in Italy), whereas more than a half of the Turkish diaspora concentrates in a single destination country (Germany). Morocco also seems to be more responsive in terms of allowing its nationals abroad to access homeland benefits (Fig. 1.9), although Turkey has implemented a more developed consular assistance in the area of social protection for its non-resident citizens. At the opposite pole, India and Lebanon return the lowest number of consulates in top destination countries, although the weight of their diaspora over the total population varies from 0.3% in India to 9.1% in Lebanon, respectively. On the other hand, countries such as China, Argentina, Senegal or Russia, in which non-resident nationals count with a limited demographic share (less than 3% of the population), return more than 15 consulates in their top five destination countries. In some cases, this number is not necessarily reflecting those states' interest in the needs of their citizens abroad, but rather their desire to increase their economic and political influence. As discussed in this volume, this seems to be the case for China: its diaspora population has historically played a fundamental role in the modernisation and development projects implemented in China, with a strong state emphasis on encouraging investment and return of highly skilled Chinese from overseas.

Table 1.4 also shows that very few of these countries have created ministry-level institutions for their nationals abroad. Currently, such institutions exist only in Lebanon, Senegal, and Ecuador, countries that actually provide limited access to

homeland welfare benefits for their diaspora. As they ensure visibility at the highest governmental level and usually come with budgets for diaspora-related issues, these ministries are providing very clear indications of homeland's interests in this matter. However, because of their political nature, such institutions are also the ones that are most likely to come and go as governments (or their priorities) change. This volatility is illustrated with the examples of India, Morocco, China or Serbia, states which had ministries for the diaspora, but no longer do. Sub-ministry level institutions, on the contrary, are present in almost all countries examined, which reflects their concern for having a stable and dedicated institution at the executive level to deal with diaspora issues. Most of these institutions are hierarchically dependent on the Ministry of Foreign Affairs. Yet, the fact that sub-ministerial institutions in Tunisia and Turkey are depending on the Labour and Social Affairs Ministries can be interpreted as a way to dedicate greater focus and expertise to labour migrants and their access to welfare. Lastly, the analysis of interest-representation institutions also produces a mixed picture, as only three states (Ecuador, Tunisia, and Senegal) allow citizens abroad to elect their own members of Parliament. Interestingly, Ecuador and Tunisia introduced such diaspora representation mechanism following regimes changes, therefore indicating how engagement with citizens abroad is reflective of a broader change in the way homeland authorities define their policies. On the contrary, almost all countries in our sample— except for Argentina, Tunisia, and the UK— have an explicit policy and/or institution that allows non-residents to voice their concern to homeland authorities in a non-binding manner (e.g. consultative bodies).

Overall, this comparative overview thus reveals interesting variations in the level of institutionalization of diaspora relations across non-EU states. Ecuador and Senegal have developed the most extensive institutional network for their diaspora but, as discussed in the country chapters, only Ecuador has accompanied these institutions with actual social protection policies for citizens abroad. Furthermore, the Senegalese case is particularly interesting as although the Senegalese diaspora is not very sizeable, it nonetheless has a strong economic leverage due to the high share of remittances from abroad. This trend confirms, as also suggested in past studies on diaspora institutions (Gamlen 2019), that creating such institutions may serve as a tool to signal to the diaspora that their homeland cares about them. A purely symbolic approach to diaspora institutions can therefore reflect the authorities' attempt to instrumentalize non-resident populations to pursue a specific economic or political agenda. In our sample, such strategic approach is also visible in the case of Lebanon, which created a dedicated ministry for its diaspora, does not grant social benefits to nationals abroad, but still designed policies to attract remittances and diaspora investments back to Lebanon.

## 1.5 Structure of the Volume

The rest of the book includes 26 country chapters, two per each country analyzed. One chapter discusses the conditions of access to welfare for resident nationals, non-resident nationals, and non-national residents, whereas the second one focuses

on diaspora policies and institutions for nationals abroad. For each country, the first chapter starts by providing readers with a contextualization of each case study in terms of key characteristics of their national welfare systems and migration trajectories. This introductory section is followed by an in-depth analysis of the main eligibility conditions under which individuals can access social benefits across five policy areas: unemployment, health care, old-age pensions, family-related benefits, and guaranteed minimum resources. For each country, the authors discuss how foreigners can access these benefits when compared to their national counterparts, while also explaining which welfare entitlements are made available for citizens living abroad.

The second chapter for each country is designed to complement the first one by focusing on diaspora policies and institutions that these non-EU states have developed for their nationals abroad. The first part of these chapters starts with a brief discussion of the characteristics of the diaspora and its relations with the homeland. They then dedicate more attention to key institutions and policies (outside of social protection policies) that regulate these relations. In the second part, authors first discuss the general framework in which sending states develop social protection policies for citizens abroad (consular policies, bilateral social security agreements, membership in regional organizations, etc.); and proceed with the identification of key policies for this population across several policy areas. The chapters conclude by reiterating key factors that explain the development of each country's diaspora policies and institutions.

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# Chapter 2

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Argentina



Verónica Carmona Barrenechea, Giuseppe M. Messina, and Mora Straschnoy

### 2.1 Overview of the Welfare System and Main Migration Features in Argentina

This chapter aims to discuss the link between migration and social security and protection in Argentina. The introductory section provides a historical overview of the national security system and recent transformations of migration policy in Argentina. The main section analyzes the link between migration and social protection by closely examining the current legal framework regarding five main policy areas: unemployment, health, pensions, family benefits and guaranteed minimum resources. Lastly, the section on conclusions presents a summary of the key findings of this study.

#### 2.1.1 *Main Characteristics of the National Social Security System*

At the end of the 1970s, Argentina's welfare institutions resembled those of the European conservative model with a developed contributory Social Security and quasi-universal state provisions in the areas of healthcare and education (Lo Vuolo and Barbeito 1994; Isuani 1992).<sup>1</sup> However, risk coverage, eligibility and benefit

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<sup>1</sup>In this section we are referring to the classic categorization by Esping-Andersen (1990). This author distinguishes between a social-democrat model of Welfare state (high decommodification,

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amounts were highly stratified (see Filgueira 1998); a proper unemployment income protection was never fully developed; and a significant quota of people remained excluded from the contributory system- especially informal workers (Lo Vuolo and Barbeito 1994). The latter was actually a key element that emerged during the 1990s, a period in which unemployment and informality increased steadily, reaching the highest levels during the political and economic crisis of 2001–2002 (Lindenboim 2003).<sup>2</sup>

In those years, Argentina’s welfare regime suffered a significant shift towards a liberal-residual model (Barrientos 2009) with the introduction of a capitalization pillar for the pension system managed by private pensions funds (*Administradoras de Fondos de Jubilaciones y Pensiones* – AFJP), the deregulation of “*Obras Sociales*” (statutory insurance schemes paid with joint employer-employee Social Security contributions) (Danani and Hintze 2011), and the increasing weight of “*Prepagas*” (private medical insurances) in the provision of health and private schools in education (Gamallo 2011). Even if the contributory unemployment insurance was implemented in 1991, its coverage was particularly low. For instance, in 2001 – as the economic crisis was in full swing- only 6% of the unemployed were receiving this benefit (Messina 2017). Between 2003 and 2015, these tendencies have been partially reversed (Danani and Hintze 2011).

Firstly, the pensions system underwent a renationalization in 2008 forming a united pay-as-you-go public system called Integrated Argentinian Pension System (*Sistema Integrado Previsional Argentino* – SIPA). Since 2005, a special access and Contribution Repayment Plan (“*Moratoria previsional*”) allowed millions of people to retire within the Social Security scheme, although at a minimum level and regardless of previous contributions.<sup>3</sup> As of September 2017, around 6.8 million people were receiving a pension, out of which 3.6 million had gained access due to the moratorium (MTEySS 2017). Secondly, the introduction of a non-contributory pillar to the Social Security Family Allowance system in 2009 – “*Asignación Universal*

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universalistic social policies), a liberal model (low decommodification, residual social policies), and a conservative one (high stratification, contributory social policies). The concept of decommodification refers to the disconnection of individual welfare from access to formal labour markets. Stratification captures the distributive effects of social policy on the class structure of society. In the case of the conservative model, social security is founded on horizontal solidarity between workers along professional lines in order to cover for social risks such as old age, sickness, unemployment, etc. while preserving occupational hierarchies. This is historically combined with a high familiarisation of unpaid care work that rests on the shoulders of the female members of the household, whose irregular work histories have prevented them from accessing in full form to social insurance programs (Martínez Franzoni 2008).

<sup>2</sup>Unemployment rate was as high as 18% and informality among salaried workers jumped to the 44% Source: SEDLAC (CEDLAS and The World Bank).

<sup>3</sup>A vast majority of individuals who had access to the pension moratorium were women (73%). At the beginning, the term used for describing this repayment plan was “housewives pension” as it was the State recognition of reproductive and care work that was mostly in charge of women who also had non-formal jobs. During the second moratorium of 2014, 86% of the beneficiaries were women. See <https://www.pagina12.com.ar/diario/suple/mentos/las12/13-10464-2016-03-21.html> (in Spanish).

*por Hijo para Protección Social*”, Universal Child Allowance, UCA (Pautassi et al. 2013)-, also increased significantly the number of households of informal workers with children which were receiving benefits via the Social Security National Administration (*Administración Nacional de la Seguridad Social-ANSES*).<sup>4</sup> As of September 2017, around 4.2 million workers and 1.8 million retired workers were receiving a contributory family allowance, while 3.9 million non-formal workers were covered under the UCA scheme (MTEySS 2017). Thus, these two non-traditional social policy programs – Contribution Repayment Plan and UCA-accounted for the great increase in pension and family allowances coverage during the last few years (Danani and Hintze 2014).<sup>5</sup>

In other social policy areas, the persistent informality in the labour market – which still characterized around 40% of the overall workforce (MTEySS 2013) – has been affecting the coverage and financing of Social Security institutions, whereas the universal (non-contributory) public provision of goods and services have been generally underfunded. That is the case for the health care system in which the contributory provisions “*Obras Sociales*” cover only formal workers, whereas the public sector has a residual role of attending people without explicit coverage. Consequently, the combination of dual labour markets and the conservative-type of Welfare state institutions have resulted in a highly stratified and segmented access to social policy programs (Pautassi and Gamallo 2014, 2016).

### 2.1.2 Migration History and Key Policy Developments

Argentina has traditionally been a receiving country for migrants, although the composition of the inflows has varied over time, now coming mainly from the countries of South America. In the pre-World War 1914 era, the migratory flow from Europe was particularly intense: the Census of that year registered the maximum population of foreign origin over the total (around 30%), most of them Italians and Spaniards (Rapoport 2003). In this period, Argentina became the second recipient country for European immigrants after the United States (Migraciones, OEA 2019). Thanks to birthright citizenship (*jus solis*), Argentine nationality is acquired by migrants’ children born in Argentina. This factor was compounded by the decline in European migratory balances from the mid-twentieth century, leading to a decrease in the share of foreigners. At the same time, a regional migration system emerged in which Argentina constitutes a pole of migratory attraction originating from

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<sup>4</sup>Domestic workers started receiving the Universal Child Allowance regime in 2013. In 2016, under the new right-leaning presidency, the Family Allowance was extended to low-learner self-employed workers, this increasing even more its coverage.

<sup>5</sup>In 2009, 86% of children and adolescent were covered by this mixed family allowance system, while 90% of adults over 65 years received a retirement benefit (Bertranou and Maurizio 2012; Messina 2017).

**Table 2.1** Top 10 Countries of Origin of Migrants Residing in Argentina (2017)

Total	Paraguay	Bolivia	Chile	Peru	Italy	Uruguay	Spain	Brazil	Other South America	China
2.164.524	704.503	434.759	221.109	202.643	158.049	137.726	101.726	50.621	32.126	14.936

Source: United Nations, Department of Economic and Social Affairs. Population Division (2017). Trends in International Migrant Stock: The 2017 revision (United Nations database, POP/DB/MIG/Stock/Rev.2017)

bordering countries and other countries of South America.<sup>6</sup> This process occurred while Argentine citizens migrated to more developed countries in Europe or North America during the recurrent phases of crisis started in the 80s (ILO & MTEySS 2011). According to 2017 data,<sup>7</sup> about 977 thousand Argentines reside abroad. The main countries of destination are Spain (254.230) and the United States (196.095). Other countries historically linked to migration to Argentina also host an important Argentine population such as Italy (74.470) and Israel (38.372). Argentine migration is also concentrated in countries in the region such as Chile (73.285), Paraguay (58.535), Bolivia (44.436), Brazil (35.618) and Uruguay (27.933), as well as other countries in North America such as Canada (21.939) and Mexico (19.214).

In recent years, Argentina has been the destination of intraregional migrations (IOM 2017). As shown in Table 2.1, a significant share of foreign residents comes from South American countries.

Regarding immigration policy, the 2004 Immigration Reform (*Migration Law* N° 25781<sup>8</sup>) defined migration as a fundamental human right, while also establishing the general principle of equal treatment and non-discrimination for migrant workers. The reform granted access to public education and healthcare to irregular migrants and ensured the protection of their claims against employers for non-compliance with employment laws. It was an important normative advance in the protection of migrants' rights that replaced the previous regulation approved by the last military dictatorship (Law N° 22439 of 1981). The latter was a very restrictive and punitive regulation regarding undocumented migrants, did not promote channels of legal migration for citizens of neighboring countries and was permeated by a negative attitude towards non-European migrants.<sup>9</sup> Due to restrictions to the legal entry of persons from the Latin American region, the number of irregular foreigners increased during this period (Novick 2012), leading to the adoption of two

<sup>6</sup>In the year 2010, just a 4.5% of Argentine population was foreign. Out of approximately 1.8 million foreign citizens residing in Argentina, 68.9% have arrived from bordering countries (Source: INDEC Census Data).

<sup>7</sup>United Nations, Department of Economic and Social Affairs. Population Division (2017). Trends in International Migrant Stock: The 2017 revision (United Nations database, POP/DB/MIG/Stock/Rev.2017).

<sup>8</sup>Available in Spanish here: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm>

<sup>9</sup>Article 2 of the law dictated the promotion of migration “whose cultural characteristics allow for their proper integration into Argentine society”.

immigration amnesties: in 1984, during the presidency of Raúl Alfonsín, regularizing 136 thousand foreigners; and in 1992, during the first presidency of Carlos Menem, regularizing 224 thousand migrants (ILO and MTEySS 2011).

These temporary solutions changed by a more open migration policy after the 2004 reform. To correct pre-existing situations of irregularity, the National Migratory Document Regularization Program (*Programa Nacional de Normalización Documentaria Migratoria* – better known as “Big Homeland”/“*Patria Grande*”) was implemented for Mercosur nationals and states associates who were residing in Argentina prior to April 2006.<sup>10</sup> This program thus allowed for a more favorable regime for migration from the Latin American region.

In January 2017, the migration law was reformed in a regressive way by Decree 70/2017.<sup>11</sup> Under the argument of a “security emergency” (including narcocriminality and organized crime threats), the new norm implies a regression in terms of rights and due process, limiting the access to justice, weakening the right to defense in cases, and leading to denial of residence or even expulsions. In February 2017, human rights organizations filed a lawsuit requesting the decree to be declared unconstitutional and their petition was granted in March 2018.<sup>12</sup> Regarding immigration and social protection, the issue of migrants’ access to the public health system and free public education gained salience in political debates,<sup>13</sup> although it has not translated into restrictive policies. However, in February 2019, ministers from the Executive Branch have announced measures aimed at hardening immigration policy.<sup>14</sup> The announced modifications imply the presentation of more documentation by the immigrant applicant of residence, including certification of lack of criminal records of the last 10 years, health certificates and work certificate of their countries of origin, and an increase of fees related to the migratory process under the concept of “measures of reciprocity”.

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<sup>10</sup>This program followed the signing of the “Agreement on Residence for Nationals of the States Parties of Mercosur, Bolivia and Chile” and “Agreement on Residence for Nationals of the States Parties of Mercosur” in 2002, ratified by Argentina in 2004.

<sup>11</sup> Available in Spanish: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/271245/norma.htm>

<sup>12</sup> More information available here: <https://www.cels.org.ar/web/en/2018/03/el-dnu-de-migrantes-fue-declarado-inconstitucional-por-el-poder-judicial/>

<sup>13</sup> The Minister of Health of Jujuy Province stated in February 2008 that they want to charge foreigners that are treated in public hospitals: <https://www.lanacion.com.ar/2111530-el-ministro-de-salud-jujeno-advirtio-que-quieren-que-bolivia-pague-por-la-atencion-medica>. This has raised public debates on whether it is constitutional not to attend foreigners in public hospitals: <https://www.lanacion.com.ar/2112975-con-que-paises-limitrofes-hay-convenios-de-reciprocidad-en-salud-y-como-funcionan>

<sup>14</sup> See <https://www.infobae.com/politica/2019/02/28/certificado-de-trabajo-de-salud-y-antecedentes-penales-las-nuevas-exigencias-para-los-extranjeros-que-quieran-radicarse-en-argentina/> <https://www.pagina12.com.ar/177874-el-gobierno-dispuso-mas-obstaculos-para-los-inmigrantes>

## 2.2 Migration and Social Protection in Argentina

Although the 2004 Immigration Reform improved the human rights of migrants regardless of the regularity of their residency, the new regime also reaffirmed that residence permits are needed for foreigners to engage in formal economic activities. There are two types of residence permits granting the same rights, but with a different duration: the temporary (1 year) residence permits and the permanent ones. The applicable legislation also differentiates between: (1) nationals of Mercosur and associate countries<sup>15</sup>; (2) foreigners from other countries. Citizens of the former category benefit from a privileged status granting them longer temporary residence permits (2 years instead of 1 year), lower immigration visa fees and access to residence permits based on citizenship. Non-Mercosur citizens have to provide documentation to apply for the types of visas available (employment, education and marriage/civil union being the most important). Other than that, when a foreigner's regular status has been certified and he/she has been granted a National Identity Document (*Documento Nacional de Identidad* – DNI) in Argentina, that person is entitled to the same labour and Social Security rights as national residents, regardless of the migration category to which he/she belongs.

Argentina has also signed a number of international Social Security agreements granting privileged access to some social benefits for national citizens residing abroad or migrant workers coming to Argentina (Table 2.2). Generally speaking, these agreements regulate the transfer of workers' contributions between signatory States.<sup>16</sup> This mechanism allows workers to ask for an aggregation of contributions paid in each country to gain entitlement to contributory public (old age and invalidity) pension benefits in the country of residence. Some agreements also grant access to health care and family allowances for pension recipients (Chile or Italy), maternity leave and sickness benefits (Italy and Spain), and health care for temporary expatriate workers (MERCOSUR), etc.<sup>17</sup>

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<sup>15</sup>This includes Bolivia, Brasil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay, Venezuela, Guyana and Suriname.

<sup>16</sup>Certain categories of workers remain under the Social Security of the country of origin. In most cases, this applies for workers sent as expatriate to the other country by their employers for a limited period of time; sea and air transportation workers; civil and foreign service employees, etc. See: <https://www.anses.gob.ar/prestaciones/prestaciones-por-convenio-internacional/> (in Spanish).

<sup>17</sup>In most cases, bilateral and multilateral agreements have been signed with countries representing relevant migration destination or points of origin. For instance, the three countries whose nationals represent the largest groups of foreigners residing in Argentina are Paraguay (704.503 nationals of Paraguay residing in Argentina), Bolivia (434.759) and Chile (221.109). The three most relevant countries of destination for Argentine migrants are Spain (254.230 nationals of Argentina residing in Spain), the United States (196.095) and Italy (74.470) (Source: United Nations 2017).

**Table 2.2** Argentina: International social security agreements

<b>I. Multilateral agreements:</b> MERCOSUR (Brazil, Paraguay, Uruguay); Iberoamerican (Bolivia, Brasil, Chile, Ecuador, El Salvador, Paraguay, Peru, Portugal, Spain and Uruguay).
<b>II. Bilateral agreements with EU countries:</b> Belgium, France, Greece, Italy, Luxembourg, Portugal, Slovenia, Spain.
<b>III. Bilateral agreements with non-EU countries:</b> Chile, Colombia, Peru.

Source: <https://www.argentina.gob.ar/trabajo/seguridadsocial/internacionalesvigentes>; <https://www.anses.gob.ar/prestaciones/prestaciones-por-convenio-internacional/>

### 2.2.1 Unemployment

Unemployment insurance (*Seguro de Desempleo*) has been implemented in Argentina since 1991,<sup>18</sup> granting cash benefits –plus family allowance and health care – during the unemployment period. This contributory scheme is financed by employers from deductions of their employees' gross payroll. To receive unemployment benefits for only 2 months, claimants are required at least 6 months of prior contributions. However, a minimum period of 36 months of contributions is needed to become eligible for a maximum of 12 months of unemployment benefits. Having a formal job and identification documents (DNI) are also important eligibility conditions for nationals and foreigners alike. Continuous residency in Argentina is required for both categories since recipients have to be available for possible controls by the authorities, occupational training and job offers from the employment office.

Nevertheless, many categories of workers are not covered by this general scheme. Currently, unemployment insurance covers private-sector employees, construction workers, and agricultural workers in case of unfair dismissal, while excluding self-employed persons, household workers, public-sector employees or private-school teachers. Informal workers are also excluded because of their lack of contributions, leading to a rather low coverage of this scheme. At the end of 2016, this program had approximately 93,000 recipients (MTEySS 2017), against an unemployed population of approximately 926,000 individuals residing in urban areas (INDEC 2017). Individuals who are excluded from this scheme can still benefit from active labour policies that generally aim to increase the employability of the most vulnerable unemployed persons by granting them some economic incentive/means-tested cash benefits (Bertranou and Casanova 2016).

Having exhausted the unemployment insurance benefits also grants access to a non-contributory unemployment assistance program called Training and Employment Insurance (*Seguro de Capacitación y Empleo*). This benefit is granted for a maximum period of 24 months. In 2016, this program covered up to 103,000 individuals (CGN 2017). It combines a non-contributory benefit scheme with active labour policies managed by the local Employment Offices where unemployed

<sup>18</sup> Available in Spanish: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/412/texact.htm>



workers must register. Participation in activities such as adult education, vocational training and job placement services, among others, increases the amount of the cash transfer granted to the beneficiaries. However, beneficiaries risk having the benefit suspended – or eventually been excluded from the program – if they fail to participate in those activities or are not available to work. Residency is a strict requirement for accessing this program. The scheme thus excludes Argentines residing abroad. However, foreigners with legal residency and national identification documents have equal access as resident nationals. Moreover, accessing unemployment benefits does not affect *per se* the access of foreigners to residence permits, family reunification or naturalization. It is also important to note that in this area of unemployment protection, multilateral/bilateral agreements do not generally allow to transfer paid contributions to another country, which means that migrants cannot count those contribution periods to become eligible for unemployment insurance in the countries of residence.

### 2.2.2 Health Care

The Argentine health care sector is highly fragmented and decentralized. Public health services grant universal access to health care, but they are still chronically underfunded. Furthermore, health care services are managed at the subnational level, this affecting their capacity to cover the poorer areas of the country. The poorest sectors of the population, excluded from any kind of health insurance, are the main patients of the public sector. According to the 2010 Census data, up to 36% of the population was in that situation, reaching 60% in the first income quintile. However, 46% of the population have access to “*Obras Sociales*” covering formal private and public workers.<sup>19</sup> The most relevant program in this regard- “PAMI” (*Programa de Asistencia Médica Integral* – Program of Integral Medical Assistance) attends millions of beneficiaries of old-age public pensions. Additionally, around 10% of the population had gained access to private health care insurance through their “*Obra Social*”, while 5% are exclusively covered by a private insurance company (*Prepaga*). Around 30% of overall health care expenditures are represented by out-of-pocket costs sustained especially by low-income households.<sup>20</sup>

Different rules apply for accessing healthcare via the contributory, non-contributory and private health sector. This chapter will focus mainly on the contributory sector. “*Obras Sociales*” cover all individuals who are formally employed and self-employed registered with the Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos* – AFIP). For employees, the benefit is funded out of contributions over the salary: 5% by the employer and 3% by the

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<sup>19</sup> Currently there are approximately 280 national “*Obras Sociales*”, most of them under trade union control (Cetrángolo et al. 2011).

<sup>20</sup> Data in this section is taken from Maceira (2011) and Cetrángolo (2014).

employee. For self-employed, the benefit is funded via a monthly fixed amount paid by the worker through the monotax (*monotributo*). Foreigners with legal residency and national documents have the same rights as national citizens to access this scheme. Health insurance under the “*Obras Sociales*” program has a coverage of medicines between 40% and 100%,<sup>21</sup> whereas health insurance may charge a copayment whose maximum value is regulated by the government.<sup>22</sup> However, both contributory and private health insurances have to guarantee a minimum level of medical provision established by the Compulsory Medical Program (*Programa Médico Obligatorio*).

Non-resident nationals are not usually covered by health insurance schemes, with the exception of those residing in other MERCOSUR countries, which are covered by the MERCOSUR Multilateral Agreement on Social Security. This Agreement entered into force in 2005 for the four Member States: Brazil, Uruguay, Paraguay, and Argentina. It includes coverage of healthcare for wage workers according to the legislation of the country of residence. In order for a worker and his/her family members to receive benefits in kind in case of sickness during their time abroad, the person is required to submit to the Social Security of the country of residence a document of enrollment issued by Argentine Social Security. Also, a few bilateral agreements (Chile, Italy and Portugal) grant health care access to retired workers receiving a pension benefit in those countries.

On the other hand, the sick leave and benefit are regulated in Argentina by the Work Contract Law (*Ley de Contrato de Trabajo*) applicable to private sector wage workers. If an individual has been working for less than 5 years in the same company, he/she has the right to a 3-month paid leave (extended to 6-month if he/she has family dependents). The sick leave period is duplicated for those who have worked for more than 5 years in the same company. The monthly amount is equivalent to the full monthly wage and it is paid by the employer. After the paid leave period, the worker has right to up to one more year of unpaid leave. Foreigners with legal residency and national identity documents have the same rights as resident citizens, so no qualifying period of prior residence is required to be eligible. After 2 years of sick leave, the worker must return to work or access a disability pension. In general, non-resident nationals are not covered by sick benefits, but those residing in MERCOSUR countries are covered by the MERCOSUR Multilateral Agreement on Social Security. This Agreement establishes that the Social Security authorities in the country of residence will receive worker's claim including information regarding his/her contribution period and the certification of his/her temporary or permanent incapacity. Doctors will establish if the incapacity is due to working accidents or professional sickness, and if there is the need for rehabilitation; and the liaison bodies of the other state will decide if the right to the sick leave applies according to the legislation in the country of origin.

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<sup>21</sup> Resolution N°310/2004: <https://www.sssalud.gob.ar/normativas/consulta/000595.pdf>

<sup>22</sup> Resolution 58/2017: <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=270760>

As for invalidity benefits, Argentina's Social Security System covers workers' loss of income caused by conditions of invalidity, defined as the permanent reduction of at least 66% of his/her physical or intellectual abilities. This condition will be assessed through a process of medical qualification regulated by the State. The invalidity benefit is not compatible with an employee's income and the beneficiary must be below the statutory retirement age. There are two categories of beneficiaries: regular and qualifying irregular contributors. Regular beneficiaries are required to have at least 30 months of contributions in the 36 months prior to the permanent invalidity assessment or else meet the requirements for the social insurance old-age pension. They are entitled to a benefit equal to 70% of their contribution base ("*base jubilatoria*"). Qualifying irregular contributors must have at least 18 months of contributions in the previous 36 months or meet 50% of the minimum contribution requirements for the social insurance old-age pension (30 years) and have 12 months of contributions in the previous 60 months. They will receive a benefit equal to 50% of their contribution base. Foreigners with legal residency must meet the same eligibility rules as resident nationals. Both groups are allowed to aggregate contributions paid to another country under a multilateral/bilateral agreement to be eligible for the invalidity benefit. Moreover, both categories can receive their benefit abroad once the process of financial and medical qualification has been completed and the condition of invalidity definitely certified.<sup>23</sup> Migrant beneficiaries are also required to periodically provide a proof-of-life response to maintain the benefit payments.

In Argentina, there is also a means-tested non-contributory invalidity pension requiring at least 76% degree of reduction of capacity. This scheme has strict residency rules (5 years of residency in Argentina for national citizens and 20 years of residency for foreigners) and cannot be exported abroad. The scale of this scheme is quite large (1.1 million beneficiaries in September 2017) when compared to just 194 thousand beneficiaries of the contributory invalidity pension (MTEySS 2017).

### 2.2.3 Pensions

The pension system in Argentina was renationalized in 2008 under a pay-as-you-go public scheme called Integrated Argentinian Pension System (SIPA). Since 2005, a special access and contribution repayment plan ("*Moratoria previsional*") allowed millions of people to retire via the Social Security scheme, although at a minimum level, regardless of their previous contributions. The Argentinian system also distinguishes between contributory and non-contributory pensions.

Contributory pensions include Old-age pension (*Prestación por Vejez*) and Advanced-age old-age pension (*Prestación de vejez en edad avanzada*). The

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<sup>23</sup>When the worker is residing in a country not covered by a multilateral or bilateral agreement for a period of 3 months or more, he/she has to give warning to ANSES so that a local bank that can operate international transfers will be assigned to send the worker's benefit abroad: <https://www.anses.gob.ar/tramites/ausencia-del-pais-y-reingreso/>

qualifying period of contributions is 30 years and the qualifying age is 60 years for women and 65 years for men. Self-employed or dependent formal workers who meet the age requirement but do not have sufficient years of contributions may do so through adherence to a moratorium, which allows them to complete the missing years of contribution. Old age contributory benefits are increased four times per year according to a mixed price and wage Mobility Index and are paid by the Argentine Social Security – ANSES.

Foreigners with legal residency must meet the same eligibility rules as national citizens to be granted an old-age contributory pension. To be eligible for this pension, both groups are allowed to aggregate contributions paid to another country under a multilateral/bilateral agreement. Moreover, both categories can receive their benefit abroad by giving warning to the ANSES when they leave the country for 3 months or more. Migrant beneficiary are required to periodically provide a proof-of-life response to maintain the benefit payments.

The non-contributory pension- the Universal Pension for Older Persons, (*Pensión Universal para el Adulto Mayor*) is granted by the ANSES to people over 65 years old who do not have any retirement or pension benefits. This pension cannot be exported and additional qualifying requirements also include: being Argentine or naturalised Argentine with at least 10 years of residence in the country or being a foreigner with a minimum period of 20 years of prior residence and maintain the residence in the country once the pension has been granted. The amount of this universal pension is the equivalent of 80% of a minimum old-age pension.

## 2.2.4 Family and Parental Benefits

The Argentine Family Allowance System was implemented in 1957 and its main aim was to alleviate formally employed workers from the expense of family reproduction by transferring income through the Social Security System. The right to these allowances was conditioned by claimant's relationship to the labour market and his/her financial contributions to the Social Security System. In 1968, the different funds for Family Allowances were unified in the attempt to create an organic family allowance regime (Law N° 18,017).<sup>24</sup> Several allowances were established (for marriage, maternity, birth, spouse, child, large family size, and children in elementary, middle, and high school age) and the frequency of the allowance depended on the type of contingency to be covered.

In 1973, the inclusion process in the Family Allowance System of all formally employed workers was consolidated. During the 1990s, a new reformed introduced the Unique Social Security System (*Sistema Único de Seguridad Social*) leading to the elimination of allowances in higher income tiers and the establishment of a stair-step amount inversely proportional to the income (Hintze and Costa 2011). Changes

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<sup>24</sup> See: <http://servicios.infoleg.gov.ar/infolegInternet/anexos/15000-19999/19443/norma.htm>

in the regime involved a shift in paradigm: while Family Allowances covered family contingencies, access to the allowances became relativized due to the new law granting protection against such circumstances.

As a product of the reform and transformations in the labour market, a growing number of families and children were no longer protected by the system. In 2009, the Universal Child Allowance (UCA) was created through Necessity and Urgency Decree No. 1602/09. The UCA incorporates a “per child allowance” into the social security system, for the children of non-formal and domestic workers who earn salaries below the Minimum Adjustable Vital Wage (*Salario Mınimo Vital y Movil*), and the children of unemployed workers and registered temporary workers of the agricultural sector. As for the nationality criteria, children and adults must be Argentinian, naturalised citizens, or legal residents for no less than 3 years.<sup>25</sup> Migrants who cannot prove legal residency for the required number of years are excluded.

As mentioned before, in 2017, around 4.2 million workers and 1.8 million retired workers were receiving a contributory family allowance, while 3.9 non-formal workers were under the UCA scheme (MTEySS 2017). It is also important to highlight the case of female workers excluded from the contributory family allowance scheme (domestic, informal or unemployed workers). In 2011, a new non-contributory component was added to the UCA scheme; the Pregnancy Allowance for Social Protection (Decree 446/2011<sup>26</sup>), targeting informal or unemployed female workers. Eligible claimants receive a monthly benefit since week 12 of pregnancy, provided that they comply with an established set of health controls and treatments within the public health sector. During their pregnancy, a 20% of the benefit is kept by ANSES and is given to the beneficiaries at the birth of their children. Foreign citizens must have the DNI and a legal residency of at least 3 years.

As for maternity benefits, formally employed female workers have the right to paid maternity leave for 12 weeks. This requirement leaves an elevated number of women without protection, due to the problem of informality. Both Argentinian citizens and foreigners residing legally in Argentina have the right to maternity benefits. The maximum period of paid maternity leave is 3 months (45 days pre-birth and 45 days post-birth leave). The payment is equivalent to the salary and it is done by ANSES. Women residing abroad are eligible for maternity leave in case an International Agreement, such as the MERCOSUR Agreement and the bilateral agreements with some EU countries (France, Greece, Italy, Luxembourg, Spain and Portugal).

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<sup>25</sup>An UCA assessment from a human rights of migrants’ perspective can be found in Ceriani and Morales 2011. This has been criticized by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the Committee on Economic, Social, and Cultural Rights, both of which are United Nations committees. (United Nations, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, September 2011).

<sup>26</sup>Family Allowances. Decree 446/2011 Amend Law No. 24,714 in relation to the Pregnancy Allowance for Social Protection. The text of the decree is available in Spanish, See: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/181250/norma.htm>

Finally, there are no parental benefits at the national level in Argentina. Fathers in a formal wage work have the right to 2 days paid leave after their child's birth. Only formal workers are eligible, regardless of their nationality.

### **2.2.5 *Guaranteed Minimum Resources***

In Argentina there is no general non-categorical cash transfer program for individuals or household whose income is below the extreme poverty line. The largest program targeting low-income households is the Universal Child Allowance (see above), which doesn't include individuals or households without children. Other non-contributory cash transfers are in place for specific categories (old-age, invalidity, etc.).

## **2.3 Conclusions**

The issue of migration is of special relevance for Argentina since the majority of its population is descendant from immigrants who settled in the country in the last few hundred years. According to the 2010 Census, just 2.28% of Argentines declared to belong to an indigenous population. Also, the composition of the Argentine population has changed with modifications in the flow of migration. Prior to the First World War, Europeans (especially from Spain and Italy) were the protagonists of mass migration to Argentina, accounting for 30% of the population at the peak of this process. After the Second World War, not only did the relative weight of immigration decrease, but its composition also changed, with a sharp decline of the European inflow and an increase of immigrants coming from neighboring countries.

The main findings of the chapter indicate that in each of the policy areas analysed, there is a high degree of fragmentation in the systems, with an overlap between contributory and non-contributory regimes which guarantees broad levels of coverage, but unequal levels of benefits. In order to understand what impact this characteristic has on migrants' access to social benefits, two features of the Argentine case must be taken into account. Firstly, the social protection system was constituted around contributory social security institutions with coverage of formal salaried workers (mainly men). Non-contributory programs were introduced during the last decade and they managed to incorporate a large number of people, mainly women, previously excluded because of their work trajectories. In the same period, the immigration reform defined migration as a fundamental human right and established the general principle of equal treatment and non-discrimination for migrant workers.

Within this broader framework, this chapter shows that in the case of contributory benefits, access is not directly subject to the migratory status, but to the condition of labour formality. Formal employees and self-employed workers who

contribute to Social Security have the same rights regardless their nationality. However, in order to become formal workers, foreigners must have regularized their immigration status. The migratory status and the years of residence in Argentina are factors that determine access to non-contributory benefits. For example: the Universal Child Allowance for Social Protection requires 3 years of residence for both parents and children, even in the case of children born in Argentina. Similarly, the Universal Pension for Older Persons requires its recipients to be Argentine by birth, naturalized Argentine with 10 years of residence in the country, or foreigners with a minimum residence of 20 years.

Once the person has gained access to a benefit, there are also differences between the contributory and non-contributory schemes with regards to the residence requirement. For example, in the case of ordinary contributory pensions, the recipients may reside in the country of their choice. However, for the Universal Pension for Older Persons, recipients must reside in Argentina.

Another relevant issue regarding social protection refers to the international Social Security agreements that Argentina signed. These agreements grant privileged access to some social benefits for national citizens residing abroad or migrant workers coming to Argentina. In general, these agreements regulate the transfer of workers' contributions between signatory States. This mechanism allows workers to ask for an aggregation of contributions paid in each country to gain entitlement to old age and invalidity pension benefits in the chosen country of residence. Some agreements also grant access to health care and family allowances for pension recipients (Chile, Italy), or maternity leave and sickness benefits (Italy, Spain). The most robust agreement is the MERCOSUR Multilateral Agreement on Social Security that guarantees access for migrant workers in the States Parties to the same rights as in the States of origin in matters of social security regarding contributory benefits and health services. There are also a number of bilateral Agreements in place which grant access to old age and invalidity benefits. Some of these agreements also grant access to health care and family allowances (usually for pension recipients) and others give access to maternity leave and sickness benefits. When a worker migrates to countries not covered by any Social Security agreements, he/she loses the right to ask for an aggregation of contributions paid in each country to be eligible to contributory benefits in the chosen country of residence. This usually derives in losing the rights to receive a Social Security benefit in Argentina, unless the benefit is already being granted (for example, in the case of retired workers receiving a pension benefit and deciding to move abroad). On the other hand, unemployment benefits are not granted to those residing abroad.

In summary, migrants' access to contributory social security in Argentina is determined mainly by their employment status. In contrast, access to non-contributory benefits depends not only on the eligibility conditions determined by each public policy, but also the years of residence that migrants can demonstrate, once he/she has regularized his/her residence with the migration authorities. This situation is explained by the relatively open immigration policy that characterizes Argentina since the 2004 reform. Yet, the measures adopted by the current government (since the end of 2015) and the discourses that follow them betray a political

change towards a more restrictive migration policy, although this has not been reflected yet in changes in access to social protection for migrants with regular residence.

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# Chapter 3

## Diaspora Policies, Consular Services and Social Protection for Argentine Citizens Abroad



Ana Margheritis

### 3.1 Introduction

Argentina has a relatively short experience in addressing emigration as a policy issue and engaging with its citizens residing abroad. The topic has started to be studied in the last two decades, but specific literature is still scarce. This chapter aims at explaining the general institutional framework by which Argentina's authorities interact with nationals abroad, with a specific focus on social protection. It shows that Argentina's policies for citizens abroad have not institutionalised yet as a distinct and vibrant sphere of action and most initiatives have waxed and waned over time. Such lukewarm approach is characterised by ambivalence, intermittent and selective engagement, and relatively little development in terms of responding to social protection needs of national abroad.

In particular, this chapter presents a detailed account of the policies, programmes and services offered by Argentine authorities across five specific policy areas: unemployment, health care, pensions, family-related benefits, and economic hardship. For each of these areas, the existence of initiatives is traced at the national, subnational and regional levels, with specific emphasis on the five top country destinations for Argentine emigrants: Spain, USA, Italy, Paraguay and Israel.

The main findings provide evidence to characterise engagement as lukewarm, showing that neither the state nor citizens abroad have been pro-active on regular basis; thus, when both migrant and state activism converged, engagement intensified for a while to lose momentum later. In particular, in terms of social protection policies, the findings indicate that (a) priority has been given to pensions and social security issues; (b) there is currently an attempt to facilitate access to protection and benefits through simplified bureaucratic practices and virtual means, and (c) rights

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of Argentines residing within MERCOSUR countries are enacted by regional agreements, yet regional integration remains at a low level of institutionalisation, regional norms are not fully binding, norm implementation is not homogeneous across member states, and access to benefits is contingent on the country of residence's implementation capacity.

The following section provides some background information on the profile of the Argentine diaspora and main characteristics of the home country engagement. This includes an overview of the institutional infrastructure by which Argentina's authorities engage with nationals abroad and the main components of such engagement policies. The second section focuses on the specificities of the above-mentioned social protection policies. The third section summarises the main findings.

## **3.2 Diaspora Characteristics and Home Country Engagement**

### ***3.2.1 The Argentine Diaspora and its Relations with the Homeland***

Argentina was historically (and still is) considered a place for immigration. Emigration has received increasing academic and political attention in the last few decades, and especially since the 1990s, when the numbers rose significantly and the characteristics of flows changed. While in the past emigration had been considered a temporary problem, mostly linked to political instability and persecution, in the early 2000s it started to be seen as a relatively constant and heterogeneous trend, related to the deteriorating political and economic situation (for a brief historical overview, see Jachimowicz 2006).

Antecedents of policy initiatives towards emigration are to be found in the late 1950s, when governments showed some concern with the exit of scientists and drew up some plans to repatriate them. After the return to democracy in 1983, governments were sensitive towards the hardships endured by former political exiles. In the context of reparatory measures, in 1991 Law 24,007 was passed to allow Argentines living abroad to vote (Novick and Murias 2005).

In terms of numbers, emigration increased since the mid-1970s and peaked at the time of the 2001 crisis and immediately afterwards. The profile of the last wave of Argentine emigrants (i.e., young, educated, with relatives or networks in Spain—which together with Italy became a preferred destination—, employed at the time of living, and mostly non-active in migrants' associations) is closely related to the initial steps by the Argentine state to promote transnational links in early 2000s (Margheritis 2016).

According to the UN Population Division (Department of Economic and Social Affairs), in 2017 the total number of Argentine emigrants was 977,200.<sup>1</sup> This figure, which has been relatively stable since 2005, is around 2.27% of the total population of Argentina (44.3 million in 2017). These numbers are consistent with the information in the last country profile published by the Organisation for International Migrations (OIM 2012b). In the last (mid-term legislative) elections of 2017, 362,820 Argentines residing abroad were entitled to vote.<sup>2</sup> For the same year, the top five destinations were Spain, the USA, Italy, Chile and Paraguay, in this order, with the first three countries attracting around 55% of the total. The gender composition of emigrants was balanced.<sup>3</sup>

### 3.2.2 *Diaspora Infrastructure*

Historically, immigration was inextricably linked to Argentina's state- and nation-building processes. The imperative to populate its vast territory translated into an open door policy in late nineteenth century, preferably regarding European newcomers. At the turn of the century, the country indeed received massive immigration and the flows continued until the 1960s approximately, helping to consolidate the image of being a country of immigration (FitzGerald and Cook-Martín 2014:299–332). As Cook-Martín (2008) ably explains, Italy, Spain and Argentina constituted a 'migration system' since mid-nineteenth century and became linked as sending and receiving countries whose roles reversed when the direction of massive migration flows reversed toward the end of the twentieth century. Over time, the three countries competed for establishing or maintaining citizenship links with the same group of migrants and their descendants. Thus, nationality laws, the creation of specialised offices, administrative centralisation and red tape translated those efforts and conditioned migrants' strategies, as well as those of future generations. For example, Argentines of Spanish or Italian descent have access today to dual citizenship, which in the European context allows them to reside, work, and access social benefits in destination/host countries. This may facilitate the re-orientation of mobility in times of crisis and discourage mobilization to demand services to the home country. As some studies indicate, in comparison to other groups, the last massive wave of Argentines emigrants moving to Europe in early twenty-first century seem to be keen on using dual citizenship to 'blend' within the host society and integrate via the labour market rather than engaging in associational life with co-nationals; they also tend to rely on relatively high human and social capital, adopt

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<sup>1</sup> See [https://migrationdataportal.org/?i=stock\\_abs\\_origin&t=2017&cm49=32](https://migrationdataportal.org/?i=stock_abs_origin&t=2017&cm49=32), accessed 25 February 2019.

<sup>2</sup> Cf. [https://www.clarin.com/politica/360-mil-argentinos-residen-exterior-habilitados-votar\\_0\\_B1JRWtIpZ.html](https://www.clarin.com/politica/360-mil-argentinos-residen-exterior-habilitados-votar_0_B1JRWtIpZ.html), accessed 26 February 2019.

<sup>3</sup> Cf. <https://datosmacro.expansion.com/demografia/migracion/emigracion/argentina>, accessed 26 February 2019.

individualistic strategies, and seek very little support from institutions of the home country or migrant-related non-governmental organisations (Margheritis 2017b).

Given this historical background, Argentina's coming to terms with different waves of emigration is a relatively new phenomenon, only partially incorporated into political rhetoric and actions. The inclusion of Argentines abroad in political discourses and specific policies of the home country becomes evident only in the aftermath of the 2001 crisis, when there was a peak in emigration flows. It is in that decade that consular services and institutions expanded and informal relations with some groups of nationals abroad intensified,<sup>4</sup> although intermittently. On both sides of the relationship, testimonies indicate that there was not a tradition of engagement and low capacity to set stable and inclusive participatory mechanisms of dialogue.<sup>5</sup>

Notable developments in that decade include the attempt to carry out an online census of nationals abroad, the expansion and institutional upgrade of the office of Argentines Abroad within the Ministry of Foreign Affairs, and the launching, in 2004, of the Province 25 Programme within the Secretariat of Provinces at the Ministry of Interior, named after the imaginary, extra-territorial province.<sup>6</sup> The rationale behind the initiative was that the state has to help to recover or maintain nationhood links with expatriates, especially with those who left around the time of the 2001 crisis and felt extremely disappointed by, and upset with, the country and the political elite; that is, those who felt "expelled" by a socio-economic model that failed to provide for their needs and aspirations. The 2001 crisis confirmed their sense of frustration, reinforced negative expectations about the future, and accelerated their plans to emigrate. Although the reference in the label to an imaginary province never translated into any legal or constitutional update of the country's administrative structure, the immediate goals of this program at the moment of launching were quite ambitious: to facilitate certain procedures to support citizens abroad (e.g., ID and passport renewals, police record certificates, etc.) and to encourage political participation and representation of nationals abroad. Over the years, the Province 25 Programme went from a phase of intense activity and exchanges with migrant associations (particularly those in Spain) between 2007 and 2009 to low-profile, assistance-oriented activities since then.

This is better understood in the context of broader migration dynamics. Given receding emigration and the domestic repercussions of increasing immigration from neighbouring countries,<sup>7</sup> in the current decade Argentina re-focused its attention towards immigration issues. Institutional expansion happened in relation to all immigration issues. In contrast, deprived of the political impulse given by former

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<sup>4</sup>For instance, the 2005 regularization process in Spain created an opportunity to develop an incipient relationship between Argentine consulates and some migrant associations.

<sup>5</sup>For a detailed historical overview and analysis of the evolution of the relations between the country of origin and nationals abroad, see Margheritis 2016.

<sup>6</sup>Argentina is politically and administratively divided into 23 provinces plus one autonomous district (the capital city). Argentines abroad would represent the fourth largest province in terms of population.

<sup>7</sup>For details on this point, see OIM 2012a.

president Néstor Kirchner in the early 2000s, emigration initiatives were put on hold and followed an inertial path. The Province 25 Programme relied on very few staff members and, turning away from its initial political goals, re-focused in the last decade on providing information to citizens residing abroad, mainly online. Until 2015, it worked in informal and sporadic contact with two small, related institutions: the Department of Argentines Abroad, within the General Directorate of Migrations at the Ministry of Interior, and the Directorate of International Migrations, within the Ministry of Foreign Affairs. The programme is now absorbed within the new online platforms for Argentines abroad;<sup>8</sup> its twitter account was created in 2010 and not updated since 2015.

The Macri administration (2015–2019) has made extensive use of online portals to communicate with citizens at home and abroad in all areas of policy, including the creation of a web page dedicated to nationals abroad.<sup>9</sup> It is also to be noted that the terminology of ‘Argentines abroad’ has switched to ‘Argentines in the world’ recently.

In sum, in terms of institutional actors, the Ministry of Foreign Affairs and Worship outstands in this realm as the main institutional actor. As it is in charge of foreign policy and representation in foreign countries and international organizations, its functions include consular affairs, defined as protection and assistance to citizens living abroad, as well as strengthening of links with the country. It maintains informal contacts to coordinate with all other offices mentioned above. No specific diaspora institution has been created yet.

Similarly, there is no record of variation for the basic consular services across the five top destinations for Argentines abroad, although the scope of the consular network varies in each country (six in Spain, seven in the USA, three in Paraguay and one in Israel).

### 3.2.3 *Key Engagement Policies*

In the framework of the above institutional infrastructure, relations between the country of origin and nationals abroad have remained largely non-institutionalised and informal. The main attempt to develop engagement policies was the creation of the Province 25 Programme which, as it was explained above, lags behind its initial goals. Such programme underwent a phase of intense activity and exchanges with migrant associations (particularly those in Spain) between 2007 and 2009. Several meetings with representatives of emigrants were held and a bill to create the “Exterior” (extra-territorial) District and grant emigrants parliamentary

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<sup>8</sup> See <https://www.argentina.gob.ar/interior/secretaria-de-provincias-y-municipios/argentinos-en-el-exterior>, accessed 25 February 2019.

<sup>9</sup> See <https://www.argentina.gob.ar/argentinosenelmundo>. Accessed 10 May 2018.

representation was submitted in 2009.<sup>10</sup> This was an attempt to actually constitute a new constituency out of the group of citizens residing abroad and extend their political rights so they can not only vote in national elections but also elect their own representatives to the national legislative body as other territorial districts of the country do. However, the project did not receive enough endorsement in Congress. The meetings did not lead to the institutionalisation of a specific mechanism of dialogue and collaboration like neighbour countries have (e.g., consultation councils).<sup>11</sup>

Political participation of nationals abroad in election processes is possible. The right to vote in presidential and national legislative elections was established by Law 24, 007 in 1991. In the context of democratization, it was then seen as a 'reparatory' measure towards those political exiles who left the country during the dictatorship, rather than an engagement policy. It has indeed generated limited engagement as voter registration and voting have remained relatively low (Margheritis 2017a). Standing as candidates is not an option for nationals abroad. Franchise for citizens abroad in regional or subnational elections does not exist.

The Macri administration attempted to facilitate procedures regarding the exercise of political rights abroad. Citizens living abroad used to be expected to register before casting a vote. Since 2017, by Decree 403, citizens living in other countries whose current domicile abroad is properly recorded in their ID are automatically included in the Registry of Voters Residing Abroad and can cast a ballot in the consular office with jurisdiction in their area of residency. Another recent innovation (implemented in the October 2017 elections) is the setting of an information stand at the main airport to inform nationals abroad of voting rights, requirements, and procedures.<sup>12</sup> Epistolary voting was implemented for the first time in the 2019 elections as established by Decree 45/2019.<sup>13</sup>

In spite of these developments, major political parties do not have a department and/or position dedicated to dealing with nationals residing abroad and have not engaged in a major parliamentary debate on these matters lately. Yet, PRO (*Propuesta Republicana*/Republican Proposal, the party leading the coalition in power for the period 2015–2019) has created a website to gather proposals from Argentines abroad and engage them with the proposed changes above.<sup>14</sup>

In addition to the registration of voters already mentioned, the former Argentine Government attempted to develop a comprehensive registry of nationals abroad. To

<sup>10</sup> See full text of the bill at <http://boletinargentino.blogspot.com/2009/12/argentina-creacion-del-distrito.html>. Accessed 12 May 2018.

<sup>11</sup> On this respect, a bill to create councils of residents abroad and a general council of emigration was sent to Congress in 2004 but it has not been approved yet. See <http://www.diputados.gob.ar/proyectos/proyecto.jsp?id=49684>. Accessed 15 May 2018.

<sup>12</sup> See <https://www.argentina.gob.ar/noticias/elecciones-2017-stand-informativo-en-ezeiza-para-los-argentinos-en-el-exterior>. Accessed 15 May 2018.

<sup>13</sup> See <https://www.argentina.gob.ar/noticias/los-argentinos-en-el-exterior-ya-pueden-votar-por-correo-postal>, accessed 9 March 2020.

<sup>14</sup> See <http://www.pro.com.ar/argentinosenelexterior/>. Accessed 10 May 2018.

that effect, these nationals can request their registration in the so-called *Libro de Matrícula*/Matricular Registry of the consulate, at the nearest consulate to their place of residency abroad. Registration is optional and free. They can also request a certificate or proof of registration for a fee, and such certificate would be valid for a year. The Ministry of Foreign Affairs recommends registration as a way of facilitating administrative procedures and creating a channel of communication so citizens abroad can receive relevant information. It is also possible to register online at the general website of the Argentine Government.<sup>15</sup>

The Argentine consular network assists nationals abroad with the traditional consular procedures, such as obtaining or renewing passports, identification documents, and other. There is no record of norms regarding honorary and mobile consulates, but public officials confirmed that Argentina does not have honorary consulates and the practice of setting mobile consulates does indeed exist. Embassies and consulates organise the itinerary and frequency of visits depending on the needs in each location.<sup>16</sup>

Regarding the economic dimension of engagement policies, it is worth mentioning that Argentina has signed bilateral treaties for the avoidance of double taxation of its citizens abroad with 21 countries and other initiatives were discussed in the mid-2000s. Yet, in spite of discussions on mortgages or special bank accounts to citizens abroad, no economic policies related to remittances or investments have ever been adopted.

Although there is no specific policy to encourage return, the Government provides online information available on procedures, documents required, and tax exemptions for personal goods and other items.<sup>17</sup> Argentina also developed a specific programme towards scientists within the Ministry of Science: RAICES, *Red de Argentinos Investigadores y Científicos en el Exterior*/Network of Argentine Researchers and Scientists Abroad. One of the goals of this programme is to encourage return of highly skilled emigrants.<sup>18</sup> Another policy in the area of return consists in subsidies to encourage returnees and knowledge transfer (e.g., scientists who intend to return may apply for support in the form of a subsidy, a fellowship, or participation in a productive project).<sup>19</sup> As of February 2019, the online page of the programme informs that 1323 scientists have returned to Argentina.<sup>20</sup>

In the realm of culture, the National Directorate of International Cooperation, within the Ministry of Culture, is the main institution with the mission of promoting Argentina's culture among nationals residing abroad<sup>21</sup> but there are no specific

<sup>15</sup> See <https://www.argentina.gob.ar/argentinosenelmundo/registro>. Accessed 9 May 2018.

<sup>16</sup> Interview with the author, Argentine consul in Cadiz, Spain, 10 April 2018.

<sup>17</sup> See <https://www.argentina.gob.ar/secretaria-de-provincias/guia-para-argentinos-que-desean-retomar-al-pais>. Accessed 24 October 2018.

<sup>18</sup> See <http://www.raices.mincyt.gov.ar/institucional-presentacion.php>. Accessed 25 February 2019.

<sup>19</sup> See details under 'repatriation actions' in the link above.

<sup>20</sup> Cf. <http://www.raices.mincyt.gov.ar/>, accessed 25 February 2019.

<sup>21</sup> See <https://www.cultura.gob.ar/institucional/organismos/direccion-nacional-de-cooperacion-internacional/>. Accessed 11 May 2018.



policies to grant access to educational facilities or to create incentives for the creation of non-for-profit associations. Notable exceptions include the existence of five Argentine schools abroad to provide complementary education on language and social sciences (in the USA, Switzerland and France).<sup>22</sup> In addition, nationals residing abroad have the possibility of taking exams at embassies or consulates to complete secondary education.<sup>23</sup> Regional norms offer further opportunities: the Protocol of Educational Integration (signed in 1994 by MERCOSUR members) allows continuity in education when on the move by validating diplomas of primary school and mid-level/non-technical education.<sup>24</sup>

In terms of the basic consular protection, the website of the ministry informs what consulates can do for nationals living abroad and what consulates cannot do for them. It states that, under no circumstances, consulates or embassies are responsible for cash benefits or any financial help,<sup>25</sup> although in practice, this constitutes a grey area as routine protocols of consulates are not available online but public officials acknowledge that they have some discretionary power to help and/or re-direct some cases to international organizations or host country institutions.<sup>26</sup>

More generally, consular services include some classic services such as the use of the postal address of the consular office for the reception of private correspondence, general assistance and orientation regarding legal, medical and notarial matters, assistance to people who are injured or have serious health problems (although this does not involve economic disbursement by the consul or Argentine authorities), the granting of passports and other IDs, legalisation of documents, and notarial services. More specific services and other forms of assistance by consular offices include: informing relatives about accidents or deaths, catastrophes and provide advice in such situations; facilitating communication with relatives to inform them about a person's situation and needs; being interested in detained or imprisoned nationals and, under certain circumstances, transmit messages to their relatives; ensuring the defense of the Argentine citizens in court by seeking information about the process, the person's state of health, and ensuring the maintenance of dignified conditions of hygiene and housing, in the case of detainees. Regarding documentation, consular offices can authorise all acts that can be performed by public notaries

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<sup>22</sup> See <https://www.argentina.gob.ar/educacion/innovacionycalidadeducativa/escuelasargentinaselexterior>. Accessed 11 May 2018.

<sup>23</sup> See <https://www.argentina.gob.ar/rendir-examenes-en-el-externo-para-terminar-el-secundario>. Accessed 11 May 2018.

<sup>24</sup> See <https://www.argentina.gob.ar/reconocimiento-de-certificados-titulos-y-estudios-de-nivel-primario-y-secundario>. Accessed 11 May 2018.

<sup>25</sup> See <https://www.mrecic.gov.ar/funciones-consulados-argentinos-en-externo>. Accessed 20 October 2018.

<sup>26</sup> This information comes from personal communications with public officials at the Ministry of Foreign Affairs of Argentina. They often refer to internal norms that guide daily activities of consulates, but these are not available online. Law 20.957 regulates the functions of Argentine Foreign Service, including duties and working conditions of its personnel, but it does not specify consulates' activities. See <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/18795/text-act.htm>. Accessed 15 October 2018.

in the country, especially legalisation, award of the nationality option to children of native Argentines born abroad, and processing documentation (e.g., record updates, duplicate ID, changes of address, etc.).

The consular network does not provide certain services such as paying the costs of repatriation of ashes or mortal remains of Argentine citizens who died abroad nor providing money for medical expenses, hospitalization, surgery, or medical repatriation. Consular offices are also not expected to pay bills (such as hotel bills, legal, medical or any other expenses), provide tickets or means to return to Argentina except in very special circumstances of proven indigence or extreme vulnerability that merit the evaluation of repatriation, under strict compliance with certain requirements. It is to be noted, however, that in the early 2000s, the Ministry of Foreign Affairs managed a Fund for the Assistance to co-nationals that served to repatriate migrants with no economic resources as well as to support financially those facing medical emergencies (Buirá 2006).

### 3.3 Diaspora Policies and Social Protection in Argentina

Social protection in Argentina has mirrored the high volatility in politics and economics, as well as the cycles of state intervention and withdrawal (or, cycles of protection and lack of protection) shaped by various development strategies (Barbeito and Goldberg 2007). More recently, the attempt to bring back the state and increase the protection to vulnerable social sectors has been part of the post-neoliberal, neo-populist discourse in the aftermath of the dramatic 2001 crisis (Grugel and Ruggirozzi 2007). Maintaining social welfare programmes has been a key component of president Macri's approach since 2015. The need for flexibility in social spending was acknowledged in the early 2018 agreement reached with the International Monetary Fund, in the context of concerns with domestic order.

Moreover, the nature of the institutional framework and character of engagement policies described above indicates that Argentina's attempt to develop diaspora policies has not followed a linear, progressive path. It has rather advanced in stops and goes in the development of such policies, that is, state outreach efforts have been intermittent and of varying intensity. Some initiatives have been relatively successful in terms of achieving initial goals, such as the RAICES Programme. Others have somehow faded or reached a plateau. That is the case of the Province 25 Programme (Margheritis 2016:109–112). There has been little progress in the area of social protection for non-resident citizens, although Argentina offers a number of programmes to assist resident citizens.<sup>27</sup> Providing information has become, instead, the main component of the current Government's approach to emigrants. In practice, information diffusion seems to be part of general policies rather than a

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<sup>27</sup> For a summary as of February 2018, see an official online chart at <https://www.argentina.gob.ar/politicassociales/informacion-sobre-planos-y-programas-sociales/guias-de-programas-sociales>. Accessed 13 October 2018.

protection or assistance mechanism fully integrated into a package of diaspora engagement policies. The fact that, when consulted, consulate officials refer to the national institution for general information illustrates this point.<sup>28</sup>

A few other mechanisms of protection are worth mentioning here. For instance, nationals living abroad suffering from discrimination can report this to the INADI, *Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo*/National Institute against Discrimination, Xenophobia and Racism.<sup>29</sup> This is a free service and can be done by phone, email or webpage. There is no information online of what action is taken after a complaint made by a citizen residing abroad, if any, or what procedures follow suit in the host country. INADI only informs online that domestic reports are investigated, advice is offered to victims, a solution is sought and a final report is prepared.

Finally, access to social protection is included within regional norms and, therefore, can potentially impact the small group of Argentines residing in a neighbouring country under consideration here: Paraguay (which hosts around 58,535 emigrants, that is, around 5% of the total).<sup>30</sup> According to MERCOSUR's Residency Agreement (agreed on 2002, effective since ratification by all member states in 2009), Argentines have access to free circulation within MERCOSUR member states and access to legal residency and related rights, such as right to work, petition, exit/entry, worship, family reunification, and send remittances. Regarding employment and access to health services, they are offered equal treatment vis-à-vis nationals of the country of residency and the possibility of consolidating all contributions into a single social security scheme in the country of residency at the moment of retirement –being this Argentina or another country.<sup>31</sup> The 1998 *Declaración Socio-laboral*/Social and Labour Declaration of MERCOSUR establishes principles and rights, such as equality of rights, treatment and opportunities in the area of employment regardless of race, nationality, gender, age, religion, political ideology or other social or family condition, as well as equality of rights and working conditions for migrant workers vis-a-vis nationals in the host country.<sup>32</sup> In 2015, a similar Declaration ratified these principles and established the right to assistance, information, protection and equal rights and working conditions, regardless of nationality. In the framework of MERCOSUR, a Multilateral Agreement on Social Security was also adopted in 1997 (effective since June 2005), thus making possible for workers to accumulate contributions in any member state

<sup>28</sup> Personal communication, Minister, Argentine Embassy in London, 18 April 2018.

<sup>29</sup> See <https://www.argentina.gob.ar/denunciar-discriminacion-para-argentinos-en-el-exterior>. Accessed 10 May 2018.

<sup>30</sup> Cf. <https://datosmacro.expansion.com/demografia/migracion/emigracion/argentina>, accessed 1 March 2019.

<sup>31</sup> See [http://www.mercosur.int/innovaportal/v/6425/5/innova.front/residir\\_y\\_trabajar\\_en\\_el\\_mercosur](http://www.mercosur.int/innovaportal/v/6425/5/innova.front/residir_y_trabajar_en_el_mercosur). The *Cartilla de Ciudadanía*/Citizenship Booklet provides further details. See <http://www.cartillaciudadania.mercosur.int/es>. Accessed 16 October 2018.

<sup>32</sup> See [http://www.mercosur.int/innovaportal/file/4506/1/es\\_declaracion-sociolaboral.pdf](http://www.mercosur.int/innovaportal/file/4506/1/es_declaracion-sociolaboral.pdf). Accessed 15 May 2018.

and consolidate them as if they had been made in only one country. As a result, workers are also entitled to social security benefits in any member state, including health coverage in case of illness and insurance policy in case of accidents at work.<sup>33</sup> However, the full and proper implementation of these ‘portable’ rights within the bloc is contingent on the nature of regional integration in South America. MERCOSUR has a long and mixed record of slow and conflictive movement towards its goals, despite the fast advance of its socio-political agenda in the 2000s (Margheritis 2013). Because of MERCOSUR’s norms enter into force once each member state has ratified them, lack of provisions regarding member compliance and dispute settle mechanisms (Pucheta 2014), and power asymmetries between member states, the exercise of rights is uneven across groups and geographies.

The assessment of progress on free circulation, protection of migrants’ rights and regional citizenship within the MERCOSUR made for the 2013 World Forum on Human Rights held in Brazil, confirms the limits of MERCOSUR as a tool for the protection of citizens abroad. Although only a small segment of the entire Argentine diaspora reside in a neighbouring MERCOSUR member state (Paraguay), conclusions of the Forum indicate that the protection and exercise of rights within MERCOSUR in general face serious obstacles in practice and full implementation of regional accords is still pending. Reasons for these underwhelming outcomes include (a) the lack of adaptation and harmonisation of national legal and institutional frameworks to the new norms, and (b) bureaucratic obstacles such as lack of budget, technical and managerial expertise, and information systems (IPPDH 2013:19).

Overall, although comprehensive information is not available, scattered evidence shows that intra-regional migrants face similar challenges in all countries and the actual exercise of rights and access to social welfare benefits vary significantly across immigrant communities, depending on their relative position in ethnic hierarchies, resilient forms of stigmatization by the host society, and migrants’ spatial segregation. In addition, gender, age, ethnicity, and time of arrival matter. Many migrants are not even aware of their rights and properly informed of how to make claims; most of them experience lack of protection, insecurity, discrimination, and abuses daily (Margheritis 2018).

### 3.3.1 Unemployment

In the twenty-first century, Argentine Governments implemented a number of measures to address unemployment, including unemployment allowance, job training, job creation, redundancy payments/compensation, and subsidies to employers, among others (for details, see Bertranou and Paz 2007). For most of them

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<sup>33</sup> See [http://www.mercosur.int/msweb/portal%20intermediario/Normas/normas\\_web/Decisiones/ES/Dec\\_019\\_097\\_.PDF](http://www.mercosur.int/msweb/portal%20intermediario/Normas/normas_web/Decisiones/ES/Dec_019_097_.PDF). Accessed 25 April 2018.

permanent residence<sup>34</sup> in the country and physical presence at in Argentina to submit an application (as application is personal and needs to be done in the closest office to their domicile)<sup>35</sup> are listed as a qualifying criteria. These benefits are therefore not available to non-resident citizens. In addition, there is no specific or additional policy in the area of unemployment for citizens abroad beyond the limited provisions of the MERCOSUR agreements. Lastly, as shown above, the missions of consulates are narrowly defined and they do not help citizens abroad seek jobs or obtain work permits in host countries.

### 3.3.2 *Health Care*

As noted by Bianculli and Hoffmann (2016), the right to health did not appear in Argentina's constitutional framework until recently; full recognition happened simultaneously with structural reforms and decentralisation, which partially dismantled and questioned universal health provision. Argentina does have a universal health system that offers free treatment to both national and foreigners. At present, a specific health policy for Argentines abroad does not exist but they can access public health when visiting the country for free (regardless of place of residency and socio-economic condition) unlike foreigners which, since 2018, are subject to medical fees except if they are legal residents proceeding from MERCOSUR member states as they are entitled to the same benefits as nationals.<sup>36</sup> For Argentines residing in a major destination country such as Paraguay that is also member of MERCOSUR, access to health coverage in the country of residency is therefore established in the Residency Agreement. Yet Argentines residing in Paraguay and other MERCOSUR countries are affected by the fact this organization is essentially inter-governmental, and ministries of health differ significantly in competences, organisation, and funding which means that compromises are difficult to achieve and agreements are not always incorporated into domestic legal framework. Overall, because of the focus of MERCOSUR has been on disease control and epidemic prevention, the portability of health entitlements remains very underdeveloped (Bianculli and Hoffmann 2016). As a consequence, as noted by the Regional Manual on Migrants' Human Rights, whereas some South American countries have incorporated the right to health coverage in their national migration legislation, implementation issues, cost or requirement to present valid ID often prevent effective access (OIM/IPPDH 2017:101).

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<sup>34</sup> See <https://www.argentina.gob.ar/politicassociales/informacion-sobre-planos-y-programas-sociales/guias-de-programas-sociales>. Accessed 24 October 2018.

<sup>35</sup> See <https://www.argentina.gob.ar/tramitar-la-prestacion-por-desempleo>. Accessed 8 October 2018.

<sup>36</sup> See <https://www.minutouno.com/notas/3063508-atencion-medica-gratuita-extranjeros-que-pasa-el-resto-del-mundo>. Accessed 5 October 2018.

Looking at the role of consulates, they provide general information in the area of health but do not engage in seeking services for residents abroad and cannot petition preferential treatment in hospitals or prisons of host countries for Argentines residing abroad.

### 3.3.3 Pensions

The pension system in Argentina has been recurrently in crisis and subject to several reforms. Long-term, general characteristics included decreasing coverage (i.e., lower and lower pensions and mounting difficulties to access) and increasing fiscal deficit. Hence, as a result of a deep crisis affecting the entire state apparatus, it underwent several partial reforms. A major attempt to privatise social security occurred in 1994, with mixed results.<sup>37</sup> The 2001 crisis exposed the lack of social protection in this area again. Centralised, public management by the state was restored via a major structural reform in 2008. As Danani and Beccaria (2011) show, this illustrates the point above about historical cycles in social protection in general, or lack of thereof.

Notwithstanding a chronic critical situation, it is worth noting that pensions is a notable exception within the lack of fully-fledged diaspora engagement policies. In this area, for the past few years nationals residing abroad can rely on some assistance to consolidate contributions made in more than one country and related procedures. There is consistent information provided online by the main national institution in charge of social security and consulates.

The main national institution in charge of pensions is the ANSES (*Administración Nacional de la Seguridad Social*/National Administration of Social Security) and provides the same information on procedures to retired nationals abroad as the Ministry of Foreign Affairs. It also informs online of international agreements with Brazil, Chile, Uruguay, Spain, Italy, Portugal, Greece, and MERCOSUR members.<sup>38</sup> MERCOSUR norms became effective after 1 June 2005 and replaced former bilateral agreements with Brazil and Uruguay. ANSES further informs of agreements with other countries, such as Belgium, Colombia, Slovenia, France, Luxemburg, and Peru, as well as the Inter-American Multilateral Agreement on Social Security, effective since 1 August 2016.<sup>39</sup>

The main implication of these agreements concerns the portability of pension contributions made by Argentines who have worked in several countries and allow them to consolidate all contributions in a single pension scheme. For Argentines residing in Paraguay and other MERCOSUR countries, the MERCOSUR

<sup>37</sup> See details in CEPAL 2004; for a comparative perspective and persistent weaknesses of the Argentine social security system, see De Mesa and Bertranou 1997.

<sup>38</sup> See <https://www.anses.gob.ar/tramites/trabajadores-en-el-exterior/>. Accessed 15 May 2018.

<sup>39</sup> See <https://www.anses.gob.ar/prestaciones/prestaciones-por-convenio-internacional/>. Accessed 15 May 2018.

Multilateral Agreement on Social Security allows for the transfer of contributions from one member state to another is done via administrative offices of the countries in which they worked –most often, the ministries of Social Security or Employment (OIM/IPPDH 2017).

In addition, nationals abroad may also request to the home country a revision in the amount of their Argentine pension via the *Programa de Reparación Histórica* Historic Reparation Programme (created in June 2016) based on legal sentences of the Supreme Court and other courts.<sup>40</sup> This programme aims at solving two chronic problems: improving pensions (which have seriously deteriorated historically) and ending legal suits to the state by pensioners.

To receive an Argentine pension abroad, nationals residing abroad have to submit life certificates regularly (twice a year). They have to report to the national social security agency by submitting ID and pension payslip. Consulates assist retirees with the life certificate by transmitting the certificate via electronic means to the national social security agency: the ANSES. This was designed as to give retirees an optional means of submitting the certificate and to expedite the procedure.<sup>41</sup> Retirees can submit the certificate to consulates in person or via regular mail.<sup>42</sup> This represents an innovation implemented in early 2017 as a result of inter-ministerial cooperation between the Ministry of Foreign Affairs and the ANSES.<sup>43</sup>

Beyond these provisions, there is no cash or in-kind benefits and specific programmes to attend the needs of retired nationals residing abroad and consulates limit their role to the provision of information.

### 3.3.4 *Family-Related Benefits*

Support to families has increased in Argentina since early 2000s under Governments of different political orientation. Existing programmes include the so-called a universal child allowance, universal allowance for social protection during pregnancy, and family allowance for children with special needs. Most of them have clear conditions for access to the benefit and/or duties such as proof of children attending

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<sup>40</sup> See <https://www.argentina.gob.ar/consultar-si-estas-incluido-en-la-reparacion-historica-de-jubilados-y-pensionados>. Accessed 15 May 2018.

<sup>41</sup> See <https://www.argentina.gob.ar/dar-fe-de-vida-supervivencia-para-jubilados-y-pensionados-argentinos-en-el-exterior>. Further information is available in the ANSES website: <https://www.anses.gob.ar/tramites/supervivencia-fe-de-vida/>. Accessed 15 May 2018.

<sup>42</sup> See <http://www.csidn.mrecic.gov.ar/es/content/anses-informacion-para-jubilados-y-pensionados-que-residen-en-el-exterior>. Accessed 15 May 2018.

<sup>43</sup> See <https://www.casarosada.gob.ar/informacion/eventos-destacados-presi/38505-jubilados-y-pensionados-que-residen-en-el-exterior-pueden-acreditar-supervivencia-por-medios-electronicos>. Accessed 15 May 2018.

school, pregnancy regular checks, etc.<sup>44</sup> Residency in the country is a requisite to apply for the universal child allowance.<sup>45</sup> Thus, the access to such social protection is not available to non-resident citizens. Other type of assistance to families, such as access to paternal leave, child benefits, cash or in-kind benefits upon birth of a child or during the period of raising children, does not exist for Argentines abroad.

Argentine consulates assist families residing abroad in a limited way by facilitating certain bureaucratic procedures. For example, nationals of Argentina residing abroad cannot obtain a birth certificate for their children born abroad from their home country but they can request birth certificates of their children born in Argentina. Children of Argentine nationals born abroad can opt to have Argentine nationality and the process can be initiated either in Argentina or in the country of residency via the closest consular office.<sup>46</sup>

In the area of education, Argentine families abroad have the right to register for online long-distance primary and secondary education for children of Argentine nationals but the system is designed primarily for those who are residing abroad temporarily. The goal of the *Servicio de Educación a Distancia* (Distance Learning Service) is to allow these children to keep practising the language, cultivate the feeling of belonging to their country of origin, and facilitate their re-incorporation to the national educational system upon returning.<sup>47</sup>

### 3.3.5 *Economic Hardship*

The *Plan Nacional de Seguridad Alimentaria*/National Plan of Food Safety contemplates access to food for those in situations of extreme vulnerability. Likewise, the *Plan Nacional de Protección Social*/National Plan of Social Protection and *Plan Nacional de Primera Infancia*/National Plan of Early Childhood target households and infants in similar conditions. Other programmes address specific basic needs, such as access to the public network of natural gas. They are all implemented via social assistance in situ.<sup>48</sup> Thus, these benefits are not available to non-resident citizens. In short, this type of policies do not reach out to citizens residing abroad. Also, the Ministry of Foreign Affairs informs that, under no circumstances, consulates or embassies are responsible for financial help. It also informs that families are

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<sup>44</sup> See details at <https://www.argentina.gob.ar/politicassociales/informacion-sobre-planes-y-programas-sociales/guias-de-programas-sociales>. Accessed 8 October 2018.

<sup>45</sup> See <https://www.argentina.gob.ar/tramitar-la-asignacion-universal-por-hijo-auh>. Accessed 8 October 2018.

<sup>46</sup> See <https://www.argentina.gob.ar/opcion-de-nacionalidad-argentina-para-hijos-de-argentinos-nacidos-en-el-exterior>. Accessed 9 October 2018.

<sup>47</sup> See <https://www.argentina.gob.ar/educacion/gestioneducativa/sead>. Accessed 9 October 2018.

<sup>48</sup> See details at <https://www.argentina.gob.ar/politicassociales/informacion-sobre-planes-y-programas-sociales/guias-de-programas-sociales>. Accessed 8 October 2018.



responsible for repatriation.<sup>49</sup> Nevertheless, in practice consulates have the discretion to help in extraordinary circumstances and/or re-direct the case to international organizations or host country institutions. This constitutes a grey area of action, subject to assessment on a case-by-case basis.

### 3.4 Conclusions

In early twenty-first century, Argentina made an attempt to tackle what was perceived as the increasingly visible problem of emigration. The number of emigrants peaked at the time of the dramatic political and economic crisis in 2001, exacerbating a historical trend of outflows due to politico-economic problems and state failed policies. Thus, emigration was part and parcel of the social debt that democratic governments felt compelled to address. However, engagement with the diaspora started only two decades later and the sending state's approach has mainly been based on assistance, that is, on facilitating certain solutions rather than expanding the scope of protection or building partnerships. After some short instances of activism on both sides, engagement faded and diaspora issues have not been high on the agenda of Argentine governments in the current decade.

The main initial motivation to expand services to emigrants derived from emigrants' profile and, to some extent, the need of an emerging governing coalition to build up its identity and support base in the aftermath of the 2001 crisis. Also, given the concern with national development, this approach has led to an emphasis on return of highly qualified citizens living abroad and/or scientific collaboration as a way of reversing the emigration trend and compensating for the loss of human capital. Political enfranchisement—not a new, engagement-oriented measure but a pre-existing right—remained confined to extra-territorial voting in presidential and national legislative elections. A few other measures aim at cultivating links with the country of origin but these are thin in the area of social welfare protection or benefits.

This is not surprising given the historical record of cycles in state intervention/withdrawal and protection/lack thereof. Moreover, the state itself has constituted a hurdle in emigrants' access to social protection. Bureaucratic practices have been reformed several times but still face serious challenges, such as the lack of a comprehensive and strategic vision to strengthen policy consistency, uneven distribution of technical capacities, scarce coordination across the state apparatus and levels of government, and overwhelming role of the executive power on decision making (Margheritis 2016: 112–116). In addition, as it was explained in this chapter, diaspora policies constitute a relatively new area of state intervention in which expertise was scarce and progress is still incipient and intermittent. Engaging with Argentines

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<sup>49</sup>See <https://www.mrecic.gov.ar/funciones-consulados-argentinos-en-exterior>. Accessed 17 May 2018.

abroad was a relatively new task for traditional consular offices in the twenty-first century.

Looking at the demand side, the size of the emigrant community has remained relatively stable after the last peak at the turn of the century. Claims and mobilization have not been intense, constant and effective enough to resonate domestically on regular basis and become a driver of engagement. Some groups of Argentines abroad have proved able to advance a few demands at specific moments in time. But associational life revolves mainly around cultural and social issues; the level of organization varies considerably across associations and destination sites; in general, members' participation is very low. For the majority of emigrants, memories of recurrent crises and losses that prompted their departure still translate into distrust of state institutions, thus making them reluctant to cultivate links with co-nationals and visit or consult with official offices. For many of them, access to a second (generally, European) nationality facilitates a strategy of 'invisibility' (Margheritis 2017b).

As a result, by all accounts, Argentina has implemented some measures to address the needs of its nationals abroad, though in a limited fashion. Comparison with other Latin American countries show that Argentina has joined this regional trend but has not lead it in terms of policy scope and innovation. This is confirmed by both quantitative and qualitative accounts (Pedroza and Palop-García 2017; Margheritis 2016, respectively).

The Argentine authorities' approach has also been selective and somehow shaped by relations with countries of destination. The RAICES Programme clearly targets highly skilled emigrants who are being enticed to either return or maintain professional involvement in the country of origin. The bilateral relationship with Spain was deemed at times as 'strategic' due to historical colonial ties and relatively strong economic and cultural links. Being the place of residency for some political exiles since the 1970s and more recent economic emigrants, former administrations made outreach efforts, although at present no additional or specific protection policies are implemented in that country.

Overall, thus, Argentina has exhibited a lukewarm and intermittent approach to diaspora engagement. No specialised office or formal consultative mechanism have been created yet. As this study shows, there is little progress on social protection at the transnational level, except for the area of pensions. In the last 3 years, the most notable developments regarding emigrants are the extensive use of online means of communication to diffuse practical information of interest to nationals abroad and the change of terminology to address them: rather than placing them 'in the exterior' of the national borders, emigrants are today 'in the world' –a language nuance which might indicate simply geographical dispersion and/or an incipient attempt to foster inclusion in the country of origin.

Whereas the MERCOSUR agreements place Argentines residing in another country of the bloc in a theoretically more favourable position when it comes to access to social protection, the exercise of those rights is contingent on host countries' capacity to implement regional norms. Significant change is not expected from a bottom-up source as pressure from civil society is limited and regional institutions remain relatively impermeable to its input (Pucheta 2014; Grugel 2005).

Overall, we can safely conclude that because Argentina stands out in the South American context as a net receiving country. Immigration rather than emigration has been a core concern for policy-makers in spite of the emigration peaks of the early 2000s.

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# Chapter 4

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in China



Alex Jingwei He

### 4.1 Overview of the National Social Security System and Main Migration Features in China

#### 4.1.1 Main Characteristics of China's Social Security System

Since the foundation of the People's Republic of China in 1949, its welfare system had been deeply embedded into the country's planned economy and urban-rural divide, until China's embarkation on market-oriented reforms in 1980s. Full and life-long employment, job creation and job assignment—often referred to as the “iron rice bowl”—were guaranteed (Guan 2000). Economic activities in urban areas predominantly took place around state-owned enterprises (SOEs) that still contributed close to 80% of gross industrial output and employed more than 75% of the urban workforce by 1980 (Leung 2003). Work units (*danwei*), particularly SOEs, were the cornerstones of both welfare financing and delivery, providing workers and their family members with a comprehensive social protection package (Saunders and Shang 2001). In contrast to the dominance of *danwei* in this socialist mini-welfare state, the role played by the state was limited to caring for the most vulnerable groups in the urban population, including childless frail elders, the disabled homeless, and orphans (Leung 2005). Overall, the Chinese society, especially the urban sector, constituted a “welfare society in a low-income country,” under the planned economy (Guan 2000).

The economic reform initiated in 1978 exerted a significant impact on social security. First, inefficient and overstaffed SOEs started to suffer from heavy economic losses, so that financing the mini-welfare state became a heavy burden.

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Neither the government nor the SOEs had the financial ability to continue their generous provision of welfare. Even worse, many SOEs underwent privatization and bankruptcy. Second, the iron rice bowl was blamed as a disincentive for improving productivity and was gradually dismantled. A mass layoff of workers in the 1990s dramatically changed labour relations and raised enormous demands for social protection. Third, alongside economic liberalization, private and informal sectors flourished while new professions proliferated, calling for a paradigm shift in social security. Although the economic transition was gradual and incremental, it swiftly led to the destruction of old social security institutions, especially pension, housing, education and health care (Chan et al. 2008). Only in recent years has China seen a prominent expansion of social policies, in response to rising social instability and the need for the party-state to exert political legitimacy (Ngok and Huang 2014).

Constituting the skeleton of the current urban social security system are five social insurance schemes, covering old-age pension, general medical care, maternity benefits, work injury, and unemployment, as well as a provident fund for housing finances. Well-known to most Chinese people is the term “*wu xian yi jin*” (five insurances and one fund). Table 4.1 presents the prevalent contribution rates of all mandatory social insurance schemes, which are predominantly financed by contributions from employers and employees. Also financed by contributions from employers and employees, but without risk-pooling, is the housing provident fund, which is earmarked for enrollees’ housing purposes.

The development of China’s rural social security system is much more recent. The Rural Cooperative Medical Scheme (NCMS) is a community risk-pooling program intended to help farmers cope with catastrophic medical expenditures. Enrolment is typically on a household basis. Central and local governments provide generous premium subsidies. Now the NCMS is being integrated with the Urban Resident Basic Medical Insurance, in China’s efforts to consolidate its fragmented social health insurance system. Built on a similar model, the New Rural Basic Social Pension Scheme was introduced in recent years to provide basic financial protection for the rural elders. This voluntary scheme is jointly funded by individuals, villages, and local governments.

**Table 4.1** Prevalent contribution rates of mandatory social insurance schemes

	Employer (%)	Employee (%)
Retirement insurance (old-age pension)	20	8
Unemployment insurance	2	1
Maternity insurance	1	0
Work injury insurance	1	0
Medical insurance	6	2
Housing provident fund	5–12	5–12

Note: The merger of maternity insurance and medical insurance has been undertaken since 2017

Source: He and Wu (2017)

The Minimum Livelihood Guarantee System (MLG)<sup>1</sup> or *dibao*, is China's social safety net. Jointly financed by the central government and local governments, this means-tested non-contributory cash transfer system serves as the major instrument of poverty alleviation in the country. The MLG started as an urban scheme in 1999 and now covers every locality. Rural MGL has been introduced in many localities since 2004, albeit much less generous than the urban scheme.

The Chinese social security system bears two salient characteristics: systemic fragmentation and wide regional disparity. Some social insurance schemes are operated at county level, while others are operated at prefectural level. Social risk-pools and individual accounts co-exist in some insurance schemes. Depending on residential status (urban vs. rural *hukou*; *hukou* refers to household registration status), individuals are enrolled on different insurance schemes, which vary substantially in benefits (Wu 2013; Gao and Rickne 2014; He and Wu 2017). Equity issues also exist across localities, as fiscally-strong local governments tend to offer higher benefits (Shi 2012).

### 4.1.2 Migration History and Key Policy Developments

Migration, both internal and international, has a long history in China. Hong Liu (2005) identified three distinctive phrases of Chinese emigration to overseas. In the first phrase (1850s to 1950), millions of Chinese, predominantly laborers from South China (Guangdong and Fujian) started emigrating overseas, concentrating mainly in Southeast Asia. The second phrase (1950–1980) was much smaller in both scale and population, as the newly founded People's Republic of China adopted a highly restrictive immigration policy (Liu 2009). But the destination of emigration was much more diverse, including mainly North America, Western Europe, Japan, and Australia (Liu 2005). The third and the most recent wave (1980 to present) has been characterized by very wide range of personnel, including high-skilled professionals, students, wealthy immigrant investors, as well as low-skilled workers. China has become one of the world's leading source countries of immigration, providing about 4% of the total population of migrants (Xiang 2016). It is estimated that around 30–35 million ethnic Chinese live outside of Mainland China, Hong Kong, Taiwan, and Macau (Thunø 2001).

Historically, China has been a sending country of migrants, but this situation is gradually evolving. With increasing number of international immigrants from a variety of countries, China is becoming a destination country for transnational migrants rather than a mere source of them. Yet, the migration inflows are still significantly lower when compared to the outflows. Even including those from Hong Kong, Macau, and Taiwan, the total stock of immigrants is merely one million,

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<sup>1</sup> Translated variously as “Minimum Living Standard Assistance”, “Minimum Living Standard Guarantee”, and “Minimum Living Standard Scheme”.

accounting for 0.07% of the Chinese population (Center for China and Globalization 2018). Based on the most recent population census (2010), the top ten source countries of immigration to China are: Republic of Korea, United States, Japan, Myanmar, Vietnam, Canada, France, India, Germany and Australia. Main reasons of migration include: business (20.1%), employment (19.8%), residential settlement (18.3%), and study (19.7%) (National Bureau of Statistics 2011). Most of these legal immigrants reside in economically prosperous parts of China, such as Beijing, Shanghai, Guangdong, and Zhejiang.

In theory, China accepts asylum seekers for political reasons, as the right to seek asylum is recognized by the PRC Constitution. There is a large undocumented population of refugees and illegal workers in China, mainly from North Korea, Vietnam, and Africa; but due to the secretive nature, no official data is available. At the end of 2015, China held about 300,000 recognized refugees, with the vast majority coming from Vietnam (UNHCR 2015).

Seeking to attract foreign talents, particularly in education, technology, science, and management, the Chinese government promulgated the *Regulations for Examination and Approval of Permanent Residence of Aliens in China* in 2004. The regulation officially introduced the permanent resident permit, commonly known as China's "green cards", to three eligible categories of foreign nationals: skilled immigrants, business immigrants, and family reunion (Liu 2009). The permit serves the identity card of foreign nationals in China which also gives them access to the domestic social security system. However, the actual number of green card holders until 2016 is merely around 10,000, due to high eligibility barriers and stringent screening (Nanfang Zhoumo 2017).

The Entry and Exit Administration of the Ministry of Public Security had been the government body managing immigration-related affairs until 2018. In the effort to formulate and implement more effective immigration policies, the Chinese government upgraded it into the State Immigration Administration in April 2018.

## 4.2 Migration and Social Protection in China

The development of China's social security system accelerated during the turn of the new millennium, and incremental reforms have been undertaken since then. In the belief that a developing country is unable to afford welfare that is "too generously" provided to citizens, the Chinese government explicitly defines most social security schemes as "basic" entitlements, manifesting its modest welfare ideology (Chan et al. 2008). Major social insurance programs have achieved fairly wide, if not universal, coverage of the population, while the MLG serves as the last-resort protection for all.

Despite the rapid immigration of foreigners to China in the past two decades, their social protection had not become a major policy concern for the government until the recent years. In 2011, the Ministry of Human Resources and Social Security promulgated "The Provisional Arrangement for the Enrolment of Employed Foreign



Nationals in China's Social Insurance Programs", which remains the only central government administrative ordinance to date governing foreigners' access to the Chinese social security system.

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

### ***4.2.1 Unemployment***

Unemployment protection in China is based on mandatory unemployment insurance, jointly contributed by employers and employees. The program covers urban work units (except government organizations) and their employees, including the self-employed. Migrant workers with a rural residential status but employed in urban enterprises are required to be insured. Eligibility criteria include: (1) premium contribution of at least 12 months, (2) involuntary unemployment, (3) unemployment registration at local social security authorities, and (4) willingness to work. Risk-pooling is conducted at the prefectural level. Employer bears the responsibility of producing proof of terminated employment, which is an essential document for the individual to register unemployment status at social insurance agency. The actual set of required documents varies across localities. For example, some local authorities require bank account statement and fingerprint authentication of the unemployed applicant.

Recipients of unemployment protection are required to report their job search efforts to local social insurance agency on a monthly basis. Failing to meet the reporting requirement may lead to the loss of cash benefits for that month. Aside from the qualifying eligibility stated above, a continuing eligibility is also imposed, requiring the recipient to actively seek, capable of, and available for work. Unemployment benefits shall terminate under several conditions, such as (1) re-employment, (2) emigration, (3) becoming eligible for old-age pension, and (4) refusal to take jobs recommended by the local authorities. China's unemployment insurance system does not have a waiting period before benefits commence, and therefore, the cash allowance is provided from the date when unemployment registration is completed.

Unemployment benefits in China are not earning-related, but are provided on a flat rate set by local governments. The actual rate varies across localities, but is typically between the level of MLG allowance and the level of minimum wage. In other words, the cash benefits are supposed to support daily subsistence only. The length of benefits also varies according to the recipient's years of contribution. An individual who has contributed for less than 5 years before unemployment may receive benefits for up to 12 months, while an individual with more than 10 years' continuous contribution may receive benefits for up to 24 months. It is widely criticized that the level of unemployment benefits is too low and the income replacement rate (less than 20%) is much lower than that of other countries (Jiang et al. 2018). In order to discourage recipients' reliance on the insurance, the benefit payment is typically provided on a descending structure with elapse of time. The low level of financial protection stands in sharp contrast with the large surplus of the insurance funds, leading to doubts about the operational efficiency of the unemployment insurance scheme (Vodopivec and Tong 2008).

Given the shallow protection that it provides to Chinese citizens, the unemployment insurance is even less attractive to foreign nationals residing/working in China, although the government requires foreigners employed in China to participate in the insurance. Unemployment protection of foreigners has not yet become a major policy issue for the Chinese government, but according to the prevalent policy framework, foreigners with legal employment status are required to participate in the unemployment insurance program that gives them the same access to basic financial protection. Chinese nationals residing in other countries are not eligible for unemployment benefits in their home country.

### **4.2.2 Health Care**

The Chinese health care system is dominated by public providers partially funded by the government, with private sector playing a supplementary role. Health insurance and private out-of-pocket payment account for the lion's share of providers' incomes. Owing to a series of misaligned incentives created in China's misguided health care reforms between 1980s and early 2000s, supplier-induced demand and the resultant vast provision of unnecessary care have been plaguing the Chinese health system for more than three decades. Health care costs escalate at rapid rate while financial accessibility remains a key barrier for many low-income people, despite the financial protection aided by China's expanding social health insurance (He and Meng 2015).

Social health insurance is the most salient characteristic of the Chinese health financing system. Three schemes co-exist. Contributed by both employers and employees on a fixed formula, the Urban Employee Basic Medical Insurance (UEBMI) covers employees of the urban formal sector. The New Cooperative Medical Scheme (NCMS) insures rural households which receive generous premium subsidies from central and local governments. Also generously subsidized by

government, the Urban Resident Basic Medical Insurance (URBMI) covers those who are not protected by either UEBMI or NCMS. The two urban schemes are operated by prefectural social security bureaus while the NCMS is managed by county-level health bureaus. The central government has been steering the integration of NCMS and URBMI since 2017, in order to reduce systemic inefficiency and inequity (He and Wu 2017).

Although NCMS and URBMI are designed as voluntary programs, their coverage is fairly wide, if not universal. Covering nearly the entire population, all three programs are mainly intended to protect enrollees against catastrophic medical expenditures. Both inpatient and outpatient care are included. Despite universal insurance coverage, the fragmentation of the social health insurance system has created various negative consequences. In particular, depending on local condition and financing capacity, benefit package varies considerably across schemes and localities, leading to systematic inequity (He and Wu 2017). Financial protection of the NCMS and URBMI remains shallow.

For Chinese nationals, those formally employed, self-employed, and farmers can join social health insurance voluntarily, albeit to different schemes. Individual accounts still exist in many local schemes, from which individuals pay their outpatient costs. Social pool benefits commence after individuals have paid deductibles. In principle, foreign nationals employed in China are required to join the UEBMI that gives them same level of financial protection as the Chinese citizens enjoy, but enforcement is not rigid in practice, as many foreigners own private health insurance policies that also give them access to health services provided by both private and public hospitals. Self-employed foreign nationals are allowed to join the URBMI on a voluntary basis, but in reality the subscription rate is rather low.<sup>2</sup> Chinese nationals residing/working abroad are typically not protected by China's social health insurance unless they have made regular contribution and receive care in China. Medical expenses incurred overseas are usually not reimbursable in the Chinese social health insurance system. In practice, any patient, regardless of nationality, can access China's hospital services on an out-of-pocket basis.

Financial protection against sickness in China is predominantly provided through social or self-purchased commercial health insurance. There had been no nationwide cash benefit program in case of sickness until 2016, when the Chinese government started to implement cash allowance schemes for the low-income disabled and those in severe disability. Administered by county and prefectural civil affairs authorities, respectively, the two schemes give eligible individuals monthly allowance on a means-tested basis. Medical proof of the level of disability is a necessary requirement. However, the payment by these two new schemes is rather low, ranging from 50 RMB to 100 RMB per month. Foreign nationals residing in China or Chinese nationals residing abroad are ineligible.

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<sup>2</sup>“How should foreign employees participate in China's social security programs?”, People's Daily (International Edition), May 31, 2014, retrieved from <http://www.chinanews.com/hr/2014/05-31/6233679.shtml>

### 4.2.3 Pensions

China's urban old-age pension system is built on a three-layer structure. As the first layer, the so-called basic pension plan is a mandatory social pool that gives retirees a defined-benefit financed by a pay-as-you-go system. Employers contribute 22% of employees' wages to a basic pension fund managed by prefectural social security bureaus. Employees with 15 years of contribution are eligible to receive basic pension income after retirement. In addition to the requirement of contribution history, the qualifying conditions also require that an employee must have reached the statutory retirement age of 60 for men or 55 for women. The first tier ensures a replacement rate of 35% of the city's average wage after 15 years of contribution. Payment is subject to periodical adjustment according to an index combining local average wage and price inflation.

The second layer is a defined-contribution system fully funded by individual accounts. It requires compulsory contribution (approximately 8% of wage) from employees to their individual accounts. The target replacement rate of this layer is about 24%, assuming 15 years of continuous contribution and a monthly payment formula. The third layer is voluntary pensions including annuity programs of individual firms, individual retirement plans, and other supplementary pension schemes that are beyond the scope of this chapter.

Overall, the first two layers constitute the mandatory part of China's old-age pension system. Under normal circumstance, a retiree receives two distinct pensions. The first pension comes from the social pooling account based on the accumulation of employer's contribution and benefit level depends on the average wage, the employee's salary before retirement, and history of contribution. The second pension comes from the individual account financed entirely by the individual's contribution before retirement. Retrospective lump-sum contribution payment is possible, should an individual fail to meet contribution requirement but wish to claim pension after retirement.

Not until the recent decade has China instituted old-age pension schemes for the vast rural population and the urban population that is not protected by the employees' pension programs. The Urban-Rural Resident Basic Social Pension Scheme (URRSP) covers rural residents and urban residents excluded from other pension systems. This scheme is also a combination of basic social-pooling fund and an individual account, while the former is not accumulated by employers' contribution but subsidized by central and local governments. The URRSP pays recipients in flat rate, regardless of income or contribution. However, large disparity of monetary benefits exists among localities, reflecting local socioeconomic status and generosity of government subsidies (Tao 2016; Zhu and Walker 2018). In principle, both employed and self-employed foreign nationals may voluntarily participate in the URRSP but the situation is rare, largely owing to its low level of financial protection which is hardly attractive to foreign nationals.

Foreign nationals employed in China are required to contribute to the urban employee pension scheme on the same conditions and entitlements as their Chinese

counterparts apply, but actual enforcement varies while exemptions are given to nationals of selected countries which have signed bilateral social security agreements with China. Chinese nationals residing/working abroad are normally excluded from the old-age pension system at home, with exception given to the expatriate personnel who may continue their contribution. A retiree residing abroad can still receive pension payment provide that he or she has made 15 years of contribution and remains a Chinese citizen, despite overseas residence. In collaboration with the Ministry of Foreign Affairs, the Ministry of Human Resources and Social Security has simplified the procedures for this group of Chinese retirees to claim pension overseas. An annual endorsement certifying the retired individual's foreign residence status must be issued by the Chinese embassy or consulate office.

#### **4.2.4 Family Benefits**

All employed women in China, independently of their nationality, are entitled to statutory paid maternity leave of up to 98 calendar days (14 weeks; 15 days before and 83 days after delivery). The standard qualifying period is between 12 and 24 months. The provision was extended from 90 days in 2012, in order to meet the maternity leave suggested by the International Labour Organization. Despite this centrally set maternity leave provision, there is significant local variation. Many local governments have further extended maternity leave, ranging from 128 days (such as Beijing, Shanghai, Jiangsu, Zhejiang, etc.) to 190 days (Hainan and Henan). In light of the relaxation of the One Child Policy, the Chinese government has adopted a variety of policy measures to encourage birth. For instance, female employees who have made more than one birth are entitled to an additional 15 days of leave for each additional birth. Moreover, a female employee who gives birth to her first child at age 24 or above is regarded as a case of "late childbirth", and is entitled to an additional "late maternity leave" of approximately 4–5 weeks on average (local variation exists). Women who are unemployed, self-employed, or flexibly employed are not entitled to maternity leave.

All employers in China are responsible to contribute to mandatory maternity insurance while employees are exempted from contribution. The insurance fund forms the pool from which employers pay full salary to their female employees in the name of maternity allowance. In the rare event that the female employee does not participate in the maternity insurance, the employer is responsible to pay the full cash benefit from its own welfare fund. The maternity allowance is made retrospectively. Central government ordinance stipulates that female employees shall be granted with at least one breast-feeding hour per day during the "breast-feeding period" of up to 1 year, but actual enforcement is not rigid and may vary significantly among employers.

There is no centrally stipulated paternity benefit in China. The central government has encouraged local authorities to introduce more family-friendly policies since the relaxation of the One Child Policy. Most localities offer paid paternity

leave to male employees, with the actual provision varying from 10 to 30 days. Full salary is payable from the maternity insurance fund, or by employers, depending on local policies.

Foreign employees in China are entitled to both paid maternity leave and paternity leave, but female employees are not eligible for the late maternity leave that applies to Chinese nationals only. The maternity allowance and paternity allowance apply to foreign employees who are enrolled to the maternity insurance scheme. Chinese nationals residing abroad are not entitled to any of the aforementioned benefits. China has not yet introduced parental benefits or child benefits.

#### **4.2.5 *Guaranteed Minimum Resources***

As mentioned above, China's last-resort social protection program is the Minimum Livelihood Guarantee Scheme (MLG), or *dibao*. Centrally organized by the Ministry of Civil Affairs, the actual administration of MLG is by local governments. The financing formula of this scheme combines local taxation and central fiscal subsidies. The MLG started as an urban scheme in 1999 while the rural MLG was established nationwide in 2004 and has experienced impressive development since then.

Any household whose per capita income falls below a locally determined minimum living standard is eligible to apply MLG. MLG benefits are paid in the form of cash allowance that is supposed to be sufficient to cover the costs of basic necessities. Means-test is necessary and is usually conducted in a fairly rigid manner. Applicants must meet both income and assets criteria set by local governments. Other cash benefits such as medical assistance and education allowance have been provided to MLG recipients in recent years. The generosity of MLG payment also varies considerably across localities, contingent largely on the level of socioeconomic status and fiscal capacity of local governments (Solinger and Hu 2012). Despite the rising generosity of MLG in recent years, it is widely seen that its effect in poverty reduction could have been more significant, especially in the rural areas (Li and Walker 2018; Guo et al. 2017).

The MLG scheme started with no requirement for active reemployment, but in recent years, many local governments have introduced a series of measures to solve the incentive problem, including job-search allowance. Some cities, such as Guangzhou, now require MLG recipients with working ability to participate in community service. The eligibility of MLG is strictly tied to local *hukou* that is granted to Mainland Chinese citizens only, and therefore, foreign nationals residing/working in China are not protected by this scheme. In principle, Chinese nationals living abroad are not eligible to apply MLG either, even in possession of local *hukou*, because the status of local residence is a necessary eligibility condition. In practice, either situation is extremely rare.

### **4.2.6 *Obstacles and Bilateral/Multilateral Social Security Agreements***

There are few obstacles for foreign employees to participate in the Chinese social insurance programs. In the formal sector where participation enforcement is relatively rigid, monthly contribution is automatically deducted from one's payroll, and therefore, contribution leakages tend to be small. Self-employed and unemployed foreigners are eligible to join insurance schemes designated for urban residents (such as URBMI and URRSP), but their participation is entirely a personal decision. Some social security benefits are available to Chinese nationals only (such as MLG, disability allowance, and late maternity leave). The take up of social benefits does not affect foreigners' access to residence permits nor their family reunification in China.

On the other hand, China is a member of several loosely-organized regional cooperation networks, such as Asia-Pacific Economic Cooperation (APEC), Shanghai Cooperation Organization, and Greater Mekong Subregion Economic Cooperation, but multilateral social security cooperation has not yet become an issue of concern in these institutions. To date, China has signed bilateral social security agreements with 10 countries, namely, Germany, Republic of Korea, Denmark, Finland, Canada, Switzerland, the Netherlands, France, Spain, and Luxembourg. These agreements grant mutual exemption of selected social security contributions to Chinese employees working in these countries, as well as employees of these countries who work in China. In practice, nationals of these selected countries may decide whether or not to participate in China's social insurance program, as the agreements do not exclude them from the system.

## **4.3 Conclusions**

China has made impressive strides in social security development in the past two decades. Now, major segments of the population—the urban employed, farmers, and the urban unemployed—have been covered. Notwithstanding criticism on shallow protection and inequality, the way in which welfare reforms have been undertaken is arguably an appropriate strategy for such a huge country with vast regional disparities. The achievements made thus far are attributable to China's programmatic strategy of first achieving wide but shallow coverage before expanding benefits (Yu 2015).

Moving forward, three key tasks are high on the government's agenda of social security reforms. The first is to consolidate the fragmented social insurance system, especially in retirement protection and health care. Financial protection will be

steadily increased for urban and rural residents, reducing the vast gap in entitlements among different schemes. The second is to strengthen administrative capacity of social security institutions and adopt the best practice of welfare governance. Operational efficiency of social security programs is expected to improve (Liu and He 2018). The third is to make proactive and strategic preparations for the rapidly ageing population. For instance, long-term care insurance is now being experimented in some cities (Yang et al. 2016). Tremendous investment has been made to foster the development of elderly care network.

Migration is certainly a key issue for social security systems, but internal rural-to-urban migration is much more significant for the Chinese system when compared to international migration. Approximately 280 million migrant workers—more than half of the entire European Union’s population—reside in Chinese cities and have made an enormous contribution to the country’s economic achievement.<sup>3</sup> Due to the *hukou* restriction, most migrant workers were excluded from- or had limited access to the urban welfare system (Gao et al. 2012; Wong et al. 2007). This systemic inequality had long been the subject of international as well as scholarly criticism. While significant government efforts have been paid to reduce the inequality in the past years, social protection of this vulnerable group of population remains a critical policy problem.

Transnational immigration is an issue of lower policy significance for the Chinese social security authorities, as there are merely 850,000 documented foreigners engaging in full-time employment in China (Center for China and Globalization 2014). Nevertheless, the Chinese government is certainly not blind to the social protection needs of this non-national population. Most contributory social insurance programs have required foreign residents with legal employment status to join. The participants, therefore, are granted with access to unemployment benefits, health care services, contributory old-age pension, and maternity benefits. Yet, a few programs have not yet included foreign nationals, such as guaranteed minimum income and disability allowance. However, a much larger population of self-employed and undocumented foreigners reside in China. Getting this group of people included into the social security system is a much thornier task (Hanley and Wen 2017). Compared to their fellow citizens at home, Chinese nationals residing abroad are excluded from most social security benefits in China, except old-age pension, provide that qualifying period of contribution is met.

Overall, China represents an interesting case to observe how a rising developing country confronts and tackles the variety of social security issues and challenges brought about by rapid and extensive cross-border personnel movements. Yet, the issue of (international) migrants’ access to social security is much less pronounced in China, as compared to what many European countries have been experiencing. The extraordinary size of the Chinese population makes the number of foreigners appears very small. Moreover, the Chinese social security system has been

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<sup>3</sup> 2017 Migrant worker monitor report, National Bureau of Statistics, retrieved from [http://www.stats.gov.cn/tjsj/zxfb/201804/t20180427\\_1596389.html](http://www.stats.gov.cn/tjsj/zxfb/201804/t20180427_1596389.html)



undergoing gradual expansion in both coverage and benefits, without much popular fear about welfare retrenchment. As explained above, the current provision of social security benefits is largely unattractive to foreign nationals. Therefore, there is no evidence of welfare chauvinism in the Chinese society till now. The policy efforts spent thus far are apparently towards a more inclusive approach. Moving forward, with further development of China's social security system and growing number of immigrants and emigrants, how the Chinese government responds to new challenges warrants close attention.

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# Chapter 5

## Diaspora Policies, Consular Services and Social Protection for Chinese Citizens Abroad



Elena Barabantseva and Tao Wang

### 5.1 Introduction

This chapter offers an overview of the recent policy developments initiated by the government of the People's Republic of China (PRC or China hereafter) in the area of social protection of its citizens living abroad. Chinese leaders regularly emphasise the importance of China's sizeable overseas population towards achieving China's goals of socio-economic development, technological advancements, and territorial sovereignty. The 2018 State Council Report on the Protection of Overseas Chinese Rights and Interests stresses that 'the overseas Chinese have an irreplaceable important role in realizing the Chinese dream'.<sup>1</sup> Since the late nineteenth century, China's imperial officials and reformers – and latterly, its revolutionaries – have recognised the socio-economic value and political potential of overseas Chinese for their homeland. For example, Sun Yatsen, the leader of the 1911 Revolution, widely viewed as the father of modern China, famously called overseas Chinese 'the Mother of the revolution'.

Recent official estimates put the number of overseas Chinese nationals at six million,<sup>2</sup> with the following five countries hosting the largest numbers of China-born population: the United States (US-2,335,000 residents born in China according

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<sup>1</sup> Standing Committee of the 13th National People's Congress. (2018). 国务院关于华侨权益保护工作情况的报告 [Report of the state council of protection of overseas Chinese rights and interests"]. [http://www.npc.gov.cn/npc/xinwen/2018-04/25/content\\_2053574.htm](http://www.npc.gov.cn/npc/xinwen/2018-04/25/content_2053574.htm). Accessed 4 March 2019.

<sup>2</sup> See footnote 1.

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to the 2016 data of the US Census Bureau),<sup>3</sup> Canada (649,260 according to 2016 Census),<sup>4</sup> Japan (878,000 by media estimates in 2017),<sup>5</sup> Australia (318,969 according to the 2011 Census),<sup>6</sup> and the United Kingdom (UK- 182,628 residents born in China according to the 2015 Census).<sup>7</sup> Characterised as a ‘high-end’ wave of Chinese migration, it was made possible by the government relaxation of institutional and legal barriers for leaving China that opened up opportunities for highly-skilled and well-off people to seek new educational, investment, and career prospects abroad (Xiang 2016). The majority of these ‘new migrants’ left China after the beginning of reforms in the late 1970s and are now the main target of the state diaspora policies.

“Overseas Chinese affairs work” (*qiaowu gongzuo* 侨务工作) is the traditional term that the PRC uses to refer to its policies towards Chinese people abroad and it has not changed since the Mao era (1949–1975). The range of state activities, however, has in recent decades expanded in multiple directions, including flexible exit and entry arrangements, incentives for investments, favourable social protection for overseas Chinese returnees, soft power projection, and pro-China propaganda.<sup>8</sup> Since the late 1970s, when China introduced pro-market reforms and became single-mindedly focused on economic growth, the core of “Overseas Chinese affairs work” has been economic policies. Policymakers across the country try every means to entice Chinese diaspora to invest in China, using tax exemption, cheap land, low-interest loans and even free cash.

As China’s economic engine has begun to shift from manufacturing to technology, recruiting overseas Chinese talent has become a new mission. Scientists, professors, and bankers of Chinese descent have frequently been recruited back to

<sup>3</sup>Zong, Jie and Batalova, Jeanne. (2017). Chinese Immigrants in the United States. Migration Policy Institute. <https://www.migrationpolicy.org/article/chinese-immigrants-united-states>. Accessed 12 June 2019.

<sup>4</sup>Statistics Canada (2019). Immigration and Ethnocultural Diversity Highlight Tables – Immigrant population by place of birth, period of immigration, 2016 counts, both sexes, age (total), Canada, 2016 Census – 25% sample data, <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/hltfst/imm/Table.cfm?Lang=E&T=21&Geo=01&SO=4D>. Accessed 12 June 2019.

<sup>5</sup>Schreiber, M. (2018). Media stews over growing Chinese numbers in Japan. *The Japan Times*. <https://www.japantimes.co.jp/news/2018/07/14/national/media-national/media-stews-growing-chinese-numbers-japan/#.XP-artNKjdc>. Accessed 12 June 2019.

<sup>6</sup>Department of Social Services of the Australian Government (2014). The China-Born Community. <https://www.dss.gov.au/our-responsibilities/settlement-services/programs-policy/a-multicultural-australia/programs-and-publications/community-information-summaries/the-china-born-community>. Accessed 12 June 2019.

<sup>7</sup>Office for National Statistics (2018). Table 1.3: Overseas-born population in the United Kingdom, excluding some residents in communal establishments, by sex, by country of birth, January 2017 to December 2017, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/methodologies/populationbycountryofbirthandnationalityqmi>. Accessed 12 June 2019.

<sup>8</sup>Overseas Chinese Affairs Cadres’ School of the Overseas Chinese Affairs Office of the State Council (2015). *Q&A on Policies and Regulations about Overseas Chinese Affairs*. Beijing: Shijie Zhishi Press.

China, often with incredibly generous offers. By contrast, when it comes to social welfare protection of Chinese nationals living abroad, the resources provided by the government are stunningly sparse. In this chapter, we show how China's welfare policies towards its nationals abroad varies from one field to another. We find that under almost any circumstances including unemployment, medical emergency and economic hardship, Chinese consulates do not provide financial assistance to citizens abroad. Social protection is limited to providing information, visa arrangements, contacting family members in China and other logistical support. Outside of crisis situations affecting a large number of Chinese workers overseas, the areas of social welfare and protection of nationals abroad remain largely outside of the state's concern.

## 5.2 Diaspora Characteristics and Home Country Engagement

Since Xi Jinping's ascent to power in 2012, overseas Chinese have been given an increasingly important role in China's soft power strategy abroad including cultural and educational exchanges, internationalisation of Chinese media, and transmission of Chinese culture and language (Ding 2015: 235). Furthermore, with the growing expansion of China's "Go Global" policies and their most recent reincarnation of the "One Belt, One Road" initiative introduced by Xi Jinping in 2013, the imperative nature of overseas Chinese citizens' protection has increased. With the expansion of Chinese development and infrastructure projects abroad, the exposure to social unrest, violence and political volatility among Chinese nationals working on overseas projects has increased. Since the attacks on Chinese workers in Afghanistan and Pakistan in 2004, and a major rescue operation in East Timor in 2006, overseas citizens' protection has become a 'new diplomatic imperative' (Zerba 2014: 1094). In 2011, China carried out the first large-scale evacuation operation of 35,000 Chinese nationals from the civil war in Libya (Zerba 2014). The significance of such operations for China's global image-making is reiterated by the fact that they have informed the storylines of state-funded nationalistic blockbusters such as *Wolf Warrior 2* and *Operation Red Sea* (Connolly 2019). This latest phase in the evolution of China's policies towards its nationals abroad builds on the long history of diaspora engagement. The surprisingly high number of Chinese residing in Libya is simply the tip of the iceberg of China's diaspora across the world. Indeed, the bond between China and its diaspora communities has never been weak.

### 5.2.1 *The Chinese Diaspora and its Relations with the Homeland*

The Chinese diaspora has historically played a central role in the Chinese national projects of modernisation and development. Since the late nineteenth century, when a sizeable number of Chinese migrants started settling in Asia, the Americas, and Europe, Chinese rulers recognised the potential economic and political role that these communities could play in realising China's transformational objectives. In recognition of the hardship and plight of Chinese labourers overseas, the first nationality law of 1909 introduced by the Qing Imperial Court adopted the *jus sanguinis* principle and offered them consular protection. This law was predicated on the idea that all people of Chinese descent are members of the Chinese nation and should be protected by its government. During the late 19th - early twentieth century's revolutionary campaign led by Sun Yat-sen against the dynastic rule of the Qing and foreign domination, overseas Chinese communities in Southeast Asia and the US were central to his efforts to raise funds for the national survival project. Although the dual citizenship principle was repudiated in favour of the single citizenship by the PRC government in 1956, state policies towards overseas communities have developed into an area of important ideological and economic policy activities. In the pre-reform period, overseas Chinese communities were part of the United Front campaign which was dedicated to the revolutionary struggle, while in the post-reform period, modernisation became its foremost goal. Historically, the main objective of China's engagement with its overseas populations has been improving China's "international image, promoting China's domestic and foreign advancement, and raising the status of the OC in their places of residence" (To 2014).

Most official pronouncements about state policies towards overseas Chinese begin with an estimation of the number of Chinese living abroad. In the 1990s, Chinese policymakers gave the number of 30 million overseas Chinese worldwide, which ambiguously referred to overseas Chinese nationals (*huaqiao*) and people of Chinese descent (*huaren*) (Zhao 1994: 8). By 2017, according to official publications, this figure had doubled to 60 million (Wang and Kang 2017). Developing a comprehensive and complex apparatus to include overseas Chinese into China's domestic reforms and overseas strategies has become an essential part of China's post-1978 development model. Central to this project are China's goals of economic and technological development, revival of national strength, and growing global influence. The protection of rights and interests belonging to overseas Chinese is enshrined in the Constitution of the PRC, with Article 50 specifically dedicated to the subjects of overseas Chinese and returned overseas Chinese. It states: "The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned

overseas Chinese and of the family members of Chinese nationals residing abroad”.<sup>9</sup> This area of state activities has been in constant fluctuation.

### 5.2.2 *Diaspora Infrastructure*

The institutional network involved in delivering China’s diaspora policy is vast, ranging from government agencies, party apparatus, and non-governmental associations to consulates, embassies and representative organizations across the globe. It is not only enormous in size, but also complex. Owing to a unique party-state system, there is a fine line between state and party, between legislative and executive branches, and between governmental and non-governmental agencies.

In terms of international infrastructure, the PRC has an extensive consular network in 178 countries across the world, in addition to mobile consular services in areas where there is no physical consulate in operation. In each consulate, there is usually a department named Overseas Chinese Team tasked to deal with diaspora issues. This team consists of career diplomats appointed by the Ministry of Foreign Affairs. It is the first official contact point for Chinese abroad who need consular services and social protection. Beyond the bricks and mortar of Chinese consulates, semi-governmental agencies are set up all over the globe. For example, in 2004, the government launched Confucius Institutes around the world with the mission to promote Chinese culture and language. Although primarily aimed at foreign populations, Confucius Institutes work actively with Chinese consulates. In addition, the Chinese Students and Scholars Association (CSSA), operating across university campuses outside of China, also plays a role in the diaspora infrastructure. By holding cultural events such as annual Chinese New Year galas and food festivals, the CSSA fosters new links connecting Chinese diaspora communities with overseas Chinese students. Since 2014, a network of grassroots Overseas Chinese Mutual Aid Centres staffed by volunteers and receiving support from and acknowledgment by the Chinese central government have started appearing around the world.

These institutions abroad, however, should be considered as an extension and the tip of the iceberg of the massive superstructure within China. Domestically, at the centre of this superstructure are five interrelated governmental and party institutions, also known as five *qiao* (*wu qiao* 五侨) (Liu and van Dongen 2016). “The big five” are: the Overseas Chinese Affairs Office of the State Council, the Overseas Chinese Affairs Committee of the National People’s Congress (NPC), the Hong Kong, Macau, Taiwan Compatriots and Overseas Chinese Affairs Committee of the National Committee of the Chinese People’s Political Consultative Conference (CPPCC), the All-China Federation of Returned Overseas Chinese, and the China Zhi Gong Party.

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<sup>9</sup>The National People’s Congress (2004). Constitution of the People’s Republic of China. [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm). Accessed 4 March 2019.



Overseas Chinese Affairs Office (OCAO) of the State Council stands at the core of China's diaspora infrastructure. Once a ministry, in 2018 it was merged into a party apparatus of the Communist Party of China (CPC), namely, the United Front Work Department of Chinese Communist Party Central Committee.<sup>10</sup> The OCAO is an overarching unit in charge of proposing laws and regulations regarding overseas Chinese, coordinating, supervising and implementing China's diaspora policies throughout all levels of the government. It also formulates and promotes China's soft power agenda abroad and provides guidance for overseas Chinese organizations.

The National People's Congress is the PRC's legislative branch. The Overseas Chinese Affairs Committee is thus a legislative sub-organization with a specific duty in the area of diaspora issues. Currently consisting of 20 members, the Committee proposes and evaluates laws related to overseas Chinese; monitors executive branch performance and reports any inconsistencies when the executive branch does not follow the Constitution and national laws; undertakes hearings; and gathers information and investigates issues relevant to diaspora.<sup>11</sup>

The National Committee of the Chinese People's Political Consultative Conference (CPPCC), in practice, is the country's top political advisory body, a restricted version of the United Kingdom's House of Lords. In China's party-state system, the main mission of the CPPCC is to draw support for the CPC among non-party members including Chinese nationals residing abroad. At the CPPCC, the Hong Kong, Macau, Taiwan Compatriots and Overseas Chinese Affairs Committee handles issues related to Hong Kong, Macau, Taiwan and overseas Chinese.

The All-China Federation of Returned Overseas Chinese is a "non-governmental organization" under the leadership of the CPC. Although its main task is focused on returned overseas Chinese, the organization is also in charge of addressing the needs of nationals residing abroad. Unlike governmental organizations in China, the Federation has its emphasis on public diplomacy. This is reflected in its own slogan: "consolidating old friendship and broadening new friendship."

The China Zhi Gong Party is one of the eight minor parties that are legally permitted but are subordinate to the Communist Party of China. The Zhi Gong Party largely consists of returned overseas Chinese, their relatives, and those who have overseas connections. Its core mission is to maintain ties with overseas Chinese communities, using its intermediate role to promote Chinese culture and language, and most importantly, developing pro-China patriotism among Chinese nationals residing abroad.

Each of "The Big Five" is a national institution which maintains a top-down hierarchy ranging from national, provincial to local offices. Besides "The Big Five",

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<sup>10</sup>Chinese Communist Party Central Committee (2018). 深化党和国家机构改革方案 [The plan for deepening the reform of party and state institutions]. [http://www.gov.cn/zhengce/2018-03/21/content\\_5276191.htm#1](http://www.gov.cn/zhengce/2018-03/21/content_5276191.htm#1). Accessed 18 October 2018.

<sup>11</sup>The National People's Congress (1982). 中华人民共和国全国人民代表大会组织法 [Organic law of the National People's Congress of the People's Republic of China]. [http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4425.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4425.htm). Accessed 30 October 2018.

many semi-official organizations such as the China Overseas Exchange Association serve as peripheral institutions of China's diaspora infrastructure. In addition, scholars estimate that several tens of thousands of grassroots overseas Chinese associations organized on the principle of kinship, place of birth, educational and professional affiliation and business networking are active worldwide (Liu and van Dongen 2016: 817).

### 5.2.3 *Key Engagement Policies*

The Chinese state's engagement with its nationals abroad places an overwhelming emphasis on encouraging investment and return of overseas Chinese talent back to China.

In China, foreigners' investment in the private sector enjoys a privileged status with substantial benefits, as the government is particularly interested in attracting foreign direct investment. Interestingly, investment by Chinese nationals residing abroad is treated as foreign direct investment. Furthermore, the equipment, vehicles and consumer goods that overseas Chinese import are exempted from import duty and commercial tax. In instances where overseas Chinese run companies that produce goods for export, the imported raw materials, components, equipment, and fuel are exempted from import duty and commercial tax. The final products for export are also exempted from export duty.<sup>12</sup>

In addition, the OCAO, in coordination with local governments, brought about a variety of policies to promote overseas Chinese business start-ups. For example, "Dream Incubators of Overseas Chinese" is a programme which aims to help overseas Chinese to develop new companies in China. Run by local governments, the incubators offer office space, low interest loans, government subsidies, and tax deduction among other incentives.

Investment in real estate in China is not particularly encouraged, given the saturated housing market. Chinese nationals residing abroad are allowed to purchase only one residential property for personal use. Although it appears to be a restriction, this policy is actually in favour of overseas Chinese when it comes to metropolitan cities. In Beijing, for example, the government has placed a cap on who is eligible to buy residential properties in order to control skyrocketing housing prices. Only those who are registered in Beijing's household system or have worked in Beijing for more than five years are permitted to buy. The Chinese citizens residing abroad, however, are required to revoke their household certificate before leaving the country. Thus, the special housing policy allows them to purchase one property

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<sup>12</sup>The State Council (1990). 国务院关于鼓励华侨和香港澳门同胞投资的规定 [Regulations on encouragement of investments from overseas Chinese and Hong Kong and Macao compatriots]. <http://www.mofcom.gov.cn/aarticle/b/f/200207/20020700031072.html>. Accessed 19 October 2018.

in a highly restricted market, regardless of their household certificate or working years.<sup>13</sup>

Not only overseas Chinese investment, but also overseas Chinese professionals are actively encouraged to return to China. Mainly targeting overseas Chinese, the government initiated the “Thousand Talents Plan” in 2008.<sup>14</sup> This policy aims to bring about 2000 “top international talents” within five to 10 years to China, including scientists, researchers, entrepreneurs, and bankers. The recruited overseas Chinese usually hold full professorships in elite universities in the West, or management positions in multinational companies or international banks. The benefits that come with the plan are enormously attractive, even in comparison to similar positions worldwide. It is common for these scientists to be awarded research grants in excess of \$1.5 million, annual salaries of \$150,000, in addition to generous bonuses and housing allowance.<sup>15</sup> Indeed, some universities even advertise positions offering research grants of up to \$15 million.<sup>16</sup>

Young overseas Chinese talent is also a target of overseas Chinese policies. When applying for Chinese universities, overseas Chinese high school students receive bonus points for the National College Entrance Exam (*gaokao* 高考). Once admitted, there are scholarships exclusively aimed at this group of overseas Chinese. The scholarships start at 4000 RMB (\$600) on an annual basis and can be as high as 30,000 RMB (\$4500) per year. Each year, the government offers scholarships to thousands of students from overseas Chinese families.

Compared to their considerable efforts to attract investment and talent, consular services and social protection provided by the Chinese government to overseas Chinese are a recent development and remain limited. Information outlets including the “Consular Voice” (*ling shi zhi shen* 领事之声) on social media, an emergency hotline, and the “Ministry of Foreign Affairs 12308” (*wai jiao bu* 外交部12,308) smartphone application were set up to announce security warnings and important information concerning overseas Chinese. A gradual improvement in the area of “overseas citizen protection” (*haiwai gongmin baohu* 海外公民保护) has been developed in response to the mounting pressure to protect the growing number of Chinese nationals working on China’s overseas infrastructure projects. The

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<sup>13</sup>Chinaqw (2016). 华侨、华人如何在中国买房?需要注意这些程序 [How should overseas Chinese buy properties in China? Note this procedure]. <http://www.chinaqw.com/sqfg/2016/07-08/94588.shtml>. Accessed 4 March 2019.

<sup>14</sup>Chinese Communist Party Central Committee (2008). 中央人才工作协调小组关于实施海外高层次人才引进计划的意见 (千人计划) [Opinion by the central committee of CPC human resources coordinating team about the plan of recruiting leading international talents, also known as the thousand talents plan]. <http://cpc.people.com.cn/GB/244800/244856/18246001.html>. Accessed 3 November 2018.

<sup>15</sup>Harbin Institute of Technology (2015). 哈尔滨工业大学诚聘 ‘千人计划’ 人选 [Harbin Institute of Technology to recruit candidates of the Thousand Talents Plan]. <http://www.hit.edu.cn/282/list.htm>. Accessed 4 March 2019.

<sup>16</sup>Western Returned Scholars Association (2018). 2018年千人计划即将启动 补贴最高450万 [2018 Thousand Talents Plan to start, subsidy up to 4.5 million]. [http://www.wrsa.net/content\\_40351214.htm](http://www.wrsa.net/content_40351214.htm). Accessed 4 March 2019.

Department of Consular Affairs of the Ministry of Foreign Affairs set up a division for consular protection in May 2006 with its subsequent upgrade in 2007 to the Centre for Consular Assistance and Protection (Zerba 2014). Although in recent years China has expanded the network of its consular support, improved emergency response and protection mechanisms of its citizens abroad, they remain limited outside of large-scale emergencies such as the Libya operation. By and large, Chinese consulates have a *laissez-faire* policy toward the social welfare of its nationals abroad. They do not, for example, offer any type of financial help such as subsidising medical costs, flights or hotels under any circumstances.

### 5.3 Diaspora Policies and Social Protection in the PRC

The engagement of the PRC's consular network, diaspora institutions and ministries in the area of social protection of Chinese nationals abroad is restricted. According to the Report of the State Council on the Protection of Overseas Chinese Rights and Interests that was adopted at the second meeting of the Standing Committee of the 13th National People's Congress in April 2018, "the rights and interests of overseas Chinese" are protected by law.<sup>17</sup> The report provides an overview of the government's activities in the following three areas of overseas Chinese affairs: legal protection of the rights and interests of overseas Chinese; expansion of the mechanism to implement overseas Chinese policies; and propaganda among the overseas Chinese communities. In the area of social protection regarding the interests and rights of overseas Chinese, the report emphasises the right of the overseas Chinese to return to China in accordance with the "Regulations on the Procedures for the Return of Chinese to Settlement".<sup>18</sup>

Chinese schools abroad have traditionally constituted one of the central pillars (along with Chinese media and associations) of China's diaspora policies and have been a major source for identity orientation providing linguistic and cultural socialisation for new generations of overseas Chinese. They promote new kinds of global Chinese identities while maintaining strong cultural ties to their diasporic home (Ding 2015; Pieke 2012). By the 2010s, over 1000 supplementary Chinese language schools operated around the globe. In the United States alone, the Chinese School Association had 433 member schools listed on its website in 2019.<sup>19</sup> The right to

<sup>17</sup> Standing Committee of the 13th National People's Congress (2018). 国务院关于华侨权益保护工作情况的报告 [Report of the state council of protection of overseas Chinese rights and interests"]. [http://www.npc.gov.cn/npc/xinwen/2018-04/25/content\\_2053574.htm](http://www.npc.gov.cn/npc/xinwen/2018-04/25/content_2053574.htm). Accessed 4 March 2019.

<sup>18</sup> China Overseas Network (2017). 华侨回国定居应如何办理手续?[How should overseas Chinese return to China to settle down]. <http://www.gqb.gov.cn/news/2017/0207/41734.shtml>. Accessed 10 November 2018.

<sup>19</sup> Chinese School Association in the United States (2019) 全美中文学校协会简介 [About the Chinese School Association in the United States]. <http://csaus.org/FHFRONT/csau/about.jsp>. Accessed 19 March 2019.

education for the children of overseas Chinese is guaranteed in the PRC with two institutions of higher education, Jinan and Huaqiao Universities, recruiting returned overseas Chinese students.

The protection of social insurance rights and interests of overseas Chinese is administered by the Ministry of Human Resources and Social Security<sup>20</sup> in accordance with the Law on Social Insurance.<sup>21</sup> The PRC grants more social rights and economic opportunities to overseas Chinese returnees in China rather than to the Chinese communities abroad. The Guidance on China's Consular Protection and Assistance (2018) is the latest document outlining government policies and services for nationals abroad.<sup>22</sup> It details the services that Chinese consular offices provide, in particular available sources of information and links to current government policies. The consular activities are limited to the traditional domains of consular protection, including provision of notarizations, certifications, and other document-related services. In case of health emergencies, the consulate can provide assistance with accessing health and legal aid, and repatriation in case of death, yet the cost of these services is covered by the person concerned or their family in China. As our survey of the government activities in the area of social protection of overseas Chinese shows, outside of large-scale operations, like the Libya crisis that affected a substantial number of Chinese nationals and cost the government 1 billion RMB, government agencies limit their protection of citizens abroad to the area of information rather than service provision.

### 5.3.1 Unemployment

In the area of unemployment, Chinese state institutions offer minimal support to overseas Chinese. The Guidance on China's Consular Protection and Assistance (2018) clearly states that Chinese consulates cannot offer any type of financial help to Chinese nationals abroad under any circumstances. This includes the loss of income and unemployment abroad. The consulate services have a function to inform the family in China of the overseas Chinese about their financial difficulties and can advise the family on how to transfer the funds needed.

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<sup>20</sup>Ministry of Human Resources and Social Security (2009). 关于进一步做好在国内就业的华侨参加社会保险有关工作的通知 [Notice on the overseas Chinese participation in social insurance for further employment]. [http://www.gov.cn/zwgk/2009-10/30/content\\_1452856.htm](http://www.gov.cn/zwgk/2009-10/30/content_1452856.htm). Accessed 4 March 2019.

<sup>21</sup>The National People's Congress (2010). 中华人民共和国社会保险法 [PRC's Social Insurance Law]. [http://www.npc.gov.cn/npc/xinwen/2010-10/28/content\\_1602435.htm](http://www.npc.gov.cn/npc/xinwen/2010-10/28/content_1602435.htm). Accessed 4 March 2019.

<sup>22</sup>The Consular Affairs Department of the Ministry of Foreign Affairs (2018). 中国领事保护和协助指南 [Guidance on China's consular protection and assistance]. Beijing: Shijie Zhishi Press.

### 5.3.2 Health Care

In the area of health care, the government institutions offer updates on health risks and healthcare provision on their website.<sup>23</sup> In January 2018, the Ministry of Foreign Affairs introduced a new service on Weibo (Chinese version of Twitter) called Consular Voice (*ling shi zhi shen* 领事之声) where it publicizes consular updates and announces important information concerning overseas Chinese, including healthcare.

There is no national policy requiring Chinese consulates to assist overseas Chinese to access health insurance and benefits in China. In the PRC, participation in the medical insurance fund is arranged through the domestic employer in line with the 2011 Social Insurance Law. However, Chinese nationals residing abroad can maintain a form of health coverage in China if they continue to contribute to the National Health Insurance programme (*yiliao baoxian* 医疗保险).<sup>24</sup> In case of medical emergency abroad, Chinese consulates do not provide medical services on their premises and do not provide any cash payments. Yet, they can supply a list of local medical institutions in the country of residence and assist the person to contact their family in China. The consulate's assistance in this area is limited to providing information about available services (legal support, translation services or medical care providers), but the cost of services and repatriation has to be covered by the person concerned or their family in China.<sup>25</sup> If a Chinese national abroad develops a serious health issue and their family in China cannot make arrangements for their repatriation or arrange medical care, a Chinese consulate employee will assist family members with visa arrangements. However, all related medical, travel and other costs will have to be covered by the person concerned or their family in China.<sup>26</sup>

### 5.3.3 Pensions

According to the "Notice regarding benefits issues involving the retired and resigned personnel residing abroad",<sup>27</sup> overseas Chinese retirees should be treated equally with retired nationals domestically.

<sup>23</sup> <http://cs.mfa.gov.cn/>. Accessed 6 April 2020.

<sup>24</sup> The National People's Congress (2010). *中华人民共和国社会保险法* [PRC's Social Insurance Law]. [http://www.npc.gov.cn/npc/xinwen/2010-10/28/content\\_1602435.htm](http://www.npc.gov.cn/npc/xinwen/2010-10/28/content_1602435.htm). Accessed 4 March 2019.

<sup>25</sup> See footnote 22.

<sup>26</sup> See footnote 22.

<sup>27</sup> Overseas Chinese Affairs Cadres' School of the Overseas Chinese Affairs Office of the State Council (2015). *Q&A on Policies and Regulations about Overseas Chinese Affairs*. Beijing: Shijie Zhishi Press.

The legal framework in the area of retirement is regulated by the PRC's Social Insurance Law (2011) and the "Implementation of the PRC's Social Insurance Law". Overseas Chinese can receive pensions abroad if they satisfy two conditions: 1) have participated in the national basic old-age insurance scheme and have contributed to it for at least 15 years, and 2) have reached the legal retirement age. To receive a pension, the person has to complete relevant procedures and obtain a pension account in China. The procedures for pension registrations vary across local social insurance agencies, and the claimant is advised to consult the local social insurance office in their residential area. Applicants can visit the website of the social insurance department where the pension is located or call the local 12,333 consular support line to find out about the specific policy.<sup>28</sup>

To receive pension funds abroad, retired overseas Chinese who satisfy the criteria for pension payments must present a life certificate entitled "Declaration Form for Exit and Retirement of Persons' Retirement", issued by Chinese embassies and consulates abroad, at least annually at the social insurance agencies responsible for pension payments. Overseas Chinese can also entrust relatives or others in China to receive pension payments.

As mentioned above, provisions for participation in the pension scheme by overseas Chinese vary from one province to another. In accordance with Article 24 of Zhejiang Province's "Regulations regarding protection of the rights and interests of overseas Chinese" (2018), if an overseas Chinese originating from the province contributes to the pension account for less than 10 years, they can contribute to it for another five years. If the payment is still insufficient for the minimum payment period set by the state after five years, it may be paid in one lump sum to the minimum payment period stipulated by the state.<sup>29</sup>

As opposed to Chinese retirees residing abroad, one emerging policy area concerns Chinese citizens working abroad. Since 2011, China has signed social security agreements with 12 countries, including Germany, South Korea, Denmark, Finland, Canada, Switzerland, the Netherlands, France, Spain, Luxembourg, Serbia, and Japan (China Business Law Journal 2018). The main purpose of the agreement is to ensure that international migrant workers do not pay double social security taxes. Without such agreements, Chinese employees working in Luxembourg, for example, would have had to contribute to Luxembourg's pension system. The same is true for Luxembourg employees working in China. The agreement exempts employees of one country from making social security contributions in the host country for a period of time (normally five years). Not every international employee is eligible, however. The agreements mainly apply to freelance individuals and

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<sup>28</sup> Overseas Chinese Affairs Office (2018). 外籍华人能否在中国领养养老金? [Can Chinese of foreign nationality receive pension from China abroad?]. <http://www.gqb.gov.cn/news/2018/0830/45316.shtml>. Accessed 4 March 2019.

<sup>29</sup> Civil and Commercial Law Network (2018). 浙江省华侨权益保护条例全文 [Protection of overseas Chinese rights and interests in Zhejiang province]. [http://m.liuxiaoe.com/fagui/116029\\_2.html](http://m.liuxiaoe.com/fagui/116029_2.html). Accessed 4 March 2019.

people working on an assignment, for instance, employees assigned by Chinese companies to work in Japan.

### 5.3.4 *Family-Related Benefits*

For nearly four decades, the PRC exercised strict population control policies that were relaxed in January 2016. There are no financial incentives for child birth or child benefits in China. Maternity leave and pay is arranged through a contractual relationship between a domestic employer and employee in accordance with State Council Order N619 on “Special provisions for labour protection for female employees”.<sup>30</sup> These provisions do not extend to overseas Chinese unless they work for a domestic employer operating overseas. Chinese nationals born abroad cannot obtain a birth certificate from Chinese authorities abroad. They receive a birth certificate issued by the country of residence that needs to be translated and certified at the Chinese consulate for receipt of a Chinese travel document that gives its holder the right to cross the border to the PRC as a Chinese national.<sup>31</sup>

### 5.3.5 *Economic Hardship*

Like in other areas of social protection of overseas Chinese, government institutions provide minimal support in case of economic hardship or destitution faced by a Chinese national abroad. The consulate restricts its role to informing the family in China and providing advice on how to transfer money for the overseas Chinese in economic hardship.<sup>32</sup>

In recent years, there have been concerted efforts by the Chinese government to mobilise overseas Chinese popular organisations to consolidate their own mutual support activities. In 2014, the OCAO in association with local overseas Chinese associations started the programme of setting up “Overseas Chinese Mutual Aid Centres” in cities around the world which hold a significant concentration of Chinese communities. In September 2015, the OCAO in Beijing announced the opening in the previous year of Overseas Chinese Service Centre in Houston (US).<sup>33</sup>

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<sup>30</sup>The State Council (2012). 女职工劳动保护特别规定 [Special provisions on labour protection for female employees]. [http://www.gov.cn/zwggk/2012-05/07/content\\_2131567.htm](http://www.gov.cn/zwggk/2012-05/07/content_2131567.htm). Accessed 4 March 2019.

<sup>31</sup>Ministry of Public Security (2001). 公安部关于对出国人员所生子女落户问题的批复 [Reply of the office of public security on the settlement of Children born to overseas Chinese]. <http://www.chinalawedu.com/falvfagui/fg22598/54807.shtml>. Accessed 4 March 2019.

<sup>32</sup>See footnote 22.

<sup>33</sup>Overseas Chinese Service Centre (2018). 关于 ‘华助中心’ [About overseas Chinese service centre]. <http://chineseciviccenter.org/ocsc/index.html>. Accessed 4 March 2019.



The declared objective of the Centre was to help overseas Chinese to adapt to local life, including providing assistance with housing, employment, investment, residency, language training, and participation in local communities' cultural life (International Festivals, Thanksgiving, and so forth). In 2018, the State Council reported that 60 mutual aid centres operated in 40 countries around the world with the aim of providing legal assistance, volunteering opportunities, and advisory work on integration into the local society.<sup>34</sup> Established and run exclusively by volunteers, the activities of the mutual aid centres are guided and supported by the OCAO – which organises annual events in Beijing celebrating their work. Their efforts were acknowledged at the 2017 Global Overseas Chinese Awards ceremony.<sup>35</sup> Providing care to Overseas Chinese who require help and assistance has become an important dimension of overseas Chinese work in recent years. Advertised as a non-profit service run by overseas Chinese volunteers with the aim of “care, help, and integration”, the creation of the centres is guided by the assumption that all overseas Chinese continue to “love China” from abroad.

## 5.4 Conclusions

Overseas Chinese have historically played a significant role in China's national development and continue to occupy a central stage among government policy priorities. The State Council publishes annual updates on policy developments and achievements in the area of protection of the overseas Chinese rights and interests. The report presented at the 13th National People's Congress states that “the overseas Chinese have an irreplaceable important role in realizing the Chinese dream”.<sup>36</sup> In recent years, “overseas Chinese affairs work” has developed through expanding policy infrastructure, encouraging China's diaspora to participate in national economy and trade, science and technology developments, and large-scale crisis response, yet has seen very limited developments in the area of day-to-day social protection of Chinese nationals abroad. The integration of the Overseas Chinese Affairs Office into the CPC structure through its merger with the United Front Work Department in March 2018, suggests a growing priority and significance of overseas Chinese policies for the party-state.

The Outline for the Development of the State's Overseas Chinese Affairs during the 13th Five-year plan (2016–2020) sets a direction for policy development. It is apparent from the document's emphasis on economy, science, technology, culture and education, that social protection of Chinese diaspora remains a non-priority as a sphere of government policies. The overseas Chinese work is aimed at co-opting

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<sup>34</sup> See footnote 1.

<sup>35</sup> China News Network (2018). 2018助中心年会回眸:凝侨心侨力共享民族复兴梦 [2018 China Aid Centre Annual Meeting Review: Consolidation of Overseas Chinese and Sharing the Dream of National Rejuvenation]. <http://www.chinaqw.com/huazhu/2018/01-14/175152.shtml>. Accessed 3 March 2019.

<sup>36</sup> See footnote 1.

Chinese citizens abroad into economic, technological and image-making activities of the state rather than to responding to welfare needs of Chinese nationals residing abroad. This in large part mirrors China's limited domestic social welfare provisions which are mainly arranged through a contractual employer-employee relationship rather than guaranteed by the state.

Pension has been by far the most developed and debated area of social protection policies, with numerous queries from overseas Chinese retirees about how to receive pension funds from abroad and requests to simplify the paperwork submitted to Chinese consulates. In July 2018, at the press conference of the Ministry of Social Insurance, it was announced that the Chinese government is trialling a new internet video certification policy that might in the future replace the annual procedure of submitting the "Health Confirmation Form" in person to Chinese consulates for pension payments.

The lack of knowledge by overseas Chinese about social protection laws in the country of residence became a news headline in August 2017, when the China Overseas Network, the main portal for overseas Chinese affairs, published an article about a Chinese national living and working in Italy for over 20 years, who lost his low-income benefits pension after relocating to China, having violated the conditions for qualifying for the low-income benefits. Following this case, the Overseas China Network published information on basic pension regulations for a number of countries with a significant Chinese diaspora population.<sup>37</sup>

The growing number of Chinese nationals travelling, working and settling down overseas will likely lead to the expansion of China's activities in the area of social and welfare protection of its citizens abroad. Yet, for the time being, protection of citizens remains limited to the instances of emergency when China's national interests and global image are at stake.

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<sup>37</sup>China Overseas Network. (2017). *海外侨胞请小心!这样做,你的养老金可能不保* [Overseas Chinese please be careful! Otherwise, your pension may not be guaranteed!]. <http://world.people.com.cn/n1/2017/0810/c1002-29462973.html>. Accessed 4 March 2019.

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# Chapter 6

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Ecuador



Anaía Minteguiaga and Valerie Carmel

### 6.1 Overview of the Welfare System and Main Migration Features in Ecuador

This chapter aims to present and analyse Ecuador's welfare system and access to social protection benefits across five policy areas: unemployment, health care, family benefits, pensions, and guaranteed minimum resources. Special emphasis is placed on eligibility requirements for migrants, both foreigners residing in the country and nationals residing abroad. We start with a brief introduction regarding the main features of the country's welfare system and the main patterns of migration to contextualize state intervention and social protection. We later identify the main contributory and non-contributory social protection benefits to examine the principles that inform them, eligibility criteria, inclusion or exclusion of migrants, among others.

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### 6.1.1 *Main Characteristics of the National Social Protection System*

Scholarly work on social protection and welfare in Ecuador has mostly provided fragmented contributions on social policy areas like education (Ponce 1997, 2010), health (Velasco 2011; Estrella and Crespo-Burgos 2002), labour (Porras 2010; Serrano 2013) or specific social programs (Naranjo 2008; Ponce et al. 2013; León 2002; León and Alomia 2008). It has also favoured a quantitative approach focused on spending and the general argument that the public-state sphere is the sole producer of welfare (Ponce and Drouet 2017; Vos 2000; Vos et al. 2002). However, a series of comparative regional studies shed light on the main characteristics of Ecuador's social protection system.

Barrientos (2004), for example, stresses that informality must be at the centre of the characterization of welfare regimes in Latin America because of low levels of labour insertion leading to low levels of inclusion in social security systems. This also applies to Ecuador although there have been attempts to include informal-sector workers in the social protection system.<sup>1</sup> Another main trait of social protection in Ecuador is the relevant role of families. Martínez (2007) worked on a typology for Latin America that defined Ecuador's welfare regime as "familiarist"<sup>2</sup> due to the great weight placed on family and community arrangements for risk management and the provision of social services in the framework of an excluding labour market and weak public policy. These arrangements range from the substitution of expenses through women's unpaid work to migration (Vásconez 2005; Vásconez et. al. 2005).

The role of the state and the market in welfare provision and the degree of universalism in social policy have not remained constant. Rather, they have been adapted to the economic and development models adhered to at different moments. For example, the rise of structuralism (1940s – late 1970s) was accompanied by an endogenous development model and increased state interventionism in economics and social policy. Filgueira (2013) labelled it as a period of "narrow corporatism" for the region because social protection benefits were granted based on affiliation to specific unions or trades and favoured public sector workers. However narrow, it was a period when the state enlarged the ranks of those it provided protection for. Within this regional context, Filgueira (1998) argued Ecuador had an "excluding"

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<sup>1</sup> In 1968, the Ecuadorian Social Security Institute (IESS, for its Spanish acronym) ran its first pilot program called the Peasant Social Security or *Seguro Social Campesino*, which has successfully incorporated over a million rural workers and small-scale fisherman. In 2015, unpaid domestic workers were included in the social security pension scheme as voluntary affiliates through the Organic Law for Labour Justice and Recognition of Work in the Home, or *Ley Orgánica para la Justicia Laboral y Reconocimiento del Trabajo del Hogar*.

<sup>2</sup> The other two types of welfare regimes in Latin America are the state-productivist regime, in which the state invests in human capital for their insertion into labour markets, and the state-protectionist regime, in which the state also invests in human capital but emphasizes the de-commodification of social protection.

regime characterized by elitist social security and health systems that reinforced social stratification and exclusion in access to social services.

In the 1980s, with the predominance of a neoliberal economic and development model, attempts to promote a more active state and the expansion of social protection were replaced with a general tendency towards focalization, deepening the stratifying and stigmatizing effects of social policy (Sojo 1990). Between 1983 and 2006, social policy in Ecuador promoted what Filgueira (2013) called “restricted focalization”. At a regional level, the state was pushed to play a “residual” role in social policy as the market and international institutions, including NGOs, became predominant. Public services like health and education were redefined as services exclusively for “the poor”, while public spending was reduced for the sake of fiscal stability. On the other hand, in the modest formal labour market, Ecuador witnessed setbacks in social protection through the promotion of labour flexibility, encouraged as a way to lure in foreign investment.

A third moment in the development of social protection in Ecuador was inaugurated in 2007 through a series of executive decrees that secured immediate investment for the failing education and health systems,<sup>3</sup> and consolidated in 2008 with the re-writing the country’s political Constitution. Since then, Ecuador witnessed an expansion of social protection and a shift towards a universal model (particularly for education and healthcare). The Constitution paved the way for a new distribution of responsibilities among the different spheres of welfare provision (state, market, family-community), favouring the state’s role in the provision of welfare and redefining social services as social and economic rights. Likewise, the government of then president Rafael Correa enshrined more labour protection through the prohibition of outsourcing and any form of precarious work,<sup>4</sup> increased wages to guarantee coverage of the basic consumer basket, and increased access to social security.<sup>5</sup> Filgueira (2013) referred to this shift as a second experiment to build “social citizenship” based on universalism and as a “political solution” to the inclusion crisis generated by the austerity policies implemented in the previous decades. An experiment Filgueira (2013) recognized as incomplete because states were unable to modify the contributory pillars of social protection and to untie access to social security from the logic of the market.

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<sup>3</sup>In March and May 2007, president Rafael Correa declared the education and health sectors in a state of emergency ordering the immediate release of funds for both public systems. In that first moment, US\$40 million were disbursed to the Ministry of Public Health (MSP for its Spanish acronym) and US\$80 million to the Ministry of Education to repair infrastructure and obtain necessary equipment and supplies.

<sup>4</sup>In the framework of re-writing the Constitution, legislators approved the prohibition of outsourcing and precarious labour. In relation to this mandate, the then Ministry of Labour Relations began conducting a series of inspections nation wide.

<sup>5</sup>The 2008 Constitution defines social security as the state’s duty and as a right of all inhabitants (Art. 55) paving the way for the necessary expansion in coverage. In 2014, through IESS Resolution 467, the government established the voluntary affiliation process for those without a formal job, a direct employer, or people living abroad.

Ecuador still shows high rates of informal labour and, consequently, a stratified social security system (Minteguiaga and Ubasart-González 2013) while attempts towards the de-commodification and universalization of access to social services did not replace “pro-poor” targeting or the reliance on the family and community for social protection (Minteguiaga and Ubasart-González 2014). Access to unemployment, maternity and paternity leave, and pensions depends on individual contributions to the IESS, either as employees or voluntary affiliates. Only health benefits in kind are accessible to all residents (either national citizens or foreign residents<sup>6</sup>), regardless of employment or contributions to the public health system. Benefits to guarantee minimum resources, such as the Assistance Pension and the Human Development Bonus (HDB), are the only non-contributory benefits but they are reserved only to those who can prove they are living in a condition of extreme poverty and must be either Ecuadorian nationals or refugees.

### ***6.1.2 Migration History and Key Policy Developments***

Migration outflows were regular throughout Ecuador’s modern history until 1.5 million people fled the country following the economic and financial crisis of the late nineties when unemployment reached 15% and the poverty rate 56% (Jokisch 2014). Spain became the main destination country, accounting for 45.1% of Ecuadorian emigrants, while 28.6% settled in the United States (Herrera et al. 2012). The massive outflow of people seeking work opportunities had negative effects on some communities’ social fabric and positive effects on the economy through remittances that peaked in 2007, reaching US\$3.3 billion (Jokisch 2014). With the onset of the 2008 international financial crisis and in the context of Ecuador’s growing economy, the emigration trend reversed. Between 2009 and 2012, the number of Ecuadorian emigrants dropped by 31% (OAS 2015) and in 2010, during Ecuador’s last census, the government registered at least 72,000 people who had returned from abroad. In light of the influx of returning migrants, the Ecuadorian government implemented the “Welcome home” plan to assist returnees.<sup>7</sup>

Ecuador has also been an important receiving country, especially for Colombians seeking refuge after being forcibly displaced by the country’s decades-long internal armed conflict (1960 – on going) and drug trafficking-related violence. The Ministry of Foreign Affairs and Human Mobility (2018) estimates that in 2018, over 500,000 Colombians lived in Ecuador. Of them, only 200,000 enjoy a regular status.<sup>8</sup> Most

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<sup>6</sup> However, since September 2018, having public or private health insurance has become a requirement for obtaining temporary and permanent residency.

<sup>7</sup> The plan allowed returning migrants to enter the country with all their belongings without paying import taxes, provided a “housing grant” and credit for entrepreneurs, among others (Sanchez 2014).

<sup>8</sup> Over 60,000 have been granted refugee status, 45,486 have Mercosur visas, 18,663 have family reunification visas (*visas de amparo*), and 6773 have been granted humanitarian or international protection visas.

recently, Ecuador has become a destination and transit country for Venezuelans who are facing a prolonged economic crisis. Between 2014 and 2018, over three million Venezuelans left their country of origin. The United Nations High Commissioner for Refugees (UNHCR) has registered Ecuador among the top four destinations for Venezuelans, preceded by Colombia, Chile, and Peru; there are approximately 221,000 Venezuelan migrants and refugees in Ecuador (Stein 2018). Of these, only 97,000 have obtained a residence permit, allowing them to work legally. The other two largest groups of immigrants (Cubans and U.S. citizens) are marginal in comparison.<sup>9</sup>

In 2008, through the new Constitution, Ecuador laid out a series of protections for immigrants. It guaranteed non-discrimination on the basis of migratory status (article 11), recognized the right to migrate and established that “no human being will be considered illegal” (article 40), and advocated for the principle of universal citizenship and free movement (article 416). In 2013, the Ministry of Foreign Affairs and Human Mobility (hereinafter referred to as the MFA) began drafting the Human Mobility Law.<sup>10</sup> The bill, approved in February 2017, ratified the principles of universal citizenship, free movement, non-criminalization, and non-discrimination. It also eased entry for South Americans, requiring only a national Identity Document (ID) card and granting them an automatic 180-days visa. However, Venezuelan and Colombian immigrants come to Ecuador in search of jobs and the visa does not allow them to work legally. Despite the possibility of applying for a temporary and then permanent residency once in Ecuador, international organizations point to high costs as a serious obstacle to achieving a regular migratory status, leaving immigrants “without rights and access to services, and therefore vulnerable to all forms of exploitation and abuse, violence, and discrimination” (Stein 2018: 11).

In August 2018, amid rising xenophobia targeting Venezuelans, the government of Lenin Moreno announced Ecuador would begin requiring passports for entry. Human rights groups succeeded in eliminating the requirement but the MFA later issued a ministerial agreement requiring Venezuelans’ national IDs to be validated by either the Venezuelan government or a recognized international institution. In January 2019, the government again announced extra requirements that single out Venezuelans by requesting their police records.<sup>11</sup> Finally, since August 2019 the Ecuadorian government is requesting visas for Venezuelans. In order to obtain a visa they need a passport and police records. The measure will likely produce an increase of irregular migratory inflows and make Venezuelans even more vulnerable to violence, human trafficking and other forms of abuse. Ramírez (2018) contends that this policy shift responds to a global trend favouring a “control and security”

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<sup>9</sup>There are roughly 5000 Cubans and 4000 U.S. citizens residing in Ecuador.

<sup>10</sup>This law replaced four previous laws: the Travel Documents Law, Naturalization Law, Migration Law, and Immigration Law.

<sup>11</sup>The announcement was made after the murder of an Ecuadorian woman at the hands of her romantic partner (a Venezuelan man). Feminist groups protested against a rising trend of femicides and gender-based violence a few days later. They also rejected the government’s measure for promoting xenophobia.



approach to migration that portrays immigrants “as those responsible for altering order and stability as well as placing public social services like health, education, and social security at risk” (12).<sup>12</sup>

## 6.2 Migration and Social Protection in Ecuador

IESS affiliates, whether national citizens or foreigners residing in Ecuador, are the most protected category of population in terms of access to social protection benefits. They have access to health benefits in kind, paid maternity and paternity leave, old age and disability pensions, and unemployment. Affiliation for full and part time workers is a legal obligation of every employer in Ecuador; not fulfilling this obligation within the first 15 days of employment is considered a criminal offense and carries a penalty of three to five basic salaries for each non-affiliated worker and 3–7 days of prison (articles 243 and 244 of the Penal Code or *Código Penal*).<sup>13</sup> However, it is not easy to secure the right to work as an immigrant in Ecuador.

Only recognized refugees are guaranteed the right to work and need no authorization or labour certification to be able to work.<sup>14</sup> All other foreigners must have a work visa (e.g. 12-VI or 9-IV) or temporary residency visa (e.g. Southern Common Market or Mercosur, Union of South American Nations or Unasur, and Ecuador-Venezuela Statute) to work legally. These are granted to immigrants who have secured labour contracts in the country and does not protect vulnerable, non-professional immigrants. Work visas are granted to professionals with high technical/educational levels,<sup>15</sup> while the Mercosur and Venezuelan Migrant Statute visas are granted only with proof of a source of income for at least the minimum wage. Foreign residents can work as public servants only with a prior report from the hiring institution and a permit issued by the Labour Ministry.<sup>16</sup> To work in the private sector they need a “certification by the Labour Ministry’s National Director of Employment and Human Resources” stating that the hire does not affect the “national policy on employment and human resources.”<sup>17</sup>

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<sup>12</sup>Generally, there are rising numbers of deportations and non-admissions. While in 2017 the Interior Ministry registered 26 deportations and 234 non-admissions, by April 2018 it registered 191 deportations and 22 non-admissions (Ramírez 2018).

<sup>13</sup>Both sanctions will only be enforced if the employer does not pay its debt to the IESS within 48 h after being notified.

<sup>14</sup>As established through Executive Decree 1182 (2012) and the Labour Ministry’s ministerial agreement 118 (2013).

<sup>15</sup>Migrants who wish to work in Ecuador must register their higher education degrees at the Secretariat of Higher Education, Science, and Technology.

<sup>16</sup>As stated by article five of the 2016 Organic Law on Public Service or *Ley Orgánica de Servicio Público*.

<sup>17</sup>Article 560 of the Labour Code or *Código del Trabajo*.

Only refugees have access to non-contributory social protection benefits like the HDB or the Assistance Pension. In general, accessing social benefits in Ecuador cannot affect an immigrant's application for temporary and permanent residency, family reunification, or citizenship because the MFA (responsible for granting visas, residency, and nationality) does not crosscheck information with the education or health ministries that provide the only benefits immigrants can access.

Ecuadorian citizens residing abroad have no access to non-contributory social protection benefits. They can only access MSP health services if they are in Ecuador regardless of residency. The only social protection benefits they can secure are those linked to being an IESS affiliate because they can voluntarily affiliate to IESS gaining access to health services in Ecuador and access to IESS pensions. However, they don't access unemployment benefits, or maternity and paternity benefits. Ecuador has signed bilateral social security agreements with Spain, the Netherlands, Uruguay, Venezuela, Chile, Peru, Paraguay, and Colombia that allow immigrants from these countries and Ecuadorians who have worked in these countries to totalize the periods worked across territories to access their contributory old age, invalidity and montepío<sup>18</sup> pensions.

Ecuador is part of several regional integration organizations: associated member of MERCOSUR and full member of the Andean Community (CAN), UNASUR,<sup>19</sup> the Latin American Integration Association (ALADI), and the Community of Latin American and Caribbean States (CELAC), but no benefits apply exclusively to nationals of one Member State of these regional integration bodies who move to another Member State. In 2004, the CAN created the Andean Committee of Social Security Authorities and between 2013 and 2016, the Committee worked on a regulatory framework for shared norms that would guarantee social security to "community" migrants working within the CAN. However, no concrete measures have been announced so far. In 2009, UNASUR created the South American Sectorial Council for Social Development, in which Member States share experiences in the field of social protection. However, no specific policies of intra-regional social security coordination have emerged from this space.<sup>20</sup>

In 2008, Ecuador signed the Multilateral Ibero-American Agreement on Social Security,<sup>21</sup> which includes Argentina, Bolivia, Brazil, Chile, El Salvador, Spain, Paraguay, Peru, Portugal, and Uruguay. According to the Ibero-American Organization for Social Security or OISS (2017), the agreement, "effectively applied" in Ecuador since 2011, is applicable to social security benefits in case of invalidity, old age, survival, job-related accidents and illness and it ensures the

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<sup>18</sup> Pension granted to the children, widow or dependent parents of an IESS affiliate or pensioner.

<sup>19</sup> Since March 2019, Ecuador followed through all formal steps for its withdrawal from UNASUR, but it is not yet finalized.

<sup>20</sup> UNASUR has been practically paralyzed since 12 Member States announced their temporary withdrawal in 2018 so progress towards an inter-connected social protection system is highly unlikely now.

<sup>21</sup> Available here: [http://www.seg-social.es/Internet\\_1/Normativa/index.htm?dDocName=147177&C1=1001&C2=2013&C3=3053#documentoPDF](http://www.seg-social.es/Internet_1/Normativa/index.htm?dDocName=147177&C1=1001&C2=2013&C3=3053#documentoPDF)

possibility to totalize periods and “export” the benefits. However, according to the IESS website, years worked in Argentina, Bolivia, Brazil, El Salvador, and Portugal are not being totalized and benefits (pensions) are not sent to other countries. No social security benefit in Ecuador is exportable. Ecuadorians living abroad can enter the social security pension scheme by voluntarily affiliating to the IESS, but they cannot export the pension; they must claim it in a national bank account once they’ve met the necessary requirements.

Non-contributory social protections (HBD or the old-age Assistance Pension) benefits are granted to the “poor” citizen, which is the second most protected category. However, only Ecuadorians and refugees who certify living in extreme poverty are eligible to access these benefits that don’t represent even half of the consumer basket.<sup>22</sup>

### 6.2.1 Unemployment

The Unemployment Insurance scheme went into effect in March 2016 through the Organic Law for the Promotion of Juvenile Labour, Exceptional Regulation of the Work Day, Unemployment and Unemployment Insurance.<sup>23</sup> Only employed workers affiliated to the IESS –national citizens or foreigners– can claim this benefit. Those who are voluntarily affiliated or fall under special social security regimes don’t have access to unemployment insurance as they don’t have an employer. Furthermore, military staff and police officers cannot apply for the unemployment insurance benefit as they fall under two special social security regimes that do not operate within the IESS: the Social Security Institute of the Armed Forces (ISSFA) and the Social Security Institute of the Police (ISSPOL), which have their own medical centres, hospitals and higher pensions.

To receive Unemployment Insurance, IESS affiliated workers must register 24 monthly contributions, 6 of which must be consecutive and immediately before claiming the benefit. Claimants must be involuntarily unemployed for 60 days. There are no explicit residency or age requirements, nor do beneficiaries have to prove job search or register as job seekers. The benefit can be claimed on day 61 of unemployment and there is a 30-day waiting period for the first payment. It lasts for 5 months and it is a percentage<sup>24</sup> of an average of the beneficiary’s last 12 salaries.

Before the Unemployment Insurance was created, IESS affiliates could withdraw accumulated personal savings in the *Fondo de Cesantía*, or Unemployment

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<sup>22</sup>The HDB represents a cash transfer of US\$50 to US\$150, while the Assistance Pension is US\$100. According to the National Institute for Statistics and Census (INEC) the basic consumer basket for August 2018 is US\$710.76.

<sup>23</sup>*Ley Orgánica para la Promoción del Trabajo Juvenil, Regulación Excepcional de la Jornada de Trabajo, Cesantía y Seguro de Desempleo.*

<sup>24</sup>70% for the first month, 65% for the second one, 60% for the third, 55% for the fourth and 50% for the fifth and last month.

Fund.<sup>25</sup> When IESS affiliates claim their Unemployment Fund the IESS transfers the total amount in the personal saving account to the affiliate's bank account. The two benefits are not mutually exclusive. If the beneficiary remains unemployed after receiving Unemployment Insurance, he/she can access his/her personal fund. Access to the fund requires 24 monthly contributions and 60 days of unemployment. This benefit, like all others, is not exportable. Nationals residing abroad can only access it if they have a bank account in Ecuador, where the benefit can be deposited. Nationals or foreigners who are entitled to receive the Unemployment Insurance can temporarily leave the country without affecting eligibility requirements.

## 6.2.2 Health Care

Health is conceived as a universal right granted to everyone, independently of their residency, employment status or nationality. According to Ecuador's 2008 Constitution, the public healthcare system includes social security,<sup>26</sup> and MSP services. The MSP only provides benefits in kind in case of sickness, while the IESS provides both benefits in kind and cash benefits for sickness and invalidity. We focus on benefits in kind provided by the MSP and cash benefits provided by the IESS as these are the more general benefit providers in the health area.

Universal public healthcare services managed by the MSP are financed through national revenue. The 22nd transitional provision of the 2008 Constitution established that the national budget for the health system had to be increased by 0.5% of Gross National Product (GNP) yearly, until reaching no less than 4% of the GNP. This measure aimed to reverse the tendency to underfund the public healthcare system, which before 2008 was focalized for people living under conditions of poverty. In order to access the MSP health services, national and foreign residents only have to show their ID.

Despite its stated universal character, there are several reports of refugees being denied their right to public healthcare (Jaramillo 2015; ODNA 2010). Organizations such as Catholic Relief Services and the Scalabriniana Mission have reported that refugees seeking medical attention are routinely rejected by public hospitals and health centres, or have to wait more than nationals to access services (Jaramillo 2015). Immigrants without refugee status also face restricted access to universal health care and education services (Cardoso and Mendiola 2008; Sánchez 2013; Benavides 2007). The 2017 Human Mobility Law stipulates health providers cannot refuse to provide emergency medical attention to migrants. However, article 64 states that for a foreigner to be granted a permanent residence, the person must either affiliate to the IESS or get a private health insurance. In April 23, 2018

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<sup>25</sup> While the unemployment insurance is financed 2% by the worker's salary contribution and 1% by the employer, the unemployment fund is financed only by the worker's 2%.

<sup>26</sup> The IESS, the Social Security Institute of the Police (ISSPOL), and the Social Security Institute of the Armed Forces (ISSFA) health services and facilities, which are public but restricted.

Ecuador's president Lenin Moreno issued an executive decree making the health insurance requirement for foreigners in Ecuador mandatory. This marks a clear restriction on foreigners' access to MSP health services.

Access to IESS health benefits in kind is restricted to IESS affiliates and pensioners, regardless of whether they are nationals or foreigners, employed or voluntary affiliates. Ecuadorian citizens and non-national residents can become voluntary IESS affiliates as long as they have an Ecuadorian ID.<sup>27</sup> Affiliates must have registered at least 3 monthly contributions, while pensioners can access the benefits immediately. Since 2010,<sup>28</sup> the affiliate's children and registered spouse, either nationals or foreigners, can also access IESS health benefits in kind as long as the affiliates contribute an additional 3.41% for spouses or cohabitants (coverage for children under 18 is free of charge). Pensioners must contribute 4.15% of their pensions for their spouses and 3.41% for their children under 18. For both MSP and IESS health benefits in kind, the beneficiary is not required to pay at any moment and IESS affiliates and pensioners can use private health service providers that have entered into prior agreement with the IESS.

Cash benefits in case of sickness are granted to employed workers affiliated to the IESS, regardless of nationality. These benefits are granted in the form of paid licenses for a period of up to 185 days. Claimants must have at least 6 monthly and continuous contributions immediately preceding sickness. There is no explicit residence requirement, although the IESS affiliate, regardless of nationality, must be working in Ecuador in order to access it. If the affiliate moves abroad and the license has not been paid, the IESS will make the payment in a national bank account.

If sickness turns into prolonged incapacity, the affiliate can receive a transitory incapacity subsidy for 1 year. This is prior to receiving the Invalidity Pension granted to IESS affiliates who are not receiving other pensions and have 60 monthly contributions (out of which at least 6 of them immediately prior to the incapacity) or 120 monthly contributions (if the incapacity happens between 6 and 24 months of the affiliates' last contribution). There is no explicit residency requirement for accessing the Invalidity Pension. The main condition of access is to be "incapacitated to procure through a job proportional to his or her capacities, strengths, theoretical and practical formation, a remuneration at least half of the remuneration a healthy worker in similar conditions obtains in the same region" (Social Security Law, article 186).

The National Evaluation Commission evaluates the request for the Invalidity pension. If it is approved, the affiliate has to accept the pension agreement and resign from his/her job to start collecting the pension. To prove the existence of a permanent invalidity, the affiliate must undergo periodic assessments. Invalidity pensions and the transitory subsidy are calculated taking the average of the best

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<sup>27</sup>A foreigner who wants to get an Ecuadorian ID must go to the Civil Registry (*Registro Civil*) with a valid passport, a valid visa and an ID issuance order. For the issuance order, the foreigner must have a visa for temporary or permanent residency, certification of having public (IESS) or private health insurance (since September 2018), and an updated list of migratory movement.

<sup>28</sup>Resolution N° CD 334 of the IESS Directive Council.

5 years of reported salaries. Calculations differ depending on the years contributed to the IESS. Nationals and foreigners who are IESS affiliates have an equal right to the transitory incapacity subsidy and the invalidity pension; the conditions to claim these benefits are the same for all IESS affiliates. These benefits are not exportable, but national and foreigner IESS affiliates who move abroad can continue receiving the benefit as long as they have a bank account in Ecuador.

Finally, there are two non-contributory health-related cash benefits. The disability Assistance Pension is granted to Ecuadorians or refugees living in conditions of extreme poverty that have a disability of at least a 40%, whereas the Joaquin Gallegos Lara Bonus is granted to Ecuadorians with severe physical disability (at least 75%) or intellectual disability (at least 65%), catastrophic disease or to children under 14 with HIV-AIDS. The former receive US\$100 and the latter US\$ 240 monthly. These social protection benefits are not available to foreigners residing in the country or to nationals residing abroad.

### **6.2.3 Pensions**

There are two types of old-age pensions in Ecuador: the contributory pensions granted to IESS affiliated and the non-contributory pensions managed by the Ministry of Social and Economic Inclusion (MIES) granted to people living under conditions of extreme poverty. IESS pensions are financed through the “intergenerational solidarity” scheme, under which the monthly pensions of “passive workers” or pensioners are financed by the monthly contributions paid by active workers affiliated to the IESS and state financial contributions. The 2001 Social Security Law sought to establish a mixed system for financing pensions, but this system was declared unconstitutional in 2005. Non-IESS pensions are managed by the MIES and financed through tax revenue. In 2012, the National Assembly approved the Law for the Redistribution of Social Spending,<sup>29</sup> which enabled the increase of the amounts paid for non-contributory old-age Assistance Pension from US\$30 to US\$50 by capturing part of private banks’ utilities. In December 2017, the Executive Decree 253 increased the Assistance Pension to US\$100.

To access the IESS old-age retirement pension, the affiliate must either be 70 years old and have contributed during 10 years; or have 40 years of contributions, with no age requirement. This applies to voluntary affiliates, including Ecuadorians living abroad, which means an Ecuadorian can live abroad all his/her life and if they contributed for the minimum 10 years required and reached the age of 70 they have access to the old-age retirement pension. The pension is calculated using an average of the best 5 years of reported salaries and the amount varies according to years contributed.

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<sup>29</sup>*Ley para la Redistribución del Gasto Social.*

Once the affiliate acquires the right to become a pensioner, there is no residency requirement although the pension cannot be exported. A retiree can receive his/her pension in an Ecuadorian bank account regardless of where he/she is residing. These pensions can be accessed from abroad if the retiree has an international ATM card or if he/she transfers the money after the IESS deposited it in an Ecuadorian bank account.

Ecuadorians or refugees of at least 65 years of age who can prove they live in “extreme poverty” through the Social Registry<sup>30</sup> can claim the non-contributory old-age assistance pensions. Refugees are the only foreigners who can claim this benefit and Ecuadorians residing abroad do not have access to non-contributory old-age assistance pensions. There are no qualifying periods of contributions or explicit residency requirements. In order to obtain this pension (of US\$100 per month), eligible claimants must show their national ID and wait for the in situ survey to prove living in “extreme poverty.”

#### **6.2.4 Family Benefits**

There are several types of family-related benefits in Ecuador and the eligibility conditions applied in each case vary from one benefit to another. Paid maternity leave is granted to employed workers affiliated to the IESS who have at least 12 months of uninterrupted contributions prior to giving birth. The benefit lasts for 12 weeks<sup>31</sup> and there is no explicit residency requirement. National and foreign IESS affiliates have equal access to maternity and paternity benefits. None of these benefits are exportable, but individuals can still temporarily move abroad while receiving the maternity/paternity paid leaves in an Ecuadorian bank account. In the public sector, the employer covers 40% of the worker’s wage while the IESS covers 60%. In the private sector, the employer covers 25% and the IESS 75%, respectively.

Eligibility conditions for paid paternity leave are the same as for the maternity leave. The benefit lasts 10 days, with a possibility of extension in particular circumstances. Like mothers, fathers can claim an optional unpaid leave of up to 9 months. Additional benefits for parents are the paid hourly permits to care for children or the breastfeeding permits for up to 2 h daily for 12 months after paid maternity leave is over. There are no parental benefits (i.e. benefits to replace income for parents who want to take care of their children after maternity or paternity benefits) in Ecuador.

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<sup>30</sup>The Social Registry is a database that uses a series of indicators (e.g. living conditions, schooling, income, properties, and access to public services) to create a wellbeing index for determining who can benefit from different social programs.

<sup>31</sup>Affiliates can access an additional 36 weeks without pay, but with the guarantee they will not be fired during the unpaid leave. There are situations that justify an extension of maternity leave (multiple births, C-section, premature births, etc.). Foster parents have the right to a paid licence for 15 days, which begin after the child is legally transferred.

The Human Development Bonus can be considered a child benefit because it is granted to heads of family with children (under 18) who live in “extreme poverty” (the living conditions are certified through the Social Register). The benefit is only granted to resident Ecuadorians and refugees, until the family ceases to live under extreme poverty. Beneficiaries must certify periodic health checks and that the children are going to school. The HDB has a flat component of US\$50 and a variable component: US\$30 for every child between 0 and 5 years old for up to 3 children, US\$10 for every child between 5 and 18 for up to three children. The value of the variable component is reduced by 10% for every extra child. The maximum amount for the benefit is of US\$150. People who receive other cash transfers (e.g. Assistance Pension) are not eligible to get the variable component.

### 6.2.5 *Guaranteed Minimum Resources*

In Ecuador there are no guaranteed minimum resources scheme, but there are four programs that provide conditional cash transfers: the Assistance Pension, the Human Development Bonus, the Joaquín Gallegos Lara Bonus (BJGL), and Eloy Alfaro Scholarship Program. These benefits are covered through the national budget, specifically through tax revenue.

The BJGL recognizes two subjects of intervention: rights holders, who are people with serious disability (75% physical disability or 65% of intellectual disability), or catastrophic illness, or children under 14 with HIV-AIDS and the caregivers. The transfer is equivalent to US\$ 240. The transfer is deposited either to the rights holder or to the caregiver depending on the degree of dependency of the person with disability. From its creation in 2010 the transfer only benefits people within the Social Registry database. In 2014, it was established that the program could benefit foreigners, but only in an exceptional way and “when there are sufficient financial resources”.<sup>32</sup> The Eloy Alfaro National Scholarship is given to members of households that receive the HDB or who can prove a condition of poverty despite not receiving the bonus and are enrolled in a national university. The transfer started out as a minimum wage, currently US\$394, but was later reduced to half the minimum salary. The program was designed to only benefit Ecuador citizens and refugees.<sup>33</sup>

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<sup>32</sup>This was stipulated in resolution 19 of the extinct Technical Secretariat for Disabilities (*Secretaría Técnica de Discapacidades*), which ran the program until 2016, when it was transferred to the MIES.

<sup>33</sup>The program has not been eliminated, but it was not launched in 2018.



### 6.3 Conclusions

The Ecuadorian social protection system is a highly stratified one in which IESS affiliates (whether Ecuadorian or foreigners) enjoy most benefits. This effectively means that social protection benefits are contributory and depend on a person's favourable insertion in the labour market. Given the existence of an important informal labour market, the overall system has a low coverage. To illustrate, the National Institute of Statistic and Census revealed that only 42% of all workers were affiliated to the IESS in 2018. Furthermore, there were roughly 4 million affiliates and 400,000 pensioners, while 8.2 million people made up the total labour force according to World Bank data (2017). This means that less than half of the working-age population has access to unemployment insurance, family benefits, sickness subsidies, old age and invalidity pensions.

State attempts to broaden coverage and access to social protection during the 2007–2017 period relied on the existing structure of benefits. Affiliation to IESS became more inclusive through different forms of voluntary affiliation and new benefits were created. Non-contributory benefits like the HDB –established in the late nineties to make up for the elimination of the key subsidies to gas, fuel, and electricity– increased its coverage, but they continue to be too limited to provide adequate social protection or the necessary conditions to overcome poverty. Efforts to modify and expand social protection through the universalization of access to health and education to address the issue of socio-economic inequality did not displace the focus on poverty that social policy based on focalized programs has. However, during these years there was some innovation in this field through the creation of interconnected programs that sought to address the problem of structural inequality like the Eloy Alfaro Scholarship. Regrettably, in the context of a new wave of austerity measures inaugurated in late 2017, this program has been discontinued.

Universal coverage for health, implemented since 2007, provides a general base for social inclusion and protection for all individuals including immigrants, but recent legal reforms seek to exclude immigrants by requiring them to either affiliate to the IESS or get private health insurance in order to apply for a residence permit. Migrants in general, foreigners in Ecuador and Ecuadorians abroad, are the least protected group of people. Social protection benefits granted to Ecuadorians living abroad are very limited, and they are dependent on monthly contributions to the IESS as voluntary affiliates. Even contributing, they only gain access to pensions when they meet the necessary requirements. They can't access maternity and paternity benefits, unemployment, or health benefits.

In Ecuador, there are no political parties with explicitly anti-immigrant platforms. However, the current minister of labour has made references to a “moratorium” to replace “foreign irregular workers with young Ecuadorian affiliated workers” (Enriquez 2017). Low skilled workers who come to Ecuador as immigrants are usually denied IESS affiliation by employers who take advantage of irregular migratory status to pay them less than the minimum wage or to avoid paying IESS affiliation (Zambrano 2018). As previously mentioned, there is a worrying

trend of scapegoating Venezuelan immigrants. This has happened at all levels of political life, from forms of harassment in the workplace to mob violence<sup>34</sup> and restrictive measures announced against Venezuelans by high-level authorities, including the president. Any “moratorium” or “replacement policy” would further deteriorate access to social protection benefits by creating an incentive to refrain from hiring Venezuelan immigrants. Immigrants who access IESS social protection are mostly those with a high level of education.

In the past years, the country also witnessed a return to a more “restrictive focalization.” As cash transfers within the HDB and the Assistance Pension increased in value, it narrowed its target population to people living in extreme poverty, first in 2013 and then in 2017. Additionally, since 2017, there have been attempts to reduce the provision of labour-related protections. In September 2017, the Executive Decree 135 ordered a freeze on public hiring, a prohibition of new hires, and the elimination of provisional appointments. Since then, there have been several layoffs in the public sector and processes to privatize public companies. Because access to a formal job is what mainly determines access to social protection benefits, measures that increase unemployment have direct negative consequences on welfare and social protection. With the recent developments and setbacks in the field of social and migratory policy, Ecuador’s social protection system is deepening its exclusionary, residual, and familiarist character.

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<sup>34</sup>Most recently, mobs attacked Venezuelan families in the city of Ibarra following the murder of an Ecuadorian woman by her Venezuelan partner.

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# Chapter 7

## Diaspora Policies, Consular Services and Social Protection for Ecuadorian Citizens Abroad



Consuelo Sánchez Bautista

### 7.1 Introduction

The analysis of diaspora policies makes it possible to discern, in general terms, national states' relation and commitment to their citizens abroad. Sending states are interested in maintaining their ties to their diaspora populations for different reasons (Weinar 2017; Collier 2013; Lafleur 2011; Gamlen 2006). For example, Ecuador has wanted to respond to its massive emigration, particularly since 1999 when its flow of emigrants increased significantly. However, in the Ecuadorian case it is also relevant to consider the political and social interest that the 1999–2000 so-called 'migration crisis' aroused during and after the 2006 presidential campaign, when the Ecuadorian migration crisis and the Ecuadorian migrants were used as a symbol of both the impact of the economic crisis that had been affecting the country and the opportunity to rebuild the country (Sánchez Bautista 2017). From 2007 till now, the relevance of the migration phenomenon in Ecuador and the state's sustained interest in engaging with Ecuadorians abroad have been made manifest in the recognition of "people in human mobility situations" in the national constitution (2008); in the creation, adaptation, and reform of infrastructure to address human mobility; in the design of various policies and services to serve and protect Ecuadorians abroad, their families in the country, and the returnees; and in the new Organic Law on Human Mobility (Ministerio de Relaciones Exteriores y Movilidad Humana 2017a). Electoral motivations have driven this interest, but also the condition of vulnerability in which the migration of Ecuadorians often happens. Consequently, voting rights for nationals abroad and protection for migrants, particularly those in vulnerable conditions, have been continuously granted after 2007, alongside other

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services such as providing information about the rights of Ecuadorians abroad, legal assistance, repatriation, and pensions.

Within the diverse bibliography on why and how states relate to their communities abroad, the two-pronged proposal of Gamlen (2006, 2008) are particularly relevant for the purpose of this chapter. He explains that states may be interested in *building* a community abroad through strategies aimed at expanding citizenship for nationals abroad or enlarging cultural policies in destination countries, but, at the same time, they may also be interested in *maintaining* ties with their diaspora. Weinar (2017) adds to Gamblen's classification by observing that the diaspora *engagement* policies are related to socio-economic ties and include the creation of institutions and infrastructure to keep those ties alive. Engaging with communities abroad and building and maintaining ties between countries of origin and those communities can be carried out through various policies, programmes, and services that can help to safeguard political, economic, cultural, and social rights, as in the case of Ecuador (Sánchez Bautista 2017), and as this chapter will show, with a specific focus on social protection policies and services implemented by the Ministry of Foreign Affairs and Human Mobility since 2013.

In this sense, the purpose of this chapter is two-fold. The first is to show that Ecuador's policy towards citizens abroad is connected to a political shift in the country and to the new political discourse that appeared as of 2006. The second is to present the central social protection-oriented diaspora engagement policies and services currently in force to protect nationals abroad, specifically those who live overseas permanently and those in vulnerable conditions, although the services are available to all citizens abroad. In particular, I will concentrate on existing social protection policies in the areas of unemployment, health care, pensions, family-related benefits, and economic hardship. In doing so, after providing a general overview of the main characteristics of Ecuadorian emigration, I will characterize the general institutional framework whereby Ecuadorian authorities interact with nationals abroad, and I will present a general review of the primary engagement policies for the Ecuadorian diaspora. Then, I will focus on the existing policies, programmes, and services offered by the Ecuadorian state to respond to social protection needs of nationals abroad across the aforementioned specific areas. However, I will not assess how these policies and services have been implemented or whether they respond to nationals abroad needs because such an assessment would go beyond the scope of this chapter. Finally, I will present the main conclusions.

## 7.2 Diaspora Characteristics and Home Country Engagement

### 7.2.1 *The Ecuadorian Diaspora and its Relations with the Homeland*

Ecuador has a history of emigration that began back in the 1960s and the 1970s and was mainly to Venezuela, the United States, and Canada (Herrera 2003; Herrera 2007). During the 1970s, emigration continued, but it was in the late 1990s that the first massive wave of Ecuadorian emigration occurred, due to an economic and political crisis in the country (Herrera 2003, 2007, 2011; Herrera et al. 2012). That crisis forced approximately 1.4–1.6 millions of Ecuadorians to leave the country between 1999 and 2005 (Herrera et al. 2012). The most popular destinations during this time were Spain, the United States, Italy, and the United Kingdom. However, between 2004 and 2010, emigration declined due to the implementation of the Schengen Visa and the economic crises that affected Ecuadorians' two main destination countries in particular. During this period, while emigration decreased, return movements increased: the Census of Population and Housing conducted in 2010 reported that, from 2005 to 2010, almost 64,000 people returned to the country (Herrera et al. 2012). These two movements in the recent history of Ecuadorian migration—the massive emigration after 1999 and the return of Ecuadorians during 2004–2010—have impacted and shaped the political discourse around migration abroad, Ecuadorian migrants, and migration infrastructure and policies.

Before 2000, the Government's actions in relation to migration issues were limited and insufficient and mainly focused on the smuggling of migrants. However, after the first massive wave of migration, when a large Ecuadorian community was living overseas, the Ecuadorian Government started to deploy multiple responses. During the 2000s, it became necessary for the state to recognize and call attention to the massive departure of Ecuadorians and to start creating a new body of policies and a new infrastructure that would respond to that phenomenon (Eguiguren 2011; Sánchez Bautista 2017). The *Plan Nacional de Ecuatorianos en el Exterior* (2001) (National Plan for Ecuadorians Abroad) was then the first attempt to provide comprehensive services to people about to leave or interested in emigrating, Ecuadorians abroad, and their families in Ecuador (Ministerio de Relaciones Exteriores, Comercio e Integración 2007). Though its full implementation would be problematic (Eguiguren 2011), this national plan was designed with a view to providing attention to emigrants' relatives living in Ecuador; protecting and promoting the rights of Ecuadorians abroad, their official status and documents, and their inclusion in receiving countries; and developing joint programs between origin and destination communities. Additionally, in 2004, one of the Ecuadorian state's priorities was to combat human trafficking and smuggling, yielding as a result the *Plan Nacional para combatir la trata de personas, el tráfico ilegal de migrantes, explotación sexual laboral y otros modos de explotación y prostitución de mujeres, niños, niñas y adolescentes, pornografía infantil y corrupción de menores*, which took effect in 2006.

By 2007, the population of Ecuadorians abroad was about 1.6 million people, which accounted for 11% of the total population of Ecuador and about 30% of the economically active population (CEPAL 2010). In this context, and since the 2006 presidential campaign, the migration crisis was central to the discourse of the *Alianza País* candidate, Rafael Correa, who took office as president in 2007. The promise of facilitating their return to the homeland and their contribution to economic recovery and development was a cornerstone of the new political project, and Ecuadorians abroad became a symbol of economic recovery and hope (Sánchez Bautista 2017). The motto “we are fixing the house so they can come back”<sup>1</sup> (Secretaría Nacional del Migrante 2007) marked the creation and renewal of strategies to respond to emigrants’ needs and the desire of many to be able to return to a country that could offer them better living conditions than before (Margheritis 2016).

This discourse, pivotal during the election campaign and sustained during President Correa’s Government, was accompanied by other strategies: giving Ecuadorians abroad the right to vote in presidential and vice presidential elections in Ecuador (granted in 2002, but only enforced as of 2006); extending the migrant vote to elect representatives for Ecuadorian citizens abroad to the Constituent Assembly (in 2007); creating a new and specialized infrastructure, the *Secretaría Nacional del Migrante* (National Secretariat for Migrants), and redesigning the policies on emigration from a perspective of protection of emigrants and their rights (as of 2007); and enacting a new national constitution that consolidated the previous discourse of *Alianza País* and Correa on migration, which included the recognition of migrants’ rights, freedom of movement, and universal citizenship (in 2008). The national constitution recognized people involved in human mobility as a group deserving priority attention.

Considering not only Ecuadorians abroad and returnees but also immigrants, refugees, and people in need of international protection, the concept of “human mobility” became central in the national constitution and in Ecuadorian migration law and policy.<sup>2</sup> This concept refers to the different types of temporary or permanent migration movements (emigrants, immigrants, refugees, asylum seekers, people in transit, Ecuadorian returnees, victims of human trafficking and smuggling, and their relatives) and is based on the recognition of the right to migrate and migrants’ right to voluntary return (Ministerio de Relaciones Exteriores y Movilidad Humana 2017a; Asamblea Constituyente 2008). As of Ecuadorian emigrants, the latest documents such as the Organic Law on Human Mobility and its Regulation (Presidencia de la República de Ecuador 2017) refer to them as Ecuadorians abroad (*personas ecuatorianas en el exterior*), which would imply that, as Ecuadorian citizens, they

<sup>1</sup>In Spanish: “estamos arreglando la casa para que vuelvan.”

<sup>2</sup>Definitions according to Article 3 of the Organic Law on Human Mobility are as follows. *Person in a human mobility situation*: The person who mobilizes from one state to another with the intention of residing or settling temporarily or permanently therein. *Human mobility*: Migratory movements performed by a person, family or human group in transit or intending to settle temporarily or permanently in a State other than its homeland or in which it has previously resided, which generates rights and obligations.



keep their rights even beyond the national boundaries no matter their migration status.

Finally, after years of joint work between the Government and civil society, including social organizations of Ecuadorians abroad and returnees, the Organic Law on Human Mobility was launched in 2017—President Correa’s last year in office. This Law and its Regulation (2017) stipulate the rights foreseen by the national constitution and represent the materialization of the promise of a “‘new country’ [that] would recognize and strengthen migrants’ rights” (Sánchez Bautista 2017, p. 71) made in the 2006 presidential election campaign. In general, they established the political, economic, social, and cultural rights of people in human mobility situations, but particularly those of Ecuadorians abroad and returnees.

### 7.2.2 *Diaspora Infrastructure*

Since 2000 until now, as mentioned previously, infrastructure and policies have undergone various changes, but I will focus on the most representative milestones after 2013.

The vice ministry of Human Mobility, created in 2013, is the institution currently in charge of the country’s migration policy. This office assumed the responsibilities of the former *Secretaría Nacional del Migrante* (2007–2013) and was incorporated into the administrative structure of the Ministry of Foreign Affairs. Since then, the vice ministry, jointly with a network of 84 embassies, 140 consular offices including honorary consulates and mobile consulates, has been in charge of maintaining communication with the diaspora and responding to the needs of nationals abroad, following constitutional mandates regarding migrants’ protection.

According to the document *Ministerial Agreement 040* (Ministerio de Relaciones Exteriores y Movilidad Humana May 2017b), the Under-Secretariat of the Ecuadorian Community and, mainly, the Office of Attention and Protection to Ecuadorians Abroad are responsible for planning and coordinating the migration policy to protect Ecuadorians residing abroad. To accomplish this goal, the Office of Attention and Protection to Ecuadorians Abroad has, among others, the responsibility to propose protection policies; to design and implement plans, programs and projects supporting Ecuadorians abroad; to establish protocols for sponsorship, advocacy, and accompaniment in cases of violation of emigrants’ rights; to establish guidelines and protocols for the repatriation of corpses and mortal remains of Ecuadorian emigrants; to establish guidelines and protocols for the transfer of detained or incarcerated Ecuadorian citizens and to follow up on these cases; to coordinate and manage international restitution and assistance in cases of separation and subsequent reuniting of children and adolescents; to propose and implement coordination strategies and international cooperation for the care and protection of Ecuadorians abroad; and to define mechanisms to guarantee humanitarian aid to the Ecuadorians abroad and their families, especially in cases of natural disasters and

emergencies. Generally speaking, these responsibilities reflect the priorities for attention to nationals abroad.

As mentioned before, the vice ministry is responsible for migration policy at a national level but, more recently, the National Plan of Human Mobility (Ministerio de Relaciones Exteriores y Movilidad Humana 2018) has pointed out that the management of migration policy, programmes, and services is a shared responsibility among the state's institutions, according to their responsibilities. Thus, the ministries of Culture, Housing, Education, Health, Justice, Sports, the Interior, and Labor should extend access to some of their programs and services in accordance with the rights of Ecuadorians abroad and returnees, as stated in the Constitution and the Organic Law on Human Mobility and its Regulations.

Moreover, to respond to the needs of nationals abroad and returnees and guarantee their access to rights, the vice ministry coordinates actions with other national institutions, such as the National Secretariat for Higher Education, Science, Technology, and Innovation; the Ecuadorian Social Security Institute; the National Customs Service of Ecuador; the Superintendence of Information and Communication; the Citizens' Council of Citizen Participation and Social Control; and the Office of the Human Rights Ombudsman, the only national institution with offices currently in the United States, Spain, Italy, and Mexico (see Sect. 7.3 for details).

The Executive Order No. 20 (2013) declared that the National Council for Equality and Human Mobility, along with the Vice Ministry of Human Mobility, must address the mainstreaming of migration policy. The participation of the National Council for Equality in the protection of migrants is also reinforced in the National Plan of Human Mobility (Ministerio de Relaciones Exteriores y Movilidad Humana 2018), which states that the National Council for Equality and Human Mobility is the agency in charge of monitoring and assessing the national goals included within the National Development Plan (2017–2021) regarding human mobility. The participation of all these entities to ensure access to rights and services for Ecuadorians abroad is based on the migration policy's management model and principles of co-responsibility, trans-sectoriality, and mainstreaming (Ministerio de Relaciones Exteriores y Movilidad Humana 2018).

The institutional framework for migration is complemented at a local level with regional offices of the vice ministry aimed at providing information and services to migrants and their families. As part of the institutional infrastructure to address the needs of Ecuadorians abroad, the Ministry of Foreign Affairs and Human Mobility also launched the "virtual consulate" ([www.consuladovirtual.gob.ec](http://www.consuladovirtual.gob.ec)), a webpage designed essentially to request consular procedures online (see next sections for more information).

### 7.2.3 *Key Engagement Policies*

The Organic Law on Human Mobility (Ministerio de Relaciones Exteriores y Movilidad Humana 2017), its Regulation (Presidencia de la República de Ecuador 2017) and the National Plan for Human Mobility, launched in May 2018, now offer the main guidelines for Ecuadorian migration policy.<sup>3</sup> Nevertheless, the national constitution (2008) and other former policies and development plans and documents prepared since 2007 have oriented the policies, programmes, and services offered to nationals abroad until now. Some of the programmes and services offered by the former *Secretaría Nacional del Migrante* (Sánchez Bautista 2014, 2017) are still in force, while other services have been created to respond to the new challenges faced by Ecuadorians in destination countries.

In general, the country's migration policy must respond to constitutional principles. Since 2008, these fundamental principles recognize, among others, freedom of movement, universal citizenship, and rights for Ecuadorians living abroad, returnees, immigrants and refugees living in the country. In particular, Title II, Chapter Three, Article 40, states that the country shall provide Ecuadorians abroad with assistance, care, advisory services, and comprehensive protection so that they can exercise their rights; provide safeguards when citizens have been arrested and imprisoned abroad; promote their ties with Ecuador, facilitate family reunification and encourage their voluntary return; and protect transnational families and the rights of their members. The national constitution also states that Ecuadorians residing abroad may be elected to any office and have the right to elect the president, the vice president, and members of the National Assembly (equivalent to the parliament) representing Ecuadorians abroad.

On the other hand, the Organic Law on Human Mobility (2017) establishes as a principle the protection of Ecuadorian citizens abroad and respect for their rights, regardless of their migratory status. These rights are aligned with the national constitution and are the main parameter for the services offered by the Ecuadorian Government to nationals living abroad and returnees as well.<sup>4</sup> Among their rights, the following are mentioned: citizenship, democratic participation, political organization, and voting rights from abroad; maintaining and transmitting their cultural identity; and access from abroad to plans, programmes, and projects developed in Ecuador: health services and the Ecuadorian Social Security System, education, and justice and legal assistance (see details on this in Table 7.1 and Sect. 7.3).

On another front, the Organic Law on Human Mobility (2017) also provides the principles for consular protection and assistance from diplomatic missions or

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<sup>3</sup>This law refers to all people in human mobility situations: Ecuadorians abroad, returnees, refugees, asylum seekers, persons in need of international protection, persons in transit, and victims of human trafficking and smuggling. However, herein I am specifically referring to Ecuadorians abroad and, sometimes, returnees.

<sup>4</sup>It is worthwhile to mention that information on services beyond consular procedures for Ecuadorians abroad is not available on the Ministry of Foreign Affairs and Human Mobility's website. However, the Ministry's website offers complete information about services that returnees can access in Ecuador (<https://www.cancilleria.gob.ec/catalogo-servicios-migrantes/>).

**Table 7.1** Policies and main policy strategies concerning Ecuadorians abroad

Policies	Policy strategies
To promote universal citizenship and freedom of movement in the international arena	Promoting initiatives to defend Ecuadorian citizens' rights in international settings
To strengthen the protection of rights of the population in human mobility situations	Reducing paperwork so that Ecuadorian migrants can access Ecuadorian public health services; encouraging affiliation to the healthcare and retirement system of the Ecuadorian Social Security Institute (IESS) Implementing an accessible and safe remittance system and promoting Ecuadorians' active inclusion in the national financial system from abroad Implementing effective, efficient, transparent, and quality consular services Including Ecuadorians abroad in the commercial, tourist and cultural promotion of Ecuador Promoting Ecuadorian cultural values with particular attention to girls, boys, and adolescents Strengthening mechanisms for democratic participation abroad
To promote safe and orderly migration	Promoting the rights of victims of human trafficking or smuggling Promoting regional mechanisms and bilateral agreements to prevent risky migration
To preserve diversity, integration, and coexistence of people in human mobility situations	Coordinating reciprocity mechanisms with host countries, so that Ecuadorian migrants can have better guarantees for the respect of their rights Supporting associativity and access to resources for the implementation of cultural and sports projects Strengthening solidarity and aid networks

consular offices to complement the aforementioned rights. Consular offices' duties and services are, among others: to coordinate actions with the institutions in charge of economic policies and services to promote investments and family savings; to assess and coordinate assistance in cases of vulnerability; to provide accompaniment in the cases of vulnerable people in hospitals, health centers, or institutions for children, adolescents, and older adults; to accompany Ecuadorians abroad before courts and to provide effective assistance to Ecuadorians deprived of liberty; to coordinate the care and protection of victims of human trafficking or smuggling; and to promote access to, and the production and circulation of, arts, and cultural heritage.

As for mobile consulates, their goal is to extend consular services to places with a significant number of Ecuadorians who have no access to permanent consular offices. Mobile consulates offer the same kinds of services provided by consular offices, such as issuing passports; renewing national ID renewals or issuing consular ID cards in countries where this document is available; issuing police records, powers of attorney, notarial records, and affidavits; registering place of residence for

census and election purposes according to the law<sup>5</sup>; and providing attention to cases of vulnerability (see details on this below), as well as legal advice and information about rights and services available to Ecuadorians abroad. These services vary as a function of consular resources and special needs based on local contexts in receiving countries.

On the other hand, based on premises of the Constitution and the Organic Law on Human Mobility as well as the policy guidelines provided by the National Development Plan (2017–2021), the National Plan for Human Mobility (2018) is built upon four fundamental policies focusing on persons in human mobility situations. These core policies are as follows: (a) to promote universal citizenship and freedom of movement in the international arena; (b) to strengthen the protection of rights of the population in human mobility situations; (c) to promote safe and orderly migration; and (d) to preserve diversity, integration, and coexistence of people in human mobility situations.

Along with the four overarching policies and the policy strategies (see Table 7.1), the National Plan for Human Mobility (2018) considers a level of policy action which provides advice on the kind of measures that should be considered in implementing the policies. Some of these actions are already being developed, but others need to be planned and designed throughout the implementation of the National Plan.

Beyond these rights and policies, and the services offered by the consular offices as described above, the Ecuadorian Government has been supporting Ecuadorians abroad through a wide variety of services offered in Ecuador by national governmental institutions such as ministries. In the past, the *Secretaría Nacional del Migrante* itself offered services to Ecuadorians abroad and their families. However, the new institutional framework in effect since the creation of the Vice Ministry of Human Mobility in 2013 has instead encouraged the inclusion and access of Ecuadorians abroad to services offered to all other Ecuadorian citizens, including returnees living in Ecuador as well.

In this context, it is worth mentioning some of the services available in Ecuador to Ecuadorians abroad, their families, and returnees. These include access to mortgage loans and economic incentives granted by the national Government through the Ministry of Urban Development and Housing. Ecuadorian citizens living in Ecuador and abroad, immigrants, returnees, and refugees can apply to the allowance for construction of their own housing on their own land (*bono para construcción de vivienda*), the allowance for housing improvement (*bono para mejora de vivienda*) and the Manuela Espejo grant to persons with disabilities who are registered as such in the Ministry of Public Health of Ecuador, on the basis of the law and their critical

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<sup>5</sup>Although voting is mandatory in Ecuador, it is optional for Ecuadorians living abroad. To exercise this right, Ecuadorians must be registered in the consular office nearest their home. Once a citizen abroad is registered in a office, he or she can also access services online or in person, such as the “4x4 system” among others. Ecuadorians abroad who are in the consular register at the same time keep all their data in the Civil Registry and other institutions and can access services inside Ecuador, as described in Sect. II.

or vulnerable socio-economic condition, in order to provide them with adequate housing for their needs and or to improve living conditions and accessibility.

Regarding economic programs offered to all Ecuadorians living abroad, their families, and returnees, the “4x4 system” service aims to facilitate transfer of goods from Ecuadorians abroad to their families in Ecuador through a tax exemption system. Similarly, to facilitate the return of Ecuadorian migrants, the Ecuadorian Customs Service offers a “Tax-Exempt Household Goods” service (updated in 2018), aimed particularly at Ecuadorians who have lived abroad for at least 2 years and want to take household goods back to Ecuador.

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

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

Regarding formal education, Ecuadorians living abroad can take the exam *Ser Bachiller*, a standardized national exam required to access higher education in public institutions in Ecuador. In 2018, Ecuadorians abroad living in Chile, Colombia, Costa Rica, Cuba, El Salvador, Germany, Guatemala, Honduras, Italy, Panama, Peru, Spain, the United States, and Venezuela took the exam (Secretaría de Educación Superior, Ciencia, Tecnología e Innovación 2018). Likewise, since 2018 the Ministry of Education has offered an online literacy, primary, and secondary education program for Ecuadorians who are residing in Italy, Spain, and the United States who are at least 3 years behind in their education or who are over 18 years old and have had no opportunity to complete high school. Once the courses are completed, Ecuadorians abroad can obtain a high-school degree, which will allow them to access higher education and technical certifications. For the Vice Ministry of Human Mobility, this service makes effective the portability of rights for Ecuadorians abroad, in accordance with the principle of universal citizenship (Ministerio de Educación 2017).

### 7.3 Diaspora Policies and Social Protection in Ecuador

As already described, the rights of Ecuadorians abroad are enforced in the national constitution and the Organic Law on Human Mobility and its Regulation. This law is complemented by the policy guidelines provided by the National Plan for Human Mobility to meet the needs of Ecuadorians abroad and to ensure their access to rights. As for social protection-oriented norms, policies, and services, these are addressed to all Ecuadorians abroad but give special attention to those in vulnerable situations, whether because of economic or social restraints, health issues, documentation issues, gender, or age. In the effort to provide attention to the population in a human mobility situation, the Ministry of Foreign Affairs and Human Mobility coordinates actions with consular offices and other national institutions to implement the migration policy and the trans-sectoral strategy. Although Ecuadorians abroad do not receive any cash assistance benefit from the Ecuadorian Government,<sup>6</sup> there is a variety of other services from which they can benefit, such as information services, legal advice offered by consular offices for specific challenges faced by Ecuadorian migrants in host countries, and repatriation.

Ecuadorians abroad can learn about their rights and the services provided by consular offices in host countries and national institutions in Ecuador through different resources. The Ministry of International Affairs and Human Mobility's website provides general information on policies and rights, as well as documents related to the human mobility law and regulations. Additionally, the Ministry has launched the online application "Ecuador Contigo," which allows migrants abroad to access information regarding services offered by consular offices, a list of 24-hour contact telephone numbers to reach out in emergencies, information about the rights of Ecuadorians in host countries, and information on how to process the returning migrant certificate (*certificado de persona ecuatoriana retornada*). As part of the contingency plan implemented to deal with migration challenges posed by securitization measures adopted by the United States, this app also provides videos and digital bulletins about migrant's rights, legal advice, and general advice in case of detention. Through this app, Ecuadorians abroad can also access information about the virtual consulate, a tool included on the webpage of the Ministry of Foreign Affairs and Human Mobility that allows its users to apply for, request, and manage the different services offered by the consular offices, e.g., legalizations and notary records, certifications, travel documents, powers of attorney, last wills and testaments, and registration and certification of births, deaths, marriages and divorces. All the products and services provided through the virtual consulate may be either fully online, which means that they do not require the presence of the person at all, or partially online, which means that someone's presence will be required at some point after filing an application.

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<sup>6</sup> Within the normative framework there is no explicit information about direct cash assistance for Ecuadorians abroad, although some home country benefits in involve allowances such as housing subsidies and access to loans.

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

As for legal advice, consular offices provide this service free of charge as part of their responsibilities. It is worth mentioning that Article 214 of the Constitution states that the Office of the Human Rights Ombudsman shall have delegations abroad to protect and safeguard the rights of Ecuadorians and provide assistance in cases of vulnerability.<sup>7</sup> In general, the protection responsibilities of the Ombudsman are carried out within the framework of advice, informal negotiations, legal actions, strategic litigation, visits to detained persons in the host country in coordination with the Ecuadorian consular offices, assistance in cases of deportation, legal advice in cases of evictions and mortgages, and dialogue with human rights institutions in host countries, as well as with groups of Ecuadorians abroad to listen and attend to their particular needs, in keeping with the Ombudsman's competences.

Legal advice provided by consular offices depends on resources, local immigration contexts, and migrants' needs in particular settings as well. For example, in Spain, consular offices deliver legal advice in events of unfair dismissals, evictions, and mortgages (since 2012), and financial loans. They also offer legal support during the process of negotiations with financial institutions, family reunification efforts, alimony, detentions and/or expulsions. Likewise, Ecuadorians living in Spain can receive legal support in matters related to access to host country social protection services.<sup>8</sup> In Italy, protection services to Ecuadorian migrants include legal sponsorship and psychosocial support in cases of children and adolescents removed from their families, and talks and information about gender and family violence and the care and custody of children.

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

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<sup>7</sup>The Office of the Human Rights Ombudsman opened one of its first delegations in Madrid in 2001.

<sup>8</sup>Affiliation to the Spanish social security regime is possible under the "Security Agreement between Ecuador and Spain" (2009). This agreement ensures the portability of rights for both Ecuadorians and Spanish living in both countries.



There are a few other social protection services that cover Ecuadorians abroad. The following paragraphs will discuss policies and services regarding unemployment, health care, pensions, family-related benefits, and economic hardship.

### **7.3.1 Unemployment**

Although there is a policy regarding national unemployment insurance that covers Ecuadorians living in the country, the Ecuadorian Government does not offer unemployment benefits for migrants abroad. For Ecuadorians living in Ecuador, the unemployment insurance application should be made from day 61 of being unemployed and up to 45 days after this date. An additional requirement is to have 24 non-simultaneous contributions to the national social security system through a position requiring an employment contract (Ecuadorians abroad only can be affiliated on a voluntary basis); to have six continuous contributions immediately before unemployment; not to be retired; and not to have voluntarily resigned.

However, Ecuadorians abroad can apply for a severance payment (individual unemployment reserve fund) if they have been voluntarily affiliated to the Ecuadorian Social Security Institute (IESS) (voluntary affiliation to the Ecuadorian Social Security Institute is eagerly encouraged by the national Government). In this case, Ecuadorians abroad can request the reimbursement of this contribution (3% of their salary income until February 2006, and 2% after this date). The severance pay amount is determined on the basis of the amount of the contributions, which are established according to individual salaries. The request must be made through the web portal [www.iessgob.ec](http://www.iessgob.ec). Ecuadorians abroad do not need to comply with the requirement of number of contributions (24 for persons living in Ecuador), the waiting time (60 days without paying voluntary or mandatory affiliation to the IESS) or the unemployed status. The individual unemployment fund can also be requested for maternity or paternity leave (if parents do not receive a salary during this period). Ecuadorians abroad can therefore access this benefit if they are voluntarily affiliated to the IESS.

On another front, as mentioned before, education and training for economic integration and development of labor skills are offered by some consular offices in host countries. This is not a policy, but consular offices offer this kind of service according to the needs of Ecuadorians abroad.

### **7.3.2 Health Care**

Health coverage and assistance for emigrants is provided in Ecuador by the national health system. Nationals abroad can maintain health coverage only if they pay for voluntary affiliation to the IESS, and they will have the same healthcare options designed for citizens in Ecuador. Ecuadorians abroad who are voluntarily affiliated

to the IESS can only access health services and benefits in Ecuador, but can do so even if they are only in the country temporarily. Healthcare benefits include occupational risks, sickness and maternity assistance in Ecuador, and health coverage for migrants' children under 18 years old living in Ecuador.

Healthcare benefits for people with disabilities have been a mainstream policy in Ecuador since 2007. Specifically, the Ministry for Economic and Social Inclusion (MIES) provides free assistance to people with disabilities in conditions of poverty or extreme poverty at the national level through direct administrative centers and cooperating entities. Nevertheless, Ecuadorians abroad cannot access this type of service unless they return to the country and apply for the services delivered by the MIES. One exception is made in the case that Ecuadorians abroad wish to apply for the disability certification as a requirement to access healthcare and economic benefits in Ecuador. Ecuadorians abroad can apply to a provisional certificate of disability by presenting the requirements in the Ecuadorian consular office in the country of residence. In Ecuador, the Ministry of Public Health is in charge of assessing the type and the severity of the disability and issuing the certificates. If Ecuadorians abroad meet the requirements, they will receive the provisional certificate electronically. Once they return to Ecuador, within 90 days after receiving the certificate, they must undergo physical verification (qualification or requalification). Ecuadorians with disabilities living abroad who have been qualified and who manifest their express wish to return to the country can enjoy state benefits, as well as the benefits enshrined in the law and in its regulations, according to their degree of disability, as soon as they enter the country.

At a regional level, access to health services works differently within the member states of the Andean Community (CAN) (Bolivia, Colombia, Ecuador and Peru). The Andean Social Security Instrument establishes that health services required by migrant workers in host countries, when they are affiliated to the social security system in their country of origin, will be provided by the host country and reimbursed by their country of origin.

Consulates do not seem to play an active role in the effort of Ecuadorians abroad to access health services in Ecuador. Any inquiries on voluntary affiliations to the IESS and other benefits should be addressed to the IESS in Ecuador through its website, via Skype or by phone.

### **7.3.3 Pensions**

Ecuador has signed bilateral social security agreements (BSSA) with pension-related provisions with the following countries: CAN member states (Bolivia, Colombia, and Peru), Chile, Netherlands, Paraguay, Spain, Uruguay, and Venezuela. According to the IESS in charge of this policy, bilateral agreements do not include health care of medical assistance for Ecuadorian emigrants in Ecuador. However, in the case of the Andean Community members, Bolivia, Colombia, and Peru will offer to citizens from the other CAN members states the same treatment as nationals

regarding social security benefits, according to local laws. This disposition only applies to labor migrants and their beneficiaries affiliated to the national social security scheme.

In the case of Ecuadorians living in Spain, the International cooperation social security agreement between Spain and Ecuador provides Ecuadorians with economic benefits for permanent disability, retirement and survival, and economic benefits for work accidents and occupational diseases. On the other hand, the international cooperation social security agreement between Chile and Ecuador provides Ecuadorians with economic benefits for permanent disability, retirement, and survival. For any other countries without bilateral agreements with Ecuador in this matter Ecuadorians abroad voluntary affiliated to the Ecuadorian Social Security Institute can apply to obtain pension benefits in Ecuador if they meet the requirements.

The IESS requires that Ecuadorians must apply for pensions at the residence country only if there exists an international cooperation agreement between Ecuador and the country of residence. When submitting the documentation, through the IESS portal, the application for both countries will be generated and, if the requirements are met, two pensions could be approved, and they will be calculated proportionally, according to the contributions made in each country.

Consular offices can issue documents and certificates needed to apply to cash pension rights, such as special powers and life certificates. In case that the life certificate is required for the retirement pension, beneficiaries should visit the consular office and provide originals and copies of their passport and ID and two photographs. To apply to survivors benefits for dependents the person concerned should be present at the consular office and bring originals and copies of the passport and the ID; affiliation data with updated marital status for all cases; and marriage, divorce, or death certificates when applicable. These certifications are free and have 1-year validity.

### ***7.3.4 Family-Related Benefits***

The services offered by the Ecuadorian state to Ecuadorians abroad include very few cash benefits for families besides the individual unemployment fund (see above), which can also be requested for maternity or paternity leave, if parents do not receive a salary during this period. Family-related benefits are oriented to other kinds of services, such as identity documentation and psychological and legal advice.

Consular offices can issue birth certificates and deliver other services such as timely and late birth registration. In the Ecuadorian consulates, children born abroad, of any age, may be registered as a son/daughter of an Ecuadorian father and/or mother.

Additionally, in the fulfilment of its duties, the Ministry of International Affairs and Human Mobility, through its consular offices and the delegates of the Office of the Human Rights Ombudsman, where applicable, provides legal advice on issues

related to cases of children and adolescents removed from their families (as in the case of Ecuadorian families in Italy), gender violence, family violence, care and custody of children, locating of persons (detainees and missing), repatriation of people in vulnerable situations, repatriation of the deceased and mortal remains; psychosocial care for migrants' family members, high-risk migration prevention, and general information about consular services and ways to access protection services in Ecuador for people in a vulnerable situation.

### 7.3.5 *Guaranteed Minimum Resources*

The Ecuadorian Government's mechanism to protect Ecuadorians abroad from extreme hardship is repatriation of persons in vulnerable condition and exceptional cases, since there are no other guaranteed minimum cash benefits available for Ecuadorians abroad in situations of vulnerability.

Article 21 of the Organic Law of Human Mobility states that Ecuadorians abroad in situation of vulnerability, whether in transit or living in the country of destination, will receive priority attention. Complementarily, Article 39 refers to *exceptional cases*<sup>9</sup> of repatriation of Ecuadorians in situations of vulnerability. Repatriation is defined as the assisted return to Ecuador under the partial or total custody of the state, in cases of people deprived of freedom, children or adolescents who are not accompanied or are in vulnerable situations, victims of human trafficking or smuggling of migrants, people with catastrophic or terminal diseases, and other cases determined as exceptional by the competent human mobility officials.

The status of vulnerability must be declared by the Vice Ministry of Human Mobility in Ecuador or through diplomatic missions or consular offices abroad. In general, vulnerability will be recognized in the following situations: limited economic resources and irregular status; children or adolescents not accompanied by, or separated from their parents; senior citizens, pregnant women, persons with disabilities or catastrophic or highly complex diseases; victims of family or gender violence or discrimination and xenophobia; detainees; homelessness; victims of human trafficking or smuggling; and persons affected by migration or social policies in their destination countries.

People in vulnerable situations should request the recognition of this situation from the Vice Ministry of Human Mobility or to the consular or diplomatic offices abroad. However, the procedures to request this declaration of vulnerability are not clear in the Regulations of the Organic Law on Human Mobility.<sup>10</sup>

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<sup>9</sup>The Regulations of the Organic Law regard as exceptional those cases described under the definition of situations of vulnerability. However, the Organic Law on Human Mobility defines in different articles the situations in which Ecuadorians abroad are considered vulnerable (Article 21) and cases that are considered exceptional (Article 39). These are already included in Article 21.

<sup>10</sup>The Regulations only detail the requirements for applying for repatriation of corpse or the mortal remains (Sect. III, Articles 10 to 14).

Repatriation requests are reviewed and approved by the Vice Ministry of Human Mobility or consular or diplomatic offices abroad in cases of vulnerability or in exceptional cases as described above. To approve the applications, the officials will assess the risks for individual and family safety and security. Article 3 of the Regulations of the Organic Law on Human Mobility establishes that the person identified as vulnerable by the competent authority will be protected and will receive priority attention in keeping with the mechanisms that can be implemented by the authorities. Family members do not have to reimburse the cost associated with repatriation. Additionally, transportation, accommodation or foster care can be provided in Ecuador and in the country of destination with no reimbursement obligations.

Finally, the national Government in coordination with the consular offices provides repatriation of the deceased for families in vulnerable situations. However, the Ministry of Foreign Affairs and Human Mobility does not cover the costs of funeral services or burial sites, but rather only repatriation expenses for the corpse or the mortal remains (ashes) to Ecuador; these costs do not have to be reimbursed. The service will be granted only when the deceased person and his/her family have a vulnerable socio-economic situation, which must be corroborated before the expense is approved. For this evaluation, the applicants both in the country in which the person died and in Ecuador must meet certain requirements. There will be two applicants: one abroad, who will contact the consulate closest to the place of death; the second in Ecuador, who will contact the Vice Ministry of Human Mobility. The required documents are the application for repatriation services, which must be submitted to the Ministry of Foreign Affairs and Human Mobility of Ecuador; a copy of the ID of the family member requesting the repatriation; and a copy of the ID, passport or birth certificate of the deceased.

## 7.4 Conclusions

Since 2000, when the emigration of Ecuadorians became a visible reality, the Ecuadorian state has been designing and implementing different strategies to protect its citizens abroad. However, starting in 2007, the process of strengthening and revamping Ecuadorian migration policies became rooted in a strategic electoral discourse by the *Alianza País* presidential candidate, who aimed at leveraging the votes of Ecuadorians overseas. Thus, since that moment and after President Correa took office, Ecuador has had the time to build a set of laws, regulations, and policies and an administrative infrastructure to cope particularly with the needs of its nationals abroad and returnees, and to establish strategic relations with Ecuadorians abroad. Beyond political will, it is also worth considering that the changes implemented regarding the infrastructure, programmes, and services offered have been shaped according to the availability of state resources as well. Thus, after Ecuador started its economic recovery following the hike in oil prices during President Correa's mandate, it was more feasible for the Government to strengthen the migration policy despite the fluctuations in their implementation.

In terms of the relation between the Ecuadorian state and its diaspora, it is worth mentioning that, despite the fact that campaign rhetoric had referred to Ecuadorian emigrants as “compatriots” and “brothers and sisters”, within the current norms, they are called “Ecuadorians abroad”. This term is meant to highlight the fact that they belong to the territory, are entitled to their rights as Ecuadorian citizens, and are protected by the state beyond its geographical borders—rather than to call attention to their migratory status or their circumstances as emigrants overseas. They are also referred to as “people in human mobility situations”, which implies the recognition of their rights, including the right to migrate.

From 2007 to date, a variety of reforms have been made to the administrative infrastructure, norms, policies, and programmes, but the spirit of protection for Ecuadorian migrants and their families has remained. At the time of writing this chapter (January 2019), in terms of norms and policies, the Constitution (2008), the Organic Law on Human Mobility (2017) and its Regulation (2017), and the National Plan for Human Mobility (2018) are the main guidelines for the Ecuadorian institutions’ efforts to guarantee the rights of Ecuadorian migrants and, accordingly, to provide services in Ecuador and abroad. To this end, in terms of infrastructure, the Ministry of Foreign Affairs and Human Mobility, with its network of consular offices, and in coordination with the different ministries and other governmental agencies in Ecuador—in keeping with the trans-sectoral strategy to guarantee the rights of Ecuadorian migrants—is actually in charge of implementing the legal provisions and the diaspora engagement policies in force in Ecuador. These protection-oriented norms, policies, and services are aimed at all Ecuadorian migrants, but give particular attention to those in vulnerable situations, whether because of economic or social constraints, health issues, documentation matters, gender, or age.

Specific rights of Ecuadorian migrants are recognized in the documents mentioned previously, and services should therefore be provided to allow Ecuadorian citizens to exercise their rights from abroad. Despite the fact that the Ecuadorian Government does not offer any kind of direct cash support to emigrants in their countries of destination, the consular offices are in charge of providing protection, assistance, and services such as paperwork and documentation, information about rights in Ecuador and in countries of destination, legal advice and accompaniment and monitoring in cases of legal actions, assistance in cases of vulnerability, repatriation, workshops, and informal programs that promote Ecuadorian culture.

Additionally, the Government has been supporting Ecuadorians abroad through a wide variety of services now offered by national governmental institutions such as the ministries or secretariats. The Ecuadorian migrants abroad and returnees can access mostly the same kinds of programs and services as any Ecuadorian living in the country. However, some of the benefits can only be enjoyed in Ecuador, such as health services, housing credits, or access to the public higher education system, which is free in Ecuador.

Although the social protection policies for Ecuadorians abroad exist and are particularly focused on cases of vulnerability, they do not include any unemployment or cash benefits for Ecuadorians living in other countries. When economic, health-related, or any other kind of vulnerability exists, the answer is repatriation, and it is

granted on a case-by-case basis. However, in general terms, the programmes and services offered by the Vice Ministry of Human Mobility and the consular offices are in accordance with the rights of Ecuadorians abroad and their families as stipulated in the Constitution, the Organic Law on Human Mobility, and its Regulations.

After 2 years of having a new Government in the country, some of the services provided continue to be implemented, and the infrastructure seems to have become consolidated. This is evident in the National Plan of Human Mobility (2018), even though the functions of the National Council for Equality and Human Mobility would still need to be strengthened. This body is relevant since its role is to monitor and assess public policy regarding human mobility. Also, it is important to acknowledge that the implementation of the policies regarding Ecuadorian migrants and the services provided to this population might suffer modifications due to the country's current economic situation and the Government's priorities. In any case, the results seen in coming years will make it possible to determine whether Ecuador has finally consolidated a migration policy made by the state to supersede a policy made by a specific administration, i.e., a policy that can outlast political interests and governmental changes.

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# Chapter 8

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in India



Sony Pellissery, Saloni Jain, and Geo Varghese

### 8.1 Overview of the National Social Security System and Key Migration Features in India

#### 8.1.1 *Main Characteristics of the National Social Security System*

Just like other countries in the Global South, India has put forward a social security system that is largely influenced by its colonial legacy. Many ‘welfare’ concerns were operationalized through the framework of developmental state (Pellissery and Sasidhar 2018) that aimed to modernize the nation through a process of state-led economic growth. Yet, following the colonial legacy, those close to the state (‘formal’ workers) received social security arrangements comparable to those in advanced industrialised welfare states.

Welfare arrangements in India have a segmented nature. This country has one of the largest informal economies in place (Pellissery 2013). About 92% of the Indian labour force is working in unorganised sector without access to any formal social security mechanisms (NCEUS 2007). Those who are in the formal sector are provided with social security measures, thus being considered as a privileged segment of the Indian society. Most international workers (except undocumented migrants) work in the formal sector and are considered to be part of the formal labour market.

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The segmented labour market is reinforced by social security arrangements and labour laws largely influenced by India's colonial past. Employee's State Insurance Act (1948, ESI) is modelled after the British welfare arrangements for industrial workers and is currently the overarching framework for social security in India.

Social welfare is a subject placed among the 'directive principles' of the Indian Constitution, resulting in the state's engagement in social security as a desirable activity, rather than an obligatory sector of intervention. Constitutional articles 38, 41, 42 and 47 dealing with social welfare were placed in the 'concurrent list' where there is joint responsibility between regional/local states and central government. This categorisation of social policies as a 'desirable activity' led to a "needs-based conception of justice in theory, but was in practice based on ideas of charity, benevolence and paternalism. The idea of a right to welfare or justice was clearly precluded" (Jayal 2011: 39). Therefore, appeasing the electorate was at the heart of the development of the Indian social security system in federal states (Pellissery and Barrientos 2013). For instance, until 1995, there was no national level non-contributory pension system. Yet, most regional states were providing pensions from their local budgets.

Because of the segmented nature of the labour market and the fact that the majority of workers are engaged in the informal economy, labour laws cover only to a small proportion of the work force. The main social security instrument for workers – the Employee's Provident Fund Organization (EPFO) – is applicable only to about 12% of the population (CSO 2018).<sup>1</sup> Most labour laws applicable to private companies (where migrants are largely employed) are within the purview of the federal state. Therefore, there is a significant variation between Indian states on labour regimes. Such a scenario, coupled with heightened globalization, has resulted in approaching labour through the logic of economic production. A recent review of the legislation in the post-liberalised India (Pellissery 2008) has shown that court interpretations of the law have favoured employers.

This segmented labour market has created a limited possibility for the application of human rights. The International Convention of Economic, Social and Cultural Rights (ICESCR)<sup>2</sup> states that the right to social security implies two predominant categories of measures: social insurance schemes (contribution based) and social assistance schemes (non-contributory and typically taxation-funded measures through means-tested mechanisms for the vulnerable population). Although India is signatory of this declaration, the Constitution of India does not recognize

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<sup>1</sup>This low level of take up is primarily since these laws are applicable in establishments, which has more than 20 workers. In the informal economy, employers, in order to avoid payment of social security benefits, arrange their production units in such a way that in a legal unit, there will be less than 20 workers.

<sup>2</sup>Also in Universal Declaration of Human Rights (UDHR), Articles 22 and 25; CeRD, Article 11; CRC, Article 26; and the Convention for the Protection of Migrant Workers and their Families (CMW), Article 27. It also appears in regional human rights instruments (Protocol of San Salvador, Article 9; European Social Charter, Article 12), and in several Conventions of the international Labour Organisation (ILO), in particular Convention No. 102 on Minimum Standards of Social Security. The CRPD explicitly refers to the right to social protection (Article 28).

social security as a fundamental right. However, Article 41 of the Constitution does stipulate that the state should – within the limits of its economic capacity- secure the right to work, education and public assistance in case of unemployment, old age, sickness and disability. Article 42 further requires the state to secure just and humane working conditions and maternity relief. Article 47 also stipulates that the state should raise the level of nutrition and the standard of living and improve the public health sector. These obligations require the state to create a broader outline of a social security regime.

In practice, India's social security schemes cover only a very small segment of the organised work force. Out of an estimated work force of around 397 million, only 28 million benefit from formal social security protection (Pellissery et al. 2014). Although 90% of the workforce is working in the unorganized sector according (Asian Development Bank 2016), the total social protection expenditure in India as a percentage of the GDP in 2012 was 1.6 (compared to 6.5 in China, 4.4 in Thailand, and 2.6 in Sri Lanka during the same period). In other words, social expenditure is primarily an out-of-pocket expenditure for most Indian families.

Since 1991, India formally entered the globalized economy by accepting the terms and conditions for loan from the International Monetary Fund. This has resulted in several layers of economic reforms. Apart from an open economy (ending the protected economy), state's intervention in several key social sectors have been re-oriented. Consequently, private actors have been allowed to intervene in areas such as education, health, and pensions. As the labour market also saw a new category of 'international workers' in skilled jobs, ESI has been recently modified in order to incorporate their concerns, as explained in the next section.

### ***8.1.2 Migration History and Key Policy Developments***

The rich resources and geographical positioning of India has significantly contributed to the migration inflows towards this country. The size of the country itself has generated large stocks of internal migrants generally moving between different places within the same regional state. It is estimated that around 35% of people in urban areas and 26% of residents of rural areas have moved from their place of usual residence (Census of India 2011). According to the national Census data, the total number of internal migrants increased significantly during the past decades, from 167 million individuals in 1971 to 315 million in 2001. The National Sample Survey revealed that in 2008, about 28.5% of Indians (over 325 million people of the total population of 1.14 billion) were internal migrants. Internal migration has thus become an important issue from the perspective of social security. Although this specific type of migration is beyond the aim of this chapter, some of the social security provisions discussed here do include the eligibility condition of local residence, thus excluding internal migrants from social security provisions.

Determining who is an immigrant and who is a citizen is a rather complicated task in some parts of India, especially in the border regions. In some places (for instance, the North East of India) citizenship debates are contentious, and civil rights are denied for generations, let alone social rights. There is a recent attempt to create a National Register of Citizens according to which those whose names are in the official list until 1971 will be considered as citizens. There are various issues of documentary proofs. Since 2009, the Indian government has attempted to issue a unique identification document (*aadhar card*). Until July 2018, 1.22 billion identification cards have been issued (UIDAI 2018), although problems still remain for individuals who might be missed out of such registration processes.

In 2006, foreigners accounted for 0.4% of India's total population – approximately 5 million people (World Bank 2008), with most of them originating from neighboring countries such as Bangladesh, Pakistan, Afghanistan, Bhutan, Sri Lanka, Nepal, Myanmar or China.<sup>3</sup> The emigrant population represents about 0.9% of the total population (above 10 million people).<sup>4</sup> Most of them come from few states (Kerala, Tamilnadu, Goa, Punjab, Gujarat, Andhra Pradesh) and they generally respond to two different migration trajectories: either skilled workers who migrated to the UK, USA, Australia, Canada and other developed countries since the 1950s or low-skilled emigrants who have started to move to Middle East or South East countries on temporary labour contracts since 1970s (Rajan 2010).<sup>5</sup> As explained below, these two categories respond to quite different social security requirements.

'Foreigners' broadly fall into the two categories mentioned in the previous paragraph. Unskilled foreign workers are typically from neighbouring states (rarely from other middle and low developed economies), and they compete for social security resources with large number of Indian unskilled labourers. Therefore, for political reasons, Indian low skilled labourer are preferred over foreigners. On the other hand, when it comes to skilled migrant labourers, they are typically well-off than majority of Indian population. They have access to private social security

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<sup>3</sup>A significant portion of migration from neighbouring countries, particularly from Bangladesh, is sensitive political issue of illegal immigration. Very often this has resulted in communal riots between migrants (primarily Muslims) and local residents (primarily Hindus). The Illegal Migrants (Determination by Tribunal) (IMDT) Act, enacted in 1983 was later struck down by the Supreme Court of India in 2005.

<sup>4</sup>Sources based on Indian data (NSSO 2008) suggest there are around four million Indian citizens residing abroad. However, the sending country statistics are often unable to capture families that have migrated with the migrant. The figure of 10 million is based on the World Bank's assessment. The India Migration Report (2010) estimates six million Indian emigrants working in Gulf countries alone. The World Bank estimates that US \$ 55,000 million was received as remittance in 2010 alone. Compared to this, outward remittance flow was as small as US \$ 4000 million. International Organisation for Migration predicts that India will emerge the largest migrant-sending country globally by 2050.

<sup>5</sup>It is estimated that 90% of migrants of the state of Kerala are living and working in the Gulf countries.

arrangements, and therefore do not make a political demand for the same.<sup>6</sup> Exceptions to this large apathy towards ‘foreigners’ is where India has signed SSAs and ‘international workers’ are recognised.

## 8.2 Migration and Social Protection in India

This section will examine how social protection is being provided in life circumstances of unemployment, sickness, old age, difficult family circumstances and income loss. In particular, we will examine how social protection is being extended to domestic citizens and foreigners. As indicated in the previous sections of this chapter, in a segmented economy – formal and informal workers – social protection benefits are also extended in segmented manner. Foreign workers, primarily being in the private sector, are treated to cover the social protection benefits through private sources. However, in recent times, recognition of ‘international worker’ has begun to recognise foreigners eligible for certain social protection benefits.

### 8.2.1 Unemployment

In an informal economy, it is extremely hard to calculate who is employed and who is not. The share of people engaged in several gainful activities though the salaried jobs have decreased.<sup>7</sup> The Centre for the Monitoring of the Indian Economy (CMIE) estimated that around 31 million persons were seeking for a job in India in February 2018 (6.5% unemployment rate).

Three main schemes aim to address unemployment in India. Under the National Employment Scheme, some regional governments provide unemployment allowances to specific categories of jobseekers out of their own resources through employment exchanges.<sup>8</sup> The national level Unemployment Allowance Scheme (*Rajiv Gandhi Shramik Kalyan Yojna*) was introduced in 2005 as an unemployment insurance programme managed by Employees’ State Insurance Corporation (ESIC). The eligibility condition for *Rajiv Gandhi Shramik Kalyan Yojna* are: (a) the person

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<sup>6</sup> It is interesting to note that travel concession (train), seen as a civil right than social right, used to be provided to all senior citizens above the age of 60 until 2016. Since then this facility for foreigners is taken away and only nationals are entitled for 50% of travel concession.

<sup>7</sup> In economic theory, the complexity of ‘disguised unemployment’ explains this phenomenon. Yet, as per the report of National Skill Development Mission, 97% of Indian workforce has not undergone any skill training.

<sup>8</sup> But the Committee (Forty-second Report of the Standing Committee on ‘The Employment Exchanges (Compulsory Notification of Vacancies) Amendment Bill, 2013) observe that the Employment Exchanges have lost their significance due to changing trends for e.g. rise in number of contract workers, use of capital intensive techniques, technological developments, outsourcing and emergence of recruitment boards have led to reduced coverage under the Act.

should have been an insured person (IP) under the ESI Act on the date of loss of insurable employment, on account of closure of the factory or establishment, retrenchment, or permanent invalidity arising out of non-employment injury; (b) the insured person should have contributed under the ESI Scheme for at least two years; (c) applications for Unemployment Allowance should be within six months from the date of loss of employment; and (d) minimum 1 month waiting period after unemployment is needed. However, this scheme has a very low take up,<sup>9</sup> mainly due to the fact that it applies to factories having at least 10 workers or similar organizations with at least 20 workers. Furthermore, only national residents can apply for this scheme as foreigners and non-resident nationals do not qualify as eligible applicants.

India also provides an unemployment assistance scheme in the form of the National Employment Guarantee Act. 100 days of wage employment are guaranteed in a financial year to every rural household whose adult members volunteer to do unskilled manual work.<sup>10</sup> National citizens residing in the country are not required to have exhausted<sup>11</sup> the right to unemployment insurance (RGSKY) benefits to become eligible to claim unemployment assistance under MGNREGS. However, the benefit is only for 'local residents' (this refers to village domicile which is the lowest tier of governance where the demand for job is made) as applicants must prove residence in the village. All adult members of the household who register may apply for work. To register, they have to: (a) be local residents ('local' implies residing within the Gram Panchayat,<sup>12</sup> including those that may have migrated some time ago but may return); (b) be willing to do unskilled manual work; and (c) apply as a household (nuclear or single-member family) at the local Gram Panchayat. The Act is not specific about whether foreign residents are eligible for employment guarantee even if they stay in the village.

The third scheme- *Swarna Jayanti Shahari Rozgar Yojana*- was introduced in 2012 in order to provide gainful employment to the urban unemployed and under employed poor, by encouraging the setup of self-employment ventures by the urban poor living below the poverty line, skills training and also through providing wage

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<sup>9</sup>In 2009 a reported number of 3881 were assisted through this scheme.

<sup>10</sup>Ref. [http://nrega.nic.in/netnrega/writereaddata/Circulars/2342AP\\_drought\\_letter\\_6\\_June\\_18.pdf](http://nrega.nic.in/netnrega/writereaddata/Circulars/2342AP_drought_letter_6_June_18.pdf) (Accessed on 03 November 2018).

<sup>11</sup>Theoretically speaking, the Employment Guarantee scheme is in parallel to unemployment insurance benefit. In practice, both are addressed at two separate segments. Employment guarantee scheme is targeted at rural unskilled workers ready to engage in manual labour, whereas unemployment insurance is targeted towards skilled graduates (generally in urban areas) who are registered for a job.

<sup>12</sup>Gram Panchayat is the lowest tier of governance in India. It is often translated as village. The size and geographical area differs from region to region. However, there is a constitutionally mandated elected body and bureaucracy at this lower tier. For various schemes, this lowest tier is devolved the responsibility to verify the eligibility conditions for welfare assistance. The expression of 'local domicile' typically refers to Gram Panchayat certifying the person concerned regularly residing in the village.

employment by utilizing their labour for construction of socially and economically useful public assets. The scheme is categorical in nature.

### 8.2.2 Health Care

India has one of the lowest health expenditure as share of GDP in the world (1.4%). It has a thriving private health care market and poor quality public health system. Most residents do not have access to any insurance system, and about 70% of health expenses represent out-of-pocket expenditure.

The health care system is segmented in two ways. First, only those who have a formal employment can enjoy free medical treatment through the chain of hospitals run by Employees' State Insurance Corporation (ESIC).<sup>13</sup> Currently, the ESI Scheme is not applicable to foreigners or citizens residing abroad. National citizens residing abroad can claim invalidity benefits under the *Pravasi Bharatiya Bima Yojana* (more details below) and not under the ESIC scheme. However, this covers only a limited segment of the population- less than 2% in 2017. The second type of segmentation derives from the access the insurance. The rich segments of the population have access to an insurance that covers medical procedures in advanced hospitals. To address this second type of segmentation, the scheme *Rashtriya Swasthya Bima Yojana (RSBY)* was launched in 2008 to cover Below Poverty Line families. The scheme is jointly funded by the central government and the state government and aims to reduce out of pocket expenditure on health, while also increasing access to health care. The eligibility condition for RSBY is belonging to the section of nationally defined below poverty line. This is determined by state governments. Most of the state governments consider citizenship as criteria for BPL,<sup>14</sup> thus, excluding foreigners. Recently, some sections of labourers are also brought eligible for RSBY, including building and other construction workers registered with the Welfare Boards, licensed railway porters, street vendors, MNREGA workers who have worked for more than 15 days during the preceding financial year, Beedi workers, domestic workers, sanitation workers, mine workers, rickshaw pullers, rag pickers, and auto/taxi drivers.<sup>15</sup>

The *Pravasi Bharatiya Bima Yojana (PBBY)* is a mandatory insurance scheme initiated in 2003 with the aim of safeguarding the interests of Indian emigrant workers, both working for Indian companies and companies owned by foreigners in a different country. The insured workers are covered for accidental death or permanent disability leading to loss of employment while abroad. The insurance also compensates for the costs of hospitalization. Coverage of repatriation for medically

<sup>13</sup> Ref. <https://www.esic.nic.in/sickness-benefits> (accessed on 02 October 2018).

<sup>14</sup> Ref. <https://archive.india.gov.in/howdo/howdoi.php?service=7> (accessed on 12 December 2018).

<sup>15</sup> Ref. <https://www.india.gov.in/spotlight/rashtriya-swasthya-bima-yojana#rsby3> (accessed on 11 December 2018).

unfit/premature termination of employment, maternity expenses benefit to female emigrants and legal expenses related to emigrants' overseas employment are some of the benefits covered through this scheme (MEA 2017).

The public health centres, where primary services are provided don't distinguish between citizens and foreigners. Yet, the standards of their services are poor and often people self-select to receive services if the care could be affordable from private sources. However, in the public health system itself, secondary and tertiary services are of higher quality. Yet, most of these services are on payment basis.

### **8.2.3 Pensions**

India's pension system is also highly segmented. The vast majority of the population do not have any arrangements for an old-age pension. The law requires children to care their parents, such care being provided without legal sanctions in a traditional joint family system. Only a small share of the population (less than 7%) that is in the formal sector enjoys the state pension.

Since 2004, this state-funded pension system was turned into a contribution based system through the National Pension Scheme. This is available to any citizen of India, whether resident or non-resident, therefore excluding foreign residents. Claimants must be aged between 18 – 60 years. After attaining 60 years of age, individuals will not be permitted to make further contributions to the NPS accounts. NPS account can be operated from anywhere in the country irrespective of individual employment and location/geography. An individual is eligible for withdrawal before the tenure only if he/she has contributed for at least 10 years in the NPS Account. Further, one must contribute at least Rs. 6000 for tier 1 account and Rs.2000 for tier 2 account annually for 10 years to avail the benefits of pre-mature or mature withdrawal. Since 1991, private companies have been allowed to operate in the pension sector. Since 2009, the National Pension Scheme is open to all citizens for contribution-linked pension system. Yet, until December 2017, less than 1% of population is part of this pension system. In other words, access to these private pension funds are hugely dependent on income, and therefore limited.

Contribution-linked National Pension Scheme is open to all citizens of India. While employers have the provision to make contributions to supplement that of employees, the Government of India does not make any contributions towards this scheme. Both residents and non-residents could be part of this scheme. There is also a minimum contribution clause of Rs. 2000 per annum to remain in the National Pension Scheme.

Only international workers working under an employment visa are subject to the regulations of EPF, and contractual work or short-term business travel is exempt. However, there are certain exemptions regulated via bilateral arrangements when international workers contribute to their home country social security system or when they have the 'detached worker' status as specified in the social security agreement. Furthermore, economic agreement exemptions are granted when: (a)



international workers contribute to the home country system; (b) the participation in India's social security system is specifically exempted by the economic agreement and; (c) only those employees covered by a bilateral agreement are eligible for withdrawal benefit under the EPF, 1995, who have not rendered the eligible service (i.e. 10 years) even after including the totalisation benefit as may be provided in the said agreement. In all other cases, withdrawal benefit under the EPS, 1995 will not be available to international workers for contributory service less than 10 years.

India also provides a non-contributory pension scheme- the National Old-age Pension Programme designed for citizens who are below poverty line. Only those who do not qualify for a contributory pension are eligible to apply for this non-contributory pension scheme. However, the pension amount is very small (Rs. 200 per month, although most regional governments complement this with additional funds). This non-contributory pension is means-tested and granted a person who is 60 years or above and belongs to a household below the poverty line. The period of prior residence is not an eligibility criterion under the scheme. However, the scheme is reserved only for resident citizens as resident foreigners or non-resident citizens cannot apply for it.

#### **8.2.4 Family Benefits**

In several ways, family as an institution is central to the Indian society and culture. Therefore, several life-contingencies are taken care by the family as a unit. For workers in the formal sector, though there are maternity and paternity leaves (the latter only for some specific categories of workers), there is no system of parental benefits or child benefits in the Indian social security system. Maternity benefits are paid for 12 weeks, although mothers have 26 weeks of maternity leave. Since maternity benefits are granted to employees covered by the ESI Act, they also cover 'international workers'. Hence, foreign residents can access maternity benefits from India under the same conditions as national residents.

One major challenge in India is providing support for women who are in the informal sector. Neo-natal and maternal deaths are extremely high in India. Since 2005, a safe motherhood programme was introduced (*Janani Suraksha Yojana*, JSY) as a targeted scheme for all pregnant women below the poverty line. The scheme is financed by the central government and provides cash assistance, nutrition and routine physical examination for mothers. As previously mentioned, India does not have a child benefit scheme. Yet, since 1975, the Integrated Child Development Scheme provides nutrition, health check-up, education, and child care until the age of six when children are compulsorily required to be enrolled in a school. Around 13,30,000 *anganwadi* (community based shelters) across the country provide these services in kind. Several state governments have extended the services in these centres to international migrants. However, several study reports (PEO 2011) have shown that self-exclusion is the mechanism in these places.

### **8.2.5 *Guaranteed Minimum Resources***

There is no non-categorical, non-contributory scheme of guaranteed minimum resources in India. However, there are certain schemes that do provide benefits in cash to individuals in need. One example is the employment guarantee scheme initiated in 2005 that provides 100 days wage employment for rural areas to every household whose adult members volunteer to do unskilled manual work. 69% of the Indian population live in rural areas (Census 2011), hence this scheme covers most of the population. A condition of local citizenship (village domicile) prevents migrants from accessing this scheme. Secondly, the National Social Assistance Programme (NSAP) introduced in 1995 provides support to certain groups of individuals (aged persons, widows, disabled persons, bereaved families on death of primary bread winner) living in households below the poverty line. These are non-contributory benefits accessible only to resident citizens. Since the administration of these schemes is done through local governments, internal migrants are not eligible since they have to provide a resident certificate of five years. Last but not least, the Unorganised Sector Workers' Social Security Scheme which came into force since 2004 is contributory in nature. There have been discussions on universal basic income (Economic Survey 2016), although there are no current plans for its implementation.

### **8.2.6 *Bilateral/Multilateral Social Security Agreements***

As previously mentioned, the category of 'international worker' introduced in 2008 is particularly relevant when discussing migrants' access to social protection in India. An international worker is defined as: a) any Indian employee working or having worked abroad in a country with which India has entered into a Social Security Agreement (SSA) or; b) any foreigner working in India in an establishment where the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 is applicable. Generally, this refers to any registered work place with more than 10 workers.

International workers are eligible for the benefits covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. These are contributory benefits through Employees Provident Funds Scheme (1952), Employees' Pension Scheme (1995) and Employees Deposit Linked Insurance Scheme (1976). International Workers contributing to the social security of their country of origin, with which India has entered into a Social Security Agreement and enjoying the status of a detached worker are considered to be excluded.

India currently has bilateral social security agreements with 19 countries: Belgium, Germany, Switzerland, Luxembourg, France, Denmark, Republic of Korea, Netherlands, Hungary, Sweden, Finland, Czech Republic, Austria, Norway, Australia, Canada, Japan, and Portugal. Most of these agreements were signed with

are EU member states, It is important to note none of these countries are neither on the list of top three destination countries for Indian migrants, nor the workers from these countries form highest number of foreigners residing in India. Partly in response to the demands of companies with business in both these countries to facilitate movement of their employees. For each country, the social benefits covered in the agreements are different. For instance, the agreement with Canada covers old-age and survivors' pension for employed persons and the Permanent Total Disability pension for employed persons. Similarly, for those coming from Singapore are exempted for Provident Fund contributions since India has a Comprehensive Economic Partnership Agreement with Singapore.

In terms of international cooperation in the field of social security, it is also worth mentioning that India is member of the Colombo Process, a regional consultative process on management of overseas employment and contractual labour for countries of origin in Asia.<sup>16</sup> The main aim of the Colombo Process is to provide a forum for Asian Labour sending countries to discuss and resolve issues pertaining social security. Among this, with some of the Gulf Region Countries (where 6 million Indians work) there have been bilateral agreements signed since 2004. These countries are Kuwait, Oman, Malaysia, Bahrain, Yemen, Jordan and Qatar. The Indian Ministry of External Affairs has set up several offices in Gulf countries as part of India Centre for Migration for various helps.<sup>17</sup> What is important to remember is these agreements primarily facilitate smoothening of a range of civil issues since recruitment in host countries through unscrupulous private agencies create a range of problems for illiterate and low skilled workers.

### 8.2.7 *Obstacles and Sanctions*

There are several obstacles and sanctions for foreigners or citizens residing abroad in accessing social benefits across the five core policy areas analyzed in this chapter. In the case of unemployment schemes (*Rajiv Gandhi Shramik Kalyan Yojana* and *Mahatma Gandhi National Rural Employment Scheme*), our findings indicate that while there are no migration related restrictions per se, citizens living abroad may be able to access these schemes only if they are insured under the ESI Act and have contributed for a minimum period of five years prior to loss of employment.<sup>18</sup> Similarly, there are no restrictions on foreigners living in India to avail the scheme provided they qualify as employees under Section 2(9) of ESI Act and fulfil the

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<sup>16</sup>The eleven member countries for the process are Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam and eight destination country participants are Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates.

<sup>17</sup>Utilisation of Welfare fund established by this Centre shows about 50% of money is spent on supporting people with air travel.

<sup>18</sup>Circular, No. N-11/12/2003-Bft.II/Vol.II,Rajiv Gandhi Shramik Kalyan Yojana.

above mentioned criteria. However, needless to say, the scheme is valid only for the companies which are covered under the ESI Act. In the case of MGNREGS, citizens residing abroad may not be able to access the benefits of the scheme as it is applicable to only those “rural household whose adult members volunteer to do unskilled manual work”<sup>19</sup> assigned within the country. As far as the liberal interpretation of the law is concerned, foreigners living in India may be able to access the benefits of the scheme provided their household is registered by the Gram Panchayat. However, in reality, this process is bound to be filled with obstacles as the registration process is left to the whims and fancies of the Gram Panchayat.

To avail the social security benefits in the domain of health care mainly covered by the integrated need based social insurance scheme provided by the ESI Act, 1948, there are no migration related obstacles for foreigners or nationals. In *Rashtriya Swasthya Bima Yojana*, we find that there is a major obstacle for foreigners in availing the scheme as the programme is applicable only to the BPL category household or specified unorganised sector workers and therefore applicable only to Indian citizens. For citizens who are eligible for the scheme but are living abroad, the major obstacle arises in using the benefits of the scheme which is applicable only in hospitals across India.

There are two schemes that cover the maternity benefits in the area of family benefits. The Maternity Benefits Act (1961) does not impose any migration related constraints for non-national residents or non-resident nationals to access this scheme. The Act only require female employees to have worked for at least 80 days during the year immediately preceding the expected delivery date in order to be eligible to claim the benefit.<sup>20</sup> Similar is the case with the maternity benefits under the ESI Act (1948) which are available to insured employees (women), “earning wages up to INR 21,000 and who have contributed for a period of at least 70 days in the immediately preceding two consecutive contribution periods”.<sup>21</sup> However, the women employees covered under the ESI Act may not be able to access the benefits of the Maternity Benefits Act.

Lastly, in the area of pensions, the contributory pension schemes namely National Pension Scheme and Atal Pension Yojana, we find that APY is applicable only to citizens and therefore citizens living abroad can access the scheme, provided that person is not a non-resident Indian (NRI). On the other hand, any citizen of India can access the National Pension Scheme, independently of his/her place of residence. In the case of Employee pension scheme covered under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 there are no migration related restrictions on citizens or foreigners living abroad to avail the scheme provided the employees are members of the Employee Provident Fund Scheme. In the non-contributory pension scheme, the applicant must necessarily belong to a household living below poverty line. Citizens living abroad may be able to access the

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<sup>19</sup> Sec 3(1), National Rural Employment Guarantee Act, 2005.

<sup>20</sup> Sec 5(2), Maternity Benefit Act, 1961.

<sup>21</sup> Sec 50, ESI Act, 1948.

scheme provided the “applicant is a destitute, having no regular source of financial support from family members or any other sources.”<sup>22</sup>

In general, we can conclude that all labour laws regulating employment relationships in India also apply to foreign nationals employed in India. In our research, we find no evidence of sanctions against foreigners and accessing certain benefits in the policy areas mentioned above do not constrain their access to residence permit, family reunification or nationality in India.

### 8.3 Conclusions

As we have shown, welfare state is not a home-grown idea to India, as common with several countries in Global South, where industrialisation has not prompted the state intervention for de-commodification. In predominantly agrarian and service-led economies, social security is perceived as a subject that is relevant for a small section of the society. In India’s segmented economy, this has particularly favoured a miniscule section of formal sector workers who are seen as elite section of the society. In the large segment of informal workers, there is significant immigrant population from neighbouring countries. However, for this immigrant population often civil rights are not also provided, let alone social rights (Pellissery et al. 2014). Their civil status is a matter of political contention. Since 2009, the Indian government has attempted to issue a unique identification document (*aadhar card*), which has 1.22 billion card holders as of July 2018.

Since the opening up of the Indian economy to foreign capital and foreign workers in skilled sector, several changes have taken place. India’s architecture of Employee State Insurance Act (1948) was amended in 2008 in order to include a new section on ‘International Workers’. However, stringent conditionalities are introduced to give them social rights, as discussed in this chapter. These conditionalities have a logic that formal workers (typically international workers) are far better off than informal workers (which form the large voter base) who are the primary target of Indian welfare state.

Another major development is the ongoing process of signing totalisation agreements with countries where skilled labourers are travelling from India. So far, 19 countries (primarily from the European Union) have signed such totalisation agreements for transferrable social security arrangements. India also has bilateral agreements with six countries in Gulf Region where six million Indians are working. In several regions, this diaspora forms a significant voice and shapes political discourses, which in turn incentivises the ruling parties to create favourable working conditions for such population.

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<sup>22</sup>National Social Assistance Programme (NSAP), 1995.

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# Chapter 9

## Diaspora Policies, Consular Services and Social Protection for Indian Citizens Abroad



Daniel Naujoks

### 9.1 Introduction

India not only has the largest emigrant population in the world. The country also has a long history of establishing an institutional framework and a multi-faceted infrastructure for its diverse diaspora populations. In the past 40 years, a variety of institutions have been created, changed, discarded, and merged. Some mechanisms were ad hoc and temporary in nature, some were established in partnership with the private sector. The varying needs of India's heterogenous and vast diaspora and emigrant populations have led to a plethora of policy initiatives. Because of the political will to communicate about the adoption of proactive policies, on the one hand, and limited resources of a developing country, on the other, several policies exist more on paper or are limited to low-scale implementation.

This chapter provides a broad overview of existing initiatives, shedding light on specific policy designs to include and exclude different populations in India and abroad. Given limitations in space and scope, this chapter focuses on the current institutions with brief references to infrastructure that has recently been replaced. While the chapter puts an emphasis on the letter of the law, I attempt to provide information on the origins and implementation of policies, where possible. However, the dearth of in-depth analysis on the vast majority of India's initiatives provides challenges for establishing clear evidence on drivers and rationales for policy processes.

The chapter shows that India has established a set of policies for various diaspora populations that are largely separate from the rules and policies adopted for nationals at home. Thus, diaspora engagement policies, and especially policies aimed at fostering social protection of Indians abroad, are generally not integrated into

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national social protection policies. There is a clear distinction between diaspora policies that are geared towards the engagement of ethnic Indian populations whose forefathers have left Indian shores many generations ago, Indian communities in OECD countries – mostly US, Canada, Europe and Australia, and migrant workers going on temporary assignments to countries in the Persian Gulf. Protection policies are generally limited to Indian citizens and the majority of special programs are limited to temporary migrant workers in specified countries.

## 9.2 Diaspora Characteristics and Home Country Engagement

### 9.2.1 *The Indian Diaspora and its Relations with India*

Before outlining India's diaspora infrastructure, this chapter will briefly elaborate on different terms that have developed to describe people who trace their origin to modern-day India. Some of these terms are colloquially used, some have different meanings in official policies and legal documents, making it difficult to assign singular meanings and definitions. Policy and legal definitions are important to understand specific benefits, collected data, and official narratives.

The most common term used to describe diasporic Indians is Non-resident Indians, or NRIs.<sup>1</sup> Originally deriving from a tax category, the term used to refer to Indian citizens living in India for less than 182 days each year. In this sense, it is often used to distinguish Indian citizens living abroad from those who have acquired a different citizenship, who are referred to as Persons of Indian Origin (PIOs).<sup>2</sup> As an overarching category to include NRIs and PIOs, government documents and policies refer to the Indian diaspora, Overseas Indians, or its Hindi equivalent *Pravasi Bharatiya* (Naujoks 2018a).<sup>3</sup>

As seen through the policy eyes of the Indian political system, overseas Indians fall into three broad categories:

- NRI temporary workers, mostly in the Gulf Cooperation Council (GCC) countries;
- NRI and PIOs in the US, Canada, Australia and Europe;

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<sup>1</sup>It may be added that from a sociological viewpoint, diasporic actors have been defined as all persons who originate from a certain country, self-identify with that country, and who maintain a meaningful cultural and social relationship with the country (Sheffer 2003; Naujoks 2013, 12).

<sup>2</sup>Others understand as PIOs only those born abroad (2+ generation), though this review focuses on government policies and thus, adopts the official terminology.

<sup>3</sup>For more details on different legal definitions when it comes to specific economic rights, see Naujoks (2018a, 92).

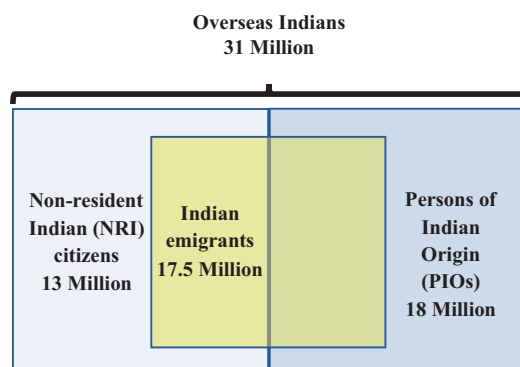
- PIOs in countries where large-scale emigration took places roughly 150 years ago (Mauritius, South Africa, Fiji, Malaysia, Singapore, etc.), often referred to as the “old diaspora” (Dubey 2011; Lal 2018).<sup>4</sup>

According to UN data on international migrants, India is the largest source country of emigrants. About 17.5 million persons born in India are now living abroad, followed by 12 million Mexican and 11 million Chinese emigrants (United Nations 2019). This number includes both first generation NRIs and PIOs, but not overseas Indians who were born abroad. The Indian government estimates that in the end of 2018, out of 31 million overseas Indians, 13 million were NRIs and 18 million PIOs (Fig. 9.1).

Note: Per definition, UN emigrants also encompass all first-generation emigrants who obtained citizenship in countries of destination, hence becoming PIOs. Second generation Indian citizens abroad are NRIs but – generally – not migrants, according to UN statistics.

Figure 9.2 illustrates the distribution of Indian emigrants across the major 15 countries of destination. These 15 countries collectively account for 95% of all Indian migrants in the world, excluding though the majority of persons of Indian origin. GCC countries host half of Indian migrants (51%), which explains why the Indian policy framework has a strong emphasis on migrants to this part of the world.<sup>5</sup>

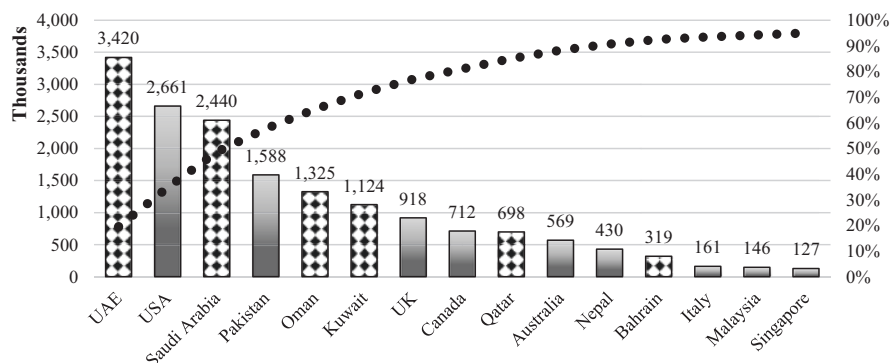
Note: This refers exclusively to Indian emigrants captured in UN data, not the broader definition of Overseas Indians (Fig. 9.1). The dotted line displays the cumulative share of the host countries in all Indian emigrants. Thus, the eight major host



**Fig. 9.1** Estimates for Overseas Indian populations (2018). (Source: Emigrant data: United Nations 2019; all other: Government of India 2018)

<sup>4</sup>For an overview of the Indian diaspora, see Dubey (2003); Raghuram et al. (2008); Sahoo, Baas, and Faist (2012); Mongia (2018).

<sup>5</sup>For more details on Indian migrants in the Persian Gulf, see Azhar (2016) and Rajan (2017).



**Fig. 9.2** Top 15 countries hosting Indian migrant populations (2019) (in thousands). (Source: Author's calculations, based on United Nations (2019) data)

countries collectively account for 80% of the entire Indian migrant population. Countries highlighted in a dotted pattern are West Asian countries.

As shown in Naujoks (2010), India's 'world view' of its diaspora has undergone a tremendous change, which in turn led to the adoption of a host of diaspora policies. Until the mid- to late 1990s, state institutions had a negative policy attitude, which can be paraphrased as follows:

The diaspora consists of three elements. First, those who left under colonial rule and who live in remote places like the Caribbean, Africa and Fiji, where they face significant social difficulties from the indigenous population, which is why India should not try to reach out to them. Second, highly-skilled migrants residing in industrialized Western countries, most of whom obtained free education in India and deserted India for their personal benefit, without caring about the progress of the country. Third, laborers who move temporarily to the Gulf countries and whose remittances are critical for their communities of origin.<sup>6</sup>

As the High-level Committee on the Indian Diaspora (2002:xi) concluded: "Barring some high profile names in the Information Technology and entertainment sectors abroad, the Diaspora has been largely out of public sight and awareness." This paradigm changed through a complex interplay of internal and external, objective and subjective factors<sup>7</sup> to a perception that can be described as follows:

The enormous Indian diaspora covers all continents and over 100 countries. The diaspora in the Western countries is rich and makes India proud. Indians abroad are shining ambassadors of the great Indian civilization. They are remitting money<sup>8</sup> and

<sup>6</sup>Whereas temporary migrants used to originate predominantly from India's Southern states, in recent years, the majority hail from Northern India.

<sup>7</sup>For a discussion of the factors, see Naujoks (2010).

<sup>8</sup>These narratives are supported by official statistics that show that in the past decade, each year India receives the largest amount of remittances in the world – in absolute terms. Slightly more than half of such funds originate from Gulf countries.

are an asset to the country—they are a veritable ‘brain bank’ from which the country can make withdrawals.

The perception of the temporary Gulf migrants has not changed significantly, although there is a greater awareness to safeguard their rights and working conditions. This paradigm shift took place in many different strata of public life. The new views are expressed in statements from the political sphere, as in, “if there is an Empire today on which the sun truly cannot set, it is the empire of our minds, that of the children of Mother India, who live today in Asia, Africa, Australia, Europe, the Americas and, indeed, on the icy reaches of Antarctica” or the political party BJP, which led the ruling government coalition from 1998–2004, during which several new diaspora policies were established, “believes that the growing achievements of the vast Indian diaspora are a matter of pride and a source of strength for India.” Hegde (2018, 77) argues that the Indian establishment revised and institutionalized the relationship with India’s influential diaspora spread across the world in an effort to redesign its global image as a serious economic player and technological powerhouse. This remarkable paradigm shift may be dubbed as ‘from the invisible diaspora to the diaspora empire’ and ‘from the traitor tune to a pride paradigm’ (Naujoks 2010). In the light of the newly perceived value overseas Indians bring to India, a large set of diaspora engagement policies have been adopted.<sup>9</sup>

### 9.2.2 *India’s Diaspora Infrastructure*

India’s government institutions are geared towards specific components of these three categories of overseas Indians laid out in the previous section. In 2004, India established a special Ministry of Overseas Indian Affairs (MOIA) that had different joint secretaries and divisions to cater to different categories of overseas Indians. Gamlen (2014, 2019) shows that diaspora-related government offices have spread rapidly in the past decades. Whereas in 1980, only a handful of countries had established such institutions, by 2014, over half of all states in the United Nations had one. However, in 2015, the government of Prime Minister Narendra Modi merged the MOIA with the Ministry of External Affairs (MEA), where the bulk of issues related to diaspora and NRI affairs are handled now at the ministerial level.<sup>10</sup> Within the MEA, the diaspora infrastructure is housed in the Overseas Indian Affairs division that includes the Protector of Emigrants, which focuses on (mostly temporary and low-skilled) labor emigration. Until 2004, the Protector of Emigrants was

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<sup>9</sup>Dubey (2003) and Kahali (2017) detail the development of India’s paradigms on diaspora issues. Hegde and Sahoo (2018) provide a broad overview of key issues regarding Indian diaspora communities and their relationship with India.

<sup>10</sup>Some of the departments had merged already before the final merger was announced. For an evolution of diaspora policies and infrastructure in India, see Lum (2014).

housed in the Ministry of Labor.<sup>11</sup> Then it became an integral part of the newly created MOIA, before moving with the entire overseas Indian portfolio to the MEA in 2015. The Protector of Emigrants focuses on protecting less-skilled labor emigration to the Gulf region and elsewhere. The other sections of the MEA's overseas Indian division focus on the other two segments of India's diaspora population. The MEA overseas embassies and consulates in 160 countries, as well as honorary councils in an additional 36 countries that cater to the needs of India's overseas population.

The work by the MEA is flanked by several independent or semi-independent bodies. Especially, the India Centre for Migration (ICM) and the Indian Council for Cultural Relations (ICCR). The ICM is supposed to act as a government-controlled think tank that undertakes research and studies on migration of Indian workers for overseas employment and supports informed policy making (MEA 2019c). Lastly, the Indian Council for Cultural Relations (ICCR) under the auspices of the Ministry of External Affairs is India's primary agency to formulate and implement policies and programs relating to India's external cultural relations.

The MEA runs Indian Workers Resource Centres (IWRC) in the UAE, Saudi Arabia, and Malaysia. They provide 24x7 helpdesks for both intending migrants and overseas Indians and an electronic platform attends to queries in 11 Indian Languages. These centres abroad are integrated with five domestic Migrant Resource Centres (MRCs) based in Kochi, Hyderabad, Gurgaon, Lucknow, and Chennai.<sup>12</sup>

As India has a decentralized structure of federal governance, some of India's states also created institutional and regulatory frameworks for diaspora and migrant populations. At least the states of Gujarat, Kerala, and Punjab pursue particularly active policies relating to their expatriate population.<sup>13</sup>

Since 1998, the Gujarat government maintains a separate Department for Non-Resident Gujaratis under which an autonomous Gujarat State Non-Resident Gujaratis (NRGs) Foundation aims at promoting social, cultural and linguistic bonds among the global Gujarati family, exploring the possibility of how NRIs and NRGs can play a vital role in the development of the state and identifying the areas in which the government can be of assistance to NRIs and NRGs.

In Kerala, the Department of Non-resident Keralites' Affairs (NORKA) was established in 1996 and 6 years later, its field agency Norka-Roots. Also in 1996, the NRI Sabha (assembly), Punjab, was founded as a non-governmental organization whose primary object was to strengthen the ties between the Punjabi diaspora and the people and culture of their motherland, and to help with their grievances, especially those concerning properties issues. Despite its set-up as an NGO, the NRI Sabha is chaired by the state government's Commissioner for NRI Affairs. Its chief

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<sup>11</sup> Mongia (2018) provides an interesting analysis of the origins of the protector of emigrants under British colonial rule and its role in the system of indentured labor.

<sup>12</sup> For more information, see MEA (2019d).

<sup>13</sup> In addition to these three states, an increasing number of states have established NRI departments that aim at providing information and build partnerships with regional emigrant, diaspora and returnee communities.

patron is the Chief Minister of Punjab ex-officio, while its elected president has to be a former NRI, which includes foreign citizens of Indian origin. Furthermore in 2007, the Government of Punjab established a Department of NRI Affairs. In addition to the three states mentioned above, various other states have created Non-resident Indian (NRI) centres and cells to facilitate the relationship with overseas Indians and to address their problems.

### 9.2.3 Key Diaspora Engagement Policies

Over the past 20 years, Indian state institutions have established a wide spectrum of diaspora engagement, as well as labor migration policies and programmes.

#### Participation and Representation

While there is no specific consultative or representative mechanism between the central government and overseas Indians, since 2003, the Government has held a large diaspora conference – the *Pravasi Bhartiya Divas*, one of the objectives of which is to consult with the diaspora and emigrant workers.<sup>14</sup> At the regional level, in the state of Punjab, the NRI Sabha is set-up as a consultative body that includes government officials, as well as elected NRIs.

Before 2010, with the exception of Indian diplomats and other limited categories, Indian citizens living abroad were not allowed to cast their vote in elections back home. However, a 2010 amendment of the Representation of the People Act allowed NRIs to be included into voter rolls. However, NRI voters needed to return physically to India on election day to cast their vote and could not use postal ballot, voting at voting stations abroad or other remote procedures. As expected, this leads to no significant NRI voter turnout. In the end of 2017, the Government introduced the Representation of People Act Amendment bill 2017 that would allow NRIs to avail themselves of proxy voting. However, the bill lapsed with the dissolution of the 16th Lok Sabha and has since then not been reintroduced. It is interesting to note that the major political parties have affiliate groups, namely the “Friends of the Bharatiya Janata Party (BJP)” and the “Overseas National Congress.”

#### Economic Policies

Overseas Indians have long served as a textbook example for the positive relationship between migration and development in migrants’ countries of origin (Hunger 2004; Kapur 2010; Naujoks 2013). For this reason, for the past 20 years, economic policies with regard to overseas Indians have long been a central area of government intervention.

As there are restrictions for both, foreign direct and portfolio investments, it is important to note that India has created a range of special rules and facilities for NRI

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<sup>14</sup> In addition, Mani and Varadarajan (2008) observe several critical attempts of the government to foster a neoliberal and nationalist agenda. See Singh (2018a, b) for a recent assessment of the convention.

investors (Naujoks 2018a).<sup>15</sup> Even though India receives the largest amount of remittances, in absolute numbers, there are no policies on remittances.<sup>16</sup> However, India created special savings accounts for NRIs. In the 1970s, the government of India felt the need to stock up the country's foreign-exchange reserves. For this purpose, it authorized special deposit schemes for NRIs. From the 1990s onward, the policies kept in focus that a high volatility of such deposits could be detrimental to the country's economic stability, which is why it was sought to attract stable deposits. In order to increase the attractiveness of such schemes, accounts could be denominated in foreign or domestic currency. They also had a higher than normal interest rate and accounted for certain tax exemptions (Naujoks 2018a). While there are no financial incentives for overseas Indians to buy real estate, India has adopted legislation that allows non-resident Indians to purchase real estate. Whereas India's FDI policy does not allow any FDI into firms engaged in real estate, FDI can be allocated to build townships, housing, and infrastructure. However, while certain conditions apply to non-diaspora FDI—such as the minimum area to be developed or to invest at least USD five million within the first 6 months of the project—these restrictions do not apply to investment by NRIs (Naujoks 2018a).

In addition, when the Indian economy was in urgent need of foreign exchange India issued three foreign-currency diaspora bond schemes. In total, India received USD 11.3 billion in foreign exchange from the three schemes, which were launched in order to help the country over the balance of payment crisis in 1991, strengthen the country when it suffered from sanctions imposed by the U.S. and the World Bank in response to India's nuclear tests in 1998 and smoothen the effects of an adverse global economy in 2000 (Ketkar and Ratha 2010).

Indian transnational diaspora organizations have been involved in promoting social and economic development in India (Agarwala 2018). For this reason, the Indian government seeks their contributions and offers organizations to register on a voluntary basis with Indian missions. However, given India's mistrust of any foreign contributions, diaspora organizations' engagement in India is highly regulated by the Foreign Contribution Regulation Act, 1976.<sup>17</sup> It channels charitable contributions from NRIs into local development projects that are suggested and implemented by state governments. Furthermore, India signed double taxation agreements with more than 130 countries.

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<sup>15</sup>Only registered foreign portfolio investors, foreign institutional investors, that is, entities established or incorporated outside India and that are registered in India, and NRIs can invest through a registered broker in the capital of Indian companies on recognized Indian Stock Exchanges. In addition, there are facilitations for NRI direct investments in the air transport industry and real estate, for investments in partnership firms since 2015, investments by NRIs made on a non-repatriable basis are at par with domestic investments made by Indian residents. For more details, see Naujoks (2018a).

<sup>16</sup>For an introduction to money flows, gender and family among Indian migrants, see Singh (2018a, b) and Naujoks (2020b).

<sup>17</sup>Since 2008, the Government has been in the process of establishing the India Development Foundation of Overseas Indians (IDF-OI) that became operational in 2016 and that was finally closed in March 2018, as the foundation failed to attract meaningful contributions.

In order to meet the diasporic demand for dual citizenship and within the state's economic engagement strategy with the diaspora, India created two special membership statuses. In 1999, the Indian government launched the Person of Indian Origin Card (PIO card), and in late 2003, legislation on the Overseas Citizenship of India (OCI) was adopted as another membership category and operationalized in 2005.<sup>18</sup> In January 2015, the PIO card scheme was formally absorbed by OCI. By the end of 2017, almost 3.2 million persons of Indian origin had obtained OCI, about half in the U.S. and Canada, and 20 percent in the U.K.

### **Cultural and Educational Policies**

The Indian Council for Cultural Relations (ICCR) is the main institution to promote Indian culture abroad. Whereas the ICCR deliberately provides cultural assistance to diasporic cultural needs, its endeavors are by no means limited to diasporic communities around the world but aim at fostering the cultural relations and mutual understanding between India and other countries. The ICCR runs 30 Indian Cultural Centers around the world and it funds chairs for Indian culture in other countries. Its website informs that in countries that have a sizeable ethnic Indian population, the centers focus on teaching Indian dance, music, languages and yoga, and organize national days and festivals. Further, since 2006, the Scholarship Programme for Diaspora Children grants scholarships of up to USD 4,000 per annum to 100–150 PIO and NRI students for undergraduate courses “in order to make higher education in India accessible to the children of overseas Indians and promote India as a centre for higher studies.”

With the Tracing the Roots Programme, the Government aims at assisting persons of Indian origin in tracing their roots in India through a cooperation with private organizations.<sup>19</sup> To ensure ongoing ties with the descendants of Indian migrants, so-called second-plus generation, the Know India Programme (KIP) involves a “three-week orientation programme for diaspora youth conducted with a view to promote awareness on different facets of life in India and the progress made by the country in various fields e.g. economic, industrial, education, science and technology, communication and information technology, culture” (MEA 2019b). The program is modeled on the Birthright Israel program (High-level Committee of the Indian Diaspora 2002, 339). However, whereas between 20,000 and 37,000 Jewish youths participate in the birthright program every year, the Indian program is a small-scale project. Since its inception in the end of 2003 until end 2017, India's KIP has brought a total of 1,533 diasporic youths to India, or an average of less than 100 youths every year. The small scale and low-level of implementation of these programmes illustrates that many of the programmes are first and foremost discursive tools (Naujoks 2013, 53).

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<sup>18</sup>For an in-depth analysis of the genesis and impacts of the PIO card and OCI, see Naujoks (2013, 2020a).

<sup>19</sup>For the first years, the ministry had entered into a Memorandum of Understanding with the organization *Indiroots*, whereas in 2019, these assignments were handled by Singapore-based *Alankit Assignments*.



### 9.3 Diaspora Policies and Social Protection in India

As one of the largest sending countries of labor migrants, many of which reside in countries where migrants have limited access to host country social protection schemes, the country has created a considerable number of policies and schemes to provide transnational protections for its citizens abroad. Many of these are restricted to Indian nationals residing in specific countries, most importantly the Gulf Cooperation Countries.

Welfare and social protection policies for overseas Indians include the now defunct *Mahatma Gandhi Pravasi Suraksha Yojana* (MGPSY) pension scheme for NRIs that will be discussed below, legal and financial assistance and the *Pravasi Bhartiya Bima Yojana* (PBBY), as well as the Indian Community Welfare Fund (ICWF).

Since 2009, the Indian Community Welfare Fund (ICWF) has assisted Indian nationals abroad in times of distress and emergency in the ‘most deserving cases’ on a ‘means tested basis.’ Beneficiaries do not have to repay the cost covered. It includes legal and financial assistance to Indian women who were abandoned, cheated, and/or abused by their NRI/PIO or foreign spouses; emergency medical care for accidents with serious life threatening injuries; the payment for small fines and penalties in respect of Indian nationals for minor offences/crimes, such as for “illegal stay in the host country where *prima facie* the worker is not at fault”, and assistance for repatriation of nationals abroad. The stated target groups are “overseas Indian workers duped by unscrupulous intermediaries in the host countries, runaway house maids, those who become victim of accidents, deserted spouses of Overseas Indians or undocumented Overseas Indian workers in need of emergency assistance or any other Overseas Indian citizens who are in distress would be the main beneficiaries of the Fund.”<sup>20</sup> The ICWF rules further allow consulates to pay for the transportation of mortal remains of deceased Indian national to India or local cremation/burial of deceased.

In the period 2009–2016, Indian consulates have provided support for 80,000 beneficiaries (India Center for Migration 2017). As Fig. 9.3 shows, two-thirds of these funds were used to provide funds for flights and accommodation. However, this also includes large scale evacuations of more than 6,200 Indians from Iraq, 3,600 from Libya, and most recently 6,700 from Yemen (Ibid.).<sup>21</sup>

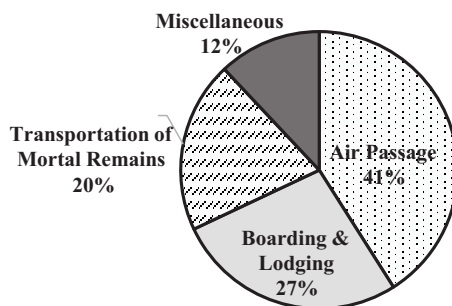
Indian consulates have a large discretion as to whether the “beneficiary deserves to be assisted.” Importantly, under ordinary circumstances, the funds are limited to Indian nationals who have entered the host country legally. The funds to provide such assistance have to be raised by Indian consulates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

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<sup>20</sup>For more details see, MEA (2019a).

<sup>21</sup>On India’s emergency evacuations, see Xavier (2016).

**Fig. 9.3** Usage of Indian Community Welfare Fund (2009–2016). (Source: India Center for Migration 2017)



The *Pravasi Bharatiya Bima Yojana* (PBBY) is a mandatory insurance scheme aimed at safeguarding the interests of Indian emigrant workers falling under Emigration Check Required (ECR) category going for overseas employment to ECR countries. This applies to the 18 official ECR countries: Afghanistan, Bahrain, Indonesia, Iraq, Jordan, Kingdom of Saudi Arabia, Kuwait, Lebanon, Libya, Malaysia, Oman, Qatar, South Sudan, Sudan, Syria, Thailand, UAE, and Yemen, of which, at the time of writing, departures to Libya, Sudan, Syria, and Yemen have been suspended because of the security situation in these countries. The scheme, initially launched in 2003, has been amended in 2006, 2008, and 2017 with the overarching objective of strengthening the coverage of emigrant workers. At the regional level, under the Kerala Pravasi Welfare Board, the Non-Resident Keralites' Welfare Fund Act 2008 has developed some welfare schemes for the benefits of Non-Resident Keralites, such as several pension schemes.<sup>22</sup>

The following sub-sections will briefly elaborate on policies and programs that address policy issues related to unemployment, health care, pensions, family-related benefits, as well as resources for economic hardships.

### 9.3.1 Unemployment

While there are no specific policies and programs that address unemployment of Indian nationals abroad, the Indian government has created several skills upgrading initiatives that aim at increasing the employability of Indians abroad. Some of these programs are specific programs for prospective migrants, while others are part of general skill-upgrading endeavors for the Indian labor market. Specifically, the *Pravasi Kaushal Vikas Yojana* (PKVY) aims to enhance the skill sets of potential migrant workers and facilitate overseas employment opportunities. Launched at the 14th *Pravasi Bhartiya Divas* convention in 2017, it involves programmes of 2 weeks

<sup>22</sup>For more information, see <http://pravasiwelfarefund.org>

to 1 month<sup>23</sup> that engage in capacity building in the areas of development of skills standards, curricula, learning material, assessment of standards, testing and certification on par with global standards. Initially, it focuses on sectors that are in demand in the ECR countries, including domestic workers, drivers and construction workers.<sup>24</sup> This program is implemented by the MEA in collaboration with the Ministry of Skill Development and Entrepreneurship (MSDE). It is complemented by a compulsory pre-departure orientation (PDO), which prepares migrants for the journey to ECR countries.<sup>25</sup> However, at the time of writing, the program was still in the development stage, though the Government of India has allocated funds for it in 2018. As of January 2018, India's National Skill Development Corporation (NSDC) enrolled 400 students in 13 India International Skill Centres in the pilot phase covering eight sectors, namely domestic workers, retail, hospitality, capital goods, healthcare, construction, automotive and security.<sup>26</sup> Around 400 students have been enrolled in these centres.

At the sub-national level, there are no specific programs for unemployed emigrants. However, there is a regional pre-departure program and a skill enhancement program in the state of Kerala. Norka-Roots conducts one-day pre-departure training courses to overseas job aspirants to make them aware of the general job situations abroad and to impart essential information relating to visa, emigration rules, employment contract, customs regulations, and travel formalities etc.<sup>27</sup> In addition, a program focuses on upgrading the skills of Keralites to meet the challenges in the employment market.<sup>28</sup>

### 9.3.2 Health Care

India's health care system is based on government health insurance schemes, as well as on private insurance schemes. The public insurance system includes government-owned companies, such as New India Assurance Co, Oriental Insurance Co, National Insurance Co and United Insurance India. NRIs could buy health insurance policies from such insurers for treatment in India, though there is no special provision or communication strategy on the part of the Government or these companies. For policies that allow accessing health care abroad, residential guidelines generally state that policies can be issued to Indian citizens residing in India alone. They explicitly stress that cover is not allowed to NRIs (and equally not to

<sup>23</sup> Ministry of External Affairs, [mea.gov.in/press-releases.htm?...Pravasi+Kaushal+Vikas+Yojana+PKVY](http://mea.gov.in/press-releases.htm?...Pravasi+Kaushal+Vikas+Yojana+PKVY)

<sup>24</sup> For more details, see MEA (2019e) and India Migration Centre (2017, 7). However, no official announcements were made since the launch of the scheme in January 2017.

<sup>25</sup> See Rajan, Bhaskar, and Wadhawan (2017) for the content of this training.

<sup>26</sup> 50 centres are slated to be further opened under this initiative (India Migration Centre 2017, 9).

<sup>27</sup> For more information, see Norka Roots (2019a).

<sup>28</sup> For more details, visit Norka Roots (2019b).

foreign citizens living in India).<sup>29</sup> NRIs are also not covered by India's *Rashtriya Swasthya Bima Yojana* (RSBY) health insurance scheme for the poor, though they might be eligible upon their return. However, the lack of any communication and outreach material in this regards highlights that these policies are not geared towards citizens abroad.

Apart from access to general health care systems, specific, though rather small-scale schemes have been adopted by the national and state governments to address select migrants' health concerns. The Indian Community Welfare Fund (ICWF) that was introduced in the beginning of this section can provide emergency medical care on a means tested basis to overseas Indians who are involved in an accident with serious life-threatening injuries, who have life-threatening medical conditions or suffer a serious disability. However, in the first 10 years of the fund's existence, fewer than 500 individuals have received support for emergency health care (India Migration Center 2017, 7). The *Pravasi Bharatiya Bima Yojana* insurance scheme for emigrant workers in the ECR category covers birth-related hospital costs of up to USD 350 in India, though to avail themselves of these maternity benefits abroad, all required documents need to be certified by the Indian Mission, thus creating a significant barrier to access said benefits.

In the Indian state of Kerala, the Kerala Pravasi Welfare Board can provide financial assistance under its medical treatment, accident-cum-death insurance scheme. Under this scheme, a member Non-Resident Keralite (NRK) who is afflicted with critical illness is eligible for obtaining a maximum financial assistance of INR 50,000 (approximately USD730) during the entire period of his or her membership. The Welfare Board can also engage with national insurance companies to provide such services. Furthermore, through the Santhwana Financial Assistance scheme for returned NRKs in distress, financial assistance is provided to NRKs or their dependent family members in case of medical treatment expenses, death assistance or the acquisition of artificial limbs, crutches, wheel chair or other aids to overcome physical disability.

### 9.3.3 Pensions

India's National Pension Scheme (NPS) is a government-sponsored contribution pension system. Whereas it was initially launched for government employees only, since 2009 it is open to all employees in India. In 2015, NRIs were allowed to obtain a unique Permanent Retirement Account Number (PRAN) and thus subscribe to the pension scheme. NRIs pay into the scheme either by inward remittance through normal banking channels or out of funds held in their special diaspora savings accounts. Importantly, this is only open to Indian citizens and migrants' NPS account will be closed if they acquire a different citizenship, thus forfeiting their

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<sup>29</sup> See for example New India's Global Mediclaim Policy (New India Assurance 2019).

Indian citizenship.<sup>30</sup> Consulates and the MEA provide online information on how to access the pension scheme for NRIs.

In 2012, the government had launched the *Mahatma Gandhi Suraksha Pravasi Yojana* (MGPSY), as a voluntary scheme to provide social security coverage to Indians in emigration check required (ECR) countries. However, the lack of sufficient subscribers led to abandoning the scheme in early 2017 (MEA 2019h).

In the state of Kerala, Non-Resident Keralites who continuously contribute to the Welfare Fund up to the age of 60, are eligible for a monthly pension of INR 2,000 (approximately USD 30) after the age of 60.

### 9.3.4 *Family-Related Benefits*

While the Indian government does not grant specific family-related benefits to its nationals abroad, consulates are tasked with keeping the registers of births and deaths for the district and to issue duly certified copies of entries in the registers.<sup>31</sup>

### 9.3.5 *Economic Hardship*

Countries often provide specific resources for economic hardships that their citizens abroad experience. Such measures consist of means-tested benefits that are conceived as the last resort of social protection, i.e. the ultimate “safety net” that aims to prevent extreme hardship and protect single persons and households from severe poverty (Vintila and Lafleur 2020). The Indian Community Welfare Fund (ICWF) that has been introduced above is meant to assist Indian nationals abroad in times of distress and emergency – though as discussed above on a discretionary basis. Under the ICWF, consulates can provide distressed nationals abroad with boarding and lodging in a budget category or in shelters run by the Indian mission or an NGO empanelled with the mission. It can also pay for air passage to India for stranded overseas Indian nationals, as well as legal assistance for Indian nationals abroad who have committed minor crimes, offences or have been falsely implicated by their employer and put in jails. The consulate can further provide legal and financial assistance to Indian women, who were abandoned, cheated, or abused by their NRI/PIO or foreign spouses. It can also pay small fines and penalties in respect of Indian nationals for minor offences, such as for illegal stay in the host country where *prima facie* the worker is not at fault, and to enable release of Indian nationals from jail or a detention center. There are no regional policies or schemes to cover such resources.

<sup>30</sup>On dual citizenship in India, see Naujoks (2013). For more details, see MEA (2019g).

<sup>31</sup>Cf. Citizens (Registration at Indian Consulates) Rules 1956, in exercise of the powers conferred by Sections 18(1) & 2(f) and 5(1)(b) of the Citizenship Act, 1955. For more details, see MEA (2019f).

## 9.4 Conclusions

As the country with the world's largest emigrant population and a long history of international mobility, India has adopted a multi-faceted institutional and policy framework to govern migration and diaspora engagement. However, India is also a developing country with a large domestic population and severe development challenges at home. Almost 300 million people are considered poor by national poverty standards<sup>32</sup> and its per capita Gross Domestic Product of USD 7,000 places it between Angola and Uzbekistan.<sup>33</sup> This means that India experiences significant budgetary limitations when it comes to establishing meaningful social and legal protection system and diaspora engagement strategies. While there is not an urgent need to spend scarce resources on skilled and highly skilled emigrants in the US, Canada, Australia, Europe or other parts of the world, social protection schemes focus on low-skilled Indian migrants. For this reason, it makes sense that policies focus on the emigrant populations that reside in countries in the Gulf region, which do not have strong social protection systems for their large immigrant populations (Rajan 2017). Other diaspora engagement strategies focus on more socially integrated and often economically richer diaspora communities. Thus, India's differentiated approach takes into account the various socio-spatial positionalities of specific Indian migrant and diaspora populations.<sup>34</sup>

Gamlen (2014) conceptualized three rationales for establishing diaspora engagement policies. States can attempt to *tap* into the potential they see from looking at resources in the diaspora; they can *embrace* diaspora populations as part of nationalistic strategies of nation-building or they can be prompted by international debates and *governance* discourses. All elements are present in India's engagement strategies. Déllano and Gamlen (2014, 44) argue that much recent interest in state-diaspora relations is linked to a resurgence in optimism about the relationship between migration and development. This can be confirmed for the case of India's engagement. While the major drivers seem to be the wish to tap into remittances and overseas employment opportunities, India also exemplifies the growing infrastructure around governing migration and a management approach to temporary migration. This appears to be based on domestic political pressures, the conviction that human rights issues of Indian migrants abroad create problems for the Government of India, as well as the international discourse on the protection of migrant workers.<sup>35</sup>

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<sup>32</sup>Based on the World Bank's "“lower middle-income”" poverty line, 660 million people in India were living below this poverty line in 2015 and 176 million were living in extreme poverty (World Bank 2018).

<sup>33</sup>2019 Gross domestic product based on purchasing power parity (PPP) and current USD, according to World Bank's World Development Indicators.

<sup>34</sup>Koinova (2018) highlights the importance of diaspora actors' socio-spatial positionality, as their power deriving from linkages to homeland, host-land and a variety of other global contexts.

<sup>35</sup>While this observation is based on the author's long-stranding research on policy processes in India (see Naujoks 2010, 2013, 2018a), there are limitations to fully understand the black-box of what drives policies and how to meaningfully conduct a meaningful policy analysis of these issues.

Often India's diaspora policies are rather small in scale, indicating that a major objective of the policies is to announce said policies at government sponsored diaspora meetings, rather than actually having a measurable impact on outcomes (Naujoks 2013, 53). This is reflected in the relatively low budget that is available for such programs and in many cases the low number of beneficiaries.<sup>36</sup>

Endeavors to integrate migrants into development strategies in their countries of origin and destination is part of the global agenda for sustainable development (Naujoks 2018b). The Sustainable Development Goals (SDGs) that form the core of the globally agreed-upon development roadmap stress the importance of implementing social protection measures for all, social protection policies to achieve greater equality, and achieving universal health coverage for all.<sup>37</sup> Combined with the SDGs' call for well managed migration policies,<sup>38</sup> India and other countries of emigration may expand the scope and quality of their programs targeting migrant workers and their families.

In May 2018, during the regional election in the state of Karnataka, only six non-resident voters participated in the process.<sup>39</sup> During the 2019 general election, some 900 million voters were eligible to cast their vote in India. It is obvious that an additional ten million Indian voters from abroad would not be able to substantially alter the outcome of a national election. However, since Indians have to return home on election day to exercise their vote, very few have availed themselves of this possibility. While close to 100,000 NRIs had registered as voters, the Indian Election Commission reported that only 25,000 of them voted – 98% of which in Kerala and only 4% were women.<sup>40</sup> As mentioned above, the previously introduced bill to allow proxy voting for NRIs has lapsed. It remains to be seen what reforms India will introduce to provide meaningful political participation for citizens residing abroad and whether more political power for NRIs will also lead to more comprehensive and extensive social policies for Indian nationals living outside of India.

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<sup>36</sup> Kapur and Nangia (2015) show that India's general social welfare policies have focused more on specific social protection programs than on the expansion of basic public services. As one of the possible explanations, the authors suggest that this may be the case as such programs have a stronger 'visibility,' as they are observable outcomes, which is connected to the more limited nature of their stated goals.

<sup>37</sup> See SDG targets 1.3, 3.8, and 10.4, respectively.

<sup>38</sup> See SDG target 10.7.

<sup>39</sup> Times of India, "Pravasi peeve: Despite Election Commission drive, only 6 NRIs registered to vote,"

April 24, 2018, <https://timesofindia.indiatimes.com/india/pravasi-peeve-despite-election-commission-drive-only-6-nris-registered-to-vote/articleshow/63890252.cms>

<sup>40</sup> Economic Times, "25,000 of 1 lakh overseas Indians registered in e-rolls voted in LS polls: EC," October 20, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/25000-of-1-lakh-overseas-indians-registered-in-e-rolls-voted-in-ls-polls-ec/articleshow/71673081.cms?from=mdr>. In August 2017, only 24,000 NRIs had registered as voter with the Indian Election Commission and it is estimated that only 12,000 of them voted, see Economic Times, "Only 24,000 overseas Indians have registered as voters," August 13, 2017, <https://economictimes.indiatimes.com/nri/nris-in-news/only-24000-overseas-indians-have-registered-as-voters/articleshow/60043359.cms>

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# Chapter 10

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Lebanon



Paul Tabar, Andrew Denison, and Maha Alkhomassy

### 10.1 Overview of the National Social Security System and Main Migration Features in Lebanon

The purpose of this chapter is to analyze the legal framework regulating Lebanon's welfare system for Lebanese nationals living at home or abroad and foreigners residing in the country. Five specific policy areas will be outlined: unemployment; health care; pensions; family benefits; and guaranteed minimum resources.

#### 10.1.1 *Main Characteristics of the National Social Security System*

The fragmented and decentralised nature of Lebanon's welfare system has resulted in significant segments of the population maintaining comprehensive protection, partial protection, no protection or restrictive protection based on ad hoc schemes provided by third parties. The National Social Security Fund (NSSF)<sup>1</sup> was created in 1963 under the tutelage of the Ministry of Labour (MoL) and the Ministry of Social Affairs (MoSA).<sup>2</sup> The original aim of the fund was to establish a universal mandatory insurance scheme following the French model. Although the NSSF

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<sup>1</sup><https://www.cnss.gov.lb/>

<sup>2</sup>Decree No. 13955 of 1963 established the Social Security Law. It is the primary governing law from which the social protection schemes derive.

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maintains financial and administrative independence, it is ultimately controlled by the Presidency of the Council of Ministers (PCM) and the MoL. The NSSF is primarily financed through monthly contributions by the employer<sup>3</sup> and employee based on a percentage of the employee's earnings up to a monthly revenue of 1,500,000 Lebanese Liras (LBP) (US\$ 1000, except for end-of-service indemnity benefits which has no ceiling) and government subsidies. The NSSF covers: (i) *Health and Maternity Insurance*<sup>4</sup> – financed by employer contributions at 8% and employee contributions at 3%<sup>5</sup> (in addition, government subsidies amount to 25% of the total expenditures of the health and maternity insurance); (ii) *Family and Education Allowances*<sup>6</sup> financed by employer contributions at 6%; (iii) *End-of-Service Indemnity*<sup>7</sup> – financed by employer contributions at 8.5% (with 0.5% goes towards NSSF administrative costs) (Rached 2012; Ammar 2009; EGYM 2017).<sup>8</sup>

For the approximately 50% of Lebanese without formal social protection insurance, the Ministry of Public Health (MoPH) provides some degree of health care protection (MoPH 2016; Ajluni and Kawar 2015).<sup>9</sup> Otherwise, those that are uninsured must rely on out-of-pocket expenditures for any medical services not covered by the MoPH.<sup>10</sup> The MoPH is financed by the Ministry of Finances' treasuries which amount to approximately 1% of GDP. In terms of the total government budget, it has not exceeded 4% in any given year up until 2005 (Nasnas 2016; Ammar 2009).<sup>11</sup>

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<sup>3</sup>Private employers with over 10 employees are required to submit reports and pay contributions every 3 months. Larger enterprises with more than 10 employees are required to do so on a monthly basis.

<sup>4</sup>Health and maternity insurance is governed by Decree. No. 14035 issued on the 16th of March 1970. It was amended by Decree No. 5101 on the 24th of March 2001.

<sup>5</sup>NSSF issued Law No. 27 dated on the 10th of February 2017 followed by Decision No. 224 dated on the 12th of July 2017 issued by the MoL and their application memo No. 559 dated on the 24th of July 2017 which increased the health and maternity contributions by 1% for employer and employee (2% in total).

<sup>6</sup>Family and education allowances are governed by Decree No. 2957 dated on the 20th of October 1965.

<sup>7</sup>End-of-service indemnity is governed by Decree No. 1519 dated on the 24th of April 1965.

<sup>8</sup>There are a number of additional social protection schemes for different segments of the population (i.e. Civil Servants Cooperative and various schemes for military/security institutions).

<sup>9</sup>Ministry of Public Health: <https://www.moph.gov.lb/en>

<sup>10</sup>From 1998, Lebanon was spending 12.4% of its GDP on health and out-of-pocket payments which constituted 60% of total health spending. This was among the highest in the Eastern Mediterranean region. Importantly, with the utilisation of preventative, promotive and curative services, especially among poorer Lebanese, total health spending as a share of GDP has fallen from 12.4% to 8.4% and out-of-pocket spending as a share of total health spending fell from 60% to 44% (WHO 2010).

<sup>11</sup>Importantly, in terms of budget and government revenue expenditures, there has been no formal state budget for Lebanon since 2005. Additionally, without any formal budgeting process over such an extended period of time, it is difficult for the MoPH to effectively coordinate or adapt to future conditions (MoPH 2016).

Finally, there are a number of ad hoc social protection programmes that have attempted to fill the gaps of Lebanon's social protection, especially after the 2011 Syrian crisis. Some examples are the National Poverty Targeting Programme (NPTP) and Public Employment Programmes (PEP). These are often funded by a variety of (international) non-governmental organisations, United Nations agencies and/or the assistance of national governments.

### ***10.1.2 Migration History and Key Policy Developments***

For over 150 years, Lebanon has experienced waves of emigration resulting from lopsided economic development, undemocratic communal politics and national/international conflict (Tabar 2015). The first wave of emigration occurred in the mid to late nineteenth century with a small number of mainly Christians who were sent to Rome in order to return and serve as clergy. Also, with increasing integration of British and French capitalist markets, a number of Lebanese Christians emigrated to the main centres of trade between Europe and the Near East, including Egypt, Livorno, Marseille and Manchester. The second wave is marked by rapid population growth with an increasing number of educated and skilled persons. By World War I, a third of the population (mostly Christian) had left the country in order to seek better economic opportunities mainly in North and South America, Australia, West Africa, Europe and New Zealand. The third wave of emigration occurred between 1945 and 1975, due to increasing political instability and economic deterioration from the Arab-Israeli war in 1967 and labour demands from the Gulf States. The fourth wave is marked by the onset of the Lebanese Civil War (1975–1989) with approximately 990,000 people leaving the country. This accounted for approximately 40% of the total population. This fourth wave of emigration led many Lebanese to flee primarily to Canada, Australia, the United States, France, Germany and the Gulf States (Tabar 2015). Since the 1990s, Lebanon has seen increased confrontations with Israel which resulted in the 2006 Israeli invasion, political instability, assassinations and civil strife, including the impacts of the Syrian civil war which began in 2011.

Presently, population growth, immigration, high levels of inactivity in youth, lack of demand for a skilled and educated workforce and low-standard working conditions are some of the *push* conditions that cause many Lebanese to emigrate abroad leaving a significant *brain drain* effect in the country.<sup>12</sup> Moreover, the Lebanese government has used migration outflows as a tool to ease unemployment pressure and increase the remittance flows back into the country (Hourani 2007). The impact of remittances from the Lebanese diaspora has resulted in approximately US\$ 7.3 billion in 2016 which amounted to about 14.1% of Lebanon's

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<sup>12</sup>According to a Gallup survey in 2010, an estimated 37% of Lebanese youth expressed their willingness to emigrate permanently. Moreover, approximately 50% of Lebanese emigrants have at least secondary education and an estimated 25% with tertiary education (ETF 2017).

GDP. This figure is considered to be among the highest in the world (KNOWMAD 2017). Ajluni and Kawar (2015) explain that these significant inflows of remittances to family members in Lebanon have impacted the activity rates of working-aged people which has limited the rate of unemployment and has led to the expansion of low productivity economic activities in the country.<sup>13</sup> Moreover, demographic numbers of Lebanese, whether in Lebanon or abroad, have major political implications which can affect the country's sectarian balance and disrupt sect-based power-sharing arrangements. De Bel-Air (2017) estimates that 885,000 Lebanese migrants, either first-generation or born in Lebanon, are residing abroad as of 2014. Of these, 41% reside in the Gulf States, 23% in North America, 21% in Europe (including Norway and Switzerland) and 16% in other countries including Australia and Brazil. Moreover, given the selective process of immigration, Lebanese emigrants are almost twice as educated as non-migrants with at least 25% maintaining tertiary education (De Bel-Air 2017; ETF 2017).

Lebanon, also being a country of immigration, has experienced inflows of migrants and refugees over the years. The twentieth century witnessed the immigration of Armenians fleeing genocide from the Ottoman empire in the early 1900s, Palestinians fleeing Israeli occupation since 1948, Iraqis escaping Iraq from the Gulf wars in 1990–1991 and early 2000s and more recently Syrians fleeing the civil war since 2011. Furthermore, there are a number of migrant populations working under the *kafala*<sup>14</sup> system from Ethiopia, Bangladesh, Sri Lanka and Indonesia.

Since it is rather difficult to provide accurate figures on the number of foreigners residing in Lebanon, most statistics derive from research conducted by international non-governmental organisations. In 2015, a total of 209,647 foreign labour work permits were issued by the MoL. The largest groups of legally registered foreign workers are Ethiopians (73,419), followed by nationals of Bangladesh (49,136), the Philippines (23,606) and Sri Lanka (8,867) (De Bel-Air 2017). Palestinians, although the majority were born in Lebanon, are considered foreigners. There are approximately 300,000–350,000 Palestinians in Lebanon, including the 42,000 Palestinians from Syria (De Bel-Air 2017; UN and GoL 2017; Chaaban et al. 2010). Syrian nationals currently constitute the largest foreign group in Lebanon. Although the Lebanese government has claimed the figure of 1.5 million Syrians in Lebanon since 2016, the UNHCR states that there are 950,000 registered Syrian refugees, 14,000 Iraqi refugees and almost 2,000 Sudanese refugees in the country (UN and GoL 2017; UNHCR 2019). Additionally, it is quite challenging to estimate the number of unregistered Syrians residing in Lebanon.

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<sup>13</sup>Remittances are mainly used by individuals and families for consumption and to raise their standard of living. According to a mini-survey conducted by Barendse et al. (2006), researchers found that 56% of respondents used remittances for 'daily expenses,' 24% on school fees, 10% were used for investments and 5% for the building of a house.

<sup>14</sup>The *kafala* system is a work-sponsorship system in Lebanon which is applied to mainly construction and domestic workers and other unskilled labourers. The *kafala* system has been criticised for facilitating exploitation of foreign workers as employers oftentimes hold the employees' passport with employees having little legal protection.

Emigration, for many Lebanese, has been a vital social ‘safety net,’ particularly for the most vulnerable segments of the population (i.e. elderly, unemployed). The absence of decent-pay employment, poor infrastructure, anaemic social protection, a lack of essential services like water and electricity and a persistence of domestic and international crises cause many Lebanese to emigrate. Regularly, those who have the economic means (i.e. formal employment) enjoy the protection and security of social protection schemes. In tandem, foreign nationals from a limited number of wealthy countries are eligible by law to enrol in the social protection schemes. Nevertheless, it is the most vulnerable migrants (refugees, displaced, domestic workers) who are left with little protection, as explained below.

## 10.2 Migration and Social Protection in Lebanon

Technically, all formal employers are required to register their employees with the NSSF. This includes full-time employees of the private sector and contractual employees in the public domain. NSSF benefits are also extended to employees’ dependents (unemployed spouse, children and parents over the age of 60). Self-employed Lebanese nationals have the choice to voluntarily join the NSSF.<sup>15</sup> Unemployed Lebanese nationals or those working abroad are excluded from participating in the NSSF. Foreign employees working in Lebanon with a valid work permit and residency permit are entitled to join the NSSF only if their country of nationality offers equal treatment to Lebanese workers as stipulated by Article 9 of the 1963 Social Security Law. Officially, only four countries meet this criterion: France, Belgium, the UK and Italy (IDAL 2016). According to Nasnas (2016), there were an estimated 34,000 non-Lebanese insured in the NSSF’s sickness and maternity branch in 2012. Additionally, foreign employees are not entitled to end-of-service benefits. For those Lebanese nationals registered with the NSSF, their benefits are not exportable.

The exception to these particular regulations are the Palestinians in Lebanon.<sup>16</sup> They remain a special category of foreigners as the 1964 law<sup>17</sup> classified them as foreigners in the Lebanese labour market, thus obliging them to obtain a work permit prior to employment. Furthermore, because of Article 9 of the 1963 Social Security Law (the stipulation of reciprocity of treatment for social protection by a foreign state), the Palestinians’ status as foreigner and stateless does not allow the

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<sup>15</sup>As self-employed Lebanese may join the NSSF on a voluntary basis, according to Ammar (2009), voluntary adherents have never surpassed 6.5%.

<sup>16</sup>Over 90% of Palestinians were born in Lebanon. The remaining 10% consist of the older generation who were born in Palestine but were forced to flee in 1948 — known as the *Nakba* (“catastrophe”) (Al-Nashif and El-Khoury 2012). The Government of Lebanon considers Palestinians in Lebanon as refugees.

<sup>17</sup>Ministerial Decree No. 17561 of 1964.

eligibility of enrollment in the NSSF. (Al-Nashif and El-Khoury 2012).<sup>18</sup> In 2010, the House of Representatives approved an amendment of the Social Security Act which exempted Palestinians from paying the work permit fees, cancelled the principle of reciprocity and provided Palestinians end-of-service benefits by the NSSF. Palestinians and their employers registered with the NSSF are required to pay full social protection contributions while still being deprived of health and maternity insurance and family and education allowances (Solidar 2015; Abi Yaghi 2014).<sup>19</sup>

There is no comprehensive public non-contributory social protection scheme in Lebanon. Citizens who are unemployed, the often self-employed and foreigners residing in Lebanon are generally left without any semblance of public social protection. Furthermore, given the high degree of informality in the labour market, a significant number of Lebanese workers do not maintain access to formal social protection benefits at all. However, the MoPH does provide non-exportable health care to resident Lebanese nationals that are uninsured by covering what is considered as ‘catastrophic’ health care payments (Ammar 2009; WHO 2006).<sup>20</sup> However, foreign residents cannot access these benefits. The MoSA is also responsible for coordinating social protection in Lebanon and is in charge of implementing a program called The National Poverty Targeting Program (NPTP) launched in 2011. The NPTP provides a combination of social assistance and social service provisions (partial medical bill payments, school fee waivers, free books, food assistance) to ‘extremely poor’ Lebanese citizens (Kukrety 2016).<sup>21</sup> In order to access these provisions, Lebanese citizens must register with the nearest Social Development Centre (SDC).<sup>22</sup> A Proxy Means Test formula is applied to determine their ‘poverty level’ and whether they are able to register as beneficiaries.<sup>23</sup>

Lebanon is also a member of several regional integration organizations including: the Arab League; the Union for the Mediterranean (UfM); the Organisation of Islamic Cooperation (OIC); the Parliamentary Union of the OIC Member States (PUIC); and the International Organisation of the Francophonie (OIF). However,

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<sup>18</sup>95% of Palestinians in Lebanon possess a Lebanese-Palestinian passport (known as a *Wathika*). Additionally, 96% also maintain a UNRWA card which claims they are registered with the Ministry of Interior’s General Directorate of Political and Refugee Affairs (Al-Nashif and El-Khoury 2012).

<sup>19</sup>Despite the legal reforms in 2010, Palestinians who obtain work permits are very low. One primary reason for this is because the issuance of a formal work permit automatically entails the commitment to register with the NSSF. Approximately less than 2% of Palestinians in Lebanon have a work permit (Al-Nashif and El-Khoury 2012).

<sup>20</sup>‘Catastrophic’ payments are considered emergency hospital care and expensive medication and treatment for diseases such as cancer, mental illness, multiple sclerosis and other financially complicated diseases.

<sup>21</sup>According to figures from the MoSA, as of June 2015, approximately 160,985 Lebanese households had applied for benefits from the NPTP.

<sup>22</sup>Social Development Centres (SDCs) are local centres distributed throughout Lebanon and are designed to implement the social development policies of the MoSA.

<sup>23</sup>The MoSA reaches around 350,000 beneficiaries yearly through SDCs or contracting NGOs and welfare institutions (World Bank 2013).



only some of these organisations aim to make progress in the field of social security. For instance, the Council of Arabic Economic Unity (CAEU) of the Arab League aimed to coordinate legislation concerning labour and social security.<sup>24</sup> However, Lebanon has not enacted nor made significant progress in terms of social security coordination. As for the UfM, the Euro-Mediterranean Partnership Agreement addresses some key issues regarding social protection.<sup>25</sup> Yet, the EMP does not go beyond the arrangement of ‘dialogue’ on core issues of social protection and on the coordination and extension of social security benefits to migrants of member states in Lebanon (Ayadi and Gadi 2013; García de Cortázar Nebreda 2016).

### 10.2.1 Unemployment

Lebanon does not have a formal scheme of unemployment insurance or assistance. Those who are employed and enrolled in the NSSF receive an end-of-service indemnity (ESI) if they retire or lose their job. If the employee loses their employment prior to completing at least 20 years of service, s/he is subject to a reduction schedule of entitlements (Jarmuzek and Nakhle 2018).<sup>26</sup>

As a result of the impact from the Syrian crisis, Lebanon’s Gross Domestic Product (GDP) fell from an average of 9% during 2007–2010 to less than 2% per year since 2011 (World Bank 2015; Nasnas 2016). It is estimated that due to the Syrian crisis, some 200,000 additional Lebanese have been pushed into poverty adding to the existing 1 million poor in the country. Furthermore, an additional 250,000 to 300,000 Lebanese are estimated to have become unemployed (World Bank 2018). Consequently, a burgeoning of Public Employment Programmes (PEP) have developed to mitigate the impacts of increasing unemployment. Specifically, cash-for-work (CfW) programmes are short-term interventions used by humanitarian assistance organisations to provide temporary employment in public projects to the most vulnerable segments of the population (Mercy Corps 2007). As a number of differing organisations implement CfW programmes, most decisions regarding beneficiaries are taken by the organisations themselves. CfW programmes are often extended to displaced Syrians and Palestinians from Lebanon or Syria. Of the estimated 300,000 to 350,000 job opportunities programmes like PEPs are expected to create, the Republic of Lebanon has stated 60% will be for displaced Syrians living in Lebanon (Republic of Lebanon 2016).

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<sup>24</sup> See Article 2 and Article 9 of the Agreement of Economic Unity Among Arab States.

<sup>25</sup> See Article 65(2) of the Euro-Mediterranean Partnership Agreement.

<sup>26</sup> The reduction schedule of ESI entitlements for less than 20 years of service are the following: less than 5 years contribution, 50% reduction; between 5 and 10 years contribution, 35% reduction; between 10 and 15 years contribution, 25% reduction; between 15 and 20 years contribution, 15% reduction.

### 10.2.2 Health Care

For Lebanese formally employed, the NSSF is the most important source of public health care providing 90% of hospitalisation costs and 80% of medical consultations and medication. NSSF benefits also extend to the dependents of the insured. Hospital admission is secured through the insured's physician and reviewed by NSSF medical inspectors. Outpatient care is paid by patients and later reimbursed by the NSSF; however, these reimbursement procedures have been criticised as tedious, time-consuming and bureaucratic. This has led many insured Lebanese to forego their claims due to the hassle of obtaining their reimbursements (Kronfol 2002). NSSF health care benefits are not exportable to other countries. Foreigners may enrol in the NSSF's health care insurance only if they originate from a country which provides the reciprocity of treatment for Lebanese nationals (i.e. France, Belgium, the UK and Italy).

The MoPH has evolved from its original role of providing health care to the poor to become a non-contributory safety net for all non-insured Lebanese (otherwise known as the 'insurer of last resort').<sup>27</sup> It covers 'catastrophic' health care payments like hospitalisation, expensive medication and the costs of treatments for chronic diseases (Al-Nashif and El-Khoury 2012). The MoPH is also a key facilitator for health care centres in Lebanon.<sup>28</sup> Through this public-private or 'blended' organizational management, the MoPH is able to ensure a (primary medical) safety net and provide an alternative for secondary care to the uninsured (MoPH 2016). Under the MoPH, hospital care is covered up to 85% at private hospitals and 95% at public hospitals.<sup>29</sup> A significant structural weakness of the MoPH's health care relates to its almost exclusive focus on service provision, with a limited role in prevention, planning and regulation (Salti et al. 2010).

For migrant domestic workers (i.e. Sri Lankan and Indonesian), health insurance is mandatory, however, they are unable to obtain NSSF benefits or to benefit from the MoPH's health care. Their employers must obtain health insurance via private providers before they are able to obtain a work permit (General Directorate of General Security 2019). For Palestinians living in Lebanon, the United Nations Relief and Works Agency (UNRWA) is the only provider of health coverage. UNRWA currently operates 28 primary health care facilities in Lebanon. It has also formed an arrangement with the Palestine Red Crescent Society hospitals to further provide equal access to secondary health care (UNRWA 2019).

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<sup>27</sup>Those without medical insurance and rely on the MoPH include over 30% of the population (Nasnas 2016).

<sup>28</sup>There are approximately 1080 health care facilities providing unpaid medications, vaccines and access to advanced medical equipment.

<sup>29</sup>Private hospitals account for 82% of Lebanon's total capacity (El Khoury et al. 2012). The number of publicly-run hospitals in Lebanon is 29 (UN and GoL 2017).

### 10.2.3 Pensions

Lebanon's primary pension scheme follows a defined-contribution system administered by the NSSF. The NSSF provides an end-of-service indemnity (ESI) which offers a one-time lump-sum cash benefit equivalent to the accumulated contributions associated with past employers and one month of earnings for each year of service with final employer.<sup>30</sup> ESI recipients primarily include private sector contractual and wage-earning employees and contractual government employees whose employment was terminated due to reaching the retirement age (60–64 years of age) or disability.<sup>31</sup> The self-employed may also voluntarily subscribe to the NSSF. Eligibility for full ESI benefits requires an employee to accumulate at least 20 years of service in Lebanon otherwise a reduction schedule on the benefits will be applied. Although foreign employees are entitled to join NSSF, they are not eligible for ESI benefits. However, ESI benefits are extended to Palestinians in Lebanon with a valid work permit. Yet, upwards of 98% of Palestinians are not enrolled in such formal employment mainly due to regulations requiring them and their employers to contribute to all social protection branches of the NSSF, yet *only* receiving the ESI benefits.

All NSSF benefits are terminated after the lump-sum payment leaving many retirees with no pension or health care coverage.<sup>32</sup> Furthermore, employers face substantial economic strain when an employee retires primarily because of the lump-sum cash that is paid out in addition to the contributions made to the NSSF (Rached 2012).

### 10.2.4 Family Benefits

In Lebanon, maternity benefits are granted to all women registered with the NSSF. Women may also receive maternity benefits if a family member (i.e. father or husband) is enrolled in the NSSF and includes her as a beneficiary. To become eligible for maternity benefits, individuals must have been under the NSSF's insurance coverage for at least 10 months prior to the scheduled delivery date. Maternity benefits are granted for 10 weeks and the amount paid is equal to two thirds of the average working day. There are no paternal benefits in Lebanon.

In terms of family allowances, families receive 33,000 LBP (US\$ 22) monthly for every child from the moment s/he is born, up to five children. In the case that

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<sup>30</sup>One month of earning for every year of service up to 20 years and 1.5 months for every year after.

<sup>31</sup>Taxi drivers, newspaper and magazine vendors, local councillors and permanent agricultural workers are also included as well.

<sup>32</sup>According to PAPFAM data, 74.8% of elderly Lebanese derive their income from their children (Tohme et al. 2010) with more than 80% of Lebanon's population over 65 having no pension or health care coverage (Ajluni and Kawar 2015).

both parents are insured by the NSSF, family allowances are not paid twice for the same child. Child allowances are granted up to 18 years for sons (or 25 years if they are still studying) and 25 years for daughters unless they are married before this age.

Only mothers permanently residing in Lebanon are allowed to access maternity benefits.<sup>33</sup> Maternity and family benefits are extended only to employed foreigners originating from a country that maintains reciprocity of treatment for Lebanese nationals (France, Belgium, the UK and Italy). In order to receive family allowances, the family members of the insured should be residing in Lebanon.

### 10.2.5 *Economic Hardship*

Lebanon does not maintain any guaranteed minimum resources nor a comprehensive non-contributory welfare scheme to protect the most vulnerable Lebanese at home, abroad or foreign nationals living in Lebanon from economic hardship. However, the National Poverty Targeting Program (NPTP) is the first poverty-targeted social assistance program aiming to “provide social assistance to the poorest and most vulnerable Lebanese households based on transparent criteria that assess each household’s eligibility to receive assistance” (Presidency of Council of Ministers 2016).<sup>34</sup> The NPTP was originally launched in October 2011, but since the Syrian crisis persisted, it was relaunched as the *Emergency* NPTP (ENPTP) in 2014 (Kukrety 2016).<sup>35</sup> Both the NPTP and the ENPTP provide social protection only for Lebanese nationals (MoSA 2013). Foreigners, including Palestinians, are not eligible to enrol in this programme nor are these benefits exportable. For Lebanese households (or single individuals) to benefit from the ENPTP, their ‘poverty level’ must be assessed by a Social Inspector. This assessment takes into account the applicant’s standard of living based on employment status, level of education, marital status, physical ability, housing condition, assets owned and their geographic location (Kukrety 2016). If deemed below the determined poverty threshold, the head of the household is given a *Halla* card which provides them access to education and health benefits at any of the 220 SDCs or local clinics and from the Ministry of Education and Higher Education. Benefits are provided for a three-year period before a reassessment is conducted.<sup>36</sup>

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<sup>33</sup>The only exception for residing abroad while being eligible to receive maternity benefits is that if the company is registered and the work contract is signed in Lebanon but are temporarily working abroad.

<sup>34</sup>Quotation originates from cabinet policy statement on the NPTP which established the program (18th of June, 2009).

<sup>35</sup>As of October 2016, the Government of Lebanon estimates that approximately 1.5 million Syrians were residing in Lebanon. This amount to almost a quarter of Lebanon’s population (UN and GoL 2017).

<sup>36</sup>According to the World Bank (2016), the ENPTP remains limited in scope and coverage reaches less than 10% of the population.

### 10.2.6 *Obstacles and Bilateral/Multilateral Social Security Agreements*

Foreigners originating from certain countries (i.e. US, Canada, EU Member States, etc.) do not require a pre-approved visa to enter Lebanon. A cost-free visa up to 3–6 months is granted upon entry into the country. However, for other nationalities (including Indonesia and Sri Lanka), a previous authorisation by the General Directorate of General Security of Lebanon is required before granting an entry visa.<sup>37</sup> Once arriving in Lebanon, foreigners must apply for work permits from the MoL and residency permits from the General Directorate of General Security. Domestic workers (i.e. Indonesian and Sri Lankan migrants) in Lebanon are specifically required to obtain their residency and work permits following an alternative set of guidelines.

The procurement of social benefits from Lebanon appears to have no effect on residence permits, family reunification or naturalisation of foreigners<sup>38</sup> in the country. This is primarily because proper legal documents (i.e. residency and work permits) must be established before foreigners may attain social protection benefits from the NSSF (the only scheme they are eligible to partake).

The greatest obstacles rest on the approximate 300,000–350,000 Palestinians residing primarily in Palestinian refugee camps and surrounding ‘gatherings’ (De Bel-Air 2017; UN and GoL 2017; Chaaban et al. 2010). Although over 90% of Palestinians in Lebanon were born in the country, they are still considered as foreigners and excluded from the social, economic and political life of the country, including social protection. What little social protection that is provided to Palestinians (i.e. health care) comes primarily from UNRWA.<sup>39</sup> With the effectiveness of UNRWA often hindered by its reliance on aid money, it endeavours to provide Palestinians with essential assistance in the areas of shelter, infrastructure, education, health care and some limited welfare services (Chaaban et al. 2010; Al-Nashif and El-Khoury 2012). Lebanese have strongly opposed the nationalisation (or *tawteen*) of Palestinians. Their position on the ‘right to return’<sup>40</sup> of Palestinians has been used to justify discriminatory and restrictive economic, social and civil policies for over 70 years. Additionally, the debate on naturalisation has been a taboo subject for almost all political parties with any discussion examining

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<sup>37</sup> For a list of countries and their respective visa requirements, visit: <http://www.general-security.gov.lb/en/posts/38>

<sup>38</sup> There has been no major citizenship reform since 1924, and access to citizenship for foreign residents does not depend on established administrative rules and processes but rather on ad hoc political decisions (Jaulin 2014).

<sup>39</sup> Palestinians in Lebanon also receive assistance from around 46 Arab organisations and 20 NGOs. However, the assistance pales in comparison to that of UNRWA (Chaaban et al. 2010).

<sup>40</sup> The ‘right to return’ is the political position or principle which states that Palestinians (whether first-generation or their descendants) have the right to return to the land they were displaced from. Lebanon, for example, argues that providing citizenship to Palestinians could inhibit them from returning to Palestine.

the economic, social and civil rights of Palestinians becoming disrupted by rival accusation of promoting *tawteen*; an act considered virtually treasonous within the political discourse (Chaaban et al. 2010).

According to Article 9 of the Social Security Law of 1963, foreign wage-earners and salary-earners are able to benefit from the NSSF if they hold a valid residency and work permit and originate from countries which grant Lebanese nationals equal or better social protection (Social Security Law of 1963, 2007). Currently, Lebanese authorities have approved France, Belgium, the UK and Italy as countries which meet the reciprocity of social protection criteria stipulated by the Social Security Law. Furthermore, the Euro-Mediterranean Partnership Agreement (EMP) was signed by Lebanon in 2002 with the final draft coming into force in 2006. However, unlike EMP agreements signed with other states (i.e. Algeria, Morocco, Tunisia) Lebanon's EMP agreement does not go beyond the arrangement of 'dialogue' on issues pertaining to social protection and includes no reciprocal cooperation in the area of social protection (García de Cortázar Nebreda 2016; Ayadi and Gadi 2013).

### 10.3 Conclusions

The fragmented and decentralised nature of Lebanon's social protection schemes has left upwards of half the population without any comprehensive social protection. Specific groups (i.e. Palestinians, elderly, migrants) inhabit an even more precarious position due mainly to restrictive policies in place or an impasse on inclusive policies to provide protection for larger segments of the population. The lack of social protection coverage, coupled with a number of other deficiencies, has both historically and presently motivated many Lebanese to seek better opportunities and security abroad. For many Lebanese households, having a family member or close friend residing abroad has been an indispensable source of social and economic protection from the country's instability. For foreigners residing in Lebanon, the only social protection scheme they can benefit from is the NSSF. However, due to the limiting stipulations from the reciprocity of treatment for social protection from the Social Security Law of 1963 (Article 9), only citizens from France, Belgium, the UK and Italy are able to formally benefit. Lebanon has regularly posited itself *not* as a country of immigration nor refuge.<sup>41</sup> Most migrants and refugee communities are often perceived as a burden on infrastructural needs, security concerns and economic opportunities. Most importantly, the tenuous sectarian balance pervasive in the country is cited as a primary reason for the lack of social protection and naturalisation rights for many migrants. Lebanese authorities have tacitly and explicitly stressed the concern about providing particular services and/or rights to migrant populations for trepidation that they may not leave the country.

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<sup>41</sup> Lebanon is not signatory to the 1951 Convention Relating to the Status of Refugees nor its 1967 Protocol.

In 2004, the office of the Prime Minister and the MoL drafted a bill which proposed changes to the ESI component of the NSSF and provided key redistributive measures to mitigate vulnerability from employees with poor earnings, the risk of longevity and unemployment. In 2011, the MoL proposed another draft bill to adopt a “Notional Defined Contribution” system where individuals pay contributions from their salary and fund benefits for the retired population. Each individual would maintain a ‘notional account,’ and upon retirement, beneficiaries would receive at least 40% of wages. However, none of these draft laws have been passed. Also, Lebanon moved towards implementing comprehensive and universal health care coverage in 2012. The Comprehensive Health Project was presented by the Minister of Labour with the explicit objective to unify and include all Lebanese under one non-contributory health care system. However, this too has yet to be implemented (Nasnas 2016).

As discussed previously, the NPTP (and the ENPTP) has been implemented as a short-term social assistance program meant to alleviate the economic and social difficulties stemming from the Syrian crisis. Recently, the Government of Lebanon has been looking into legally institutionalising the NPTP as a permanent feature of Lebanon’s social protection system. Although the draft law is still under discussion, this would constitute a significant step in providing vulnerable Lebanese a social safety net (World Bank 2016).

For the approximate 270,000 Palestinians in Lebanon, UNRWA is the only institution to provide some semblance of social protection. Because Palestinians are considered foreigners in the country (irrespective of the overwhelming majority being born in Lebanon), they are not entitled to any social protection afforded to Lebanese citizens. The UN (2019) has stated that UNRWA is facing “the greatest financial predicament in its history this year following the abrupt end to funding by the United States.” Pierre Krähenbühl, the Commissioner-General of UNRWA, further describes that the shortage of US\$ 446 million<sup>42</sup> has threatened the general education of 525,000 students, essential primary health care for 3 million patients and food assistance for 1.7 million refugees who fled difficult emergencies, including Syria. As of late, global funding campaigns are underway to assuage the substantial financial shortfall.

Finally, endemic in Lebanese institutions and administrations are sectarian and clientelist politics which have obstructed and hindered the development, modernisation and inclusivity of many vital institutions. The NSSF, for example, is not a public independent sector nor is it separated from the political Lebanese reality. In fact, their internal work practices and the recruitment processes are highly politicised and controlled by clientelist agendas (Abi Yaghi 2014). Even official figures containing the number of staff in government positions and ministries is classified information due to the sensitivity of the sectarian aspect (Mourtada n.d.). What Lebanon has managed to create in terms of social protection can be described as a ‘political safety net’ rather than an essential ‘social safety net’ which would

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<sup>42</sup>US\$ 446 millions accounts for approximately 40% of UNRWA’s operating budget (UN 2019).

overcome political or sectarian affiliation and provide a comprehensive and equitable welfare scheme to assist all segments of the Lebanese population and non-Lebanese residing in Lebanon.

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# Chapter 11

## Diaspora Policies, Consular Services and Social Protection for Lebanese Citizens Abroad



Paul Tabar and Andrew Denison

### 11.1 Introduction

This chapter aims to explain, firstly, the characteristics, infrastructure and key policies relating to the Lebanese diaspora; and secondly, an outline of the key social protection policies will be provided, specifically in the areas of unemployment, health care, pensions, family-related benefits and economic hardship by Lebanese authorities. Principally, the diaspora engagement policies reflect a concerted effort to increase investment, capital, tourism and other economic activities back into Lebanon. Until recently, Lebanon has also made efforts to engage politically with the diaspora. Repatriation and voting abroad were particularly important in terms of diaspora engagement as Lebanon underwent a national parliamentary election in May of 2018 with Lebanese nationals abroad having the right to vote for the first time in absentia. Yet, as Lebanon struggles to enact meaningful social protection policies for its own citizens at home, providing such social protection for Lebanese abroad has simply not been a priority for the government. The focus of diaspora engagement predominately in economic activities stems from the necessity of economic remittances, boosting tourism from visits to the homeland and creating businesses, trade and investment opportunities (Hourani 2007). Remittances not only constitute a significant portion of Lebanon's Gross Domestic Product (GDP), it also provides numerous citizens some semblance of a social safety net as well. Engagement with the diaspora politically will become more active in the future as the importance of the diasporic vote may not only impact the parliamentary election outcomes, but also disrupt the delicate sectarian balance of the political establishment.

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## 11.2 Diaspora Policy Infrastructure and Key Policies

A brief historical account of Lebanese emigration including a number of difficulties encountered with the diaspora will be summarised. Furthermore, infrastructure, central to the engagement with the diaspora, will be described along with key policies implemented by the government.

### 11.2.1 *The Lebanese Diaspora and Its Relations with the Homeland*

Accurate figures on the number of Lebanese emigrants and their characteristics are in large part fragmented and/or uncertain. Due mainly to historical controversies and political concerns over the true size of the Lebanese diasporic population, figures have differed drastically depending on how quantitative data is gathered, whether children and grandchildren of former migrants are considered and who may be collecting the data (MPC 2013).<sup>1</sup> Such concerns derive from the fragile political system which functions according to sectarian affiliation. Hence, demographic numbers of Lebanese, whether in Lebanon or abroad, have major political implications which can affect the country's sectarian balance and disrupt sect-based power-sharing arrangements. Nevertheless, De Bel-Air (2017) estimates that 885,000 Lebanese migrants, either first-generation or born in Lebanon, are residing abroad as of 2014. Of the 885,000 Lebanese migrants abroad: 41% reside in the Gulf States; 23% in North America; 21% in Europe (including Norway and Switzerland); and 16% in other countries including Australia and Brazil. Moreover, given the selectivity of many immigration countries, Lebanese emigrants are almost twice as educated as non-migrants with at least 25% maintaining tertiary education (De Bel-Air 2017; ETF 2017).

Historically, Lebanon has experienced waves of emigration for more than 150 years as a result of lopsided economic development, undemocratic communal politics and national and international conflicts (Tabar 2015). The first wave of emigration occurred in the mid to late nineteenth century with a small number of mainly Christians who were sent to Rome in order to return and serve as clergy. Also, with increasing integration of British and French capitalist markets, a number of Lebanese Christians emigrated to the main centres of trade between Europe and the Near East, including Egypt, Livorno, Marseille and Manchester. The second wave is marked by rapid population growth with an increasing number of educated and skilled persons. By the end of the late nineteenth century and with the collapse of the silk industry, the local population sought better economic opportunities abroad. By World War I, a third of the population (mostly Christian) had left mainly to North and South America, Australia, West Africa, Europe and New Zealand. Between 1945 and 1975

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<sup>1</sup>E.g. in 2009, the UN Lebanese national population estimates differed by almost 400,000 people.

constituted the third wave of emigration. Because of political instability and economic deterioration from the Arab-Israeli war in 1967 and also the demand of labour in the Gulf States, many Lebanese decided to emigrate. With the onset of the Lebanese Civil War (1975–1989), approximately 990,000 people left the country which accounted for 40% of the total population. This fourth wave of emigration led many Lebanese to flee primarily to Canada, Australia, the United States, France, Germany and the Gulf States (Tabar 2015). Since the 1990s, Lebanon has seen increased confrontations with Israel which resulted in the 2006 Israeli invasion, political instability, assassinations and civil strife. The Syrian civil war which began in 2011 has also put considerable strain on the Lebanese economy and infrastructure as well.

The long and complex history of emigration can help explain the rough estimation of 4–13 million Lebanese immigrants abroad. Furthermore, such numbers can become inflated due to the prevalence of urban myths, a natural desire to exaggerate the presence of the Lebanese diaspora and the difficulty of locating and disseminating accurate data (Muglia 2015; Joulin 2006). This brief historical account of Lebanese emigration can shed light on why there is a lack of meaningful engagement between state-diaspora relations. It is often the inability of the government to provide economic opportunities or protect its citizens from national/international conflicts. As emigration is often used as a means to flee conflict and find economic prosperity, the diaspora is often held up as the safeguard for many Lebanese at home. Economic investments, remittances, trade, etc. have been employed not only to provide a safety net, but also to stimulate the economy and for reconstruction and development efforts after conflict and war.

Presently, in most official capacities, Lebanese ministries and sub-ministries refer to Lebanese nationals abroad as such or as emigrants. However, the Minister of Foreign Affairs and Emigrants, Gebran Bassil, makes numerous references to Lebanese nationals, expatriates, co-ethnics or children of Lebanese parents as the “Lebanese Diaspora” as a means to stimulate engagement when encouraging investment or tourism in Lebanon. This is done, in particular, through the Ministry of Foreign Affairs and Emigrants’ engagement programme, the Lebanese Diaspora Energy.<sup>2</sup>

### ***11.2.2 Diaspora Infrastructure***

Lebanese diaspora infrastructure consists of consulate networks, government ministries and sub-ministries and consultative institutions which facilitate engagement with the diaspora. Within Lebanon’s top five destination countries, the consulate networks maintained are relatively sparse. The United States of America contains three consulates with three honorary consulates; Canada contains one consulate with one honorary consulate; Australia contains two consulates with two honorary consulates; Germany does not contain a consulate but does have one honorary

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<sup>2</sup> See the Lebanese Diaspora Energy webpage at <http://www.lde-leb.com/index.php>

consulate; and France contains two consulates with zero honorary consulates.<sup>3</sup> Furthermore, Lebanon does not support any mobile consular services to any of the top destination countries.

The primary Lebanese public institution and national authority relating to Lebanese nationals residing abroad is the Ministry of Foreign Affairs and Emigrants (MoFAE). Formerly the Ministry of Foreign Affairs, it was merged with the Ministry of Emigrants to create one entity.<sup>4</sup> Under the auspices of the MoFAE, Lebanon has two main sub-ministries which maintain specific mandates in addressing the needs of Lebanese nationals abroad: the General Directorate of Emigrants (GDE) and the Directorate of Political and Consular Affairs (DPCA). The General Directorate of Emigrants is primarily tasked with outreach activities as a means to boost and develop the cultural and educational bonds with Lebanese nationals abroad. It further attempts to serve the needs by acknowledging the importance of the contributions made by them. Moreover, the GDE pushes for Lebanese nationals abroad to be considered as *de facto* investors and should be provided the proper securities and incentives for increased contributions to the home country (Zbeeb 2015).<sup>5</sup> The Directorate of Political and Consular Affairs was established to provide the Lebanese nationals abroad assistance for important services including (but not limited to): renewal and authentication of official documents and passports; information on investment opportunities; registering and recording personal status related matters; and registration of voting abroad.<sup>6</sup>

The Economic and Social Council of Lebanon (CES) is a consultative body with its mission to develop inter-dialogue, cooperation and coordination within/among various social, economic and professional sectors and actors.<sup>7</sup> The CES formulates relevant economic and social policies for the Lebanese government to implement if they so choose. Although the CES primarily functions within Lebanon and between numerous sectors, associations, syndicates and vocations, it also seeks cooperation and coordination with expatriate institutions through the mobilisation of international conferences reckoning that dialogue between the CES and Lebanese nationals or expatriates abroad can enhance/facilitate collaboration.<sup>8</sup>

The Lebanese Diaspora Energy (LDE) was established in 2014 by the MoFAE as a means to encourage engagement with the Lebanese diaspora and the home country in order to stimulate investment and tourism in Lebanon. The LDE's major

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<sup>3</sup> See a complete list of Lebanese embassies and consulates at <http://www.lebanity.gov.lb/downloads/MF-List-Of-Embassies-EN-2016-08-17.pdf>. The MoFA does not maintain a comprehensive list of consulates.

<sup>4</sup> Law No. 247 of 2000 incorporated the Ministry of Emigrants and the Ministry of Foreign Affairs.

<sup>5</sup> The General Directorate's official website is [emigrants.gov.lb](http://emigrants.gov.lb). However, the website is not operational at this time.

<sup>6</sup> The Directorate of Political and Consular Affairs does not have an official website to provide information regarding its services or programmes.

<sup>7</sup> The Economic and Social Council of Lebanon (CES) was established by Law No. 533/096 in 1999.

<sup>8</sup> For more information on the Economic and Social Council of Lebanon's contributions see Nasnas 2016.

initiative is the organisation of annual international conferences at crucial locations where Lebanese nationals abroad are present.<sup>9</sup>

Since the passing of Lebanon's Parliamentary Election Law in 2008,<sup>10</sup> Lebanese nationals abroad have the right to vote. Registering to vote was done online via an application from the MoFAE or at the nearest Lebanese consulate. Voting abroad took place at designated polling centres most often at the consulates themselves. The most recent election and first to include Lebanese nationals abroad occurred in May 2018. A total of 46,799 votes were cast abroad (UNDP 2018). Most notably, the Lebanese Forces political party, the Free Patriotic Movement and the Syrian Socialist National Party (SSNP)<sup>11</sup> offered the most developed infrastructure in place for voter engagement of Lebanese nationals abroad. This infrastructure consists primarily of dedicated diaspora engagement within their official website in the form of information and donation portals. The Lebanese Forces provided a mobile phone application which helped facilitate information regarding how to register and vote, to connect with other Lebanese Forces supporters and to obtain donations.<sup>12</sup> The Free Patriotic Movement also maintains online websites providing news and information for voting and investment. Notably, the Minister of Foreign Affairs and Emigrants, Gebran Bassil, has also been the leader of the Free Patriotic Movement since 2015. The SSNP also has a directorate of foreign affairs with the role to establish connections and networks between Syria and the diaspora.

### 11.2.3 Key Engagement Policies

Although there has been no transversal strategy in which authorities respond to the social protection needs of Lebanese nationals abroad, there has been a concerted effort by government officials to not only stimulate economic activities between Lebanon and the diaspora, but also repatriate Lebanese expatriates abroad.<sup>13</sup> Since the drafting of the law that extends the Reacquisition of Lebanese Citizenship to the Descendants of Lebanese Emigrants in 2011 and passed by the Lebanese Parliament in 2015, significant effort has been focused on the acquisition of Lebanese citizenship to those who have either renounced their Lebanese citizenship or are

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<sup>9</sup> See LDE conference in Montreal <http://www.lde-leb.com/northamerica2018.php>

<sup>10</sup> Parliamentary Election Law (No. 25 of 2008).

<sup>11</sup> The SSNP is an active and secular political party operating in Lebanon, Jordan, Iraq, Palestine and Syria which advocates for a *greater* Syrian state based on historical and cultural boundaries of the Syrian nation-state. The party originated as an anticolonial organisation in Beirut in 1932.

<sup>12</sup> For more information on the Lebanese Forces app, visit <http://lebanese-forces.info/app/>

<sup>13</sup> See Lebanon's simplified citizenship programme; <http://www.foreign.gov.lb/Library/Assets/LEBANESE%20CITIZENSHIP%20PROGRAM.pdf>. Furthermore, see <http://www.lebanity.gov.lb/> whereby the MoFAE advocates the Lebanese diaspora to repatriate.

descendants of Lebanese emigrants.<sup>14</sup> As discussed earlier, the enactment of the 2008 Parliamentary Elections Law which guaranteed the right of Lebanese nationals abroad to vote has placed a focus to encourage Lebanese descendants and nationals abroad to register for elections in their home country. As mentioned previously, Lebanon's first election after implementing the Parliamentary Elections Law witnessed a total of 82,965 registered voters abroad with 46,799 Lebanese nationals actually voting (UNDP 2018). Comparing these figures to an estimated 885,000 Lebanese nationals abroad (first-generation, born in Lebanon) in 2014 and a roughly 4–13 million people of Lebanese descent worldwide in the Lebanese diaspora, Lebanese officials and political entities are fully cognisant of the latent and vast political and economic capital that will require harnessing and, subsequently, contending over (De Bel-Air 2017; Al Kantar 2016; Joulin 2006).<sup>15</sup> Therefore, boosting engagement with the Lebanese diaspora is of substantial importance particularly as overall remittances have been dropping over the last several years.<sup>16</sup> One example of such engagement is clearly seen with the MoFAE's organisation of LDE international conferences at locations with sizeable diaspora populations. The Lebanese government's strategy with regards to the LDE conferences has involved appealing to the nostalgia between Lebanon and the diaspora for deeper engagement and consequently increased economic and political capital back into the home country.<sup>17</sup>

Lebanon has also taken legislative steps to ease legal restriction on foreign property ownership. The Foreign Acquisition of Property and Property Rights in Lebanon is one such legislation designed to encourage investments in Lebanon, particularly in the industry and tourism sectors.<sup>18</sup> The law also lowers real estate registration fees for both Lebanese and foreign nationals (Zbeeb 2015). Encouraging Investment in Lebanon is another example of a law which provides a series of incentives for foreign investments in Lebanon.<sup>19</sup> This law also established the Investment Development Authority of Lebanon (IDAL); a public agency entrusted to encourage and attract Lebanese nationals abroad to invest in Lebanon (ICMPD and IOM 2010; IDAL

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<sup>14</sup>The acquisition of Lebanese citizenship follows the *jus sanguinis* principle, however, only paternally. For more information on the eligibility to reclaim Lebanese citizenship see [http://globalcit.eu/wp-content/uploads/2011/12/Translation\\_Draft%20Law%20\\_Lebanon.pdf](http://globalcit.eu/wp-content/uploads/2011/12/Translation_Draft%20Law%20_Lebanon.pdf)

<sup>15</sup>According to the World Bank, the population of Lebanon in 2016 was estimated at six million. Consequently, Lebanon has not had an official government census since 1932. This is because of the sensitivity of demographic figures in politics.

<sup>16</sup>Remittances as a percentage of GDP was estimated at 23.9% in 2008; the peak in the last 20 years. However, remittance levels as a percentage of GDP stands at 14.1% in 2016 (Adweh 2014; KNOWMAD 2017).

<sup>17</sup>“Keep that flame of love for Lebanon alive in your heart, while keeping your success in the diaspora.” Quote from Minister of Foreign Affairs, Gebran Bassil, from the Lebanese Diaspora Energy. LDE conferences primarily involve gathering the diaspora's business elite abroad and fostering engagement.

<sup>18</sup>The Foreign Acquisition of Property and Property Rights Law No. 296 of 2001.

<sup>19</sup>Encouraging Investment in Lebanon Law No. 360 of 2001.



2001).<sup>20</sup> IDAL has been responsible for implementing investment incentives in the form of tax exemptions granted in the fields of technology, information, telecommunications/media, tourism, industry and agriculture. IDAL is also managing agency responsible for bilateral Promotion and Protection of Investments agreements between Lebanon and Canada, France and Germany (IDAL 2016a).<sup>21</sup> These bilateral investment agreements are meant to create and maintain favourable investment conditions through contractual protection of such investments. Furthermore, the agreements are meant to provide fair and equitable treatment on a non-discriminatory basis and full protection and security of foreign investments in both countries (Zbeeb 2015). Lebanon also participates in bilateral agreements to avoid the double taxation and to also encourage the exchange of goods, technology and the inflows of capital (IDAL 2016b).<sup>22</sup>

Partnered with the MoFAE and the UNDP, Live Lebanon is an initiative to provide an online platform for the Lebanese diaspora to contribute funds, investments or professional expertise for local development projects in the areas of health, environment and education in struggling communities. One example of Live Lebanon's activities involved the procuring of a power generator for the Bhamdoun Al Mhata village. The funds were generated by donations made from the Lebanese diaspora towards Live Lebanon's project initiatives. Utilisation of the term diaspora is prevalent as a means to emphasise the importance of assisting communities that are struggling in the homeland.

The Transfer of Knowledge through Expatriate Nationals (TOKTEN) is another relevant programme organised by the UNDP and executed through the Council for Development and Reconstruction (CDR).<sup>23</sup> Although CDR is not an agency that directly engages with Lebanese nationals abroad, it is involved with this particular project. TOKTEN's primary objective is to obtain the technical experience of Lebanese nationals abroad (or Lebanese descendants) in order to reinforce the national development efforts in Lebanon and transfer their skills and know-how.<sup>24</sup> TOKTEN encourages the return of Lebanese abroad for short-term consultancy assignments in the form of volunteerism (Tabar 2009).

The World Lebanese Cultural Union (WLCU), originally founded by the Lebanese government in 1960, is a civil organisation which maintains a

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<sup>20</sup>Although IDAL does maintain a specific focus for attracting investment from Lebanese nationals abroad, it also encourages investment from non-Lebanese and local Lebanese nationals as well.

<sup>21</sup>Among Canada, France and Germany who have signed investment protection agreements, Lebanon also maintains a bilateral investment agreement with 51 other countries. For a comprehensive list and description see IDAL's Investment Protection Agreements at [investinlebanon.gov.lb](http://investinlebanon.gov.lb)

<sup>22</sup>Countries that Lebanon signed an agreement with to avoid double taxation are: Algeria, Armenia, Bahrain, Belarus, Bulgaria, Cuba, Cyprus, Czech Republic, Egypt, France, Gabon, Iran, Italy, Jordan, Kuwait, Malaysia, Malta, Morocco, Pakistan, Poland, Qatar, Romania, Russia, Senegal, Sudan, Oman Sultanate, Syria, Tunisia, Turkey, U.A.E., Ukraine, Yemen.

<sup>23</sup>Established by government decree No. 5 of January 31, 1977, the Council for Development and Reconstruction (CDR) is a public authority unit established by the Lebanese government.

<sup>24</sup>One example of TOKTEN's consultancy assignments was the training of army officers on cyber defence. See TOKTEN article: <http://www.toktenlebanon.org/annoucement/more.php?id=22>

non-political, non-religious and non-profit position. Its primary goal is to strengthen ties, promote mutual friendships and understanding among the Lebanese diaspora (anyone of Lebanese decent abroad) and Lebanon. This is primarily achieved by establishing, promoting and enhancing understanding via encouraging and exchanging cultural, educational, social and tourist activities (Hourani 2007). Lebanon's Ministry of Tourism is also tasked with promoting Lebanon's cultural heritage at home and abroad. Although not mandated to specifically engage with Lebanese nationals abroad, the Ministry of Tourism does engage with them in the capacities of promoting return to the homeland for seasonal tourism and also to invest in tourism-related projects.

### 11.3 Diaspora Policies and Social Protection in Lebanon

Lebanese engagement with nationals abroad in the area of social protection can be summed up as almost entirely absent. Outside the basic services offered by consulates described below, Lebanese consulates provide assistance to nationals abroad in the case of arrest, detention, serious illness/accident, or in the case of death. Moreover, what engagement Lebanese authorities and institutions do have with nationals abroad consists almost exclusively of enticing, incentivising or rousing engagement for political and/or economic benefits of the home country. One attributable reason is that social protection in general is considered to be at a nascent stage in Lebanon. The social protection system is characterised by a multiplicity of social assistance and insurance programmes that more or less operate in an ad hoc manner in response to crises (Kukrety 2016).<sup>25</sup> Additionally, the approximate share of informally-employed persons in Lebanon is estimated at about half the Lebanese workforce, and so those within the informal labour market are outside of any meaningful social security coverage (Ajluni and Kawar 2015).<sup>26</sup> Roughly 40% to 50% of the Lebanese population are not enrolled in the National Social Security Fund,<sup>27</sup> and as a result, the most vulnerable populations (elderly, people with disabilities, the unemployed, foreign workers, women, farmers, etc.) are ignored from formal social protection systems (Abi Yaghi 2014). As a consequence, the major providers of social protection from severe poverty come from individual families, emigrant remittances, private/civil institutions, charities, non-governmental organisations, or religious/political organisations which, due to the absence of a centralised system of

<sup>25</sup> Lebanon is currently hosting an approximate 1.5 million Syrians as of October 2016 as a result of the fallout from the conflict in Syria (UN and GoL 2017).

<sup>26</sup> ILO figures are taken from both the Lebanese Central Administration of Statistics' (CAS) 2004 *Household Survey* and the 2009 *Multiple Indicators Cluster Survey* along with the World Bank's MILES report. Self-employed work with limited access to social security or health insurance coverage is also added to informally-employed persons.

<sup>27</sup> The National Social Security Fund (NSSF) is Lebanon's national social insurance system.

effective social protection, strengthen and deepen sectarian or partisan clientelist practices within the country (Cammatt 2014; Abi Yaghi 2014).

The Euro-Mediterranean Partnership Agreement (EMP) was signed by Lebanon in 2002 with the final draft coming into force in 2006. Although the EMP is primarily an economic and trade agreement, Article 65 of the agreement maintains social protection provisions to bolster and improve projects and programmes in the social protection field. However, the EMP signed with Lebanon does not contain provisions for the coordination of social protections between the EU and Lebanon as compared to the agreements signed with other states (i.e. Algeria, Morocco and Tunisia). Therefore, compared to EMP agreements with other countries, what social security provisions that are included are wholly absent from the EMP agreement with Lebanon (García de Cortázar Nebreda 2016).

Lebanon's bilateral agreements for the promotion and protection of investments do mention social services, however, they are included in the General and Specific Exceptions annex. As a result, social services (i.e. income security, social security, health and child care, etc.) are included as exceptions that will not be impacted by the bilateral agreement.<sup>28</sup>

### 11.3.1 Unemployment

Lebanon does not maintain any official government policy, programmes or services to provide benefits or training for Lebanese nationals living abroad in the case of unemployment. This is not unreasonable given the fact that the Lebanese government does not provide such benefits to its citizens residing in Lebanon. More often, successive Lebanese governments have used migratory outflow as a tool to ease unemployment pressure and increase remittance flows back into the country (Hourani 2007).<sup>29</sup> Summarily, in terms of any significant protection for Lebanese nationals abroad, neither the Lebanese government nor consulates offer any protection nor assistance for host country unemployment services in the case of economic hardship or unemployment.

The Euro-Mediterranean Partnership Agreement that Lebanon is signatory to does address key issues regarding unemployment social protection in Article 65.<sup>30</sup> However, the EMP does not go beyond the arrangement of dialogue on core issues

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<sup>28</sup> A complete list of social service exemptions found in the agreement are: public law enforcement; correctional services; income security or insurance; social security or insurance; social security or insurance; social welfare; public education; public training; health and child care.

<sup>29</sup> Unemployment is a prominent push factor for many highly educated Lebanese. Approximately 50% of Lebanese emigrants have at least secondary education and an estimated 25% with tertiary education resulting in a significant *brain drain* effect for Lebanon (ETF 2017).

<sup>30</sup> Article 65(2) The Parties shall engage in a dialogue on all aspects of mutual interest and particularly on social problems such as unemployment, rehabilitation of the less able-bodied, equal treatment for men and women, labour relations, vocational training, safety and health at work.

of social protection in the area of unemployment, and unlike EMP agreements with other countries (i.e. Morocco, Algeria, Tunisia), Lebanon's EMP agreement maintains no reciprocal commitments concerning economic or social cooperation (Ayadi and Gadi 2013). No mention of unemployment protection is stated in any of Lebanon's bilateral agreements on the promotion and protection of investments.

### 11.3.2 Health Care

The Lebanese health care system remains heavily fragmented primarily between and within public and private institutions with government entities acting as official regulators (WHO 2006). Although Lebanon maintains no relevant official policy whereby consulates provide healthcare or invalidity services, cash/in-kind benefits or coverage to Lebanese nationals abroad, certain public health care schemes do provide some form of health care coverage abroad. The Civil Servants Cooperative under the tutelage of the Council of Ministers does provide pre-admission health coverage abroad up to 90% for Lebanese government employees and their dependents abroad.<sup>31</sup> Furthermore, the Lebanese Army retains its own public health services as well.<sup>32</sup> It provides pre-admission health care coverage abroad up to \$10,000 for Lebanese employed in the army or security services and their families (Ammar et al. 2000; Ammar 2009).<sup>33</sup>

Lebanese consulates or institutions do not provide assistance in accessing host country health coverage or benefits. However, consulates have been known to provide cash assistance to Lebanese nationals abroad in the case of serious health emergencies. Nevertheless, there is no formal policy for these cash benefits, and they are given only at the discretion of officials at consulates or embassies.

Lebanon has been struggling to establish a non-contributory health care protection scheme for all Lebanese citizens. In 2012, Ministry of Labour, Charbel Nahas, presented the Comprehensive Health Project. The primary aim of the project was to unify the differing health care protection schemes in the country and also provide comprehensive health care coverage to those with limited or no income. Unfortunately, the Comprehensive Health Project has yet to be implemented (Nasnas 2016).

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<sup>31</sup>Health care coverage under the Civil Servants Cooperation amounts to approximately 4.4% of the Lebanese population. However, an estimated 8–9% of the Lebanese may be eligible (Ammar et al. 2000; Ammar 2009).

<sup>32</sup>The Army's health care scheme falls under the patronage of the Ministry of Defence whereas the Ministry of Interior is responsible for the Internal Security Forces, General Security Forces and State Security Forces. However, all army/military health schemes are financed by the Lebanese government and contain essentially the same coverage rules for care (Ammar 2009).

<sup>33</sup>Health care for the army or security services amount to approximately 9% of the Lebanese population. However, an estimated 11% may be eligible (Ammar et al. 2000; Ammar 2009).

Although Lebanon maintains a large number of private health insurance services, a considerable portion of the population is still unable to afford full medical coverage. Therefore, Lebanon's national social insurance system, the National Social Security Fund (NSSF) is the country's most important social protection insurance provider. It offers employees with health and maternity insurance, family and educational allowances and end-of-service indemnity to retirees. However, the NSSF does not cover any medical treatment outside of Lebanon. Additionally, those who are informally or self-employed and unemployed do receive basic essential health care from the Ministry of Public Health (MoPH).<sup>34</sup> This coverage too is not provided outside of Lebanon.

Article 65 of the Euro-Mediterranean Partnership Agreement which Lebanon has ratified stipulates a cooperation between parties to *improve social security and health insurance systems* and *improve the health care system through cooperation*. However, little meaningful reforms have been undertaken by Lebanon since the ratification of the EMP.

Medical tourism has fared well in Lebanon with the country being a top destination for medical tourists in the Middle East and North African (MENA) region. According to Hassan (2015), an estimated 10% of the tourists entering Lebanon identified medical treatment as their purpose of visit. As part of an effort to promote Lebanon as a health care tourism destination, the Eighth Conference on Medical Tourism was held in Beirut in 2013. The conference was a means to promote Lebanon as a key destination of medical tourism, health and beauty, along with promoting Lebanese tourism in general.

### 11.3.3 Pensions

Lebanese civil servants and those in the military are covered by generous public-sector pension schemes which are financed by a pay-as-you-go method with public employees contributing an equivalent of 6% of the wages in the public sector.<sup>35,36</sup>

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<sup>34</sup>The MoPH covers what would be considered as 'catastrophic' payments for households without health insurance. Approximately 43% of Lebanese citizens possess no health care insurance and are only able to rely on the MoPH in dire circumstances (WHO 2006).

<sup>35</sup>The pension scheme for public servants was established by the 1959 Public Servants System Legislature Decrees and the military follows a 1961 legislative decree. These pension schemes are considered unsustainable with expenditures on civil servant pensions at 1.2% GDP and spending on military pensions at 2% of GDP (Rached 2012). The pension scheme's replacement rate is often close to 100%. It does not enforce a minimum retirement age, so accrual rate is high with respect to the retirement age. Additionally, benefits can distort due to ad hoc and costly additional benefits like extra lump-sum payments for retirees who completed 40+ years of service. Variations in pension payments are also high as they are based on the last salary earned by retiree (Jarmuzek and Nakhle 2016).

<sup>36</sup>In the case of financial disparities or shortfalls in funds as a result of demographic shifts or an unsustainable benefit formula, the government is directly covered by the Treasury's general reve-

Lebanese nationals under the public-sector pension scheme are permitted to obtain their pension benefits while living abroad. Summarily, Lebanese nationals under the public-sector pension scheme must renew their pension benefits annually while abroad. This is done by completing and signing the “application from retiree” form which then must be brought to the nearest consulate for legalisation. Lebanese nationals abroad under this scheme must also provide proof of identification in the form of the Lebanese civil identification. Afterwards, the “application from retiree” form, along with their Family Registry Record and proof of their Lebanese residence must be sent to the Ministry of Finance. For a Lebanese national abroad as a *beneficiary* of the public pension, they are able to obtain pension benefits abroad.<sup>37</sup> The process is similar except the “application from a beneficiary” form must be legalised by the consulate along with either proof of divorce, death or mental illness; all documents must be sent to the Ministry of Finance (Ministry of Finance 2016).

The National Social Security Fund (NSSF) is an independent institution established in 1963 under the Ministry of Labour which provides services primarily to private-sector and contractual government employees. The NSSF’s retirement scheme involves a lump-sum cash benefit upon retirement.<sup>38</sup> All benefits are terminated after the lump-sum payment leaving many post-retirees with no pension or health coverage after retirement. For those Lebanese who retire from the informal sector, they will only have their savings to survive on. With the absence of public safety nets, many elderlies rely on income transfers from their children (Rached 2012).<sup>39</sup>

Consulates are not directly involved in the acquisition of pension benefits for Lebanese abroad in the case of acquiring Lebanese benefits or host country benefits. However, consulates do provide legalisation of particular documents including life certificates.

### 11.3.4 *Family-Related Benefits*

Lebanon and Lebanese consulates do not maintain any official policy with regards to providing cash or in-kind benefits to assist families in birth or raising a child abroad. The National Social Security Fund (NSSF) does contain protection services

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nues (i.e. taxpayers) (Nasnas 2016).

<sup>37</sup> Beneficiaries of Lebanese pensioners pertain to divorced, widowed or unmarried daughters, widowed wives, any son or daughter under the age of 18, or a son or daughter with mental disabilities.

<sup>38</sup> This lump-sum is equivalent to the accumulated contributions associated with past employers and one month of earning for each year of service with final employer (up to 20 years).

<sup>39</sup> According to PPFAM data, 74.8% of elderly Lebanese derive their income from transfers from their children (Tohme et al. 2010).

in the field of maternity and family and educational allowances.<sup>40</sup> However, to be eligible for NSSF's services, a Lebanese national must be formally employed and residing in the country. Those working in the informal sector are also not entitled to NSSF's maternity and family benefits (Kukrety 2016).

Although Lebanese consulates do not provide protection services to Lebanese nationals abroad, they are responsible for a number of administrative procedures concerning families. Mainly, Lebanese families abroad must register *vital events* at the nearest consulate or embassy; this can be done either in person or by mail. These events normally include marriage, divorce, birth or death.<sup>41</sup> Lebanese nationals are also able to obtain Lebanese birth certificates abroad through consulates. Primarily, parents must obtain the host country's birth certificate certified by the appropriate Ministry of the host country and provide it to the consulate. The consulate will then send the appropriate documents to Lebanon whereby the Lebanese birth certificate is sent back to be picked up at the receiving consulate.

Lebanon's bilateral agreements have maintained some provisions with regards to family protection. Article 65(1)(c) of the Euro-Mediterranean Partnership Agreement stipulates cooperation within projects and programmes with the aim of bolstering and developing Lebanon's family planning and mother and child protection programmes. In 2010, Lebanon also ratified the Agreement between Australia and the Republic of Lebanon regarding Cooperation on Protecting the Welfare of Children.<sup>42</sup> In summation, the agreement establishes a structure between the governments of Lebanon and Australia to assist parents in either country to resolve disputes across international borders concerning their children. The agreement helps mediate and coordinate with the proper authorities of each country to: facilitate the transmission of information and documents related to applications; encourage dialogue between parents and assist in finding an amicable resolution to the issues in dispute; monitor and report on the progress of individual cases. International Social Service Australia (ISS) further provides international parent child abduction services including information, advice, emotional support, counselling for family members, mediation and assistance with reunification and returns.<sup>43</sup>

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<sup>40</sup>The NSSF provides maternity indemnity in cases where employers do not provide maternity leave. Family and educational allowances are provided in the case of an emergency for families faced with economic hardship normally due to medical emergencies/shocks. The allowances are provided as funds for school to ensure children remain in the educational system. There is a cap of five children per family whereby allowances will decrease (Kukrety 2016).

<sup>41</sup>Registration of vital events oftentimes comes at no cost. Furthermore, for Lebanese nationals abroad, it is important to stay up-to-date with registration of vital events. They are particularly salient in the case of, for example, receiving pensions as a beneficiary or repatriation/acquisition of citizenship.

<sup>42</sup>For the full agreement, see [https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jsct/25november2009/treaties/lebanon\\_text.pdf](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsct/25november2009/treaties/lebanon_text.pdf)

<sup>43</sup>For more information on ISS Australia's protection services in the case of parental disputes across international borders, see <https://www.ag.gov.au/FamiliesAndMarriage/Families/InternationalFamilyLaw/Pages/InternationalParentalChildAbduction.aspx>

### 11.3.5 *Economic Hardship*

Lebanon does not maintain policies which provide guaranteed minimum resources for Lebanese in economic hardship. As a consequence, Lebanon does not provide any such policies for nationals living abroad. However, there have been different interventions and safety nets implemented usually in response to particular crises, wars or emergency situations.<sup>44</sup> Yet, there has been no cohesive nor clear national policy/strategy to provide Lebanese relief or protection from poverty.

One such example of a “safety net” is the Emergency National Poverty Targeting Programme (ENPTP). ENPTP is a combination of social assistance and social services to the “extremely poor” Lebanese households in the form of medical bill payments, school fee waivers and food assistance. The programme was implemented as a response to the Syrian crisis in Lebanon. However, Lebanon would not be able to finance the programme if it were not for the assistance of international organisations like the World Bank, United Nations High Commissioner for Refugees (UNHCR) and NGOs to help implement the programme. As of June 2015, a total of 160,985 Lebanese households had applied to benefit from the programme. However, ENPTP services primarily target those vulnerable within Lebanon, and services are not exportable to Lebanese nationals living abroad (Kukrety 2016).

In terms of guaranteed minimum resources for economic hardship, neither Lebanese public institutions nor consulates abroad assist Lebanese with accessing host country benefits. In exceptional cases, consulates may provide cash benefits to Lebanese nationals abroad in dire situations, however, there is no formal policy and benefits are given by the consulates discretion only. It is only in the most extreme or dire cases that the most vulnerable are given any form of assistance and only through assistance from international organisations. It is most often the Lebanese diaspora and their remittances which provide any semblance of a “safety net” that Lebanese can rely on.<sup>45</sup>

## 11.4 **Conclusions**

The principal effort of Lebanese authorities’ engagement with the diaspora involves increasing investment, capital, tourism and other economic flows back into the home country. As Lebanon moves from crisis to crisis due in large part to regional powers vying for influence, along with the country’s delicate confessional balance in parliament, the country struggles to implement meaningful long-term public

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<sup>44</sup>Examples of emergency situations have been the 2006 Israeli invasion and recently the Syrian crisis which began in 2011.

<sup>45</sup>Remittances are mainly used by individuals and families for consumption and to raise their standard of living. According to Barendse et al. (2006), in a mini-survey conducted, researchers found that 56% of respondents used remittances for ‘daily expenses,’ 24% on school fees, 10% were used for investments and 5% for the building of a house.



social protection policies that benefit Lebanese universally. Although there has been no shortage of proposals for meaningful social protection programmes, more often, financial or political limitations have hindered implementation.<sup>46</sup> As current trajectories suggest, Lebanon will likely continue to engage with the diaspora predominantly to stimulate economic investment while overlooking fundamental social protection policy gaps for their citizens abroad.

Lebanon must also look beyond financial and economic gains when interacting with the international community. The overwhelming majority of bilateral and multilateral agreements that Lebanon has ratified are primarily focused on economic and investment benefits. Vital bilateral social security agreements or noteworthy provisions of social protection in existing agreements are virtually absent, particularly with Lebanon's top destination countries as well.

However, since the enactment of the 2008 Parliamentary Elections Law which guaranteed the right for Lebanese nationals abroad to vote and Lebanon's first election in 9 years occurring in 2018, the significance of the Lebanese diaspora may be entering a new stage. With roughly 5% of Lebanese nationals abroad casting a vote in the 2018 election, there does exist a latent yet considerable political potential within the diaspora. Furthermore, slated for the next election, Minister of Foreign Affairs and Emigrants, Gebran Bassil, stated that there will be six parliamentary seats assigned for the diaspora (Ministry of Information 2018).<sup>47</sup> As Tabar (2014) explains, by broadening the scope of participation through allotted diaspora seats in parliament, migrants may have the political opportunity to make independent political demands free from home-based political calculations and benefit more from the policies of the Lebanese government.

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<sup>46</sup>In terms of financial limitations, the IMF concluded that public debt is estimated above 150% of GDP at the end of 2017.

<sup>47</sup>The six parliamentary seats for the diaspora were introduced in a new 2018 electoral law that has yet to be ratified by Cabinet decree.

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# Chapter 12

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Morocco



Abderrahim Oulidi and Keivan Diakité

### 12.1 Overview of the Welfare System and Main Migration Features in Morocco

This chapter aims to discuss the legal framework regulating Morocco's welfare system and the access of national residents, non-national residents, and non-resident nationals to social benefits across five policy areas: unemployment, health care, family benefits, pensions, and guaranteed minimum resources.

The current Moroccan welfare system can be better understood when tracing the historical development of its key components. Like in many African countries, the social security in Morocco until the protectorate was mainly based on a traditional form of solidarity and family mutual assistance (Reimat 1997). Occupational groups, such as the traditional trade guilds, developed a solidarity system that guaranteed care in case of accidents or illness to everyone.<sup>1</sup> It was only after the establishment of the French protectorate that the Moroccan state started to adopt specific legislation in the field of social protection- especially pensions. However, this legislation was mainly intended to protect the needs of French workers and officials

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<sup>1</sup> « Le système de retraite au Maroc » Revue Al Maliya, n°40 march 2007, p 22. Available here: [http://www.finances.gov.ma/Maliya%20tawassol/file\\_220807\\_151728869.pdf](http://www.finances.gov.ma/Maliya%20tawassol/file_220807_151728869.pdf). Accessed 26 March 2020.

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residing in Morocco. In 1917, the protectorate's administration created the Moroccan Provident Fund (CPM) with an optional membership. Similarly, several institutions were created to respond to the needs of different professional groups of French residents covering mainly the workers' compensation scheme managed by private insurance companies, the pension scheme for civil servants, the family allowance scheme financed by European employers, and the pension plan of the European high officials.

### ***12.1.1 Main Characteristics of the National Social Security System***

The different components of the Moroccan social protection system have been developed in a rather fragmented manner over a very long period of time. The current system consists of a contributory scheme (the National Social Security Fund, CNSS<sup>2</sup>; the National Fund of Social Welfare Organisations, CNOPS<sup>3</sup>; the Moroccan Pension Fund, CMR; the group retirement allowance plan, RCAR); a partially contributory system (the Medical Assistance Plan, RAMED<sup>4</sup>) and a non-contributory system (programs for vulnerable populations such as “Tayssir”, “Kafala”, or the National Initiative for Human Development, INDH<sup>5</sup>). The system covers employees from all public sectors and a large part of private sector employees,<sup>6</sup> by providing them protection against the risks associated to maternity, invalidity, old age, survival, death, unemployment, and family.

Compulsory social security schemes fulfil an important function of risk coverage and financial transfers in the form of family allowances and income replacement in the form of sickness and maternity benefits, and through the pension scheme (old-age, invalidity and survivors). There are several management bodies: CNOPS manages the public scheme and students; RCAR manages the pensions of state employees, local authorities and public institutions subject to the financial control of the state; CMR manages the pensions of the civilian and military state personnel; and the CNSS manages the private scheme. Medical coverage based on a non-contributory scheme has also been put in place for the poorest population including migrants and refugees (the convention has been ratified, but not yet implemented). They will be part of the Medical Assistance Scheme RAMED, which will be managed by the National Health Insurance Agency (ANAM).

<sup>2</sup> *Caisse Nationale de Sécurité Sociale*, <http://www.cnss.ma/fr>. Accessed 26 March 2020.

<sup>3</sup> *Caisse Nationale des Organismes de Prévoyance Sociale*, <http://www.cnops.org.ma>. Accessed 22 March 2020.

<sup>4</sup> *Régime d'assistance médicale*, <http://www.ramed.ma>. Accessed 26 March 2020.

<sup>5</sup> <http://www.indh.ma>. Accessed 26 March 2020.

<sup>6</sup> Morocco now has 3.8 million employees in the private sector. About 600,000 of them are not declared by their employers. Source: [www.cnss.ma/fr/content/chiffres-clés-1](http://www.cnss.ma/fr/content/chiffres-clés-1). Accessed 22 March 2020.

The Moroccan pension system is currently based on four schemes. Three of them are mandatory and managed by public institutions: two schemes cover public sector employees (CMR and RCAR) and the third one covers private sector employees via the CNSS. A fourth (optional) scheme is aimed at private sector employees (CIMR). Non-salaried workers (traders, craftsmen, individuals with liberal professions, farmers, and fishermen) cannot join any of these schemes, although Law No. 99–15 of December 2017 proposed the creation of a pension plan for these workers. Also, there is no non-contributory pillar of solidarity in Morocco and the system covers only 40% of the employed labour force.

As for financing, the contributory plans are financed by employers' contributions, state contribution, donations and any other resources assigned to basic compulsory retirement insurance plans under legislation or special regulations. The four pension plans are also financed by the interest generated by their reserve funds. RAMED is financed by the state, local collectivises, tax revenue, donations, other resources assigned to basic compulsory health insurance plans and flat-rate contributions from vulnerable populations. Since its entry into force in 2006, the CNSS manages the compulsory health insurance (AMO) for private sector employees subject to the Moroccan social security scheme. Recipients of a minimum pension (500 dirhams per month) and people with an annual income of less than 5.650 dirhams per person are covered by RAMED.

### ***12.1.2 Migration History and Key Policy Developments***

During the last decades, Morocco has put in place several initiatives aiming to ensure the social protection of mobile individuals, including foreigners residing in Morocco and Moroccan nationals residing abroad. Bilateral social security agreements have been signed with Algeria, Belgium, Canada, Denmark, Germany, Egypt, Spain, France, Libya, the Netherlands, Luxembourg, Portugal, Quebec, Romania, Sweden, and Tunisia; and different conventions have been adopted aiming to make the living conditions of foreign residents meet equal standards as for Moroccan citizens.

Morocco's special historical-cultural relationship with West Africa is reflected in the conditions of access to the territory enjoyed by citizens of different countries. While these facilities also concern nationals of European countries, Morocco has in recent years made a strategic reevaluation of its diplomatic, commercial, political and security relations with French-speaking West African states. The deployment of various programs has allowed for closer ties between these states and Morocco in the framework of bilateral and international cooperation. The limits and challenges that Morocco faces as a link between Europe and Africa have been quickly emerging, especially given the situation of sub-Saharan migrants who transit Morocco to reach Europe. If for some foreigners, Morocco is actually seen as a transit country in their journey to Europe, for others, it is also and above all a country of immigration.

Over the years, Morocco has become a destination country for different types of immigration, of various geographical origins (Europe, Africa and elsewhere), permanent or limited in time. Officially, about 84,000 foreigners are currently registered as living in Morocco<sup>7</sup> (the Moroccan population is 36 million people). The majority of foreigners residing in Morocco come from African countries (41.6%) and European countries (40%). Among the most represented nationalities, the French come first (25.4%), followed by Senegalese (7.2%), Algerians (6.8%) and Syrians (6.2%). 15.2% of foreigners come from Asian countries (82.8% from the Middle East) and 3.2% from other continents. The advantages and attractions offered by Morocco as a host country are geographical, economic, linguistic-cultural, but also political. As a politically stable country, in the process of economic and social modernization, offering geographical and linguistic-cultural proximity to Europe, Morocco attracts a potentially large target group of foreigners wishing to emigrate.

Nowadays, a foreign employee of the private sector can benefit from CNSS services in the same way as a Moroccan citizen. Furthermore, a framework agreement has been recently adopted to allow immigrants and refugees to access the Medical Assistance Scheme (RAMED). However, migrants and refugees still do not have access to RAMED benefits as technical problems between the Ministry of Interior, the Ministry of Moroccans living abroad, and the National Health Insurance Agency delayed the publication of affiliation cards to gain access to medical benefits for migrants and refugees.

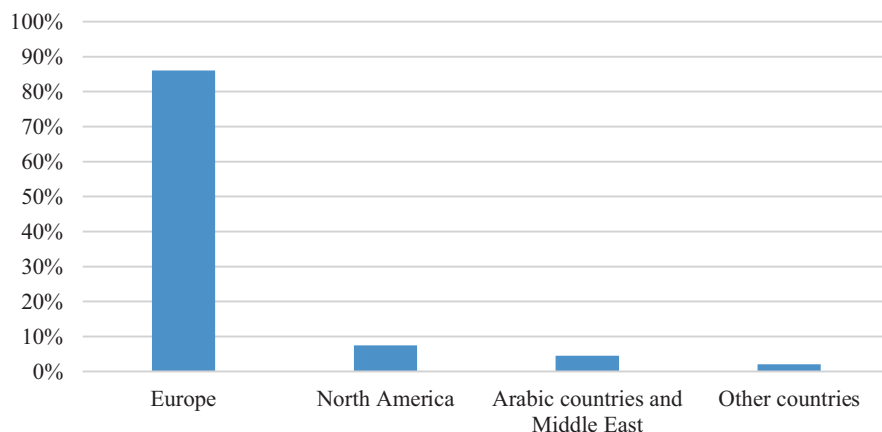
According to the OECD (2017) report on Moroccan emigrants, it is estimated that just over 4.3 million Moroccans live abroad. Given that the total population of Morocco is 36 million people, the estimated share of non-resident Moroccans corresponds to 11% of the population residing in Morocco. It is therefore not a coincidence that a Ministry in charge of Moroccans Residing Abroad (MRE)<sup>8</sup> exists in Morocco. However, the historical reasons for migration and the direction of migration flows differ. As an example, the labour agreements that Morocco concluded with Belgium and France in the early 1960s led to a growing outflow (until the 1970s - then, thanks to family reunification, until the 1990s) of Moroccan migrants residing in France and Belgium, particularly manual labourers settling there and raising children. The recent outflow of Moroccans to the Gulf countries (especially Saudi Arabia) can also be mentioned.

As shown in Figs. 12.1 and 12.2, the main destination of Moroccan emigrants is Europe. 86% of Moroccans residing abroad live in France, Spain, Italy, Belgium, and the Netherlands. The second destination is North America, where 7.5% of the emigrant population is found, followed by Arabic and Middle East countries that host around for 4.5% of the emigrant population.

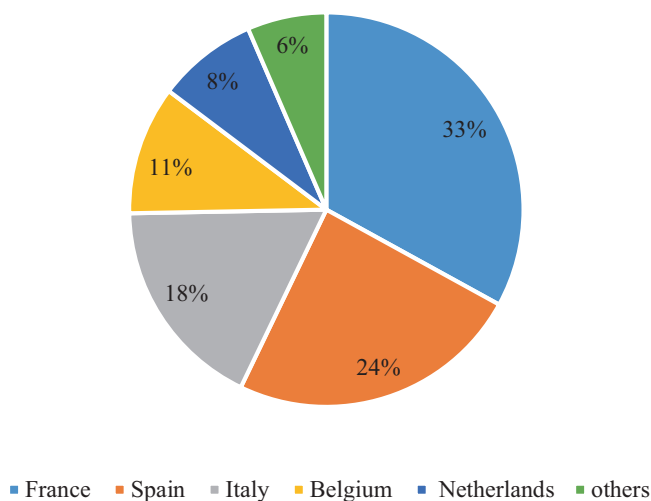
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<sup>7</sup>High Commission for Planning report (2018)

<sup>8</sup>Website of the Ministry of Moroccans living abroad (MRE). <https://marocainsdumonde.gov.ma/>. Accessed 26 March 2020.



**Fig. 12.1** Destinations of Moroccans residing abroad, 2018. (Source: Ministry of Moroccans living abroad (MRE))



**Fig. 12.2** Main European countries of destination of Moroccan emigrants. (Source: Ministry of Moroccans living abroad (MRE))

More than half of Moroccan emigrants in Europe mention family reasons as reasons for migration, whereas work is the second most common reason. This flow includes a considerable number of seasonal workers. 58% of Moroccan emigrants have low levels of education (first cycle of secondary education), whereas emigrants with a high level of education are proportionally more numerous in North America (two-thirds of Moroccan emigrants are graduates of higher education) (OECD 2017).



## 12.2 Migration and Social Protection in Morocco

CNSS affiliates, whether national citizens or foreigners residing in Morocco, are protected in terms of access to social benefits. To become a CNSS affiliate, a person must be employed in Morocco. The entitlement to AMO benefits is conditioned by the justification of 54 days of prior contribution for a period of six months. Affiliation is a legal obligation of every employer who is required to join CNSS no later than 30 days after the first employee is hired, to regularly report to the CNSS the monthly amount of wages paid and the number of days worked by their employees.

Foreigners residing in Morocco are subject to the same conditions as nationals and receive the same benefits. Moroccans living abroad cannot voluntarily enter the Moroccan social security scheme if they were not affiliated before moving abroad. However, some of the acquired rights are subject to exportability, including the old-age pension, the disability pension, or maternity benefits. Since the 1960s, social security benefits that are subject to exportability are paid to affiliates even if there is no bilateral social security agreement between Morocco and their respective countries of residence. The only condition is to show a proof of residence in the new country. Moreover, it is also worth mentioning that Morocco is part of several regional integration organisations, including the African Union (UA), the Arab Maghreb Union (UMA) and the Community of Sahel-Saharan States (CEN-SAD). However, none of these regional integration schemes has made specific efforts to ensure the social protection of intra-regional migrants or to facilitate their access to specific benefits in the countries of residence.

The next section of the chapter discusses the eligibility conditions for accessing social benefits for national residents, non-national residents and non-resident nationals; and it further highlights the specificities of each policy area.

### 12.2.1 *Unemployment*

The National Social Security Fund (CNSS) provides employees who involuntarily lose their jobs and are actively seeking for work a minimum income called Loss of Employment Compensation (IPE). This allowance is financed by employees (0.19% of salary capped at 6.000 dirhams) and employers (0.38% of salary capped at 6.000 dirhams). The benefit is granted for up to 6 months to employed workers affiliated to CNSS. Resident nationals and foreigners can claim this allowance under the same conditions. To claim the benefit, individuals must have accumulated 780 days of salary declarations during the last 36 months preceding the date of job loss, including 260 days during the last 12 months preceding this date. The monthly amount is equal to 70% of the reference salary (average monthly salary declared for

the last 36 months), without exceeding the amount of the statutory minimum wage.<sup>9</sup> Those who receive the benefit must register with the National Agency for Promotion of Employment and Skills (ANAPEC) and actively search for work (although the job search is never checked). 25% of people registered for the unemployment allowance have either resumed their job or found a new one (CNSS 2018).

### 12.2.2 Health Care

The medical coverage system in Morocco consists of a basic system including the Mandatory Health Insurance (AMO) and the Medical Assistance Plan (RAMED).<sup>10</sup> AMO is based on the contributory principle and the principle of risk pooling. It provides benefits in kind in case of sickness and cash benefits for sickness and physical invalidity. Membership is compulsory for companies that are subject to the social security scheme and do not have any medical coverage at the date of entry into force of the Mandatory Health Insurance.<sup>11</sup> Article 14 of the Law 65–00 provides for a period of five years from the decree of application of the law to allow companies to join AMO. However, the application decree has never been released, which leads to the fact that today, 1.27 million private sector employees are not affiliated to the AMO, including 303.000 employees of the public sector.<sup>12</sup> However, they remained covered by private insurance.

The right to basic health care AMO benefits<sup>13</sup> for private sector employees is subject to the completion of a contribution period of 54 working days during the six months preceding the care, the actual payment of contributions by the employer, the identification of family members of the insured or pensioner with the CNSS, and the declaration of long and costly diseases at the CNSS. In order for the CNSS to reimburse the care costs (doctors' fees, prescribed medications, etc.), affiliates must submit a health care form filled by their physician. The reimbursement period set by law is three months from the filing date, and a physical medical check can be scheduled as part of the AMO Services. Resident nationals and foreign citizens can access benefits in kind in Morocco under the same eligibility conditions. However, medical care abroad is only reimbursable or covered if the insured person falls ill

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<sup>9</sup> As of January 1, 2018, the legal minimum wages in Morocco (SMIG) is 13.46 dirhams/hour in the sector of industry, trade and liberal professions. The monthly SMIG is equal to 13.46 MAD/Hour \* 191 Hours/Month = 2570.86 dirhams. Source: <http://blog.ojraweb.com>. Accessed 26 March 2020.

<sup>10</sup> This scheme, which entered into force on 18 August 2005, was introduced by Law 65.00 on the code of medical coverage.

<sup>11</sup> Article 114 Law 65–00, [https://www.cnss.ma/sites/default/files/loi-65-00-amo\\_0.pdf](https://www.cnss.ma/sites/default/files/loi-65-00-amo_0.pdf). Accessed 26 March 2020.

<sup>12</sup> ANAM (2017). Convention de partenariat relative à la production et à la délivrance des cartes d'assistance médicale pour les migrants au Maroc.

<sup>13</sup> The medical coverage taken into account. <http://www.cnss.ma/fr/content/que-couvre-lamo>. Accessed 26 March 2020.

unexpectedly. In this case, the refund is made on the basis of national pricing, so health benefits in kind are not transferable. Moroccans residing abroad cannot thus claim these benefits from Morocco.

Sickness cash benefits are available only to employees. Both resident nationals and foreigners can claim the sickness allowance under the same conditions. There is no specific requirement of prior residence in the country, although cash benefits do depend on a period of insurance (54 days of contribution during the 6 months preceding the sickness). Sickness allowances are not transferable for nationals living abroad (the benefit is only paid in Morocco during a maximum period of 52 weeks), but individuals who receive sickness benefits can move temporarily abroad if they show up for the medical check in Morocco. However, disability pensions can be transferred abroad if affiliates show a residence certificate. Invalidity pensions are available only to employees, foreigners or nationals. The minimum period of insurance required to become eligible is 3 years. If the invalidity is caused by an accident on the workplace, this condition does not apply and the benefit is automatically granted. The amount of the pension is based on the previous earnings. The invalidity pension is always granted on a temporary basis and it is replaced by an old-age pension when the beneficiary reaches the pensionable age.

The medical assistance scheme is based on the principle of national solidarity for the benefit of the poor population.<sup>14</sup> RAMED only provides benefits in kind.<sup>15</sup> Based on the principle of solidarity, this scheme has a semi-contributory part financed by a fixed participation of people and households deemed vulnerable.<sup>16</sup>

The Moroccan health care system was initiated under the French protectorate. More than 60 years after independence and despite the progress made since 2002 with the introduction of health insurance schemes for private sector employees, civil servants and the poor, the system is still struggling to comply with the principles of universality, solidarity, and quality of care. In 2016, 45.4% of the population did not have medical coverage.<sup>17</sup> Self-employed persons are not yet covered by any health social protection scheme, although they account for a third of the Moroccan population. The 98–15 draft law plans to include them in the AMO regime. It will come into force once published in the Official Bulletin.

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<sup>14</sup>*Loi portant code de la couverture médicale de base*, [https://www.cnss.ma/sites/default/files/loi-65-00-amo\\_0.pdf](https://www.cnss.ma/sites/default/files/loi-65-00-amo_0.pdf). Accessed 26 March 2020.

<sup>15</sup>List of benefits in kind: <http://www.anam.ma/lagence/presentation/la-couverture-medicale-de-base/ramed/prestation-couverte/>. Accessed 26 March 2020.

<sup>16</sup>Vulnerable people in urban areas are recognized as having a weighted income of more than DH 3767 per person per year and DH 5650 per person per year and rural residents whose heritage score is greater than 28 and less than or equal to 70 which corresponds to 120 DH per person and capped at 600 DH per household and a non-contributory part financed by taxes, reserved for the poor (Persons whose income is less than or equal to DH 3767 per person per year when they live in an urban area, or whose heritage score is less than or equal to 28, are recognized as being in a poverty situation.)

<sup>17</sup>“La protection sociale au Maroc “Rapport du conseil Economique, Social et Environnemental, 2018, <http://www.ces.ma/Documents/PDF/Auto-saisines/2018/AS34-2018/Av-AS34-VF.pdf>. Accessed 26 March 2020.

### 12.2.3 Pensions

Four different plans provide retirement benefits to public and private sector employees (national citizens and foreigners) in Morocco: the CNSS, the CMR, the RCAR and the CIMR.<sup>18</sup> The largest pension fund is CNSS, with 3.2 million affiliates. The eligibility conditions for claiming old-age pensions differ from one pension fund to another. For CNSS, these conditions include: having reached the age of 60 (or 55 for minors who have worked underground for at least 5 years); having ceased all salaried activity; and having contributed at least 3240 days. The minimum pension is 1000.00 dirhams per month.<sup>19</sup> The amount of the pension corresponds to 50% of the monthly salary capped for those who totalize at least 3240 days of contribution (around 10 years). This amount is increased by 1% for each additional insurance period of 216 days.<sup>20</sup> The maximum is 70% of the average monthly salary. All taxable employees, whether Moroccan or foreign residents, are entitled to this pension, provided they have made sufficient contributions. There is therefore no differential treatment based on the nationality of the employee.

In the public sector, the CMR and the RCAR provide pensions on the basis of a contributory pillar. The required period of contribution is 10 years for CMR and 3 years for RCAR, respectively. The minimum pension for affiliates having the required contribution is 1500 dirhams in both schemes. For CMR, the benefits and contribution are not capped and the contribution rate is 28% (14% employee, 14% state) after the 2016 reform.<sup>21</sup> The 2016 reform also changed the retirement age from 60 to 63 years gradually from 2016 to 2020. At RCAR, contributions are capped<sup>22</sup> and the threshold for a contribution salary in 2017 was 17,100 dirhams. The normal contribution period is 30 years and the legal retirement age is 60 years. Each year of contribution entitles to 2% of average career salary. The maximum pension to which an affiliate is entitled to equals 80% of the average career salary. The contribution rate is 18% (6% the employee and 12% the employer). The condition for accessing these two pension schemes are the same for nationals and foreigners.

<sup>18</sup> However, a draft law (99–15) provides for the establishment of a pension system for non-employed workers, which will come into force once published in the Official Bulletin. The law, which is likely to affect 11 million people, provides that the independent pension plan is managed by the CNSS and operates in points.

<sup>19</sup> CNSS activity report 2016, <https://www.cnss.ma/sites/default/files/files/CNSS%20-%20Rapport%20d'activit%C3%A9%202016.pdf>. Accessed 26 March 2020.

<sup>20</sup>

<sup>21</sup> [www.courdescomptes.ma/upload/MoDUle\\_20/File\\_20\\_466.pdf](http://www.courdescomptes.ma/upload/MoDUle_20/File_20_466.pdf). Accessed 26 March 2020.

<sup>22</sup> Each year the threshold are published here: <https://www.rcar.ma/?q=fr/indicateurs/salaires-plafond>. Accessed 26 March 2020.

In addition to these three plans, Morocco also implemented a survivor pension scheme allocated to family members<sup>23</sup> of an insured person who, at the time of death, was receiving an old-age pension or was eligible to receive it.

Old-age pensions are exportable. If affiliates decide to live abroad, their acquired rights are transferred to the new country of residence. CNSS also conducts yearly life control operations.

#### ***12.2.4 Family Benefits***

In Morocco, child benefits financing is the responsibility of the employer. These benefits are intended for employees who reside in Morocco and exercise an activity subject to the social security scheme or pensioners with children born no later than 300 days after the effective date of the pension (regardless of their nationality). To qualify for the benefits, insured individuals must have 108 days of contributions during a period of six months of registration and a monthly salary greater than or equal to 60% of the minimum wage. The amount of child benefits is flat-rate. Since 2007, child benefits are paid directly to the insured. There is a residency condition for children in order to open access to those benefits that are granted independently of the nationality of the beneficiaries, but are non-exportable. Hence, national citizens residing abroad cannot claim this type of benefits from Morocco. Furthermore, CNSS periodically conducts legal control operations aiming to check if children entitled to family benefits continue to meet the living, schooling, or learning conditions.

Regarding maternity benefits, salaried women who cease all wage activity for child birth receive a daily allowance for 14 weeks. The condition for granting this benefit is to have contributed two months during the last 10 months. The amount of the benefit is 100% of the average daily wage (capped). It is exportable if the affiliate decides to reside abroad, although she has to show a residency certificate in the country she is moving to.

Morocco does not have yet specific schemes of paternity or parental benefits. However, it offers some targeted programs for children and families in vulnerable situations. Yet, these schemes exclude foreign residents, as they are exclusively dedicated to Moroccan citizens. Examples in this regard are the cash transfer programs for children in precarious situations, such as the program for direct assistance to vulnerable widowed women with orphaned children set up in 2014. Financed by a social cohesion support fund, the Family Care Fund pays the widow, for each orphan child under 21 years of age (with the exception of disabled children for whom there is no age limit), an amount of 350 dirhams per month, with a monthly ceiling not exceeding 1050 dirhams monthly per family and subject to schooling or

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<sup>23</sup>This includes dependent spouses and children under the age of 16, 21 (if they continue their studies) or 18 (if they are apprenticed) or dependent children with disabilities without a stable income regardless of their age.

child's registration in vocational training. Likewise, the Fund provides divorced poor women and their children (when the father is absent or insolvent) an alimony advance of the same amount and with the same ceiling as that granted for the direct assistance program for widowed women in precarious situations. There are also additional programs for the education of children in need.<sup>24</sup>

### ***12.2.5 Guaranteed Minimum Resources***

There is no specific scheme of non-contributory guaranteed minimum income in Morocco. Only the members of the liberation army can receive a lump sum allowance from CMR that could be considered a minimum income. However, this represents a special category, and the benefit cannot be granted on the basis of volunteering or membership in the fund.

Also, the compensation fund in Morocco is an opportunity to overhaul the social protection system. The compensation system was created in the 1940s to protect the purchasing power of the population and allow them to have access to basic necessities (sugar, flour, soft wheat, butane gas). Until 1973, the compensation fund played a real equalization role by financing subsidies from its own resources, particularly from the oil sector. After 1973, the fund was deprived of its own revenue, entirely dependent on the state budget, thus reducing it to a mere subsidy fund.

### ***12.2.6 Obstacles and Sanctions***

Foreigners residing in Morocco may be affiliated to existing social protection schemes provided they are employees. In accordance with the provisions of Article 516 of the Labour Code Law 65.99,<sup>25</sup> any employer wishing to recruit a foreign employee must obtain an authorization from the Government Labour Administration. This authorization is granted in the form of a visa affixed to the work contract. This formality is mandatory and the Labour Code stipulates penalties in case of omission:

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<sup>24</sup>For instance, the "Tayssir" program is a conditional cash transfer for households living in the poorest communes, aiming to combat dropping out of school. The scheme is currently carried out by municipalities and benefits all rural communes with a poverty rate higher than 30% and a school dropout rate higher than 8%. Also, the Royal Initiative "One Million Schoolbags" aims to fight against school dropout and inequalities by allowing reduced tuition fees for families of millions of primary schools in rural and urban areas and colleges in rural areas. The Ministry of National Education and Vocational Training also distributes schoolbag kits (bags, books, booklets, school supplies) according to the school level and the environment. With an annual budget of 400 million dirhams in 2013–2014, this initiative has benefited 3,897,542 children aged 6 to 15, including 2,401,432 from rural areas.

<sup>25</sup>[www.droit-afrique.com/upload/doc/maroc/Maroc-Code-1999-du-travail.pdf](http://www.droit-afrique.com/upload/doc/maroc/Maroc-Code-1999-du-travail.pdf). Accessed 26 March 2020.

the employer risks a fine and must pay the repatriation costs of the employee who has not obtained the required work visa or its renewal. For its part, the unauthorised employee cannot work legally and remain in the Moroccan territory. Employment contracts concerning foreigners must be of an indefinite duration. Thus, the affiliation to the social security scheme does not, in any case, affect a foreigner's application for temporary and permanent residency, family reunification, or citizen application.

### ***12.2.7 Bilateral and Multilateral Social Security Agreements***

Morocco has signed bilateral social security agreements with 15 countries (Algeria, Belgium, Canada, Denmark, Germany, Egypt, Spain, France, Libya, the Netherlands, Luxembourg, Portugal, Quebec, Romania, Sweden, Tunisia). Moroccans who have worked in these countries and immigrants from these countries residing in Morocco can totalise the periods worked to access contributory old-age and invalidity pensions. National citizens residing in these countries can claim these benefits without returning in Morocco. Morocco is also part of three regional integration organisations, but none of them has made any progress towards the social security coordination between the member states or facilitated access to social benefits for Community migrants. Furthermore, as previously mentioned, social security benefits that are subject to transportability are paid to affiliates even if there is no bilateral social security agreement between Morocco and the country of residence. The only condition is to prove a residence certificate.

## **12.3 Conclusions**

This chapter has examined the social protection system in Morocco and the access of national residents, non-national residents and non-resident nationals in the field of social insurance, social assistance, health, family benefits, employment and social action plans. As a general rule, the access to social benefits in Morocco is reserved for affiliates- nationals or foreigners without distinction. Current laws (laws 98–15 and 99–15) provide for the extension of retirement and health benefits to non-salaried workers in the future. This highlights the momentum in which the government has been working since 2002 to make social protection more accessible to different social categories of Moroccans and foreign residents through the extension of health benefits to migrants at first. The current social protection system is too fragmented and involves a large number of actors whose coordination is not yet developed. Through the many bilateral agreements put in place between Morocco and its partners, Moroccans living abroad have access to more and more social benefits like retirement pensions and disability fringe benefits even if the question of the transportability of other contributory benefits needs to be addressed.

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# Chapter 13

## Diaspora Policies, Consular Services and Social Protection for Moroccan Citizens Abroad



Rilke Mahieu

### 13.1 Diaspora Policy Infrastructure and Key Policies

#### 13.1.1 *The Moroccan Diaspora and its Relation with the Homeland*

Moroccans are currently one of the largest and most dispersed migrant populations in Europe, with large diaspora communities in France (1,146,000), Belgium (298,000), the Netherlands (363,000), Italy (487,000) and Spain (766,000) and smaller ones in many other European countries, including Germany (127,000) (De Haas 2014).<sup>1</sup>

Europe's need of cheap labour after the Second World War has been an important driver for Morocco's post-war emigration (Charef 2014). Morocco's signature of a series of labour treaties with European states during the 1950s and 1960s can be put forward as the decisive factor of the twentieth century Moroccan emigration. While the initial labour migration wave was primarily low-skilled and male-dominated, this unidimensional picture should be nuanced in at least four ways. First, the presence of Moroccans in Europe is older than post-war migration, including Moroccan soldiers' participation in the World Wars. Second, Moroccan emigration has always been motivated by other than strictly economic factors, such as political repression under Morocco's authoritarian regime following independence. Third, after the abandonment of the labour recruitment treaties in 1973, Moroccan emigration continued, albeit in different shapes. Other types of Moroccan migration emerged such as (female) family reunification, student migration, high-skilled migration,

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<sup>1</sup> Figures based on consular registration data.

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marriage migration, etc., thus adding to the diversity in the Moroccan expatriate population. Fourth, the Moroccan population abroad has expanded geographically to an increasing number of destinations. Initially, the Moroccan labour migration went to France, Belgium, the Netherlands and Germany (the four countries that had signed a labour treaty with Morocco). Among these, France was the primary destination, with population movements being anchored in the status of Morocco as a French protectorate until the Moroccan independence in 1956. From the 1970s and 1980s onward, while migration to the original destination countries continued, Spain and Italy emerged as new major destinations. Since then, Moroccan migration flows have also been oriented towards other European countries (e.g. the UK and Scandinavian countries), the United States and Canada (Fondation Hassan II & IOM 2014). Since the 1990s, the Gulf has become an important destination (Ibid). In addition, large waves of Moroccan-Jewish migration have taken place from 1948 onward, primarily towards Israel, but also to France and North America (De Haas 2014).

The Moroccan population abroad, currently estimated by the Moroccan government at five million *Marocains Résident à l'étranger* (about 15% of the total Moroccan population), contributes in various ways to Morocco's economy and society. Most notably, there is an annual remittance flow of around \$7 billion (through official channels only). Remittances are the second source of hard currency after tourism receipts, which are also, to a large extent, provided by expatriate Moroccans during summer holidays (MPC 2013), as more than two million Moroccans return every year during holidays. Because of this significant financial input, the Moroccan population abroad is often depicted as the "cash cow" of Morocco. Many also own houses in Morocco, and at the community level, numerous small-scale non-governmental initiatives improve general welfare and contribute to local development in Morocco.

Since the beginning of Moroccan mass emigration in the early 1960s, there have been attempts by the Moroccan state to control the Moroccan population abroad and to manage and consolidate their economic contribution (Iskander 2010). However, Moroccan diaspora policies have changed significantly over time and are often described as an evolution from a repressive "long arm of Rabat" to a cooperative "outreached hand" (Bouras 2012). Notwithstanding this shift, distrust towards the Moroccan state persists among expatriate Moroccans. While it is difficult to make generalised claims, both historical (Iskander 2010) and contemporary experiences of non-resident Moroccans with origin-state institutions (represented, for instance, by police and consular staff (Kahmann 2014)), contribute to a general sense of distrust towards the Moroccan state. Diaspora policy institutions in particular are regularly being evaluated as inefficient, non-transparent and undemocratic (Belguendouz 2008; Østergaard-Nielsen 2012). More generally, major deficiencies in the Moroccan political system further spur a sceptical stance regarding Moroccan state's discourses and actions.

### 13.1.2 *Diaspora Infrastructure*

Morocco's consular network spans all major destination countries. In each of the top five destination countries, there are several consulates whose number depends on the size and geographical dispersion of the Moroccan populations, as well as the size of the territory. There are 16 Moroccan consulates in France, 11 in Spain, 7 in Italy, 3 in Belgium and 4 in the Netherlands. Beside the consular infrastructure, mobile consulates offering similar services are organised, although on an irregular basis. In addition, Morocco has appointed 75 honorary consuls, mainly in countries and regions lacking consular representation.

While the Moroccan consular network is vast, the lack of quality of its services has been a source of frustration among Moroccans living abroad (Iskander 2010; Belguendouz 2006). Among others, Moroccans abroad complain about the very long waiting lines and unequal treatment due to favouritism. In response to this situation, the improvement of consular services has become a governmental priority since 2015, under the impulse of King Mohammed VI.<sup>23</sup> Among others, a large number of consular employees were fired and replaced, and a hotline for complaints about the consular services was installed.

Beside the consular network operating under the Ministry of Foreign Affairs, various other Moroccan national institutions and foundations have an important stake in emigrant affairs. First, there is the Ministry Delegate to the Ministry of Foreign Affairs and International Cooperation, in charge of Moroccans Residing Abroad and Immigration Affairs (MDCMREAM). This Ministry is charged with the task of preparing and implementing the governmental policy regarding both Moroccans residing abroad and immigrants in Morocco, in cooperation with other ministries and institutions inside and outside Morocco in the realm of migration affairs. The Ministry for Moroccans living abroad was first created in 1990 and has taken different forms since then (sub-ministry, independent ministry). In its current form, it has operated since 2017, during the Othmani government.

Second, there is the Hassan II Foundation for Moroccans Residing Abroad. Created in 1990 and presided by the King's sister Lalla Meryem,<sup>4</sup> this Foundation

<sup>2</sup> See the Royal Discourse of the 16th Coronation Celebration on July 15, 2015.

<sup>3</sup> In the latest governmental declaration (2016–2021), the following goal has been set “Completion of the consular reform project and the process of modernizing and improving the quality of consular and social services, for the benefit of members of the Moroccan community residing abroad, as part of a dedicated action program”.

<sup>4</sup> It should be noted that while the Hassan II Foundation for Moroccans Residing Abroad and the Mohammed V Solidarity Foundation are, strictly speaking, non-political institutions, they are however very tightly connected to the monarchy, which is at the heart of political power in Morocco. The Hassan II Foundation has been designed as a quasi-governmental social aid agency, the major source of income constituting a direct contribution by the Moroccan financial institutions governing migrant remittances, based on a fixed interest rate on emigrant savings (Belguendouz 2006). The Mohammed V Solidarity Foundation's budget mainly stems from a committee of around 100 regular donors, including all major financial institutions and a range of other

aims to support the ties between Moroccans living abroad and their home country and to help non-resident Moroccans to overcome difficulties resulting from their emigration. This institution organises language and cultural education and activities for children, offers judicial, economic and social assistance and promotes cooperation. In addition, it contains an observatory on Moroccan migration.<sup>5</sup>

Third, a national consultative body was created in 2007: the Council of the Moroccan Community Living Abroad (CCME). The CCME's responsibilities include the monitoring and evaluation of the country's public policies with regard to its nationals abroad. It is responsible for issuing notices to ensure the defence of the interests of overseas Moroccans and strengthening their contribution to the economic, social and human development of the country. Furthermore, it also aims to reinforce diplomatic relations and cooperation between Morocco and the countries of residence.

Fourth, since 2000, the Mohammed V Solidarity Foundation, a humanitarian organisation presided by King Mohammed VI,<sup>6</sup> is in charge of the annual *Marhaba* mission, described as "a humanitarian mission consisting of the management of the transfer of 2.5 million Moroccans between their host countries in Europe and their home country, Morocco, during the summer season".

It should be noted that all diaspora institutions are situated at the national level, which reflects Morocco's centralised political system.<sup>7</sup> While the presence of various diaspora institutions in Morocco indicates the importance adhered to emigration by the central authorities, it has also spurred the criticism that there are too many institutions with overlapping competencies in the field of Moroccan diaspora policies (Belguendouz 2006).

Regarding the target population of Moroccan diaspora policies, the most commonly used term for Moroccan nationals abroad is "MRE" (*Marocains Résidant à l'Étranger* or "Moroccans Living Abroad"), while "MDM" (*Marocains du Monde* or "Global Moroccans") is also increasingly used. These terms are used in the broadest sense possible. They include Moroccan emigrants and their foreign-born descendants (second, third and further generations). This inclusive understanding draws on the Moroccan Nationality Code according to which any child born of a Moroccan father or mother is a Moroccan citizen, irrespectively of the place of birth or residence (*ius sanguinis* principle). As the Moroccan nationality is granted automatically and cannot be renounced, all persons with Moroccan origins are automatically considered as "MRE". However, due to the ordinary naturalisation process and the acquisition of the host country's nationality at birth (*ius soli* principle), a large share of Moroccans abroad has dual nationality. For instance, in the

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companies in Morocco. However, the nature of the budget of both foundations should not conceal that they are policy instruments employed by the monarchy.

<sup>5</sup>For an in-depth discussion of the relationship between the Ministry and the Hassan II Foundation, see Mahieu (2019).

<sup>6</sup>See footnote 4.

<sup>7</sup>However, in 2008 a process of "advanced regionalisation" has started, with the aim of making the regions more autonomous.

main destination country- France, approximately two out of three Moroccans have French nationality (Wels et al. 2015).

### 13.1.3 Key Engagement Policies

The Monarchy sets the course for Moroccan diaspora policies. King Mohammed VI (r.1999–present) and his predecessor and father Hassan II (r.1961–1999) have drawn the institutional outlines of these policies and define(d) to a large extent the policy agenda (Brand 2006). In addition, the new Moroccan Constitution (2011) provides some of the guiding principles for Moroccan diaspora policies.<sup>8</sup> However, an integrated, transversal Moroccan diaspora strategy is non-existent.

As stipulated in Article 16 of the Constitution, the Moroccan state aims for the “strengthening of MREs’ contribution to the development of their home country, Morocco, and the tightening of cordial and cooperative ties with the governments and societies of the destination countries”. This illustrates well the Moroccan diaspora policies’ focus on the contribution of Moroccans living abroad to the socio-economic development of Morocco. Traditionally, Moroccans living abroad have sent large flows of remittances, which are facilitated by several Moroccan banks having agencies in the major destination countries (e.g. *Banque Populaire* and *Atijariwafa Bank*). While remittances are still considered important, current diaspora policies focus more on the mobilisation of Moroccan human resources and investment capital. Through supporting transnational entrepreneurship (e.g. by offering individual guidance to start-ups), stimulating investment in real estate and other sectors (through reduced taxation rates and targeted investment programs), setting up platforms to mobilise and create business networks (such as *Maghribcom*) and disseminating information, the Moroccan state takes an active role in this field.<sup>9</sup> Characteristic for policies linking “migration” and “development” is that commonly supranational, regional and other international institutions are involved. Examples of international actors involved in this branch of Moroccan diaspora policies are the International Organisation for Migration, the European Union, the United Nations and development agencies of several receiving countries.<sup>10</sup> Usually, external actors provide a large share of the funding for these policies. Depending on the partnership configuration, initiatives in this field are sometimes oriented towards specific segments of the Moroccan expatriate population.<sup>11</sup>

<sup>8</sup> Art. 16, 17, 18, 30 and 163.

<sup>9</sup> On Morocco’s mobilisation strategy, El Asri (2012).

<sup>10</sup> A good example here is SHARAKA, a project co-financed by the EU Commission, France and the Netherlands ([www.sharaka.ma](http://www.sharaka.ma)). This project ran between 2014 and 2017 and was part of the broader EU-Morocco Mobility Partnership, established in 2013.

<sup>11</sup> For instance, the *Maghrib Entrepreneurs Program* offers support to Moroccan-French entrepreneurs in France and Morocco with their start-up business in Morocco. The program was run in 2014–2015 by the MDCMREAM in cooperation with *l’Agence Française de Développement*.

Beside the socio-economic focus, the ideas of maintaining cultural ties and preservation of the national identity take a pivotal position in Moroccan diaspora policies and discourses (Mahieu et al. 2017; Mahieu 2019). To these aims, several learning programs are being implemented, including Arabic Language and Moroccan Cultural Education (*ELACM*) in major destination countries and an online Arabic language-learning platform (*e-Madrassa*), both coordinated by the Hassan II Foundation. In addition, homeland tours or immersion programs are offered to different age groups, with the aim of immersing children and youngsters in the Moroccan culture, history and society. Examples of these programs are the Seasonal Universities for students in higher education aged between 18–25 (organised by the MDCMREAM) and summer camps for children (organised by the Hassan II Foundation) (Mahieu 2015). Beside visiting programs, Moroccan diaspora institutions also aim at supporting the proliferation of the Moroccan cultural life in the host societies, for instance by supporting Moroccan theatre tours and by creating Moroccan cultural centres (both initiated by the MDCMREAM).

While legally, Moroccan nationals living abroad are entitled to vote and to be eligible in legislative elections at the national, regional and local level (2011 Constitution, Article 17 and Article 30), in practice, this right is not implemented by the Moroccan state. According to the Ministry of Interior Affairs, logistic and diplomatic obstacles for the creation of a constituency abroad in the destination countries impede the electoral participation of nationals living abroad.<sup>12</sup>

Concerning return migration, returnees currently receive little support from the Moroccan state (SHARAKA 2015). However, policy strategies on return migration are emerging (Cherti et al. 2013), and targeted support initiatives are being set up.<sup>13</sup>

## 13.2 Diaspora Policies and Social Protection in Morocco

Pivotal for the social protection of Moroccans nationals living abroad are the Bilateral Conventions on Social Security. In response to large-scale Moroccan labour emigration since the 1960s, Morocco has signed Bilateral Conventions with a number of destination countries for Moroccan emigrants.<sup>14</sup> Among the top five destination countries, four have concluded bilateral agreements on social security

<sup>12</sup>However, during the period 1985–1989, Moroccan nationals abroad were able to directly elect five representatives in parliament (Iskander 2010).

<sup>13</sup>In 2017, a convention was signed between the Ministry for Moroccans Living Abroad, and the Regional Council of Beni Mellal-Khenifra on the establishment of a reception centre for MRE, which would be the first one in Morocco. The centre will aim at both temporary visitors as returnees, and would offer a broad range of administrative and cultural services and leisure.

<sup>14</sup>Morocco has signed Bilateral Social Security Conventions with 14 countries: Belgium, the Netherlands, Spain, Sweden, Germany, Libya, Denmark, Romania, Tunisia, Canada, Portugal, Québec, France, and Luxembourg. With several others, negotiations are continuing.

with Morocco: France (2007),<sup>15</sup> Spain (1979), Belgium (1968), and the Netherlands (1972). A similar Bilateral Convention with Italy has been drafted in 1994, but due to Italy's refusal to sign it, it has not been implemented.

All Conventions include key principles such as: the fact that the primary legislation is the one of the country of labour (i.e. the country of residence); equal treatment of nationals and expatriate workers; the exportability of benefits that are normally subject to the residence condition (such as pensions and child benefits); the coordination of the social security systems of both parties. As such, the Conventions guarantee that Moroccan nationals working abroad have the same social security rights and obligations as employed citizens of their residence countries. They also ensure that, under certain conditions, Moroccan nationals, receive Moroccan social security benefits while living abroad and, in case of return to Morocco, that social rights built up in the destination country are exportable to Morocco. Finally, such Conventions also guarantee that periods of activity in both countries are totalised for their entitlement to social security benefits and for the calculation of these benefits.

However, the Conventions only cover *contributory* benefits (i.e. benefits the person has contributed to directly, as part of an insurance system) and benefits based on non-contributory solidarity mechanisms (welfare redistribution drawing on the taxes paid by all tax payers) are not included (Wels et al. 2015). Also, the Conventions only cover Moroccan nationals (and their dependants) with a *legal* residence status, who are also *workers* (or have an equivalent status) in their residence countries.<sup>16</sup>

In addition to bilateral relations, the protection of social rights of Moroccans in Europe is also affected by European harmonization processes. For instance, the Euro-Mediterranean Agreement,<sup>17</sup> signed in 2000 by Morocco and the EU Member States, also addresses the social protection of Moroccans in European countries. While primarily a trade agreement, Article 65 of the Euro-Med Agreement concerns social security. It establishes the principle of equal treatment of Moroccan nationals and the citizens of EU Member States in the domain of social security,<sup>18</sup> the principle of exportability of social rights from one country to another when nationals move, and the aggregation of activity periods of Moroccan nationals in different EU Member States for the entitlement to and calculation of certain social security benefits.<sup>19</sup> However, the Euro-Med Agreement's provisions are not directly implementable

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<sup>15</sup>Original Convention signed on 9-7-1965, revised Convention signed in 2007.

<sup>16</sup>The various Bilateral Social Security Conventions differ in what refers to the categories of employees that they cover. Often, only employed workers are covered, but the French-Moroccan and Spanish-Moroccan Bilateral Conventions, also include self-employed workers (but only France and Spain do so, not the Moroccan state).

<sup>17</sup>[http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc\\_127906.pdf](http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127906.pdf)

<sup>18</sup>However, this non-discrimination principle has been underpinned by EU Members States earlier by the ratification of the International Labour Organisation's *Migration for Employment Convention* N°97 (1949) in the 1950s and 1960s.

<sup>19</sup>The accumulation of social rights across Member States is important, as there have been significant migration flows of Moroccan nationals from Southern to Northern European countries during

(since regulatory instruments are needed). To take effect, the agreement still needs to be endorsed by the Morocco-EU Association Council (García de Cortázar Nebreda 2016). Notwithstanding, the European Court of Justice has ruled that the non-discrimination principle in social security is directly implementable anyway (Eisele 2014).<sup>20</sup> Also, the principle of aggregation of the beneficiary's periods of activity in different Member States is effective yet (García de Cortázar Nebreda 2016).

While there are overlaps between the protection offered by the Euro-Med Agreement on the one hand, and the Bilateral Conventions on the other hand, the Conventions offer a far more comprehensive social protection. These differences explain why Morocco continues to prioritize a bilateral strategy, by initiating or continuing bilateral negotiations with other destination countries (like Norway), renegotiating existing conventions (for instance, with France in 2007) and concluding new administrative arrangements to specify the application of the existing conventions (for instance, with Belgium in 2014).<sup>21</sup> While the social protection offered by the Conventions has become more extensive over the years in several cases (e.g. Belgium and France), an inverse tendency of more restrictive application may be noted in the case of the Netherlands. In 2016, the Dutch government announced to lower certain benefits of Moroccan nationals' dependants living in Morocco,<sup>22</sup> this decision being justified by the Dutch government by the lower cost of living in Morocco compared to the Netherlands. While the Moroccan government and diaspora institutions initially contested the decision as unfair, the dispute was settled in favour of the Dutch position.

Beside the provisions defined in bilateral and European agreements, the social protection of Moroccans living abroad receives only limited attention by Moroccan public institutions. There is no systematic dissemination of information on the social protection of nationals abroad, or on the application of the relevant bilateral and EU agreements in particular. Information is disseminated on an irregular basis or to limited audiences, such as through the publication of studies (e.g. by the CCME), the organisation of conferences (e.g. by the Hassan II Foundation) or by organising information sessions (by the National Social Security Fund, CNSS).<sup>23</sup> Sometimes, information gaps are addressed by campaigns of international or foreign national development agencies,<sup>24</sup> or by host country institutions. A recent study on Morocco's Bilateral Social Security Conventions with Belgium and France found that information provision by the host country institutions is seen by beneficiaries as effective,

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the latest European economic crisis.

<sup>20</sup>Case C-18/90 Kziber (1991) ECJ I-199.

<sup>21</sup>In 2014, a new administrative arrangement was signed, consolidating returning Moroccan pensioners' rights to health care in Morocco.

<sup>22</sup>In particular, dependant widows and children of emigrants would be affected by the measure and lose up to 40% of their benefits.

<sup>23</sup>For studies, see CCME (2016a) and CCME (2016b). The Hassan II Foundation organised the conference « *Le troisième âge des Marocains résidant à l'étranger* » in June 2005 in Rabat.

<sup>24</sup>For instance, with regard to return migration to Morocco, a guide has been developed by the SHARAKA consortium, also covering the issue of social security: <http://www.sharaka.ma/assets/Uploads/Guide-MRE-Version-Francaise2.pdf>



while information provision by Moroccan public institutions is considered inadequate as administrative staff is often ill-informed (Holzmann 2016).

With regard to the Moroccan consular network, enhancing access to the Moroccan social security protection is not considered a core task of consulates, nor do they assist Moroccan nationals abroad in accessing host country benefits. Consulates do not offer in-kind or cash assistance to nationals abroad and consular services are usually limited to arranging civil and administrative affairs. Helping Moroccans in dealing with social protection in Morocco or in the destination country is not a part of consulates' formal mission.

As most Moroccan nationals abroad live in stable welfare democracies, repatriation in order to ensure the safety of nationals abroad is usually not at stake. However, Article 56 of the decree regulating consular activities<sup>25</sup> defines that, if the citizen abroad is in need and does not receive any support yet by the receiving state, cash or in-kind assistance may be provided, including repatriation. However, the Moroccan state may demand a reimbursement for a period up to 3 years after repatriation in case the repatriated citizen (or the head of household of his/her family) turns out to have means in Morocco. Beside the consulates, also the Hassan II Foundation offers repatriation services to particular categories of vulnerable Moroccans. Sick persons or those in need can file a request with the Foundation for repatriation support. Under exceptional circumstances (such as civil war), repatriation is considered on a more collective basis. This has been the case for Moroccan nationals living in Libya. In 2011, the Ministry of Foreign Affairs established a "crisis cell" with the aim of following up political events in Libya and taking necessary measures, including potential repatriation of Moroccan nationals. In addition, there have been several "repatriation operations" for liberating Moroccan migrants incarcerated in Libya in the context of the European battle against clandestine migration to Europe and enabling them to return to Morocco.

No general state policy exists regarding the repatriation of the remains. Repatriation costs are normally covered by special (private) insurances. However, if a Moroccan national abroad dies without an insurance and the family has no means, the Moroccan state covers the cost of repatriation. Both the Hassan II Foundation and the Ministry for Moroccans Living Abroad include in their services the coverage of the cost of repatriation of the body to Morocco, partially or totally. Candidate-beneficiaries (i.e. family members) have to file a demand with the Ministry (via the local consulate) or the Foundation Hassan II.

### ***13.2.1 Unemployment***

The Social Security Conventions with France and Spain and the Euro-Med Agreement do not take into consideration the coordination of unemployment benefits. As a general rule, unemployment benefits are considered as non-exportable. In

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<sup>25</sup>Décret n° 2-66-646 du 21 kaada 1389 (29 janvier 1970) portant application du dahir n° 421-66 du 8 chaabane 1389 (20 octobre 1969) relatif aux attributions des agents diplomatiques et des consuls à l'étranger.

the Euro-Med Agreement, it is mentioned though that Moroccan nationals, with regard to all social security matters – including unemployment – should receive a “treatment free from any discrimination based on nationality relative to nationals of the Member States in which they are employed” (Art. 65.1).

However, the Bilateral Social Security Conventions that Morocco signed with the Netherlands and Belgium introduce one coordination measure concerning unemployment: to determinate the right to unemployment benefits, the insurance periods of Moroccan nationals during their residency in Morocco and abroad will be aggregated (i.e. the periods the person has worked, or any equivalent period, such as the maternity leave).

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

### 13.2.2 *Health Care*

The access to general health care, maternity benefits and benefits related to occupational accidents or occupational diseases are provided by the Bilateral Conventions that Morocco signed with France, Spain, Belgium and the Netherlands. These Conventions ensure that Moroccan nationals are entitled to a health care insurance under the same conditions as the citizens of the country of residence. The Conventions also protect the dependants of the insured person. Also, upon return to Morocco, Moroccan pensioners are entitled to health care insurance (AMO) in Morocco.<sup>26</sup>

Moroccans nationals in Italy are not covered by a Bilateral Convention, although they are entitled to health care insurance in Italy under the same conditions as Italians through the non-discrimination clause in the Euro-Med Agreement and other treaties (see above). Contrary to their co-nationals in the other top five

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<sup>26</sup>This is a recent measure, as AMO was introduced in Morocco in 2006.

destination countries, dependants of Moroccans residing in Italy are protected only if they also reside in Italy, not in Morocco.

Beside the obligatory health care insurance (*Assurance Maladie Obligatoire* – AMO, introduced in 2005), covering illness, maternity and accidents, Morocco has introduced the medical assistance program RAMED since 2008. It provides free or partially free medical services in public hospitals in Morocco to the most disadvantaged who are not covered by any health care insurance. Currently, the program is only accessible for Moroccans living in Morocco, but since 2013, the extension of the program to expatriate Moroccans nationals (who return to Morocco) and their dependants has been “under study” by the Health Care Ministry.

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

### 13.2.3 Pensions

As the demographic profile of the Moroccan expatriate population is shifting, the exportability of old-age pensions is a relevant issue. In main destination countries (France, Belgium, Germany, the Netherlands), where the Moroccan population is ageing rapidly (Fondation Hassan II 2006), the question of return is particularly at stake. The Bilateral Social Security Conventions cover this issue. Retired Moroccans who return to Morocco permanently continue to receive the pensions they were entitled to in the receiving country. In case the pensioner deceases, the dependants are usually entitled to a survivor’s pension, no matter whether they live in Morocco or in the destination country. Only Spain maintains a residence requirement (CCME 2016a).

However, the principle of exportability only applies to regular pensions, not to any (non-contributory) top-ups that are offered in the receiving countries to pensioners with a pension below the minimum income. This is an important aspect, as approximately one out of three Moroccan pensioners living abroad benefit from such top-ups (Holzmann 2016).

Beside the legal provisions regarding pensions, there are also support programs for old Moroccans living abroad. One of the Moroccan diaspora institutions, the Hassan II Foundation, considers the elderly as an important target group of its “Cooperation and Partnership program”. In this social program (in place since 1998), NGOs or other institutions or individuals working with retired Moroccans abroad can request the support of the Foundation Hassan II for their projects (partial

financial support or in-kind support). In some of the implemented projects, the aim was to enhance the access of Moroccan pensioners to their social rights, but many projects focus more broadly on the elderly's well-being and their ties to Morocco.

### ***13.2.4 Family-Related Benefits***

The Bilateral Social Security Conventions that Morocco signed with four of the top five receiving countries guarantee Moroccans' access to family benefits even when the dependants (spouse and children) are residing in Morocco.<sup>27</sup> In contrast, the Euro-Med Agreement only guarantees family benefits when the children are residing with the worker in an EU Member State. As a result, Moroccan heads of households working in Italy are not entitled to family benefits when their children are living in Morocco.

In 2010, a scholarship program was launched to support the school careers of Moroccan youngsters abroad. The Ministry Delegate to the Ministry of Foreign Affairs and International Cooperation, in charge of Moroccans Residing Abroad and Immigration Affairs (MDCMREAM), together with the Ministry of Higher Education, Academic Research and Professional Training offers 1000 university scholarships annually to students in a "precarious situation". Their candidacy is made via the local consulate and the selection process is done by a Commission including members of both Ministries. The scholarship is limited to one student per family and the monthly allowance is around 1000 Moroccan Dirham (= around €100).

For Moroccan families living in Algeria and the Ivory Coast, there is another specific school support program. Deprived families can apply for financial support helping to cover their children's school fee. The aim is to boost school attendance by this group. The MDCMREAM provides support to 1000 Moroccan families in Algeria and 120 in the Ivory Coast. The fee depends on the number of children in the family (one child: 1000 Moroccan Dirham per year, 500 Dirham extra per child, up to a maximum of 5 children.)

### ***13.2.5 Economic Hardship***

The Moroccan state does not provide guaranteed minimum resources for Moroccans in Morocco. Therefore, unsurprisingly, there are no provisions to guarantee minimum resources for Moroccans living abroad. In the residence countries, guaranteed minimum resources are considered as non-contributory benefits and therefore non-exportable. To benefit from them, the Moroccans beneficiary needs to reside in the receiving country.

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<sup>27</sup> Sometimes, there is a restriction with regard to the number of children abroad creating an entitlement to family benefits. For instance, the French-Moroccan Social Security Convention defines a limit of four children.

However, in 2013, the government has launched the idea to offer in-cash assistance to needy nationals abroad. The former prime minister announced the creation of a National Solidarity Fund for Moroccan nationals living abroad who find themselves in a precarious situation. The aim would be to help the “most vulnerable or needy citizens abroad”. The Solidarity Fund would contain ten million Moroccan Dirham (= €1 million.) and allocation of money would operate via consulates and embassies. However, this Fund does not seem to be operational (yet), and it is unclear who would benefit from it and under what conditions.

The lack of guaranteed minimum resources does not mean that Moroccan nationals who do not have an income are left to their fate. Due to the extensive social protection in Europe (where the largest share of the Moroccan population abroad is located), foreign nationals including Moroccan nationals are usually entitled to welfare benefits in the country of residence, although eligibility criteria vary across countries. However, Moroccan institutions (consular services, diaspora institutions) do not offer assistance to Moroccans living abroad in accessing these welfare benefits.

### 13.3 Conclusions

The focus of Moroccan diaspora policies is the mobilisation of Moroccan nationals’ human and financial capital for socio-economic development in Morocco. Social protection of nationals abroad does not take a central position on the political agenda. When considering the state of the Moroccan society, with relatively high poverty and unemployment rates<sup>28</sup> and an emerging Moroccan social security system, this lack of prioritization of expatriate nationals’ social protection is not surprising.

However, some important steps have been taken in this regard. The primary tools for expatriate nationals’ social protection are a series of Bilateral Social Security Conventions that Morocco negotiated with top destination countries, including France, Spain, Belgium, and the Netherlands. These Conventions pursue coordination of the social security systems of Morocco and the destination countries and allow the exportability of (contributory) social benefits from origin to destination countries and vice versa. In the second place, harmonising EU policies towards its Mediterranean neighbours have also led to some coordination in the protection of social rights. This is especially important for Moroccans living in countries that have not signed a Social Security Convention with Morocco, such as Italy.

While the Bilateral Conventions perform quite well (Holzmann 2016), there is room for improvement. Among others, information dissemination on social rights

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<sup>28</sup> General living standards in Morocco are moderate (Human Development Index: 0,647; position 123 out of 188 countries). Out of a population of 35 million, four million Moroccans live under the poverty line, while another 5.3 million live under the threat of falling back into poverty (World Bank 2017). In addition, unemployment rates have been rising steadily, fluctuating around 10% from 2014 on and hitting both rural populations and urban youth.

could happen more systematically and more effectively by Moroccan public institutions. Due to the profile of the Moroccan population abroad (e.g. among retirees, a large share of low-educated or illiterate persons), it is likely that a share of the potential beneficiaries is currently not very well informed about their social security rights. Also, Bilateral Conventions do not consider social protection comprehensively as they focus on contributory benefits exclusively. Moreover, many territorial gaps remain as various important destination countries of Moroccan emigrants are not covered by a convention (e.g. the Gulf Countries, the USA, Italy). Moreover, the Bilateral Conventions are unable to guarantee the social security rights of Moroccan nationals with more complex migration trajectories (García de Cortázar Nebreda 2016).

Beside legal provisions that are coordinating the social security systems of home and host countries, there are a few programs offering support to particular categories of vulnerable groups such as elderly, disadvantaged youth or sick persons. However, social programs are usually not integrated in the state's consular services, but provided by other public institutions. In addition, these programs tend to be small-scale (benefitting only a small group of beneficiaries) and/or targeting specific receiving countries, rather than being generalised, comprehensive social protection policies for Moroccans abroad.

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# Chapter 14

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in the Russian Federation



Daria Popova

### 14.1 Overview of the National Social Security System and Main Migration Features in the Russian Federation

This chapter discusses the general legal framework regulating Russia's welfare system and access for national citizens, foreigners residing in the country, and national citizens residing abroad to social benefits in five policy areas: unemployment, health care, family benefits, pensions, and guaranteed minimum resources.

#### 14.1.1 *Main Characteristics of the National Social Security System*

The current Russian federal system comprises a complex structure of social responsibilities divided between the federal and regional Governments. Pensions and contributory social transfers are regulated at the federal level and financed from social insurance contributions (SIC) and general taxes. As a result of the decentralization reform carried out in 2005, the majority of responsibilities for legislative regulation and financing of non-contributory social transfers and services were transferred from the federal to the regional level. Regional authorities may set the size and eligibility criteria within the limits established by the federal legislation. Despite partial privatization, healthcare remains to a large extent public and free at the point of use, but there are user fees for services beyond the basic coverage and informal payments are still quite widespread in healthcare. Public healthcare is funded

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through SIC and general taxes. There is a high regional disparity in spending on non-contributory social benefits and healthcare.

The social protection programmes are funded from the Consolidated Budget of the Russian Federation (which comprises federal, regional and municipal budgets) and extra-budgetary funds (the Pension Fund, the Social Insurance Fund, the Federal and Territorial Funds of Mandatory Health Insurance). Revenues of extra-budgetary funds are financed by SIC paid by employers (on behalf of employees) and the self-employed. The revenues of the Consolidated Budget are derived from general taxes (federal, regional and local). In total, the contribution of the Consolidated Budget amounts to over a half of the total social protection spending.

Since the mid-2000s and until the economic crisis which began in the second half of 2014, social spending in Russia had been expanding. Yet, recent studies categorize the Russian tax-benefit system as not very redistributive (Lopez-Calva et al. 2017; Popova et al. 2018). The social protection system is dominated by pensions and categorical benefits which are mainly targeted at people of old age. Government transfers cover a large share of the population, but most cash benefits do not reach the subsistence level. The attempts to reduce the number of eligible people by introducing means-testing procedures were largely unsuccessful. In 2005, a reform aimed at monetizing the categorical in-kind benefits (former “privileges”) resulted in massive public protests. The failure of that reform set limits to further structural changes in social policies. The ‘national projects’ initiated in 2006 proposed increases in financing of social programmes without any significant restructuring. The Government has implemented a series of increases in earnings of the public sector workers, the minimum wage, pension benefits and a revision of maternity and childcare benefits aimed at promoting the falling fertility rates. At the same time, despite the inflow of energy revenues, the fiscal capacities of the state remain limited due to poorly regulated social insurance markets and large scale informality and tax avoidance.

Table 14.1 shows the breakdown of social spending by main social programmes in Russia since mid-2000s. Total social spending (including public healthcare and social protection), accounted for 16.6% of the Gross Domestic Product (GDP) in 2015. Healthcare expenditures remained constant at 3.7% of the GDP, while social protection spending have dropped since 2010 due to austerity measures associated with the 2014 economic crisis. A significant part of social protection spending goes to public contributory and non-contributory pensions (8.2% of the GDP in 2015). Spending on social insurance or contributory benefits and quasi-insurance unemployment benefit accounted for 0.8% of the GDP in 2015. Spending on non-contributory social assistance programs accounted for 2.4% of the GDP, but a major part of these resources was spent on categorical benefits for the elderly. Means-tested benefits for the poor remain underdeveloped, accounting only for 0.4% of GDP in 2015. The costs of various social services (including social care, childcare, youth policy and other programs) amounted to 2.1% of the GDP in 2015.

**Table 14.1** Social spending in Russia (in mln rubles and as % of GDP)

Year	2005	2010	2015
<i>In current prices, mln rubles</i>			
<b>Social spending, total</b>	<b>2,909,487</b>	<b>8,032,267</b>	<b>13,765,296</b>
Healthcare, physical culture and sports	797,056	1,708,805	3,115,864
Social protection	2,112,431	6,323,462	10,649,432
Pensions	1,292,988	3,881,632	6,855,119
Unemployment benefit and ALMPs	26,383	183,884	43,210
Social insurance/contributory	134,090	456,617	639,048
<i>Maternity leave allowance</i>	<i>14,534</i>	<i>67,317</i>	<i>116,685</i>
<i>Lump-sum allowance on childbirth/adoption/family placement</i>	<i>8479</i>	<i>18,737</i>	<i>22,251</i>
<i>Childcare allowance up to 1.5 years</i>	<i>5670</i>	<i>121,797</i>	<i>142,312</i>
<i>Temporary incapacity benefit</i>	<i>95,669</i>	<i>185,183</i>	<i>196,684</i>
<i>Workplace accident/work-related disease insurance covers</i>	<i>28,833</i>	<i>46,315</i>	<i>70,562</i>
Social assistance/non-contributory	405,670	1,270,621	1,967,965
Not means-tested benefits	322,306	1,032,367	1,641,609
<i>Monthly cash payments (categorical benefits)</i>	<i>179,989</i>	<i>516,241</i>	<i>706,760</i>
<i>Other categorical benefits (cash and in kind)</i>	<i>133,691</i>	<i>401,357</i>	<i>546,723</i>
<i>Special forms of support for families with children</i>		<i>114,770</i>	<i>388,127</i>
Means-tested benefits	83,365	238,253	326,356
<i>Child allowance up to 16(18) years</i>	<i>18,135</i>	<i>43,607</i>	<i>46,447</i>
<i>Housing subsidies</i>	<i>40,035</i>	<i>55,719</i>	<i>62,757</i>
<i>State social assistance</i>	<i>1629</i>	<i>8305</i>	<i>18,211</i>
<i>Social supplement to pension</i>	<i>23,566</i>	<i>130,622</i>	<i>158,331</i>
Social care institutions	70,234	168,630	251,958
Other social programmes	45,272	158,262	703,239
Childcare and pre-school education	112,998	321,349	692,087
Youth policy	24,796	49,511	58,405
<i>As % of GDP</i>			
<b>Social spending, total</b>	<b>13.5</b>	<b>17.3</b>	<b>16.6</b>
Healthcare, physical culture and sports	3.7	3.7	3.7
Social protection	9.8	13.7	12.8
Pensions	6.0	8.4	8.2
Unemployment benefit and ALMPs	0.1	0.4	0.1
Social insurance	0.6	1.0	0.8
Social assistance	1.9	2.7	2.4
Not means-tested benefits	1.5	2.2	2.0
Means-tested benefits	0.4	0.5	0.4
Social care	0.3	0.4	0.3
Other social programmes	0.2	0.3	0.8
Childcare and pre-school education	0.5	0.7	0.8
Youth policy	0.1	0.1	0.1
<b>GDP in current prices, bln rubles</b>	<b>21,609.8</b>	<b>46,308.5</b>	<b>83,101.1</b>

(continued)

**Table 14.1** (continued)

Year	2005	2010	2015
GDP growth	106.4	104.5	97.5
CPI end-year	110.9	108.8	112.9

Sources: Calculated by Elena Gorina using the data of the Federal Treasury at <http://www.roskazna.ru> (reports on implementation of the consolidated budget of RF and budgets of state extra-budgetary funds, Federal Budget of RF, consolidated budgets of regions); federal laws on implementation of the budget of the pension fund and social insurance fund; regional laws on implementation of budgets of regions; Federal State Statistics Service data (statistical digest “social situation and standard of living of the population of Russia”) at <http://www.gks.ru/>; Federal employment service data at <http://www.rostrud.ru/>

### 14.1.2 Migration History and Key Policy Developments

The migration situation in Russia has been developing according to a scenario of migration in Western Europe, but lagging by 30 to 40 years. In the 1960s, Europe experienced postcolonial migration flows; currently, the situation in Russia resembles the one in Western Europe in the late 1970s. As of 2017, Russia hosted 11,7 million international migrants which accounted for 8.1% of the total population (UN DESA 2017). However, the majority of these international migrants comes from the former Soviet Union republics, with the three largest contributors being Ukraine, Kazakhstan and Uzbekistan. The balance of international migration increased sharply after the collapse of the Soviet Union, reaching its highest level in the mid-1990s (845,7 thousand people, or 5.7 per 1000 people in 1994) (Rosstat 2017). This was due to the massive flow of Russian expatriates returning to Russia from other states of the former Soviet Union. Subsequently, there was a decrease in the intensity of international migration until mid-2000s. Starting from late 2000s, the balance of international migration has been rapidly growing again due to the inflow of temporary economic migrants from less developed Central Asian states, including Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Currently, these are the main group of working migrants in Russia (Di Bartolomeo et al. 2014). In 2015–2016, the number of migrant workers shrank by at least one third after a nearly two-fold depreciation of national currency and the contraction of the Russian labour market, but this seems to be a temporary trend (Rosstat 2017).

At the same time, in 2017, 10,6 million people born in Russia lived abroad (UN DESA 2017). Among those, three quarters were in former Soviet Union republics. Of those not living in the former Soviet Union countries, the majority are ethnic migrants who took part in repatriation programs which enabled them to settle in Germany, the United States and Israel. Overall, the top destination countries for Russian emigration over the period since the collapse of the Soviet Union were Ukraine, Germany and Kazakhstan.

Russia’s migration policy has been rather ambiguous. Russia has established a visa-free regime with countries of the Commonwealth of Independent States (CIS) which allows citizens of these countries to stay in Russia temporarily and look for work. However, a lack of transparent and flexible labour migration policy has

pushed a major share of them into undeclared work. Estimates of the number of undocumented migrants working in Russia vary from 3–4 million in autumn and winter to 5–7 million in spring and summer due to seasonal work (Iontsev and Ivakhnyuk 2012). They mostly hold low-paying jobs, primarily in trade and construction, which are unattractive to Russian citizens. Widespread undeclared employment of migrants is associated with considerable financial losses for Russia in the form of unpaid taxes and social contributions. At the same time, this group of migrants is deprived in terms of their employment and social rights and have sometimes been met with xenophobia.

Politically, Russia is interested in strengthening integration of the post-Soviet space and considers interaction with CIS countries a priority of its migration policy. The demographic developments over the past 20 years (low fertility rates and population ageing) make Russia increasingly dependent on foreign workforce. Yet, only recently has the Russian Government started elaborating a migration policy that accounts for labour market needs. The State Migration Policy Concept (2012) sets policy until 2025 aiming to make immigration policy more balanced and includes the development of legislation focused on various (primarily labour) migration flows.

One of the major developments in migration policy has been the launch of the Eurasian Economic Union (EAEU), which comprises Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. Citizens of these countries are subject to preferential migration regime which makes them equal to Russian nationals in terms of their employment and social security rights (and vice versa). At the same time, new regulations introduced in 2015 made it more difficult and costly for other migrants to access the Russian labour market on a legal basis. All potential employees are now required to pass Russian language tests, undergo a medical exam and purchase voluntary health insurance. Finally, integration of migrants still receives little policy attention, which remains a major challenge.

## 14.2 Migration and Social Protection in the Russian Federation

The main legislative act regulating the rights and obligations of foreigners in Russia is the Federal Law No 115 of July 2002. The Law defines three main types of migrant statuses that condition foreigners' access to social benefits: temporary visitors (on a migration card/visa), temporary residents (on a temporary residence permit), and permanent residents (on a residence permit)<sup>1</sup>.

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<sup>1</sup>Foreigners can apply for a status of a permanent resident within three years after having obtained a temporary residence permit. The procedure implies passing the Russian language proficiency test (with the exception of citizens of Belarus, pensioners and minors) or providing the certificate of secondary education obtained in the Soviet Union or Russia; medical exam; confirmation of means (income above the subsistence level); state duty. Some individuals are eligible for the simplified

Social security benefits are financed from extra-budgetary funds that receive their revenues from social contributions made by the working population. Hence, a personal contribution record determines the entitlement to receive social security benefits from these funds. Foreigners who are permanent or temporary residents are entitled to social security benefits if they are considered socially insured according to the law, if they work under an employment contract, or if their employer makes social insurance contributions on their behalf. The exception are all social benefits for families with children<sup>2</sup>. Foreigners who are permanent residents are entitled to receive them even if they do not have a contribution record, just like nationals. Foreigners who reside in the country on a temporary basis are only entitled to temporary incapacity and maternity benefits provided that they have been officially registered and made contributions to the Social Insurance Fund for at least six months. Neither permanent, nor temporary foreign residents are entitled to the cash unemployment benefit.

As for social assistance benefits, all foreigners legally residing in Russia can access these benefits under the same eligibility conditions as those applied for resident Russians. However, social assistance benefits will not be provided in cases of illegal residence and employment, work under a civil law contract, deprivation of parental rights or leaving children in full provision of the state.

All foreigners, regardless of their status in the Russian Federation, are eligible for free emergency medical care in public healthcare institutions. Only foreigners who are insured can receive other types of free healthcare. This applies to permanent or temporary foreign residents, as well as refugees. Temporary visitors are not eligible and are obliged to have a voluntary health insurance or pay for medical treatment. Temporary workers must have a certificate of voluntary medical insurance to be able to work on the territory of the Russian Federation.

A special group of foreign citizens who enjoy a preferential treatment in terms of accessing social benefits in Russia are citizens of the Republic of Belarus (based on a bilateral treaty of 2007) and citizens of the countries of the Eurasian Economic Union (EAEU<sup>3</sup>, which apart from Belarus and Russia, also includes Kazakhstan, Armenia and Kyrgyzstan). Insured citizens of these countries have the same rights of access to social security benefits (excluding pensions) as citizens of the state where they are employed.

The only type of social benefits that could be received by a non-resident Russian citizen is contributory pension. A temporary leave from Russia (without acquiring a status of a permanent resident in another country) will not affect the rights of Russian citizens to social benefits from Russia, as long as they fulfil the general eligibility conditions for those benefits.

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procedure for obtaining a residence permit. These include: highly qualified workers and their family members, refugees, Russian native speakers, citizens of Turkmenistan and Belarus; participants of resettlement program for the expatriates, individuals married to Russian citizens.

<sup>2</sup>Federal Law No 81 of May 19, 1995 “On state benefits for citizens with children”.

<sup>3</sup>See: <http://www.eaeunion.org/?lang=en>. Last accessed 5 May 2020.

### ***14.2.1 Unemployment***

According to the Russian labour legislation<sup>4</sup>, there are several types of social support guaranteed by the state to the unemployed. The unemployment benefit in Russia is financed by general revenues and is weakly related to the length of service and earnings, hence can be considered as a quasi-insurance program. To be eligible for an earnings-related unemployment benefit, applicants should be employed at least for 26 calendar weeks of full-time employment during 12 months preceding the job loss. The benefit is conditional on applicant's registration with the employment service. During the first 12 months of unemployment, the amount of the benefit is defined as a proportion of applicant's average earnings for the last three months of employment, subject to minimum and maximum thresholds. After that period, the applicant might be entitled to the minimum amount of unemployment benefit. The unemployed lacking a sufficient insurance record (e.g. first-time job seekers, those who have exhausted their entitlements, those willing to start working after a year long break) and those dismissed due to violation of work discipline are entitled to the minimum amount of the unemployment benefit, while each period of the benefit payment cannot exceed six months during a 12-month period.

The public employment service provides early retirement pensions to the recipients of unemployment benefits and material aid to those unemployed who exhausted their eligibility for the cash benefit. In addition, there are cash benefits aimed at supporting the participation of job seekers in active labor market programs, including a training scholarship, wages for public works, etc.

Registered unemployment rates in Russia are substantially lower than survey-based unemployment rates (by International Labour Organization - ILO definition), predominantly due to limited incentives for registration, as the unemployment benefit amount is very low. However, registration of working age individuals at the employment service if they are not in work is a mandatory requirement for obtaining the means-tested social assistance. Only around one third of the unemployed is registered with the public employment service. The unemployment benefit is paid to nearly 90% of the registered unemployed and overall, recipients constitute less than 1% of the population (Rosstat 2018a).

Foreign residents cannot apply for the unemployment benefit as the latter is exclusively reserved for nationals. Russian citizens permanently residing abroad are not eligible either. However, foreigners may apply to the employment service in order to receive help with job search.

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<sup>4</sup>The Labour Code of the Russian Federation (Federal Law of 30.12.2001 No 197); Federal Law of 19.04.1991 No 1032-1 "On employment in the Russian Federation".

### 14.2.2 Health Care

Public healthcare is free at the point of use for Russian citizens<sup>5</sup>. The state guarantees free healthcare including in- and out-patient treatment, rehabilitation/nursing care and provision of medicine for specific categories of patients. However, free provision is currently quite limited, which results in the growth of private spending on healthcare services, including “additional” services provided by public medical institutions. Public healthcare for working people is funded through contributions paid by employers and the self-employed to the Federal and Territorial Mandatory Health Insurance Funds. The cost of health insurance for non-working citizens is covered from the regional budgets, with the share of healthcare spending subsidized by the budget being over 50%.

All foreigners, regardless of their status, are eligible for free emergency medical care in public healthcare institutions<sup>6</sup>. Insured foreigners can also benefit from other types of public healthcare<sup>7</sup>. This applies to foreigners permanently residing in the country and refugees, irrespectively of their working status, and temporary non-national employees. Uninsured women are also eligible for medical help during pregnancy and childbirth. Foreigners who are temporarily residing in the country are obliged to have a certificate of voluntary health insurance valid on the territory of the Russian Federation.

Health-related cash allowances are provided by the Social Insurance Fund (SIF)<sup>8</sup>. Its revenues are generated by social insurance contributions paid by employers and transfers of the federal budget to cover the costs of payments to some categories of uninsured persons. The Fund also accumulates employer contributions on mandatory workplace accidents and work-related disease insurance. The main health-related cash allowance – a temporary incapacity benefit – is paid to all insured persons (regardless of the nationality or the length of residence in Russia) for the whole period of absence from work due to sickness or the need to take care for a sick family member. The amount is estimated on the basis of annual earnings of the insured person over the past two years subject to an upper limit. The size of the benefit is differentiated by a length of the contribution record: 60% of average earnings for employees with less than five years employment record; 80% for employees with five to eight years record; 100% for those with more than eight years record; no more than the minimum wage for employees whose record is below six

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<sup>5</sup>Federal Law No 323 of 21.11.2011 “On the basis of citizens’ health protection in the Russian Federation”.

<sup>6</sup>Government Decree No 186 of 6.03.2013 on the rules of providing medical care to foreign nationals on the territory of the Russian Federation.

<sup>7</sup>Federal Law No 326 of 29.11.2010 “On Compulsory Health Insurance”, article 10.

<sup>8</sup>Federal Law No 165 of 16.07.1999 ‘On foundations of social insurance’; Federal Law No 255 of 29.12.2006 ‘On mandatory social insurance in case of temporary incapacity and maternity’; Federal Law No 125 of 24.07.1998 ‘On mandatory social insurance in case of workplace accidents and work-related diseases’.



months. The allowance is not exportable as being employed in Russia is a prerequisite for qualifying for this benefit.

The main cash allowance related to disability is the disability pension. In 2017, 2.183 million people (out of 43.177 million pensioners) received a disability pension (Rosstat 2018a). There are contributory and non-contributory (or social) disability pensions. The contributory ones are provided on the same conditions as old-age pensions, except that the former can be claimed irrespectively of age. Individuals without any contribution record (e.g. disabled children) are eligible for the non-contributory disability pensions. The size of disability pension depends on the severity of disability. The total number of recipients of disability pensions is lower than the total number of the disabled, because some of them choose to receive an old-age pension, which is higher for people with the easiest form of disability. Contributory disability pension can be exported outside of Russia, but non-contributory disability pensions are only available to those residing in Russia (nationals and permanent foreign residents).

### **14.2.3 Pensions**

Since 2002, Russia maintains a three-pillar pension system: the first pillar is based on a pay-as-you-go (PAYG) principle, the second pillar is a funded system (for those born after 1966), whereas the third pillar provides mechanisms for additional savings towards a better pension on a voluntary basis<sup>9</sup>. The first two pillars are financed by contributions to the extra-budgetary Pension Fund paid by employers (on behalf of employees) and the self-employed. Russia also has a “zero” pillar or general revenue-financed benefits for uninsured pensioners (the disabled, orphans, etc.). Early retirement and postponement are possible and individuals are allowed to work while receiving a pension. The share of working pensioners amounts to about 30% since early 2000s (Rosstat 2018a). Currently, about half of the total budget of the Pension Fund is funded by transfers from the federal budget.

Contributory pensions are called labour pensions and comprise old age, disability and survivor's pensions. The pension formula has undergone several changes, the latest one in 2015. Currently, the eligibility for the contributory pension depends on an ‘individual pension score’ (pension points) calculated based on earnings, length of employment and age at retirement. The minimum contribution period to

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<sup>9</sup>Federal Law No 167 of 15.12.2001 ‘On mandatory pension insurance in the Russian Federation’; Federal Law of 24.07.2002 ‘On investment of assets for financing the funded element of the labour pension in the Russian Federation’; Federal Law No 173 of 17.12.2001 ‘On labour pensions in the RF’; Federal Law No 166 of 15.12.2001 ‘On public pension provision in the RF’; Federal law No 56 of 30.04.2008 ‘On additional insurance premiums for the funded part of the labour pension and the state support for formation of pension savings’.

be eligible for a contributory pension is 15 years (prior to 2015 – five years). Prior to January 2019, the retirement age was 55 years for women and 60 years for men<sup>10</sup>.

Social pensions are granted to individuals with insufficient or no labour record. This comprises all men aged 65+ and women aged 55+, the disabled, children-orphaned studying full-time up to the age 23 and representatives of the small ethnic groups of the North upon reaching the age 55 for men and 50 for women. There is no means-test. In 2015, out of 41.456 million pensioners, 3.007 million received social pensions (Rosstat 2018a).

In order to receive a contributory pension, foreigners must have the status of permanent residents, be insured in the Russian system of mandatory pension insurance, and fulfill the general eligibility conditions. Social pension may be granted to foreigners permanently residing in Russia if they lived in the country for at least 15 years and reached the state retirement age. Foreigners temporarily residing in Russia are not entitled to claim public pension until they receive a permanent residency status or citizenship. However, the pension rights of foreigners may also be regulated by bilateral agreements. Under such an agreement, pension rights acquired in one state can be taken into account when claiming a pension in another country. For instance, such an agreement currently exists between Russia and Belarus. Contributory pensions can be received by individuals living outside of Russia, while social pensions are not exportable.

#### **14.2.4 Family Benefits**

The system of social protection of children and families comprises cash benefits and services for families with children,<sup>11,12</sup> Almost all childbirth-related cash benefits were subject to revision in 2007, as a part of the Government strategy to suspend population decline. Currently, the duration of paid maternity leave is 140 calendar days. The amount of the maternity allowance covered by social insurance is 100% of average earnings for the past two years preceding the leave, subject to an upper limit set annually by the Social Insurance Fund (SIF). For women whose contribution record is below six months, the amount cannot exceed the minimum wage

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<sup>10</sup>The pension reform approved in 2018 implies a gradual transition to the retirement age from 55 to 60 years for women and from 60 to 65 years for men during the period 2019–2028.

<sup>11</sup>Federal Law No 81 of 19.05.1995 ‘On state allowances to citizens with children’; Labour Code of the Russian Federation (Articles 255–257); Federal Law No 255 of 29.12.2006 ‘On mandatory social insurance in case of temporary incapacity and maternity’; Federal Law No 256 of 26.12.2006 ‘On additional measures of support to families with children’; Decree of the President of the Russian Federation No 431 of 5.05.1992 ‘On measures of social protection of families with many children’.

<sup>12</sup>Maternity and family allowances that are not covered in this section include lump-sum cash allowances in connection with childbirth granted to all nationals and a lump-sum cash transfer to mothers who gave birth to a second child (maternity capital).

established in the region. All socially insured women are entitled to maternity allowance, irrespectively of their nationality.

Upon completion of maternity leave, mothers (fathers, adoptive parents, other relatives or guardians taking care of a child) are entitled to a paid parental leave that lasts up to 1.5 years. For socially insured individuals, the cash allowance for the period of parental leave (monthly child care allowance up to 1.5 years) equals 40% of the average monthly earnings for the past two calendar years, subject to lower and upper thresholds. Individuals whose contribution record is below six months are entitled to the minimum allowance. To receive this allowance, foreigners must be either permanent residents or socially insured. However, the above mentioned allowances are not conditioned by the country of birth, residence or nationality of the child.

The parental leave benefits are complemented by several means-tested monthly allowances. According to Russian law, eligibility for means-tested benefits is derived by comparing the individual, family or household income with the poverty line<sup>13</sup>. The monthly allowance for the third and subsequent children up to three years (introduced in 2017) is paid if family income is below the mean income in the region. The monthly allowances for the first and second children up to 1.5 years (introduced in 2018) are paid if family income is below 150% of the regional poverty line<sup>14</sup>. The benefit amounts are equal to 100% of the cost of regional poverty line<sup>15</sup>.

A monthly allowance for children up to 16 (18) years from poor families is the largest means-tested program in Russia in terms of its coverage, mainly due to weak targeting mechanisms (Popova 2013). The coverage though has been decreasing from over 40% of the population under 16 years in 2010 to 27% in 2015 (Rosstat 2018a). Since the decentralization reform carried out in 2005, the amounts, eligibility conditions, indexation and forms of payment of this benefit vary significantly from region to region.

Both permanent and temporary residents may be eligible to means-tested allowances, irrespectively of their insurance record, if they satisfy the conditions established in the region. The residency condition also applies to children, while the country of birth and nationality are irrelevant in these case. Nationals residing abroad are not entitled to claim any of these allowances as they are linked to employment or the residency status.

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<sup>13</sup>The poverty line is referred to as the Minimum Subsistence Level (MSL) and equals the cost of a minimum basket of goods and services.

<sup>14</sup>In 2020, the age threshold was raised to three years and family income threshold was raised to 200% of the regional poverty line.

<sup>15</sup>In 2020, a new means-tested monthly allowance for children aged 3–7 years was introduced. The amount is equal to 50% of the cost of the regional poverty line and the family income should not exceed 100% of the regional poverty line.

### 14.2.5 *Guaranteed Minimum Resources*

There is no single guaranteed minimum income benefit in Russia. Instead, there are a number of allowances, most of which are categorical allowances inherited from the Soviet social protection system<sup>16</sup>. The means-tested programs are poorly developed and account for a significantly smaller share of spending on social assistance.

The state social assistance scheme<sup>17</sup> was established to provide relief to households in need. The program design, coverage and financing are regulated by the regions. Generally, the rules mix the notion of targeting with categorical provision of assistance, defining certain groups (pensioners, families with 3+ children, students, etc.) eligible for the benefits. In addition, targeted assistance is often confused with one-time emergency assistance (e.g. loss of the breadwinner, severe illness, natural disaster). Starting from 2010, state social assistance can be provided in the form of a conditional cash transfer.<sup>18</sup> The inter-regional variation in program rules is the highest among all means-tested schemes. The number of those who actually received a regular cash benefit amounted to 1.846 million people in 2016, and the number of recipients of a lump-sum payment was 1.633 million people, which altogether is less than 2% of the population (Rosstat 2018b). All foreigners legally residing in Russia can apply for state social assistance under the same conditions as national residents. Non-resident citizens are not entitled to claim this benefit.

A social supplement to pension<sup>19</sup> is a special type of means-tested social assistance for the elderly people. Introduced in 2010, this benefit is provided to all non-working pensioners whose total income is below the cost of a pensioner's poverty line in a given region. In 2015, 6.672 million people or 13% of pensioners received the supplement (Rosstat 2018b). The benefit can be paid to all permanent residents, regardless of their nationality. Russian citizens who have left for permanent residence abroad are not eligible.

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<sup>16</sup>These are free services or discounts on payment for services, provided to vulnerable categories of the population (disabled people, war veterans, victims of the Chernobyl accident, etc.); but they also cover privileges for groups based on specific merits (mainly military) and their occupational status.

<sup>17</sup>Federal Law No 178 of 17.07.1999 "On state social assistance".

<sup>18</sup>Beneficiaries have to sign a social contract to confirm their obligations (active job search, enrollment in a professional training, self-employment, school attendance, etc.) upon receipt of the benefit.

<sup>19</sup>Federal Law No 178 of 17.07.1999 "On state social assistance", article 12.1

### ***14.2.6 Obstacles and Bilateral/Multilateral Social Security Agreements***

Foreigners' access to social benefits in Russia is determined by their legal status. Permanent residents and refugees have the same access to social benefits as Russian citizens, with few exceptions<sup>20</sup>. Temporary foreign residents are eligible for social insurance benefits (e.g. temporary incapacity and maternity-related cash allowances, public healthcare services) that are conditional on their employment status and social contribution record. They may be eligible for social assistance and family benefits that are available in their region of residence. On the other hand, Russian citizens permanently living abroad are not eligible for any other type of social benefits granted by Russia, apart from contributory pensions.

As far as obstacles are concerned, the Federal Migration Service has the right to recall a previously issued temporary or permanent residence permit if a foreigner cannot provide for himself/herself and his/her family at a level which is above the cost of the regional poverty line. Therefore, foreigners may be limited in terms of their rights of access to unemployment benefits and social assistance. Temporary staying workers may lose their job and, therefore, the right to stay in the Russian Federation, if they do not have a valid certificate of compulsory or voluntary health insurance.

A special group of foreigners who have preferential treatment in terms of accessing social benefits in Russia are nationals of Belarus. Being members of the Union State<sup>21</sup> since 1996, the Russian Federation and Belarus have signed an agreement on cooperation in the field of social security and social assistance<sup>22</sup>. Citizens of Belarus permanently residing in Russia are equal to Russians in terms of their rights to social benefits and vice versa. This covers maternity benefits, unemployment benefits, old age, disability and survivor's benefits, benefits in the event of occupational disease or accident, and family benefits. Access to public healthcare is conditional on permanent residency status or on employment. When calculating social security benefits, the work experience acquired on the territory of both countries is taken into account. The benefits are paid by the country of residence. For child-related benefits (e.g. birth grant, child allowance up to 16(18) years), the child's place of residence is taken into account.

Citizens from the EAEU countries have similar advantages in access to social security in Russia. According to the agreement that came into force in 2015, migrants from these countries have the same rights for social security (except pensions) as citizens of the state of employment. This includes compulsory insurance

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<sup>20</sup>For instance, foreign nationals are not eligible for the unemployment benefit, the maternity capital (a lump-sum benefit for women who have given birth to the second child) and various categorical cash benefits mainly targeted at the elderly and disabled individuals.

<sup>21</sup>See: <http://eng.soyuz.by/>. Last accessed 05 May 2020.

<sup>22</sup>Agreement between the Republic of Belarus and the Russian Federation on cooperation in the field of social security. Done at Saint Petersburg on 24 January 2006.

against temporary incapacity and maternity insurance, compulsory insurance against occupational accidents and diseases and compulsory health insurance.

### 14.3 Conclusions

The eligibility of Russian nationals to social benefits depends either on their employment status and contribution record (for pensions and other social insurance benefits), or their residence status (for social assistance and healthcare). The place of residence is particularly important because the responsibility for legislative regulation and financing of most non-contributory social benefits and services lies with the regions. Since the priorities and budget capacities of regional authorities differ greatly across the regions, the overall level of social protection of citizens residing in different parts of the country may also differ substantially.

When deciding to permanently move abroad, Russian citizens lose their entitlement to claim most social benefits available in Russia, apart from acquired contributory old-age and disability pensions. On the other hand, the right of foreign residents to social benefits is essentially the same as that of their national counterparts, as long as they are legally employed and make social security contributions. However, there are two major exceptions: pensions and unemployment benefits. Pensions require a much longer contribution history and/or residence in Russia for at least 15 years. Moreover, foreigners are excluded from accessing unemployment benefits, although they can benefit from job search programs. Social assistance benefits provided at the regional level are typically available to all legal residents, foreigners included, with few exceptions. However, foreigners' access to social assistance benefits might also be constrained by the fact that their residency permit or temporary registration may be recalled if it becomes evident that they are not able to provide themselves and their family with the minimum resources (i.e. income above the regional poverty line).

Having said that, the most acute migration problem in Russia is the scale of illegal migration from CIS countries. Estimates of the number of illegal migrants vary from 3–4 million in autumn and winter to 5–7 million in spring and summer due to seasonal work (Iontsev and Ivakhnyuk 2012). Widespread illegal employment of foreign citizens is associated with considerable financial losses for Russia in the form of unpaid taxes and social contributions. At the same time, this group of migrants is completely deprived in terms of their employment and social rights.

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# Chapter 15

## Diaspora Policies, Consular Services and Social Protection for Russian Citizens Abroad



Anna Prokhorova

### 15.1 Diaspora Policy Infrastructure and Key Policies

#### 15.1.1 *The Russian Diaspora and its Relations with the Homeland*

Russian diaspora is an arguable concept, and the very existence of the Russian diaspora is challenged; it is neither Russian because it includes not only ethnic Russians, nor diaspora since the home country – the Soviet Union (USSR) – no longer exists (Suslov 2017). However, it is this Soviet diaspora which remains in the focus of the authorities of the Russian Federation since collapse of the USSR. When in 1999, the long-awaited law On Support of the Compatriots Abroad was adopted, the political agenda was focused on Russian-speaking population and ethnic Russians who were still living in former Soviet republics, so-called ‘near abroad’.

Russian nationals residing abroad is just a sub-category of a broader category of ‘compatriots abroad’ introduced in the Russian legislation in 1999.<sup>1</sup> The “compatriots” definition came to cover also those who had citizenship of the USSR and their descendants, irrespective of current citizenship. As a result, the Russian nationals residing abroad are not covered by special Government program, but are included into a broad array of measures targeting ‘compatriots abroad’ in general. For

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<sup>1</sup>According to the Federal Law “On the State Policy of the Russian Federation in Respect of the Compatriots Abroad” of May 24, 1999, the category of “compatriots abroad” also covers people who had USSR citizenship, descendants of those who have been historically living in the territory of the Russian Federation, and persons whose relatives on the direct ascending line lived in the territory of the Russian Federation earlier, including foreign citizens and stateless persons.

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example, the state program of the work with compatriots abroad makes no distinction between Russian nationals abroad and other categories of compatriots.<sup>2</sup>

One should bear in mind that by late 1990s when the law on compatriots was adopted, the stock of Russian nationals abroad was made of not only emigrants who voluntarily left the home country in the 1990s, but also of the residents of the former Soviet republics who had used the opportunity to obtain a Russian national passport while remaining abroad. In absolute terms, during the post-Soviet period 1992–2013, Russian citizenship was acquired by 8 million people: 5.8 million were naturalized through the Federal Migration Service of Russia upon arrival to Russia, while 2.2 million people obtained Russian citizenship while living abroad, through representative offices of the Russian Federation (Prokhorova 2017). Unfortunately, there is no data on how many of those who acquired Russian citizenship in the 1990s without coming to Russia, were still living outside Russia.

Currently, Russian nationals abroad constitute about 1/5 of all compatriots residing abroad, or around five million people. These are concentrated in ‘far abroad’ destinations, primarily in Israel, the United States of America (USA) and Germany. According to the 2010–2011 census data in OECD countries, the number of people of Russian origin there was about 660,000 people or 0.46% of Russia’s population (146.7 million people as of January 1, 2019). It is less than in case of Germany (1.5%) and Great Britain (2.19%), but a little bit more than in case of Turkey (0.34%). Russian researchers estimate that, in the period 2011–2017, roughly 2.7 million people left the country to live somewhere beyond former Soviet republics, and around half of these emigrants keep Russian citizenship (Mkrtchyan and Florinskaya 2018).

Up to 2005, compatriots abroad have been regarded by Russian authorities as a rather static category of Russian-speaking population in the near abroad, in need of cultural and language support. However, the situation changed in 2006 with the introduction of the State Program for Assisting Compatriots Residing Abroad in Their Voluntary Resettlement in the Russian Federation (further – the compatriots resettlement program). This program aimed to attract Russian-speaking population from the post-Soviet space in order to compensate for the natural population decrease in Russia. The compatriots continue coming mainly from Kazakhstan, Ukraine, Tajikistan, Armenia, i.e. from near abroad, while the share of participants coming from beyond the Commonwealth of Independent States (CIS) – Lithuania, Germany - is quite insignificant. Upon resettlement in Russia, compatriots without Russian citizenship could acquire the Russian passport through a simplified procedure and claim all relevant social protection benefits including pension, maternity capital, unemployment benefits, etc. These benefits can be attractive for compatriots from comparatively economically worse host countries. While for those returning from European destinations, the refugee crisis would serve the key driver of resettlement – as the case of the Russian Germans. In 2012, the compatriots resettlement program was prolonged for an indefinite period. In the new Migration Policy

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<sup>2</sup>The State Program on the Work with Compatriots Abroad for the period of 2015–2017.

Concept of November 2018, the resettlement of compatriots is declared as one of the priority areas of work. It is estimated that Russia would need to have around 300,000 compatriots to resettle annually to compensate for the natural population decrease.

Today, Russian diaspora policies have a clear post-Soviet focus, prioritizing compatriots in the near abroad. In the past 25 years, the role of the Soviet diaspora as a specific area of policy has changed due to demographic and geo-political factors.

### ***15.1.2 Diaspora Infrastructure***

The main implementing agency in charge of compatriots' policies is the Federal Agency for the Commonwealth of Independent States (CIS), Compatriots Living Abroad, and International Humanitarian Cooperation (called briefly *Rossotrudnichestvo*), established in 2008. Together with the Ministry of Foreign Affairs, *Rossotrudnichestvo* is responsible for the implementation of the state program of work in relation to compatriots abroad. The network of Russian consulates and the network of representative offices of *Rossotrudnichestvo* abroad aim to cover the needs of Russian compatriots and nationals in host countries.

Nowadays, *Rossotrudnichestvo* is represented in 80 states of the world by 95 representative offices: 72 Russian centers of science and culture in 62 countries, and 23 representatives of the Agency serving in the Russian embassies in 21 countries. This vast network of representative offices was inherited by *Rossotrudnichestvo* from its predecessors – the Soviet Union Society for Cultural Cooperation Abroad (established in 1925), the Union of Soviet Societies of Friendship and Cultural Cooperation Abroad (acting since 1958), and the Russian International Centre of Science and Culture (operating in 1994–2008). The key mission of the mentioned agencies was humanitarian cooperation, including organization of exchange visits of academia, exhibitions, Russian language training, etc. Today, the overseas offices of *Rossotrudnichestvo* continue functioning as Russian cultural centers. However, unlike its predecessors, *Rossotrudnichestvo* is included into the Government system and is responsible for the implementation of the Government program on the work with compatriots abroad, with a focus on the CIS, i.e. the near abroad. On top of that, *Rossotrudnichestvo* plays the role of a soft power instrument, promoting a positive image of Russia abroad.

The law on compatriots of 1999 had introduced new elements of the diaspora institutional infrastructure. In particular, the law established the World Congress of Compatriots – the supreme representative body providing interaction of compatriots with home country governmental bodies and authorities of the constituent entities of the Russian Federation. Each World Congress of Compatriots brings together high-level public officials, including the President of Russia, and the delegates of the coordination councils of the Russian society organisations working abroad in more than 90 host countries. The work of the coordination councils in the host

countries and the participation of the delegates is funded by Russia in the framework of the state program with compatriots.

The distribution of the governmental funds allocated for the work with compatriots abroad is overseen in Russia by the Government Commission on the Compatriots Living Abroad, established in 1994. The Commission is headed by the Minister of Foreign Affairs. At the legislative level, in the Parliament (State Duma), there currently works the State Duma Committee on CIS, Eurasian Integration and Compatriots Abroad. Finally, within the Civic Chamber of the Russian Federation, there is the Commission on Development of Public Diplomacy and Support of the Russian Nationals Abroad. The latter is probably the only institution which explicitly indicates the Russian nationals abroad as the target category of population whose interests it aims to represent.

The state program on the work with compatriots abroad does not cover issues related to the compatriots' resettlement. There is a separate federal program implemented by the Ministry of Interior which oversees internal and international migration issues. The Ministry has representative offices dealing with migration issues in Armenia, Kazakhstan, Kyrgyzstan, Latvia, Tajikistan, Turkmenistan and Uzbekistan to process the applications from the compatriots who wish to participate in the resettlement program. About 45% of all applications are submitted in Russia.

Within such diaspora infrastructure, Russian consulates stand out since they have been concerned primarily with the needs of the Russian citizens residing abroad. However, as of 2017, about 60 Russian consulates in 40 countries – both in the near abroad and in the far abroad (for example, in Germany and Brazil) – were involved in providing consultations and processing applications for the compatriots resettlement program.<sup>3</sup> Thus, consulates came to serve both current and prospective Russian nationals.

### ***15.1.3 Key Engagement Policies***

Speaking about key policies in relation to Russian nationals abroad, it becomes evident that it is rather problematic to single out this specific area. As mentioned, there is no normative document addressing directly this category of people, but there are rather several laws concerning specifically Russian nationals abroad. Even in this case, the distinction should be made between 'Russians in the near abroad' (i.e. CIS) and 'Russians in the far abroad'. The first category is covered by legislation related to the CIS and additional bilateral agreements between Russia and former Soviet republics. Examples of laws targeting Russians in the far abroad include bilateral agreements on the avoidance of the double taxation, bilateral agreements in the field of social protection, and the most recent legislative initiative on the

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<sup>3</sup> Monitoring report on the implementation of the State Program for Assisting Compatriots Residing Abroad in Their Voluntary Resettlement in the Russian Federation for the Q4 of 2017.

“currency resident status” (see details below) of the Russian nationals abroad. However, it makes sense to start with a brief description of the home country policy towards compatriots abroad which covers also Russian nationals in the near and far abroad and makes no distinction between them.

### **Culture, Religion, Language and Education**

The state policy in relation to the compatriots abroad is declared to be an essential part of both internal and external policy of the Russian Federation. The framework of relations between Russia and compatriots abroad is outlined across four pillars of support provided by the home country: 1) support in the field of fundamental human and civil rights and freedoms; 2) support in the economic and social areas; 3) support in the field of culture, religion, language and education; 4) support in the field of information.<sup>4</sup>

The third pillar – culture, religion, language and education - constitutes the major part of home country efforts in relation to compatriots abroad as reflected in the state program on the work with compatriots abroad. In terms of the Russian language promotion and preservation, the law states that home country authorities create conditions for learning the Russian language, getting education in Russian and providing access to information in Russian. Additionally, home country authorities are to support training of the Russian language teachers for work abroad.

For a long time, Russia’s efforts in the area of the Russian language promotion have relied on the facilities of the Russian Centers of Science and Culture, established abroad by the predecessors of *Rossotrudnichestvo*, which are now acting as representative offices of *Rossotrudnichestvo* abroad. Such path dependency approach continued up to 2007, when the Ministry of Foreign Affairs and the Ministry of Science and Education jointly established the Russian World Foundation with a mission to promote the Russian culture and the Russian language learning abroad. The Foundation launched a separate network of Russian Centers implanted in the educational organisations in 48 countries. In 2018, *Rossotrudnichestvo* and the Russian World Foundation signed a cooperation agreement to combine effectively their efforts in the promotion of the Russian language learning in CIS.

In the post-Soviet space, the status of the Russian language is a specific area of concern for the Russian authorities. While most ethnic Russians moved to Russia in the 1990s, those who remained outside turned into ethnic minority, and the Russian language lost its positions. Nowadays, only half of the population in 14 former Soviet republics speak Russian. On the one hand, it is regarded by Russian authorities as a sign of weakening of the Russia’s influence in the post-Soviet space. On the other hand, low level of the Russian language knowledge appears to constrain the social integration of the labour migrants coming to Russia from Central Asia republics.

One of the reasons of the worsening of the Russian language learning in the post-Soviet space is the limited access to the Russian language education in former

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<sup>4</sup>Federal Law #99 “On State Policy of the Russian Federation in Relation to the Compatriots Abroad” (1999).

Soviet republics. This turns out to be especially challenging in the Baltic states. One of the most recent instruments addressing this problem of access to the Russian language education is the Russian federal program “The Russian Language” for the period 2016–2020. In 2015, the President approved the Concept paper “Russian Schools Abroad”. The concept paper envisages the creation of four types of Russian schools providing access to the Russian language education both to Russian nationals permanently residing abroad and to compatriots in the host countries. The state support is to be provided to the organizations included in the register of Russian schools abroad. Currently, the register includes over 2000 schools and its maintenance is carried out by *Rossotrudnichestvo*.

Additionally, the Russian Federation provides support to compatriots in getting education in Russia, including diploma recognition based on bilateral agreements with selected countries. In the Federal law on Education, it is stated that the Russian Federation provides scholarships for foreigners and compatriots to study in Russian higher education institutions.<sup>5</sup> In 2018, the quota for the number of foreigners and compatriots was defined at 15,000 students. The scholarship covers education fees, but does not cover living expenses and medical insurance. The room in the dormitory is provided. The selection of candidates is conducted in two stages: first, it is an interview in a representative office of *Rossotrudnichestvo* abroad, and secondly, it is the selection made by the university. Recently, *Rossotrudnichestvo* launched a thematic web portal *Russia.study* to facilitate online applications for enrollment into Russian universities and applications for the scholarship to cover education fees. Additionally, students-compatriots are in some regions eligible for city scholarship, for example, in St. Petersburg.<sup>6</sup>

The Russian Orthodox Church (ROC) is also rather actively involved in the work with compatriots abroad. ROC is a frequent beneficiary of the grant program of the Russian World Foundation: the Department of External Church Affairs organizes cultural festivals, meetings with the Russian diaspora community, workshops and the Russian language courses for diaspora. The head of the ROC regularly participates in the World Congress of Compatriots.

### **Economic and Social Areas**

Access to economic and social protection schemes is available only to those compatriots who have Russian citizenship and is based on the national legislation, multilateral or bilateral agreements. For example, Russia is a signatory to a Treaty for the Prevention of Double Taxation with over 80 countries all over the world. Additionally, all Russian nationals in retirement age are eligible for Russian pensions. Special

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<sup>5</sup>In accordance with the Federal law #273 “On the Education in the Russian Federation”, as of 29 December 2012.

<sup>6</sup>The Law of St Petersburg “About establishment of bonuses, scholarships and awards in St Petersburg”/Government of the city of St Petersburg grants special student scholarship to 15 compatriot students from Baltic states studying in St. Petersburg. The scholarships are granted annually since 2005.

agreements address the payment of pension in the «near abroad»,<sup>7</sup> and in several countries of the ‘far abroad’, namely Lithuania, Spain and Israel.<sup>8</sup>

Two most recent legislative initiatives targeting Russian nationals abroad are associated with control mechanisms rather than support measures, which is explained by geo-political constrains. In 2014, amendments to the law ‘On Citizenship’ imposed on all Russian nationals an obligation to report about having a second citizenship or long-term residence of another country. Citizens residing permanently abroad are required to do that within 30 days period after their arrival to Russia. The notification cannot be submitted through a consulate.

Under the 2018 amendments introduced into the federal law “On currency regulation and currency control”, all Russian citizens are considered currency residents irrespective of their country of permanent residence. Currency residents are required to present account statements to the tax authorities for accounts/deposits held with banks which operate outside Russia. According to the amendments made, these requirements will not apply to Russian nationals with ‘special resident status’ who spend more than 183 days outside Russia in a calendar year. However, the ‘special resident’ status is established based on the results of the calendar year, rather than when a currency transaction is made, or an account is opened abroad. Therefore, the authorities have the right to request documents confirming the duration of stay outside Russia and the fact of crossing the Russian border.

### **Political Participation**

According to the Russian consulates’ statistics, the number of Russian nationals abroad (registered either as permanent or temporary residents of a foreign country) amounts to about two million voters, i.e. people aged 18 and older. It should be noted, however, that the consulates’ data is inconsistent since the registration with the consulate is voluntary.

Russian nationals abroad constitute about 2% of the Russian voters. They can hardly radically influence the results of the elections, but their participation rate is higher than voters in Russia. In 2016, the greatest number of voting age Russian nationals was found in Germany (512,292 people), Moldova (183,194 people) and Israel (163,543 people). In the State Duma elections of 2016, the leaders by absolute number of Russian nationals who voted abroad were Moldova, Abkhazia<sup>9</sup> and Latvia. According to the Central Electoral Committee of the Russian Federation, 474,616 Russian nationals abroad voted at the presidential elections of 2018, and 85% of them voted for Vladimir Putin (Mislivskaya 2018).

<sup>7</sup>“Agreement on guarantees of the rights of citizens of the member states of the Commonwealth of Independent States in the field of pensions” as of 1992.

<sup>8</sup>For example, “Agreement between the Russian Federation and the State of Israel on cooperation in the field of social security”, as of 2016

<sup>9</sup>The Republic of Abkhazia is a state in northwestern Georgia, recognized by the Russian Federation, Venezuela, Nicaragua, Nauru and Syria. While Georgia lacks control over Abkhazia, the Georgian Government and most United Nations Member States legally consider Abkhazia a part of Georgia, whose Constitution designates the area as the Autonomous Republic of Abkhazia.

Consulates play the leading role in coordinating participation of Russian nationals abroad in the elections. Traditionally, polling stations are arranged in the consulate buildings. According to the general rule, Russian nationals abroad can vote in presidential elections, legislative elections and referendum. To be eligible to participate, a person should have a Russian national passport and be at least 18 years old. Russian nationals abroad vote in person in a consulate and/or polling station. Russian citizens permanently living outside Russia, having citizenship or long-term residence of another country, do not have passive voting rights.

## **15.2 Diaspora Policies and Social Protection in the Russian Federation**

All Russian nationals residing abroad have a right to two types of benefits: on the one hand, the pension and, on the other hand, a family benefit called ‘maternity capital’ paid by the home country authorities. Both benefits are handled by the Pension Fund of the Russian Federation (PFR). The PFR website provides exhaustive information and regular updates of the rules concerning pension payments to Russian nationals residing abroad.<sup>10</sup> Usually, the websites of the consulates have a special section devoted to pensions and maternity capital. Additionally, consulates inform about relevant bilateral agreements which make Russian nationals residing abroad eligible to some social protection benefits.

Application for both the pension and the maternity capital can be handled through the consulates which accept the documents or/and issue the relevant documents and send them further to the PFR. In the framework of bilateral agreements, as well as in case of regional organisations membership (CIS, Union State, Eurasian Economic Union), home country obligations in relation to pension payments are shared with host country authorities. In such cases, consulates can be also operational providing the service of requisition of documents from the home country.

### ***15.2.1 Unemployment***

Russian nationals residing abroad are not eligible for unemployment benefits paid by Russia. However, special rules exist for Russian citizens residing in Belarus. According to the Agreement between the Russian Federation and the State of Belarus on Cooperation in the Field of Social Security, the registered Russian unemployed is entitled to unemployment benefits from Belarus authorities (host country) at a rate not lower than the minimum unemployment benefit set in the host country. The payments stop when a person changes the country of residence.

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<sup>10</sup>[http://www.pfrf.ru/grazdanam/pensionres/pens\\_zagran/](http://www.pfrf.ru/grazdanam/pensionres/pens_zagran/) (last accessed 15 April 2020)

### 15.2.2 *Health Care*

According to the federal law “On the Basics of Health Protection of the Citizens of the Russian Federation” (as of 2010), Russian nationals residing abroad can receive free medical care in the Russian Federation. To visit a doctor in any Russia-based public hospital, a person needs to present his/her health insurance certificate which is issued for all Russian citizens free of charge. Medical services are also provided free of charge. Additionally, according to the Agreement between the Russian Federation and the Republic of Belarus “On the Equal Rights of the Citizens” (1998), the citizens of Russia and Belarus are granted equal rights in various spheres of life, including medical services.

Contributory disability pensions can be exported by nationals deciding to move abroad, but non-contributory disability pensions are only available to those residing in Russia. However, special rules apply to Russian nationals residing in Israel. The Agreement between the Russian Federation and the State of Israel on Cooperation in the Field of Social Security indicates that the benefits (including temporary invalidity) being paid to the Russian national by the Russian authorities do not stop in case a person changes his/her country of residence for Israel.

In addition, the website of the Ministry of Foreign Affairs provides Russian nationals going abroad with relevant information about the risks for health associated with and emergency situations across the globe. The Ministry also developed a mobile application ‘Assistant abroad’<sup>11</sup> as a means of information and communication support for Russian nationals abroad. The application is aimed both for tourists and Russian citizens who reside permanently abroad. In a situation of emergency, the application allows to call or send a text message to the emergency center of the Ministry of Foreign Affairs of Russia.

In some cases, consulates inform Russian nationals abroad about specific conditions of access to health care services in a host country. As a rule, however, according to the Consular Statute of the Russian Federation, consulates only respond to the needs of nationals associated with sanitary, phytosanitary and veterinary security: upon request, a consulate informs Russian nationals about the rules of importing plants and animals to Russia. The consultation is provided free of charge.

### 15.2.3 *Pensions*

The Pension Fund of the Russian Federation (PFR) assigns and pays pensions to over 305,000 Russian nationals residing in 128 countries.<sup>12</sup> Top five countries by the number of pensioners benefitting from Russian pensions are Germany, Israel, Latvia, USA and Belarus. As of today, Russia’s pension system distinguishes

<sup>11</sup> [www.sos.mid.ru](http://www.sos.mid.ru) (last accessed 15 April 2020)

<sup>12</sup> [www.pfrf.ru](http://www.pfrf.ru) (last accessed 15 April 2020)



between insurance pensions (paid from the PFR budget) and state pensions (paid from the federal budget). These can be referred to as contributory and non-contributory pensions, respectively. Non-contributory (state) old-age pensions are paid only to Russian nationals permanently residing in Russia. Thus, those who live abroad can apply only for the contributory (insurance-based) pension.

Pension application from abroad can be submitted through the consulates in the host country. According to the decree of the Government of the Russian Federation “On the Procedure for Paying Pensions to Persons Who Leave for Permanent Residence Outside the Territory of the Russian Federation”, consulates issue the following documents for Russian nationals applying for the extension of pension payments: 1) the Act on the personal appearance of a citizen (life certificate); 2) the Certificate confirming permanent residence outside the Russian Federation; 3) the Certificate of performance (non-fulfillment) of paid work outside the Russian Federation. A national residing abroad can apply for these documents via the consular portal.<sup>13</sup> The documents are further submitted by the consulate to the Pension Fund of the Russian Federation. The extension of pension payment is made annually provided that once a year the Russian national obtains a life certificate which is issued by the consulate upon personal appearance.

Special rules concerning pension payments exist for Russian nationals residing in one of the CIS countries, Belarus and Israel. According to the 1992 Agreement on guarantees of the rights of citizens of the member states of the Commonwealth of Independent States in the field of pensions, pensions are paid by the host country considering the employment period in both countries. When a person changes the country of residence within CIS, the pension payments can continue in case the person is not entitled to pension benefits on accordance with the legislation of the new host country. However, for Russian nationals residing in Kazakhstan and Belarus additional rules apply.

In the case of Kazakhstan, all residents of the city of Baikonur, including Russian nationals and Kazakh nationals working at the Russian spaceport Baikonur, are entitled to the Russian pension, paid in rubles and in accordance with the Russian legislation.<sup>14</sup> Also, in accordance with the 2006 Agreement between the Russian Federation and the Republic of Belarus on Cooperation in the Field of Social Security”, the home and host countries share the costs of pension payments: for example, Russian pension covers the years worked in Russia.

Similarly, Russian and Israel authorities share the pension payments, as stated in the 2016 Agreement between the Russian Federation and the State of Israel on cooperation in the field of social security. Requisition of documents confirming the period of employment in Russia is made through the Institute of National Insurance of Israel and the Pension Fund of the Russian Federation. The application form can be downloaded from the PFR website. The agreement with Israel providing for the

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<sup>13</sup> <https://pension.kdmid.ru> (last accessed 15 April 2020)

<sup>14</sup> “Agreement between the Government of the Russian Federation and the Government of the Republic of Kazakhstan on Pension Rights of the Residents of the City of Baikonur in the Republic of Kazakhstan”, as of 27 April 1996.

Russian pension to Israel-based pensioners was opposed in the State Duma by several parties, especially by the Liberal Democratic Party of Russia. The main argument against was that the Russian budget constraints do not allow for the regular increase of payments to the Russia-based pensioners while at the same time the authorities find it possible to allocate funds to pay pensions in Israel. The dispute around the Israel-Russia agreement on social benefits concerned a special provision of the agreement according to which Israeli citizens residing in Israel can apply for Russian insurance pension in case they have worked in the former USSR and left abroad before 1992 (before the break-up of the Soviet Union). In other words, these payments were meant for Russia's non-nationals, i.e. former USSR citizens.

#### **15.2.4 Family-Related Benefits**

According to the federal law “On State Benefits to Families with Children” (1997), the birth grant does not cover those who left Russia for permanent residency abroad. However, an exception is made for a specific type of birth grant, the so-called ‘maternity capital’, for which all Russian citizens are eligible irrespective of their country of residence.<sup>15</sup> The maternity capital benefit was introduced in 2006 as the core element of a set of ideological and institutional arrangements aimed at encouraging women to give birth to more children. With the maternity capital family benefit, Russian authorities aimed to increase the birth rate in Russia, not abroad. Therefore, the applications of women to Russian consulates all over the world came as a surprise and it took time to arrange the procedure of application through consulates.

The maternity capital is a benefit provided to the Russian families to which a second or a third child or more was born or adopted provided that these rights are not assigned in the birth (adoption) of a second child (if twins are born, the family is not eligible for the maternity capital). Since January 1, 2015, maternity (family) capital amounts to 453,026 rubles (around 6000 Euro). The benefit is given only once (one-time payment) and exempt from income tax. Although Russian nationals residing abroad do have the right to receive this benefit, they cannot spend it outside the Russian Federation. The benefit is provided in the form of a certificate, and can be only used for special purposes described in the law:

- Improvement of the living conditions (for example, home mortgage)
- Education of the children (since 2018, including kindergarten and services provided by private educational organizations)
- Pension contribution of the mother
- Expenses associated with goods and services for the needs of children with disabilities.

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<sup>15</sup>Federal law “On Additional Measures of State Support to Families with Children” as of 2006.

To apply for the maternity capital benefit from abroad, Russian nationals should submit the necessary documents to the consulate in their host country, including: 1) the Russian passport; 2) the certificate of the place of residence or actual stay of the Russian citizen who has the right to receive a certificate of maternity capital; 3) the birth or adoption certificate of a second or subsequent child; 4) a document confirming the Russian citizenship of the child with the birth of which the right to obtain a certificate of state emerged. The birth certificate and the child adoption certificate are issued by the Russian consulate in the host country.

Special rules concerning maternity and family-related benefits apply to Russian nationals residing in Belarus and Israel. According to the 2006 social security agreement between Russia and Belarus, child benefits and family-related benefits are assigned and paid by the country where the child resides. The 2016 agreement with Israel also specified that Russian nationals residing abroad have the right to maternity leave benefits which are assigned and paid by the host country where the beneficiary has worked. Family-related benefits are assigned and paid by the country where the child resides. A one-time child benefit (paid upon the birth of a child) can be paid by the home or host country.

Those compatriots who resettled in Russia under the compatriots resettlement program, have a right to apply for the maternity capital after the acquisition of the Russian citizenship, under the condition that a second child was born after 2007 and has Russian citizenship.

### ***15.2.5 Economic Hardship***

According to the Federal law “On the Minimum Subsistence Level” (1997), the minimum subsistence level is set on a quarterly basis by the Russian Government, at the federal and at the regional level. In case a family’s income is below the minimum subsistence level, that family is considered “low-income” and entitled to benefits, which could be both monthly cash payments and in-kind benefits. However, the family or individual should be permanent residents of Russia. Thus, nationals residing abroad are not entitled.

When a Russian citizen finds himself/herself abroad without any means for living and further stay puts his/her life under threat, a consulate can assist him/her to return to Russia. This assistance is provided in the form of covering expenses for hotel accommodation, travel expenses and food items or/and other first necessity things. The assistance is provided at no charge. Cash benefits are never offered.<sup>16</sup> In other cases, consulates can be involved by handling the issuance of the temporary identification document in case a person has lost his/her passport or issue a death certificate which is necessary to arrange the repatriation of the body to Russia.

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<sup>16</sup>According to the Russian Government regulation “On the approval of the Provision of assistance in the return to the Russian Federation of citizens of the Russian Federation who have found themselves on the territory of a foreign state without means of subsistence”. As of 31 May 2010.

### 15.3 Conclusions

As a home country, Russia has developed a specific framework of policy providing for the support and protection of rights of the compatriots abroad. However, nationals residing abroad represent just one of the categories of compatriots defined in the law on the state support in relation to compatriots abroad (1999). No specific framework for policy in relation to nationals residing abroad exists in Russia. The institutional infrastructure to support compatriots abroad is outdated: it is based on the Soviet legacy of political and cultural propaganda and is meant to serve primarily the interests of compatriots in the near abroad, i.e. CIS.

Being included in the category of ‘compatriots abroad’, Russian nationals abroad are automatically covered by the home country work program with compatriots. However, the program is mostly aimed at providing cultural support to compatriots by means of organising cultural events to consolidate the diaspora. The compatriots resettlement program launched in 2007 is mostly meant for non-nationals with Soviet background. To a certain extent, the inflow of compatriots also compensates for the outflow of Russian nationals abroad in the 2000s. However, new citizens based in Russia are entitled to a wider range of social protection benefits compared to Russian nationals residing abroad.

Social protection schemes developed by the home country to serve Russian nationals abroad are based on multilateral and bilateral agreements between Russia and former Soviet republics. Besides the agreement on pension payments in the CIS, Russia has additional agreements with Kazakhstan and Belarus, and a special agreement with Israel. As a rule, Russian nationals abroad are entitled to two types of social benefits – pension and ‘maternity capital’ family benefit. The application procedure to these benefits is based on the documents exchange between the Russian consulate in the host country and the Pension Fund of the Russian Federation in the home country. Bilateral agreements with Israel and Belarus in the field of social protection provide Russian nationals with additional social benefits paid by the host country or shared with the home country.

Russian nationals permanently residing in the so-called far abroad have been mostly beyond the outreach of the Russian authorities. Legislative initiatives targeting specifically this category of compatriots are rare and often associated with control mechanisms rather than support measures, which is explained by current geopolitical constraints.

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# Chapter 16

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Senegal



Adrien Dioh

### 16.1 Overview of the Senegalese Social Protection System and Main Migration Features in the Country

#### 16.1.1 *Main Characteristics of the National Social Protection System*

Unlike Western countries which have implemented a real social policy (as a result of power relations between policy-makers, employers and workers), in Senegal, as in many other countries of Sub-Saharan Africa, social protection has been a legacy from France, the former colonial power. It was therefore well before independence in 1960 that the first traces of social protection were found. The system was built on the Bismarckian model and pegged to wage earners at a time when informal economy was considered transitory (AFD 2014). The colonial power first introduced social insurance programs in the field of occupational accidents, then maternity insurance and family allowances (Merrieux 2013). However, this social protection system did not take into account the realities on the field nor it considered the local culture.

Social protection is most often part of a particular socio-economic context that justifies its relevance and legitimacy. Senegal's social protection system is therefore situated in a specific context marked by socio-economic difficulties and political strategies of both social and liberal inspiration. It is a corporatist system built around salary relationships. Social security and social benefits are acquired through employment and the management of the Service is the responsibility of the State and social partners through the Social Security Fund (CSS), the Pension Insurance Institution of Senegal (IPRES) and Medical Insurance Institutions (IPM).

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The system is disadvantageous to a large part of the population evolving mainly in the informal sector, which has become the main provider of jobs in urban areas since 1980. In Senegal, formal job offers concern only about 10% of the potentially active population, while the informal and agricultural sectors are the main sources of income. This large proportion of the population working in the informal sector can be justified by the inability of the modern sector to occupy a large and undoubtedly growing part of the labor force. In the 1980s and 1990s, the phenomenon, which was thought to occur in a short period, increased particularly because of a population surge that produced, each year, cohorts of first-time job-seekers (ANSD 2013a).

The national social protection system is built around two pillars. First, the social action is based on a non-contributory system directly provided by the State, which organizes funds and implements it. It is meant for nationals who belong to vulnerable groups. The aim is to assist people in difficult economic and social situations. To put this policy based on national solidarity into practice, the country has an institutional framework to develop, implement and monitor social policies and measures. In recent years, measures have been taken to allow some vulnerable groups to receive healthcare through a kind of health insurance provided by the government. These include the “*Plan sesame*” for elderly people, free healthcare for children under five, university medical service for students, scholarships, etc.

Second, the social welfare provision is the backbone of the Senegalese system of social protection. The system was created during the 1970s, aiming to provide coverage for employees,<sup>1</sup> civil servants, and their households. Provision and management of the health risk for employees is done through the Social Security Fund (CSS)<sup>2</sup> and the Health Insurance Institutions (IPM), while pensions are managed by the Pension Provision Fund of Senegal (IPRES) for employees and their families, and the National Retirement Fund (FNR) for civil servants and their families. This diversity of social structures aims to ensure employees (either Senegalese or foreign residents) the maximum possible against classic social risks. The funding of the system is mainly contributory with contributions paid according to the branches, either by employers and employees (retirement and health), or by employers alone (other risks). The State assists to a lesser extent with the possibility of giving grants. The Senegalese social security system covers all traditional risks (occupational diseases, accidents at work, family and maternity risk and elderly people), with the exception of illness. The latter risk is not, however, overshadowed by the public

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<sup>1</sup>In line with Article L-2 of Law 97-17 of 1 December 1997 on the new Labor Code, “any person who has undertaken to put their activity in business, whatever their sex and nationality, is considered to be a professional worker, for remuneration, under the direction and authority of another person, physical or moral, public or private”.

<sup>2</sup>This public establishment has been entrusted by the social security code adopted by the law 73-37 of 31 July 1973 (JORS n ° 4308 of 4 August 1973, p.1564), the management of the two main branches that are: family benefits (maternity and family allowances) and work accidents and occupational diseases.

authorities given that on the basis of the law on social welfare provision,<sup>3</sup> illness funds (IPM) could be created for the management of non-occupational diseases.

### ***16.1.2 Migration History and Key Policy Developments***

In 2009, Senegal has produced its first migratory profile which be repeated in 2018. The development of this profile is part of the project “Support of free movement of people and migration in West Africa” co-financed by the European Union and the Economic Community of West African States (ECOWAS). It is a privileged framework for the collection and analysis of available data on migratory flows and stocks of internal and international migrants related to the current economic context, migration policies in force, the factors underlying migration and the consequences of migration for Senegal. This tool supports the national migration policy of Senegal in a context in which the migration phenomenon has important consequences, especially in economic terms. For example, the amounts of remittances from the Senegalese diaspora have increased substantially over time, reaching 2220 million USD in 2017 (Ndione 2018).

Senegal has been confronted with the phenomenon of migration at three levels. First, as a host country for people from neighboring countries, attracted by relative social, political and economic stability. Second, because of its geographical position, Senegal serves as a transit country for emigration candidates waiting for a favorable situation for their departure. Finally, the continuing deterioration of living conditions in Senegal, along with the removal of obstacles for leaving the national territory, has urged more and more Senegalese to make of emigration a strategy of adaptation to unemployment and poverty.

Much of the migration is done in an irregular and clandestine way. This is, among other things, the reason why, in Senegal, all the studies devoted to migration highlight the major difficulty related to the collection and production of migration data to properly understand the migration reality. The available data are fragmented and do not allow for thorough and detailed analysis. Because of these shortcomings, it is difficult to analyze the evolution of the migration phenomenon in time and space.

According to the Final Report of the General Population Census (RPGA) of the National Agency for Statistics and Demography (ASND 2014), in 2014, the number of Senegalese living abroad was estimated at 156,676<sup>4</sup> (1,15% of the Senegalese population), while the country was hosting nearly 181,651 foreigners (the equivalent of 1,34% of the total population). Most of these foreign residents come from Africa, especially West Africa (84.4%), with a majority of Guineans (86,085),

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<sup>3</sup>Law No. 75–50 of 3 April 1975 on social welfare provision institutions in Senegal, JORS No. 4419 of 2 April 1975, p.557.

<sup>4</sup>National Agency of Statistics and Demography (ANSD), Final Report of the General Census of Population and Housing, Agriculture and Livestock of Senegal (RGPHA), September 2014, p. 219, RGPHAE, *Op. Cit.*, P. 68.



Maliens (20,660) and Gambians (12,811) who arrive mainly for work reasons. All these countries have the particularity of being on the borders of Senegal and, like Senegal, being members of the ECOWAS which aims at economic integration and which is a means of curbing the phenomenon of balkanization of borders caused by colonization. The majority of these people work mainly in the informal sector, notably trade.

According to the statistics of the United Nations Population Division (see Ndione 2018), the number of Senegalese living abroad was estimated at more than 533,000 (3.9%) in 2013, of whom 265,000 resided in Europe (49.7%), 251,000 in Africa (47%) and 16,000 in North America (3%). In Europe, France is the first country of destination with nearly 116,000 settled Senegalese, followed by Italy (79,000) and Spain (59,000). For the African continent, the region of West Africa is the main destination of Senegalese (203,000), where flows are mainly marked by Gambia (101,000), Mauritania (46,000) and Côte d'Ivoire (21,000). Central Africa is the second African destination region for Senegalese migrants (42,000), who settle mainly in Gabon (29,000), Congo (10,000) and the Central African Republic (3000). North America hosts nearly 16,000 Senegalese, divided essentially between the United States (13,200) and Canada (3000).

## 16.2 Migration and Social Protection in Senegal

Given the demographic changes described above, there is the concern of taking into consideration the phenomenon of migration in the field of social protection in Senegal. In general, the benefits (social welfare provisions) from the national social protection system are intrinsically linked to two requirements: the status of the employee according to the Labor Code and the Merchant Marine Code and residence in the national territory. As a result, foreigners residing and working in Senegal have access to the various benefits guaranteed by the system under the same conditions as nationals. From a legal point of view, therefore, social protection does not discriminate against migrant workers established on the national territory. However, because of their territoriality, social welfare provisions/benefits are not provided outside Senegal. Hence, Senegalese workers living abroad as well as their family members who stay in the home country are covered only if their host country is bound to Senegal by a bilateral social security agreement or convention.<sup>5</sup>

Migrant workers belonging to ECOWAS<sup>6</sup> are in a special situation. While it is true that they benefit from the national social protection system under the same conditions as the indigenous people, in the event of leaving Senegal, their rights are not in principle applicable. The General Convention on Social Security of ECOWAS

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<sup>5</sup> Senegal has signed several of them with, notably, Mali, Mauritania, Cape Verde, Gabon, Cameroon and France.

<sup>6</sup> In addition to Senegal, ECOWAS includes Mali, Gambia, Guinea, Guinea Bissau, Cape Verde, Benin, Togo, Burkina Faso, Liberia, Sierra Leone, Cote d'Ivoire, Ghana and Nigeria and Niger.

Member States<sup>7</sup> makes it possible to remedy this situation. Indeed, it enshrines the four principles of international social security law, namely, equality of treatment, the uniqueness of the applicable legislation, the preservation of acquired rights and the provision of benefits abroad. However, although directly applicable, the effectiveness of the said Convention depends on the adoption of administrative arrangements between the different Member States. *Mutatis mutandis*, the Multilateral Convention on Social Security of the Inter-African Conference on Social Welfare Provision (CIPRES)<sup>8</sup> has the same objective. Undoubtedly, in the future, these two normative instruments should contribute to a significant improvement of the situation of migrant workers from the concerned countries.

### 16.2.1 Unemployment

In an environment characterized by endemic unemployment and economic underdevelopment, with Senegal being one of the Least Developed Countries (LDCs), it is hardly surprising to notice that the country has not integrated a social security scheme dedicated to unemployment into its social security system. Hence, there is no actual mechanism to deal with the risks of unemployment.

According to the National Agency of Statistics and Demography (ANSD 2013b) the unemployment rate in the second quarter of 2017 amounted to 12.5%. Nevertheless, this figure does not really give any additional information on the number of unemployed people because it is known that the majority of the active people evolve in the informal sector. Of a working age population estimated at 7,827,009 individuals, at least one out of two is inactive (Ndione 2018).

### 16.2.2 Health Care

The public health system is open to all individuals regardless of nationality, race or origin. Everyone benefits from the same provisions at the same cost. However, the Social Security Fund, whose resources come mainly from employers' contributions and refunds from the State budget, covers occupational diseases and accidents at work only. As a result, only victim workers, regardless of nationality, are covered. In their case, two types of services are provided: benefits in kind and cash benefits.

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<sup>7</sup>On the material side, the Convention covers invalidity benefits, old-age benefits, survivors' benefits, benefits in the event of accidents at work and occupational diseases, family benefits, maternity benefits, medical care and sickness benefits and unemployment benefits.

<sup>8</sup>It includes, in addition to Senegal, Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Cote d'Ivoire, Gabon, Equatorial Guinea, Madagascar, Mali, Niger, DR Congo, Chad, Togo, Union of Comoros.

Regarding benefits in kind, the employer is obliged to provide first-aid.<sup>9</sup> If the state of the victim requires treatment, care and additional benefits are covered by the Social Security Fund. This includes medical care, pharmaceutical costs, successive surgical procedures, functional rehabilitation, among others. The benefit of these provisions is subject to reporting the conditions of the illness or accident at work within 48 hours by the employer to the Labor Inspector, providing a medical certificate indicating the condition of the victim.

As for cash benefits, they consist of a replacement income paid to the victim (or his/her dependents in case of death) to compensate for the loss of salary during the period of total temporary incapacity for work or his/her workforce resulting from the permanent partial disability. These benefits, calculated on the basis of the base salary, are done either in the form of a daily allowance in case of temporary incapacity for work, or as a pension in case of permanent incapacity for work. Annuity is obtained by multiplying the annual salary by the rate of permanent disability. These annuities are subject to a revaluation to adapt to the cost of living when the disability is greater than 10%. Similarly, aggravation or attenuation of permanent disability may result in revision. The buy-back of annuities is possible in the form of a capital paid by the Fund. Moreover, the buy-back is mandatory if the victim has a permanent disability of less than 10%.

The management of non-occupational diseases of workers and their families is done through compulsory health insurance managed by Health Insurance Institutions (IPM). The resources of the MPIs come mainly from the contributions that are owed to them as well as from workers and employers. The amount of contributions depends on the gross salary as defined for the general income tax base. These institutions cover 50% to 80% of medical, pharmaceutical and hospitalization costs. To fill the gap, some companies take out additional insurance for the benefit of their staff. Others, more affluent, choose a health insurance on a flat-rate tax with a company with a refund rate of 100%. During the period of incapacity for work, the employer bears all the compensation, the amount of which depends on the duration of the incapacity and the length of service in the company.

The creation of IPM is justified by the low means of workers, the importance of the health needs and the high cost of the healthcare. It is therefore a response to the needs of health insurance not borne by the Social Security Fund. Participants registered in an MPI, i.e. workers and their family members, can only claim benefits after a two-month period of contributions.

One can infer from this that nationals and foreign residents who are excluded from this compulsory health insurance cannot therefore integrate it on a voluntary basis. It is possible, however, for some emigrants to subscribe to some companies for family insurance for the benefit of their family members who remain in the country.

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<sup>9</sup>The Labor Code requires employers to set up a corporate or inter-company medical service in the case of small size entities. But this service mainly fulfills a preventive role. This is why medical examinations are meant for the verification of the aptitude or adaptation of the worker to employment.

The disability benefit, which covers for total and permanent loss of ability to work, can be granted to any worker regardless of nationality. The disability needs to be certified by a doctor and the Medical Advisor of the IPRES. However, one must contribute for a period of 10 years or have at least 1000 points, otherwise one is only entitled to a refund of the contributions already paid. In addition, nationals residing abroad in principle are not entitled to claim this benefit.

In case of confirmation, the employee is immediately admitted to retirement and is exempted from the allowance for the remaining years of work.

### **16.2.3 Pensions**

Retirement benefit institutions are regulated by Law of 3 April 1975, which concerns all social welfare provision institutions, whatever their purpose. A decree<sup>10</sup> makes it compulsory for all employees and employers to join a pension plan managed by the Retirement Pension Institute of Senegal (IPRES).<sup>11</sup> Every employer is obliged to join this institution and failing to do so can lead to criminal penalties.

Workers in a broader sense are the beneficiaries of the scheme: former employees, adhering members, individuals eligible for the retirement allowance, participating members with an age between the minimum age of retirement and who have ceased to be engaged in paid employment and receive an allowance, the participating members recognized as unfit for work at any age between the minimum age of anticipation and the normal retirement age and who receive an allowance, surviving spouses of deceased members in active or retired service, dependent children of deceased participating members, children who lost their father or mother (the latter benefit from a survivor's benefit).

In fact, only migrant workers affiliated to a pension scheme established by other legislation are excluded from the scheme. The old-age pension is not subject to a nationality requirement. The conditions of admission to retirement include the need to have contributed at least one year, to be aged 60 years and to have ceased all professional activity in the country.

The departure from the country does not result in the loss of the right to pensions as it is possible for the migrant worker to collect them in his/her country of origin, in Senegal or in any other country of his/her choice. The costs of making the pensions available are borne by the affiliated organization. In this context, social security agreements or technical coordination agreements concluded with other social security organizations are significant in that they facilitate the settlement or

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<sup>10</sup>Decree 75-455 of April 24, 1975, JORS No. 4422 of May 17, 1975, p. 627, amended by Decree 76-017 of 9 January 1976, JORS No. 4480 of 2 March 1972, p. 422.

<sup>11</sup>Order No. 3043 approving the statutes and rules of procedure of IPRES and conferring upon it the management of the general pension scheme applicable to all employees and the supplementary executive retirement scheme, JORS No. 4638 of 3 June 1977, p.709.

payment of the entitlements acquired (or in the process of being acquired) for a given person, a migrant worker and his/her family.

Nationals who have acquired the right to a retirement pension in a foreign country and who choose to return to Senegal may continue to receive their pension on the assumption of bilateral or multilateral agreements.<sup>12</sup> The aggregation of contribution periods when the migrant worker has carried out his/her career in different countries also depends on such agreements. Nationals entitled to claim their right to retirement and who choose to settle abroad may also, at their request, receive their pension provided that they have a bank account where the transfers will be made.

In any case, the basic general scheme covers two contributory benefits (retirement allowance and survivor's allowance) according to the contributions paid and the earned points and two non-contributory benefits (solidarity allowance and social fund) without any reference to the contributions or years of service of the beneficiaries. The retirement allowance depends on the duration of the contribution and the level of salary. It is calculated by multiplying the number of points credited to the person's account at the date of settlement by the value of the pension point. The following are taken into account: all contributory periods of service from the age of 18 to the age of 60, and provided that the services have been done for a minimum of 30 days at a member institution, and that they are certified by regular work certificates. Periods of suspension of the contract without consideration of the reasons are also taken into account. The number of points awarded for each year of contributions is obtained by dividing the contribution by the reference salary for the year. The total number of pension points is increased by 10% for each dependent child at the time of retirement. Nevertheless, the overall increase in points, as such, is limited to 30%.

The retirement age is currently 60, but the participant is free to apply for early settlement, starting at age 55 but in which case the rate of the allowance is reduced by 5% per year of anticipation.

#### **16.2.4 Family Benefits**

Family benefits are introduced for workers with one or more dependent children. They consist of the allocation of sums of money or the provision of goods or services to the head of the family in order to partially compensate the financial burdens resulting from the occurrence/birth of children. Their benefit is subject to general conditions among which nationality is not a requirement.

There are several types of family benefits in Senegal. The prenatal allowances are granted to any female employee whose husband is unemployed or spouse of a paid worker as well as to any unmarried female employee. Maternity benefits are

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<sup>12</sup>Such an agreement exists between France and Senegal so that any Senegalese who have acquired the right to a retirement pension in France and who decide to return to the home country to perceive their due from there.

provided from the birth of the child until the age of 2. Family allowances are paid from the child's second birthday up to the age of 14 (or 18 if the child is studying or 21 in case of further education, disability or incurable illness), up to a maximum of 6 children. The daily maternity leave allowances due to the pregnant female employee on maternity leave for a period of 14 weeks, including 8 weeks subsequent to the delivery. This leave can have an extension of 3 weeks in case of consequent disease. They amount to 100% of the last salary received.

For accessing family benefits, it is important to be a worker in line with the Labor Code and the Merchant Marine Code. However, workers whose children benefit from a more favorable benefit scheme are not covered. The status of worker implies a professional activity over a period of 3 consecutive months with one or more employers, and a minimum working time of 18 or 120 days in the month, being understood that this time may be spread over a period of 2 years or 3 months in occupations and jobs which involve intermittent or irregular work schedules. The entitlement to benefits is retroactive to the date of the commitment. The worker must also have dependent children, meaning that he/she must provide, generally and permanently, housing, food, clothing and education of the child (this corresponds to the duties of the person exercising paternal authority).

However, workers can claim family benefits only if they and their dependent children live in Senegal. Nevertheless, those who perform in another State for the execution of their contract, a temporary stay of 6 months maximum (renewable once), continue to receive benefits. The same applies for those who perform abroad a training or professional development, regardless of the duration of the internship. On the other hand, the family benefits of the Social Security Fund cannot be granted to employees who have their habitual residence abroad and who, for the performance of their contract, have a six-month stay (renewable once) in Senegal. The residency requirement also applies to beneficiary children.

### ***16.2.5 Guaranteed Minimum Resources***

Senegal does not have a general framework guaranteeing minimum resources for the most vulnerable group of the population. However, the National Family Safety Scholarship Program (PNBS) was launched in 2013. It is based on the reconstruction of solidarity and redistribution of resources based on equity, social justice corresponding to forms of social assistance that can mitigate the risks and poverty shocks on the most vulnerable groups. The aim of the program is to fight against vulnerability and social exclusion of families through integrated social protection with a view of promoting their access to social transfers and strengthening, among other things, their educational and productive capacities. The social security bursary amounts to Francs CFA 100,000 (about 152 Euros) per year, paid to the most vulnerable families. The implementation of this program is accompanied by the establishment of a consultation mechanism at the national and regional levels in order to cover the social demand for the benefit of the most vulnerable families.

Circumscribed initially to some 25,000 families, family grants are intended to be applied gradually to the poorest households.

### 16.3 Conclusions

Due to the limitation of the legal texts to the national framework, the Senegalese system of social protection has a limited material scope. Most services generally aim to either restore the health of the victim by means of pharmaceutical products, or compensate the increase of expenses or reducing income in the form of, for example, family benefits or old-age pension.

Spatially, unless an agreement or convention waives residency requirements, the compulsory social security scheme applies only in Senegal, in accordance with the principle of territoriality of social security laws. On a personal level, the system exclusively benefits employees, regardless of their nationality, as well as members of their families, in order to protect them against the economic and social risks that may result from the partial or total loss of income, their temporary or permanent capacity to gain or their means to satisfy essential needs. This means that the guarantee of the enjoyment of social security guarantees for workers and their entitled dependents is not subject to nationality requirement. Nevertheless, migrants who intervene in the so-called informal sector and who are by far the most numerous, are left behind. The fact is that the existence of an employment contract is the *sine qua non* condition for the applicability of the national social security system to the individual and his/her family.

However, the principle of territoriality of the social security laws results in non-taking into account the non-resident nationals as well as the members of their families remaining in the country. The non-applicability of social security benefits is likely to dissuade immigrants currently residing in Senegal from returning to the countries of nationality either during their career or retirement, to give up the idea of no longer being able to collect the benefits for which they have contributed over years. The question of the applicability of social security benefits for foreigners is therefore crucial and must therefore catch the attention of public authorities.

Bilateral or multilateral social security agreements can overcome these difficulties. Conventions are only a good part of the solution in that they can make up for discrepancies between national laws and establish rules for coordination, but also for integration. At the regional or sub-regional level, many social security conventions are still not implemented. Despite their normative importance for migrant workers, bilateral agreements procrastinate on the difficulties that have on their effectiveness. First of all, they are often not well-known by their recipients: labor professionals and migrants. Secondly, the institutions responsible for their monitoring and enforcement lack oftentimes means and capacities. Still, in the absence of social security agreements signed between home and host countries, migrants who work in another country cannot benefit their family members who

stay in the country. Similarly, those who decide to leave the host country run the risk of losing their acquired rights or those to be acquired.

It is true that coordination between social security institutions is not easy. Their cooperation is often hindered by a weak development of the social security system in some countries, the fact that not all benefits are offered by the host country, differences between the social security systems of home and host countries and, finally, the insufficiency of the administrative capacities to prove and guarantee that all the necessary conditions are satisfied on the one hand, and to ensure efficiently the transfer of the benefits during several years, on the other hand.

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# Chapter 17

## Diaspora Policies, Consular Services and Social Protection for Senegalese Citizens Abroad



Etienne Smith

### 17.1 Diaspora Characteristics and Home Country Engagement Infrastructure

#### 17.1.1 *The Senegalese Diaspora and its Relations with the Homeland*

With a population of Senegalese abroad approaching one million for a total population of 15 millions, Senegal is unquestionably an emigration country. The Senegalese diaspora is estimated at a minimum of 550,000 and up to 2,5 million people by some estimates. Based on the most consistent and minimal figures, the Senegalese population abroad is divided primarily between Western Europe (approximately 280,000) and Sub-Saharan Africa (around 230,000), with the rest in North America (around 25,000), North Africa and the Middle East (15,000) and very small numbers in Asia and South America. According to the estimations, the main destination countries in Europe comprise France (around 110,000), Italy (80,000) and Spain (60,000); in West Africa, mostly Gambia (100,000), Mauritania (40,000) and the Ivory Coast (20,000); in Central and Southern Africa, Gabon (20,000), Congo (10,000) and South Africa (5,000); in North Africa and the Middle East, Morocco (10,000); in North America, the United States of America (20,000) and Canada (5,000) (Lessault and Mezger 2010; Smith 2015b; Ndione 2019).

Historically, Senegalese first emigrated to other African countries (West Africa and Central Africa) and France. Emigration flows diversified in the 1990s to include notably Italy, Spain and North America, as well as new destination countries in the Middle East (Saudi Arabia and Gulf states), North Africa (Morocco), Asia (China)

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and South America (Brazil, Argentina) (Bredeloup 1992; Robin and Lalou 2000; Tall 2002; Diop 2008; Fall 2013; Lessault and Flahaux 2013; Baizán et al. 2013; Beauchemin et al. 2014; Ndione 2019). Senegalese emigration is sociologically heterogeneous, combining historical flows of labour migration (industrial sector in France and Southern Europe, mining sector in West and Central Africa- see Bredeloup 1993; Beauchemin et al. 2014) in the 1960s and 1970s, followed by petty trade and informal sector (virtually everywhere, see Ebin and Lake 1990), student and highly-skilled migration (mainly in France, but also Switzerland, Belgium, North America, Morocco, or Asia- see Bava and Pliez 2009), and religious endeavours (Mboup 2001; Tandian 2008; Dia 2014; Berriane 2015).

### 17.1.2 *Diaspora Infrastructure*

Engagement with the diaspora started in the 1980s, when students and migrant workers in France were the two main categories of Senegalese abroad. In 1979, the Service for the Monitoring of Senegalese Students Abroad<sup>1</sup> was created by the Ministry of Education. Hosted in the Embassy of Senegal in Paris, it manages governmental scholarships for Senegalese students abroad (payment, orientation and assistance for Senegalese students abroad) and is competent for Senegalese students worldwide. In 1983, a deputy-minister in charge of emigrants (*ministre délégué chargé des émigrés*) was appointed for the first time, primarily tasked with providing assistance to Senegalese in France (Fall 2010, p. 82). In a context of the first wave of forced repatriation of Senegalese migrants from France, the Office for Reception, Orientation and Monitoring of Emigrants<sup>2</sup> was created in 1987 to provide assistance to returnees.

However, the real policy turn and first attempt at institutionalizing a comprehensive engagement with the diaspora occurred in 1993, when the Ministry of Foreign Affairs's official name became the Ministry of Foreign Affairs and Senegalese Abroad<sup>3</sup> and with the creation within the Ministry of the General Directorate of Senegalese Abroad<sup>4</sup>. In charge of the promotion, protection and assistance to Senegalese nationals abroad, this Directorate became a Ministry of its own in 2003, known as the Ministry of Senegalese Abroad<sup>5</sup>. In 2012, it was reintegrated within the Ministry of Foreign Affairs and Senegalese Abroad. The General Directorate of Senegalese Abroad currently comprises two divisions: the Directorate for the Assistance and Promotion of Senegalese Abroad<sup>6</sup>, formerly known as the Directorate

<sup>1</sup> *Service de Gestion des Étudiants Sénégalais à l'Étranger*.

<sup>2</sup> *Bureau d'Accueil, d'Orientation et de Suivi des émigrés* (BAOS).

<sup>3</sup> *Ministère des Affaires Étrangères et des Sénégalais de l'Extérieur* (MAESE).

<sup>4</sup> *Direction Générale des Sénégalais de l'Extérieur* (DGSE).

<sup>5</sup> *Ministère des Sénégalais de l'Extérieur* (MSE).

<sup>6</sup> *Direction de l'Assistance et de la Promotion des Sénégalais de l'Extérieur* (DAPSE).

for Social Affairs<sup>7</sup>, in charge of the protection and assistance to Senegalese abroad, and the Directorate for the Promotion of Investment and Projects<sup>8</sup> responsible for the economic promotion of Senegalese abroad (Fall 2010; Toma and Kabbanji 2017). In 2017, the decree reorganizing the Ministry of Foreign Affairs and Senegalese Abroad mentions that the Minister “assists, as necessary, Senegalese abroad, encourages and coordinates the initiatives aimed at their gathering. It develops mechanisms for their economic, social and cultural reintegration as well as their access to housing and the promotion of their investment projects.”<sup>9</sup>

The Senegalese consular network is relatively large and well-funded for a developing country, with a diplomatic presence (embassies and consulates) in 49 countries (23 in Africa, 11 in Europe, 6 in the Middle East, 6 in Asia, 3 in the Americas). Initially, the consular network did not reflect the geography of Senegalese emigration, but rather historical ties and geopolitical motives (Western Europe, West African neighbouring countries, key countries in Africa like Nigeria or Ethiopia). However, the geography of diplomatic representations increasingly matches Senegalese emigration, with an increased presence in countries with major Senegalese communities like Spain and Italy, or with new destination countries in Latin America and Asia. Mobile consulate services are offered in some countries, notably for passport application, ID card application, and electoral register registration. A network of honorary consuls also exists. Honorary consuls are habilitated to provide assistance to Senegalese abroad (contacts, reaching out to local or home authorities, etc.), but they do not issue official documents.

Exceptional repatriation by consulates for health issues is possible, but only for severe health conditions. No formal rules apply as the decision remains at the discretion of the consulates and the Directorate for the Assistance and Promotion of Senegalese Abroad of the Ministry of Foreign Affairs and Senegalese Abroad.<sup>10</sup> In case of death, consulates help logistically with repatriation of bodies and administrative procedures, although there is no formal provision for financial support. When the family of the deceased duly declares the death, the consulate issues a “voucher” which reduces tax paid at customs for the repatriation of the deceased body.

A consultative institution, affiliated with the Ministry of Foreign Affairs and Senegalese Abroad, also exists. The Superior Council of Senegalese Abroad<sup>11</sup> was officially created in 1995, and then again in 2010, after more than ten years of inactivity. It finally changed its name in 2014 to become the High Council of Senegalese

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<sup>7</sup> *Direction des Affaires Sociales* (DAS).

<sup>8</sup> *Direction de l'Appui à l'Investissements et aux Projets* (DAIP)

<sup>9</sup> *Décret n° 2017-1565 du 13 septembre 2017 relatif aux attributions du Ministre des Affaires étrangères et des Sénégalais de l'Extérieur*, <https://www.sec.gouv.sn/d%C3%A9cret-n%C2%B0%C2%A02017-1565-du-13-septembre-2017-relatif-aux-attributions-du-ministre-des-affaires>. Last accessed 29 April 2020.

<sup>10</sup> *Ministère des Sénégalais de l'Extérieur, Guide du Sénégalais de l'Extérieur. Mieux communiquer avec les compatriotes expatriés*, Dakar, 2007, p. 23.

<sup>11</sup> *Conseil Supérieur des Sénégalais de l'Etranger* (CSSE).

Abroad<sup>12</sup>, but is still not fully functional. It has a consultative role on all matters regarding Senegalese abroad, and is supposed to meet twice a year in Dakar at the request of the Ministry of Foreign Affairs and Senegalese Abroad. Extraordinary meetings can also be organized at the request of two thirds of its members. The High Council is composed of: (1) members elected among Senegalese residing abroad duly registered with the Senegalese embassy and members of associations of Senegalese abroad duly recognized by the Ministry of Foreign Affairs or by the host country and; (2) members appointed by the President of the Republic<sup>13</sup>.

The major political parties have branches abroad, with a formal presence in the parties' organisation charts.<sup>14</sup> Historically, these sections abroad have been particularly active in France, Italy, the United States, Spain and Gabon. Electoral campaigns often begin abroad and some presidential candidates have even launched their political campaign from abroad (Salzbrunn 2002; Smith 2015a). In countries like France, links with parties and trade unions of the host country have also developed throughout the years, especially at the local level.

Called *émigrés* or *travailleurs migrants* in official policy documents in the 1980s, the Senegalese nationals abroad have subsequently been named *Sénégalais de l'étranger* and finally *Sénégalais de l'extérieur* in the official nomenclature.<sup>15</sup> In 2007, the Ministry used the expression "expatriates" (*compatriotes expatriés*) in its official *Handbook for Senegalese Abroad*.<sup>16</sup> Senegalese abroad are commonly referred as *les émigrés* and *la diaspora* in daily conversation and media reports. In Senegal, views about Senegalese abroad are mixed: a strong desire for migration and social emulation triggered by "success stories" of seemingly wealthy returnees cohabit with criticism regarding lifestyle abroad (Riccio 2005; Diop 2008; Timera 2014). However, rather favourable overall views predominate as the financial flows from the diaspora are unanimously considered vital for the Senegalese economy (Ndione 2009; Somé 2009; OECD 2012). In 2017, these flows reached 2,2 billion US dollars, accounting for around 13% of the Gross Domestic Product and more than twice the level of development aid (Ndione 2019, p. 17, 68).

<sup>12</sup> *Haut Conseil des Sénégalais de l'Extérieur* (HCSE).

<sup>13</sup> In its initial stage (1995–2000), the geographical distribution of its 60 elected members was the following: Africa (30), Europe (16), Americas (7), Middle East (6) and Asia (1). 15 members were appointed by the President of the Republic. In 2010, for the "re-creation" of the Council, 30 members were elected and 45 appointed by the President of the Republic.

<sup>14</sup> See, for instance, the Delegation for Senegalese Abroad (*Délégation des Sénégalais de l'Extérieur*) of *Alliance pour la République* (APR); the National Secretary for the Diaspora (*Secrétaire National Chargé de la Diaspora*) of *Parti Démocratique Sénégalais* (PDS); or the National Secretariat for Senegalese Abroad and Migration (*Secrétariat National aux Sénégalais de l'extérieur et aux questions migratoires*) of *Parti Socialiste* (PS).

<sup>15</sup> "*Les Sénégalais établis hors du Sénégal*" is a term used only very recently, probably modelled on the expression in use in French policy documents when referring to French expatriates.

<sup>16</sup> *Guide du Sénégalais de l'Extérieur. Mieux communiquer avec les compatriotes expatriés, Ministère des Sénégalais de l'Extérieur, Dakar, 2007.*

### 17.1.3 Key Engagement Policies

In 2001, the Government of Senegal held a symposium in Dakar to engage with associations of Senegalese abroad, which led to the autonomisation of the *Direction Générale des Sénégalais de l'Extérieur* and the creation of the Ministry of Senegalese Abroad in 2003. In 2006, the Ministry formalized the official policy commitments of the state towards its citizens abroad in a Policy Paper on Senegalese abroad<sup>17</sup>, later updated in 2011, sketching out the main priorities: consular registration and assistance, political representation, and economic promotion. In 2018, the Ministry issued its policy plan, drafted in partnership with the International Organization for Migration (IOM) and the United Nations Development Programme (UNDP). The National Migration Policy of Senegal<sup>18</sup> reaffirms these main goals, while clearly prioritizing economic development in line with the national development plan of Senegal known as *Plan Sénégal Emergent* and regulation of emigration flows in line with the priorities of Senegal's main partners (France, Italy, and Spain).

#### Registration and Administrative Documents

Consulates are responsible for the upkeep of the Register of Senegalese Abroad<sup>19</sup>. Consular registration is optional for Senegalese abroad, but necessary in order to acquire a consular ID (*carte consulaire*), a national identity card and a voter's card (the same biometric card for the latter two).<sup>20</sup> Only eight consulate generals (in France, Italy, Spain, the Ivory Coast, Gabon, Morocco, the United States, Saudi Arabia) are entitled to produce and deliver biometric passports directly to Senegalese abroad.

The Ministry of Foreign Affairs and Senegalese Abroad centralizes the consular register and has been carrying out a comprehensive census of Senegalese abroad since 2009. However, it has not yet been published. It also holds an official register of associations of Senegalese abroad. In 2008, a total of 741 such associations worldwide were registered with the Ministry.

All Senegalese consulates are habilitated to issue birth certificates for Senegalese born abroad in the jurisdiction of the consulate. Birth must be declared within one month and the birth certificate is issued free of charge by the Consulate within three to ten days (birth certificate of the host country and a valid ID must be produced).

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<sup>17</sup> *Lettre de Politique Sectorielle des Sénégalais de l'Extérieur, Ministère des Sénégalais de l'Extérieur, Dakar, 2006.*

<sup>18</sup> *Politique Nationale de Migration du Sénégal (PNMS).*

<sup>19</sup> *Registre des Sénégalais établis hors du Sénégal.*

<sup>20</sup> If they do not register in the Register of Senegalese abroad or the register for external voting, Senegalese abroad can keep being registered as residents in Senegal, provided that they have proof of residence in Senegal. As a result, they can access health services provided to Senegalese residents.

### **Electoral Rights and Political Representation**

Adopted in 1992, external voting rights have allowed Senegalese abroad to participate in Senegalese presidential and legislative elections since 1993 (Dedieu et al. 2013; Smith 2015a, b). While initially only a handful of communities of Senegalese abroad could participate (for instance, only Senegalese from 15 countries in the 2000 elections), now Senegalese living in 49 countries participate in Senegalese elections. The electoral register for Senegalese abroad compiled by the Ministry of Foreign Affairs and Senegalese Abroad comprises more than 310,000 voters (in 2019), who are required to vote in person at a polling station in the country of residence. In 2016, in line with the argument that the Senegalese abroad constitute “the 15<sup>th</sup> region of Senegal”, special parliamentary representation for Senegalese abroad was introduced for the first time: 15 of the 165 seats in the National Assembly are now reserved for Senegalese abroad, i.e. just below 10%. The implementation of this major constitutional reform took place during the legislative elections of 2017.<sup>21</sup>

### **Economic Promotion**

Besides political rights, economic engagement with the diaspora is the key priority for the Government of Senegal. Securing housing in Senegal was a major concern for Senegalese abroad in the 2000s. The Ministry of Foreign Affairs and Senegalese abroad hosted a division specifically dedicated to this task, the Directorate for the Promotion of Housing for Senegalese Abroad<sup>22</sup>. A program of “diaspora estates” was launched in two regions for Senegalese from France, the United States and Italy. The scheme monitored sale of land plots and five years loans for Senegalese abroad organized in associations and willing to pay 20% of the total construction costs (Tall 2009). These programs were not continued, but the Directorate for the Promotion of Investment and Projects<sup>23</sup> continues to organize housing fairs abroad (*Salons de l’habitat*) to promote the purchase of real estate in Senegal by Senegalese abroad. Since 2012, a Interministerial Committee to help Senegalese abroad access housing in Senegal<sup>24</sup> has been given the task to determine quotas for Senegalese abroad in accessing constructible land, provide information and assistance to Senegalese abroad to access funding facilities for housing.

During that same decade, the official discourse gradually shifted its priorities upon realizing that investment made by Senegalese abroad in real estate, transport or trade is not ‘productive investment’. By the mid-2000s, the channelling of financial flows from Senegalese abroad towards productive investment (agriculture and agro-business, small businesses, etc.) became the top priority, being recently reiterated within the framework of the long-term development strategy for 2035 (*Plan Sénégal Emergent*).

<sup>21</sup>These extra-territorial seats are distributed as follows: Africa (7), Europe (6), America and Oceania (1), Asia and the Middle East (1).

<sup>22</sup>*Direction de la Promotion de l’Habitat des Sénégalais de l’Extérieur* (DIPHASE).

<sup>23</sup>*Direction de l’Appui à l’Investissements et aux Projets* (DAIP).

<sup>24</sup>*Comité interministériel pour l’accès au logement des sénégalais établis à l’étranger*.

The major innovation in this respect has been the creation of the Investment Support Fund for Senegalese Abroad<sup>25</sup> in 2008. This investment and guarantee fund, under the auspices of the Directorate for the Promotion of Investment and Projects, promotes “productive investment” in Senegal by Senegalese abroad in any sector except real estate, trade and transport. Any Senegalese citizen residing abroad, holding a valid document proving residence abroad, and bringing a 10% personal contribution to the project is eligible. Two mechanisms are in place: either direct loans or a guarantee provided for loans with private banks. Technical expertise is also provided.

In parallel, the Ministry of Economy and Finance has set up an Investment and Guarantee Fund for Senegalese Abroad<sup>26</sup>, as part of the broader FONGIP program<sup>27</sup>. This investment and guarantee fund is specifically for small businesses in priority sectors, as defined by the Ministry. It seeks to help Senegalese abroad access credit by decentralized financial services institutions in Senegal and to strengthen these decentralized financial services institutions in Senegalese regions, especially those contributing the most to international migration flows.

These two initiatives are part of the Policy Plan for Senegalese Abroad<sup>28</sup> launched by the General Directorate for Senegalese Abroad as part of the Strategic Orientation Plan 2014–2017, which aimed at promoting the territorialization of migration in favour of local development.

Targetting the remittances of Senegalese abroad, promoting local development and encouraging return migration are seen as convergent and mutually reinforcing goals by the Ministry, as well as international partners of Senegal’s migration policy (IOM; French, Spanish and Italian cooperation especially). A few joint initiatives have been experimented in the last decade:

- the Support Program for Solidarity Initiatives for Development<sup>29</sup>, launched in 2009. Jointly sponsored by the Senegalese Government<sup>30</sup> and French cooperation, its main goal is to provide support for private economic investment projects in Senegal by Senegalese residing in France. Two mechanisms exist: (1) financial (up to 70% of the projet) and technical support for associations of Senegalese nationals in France to set up local infrastructure development in their regions of origin in Senegal and; (2) mobilization of scientific and technically-skilled Senegalese from France for short assignments in Senegal. The program also

<sup>25</sup> *Fond d’Appui à l’Investissement des Sénégalais de l’Extérieur* (FAISE). Within the FAISE, a specific fund, *Femmes de la diaspora*, is devoted to projects led by women from the diaspora

<sup>26</sup> *Fonds de Garantie pour l’Investissement des Sénégalais de l’Extérieur* (FOGARISE).

<sup>27</sup> The FONGIP is a guarantee fund for priority investment set up by the Government in 2012.

<sup>28</sup> *Plan d’action en faveur des Sénégalais de l’Extérieur*.

<sup>29</sup> *Programme d’Appui aux Initiatives de Solidarité pour le Développement* (PAISD).

<sup>30</sup> The institutions responsible for the program in Senegal are the *Direction de la Coopération Technique at the Secrétariat Général de la Présidence de la République du Sénégal*, the *Agence de Développement et d’Encadrement des Petites et Moyennes entreprises* (ADEPME), the *Direction Générale des Sénégalais de l’Extérieur* of the Ministry of Foreign Affairs and Senegalese Abroad and the Senegalese embassy in Paris.

includes the specific scheme Solidarity Volunteering for Development<sup>31</sup> for second and third generation Senegalese born in France who are willing to participate in Senegal in community-development non-profit projects.<sup>32</sup>

- the Platform for the Support of the Private Sector and Valorisation of the Senegalese Diaspora in Italy.<sup>33</sup> This program is a partnership between the Microfinance Division of the Ministry of SME(s), Women Entrepreneurship and Microfinance of Senegal and the Ministry of Foreign Affairs of Italy and the Piemonte region in Italy. The Platform provides credit support, loan rate guarantees and technical expertise for small businesses run by Senegalese nationals residing in Italy who invest in Senegal (Italians willing to create a small business in Senegal are also eligible).

In 2016, the Ministry of Foreign Affairs and Senegalese Abroad launched the first Support Office for Senegalese Abroad<sup>34</sup> outside Senegal, located with the consulate general of Senegal in Milano. Working as a liaison office for the FAISE, FONGIP and PLASEPRI national programs, it is mainly an orientation and support office providing information for Senegalese in Italy willing to invest in Senegal. After this first experiment, the policy goal is to multiply these Support Offices abroad in key countries with significant Senegalese migrant communities.

The return of Senegalese migrants is also one of the clearly stated long-term goals of the FAISE and PLASEPRI programs.<sup>35</sup> The still existing Office for Reception, Orientation and Monitoring of Emigrants<sup>36</sup> provides information for aspiring migrants, first-degree family members with a relative abroad or returnees with the aim, in the latter case, of facilitating socio-economic reintegration. It now has sub-branches in the regions of Senegal with most emigrants.

Overall, the engagement of the Senegalese state with its citizens abroad has clearly intensified over the years, along its two most salient priorities: political representation and tapping into the resources of the diaspora. Despite being defined as a legitimate policy goal by official policy papers, social protection for Senegalese abroad lags behind drastically, especially when compared with the progress noted in the two aforementioned policy areas. The main reason is, of course, the embryonic state of social protection in Senegal itself in many branches, but also the absence of a strong and specifically dedicated institution tasked with advancing social

<sup>31</sup> *Volontariat de Solidarité pour le Développement*.

<sup>32</sup> [www.codev.gouv.sn](http://www.codev.gouv.sn). Last accessed 29 April 2020.

<sup>33</sup> *Plateforme d'appui au secteur privé et à la valorisation de la diaspora sénégalaise en Italie* (PLASEPRI).

<sup>34</sup> *Bureau d'Appui aux Sénégalais de l'Extérieur* (BASE).

<sup>35</sup> In the period 2006–2007, a sectorial policy was initiated jointly by Spain and Senegal for the return of emigrants to agriculture (Plan REVA *Retour des Emigrés Vers l'agriculture*). The main goal of this 20 million euros scheme funded by the Spanish cooperation was to foster jobs in the agricultural sector for Senegalese returnees from Spain. Although the program was discontinued, some imitative measures to foster investment and return in agriculture are still in place, e.g. the reservation of 20% arable land for Senegalese abroad.

<sup>36</sup> *Bureau d'Accueil, d'Orientation et de Suivi des émigrés* (BAOS).



protection for emigrants. The lack of basic protection and pro-active state policy is only partially made up by the self-help schemes and vibrant associational life of Senegalese abroad (Dia 2007, 2010; Tandian and Coulibaly-Tandian 2016; Hunter 2018).

## 17.2 Diaspora Policies and Social Protection in Senegal

As a general rule, in all matters related to social protection, a strict principle of territoriality and residence applies in Senegal (Fall 2003; Tounkara 2009; Baumann 2010). As a result, emigrants lose their rights when they settle abroad, with very few exceptions detailed below. The Labour Law, Social Security Law and the founding texts of the Institute for Pension Plans of Senegal<sup>37</sup> contain no specific disposition for emigrants.

### Information Policy

Within the Ministry of Foreign Affairs and Senegalese Abroad, the Directorate for the Assistance and Promotion of Senegalese Abroad and the consular network have the mission to provide basic information and administrative assistance to Senegalese abroad. In 2007, the Ministry of Senegalese Abroad, published the Handbook for Senegalese Abroad, a 121 pages brochures with basic information about assistance and the role of consulates and the Ministry. Information provided about assistance is primarily focused on repatriation of corpses, i.e the administrative assistance that consulates and the Ministry can provide. Consulates help logistically with the repatriation of bodies and administrative procedures, but no formal provision for financial assistance exists. Exceptional financial help is at the discretion of the Directorate for the Assistance and Promotion of Senegalese Abroad. When the family of the deceased duly declares the death, consulates issue a “voucher” which reduces tax paid at customs for the repatriation of the corpse. In practice, the costs are covered by self-help associations, some of which have been structuring themselves as *sociétés de secours mutuel*, but the Ministry plays no part in these associations, except for holding the register and disseminating their contacts. One noteworthy exception is the particular case of repatriation of murdered individuals: the Ministry has made it an unwritten rule to cover the costs of repatriation of Senegalese abroad who were murdered<sup>38</sup>.

Abroad, only Senegalese in France benefit from the presence of a social affairs *attaché (assistante sociale)* at the consulate general of Senegal in Paris. The *attaché* provides protection and legal assistance for Senegalese in France in situation of distress or facing legal issues, but no detailed specific information is provided online.

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<sup>37</sup> *Institut de Prévoyance Retraite du Sénégal (IPRES)*.

<sup>38</sup> Interview with Mr. Sory Kaba, Head of the General Directorate for Senegalese Abroad, Dakar, January 8, 2019. Quite a few cases of murders of Senegalese abroad have been mediatized in recent years in Italy, France, Spain, the United States, Brazil, the Ivory Coast or Morocco.

In Senegal, the Social Security Board<sup>39</sup> provides specific information to family members in its national office (with a dedicated office for migrants and their family members within the Division for Social Protection for Emigrants<sup>40</sup> and its regional branches).

### **Bilateral Conventions on Social Protection**

As of 2018, the bilateral convention on social protection between France and Senegal, signed in 1974, is the only convention that has been implemented. Specific information is provided by the social affairs *attaché* at the consulate general in Paris for Senegalese living in France who can benefit from the application of the convention, which currently covers only family allowances (see below).

Senegal also signed bilateral conventions with Mali (1965, renegotiated in 1996) and Mauritania (1972, renegotiated in 1987), which are very limited in scope.<sup>41</sup> A convention was signed with Cabo Verde (1998), although it is not implemented yet. Conventions with Gabon and Cameroon have also been drafted, but not been ratified (Toukara 2009, p. 23–24). During the last decade, Senegal has been negotiating with Spain and Italy for bilateral conventions, but no agreement has been reached yet about their future perimeter and the set of rights to include.

### **Multilateral Conventions on Social Protection**

In 1993, 14 Member States of the *Zone Franc* in Africa established a dedicated institution for the harmonisation of social protection regimes, the Inter-African Conference on Social Welfare (CIPRES)<sup>42</sup> based in Lomé (Togo). The major policy goal of CIPRES is to help Member States coordinate their social protection regimes, with the explicit objective of improving social protection for migrant workers in Member States, as stated in the Preamble and article 1 of the CIPRES Treaty of 1993. In February 2006, the CIPRES multilateral convention on social security was adopted in Dakar. This convention upholds the principle of the continuation of acquired rights for migrants (allowing for the suspension of the territoriality principle and the transferability of pension and health insurance rights) and equality of treatment between citizens of signatory states. However, this convention, ratified by Senegal in 2014 only, has been ratified by only seven out of the 17 signatory states.<sup>43</sup> Short of a functional multilateral convention, payment agreements have been

<sup>39</sup> *Caisse de Sécurité Sociale (CSS)*.

<sup>40</sup> *Division de la Sécurité Sociale des Emigrés*.

<sup>41</sup> The convention with Mali is merely an administrative agreement between the Social Security Boards of each country to facilitate the payment of workplace accident or disease benefits for posted workers (*travailleurs détachés*) on the territory of the other state for less than one year. See: *Arrangement administratif général relatif aux modalités d'application de la convention générale sur la Sécurité Sociale entre la République du Sénégal et la République du Mali*, Bamako, 25 July 1996. With Mauritania, disagreement about the level of family benefits have stalled the process (Toukara 2009, p. 23), as well as currency exchange rate (Ndione 2019, p. 110).

<sup>42</sup> *Conférence Interafricaine de la Prévoyance Sociale (CIPRES)*.

<sup>43</sup> Current members of CIPRES include: Benin, Burkina Faso, Cameroon, C.A.R., Congo, Côte d'Ivoire, Gabon, Guinea-Bissau, Equatorial Guinea, Madagascar, Mali, Niger, D. R. C., Senegal, Tchad, Togo, Comoros.

negotiated bilaterally between the Social Security Board (CSS) and the Institute for Pension Plans of Senegal (IPRES) with their partner institutions in the Ivory Coast, Benin, Togo, Mali and Burkina Faso.<sup>44</sup>

As a Member State of both the Economic Community of West African States (ECOWAS) and West African Economic and Monetary Union (WAEMU), Senegal has signed the treaties and protocols of both institutions allowing for the free circulation and settlement of citizens from each Member State in all other Member States. To this day, no social protection agreements have been implemented through ECOWAS, although a regional social policy framework is clearly on the agenda.<sup>45</sup>

### 17.2.1 *Unemployment*

There is no policy of unemployment benefits in Senegal. The only unemployment benefits Senegalese abroad can access are the schemes available in their host countries, depending on the legislation applicable in each case.

### 17.2.2 *Health Care*

Until the mid-2000s, health care provisions in Senegal were only accessible for workers in the public sector and formal private sector. In the last decade, major policy reforms occurred to broaden access to health care for workers in the informal sector, children under the age of 5, students and the elderly.<sup>46</sup> So far, however, these schemes have not been extended to emigrants because the priority remains to extend national coverage first.

The Division for Social Protection for Emigrants of the Social Security Board of Senegal provides brief information about access to social protection programs available for Senegalese citizens living in France (and only them) in its brochure *Handbook for Emigrants*<sup>47</sup>. However, only posted workers (*travailleurs détachés*) in

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<sup>44</sup> As of 2018, only the mutual payment agreements signed with the Ivory Coast, Togo and Burkina Faso were fully operational (Ndione 2019, p. 111).

<sup>45</sup> In spring 2018, the Social Affairs Division of the ECOWAS Commission, in partnership with UNICEF and ILO was recruiting a social protection expert to draft a policy framework with the goal of setting regional standards and guidelines for social protection policies and strategies in the ECOWAS.

<sup>46</sup> See for instance the *Plan Sésame*, initiated in 2006, providing free basic health care for the elderly, and the *Couverture Maladie Universelle* launched in 2012, aiming at the gradual extension of basic health care through mutual health insurance. Health care insurance coverage has increased from 7% in 2013 to 20% in 2016. Membership in mutual health insurance organisations has reached around 5,3 million (in 2017).

<sup>47</sup> *Caisse de Sécurité Sociale du Sénégal, Guide des émigrés*, <http://www.secusociale.sn/docu.html#guiem>. Accessed 4 April 2018.

France are eligible for the continued access to Senegalese social security benefits in the area of health care for a maximum period of three years (with possible exceptional extensions). All other Senegalese emigrants in France are encouraged to seek access to health and invalidity schemes provided by France and check their eligibility status with these programs.

### 17.2.3 Pensions

Senegalese citizens entitled to claim their right to retirement from Senegal and who choose to settle abroad may receive their pension provided that they have a bank account where the transfers will be made. The Institute for Pension Plans of Senegal (IPRES) has a specific section of its website dedicated to Senegalese abroad, yet with relatively little information.<sup>48</sup> Within the consular network, only the consulate general in France provides information on the bilateral convention between France and Senegal through its social affairs *attaché*. However, the convention applies to Senegalese workers in France willing to return to Senegal and keep the benefit of their French pension<sup>49</sup>, and not to Senegalese in France willing to keep the benefit of their Senegalese pension<sup>50</sup>.

Emigrants have consistently called for the renegotiation of the bilateral convention between France and Senegal in order to better accommodate the needs of Senegalese workers and pensioners. However, as in other fields of social protection, the most pressing issue for the Government is to increase national coverage before addressing the case of emigrants' access.

### 17.2.4 Family-Related Benefits

Family benefits in Senegal (*allocations familiales*) exist for workers in the public sector and the formal private sector. Senegalese abroad are not eligible for these programs, except those residing in France.

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<sup>48</sup> [www.ipres.sn/institut/index.php?option=com\\_content&view=article&id=67&Itemid=90](http://www.ipres.sn/institut/index.php?option=com_content&view=article&id=67&Itemid=90). Accessed 4 April 2018.

<sup>49</sup>This is possible only for contributory pension schemes within the general regime, not for non-contributory benefits such as the guaranteed minimum for the elderly (*minimum vieillesse*) which requires residence in France (at least six months per year). Retired Senegalese migrants returning to Senegal, even when eligible to French pensions, may nonetheless face visa or residence permit issues with the French administration that can affect their ability to effectively access their pension scheme.

<sup>50</sup> *Convention du 29 mars 1974 entre le Gouvernement de la République Française et le Gouvernement de la République du Sénégal sur la Sécurité Sociale, modifiée par l'avenant du 21.12.1922 en vigueur le 01.06.1994 (décret n°94-513 du 20.06.1994).*

In application of the 1974 Franco-Senegalese bilateral convention on social security, the Social Security Board of Senegal (CSS), through its dedicated Division for Social Security for Emigrants, is responsible for the payment of French family allowances to the family members (spouse and children) in Senegal of Senegalese workers living in France (pre-birth, birth and family benefits for up to four children until 18 years old or 21 years old if students). The French Family Allowances Office<sup>51</sup> transfers the allowances money to the Social Security Board of Senegal. This scheme requires the yearly certification of the family certificate by the Social Security Board of Senegal and the consulate general in Paris. Payment occurs in cash at the regional offices of the Social Security Board of Senegal. Additionally, four times a year, mobile payment teams circulate at the village level (10-day tours) for the three regions with most emigrants (Saint-Louis, Matam and Tambacounda). The Social Security Board of Senegal also cooperates regularly with its French equivalent for the transmission of relevant documents and certificates, which transit through the consulate general of Senegal in Paris. Moreover, Senegalese in France have access to a personal account on the online portal of the Social Security Board of Senegal, which has a specific section of its website dedicated to Senegalese in France (*Espaces émigrés*).

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

### 17.2.5 *Economic Hardship*

There is no nationwide program in Senegal providing a guaranteed minimum resources scheme. Launched in 2013, the National Program of Allowances for Family Safety<sup>52</sup> targets the most vulnerable households. Selected households receive 100,000 FCFA (150 euros) per year during five years. In exchange, families must enroll children in school, registry office and vaccination programs. The program is run by the General Delegation for Social Protection and National Solidarity<sup>53</sup>. In 2018, 300,000 families benefitted from this program. However, emigrants are not eligible to apply. Self-help associations among Senegalese abroad and remittances from Senegalese abroad constitute one of the many informal social safety nets put in place by emigrants for themselves or for their relatives in Senegal in the absence of a state policy in this domain (Tandian and Coulibaly-Tandian 2016).

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<sup>51</sup> *Caisse d'Allocations Familiales*.

<sup>52</sup> *Programme national de bourses de sécurité familiale* (PNBSF).

<sup>53</sup> *Délégation générale à la protection sociale et à la solidarité nationale* (DGPSN).

## 17.3 Conclusions

In matters of social protection, Senegalese emigrants are, for the most part, left to their own devices. Reform of the Senegalese legislation and introduction of the principle of the portability of social protection rights is regularly called for by associations of Senegalese emigrants, especially for health care and invalidity. Despite persistent demands for a voluntary insurance scheme backed by the Government for emigrants or the creation of a dedicated and comprehensive institution for the social protection of emigrants, little policy improvement has yet materialized.

In response to the grievances of the diaspora, the state of Senegal rather prioritises the gradual extension of domestic coverage in Senegal through its universal health care scheme (planning to increase coverage from 20% to 50%), while also pursuing its policy of negotiating bilateral conventions on social protection with new countries with large numbers of Senegalese citizens (Italy, Spain). However, even when a bilateral convention exists, reciprocity does not function well when social protection policies are found lacking in the sending state or when the destination country prioritises the management of return migration over the extension of new rights. According to emigrant associations and policy experts, the only working convention to date, i.e. between France and Senegal, also needs to be reformed as its scope remains very limited (family allowances only).

There is much room for change in the future however, as the economic weight of the diaspora keeps increasing and the allocation of the 15 new seats to the diaspora in the Parliament could amplify the political voice of Senegalese abroad advocating policy change, depending though on the extent to which these new representatives of Senegalese abroad will take on their new role.

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# Chapter 18

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Serbia



Tamara Popic

### 18.1 Overview of the Welfare System and Main Migration Features in Serbia

#### 18.1.1 *Main Characteristics of the National Social Security System*

Similar to the other former socialist countries from the South Eastern European region, Serbia's welfare policy development at the beginning of the twenty-first century was characterized by a reform delay. Due to the protracted transition from socialism to capitalism disturbed by severe economic crisis and affected by the Yugoslav wars in the 1990s, the country started the so-called 'de-blocked' transformation of its welfare state only in 2000 (Perišić 2016). Since then, the efforts to reform the national welfare state have been relatively unsuccessful, mainly due to the country's unstable economic outlook. Consequently, the national welfare system is characterized by the focus on the old rather than the new social risks. Today, welfare provision in Serbia is one of the public sectors facing fundamental demographic and economic challenges and a sector that is, to a large extent, shaped by economic decisions (Perišić and Vidojević 2015).

The national social security system is based on the social insurance model and financed mainly by social insurance contributions and, to a lesser extent, the general state budget via taxes. The entitlement for most social benefits is based on employment period and/or payment of compulsory insurance contributions. More specifically, unemployment, health benefits and pensions are based on the payment of insurance contributions. Some family benefits are based on employment, whereas

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others depend on citizenship and residence. The guaranteed minimum resources scheme is conditioned solely by citizenship and residence.

As most social benefits are contributory, foreigners residing and working in Serbia have access to these benefits under the same eligibility conditions as Serbian nationals. There are, however, certain exceptions. One of them is in the area of guaranteed minimum resources, which is a non-contributory scheme available only for national citizens. Another exception are parental benefits. To qualify for the benefit, the parent must be a citizen and resident of Serbia. Foreigners are also excluded as potential beneficiaries of child benefits as the latter are means-tested and require the child to be a Serbian national residing in Serbia. However, certain categories of foreigners, such as those coming from countries that have a bilateral social security agreement with Serbia, can benefit from a differential treatment in terms of accessing social protection in Serbia.

As most social benefits are linked to employment and/or previous contributions, Serbian citizens residing abroad are generally excluded as potential beneficiaries and there are very limited possibilities of exporting these benefits when deciding to permanently reside abroad. The only exception are pensions. If during the period spent working abroad, Serbian citizens are not compulsory insured with the foreign insurance authority, or if they cannot use their rights outside of the territory of the state they work in, they can join the Serbian pension insurance scheme. At the same time, Serbians living abroad in one of the three countries that represent the 3 largest destinations for Serbian citizens (Germany, Austria and Switzerland) are able to receive some social benefits based on bilateral social security agreements between Serbia and these countries.

### ***18.1.2 Migration History and Key Policy Developments***

The evolution of Serbia's migration trends can be better understood in light of the country's political and historical development. From 1945 until 1992, Serbia was a communist state and one of the six republics of the Socialist Federal Republic of Yugoslavia. After Yugoslavia's breakup, from 1992 to 2006, the country was first in federation and then in union with Montenegro. In 2006, Serbia became an independent state. These changes in the statehood status and other events such as the Yugoslavia's civil war (1991–2001) and the NATO bombing (1999) had a strong impact on the political and socio-economic situation in the country and a significant influence on migration flows. In fact, most migration flows have been largely motivated by economic (labour) and/or political reasons (Fassman and Munz 1994; Pavlov 2009).

According to the Ministry of Foreign Affairs,<sup>1</sup> in 2018 there are around 4.5 million Serbian citizens living abroad, compared to 7 million individuals residing in Serbia. At the same time, in 2017, there were around 500.000 foreigners living in Serbia, coming mainly from former Yugoslavia republics.<sup>2</sup> The three countries with the largest number of Serbian nationals are Germany, Austria and Switzerland. At the same time, the three largest groups of foreigners residing in Serbia come from former Yugoslavia republics – Bosnia and Herzegovina, Croatia and Montenegro. Currently, Serbia has bilateral social security agreements signed with all these six countries. These agreements are based on the principle of equal treatment and the general condition that foreigners residing in Serbia must be legally entitled to these benefits in their home countries in order to receive them in Serbia. The agreements also allow for the aggregation of insurance periods between the two countries, as in the case of pensions.

Generally speaking, Serbian social protection policies toward migrants can be explained by the structure of the country's welfare system based on social insurance contributions. Since employment is the basis of most benefits entitlement, they are granted to foreigners living and working in Serbia, while Serbians abroad have access to these benefits only depending on social security agreements between Serbia and the respective country. More substantially, however, the very limited access to non-contributory benefits for both foreigners in Serbia and Serbians abroad can be explained by different reasons. For foreigners, by the exclusionary principle according to which certain benefits are granted only to resident Serbian citizens. For Serbians abroad, by the elites' perception of diaspora as mainly an economic resource, and as a supplement to the country's social-safety net, rather than its beneficiary.

To this date, no recent Serbian government has put forward a pro-active policy towards the integration of immigrants or the Serbian diaspora into the country's social protection system. The only move in this direction, regarding immigrants, was the adoption of the 2014 Law on Employment of Foreigners,<sup>3</sup> which stipulates that foreigners employed in Serbia have equal rights and obligations with respect to work, employment and self-employment as Serbian nationals (Article 4). However, the law also introduces the possibility of limiting the number of non-national employees in Serbia, depending on situation on the Serbian labor market.<sup>4</sup>

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<sup>1</sup>Ministry of Foreign Affairs (2018). <http://www.mfa.gov.rs/sr/index.php/konzularni-poslovi/dijaspora/dijaspora-opste?lang=lat>. Accessed on 1 October 2018.

<sup>2</sup>United Nations (2019). Monitoring Global Population Trends. <http://www.un.org/en/development/desa/population/migration/data/index.shtml>. Accessed on 13 February 2019.

<sup>3</sup>Law on Employment of Foreigners (*Zakon o Zapošljavanju Stranaca*). Official Gazette 113/2017.

<sup>4</sup>Zdravković, M. (2015). Serbia: New Act on Employment of Foreigners is Adopted. <https://www.schoenherr.eu/publications/publication-detail/serbia-new-act-on-employment-of-foreigners-is-adopted/>. Accessed 1 October 2018.

## 18.2 Migration and Social Protection in Serbia

As explained above, both citizens of Serbia and foreigners residing in Serbia gain access to most social protection benefits based on employment and/or previous contribution period, but access to some benefits is dependent on both citizenship and residence. In 2018, contributions for pension (and invalidity) insurance amount to 26% of the salary, 10.3% for healthcare (including benefits in kind, sickness cash benefits and invalidity cash benefits), and 1.5% of the salary for unemployment insurance.<sup>5</sup> For healthcare, insurance contributions cover workers and their families, while contributions of specific social groups independently of their employment status (such as pregnant women, children, or blood donors) are covered by the state (taxes). Family benefits (including maternity, paternity, parental and child benefits) are non-contributory, but eligibility to some of these benefits still depends on previous employment (maternity and paternity benefits). Pensions and unemployment benefits depend on periods of previous employment and contributions. The social protection benefits that are non-contributory are those provided under the guaranteed minimum resources scheme (financial social assistance) and two types of family benefits (parental and child allowance). As mentioned above, these last three types of benefits are also granted exclusively to resident citizens, since both citizenship and residence represent key eligibility criteria.

Currently, Serbia is a member in 14 regional integration organisations,<sup>6</sup> but none of them provides for social security coordination, nor they facilitate in any way the access to social benefits for community migrants.

### 18.2.1 Unemployment

The unemployment insurance (*osiguranje u slučaju nezaposlenosti*) for both national citizens and foreign residents is regulated by the Labour Law,<sup>7</sup> the Law on Employment and on Unemployment Insurance,<sup>8</sup> and the Law on Employment of

<sup>5</sup> MISSCEO (2019). The Mutual Information System on Social Protection of the Council of Europe Database. <http://www.missceo.coe.int>. Accessed 13 February 2018.

<sup>6</sup> The South East Europe Cooperation Process; the Central European Initiative; the Adriatic and Ionian Initiative; the Framework Agreement on the Sava River Basin; the Migration, Asylum, Refugees Regional Initiative; the Central European Free Trade Agreement; the South East European Law Enforcement Centre; the Regional Cooperation Council; the Brdo-Brioni Process; the EU Strategy for the Danube region; the EU Strategy for the Adriatic and Ionian Region; the Berlin Process; the Visegrad Group and the Regional Youth Cooperation Office (Ministry of Foreign Affairs 2018a).

<sup>7</sup> Labour Law (*Zakon o Radu*). (2005). *Official Gazette* 113/2017.

<sup>8</sup> Law on Employment and on Unemployment Insurance (*Zakon o Zapošljavanju i Osiguranju u Slučaju Nezaposlenosti*). *Official Gazette* 113/2017.

Foreigners. The institution in charge of these benefits is the National Employment Service (*Nacionalna Služba za Zapošljavanje – NSZ*).

Unemployment benefits are financed by the social insurance scheme, which includes compulsory contributions set at 1.5% of workers' wages (of which employers pay 0.75% and employees 0.75%). Resident nationals and foreigners who are employed or self-employed are eligible for unemployment benefits if they have previously been insured for at least 12 months continuously or discontinuously for at least 18 months. Prior residence in Serbia is not an eligibility requirement. To receive unemployment insurance benefits, nationals and foreigners must be registered as unemployed/job seekers, available for work, and prove regular job search.

Individuals are obliged to claim the benefit within 30 days since s/he stopped paying unemployment insurance. Claimants must wait around 2 months for the approval of the benefits, after which they receive the first payment 'retroactively' (thus covering the whole period since the individual submitted the claim). The amount received depends on previous earnings and duration of employment. The maximum duration depends on insurance periods.<sup>9</sup> Those who need two more years until reaching the retirement age can receive the unemployment benefits for up to 2 years. While receiving unemployment benefits, individuals can temporarily leave the country as long as they fulfil their obligations towards the NSZ (including presence at the NSZ every 30 days, and response to NSZ's calls, job offers, and participation in activation programs and trainings). While the law does not actually stipulate sanctions, if the individual does not fulfil these obligations, s/he is excluded from the national unemployment register, this leading to the temporary suspension of the benefit. Those who receive unemployment benefits in Serbia can export them when deciding to move abroad only if the country to which they have moved has a bilateral social security agreement with Serbia covering unemployment benefits.

After the unemployment insurance benefit comes to an end, there is no separate unemployment assistance.

### **18.2.2 Health Care**

The access to health benefits in cash and kind and invalidity benefits is regulated by several pieces of legislation.<sup>10</sup> Resident nationals and foreigners can access these benefits based on the compulsory social insurance scheme financed mainly by

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<sup>9</sup>Three months for those who have from 1 to 5 years of insurance; six months for 5 to 15 years of insurance; nine months for 15 to 25 years; and 12 months for more than 25 years of previous insurance.

<sup>10</sup>Law on Social Insurance Contributions (*Zakon o Doprinosa za Obavezno Socijalno Osiguranje*), Law on Healthcare (*Zakon o Zdravstvenoj Zaštiti*), Law on Healthcare Insurance (*Zakon o Zdravstvenom Osiguranju*), Statute on Conditions and Procedures on Compulsory Health Insurance Right (*Pravilnik o načinu i postupku ostvarivanja prava iz obaveznog zdravstvenog osiguranja*), Law on Labor (*Zakon o Radu*), Law on Pension and Invalidity Insurance (*Zakon o*

contributions and, to a much lesser extent, by taxation. Contributions for social health insurance amount to 10.3% of workers' wages. The institution in charge of administrating these contributions is the National Health Insurance Fund (*Zavod za Zdravstveno Osiguranje*). The health insurance contributions for unemployed persons are covered by the state through taxation.

Both employed and self-employed individuals are covered by the social health-care insurance for benefits in kind. Foreign or national residents who are not compulsory insured (for example, students over 26 years old) can join the social security scheme voluntarily to get access to the healthcare system. The national health insurance funds decide the level of voluntary monthly contribution to the healthcare insurance. In 2018, this contribution amounted to 2374 Serbian Dinars (around 20 euros).<sup>11</sup> Resident nationals and foreigners who are voluntarily insured receive the same health benefits in kind compared to those compulsory insured. There is no specific requirement of a minimum period of insurance or prior residence in the country to become eligible for benefits in kind. Dependant family members of employees are also granted access to health services.

The National Health Insurance Fund covers a large part of the healthcare costs directly to the healthcare facility or provider. There are also small flat payments for specific services that apply to both national and foreign residents entitled to health-care. For inpatient care, patients pay a fee of 50 Serbian Dinars (around 50 cents) for a day spent in hospital. To claim benefits in kind, individuals have to submit a copy of their identity card, a copy of the work contract and (only for foreigners working in Serbia) a copy of the work permit.

Nationals and foreigners residing in Serbia who are employed or self-employed can also claim cash benefits in case of sickness. These benefits do not depend on a minimum period of prior residence in Serbia, but there is a requirement of a minimum period of insurance, which differs depending on the type of sickness. For sickness not related to work, the person has to be insured for at least 3 months or 6 months with interruptions over the last 18 months. There is no minimum insurance period required for employment injury or occupational diseases. Resident nationals or foreigners who are not compulsory insured cannot join the social insurance scheme voluntarily to become eligible for sickness benefits.

The access to these benefits is conditioned by a medical certificate proving that the claimant is incapacitated (for a period of sickness of less than 30 days) or a certificate from a specialist committee (for periods longer than 30 days). There is also an obligatory monthly examination by a specialist committee. The level of sickness benefits depends on earnings, although the amount cannot be lower than the minimum salary nor exceed 65% of the highest contribution base. The employer pays the sickness benefits of the employee for the first 30 days (although this is not a

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*Penzijskom i Invalidskom Osiguranju*), Law on Professional Rehabilitation and Employment of Individuals with Invalidity (*Zakon o Profesionalnoj Rehabilitaciji i Zapošljavanju Osoba sa Invaliditetom*).

<sup>11</sup> National Health Insurance Fund (2018). Inclusion in Compulsory Health Insurance. <http://www.rfzo.rs/index.php/ukljucivanje>. Accessed 1 October 2018.

salary), but after this period, the benefits are paid by the National Health Insurance Fund. After 6 months of receiving sickness benefits, individuals are assessed for work incapacity by a committee of specialists. If considered capable of work, they return to work. In the opposite case, they become eligible for invalidity benefits. Those who receive sickness benefits can leave the country temporarily as long as they respond to potential requests for medical examination required by their employers.

In Serbia, invalidity is defined as a complete loss of the ability to work due to health conditions which cannot be reversed by medical treatment or rehabilitation. The invalidity pension is granted to both employed and self-employed. Those who are not compulsory insured can join the scheme voluntarily by paying invalidity (and pension) insurance. The minimum period of insurance required depends on the type of invalidity. For work-related invalidity, there is no minimum qualifying period, but for invalidity unrelated to work, the minimum insurance period ranks from 1 year (for those up to 20 years of age) to 5 years (for individuals over 30 years of age). Invalidity benefits do not require a minimum period of prior residence in Serbia. These benefits depend on earnings, the period of insurance, gender, age, working place risks and causes of invalidity (work-related or not). Those who receive invalidity benefits are periodically re-examined. They can temporarily leave the country if they remain available for medical checks during the first 3 years since the invalidity was certified. They can also export the benefit if they permanently move abroad. However, this is possible only for Serbian nationals who move to a country with which Serbia has a social security agreement covering invalidity benefits.

### 18.2.3 Pensions

The access to old-age pensions (pension insurance (*penzijsko osiguranje*) and pension (*penzija*)) is regulated by the Law on Pension and Invalidity Insurance,<sup>12</sup> the Law on Compulsory Social Insurance Contributions<sup>13</sup> and the Law on the Budget System.<sup>14</sup> Pensions are regulated according to the pay-as-you-go model. There is no special scheme of a public non-contributory pension. However, individuals who have never worked or do not meet the minimum number of contribution years for accessing an old-age contributory pension, can still apply for the financial social assistance scheme.

Both employees and self-employed are eligible for contributory pensions, independently of their nationality. Those who are not compulsory insured can

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<sup>12</sup>Law on Pension and Invalidity Insurance (*Zakono Penzijskom i Invalidskom Osiguranju*). Official Gazette 142/2014.

<sup>13</sup>Law on Compulsory Social Insurance Contributions (*Zakon o Doprinosima za Obavezno Socijalno Osiguranje*). Official Gazette 7/2018.

<sup>14</sup>Law on the Budget System (*Zakon o Budžetskom Sistemu*). Official Gazette 113/2017

voluntarily pay their pension insurance. The minimum standard retirement age in 2018 was 65 years for men and 62 years for women. Individuals can claim an old-age pension after at least 15 years of contribution. Periods completed in countries with which Serbia has a social security agreement that covers pensions are aggregated with the period completed in Serbia, for both national citizens and foreign residents. Serbian citizen who work abroad and are not compulsory insured with the foreign insurance authority, or not able to use their rights outside of the territory of that state, can join the Serbian pension insurance scheme. The access to an old-age pension is not conditioned by a minimum period of residence and there is the possibility of back purchase of the insurance period (only for periods in which the individual was insured, but no insurance contribution was actually paid). The pension is dependent on previous earnings over the entire working period and the average wage in Serbia for each year of working period. Exportability of pensions is possible only for individuals who move to a country with which Serbia has signed a bilateral social security agreement covering pensions.

#### **18.2.4 Family Benefits**

Access to family benefits is regulated by the Law on Financial Help for Family with Children,<sup>15</sup> the Law on Healthcare Insurance,<sup>16</sup> the Law on Family,<sup>17</sup> the Law on Labour and the Law on Social Protection.<sup>18</sup> Access to family benefits is not based on compulsory social insurance, since there are no special pay-role taxes for this type of benefit, but some benefits depend on previous employment. There are five types of family benefits. Maternity, paternity and childcare benefits depend on previous employment period, which implies that resident nationals and foreigners who are employed are eligible to apply. However, parental and child benefits, which do not require previous employment, are not available to foreigners as they also include a citizenship requirement (of the parent or child).

Both employed and self-employed are eligible for maternity, paternity and parental benefits. There are no specific eligibility conditions regarding the country of birth or residence of the child. The maternity leave is obligatory and lasts for 13 weeks. There is a minimum period of insurance (less than 6 months) required to become eligible for maternity benefits, but there is no requirement of a minimum period of prior residence. Employers are legally obliged to pay maternity benefits as

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<sup>15</sup>Law on Financial Help for Family with Children (*Zakon o Finansijskoj Pomoći Porodici sa Decom*). *Official Gazette* 107/2009.

<sup>16</sup>Law on Healthcare Insurance (*Zakon o Zdravstvenom Osiguranju*). *Official Gazette* 10/2016.

<sup>17</sup>Law on Family (*Zakon o Porodici*). *Official Gazette* 6/2015.

<sup>18</sup>Law on Social Protection (*Zakon o Socijalnoj Zaštiti*). *Official Gazette* 24/2011.



'replacement' for salaries. The amount of the maternity benefit depends on previous earnings and period of insurance.<sup>19</sup>

Serbia offers a quite limited scheme of paternity benefits as the father is allowed to take paternity leave only if the mother cannot take care of the child because she passed away, abandoned the child, is in prison, has extreme illness or has lost her parental rights. The eligibility requirements for accessing paternity benefits are similar as those applied for maternity benefits (previous insurance period, no specific conditions regarding the country of birth/residence of the child, level of benefit depending on previous earnings and period of insurance).

There is no legal provision according to which individuals receiving maternity or paternity benefits are banned from leaving the country temporarily while receiving the benefits. There is a limited possibility of exportability of maternity and paternity benefits only in situations in which individuals move to a country that has a bilateral social security agreement with Serbia covering family-related benefits.

The parental leave starts after the 13 weeks of maternity leave and is a family entitlement that can be shared among parents. It can be granted for up to 39 weeks without specific conditions regarding the country of birth or residence of the child. As for the "parental allowance" (*roditeljski dodatak*), this lump-sum benefit is available independently of the employment status or the prior period of insurance. However, the parent who is the bearer of this right must be a resident Serbian national and the immediate caregiver for the child. Thus, the child should also reside in Serbia, although this is not specified as such in the law. Furthermore, child's residence certificate is also one of the documents required to submit the claim for the parental allowance. There are no specific conditions on whether the parent receiving the parental allowance can leave the country temporarily. When deciding to permanently reside abroad, individuals can export the parental benefits only if they move to another country with which Serbia has signed a bilateral social security agreement that covers parental benefits.

Similarly, the "child allowance" (*dečiji dodatak*) is a benefit available to all national residents, independently of their employment status, period of insurance or prior residence in Serbia. The benefit is granted only if the child has the Serbian citizenship and resides in Serbia. One of the parents must also be a resident Serbian citizen, meaning that foreigners are specifically excluded as potential beneficiaries of child benefits in Serbia.

Child benefits are means-tested benefits that can be granted up until the child reaches the age of 19 (up to the age of 26 for children with special needs). The monthly net income per family member has to be lower than the defined threshold (20% of net average wage increased if the child is disabled or raised by a custodian, a foster parent or a single parent). Furthermore, the claimant can only possess the real estate in which he/she lives, which cannot be bigger than a room per household member plus one additional room. Furthermore, the claimant must not possess more

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<sup>19</sup>If the mother had been in continuous employment for at least 6 months prior to the maternity leave, the employer pays 100% of her previous gross salary, if between 3 to 6 months, then 60% of the previous gross salary and if less than 3 months, then 30% of the previous gross salary.

than two hectares of land per household member; nor money equivalent to more than 30 child allowances per family member when the claim is submitted.

The child allowance is flat-rate and available only for the first four children who must also attend primary and secondary education. Since there are no conditions on whether the parent receiving the child allowance can leave the country temporarily, it is possible to go abroad for short time periods. Nationals can also export these benefits if they permanently move to another country with which Serbia has a bilateral social security agreement covering child benefits.

### ***18.2.5 Guaranteed Minimum Resources***

The terminology used to refer to the minimum guaranteed resources scheme in Serbia is “financial social assistance” (*novčana socijalna pomoć*). This scheme is managed locally by the branches of the Centre for Social Work and National Employment Service and is regulated by the Law on Social Protection and the Decree on measures of social inclusion for users of financial social assistance.<sup>20</sup>

This social protection area is not linked to employment, but it is clearly conditioned by requirements of citizenship and residence. These benefits are exclusively reserved for resident nationals only. Both single persons and families are entitled to financial social assistance. The benefit is mean-tested and the income and the (real and movable) properties are taken into account to determine eligibility. The period of prior residence in Serbia is not an eligibility requirement, but citizenship is, meaning that foreigners cannot claim social assistance. Moreover, this benefit is granted only to resident nationals who have exhausted other social security benefits and civic responsibilities of maintenance. Recipients are obliged to actively seek “suitable” work and do community work, although there are no sanctions if individuals do not fulfil these obligations. The benefit is dependent on income/asset and family composition. Those who are capable of working receive the benefit for up to 39 weeks, while those who are not able to work receive the benefit for 52 weeks. The application has to be resubmitted at the end of the period for which it was granted. There is a periodic re-assessment of personal circumstances, although this is not very frequent.

While receiving the benefit, individuals can leave the country temporarily as long as they meet their obligations with the Centre for Social Works and National Employment Service. They are however not able to claim this benefit if they permanently move abroad. Also, none of the bilateral social security agreements that Serbia has concluded with the three main countries of origin of foreigners residing in Serbia and the three main countries of destination of Serbian citizens cover the area of financial social assistance.

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<sup>20</sup>Decree on measures of social inclusion for users of financial social assistance (*Uredba o merama socijalne uključenosti korisnika novčane pomoći*). Official Gazette 112/2014.

### **18.2.6 *Obstacles and Sanctions***

The overview of eligibility requirements for different types of social benefits shows that the Serbian law partially discriminates between resident Serbian citizens and foreigners residing in the country. Non-nationals are eligible for unemployment, healthcare, pensions and some family benefits (maternity and paternity benefit/leave and parental leave) and receive these benefits under the same conditions as resident Serbian nationals, based on previous employment or insurance period. However, access to parental benefits, child benefits, and financial social assistance is reserved only for national residents.

To access social benefits in Serbia, foreigners must also comply with the precondition for employment, meaning that they must hold a valid residence (regulated by the Law on Foreigners<sup>21</sup>) and labour permit (regulated by the Law on Employment of Foreigners). As previously mentioned, the 2014 Law on Employment of Foreigners requires non-nationals to have a labor permit not only for the conclusion of an employment contract, but also for the conclusion of any other agreement based on which foreigners acquire rights derived from their employment, which also include social protection rights.

### **18.2.7 *Bilateral and Multilateral Social Security Agreements***

Currently, there are 28 countries with which Serbia has signed bilateral social security agreements (Ministry of Foreign Affairs<sup>22</sup>), including the countries whose nationals represent the three largest groups of foreigners residing in Serbia (Bosnia and Herzegovina, Croatia and Montenegro) and the three largest countries of destination for Serbian citizens (Germany, Austria and Switzerland). These six agreements cover healthcare, sickness, invalidity benefits, and pensions, allowing for the addition of pensionable/credited employment years from both countries and payment of pensions in another country. However, none of them covers financial social assistance or parental allowances. Some agreements cover both maternity/paternity/parental benefits and child allowance (Bosnia and Herzegovina, Montenegro and Germany), while others cover only maternity/paternity childcare (Croatia and Austria) or only the childcare allowance (Switzerland). Moreover, the agreements with Switzerland and Germany do not cover unemployment benefits (while the agreements for the other four countries do).

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<sup>21</sup> Law on Foreigners (*Zakon o Strancima*). Official Gazette 97/2008.

<sup>22</sup> Ministry of Foreign Affairs (2018b). Implementation of International Social Security Conventions Agreements. <http://www.mfa.gov.rs/en/consular-affairs/implementation-of-international-social-security-conventionsagreements>. Accessed 1 October 2018.

## 18.3 Conclusions

This chapter has shown that access to most social protection benefits for foreigners residing and working in Serbia depends on the structure of the country's social protection system and is based on the same criteria and requirements as those applied for national citizens residing and working in the country. As the national social security system in Serbia is based on the social insurance model, the entitlement for most of social benefits in cash or in kind is based on the employment period and/or payment of compulsory social insurance contributions. However, foreigners remain excluded from accessing non-contributory benefits such as the parental and child allowances or the guaranteed minimum resource scheme. Serbian nationals residing and working abroad under specific conditions have access to social protection benefits depending on whether the country they reside in has signed social security agreements with Serbia, but range of benefits varies depending on the country. Beside the structure of the country's social protection system, access to social protection for migrants in Serbia can be explained by the country's recent history, as well as social, political and economic trends. Turbulent political events of the 1990s marked by the Yugoslav wars, protracted transition from socialism to capitalism, and unstable economic outlook since 2000, have all contributed to the preservation of a social protection system focused on old social risks (see Perišić 2016), also marked by an exclusionary social protection model which limits access to some social protection benefits to migrants – both foreigners in Serbia and Serbians abroad.

The Serbian government has recently announced changes in some social protection areas, which could have an impact on both nationals and foreigners entitled for these benefits. For example, the proposal for the new Law on Pension and Invalidity Insurance also stipulates the elimination of penalties for early retirement.<sup>23</sup> Another debated proposal is the introduction of a minimum old-age pension, which would be available for individuals of more than 65 years old who do not have any previous contributions.<sup>24</sup>

Other important changes could emerge as a result of Serbia's negotiations for the entry into the European Union (EU). Serbia was granted the candidate country status in 2012, and the EU accession negotiations were opened in January 2014. A recent report of the European Commission<sup>25</sup> on the negotiation progress states that Serbia is "only moderately" prepared for the EU entry in the area of social policy and employment. The report suggests that Serbia should mainly focus on increasing financial and institutional resources for employment and social policy in order to

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<sup>23</sup> Blic (2018). Orbović: Novim zakonom ukinućemo penale za prevremeni odlazak u penziju. <https://www.blic.rs/vesti/ekonomija/orbovic-novim-zakonom-ukinucemo-penale-za-prevremeni-odlazak-u-penziju/nd69m73>. Accessed 1 October 2018.

<sup>24</sup> Informer (2017). Penziju će imati čak i oni bez dana staža: Srbija menja zakon <http://informer.rs/vesti/drustvo/328888/penziju-ce-imati-cak-i-oni-bez-dana-staza-srbija-menja-zakon-220000-ljudi-nema-nikakva-primanja>. Accessed 1 October 2018.

<sup>25</sup> European Commission (2018). Serbia Report. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>. Accessed 1 October 2018.

target in a more systematic manner young people, women and long-term unemployed. It also suggests improvements in the adequacy of the social benefit system to provide more effective support for those parts of the population most in need. More generally, Serbia's EU accession is expected to imply significant changes in access to social benefits for both Serbian citizens temporarily traveling and/or permanently moving to EU countries, and would also have an impact on the social protection of EU citizens residing and working in Serbia.

Currently, there are no significant controversies or political debates related to the access of foreign residents or nationals residing abroad to social benefits in Serbia. Most of the recent debates were instead focused on the status of irregular migrants and asylum seekers. However, it is estimated that, in 2018, there were only around 4,000 irregular migrants in Serbia.<sup>26</sup> The governments' attitudes towards the migrants in search of work and better economic conditions was expressed in the words of the Minister of Labor and Social Policy, Aleksandar Vulin, who in the context of the migration crisis said that "Economic migrants who are not welcomed in the EU should not be welcomed in Serbia either".<sup>27</sup>

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<sup>26</sup>Euractiv (2018). Migrants in Serbia still face difficulties EU official says. <https://www.euractiv.com/section/justice-home-affairs/news/migrants-in-serbia-still-face-difficulties-eu-official-says/>. Accessed 1 October 2018.

<sup>27</sup>*Politika* (2016). Vulin: Ako ekonomski migranti ne mogu u EU, ne mogu ni u Srbiju <http://www.politika.rs/scc/clanak/363757/Вулин-Ако-економски-мигранти-не-могу-у-ЕУ-не-могу-ни-у-Србији>. Accessed 1 October 2018.

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# Chapter 19

## Diaspora Policies, Consular Services and Social Protection for Serbian Citizens Abroad



Tamara Popic

### 19.1 Introduction

This chapter provides an overview of Serbia's diaspora policies, mainly focusing on the main features and development of policies in the area of social protection. It shows that the country's diaspora policy programs have given priority to economic, but also cultural engagement of Serbian nationals residing abroad. The Serbian diaspora also enjoys voting rights, but its turnout is usually low, due to practical and political problems. At the same time, social protection for diaspora is limited to health and pension benefits, and this only under special conditions. Structurally, the character of Serbian diaspora policies can be explained by Serbia's social protection system based on social insurance contributions, i.e. employment as the basis of benefits entitlement. More substantially, however, the very limited social protection benefits granted to diaspora can be explained by the elites' perception of diaspora as mainly an economic resource, and as a supplement to the country's social-safety net.

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## 19.2 Diaspora Characteristics and Home Country Engagement

### 19.2.1 *The Serbian Diaspora and its Relations with the Homeland*

The evolution of Serbia's emigration trends and diaspora policies can be contextualized within the country's political development. From 1945 until 1992, Serbia was a communist state and one of the six republics of the Socialist Federal Republic of Yugoslavia. After Yugoslavia's breakup, from 1992 to 2006, the country went through several changes in its statehood status. In 1992, it formed the Federal Republic of Yugoslavia together with Montenegro, which in 2003 became the State Union of Serbia and Montenegro. In 2006, after Montenegro's referendum on independence, both Montenegro and Serbia became independent states. In 2008, Serbia's Autonomous Province Kosovo and Metohija declared its independence. These changes in the statehood status of Serbia were also accompanied by Yugoslavia's civil war (1991–2001) and the North Atlantic Treaty Organization (NATO) bombing (1999).

The turbulent state history of Serbia had strong impact on the political and socio-economic situation in the country, which in turn played a role in the development of the diaspora trends. Roughly, Serbia's emigration can be divided in two main emigration waves. The first one, motivated mainly by economic reasons, took place during communism and implied the emigration of Serbian nationals to Western European countries such as Germany and Austria (Fassmann and Munz 1994). The second wave took place in the post-communist period, which can also be divided between the Milošević (1992–2000) and post-Milošević eras (2000–today), during which emigration was motivated by economic, but also political and educational reasons, and implied also increased emigration to non-European countries, such as the United States, Canada and Australia (Pavlov 2009). Currently, the five countries with the largest number of Serbian nationals are in Europe: Germany, Austria, Switzerland, France and Croatia.

The unstable political developments led to some confusion in the emigration statistics. To this day, the Serbian Statistical Institute does not have its own statistical data on emigrants, and there are no other official sources that can reliably indicate the total number of Serbs in diaspora (Grečić 2016; Tomić 2016). According to the Ministry of Foreign Affairs,<sup>1</sup> even though there is no census of diaspora, it is estimated that Serbia's diaspora (including Serbian nationals abroad and 'Serbs in the region' - see the next section) includes around 4.5 million individuals. This is significant, given that Serbia's resident population is estimated at 7 million. The size of the diaspora could also explain why this segment of the population has been seen

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<sup>1</sup>Ministry of Foreign Affairs (2018). Diaspora [*Dijaspora*]. <http://www.mfa.gov.rs/sr/index.php/konzularni-poslovi/dijaspora/dijaspora-opste?lang=lat>. Accessed on 23 September 2018.



mainly as an economic resource, and not a part of the country's social protection system.

### 19.2.2 *Diaspora Infrastructure*

The main developments in diaspora politics and institutions took place in the post-Milošević era. During this period, two apparently contradictory tendencies emerged – post-territorial nationalism through the extension of citizenship rights for the diaspora and the creation of dedicated institutions for nationals abroad (Ragazzi and Balalovska 2011). The change in citizenship rights took place through the new Law on Citizenship introduced in 2004 (Law no. 135/2004) and amended in 2007 (Law no. 90/2007).<sup>2</sup> This legislation was based on ethnic preferential citizenship, as it allowed individuals of Serbian ethnicity who do not have residence in Serbia to acquire Serbian citizenship (see Radosavljević 2014).<sup>3</sup>

Institutional developments were initiated by the establishment of the Ministry of Diaspora in 2004, which was later transformed into the Ministry of Religion and Diaspora (Tomić 2016).<sup>4</sup> In 2006, the government issued a “Declaration on the Proclamation on the Relations of the Homeland and Diaspora as Relations of Greatest State and National Interest”.<sup>5</sup> In 2009, it introduced an important law, the Law on Diaspora and Serbs in the Region.<sup>6</sup> According to this law, the term diaspora refers to “citizens of Serbia who live abroad” and “members of the Serbian nation living abroad, who emigrated from the territory of Serbia and the region, and their descendants” (Article 2). This distinction indicated that the Serbian diaspora is formed by Serbian nationals who now live abroad, as well as those ethnic Serbs (without Serbian citizenship) who emigrated from the region and now live abroad.<sup>7</sup>

<sup>2</sup> Law on Citizenship of the Republic of Serbia in 2004 (Law no. 135/2004). [*Zakon o Državljanstvu Republike Srbije*]. [https://www.paragraf.rs/propisi/zakon\\_o\\_drzavljanstvu\\_republike\\_srbije.html](https://www.paragraf.rs/propisi/zakon_o_drzavljanstvu_republike_srbije.html). Accessed on 20 September 2018.

<sup>3</sup> Individuals are allowed to acquire Serbian citizenship on the condition that they have reached the age of 18 and that they are not deprived of working capacity. Along with the request for acquiring citizenship, it is necessary to submit a written statement that they consider Serbia to be their own country (Law on Citizenship of the Republic of Serbia (Law no. 135/2004, 90/2007, Article 14).

<sup>4</sup> Previously, there was Ministry of Diaspora, which was founded in 1991 and merged with the Ministry of Religion in 2003.

<sup>5</sup> Government of Serbia (2006). Declaration on the Proclamation on the Relations of the Homeland and Diaspora as Relations of Greatest state and National Interest [*Deklaracija o proglašenju odnosa otadžbine i rasejanja odnosom od najvećeg državnog i nacionalnog interesa*]. <http://dijaspora.gov.rs/wp-content/uploads/2012/12/deklardijaspo1.pdf>. Accessed 21 September 2018.

<sup>6</sup> Law on Diaspora and Serbs in the Region (2009). [*Zakon o Dijaspori i Srbima u Regionu*]. <http://demo.paragraf.rs/WebParagrafDemo/ZAKON-O-DIJASPORI-I-SRBIMA-U-REGIONU-SI-glasnik-RS,-br.-88-2009.htm>. Accessed on 20 September 2018.

<sup>7</sup> Large number of ethnic Serbs from the countries of former Yugoslavia emigrated abroad in the Balkan region during the civil conflict in the 1990s.

This wide definition of the terms ‘Serb’ and ‘Serbian diaspora’ is confirmed by the definition of diaspora as not only Serbian citizens living abroad, but also “members of Serbian nation who live in Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Macedonia, Romania, Albania and Hungary” (ibid.). The law also envisioned the establishment of a Ministry for Diaspora and an Assembly of Diaspora and Serbs in the Region, which would be responsible for supporting projects aiming on promotion of Serbian language and culture. It also stated that relations between the homeland and diaspora have to be strengthened through the promotion of economic cooperation (see also Petronijević 2014).

In 2011, the government introduced a “Strategy of Preserving and Strengthening the Relations of the Home State and Diaspora and Serbs in the Region”<sup>8</sup> (Ministry of Religion and Diaspora 2011).<sup>9</sup> A new Ministry of Diaspora and an Assembly of Diaspora and Serbs in the Region were also established following the 2009 law. However, this Ministry was abolished in 2012 and replaced by the Office for Cooperation with the Diaspora and Serbs in the Region, within the Ministry of Foreign Affairs. The Ministry of Foreign Affairs, through diplomatic missions including embassies, consular services and honorary consulates, provides support for the development of the diaspora’s national and cultural identity. The Law on Foreign Affairs (2007)<sup>10</sup> defines the obligations of these institutions towards Serbian nationals residing abroad. The Ministry also encourages the diaspora to intensify relations with the Serbian “motherland” (*matika*, in Serbian) and continually promotes ties in the area of business, science, culture and sports (see also Petronijević 2014). The Office for Cooperation with the Diaspora and Serbs in the Region, as sub-unit of the Ministry, is in charge of administrative and professional tasks related to the status of Serbian citizens living abroad, but it does not offer any specific assistance for Serbs abroad in situation of need (this is rather the responsibility of missions and consulates and the Department for Consular Services, see below). With an aim of promoting closer economic ties with diaspora, the Office has also established local Offices for Diaspora, which are supposed to provide information on potential for local diaspora investments. There is also the Centre for Diaspora within the Serbian Chamber of Commerce, established in 2011, which is in charge of making contacts with Serbian entrepreneurs living abroad.

The Assembly of Serbian Diaspora and Serbs in the Region is considered the highest diaspora body. Its main task is to identify problems faced by the diaspora

<sup>8</sup> Ministry of Religion and Diaspora (2011). Strategy of Preserving and Strengthening the Relations of the Home State and Diaspora and Serbs in the Region [*Strategija Očuvanja i jačanja odnosa matičine države i dijaspore i matične države i Srba u regionu*]. [http://dijaspora.gov.rs/wpcontent/uploads/2012/12/strategija\\_mvd2011.pdf](http://dijaspora.gov.rs/wpcontent/uploads/2012/12/strategija_mvd2011.pdf). Accessed 23 September 2018.

<sup>9</sup> The term “Serbs in the region” includes all ethnic Serbs who live in the Balkan region e.g. ethnic Serbs living in former Yugoslavia countries Slovenia and Croatia. This also includes a large number of ethnic Serbs who live in Republic of Srpska, which is one of the federal states of Bosnia and Herzegovina. Serbs living in Kosovo, Serbia’s autonomous region, which declared independence in 2008 that was not recognized by Serbian’s government, are considered residents of Serbia.

<sup>10</sup> Law on Foreign Affairs (2007). [*Zakon o Spoljnim Poslovima*]. [https://www.paragraf.rs/propisi/zakon\\_o\\_spoljnim\\_poslovima.html](https://www.paragraf.rs/propisi/zakon_o_spoljnim_poslovima.html). Accessed 20 September 2018.

and develop solutions. The assembly has 45 delegates elected by Serbian nationals residing abroad according to quotas for each country/group of countries for a 4-year term. The delegates are all Serbian nationals residing abroad and their meetings take place through regular sessions on Diaspora Day, or through extraordinary sessions upon agreement. Meetings are supposed to take place in Belgrade, but there is also the possibility of organizing “electronic sessions” (i.e. video conferences). The assembly establishes and appoints representatives to different diaspora councils: the Economic Council, the Status Council, and the Council for Culture, Education, Science and Sports. Even though this assembly is the highest diaspora body, it does not have a consultative function, as it is not obligatory for home country authorities to consult the Assembly regarding diaspora issues. This implies that the Assembly meetings have mainly symbolic character (Tomić 2016). However, the consultative function is performed by the Committee for Diaspora and Serbs in the Region, the committees of the National Assembly of Serbia in charge of questions pertaining to the Serbian diaspora and Serbs in the region.<sup>11</sup> The mission of the Assembly is defined as follows: (1) it determines the problems of the diaspora and Serbs in the region and proposes solutions; (2) it provides guidelines for the development of the Strategy for Preserving and Strengthening the Relations of the Home State and diaspora, as well as home countries and Serbs in the region; (3) it elects Councils of Diaspora and Serbs in the region, supervises their work and decides on termination of the mandate of their members; (4) it performs other activities of importance for the interests of the diaspora and Serbs in the region. As the mission is rather general, the elected members of the Assembly do not have a specific mission to help Serbian citizens in the country in which they were elected, even though this help can take an informal form.

### 19.2.3 Key Engagement Policies

Serbian nationals living abroad can vote in legislative and presidential elections, following amendments to the Law on the Election of Representatives (2000)<sup>12</sup> and to the Law on Election of the President of the Republic of Serbia (2007).<sup>13</sup> Non-resident nationals have to vote in-person in the diplomatic missions or in Serbia. In-person voting implies that citizens vote in polling stations located in the embassies. Polling stations open only in places where at least 100 voters are registered.

<sup>11</sup> Serbian Parliament (2018). Committee for Diaspora and Serbs in the Region [*Odbor za Dijaspору i Srbe u Regionu*]. <http://www.parlament.gov.rs/narodna-skupstina-/sastav/radna-tela/odbori.78.895.html>. Accessed 21 September 2018.

<sup>12</sup> Law on the Election of Representatives (2000). [*Zakon o Izboru Narodnih Poslanika*] [https://www.paragraf.rs/propisi/zakon\\_o\\_izboru\\_narodnih\\_poslanika.html](https://www.paragraf.rs/propisi/zakon_o_izboru_narodnih_poslanika.html). Accessed 20 September 2018.

<sup>13</sup> Law on the Election of the President of Serbia (2007) [*Zakon o Izboru Predsednika Republike*]. [https://www.paragraf.rs/propisi/zakon\\_o\\_izboru\\_predsednika\\_republike.html](https://www.paragraf.rs/propisi/zakon_o_izboru_predsednika_republike.html). Accessed 23 September 2018.

Postal voting is not allowed, and voters have to cast their ballots in the same place in both rounds, in case there is a second election round.

The Serbian diaspora's participation in legislative and presidential elections is characterized by a low turnout, which could be explained by political and procedural reasons (Rigoni 2013; Prelec 2017). The policies of previous Serbian authorities have been perceived as hostile towards the diaspora. In the eyes of Serbian authorities, the diaspora represented political opposition and the authorities, accordingly, discouraged its involvement in Serbia's political life (see also Ragazzi and Balalovska 2011). With respect to procedural reasons, a recent online survey on diaspora's voting highlighted barriers such as the insufficient number of polling stations, the requirement to register 20 days before the elections and the obligation to vote in person (Prelec 2017). Other studies also point to the lack of administrative capacity and lack of information for potential voters (Ragazzi and Balalovska 2011).

With respect to political parties' policies toward diaspora, no party has a special department dealing with diaspora, but some parties are more vocal than others when it comes to diaspora and Serbs from the region. Among these, the extreme right-wing party Doors (*Dveri*), emphasises the importance of links with Serbian diaspora and stresses the importance of diaspora's (financial) support to the party. Party member, Ivan Kostić, was one of the president of the Committee for Diaspora and Serbs in the Region. Two other right-wing parties – the Serbian People's Party (*Srpska Narodna Partija*) and the Serbian Progressive Party (*Srpska Napredna Stranka*) – have more limited interest in the diaspora. They focus mostly on cultural ties and diaspora's financial support for the home country (see below on remittances). As a consequence, there has been no debate in Serbia on the question of social protection of Serbian nationals living abroad or on the specific issues regarding extension or restriction of their welfare benefits.

In order to understand the relationship between Serbia and its nationals residing abroad, it is worth noting the amount of diaspora's monetary remittances to the home country. In 2015, monetary remittances represented the equivalent of 9.2% of the Serbian gross national product (Grečić 2016). According to the National Bank of Serbia,<sup>14</sup> the largest amount of remittances come from Germany (23.6%), Switzerland (15.1%), France (9.4%) and Austria (8.6%). In 2017, it was estimated that the Serbian diaspora sent over 3.6 million US dollars to Serbia.<sup>15</sup>

However, the total amount of remittances is difficult to estimate because a considerable share of remittances comes through informal or private channels. As banks in Serbia do not show great interest in remittances, money transfer can be done only through foreign banks or fast money transfer institutions, such as Western Union or MoneyGram, which makes the process expensive. Once received, remittances are

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<sup>14</sup>National Bank of Serbia (2018). News on assignments [*Novosti - u vezi sa doznakama*]. <http://www.nbs.rs/internet/latinica/scripts/showContent.html?id=9627&konverzija=yes>. Accessed 21 September 2018.

<sup>15</sup>World Bank (2018) Migration and Remittance Data. <http://www.worldbank.org/en/topic/migrationremittancesdiasporaisues/brief/migration-remittances-data>. Accessed on 23 September 2018.

used mainly to cover basic daily expenses and raise the quality of living conditions. They are rarely kept as savings or used for the development of the home community.<sup>16</sup>

The Serbian diaspora also engages in solidarity activity by financially supporting populations in need and infrastructure building in Serbia. For example, during the major floods in 2014, the Serbian diaspora responded to the call for help of the Serbian government by providing aid for the reconstruction of affected regions. Diaspora representatives sent money, food, clothes, shoes and medicines to affected areas. According to the Ministry of Finance, almost 700,000 euro was collected through PayPal foreign currency accounts and more than 27 million euro has been donated by diaspora (Rigoni 2013).

All Serbian governments since 2000 have claimed that ‘more must be done’ to leverage a segment of remittance flows into investments and savings. As part of its strategy to develop business relations with diaspora, the Ministry of Foreign Affairs has two state secretaries who target Serbian entrepreneurs living abroad. On the local level, there are more than twenty-five local diaspora offices for economic development and cooperation with diaspora. These offices are part of the local municipal governments, often in connection with the Chamber of Commerce (Tomić 2016). Even though these local offices do exist, in practice, local government bodies randomly establish cooperation with the diaspora (Petronijević 2014). Also, there is no national strategic plan on the use of remittances, and remittances have never been invested in large development projects. There are also no specific policies, which incentivize investment of the diaspora into local developments projects or business. A recent study by the United Nation Development Programme<sup>17</sup> stresses that there is a lack of specialized programme targeting diaspora investment and no differentiation between foreign investment and diaspora investment, which ignores a huge potential sector for inbound foreign investment.<sup>18</sup>

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<sup>16</sup>International Organization for Migration (2008). Migration in Serbia: A Country Profile 2008. *International Organization for Migration*, Geneva, Switzerland. [http://publications.iom.int/system/files/pdf/serbia\\_profile2008.pdf](http://publications.iom.int/system/files/pdf/serbia_profile2008.pdf). Accessed 20 September 2018.

<sup>17</sup>United Nations Development Programme (2017). Assessment of the national investment framework for diasporas in the Republic of Serbia. United Nations Development Programme. [http://www.rs.undp.org/content/serbia/en/home/library/crisis\\_prevention\\_and\\_recovery/assessment-of-the-national-investment-framework-for-diasporas-in.html](http://www.rs.undp.org/content/serbia/en/home/library/crisis_prevention_and_recovery/assessment-of-the-national-investment-framework-for-diasporas-in.html). Accessed 20 September 2018.

<sup>18</sup>Also, there are no policies that encourage the return of citizens residing abroad, even though there are estimates that return of pensioners (permanent repatriation) could generate around 500 million euros with minimal investment (see Politika 2017). Return of pensioners from diaspora for the betterment of Serbia [*Povratak penzionera iz rasejanja boljitak za Srbiju*]. <http://www.politika.rs/sr/clanak/385517/Trece-doba/Povratak-penzionera-iz-rasejanja-boljitak-za-Srbiju>. Accessed 24 September 2018).

### 19.3 Diaspora Policies and Social Protection in Serbia

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

Serbian missions and consulates abroad also provide help to the diaspora. The role of these institutions was broadly defined by the Law on Foreign Affairs (2007), but this law does not specifically define the obligations of the missions and consulates towards Serbian nationals abroad. There is a special department of the Ministry of Foreign Affairs – the Department for Consular Services-, which is defined as being in charge of “protecting the interests of Serbian nationals abroad”.<sup>19</sup> The department is responsible mainly for administrative services, including services related to repatriation and deportation of Serbian citizens from abroad, notary and registry tasks (e.g. for marriage and birth), protection of property interests, protection in case of arrest and condemnation, etc. Similarly, according to the Ordinance on Honorary Consuls (2009),<sup>20</sup> the functions of honorary consuls include protection of Serbian nationals’ rights and interests in the country of residence and concrete measures in providing necessary help in situations of emergency, including reports on deaths, accidents, arrest, investigation, deportation, or judicial procedure. However, the mission and consular sections are not obliged to provide any type of in-cash or in-kind social security benefits for Serbian nationals living abroad.

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<sup>19</sup>Ministry of Foreign Affairs (2018). Sector for Consular Services [*Sektor za Konzularne Poslove*]. <http://www.mfa.gov.rs/sr/index.php/o-ministarstvu/organizacione-jedinice/konzularni-poslovi?lang=lat>. Accessed 21 September 2018.

<sup>20</sup>Ordinance on Honorary Consuls (2009). [*Uredba o Počasnim Konzulima*]. <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/3e9f4315-20ba-4774-bfb2-1c608bf5d825>. Accessed 23 September 2018.

Serbia is a member of a number of regional organizations and initiatives,<sup>21</sup> but none of these organizations provides access to social protection of Serbian nationals who move to other states that are also members of the same regional organizations. However, there are 28 bilateral social security agreements between Serbia and other countries, which also include the countries that represent the five largest worldwide destinations for Serbian nationals: Germany, Austria, Switzerland, France and Croatia. These bilateral agreements imply that Serbian nationals living in these countries and nationals of these countries living in Serbia have equal access to the national social protection system of their country of residence. The condition is that Serbians residing in these specific countries are legally entitled to specific social protection benefits in Serbia, in order to be entitled to these benefits in the country of their residence abroad. The same applies for the nationals of these countries residing in Serbia – they have to be entitled to these benefits in their country of origin in order to access them as residents in Serbia. While the range of benefits covered depends on country specific social security agreements, all of them cover healthcare and pensions benefits.

On their websites, the Ministry of the Foreign Affairs, the Office for the Collaboration with Diaspora and Serbs in the Region, and consulates offer information on bilateral social security agreements. However, they do not offer further services or information related to welfare benefits in the host countries, not even in the five major destination countries for Serbian citizens, nor do they cooperate with non-governmental institutions active in the sphere of social protection.

### ***19.3.1 Unemployment***

In Serbia, unemployment benefits are financed through the social insurance scheme, which includes compulsory contributions, set at 1.5% of workers wages, and their reception is conditioned on the previous employment/insurance period. Serbian nationals residing abroad, as they are not employed/insured against unemployment in Serbia, do not have access to these unemployment benefits.

As for the employment services offered to Serbian citizens who plan on moving abroad, the Ministry of Foreign Affairs, Serbian embassies and consulates, do not provide any professional training, cash or in-kind benefits in situation of unemployment. They also do not repatriate unemployed nationals residing abroad. The National Employment Service does not offer any training programme before migration that aims specifically to prepare nationals for employment abroad. However, the Service provides some assistance in job search, as it occasionally lists advertisements for jobs abroad. According to the Law on Employment and Insurance in the

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<sup>21</sup> For a list of regional organizations in which Serbia is a member check here: <http://www.mfa.gov.rs/en/foreign-policy/eu/regional-initiatives>

Case of Unemployment (2009),<sup>22</sup> employment agencies can carry out mediation in the employment of Serbian citizens in Serbia as well as abroad.

It is worth mentioning that the National Employment Service offers a booklet with information on residence permits, conditions and processes related to life and work in Germany for Serbian nationals.<sup>23</sup> The National Employment Service, in cooperation with the German Organization for International Cooperation (GIZ) and the Federal Agency for Work and Mediation with Foreigners of the German Federal Agency for Work, also announces calls (in 2016, already the 5th call) for employment of Serbian nurses and technicians in Germany.

The National Employment Service<sup>24</sup> also provides information on bilateral social security agreements between Serbia and other countries that cover unemployment insurance. Out of the five largest worldwide destinations of Serbian citizens – Germany, Austria, Switzerland, France and Croatia – only the bilateral social security agreements signed with Austria and Croatia grant Serbian nationals from these two countries access to unemployment benefits. In order to receive the cash benefits in case of unemployment, Serbians from Austria and Croatia have to be already entitled to these benefits in these two countries, as this creates the basis for their entitlement in Serbia. Also, there is a condition for the aggregation of work i.e. insurance periods, which implies that during the previous 12 months the person entitled to unemployment benefits was employed (and insured) in the country in which he/she claims the benefit for at least 26 weeks.

### 19.3.2 Health Care

In Serbia, access to healthcare benefits is based on the compulsory social insurance scheme, financed mainly by contributions, which are set at 10.3% of workers' wages. Even though access to healthcare benefits is conditioned by contributions, Serbian nationals residing abroad are able to join the healthcare insurance scheme. Law on Health Insurance (2005)<sup>25</sup> specifies that two categories of Serbian citizens employed abroad have the right to compulsory healthcare insurance. One category are those who do not have insurance coverage in the country in which they live. The second category includes those who have access to health insurance in the country

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<sup>22</sup>Law on Employment and Insurance in Case of Unemployment (2009) [*Zakon o Zapošljavanju i Osiguranju u Slučaju Nezaposlenosti*]. [https://www.paragraf.rs/propisi/zakon\\_o\\_zaposljavanju\\_i\\_osiguranju\\_za\\_slucaj\\_nezaposlenosti.html](https://www.paragraf.rs/propisi/zakon_o_zaposljavanju_i_osiguranju_za_slucaj_nezaposlenosti.html). Accessed 23 September 2018.

<sup>23</sup>Available at: [http://www.nsz.gov.rs/live/digitalAssets/4/4913\\_brosura\\_-\\_rad\\_u\\_nemackoj.pdf](http://www.nsz.gov.rs/live/digitalAssets/4/4913_brosura_-_rad_u_nemackoj.pdf)

<sup>24</sup>National Employment Services (2018). Application of Inter-state Agreements [*Primena Međudržavnih Sporazuma*]. [http://www.nsz.gov.rs/live/trazite-posao/dok-traziteposao/nezaposleni/primena\\_me\\_udr\\_avnih\\_sporazuma.cid542](http://www.nsz.gov.rs/live/trazite-posao/dok-traziteposao/nezaposleni/primena_me_udr_avnih_sporazuma.cid542). Accessed on 21 September 2018.

<sup>25</sup>Law on Health Insurance (2005). [*Zakon o Zdravstvenom Osiguranju*]. [https://www.paragraf.rs/propisi/zakon\\_o\\_zdravstvenom\\_osiguranju.html](https://www.paragraf.rs/propisi/zakon_o_zdravstvenom_osiguranju.html). Accessed 23 September 2018.



of residence, but cannot use it to cover health expenses outside the territory of that country.

The Ministry of Foreign Affairs, embassies and consulates assist nationals with access to healthcare and invalidity benefits indirectly, by providing information through the website of the Ministry of Foreign Affairs and the Office for the Collaboration with Diaspora and Serbs in the Region at the special website “Guide for Diaspora”. This website provides information on rights to healthcare and invalidity insurance, types of insurance, documents needed to access the healthcare insurance and bilateral social security agreements. The national institution in charge of the healthcare insurance –the National Institute for Health Insurance- also provides information on these bilateral agreements.<sup>26</sup>

Serbia has bilateral social security agreements on healthcare benefits with the countries that represent the five largest worldwide destinations of national citizens of Serbia. Similar to unemployment benefits, in order to receive healthcare benefits, Serbians have to be entitled in their country of residence, as this creates the basis for their entitlement in Serbia. On the basis of the bilateral agreement between Serbia and France, Serbian nationals from France have also access to professional illness and accident insurance.

Consulates do not offer cash benefits to nationals residing abroad to deal with health issues. They only offer administrative support with repatriation of remains. In case of serious accidents or illness, Serbian consulates can inform relatives, visit in hospital or recommend clinics and doctors. However, consulates do not provide any financial assistance even in case of emergency. Missions also do not provide financial assistance for repatriation of remains, but they offer administrative and organizational assistance. Lastly, they do not offer any pre-departure information including training programs regarding healthcare and invalidity risk in any of the five countries that are the top destinations of Serbian nationals.

### 19.3.3 Pensions

In Serbia, pensions are regulated according to the social insurance scheme, pay-as-you-go pension model and one needs to work and contribute to the pension insurance for at least 15 years to receive a pension (non-contributory pensions do not exist). While entitlements to pensions is contributory, Serbian nationals residing abroad have access to the compulsory pension and invalidity insurance under special conditions. According to the Law on Pension and Invalidity Insurance (2003),<sup>27</sup> Serbian nationals employed (and insured) abroad have access to pension (and

<sup>26</sup>National Institute for Health Insurance (2018). International Contracts [*Inostrani Ugovori*]. <http://www.rfzo.rs/index.php/osiguranalica/zz-u-ino/ino-ugovori>. Accessed 21 September 2018.

<sup>27</sup>Law on Pension and Invalidity Insurance (2003). [*Zakon o Penzijskom i Invalidskom Osiguranju*]. [https://www.paragraf.rs/propisi/zakon\\_o\\_penzijskom\\_i\\_invalidskom\\_osiguranju.html](https://www.paragraf.rs/propisi/zakon_o_penzijskom_i_invalidskom_osiguranju.html). Accessed 23 September 2018.

invalidity) insurance if at the time they are employed abroad they do not have a pension or invalidity insurance, or if the rights of pension and disability insurance under the regulations of the state in which they reside cannot be used outside its territory.

Consulates assist nationals with access to pensions indirectly, by providing information on rights to pension insurance, types of insurance, documents needed for access to pension insurance and bilateral social security agreements through the website of the Ministry of Foreign Affairs and the Office for the Collaboration with Diaspora and Serbs in the Region through “Guide for Diaspora”. The National Institute for Pension and Invalidity Insurance also provides information on the calculation of the pensionable period spent abroad. The Institute for Social Insurance provides information to Serbians residing abroad. Finally, to receive a pension from Serbia, one has to submit a life certificate usually once per year. Consulates can authenticate such certificate.

The National Institute for Pension and Invalidity Insurance also provides information on rights to pension and invalidity insurance and bilateral social security agreements on pension insurance between Serbia and other countries.<sup>28</sup> Since Serbia has bilateral agreements on pension benefits with the five largest worldwide destinations of national citizens of Serbia – Germany, Austria, Switzerland, France and Croatia – Serbian embassies and consulates in these countries provide information on access to these benefits on their websites.

### **19.3.4 Family Benefits**

In Serbia, access to family benefits is not based on compulsory social insurance, since there are no special payroll taxes for this type of benefits, but some of them are dependent on previous employment. There are five different types of family benefits. Maternity, paternity and childcare benefits depend on previous employment period. Parental and child benefits do not have previous employment as eligibility criteria, but are conditioned by citizenship and residence. Serbian nationals residing abroad therefore do not have access to any of these family benefits.

However, consular offices provide administrative help with some family-related issues. For example, Serbians residing abroad can register their child in the Serbian registry of births through consulates. Application for the registration has to be submitted in person and under the condition that one parent is Serbian. The documents that need to be submitted are the child’s birth certificate of the country abroad and parents’ marriage certificate.

In addition, the Ministry of Education manages the Special Programme on the Education and Upbringing Abroad, through which it regulates the licences and working conditions of Serbian language teachers who are sent abroad with the mission to teach Serbian abroad to children. The Serbian language courses target

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<sup>28</sup> Available at: <https://www.pio.rs/lat/medjunarodni-ugovori.html>. Accessed 23 September 2018.

children of Serbian nationals, but are also open to children with no Serbian origins. As part of this programme, the Office for the Collaboration with Diaspora and Serbs in the Region also offers free textbooks for learning of Serbian language, as well as audio files for children education (pre-school and elementary school level), that can be downloaded directly from the office's website. In each one of the top five worldwide destinations of Serbian nationals – Germany, Austria, Switzerland, France and Croatia – the website of consulates list Serbian associations and clubs, and provide information on supplementary programme on Serbian language and culture. In some countries, Serbian language courses are offered in regular schools, based on agreements with schools in destination countries. They are also organized independently, outside of the country's educational system, in Serbian associations and clubs. These language courses are usually free and if they are organized by the Serbian Ministry of Education, children are able to get a certificate about the completed grade.

On the basis of bilateral social security agreements, in Germany, France and Switzerland, Serbian nationals have access to child allowance. To receive such allowance, Serbian nationals residing in these countries have to be entitled to these benefits in Serbia. The same applies for the nationals of these countries residing in Serbia – they have to be entitled to these benefits in their country of origin in order to receive these benefits in Serbia.

### ***19.3.5 Guaranteed Minimum Resources (Including Homelessness)***

In Serbia, the scheme for minimum guaranteed resources is entitled 'financial social assistance' and is a means-tested benefit. This benefit functions as the last resort of social protection, i.e. the ultimate "safety net" that aims to prevent extreme hardship and protect single persons and households from severe poverty. This benefit is not accessible to Serbian nationals abroad.

With respect to non-resident citizens, there is no policy by which consulates ought to provide them financial assistance in case of economic hardship or homelessness. Consulates do not provide in-kind benefits, such as access to material goods or services. More specifically, none of the institutions – the Ministry of Foreign Affairs, its Office for the Collaboration with Diaspora and Serbs in the Region and/or the Committee for Diaspora and Serbs in the Region – provides any sort of help (administrative or financial) for Serbian residents abroad in case of hardship. Similarly, these Serbian diaspora institutions do not offer any help to Serbian nationals abroad with regard accessing benefits and services related to minimum income resources in the host country either. This complete absence of Serbia's support to diaspora faced with economic hardship is symptomatic of the more general perception of the Serbian diaspora as a source of financial help for the home country rather than the other way round.

## 19.4 Conclusions

As shown in this chapter, Serbia's system of social protection, which is based on the social insurance model, offers benefits that provide coverage from both labour market related risk (unemployment, guaranteed minimum resources) and life-long risks (healthcare, family care, pensions). However, the access to these social protection benefits in Serbia for Serbian nationals residing abroad has been limited to only two aspects of social protection – healthcare and pension insurance – under the specific condition that they are not entitled to these benefits in their country of work/residence and/or that they are not able to access these benefits outside the territory of that country. At the same time, Serbia has signed bilateral social security agreements with 28 countries, including the five countries with the largest number of Serbian nationals (Germany, Austria, Switzerland, France and Croatia). Serbians residing in these countries have access to more extensive social benefits in Serbia, if they are entitled to these benefits in their country of residence/employment. A structural reason why access to social protection benefits in Serbia for Serbian nationals abroad has been restricted is the country's social protection system, in which entitlements have been mainly based on employment rather than citizenship.

At the same time, even though the Serbian diaspora plays an important role in providing financial support to the country of origin, both as formal and informal remittances, there has been no debate on the possible extension of social protection of Serbian nationals living abroad. The only rights relatively recently acquired by Serbian nationals residing abroad were the voting rights in legislative and presidential elections. More generally, the key focus of the government policies has been diaspora's financial support and strengthening cultural and educational ties with diaspora. The financial support is used mainly to cover basic living expenses and rise the quality of living conditions. Therefore, it can be concluded that despite the structural reasons, Serbian authorities do not consider diaspora's access to social protection in their home and host countries as a priority. Instead, the diaspora is largely perceived as a 'supplement' to the social-safety net for Serbian families with members residing abroad.

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# Chapter 20

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Switzerland



Bettina Kahil-Wolff Hummer

### 20.1 Overview of the Welfare System and Main Migration Features in Switzerland

The link between migration and welfare in Switzerland has great practical relevance given the number of persons migrating in and out of Switzerland. More than one third of the population has a migrant background and a bit less than one third of gainful activities in Switzerland are accomplished by foreigners.<sup>1</sup> The persons concerned integrate both into the Swiss job market and social security, as tax and social contribution payers and, potentially, as beneficiary of social benefits. The Swiss social security system also covers individuals living or working outside Switzerland, more particularly, Swiss citizens and European Union (EU)/European Free Trade Association (EFTA) nationals. In many ways, the Swiss social security has therefore to respond to migration-related questions that are relevant to this research (Kahil-Wolff 2017).

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<sup>1</sup>Federal statistical office 2017, *Statistischer Bericht zur Integration der Bevölkerung mit Migrationshintergrund*, Neuchâtel.

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### 20.1.1 *Main Characteristics of the Swiss Social Security System*

In Switzerland, almost all social protection schemes are provided by the Federal social security system (Riemer-Kafka 2018). The Federal Constitution<sup>2</sup> supplies the Federal State with the necessary legislative competences in the field of pensions (Article 111), illness and accident insurance (Article 117), maternity leave (Article 116), unemployment (Article 114) and all other social risks listed in the ILO Convention 102. Social assistance – although it is mentioned in article 12 of the Constitution – is not regulated at the federal level (except for Swiss nationals residing abroad), but by the legislation of the 26 autonomous Swiss cantons. International law plays a major role as most migrants move between Switzerland and EU/EFTA Member States, hence triggering the application of EU coordination rules (EU Regulations n° 883/2004 and n° 987/2009) and the right to free movement of persons.<sup>3</sup>

The Federal social security system of Switzerland is based on 10 different branches which provide protection against social risks related to old-age, death, invalidity, illness, accidents, maternity, unemployment and family charges. Each branch has the shape of a compulsory public social insurance based on public law. The different insurance branches are financed mostly by contributions (paid by insured persons, workers, employers) and partly by taxes. General principles and procedures are regulated by the Federal Law on the General Part of Social Insurance (LPGA).<sup>4</sup> The organization of all social security schemes is decentralized. It relies on independent public and private bodies monitored by federal authorities such as the Federal Office for Social Insurances (OFAS) and the Federal Office for Public Health (OFSP).

For each branch, the statutory law clearly defines the insured persons, the risks covered, and the benefits provided. Hence, insurance institutions cannot – with few exceptions – adopt autonomous provisions. Whereas some branches are covering the entire population (public pension system for old-age, survivors and invalidity/illness insurance), others are mandatory for workers only (complementary pension scheme/public accident insurance/unemployment insurance). Self-employed persons may ensure themselves on a voluntary basis in the public accident insurance (LAA) and in the complementary pension scheme (LPP, 2nd pillar). In each social security scheme, including the sickness insurance, persons are insured individually but never as family members.

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<sup>2</sup>*Recueil systématique du droit fédéral*, RS 101. Based on art. 14 § 6 of the Federal Act on the Compilations of Federal Legislation and the Federal Gazette (Publ A, RS 170.512), the Federal Chancellery may publish legal texts of particular importance or international interest in English; the present report refers to the English version whenever available.

<sup>3</sup>European Court of Justice, European Case Law Identifier, ECLI:EU:C:2011:839, § 43

<sup>4</sup>*Loi fédérale sur la partie générale du droit des assurances sociales*, LPGA, RS 830.1

There is no National Health Service in Switzerland. Access to health care is provided through social insurances such as the ones for illness (LAMal),<sup>5</sup> accidents (LAA),<sup>6</sup> invalidity (LAI),<sup>7</sup> or the military insurance (LAM).<sup>8</sup> Whereas the illness insurance reimburses the expenses of insured persons, all other branches function by direct and full payment (the care providers are paid by the insurer). There is no mandatory sickness leave insurance. Workers and employers may conclude a public voluntary sickness insurance or a private one. Without such insurance, employers must pay the wages during a period of time that depends on the duration of employment (Geiser et al. 2019). Compulsory coverage of inability to work, however, is provided by other mandatory social insurance branches when related to maternity, accidents, work injuries, injuries in military activities or measures concerning the integration of disabled persons. Old-age, survivor and disability pensions are provided through a three-pillar system granted by the Federal Constitution. They rely on a public minimum scheme that is pay-as-you-go based and covers the whole population (LAVS, 1st pillar),<sup>9</sup> a capitalized complementary pension scheme focused on workers earning more than CHF 21.330 per year (LPP, 2nd pillar)<sup>10</sup> and on individual tax deductible savings (3rd pillar). Non-contributory old-age, survivor and disability benefits are paid to pension holders if the public pension does not cover the vital minimum (LPC).<sup>11</sup>

Swiss social security also includes family benefits (LAFam and LFA),<sup>12</sup> maternity leave benefits (LAPG)<sup>13</sup> and unemployment benefits (LACI).<sup>14</sup> Some benefits (such as health care and pensions) overlap because they partly cover identical groups of persons and risks. LPGA and special provisions therefore ensure the coordination of those benefits to prevent unjustified multiple coverage or unintended lacks (Frésard-Fellay and Frésard 2018).

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<sup>5</sup> *Loi fédérale sur l'assurance-maladie*, LAMal, RS 832.10

<sup>6</sup> *Loi fédérale sur l'assurance-accidents*, LAA, RS 832.20

<sup>7</sup> *Loi fédérale sur l'assurance-invalidité*, LAI, RS 831.20

<sup>8</sup> *Loi fédérale sur l'assurance militaire*, LAM, RS 833.1

<sup>9</sup> *Loi fédérale sur l'assurance-vieillesse et survivants*, LAVS, RS 831.10

<sup>10</sup> *Loi fédérale sur la prévoyance professionnelle*, LPP, RS 831.40

<sup>11</sup> *Loi fédérale sur les prestations complémentaires*, LPC, RS 831.30

<sup>12</sup> *Loi fédérale sur les allocations familiales*, LAFam, RS 836.2; *Loi fédérale sur les allocations familiales dans l'agriculture*, LFA, RS 836.1

<sup>13</sup> *Loi fédérale sur les allocations pour perte de gain*, LAPG, RS 834.1

<sup>14</sup> *Loi fédérale sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité*, LACI, RS 837.0



### ***20.1.2 Migration History and Key Policy Developments***

In Switzerland, like in most European countries, social protection regulation started in the late nineteenth century, under the influence of the growing industrialization and the risk of personal injuries caused to workmen. As one can see from the sickness and accident insurance created after 1911, the Swiss social protection system is partly inspired by the Bismarckian system, with a series of mandatory, strongly decentralized public insurance schemes. Currently, Swiss social security law also provides a certain number of protection schemes that apply to the whole population (especially in order to cover the risks of sickness, old age, disability and death).

Some important social security developments occurred in parallel with demographic changes. After the second World War when Switzerland started building the national pension system, economic growth triggered a need of foreign labor force that was mostly satisfied by Italian workers. In 1951, a few years after the creation of the Swiss public pension system, a first social security agreement was concluded between Italy and Switzerland to protect Italian migrant workers. Social security agreements with Germany (1964), Austria (1967) and France (1975) followed in the attempt to address economic relations and migration related issues with those countries. Other cornerstones in the field of social protection for migrants can be found in the law of the land. The Swiss public pension system, including the disability insurance created in 1959, first included a waiting period of 10 years before insured foreigners were entitled to an old-age, survivor or disability pension. At that time, the legislator intended to favor migrants from countries that would give equal treatment to Swiss citizens on their territory, via national law or bilateral agreements (Binswanger 1950). This discriminating rule was lowered to a 1 year waiting period in 1997. Since June 2001, the situation of most migrants living and/or working in Switzerland are subject to EU Regulations n° 883/2004 and n° 987/2009. At the same time, the federal legislator narrowed the access to the public pension system for Swiss citizens living abroad; today, Swiss citizens (as well as EU citizens) may adhere to the system only if living outside an EU or EFTA country and after a five-year prior insurance period (see Sect. 20.2.3 below).

Today, the largest group of foreigners living or working in Switzerland are EU and EFTA citizens. According to the Foreign Population and Asylum Statistics 2017, published by the Federal State Secretariat for Migration (SEM) in March 2018, around 70% of the permanent foreign resident population come from European countries, with Italy first (319.367 persons), Germany second (305.785 persons) and Portugal third (268.012 persons). The main reasons for migration towards Switzerland are the Swiss job market (47% take up employment) and family reunification (31% of migrants arrive to Switzerland for this reason).<sup>15</sup> A decade ago, the SEM reported about the constant increase of migration in Switzerland, with

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<sup>15</sup> Federal State Secretariat for Migration, Foreign Population and Asylum Statistics 2017. <https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/bestellung/auslaender-asylistatistik-2017-e.pdf>

two million persons immigrating to Switzerland since the end of World War II and 1.5 million foreign nationals in 2007.<sup>16</sup> In 2019, Switzerland hosted around 2 million foreigners out of 8,4 million inhabitants (hence, 23,8% of the total population). The situation is different in the field of emigration. Only one-tenth of Swiss citizens live abroad. This percentage is mostly stagnant, with 10% in 2007<sup>17</sup> and 11% in 2018.<sup>18</sup> A majority of non-resident Swiss citizens live in Europe, especially in France, where they settle for retirement.<sup>19</sup>

## 20.2 Migration and Social Protection in Switzerland

With some exceptions, the Swiss social security law does not distinguish between nationals and foreigners. Most social security branches are based on the idea that individuals must be insured according to the rules of domicile and/or *lex loci laboris*. As long as a person fulfills the conditions required by the law, he/she is insured no matter his/her origin or nationality. The federal law concerning the General Part of Social Insurance (LPGA) does not contain any rules either that make a distinction between nationals and foreigners. However, there are special rules in areas such as the exportability of public pensions, access to the voluntary public pension scheme for individuals living abroad or access to invalidity benefits. As explained below, these rules require Swiss/EU/EFTA citizenship. About 20 bilateral social security agreements, the Free Movement of Persons Agreement (Switzerland-EU) and the EFTA Agreement (Switzerland, Liechtenstein, Norway, and Iceland) waive most of the discriminating national rules. Towards EU/EFTA Member States, Switzerland applies EU Regulations n° 883/2004 and n° 987/2009. However, these Regulations do not cover social assistance so that, even when the Free Movement of Persons Agreement and the EFTA Agreement are applicable, Switzerland may still refuse social aid to inactive persons who are not workers or self-employed.

Foreigners' access to social benefits in Switzerland is also constrained by the migration rules in the federal law. As a result of a popular vote in 2014, a new provision stipulates that the administration will not issue a residence permit to foreigners who apply for non-contributory benefits paid to old-age, survivor or disability pension holders provided by the federal complementary scheme (LPC). The new rules also state that foreign job-seekers and their families do not qualify for social assistance (art. 29a Federal Act on Foreign Nationals, FNA, RS 142.20). Concerning persons who fall into the scope of the Free Movement of Persons Agreement, FNA specifically stipulates that it is not applicable to these persons unless the legal act

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<sup>16</sup>Federal Office for Migration, Migration Report 2007, p. 7. <https://www.sem.admin.ch/dam/data/sem/publiservice/berichte/migration/migrationsbericht-2007-e.pdf>

<sup>17</sup>Federal Office for Migration, Migration Report 2007, p. 7.

<sup>18</sup>Federal Statistical Office, Press release, Swiss abroad in 2018, <https://www.bfs.admin.ch/bfs/en/home.assetdetail.7826275.html>

<sup>19</sup>Federal Statistical Office, Press release, Swiss abroad in 2018.

contains rules that are more advantageous than the FMP Agreement. The revision of the Immigration Law did also lead to certain modifications of social security law. The new provisions restrict the access to non-contributory pensions (art. 5 LPC now stipulates that complementary benefits are provided only to foreigners who have a legal residence in Switzerland) and allow the data exchange between social security institutions and border protection authorities. Concerning the disability insurance, the federal law also allows to ask the assistance of immigration authorities when dealing with cases of insured persons (article 59 LAI). Furthermore, there is a new rule requiring a six-months waiting time for migrants to qualify for unemployment benefits (article 14 LACI). The new rules entered into force on July 1st 2018 and January 1st 2019.

Most of the new regulations, however, are not applicable to those who fall into the scope of EU Regulations n° 883/2004 and n° 987/2009. Those migrants are protected by the European coordination rules (Kahil-Wolff 2015). These Regulations contain certain rules that derogate national law and apply to all branches of social security (for instance, a national rule requires residency in Switzerland as a condition to get family benefits, whereas Regulation n° 883/2004 waives such condition by providing exportation of benefits).

### ***20.2.1 Unemployment***

The federal unemployment insurance covers all workers, regardless of their nationality. Nevertheless, the insured person has to fulfill certain requirements that could restrain foreigners' access to unemployment benefits. The law requires to be without a job, effectively reside in Switzerland (Rubin 2014), comply with a 12-month contribution period, register with the local unemployment service and be able to accept a job (art. 8 LACI). Although the law does not require special eligibility conditions for foreigners, some of the conditions mentioned before (like residence or prior contribution periods) are harder to fulfill by non-Swiss residents. In particular, a foreigner, although he/she is insured, may not qualify for unemployment benefits if the issuance of a work permit is not granted (ATF 126 V 376) since without a permit, the applicant is not allowed to accept a job. This rule does not apply, however, to EU/EFTA nationals. Furthermore, the condition of residency applies to Swiss nationals and foreigners. Thus, insured persons living abroad cannot claim unemployment benefits under national law. Yet, nationals who move to EU/EFTA countries in search for work can export their unemployment benefits for a short period.

Under international law, frontier workers, no matter if Swiss or EU/EFTA nationals, have to apply for unemployment benefits in the country where they reside. Concerning the prior contribution period required by Swiss law, article 61 of Regulation n° 883/2004 demands to aggregate periods accomplished in an EU/EFTA country. This rule applies from the first work day (Rubin 2014) and the federal administration in the field of unemployment insurance expressly states that

even a one-day work period is sufficient to grant aggregation.<sup>20</sup> According to Swiss law, Swiss citizens and EU/EFTA nationals with a permanent residence permit who return to Switzerland after having worked outside the European economic area are partly exempt from the prior contribution requirement (art. 14 § 3 LACI).

Certain cantons have adopted local legislation concerning non-contributory unemployment benefits for persons who no longer qualify for benefits of the federal unemployment insurance. These legislations generally require residency in Switzerland, more particularly, in the canton concerned. In other cantons, unemployed persons who are no longer eligible for unemployment benefits of the federal unemployment insurance fall into social assistance and the corresponding regimes usually contain a residence clause.

### 20.2.2 Health Care

There are four social insurance schemes regulating access to health care in Switzerland: the federal law concerning mandatory sickness insurance (LAMal), the federal law concerning mandatory disability insurance (LAI), the federal law concerning mandatory accident insurance for workers (LAA), and the federal law concerning mandatory military insurance (LAM). The sickness insurance provided by LAMal contains two strings: a compulsory care insurance and a voluntary daily benefits insurance to compensate a loss of income in case of health-related incapacity to work. The first string is financed by individual premiums; employers do not contribute to this string. The health care provided must correspond to a legally defined list that includes nearly all medical practices necessary to treat the sick insured person. As the care insurance is mandatory, health insurers cannot exclude persons who are sick or require a waiting period, although the scheme is limited to persons residing or working in Switzerland. Except certain situations like emergency or treatments not available in Switzerland, care provided on Swiss territory only entitles to reimbursement. The second string that is supposed to provide benefits in cash offers a very limited protection (sickness cash benefits provided by LAMal often reach an average amount of not more than CHF 15.- per day) because the insurer is not legally obliged to cover a minimum amount. Therefore, most employers who want to cover their staff have to contract a private insurance that is not part of social security. Foreign residents can access health benefits in kind under the same conditions as national residents.

Like in all the other fields of social security, Switzerland applies EU Regulation n° 883/2004 which facilitates access to health care in cross border situations by prohibiting discrimination and by providing health care in the Member State of residence or short term stay (see also Eugster 2016). The competent State (for instance, Switzerland if the person is insured in Switzerland) has to pay for the health care

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<sup>20</sup>sec0, *Administrative Ordinance on January 1st 2019*, E11, p. 105.

provided abroad. This Regulation applies to Swiss, EU and EFTA nationals. Benefits in cash must be paid regardless national residency clauses. Swiss national law does not contain any rules that grant health care especially to Swiss citizens living abroad, but if an individual is in need, the payment of health care provided abroad may, in certain cases, be based on Federal Act on Swiss Persons and Institutions Abroad, RS 195.1). Moreover, only one of the social security agreements ratified by Switzerland (with Germany) provides cross-border access to health care.

The accident insurance (LAA) provides health care and several cash benefits whenever a worker is victim of an accident (professional and non-professional accidents) or suffering from an occupational disease. Self-employed persons have access to the same benefits if they are insured on a voluntary basis. LAA does not contain any special rules differentiating between nationals and foreigners. However, self-employed persons who wish to adhere to the voluntary scheme must have their residency in Switzerland. This rule does not apply to persons falling into the scope of EU Regulations n° 883/2004 and n° 987/2009.

Besides the sickness insurance, the Swiss pension system also provides benefits that cover certain health issues. The old-age insurance (AVS) and the disability insurance (AI) pay benefits in kind to insured persons that need long term care (Kieser 2020). Health care is provided by the disability insurance to children and young persons under the age of 20 if they suffer from a congenital defect (article 13 LAI). Some exceptions apart, young foreigners born outside Switzerland do not qualify for benefits from LAI including health care in case of a congenital defect (art. 6 § 2 LAI). They may however get health care from the Swiss illness insurance (LAMal).

### 20.2.3 Pensions

Three federal laws regulate access to the Swiss public pension system: LAVS, LAI and LPC. The pension scheme is mandatory for persons living or working in Switzerland. Old-age pensions are provided after a contributory minimum period of 1 year but the amount of the pension depends on the number of years of contributions and the income gained during those years (Valterio 2011). Under certain conditions, non-contributory pensions are paid to Swiss, EU and EFTA citizens who do not fulfill the minimum period of 1 year, but these conditions are seldom fulfilled (the applicant needs to have domicile and permanent residency in Switzerland and must have been insured without any interruption). Furthermore, in addition to the contributory pension, non-contributory old-age, survivor and disability benefits are paid to pension holders if their pension does not cover the vital minimum. Pension holders must reside in Switzerland to receive non-contributory benefits. The voluntary access to the pension scheme for persons who are living or working abroad is restricted to Swiss, EU and EFTA nationals. These rules concern persons working for the Swiss Government or for certain International organizations and persons living outside Switzerland or in EU/EFTA countries (LAVS). For posted workers and

students, the nationality does not make a difference. For instance, no matter if the worker is Swiss or not, he/she remains insured while working abroad for an employer based in Switzerland. Independently from any gainful activity, Swiss citizens (as well as EU citizens) may adhere to the public pension system on a voluntary basis if they are living in a third country (i.e. outside Switzerland, the EU or the EFTA); this possibility, however, is subject to a five-year prior insurance period. Persons who do not remain insured while working or living abroad will have a shorter contribution period and will – *pro rata temporis* – receive a smaller pension. The same rules apply, *mutatis mutandis*, for the disability insurance.

Swiss citizens residing abroad are entitled to claim public pensions from Switzerland, but foreigners must have their domicile and permanent residence in Switzerland. For foreigners falling into the scope of a bilateral agreement or the EU Regulations n° 883/2004 and n° 987/2009, the residence condition is waived and pensions are exportable no matter in which country they choose to reside. Other foreigners who do not get a pension because they move out of Switzerland are able to get a part of their contributions back (Valterio 2011).

At the federal level, individuals who receive pensions from the public pension scheme (LAVS/LAI) may qualify for a complementary non-contributory pension (LPC). The system is implemented by the 26 cantons which may adopt rules that improve the benefits provided by LPC. LPC requires pension holders to reside in Switzerland and EU Regulation n° 883/2004 does not waive this condition. From July 2018 onward, additional requirements apply to foreigners, as complementary benefits are provided to foreigners only if they have a legal residency in Switzerland and 10 years of prior residence. For EU/EFTA citizens, however, the 10 years requirement is waived by Regulation 883/2004. The complementary pension schemes (second pillar: LPP and supplementary benefits) do not stipulate discriminating rules concerning foreigners. An insured person who leaves the country has the right to ask the pension fund for repayment of his/her assets; concerning LPP benefits, this rule does not apply to persons covered by EU Regulations n° 883/2004 and n° 987/2009.

#### **20.2.4 Family Benefits**

Switzerland has introduced family benefits but does not provide parental leave. Family benefits have been regulated mainly by the legislation of the 26 cantons, although the federal legislator adopted a legal framework (LAFam) in 2006 aiming to harmonize this policy area. Family benefits are provided to workers and self-employed persons who are insured as such by the public pension scheme (AVS). The presence of one or more children, no matter their nationality, triggers the right to family benefits. The law does not stipulate any other condition concerning citizenship. No prior contribution period is required to access these benefits, although article 7 of the Ordinance (OAFam, RS 836.21) requires residence in Switzerland as an eligibility condition (condition waived by EU Regulation n° 883/2004).

Furthermore, OAFam reserves birth allowance to mothers who have been living in Switzerland for at least 9 months before giving birth (this allowance is not included in Regulation n° 883/2004). Federal law contains no rules that allow non-resident Swiss citizens to receive family benefits from Switzerland. The law of the 26 cantons might contain rules that restrict certain types of family benefits to Swiss citizens (e.g. Ticino, ATF 143 I 1).

The maternity benefits scheme (LAPG, RS 834.1- see also Geiser et al. 2019) is inspired by Directive 92/85/EEC concerning pregnant workers and workers who have recently given birth. LAPG covers female workers and self-employed working in Switzerland who have been insured in the public pension scheme (AVS) during 9 months before giving birth and have worked at least 5 months during this period. For Swiss/EU/EFTA nationals, Regulation n° 883/2004 provides aggregation of periods accomplished in an EU/EFTA Member state. The LAPG scheme grants benefits during 14 weeks, at 80% of the average income previously earned.

### ***20.2.5 Guaranteed Minimum Resources***

As mentioned, the public pension scheme (1st pillar) is supplemented by non-contributory benefits granting minimum resources to pension holders (LPC). Besides this, Swiss law also provides social aid to persons in need. The access to social assistance is mainly based on the legislation of the 26 cantons, although a certain harmonization is ensured via cooperation between the cantons (*Conférence Suisse des institutions d'action sociale*, CSIAS). As a common denominator, social assistance or social aid is provided to persons living in Switzerland who cannot cover their basic living costs. Benefits include basic living and housing costs. In addition, the federal law provides benefits that allow to pay the mandatory social health insurance (LAMal), while also granting the right to assistance for persons in need, including access to indispensable health care (see also Gächter and Filippo 2015).

In most cantons, social assistance is restricted to persons living in the canton. EU Regulation n° 883/2004 is not applicable to social assistance, but the Free Movement of Persons Agreement mentioned above contains rules concerning non-contributory benefits and social aid. The Agreement grants equal treatment with respect to welfare benefits for EU/EFTA nationals who qualify as workers but it allows Switzerland to not provide social assistance to non-active foreigners (art. 24 annex I FMPA and EU Directive 2004/38EC on the right of citizens to move and reside freely within the territory of the Member States). Concerning persons who lose their job, the law excludes them from social aid (art. 61a § 3 FNA). Moreover, foreigners can lose their residency permit if claiming or obtaining social aid. According to FNA, the competent authority may revoke a permit if a foreigner or a person the foreigner must care for is dependent on social assistance.

Federal law also provides social aid for Swiss citizens living abroad. The Federal Act on Swiss Persons and Institutions Abroad (SAA, RS 195.1) concerns Swiss

citizens who are not domiciled in Switzerland and who are registered as such in the Swiss Abroad Register. The Swiss Confederation grants social assistance to non-resident Swiss who are in need and “unable to support themselves or with their own resources, with financial assistance from private sources or with assistance from the receiving state” (art. 24 SAA). The type and the amount of social aid depend on the conditions in the receiving state. The applicant may be advised to return to Switzerland if this is in his/her interest and the Confederation covers the travel costs. Once the person is back in Switzerland, the canton of residence becomes competent to provide social assistance if needed.

### 20.3 Conclusions

This chapter has shown that the Swiss social security system covers individuals who live and/or work in Switzerland. In general, the law does not distinguish between nationals and foreigners, besides certain exceptions concerning access to voluntary schemes, disability benefits and unemployment benefits. Social assistance is limited to persons residing in Switzerland. Most of the national rules, however, are subject to social security coordination which arises from the Free Movement of Persons Agreement applied to EU/EFTA nationals. In the future, the implementation of FMPA and Regulation n° 883/2004 might even be strengthened by an Agreement on institutional matters that the EU and Switzerland have drafted in December 2018.<sup>21</sup> This Agreement provides for a dispute settlement that allows to bring a dispute before the European Court of Justice and thus promises a more homogenous application of EU law within the in Free Movement of Persons Agreement.

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<sup>21</sup> [https://www.eda.admin.ch/dam/dea/en/documents/abkommen/InstA-Wichtigste-in-Kuerze\\_en.pdf](https://www.eda.admin.ch/dam/dea/en/documents/abkommen/InstA-Wichtigste-in-Kuerze_en.pdf), Accessed 15 January 2019.



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# Chapter 21

## Diaspora Policies, Consular Services and Social Protection for Swiss Citizens Abroad



Lorenzo Piccoli

### 21.1 Diaspora Policy Infrastructure and Key Policies

This chapter presents the policies of Swiss institutions in their dealings with Swiss abroad, with a specific focus on the area of social protection. The chapter is divided into two main sections. First, it describes the general institutional framework by which Swiss institutions interact with nationals abroad, as well as the main engagement policies with this population. The second part of the chapter focuses on the policies, programmes and services offered by Swiss institutions to respond to the social protection needs of Swiss abroad across five specific policy areas: unemployment, health care, pensions, family benefits, and guaranteed minimum resources. This chapter explains how the Federal Council has gained control over this network of institutions starting from the 1960s. The centralization of social protection towards Swiss abroad was the result of a new legislation recognizing the crucial role of Swiss nationals abroad in shaping both internal politics and the external image of Switzerland. As part of this strategy, the Federal Council developed more encompassing social protection policies, while safeguarding pre-existent cantonal and charitable associations. As a result, Swiss nationals abroad can access a wide set of social entitlements.

Due to the lack of scientific literature on this topic, the data used for this chapter amount to 19 formal policy-making documents (existing legislation, expired

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legislation, motions to the Federal Assembly, official guidelines and regulations), as well as a set of six interviews with policy-makers and experts.<sup>1</sup>

### 21.1.1 *Diaspora Infrastructure*

The Federal Statistical Office (FSO) estimates that there were 751,800 Swiss nationals living abroad at the end of 2017.<sup>2</sup> Of these, 73.5% had dual citizenship, 62% were based in Europe and 54.4% were women.<sup>3</sup> In terms of countries of destination, France has the largest Swiss expatriate community in Europe (193,300 in 2017), followed by Germany (88,600) and Italy (49,600). Outside Europe, the majority of Swiss citizens live in the United States (79,900), Canada (39,700), Australia (24,900) and Israel (19,900). In total, Swiss nationals abroad represent 11% of the total Swiss population. They are often referred to as the “Swiss colony”, the “community of Swiss abroad”, or the “fifth Switzerland” (*Fünfte Schweiz*), alluding to the fourfold linguistic division within Switzerland.

There is virtually no academic research on the policies towards the Swiss abroad. This stands in stark contrast with the relative abundance of studies targeting specific communities of Swiss abroad. Scholars have researched the Swiss in the Americas (Arlettaz 1979), Argentina (Glatz 1997), Australia (Wegmann 1989), Brazil (Dewulf 2007), Canada (Bovay 1976), Chile (Schneiter 1983), China and North European countries (Camenisch and Muller 2017), Poland (Andrzejewski 2002), Russia (Bühler et al. 1985) or Romania (Chinezu 2002). Some scholars have even studied cantonal emigrants, like the Ticinese in California (Perret 1950) and the Bernese in the United States (Geissbuhler 1999). Yet, no systematic study has been conducted on the institutional structuring of the relationship between the Confederation and the Swiss nationals abroad.

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<sup>1</sup> The full list of interviews includes: 1) Director at the Organisation of the Swiss Abroad (14/6/2018, Bern); 2) Division Director at the Federal Council: *Eidgenössisches Departement für auswärtige Angelegenheiten Konsularische Direktion, Zentrum für Bürgerservice Sozialhilfe für Auslandschweizer/innen* (5/9/2018, Bern); 3) Division Director at the Federal Council: *Eidgenössisches Departement für auswärtige Angelegenheiten, Konsularische Direktion, Delegierte für Auslandschweizerbeziehungen* (14/9/2018, Bern); 4) Division Director at the Federal Council: *Dienst Sprachen und Gesellschaft, Bundesamt für Kultur* (26/9/2018, Bern); 5) Division Director at the Federal Council: *Département fédéral de l'intérieur, Office fédéral des assurances sociales, Affaires internationales* (3/10/2018, Bern); 6) Former Director at the Organisation of the Swiss Abroad (4/10/2018); Director of the *Associazione Gazzetta Svizzera* (5/10/2018, Milan).

<sup>2</sup> Federal Statistical Office of Switzerland (2018). Statistics on the Swiss Abroad. <https://www.eda.admin.ch/eda/en/home/living-abroad/publications-statistics/statistics.html>. Accessed 18 March 2019.

<sup>3</sup> Most dual nationals lived in Oceania (78.3%), North and South America (77.2%), and Europe (73.7%). In Africa and Asia, the percentage of dual nationals was around 60%.

Historically, the Federal Council has actively worked towards guaranteeing the social protection of Swiss abroad. Since 1846, the main institution that is responsible for engaging with Swiss nationals abroad is the Federal Department of Foreign Affairs (FDFA, *Eidgenössisches Departement für auswärtige Angelegenheiten*). In addition to protecting Switzerland's interests abroad, the FDFA has among its main tasks the improvement of services for Swiss nationals living abroad and the maintenance of the administrative register of the Swiss abroad E-VERA, which contains information on the Swiss nationals abroad.<sup>4</sup>

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

The Federal Council actively supports institutions that promote relations and assist Swiss abroad. Among these, the Organisation of the Swiss Abroad (OSA, *Die Auslandschweizer-Organisation*) plays a particularly prominent role. This non-profit organisation was established during World War I, in 1916, under the umbrella of the New Helvetic Society (NHS, *Neue Helvetische Gesellschaft*), which had itself been created 2 years earlier to defend the unity of the young Helvetic Confederation. The OSA was initially operative abroad. It set up a permanent secretariat in Geneva in 1919, which was then moved to Fribourg in 1923, and then in Bern in 1928. In 1924, the OSA started to receive financial support from the Federal Council. Today, its activities are enshrined in Article 9.2 and Article 38 of the Federal Act on Swiss Citizens and Institutions Abroad.<sup>5</sup> It has three main tasks: providing services for Swiss nationals abroad, communicating with them, and representing them in Switzerland. More specifically, the OSA provides advice on all types of legal, social security insurance and training matters; it publishes the bi-monthly magazine "Swiss Review" and promotes active cultural and educational programmes for young Swiss nationals abroad. The OSA also organizes the Congress for Swiss nationals abroad, which takes place every year in a different city

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<sup>4</sup>The register is updated through the notifications sent to the FDFA by the municipal offices upon departure and return of Swiss nationals. According to information estimations of the government officials, in addition to the 751,800 persons who were officially registered to live abroad in 2017, there are about 250.000 Swiss abroad who has not registered in E-VERA.

<sup>5</sup>The two articles read, respectively: "The Confederation shall maintain contact with institutions that promote relations between the Swiss Abroad and that contribute to better support and networking of the Swiss Abroad, particularly the Organisation for the Swiss Abroad" and "[The Confederation] may grant financial support to the Organisation for the Swiss Abroad to safeguard the interests of the Swiss Abroad and to provide them with information".

**Table 21.1** Annual subsidies of the Swiss Federal Council to the Organisation of the Swiss Abroad, in Swiss francs (1980–2015)

Year	Amount
1980	1.260.885
1985	1.154.200
1990	717.413
1995	1.235.782
2000	1.171.911
2005	3.178.442
2006	3.225.000
2007	4.001.355
2008	3.270.430
2009	2.800.000
2010	2.663.520
2011	2.723.384
2012	3.037.073
2013	3.253.360
2014	3.263.513
2015	3.075.133
2016	3.212.374
2017	3.056.261

Source: Own elaboration based on data from the FDFA

of Switzerland. The directors of the OSA hold at least four official meetings with representatives of the CD every year and the OSA receives three million francs (approximately two million and sixty-five hundred euro) per year from the Swiss Federal Council to carry out its activities (Table 21.1).<sup>6</sup>

The Foundation for Young Swiss Abroad (FYSA, *Stiftung für junge Auslandschweizer*) is also directly connected to the Swiss Federal Council and its role is enshrined in Article 9.3 of the Federal Act on Swiss Citizens and Institutions Abroad.<sup>7</sup> This Foundation was created under the name Swiss Aid in 1917, in order to allow Swiss children living in disaster-torn areas abroad to spend a couple of weeks relaxing with host families in a quiet setting. The first holiday camps were organised in the 1960s, while the Foundation took its current name in 1979.

Similar to the working of the FYSA, *educationsuisse* also promotes the training of young Swiss abroad and works closely with Swiss schools abroad and with international schools where Swiss teachers teach. This non-profit organisation was established in 1942 as “Help Committee for Swiss Schools Abroad” and was later on simply renamed as “Committee for Swiss Schools Abroad”. Since 2012, it is

<sup>6</sup>*Banque de données des subventions fédérales*, 2018

<sup>7</sup>*Loi fédérale sur les personnes et les institutions suisses à l'étranger*, 26/9/2014: “[The Confederation] shall promote exchange between young Swiss Abroad and encourage their ties to Switzerland.”

known as *educationsuisse* and, following the Federal Act on the Diffusion of Swiss Education Abroad, it is economically supported by the Federal Council, Office of Culture (OC, *Bundesamt für Kultur*).<sup>8</sup>

All Swiss abroad registered with a Swiss representation, except those living in Italy, receive the bi-monthly magazine Swiss Review (*Schweizer Revue*), which reports specifically on issues which interest Swiss abroad and strengthens their ties with the home country. Special emphasis is given to politics, so that Swiss citizens living abroad can exercise their electoral rights in a responsible and informed manner. Because it contains governmental information and announcements, the Swiss Review also serves as an official publication organ. Since 1973, the Review has been published by the OSA in Bern, which receives public funding from the FDFA for the publication. Edited to 422,000 copies, it is politically neutral.

Swiss nationals living in Italy do not receive the Swiss Review. Instead, they can sign up for the Swiss Gazette (*Gazzetta Svizzera*), which was created by the then cultural *attaché* of the Swiss embassy in Milan in 1968. This magazine, published in Italian, aims at strengthening the links between the various Swiss colonies in Italy and maintaining the bonds with Switzerland. It is managed by the Swiss Gazette Association (*Associazione Gazzetta Svizzera*), which was established in 1995. The Association is subsidised for one third by the Swiss Federal Council and for two thirds by the readers. Its annual budget of around 300,000 francs is used to publish 11 issues per year. The Swiss Gazette is read by about 30,000 people, with 22,000 printed copies and about 7000 access online per month. Like the Swiss Review, the Swiss Gazette is politically neutral.

Political parties have traditionally engaged with Swiss nationals abroad. All the main parties that are currently part of the Federal Council (The Liberals; the Social Democratic Party; the Swiss People's Party; the Christian Democratic People's Party) have a branch that maintains the ties with nationals abroad. In 2004, under impulse of the OSA, several members of the Federal Assembly established the Parliamentary Group of the Swiss Abroad, which is coordinated by three Co-Presidents and currently consists of 75 members of both chambers. Its activity is dedicated to the representation of the interests of Swiss nationals abroad and every 3–4 months, the Group releases a newsletter with information on the most important reforms that may affect Swiss nationals abroad. In the current legislature (2019–2023), the Inter-Party Parliamentary Group of the Swiss Abroad is the biggest group in the Federal Assembly.

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<sup>8</sup> *Loi fédérale sur la diffusion de la formation suisse à l'étranger*, 21/3/2014.

### 21.1.2 Key Engagement Policies

In public discourses, Swiss nationals abroad are seen as important actors in shaping Switzerland's image in the world. For this reason, the institutions have traditionally invested in fostering cultural networks and have actively promoted the establishment of minimum social standards of protection for Swiss nationals abroad (Arlettaz 1986). The protection of Swiss abroad is enshrined in Article 40 of the Federal Constitution, stipulating that “the Confederation shall encourage relations among the Swiss abroad and their relations with Switzerland. It may support organisations that pursue this objective. It shall legislate on the rights and obligations of the Swiss abroad, in particular in relation to the exercise of political rights in the Confederation, the fulfilment of the obligation to perform military or alternative service, welfare support and social security”. This legislation was first introduced as Article 45 of the Constitution in 1966, following a popular initiative with 68% of approval by the voters. It became Article 40 following the revision of the Constitution in 1999.<sup>9</sup>

More detailed policies in this field are regulated by the Swiss Abroad Act, the Federal Act of 26 September 2014 on Swiss Nationals and Institutions Abroad.<sup>10</sup> The law includes measures aimed at supporting, informing and promoting links between Swiss nationals abroad, their political rights, social assistance that may be granted to them and support for specific institutions. The Act defines Swiss nationals abroad as those Swiss citizens who “are not domiciled in Switzerland and who are listed in the Register of the Swiss Abroad” and aims at “facilitate[ing] international mobility for Swiss nationals” and “promot[ing] Switzerland's presence and links abroad”. Swiss abroad are recognised as being of a unique importance to their homeland regarding knowledge, experience, access and connection.

Swiss abroad are directly involved in political affairs. Since 1992, all Swiss nationals abroad are eligible to vote and to stand as candidates in elections for the National Council and in national referendums, under condition that they register upon moving out of the country.<sup>11</sup> Moreover, the law entitles Swiss nationals abroad to sign federal initiatives and requests for referendums at the federal level. Twelve cantons also provide the right of vote in cantonal matters and the right to be elected to the respective Council of State to Swiss nationals abroad (Arrighi and Piccoli 2018).<sup>12</sup>

Until 2018, the Federal Council had concluded international social security agreements with 44 countries. The objectives of these agreements are to ensure the equal treatment of citizens from the contracting States, determining the applicable legislation and the payment of social security benefits abroad. Switzerland is also

<sup>9</sup> *Constitution fédérale de la Confédération suisse*, 18/4/1999.

<sup>10</sup> *Loi fédérale sur les personnes et les institutions suisses à l'étranger*, 26/9/2014. See also: *Ordonnance sur les personnes et les institutions suisses à l'étranger*, 15/10/2018.

<sup>11</sup> *Ordonnance sur les droits politiques des Suisses de l'étranger*, 16/10/1991.

<sup>12</sup> The full list of cantons that provide the right to vote in cantonal elections is as follows: Basel-Land, Basel-Stadt, Bern, Fribourg, Geneva, Graubünden, Jura, Neuchâtel, Schwyz, Solothurn, Ticino, Zürich.

part of several standard-setting conventions. In accordance with the Agreement on the Free Movement of Persons between Switzerland and the European Union (EU),<sup>13</sup> relations with EU Member States are governed by the provisions of Regulations (EC) No. 883/04<sup>14</sup> and (EC) No. 987/09.<sup>15</sup> Both regulations coordinate the various European social security systems and apply also for European Free Trade Association (EFTA) countries.<sup>16</sup>

## 21.2 Diaspora Policies and Social Protection in Switzerland

Until recently, the social protection of Swiss abroad was left to *ad hoc* initiatives by the Federal Council, such as the aid operation to support Swiss abroad following World War II in 1957, as well as to charitable organisations, non-profit organisations, cantonal and municipal institutions. The Federal Council counted 57 organisations providing social support to Swiss abroad in the early 1970s. It also estimated the federal expenditure for Swiss abroad at around 85,000 francs per year, vis-à-vis a cantonal expenditure of about 63,900 francs per year. At the time, it was not unusual that a Swiss expatriate originally from Zürich, for example, obtained social support from his canton while his neighbour from Grisons did not. The uneven social protection accorded to Swiss abroad, as well as the need to coordinate the interventions and the new Article 45 on the rights and obligations of the Swiss abroad introduced in 1966, inspired the Federal Assembly to approve the Federal Act of 21 March 1973 on Social Assistance and Loans to Swiss Citizens Abroad.<sup>17</sup> It was the first time the federal institutions took the matter of welfare assistance for Swiss nationals abroad in their own hands.

Today, Article 22 of the Federal Act on Swiss Citizens and Institutions Abroad stipulates that “the Confederation grants social assistance to the Swiss Abroad who are in need”. Swiss nationals abroad who find themselves in need of social

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<sup>13</sup> *Accord entre la Confédération suisse, d'une part, et la Communauté européenne et ses Etats membres, d'autre part, sur la libre circulation des personnes*, 21/6/1999.

<sup>14</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems, 29/4/2004.

<sup>15</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, 16/9/2009.

<sup>16</sup> *Ordonnance sur l'introduction progressive de la libre circulation des personnes entre, d'une part, la Confédération suisse et, d'autre part, l'Union européenne et ses Etats membres, ainsi qu'entre les Etats membres de l'Association européenne de libre-échange*, 22/5/2002.

<sup>17</sup> *Loi fédérale sur l'assistance des Suisses de l'étranger*, 21/3/1973. See also earlier debates in the Federal Assembly: *Message du Conseil fédéral à l'Assemblée fédérale concernant l'insertion dans la constitution d'un article 45 bis sur les Suisses à l'étranger*, 2/7/1965; and *Message du Conseil fédéral à l'Assemblée fédérale concernant un projet de loi fédérale sur l'assistance des Suisses de l'étranger*, 6/9/1972.



**Table 21.2** Number of Swiss abroad who benefit of social assistance through the Swiss Federal Council (2011–2017)

Year	Assistance abroad	Repatriation	Emergency aid for tourists
2011	323	142	90
2012	307	158	101
2013	285	143	114
2014	295	144	98
2015	262	110	158
2016	258	118	148
2017	224	88	132

Source: Own elaboration based on data from the FDFA

**Table 21.3** Financial cost of the social assistance through the Swiss Federal Council, in Swiss francs (2011–2017)

Year	Payments towards foreign countries	Returns
2011	1.761.608	459.042
2012	1.602.524	444.710
2013	1.256.476	767.345
2014	1.579.510	499.817
2015	1.178.677	226.424
2016	1.132.725	234.297
2017	1.113.319	231.154

Source: Own elaboration based on data from the FDFA

protection of any kind, be it matters of health, pension, unemployment, or minimum resources, can contact the Swiss representation responsible for their place of residence abroad. This is part of an official policy called Social security for Swiss citizens abroad (*Sozialhilfe für Auslandschweizerinnen und Auslandschweizer*) (Table 21.2).

Consulates and embassies normally try to find ways to include the person in the social welfare of the host country, except for emergency cases like hospitalisation, when the representation grants the essential emergency aid and notifies the Consular Directorate (CD).<sup>18</sup> Most often, however, the person fills an application which is first reviewed and completed by the representation responsible for her/his place of residence abroad and transfers it together with a report and request to the CD at the FDFA in Bern. The CD decides whether to accept applications following a set of guidelines internal to the ministry. In urgent cases, the representation grants the essential emergency aid and notifies the CD. The CD may authorise representations to grant additional social assistance on their own initiative. In addition to *una tantum* financial help, this policy also allows for continuous funding over the years, provided that the individual stipulates a plan together with the CD. Every year, the CD submits to Parliament a budget, part of the broader budget for the FDFA. The

<sup>18</sup>Note that the majority of these cases actually concern Swiss temporarily abroad, e.g. tourists.

amount of money spent by the CD has been steadily decreasing over the last 5 years, from 1,7 million francs in 2010 to 1,1 million at the end of 2017 (Table 21.3).

Interestingly, according to Article 25 of the Federal Act on Swiss Citizens and Institutions Abroad, Swiss nationals might be ineligible for social assistance if they have another nationality that is considered preponderant. The internal guidelines of the ministry explain how to determine which of the nationalities is preponderant, namely: (i) the circumstances which led to the applicant's acquisition of the foreign nationality; (ii) the state where the applicant resided during childhood and training; (iii) the length of stay in the current State of residence; (iv) the applicant's relations with Switzerland.<sup>19</sup> There are some specific situations when, even though the foreign nationality of the applicant is preponderant, social assistance can still be granted on an exceptional basis.<sup>20</sup> It may be that over time the predominant nationality changes. If social assistance has begun to be granted when Swiss nationality predominates, assistance benefits granted on a regular basis may be maintained even if, over time, the foreign nationality has become preponderant. If a person receiving social assistance acquires a foreign nationality, the payment of assistance benefits should be re-examined.

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

Article 35 of the Federal Act on Swiss Persons and Institutions Abroad establishes that social assistance recipients must repay the social assistance benefits if they no longer require them and are able to support themselves and their families.<sup>21</sup> Social assistance benefits may be claimed back up to 10 years after the last payment, unless the receivable was stipulated contractually or by the CD. However, not all the recipients of social assistance are able to pay back the money they have received.

If Swiss nationals die abroad, the foreign authority will inform the local Swiss representation in the country concerned. If this is not done, family members may give the foreign death certificate to a Swiss representation, which will send the document to the deceased's municipality of origin. If a person wishes to be buried in Switzerland, the Swiss representation will also prepare the necessary documents

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<sup>19</sup> *Checkliste mehrfache Staatsbürgerschaft: Welches Bürgerrecht dominiert? Gesetzliche Grundlagen*, 1/1/2015.

<sup>20</sup> These situations are the following: (i) minor children, where the predominant nationality of one of the parents is Swiss; (ii) severely disabled persons, where the predominant nationality of one of the parents is Swiss; (iii) persons at risk of imminent death, very serious illness, reversible disability; (iv) in the event of war, natural disaster or political disturbance. In borderline situations, the doubt must benefit the applicant.

<sup>21</sup> *Loi fédérale sur les personnes et les institutions suisses à l'étranger*, 26/9/2014.

for repatriation. The Federal Council may cover the costs of funerals for Swiss nationals who die abroad and who are without means, provided neither their relatives nor the receiving state is willing to pay the costs.

In addition to these policies, the Federal Council supports institutions that promote relations between Swiss nationals abroad and their ties to Switzerland. Today, more than 750 Swiss associations and institutions overseas are affiliated to the OSA, including humanitarian groups, traditional Swiss clubs, sporting associations, choirs, charities, and family associations. These diverse associations constitute “micro-communities of solidarity, where Swiss identity can be easily transmitted” (Leu 2016: 31). In Paris for example, the Swiss Society of Charity has been operating since 1820 and currently has around 20 volunteers who go to the aid of Swiss nationals who are sick or lonely, help them with administrative matters and make hospital visits. Some of these associations are representative of specific cantons. In Argentina and Brazil, for instance, the association *Valaisans du Monde* is well established; in Brazil, the association *Nova Friburgo* represents Swiss nationals from the canton of Fribourg. These associations work closely to Swiss diplomatic missions: although they do not formally participate in the decision-making process, in some countries, they provide information that can help the missions deciding on whether requests for welfare assistance are legitimate. In a few countries, Swiss diplomatic missions rely on these associations to provide first hands-on support to Swiss nationals. While providing social help, these associations also ensure an enduring cultural connection between Swiss nationals abroad and the country of origin. The OAS, for example, supports elderly Swiss citizens with poor economic possibilities who wish to return to their homeland for a visit. Requests must be submitted to the Swiss embassy or consulate where the person resides. The financial support however excludes coverage of unpaid stay taxes (e.g. for overstayers) or other debts incurred in the host country which make it impossible to leave.

The following pages describe in detail the services and policies for five key social protection areas. They focus mostly on EU cooperation agreements because most Swiss nationals abroad reside in these countries.

### **21.2.1 Unemployment**

Swiss nationals in the EU benefit from the bilateral Agreement on the Free Movement of Persons signed on 21 June 1999, while Swiss nationals in Iceland, Liechtenstein and Norway benefit from the EFTA Convention signed in Stockholm on 4 January 1960. In principle, anyone who is gainfully employed abroad or is a family member of an individual employed abroad is not insured under the compulsory Swiss OASI/DI scheme. However, they may take out such insurance under certain conditions. Individuals who are gainfully employed in an EU/EFTA Member State by a Swiss employer and are paid by this employer can continue to be covered by the OASI/DI/APG schemes and the unemployment insurance scheme if their salary is paid in Switzerland, by the Swiss employer; or, alternatively, if the employer

agrees that the employee continues to be insured in Switzerland. Insurance cover, however, can only be continued if the individual concerned has been insured for five consecutive years in the compulsory or optional OASI/DI scheme, either directly prior to taking up employment abroad or – for individuals who have been posted in an EU/EFTA Member State while still insured in Switzerland – directly after the termination of their employment abroad. For continued insurance during employment in an EU country, Swiss nationals and citizens of EU Member States can use insurance periods in EU or EFTA countries to count towards this five-year period. The same applies for EFTA nationals for continued insurance during employment in Iceland, Liechtenstein or Norway. Continued insurance cover in Switzerland does not exempt a person from any social insurance obligations in his/her country of employment. Swiss consulates and embassies can assist Swiss abroad in their dealings with unemployment benefits, by helping them to navigate the legislation.

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

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

### **21.2.2 Health Care**

The Federal Law on Health Insurance holds that health insurance is solely mandatory for those living in Switzerland. However, agreements concluded with the EU and EFTA have brought about exceptions to this rule for the following categories of Swiss nationals abroad: cross-border workers and their family members; pensioners and their family members; Swiss nationals abroad drawing unemployment benefits in Switzerland and their family members, as well as family members of temporary residents in Switzerland. As a general principle, these individuals have the possibility to choose between health care in their country of residence or in Switzerland. Swiss pensioners abroad must continue to hold basic health insurance with a Swiss provider for themselves and their dependents; but this rule does not apply to pensioners living in Austria, Italy, Germany, France, and Spain, as one of the conditions that are part of the Agreement with the EU on the Free Movement of Persons signed on 21 June 1999. The rule also does not apply to those individuals who are receiving a pension from their country of residence, even if the pension received in the

country of residence is lower than the Swiss pension. Finally, if the pensioner is domiciled in a country from which he/she does not receive a pension but receives a Swiss pension and a pension from another EU/EFTA state, he/she must stipulate insurance in the country in which he/she has held insurance for the longest period for retirement pension purposes.

For all other categories of Swiss nationals living in EU/EFTA Member States, the Agreement on the freedom of movement of persons concluded between Switzerland and these countries establishes coordination of the social insurance systems. Within the health insurance framework, the Agreement stipulates that the appropriate place for health care coverage is the country in which the person is working. For example, a Swiss citizen working and residing in Italy will be governed by the Italian health insurance regime.

When a Swiss national emigrates to a state outside of the EU/EFTA, it is no longer possible for her/him to remain in the compulsory basic health insurance scheme. Health insurance companies have the possibility to privately provide health insurance plans for abroad.

The OSA offers information services in these matters, such as answering legal questions, indicating companies that propose international health insurance, explaining the consequences of emigration on the social insurance scheme, and providing information on the specific regulations concerning health legislation.

Consulates can assist individuals finding a doctor or setting up a visit in the hospital. The policy of social security for Swiss citizens abroad also allows consulates to anticipate the money to cover emergency health care, if needed.

### **21.2.3 Pensions**

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

**Table 21.4** Annual subsidies of the Swiss Federal Council to the Swiss Schools Abroad (1980–2015)

School	Students	Swiss Students	Funding in francs
Bangkok	264	43	602.952
Barcelona	656	156	1.702.447
Bergamo	176	28	371.704
Bogota	727	144	1.811.615
Curitiba & Sao Paulo	1.369	179	2.108.004
Catania	92	24	260.833
Lima	715	233	1.741.247
Madrid	560	82	1.157.986
Milan	515	151	1.542.882
Mexico City, Cuernavaca, Querétaro	1.424	141	2.338.670
Rome	504	145	1.632.025
Santiago de Chile	729	176	1.829.954
Singapore	277	153	1.119.574
<b>Total</b>	8.008	1.655	18.219.893

Source: Own elaboration based on information from the Federal Office of Culture. Note: The 18th Swiss School Abroad, the School of Beijing, is not in the list because it was recognised in December 2017

### 21.2.4 Family-Related Benefits

Family-related benefits are not accessible to Swiss nationals abroad (although Swiss family allowances can also be paid for children residing in the EU/EFTA). The Federal Council, however, provides some indirect support to families abroad through financial incentives for the education of pupils in Swiss schools and for short return trips to Switzerland for Swiss children who live abroad. These activities are coordinated by the Federal Office of Culture.

Swiss schools abroad are subsidised by the Swiss Confederation provided they meet the requirements of the Federal Act on the Provision of Swiss Education Abroad (Swiss Schools Act) of 21 March 2014.<sup>22</sup> Currently, the Swiss Confederation recognises 18 Swiss schools abroad, five of which are in South America, four in Italy, two in Spain, and two in Asia (Table 21.4).

The Federal Office of Culture is responsible for the promotion and recognition of Swiss schools abroad and it works together with the association *educationsuisse*, which represents the interests of the Swiss schools with the Swiss authorities. The association also provides information about the range of international schools supported by the Federal Council. Swiss families abroad who do not live in the vicinity of a Swiss school, but who wish to provide their children with Swiss training, can

<sup>22</sup> *Loi fédérale sur la diffusion de la formation suisse à l'étranger*, 21/3/2014. See also: *Ordonnance sur la diffusion de la formation suisse à l'étranger*, 28/11/2014; and the debates in the Federal Assembly: *Message concernant la loi fédérale sur la transmission de la formation suisse à l'étranger*, 7/6/2013.

apply for support from the Confederation for the following three actions: (1) recruiting a Swiss teacher at a German, French, or international school abroad; (2) establishing courses on the history and geography of Switzerland and national languages; (3) purchasing of Swiss educational material. The promoter or applicant must in any case be an association of Swiss parents or a Swiss organization.

In addition to this service, the Federal Office of Culture also supports the Foundation for Young Swiss Abroad (FYSA, *Stiftung für junge Auslandschweizer*). This charity provides resources for Swiss children living abroad to spend some time in Switzerland. The charity was initially established on the initiative of a small group of volunteers who, in 1917, brought to Switzerland 280 Swiss children from war zones in Germany. Children spent a few weeks of holiday and were hosted by families. The cost of this initiative was met in full by the Federal Council. The following year, a private committee was formed under the name of “Swiss Aid”, which set itself the objective of continuing and building upon the aid work started. In October 1979, a decision was made to change the name of the Foundation from “Swiss Aid” to the “Foundation for Young Swiss Abroad”. Today, the Foundation relies on the administrative structures of the OSA, therefore relying indirectly on federal funding. It is composed of ten cantonal committees, which organise annual fundraising events. In total, the Federal Office of Culture spends about 20 million francs per year on Swiss schools abroad, which represents 15% of the total budget.

### **21.2.5 Economic Hardship**

There is no policy concerning the guaranteed minimum resources for Swiss nationals abroad. However, consulates and embassies often provide financial support to Swiss nationals abroad who do not have sufficient economic resources through the Social security for Swiss citizens abroad overseen by the Consular Directorate (CD) at the FDFA in Bern. As previously noted, this policy allows for structured welfare funding. According to the government officials interviewed for this research, the majority of recipients of social assistance abroad have received funding from the CD for several years now.

## **21.3 Conclusions**

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

This constitutes a “*guichet unique*” for what is, in fact, a broad range of policies and actors.

This highly institutionalised system has developed quite recently. Until the late 1960s, the social protection of Swiss nationals abroad was uncoordinated and dependent upon cantonal authorities and benevolent societies. The Federal Council took over starting from 1966, with the introduction of what is now Article 40 of the Constitution, which encourages and supports relations between Switzerland and the Swiss abroad. In 1973, the Council approved the Federal Act on Social Assistance and Loans to Swiss Citizens Abroad.<sup>23</sup> Since 2014, the social protection of Swiss abroad is mandated by the Federal Act on Swiss Citizens and Institutions Abroad. This legislation is a consequence of the recognition, by the Federal Council, that Swiss nationals abroad have a crucial role on two fronts. Internally, they shape politics through their right to vote and stand as candidates in federal elections and in some cantonal elections. Externally, they are considered informal ambassadors of the country, a particularly important role also because Switzerland is not part of the EU and must find alternative ways to make its voice heard. As part of this strategy, the Federal Council developed more encompassing social protection policies, while safeguarding pre-existent cantonal associations. Today, Swiss nations abroad can access a wide set of social entitlements.

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<sup>23</sup> *Loi fédérale sur l’assistance des Suisses de l’étranger*, 21/3/1973.



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# Chapter 22

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Tunisia



Laura Gelb and Mohamed Ali Marouani

### 22.1 Overview of the Welfare System and Main Migration Features in Tunisia

#### 22.1.1 *Main Characteristics of the National Social Security System*

The first modern type<sup>1</sup> social security scheme appeared in Tunisia in 1898 under the French protectorate. It was exclusively reserved for civil servants and mainly designed for pensions management. A family allowance scheme was created in 1918 and a long-term sickness scheme was set up in 1951. Family allowances were further extended in 1944 and a pension scheme was introduced for the banking sector in 1949 (Chaabane 2002). However, the most important social security reforms took place after independence, during the 1960s (for healthcare and family allowances) and 1970s (for old-age and disability pensions). Social security covered independent workers since 1982, low-income workers (maids, craftsmen, etc.), intellectuals and artists since 2002.

Tunisia has signed bilateral social security conventions with 14 European and North African countries in the attempt to protect the social rights of Tunisian

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<sup>1</sup>What existed before could be considered as a charities, although in some cases there were some rules for taxes collection and allowances to the poorest.

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emigrants, mainly the transferability of benefits. A voluntary contributory system was created in 1989 for emigrants in other regions (Gulf, North America), which allows mainly to cover the families remaining in the country.<sup>2</sup> This scheme covers health, pensions, invalidity and death.

Currently, the Tunisian social security system includes several categories of contributory benefits such as family allowances, cash benefits (sickness, maternity and death), health care, old-age, disability and survival pensions, death benefits and compensations for accidents at work and occupational illnesses. The specific procedures for accessing these benefits vary substantially across workers. For example, non-wage earners in the agricultural sector are not entitled to benefit from family allowances. The beneficiaries are the contributors themselves, their spouses, children until 20 years and ascendants above 60 who are in the care of the contributor. To benefit from health and maternity, the contributor needs to prove 50 days of work during the last two quarters, or 80 days of work during the last four quarters.<sup>3</sup>

The state manages the social security system through two funds: the National Social Security Fund (CNSS) for the private sector and the National Pensions and Contingency Fund (CNRPS) covering civil servants. Health benefits are managed by the National Health Insurance Fund (CNAM) created in 2004. In 2013, CNSS affiliates represented 75% of all affiliates in the country and they were covered by seven different regimes according to their professional category (Ben Othman and Marouani 2016). The most important regime is the RSNA (*Régime des salariés non agricoles*) for non-agricultural employees, which represented 53% of all contributors to the CNSS in 2013. Agricultural employees with low revenues contribute to the RSA regime (*Régime des salariés agricoles*), whereas those with higher revenues are covered via the RSAA regime (*Régime des salariés agricoles amélioré*). Self-employed contribute to the RTNS regime (*Régime des travailleurs non salariés*) and, since 2002, two additional regimes were introduced in the CNSS: RACI (*Régime des artistes, créateurs et intellectuels*), for artists and intellectuals and RTFR (*Régime des travailleurs à faibles revenus*) for low wage employees (Ben Othman and Marouani 2016).

There are two categories of CNSS affiliates: wage-earners and independent workers. Table 22.1 summarizes the contributions rates for each social security branch and the respective shares paid by employers and employees. Table 22.2 describes the amounts of contributions for independent workers.

Old-age, health and maternity are automatically included in independent workers' contributions. They can voluntarily cover themselves against professional accidents (0,4–4%). The contribution rate is 14.71% computed on the declared income, or on a lump-sum basis for the lowest income groups. Low-income people not covered by the social security contributory scheme can benefit from specific social

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<sup>2</sup><http://www.social.gov.tn/index.php?id=49&L=0>

<sup>3</sup>CLEISS (2018). Le régime tunisien de sécurité sociale (salariés). <http://www.cleiss.fr/>. Accessed 01 August 2018.

**Table 22.1** Contributions for wage-earners

ITEM	Employer (%)	Employee (%)	Total (%)
Old-age, disability and survival	7,76	4,74	12,5
Health, maternity	5,08	3,17	8,25
Family allowances	2,21	0,89	3,10
Professional accidents and illnesses	0,4 to 4	–	0,4 to 4
Government special fund	1,52	0,38	1,90
<b>TOTAL</b>	<b>16,97 - 20,57</b>	<b>9,18</b>	<b>26,15 - 29,75</b>

Source: <http://www.cleiss.fr/docs/cotisations/tunisie.html>

**Table 22.2** Contributions for independent workers

Quarterly amounts of contributions		
Income group	Contribution base	Amount of contributions (TND)
1	975,00	143,423
2	1462,50	215,134
3	1950,00	286,845
4	2925,00	430,268
5	3900,00	573,690
6	5850,00	860,535
7	8775,00	1 290,803
8	11,700,00	1 721,070
9	14,625,00	2 151,338
10	17,550,00	2 581,605

Source: <http://www.cleiss.fr/docs/cotisations/tunisie.html>

assistance programs. The program for families in need (PNAFN, see below) is the main instrument of social assistance in Tunisia. It covers around 240,000 families by providing them cash transfers (110 TND per month, around 40 EUR) and a card for subsidized health care at public health centres.<sup>4</sup> Involuntarily unemployed, temporary workers and unemployed graduates have also a renewable one-year health coverage. Most casual agricultural workers, domestic employees and non-eligible unemployed do not have access to health coverage.

<sup>4</sup>UNICEF (2014). Evaluation of the Education Benefit Program of PNAFN in Tunisia. *Evaluation Report*.

### 22.1.2 *Migration History and Key Policy Developments*

According to Seklani (1974), Italians constituted the bulk of the foreign population in Tunisia at the end of the nineteenth century (80,000). They were mainly from Sicily and worked as fishermen, craftsmen and farmers. At the end of World War II, the number of foreigners reached 350,000, dominated by French citizens, as a result of a deliberate policy to reduce Italian influence in Tunisia. Libyans and Algerians were also present, but most of them left after the discovery of oil in Libya and Algeria's independence. The Bizerte crisis in 1961 and the nationalization of agricultural land in 1964 led 70% of foreigners to leave the country (Seklani 1974). The 2014 census showed that immigration was relatively low in recent years, foreigners representing around 0.5% of the population. This number does not include Libyans visiting Tunisia for long periods, sometimes exceeding 6 months since the deterioration of the security situation in Libya. 1,8 million entered Tunisia and 1,4 million left in 2014.<sup>5</sup> Although to a lesser extent than Morocco and Libya, Tunisia has also become a transit country for sub-Saharan migrants and refugees (Natter 2015).

The emigration of Tunisian nationals did not start significantly before independence. Recruitment was organized in cooperation with European countries as Tunisia signed agreements with France (1963), Germany (1965), Belgium (1969), and the Netherlands (1971). In 1967, the Government created a directorate within the Ministry of Social Affairs to manage the flows of migrants to Europe (mainly to France and, to a much lesser extent, also to Germany). This directorate seemed effective in training Tunisians to the growing demand of booming Europe. The 1973 oil crisis led to a significant reduction in emigration flows to Europe and the emergence of Libya as a new significant destination, overtaking even France in the mid-1970s (Natter 2015). An agreement was signed in 1971 to organize these migration flows, although the Libyan regime did not hesitate to resort to mass expulsions of Tunisians on the occasion of major diplomatic disagreements. The other important country for Tunisia's emigration history is Italy, which became a significant destination in the 1980s. Migration to Italy was mainly seasonal or temporary, but it became increasingly permanent after the implementation of a visa for Tunisians in 1990.

More than 1,2 million Tunisians (around one tenth of the population) were registered with Tunisian consulates in 2012.<sup>6</sup> More than half reside in France (55%), 15% in Italy and 7% in Germany. The rest are based in Arab countries (15% between Libya, the United Arab Emirates and Saudi Arabia) or in North America (3%). The educational level of emigrants increased significantly over the four last decades, reflecting an increase of the share of student migration (David

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<sup>5</sup>World Bank (2017). Impact of the Libya crisis on the Tunisian economy. Washington D.C.: World Bank.

<sup>6</sup>Office des Tunisiens à l'Étranger (2012). *Répartition de la Communauté tunisienne à l'étranger 2012*.

and Marouani 2018). More educated workers tend to settle more permanently (Boughzala and Kouni 2010).

The pressure of European countries on Tunisia to tighten its control of illegal migration led the Government to adopt a law in 2004 which sanctions heavily smugglers and any individual which contributes to illegal migration. Despite this law, bilateral negotiations with the two main host countries continued. In 2008, for example, France and Tunisia signed an agreement allowing more skilled migration to France in exchange of tighter controls and more readmissions of undocumented migrants in Tunisia. The agreement was only partly implemented (Natter 2015). Finally, the security void following the 2011 revolution led to a surge of illegal migration (Boubakri 2013), although this hike was temporary as border controls in cooperation with European partners was reintroduced quickly.

## 22.2 Migration and Social Protection in Tunisia

Two interlinked factors determine the regularity of the residence status of foreigners in Tunisia: respecting the rules for residence and having a work contract (for which non-nationals should get a permit). This work permit is generally granted under rather restrictive conditions (economic needs tests, etc.) for a maximum period of 1 year. Students, spouses of foreign residents and citizens from Maghreb countries can have residence permits without an authorization to work. Refugees registered with the United Nations High Commissioner for Refugees (UNHCR) have softened residence conditions, but they are not allowed to work (Hanafi 2017).

Once the legal residence requirement is met, there is no specific element in the Tunisian social security law that could discriminate between national and foreign residents in terms of accessing social benefits. Furthermore, according to the Ministry of Social Affairs,<sup>7</sup> bilateral social security agreements have been signed with 14 countries: France, Belgium, the Netherlands, the Luxembourg, Germany, Italy, Austria, Libya, Morocco, Algeria, Egypt, Mauritania, Spain and Portugal. All these conventions establish the principles of equal treatment with nationals of the country of employment and free transfer of benefits to the country of origin, with some exceptions such as the transfer of family allowances for children remaining in the home country that Austria, Switzerland and Luxembourg do not allow (Maddouri 2011). Moreover, the Euro-Mediterranean Agreement signed between Tunisia and the European Union (EU) in 1995 includes a component for regional coordination of social security agreements. This component is based on five principles (Maddouri 2011). Firstly, Tunisian workers and their family members residing with them benefit from a system characterized by the absence of any nationality-based discrimination. Secondly, social security covers sickness

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<sup>7</sup> *Ministère des Affaires sociales* (2018). <http://www.social.gov.tn>. Accessed 1 August 2018.

and maternity benefits, invalidity, old-age and survivors' benefits, industrial accident and occupational disease death benefits, unemployment benefits and family benefits. Thirdly, the aggregation of the periods of insurance, employment or residence completed in the various Member States with regard to pensions and old-age pensions, invalidity and survivors' benefits, family benefits, sickness and maternity benefits and health care for themselves and their families residing within the EU. Fourth, the export of family benefits within the EU. Fifthly, free transfer to Tunisia of pensions and old-age pensions, survival and accident at work or occupational disease and invalidity. 12 years after the entry into force of the Euro-Med Association Agreement in 1998, the European Commission presented its first proposal of implementation of this component.

There is a specific regime for Tunisian residents in countries that have not concluded social security agreements with Tunisia (Gulf, North America, Eastern Europe, etc.). The management of this regime is entrusted to the institutions of the Ministry at the Office of Tunisians Abroad (OTE) and the National Social Security Fund (CNSS). Contributors have access to the same benefits in Tunisia, but their health expenses in the host country are not covered. According to Maddouri (2011), the affiliation to this regime is very low, which led the Government to think about ways to increase information, simplify procedures and give more incentives to increase the coverage among the target population.

### 22.2.1 *Unemployment*

In Tunisia, unemployment benefits are granted to individuals with an open-ended contract who become involuntarily unemployed due to economic or technological reasons. The Tunisian unemployment scheme combines elements of unemployment insurance and unemployment assistance. They can be considered as unemployment insurance because the worker needs to contribute for three successive years to the CNSS within a given company to be eligible. However, the scheme also has some elements of unemployment assistance, as the upper limit of the unemployment benefit is the minimum wage and its maximum duration is of 12 months, independently on the length of individual contributions (once it is more than 3 years). There is no nationality criteria specified in the unemployment scheme.

Severance payments and legal rights are also taken in charge by the CNSS for workers who lose their jobs for economic or technological reasons. The indemnities and rights related to dismissal must be judged by a Court.<sup>8</sup> Severance payments and legal rights cover unpaid wages and accessories, unpaid leave with pay, severance indemnities and the end-of-service bonus fixed by the Labour Code. Employees who have lost their jobs can also benefit from the maintenance of family allowances

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<sup>8</sup> CLEISS (2018). *Le régime tunisien de sécurité sociale (salariés)*. <http://www.cleiss.fr/>. Accessed 1 August 2018.

and health benefits. Independent workers do not benefit from this scheme and there is no possibility to join the scheme voluntarily.

### **22.2.2 Health Care**

Health-related benefits are managed by the National Health Insurance Fund (CNAM). Foreign workers and their families can access these benefits under the same conditions as Tunisian nationals. For Tunisians employed in countries not linked to Tunisia by a social security agreement, a voluntary insurance system was set up in 1989 covering health care for the worker and the family members remaining in Tunisia. This voluntary contribution to the CNSS gives the same entitlements as the traditional scheme.

Workers who contribute to the CNSS and CNRPS and their families benefit from the CNAM system, which allows for reimbursements of medical costs or partial costs directly paid by the health fund. The beneficiary can choose between three systems: a) a public health care system where the patient benefits from services provided in public health structures and social security clinics; b) a contract doctor chosen by the patient and paid directly by CNAM) or; c) the reimbursement of costs in the two public and private sectors covered by the agreement, payment of the resulting costs by the social insured and subsequent reimbursement by the fund within the limits of the reimbursement rates relating to care benefits granted under the basic scheme. The third scheme is generally chosen by better-off households, as some doctors do not adhere to the CNAM contractual scheme for various reasons.

Insured individuals who wish to change the scheme must inform the fund at least 3 months before the end of the calendar year. Some specific groups are also exempted from paying the CNSS contribution: students, trainees, maids, laborers, farmers, fishermen, etc. Foreign students, nationals of a country that has a bilateral social security agreement with Tunisia for students or those receiving a scholarship from the Tunisian Government also benefit from the same advantages as Tunisian students.

It is estimated that between 10 and 20% of the vulnerable population in Tunisia does not benefit from any health coverage (Jaouadi 2016). Regular migrants who are not covered through a work contract in Tunisia can be affiliated to private insurance schemes (national or foreign) if they want to access the Tunisian health care system. Access to health care is also covered by some bilateral social security agreements signed by Tunisia (such as the one with Libya- see Jaouadi 2016). However, undocumented migrants face serious difficulties in accessing health facilities in Tunisia. Some of them benefit from the assistance of NGOs and humanitarian organizations. Although they do not have a guaranteed access to public health facilities, some are treated on a case-by-case basis by managers who try to find organizations to cover their medical treatment (NGOs, international organizations, embassies, etc.).



Cash benefits in case of sickness are paid under certain conditions: the insured needs to justify 50 days worked in the two last quarters or 80 days in the preceding year. The compensation is paid during 180 days, ceiling which can be increased in case of long-term illness. Foreigners who contribute to the social security system have the same health entitlements as Tunisians.

### **22.2.3 Pensions**

The Tunisian pension system is a pay-as-you-go system. A rapid demographic transition led to a structural deficit of the old-age funds since 2000 for the CNRPS and, since 2002, for the CNSS. According to the Tunisian National Statistical Institute (2009), the share of retirees is expected to increase from 10% in 2010 to 20% in 2034, mainly due to the rapid aging of the Tunisian population. The increase in the dependency rate puts a heavy pressure on the financial viability of the social security system (Ben Othman and Marouani 2016). Moreover, the Government plans to increase the statutory retirement age from 60 to 62 years in 2020, although this measure cannot guarantee the equilibrium of the funds' budgets.

The contribution to the pension system is compulsory and linked to obtaining a formal work contract. When a worker is affiliated to CNSS or CNRPS, a percentage from his/her income is automatically levied on employers and employees for pensions (total of 12.5% for pensions) and a percentage for health (8.25%). This conditional access to the health system is an incentive for workers to contribute to the social security system given that their behavior towards health risks is not impacted by time preference (Ben Braham and Marouani 2019).

Foreigners can access the contributory pension from Tunisia under the same eligibility criteria as Tunisian nationals. The residence criteria is compulsory at the time of claiming an old-age pension in Tunisia. However, this restriction does not apply for nationals from countries linked to Tunisia by bilateral social security agreements who can accumulate rights if they work in different countries and benefit from an old-age pension independently of their decision to remain or not in Tunisia (Maddouri 2011). The pension is paid "pro rata temporis". Each institution compares the amount of the national pension and that of the prorated pension and pays the more advantageous of the two. The debtor fund pays the pension directly, which is reversible to the beneficiaries. Tunisian workers residing abroad who benefit from the special social protection scheme that Tunisia has implemented for them also have access to an old-age pension from their country of nationality.

### 22.2.4 *Family Benefits*

Maternity benefits are currently equal to 2/3 of the average daily wage, capped at twice the minimum wage during the maternity leave period (4 weeks in the private sector and 10 weeks in the public administration).<sup>9</sup> There are also parliamentary discussions for extending the maternity leave period to 14 weeks for mothers in both sectors and 15 days for fathers instead of two currently. The objective is to adapt the Tunisian law to the Convention 183 of the International Labor Organization (ILO) on the protection of maternity in accordance with the new Tunisian Constitution. A scheme for paternity benefits is currently being discussed. Child benefits are granted to all contributors to the Social Security Funds for their three first children aged under 16 (or under 18 for those who are apprentices and receive less than 75% of the minimum wage, under 21 years if they are pursuing studies, or without any age limit for those with a disability or handicap).

Foreign residents who contribute to the Tunisian social security system are entitled to the same family-related benefits as national residents. However, Maddouri (2011) raises the issue of the transferability of child benefits when the children remain in the country of origin. Most bilateral agreements signed by Tunisia allow for the exportability of family allowances, except for the more recent agreements signed with Austria, Luxemburg and Switzerland.

### 22.2.5 *Guaranteed Minimum Resources*

Tunisia does not have a guaranteed minimum resources program, although there is an assistance scheme for the most vulnerable families since 2007 (*Programme National d'Aide aux Familles Nécessiteuses*, PNAFN<sup>10</sup>). Beneficiaries of PNAFN are also eligible for free medical assistance under the Free Medical Assistance Programme (AMG). This cash-transfers program targets households which have a lower income than the poverty line; have members with disabilities and/or chronically ill; lack a head of the family or there are no means to sustain the family. Household eligibility is reviewed every 2 years. Beneficiaries must visit the social welfare office every year and get a stamp on their free health care card. The card and PNAFN status can be revoked if the social worker deems that the household is no longer eligible.

230,000 households are currently covered by this program, thus receiving around 150 Tunisian Dinars (50 EUR) per month.<sup>11</sup> Although this is not specifically

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<sup>9</sup>CLEISS (2018). *Le régime tunisien de sécurité sociale (salariés)*. <http://www.cleiss.fr/>. Accessed 1 August 2018.

<sup>10</sup><https://socialprotection.org>. Accessed 1 August 2018.

<sup>11</sup>CRES (2017). *Évaluation de la performance des programmes d'assistance sociale en Tunisie*. Ministère des affaires sociales de Tunisie et Banque africaine de développement

stipulated as such in the legislation, this program is *de facto* reserved only for national residents, as foreigners must generally hold a work contract in order to obtain their residence permit in Tunisia (except students, spouses, etc.). Tunisian residents abroad do not qualify for this program.

Overall, except for some special categories (students, spouses of legal foreign residents, Maghreb countries' nationals), the main obstacle in terms of accessing social benefits for foreigners is to have a work contract which is a *sine qua non* condition to have legal residence in Tunisia. Thus, the access to social security by foreigners depends mainly on being affiliated with the social security fund through the work of the family head.

### 22.3 Conclusions

Tunisia has invested heavily in its social security system since the independence and kept reforming the legislation to improve the coverage of the system. Unemployment insurance is probably the main issue that has not been tackled yet, although many international institutions studies pointed the need of such a mechanism.<sup>12</sup> The pension system suffers also from the rapid demographic transition and the absence of reforms.

The first category of beneficiaries of the Tunisian social security system are the contributors who access the system through their formal work status. The second category is composed of students and families in need. Informal workers cannot access the social security system, except if they are beneficiaries of the programs for vulnerable families. Migrants who have a work contract benefit from equal access to social benefits as Tunisian workers. However, the residence criteria is compulsory at the time of claiming an old-age pension. This restriction does not apply for nationals from countries linked to Tunisia by bilateral social security agreements. They have also the possibility to transfer their old-age pensions abroad and to benefit from family allowances, including in some cases when their children stay in the home country. It is important to notice that Tunisia signed these agreements mainly with countries where it has an important emigrant population such as France, Italy, Libya, etc. Some agreements, such as the one with Mauritania, cover only students.

Migrants from countries not covered by a social security agreement with Tunisia have the possibility to use the voluntary contribution scheme. However, the coverage of this system is still low due probably to low incentives. Moreover, temporary migrants and undocumented ones are almost not covered in terms of social security, which increases their vulnerability. Although non-discriminatory in principle, the Tunisian social security excludes those who do not have formal work contracts. Given that the access of foreigners to work contracts is hard, it means that the access

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<sup>12</sup> See, for instance, <http://www.worldbank.org/en/news/feature/2016/05/20/tunisia-moves-to-modernize-its-social-protection>. Accessed 1 August 2018.

to the social security system is also hard. If we consider health more specifically, the access is not easy for irregular migrants, although some solutions are found through NGOs or international organizations. As for the assistance components (such as the PNAFN cash transfer program), although not formally excluding foreigners, they seem de facto dedicated to nationals.

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# Chapter 23

## Diaspora Policies, Consular Services and Social Protection for Tunisian Citizens Abroad



Stéphanie Pouessel

### 23.1 Diaspora Characteristics and Home Country Engagement

This chapter will present the general institutional framework by which Tunisian authorities interact with nationals abroad. In doing so, it will focus on the policies, programs and services offered by Tunisian authorities to respond to the social protection needs of nationals abroad across five specific policy areas (family, health-care, pension, unemployment and guaranteed minimum resources). Consequently, the chapter helps to understand the conditions of access of different categories of individuals to the diaspora and consular policies of Tunisia and, more generally, to what extent the home country protects its nationals abroad.

As explained in the chapter, the country's diaspora policies have given priority to cultural ties between Tunisian nationals residing abroad and their home country, diaspora's financial support for the home country and voting rights following to the 2011 democratic turn that has totally reconfigured the relations between political elites and citizens. At the same time, social protection for diaspora is limited to healthcare, pensions and family benefits, which is explained by the fact that the Tunisian social protection system is limited for all citizens whether they live abroad and or in Tunisia.

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### ***23.1.1 The Tunisian Diaspora and its Relations with the Homeland***

Emigration to Europe is a phenomenon that strongly shapes the Tunisian society. Since mid-1900s, Tunisia has experienced a large wave of emigration towards Europe. Today, about 10% of the Tunisian population is living abroad and 83.5% of them reside in the European Union (EU). France, in particular, is a major destination country as it hosts 58.5% of the total Tunisian emigrant population (followed by Italy, Libya and Germany). The Tunisian emigrant population in Europe varies depending the motivations for migration (studies, work, exile, etc.), its legal status (documented or not) and its patterns of acquisition of the destination country's nationality (it is estimated that 219,037 Tunisian nationals are dual citizens).<sup>1</sup>

Looking at the Tunisian state's reaction towards emigration, authorities have historically dealt with emigration by trying to protect its non-resident nationals through agreements with European destination countries. The state aimed to promote especially Tunisian workers and students abroad, in the hope that this would trigger benefits back to Tunisia. At the same time, it aimed to strengthen the national, cultural and identity ties of emigrants with Tunisia.

The progressive closing of pathways for legal migration towards the end of the twentieth century has led to increased illegal migration which has also become one of country's policy priorities. To support this argument, it is to be noted that Tunisia was, along with Morocco, among the first countries to sign a re-admission agreement with Italy in 1998. However, while Tunisia has been very active in the area of migration control, it has simultaneously developed policies to encourage the mobility of its citizens and trigger investments in Tunisia. Today, the profile of the diaspora hardly fits the image of the post-war emigrants: new generations of Tunisians abroad are mostly born abroad with two nationalities and they have developed cultural affinities with another country. As they can no longer be considered "migrants", Tunisia struggles to recognize them as full and equal citizens despite their national and cultural connections with other countries (Boubakri 2009).

### ***23.1.2 Diaspora Infrastructure***

Historically, Tunisia's infrastructure for its diaspora relies mostly on its consular network and ministry-level institutions. Today, Tunisia counts with 62 embassies and 24 consulates spread all over the world. Paris, Nice, Marseille, Lyon, Milan and Grenoble are the first most important consular districts.

Beyond consulates, nationals abroad have been dealt with a series of institutions that varied over time. At the time of the national independence (1954), the so-called "Tunisian workers abroad" (TTE) were considered as a critical response to the

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<sup>1</sup> *Office des Tunisiens à l'étranger* (2006).

country's labour market issues. For this reason, in 1967, the Tunisian Government created the Office for Employment and Vocational Training (*Office de l'Emploi et de la Formation Professionnelle*, OTE) that organized the direct recruitment of unskilled Tunisian workers for industry and building sectors in European countries. The Tunisian Government expected that workers would migrate temporarily and then return, which led scholars such as Sayad (1999) to postulate that the generation of Maghrebi migrants in France underwent a process of double absence by which they were disconnected from both their home and host countries. In response to this phenomenon, Tunisia adopted the principle of dual citizenship in 1975 "probably[as] a way to recognize that Tunisians in Europe would not return" (Brand 2006).

As stated above, Tunisia has historically promoted legal migration by signing agreements with European countries and with countries outside Europe (Canada, Australia, etc.), while trying to strengthen links with Tunisian emigrants in order to encourage their participation in local development in the homeland (Katterbach 2010). The OTE was created to this end to implement these policies through various cultural and social assistance programs.<sup>2</sup> To this day, it publishes scientific reports, analyses, and expert notes on the state of Tunisian emigration. Originally, it belonged to the State Secretariat for Migration and Tunisians Living Abroad of the Ministry of Social Issues and Solidarity. Since January 2014, the OTE is subordinated to the Ministry of Social Issues and Solidarity (similarly to the pre-2012 period). The OTE has 14 social *attachés* in Tunisian embassies and consulates and organizes cultural events, summer camps for Tunisian children living abroad and language courses to foster Tunisian migrants' ties to the country.

After the fall of the Ben Ali regime in 2011, emigrants – through elites and leaders of civil society associations active in the EU countries of residence – expressed a significant desire to participate in process of rebuilding the country. Migration issues became part of the important social, economic and political changes brought about by the revolution, which materialized in a new attitude on the part of public authorities regarding the Tunisian community abroad.

Following the post-revolution election in 2011, authorities therefore created the State Secretariat for Migration and Tunisians living Abroad (SEMTE), under the supervision of the Ministry of Social Affairs, mostly to acknowledge the importance of the country's emigrant communities.<sup>3</sup> SEMTE works on this task in collaboration with various ministries, including the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Employment and Vocational Training, and the Ministry of Social Affairs. It aims to instill a sense of belonging to the homeland among Tunisians abroad; ensure effective assistance to Tunisians abroad; protect the rights of the community; improve access to social protection; improve the quality of administrative support for Tunisians abroad; support community integration; and strengthen community involvement in the current democratic process. In 2014, however, the State Secretariat was suppressed and its

<sup>2</sup> Available at: <http://www.social.gov.tn/index.php?id=52&L=0>. Accessed 06 April 2020.

<sup>3</sup> Available: <http://www.social.gov.tn/index.php?id=12&L=0>. Accessed 06 April 2020.



responsibilities downgraded to the Office of Tunisians Abroad. It was reinstated in 2017 under the name the State Secretariat of Migration and Tunisians Living Abroad. Overall, in line with the political developments of the country in recent years, Tunisia's diaspora infrastructure is thus characterized by a certain level of volatility.

### **23.1.3 Key Engagement Policies**

The General Direction of Consular Affairs of the Ministry of Foreign Affairs is responsible for dealing with all matters concerning the consular domain, in particular, the protection of the rights and interests of Tunisian citizens living abroad, as defined by the bilateral agreements and according to the provisions of the 1963 Vienna Convention for consular relations. The General Direction of Consular Affairs ensures the follow-up of the activities of consular missions and sections accredited abroad, in coordination with the Tunisian ministries and specialized agencies.

Tunisian embassies and consulates abroad also provide services such as consular registration and authentication or legalization of documents. The services offered also include registering births, marriages and deaths, certifying copies of identity documents, applications for conversion to Islam, and nationality procedures (certificate of nationality and acquisition of Tunisian nationality by the Tunisian mother and the foreign father for the benefit of their minor child born abroad or by the Tunisian mother and the foreign father for the benefit of their minor child born abroad to a non-Tunisian father who died or disappeared). Finally, Tunisian embassies and consulates offer citizen services such as liquidation of the assets of Tunisians who die abroad, dealing with conjugal disputes, national service or help with the importation of vehicles and goods during a temporary or definitive return to Tunisia.

For instance, consulates offer a consular registration for any citizen legally residing abroad, at any Tunisian diplomatic or consular mission abroad.<sup>4</sup> The head of the family (the husband) or the wife if it is impossible to register the husband (in case of illegal residence, for example) is invited to register in the consular register, but they remain registered in their country of origin. To obtain any documents (passport, dispensation from military service, copy of the criminal record or any authentication of documents), an identity card, fiscal stamp and photo identification are required.

All Tunisian embassies and consulates abroad also offer a social service that provides information on social security coverage, as discussed below.<sup>5</sup>

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<sup>4</sup>Temporary registration is granted to those who do not have a residence permit. Available at: <https://www.diplomatie.gov.tn/en/nc/quick-access/e-services/>. Accessed 06 April 2020.

<sup>5</sup>Available at: <http://www.cgt-paris.diplomatie.gov.tn/index.php?id=165>. Accessed 06 April 2020.

To strengthen cultural ties with diaspora, the Tunisian House (*Maison de la Tunisie*) was created in 1953 to accommodate Tunisian students. Similarly, an Arabic language program was created for the younger generations of the diaspora in Europe, with a view to rooting them in their national identity. Overall, every consulate abroad has to propose Arabic courses to citizens abroad, and lessons are offered free of charge. In France, for instance, the Tunisian House in Nice offers Arabic courses for Tunisian children 6–15 years on a weekly basis.

OTE has a series of activities in the cultural and educational fields that are designed to strengthen ties with the diaspora. For Tunisian children abroad, OTE organizes Arabic language summer classes in Tunisia during the summer season. These classes will take place in the centers and schools reserved for this program. For Tunisian students and adults abroad, OTE organizes, in collaboration with the Bourguiba Institute of Modern Languages, three sessions of Arabic language for the benefit of Tunisian students and adults residing abroad. Similarly to what other states such as Israel or Morocco offer, during school holidays, OTE organizes exploratory trips, allowing young Tunisians living abroad to visit their country of origin with the idea of confronting them with “the richness of the national heritage”. The OTE also organizes, on an annual basis, exploration trips for Tunisians abroad aged 65 and over, enabling them to visit their country of origin and strengthen ties with their country and to promote their culture in their country of residence. OTE organizes camps during the summer season for young Tunisians living abroad between 9 and 14 years old. These camps are intended to help preserve the ties that bind them to their country of origin.

Looking at economic policies, the Tunisian Investment Incentives Code is the main reference for both domestic and foreign investors. Its aim is to ensure freedom to invest and to reinforce the Tunisian economy’s openness to the outside, while ensuring non-discriminatory treatment of direct foreign investment in the Tunisian legislation. It sets the ground rules for the creation of projects and incentives for investment in Tunisia by both Tunisian and foreign investors, resident, non-resident, or in partnership. It contains a set of financial and tax benefits and covers the majority of sectors.

In Tunisia, a series of tax incentives aim to encourage Tunisians abroad to invest in Tunisia by facilitating investment on legal, administrative and regional levels. Tunisians abroad enjoy tax benefits all over Tunisia. The investment of Tunisian emigrants is facilitated through one-stop-shops and further promoted through special incentives such as tax and customs exemptions. For instance, all Tunisians living abroad have the right to import their own car into Tunisia and clear it by payment of all duties and taxes due in Tunisian Dinars without production of import authorization. This Special Regime managed by the customs allows Tunisians living abroad to import a passenger vehicle or commercial vehicle with a gross vehicle under 3.5 tones (pick-up truck).<sup>6</sup>

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<sup>6</sup>Decree n° 2009–2162 of 14 July 2009.

In addition, in regions that are classified as areas of investment, any investment operation (owned by foreigners or by Tunisians) receives 10 years of tax exemption and, in agricultural regions, incentives through the Agency for the Promotion of Agriculture Investment (APA). Furthermore, Tunisian entrepreneurs living abroad have the right to import goods related to their core business activities (industrial, commercial or agricultural) without paying customs duties. Lastly, to support migrant engagement in the economy of the home country and avoid double taxation, Tunisia has ratified non-double-taxation treaties with around 50 countries, including nearly all European countries.<sup>7</sup>

As for electoral rights, Tunisians abroad have the right to vote in the presidential elections since 1988 but, because of the authoritarian regime, it is considered that residents abroad did not have actual access to political participation until 2011. After the fall of the former regime in 2011, the president of the High Authority for Achieving the Objectives of the Revolution, Political Reform and Democratic Transition defended the extension of the right to vote for Tunisians abroad in parliamentary elections. In response to “emigrant lobbying” (Lafleur 2013), a new electoral commission, known by its acronym ISIE, was created in May 2011 to supervise elections abroad where six districts had been created to represent the diaspora.<sup>8</sup> Overall, 454 polling centers were created, including in places outside the consular system: schools, offices of associations, centers, municipalities, etc. Indeed, the Tunisian revolution introduced the participation of Tunisians abroad in elections for the National Assembly and representation within the National Assembly.

In the first post-revolution election held in October 2011, the Tunisian diaspora was able to elect its representatives in the National Constituent Assembly (NCA) in order to enhance political participation for Tunisians abroad. 18 seats of the assembly were reserved to representatives from the diaspora (eight for France; three for Italy; three for America; three for the Arab countries; one for Germany; three for the Americas and the rest of the world). The new Tunisian Constitution that passed in January 2014 acknowledges the role of Tunisians living abroad. Two articles of the Constitution clearly address this group: Article 55 that guarantees the right to vote and the right to be represented in the Assembly; and Article 74 that grants dual citizens the right to run for the position of President of the Republic, under the condition that they pledge to give up the second nationality if elected.

Tunisians residing abroad can cast a ballot in home country elections at the national level. To be allowed to vote for presidential or legislative election, the basic

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<sup>7</sup>South Africa / Senegal / Mali / Cameroon / Ethiopia / Mauritius / Burkina Faso / Jordan / Egypt / United Arab Emirates UAE / Pakistan / Sultanate of Oman / Qatar / Lebanon / Yemen / Syria / Kuwait / Sudan / Saudi Arabia / France / Germany / Austria / Norway / Italy / Denmark / Sweden / United Kingdom of Great Britain and of Northern Ireland / Spain / Turkey / Romania / Czech Republic / Poland / Switzerland / Netherlands / Hungary / Luxembourg / Portugal / Malta / Belgium / Hellenic Republic / Serbia / Canada / United States of America / South Korea / Indonesia / China / Iran / Vietnam.

<sup>8</sup>The ISIE, then headed by Kamel Jendoubi, announced the creation of 18 parliamentary seats (out of 217).

criteria are to be 18 years old; to have no criminal record; to be registered in a Tunisian consulate abroad and to initiate the registration process. Tunisians can vote in person at consulates, embassies and polling stations abroad, but there is no possibility to vote by proxy.<sup>9</sup> Similarly, nationals residing abroad can stand as candidates and be elected in elections held at the national level, namely for the Assembly of the Representatives of the People or President.

## 23.2 Diaspora Policies and Social Protection in Tunisia

Before looking at Tunisia's engagement with citizens abroad in five core area of social protection, it is important to note that the Tunisian welfare state suffers from a series of limitations. Only 37% of Tunisia's population of 11 million contributes to pension payments, only half of the population is covered by health insurance, and there are no unemployment benefits for people who lose their jobs. Moreover, although nearly a quarter of Tunisians (23%) receive benefits, less than a half (40%) of those who do are among Tunisia's poorest people.

The Tunisian social security system is essentially run by the state. There are two funds under the state supervision which manage the statutory social security schemes: the National Pension and Social Contingency Fund (*Caisse Nationale de Retraite et de Prévoyance Sociale*, CNRPS) for the public sector and the National Social Security Fund (*Caisse Nationale de Sécurité Sociale*, CNSS) for the private sector. The board of administration of these funds is composed on a tripartite basis (the state, employers, and employees).

The CNSS was founded through Law 60–30 of 14 December 1960 to extend social insurance coverage to the private sector. The CNSS is a public organization with financial autonomy, but it is overseen by the Ministry of Social Affairs. The main CNSS social insurance schemes cover the following occupational groups: private-sector employees, excluding agriculture; employees in agriculture; members of agricultural cooperatives; self-employed, including in agriculture; Tunisians working abroad; students; low-income earners (including construction laborers, domestic workers, independent fishermen and small farmers, amongst others); artists.

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

<sup>9</sup> Available at: <https://www.diplomatie.gov.tn/nc/acces-rapide/nos-missions-a-letranger/>. Accessed 06 April 2020.

<sup>10</sup> The Decree is available at: <http://www.cnss.tn/documents/54202/130173/D.89-107.pdf>. Accessed 06 April 2020.

Additionally, the Tunisian Government has concluded 13 bilateral social security agreements with the following countries: France, Belgium, Italy, Luxembourg, Germany, Austria, Spain, the Netherlands, Algeria, Morocco, Egypt, Libya and Portugal. These agreements uphold the principles of equality of treatment and transfer of rights to the country of residence.

For decades, France has welcomed the largest number of Tunisian residents abroad. France signed a social security agreement with Tunisia in 2003, which allowed Tunisian workers carrying out their professional activities in France to be subject to the social security schemes applicable in France. Among the key rights granted is the right for Tunisian women working in France who meet the conditions for receiving maternity insurance benefits in kind and in cash to retain this benefit when transferring their residence to France. Tunisian workers in France whose condition immediately requires health care during a temporary stay in Tunisia during a leave of absence, respectively, shall receive these benefits for a period not exceeding 3 months. The dependents of a worker who resides in Tunisia while the worker resides in France shall receive sickness and maternity insurance benefits in kind. The dependents of a Tunisian worker benefit from immediate sickness and maternity insurance benefits when they reside temporarily in France.

Pensioners and early retirees who are entitled to sickness and maternity insurance benefits in kind under the legislation of only one of the two signing states and who reside in the other state shall receive benefits in kind in the country of residence. In term of family benefits, it is possible to aggregate the periods of insurance completed in Tunisia for the purpose of qualifying for family benefits. The payment of family allowances to the children of the worker, early retiree, annuitant or pensioner is maintained until the children reach the age of 18. Family allowances are limited to four children.

To support Tunisian citizens abroad, embassies and consulates offer a number of social services. They provides information on social security coverage, help in the treatment of marital conflict, health problems, judicial and administrative difficulties in addition to counseling and information. Social *attachés* are key in this regard, as their job is to defend the interests of the Tunisian community abroad in the area of social protection. They are assigned to every Tunisian consulate and embassy in Europe, Canada and the Arab world. In addition to these services, Tunisians abroad can find information about social risks associated with living abroad and their welfare entitlements while living abroad on the website of the National Health Insurance Fund.<sup>11</sup>

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<sup>11</sup> Available at: [http://www.cnam.nat.tn/tun\\_etranger.jsp](http://www.cnam.nat.tn/tun_etranger.jsp). Accessed 06 April 2020.

### 23.2.1 *Unemployment*

In Tunisia, unemployment allocation is offered under very strict conditions. Tunisian national residing abroad, as they are not employed/insured against unemployment in Tunisia, do not have access to unemployment benefits. With respect to employment services offered to Tunisian citizens who plan on moving abroad, neither the Ministry of Foreign Affairs nor Tunisian embassies or consulates provide professional training, cash or in-kind benefits in situation of unemployment. They also do not repatriate unemployed nationals residing abroad.

Similarly, the National Employment Service does not offer any training program before emigration that aims specifically to prepare nationals for employment abroad. However, the National Employment Service's website has a dedicated page to Tunisian workers abroad<sup>12</sup>, where it lists jobs announcements in different countries.

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

### 23.2.2 *Health Care*

In Tunisia, health insurance is managed by the *Caisse Nationale d'Assurance Maladie* (CNAM). The welfare scheme in Tunisia is compulsory for the entire population. It differs according to the socio-professional category. The insured's spouse and minor children are entitled to social security benefits and therefore to health insurance. To receive benefits from social security, one must either have worked at least 50 days during the last two quarters or have worked at least 80 days during the last four quarters.

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

The applicant must submit to the National Social Security Fund a birth certificate extract less than 3 months old, a copy of the National Identity Card, a work certificate or other documents attesting the exercise of a professional activity abroad and an official request<sup>13</sup>.

To benefit from this regime, the Tunisian worker abroad is obliged to join the National Social Security Fund and choose an income class used as a basis for the

<sup>12</sup> Available at: <http://www.aneti-international.tn/en>. Accessed 06 April 2020.

<sup>13</sup> Available at: <http://www.cnss.tn/documents/10156/25391/P304.pdf>. Accessed 06 April 2020.

calculation of contributions and benefits in cash, to mention the affiliation number in all correspondence or contact the National Fund, and to pay contributions quarterly in the first 15 days after each quarter.

To register family members, the Tunisian worker abroad must file with one regional and local offices of the CNAM, a birth certificate of less than 3 month of the spouse and each dependent child.

Consulates assist nationals living abroad with access to healthcare indirectly, providing information on rights to healthcare, types of insurance, documents needed for access to healthcare insurance and bilateral social security agreements through the website of the Ministry of Social Affairs. Since Tunisia has bilateral agreements on healthcare benefits with the most important destinations of Tunisians abroad, embassies and consulates in these host countries provide information on access to these benefits on their websites (these agreements uphold the principles of equal treatment and transfer of rights to the country of residence). In embassies and consulates, a social service provides information on rights to pension and invalidity insurance and bilateral social security agreement on pension insurance between Tunisia and other countries.

### **23.2.3 Pensions**

In Tunisia, pensions are regulated according to the social insurance scheme. Pensions can be received at the standard retirement age of 60 years, assuming a minimum of 120 months of contributions have been made to the scheme. Pension benefits are calculated as percentages of the employee's end-of-career salary on the basis of which they paid contributions for a minimum of 2 years. The minimum pension for public sector employees is 66.7% of the national minimum salary (known by its acronym as SMIG), which is an inter-trade minimum wage.

The pension system faces deficits, by conservative estimates, with the result that the most vulnerable members of the society, such as the self-employed, often remain uncovered by pension schemes.

The workers concerned by the social protection regime for Tunisian workers abroad benefit from the old-age pension and invalidity benefits schemes. The age of entitlement to old-age pension is 65 years old. However, people can apply for a retirement pension from the age of 60. The old-age pension rate is set at 30% of the average reference income.

Consulates assist nationals living abroad with access to pensions indirectly, providing information on rights to pension insurance, types of insurance, documents needed for access to pension insurance and bilateral social security agreements through the website of the Ministry of Social Affairs. For instance, in the bilateral agreement between Tunisia and Italy, the survivors of a pensioner or a deceased worker receive their pension.

Since Tunisia has bilateral agreements on pension benefits with the most important destinations of Tunisians abroad, embassies and consulates in these countries

provide information on access to these benefits on their websites. In embassies and consulates, a social service provides information on rights to pension and invalidity insurance and bilateral social security agreements on pension insurance between Tunisia and other countries.

Lastly, an important measure targeting old-age Tunisians living abroad is the repatriation in case of death. The Tunisian state pays for the repatriation of deceased citizens. It is a consular practice and a service offered by the Ministry of Foreign Affairs. The procedure is carried out by the consulate, in collaboration with the family of the deceased. The conditions for repatriation are that death must have occurred in the competent consular country, that a proof of Tunisian nationality must be provided and that the deceased does not have had any legal impediments in the host country. The documents to be provided are the death certificate and either the Tunisian identity document or the birth certificate. The Tunisian authorities pay all the repatriation and administrative costs.

#### ***23.2.4 Family-Related Benefits***

In Tunisia, family benefits are paid for children younger than 16 (18 if an apprentice, 21 in the case of students or the insured's children providing care for brothers and sisters, no age limit if disabled). Allowances are paid for up to three children.

The social protection regime for Tunisian workers abroad and bilateral social security agreements extend this right to Tunisian workers abroad. Family allowances are granted to children who remain in Tunisia, up to a maximum of four children.

Beyond benefits per se, Tunisian authorities have also developed numerous cultural and educational programs (with a focus on Arabic language classes) targeting the younger generations in Europe with a view of stimulating their national identity (see above).

#### ***23.2.5 Economic Hardship***

There is no policy by which Tunisian consulates ought to provide financial help to nationals abroad in case of economic hardship or homelessness. Consulates do not provide in-kind benefits, such as access to material goods or services. More specifically, none of the institutions - whether the Ministry of Foreign Affairs, its Office for Tunisians Abroad or social service offices in consulates and embassies - provide any sort of help (administrative or financial) for Tunisians abroad in case of hardship. Similarly, these Tunisian institutions do not offer any help to Tunisian nationals abroad with regard to accessing benefits and services related to minimum income resources in the host country either.



### 23.3 Conclusions

This chapter has shown that, in line with the well-established perception of the Tunisian diaspora that historically perceived itself as being instrumentalised by the homeland, Tunisian authorities traditionally perceived citizens abroad as an instrument for economic development, while aiming to foster linkages with this population by promoting cultural ties with emigrants and their descendants.

Since 2011 and the regime change, a new priority has emerged among Tunisian migrants who have fought to be recognized as full members of their homeland's polity. In this regard, citizens from abroad obtained the right to vote in parliamentary elections from overseas, with a specific parliamentary representation that few sending states have given to their diaspora (Lafleur 2013).

While the government has integrated its emigrant population into the political process since 2011, this has not translated in significant policy changes to the benefit of the diaspora in recent years. Policies still focus on first Tunisians migrant workers generation and their descendants and recent emigrants that have different characteristics than the old guest workers continue to be largely ignored by their homeland. For these reasons, Tunisian nationals abroad organize themselves informally as an emigrant lobby: their messages flow through Facebook pages, websites, associations, etc., spreading information, developing solidarity and enabling mobilization.

In spite of these limitations, the 2011 revolution re-awakened a deep-seated interest in Tunisian politics among those politically active Tunisians abroad, reinvigorating a long-distance sense of patriotism and untethering a process of "diaspora return". Coming from Europe and beyond, these returnees settled at the core of the state, becoming involved in political parties and civil society or reintegrating into social life. Their multiple belongings, their complex relation with their country of "origin", their "return" that does not entail entirely "leaving" their former country, and their ability to speak different languages, all challenge the traditional approach of Tunisian authorities that perceive Tunisians abroad in monocultural terms. For this reason, it is not unlikely that this population will affect the shape and content of Tunisia's diaspora policies in the coming years.

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# Chapter 24

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Turkey



Mehmet Fatih Aysan

### 24.1 Overview of the National Social Security System and Main Migration Features in Turkey

Social security systems have undergone significant challenges through economic and social dynamics. Contemporary migration flows across countries bring new risks and opportunities for different welfare regimes. Hosting about 4.5 million immigrants and having 6 million citizens abroad, Turkey is among the countries most affected by this wave of immigration. This chapter has two objectives. First, it aims to present the general legal framework regulating the Turkish welfare regime, paying particular attention to any variances in the conditions of access to social benefits between Turkish citizens residing in Turkey and abroad and foreigners residing in Turkey. Second, it aims to discuss how these different groups of individuals access social benefits across five main social policy areas (unemployment, health care, family allowances, pensions, and guaranteed minimum income).

The chapter consists of three parts. The basic characteristics of the Turkish social security system and migration trends are discussed in this part. The second part analyses different groups' access to social benefits provided by the state. It also scrutinizes the eligibility conditions that affect access by Turkish citizens, foreigners residing in Turkey, and Turkish people residing abroad to different social benefits. The third part summarizes the main findings, assesses the recent trends and challenges to social benefits across the five social policy areas, and offers recommendations for sustainable social policies.

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### ***24.1.1 Main Characteristics of the National Social Security System***

Many researchers analyse Turkey as a Southern European or Mediterranean welfare regime because of the role of the family in welfare distribution and the country's combination of Beveridgean universal national health services with Bismarckian income transfers (Gough 1996; Bugra and Keyder 2006; Gal 2010; Aysan 2013, 2018). According to Aysan (2018; 103–106), there are four main characteristics of the Turkish welfare regime. First, similar to Southern European and Middle Eastern countries, families play a significant role in the management of social risks. Second, the state has a strategic role in welfare distribution, particularly in education, health care, and pensions, while the market has a relatively minor but increasing role in welfare distribution. Third, non-governmental organizations (particularly religious organizations and home-township networks) also play a moderate role in welfare distribution. Fourth, populism and patronage are significant political apparatuses that shape the Turkish welfare regime and they are linked to historical developments particularly related to the process of political mobilisations (Ferrera 1996).

According to a recent survey on Turkish social policies (Aysan 2018), four welfare actors –the state, the family, the market, and non-governmental organisations– have varying roles in welfare distribution in Turkey. While 93% of the participants asserted that the family is the most important welfare actor in Turkey, the state (90%), the market (60%), and non-governmental organisations (54%) are relatively less significant players in welfare distribution. Hence, according to Aysan (2018; 106), although some have argued that Turkey is a residual and weak welfare state (Bugra and Keyder 2006; Bugra and Adar 2008), the Turkish state has a substantial role in welfare distribution, particularly for health care, education, and old-age security.

Global economic developments and new social risks, such as changes in family structure, demographic ageing, and huge migration flows from the southern and eastern borders of Turkey, have caused substantial transformations in the Turkish welfare regime since the mid-2000s. While Turkey achieved rapid economic growth in the 2000s, it also had one of the highest levels of social security expenditure in Europe, which necessitated two reforms of the social security system (in 1999 and 2006, respectively). In contrast to some welfare regimes which face social security challenges due to demographic factors, the Turkish social security regime faces additional challenges stemming from different endogenous factors such as corruption, populism, and institutional problems (Aysan 2013). In light of these challenges, by the mid-2000s, it was apparent that the Turkish social security system was not sustainable and required structural reform.

The Social Security and General Health Insurance (Law no. 5510) reform implemented in 2006 had three main components. First, three different occupationally based social security institutions were merged under one single institution: the

Social Security Institution (SSI, *Sosyal Guvenlik Kurumu, SGK*).<sup>1</sup> The structural and economic differences among these three institutions show a fragmented structure in the social security system, one which also exists in Continental and Southern European welfare regimes. Despite the new social security reform, these occupational differences and benefits are still valid in terms of the social security premiums of employees and the pension incomes of retirees in different sectors. For instance, in contrast to the social security scheme for public employees, the scheme for independent workers provides relatively low levels of benefits such as old-age, disability, and health insurance. Second, a universal health insurance system was formed to provide equal health coverage for all Turkish citizens, foreign workers and their dependents. Third, means-tested social assistance for all citizens started to be coordinated by an overarching social assistance system. This reform was particularly vital in the transformation of the inegalitarian Turkish social security system by replacing the separate social security institutions with a single overarching institution (Aysan 2013; 155).

### 24.1.2 Migration History and Key Policy Developments

Turkey has experienced a series of migration flows since the mid-nineteenth century. The collapse of the Ottoman Empire and the loss of its territories in Europe led many Turks and Muslims to migrate to Anatolia (Karpas 1985). The First World War and the emergence of the Turkish Republic resulted in the population exchange of many Muslims and Greeks (Hirschon et al. 2003). Nevertheless, the first large-scale migration from Turkey to Europe started after Turkey signed its first bilateral agreement with Federal Germany in 1961, with others soon following with Austria (1964), the Netherlands (1964), Belgium (1964), France (1965), Sweden (1967), among others. Through these agreements, Turkey was able to export its labour power, decrease its unemployment rates, and develop its economy through remittances (Abadan-Unat et al. 1976).

The bilateral social security agreements signed in the 1960s were mostly for Turkish citizens working in Western Europe. Their aim was to provide social security for Turkish guest workers in their host countries and upon their return to Turkey. Hence, the agreements signed with Germany, France, and the Netherlands (the three largest destinations of Turkish citizens) mainly address such employment-related social security conditions as unemployment benefits and pensions. They do not, however, facilitate access to guaranteed minimum income. Turkish citizens working

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<sup>1</sup>The first institution was the Social Insurance Institution (*Sosyal Sigortalar Kurumu, SSK*) established in 1946 for blue-collar employees working in public and private sectors. The second one was the Retirement Fund (*Emekli Sandigi, ES*) established in 1949 solely for white-collar public employees. Finally, social security coverage was extended by the Social Security Institution of Craftsmen, Tradesmen, and Other Self-Employed People (*Esnaf ve Sanatkarlar ve Diger Bagimsiz Calisanlar Sosyal Sigortalar Kurumu, Bag-Kur*), which was established in 1971.

abroad are obliged to adhere to the regulations of the host country. Employment status, citizenship, possession of a residence permit, and local regulations are important determinants of access to benefits in many countries. The effects of these migration outflows continue to be felt today. According to the Turkish Ministry of Foreign Affairs (2019), about 5.5 million of the 6 million Turkish people living abroad are based in Europe, while the rest are based in North America, Asia, the Middle East, and Australia. In total, the number of Turks living abroad represents about 8% of the total population of Turkey in 2018.

Turkey was one of the original signatories, with a geographical limitation, to the 1951 Refugee Convention. Under the convention, Turkey assumes full responsibility for refugees coming from countries that are members of the Council of Europe, while it may offer more limited protection to people coming from other regions. According to OECD (2010), Bulgaria, Germany, and the Former Yugoslav Republic of Macedonia (FYROM) are countries whose nationals represent the three largest groups of foreigners residing in Turkey. Nevertheless, many “foreigners” coming from these three countries are originally Turkish or Muslim, and most of them have dual citizenship. Hence, they have the same social rights as national citizens and their access to social protection schemes is different from that of the general category of foreigners living in Turkey.

At the beginning of the 2010s, this picture changed with the arrival of new immigrants from Turkey’s southern and eastern borders. According to Directorate General for Migration Management (2019), there were about 4.5 million immigrants, particularly from Syria, Iraq, and Afghanistan, living in Turkey in 2018. Because of the geographical limitation to the Refugee Convention, many of these immigrants do not have official refugee status. Nevertheless, several social protection schemes are in place for their benefit, particularly in the case of Syrians living in Turkey under temporary protection status. These social protection schemes include free health care, free drug plans, free education services, and monetary support.

## 24.2 Migration and Social Protection in Turkey

Turkey’s welfare regime is a complex one. One of the primary sources of this complexity is Turkey’s rapidly changing economic and political circumstances and relations with international organizations. Another is Turkey’s complex migration history, which over the years has added, especially in the case of recent immigrants from Syria, new layers of intricacy to the Turkish social protection system (Ihlamur-Oner et al. 2012).

There are four main characteristics of social protection in Turkey: (i) national health care services based on universalistic principles for all citizens; (ii) a fragmented and corporatist social security system based on employees’ occupations and social security plans; (iii) means-tested income transfers for people in need; (iv) the social protection system itself has a very complex structure and it is confusing for

many individuals. In light of these general characteristics, the conditions under which Turkish citizens and foreigners have access to social benefits in Turkey can be summarized as follows:

- Residence and employment status are important determinants of one's access to social protection in Turkey.
- Employment status generally determines the right of access to unemployment benefits, health care, pensions, and family benefits, while residence status is important for all social policy areas except pensions.
- The majority of social benefits provided for Turkish citizens are also available for foreigners who have legal status in Turkey through their employment status.
- Guaranteed income based on means-tested measures is mostly for residents of Turkey (nationals and foreigners).
- Family benefits may vary depending on one's occupation, residence and nationality.

Turkey is not a part of any regional integration organization working to promote intra-regional social security coordination or facilitate access to social benefits for specific migrant groups. Nevertheless, the EU accession process requires the government to pay consideration to EU regulations in the design of social policies.

### ***24.2.1 Unemployment***

Turkey has had a high and steady unemployment rate since the 2001 economic crisis mainly due to its welfare regime type and labour market characteristics (Aysan 2008). Considering the present high unemployment rates, which stood at 11% for all age groups and 20% for the 15–24 age group in 2017 (OECD 2018), unemployment benefits provide an important social safety net for unemployed persons. Both Turkish employees and employers are eligible for unemployment insurance. While foreign employees can also benefit from this insurance, Turkish citizens living abroad are not eligible, since they are not working in Turkey. Hence, the main requirement to obtain this benefit is one's working status in Turkey.

The Ministry of Family, Labour, and Social Services has a general oversight of employment and related fields. Under the supervision of the Ministry, the Turkish Employment Agency provides different services such as protecting and improving employment, addressing unemployment, and executing unemployment insurance services. Employees, employers, and the state pay an unemployment insurance premium based on employees' monthly gross income to the Unemployment Insurance Fund, with contributions of 1% from the employee, 2% from the employer, and 1% from the state.

In order to be paid unemployment benefits, the following conditions apply: (i) the worker must have been fired for reasons not his/her fault, (ii) the worker must have worked at the place of work for 120 days and paid the unemployment insurance premiums, and (iii) the worker must have paid the unemployment insurance

premiums for at least 600 days in the last 3 years. In addition, foreign workers must have lived in Turkey for at least one year to be eligible. Unemployed persons can benefit from unemployment insurance for up to 10 months. Turkey does not have any specific scheme of unemployment assistance.

### **24.2.2 Health Care**

Basic healthcare services and drug plans are provided by the state. This system depends largely on a compulsory social insurance scheme financed by both employees and employers' contributions. Spouses and dependent children of the insured also enjoy health care benefits through the SSI. Persons who do not have health care coverage through their employment status must pay the insurance premiums themselves in order to benefit from the national health services provided by the state. If one's monthly household income is less than one-third of the gross minimum wage, the premium is paid by the state. In total, 98% of the population was covered by the national health care system in 2017 (SSI 2017).

All foreigners residing in Turkey, regardless of their employment status, are covered by the health care system if they pay the national health security premium. Foreigners benefit from the same conditions as national citizens in terms of accessing benefits in kind in case of sickness. The health care and drug expenses of Syrians and some other nationalities under temporary protection status are paid by the Turkish state. Turkish citizens living abroad are not eligible for national health insurance benefits. Nevertheless, if they show an address in Turkey and pay the general health insurance premiums, they can also receive health insurance benefits.

The cost of medical treatment in state hospitals is paid by the health care scheme provided by the SSI. In state hospitals, patients pay only a very small amount of the cost of ambulatory treatment (0.1 Euros in 2019). Although treatment costs vary, patients pay an additional 10 Euros, on average, for ambulatory treatment in private hospitals. The rest of the treatment cost is paid by the SSI, which also helps cover drug expenses. Workers and their dependents pay 20% of the drug costs, while retirees pay 10%. The regulations are the same for Turkish citizens and foreigners who have social security coverage.

Other benefits provided by the state include support for workers who are temporarily or permanently incapacitated. There is no requirement of a minimum period of contribution or residence for this benefit. Temporary incapacity is the inability of the insured to work for a short period, due to workplace accident, occupational disease, illness, or maternity. Temporary incapacity must be documented by an authorized physician or health committee. Insured foreigners benefit from the same conditions as Turkish citizens, but non-resident nationals are not eligible for temporary incapacity benefits.

Permanent incapacity, or disability, which is determined by the health committee of the SSI, is defined as losing the capacity to work in one's profession at a minimum of 60% or at a degree which prevents a worker from carrying out his/her duties



because of a workplace accident or occupational disease. Disability insurance is a mandatory component of social insurance and is paid for through employee premiums. All working Turkish citizens are eligible for this benefit if they pay the social security premiums for at least 5 years. Foreigners and national citizens living abroad are not eligible for this long-term insurance.

### 24.2.3 Pensions

Old-age security and pension systems are key elements in discussions of state welfare reform (Myles and Pierson 2001; Myles 2002). Pension systems based on Pay-as-you-go (PAYG) schemes are under debate, particularly in ageing countries. According to the World Bank (1994), the financial security of seniors would be better served if old-age security had three components: a publicly managed mandatory pension system, a privately managed mandatory savings system, and a defined contribution voluntary savings system. Because of Turkey's long ties and stand-by agreements with the World Bank and IMF, the pension reform proposals raised by these institutions were more than a policy recommendation for Turkish policymakers.

Despite Turkey's relatively young population, the share of public old-age expenditure in total government expenditure is higher in Turkey (16.3%) than in Norway (10.3%) or Canada (9.1%) in 2010 (OECD 2018). In Turkey, the retirement age is 58 for women and 60 for men, while life expectancy at birth is 76 for men and 80 for women, as of 2018. Hence, the pension system and the retirement age are always at the centre of debates on social security reform. The pension system, which aims to achieve income maintenance through contributions of both employees and employers, experienced two major reforms in 1999 and 2006, and another revision in 2016. The 2006 reform increased the average pension contribution period from 7000 to 9000 days for both sexes. Furthermore, the reform implemented a gradual increase in the minimum official retirement age from 58 to 65 for women and from 60 to 65 for men. Nevertheless, the minimum retirement age will be only 65 by 2036, and it will be gradually equalized at 65 by 2048 (Aysan 2013).

The Turkish pension system provides different options for different retirees and is therefore very fragmented. When citizenship is considered, the system is even more complicated. As of 2018, Turkey uses a multi-pillar old-age security system proposed by the World Bank. The first tier comprises programmes designed to provide pensioners a minimum standard of living. The second tier is an earnings-related component designed to provide some standard of living in retirement. The third tier comprises voluntary savings contributed by employers or individuals.

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

The second tier is contributory pension income provided by the state for those who have paid old-age pension premiums. Pension benefits are central instruments that help the state distribute social welfare. This public contributory pension is available not only to working citizens but also to foreigners employed in Turkey. There is a compulsory social security deduction from workers' monthly income based on their salary, but homemakers and independently employed people can contribute voluntarily to secure a pension income when they get old. Non-resident citizens are also entitled to retirement benefits if they pay pension premiums in Turkey on a voluntary basis. Contributions made by Turkish workers to state pension programs in countries with which Turkey has a bilateral social security agreement are aggregated to determine their entitlement to a public contributory pension. Workers must pay the calculated premium cost for the period worked abroad to the SSI. Another part of the second tier, a privately defined savings scheme, was included in the system in 2017. According to Law no. 4632, employers are obliged to transfer at least 3% of the basic earnings of their employees to a private pension plan. Employees have the right to stay in this system for as long as they wish. Employees who are automatically included in this system receive additional pension premium support from the state if they stay in the system. Foreign employees are not eligible for this new system.

The third tier is a defined contribution voluntary savings system available for working and non-working groups, including foreigners. There is no residence or citizenship requirement to buy individual pension insurance.

#### ***24.2.4 Family Benefits***

While there is no parental benefit in Turkey, there are maternity and paternity benefits for different occupational groups regardless of their nationality. The conditions of access to maternity and paternity benefits are the same for national and foreign residents, although birth grants are exclusively reserved for resident nationals.

One's occupation is the main determinant for accessing these family benefits. Turkish citizens living abroad are not eligible to apply. In order to receive maternity benefits, a mother must have worked at least 90 days in the year before giving birth. As part of these benefits, 66.7% of an insured worker's gross income, which is close to her net earnings, is paid for 8 weeks before the expected date of childbirth and 8 weeks after the birth. Mothers can take up to 24 weeks of additional unpaid maternity leave after the paid leave. For public employees, unpaid leave may be extended to 108 weeks (2 years). Mothers can also work part-time with a full income 2 months after the birth of their first child, 4 months after their second child, and 6 months after their third child. Fathers working in the private sector can take 5 days of paternity leave, while public employees can take 10 days. There is no unpaid paternity leave in Turkey.

While there are some small lump-sum payments for public employees' children for specific conditions, there is no systematic child benefit in Turkey. Nevertheless,

resident Turkish mothers receive a birth grant in the form of cash support for a newborn baby. Regardless of their employment status, mothers receive a lump-sum payment of 50 Euros for their first child, 60 Euros for their second child, and 100 Euros for their third child in 2019.

In addition, the number of children a family has affects the rate of its minimum living allowance (*asgari gecim indirimi*), which is deducted from one's monthly income tax and available for Turkish citizens as well as foreign employees and their dependents living more than 6 months a year in Turkey. This benefit, nevertheless, is very small: 25 Euros for a single person and 40 Euros for a married person with two children in 2019. There are also indirect benefits for children and students. For example, conditional cash transfers for the poorest households are paid for children who attend school. Immigrants who have temporary protection status, particularly Syrians, also get this monthly conditional cash transfer, although other migrants such as Afghans and Uzbeks are not eligible.

### **24.2.5 *Guaranteed Minimum Resources***

The guaranteed minimum resource scheme aimed to help citizens and foreigners in need is organized by the Social Assistance and Solidarity Fund. The Fund is overseen by the Ministry of Family, Labour, and Social Service, but its social assistance services are managed by governors and other local authorities. There are different schemes for individuals who have lower income and lack social security coverage. The poor including widowed women, the elderly, the disabled, foreigners who have temporary protection status can receive varying amounts of guaranteed minimum income. There is no minimum period of residence in Turkey that Turkish citizens or foreigners have to prove to become eligible for the benefit. However, non-resident citizens are not considered as eligible claimants.

Turkey's public social assistance as a percentage of GDP was 1.5% in 2017 (Ministry of Family, Labour, and Social Services 2018). The share of support provided for refugees has increased significantly since the beginning of the war in Syria. As of October 2018, about 1.5 million foreign beneficiaries (a quarter-million households), mostly Syrians, received direct support through Turkish Red Crescent debit cards in the context of the organization's Social Harmonization Program (Turkish Red Crescent 2018).

## **24.3 Conclusions**

The Turkish welfare regime has undergone substantial transformations through the impact of internal and external dynamics (Aysan 2018). While an ageing population, increasing living standards, and high migration flows from the south and east have led the state to play a more active role in the welfare of both citizens and

immigrants, its increasing social expenditures have forced the state to develop new strategies for the increasing social protection needs of various groups.

The Turkish social protection system has a very complex and bureaucratic structure administered by many different institutions. Ongoing policy reforms, new regulations, and populist policies make the system more complex even for social security experts. Employment status affects not only one's income and pension benefits, but also health care and family benefits. The general characteristics of social benefits for Turkish citizens living in Turkey and abroad and foreign residents can be summarized as: (i) residence and employment status are important determinants of one's access to social protection in Turkey; (ii) employment status generally determines the right of access to unemployment benefits, health care, pensions, and family benefits, while residence status is important for all social policy areas except pensions; (iii) most social benefits provided for Turkish citizens are also available for foreigners who have legal status in Turkey through their employment status; (iv) guaranteed income based on means-tested measures is mostly for national and non-national residents of Turkey; (v) family benefits may vary depending on one's occupation, residence, and nationality.

The Turkish system of social protection is a fragmented one, with divisions based on occupational differences, residence, income level, and citizenship, much like the welfare regimes of Continental and Southern Europe. Nevertheless, the residence and employment status are the key determinants for accessing social benefits. Turkey, which was traditionally a source country for Europe and a transit country for many neighbours, has become a destination country particularly since the early 2010s. Regional conflicts and better economic opportunities in Turkey attract increasing number of legal and illegal immigrants to Turkey. Relatively generous social benefits for immigrants who have legal status and other migrants under temporary protection status might be related with the old social protection system designed for Turkish citizens living in Turkey. In addition, the social protection benefits of increasing number of Turkish citizens living abroad and their increasing burden to social security system were not re-evaluated by the recent governments. Hence, the Turkish social protection system is not designed for these new migration waves. This fragmented nature as well as regional and global socio-economic risks, which make structural social security reforms inevitable, bring new challenges to the Turkish welfare regime.

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# Chapter 25

## Diaspora Policies, Consular Services and Social Protection for Turkish Citizens Abroad



Seda Aydin and Eva Østergaard-Nielsen

### 25.1 Introduction

This chapter aims to describe and explain the development of the main features of Turkish diaspora policies, with a particular emphasis on the area of social protection. First, it presents the general institutional framework through which Turkish authorities interact with their nationals abroad and depicts the main engagement policies outside of the area of welfare. Secondly, it illustrates the policies, programmes and services offered by the Turkish authorities to address the social protection needs of Turks abroad. The chapter focuses on five main policy areas (unemployment, guaranteed minimum resources, health care, family benefits, and pensions) and discusses the role of three main actors (consulates, diaspora institutions and home country ministries/agencies) in the creation and implementation of these policies.

Turkey's diaspora policies have gone through different stages since the start of labour migration to Europe in the early 1960s. In line with the European Union (EU) membership bid until 2007 and the Government's assertive neo-Ottomanist foreign policy that envisions the country as a global actor, Turkey has had an increasingly active diaspora engagement since early 2000s (Unver 2013; Aydin 2014; Mencutek and Baser 2018). In this period, the Turkish state has adopted a strategy of proactive institutionalisation and investment in social capital upgrading in its emigrant politics (Aksel 2014), and has implemented a number of significant measures such as granting voting rights to the citizens abroad. One main pillar of the Turkish state's approach to the nationals abroad has been to defend and protect their

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rights before the host country authorities. The other pillar has been to consider them as political and economic contributors, courting both their political influence as ‘public diplomats’ and their entrepreneurial activities (Aydin 2014; Mencutek and Baser 2018). In accordance with this double approach, this chapter shows that in the area of social protection, Turkish authorities mostly assume the role of facilitating migrants’ access to the welfare benefits offered in the destination countries. This is accompanied by a number of policies designed to strengthen their economic, cultural and political ties with the homeland.

In the first section of the chapter, we examine the diaspora infrastructure through which the Turkish state engages with nationals abroad. Then we present the key engagement policies illustrating the priorities and the level of engagement of Turkey with its diaspora. In the second section, we focus on welfare policies facilitating the access to social protection of Turkish nationals residing abroad.

## 25.2 Diaspora Characteristics and Home Country Engagement

### 25.2.1 *The Turkish Diaspora and its Relations with the Homeland*

The current composition of the Turkish emigrant population is mainly shaped by the labour migration starting in the early 1960s. Germany rapidly became the most important destination for Turkish workers, whose number increased from 7116 in 1961 to 910,500 in 1973 (Al-Shahi and Lawless 2005, p. 12). Considerable numbers of Turkish workers were also recruited in other countries such as the Netherlands, France, Austria, Belgium, as well as Switzerland, Denmark, Sweden and Norway.

Starting as a temporary labour migration, the Turkish presence in these countries quickly turned into a permanent one. Although the recruitment of Turkish workers stopped in the 1970s following the sharp economic downturn in Europe, Turkish citizens continued to migrate in other ways such as family reunification and family formation. Particularly after the 1980 *coup d'état* in Turkey, and later due to the Kurdish conflict in Southeast Turkey, a political diaspora was added to the labour diaspora, which was followed by irregular migration in the 2000s (Sirkeci et al. 2012). Today, the highest numbers of Turkish citizens reside in Germany (3,081,113), France (649,482), the Netherlands (396,555), Austria (279,390) and Belgium (269,861).<sup>1</sup> These countries are followed by the United States of America (USA-230,377) which mainly hosts professionals, students and clandestine migrants providing unskilled or semi-skilled labour (Akcapar 2009).

In the early years of labour migration to Europe, the overall strategy of the Turkish state was to facilitate remittance flows and assist the return of migrants. As

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<sup>1</sup> Calisma ve Sosyal Guvenlik Bakanligi (Ministry of Labour and Social Security) (2018). <https://www.csgb.gov.tr/>. Accessed 20 February 2018.



it became clear in the early 1970s that Turkish migrants were settling permanently in Europe, Turkish authorities mainly leaned towards new measures against cultural assimilation, as well as policies that would encourage return such as a return program in collaboration with United Nations Development Programme. A key development in this era was the engagement of the Presidency of Religious Affairs with Turks abroad, sending imams to Europe from 1971 (Aksel 2014, p. 202).

The 1980s witnessed a further involvement of the Turkish state in emigrant policies, due to the political emigration of opposition groups in the aftermath of the 1980 *coup d'état*, and the emerging threats to the overall wellbeing of Turkish citizens abroad due to rising xenophobia and strict migration policies of the receiving countries (Østergaard-Nielsen 2003; Kadirbeyoglu 2007; Mügge 2012; Aksel 2014). In this context, the Turkish state mainly aimed at controlling and improving the conditions of the Turkish population in Europe. Among the most significant policy steps in this decade were the implementation of the dual citizenship law for the first time in 1981, sending Turkish teachers and imams to destination countries, the establishment of the Higher Coordination Council for Workers, and legislations on voting at customs in 1986 (Aksel 2014, p. 204).

In the 1990s, a new set of policies was introduced, encouraging the political and social participation of Turks abroad, such as the Pink Card which granted a number of rights to emigrants who gave up Turkish citizenship (Kadirbeyoglu 2010; Aksel 2014). According to Aydin (2014, p. 9), “two aims or intentions lay at the heart of Turkish diaspora policy in this decade: the successful integration of all people from Turkey in the countries that received them, and support of migrants in their demands for cultural rights.” Yet, Mencutek and Baser (2018) note that, due to the problematic security and economic conditions within Turkey, the Turkish state did not have the capacity to adequately address the needs of the Turks abroad. Rather, “homeland security had become dominant in the state’s approach to its interactions with migrants abroad” in this era (2018, p. 8).

The 2000s marked the beginning of a transformation process in Turkey’s domestic and foreign politics, which has had significant effects on its diaspora engagement strategies. Under the rule of the Party for Justice and Development (*Adalet ve Kalkınma Partisi*, AKP), Turkish foreign policy adopted neo-Ottoman tones symbolizing new geopolitical ambitions. The Turkish state defined new aims such as foreign policy activism and playing the role of a bridge and model country. Also, an emphasis on multiple geographical, historical and religious identities went hand in hand with the generation of a Muslim nationalism on the basis of a historic Turkish and Ottoman identity (Aydin 2014, p. 11). In this changing foreign policy context, new dimensions were introduced to Turkish diaspora policies. Aydin (2014, p. 13) underlines that the three main features that characterised this period are the explicit definition of Turks abroad as a “diaspora”,<sup>2</sup> the Turkish state’s engagement with this

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<sup>2</sup>In the legislative language, Turks abroad are generally referred to as “Turkish citizens” (e.g. the Law on the Establishment and Duties of the MFA No: 6004). More recently, a key institution in Turkish diaspora politics, the Presidency for Turks Abroad and Related Communities (YTB), has adopted the term “Turkish diaspora” in addition to “Turkish citizens”, to describe the Turkish

diaspora as a part of public diplomacy, and connecting this policy with a new view of the nation compatible with multiple Muslim identities. Mencutek and Baser (2018, p. 8) argue that in this period, “Turkey moved from being a *managed labour state* to a *global-nation state* that adopts many diaspora policies and provides emigrant populations with a greater number of rights.”

This period follows the state’s shifting perceptions of the Turks abroad from *remittance machines* to *Euro-Turks* which are unlikely to return, but maintain transnational ties to their homeland (Østergaard-Nielsen 2003; Aksel 2014, p. 204). According to Mencutek and Baser (2018), in the area of culture, the main concern of the Turkish state is to establish strong relations with second and third generation emigrants abroad. As regards the economic policies, they write: “Turkey is interested in the entrepreneurial activities of Turks abroad, their contribution to building trade relations, furthering economic growth, and strengthening bilateral relations/export ties.” (2018, p. 9) In the area of citizenship, more rights have been conceded to Turks abroad (such as the external voting rights), and the scope of rights for former citizens has been extended. Overall, in this period, the Turkish state considers the Turkish diaspora both as a resource to tap into in the context of transnational policy-making and lobbying procedures and as an important element of its imagined political community, which it must protect as an ambitious actor in the international arena (Mencutek and Baser 2018).

## 25.2.2 *Diaspora Infrastructure*

### 25.2.2.1 **The Consular Network**

Turkey’s consulates and honorary consulates are supervised by the General Directorate for Consular Services of the Ministry of Foreign Affairs (MFA<sup>3</sup>). Based on the Law on the Establishment and Duties of the MFA No 6004,<sup>4</sup> the duties of the consulates include providing consular services and protection to Turkish citizens and legal entities with Turkish nationality, providing visa services for foreign nationals, performing the tasks listed in the Vienna Convention on Consular Relations of 1963 and fulfilling duties given by Turkish embassies. According to the same law, honorary consulates are also responsible for protecting and developing the interests of Turkey, ensuring consular protection for Turkish citizens and legal entities with Turkish nationality, conducting consular procedures if specifically authorized, and fulfilling other duties assigned by the embassy.

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emigrants abroad. The policies of the YTB also addresses “the diasporas of related communities”, with which Turkey has “shared historical and cultural ties.”

<sup>3</sup> *Disisleri Bakanligi* (Ministry of Foreign Affairs) (2018). <http://www.mfa.gov.tr/>. Accessed 20 February 2018.

<sup>4</sup> <http://www.mfa.gov.tr/data/BAKANLIK/mevzuat-2013.pdf>. Accessed 20 February 2018.

In addition to the traditional consular services, other services are offered by the *attachés* and advisors who are appointed by the Turkish ministries to work in consulates or embassies. The *attachés* and advisors are mainly in charge of diplomatic tasks, while also providing information and other services to the nationals abroad on the host and home country services and policies. Their general duties are defined by their own ministries, while their specific tasks are determined based on the needs of the diaspora.

*Attachés* and advisors are appointed according to the needs of the emigrants, so they are not in service in every host country. The *attachés*/advisors of the Ministry of Labour, Social Services and Family are the most relevant ones in the context of this chapter. This Ministry was established by the first Government after the implementation of the presidential system in June 2018 and is the unification of the Ministry of Labour and Social Security and the Ministry of Family and Social Policies. While the services of the former Ministry of Labour and Social Security are more widespread and established in 23 countries, the first *attaché* of the former Ministry of Family and Social Policies was appointed in 2015 to Dusseldorf. In 2017, plans were announced to appoint further seven advisors (in Berlin, Paris, Brussels, Stockholm, London, Oslo, The Hague) and 13 *attachés* (in Cologne, Munich, Hamburg, Stuttgart, Dusseldorf). As of March 2020, the Ministry of Labour, Social Services and Family has 30 advisors and 27 *attachés* in 29 countries.<sup>5</sup>

Turkey also offers mobile consular services. These services are not defined in the law and their scope depends on the consulate, although not all consulates offer them. An online search suggests that consulates in large countries such as Canada, the USA, Australia, and China tend to offer these services more often. This include assistance with military enlistment, citizenship application, civil registry (marriage, birth, ID card, etc.), address declaration, and criminal record declaration. The upcoming mobile service days are generally announced on the webpages of the consulates.

### 25.2.2.2 Institutions at the Sub-ministry Level

One of the main institutions at the sub-ministry level is the General Directorate for Consular Services of the Ministry of Foreign Affairs, whose duties are defined by the Law on the Establishment and Duties of the MFA No 6004. The General Directorate is responsible for the consular relations, as well as the coordination and execution of the related meetings and negotiations. Consular services and issues regarding Turkish nationals abroad are under the responsibility of this Directorate.

The General Directorate of Foreign Affairs and Services for Workers Abroad, supervised by the recently established Ministry of Labour, Social Services and Family, is another diaspora engagement institution. Founded in 1967, it is

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<sup>5</sup> <https://www.ailevecalisma.gov.tr/digm/contents/dis-temsilciliklerimiz/genel-bilgiler/>. Accessed 20 February 2018.

responsible for protecting and improving the rights and interests of Turkish workers abroad, by offering help regarding their problems abroad or after return. It also aims at monitoring employment types and rates of the Turkish labour force abroad, developing related policies, coordinating social security agreements with other countries, and keeping contact with international institutions of labour and social security.<sup>6</sup>

One of the most significant institutional changes at the sub-ministry level was the introduction of the Presidency for Turks Abroad and Related Communities (YTB, *Yurtdışı Türkler ve Akraba Topluluklar Başkanlığı*) in 2010.<sup>7</sup> The YTB worked under the supervision of the prime ministry until Turkey's transition to the presidential system in June 2018. Since then, it works under the authority of the Ministry of Culture and Tourism. The YTB constitutes the main institutional basis for the state's relations with Turkish citizens, (former) nationals and kin and co-ethnic communities abroad, as well as international students of Turkish and Muslim origin in Turkey. Its main aim is to strengthen and maintain social, cultural and economic relations with Turkish citizens and other Turkish origin communities abroad. Also, it considers the international students who are YTB scholarship-holders all over the world as volunteer ambassadors of Turkey. The YTB fosters relations with Turks abroad mainly through meetings with the Turkish migrant associations and an advisory committee of selected migrants called the Consultative Board of Turkish Citizens Abroad (*Yurtdışı Türkler Danışma Kurulu*).

In 2018, the YTB for the first time directly addressed the issues of family and social services for the Turks abroad with the Family and Social Services Experts Training and Consultation Program and scholarships for expert training. Also in 2018, the YTB started a scholarship program for expert training of lawyers who received their high school education and law degrees abroad and who are affiliated to the bars of the host countries. According to its website, the aim of the program is to train legal experts to fight Islamophobia, discrimination, and violation of rights against Turks abroad. Scholarship holders are expected to work with an NGO determined by the YTB to offer consultancy services to the Turks abroad, as well as do research and prepare reports on related topics.

The YTB also places a special emphasis on the issue of education and cultural mobility of Turks abroad, supporting the children and the youth through weekend schools, scholarships and internships for nationals and Blue Card holders who live abroad. For instance, the 'Young Leaders Program' (called the Diaspora Youth Academy in 2018) was designed to help create role model individuals for the Turkish diaspora since 2013. Moreover, the first Human Rights Education Program was held during the summer of 2017 with the aim of training undergraduate students on issues such as human rights protection, public advocacy, and the function of Turkey's administrative system and public institutions.

<sup>6</sup> <https://www.csgeb.gov.tr/diyih/contents/genel mudurluk/gorevlerimiz/>. Accessed 20 February 2018.

Accessed 20

<sup>7</sup> For further details regarding YTB's activities and aims, see: <https://www.ytb.gov.tr/en/corporate/institution>. Accessed 20 February 2018.

### 25.2.2.3 National-Level Public Institutions

One of the earliest national-level public institutions of the diaspora infrastructure is the Islamic Union of the State Office of Religious Affairs (DITIB, *Diyanet İşleri Türk İslam Birliği*) established in 1984 in Germany to coordinate the religious associations and maintain links with emigrants (Østergaard-Nielsen 2003; Aksel 2014; Mencutek and Baser 2018). Originally founded as a religious association, DITIB gradually became the umbrella organisation of the mosque associations in Germany. Among the main aims cited on its webpage are undertaking religious activities, establishing interreligious dialogue with other groups, encouraging Turks to embrace the Turkish culture and organizing cultural and social activities. According to Aydın (2014, p. 17), “DITIB is subject to the management and control of the Turkish state Presidium for Religious Affairs (DİB) and thus represents a view of Islam that is compatible with the official state policies.” The primary focus of DITIB is to provide religious services such as *hajj* and *umrah* Islamic pilgrimage trips to Mecca, and funeral funds for the repatriation of the deceased to Turkey.<sup>8</sup> It also has departments dedicated to the youth, women, consulting on social and family affairs, intercultural and interreligious dialogue, and educational and cultural topics.

In other host countries, similar institutions, usually known as *Diyanet*, were established in the form of foundations, such as the Turkish Islamic Foundation of Belgium (*Belçika Diyanet Vakfı*), the Turkish Islamic Foundation of the Netherlands (*Hollanda Diyanet Vakfı*) and DITIB France. Imams working with these foundations are civil servants whose salaries are paid by the Turkish Government, which creates an organic link between these foundations and the Presidium for Religious Affairs (DİB, *Diyanet İşleri Başkanlığı*) (Yanasmayan 2010, p. 146). Underlining the influence of the DİB over these foundations, Doomernik (1995, p. 51) notes “since mosque organizations usually have tight budgets and employees are very expensive, it immediately becomes clear how powerful this *Diyanet* [DİB] trump card is.” The scope of the services provided by these foundations varies from one country to another, as there is no unified program.

The World Turkish Business Council (DTİK, *Dünya Türk İş Konseyi*), founded under the semi-autonomous Foreign Economic Relations Board (DEİK, *Dış Ekonomik İlişkiler Kurulu*) in 2007, represents the main institution through which Turkey maintains ties with the “Turkish business community” abroad (also see Mencutek and Baser 2018).<sup>9</sup> According to its website, DTİK aims “to boost the commercial and economic relations among the Turkish business community settled outside Turkey, to strengthen and disseminate the Turkish diaspora further, to create

<sup>8</sup> Being buried in the home country is an important issue for most Turks. According to *der Spiegel*, “Islamic undertakers estimate that 70–80% of Muslim immigrants in Germany arrange to have their bodies sent home mainly to Turkey.” Along with religious reasons, this tendency also has financial and legal reasons. For example, Muslims prefer to be buried in shrouds, but laws in most German states require a coffin for a burial. (<http://www.spiegel.de/international/homeward-bound-muslims-in-germany-choose-to-be-buried-abroad-a-462035.html>. Accessed 20 February 2018.)

<sup>9</sup> <http://www.dtik.org.tr/KonseyYapilanmasiTanimim.html>. Accessed 20 February 2018.

one main centre for all kinds of problems that the Turkish entrepreneurs face abroad, and to lead the efforts to establish a stronger image for Turkey in the world.”

The Yunus Emre Foundation (YEV, *Yunus Emre Vakfı*) and the Yunus Emre Cultural Centres (YEKMs, *Yunus Emre Kültür Merkezi*), founded in 2007, have been the central institutions for the promotion of Turkish culture. Their responsibilities are stated as “presenting Turkish cultural heritage, promoting cultural exchange, making information about Turkey available and providing educational services on Turkish language and culture and on the country’s arts” (Aydin 2014). Although they are not specifically designed to meet the needs of the Turks abroad, the services they offer, such as Turkish language and culture courses, are arguably addressed to them as well.

#### 25.2.2.4 Consultative Bodies

The Consultative Board of Turkish Citizens Abroad (*Yurtdışı Türkler Danışma Kurulu*) was the main consultative body through which the Turkish nationals abroad can express opinions about specific areas of interest. It was founded in 2010 by the same law that regulates the YTB and was active until the end of 2016.<sup>10</sup> It consisted of maximum 70 members living in countries which host the largest number of Turkish citizens. Its members, with or without Turkish citizenship, were nominated by the presidency of the YTB and appointed by the president of the Board itself. Their duties include advising on problems of Turks abroad; advising on the equal participation of the Turks abroad to the economic and social life in their countries of residence; advising on the detection of the needs of the Turks abroad that should be met by the Turkish Republic; advising on activities to raise international consciousness on xenophobia, racism and discrimination; organizing workshops, meetings, conferences about the issues under its responsibility; participating to similar events organised by other institutions. The Board met at least once a year. It took decisions by majority vote, but the opinions of the MFA were given priority in the decision-making process. It was not obligatory for the Turkish authorities to consult this Board.

#### 25.2.2.5 Diaspora Infrastructure of the Turkish Political Parties

With the new legislation that gives extraterritorial voting rights to the Turkish nationals abroad since 2012, the Turkish political parties have increased their organisational capacities abroad. To deal with the concerns of the nationals abroad, mainstream parties have created bodies such as the Foreign Affairs Office (AKP) and the Coordination Office for Organisation Abroad (CHP, *Cumhuriyet Halk Partisi*, Republican People’s Party). These parties have also opened representative units in the host countries.

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<sup>10</sup>The Consultative Board is at the phase of organisational restructuring at the moment of writing of this chapter. <https://www.ytb.gov.tr/kurumsal/yurtdisi-vatandaslar-danisma-kurulu-yvdk>. Accessed 20 February 2018.

### 25.2.3 *Key Engagement Policies*

While diaspora policies remained relatively inefficient until the 1980s, Article 62 of the 1982 Constitution prepared the legal framework for the emigrant affairs for the first time, decreeing that the state should “take all necessary measures to ensure family unity, the education of children, and the social security of Turkish citizens working abroad, to secure their ties to their homeland and to help them to return.” Through the 1990s, Turkey’s interest in diaspora engagement increased, but remained limited to advisory boards and parliamentary commissions. An intensive period of engagement and institutionalisation started in 2003 by a parliamentary investigation commission attending to the problems of the Turkish nationals abroad and calling for a separate directorate for emigrant affairs (Mencutek and Baser 2018).

Scholars explain the major changes in diaspora engagement policies since the early 2000s by the EU accession trajectory (which is now abandoned), and the transition to an active foreign policy with neo-Ottoman connotations, which puts emphasis on public diplomacy (Unver 2013; Aydin 2014; Mencutek and Baser 2018). Following Erdogan et al. (2013), Mencutek and Baser (2018) write that the Turkish state has created a unified set of diaspora policies with the following objectives: to defend emigrants’ rights, especially regarding the prevention of discrimination, racism and Islamophobia; to improve the competence and qualifications of emigrants; to foster emigrants’ relations with the homeland, and their role in Turkish politics, foreign policy and the economy; and to reflect the broadening of Turkey’s conceptions of citizenship, belonging and identity.

In this regard, the granting of the external voting rights in 2012, and the foundation of institutions such as the YTB, the DTIK and the YEKMs, are considered among the main policy steps in diaspora engagement. Mencutek and Baser (2018) also underline the increasing quality of the consular services in the last decade, following the orders of the Ministry of Foreign Affairs to develop closer relations with the Turks abroad (Mencutek and Baser 2018). To this, one can also add the above-mentioned expansion of the services of the *attachés* and advisors working within the body of the consulates and embassies.

Several changes were also made regarding citizenship policies. First, in 2004, the ‘pink card’, which was issued to the Turks abroad who gave up Turkish citizenship, was substituted by a ‘blue card’. In 2009, with the Turkish Citizenship Law No 5901, the scope of the rights guaranteed by the blue card was extended.<sup>11</sup> Accordingly, blue card holders can enjoy all the rights granted to Turkish citizens, except the right to vote, the right to work as a state officer, the right to import vehicles and household goods without taxation, as well as the military service obligations (Mencutek and Baser 2018).

In the economic realm, several policies have been implemented to encourage investment and economic engagement of the Turks abroad. With a change in the

<sup>11</sup> <http://www.resmigazete.gov.tr/eskiler/2009/06/20090612-1.htm>. Accessed 20 February 2018.

Law on Value Added Tax No 6824 in 2017,<sup>12</sup> Turkish nationals who live abroad for more than 6 months with work and/or residence permits and foreign non-profit organisations in Turkey enjoy the same rights as foreign investors residing abroad to buy real estate without VAT payment, as long as the payment is made to real or legal persons in Turkey. Moreover, until 2017, Turks abroad could benefit from cash repatriation (*varlık barışı*) based on Law No 6736, which annulled monitoring, taxing and charging fees in the transfer of money and other assets from abroad. This regulation was repealed in June 2017 due to the Tax Information Exchange Agreement among the countries of the Organisation for Economic Cooperation and Development (OECD). With a new regulation introduced by Law No 7143, a new cash repatriation policy has been implemented since July 2018.<sup>13</sup> This law guarantees exemption from fees and taxation for individuals who transfer their assets such as money, gold, securities and other capital market instruments to Turkey and declare them to Turkish banks.

### 25.3 Diaspora Policies and Social Protection in Turkey

In a context of intensified diaspora engagement policies, which mainly aim at defending the rights of the emigrants in the host countries and promoting their economic and political contributions to Turkey, social protection policies offered by the Turkish state to its nationals abroad remain limited. Consulates and *attachés* mainly play a role in the dissemination of information regarding the social protection regulations of Turkey and the host countries and provide assistance in related paperwork. Until 2018, the main social services offered by the Turkish state or its diaspora institutions to nationals abroad were repatriation services for the deceased, health aid for those who benefit from health coverage in a number host countries, right to retirement from abroad, and child support. In 2018, the role of the YTB, which is the main diaspora institution, has been increased with the aforementioned programs and scholarships on family, social services and legal affairs. The YTB mainly aims at defending and protecting the Turks abroad in relation to host country authorities in these matters. Yet, counselling and therapy services through NGOs constitutes a new example of the institution's involvement in the direct provision of social services.

Regarding the most relevant social protection services, such as the in-cash and in-kind aids by the consulates or other diaspora institutions, Turkey does not have any publicly announced policies. Indeed, the Consular Guide for Travellers Abroad prepared by the MFA clearly states that consulates and embassies do not have public

<sup>12</sup><https://www.verginet.net/Dokumanlar/2017/6824-Sayili-Kanun-Vergi-Indirimi.pdf>. Accessed 20 February 2018.

<sup>13</sup><https://www.gib.gov.tr/7143-sayili-kanunun-tebligleri>. Accessed 20 February 2018.



funds for in-cash aids.<sup>14</sup> Exceptional examples are the social aid programs organized by the *Diyanet* foundations in the host countries. For example, the Turkish Islamic Foundation in the Netherlands (*Hollanda Diyanet Vakfi*) collaborates with Dutch NGOs such as the food banks to help the poor regardless of their religious and ethnic background.

Repatriation aid in case of emergencies such as wars or natural disasters is listed as the responsibility of the consulates in the Consular Guide for Travellers Abroad. However, there is no detailed description of this policy, which is likely to be discretionary. Repatriation of deceased bodies has been addressed by the Funeral Funds of DITIB in Germany and the corresponding foundations in other countries, which work like a solidarity fund with monthly membership fees. Overall, informing, assisting and defending the Turkish nationals with respect to social protection procedures of host countries is the main priority of the Turkish diaspora policies in this dimension.

As for the policy of information dissemination, similar to the *attachés*/advisors taking charge of dissemination of information in the host countries, the YTB offers an online guide called “Guide for Citizens Abroad”.<sup>15</sup> This guide presents information about the services of the Turkish state on a series of citizenship affairs, including the procedures for obtaining a passport abroad, customs regulations, Blue Card regulations, as well as health, social security and social services policies. As its name suggests, the above-mentioned Consular Guide for Travellers Abroad by the MFA is designed for the Turkish citizens travelling to other countries, rather than the emigrants living abroad. Notwithstanding, it may be helpful for emigrants, as well, as it gives advice and describes the responsibilities of the consulates in a number of cases such as hospitalization, detention, and emergency situations.

### 25.3.1 Unemployment

Social protection services for the Turkish nationals abroad in the area of unemployment are limited. A general policy of consulate services such as training, cash or in-kind benefits or repatriation assistance for the unemployed emigrants does not exist. Although there are no specific descriptions or unified regulations, some consulates circulate job offers and organize activities where employers can meet Turkish nationals. Consulates announce such opportunities in their websites and by mailing lists. As there is no specific registry or description of these services, the only way to identify them is to look through the announcement pages of each consulate. For example, in May 2016, Berlin consulate hosted the second German-Turkish Professional Training Fair, where Turkish nationals had the chance to meet German

<sup>14</sup><http://www.mfa.gov.tr/yurt-disina-seyahat-edeceklere-konsolosluk-rehberi.tr.mfa>. Accessed 20 February 2018.

<sup>15</sup><https://www.ytb.gov.tr/yurtdisi-vatandas-rehberi>. Accessed 20 February 2018.

companies, German Pension Insurance Institute, Chamber of Craft and Related Trade Workers of Germany, and the Turkish-German Chamber of Industry and Trade.

Protecting and improving the rights and interests of Turkish workers abroad and helping with their problems abroad are stated among the responsibilities of the Directorate of Foreign Affairs and Services for Workers Abroad of the Ministry of Labour, Social Services and Family. The *attachés*/advisors of this Ministry assist nationals abroad in dealing with local regulations on unemployment, including getting access to unemployment benefits in the host country. Assistance includes providing information and advocacy before the local authorities, as well as helping with the paperwork and applications to the local authorities, collaborating with the latter in professional training programs, etc. There are advisors/*attachés* in 23 countries. In Germany, their services are a bit more extended due to the large Turkish population. For example, the office of the *attaché* in Germany has a detailed website where one can find Turkish translations of German laws and regulations on many topics including unemployment benefits.

### 25.3.2 Health Care

In the area of health care and invalidity, consular services, such as training to prevent health risks abroad, cash or in-kind benefits or repatriation assistance in case of illness, do not exist. In a number of countries, consulates and *attachés* offer assistance in the preparation and submission of administrative documents for the health aid program for Turkish nationals who have health coverage abroad.

One of the most relevant policies in the area of health care is the above-mentioned health aid program for individuals (both Turkish nationals and non-nationals) who have health coverage in countries which have signed bilateral social security agreements with Turkey.<sup>16</sup> Accordingly, individuals paying social security contributions in Germany, the Netherlands, Belgium, Austria, France, Northern Cyprus Turkish Republic, Macedonia, Romania, Bosnia and Herzegovina, the Czech Republic, Luxemburg, Croatia, Serbia and Montenegro are entitled to free health care during their stay in Turkey, upon paying a contribution fee.<sup>17</sup> To receive this service, they need to submit the necessary documents obtained from the social security institute in the host country to the social security institute in Turkey. The service includes coverage of medical visits, treatments, medicine, and hospitalisation by the Social Security Institute of Turkey. Among these countries, individuals who have health coverage in Austria, Belgium, France, the Netherlands, and Germany receive a permanent YUPASS number for the health services indicated above, while the others are provided a “Health Aid Document”, the duration of which is ascertained by the

<sup>16</sup><https://www.ytb.gov.tr/soru-cevap/saglik-ve-sosyal-guvenlik>. Accessed 20 February 2018.

<sup>17</sup>Fees for outpatients depend on the institution. For medical coverage, working individuals pay 20%, whereas the retired pay 10%.

social security institute of the country of residence. YUPASS originally started as a part of the social security agreement between Germany and Turkey. Austria, Belgium, France, and the Netherlands were included in the YUPASS system in 2017.

In the case of Germany, services of the *attachés*/advisors of the Ministry of Labour, Social Services and Family are relatively extensive. The *attaché* office of the former Ministry of Labour and Social Security offers an elaborated webpage to assist nationals abroad in dealing with health regulations in host and home countries, by mainly providing Turkish translations of German laws. The *attaché* office of the Ministry of Family and Social Policies provides consultancy services on invalidity benefits given by German institutions. Services include providing information, helping with filing applications, advocacy before German institutions, and referring the applicants to relevant NGOs or other institutions.

### 25.3.3 Pensions

Starting in the 1960s, Turkey has signed bilateral social security agreements that facilitate the portability of pensions with 28 countries, including Austria, Belgium, Canada, Denmark, France, Germany Luxemburg, Norway, the Netherlands, Sweden, and Switzerland.<sup>18</sup> As of January 2015, the scope of the agreement with Germany includes old-age pensions, survivor's pensions, invalidity benefits, health insurance benefits, occupational diseases, work injuries, and family allowances that are unilaterally covered by Germany (Holzmann 2016, p. 16). According to Holzmann (2016, p. 15), despite significant changes in the characteristics of migration and the situation of the labour market, the scope of these agreements tend to “reflect the migration situation of decades ago and the labor market goals of the 1950s and 1960s.”

Based on the Turkish Law on Retirement from abroad No 3201,<sup>19</sup> the *attachés* of the Ministry of Labour, Social Services and Family are responsible for providing assistance and information to Turkish nationals regarding access to home country pensions. According to this law, which dates back to 1985, nationals working abroad can pay SSI premiums to Turkey for the time they work abroad. Although returning to Turkey is stated as a condition for receiving pensions, the website of the YTB mentions that the condition of return can also be interpreted as “no longer working abroad and not receiving any host country pensions or aids.”<sup>20</sup> The requirements are to be a Turkish citizen, to file a written application and to document the time spent abroad. As a proof of return, the applicants need to present the entry stamps on their passports. The *attachés* receive the applications and if the evaluation is favourable, they issue the “Service Abroad Document” (*Yurtdışı Hizmet Belgesi*) to the

<sup>18</sup>[http://www.sgk.gov.tr/wps/portal/sgk/en/detail/social\\_sec\\_agree](http://www.sgk.gov.tr/wps/portal/sgk/en/detail/social_sec_agree). Accessed 20 February 2018.

<sup>19</sup><http://www.mevzuat.gov.tr/MevzuatMetin/1.5.3201.pdf>. Accessed 20 February 2018.

<sup>20</sup><https://www.ytb.gov.tr/soru-cevap/saglik-ve-sosyal-guvenlik>. Accessed 20 February 2018.

applicants. Subsequently, this document should be submitted to the SSI in Turkey by the applicants themselves. Moreover, the SSI in Turkey offers consultancy by phone for inquiries regarding retirement from abroad on issues such as how to file an application, and how to receive pensions.

### 25.3.4 *Family-Related Benefits*

In the area of family-related diaspora policies, the consulates and the *attachés* of the Ministry of Labour, Social Services and Family help Turkish nationals obtain birth certificates for children born abroad and help prepare their paperwork for child support. Based on the Population Services Law No 5490<sup>21</sup> and the Civil Law No 4721,<sup>22</sup> all Turkish citizens have to declare the birth of their children to the Turkish consulate within 60 days. Documents issued by foreign authorities need to be sent by mail or handed in personally to the consulate by either of the parents. In principle, declarations are made to the mission that corresponds to the place of birth of the child. If the parents choose to declare it in another country, which has not signed the International Commission on Civil Status contract on the issuing of multilingual birth certificates, the application is double-checked by the consulate that is responsible for the place of birth of the child.

Based on Decree No 633<sup>23</sup> dating back to 2015, the Ministry of Family and Social Policies<sup>24</sup> pays a one off child benefit per child born to nationals abroad or in Turkey, as well as to the former Turkish citizens who are Blue Card holders. The amount is 300 TL (around 50 Euros) for the first child, 400 TL (around 65 Euros) for the second child, and 600 TL (around 100 Euros) for each of the following children. Applications by nationals abroad are made to the consulates and embassies with the birth certificate of the child and a petition.

One of the most significant institutional developments in the area of family is the appointment of the Dusseldorf *attaché* of the Ministry of Family and Social Policies for the first time in 2015. With this step, the Ministry aims to work on detecting and solving the problems faced by nationals abroad, come up with suggestions on how citizens abroad can benefit more effectively from the host country social services, defend the rights of nationals abroad, follow social security regulations in host countries and collaborate with host country authorities.<sup>25</sup> The Dusseldorf *attaché* addresses the problems of Turks in all parts of Germany until the opening of new

<sup>21</sup> <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5490.pdf>. Accessed 20 February 2018.

<sup>22</sup> <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf>. Accessed 20 February 2018.

<sup>23</sup> <http://www.resmigazete.gov.tr/eskiler/2011/06/20110608m1-1.pdf>. Accessed 20 February 2018.

<sup>24</sup> From June 2018 on, the new Ministry of Labour, Social Services and Family

<sup>25</sup> *Aile ve Sosyal Politikalar Bakanlığı Dusseldorf Ateseligi* (Dusseldorf *attaché* of the Ministry of Family and Social Policies) (2018). <https://dusseldorf.aile.gov.tr/>. Accessed 20 February 2018.

similar offices in Hamburg, Stuttgart, Cologne and Munich, which was declared by the Ministry in 2017.<sup>26</sup>

In 2018, the YTB has for the first time directly addressed the issues of family and social services for the Turks abroad. Together with the Family and Social Services Experts Training and Consultation Program, it organised a meeting of experts on the cultural, social, legal and demographic dimensions of the family structure of Turks abroad in September 2018.<sup>27</sup> Only Turkish nationals, or Blue Card holders who received their graduate and/or post-graduate degrees in a number of host countries, are eligible for this program. Moreover, the YTB offers scholarships for expert training for the Turkish nationals and Blue Card holders who receive graduate and post-graduate degrees in the host country institutions in fields related to family issues and social services.<sup>28</sup> The goal of these scholarships is to increase the variety of family-related support, therapy, consultancy and social services for Turks abroad and to contribute to the formation of human resources in this field. In return, scholarship holders are expected to volunteer in NGOs determined by the YTB which address the needs of Turkish citizens.

As mentioned earlier, the YTB also plays a role in family services as they offer courses and scholarships to children abroad. The YTB funds the Weekend Schools Program, which is organised by NGOs and other educational institutions and aims to provide Turkish, history, religion, culture and arts classes to Turkish children abroad with a duration of 32 to 40 weeks. It also supports NGOs abroad, which work in the promotion of bi-lingual preschool education. Another institution involved in the education of children is the Directorate of the Religious Affairs, whose advisors (mostly *imams*) offer religion classes.

### 25.3.5 *Economic Hardship*

The only service that the Turkish state offers to nationals abroad in the realm of social assistance is the help provided by the *attachés* of the former Ministry of Labour and Social Security. This assistance consists of providing information and advocacy regarding the procedures and regulations in the host country. As mentioned earlier, the *attaché* office in Germany offers a detailed website where one can find Turkish translations of German laws and regulations on many topics that also cover the German scheme of guaranteed minimum resources.

<sup>26</sup> <http://www.hurriyet.com.tr/dunya/almanyadin-4-kentinde-aile-ataseligi-aciliyor-40392454>. Accessed 20 February 2018.

<sup>27</sup> <https://www.ytb.gov.tr/guncel/aile-ve-sosyal-hizmetler-uzmanlari-egitim-programi>. Accessed 20 February 2018.

<sup>28</sup> <https://www.ytb.gov.tr/guncel/aile-ve-sosyal-hizmetler-alanlarinda-uzmanlik-bursu>. Accessed 20 February 2018.

## 25.4 Conclusions

Turkey's diaspora engagement policies have taken different forms since the 1960s. Until acknowledging emigrants' permanent settlement in the host countries, the Turkish state mainly aimed at benefitting from emigration in order to boost economic growth and cut down the unemployment rates. During the 1980s, the Government started to take measures to control and improve the circumstances of the Turkish population in Europe. In the 1990s, further institutional mechanisms were developed to encourage social and political engagement of the Turkish diaspora with the homeland. However, due to domestic security and economic concerns in this period, the Turkish state did not have the adequate resources to fully address the problems of the emigrants (Mencutek and Baser 2018).

Following the transition to a more active foreign policy in the 2000s, Turkey has strived to boost its soft power and to display its increasing competence as a global actor. The shifts in foreign policy mark the start of a new era of Turkish diaspora politics with significant institutional changes. In this new era, one tier of the overall approach of the Turkish state to nationals abroad has been to defend and protect their rights before the host country authorities. The other tier has been to consider them as political and economic contributors, courting both their political influence as 'public diplomats,' and their entrepreneurial activities (Aydin 2014; Mencutek and Baser 2018).

In this context, Turkey's social protection policies mainly focus on helping the emigrants navigate the host country social protection procedures and strengthening their economic, cultural and political ties with the homeland. Many consular social protection services such as in-kind, in-cash and repatriation aids are not present in the framework of social protection policies. *Attachés* of the Ministry of Family and Social Policies and the Ministry of Labour and Social Security, who work in consulates, mainly concentrate on assistance with host country procedures. In other words, Turkish authorities consider themselves as the facilitator of migrants' access to the welfare entitlements of the destination countries. In this context, the new legal expertise and family and social services programs of the YTB starting in 2018 signal a step forward in the Turkish diaspora engagement policies of social protection.

Among the five core policy areas discussed above, family-related benefits, access to home country pensions, and healthcare stand out as the most significant ones. Family-related benefits have the largest scope with elements such as child benefits, expansion of the related *attaché* offices, the YTB programs and educational services for children. In line with the Government's emphasis on family values as an intrinsic part of conservative policies, family benefits constitute the broadest social policy area. Protecting the Turkish family values in the host country constitutes an important core for the overall diaspora policy of defending the rights of emigrants, especially regarding discrimination, racism and Islamophobia. In this respect, training social service workers and lawyers employed by host country institutions can also be considered as an example of how Turkey shows its increasing capabilities to the other actors in the global arena.

The 2018 presidential and legislative elections consolidated the power of the ruling party AKP and its leader Erdogan. Since then, the President and Government have been challenged by the electoral success of the opposition in key Turkish cities in the 2019 local elections and the economic downturn. Despite such challenges, Turkey has continued with an active foreign policy approach in 2019, bringing forward the issues of national security and strategic autonomy. While it has gradually moved away from its traditional Western allies, it has entered in new deals with Russia and continued to build important ties in Africa and Eurasia. Based on the current situation, it is likely that Turkey's active foreign policy approach will continue in the future. In this respect, rather than any major changes or new directions in the diaspora engagement policies, one can expect a strengthening of the already existing approaches. The latest programs added to the agenda of the YTB can be regarded as a proof of this continuing trend.

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# Chapter 26

## Access to Social Protection by Immigrants, Emigrants and Resident Nationals in the UK



Alessio Bertolini and Daniel Clegg

### 26.1 Overview of the Welfare System and Main Migration Features in the United Kingdom

The UK has a complex history of social protection rights in relation to immigrants. Gradually moving away from its colonial heritage, the UK over time imposed limitations on both immigration rights and access to its welfare system on its (former) British subjects, who no longer enjoy a privileged status compared to other immigrant groups. At the same time, the UK's membership of the EU, and particularly its participation in the Single Market, created a category of migrants from EEA countries who enjoy no immigration restrictions and have almost equal access to social protection to British citizens residing in the UK. The large influx of migrants from EEA countries in recent years prompted UK Governments to try to limit their access to social protection, as a mounting anti-immigration climate and especially a fear of overburdening the welfare system with 'benefit tourists', has become a dominant political issue. This culminated in the 2016 vote for the UK to leave the EU in an advisory referendum, with the UK officially leaving the EU (so-called Brexit) on 31 January 2020. After this date, the UK has entered a transition period under which the details of the future relation between the UK and EU are being negotiated. The transition period is set to end on 31 December 2020. The new legislative framework which will regulate access to social protection for EEA immigrants residing in the UK and British nationals residing in EEA countries is likely to bring conspicuous changes for these two categories. However, at present, it is difficult to gauge the

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entity of these changes as access to social protection constitutes among the most controversial issues over which the UK and the EU aim to find an agreement.

In this chapter, we demonstrate how, at present, access to social protection by immigrants is hierarchically structured depending on immigration status, residency status and benefit type. Most favoured under UK law and policy are resident British citizens and all immigrants with a permanent leave to remain, who enjoy full social protection rights. Next are EEA immigrants with a right to reside, who have the same rights as British citizens in most social protection fields. Nevertheless, the basis of the right to reside plays an important role, as only those in employment or their family members enjoy full social protection rights, whilst all others face limitations in many non-contributory benefits. Finally, non-EEA immigrants with a temporary leave are generally excluded from all non-contributory benefits, but they are usually entitled to contributory ones. As regards British citizens who have emigrated, they generally have access to contributory benefits, but face several limitations as regards non-contributory ones, with easier access for those living in EEA countries or in countries with which the UK has a social security agreement.

### ***26.1.1 Main Characteristics of the National Social Security System***

The UK social protection system is rather residual in European comparative perspective, reflecting an emphasis as in other ‘liberal’ welfare states on market over non-market relations (Dukelow and Heins 2018). The financing of social security rests to a more limited extent than in most other European countries on specific payroll contributions, which account for only 35% of receipts in 2015 compared to a European average of over 50% and more than 60% in both France and Germany. The lion’s share of social protection funding in the UK comes from general government sources, which in 2015 represented more than 50% of receipts.<sup>1</sup>

The UK social security system – the system of cash transfers – is still highly centralised in its governance, with most expenditure in this area administered by the Department for Work and Pensions (DWP) or Her Majesty’s Revenue and Customs (HMRC). For reasons linked to its special status, Northern Ireland has its own cash transfer legislation and associated administrative bodies – though legislation has traditionally followed and matched that in Great Britain. Another qualification is that some powers over a number of social security benefits were devolved to the Scottish Government under the 2016 Scotland Act (Simpson et al. 2019). The main working-age social security benefits, family benefits and the state retirement pension remain, however, reserved to the Westminster Government. The provision of health and social care services has been rather more affected by the recent

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<sup>1</sup>Eurostat (2019) ‘Social protection receipts by type’, <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00108&plugin=1>. Accessed 10 April 2019.

devolution of powers to the UK's constituent nations, as since 1999 the devolved Governments in Belfast, Cardiff and Edinburgh have had power over the organisation of both health provision and local government social services.

The UK social security system is characterised by four main types of cash benefit (Millar and Sainsbury 2018: 3–4). First are universal or *demogrant* benefits, paid at standard rates to all individuals who fall into a specific category, irrespective of their work/contribution record or their household income. Child benefit was until recently the main example, but since 2013, high-earners are no longer eligible; specific disability and carer benefits to cover exceptional costs (Disability Living Allowance; Personal Independence Payment; Attendance Allowance) also fall into this category. Secondly, contributory benefits, entitlement to which is based on an individual's contribution history derived mainly from their employment biography, cover individuals against interruption of earnings for reasons of retirement, unemployment, sickness/disability and widowhood. Unlike in many other developed countries, contributory benefits (also called 'national insurance' benefits) in the UK are paid at a flat-rate, without any reference to an individual's prior earnings. Means-tested benefits (also called 'income based' or 'income related'), thirdly, are paid to a variety of households with low incomes based on the circumstances of the adult members and the number of children living in the household. Tax credits, finally, are an administratively specific form of means-tested benefit that have become an important feature of the UK social security landscape since the late 1990s. Tax credits are paid to lower-income working households (Working Tax Credit) and lower-income working or non-working households with children (Child Tax Credit).

In-kind benefits, or services, are the other major component of the social protection system. This is a particularly significant type of social protection in the area of health in the UK, which has a National Health Service (NHS) to provide ambulatory and hospital care. With some overlap with the NHS, services in the area of social care and social work are provided by local governments.

At time of writing, the UK social security system is in a transitional phase that results from the gradual implementation of the main provisions of the 2012 Welfare Reform Act. The most significant of these is the introduction of a new general means-tested benefit called Universal Credit (UC), which will eventually replace existing categorical means-tested benefits for the unemployed, the disabled and lone parents as well as means-tested housing benefits and tax credits. UC is being introduced initially only for new claimants, and only for all new claimants in certain parts of the country (so-called 'full service areas'). In some other parts (so-called 'gateway areas'), only new claimants meeting gateway conditions – for example, being single and not having children, but also being a British citizen – can claim UC, while others can continue to claim pre-existing 'legacy benefits'. The latest estimate for the date at which all current claimants of legacy benefits will be transferred on to UC is 2022.

### ***26.1.2 Migration History and Key Policy Developments***

In line with other former colonial countries, the UK has a long history of immigration. For a great part of the second half of the twentieth century, the largest share of immigrants came from Commonwealth countries and Ireland (Hansen 2000). The British Nationality Act 1948 granted the status of Citizen of the United Kingdom and Colonies (CUKS) to all individuals born or naturalised in either the UK or one of its colonies, thus allowing individuals from the colonies who moved to the UK to be considered like any other British citizen in most rights (Spencer 1997).

Nevertheless, the growing immigration flows from the 1950s onwards prompted successive Governments to gradually tighten immigration laws and restrict the social rights of immigrants. In the 1960s, controls were first introduced and then tightened on all immigrants not born in the UK or not holding a passport issued by the British Government. In 1971, the ‘right of abode’ was created, granting full social protection rights only to those CUKSs born in the UK, born, adopted or married to a British citizen and those who had settled in the UK for at least 5 years. In 1981, the CUKS status was substituted by different citizenship statuses for British citizens and from those from Overseas or Dependent Territories, granting the ‘right of abode’ only to the former (Spencer 1997).

The 1990s constituted a turning point for immigration in the UK. On the one hand, the scrapping of the Primary Purpose rule (1997) relaxed regulations preventing spouses married to British citizens from settling in the UK (Wray 2006). Together with an improved economic situation, this contributed to drawing an increased number of migrants to the country, more than doubling net migration within a few years (Vargas-Silva and Fernández-Reino 2018). On the other hand, the deepening of the European Single Market largely abolished immigration restrictions on EEA nationals, allowing free movement of people in and out of the UK. To regulate access to the welfare system among this group of migrants within the parameters allowed by EU law, the ‘habitual residence’ test was introduced and access to non-contributory benefits for EEA immigrants was granted only to those who could prove to be ‘habitually resident’ in the UK (Kennedy 2011a). This test also applies to British citizens who have been living abroad, as access to most non-contributory benefits is conditional on being habitually resident in the UK, though British citizens living in the EEA or in non-EEA countries with which UK has social security agreements can still claim some non-contributory benefits.

Immigration from EEA countries remained relatively low until 2004, when the EU enlargement brought a high number of Eastern Europeans, especially Polish, to the UK. The UK was one of the few EU countries not to introduce transitional immigration restrictions on citizens of the acceding member states, only introducing some limitations on social protection access through the Worker Registration Scheme, which allowed Eastern European (so called ‘A8’) immigrants with a contract of employment to access a range of non-contributory benefits only after 12 months of residence (McCullum 2012; Dustmann and Frattini 2014). In the same year, legislation was amended to grant access to non-contributory benefits only to

EEA immigrants with a ‘right to reside’ (Kennedy 2011b, 2015a). In 2007, following the unexpected inflow of EEA immigrants which had doubled net migration since 2004, the Government introduced strict immigration rules for citizens of Romania and Bulgaria (so-called ‘A2’) and temporary restrictions in both work and social protection rights (Shutes 2016).

The Coalition Government that came to power in 2010 adopted a much tougher stance on immigration and access to social protection rights than its predecessor, as the increased flux of migrants in previous years pushed immigration to the top of the political agenda, together with an increasingly dominant political and media discourse on ‘benefit tourism’ (Carmel and Sojka 2018). With respect to non-EEA nationals subject to immigration control, the Welfare Reform Act 2012 introduced the possibility to restrict access to contributory benefits to those with a right to work in the UK, though at time of writing, this provision has not been followed up by implementing regulations (Child Poverty Action Group 2017: 67); and the Immigration Act 2014 introduced an ‘immigration health surcharge’ payable at the time of the visa application as a condition of free access to most NHS services (Powell and Bate 2017).

Over the same period, the Eurozone crisis helped to change patterns of EEA migration to the UK, as Southern Europe became an important source of immigration. Further, the end of the transitional restrictions to A2 nationals in January 2014 rapidly brought Romania to overtake Poland as the main country of origin of new migrants. The end of restrictions for Bulgarians and Romanians also brought a raft of policy changes to address what then Prime Minister David Cameron described as “the magnetic pull of Britain’s benefit system” (cited in Kennedy 2015a: 19). These included the introduction of a more rigorous ‘habitual residence test’ and several restrictions in accessing non-contributory benefits.

Immigration and migrants’ access to social protection were core political issues during the EU membership referendum campaign, and popular opposition to immigration is often argued to be a key factor in explaining the referendum results (Clarke et al. 2017; Blinder and Richards 2018). After the 2016 vote, the inflow of EEA immigrants has waned, whilst immigration from non-EEA countries has stayed in line with previous years (Vargas-Silva and Fernández-Reino 2018).

## 26.2 Migration and Social Protection in the United Kingdom

The conditions that regulate access to social security benefits can be thought of as pertaining to three different levels of conditionality (see Clasen and Clegg 2007): conditions of category, conditions of circumstance, and conditions of conduct. While conditions of circumstance (e.g. contribution requirements, means-tests), and conditions of conduct (e.g. work or training requirements for claimants), are the main focus of comparative social security analysis, the boundaries of the risk groups that social benefits and services are designed to help are themselves social constructs, formed by manipulation of conditions of category. While these conditions

are of various types (demographic for age-related benefits, diagnostic for health services or disability benefits, etc.), a number also relate to the legal and/or physical attachment of claimants to the national territory. Conditions of ‘ordinary residence’ or ‘habitual residence’ are part of this first level of conditionality, and for UK nationals apply to all means-tested benefits and tax credits as well as to child benefit (except where a bilateral agreement covering this benefit is in place), though not to contributory benefits (Child Poverty Action Group 2018: 1549–1555). Under the UK’s ‘habitual residence’<sup>2</sup> rules, for example, a claimant must be able to prove that at the time of the claim they have a settled intention to reside in the UK (in fact, the common travel area)<sup>3</sup> and, for unemployment assistance alone, that they have been living in the common travel area for the past 3 months.

EEA nationals coming to the UK to seek work also have to pass the habitual residence test, which has been made more rigorous due to concerns about ‘benefit tourism’ by this group (Carmel and Sojka 2018). But many EEA nationals do not need to prove habitual residence in the UK to claim benefits, as long as they have a ‘right to reside’ as workers or self-employed persons (or their family members), for which they need to show that they are in ‘genuine and effective work’. The status of worker or self-employed, and with it the right to reside and claim benefits, can also be retained after the (self-)employment ends for up to 6 months, though longer than that only if a ‘genuine prospect of work’ (GPoW) can be demonstrated. In this way, we see domestic policy using conditions of conduct to make limitations on access to benefits that they can no longer pursue through conditions of category due to EU law (see also Shutes 2016). After Brexit, it is likely that only EEA with settled status<sup>4</sup> will continue to enjoy the same rights as before. Non-EEA nationals who are subject to immigration control are excluded by the terms of their visas from accessing those UK benefits that fall under the definition, in immigration law, of ‘public funds’. This concept covers all means-tested benefits and tax credits as well as the universal child benefit and disability/carer’s benefits. The rights of non-EEA migrants to social protection in the UK are essentially limited to contributory benefits and health services. It is still uncertain whether EEA immigrants without settled status will be treated as non-EEA immigrants for social protection purposes at the end of the transition period following Brexit.

Benefits requiring habitual or ordinary residence generally cannot be exported overseas, and benefits that don’t – such as contributory benefits – may also have

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<sup>2</sup>The term ‘habitually resident’ is not defined in legislation, but there is now quite a substantial body of case law on what it means. Factors may include the length and continuity of residence, the person’s future intentions, reasons for migration or where the person’s ‘centre of interest’ lies (Kennedy 2015b).

<sup>3</sup>The common travel area (CTA) is an open borders arrangement between the UK, Ireland, the Isle of Man and the Channel Islands. For the purposes of immigration policy and control, residence in any part of the CTA counts as residence in another.

<sup>4</sup>At present, EEA immigrants who have been living in the UK for a continuous 5-year period can apply for settled status. Those who have immigrated to the UK before 31 December 2020 can apply to pre-settled status.

presence requirements that end entitlement in all but temporary periods of absence from the common travel area. For some benefits, EU law on the coordination of social security relaxes these rules for UK nationals moving to EEA countries for as long as the UK remains the 'competent state'. It is not very clear what will happen at the end of the transition period. Reciprocal agreements relax them for UK nationals moving to non-EEA countries with which the UK has signed an agreement, but these are few in number, highly variable in their coverage and always exclude means-tested benefits.

### ***26.2.1 Unemployment***

The UK unemployment benefit system currently combines an insurance benefit (contribution-based Jobseekers Allowance, JSA-C), which is flat-rate and paid for a maximum of 6 months on the basis of contribution record, and a means-tested benefit (income-based Jobseekers Allowance, JSA-IB), which is paid at a rate dependent on income and family composition.

To be entitled to JSA-C, a UK national must have paid national insurance contributions (NICs) for 26 weeks in the two tax years preceding the claim; and contributions paid or credited must amount in both the tax years to 50 times the minimum weekly contribution for that year. There is no requirement of prior residence. The benefit has a presence requirement, though temporary periods of absence from the common travel area are permissible in specified situations, e.g. 7 days to attend a job interview. Entitlement to JSA-IB depends on a household means test and having been habitually resident in the common travel area in the 3 months preceding the claim. The presence requirements are the same for JSA-IB as those that apply to JSA-C.

To receive either form of JSA, it is necessary to be registered unemployed, immediately available for work and actively seeking work. Claimants must sign a 'jobseeker's agreement stating patterns of availability, the type of employment being sought and steps being taken to find work. Failure to respect the terms of the jobseeker's agreement may result in the suspension or reduction of benefit entitlement for set periods.

EEA nationals and non-EEA nationals subject to immigration control can claim JSA-C on the same terms as UK nationals. Only EEA nationals can claim JSA-IB, which they can do either as a 'jobseeker' or as a 'retained worker' if they meet the standard eligibility conditions. If the claim is made as a jobseeker, there is no longer any entitlement to benefits which are 'passportable' for UK nationals claiming JSA-IB, notably housing benefit. If the claim is made as a 'retained worker', housing benefit can additionally be claimed, but for those who have worked for less than 12 months in the UK before the claim 'retained worker' status can be retained for a maximum of 6 months. If an EEA national has a right to reside only as a jobseeker, they can claim JSA-IB for a maximum of 19 weeks.

Under EU social security coordination rules, JSA-C can be exported to another EEA country for a maximum of 3 months. Reciprocal arrangements with seven non-EEA states (Canada, New Zealand, Bosnia, Kosovo, Macedonia, Montenegro, Serbia) as well as Guernsey and the Isle of Man include JSA-C within their scope. JSA-IB is not exportable.

### **26.2.2 Health Care**

Since 1948, health care in the United Kingdom has been provided through the National Health Service. Following devolution in 1999, health care services in the four countries of the UK are operated autonomously and respond to the relevant Government: the UK Government (NHS England), Scottish Government (NHS Scotland), Welsh Government (NHS Wales), Northern Ireland Executive (Health and Social Care in Northern Ireland).

The founding principles of the health care system are to be universal, comprehensive and free at the point of use, with funding coming mostly from general taxation. The system provides a wide range of health care services which are generally free at the point of delivery. Since 1999, different regional NHS have increasingly diverged in terms of policy and management, though the same basic principles can be said to still hold (Greer 2016).

Everyone who is ordinarily resident in the UK has access to free health care (with exemptions). Nationals, non-EEA immigrants with an indefinite right to remain and EEA immigrants have the same access to health care, though the latter should be formally eligible only by presenting the European Health Insurance Card. Nevertheless, this is not enforced in practice. Non-EEA immigrants coming for a stay of more than 6 months are required to pay an immigration health surcharge at the time of the visa application. Non-EEA immigrants coming for a stay of less than 6 months have to pay to access health care.

Sickness benefits in cash are provided only to employees who have paid NICs. Access does not depend on immigration status. To qualify for sickness benefits, claimants need to have been off sick for four or more days in a row and earn at least an average of £116 per week. There is no minimum period of employment to qualify. Statutory sick pay (SSP) is provided on a flat-rate basis, for up to 28 weeks. Receipt of SSP can continue while a claimant is living abroad if they work for a UK employer in the EEA, or in any other country if their employer pays UKNICs.

Incapacity benefits in the UK are in constant evolution. The former incapacity benefit (IB) has gradually been replaced by the Employment and Support Allowance (ESA), which can be contribution-based (ESA-C) or income-based (ESA-IB), though a few claimants still receive the former incapacity benefit. At the same time, Universal Credit (UC) is gradually substituting ESA-IB.

In order to receive either ESA-C or ESA-IB, the claimant has to provide a medical certificate stating that they are not fit for work and pass a Work Capability Assessment to see whether she is actually unfit for work and whether she qualifies



to receive ESA long-term. The assessment is also meant to place the claimant in either a work-related activity group or in a support group.

In order to qualify for ESA-C, it is necessary to have paid enough NICs, which means having worked for at least 26 weeks in the two complete tax years before the claim and having paid contributions to the value of at least 50 times the lower earnings threshold in both tax years. In the work-related activity group, the maximum duration of payment is 12 months, while it is unlimited in the support group. As immigration status is not a qualifying condition, nationals, EEA-migrants and non-EEA migrants can all access ESA-C. In order to keep receiving ESA-C, the claimant can go outside the UK for a maximum of 4 weeks (or 26 weeks for medical treatment). ESA-C can however be exported to an EEA country for up to 1 year.

Access to ESA-IB depends on a household means-test and all claimants must satisfy the condition of habitual residence. As ESA-IB falls under the definition of 'public funds', non-EEA migrants without an indefinite leave to remain cannot claim this benefit. Those who receive ESA-IB can go abroad for a maximum of 4 weeks (or 26 weeks if it is for medical treatment).

### **26.2.3 Pensions**

The UK pension system is organised in a three-pillar structure. The first pillar is constituted by the Basic State Pension (BSP), which is a contribution-based benefit providing flat-rate protection for wage earners. The second pillar is the State Second Pension (S2P) or Additional State Pension. The S2P is meant to top up the BSP with an earnings-related component, providing additional public pension income in retirement, though workers can choose to contract out of the scheme by joining an occupational scheme provided by their employer. Following the Pensions Act 2014, from April 2016 the two state components have merged into one flat-rate state pension, named New State Pension (NSP), which will substitute for both BSP and S2P for men born after 6 April 1951 and women born after 6 April 1953.

In order to be entitled to the BSP, the S2P or the NSP, it is necessary to be of pension age (65 years old) and have paid NICs. Both the BSP and the NSP are provided on a flat-rate. There are no residence or immigration status requirements to receive those pensions. Nationals, EEA migrants and non-EEA migrants can access either BSP or NSP, as long as they have paid enough contributions. There is no limitation on where the person can live while receiving the benefit.

The main means-tested benefit for those of pension age is the Pension Credit (PC). It is meant to supplement the BSP or the NSP for those on low income and is calculated on the basis of a household means test. The PC has two components: the Guarantee Credit (GC) and the Savings Credit (SC). The GC tops up pension incomes below £163 per week per individual (or £248.80 per couple) in order to reach either threshold. SC is an extra credit for those who have saved some money towards their retirement. People who retired after 6 April 2016 are no longer eligible for SC.

In order to receive PC, claimants, including nationals returning to the UK and EEA immigrants, have to pass the habitual residence test. As PC falls under the definition of 'public funds', all non-EEA immigrants without an indefinite leave to remain cannot access PC. In order to keep receiving the benefit, the person has to reside in the UK and they can leave the country only for up to 4 weeks without explanation, 8 weeks for deaths of a partner or child, 26 weeks if for medical treatment.

### **26.2.4 Family Benefits**

The UK social security system features maternity pay, paternity pay and shared parental pay. The main parental benefit is statutory maternity pay (SMP). To receive the benefit, the mother has to be an employee and have worked for the same employer for at least 26 weeks continuing into the 'qualifying week', namely the 15th week before the expected week of childbirth. Furthermore, she has to have earned at least £116 pounds per week on average. SMP is paid for up to 39 weeks. There are no immigration status requirements to receive SMP, meaning that all migrants can access it. If the mother lives abroad, she can receive SMP if she works for a UK employer in the EEA or if her employer continues paying UKNICs.

If a mother does not qualify to SMP, she may be eligible for Maternity Allowance (MA). To access MA, the mother has to be either employed or self-employed, or have recently stopped working, and she has to have been either employed or self-employed for at least 26 weeks and have earned at least £30 per week for 13 weeks in the 66 weeks before the expected date of child's birth. The benefit can be paid up to 39 weeks. All migrants can access MA if they meet the other requirements. If the mother lives in the EEA or in a country with which the UK has an agreement, she can continue to receive MA. To access paternity pay, the requirements are very similar to those of SMP. There are again no residency or immigration status requirements. Parents can also opt for shared parental pay (SPP). The eligibility criteria and the amount received are the same as for SMP.

Child benefit (CB) has traditionally been the only truly universal welfare benefit in the UK welfare system. Until recently, every household responsible for a child below 16 years old (or under 20, if they stay in approved education or training) was entitled to CB. Since 2013, however, the universality of the benefit has been undermined through the introduction of a high-income tax charge for individuals earning more than £50,000 per year, which reaches 100% of the CB for incomes above £60,000. This has made CB *de facto* means-tested on individual (not household) income. To receive CB, all nationals returning to the UK and EEA migrants need to pass the habitual residence test. Non-EEA migrants without an indefinite leave to remain cannot claim CB. A person can still receive the benefit if they leave the UK for a short period of time (up to 12 weeks). For a longer period, receipt of CB can only continue if the claimant continues to pay UK NICs (or receive a UK

contribution-based benefit) and resides in an EEA country or in a country with which the UK has an agreement.

### **26.2.5 *Guaranteed Minimum Resources***

From the abolition of Supplementary Benefit in the late 1980s until recently, the UK did not have a general scheme of guaranteed minimum resources but instead a highly complex ‘last safety net’ composed of multiple categorical means-tested benefits. The introduction of Universal Credit (UC) with the 2012 Welfare Reform Act however recreates such a general system, at least for people of working age. UC is being implemented progressively, and currently co-exists with the categorical benefits it will eventually replace. UC is a centralised benefit, administered by the Department for Work and Pensions.<sup>5</sup>

UC is a household entitlement, and eligibility is based on the income and assets of a household falling below a specified level. It is reassessed on a monthly basis and the benefit amount is variable depending on the income and assets of the household. Claimants of UC must sign a ‘claimant commitment’ which specifies their work-related requirements. The ‘default’ position is that all claimants will have full work-related requirements, with the need to demonstrate work search and work availability. Exceptions exist, for example, when people care for very young children or have work-limiting disabilities.<sup>6</sup> Failure to comply with work-related requirements or other elements of the claimant commitment can result in the claimant being sanctioned.<sup>7</sup>

Claimants of UC must meet the habitual residence requirement, which since 2004 requires prior evidence of a right to reside. EEA migrants who are in the UK exercising their 3 month ‘initial right of residence’ under the European Directive 2004/38/EC are not considered to have a right to reside, and so cannot claim UC. Being granted a right to reside as an ‘EEA jobseeker’ only satisfies the right to reside requirement for JSA-IB, but it does not satisfy it for UC. This means that an EEA jobseeker living in an area that has yet to introduce UC may be able to claim benefits, whereas one living in a full service UC area will not. As UC falls within the definition of public funds under immigration law, it cannot be claimed by non-EEA citizens in the UK and subject to immigration control. UC cannot be exported

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<sup>5</sup>Though UC is a reserved benefit, the Scotland Act 2016 gave the Scottish Government some limited powers to vary its administration in Scotland.

<sup>6</sup>Under the initial regulations, EEA citizens able to claim UC were necessarily considered to be in the default position, irrespective of their ability to actually (seek) work. This discriminatory anomaly was rectified in 2015 by the Universal Credit (EEA jobseekers) amendment regulations 2015 (SI 2015/546).

<sup>7</sup>House of Commons Work and Pensions Select Committee (2018). Benefit Sanctions, 19th Report of Session 2017–2019, HC 955. <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/955/955.pdf>. Accessed 19 Feb 2018.

to EEA countries and is not covered by any agreements with non-EEA states. UC claims can continue during temporary absences from the UK of up to 1 month (or longer in case of death of a close relative or medical treatment) (Child Poverty Action Group 2018: 1623).

## 26.3 Conclusions

The social protection rights of migrants in the UK have greatly evolved in the past few decades. On the one hand, there has been a gradual restriction of these rights for immigrants coming from colonies or former colonies, whilst EU law has granted access to most social protection rights for EEA migrants. Nevertheless, a growing anti-immigration sentiment, which has seen immigration and immigrants' rights to social protection becoming core political issues in the past decade, have prompted successive Governments to restrict social protection rights for both EEA and non-EEA immigrants, and this is currently one of the most controversial issues in the negotiations between the UK and the EU in the transition period after Brexit.

In this chapter, we have shown that, at present, there is a hierarchy of access to the UK social protection system according to the interplay of three main variables: immigration status, residency status and benefit type. Those with 'the right of abode', which includes all full British citizens who are habitually resident in the UK, enjoy the broadest access. Those with a right to reside as EEA nationals (or family members thereof) enjoy many of the same rights of access to benefits as UK citizens, though for demogrants, means-tested benefits and tax credits, the precise basis of an EEA national's right to reside plays an important role. People who are (retained) workers or self-employed (or family members thereof) can access these benefits on the same grounds as UK citizens, whereas those with only an initial right of residence or whose right to reside is as an EEA jobseeker face more limitations. This situation is likely to undergo significant changes at the end of the transition period following Brexit but, at the time of publication, the new regulatory framework is still being negotiated. For non-EEA nationals, only those granted a permanent leave to remain can (normally) access the full range of social benefits and services. Those with time-limited leaves, and subject to immigration control, can claim contributory benefits if they are entitled and access health services, but are unable as a condition of their visa to access 'public funds' as defined in immigration law, which in practice covers all demogrants, means-tested benefits and tax credits. As such, contributory benefits and health services are the most accessible benefits; demogrants, means-tested benefits and tax credits are far less so. As regards British citizens living abroad, they are entitled to most contributory benefits (albeit some for a limited period of time), whilst they face restrictions in accessing means-tested benefits, demogrants and tax credits, though they can still claim child benefits and maternity allowance if living in a EEA country.

The distinction between types of benefits is important for access to benefits via reciprocal agreements too. The UK has signed 20 such agreements with non-EU

states, all of which cover pensions, most of which cover family and sickness benefits and some of which cover unemployment benefits. In all cases, however, the agreements pertain to non-means tested benefits, either contributory or universal.

Concerns about the access of migrants to the UK social security system has been a central issue in UK political debates in recent years, and fed into the most significant political event in contemporary British history: the holding of an in-out referendum on the UK's membership of the European Union, and subsequent popular vote for 'Brexit'. Limiting access of EEA nationals to UK benefits, specifically in-work tax credits and social housing, and ending the possibility for EEA nationals resident in the UK to receive child benefits when their children lived in another Member State were key demands in the UK Government's ultimately ill-fated attempt to renegotiate the terms of its EU membership ahead of the 2016 referendum (Clegg 2016). Though the renegotiation and referendum were prompted by extreme tensions over EU membership within the governing Conservative Party (Clegg 2017), the ambition of making access to the UK benefit system more restrictive to migrants in fact enjoys cross-party support (Kennedy 2015c). The future of UK immigration policy is currently suspended on the outcome of the fraught and drawn-out attempts of the Government to negotiate the details of its future relationship with the EU, and the outcome of negotiations is still highly uncertain.

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# Chapter 27

## Diaspora Policies, Consular Services and Social Protection for UK Citizens Abroad



Erica Consterdine

### 27.1 Introduction

The objective of this chapter is to provide an overview of the diaspora policy infrastructure and key social protection policies implemented by the United Kingdom government for its nationals living abroad. In this chapter, I will show that UK policies for its citizens abroad are characterised by limited engagement but effective communication leading to a disengaged state that keeps the dialogue open.

The key policy that underpins UK diaspora relations is providing information and support through electronic platforms in addition to some dedicated consular efforts to encourage economic ventures such as supporting British businesses abroad. The UK has been characterised by Ragazzi (2014, p. 80) as a ‘expatriate state’ which provides services to high-income category of “expats” employed for example in the transnational corporations of the sending states. Social protection policies on the other hand barely feature in the overall architecture of UK diaspora policy and are extremely limited.

Emigration policy is not effectively utilised as a form of soft power by the British state. The absence of state engagement stems from a lack of distinctive British identity, the heterogeneity of the British diaspora, and the profile of British emigrants having a typically ‘international outlook’ driven by positive pull factors with the assumption being that Britons living abroad do not want or need to engage with their homeland state. Furthermore, the Foreign and Commonwealth Office (FCO) which is the key department responsible for Britons abroad, has an organisational culture described ‘as one of the last bastions of Westminster whiggism’, with British diplomacy being ‘renowned for being whiggish and reactive’ (Hall 2013, p. 236). As a result, some have derided the FCO as failing ‘to transform itself from a

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lynchpin of empire into a more flexible post-colonial institution’ (Hall 2013, p. 237), and thus arguably diaspora policies suffer from policy inertia. Popular images of Britons abroad are ‘often unfair and out-dated’ but persist and ‘perhaps contribute to a sense in parts of government that engagement with the diaspora is only about helping emigrants to keep out of trouble’ (Finch et al. 2010, p. 14).

The UK is perhaps peculiar compared to other states in that immigration is highly politicised – arguably driving a public vote to leave the EU in the 2016 referendum (Dennison and Geddes 2018) – whilst at the same time the UK has almost no diaspora or emigrant policy to speak of and lacks any formal representative body or institution to represent Britons living abroad. There is no government minister or department with responsibility for emigrants, and no representative mechanism for Britons living abroad. Whilst there is little regional variation in the way of social protection policies for Britons residing abroad, the Scottish Government adopted a specific diaspora engagement plan to ‘harness the power of Scotland’s diaspora’ (Scottish Government 2010). Nonetheless, the UK is peculiar in its absence of a formal diaspora policy, despite an estimated 5.6 m Britons living abroad (Finch et al. 2010). Furthermore, Brexit has served to underscore the lack of formal engagement between the British state and its citizens abroad, including concerns from the Britons living in the EU around pension transferability, and the contentious 15-year residency requirement which disenfranchised many Britons, highlighting what many decried as an unfair eligibility requirement.

The chapter begins by summarising the UK diaspora and its relation with the homeland. The chapter goes on to discuss the diaspora infrastructure for UK nationals residing abroad, key engagement policies of the UK state. The final section details the existing diaspora social protection policies including access to unemployment benefits, health care, pensions, family-related benefits and economic hardship.

## **27.2 Diaspora Characteristics and Home Country Engagement Policies**

### ***27.2.1 The UK Diaspora and its Relation with the Homeland***

The UK diaspora is one the largest in the world, ranked eighth highest in absolute numbers (World Bank 2011), with the largest stock of citizens living abroad amongst high-income OECD countries (Murray et al. 2012, p. 19). This being said, estimating the stock of UK-born emigrants living abroad is challenging, with figures ranging from 4.5 to 5.6 million (Murray et al. 2012, p.18; World Bank 2011; Sriskandarajah and Drew 2006).

English-speaking nations have consistently been the top destinations for British emigrants, with Australia being the persistent top choice with an estimated 1,045,600, followed by the USA (798,000), Canada (543,900), Spain (280,500) and



Ireland (257,500). New Zealand, France and Germany are other important destinations (Murray et al. 2012). Australia is the top destination for younger age groups (aged 44 and under), whereas Spain and France are top destinations for older age groups (Murray et al. 2012, p. 17). Much of settlement emigration has taken place in countries of the Old Commonwealth as a result of colonial ties associated with the Commonwealth project and relatedly because these are English-speaking nations. Australia remains the top destination of choice in part because of family chain migration as a result of emigration in earlier decades and ‘Empire continuing to exert its influence on settlement patterns long after it ceased to exist’ (Hammerton 2017, p. 8). Thirty three per cent of all British born emigrants live in Australia or New Zealand (ONS 2018). In contrast the UK has a smaller proportion of citizens living in another EU country than any other EU state (ONS 2018). Nonetheless, as a result of more stringent entry requirements in Anglo sphere countries, and shifts to lifestyle migration, emigration to EU states has been on the rise since the 1980s with an estimated 784,900 British citizens living in the EU (excluding the UK and Ireland) in 2017 (ONS 2018).

British emigration has a long and fragmented history. In previous centuries Britons emigrated in large numbers to the colonies either as refugees or as forced economic migrants (Cohen 2008). Post-war Britain went through successive stages of austerity up to the early 1960s, and thus ‘the emigration of the period was itself a one of austerity’ (Hammerton 2017, p. 7). In the succeeding decades as UK became more prosperous, the patterns of migration shifted towards ‘lifestyle migration’ with Britons continuing to search for better employment but also preferred lifestyles such as warmer climate (Hammerton 2017, p. 7; Inter Nations 2017). In turn, emigration has been associated with ‘dynamic, adventurous and often relatively prosperous individuals taking up exciting personal opportunities overseas’ (Finch et al. 2010, p. 2). In contrast to other diasporas then post-war British emigration has been underpinned by positive pull factors. British emigrants tend to be ‘progressive global Brits’ who are self-mobilising. In turn the government’s assumption is that Britons do not require or want engagement with the homeland and that engagement ‘is only about helping emigrants to keep out of trouble’ (Finch et al. 2010, p. 14). This reticence goes some way to explaining the lack of UK diaspora engagement policy.

Considering an estimated 6.6 million UK citizens live abroad (Finch et al. 2010, p. 13) the British diaspora is curiously absent from both scholarly and applied research. Academics and policy-makers have studied UK emigration far less than the immigration of people into the UK. Despite the fact that the majority of British emigrants do so for work or to accompany someone (Murray et al. 2012, p. 9–20) – with the majority of British emigrants being of working age (aged 25–44 years) – the majority of existing research focuses on British citizens retiring abroad (e.g. Howard 2008; King and Patterson 1998; King et al. 2000; O’Reilly 2000; Warnes et al. 1999). Among British citizens emigrating between 1991 and 2010, the largest group was consistently those with a previous occupation that was ‘professional or managerial’ (Murray et al. 2012, p. 13). Whilst there are large variations within countries, ‘the British diaspora tends to be more highly educated and higher skilled

than the general UK population' (Finch et al. 2010, p. 38). The evidence suggests that UK unemployment might be closely associated with emigration levels for British citizens (Murray et al. 2012, p. 35).

The lack of scholarly attention to the British diaspora is partly because diaspora studies generally focuses on groups that suffered from imperial oppression, in contrast to the British or even English diaspora, which are seen 'as progenitors of an empire against which outsiders were defined' (Buelmann et al. 2012, p. 4). Yet perhaps the critical reason for the lack of research on the UK diaspora and more importantly the absence of a diaspora engagement policy is the UK being a multi-national diaspora in the first instance, made up of English, Scottish, Welsh and Northern Irish, 'and in some cases these national identifications are stronger than a generic British one' (Finch et al. 2010, p. 13). For example, Scottish and Welsh emigrants 'are increasingly likely to identify with notions of Scottish or Welsh diaspora rather than British diaspora' (Finch et al. 2010, p. 25) and arguably Scottish identity is more defined than a wider British national identity, as reflected in the Scottish government's efforts to engage with its diaspora. British national identity is a relatively recent social construct, with a shifting debate in the last 20 or 30 years towards a renewed sense of Britishness to restore declining national prestige and pride (Finch et al. 2010, p. 75), a project perhaps never fulfilled and contentious in the current Brexit fuelled climate where the nation introspects about its national identity. At the same time, one of the most comprehensive studies on the British diaspora found that emigrants who had settled elsewhere long term maintained strong family, cultural and emotional links with the UK, few rejected the label of being British and many saw their Britishness as positive in some way (Finch et al. 2010, p. 63, 43). This implies that despite the lack of a clear national identity there is a homeland maintenance which the government could engage with.

### ***27.2.2 Diaspora Infrastructure***

As outlined above, the British state has a limited diaspora engagement strategy, namely due to assumptions that Britons do not want or need to engage with their homeland. The infrastructure of engagement policies is therefore focused on providing comprehensive information whilst keeping the dialogue with its citizens open through social media channels. Whilst there is no specific service established the state maintains a commitment to keep the dialogue open and have people informed about their (limited or absence of) rights.

The key institution for diaspora engagement policy is the Foreign and Commonwealth Office (FCO). However, it is rare (indeed unheard of) for British officials to use the term diaspora or emigrants to describe UK citizens residing abroad (Hampshire 2013, p. 312). Conversely, the state generally refers to British emigrants as British Nationals Overseas or occasionally British expatriates.

The Foreign and Commonwealth Office's (FCO) key remit is to promote the UK's interest overseas including supporting UK citizens and businesses around the

globe. They are the lead governmental institution by which the UK state engages with its national abroad. The FCO – created in 1968 when the Foreign Office and the Commonwealth Office merged – has three key responsibilities:

- Safeguarding the UK’s national security by countering terrorism and weapons proliferation, and working to reduce conflict
- Building the UK’s prosperity by increasing exports and investment, opening markets, ensuring access to resources, and promoting sustainable growth
- Supporting British nationals abroad around the world through modern and efficient consular services.

Within the FCO, the Consular Services are the key sub-ministry (although not officially a sub-ministry) by which the state assists Britons living abroad. A Directorate within the FCO provides the Consular Services; the Directorate consists of a network of 620+ consular offices in embassies and consulates around the world. The Permanent Under-Secretary and Head of the Diplomatic Services role is to lead the Consular Services. There is no national-level public institution separate from ministries dedicated to addressing the needs of UK nationals residing abroad.

The FCO does not operate mobile consulates. In the absence of mobile consulates, the FCO relies on Honorary Consuls – of which there are just over 200 globally in 2018 – to be present in all major locations for British tourists and residents where no British diplomatic or consular mission exists. According to the FCO, Honorary Consuls provide an invaluable emergency response to crises or urgent consular cases, which are then reinforced and taken on by the consular teams in posts. The FCO states that Honorary Consuls provide a more accessible and responsive service in places where it could not justify a consular presence (Foreign Affairs Committee 2014, para 33). Honorary Consuls are volunteers (paid a stipend) who help assist British nationals where there is no full consular presence. Their duties may include crisis response, consular assistance, local authority liaison, or assisting official consular visits, but do not normally include routine consular services. The time devoted to consular matters varies widely between posts, but Honorary Consuls are expected to work on average no more than 4 h a week.

The regime relating to the functions of all consulates including Honorary Consuls are stipulated by the Consular Relations Act 1968, which transposed Article 5 of the Vienna Convention on Consular Relations (VCCR). Honorary Consuls work under the supervision of superintending posts and ‘their work is carefully managed and monitored by trained Consular staff who assess whether the task is appropriate for delegation to an Honorary Consul or whether a full time member of staff ought to be deployed’ (Foreign Affairs Committee 2014). For crisis response, the FCO established the Global Response Centre (GRC) that handles out-of-hours calls from members of the public who need urgent consular assistance.

The FCO Services, which is an executive agency of the FCO, provides protection to physical assets but this body provides no role or dedicated services to addressing the needs of nationals residing abroad. The British Council (BC) is an executive non-departmental body of the FCO that is the UK’s international organisation for cultural relations and educational opportunities aiming to build lasting relationships

between the UK and other countries. However, the British Council is no longer the prerogative of the state, and it is not within their remit to address the needs of British nationals residing abroad.

Aside from the FCO, a further relevant state ministry involved in a minor way in assisting some nationals residing abroad is the UK Visas and Immigration (UKVI) – which is a division of the Home Office – responsible for running the UK visa service. In March 2014, the Home Office assumed full responsibility for passport applications, decisions and document issuance. In June 2014, there were delays in issuing passports. To help deal with problems issuing passports for UK citizens overseas, the FCO extended passports by 12 months and began to issue emergency travel documents to children for the first time (NAO 2015). The UKVI only assist nationals residing abroad in terms of partially processing some passport applications and renewals that, depending on host state, can be completed in-person at UKVI ‘hub and spoke’ centres<sup>1</sup> that are located across the globe. However, in the majority of host states the application is processed online directly with Her Majesty’s Passport Office (HMPO) – which is a further division of the Home Office – in the UK. Some minor functions may also fall to the Visa Application Centres located across the globe, but these mainly concern non-British nationals applying for a UK visa.

Whilst there is limited regional variation in the UK’s policy towards Britons residing abroad, the Scottish Government adopted a diaspora engagement strategy in 2010 (Scottish Government 2010). The main mission of the diaspora engagement plan includes: Continue to build opportunities to engage with the Diaspora into planned Ministerial activities overseas, focusing on priority countries identified in the International Framework. The Scottish Government have conducted a number of consultations and research on the Scottish Diaspora.<sup>2</sup> The Scottish Government already has a range of tools which successfully engage with an international audience and the Diaspora, including; (i) [Scotland.org](http://Scotland.org) the official online gateway to Scotland; (ii) The Global Friends of Scotland and GlobalScot networks; (iii) and events such as Scotland Week in North America. The Scottish government’s international framework on diaspora has three key objectives:

- Creating conditions for members of the Diaspora to live, learn, visit, work and return to Scotland
- Bring a sharp economic growth focus to the promotion of Scotland to the Diaspora

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/361579/Myd\\_ocument.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/361579/Myd_ocument.pdf)

<sup>2</sup> Including the following papers: The Scottish Diaspora and Diaspora Strategy: Insights and Lessons from Ireland; Engaging the Scottish Diaspora: Rationale, Benefits and Challenges; Scotland’s Diaspora and Overseas-Born Population; and Scottish Government International Framework.

- Managing Scotland’s reputation with the Diaspora, as a distinctive global identity, an independent-minded and responsible nation, confident of its place in the world.

In contrast to the limited state engagement strategy with Britons residing abroad, the three main political parties have infrastructure to engage with citizens living abroad. The current administration – the Conservative Party (365 seats) – run the ConservativesAbroad<sup>3</sup> branch established in the late 1990s, which provides a forum ‘for like-minded people to socialise and gives a platform for political discussion on matters of mutual interest’. ConservativesAbroad were instrumental in in getting Votes for Life on the political agenda discussed below (Collard 2018). The aims of ConservativesAbroad are to keep Conservatives members and supporters living overseas in touch with politics at home; increasing the number of registered voters from abroad; increasing awareness of the issues facing British Citizens living overseas; and lobbying to reform overseas voting laws. The Labour Party (202 seats) similarly run Labour International,<sup>4</sup> which has 2400 members in over 60 countries. The objective of Labour International – aside from promoting the values of the UK Labour Party and working with sister parties in different countries – are to provide a focal point for the social and political needs of Labour Party members and supporters living or working abroad, and developing electoral support for the Party among British subjects abroad. The smallest Party – the Liberal Democrats (11 seats) – established LibDems Abroad<sup>5</sup> in 2010 which aims to help members and supporters stay in touch with the Party, ensure that the Party understands the concerns of its members overseas and to encourage members and supporters to register to vote in UK elections.

### 27.2.3 *Key Engagement Policies*

The UK is perhaps peculiar in contrast to other states in its lack of engagement policy or strategy with its citizens abroad. Current engagement by the British state with its diaspora population is limited by international standards (Finch et al. 2010, p. 9), and there is no governmental policy to speak of which actively engages with British citizens who have emigrated abroad (Hampshire 2013, p. 312). There is no state level representative or consultation mechanism or any dedicated institutional architecture for engaging with its overseas population, nor are there specific policies pertaining to remittances, return, education, housing or repatriation. State engagement is minimal and reactive to Britons residing overseas.

However, there are many initiatives led by the government that are of relevance to British emigrants and some targeted information campaigns. The FCO provide

<sup>3</sup><https://www.conservativesabroad.org/about-us>

<sup>4</sup><http://www.labourinternational.net/about>

<sup>5</sup><https://www.libdems.org.uk/abroad>

extensive advice on their websites and social media and is ‘a world leader in providing online and other information in supporting emigrants to be well prepared for life overseas’ (Finch et al. 2010, p. 11). This includes a ‘Living Abroad Checklist’, the Travel Aware website, retiring abroad, and tailored information for living and working (norms and rights) in every host state. Additionally, the government provide information on trading and investment advice for British nationals looking to emigrate including business factsheets, overseas Intellectual Property (IP) protection and guidance for setting up an overseas business.

The cornerstone of FCO policy is the (usually annually updated) booklet for Britons travelling overseas – *Support for British Nationals Abroad: A Guide* – that sets out the FCO customer charter and serves to outline how and when consulates can assist British nationals. The FCO also jointly ran an online video guide with the Buying Association to prepare Britons for buying property abroad.<sup>6</sup> However, with the exception of the latter, most of these initiatives are orientated towards all British national travelling, not necessarily or specifically Britons residing abroad.

The UK state has limited diaspora integration in the way of ‘extending political rights’ (Gamlen 2008) Dual citizenship and external voting (by post or proxy) is permitted although voter registration is ‘pitifully small’ (Finch et al. 2010, p. 70). The Electoral Commission run a specific online page for online voters to enquire and register.<sup>7</sup> Voting rights of national residing abroad has been an especially contentious issue in British politics following the EU referendum in 2016. The current system of electoral registration for national elections (and referendums depending on the franchise) allows Britons residing abroad to continue to vote for 15 years in the constituency where they were last registered. This meant that many British citizens residing abroad were ineligible to vote in the 2016 referendum despite British emigrants residing in the EU being highly affected by the vote, roughly estimated as up to two thirds of the population disenfranchised as a result of the 15-year residency rule (Benson 2019).

IPPR’s (2010) qualitative research commissioned by the FCO found that the overall low levels of voter registration is due to ‘the laborious processes of vote registration and casting postal or proxy votes’ which ‘appears to deter all but the most committed individuals’ (Finch et al. 2010, p. 70). Collard (2018) similarly surmises that registration levels for overseas voters were low ‘largely due to bureaucratic obstacles’. A study conducted by the Electoral Commission (2016) highlighted a number of barriers to casting a ballot overseas, including confusion over eligibility requirements (with some 31% of respondents believing that receiving a UK state pension or owning property in the UK made them eligible to vote), low levels of understanding that an overseas voter registration has to be renewed annually, along with a lack of awareness of how to register or vote (Electoral Commission 2016). The Association of Electoral Administrators (AEA 2017, p. 51) found that in the 2017 General Election, there were many incidences where overseas voters

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<sup>6</sup><https://www.buyassociation.co.uk/fco-overseas-property-buying-guide/>

<sup>7</sup><https://www.yourvotematters.co.uk/can-i-vote/overseas>

mistakenly believed that they would be able to vote online or have their ballot papers emailed to them.

Registered overseas voters have nonetheless increased to over 285,000 largely due to the introduction of online registration in the 2014 and 2016 referendums and the 2015 and 2017 general elections (Collard 2018; Johnston 2018, p. 16). A further 132,048 British citizens abroad registered to vote between October and November 2019 ahead of the December 2019 General Election (Benson 2019). However, in the Second Reading debate on the Overseas Electors Bill 2017–2019, Cabinet Office Minister said ‘that the number of registered overseas voters at the June 2017 General Election, just over 285,000, represented about only 20 per cent of the number likely to be eligible’, giving a potential electorate of around 1.4 million (Johnston 2018, p. 15). In a research survey conducted by the Electoral Commission of UK citizens living overseas 58% of respondents believed that they were currently registered and 30% of potentially eligible overseas voters responded that they had voted in the 2015 UK General Election (Electoral Commission 2016, p. 3). Having said this, these figures should be treated cautiously.

Since the referendum a number of grassroots networks of UK citizens resident in the EU have sprung up to lobby government for secure residency status following Brexit. The Conservative Party pledged in their 2014 manifesto to grant ‘Votes for Life’ to UK citizens resident abroad, which will mean abolishing the current rule which disenfranchises UK citizens who have been resident abroad for more than 15 years. In October 2016 the Conservative government published a policy statement on ‘A democracy that works for everyone: British citizens overseas’, which set out how the 15 year rule will be removed. The Overseas Electors Bill 2017–2019 was a private members bill that sought to end the 15-year time limit that took place in February 2018. The Bill ‘to make provision extending the basis on which British citizens outside the UK qualify to participate in parliamentary elections; and for connected purposes’ completed its public committee stage in November 2018 (House of Commons 2018). However, the Bill was filibustered by Conservative MP Phillip Davies – a member of the European Research Group and an ardent Brexiter – at the report stage (Collard 2019). Thus the Bill was killed off.

Whilst there are a number of privately led networks for British nationals residing abroad, such as Expat Network,<sup>8</sup> there is no specific state sponsored consultative or representative body or mechanism for UK nationals residing abroad. The FCO’s main channel of communication and responding to queries from Britons living abroad (aside from physical consulates and embassies) is through social media, where the FCO have dedicated Facebook and twitter pages for British emigrants. The FCO have made concerted efforts in recent years to publish up-to-date and bespoke travel advice for Britons and utilising social media as the key platform for communications. The latter has included terminating the LOCATE database – to register British emigrants – in 2013 when the FCO claimed that social media has superseded LOCATE system for registering details with an Embassy, especially in

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<sup>8</sup><https://www.expatnetwork.com>

light of the fact that only 1% of British emigrants used the registry service (British Embassy Cairo 2013). Most embassies have a dedicated Facebook site for each host state specifically for Britons residing abroad where citizens are encouraged to engage with each other.

British embassies and high commissions regularly hold conferences and events around the world – many of which are targeted at British emigrants – where the FCO can provide Q&A sessions on specific issues for Britons. Consulate efforts to hold discussions for Britons residing in Europe have seemingly increased since the referendum due to the uncertainty of status for Britons living in the EU. For example, in April 2018 the British Embassy in Paris held meetings across France to hear concerns around Brexit and residency status from Britons living in France locations (British Embassy Paris 2018). Likewise, the British Embassy in Spain held meetings in 2016 at local town halls to allow Britons residing in Spain to feedback their concerns around Brexit (British Embassy Consulate Palma de Mallorca 2016). Consulates can also provide details on any local clubs or organisations for British expatriate communities (FCO 2018). Furthermore, embassies and consulates often have close contacts with British businesses – with two overseas missions sharing premises with business groups (Hampshire 2013, p. 314) – such as through British Business Forums<sup>9</sup> (in Macedonia for example) and some embassies and/or high commissions specifically state that their mission is to support British businesses operating in host states.

### **27.3 Diaspora Policies and Social Protection in the United Kingdom**

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

Britons residing abroad cannot claim any UK means-tested or income-based benefits, and therefore there are no guaranteed minimum income benefits available for Britons residing abroad from the UK government. Policy is geared towards informing Britons of their social protection rights both from the home and host state via the FCO and gov.uk websites. Policy, not legal right, underpins consular affairs and therefore the state is under no legal obligation to provide consular assistance. The FCO is not funded to provide emergency assistance or any kind of in-cash

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<sup>9</sup><https://www.gov.uk/world/macedonia/news>



benefits or any economic assistance in any capacity. If all other options have been exhausted and only in exceptional circumstances the FCO can provide an emergency loan to help a Briton (tourist or emigrant) return to the UK on a discretionary basis<sup>10</sup> (FCO 2018). In such cases, if the Briton is eligible they must sign a ‘undertaking to repay’ agreement with the FCO and secure their loan by giving up their passport to the FCO. However, this is discretionary and rarely deployed. Whilst the FCO is responsible for coordinating matters with other UK government departments, there is no policy or evidence of consulates assisting Britons living abroad with social protection claims or welfare entitlements, although, as assistance is discretionary, this may transpire in practice. The Department for Work and Pensions (DWP) are responsible welfare, pensions and child maintenance policy.

### 27.3.1 *Unemployment*

There is no specific policy pertaining to assisting Britons residing abroad access to unemployment benefits and the consulate services have no outlined role in facilitating or assisting Britons in claiming any welfare entitlements. However, the UK government provide extensive advice on eligibility for home unemployment benefits via their website, and allow Britons to find out which UK benefits they can retrieve and host state benefits via an online questionnaire.<sup>11</sup>

The main unemployment benefit in the UK is Jobs Seekers Allowance (JSA), of which there are two types: contribution based and income based. Britons residing abroad are not eligible to claim any income-based or means tested unemployment benefits, which refers to income based JSA. Due to EU legislation, Britons residing abroad can claim contribution-based JSA in the EEA or Switzerland states for up to 3 months after leaving the UK, subject to other eligibility criteria, including:

- Being entitled to JSA on the day of departure
- Registering as a jobseeker at least 4 weeks before departure
- Looking for work in the UK up until the day of departure
- Emigrating abroad to look for work
- Registering at the equivalent of a Job Centre in the host state
- Following the state country’s rules on registering and looking for work.

Britons cannot usually claim contribution based JSA in non-EEA states. Some countries outside the EEA have social security agreements with the UK. This means that if a Briton has paid enough National Insurance contributions in the UK, they may be able to get unemployment benefits in: Bosnia and Herzegovina, Channel

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<sup>10</sup>There are exceptional cases where the UK government – not necessarily the FCO – has repatriated Britons. For example, in October 2017 the government (Department of Transport) ordered the country’s largest peacetime repatriation to fly 110,000 Britons back to the UK following the collapse of airline Monarch.

<sup>11</sup><https://www.gov.uk/uk-benefits-abroad>

Islands, Kosovo, Macedonia, Montenegro, New Zealand and Serbia. The UK government can assist with benefit claims from EU host states in a limited way by providing a form U1 which is a record of UK National Insurance contributions that may help a claim for unemployment benefit in another EU country. The government provide a list of countries online where Britons can potentially claim unemployment benefits in the host state. However, the website states that benefit arrangements will depend on the specific host state.

The website advises that an applicant contact their local Job Centre before departure to ensure there are no forms to fill out. The government provide an international line for enquiries on claiming Jobs Seekers Allowance from abroad via the International Pension Centre, which provide separate international phone numbers for differing unemployment benefits including pro-rata Employment and Support Allowance (ESA) and Jobs Seekers Allowance (JSA). Further advice on claiming benefits in host non-EEA states are on [ndirect.gov.uk](https://www.ndirect.gov.uk).

### **27.3.2 Health Care**

There is no specific policy to assist Britons living abroad with healthcare. Much like unemployment benefits the government provides extensive advice on accessing home and health country provision via the FCO and gov.uk websites. The National Health Service (NHS) is the public health services in the UK. Each of the UK's health service systems operates independently, and is politically accountable to the relevant government: the Scottish Government, Welsh Government, Northern Ireland Executive and the UK government, responsible for England's NHS. NHS England is an executive non-departmental public body, sponsored by the Department of Health and Social Care. Whilst there is usually no regional difference in UK policies towards its citizen's abroad, access to healthcare in Scotland is a marked exception. According to NHS Scotland if a UK passport holder works anywhere outside the UK they can get healthcare from the NHS in Scotland if they lived in the UK legally for more than 10 years before moving abroad in addition to the following requirements: if they have come back to the UK for a visit at least once every 2 years, their contract of employment allows them to visit the UK at least once every 2 years, and their employer will pay for the cost of their return to the UK at the end of their contract.<sup>12</sup> A further exception worth highlighting is the agreement between the UK and Ireland specifically. The UK and Irish authorities have an agreement where UK residents do not need their European Health Insurance Card (EHIC) to access healthcare services if they are on a temporary stay in Ireland. It is enough to show proof that you are ordinarily resident in the UK, such as a driving licence, passport or similar documentation that shows your NHS number or its equivalent.

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<sup>12</sup> <https://www.nhsinform.scot/care-support-and-rights/health-rights/access/healthcare-for-uk-passport-holders-living-or-working-abroad>

The NHS provide information online for Britons moving abroad which details all relevant information regarding health and provides a country-by-country guide for the specific healthcare infrastructure in host states. Further advice on covering medical costs when moving abroad are available on the NHS website.<sup>13</sup> A more general overview of health factors abroad can be found in the FCO guide *Support for British Nationals Abroad* (FCO 2018). The FCO advises that all Britons, whether travelling or moving abroad, seek out private health insurance.

The NHS is a residence-based healthcare system and therefore Britons moving permanently abroad are not automatically entitled to medical treatment. The UK NHS does not cover British nationals if they are going to be living permanently outside the EEA. If a Briton has lived outside the UK for more than 3 months (6 months for pensioners living in EEA countries) than they may be liable for charges using NHS services when returning to Britain, although they are eligible for free medical treatment in Accident and Emergency departments of NHS hospitals. However, a Briton is exempt from charges if they can: produce evidence that they have been working abroad in a EEA country or a country with which the UK has a bilateral healthcare agreement for less than 5 years and have lived in the UK continuously for at least 10 years at some point, or provide evidence that they work in another EEA country or Switzerland and pay compulsory (not voluntary) national insurance in the UK.

The UK has a number of bilateral healthcare agreements with non-EEA countries. However, these agreements are based on a Briton being a lawful UK residence and therefore reciprocal agreements namely cover visits/tourists as opposed to Britons living abroad. If a Briton has lived in the UK for 10 continuous years at some point but are now living in an EEA member state or another state with which the UK has a bilateral healthcare agreement with, then under UK law they are entitled to free of charge treatment (not including planned treatment).

Under the FCO customer charter, the FCO stipulates that they may help Britons to access medical treatment or medication if they are suffering serious medical problems because of serious disruptions. The FCO Customer Charter stipulates that the FCO can provide Britons with a list of local doctors, medical facilities and hospitals in every host state. However, the FCO cannot pay for medical treatment for Britons living abroad and there is no policy to provide cash benefits to deal with health issues. The FCO have a policy of Exceptional Assistance Measures (EAM) which provide additional practical support to British nationals who are the victim of terrorist overseas; these measures may go beyond the usual help the FCO aim to provide and can include medical evacuation, payment of immediate medical expenses and repatriation. The FCO stipulate unequivocally that they do not provide funds for repatriation including medical repatriation outside of exceptional EAM measures (see above for exception for repatriation).

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<sup>13</sup><https://www.nhs.uk/NHSEngland/Healthcareabroad/movingabroad/Pages/Introduction.aspx>

### 27.3.3 *Pensions*

Britons retiring abroad can claim their UK state pension if they have paid enough UK national insurance contributions to qualify. Britons living abroad cannot access means-tested welfare and are therefore not eligible for pension credit. British pensioners living overseas can claim their UK state pension by either contacting the International Pension Centre (IPC) or sending an international claim form directly to the IPC. The International Pension Centre provides full advice and advisors are on hand to issue advice on pension claims. The government provide detailed information on how to claim UK state pension from abroad online. Furthermore, the Pensionary Advisory Service (TPAS) is an independent organisation grant-aided by the DWP that supplies free, impartial advice on UK pensions including for Britons residing abroad. Her Majesty's Revenue and Custom (HMRC) – a non-ministerial department of the UK Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes including the national minimum wage – allows pensioners to transfer their UK state pension to an overseas pensions scheme if such scheme is on the recognised overseas pension scheme notification list (lists for each host state pension scheme are available online).

Claimants may be asked to fill out a 'life certificate' to ensure they are eligible for UK state pension. Since 2013 the DWP has operated a proof of life programme (referred to as a Life Certificate) where state pensioners residing permanently outside of the UK are required to provide independent evidence in the form of a witness statement, confirming that the applicant is alive. The DWP sends the life certificate form to an applicant after they have registered with the IPC. The consulate plays no role in the processing of life certificates. To avoid having their pension frozen, claimants have 9 months to fill out and send their life certificate forms. Life certificates are not mandatory; however, in any change in circumstance (such as address change) claimants will need to fill and register a life certificate. There is no specific policy or exemptions in FCO policy for pensioners for repatriation.

The FCO advise pensioners retiring abroad to seek a State Pension Forecast from the DWP before emigrating. Pensioners must be within 4 months of state pension age to claim their pension. State pensions only increase annually if the pension applicant lives in the EEA, Switzerland, Gibraltar or countries that have a social security agreement with the UK<sup>14</sup> (although no increases if a Briton is living in New Zealand or Canada).

Inflation adjustment on UK pension contributions has been a contentious issue amongst both British nationals and host states in terms of reciprocal social security agreements for a number of years. For example, in 2001 Australia terminated the Social Security Agreement with the UK 'because the UK Government refuses to change its policy of not indexing pensions in Australia, even though it does index

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<sup>14</sup> Barbados, Bermuda, Bosnia-Herzegovina, Jersey, Guernsey, the Isle of Man, Israel, Jamaica, Kosovo, Macedonia, Mauritius, Montenegro, the Philippines, Serbia, Turkey and USA.

pensions paid in some countries with which it has Agreements’ therefore there will be no early access to Australia’s social security system for migrants from the UK.<sup>15</sup> The UK State Pension is payable overseas only uprated annually if the individual is resident in an EEA country or one with which the UK has a reciprocal social security agreement requiring this. UK pensioners in other countries – most notably Australia, Canada, New Zealand and South Africa – have their pension frozen i.e. paid at the same rate as it was when they first became entitled, or the date they left the UK if they were already pensioners then.

The policy of not awarding increases in some countries overseas has been followed by successive governments and continued with the introduction of the new State Pension in April 2016. Essentially, ‘the reason is cost and the desire to focus constrained resources on pensioners in the UK’ (Thurley and McInnes 2018, p. 3). In 2018 Pensions Minister, Guy Opperman, set out the reasons for the policy on uprating pensions:

There are two main reasons for not paying annual up-ratings to non-residents. First, up-ratings are based on levels of earnings growth and price inflation in the UK which have no direct relevance where the pensioner is resident overseas. Second, the cost of up-rating state pensions overseas in countries where we do not currently up-rate would increase immediately by over £0.5 billion per year if all pensions in payment were increased to current UK levels (PQ 131353, 12 March 2018 cited from Thurley and McInnes 2018, p. 3).

The All Party Parliamentary Group (APPG) on Frozen British Pensions has lobbied the case for “partial uprating” – which means currently frozen pensions would be uprated going forward, from their current rate. It estimated the “upfront cost” of this at £37 million (Ibid). The arrangements to apply in EU countries in future have been a major subject of the negotiations on Brexit. A joint technical note on the comparison of EU-UK positions on citizen’s rights published on 28 September 2017 said both sides had committed to lifetime export of uprated pension (Thurley and McInnes 2018, p. 3).

### ***27.3.4 Family-Related Benefits***

Britons living abroad can get Child Benefit for children living with them within the EEA or Switzerland. The applicant must pay National Insurance in the UK – and therefore they are or were employed or self-employed – or get 1 of the following benefits: Contribution-based Jobseeker’s Allowance, Incapacity Benefit, Contribution-based Employment and Support Allowance, State Pension, Bereavement Allowance (Widow’s Pension), Industrial Injuries Disablement Benefit. If the applicant and their partner live in different countries, then the applicant may qualify for Child Benefit or its equivalent in both host states. The country

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<sup>15</sup> [https://www.dss.gov.au/about-the-department/international/international-social-security-agreements/terminati on-of-the-social-security-agreement-with-the-united-kingdom-uk-1-march-2001/ termination-of-the-social-security-agreement-with-the-uk-information-for-prospective-migrants](https://www.dss.gov.au/about-the-department/international/international-social-security-agreements/terminati-on-of-the-social-security-agreement-with-the-united-kingdom-uk-1-march-2001/termination-of-the-social-security-agreement-with-the-uk-information-for-prospective-migrants)

the child lives in will usually pay the benefit. If the benefit is more in the other country, that country will pay the applicant extra. Britons living abroad cannot claim means-tested or income-based benefits and therefore do not qualify for the Sure Start Maternity Grant – a one off payment of £500 for a first child.

Britons living overseas may be able to get child benefits in countries with which the UK has a social security agreement. Applicants are instructed to contact the Child Benefits Office (within HMRC) to find out if they can make a claim. The government provides extensive information on eligibility for child benefits for Britons living abroad, and the Childs Benefits Office, whilst not exclusively focused on Britons living overseas, provides advice on claiming child benefits including a dedicated phone number for overseas calls and a live webchat. As outlined, consular assistance is based on policy, not legal right. There is no policy to assist Britons in claiming UK or host family benefits, however consular assistance is discretionary and on a case-by-case basis depending on vulnerability.

### 27.3.5 *Economic Hardship*

There is no UK policy on ensuring that Britons residing abroad have guaranteed minimum resources, including in cases of homelessness. Britons residing abroad cannot claim any UK means-tested or income-based benefits, and therefore there are no guaranteed minimum income benefits available for Britons residing abroad from the UK government. Whilst some UK welfare entitlements can be accessed outside of the UK, other welfare entitlements are only applicable in host states where the UK has a reciprocal agreement. UK nationals can claim some contributions based state benefits (the majority are outlined above) – eligibility is varied, often dependent on residency, and only in countries where social security agreements exist.

The FCO advice for Britons residing abroad is to contact the social security branch of the HMRC national insurance contributions (international services), as well as the DWP. Whilst consular assistance is not a legal right and there is no policy to assist Britons residing abroad access to guaranteed minimum resources, as consular assistance is discretionary and based on vulnerability, in practice consulates may assist Britons in accessing information or coordinating with the DWP. For example, the Spanish Embassy advises online to seek out what income-related benefits are available in Spain by speaking to a social worker (*trabajador social*) at the Britons' local town hall or to visit the nearest *Instituto de Mayores y Servicios Sociales Office*. Some embassies in host states can provide Britons in need with a list of legal aid organisations to help assist in their claims of economic hardship. As set out in the FCO customer charter, consulates will provide details of other organisations in the host state that can provide specialist support where the FCO are unable.

The government provide information specifically for Britons residing abroad to claim UK welfare entitlements on their website. Aside from general guidance online

from the DWP, there are no other specific services offered to Britons residing abroad for guaranteed minimum resources.

## 27.4 Conclusions

In this chapter I have shown that the UK policies for its citizens abroad are characterised by providing comprehensive information whilst remaining passive in its engagement. The British state remains disengaged with its diaspora, whilst keeping the dialogue open through impressive information campaigns and social media channels. British emigrants tend to be prosperous and migrate for lifestyle underpinned by voluntarism motivations and therefore there has been little incentive to establish social protection policies or indeed engage with its diaspora.

The UK lacks any diaspora engagement policy or social protection policies for its nationals residing abroad, and is therefore underpinned by a passive approach to its emigrants. By international standards the UK remain limited in its engagement strategy which is curious given that the UK has one of the largest and most widely dispersed overseas population of any country (Hampshire 2013 p. 303). The British diaspora make a large potential voting pool and is composed of high skilled, high income individuals who could be potential ambassadors and soft power for Britain across the globe (Finch et al. 2010; Hampshire 2013, p. 319). Drawing on the limited literature on the UK diaspora, scholars argue that the absence of engagement is due to: the lack of distinctive British national identity, the heterogeneity of the British diaspora meaning that forming a cohesive policy that responds to its emigrants is challenging, but perhaps most importantly the British diasporas' 'apparent indifference to being engaged by the government...and they do not make much use of such channels as to impel politicians to represent their interests' (Hampshire 2013, p. 319–21).

Government's efforts to engage with its diaspora are solely through online information campaigns and social media as part of the FCO digital first strategy (Foreign Affairs Committee 2014). This being said, the FCO have made headways in recent years in ensuring online information for Britons travelling or moving abroad is up-to-date, that social media is engaging and responsive, and that government websites detailing advice for Britons moving abroad are extensive and comprehensive. Consulates are responsive to the needs of British nationals if and when needed and the Foreign Affairs Committee concluded on consular services in 2014 that

The Consular Service has responded with a "strategic shift" to provide a more standardised and professional service, with greater clarity on what it can and cannot provide, and a new focus on the most vulnerable. This has resulted in some welcome innovations, such as global call centres to remove the pressure from consular officers (Foreign Affairs Committee 2014 p. 3).

Conversely, the politics of British emigrants is relatively high on the political agenda, in the sense that ongoing Brexit negotiations are likely to have a significant

impact on Britons residing in the EU, and their entitlement and access to social protection in EU host states. Many Britons resident in the EU are aggrieved at the both the result of the referendum, and the 15-year time limit voting rule that prevented many Britons from being able to vote on an issue that affects them so significantly. With the VFL Bill killed at the report stage in 2019, the 15-year residency rule looks set to remain. Divisive Brexit politics means it is likely that the 15-year rule will continue to be contentious, and that the government through its consulate services will need to be more consistently engaged with Britons concerned over their residency status and social protection rights in the EU. Whilst pension increases for Britons residing in the EU has been confirmed and is unlikely to be a sticking point in negotiations, the outcome of agreements are bound to affect social protection rights for Britons in the EU.

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