



International
Labour
Organization

► Temporary labour migration: Towards social justice?



Edited by
Christiane Kuptsch
and Fabiola Mieres

► **Temporary labour migration: Towards social justice?**

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► Foreword

Labour migration of a “temporary” nature has long occupied policy makers and fuelled academic debates. While often proclaimed as a strategy to alleviate poverty and foster developmental outcomes, it remains a thorny issue and can be associated with decent work deficits. Most forms of temporary migration remain a significant challenge for the protection of migrant workers and the effective governance of labour migration across the world.

In 2022 the ILO’s Governing Body discussed temporary labour migration and acknowledged its complexities and the need for further investigation of ways forward that would maximize the opportunities and minimize the risks associated with temporary labour migration. This book emerges as a joint effort between the ILO Departments of WORKQUALITY and RESEARCH and offers reflections on different forms of temporary labour migration, the transience of categories and their policy implications; newer mobility developments in the global economy; policy tools to protect migrant workers; and challenges related to policy implementation. It also takes a longer-term perspective, trying to learn from the past to prepare for the future.

Temporary labour migration: Towards social justice? is the product of collaboration among key scholars in the field and ILO practitioners and takes the reader on a truly interdisciplinary journey. It broadens the debate by including newer areas that affect the governance of migration such as international trade, the expansion of mobility programmes, the “messiness” around forced migration and mixed flows, as well as innovative developments in migration policy design to protect migrant workers.

The result is an illuminating and careful reflection on diverse areas of temporary labour migration that will interest scholars, practitioners and a wider audience alike. In showing how exclusion from labour laws produces complex challenges to migrant workers, the chapters contribute to ongoing discussions on the state of social justice in the world; and the advances in migration policy design, such as the extension of visa portability, can set the ground for according fuller labour protection to temporary migrant workers in the future.

I hope that this edited collection inspires further conversations, active work on closing protection gaps, and strengthens collaboration among stakeholders and within the UN family to make social justice for migrant workers a reality.

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Introduction

► Understanding barriers to social justice, protection needs, evolving paradigms and past practices to shape future temporary labour migration

Christiane Kuptsch and Fabiola Mieres

Migration can be interpreted as a quest by individuals for social justice: pushed by human rights and decent work deficits, many people leave their homes in search of a better life in fairer circumstances. Migration can also be seen as a factor promoting social justice, for example, in cases where migration within regional economic integration zones contributes to equalizing living and working conditions throughout the area.

Among the many forms that migration can take, temporary movements have received a vast amount of attention, as they have become a prominent feature of the global economy. Temporary forms of labour migration are often said to be a vehicle for enhancing economic growth and for letting everyone participate in prosperity. They have been hailed as “triple win” – beneficial for migrants, destination countries and origin countries alike. However, the ILO (and other) research has documented that such outcomes are not so easily obtained (ILO 2022; ILO 2021a; ILO 2021b). The design features of temporary labour migration programmes and the measures used to attract migrant workers to participate in these schemes often conflict with the legal frameworks established to protect temporary migrant workers’ rights (ILO 2022; OHCHR 2022).

All too often, the economic gains for host nations are prioritized over the welfare of temporary migrant workers. What is more, immigration regulations dominate labour law, leading to a twofold distortion of labour markets: inequalities between migrant and local workers on the one hand, and inequalities between businesses with and without access to migrant workers on the other. Where a level playing field cannot be created at both of these levels and where a dual labour market characterized by lower standards for migrant workers appears, both social cohesion and economic efficiency will suffer.

Societies can choose how to value the contributions of their members, and how to protect their populations, including their migrant workers. The ILO’s Fair Migration Agenda launched in 2014 included the call to recognize the contribution that migrant workers make to the societies where they come from and where they work, and that this recognition “has to be translated into instruments of governance which guarantee a fair sharing of the prosperity

which migration helps to create. The ILO's social justice mandate implies an urgent need to inject a social dimension into globalization" (ILO 2014, para. 18).

Let us recall that the ILO was created with the aim of promoting social justice and peace, viewing labour exploitation as detrimental to this goal and a hindrance to the ability of any State to improve its own conditions. Indeed, the Preamble of the ILO's 1919 Constitution cites the "protection of the interests of workers when employed in countries other than their own" as one means of preventing injustice, hardship and privation. The heightened focus on the social justice dimensions of the world of work (ILO 2023a) and how to advance social justice through decent work provides an opportunity to rethink traditional paradigms regarding the regulation of labour migration – and temporary labour migration more specifically.

This volume offers reflections on barriers to social justice that stem from the design of temporary labour migration programmes and on ways to overcome these obstacles. How to offer protection to migrant workers within the existing power structures of today's global economy and who to include in the category of "temporary labour migrants" – and, therefore, deserving of such protection – are crucial questions that this volume addresses. It presents a variety of perspectives from different academic disciplines and looks at various world regions. It examines specific country programmes and policy tools, innovative approaches to policy and what we can learn from the past. The standpoints of migrants, employers and policymakers in destination and origin countries are all illuminated throughout the four parts of the volume, illustrating the complexity of temporary labour migration and how difficult it is to strike a fair balance between the various interests involved.

Temporary labour migration: Transient categories, shifting paradigms and their policy implications

There is no universal definition of temporary labour migration. In some definitions, the migrant's intention is taken as a yardstick, in others the visa category or permit obtained upon entry is decisive for defining a person as a temporary migrant worker, and in yet others, permanent migration is taken as a reference point to define temporary migration (see ILO 2022, 6–7). However, labour migration projects are dependent on economic conditions, legal contexts, and individual and social factors, and are therefore always volatile, which makes it difficult to categorize people as long-term or short-term movers based on their original intentions. Migrants may also be compelled to declare an intent to stay temporarily for lack of other options.

Someone's visa category or type of work permit is not necessarily set in stone. There may be pathways from one "category" to another, and the question of how permeable the categories are is an important one for migrants, as different rights are attached to different categories.

The temporariness of stay and migrants' social attachments are intricately interwoven. Does temporary work abroad separate the family, for example? Geographical distance significantly influences temporary migration. Shorter distances and legal possibilities for return (for example, within regional integration areas) often result in more frequent to-and-fro movements. By contrast, long-distance migration creates stronger incentives for workers to "stick it out", even after a job loss, particularly if they have not met their savings targets or have incurred debt to cover travel costs.

Part 1 of this volume touches upon these and other issues in examining transient categories as well as shifting paradigms around temporary labour migration and their policy implications.

Ronald Skeldon sets the scene by reminding the reader that definitions and categories of temporary labour migration are issues of space and time. They vary from country to country and shift over time. What is more, in his **critical appraisal of temporary, seasonal, circular and permanent migration**, Skeldon underlines the fact that distinctions between "temporary" and "permanent" are often more a social construct, created for administrative purposes, than a long-term reality: "Permanent" migrants can and do return in considerable numbers, while those who entered on a temporary visa may eventually be re-classified as permanent migrants or "immigrants" and may also later return or move on. If one also looks at internal migration, as Skeldon does, clear distinctions become even more difficult, as internal migrants are usually not required to obtain official documentation, and data on internal movements are largely not collected. However, as concerns movements across borders, the category in which a migrant falls upon entry into the country of destination makes a great difference in their daily life. As Skeldon points out, "the rights available to permanent migrants in host countries are more secure than those available to legal temporary migrants and greater again when compared to migrants who are in irregular situations". Existing categories are therefore not at all meaningless, but Skeldon calls for a greater awareness of the limitations of the definitions as well as an improved understanding of both the transience and the transformative capability of the various types of movement observed. Such awareness is particularly important as sedentary populations tend to be associated with cities and civilizations – and often with "development" itself – while mobile, nomadic and wandering peoples are labelled as "barbarians". Where such associations exist in the heads of policymakers, even subconsciously, they can provide justification for unequal treatment.

In Chapter 2 **“Back to the future? Temporary labour migration, international standards, global policy dialogues on migration governance, and the Global Compact on Migration”**, *Ryszard Cholewinski* similarly raises questions of (non-) discrimination and of permanent versus temporary forms of labour migration. He traces global migration governance frameworks and dialogues for paradigm shifts concerning distinctions between temporary and permanent migration, the permeability of categories and the preferences for one category over the other, and he examines in what ways dominant paradigms have affected the application of the principle of equality of treatment and non-discrimination towards temporary labour migrants. Cholewinski starts with an overview of how temporary labour migration is dealt with in international labour and human rights instruments, showing that the prevailing paradigm at the time of their adoption (between 1949 and 1990) was non-discrimination between migrant and non-migrant workers and between different categories of migrant workers, always against the backdrop of the sovereign right of States to determine their immigration policy. In following years, the international discourse focused on “migration and development”, and in several large forums, temporary labour migration was discussed as the desired form of migration, in particular the “circular migration” variant that was seen to lead to “triple win situations”. Under this paradigm, permanent immigration and questions of (non-)discrimination became side-shows. Only in 2018, with the adoption of the Global Compact for Safe, Orderly and Regular Migration, has the debate come back to an emphasis on temporary migrant workers’ rights and equal treatment and to a vision where both temporary labour migration and migration for the purpose of permanent employment are seen as legitimate policy objectives. In simplistic terms, one could say that the international community has moved from the equality-oriented approach towards temporary labour migration seen in the decades after World War II to a functionalist paradigm from the early 2000s when temporary labour migration became an instrument of development, and back to a more balanced and human-centred perspective in the more recent past.

From the perspective of migrants, additional complexities arise regarding the distinctions between forms of migration and categories of migrants. Labour migration projects are open to change and dependent on conditions at origin, at destination and in transit. In Chapter 3, *Christian Schramm* prefers to refer to “arrival” rather than “destination countries” to underscore the point that labour migrants do not necessarily end up working in the place that was their initial destination. In his analysis **“Mobility within the European Union: Capturing its complexity to guide policy”**, he shows how migration projects are non-linear and how migrants’ social relationships and self-positionings can exist across several changing countries. He gives the example of a Bulgarian worker who throughout her labour migration experience has been classified – contingent on Bulgaria’s status as a Member State of the European Union (EU) – as a “migrant” or “mobile person” and as a “third-country national”, with different sets of rights

attached to these categories, as well as a “short-term mover”, desiring to only work abroad for a limited period, and a “long-term mover” in need of integration support. “Classifying” people is a tricky exercise (Kuptsch and Mieres 2021), but is often necessary for policy purposes to lift people out of discriminatory situations and arrive at fairer outcomes for all, as with affirmative action programmes, for example. In this vein and using the empirical case of Bulgarian and Romanian migration, Schramm constructs “EU migration types” that would permit the development of differentiated, tailor-made support programmes for individual migrants. Based on a survey and qualitative interviews with Bulgarian and Romanian workers in the German Ruhr area, he proposes to distinguish between five “types” of migrants: (i) immigrant/emigrant families; (ii) older breadwinner returnees; (iii) young singles with a return or onward migration orientation; (iv) transnationally oriented families; and (v) circular migrants who locate the centre of their lives in their place of origin. In underlining that people may shift between these categories, he summarizes the different vulnerabilities, resources and support needs of these groups at both origin and destination. Schramm finds that national and lower-level actors at destination often focus on integration and perceive mobility as an obstacle to such integration, whereas the same actors in the country of origin have few incentives to prepare temporary workers for their stay abroad, as they tend to be seen as potential long-term emigrants. In such a context, all temporary labour migrants would benefit from greater cross-border cooperation among authorities at all levels.

Revisiting temporary movements in the global economy: “Problematic” migration versus “unproblematic” mobility?

Nowadays, migration is often perceived as a problematic social phenomenon. On the one hand this is so because “the category ‘migrant’ emerges as polysemic, holding multiple meanings, malleable, restless and, as such, *made to do political work*” (Kunz 2019, 2, emphasis added). Populist discourse often purposefully lumps together people in totally different situations and calls them “migrants”; this can include permanent immigrants, “classical” guestworkers, workers who have come under free movement provisions of regional economic integration areas, refugees, and even citizens of visibly foreign descent or ethnic minorities. At the same time, the so-called “migrants” are portrayed as “Others” and as potential security threats. On the other hand, the terms “migration” and “immigration” are frequently used interchangeably so that the idea is planted in the heads of people that “migration” is necessarily linked to permanency and that the State will have to invest in the integration of the newcomers. The latter is a reason why member countries of the Gulf Cooperation Council have traditionally preferred to refer to “expatriates” rather than “migrants”. Whatever

their motive, one can observe an increasing reticence by policymakers to use the term “migration”, including when referring to its temporary forms, instead replacing it with “mobility”.

The concept of “mobility” tends to have positive connotations. Particularly in neo-liberal thinking, “mobility” is regularly associated with “flexibility” and “agility”, and it is highly valued, encompassing the underlying idea that individuals should take responsibility for themselves in a competitive environment and that this should include a willingness to move, especially for the sake of work opportunities.

Irrespective of their stage of development, many countries pursue “welcome the skilled and rotate the unskilled” migration policies (Kuptsch and Martin 2011), trying to attract and retain global talent while also making sure lesser-skilled foreigners only have access to the labour market for defined periods without the prospect of permanent residency. In the dichotomy thus created, low-skilled jobs become associated with “migrants” and occupations demanding high skill levels with “mobile people”. Hand in hand with these associations also goes the idea that “highly skilled” workers can fend for themselves (because they are agile and flexible), so that there is no need for the State to intervene on their behalf.

The EU uses the term “mobility” for intra-EU migration, and “mobile workers” have the same rights as national workers – again suggesting unproblematic movement and giving the impression that States are freed from special obligations vis-à-vis these workers.¹

Worldwide, the number of people who move temporarily to another country under trade agreements has increased and the number of people fleeing from conflict or ecological disasters in their home countries is surging markedly. Typically, in both situations access to the labour market is regulated differently than for “normal” migrant workers. For example, the Annex on the movement of natural persons of the General Agreement on Trade in Services (GATS) states in its paragraph 2: “The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.” Refugees often do not have (official) access to the labour market at all, or only after long waiting periods, as it is assumed they will go back to their home countries as soon as the situations they fled are resolved.

1 However, there is recognition within the EU that “mobile workers” may have special needs. Otherwise, the European Labour Authority, with its mandate to ensure that EU rules on labour mobility and social security coordination are enforced in a fair and effective way, would probably not have seen the light of day in 2019.

The chapters of Part 2 of this volume speak to these developments and reflect on their implications for the protection of people who work abroad temporarily but are not classified as “labour migrants”, “migrant workers”, “migrants for employment” or similar.

Canada is an example of a country that makes a distinction between programmes for “migrants” and programmes for “mobile people”, and to some extent a forerunner of this trend, as this division has existed since 2014. Workers can enter Canada under the various categories and streams of two broad umbrella programmes, the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP). In Chapter 4, [Leah Vosko](#) explains that the TFWP is assumed to involve *migrant* workers temporarily coming to Canada to take up low-skilled jobs for lack of better opportunities back home; while the IMP is considered to be about *mobile* workers who temporarily join the Canadian labour market in high-quality occupations.² Vosko traces the origin of the IMP and the evolution of both the TFWP and IMP over time, arguing that the IMP surfaced in part as a response to criticisms related to exploitation under the TFWP and in part as a reaction to increased competition in the global economy, with the IMP being used to advance trade negotiations and temporary employment under international agreements that promote reciprocity. Key trade agreements prohibited labour market tests, and in a restructuring of the umbrella programmes, the lack of a required labour market test became the defining feature of the IMP. Some long-standing temporary labour migration programmes, such as youth mobility schemes, thus became reclassified as belonging under the IMP. Vosko therefore challenges the notion that the IMP is as “new” as it is sometimes portrayed, and she is also **challenging the global migration/mobility programme construct** as such. Indeed, her analysis of labour market (in)security under the IMP reveals that the situation for IMP permitholders is not as rosy as often assumed. Unlike TFWP participants, many IMP participants have: (i) not benefitted from reforms that were meant to protect both migrant workers and local labour markets; and (ii) suffer from low annual employment income and are obliged to hold multiple jobs to sustain themselves and their families – to name but two indicators of labour market insecurity that Vosko uses. She highlights that key components of certain IMP streams deviate from official justifications for the programme as a whole, and sees a danger of overlooking the protection needs of ever-increasing numbers of “mobile” workers under the IMP.

2 In this connection, some observers warn of a racialization and segmentation of the Canadian labour market driven by distinctions in the countries of origin from which TFWP and IMP participants are recruited, with the majority of workers under the TFWP coming from developing countries and the IMP drawing workers from more diverse sources, including many industrialized countries (Depatie-Pelletier, Deegan and Touma 2021).

In a similar vein, *Sandra Lavenex, Mariana Alvarado, Paula Hoffmeyer-Zlotnik* and *Philipp Lutz* question **business mobility as a privileged form of temporary labour migration**. They note that it is generally assumed that high demand for skilled migrants brings with it extensive privileges for these migrants as concerns their socio-economic rights and access to settlement. However, this assumption does not consider that in today's world a large fraction of skilled migration is "business migration", including temporary assignments of workers from a company in country A to country B as intra-corporate transferees, contractual service providers and business visitors. These types of movements often happen outside of the regular labour market, and typically trade and immigration officials refer to them as "mobility" that is part of a commercial transaction rather than migration. The authors of Chapter 5 underline that the combination of a temporary work contract and exemption from the destination country's domestic labour market bears structural risks: the commodification of the migrant; the empowerment of the employer over the worker; and discrimination in comparison to locally hired workers as concerns fundamental rights such as a change of employer, wage parity, freedom of association and a pathway to a permanent stay in the host country. More and more preferential trade agreements (PTAs) contain provisions facilitating the mobility and stay of such business migrants, as well as provisions concerning the social and economic rights of migrant workers. Using data from a new Database on Migration Provisions in Trade Agreements (MITA), Lavenex, Alvarado, Hoffmeyer-Zlotnik and Lutz document the scope of business mobility and migrant rights provisions in PTAs signed worldwide between 1960 and 2020. They find that the promotion of temporary business mobility has developed far more dynamically than the protection of migrant rights in PTAs. Focusing on intra-corporate transferees, the authors also examine the implementation of such temporary mobility provisions in Switzerland. They show that by allowing multinational companies to draw on limited immigration quotas and by exempting business migrants from regulatory requirements, the Swiss immigration provisions privilege international businesses that can use business migration as a recruitment channel at the expense of both other firms and the long-term immigration prospects of the business migrants.

As with migration that occurs under trade agreements, the movement of people who flee their home because of armed conflict, organized violence or life-threatening disasters is usually not looked at as "temporary labour migration" by either academia or policymakers, as *Ludger Pries* and *Berna Şafak Zülfikar Savcı* show in Chapter 6. Such "forced migration" as Pries and Zülfikar Savcı call it, frequently extends over considerable periods. During their prolonged journeys in search of safety, many forced migrants are compelled to work at least occasionally because their (often meagre) savings do not suffice as the journey becomes longer than expected and the migrants face natural and border obstacles as well as various forms of violence and fraud. Forced

migrants thus transform into “forced temporary workers”. Pries and Zülfikar Savcı trace migration trajectories, including the relations between violence and work during these trajectories, and analyse the conditions under which forced migrants work and the types of employment they hold based on findings of a survey with over 700 transit migrants in Mexico and Türkiye and on biographical interviews, as well as the findings of a segment of a German socio-economic panel study. Particularly when persons flee conflict and intense violence, they tend to migrate to neighbouring countries that may themselves be plagued by economic and political instability, but where the prevalence of an informal economy offers fairly easy access to work, albeit in precarious conditions. In pointing to the case of Türkiye, where forced migrants represent a considerable share of all temporary labour migrants because of long stays in the country, the impact of family migration and the political dynamics in the region, the authors warn of the risk that informal and precarious work performed by forced migrants can undermine minimum standards in national labour markets. They see **forced migrants as a neglected group of temporary labour migrants** and underline that in view of the growing number of forced migrants, which has more than tripled over the last three decades, and the precarious nature of their employment and living conditions, it will be crucial to include this vulnerable group in broader discussions about the protection of temporary labour migrants.

Protection and power structures: Policy tools under scrutiny

Temporary labour migration comes in many forms, such as: programmes set up unilaterally by destination countries and manifested in visa categories; circular migration schemes or young professional programmes that are based on agreements between destination and origin countries; posted workers and mobile workers under free movement provisions of regional integration areas; cross-border workers; seasonal workers; working holiday makers and so forth.³

However, despite the multitude of categories and forms there are some common flaws in programme design and underlying weaknesses when it comes to protecting migrant workers who participate in temporary labour migration schemes. What would be the best tools and policy solutions to address protection gaps? What are fundamental protection strategies, no matter the form of temporary labour migration? These questions need to be tackled against the backdrop of power imbalances, for example, between workers and employers and between origin and destination countries. The latter imbalance exists because of economic inequalities among countries, but also because the

³ For an overview of some of the most common forms of temporary labour migration and a basic typology according to institutional design, see ILO (2022).

human right to emigrate from one's country of birth is not matched by a human right to immigrate wherever one wishes to go. On the contrary, States cherish their sovereignty in relation to inward migration, and it is ultimately always the country of destination that decides who can enter their territory, under what circumstances and for what purposes.

How to better protect temporary labour migrants is the central question for the authors of Part 3 of this volume, although they examine quite different measures of protection, including: policy coherence and social partners' involvement in migration policymaking (Chapter 7); "untying" workers from employers (Chapter 8); and the use of bilateral labour migration agreements as a form of migration diplomacy (Chapter 9).

Natalia Popova sees policy coherence and the involvement of the social partners in migration policymaking as crucial elements in **addressing challenges in the design and implementation of temporary labour migration programmes**, thus leading to better outcomes for temporary migrant workers. Based on ILO analysis and guidance documents, Chapter 7 addresses the interplay between migration, employment, education and training policies, where coherence is defined as avoiding both direct and unintentional conflict among different sets of policies. Popova underlines that States' perceived need to adopt temporary labour migration policies sometimes clashes with long-term migration policy objectives, as when meeting current labour demand may call for bringing in temporary migrants while rapid population ageing would require seeking more permanent solutions to labour shortages. In terms of design, implementation, monitoring and evaluation, temporary labour migration and national labour migration policies present similar challenges, which is not surprising, as the former are a subset of the latter. These challenges comprise among other things: (i) the establishment of a robust evidence base, including the collection of "priority data" and ensuring the comparability of results over time and across countries; (ii) the use of skills anticipation and forecasting that can serve both the identification of gaps to be filled by temporary labour migrants and the upgrading of the education and training system at a systemic level for the benefit of all participants in the labour market; (iii) skills development, recognition and matching, including the application of tools such as national qualification frameworks; and (iv) the use of participatory approaches. Popova notes that the participation of labour ministries and of employers' and workers' organizations is important for bringing legitimacy and effectiveness to this policy field, both at the national and international levels, for example, when it comes to negotiating bilateral labour agreements. Evidence also suggests that involving all stakeholders from the start and having institutionalized approaches rather than ad hoc participation will ensure ownership and commitment.

Many temporary labour migration schemes are characterized by employer-tying arrangements, which are essentially State-implemented obstacles to workers'

ability to exit their employment relationship by linking the act of losing or quitting one's job with the risk of facing State sanctions. Under such schemes, migrants are brought to the country to work in a specific role and/or for a specific employer. In Chapter 8, **Daniel Costa** takes a critical look at the idea of "untying" migrant workers from their employers (also called "(visa) portability"), which has been proposed as a protection tool by both critics and proponents of temporary labour migration programmes across the world, ranging from legal aid lawyers and corporate representatives to development economists. Critics of temporary labour migration programmes see the fact that migrants can change jobs or industry sector and thus "control their work visas" as a minimum requirement for their protection; whereas proponents of temporary labour migration programmes tend to argue that no other tool is needed to protect migrants who face abuse, exploitation and injustice: migrants would be protected by the "free market" through choosing to work for the employer who offers the highest wages and benefits and the best working conditions. Costa therefore raises the question, "**Is portability a panacea?**" and uses workers' possibilities for **changing employers in US temporary migration programmes** as a basis for his analysis. He describes how portability functions in a few major US programmes. For example, low-wage workers in the H-2A and H-2B visa programmes designed for temporary and seasonal migrant work in agriculture (H-2A) and in occupations such as construction, forestry, meat processing and hospitality (H-2-B) face numerous practical and bureaucratic obstacles despite legally enjoying the possibility of changing employers. College-educated workers under the H-1-B visa programme, the largest US temporary labour migration programme, have near total portability, but depend on their new employers' willingness to pay considerable fees and undertake a lot of paperwork before a change is possible. Abuses continue to occur under the TN visa programme created as part of the free trade agreement between the United States, Canada and Mexico, and in programmes intended for foreign students and practical training, middlemen are involved, leading to conflicts of interest. Costa's detailed assessment of facts, figures and programme design leads him to the conclusion that other reforms are needed in addition to portability, and he makes suggestions in this respect.

The ILO has traditionally considered that bilateral cooperation among States is a useful tool in the protection of migrant workers; the existence of a "Model Agreement on Temporary and Permanent Migration for Employment" in the Annex of the Migration for Employment Recommendation (Revised), 1949 (No. 86), is proof of this. The United Nations Network on Migration, which brings together all UN agencies that deal with migration, has developed guidance on bilateral labour migration agreements (BLMAs), published in 2022. But how much protection can such BLMAs afford to migrant workers in contexts of asymmetrical power relations between countries of origin and destination? **Sophia Kagan** examines this question in Chapter 9 by focusing on **migration**

diplomacy between African and Middle Eastern countries, while also showing what other functions BLMAs might fulfil for States and to what extent States may or may not be interested in recommendations from international organizations regarding the scope and implementation of their BLMAs. Kagan defines migration diplomacy as the use of diplomatic tools and procedures to manage cross-border population movement, which can encompass both the intentional use of migration flows to achieve other objectives and the implementation of diplomatic strategies to address migration-related goals. The tactics used can be cooperative or coercive and depend on power dynamics and the interests of the States involved. Kagan traces both the Gulf Cooperation Council (GCC) countries' and African countries' approaches to BLMAs, describing various diplomatic methods applied over time by both sides, and showing how BLMAs have previously functioned as a mechanism to open new migration corridors. For GCC countries, BLMAs have been a tool to secure a diverse labour supply so as to decrease the risk of dependence on any one country of origin for migrant labour. African countries' scope to use coercive measures (for example migration bans) in the face of exploitation of their workers has been limited by their broader economic and foreign policy objectives, such as deepening trade and investment relations with the GCC. According to Kagan, informal forms of cooperation between African countries to promote transparency and to arrive at common positions vis-à-vis Middle Eastern countries do exist and could give rise to increased protection of African migrant workers' rights. However, numerous institutional changes foreseen under BLMAs to protect temporary labour migrants have not been implemented, and as such, these BLMAs do not significantly impact migrant workers' lives. The promise of BLMAs to ensure workers' protection therefore remains unfulfilled, "underscoring the need for more than just high-level agreements to effect real change".

A longer-term view on temporary labour migration: Learning from the past to prepare for the future

Governments' strategic use of BLMAs is also raised in two of the chapters of Part 4 of this volume, which takes a long-term perspective on temporary labour migration and presents a number of dilemmas for policymakers that have existed since the end of the nineteenth century when the first temporary labour migration schemes saw the day of light. As described by historian Cindy Hahamovic (2003), in a period of State-building, countries such as Prussia and South Africa established programmes that: (i) served industrialists in sectors undergoing rapid change; (ii) required State involvement because of mounting public opposition to foreigners; (iii) segregated foreign workers from local

populations; and (iv) provided employers with the threat of State sanctions in the form of deportation in case workers “misbehaved”.

Arguably, such “state brokered compromises designed to maintain high levels of migration while placating anti-immigrant movements” (Hahamovic 2003, 72–73) are still fashionable today in a context of political polarization and wavering trust in democratic institutions. Policy dilemmas related to temporary labour migration have also increased in number and scope against the backdrop of a global economy still recovering from the COVID-19 pandemic and dealing with global transformations such as climate change, demographic shifts and uneven digitalization. In Lutz’ (2023, 840–841) words, “migration policymaking in liberal democracies takes place within competing policy imperatives stemming from the *tension between open economies and closed states*. This so-called ‘liberal paradox’ *has intensified* over time with deepening globalisation and the domestic politicisation of migration issues” (emphasis added).

Another inherent tension in temporary labour migration programmes lies in the fact that both a flexible and a stable workforce present certain advantages. Economic competition and structural changes stimulate calls for more *flexibility* and short-term contracts. But employers also seek *stability*. According to an ILO (2021a) study on employers’ perspectives on and experiences with temporary labour migration, the business community appreciates that temporary labour migration programmes “address short-term labour needs” but considers it a major challenge that these programmes “do not address systemic issues related to developing a sustainable local workforce and improving salaries and working conditions” (ILO 2021a, 5). Because they seek predictability of processes and outcomes, companies find that “modern employment-based immigration systems should incorporate: ... work authorization programmes that are adaptable to the lifecycles of the employee with a clear path from student/cultural exchange status through to permanent residence” (ILO 2021a, 7). Employers consider that “long-term/permanent residence visas facilitate the long-term retention of valuable migrants who contribute to economic growth and competitiveness” (ILO 2021a, 22).

Employers’ preferences for a stable workforce can also manifest in their participation in circular migration schemes: When the same migrant workers who have done well in the past come back year after year, there is no need to explain their tasks to them or train them in any other way – although this is not usually invoked as the main reason for the creation of such schemes.

Historically, the establishment of circular migration programmes has been justified by their contribution to the development of origin countries (ILO 2022, 12). But have circular and other forms of temporary migration “delivered” in this respect? What can countries of origin learn from the past?

In Chapter 10 on “**Temporary labour migration from North Africa: Historical legacies and future dilemmas**”, *Aurelia Segatti* provides some answers to these questions. She shows how the number of participants in temporary labour migration programmes between EU and North African countries has gone up considerably over the years, for example, under the GECCO scheme set up by the Governments of Spain and Morocco where annual participation went up from some 3,000 workers in the late 2000s to nearly 20,000 in 2023. Numbers are also likely to stay at high levels given the interests at both ends of this migration corridor, with European countries attempting to face fluctuating labour needs, often in key jobs and in sectors where recruitment of local and youth labour is complicated (such as in agriculture), while North African countries seek to alleviate difficult employment situations and thus defuse political tensions. Segatti describes protection measures adopted by European institutions and by individual destination and origin countries and identifies areas with prospects for improved protection. She sees little measurable progress in relation to protection outcomes, even if some improvement is visible, for example, with regard to migrant recruitment. The situation is exacerbated by the fact that besides formal temporary labour migration schemes, other sizeable informal, irregular and/or illicit migration channels exist and pose serious protection issues for the workers who use them. What is more, the longer-term developmental impact of temporary labour migration is hardly given the attention and the resources that would be required to avoid negative consequences for workers and their families. Segatti observes that none of the existing temporary labour migration schemes have been accompanied by robust, structured socio-economic reintegration programmes, whether from the EU or the North African side. This has a particularly large impact on women migrant workers, who face additional gender-related cultural obstacles to engaging in their own income-generating activities upon return, and are often pressured into a vicious cycle of dependency on seasonal migration earnings. Segatti’s rich analysis also comprises a comparison with past schemes and other world regions, showing how migrant workers in North Africa tended to do better in the past (post-World War II) and have tended to do better than their Southern African counterparts, which can be attributed to the differing degree to which temporary labour migration programmes were and are supported by social protection schemes, whether through bilateral social security agreements or unilateral measures. To avoid longer-term risks posed by the increase in temporary labour migration from North Africa, Segatti highlights the need for social protection in the areas of work accidents and childcare in particular.

In examining **temporary labour migration in Switzerland** over time, *Etienne Piguet* takes another historical perspective and points to **the life, death and rebirth of the “guestworker”** in this country. His account traces the tension that can also be observed in other liberal democratic States between temporary labour migration programmes and the fundamental rights of immigrants to

participation, family unity, decent work and secure life prospects. Focusing on seasonal work as a particular form of temporary labour migration, Piguet shows how the status of the “seasonal worker” was established in 1931 as a “compromise migration policy” that had to balance identitarian concerns, voiced as fears of a “foreign overpopulation”, and economic concerns, with employers calling for labour in short supply on the local market. Nearly 100 years later, many policymakers across the globe have to reach similar “compromises” and weigh both types of concerns. Holders of seasonal worker permits were initially not accorded what are considered as fundamental rights and decent work today, but conditions improved over time, particularly when in the early 1960s, many other European countries were recruiting guestworkers and Italy threatened not to send workers to Switzerland anymore if its nationals were not given additional rights. A new agreement was concluded in 1964 that facilitated permanent residency and family reunification; and these rights were eventually extended to workers from other chief Swiss source countries such as Spain, Portugal, Yugoslavia and Türkiye. To appease anti-foreigner sentiments, the Swiss Government coupled the extension of additional rights to guestworkers with the introduction of quotas, so that the free-market policy that had dominated the 1950s and 1960s was transformed into an elaborate negotiation system that involved local administrations, employers and trade unions. Piguet describes the historic events and elements that led to the demise of this system, which ended with the abolition of the seasonal worker permit in 2002 when Switzerland concluded a free movement agreement with the EU. However, Chapter 11 goes beyond this historical review. Piguet’s innovative research compares the issuance of the former “A” seasonal worker permits with that of today’s “L” short-term work permits that have allowed Switzerland since 2002 to bring EU citizens and others to the Swiss labour market for durations of less than a year. Piguet does not detect fundamental differences regarding volume, gender balance, economic sectors and geographical spread throughout the country, but L-permit holders come from a larger array of countries than past A-permit holders, and a few new sectors of activities such as IT have also emerged.

Yet another long-term perspective is taken in Chapter 12, which also projects into the future. With the COVID-19 pandemic having exposed shortcomings in Australia’s approach to temporary labour migration, the country embarked on a review of its entire migration programme in 2022. *Joanna Howe*, one of three independent experts appointed to conduct the research, takes the reader through the key findings and contributions of this Migration Review, starting with the five proposed objectives of an overhauled migration programme, namely: (i) building Australia’s prosperity; (ii) enabling fair labour markets; (iii) building a community of Australians; (iv) protecting Australia’s interests in the world; and (v) ensuring a fast, efficient and fair system. Together with five guardrails to guide migration policy to fill skill shortages, these objectives

represent **a principles-based approach to regulating temporary labour migration in Australia**, making a significant normative contribution. The guardrails are: (i) a tripartite approach; (ii) universality; (iii) an evidence-based approach to identification of labour market need; (iv) mobility, that is, the ability to change employer; and (v) integrity. Howe considers the inclusion of “enabling fair labour markets” as the most innovative feature because earlier articulations of Australia’s migration programme mainly centred around economic outcomes and meeting employer needs. She explains that the application to migration law of the idea of “a fair go”, as it exists in Australian labour law, should help with both recognizing the considerable labour market impact of temporary migrant work and countering the tendency for migration law to divide labour law’s worker-protective mission. The Review challenged the demand-driven orthodoxy that underpinned the temporary labour migration programme since its inception in 1996, for example, by proposing to reform the Temporary Skill Shortage visa via a more robust and evidence-based method for determining skill shortages; a restructuring of the Ministerial Advisory Council on Skilled Migration; and measures of increased visa portability. The Review also tackled the issue of temporary migration into low-skilled jobs, underlining the need for a whole-of-government approach in this respect, as there would be interaction with existing labour mobility programmes for students and working holiday makers, and impact on the Pacific Australia Labour Migration scheme. It also pointed to ethical challenges associated with temporary labour migration for low-skilled work without a pathway to permanent residency, including the risk of generating a “permanently temporary” group of lower-paid migrant workers unacceptable to the Australian community. Howe concludes by reporting that the Australian Government accepted the Review’s proposed objectives and guardrails in its Migration Strategy published in December 2023 and on first reforms undertaken in response to the Review.

As a multifaceted experience, migration intersects profoundly with the principles of social justice. The contributions in this volume examine various aspects of the complex relationship between temporary labour migration and the principles of social justice. The book’s Conclusion provides a final reflection on the linkages between social justice and temporary migration under the four key themes selected by the 2023 report of the ILO Director-General to the International Labour Conference *Advancing Social Justice*, namely, universal human rights and capabilities, equal access to opportunities, fair distribution, and just transitions.

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Part

1.

**Temporary labour migration:
Transient categories,
shifting paradigms and
their policy implications**

Chapter 1.

► Temporary, seasonal, circular and permanent migration: A critical appraisal

Ronald Skeldon

Introduction

Temporary, seasonal and circular migration make up forms of human movement that are seen to be different from settled and permanent migration. Temporary movements are in contrast to those of settled peoples as, for example, when people leave one world, whether rural or the Old World, for another, whether urban or the New World. Sedentary populations are associated with cities and civilizations – often with “development” itself – while mobile, nomadic and wandering peoples are “barbarians”, or even “primitive” in some early typologies (Petersen 1975, 321–325). Thus it has been throughout human history in records compiled by urban elites.

Yet, it will be argued in this chapter that any hard and fast distinction between temporary or permanent, nomad or settler, is likely to have been more apparent than real. These categories are “fungible” to the extent that a migrant can move from one State to another throughout his or her trajectory: leaving as a temporary migrant but later choosing to stay on, or vice versa. Permanent and temporary migrants also generate self-supporting systems. Cities are supported by trading networks that see interchanges of merchants on short-, as well as longer-term, bases. Nomads have altered their circuits of seasonal migration to subjugate and incorporate cities and become wealthy, to the extent that some have even adopted urban lifestyles indefinitely. Nevertheless, nomads or wandering peoples are so often seen as characteristic of pre-modern times, with our modern era characterized more by permanent migration, perhaps even seen as an “age of migration” (de Haas, Castles and Miller 2020). To politicians across the developed world, “migration” implies a permanent movement of peoples with different values coming to settle and challenge the very identities of national populations. Yet, return and onward movements are integral parts of all migration systems. Temporary migration, whether seasonal, circular or even nomadic, is as characteristic of our contemporary world as it ever was in earlier times.

Definitions and categories as issues of space and time

While bipolar divisions between temporary and permanent, nomad and settled, overly simplify what are complex and interrelated patterns of mobility, it would be naïve to claim that temporary migration does not exist or that differences between so-called temporary and permanent statuses are unimportant. Temporary movements are important because they exist as recognized categories of human movement in migration policy. Thus, the existence of clear administrative “temporary” and “permanent” channels of entry effectively “define” migrants, and separate the temporary from the permanent. These definitions will vary by country of entry depending upon legally identified categories of entry, which themselves may regularly change as they are updated to meet specific objectives, which are themselves embedded in the historical and political contexts of the times (see Kuptsch and Mieres 2021).

A spectrum can be proposed that ranges from countries where migration has been central to their development, such as in North America and Australasia, essentially “nations by design” (see Zolberg 2006), through to those that have accepted migrants to help build their economies but never saw themselves as countries of immigration, such as many countries in Europe and Asia, and finally to countries that attempt to exclude settlement by migrants altogether and where all entrants would be seen as temporary, as in much of eastern and western Asia. This spectrum, nevertheless, would experience transformations through time. Generally, however, permanent entrants are those who are on a pathway towards citizenship of the host country; while temporary entrants will be allowed entry to engage in specific short-term activities, often of 12 months or less, or activities that do not automatically lead to citizenship, such as studying. Within the temporary entrant category, some countries make provision for repeat and regular entry for specific short-term activities, commonly for seasonal work in agriculture. Such repeat and regular movements can be defined as “circular migration”, movements that are integral to patterns of human circulation or mobility from any community. First studied in relation to internal migrations from the 1960s (see, for example, Chapman and Prothero 1985), circular migration did not emerge as a major theme in international migration until the first decade of the twenty-first century (see Triandafyllidou 2013). The term has taken on greater prominence because it draws attention to the idea of return: nuancing any impression that temporary migrants might stay on, even if the reality turns out to be different.

The fact that permanent entrants can leave to move on or return, making them *de facto* “temporary” residents in the host society, or that temporary and even circular entrants can later change their status to become permanent in no way denies the administrative separation of categories of initial entry. Also, the rights available to permanent migrants in host countries are more secure than those available to legal temporary migrants and greater again when compared

to migrants who are in irregular situations. In countries where immigration has been part of the ethic of nation building, temporary migrants pose unsettling questions precisely because they are not on a pathway to citizenship and are, in effect, second-class residents. As will be seen, such a clear distinction is becoming blurred.

The measurement of the temporary (as opposed to the permanent) migrant is problematic and rooted in the same issues as the definition of the migrant more generally (see also Kuptsch and Mieres 2021). Over what distance must a person have travelled to be classified as a migrant? How long must a person remain at a destination before being classified as “a migrant”? The accepted United Nations definition of an international migrant is someone who has moved to another country for 12 months or more. However, the International Organization for Migration identifies a migrant as any person who is moving or has moved across an international border, or within a country, away from his or her habitual place of residence regardless of that person’s legal status, reason for, or cause of moving, or what the length of stay has been. This broadens considerably the definition of a migrant, and will include many temporary, seasonal or short-term circulators among estimated numbers of migrants. Thus, statistically, it is virtually impossible to create a separate estimate for the number of temporary migrants using these data from global sources alone. Administrative data do provide relevant information from entry categories, but apart from statements of intention to stay, can tell little about what the actual length of stay will be. Nevertheless, these data are generally the principal data source used to separate instances of temporary migration from those of permanent migration.

Another complicating factor in both data collection and analysis revolves round the issue of whether migrants go to urban or rural destinations. Migration, both internal and international, tends to focus on urban areas and particularly on the largest metropolitan centres. In the European Union (EU), for example, some 14.5 per cent of the population of cities is foreign-born, compared to 10.2 per cent in towns and just 5.5 per cent in rural areas (Joint Research Centre 2019, 5). In the United Kingdom of Great Britain and Northern Ireland, some 37 per cent of the total foreign-born population of 9.5 million, or roughly 3.3 million persons in 2021, were found in London, and some 35 per cent of London’s population were migrants, compared with 14.4 per cent nationally (Vargas-Silva and Rienzo 2022). Yet, significant migration to rural areas does occur, particularly temporary migration of one type or another, and specifically seasonal agricultural workers, who are often in precarious circumstances (see the essays in Rye and O’Reilly 2021 for the EU). Being predominately temporary, migrants in the rural sector in the EU are more homogeneous than those in cities, which is essentially the result of the division of labour. Migrants in rural areas are overwhelmingly lower-skilled agricultural workers, while those who migrate to cities incorporate a range of skill levels. However, definitions of rural and urban vary among countries, and any hard and fast distinction between the two sectors must be

treated with care, as some agricultural workers may live in urban areas while working in modern agro-industrial activities in a rural area.

This chapter will examine how temporary and other movements vary by looking first at international migration and then at internal migration, where much of the early work on circular and other forms of non-permanent movements was carried out. The chapter then addresses the issue of return migration before speculatively considering future directions of temporary forms of mobility.

International migration

As discussed above, administratively defined channels of entry to a country provide a basis for separating a temporary migration from a permanent migration. Following on from this, permanent migrants are admitted under visas that allow settlement, and are generally on a pathway towards eventual citizenship as part of nation-building. Temporary entrants, on the other hand, include workers usually coming to do a specific task, as well as students, although the list can be extensive and cover a spectrum from diplomatic representatives and business people to sports teams and artistic performers and on to asylum-seekers. For example, the United States of America has 82 categories of non-immigrant arrivals under its I-94 entry, including 37 categories for temporary workers and trainees alone and four categories for student entries. Even this level of complexity does not include most Canadians visiting or in transit. In 2019, more than 81.5 million entries were recorded under these categories, falling to 13.6 million in 2021, showing the impact of the COVID pandemic on temporary migration to the United States (United States, DHS 2023). Few countries operate such comprehensive immigration programmes, which makes direct comparisons difficult, even among the most developed nations.

Focusing only on migrant workers as defined by the United Nations Statistics Division – namely, as those admitted for “the specific purpose of exercising an economic activity” – provides perhaps the most useful estimates of labour migration, but not necessarily of temporary migrants. Globally, the ILO estimated that there were some 169 million migrant workers in 2019, which represented almost 70 per cent of the global population over 15 years of age that were defined by the United Nations as international migrants at that time (ILO 2021). However, not all these 169 million migrant workers would have been temporary migrant workers, as that figure would include those who had been accepted as permanent immigrants to a country and were in the labour force during the period under consideration. However, at the global level, many, perhaps the majority, will have been temporary migrant workers.

No universal definition of “temporary” exists. Many temporary migrants will be labourers on contract for three or more years, after which time they must leave the country unless the contract is extended. They are “temporary” in that

they have no rights to permanent residence in the country of their employment unless some adjustment to their status is made. Whether that adjustment to status is made depends upon the destination country. In highly developed host societies where migration is an integral part of State-building, temporary migration provides an important stepping stone to permanent residence. For example, in the United States in 2019, just before the COVID pandemic, for example, while just over 1 million people obtained lawful permanent residence status, over 4 million migrants were admitted as temporary workers and dependent family members. An additional 1.9 million students were also admitted in that year. While many other migrants were also admitted on a temporary basis, these two groups – temporary workers and students – provided a source that is available and willing for the later award of permanent resident status. The governments of Australia and Canada also recruit many of their permanent intake “onshore”, that is, from among those who had entered through one of the temporary channels. In 2010–11, for example, some 48 per cent of all those who secured permission to reside in Australia through the Government’s migration programme were already in the country, and when only the skilled migration component is examined, that proportion increased to 59 per cent (Australia, Department of Immigration and Citizenship 2012, 7).¹ In the search for skilled migrants, onshore recruitment from the student category avoids the difficult issue of accreditation of degrees from countries other than one’s own. Young people are granted temporary entry as students, and after graduating and being trained to Australian standards, can be offered, or be allowed to apply for, permanent status.

However, the majority of destination countries in Europe, Asia or the oil-rich Middle East rarely see temporary migrant programmes as pathways to permanent settlement. Temporary programmes are precisely that – temporary – and migrants must leave the country at the end of their contracts, either to return home or to move on to a third destination. Conditions of entry through temporary programmes are usually such that the migrants will indeed leave when they are supposed to leave. Married migrant workers are not allowed either to enter with their families or to have family members join them later. Single workers may not be allowed to marry, particularly if they are women. Change of employer at the destination may not be allowed, which suppresses any aspiration to labour market mobility.²

1 Editors’ note: see also Howe (Chapter 12) in this volume.

2 Editors’ note: see also Costa (Chapter 8) in this volume.

These conditions are especially stringent in the Gulf States, which account for some of the largest migrant worker flows in the world. For example, in 2017, almost 23 million migrants were to be found in the Arab States: the majority were male and from countries in South Asia, with migrants making up 88 per cent of the population of the United Arab Emirates, 79 per cent of the population of Qatar and 72 per cent of the population of Kuwait (IOM 2020, 83–84). The men are involved mainly in construction, but a growing flow of female migrants from Sri Lanka, Bangladesh, Indonesia and the Philippines into domestic service has also been observed. It is among these two flows that evidence of abuse has emerged, both at the destination and in the process of recruitment, with most of the migration controlled through labour brokers.

These systems will persist for as long as there is a demand for labour in Gulf Cooperation Council (GCC) countries, as almost no opportunity exists for migrants to integrate into local societies to become permanent residents, let alone citizens. The workers are generally on two- to three-year contracts, after which they must return home, although they can choose to return to a GCC country on a new contract. For example, in a study of male labour migration from Kerala in southern India to the GCC area, it was shown that about three quarters of workers had made a single trip, about 15 per cent had made two trips and only 10 per cent had made three or more trips (Zachariah, Kannan and Rajan 2002, 94). Thus, the majority of migrant workers in this particular case, appeared to have engaged in just a single circuit of temporary migration.

The great fear in many countries is that the temporary migrant becomes a de facto permanent migrant, as evidenced by the experiences of countries in Europe with guestworker programmes. Paraphrasing Milton Friedman's statement that there was nothing more permanent than a temporary government programme, Philip Martin (2001) extended the expression to temporary foreign workers in the United States. Nevertheless, Martin's own research on Germany showed that some 70 per cent of the *Gastarbeiter* who had arrived between 1960 and 1999 did return home (Martin 2014, 228), which suggests a fairly successful temporary migration programme. Yet it was the 30 per cent who did not return but stayed to bring their families and become permanent migrants to Germany that became politically sensitive, and this clearly shows the evolution of temporary to permanent migration systems, although that trajectory is generally not open to most temporary workers in the Gulf States or in Eastern Asia. Germany itself has become more accommodating to the integration of both skilled and less-skilled workers as the realities of a declining native-born labour force have been recognized. The period of residence before the awarding of citizenship has been shortened to as little as three years for those who can demonstrate clear evidence of integration, and multiple citizenship is now recognized for those who naturalize.

Internal forms of migration

One of the great transformations of recent history has been the concentration of populations into urban centres (Lucas 2021). In 1950, the proportion of the world's population that was defined as urban was 29.6 per cent (UN DESA, Population Division 2018). By 1975 that proportion had increased to 37.5 per cent, by 2000 it was 46.7 per cent, and it is projected to reach 60.4 per cent by 2030. The inexorable increase in the proportion of urban populations has been accompanied by declining rural populations, even rural depopulation, in many parts of the more developed world. The redistribution of population from rural to urban has been an important part of this process, but it has not been a simple flow from village to town. Much consists of regular circular movements out of the village to engage in urban or off-farm employment on a shorter- or longer-term basis (see Hugo 1982; Prothero and Chapman 1985; Skeldon 1990).

These village-based systems of circulation fitted an emerging theory of migration of the time known as the “new economics of labour migration”, or NELM, a theory that has also been extended to theories of international migration (Massey et al 1993). In contrast to the neo-classical model of migration as a response stemming from an individual decision to maximize income, the NELM saw migration as essentially a household strategy to minimize risk. Rural households incorporate urban employment to extend their local resource base and provide alternative sources of income in case of local failure. Urban activities that are easy to enter and exit are central to this strategy, with people from rural areas working for short periods as construction workers, pedi-cab drivers or market porters having been observed in societies as different as India and Peru (Deshingkar and Farrington 2009; Skeldon 1990). The population of Bangkok has been estimated to vary by about 10 per cent, or some 800,000 people, between the wet and dry seasons, reflecting the large number of short-term seasonal migrants to the city during the slack period in agriculture (Chamrathirithong et al. 1995, 39-41).

Temporary migration in the form of movement under some form of contract for a specific length of time, for specific tasks and at specific destinations does exist among internal movements. For example, recruitment to work on plantations or on limited-term construction projects such as roads or dams or recruitment into the military all provide opportunity for travel out of one's local area. However, options to stay on after finishing a contract or to extend their stay in neighbouring towns visited en route, where they can be absorbed into friendship or kin networks, are easier to organize than in the context of international migration. “Irregularity” should not be an issue in the context of internal migration, although several countries, such as China, have implemented tight controls on internal movements at one time or another. Nevertheless, any clear distinction between temporary migration and longer-term migration becomes ever more problematic in cases of internal movement.

“Leakage” is likely to occur from village-based systems of circulation as migrants in destination areas marry partners from other areas or are offered longer-term opportunities in urban employment (Skeldon 1990; Skeldon 2012). It is also not necessarily in the interest of employers to have a labour force that is continuously turning over, which implies constant training costs and reduced efficiencies. Once migrants have become more established in destinations by chance or design, the “cumulative causation” inherent in the migration process (Massey 1990) leads to the growth and expansion of migrant communities from specific areas in specific destinations.

All these trends are also seen in international migration, though they are writ large in the case of internal movements, which are not subject to the intervening obstacle of a boundary between two different sovereign States. Thus, while parallels between international and internal migration exist, so too does this critical difference. Rarely do the administrative channels for movement exist for internal migrants, and generally, internal migrants have no need to obtain official documentation to cross the “great divide” between rural and urban.³ More broadly, the notional freedom to move within the boundaries of national borders blurs any precise distinction between longer-term, so-called permanent movements and temporary movements. No specific channels exist through which to identify permanent from temporary movers, let alone the different types of temporary migrants.

Return migration

Thus, although clear systems of temporary migration can be identified and these can blend with more permanent systems, it becomes apposite to pose the question of how permanent “permanent migrants” might be. One of the many myths around migration is that it is a movement from A to B – end of story. It is rarely thus, which introduces one of the more difficult aspects of migration to measure and assess: return migration. First, identified as a long “neglected” aspect of studies on migration almost 50 years ago (King 1978), it has subsequently emerged as one of the critical issues in the topic (King and Kuschminder 2022), even if its measurement has remained problematic. One may clearly go to another country as a permanent migrant, settler or landed immigrant, but then return home, or move on, for one reason or another. Motivations, aspirations and reasons to move or stay all change during life, but no more so than during the trajectory of migration. Just as temporary migrants may find regular employment in destinations – even in locations of transit along

3 The registration system in China has been a partial exception, as, even if people migrate, their place of registration can remain permanent, thus impacting legal access to certain services such as education and health. Chan and Yang (2020) provide a concise guide through this complex issue.

the way⁴ – that will encourage them to stay, or they may find a partner and start a family and seek to become long-term residents, so too may permanent migrants lose their employment, experience personal problems that force them to return home or move on, or just feel the time is right to return.

The great settler migrations from Europe across the Atlantic to the Americas in the nineteenth and early twentieth centuries most strongly conferred the idea of migration as permanent settlement. However, the evidence shows that, in the majority of these flows, return migration was significant. Overall, about one quarter of the over 50 million people who left Europe returned over the period from 1860 to 1930. Rates of return varied from about 20 per cent for Scandinavians through just under 40 per cent for the English and Welsh, to between 40 and 50 per cent for the Italians in the early part of the twentieth century (Baines 1991, 39; Nugent 1992). The various types of return migrants to Scotland over five centuries were examined in Varricchio (2012). Thus, the data point to the significance of temporary migration in what were once assumed to be systems of long-term, if not permanent, migration, even given the technology of transportation of the time.

In an era of modern systems of transportation that allow for rapid, accessible and economical travel around the world, there seems no reason to assume that contemporary migration patterns should be any more stable than historical migration patterns: proportions of those who enter under permanent migration schemes will return or move on. Very high rates of turnover have been observed, for example, among the Hong Kong Chinese immigrant populations of Australia and Canada (see the essays in Skeldon 1994). For the skilled, migration is often mediated through intra-corporate networks or through turnover as part of career development and the building of experience. A return might also be associated with critical stages in the life cycle, such as a retirement to a familiar and perhaps cheaper environment (King, Warnes and Williams 2000).

Thus, although clear differences exist between “permanent” and “temporary” channels of entry into destination countries, the reality may be much less clear, with many in the former category returning or moving on, and many in the latter category becoming re-classified as permanent immigrants, who in turn might later return or move on. Hence, differences between those entering in the “temporary” or “permanent” categories of an immigration policy are not as hard and fast as often assumed, and the underlying patterns of movement need to be carefully and critically examined. The duration of a migration before a return occurs can be stipulated in a contract, but it also can be flexible, influenced by a wide range of economic, social and political factors in the environments of both destination and origin, as well as all the individual aspirational and life-stage considerations that impact upon migration choices in general. Some have even

4 Editors’ note: see Pries and Zülfikar Savcı (Chapter 6) in this volume.

argued that return occurs across the generations within the diaspora, with the children of migrants “returning” to ancestral lands (King and Christou 2011).

Nevertheless, the idea of a “return migration” implies that the migrant has spent a considerable, but unspecified, amount of time at a destination. Yet, shorter-term, often regular and seasonal movements, also take place across international borders, which fall under the rubric of “circular migration”. While circular migration, as seen below, has been applied to internal migrations, its application to international movements is arguably more problematic because the establishment of channels for such moves is but a variant of a temporary migration programme (Skeldon 2012). Certainly, specific channels are opened for regular participation in seasonal occupations in the agriculture and hospitality sectors in the developed world, as well as into non-seasonal work in care, domestic and certain manufacturing jobs, such as the food-processing industry (McLoughlin and Münz 2011).

Where regular circulation is an integral part of a village-based strategy, migrants move to achieve goals within the origin community itself – a “target migration”. One might argue that such migrants never really leave the village environment and thus do not return: they circulate within a village-based system. However, assuming that, as described above, some break out of this system to stay longer at destinations, return becomes an issue. That return itself may be long term, even permanent to the village, or the return migrants may quickly remigrate to the city. Eventually, village-based systems of circulation to towns may be replaced by urban-based systems of occasional return to the village for festivals or other family visits (Skeldon 1990). Some of the “return” that does occur will not be to the village or small town itself, but rather to the closest city or large town where a lifestyle more akin to that experienced during the migration can be had, ideally at a lower cost. One of the major challenges in the study of all return migration is finding robust data that can generate reliable estimates, which generally depend upon purpose-designed surveys.

As in the case of temporary migration above, two main policy concerns emerged from these circular programmes: (i) to ensure that the migrants returned after their assignments; and (ii) to ensure adequate protection measures during their assignments. Spain and Morocco agreed on a programme to supply Moroccan fruit pickers that was hailed as an example of best practice (McLoughlin and Münz 2011). Certainly, pre-departure training was provided, along with legal information on their rights and how to deal with remittances, with follow-up debriefing in Morocco after the assignment. However, those selected were primarily married women who were not allowed to bring their children, which was considered to ensure that they did return, raising uncomfortable ethical issues. Perhaps the longest running programme of this type is the Seasonal Agricultural Worker Program between Canada and Mexico, which was established in 1974, and later extended to several Caribbean countries to supply some

20,000 agricultural workers for up to eight months every year. “Leakage” from the programme, or workers staying on irregularly, appears to have been low over the years, with a majority of workers returning home; although abusive behaviour from Canadian farmers and the trauma of separation have not been absent (Basok 2003).

Return and the temporary, circular and seasonal movements of people between origins and destinations of international migration have created significant and enduring physical links that give substance to the idea of transnational communities, often under the rubric of “diasporas”. These differ one from the other by the composition of the movers, whether highly skilled or less-skilled, and the incidence of circulation or return. Internally, however, they can also be highly heterogeneous depending on their specific origins in the country of origin, their class and their ethnicity. Nevertheless, all play roles, and have development impacts, in both origins and destinations and have become major actors on the international stage (Gamlen 2019).

Conclusion: The future

The above discussion of temporary, seasonal and circular movements has questioned the existence of any hard and fast division among these terms, and more importantly, whether any such distinction between these categories themselves and “permanent” migration can be sustained. Temporary migration can become longer-term, and those that are deemed permanent can prove temporary. The categories are based more upon administrative convenience or on statistical definitions in data captured at one point in time, than they are on the realities of migration systems in which differences become blurred. Categories are needed to make sense of what is occurring, but so too is there a need for acceptance that these forms of mobility shift over time and across space.

The jury is still out whether these shifts make up systematic transitions in mobility (Zelinsky 1971), but the available evidence from the more developed parts of the world suggests that internal migration, in terms of long-term changes in residence, is declining, although short-term mobility appears to be increasing (see essays in Champion, Cooke and Shuttleworth 2018). At the outset of this entry, nomadism was said to have been associated with “primitive” migrations. Yet, nomadism has been reinvented as the nature of the economy and society of our twenty-first century world has been transformed as we have moved into an era of the “precariat” (Standing 2016). Following the financial collapse of 2008, many middle-income Americans lost their homes and incomes, which fell particularly hard on older workers who saw all hope for their pensions evaporate. Many literally took to the road in recreational vehicles as ageing populations and economic cycles collided to create a new “nomadland”,

as identified in Jessica Bruder's influential book (2017), later adapted into the Oscar-winning film of the same title starring Frances McDormand.

These new nomads travel regular circuits to places of seasonal and short-term employment, such as state parks and sugar beet harvests and Amazon warehouses, which have become as integral to a mobile way of life as were the oases and trading towns to the nomads of old. While social media and the internet play key roles for the new nomads to spread information about employment opportunities, parking places and sympathetic companies, it is the annual "gathering place" in the Arizona desert and at other rendezvous points that provide the opportunity for social interaction and recreation that help to create some sense of solidarity among disparate individuals who are marginal to mainstream life.

Not all new nomads are engaged in low-skilled and precarious occupations. Young technocrats can practice their trade as "digital nomads" in any part of the world, travelling from resort to resort within the limits of visitor visas and living anywhere with secure broadband access. Such glamorous lifestyles reflect for some, a minority, the shift to a constant mobility, with no need to spend time at any destination or to "migrate" anywhere. Yet, the long-term sustainability of such an individualistic approach to work and life allowed by modern technology creates a precarity of its own. The scope for family life with its demands for stable education for children, not to mention access to health facilities as individuals age would seem to argue for a rootedness somewhere and sometime in the life span. Certainly, the idea of floating care homes as cruises may be an option for a few, but the majority will require some kind of rootedness to a place and attachment to a State in order to survive.

Nevertheless, the growing awareness of the importance of temporary forms of migration has inevitably attracted the attention of policymakers. In particular, circular migration has emerged as a major policy concern in Europe, although perhaps understandably given the discussions above, no clear understanding exists about how to define it (EMN 2011; Triandafyllidou 2013; Vankova 2020). Nevertheless, circular migration, however defined, is seen to provide a "triple-win" solution to current policy approaches to migration. The country of destination wins because the migrants come to do a specific task and then will go home without burdening the country in their old age or generating the tensions associated with integrating into the society and the costs of settlement. The country of origin wins because it receives large amounts of remittances sent back by the migrants, while at the same time not permanently losing talented citizens who can contribute to home-country development. Finally, the migrant wins because they learn skills overseas and earn higher salaries than they would at home before returning. All that is needed is a migration management strategy that can ensure that the positive scenario can be realized and that the negative aspects that are so often found in the recruitment process and in the exploitation of migrant workers can be minimized.

Thus, circular migration seems a policymaker's dream solution to an intractable political problem. However, whether circular migration can ever be "managed" is highly questionable. Circular migration operates in areas of free mobility, as is usually the case with movements internal to a country, and attempts to manage it within some kind of institutional framework across international borders will simply turn it into a form of temporary migration. To use the term circular migration as a euphemism for forms of temporary worker programmes, and to see it as a panacea in which every player wins, seems misplaced (Skeldon 2012). An important ethical issue also arises: whether large numbers of people can be brought into any country while excluding them from any option to stay. Any policy that is based on enforced circularity seems inherently weak and, as discussed earlier, temporary migration in more democratic societies can lead to more permanent migration.

This chapter has argued that temporary forms of movement are integral to all systems of migration. It would be an exaggeration to say that permanent migration does not exist outside of administrative categories. Yet, so-called permanent migrants can and do return or move on, just as so-called temporary migrants can and do embark upon the path to long-term residence and citizenship. This is not to say that existing categories are meaningless, but that a greater awareness of the limitations of these definitions is required, as well as an improved understanding of both the transience and the transformative capability of the various types of movement observed.

Nevertheless, as the COVID-19 pandemic of 2020–21 has shown, both permanent and temporary migration can be dramatically curtailed, even if movement does not entirely cease. While migration virtually halted, the continued circulation of workers in the form of delivery drivers and medical personnel was required to keep the flow of goods and essential services across and within borders throughout the various lockdowns at the height of the pandemic. However, the pressures to limit restrictions on human movement and reestablish the basic right to move were intense, and a rapid return to business and recreational travel post-pandemic appears inevitable.

Along with black swans such as the COVID-19 pandemic, future challenges for migration are likely to emerge in three main areas: (i) climate change; (ii) political instability; and (iii) the ageing of populations. Within each of these challenges the consequences for temporary and permanent migration may be contradictory. Gradual changes in climate may increase systems of temporary movement as people seek to mitigate seasonal extremes. Yet, rising sea levels or increasing salination of coastal plains may force people to move permanently, even resulting in the re-location of major coastal cities. Politically, the global trend towards the emergence of the strongman, rising populism and nationalism (Rachman 2022) will force growing numbers of people to move; although whether permanently or temporarily will depend upon the intensity

and persistence of the trend. Of greater global persistence and expansion will be the trend towards ageing societies and their demand for labour at all skill levels, but specifically in the care sector. Much of this will involve temporary workers, but some will stay on to bring about a transformation of destination societies and a return to the historic “polyethnic norm” (McNeill 1986), despite immigration becoming among the most divisive issues in world politics (de Haas 2023). These issues take us far beyond the ambit of this short chapter but highlight the likely persistence and importance of future temporary forms of migration.

Globally, the greatest number of circulators are currently tourists, who are generally excluded from studies of migration. Yet, with over 1 billion international arrivals a year, and with clear seasonal fluctuations, tourists make up the largest temporary movements of people in the world, with significant impacts on local and global environments. They provide a channel for irregular migrants as well as a source of employment for thousands, and their linkages with other forms of human movement – temporary and longer-term – need to be better understood. Human circulation of some kind has been an “enduring” characteristic of “a great variety of cultures and found at all stages of socio-economic change” (Chapman and Prothero 1985, 25), and truly there may be “nothing more permanent than temporary foreign workers”. The individual workers, however, need not be permanent, although the temporary migration systems almost certainly will be. The whole spectrum of temporary, seasonal and circular population movements needs to be brought into theory, models and policy as integral parts of human migration and the idea of “permanency” more critically assessed.

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Chapter 2.

► Back to the future? Temporary labour migration, international standards, global policy dialogues on migration governance and the Global Compact on Migration

Ryszard Cholewinski

Introduction

This chapter examines the prevailing paradigm of temporary labour migration in light of the international legal framework, as manifested in international human rights and labour law, and global policy dialogues on the governance of international migration. The chapter first examines how temporary labour migration has been addressed by the international legal framework, with an emphasis on the application of the principle of equality of treatment and non-discrimination. Noteworthy aspects of this legal framework are that: (i) the instruments concerned apply to migrant workers who come to a destination country for either temporary or permanent employment; (ii) permissible distinctions between these two categories of migrants are limited, particularly in the application of international labour standards; and (iii) while these frameworks do not interfere with the principle of state sovereignty regarding the admission of non-nationals to the territory, some consideration is to be given to enabling temporary migrant workers to switch to a more secure status.

The subsequent expansion of global dialogues on international migration – both intergovernmental dialogues on global migration governance, in particular those relating to migration and development, and tripartite discussions on labour migration within the ILO – and their relationship to temporary labour migration are the focus of the subsequent section. The positions on temporary labour migration held by non-governmental stakeholders, such as workers' and employers' organizations and global civil society coalitions addressing migrant rights, are also discussed, since they play a pertinent role in influencing the outcomes of these dialogues.

The final section of the chapter examines temporary labour migration in the context of the December 2018 endorsement by the United Nations (UN) General Assembly of the Global Compact for Safe, Orderly and Regular Migration (GCM) (UNGA 2018), and reflects on whether the shift to discussing

migration governance at the global level beyond a migration and development focus – and on the basis of a whole-of-government and whole-of-society approach (two of the GCM's guiding principles) – can result in the promotion of more rights-based approaches to temporary labour migration and a renewed engagement with migration for permanent employment.

Temporary labour migration in international legal frameworks

In principle, international human rights and labour standards apply, on the one hand, to all migrant workers regardless of their length of stay in the destination country (that is, migrant workers with limited or temporary residence status as well as those holding more secure or permanent residence). Moreover, they do not grant migrant workers any privileged status on the basis of their skill level, which is a common practice in those countries that afford high-skilled migrants a more favourable package of rights, including family reunion or facilitated access to more secure or permanent residence. On the other hand, these standards do not interfere with the sovereign prerogative of States to determine immigration policy regarding the admission to and residence of migrant workers in their country. Nonetheless, there are a few specific provisions concerning the legal definition of migrant worker, residence, length of stay and expulsion that are worth analysing further.

Labour standards

The ten fundamental ILO Conventions addressing forced labour, child labour, the right to freedom of association and collective bargaining, non-discrimination in employment, and the right to a safe and healthy working environment¹ apply to all workers regardless of nationality, immigration status and their length of stay in the country. Indeed, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), charged with supervising the

1 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol; Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Occupational Safety and Health Convention, 1981 (No. 155); Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The [ILO Declaration on Fundamental Principles and Rights at Work](#), adopted by the International Labour Conference at its 86th Session in June 1998, stipulates that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions” (para. 2).

application of these Conventions by States parties, has drawn attention to problematic elements of temporary labour migration. One such example is the abusive practices and conditions inherent in the application of the *kafala* (sponsorship) system in the Arab States of the Middle East, which ties the migrant worker to a single employer with respect to their employment and residence status, and which the CEACR views as being incompatible with the Forced Labour Convention, 1930 (No. 29), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ILO 2012, paras 295 and 779).

The ILO technical instruments on the protection of migrant workers and the governance of labour migration – the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying non-binding Recommendations Nos 86 and 151 – rest on the principle of non-discrimination and equality between migrant workers and nationals, which “is at the heart of these instruments” (ILO 2016, para. 326). Article 6 of Convention No. 97 calls for non-discrimination and equality of treatment with nationals for lawfully resident migrant workers in respect of wages, working conditions, trade union membership and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes and legal proceedings. While the purpose of Article 6 is to proscribe inequality of treatment arising mainly out of legislation and administrative action, Part II of Convention No. 143 goes further and aims to promote equality of opportunity and eliminate discrimination against migrant workers in practice (ILO 2016, para. 335; Cholewinski 2018, 859).² The non-discrimination and equality principle also pervades other ILO technical instruments of relevance to migrant workers, such as the Domestic Workers Convention, 2011 (No. 189), which calls for equal treatment between domestic workers and workers generally in relation to a range of working conditions, taking into account the special characteristics of domestic work.³

These instruments generally do not promote temporary labour migration or afford a different degree of protection to migrant workers according to their length of stay in the country. While some categories of persons excluded from Convention No. 97 and Part II of Convention No. 143 – such as frontier workers, members of the liberal professions and artists admitted on a short-term basis;⁴ persons coming specifically for the purposes of training and education; and workers admitted temporarily to a country to undertake specific duties

² Article 10 of Convention No. 143 obliges States parties to declare and pursue a national policy designed to promote and guarantee equality of opportunity and treatment of migrant workers in a number of areas, and is modelled on a similar obligation in Article 2 of Convention No. 111 (ILO 2016, para. 336).

³ Convention No. 189, Article 10(1). The working conditions listed in this provision concern normal hours of work, overtime compensation, periods of daily and weekly rest, and paid annual leave.

⁴ Convention No. 97, Art. 11(2)(a–b) and Convention No. 143, Art. 11(2)(a–b).

and assignments for a limited and defined period of time at the request of their employer⁵ – are clearly exercising temporary forms of migration for or linked to employment, they continue to be covered by Part I of Convention No. 143 concerned with migrations in abusive conditions and by other international labour standards, including the ten ILO fundamental Conventions referred to above.

The ILO instruments pertaining to migrant workers “make no explicit reference to a right to stay or to permanent residence in the state of employment, or to naturalization” (Cholewinski 1997, 129),⁶ although Convention No. 97 does envisage permanent migration for employment and affords such migrant workers and members of their families protection from forced return if they are unable to work because of an illness contracted or injury sustained before their entry into the destination country.⁷ The conclusion of bilateral agreements between countries experiencing sufficiently large labour migration that regulate matters of common concern arising from the application of Convention No. 97 are also supported.⁸ The accompanying Recommendation No. 86 includes a model bilateral labour migration agreement on both temporary and permanent migration for employment, including migration of refugees and displaced persons, that contains separate provisions applicable to temporary migrants or permanent migrants. The comprehensive nature of this model agreement – with a wide range of provisions covering pre-departure information and training and recruitment in countries of origin; travel to the destination country; living and working conditions at the destination, including housing conditions, dispute resolution, equality of treatment and social security; and the return journey – confirms the importance of ensuring protection to migrant workers and their families across the whole labour migration process.⁹

Human rights

Several core international human rights instruments include non-discrimination provisions, which prohibit distinctions between groups of persons on specified grounds, such as sex, race, ethnic origin and other status, unless these distinctions are specified clearly in the law, pursue a legitimate aim

5 Convention No. 143, Art. 11(2)(d-e).

6 Proposals of workers’ members to include a “right to stay” in the 1975 instruments, and particularly in Recommendation No. 151, were opposed by the employers’ members and several government members (Cholewinski 1997, 131).

7 Convention No. 97, Art. 8(1). In Article 8(2), however, the competent authorities are given the option to apply this rule after a reasonable period which should not exceed five years from the date of admission.

8 Convention No. 97, Art. 10.

9 Recommendation No. 86, Annex.

and the measures taken to achieve that aim are proportionate.¹⁰ Therefore, any distinctions applied under these instruments to migrant workers with temporary or permanent status would need to meet these strict criteria in order to be justifiable.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, (ICRMW) is a core international human rights instrument that distinguishes between migrant workers in regular status and undocumented migrants. While the rights in Part III of the ICRMW apply to all migrant workers and members of their families, the rights in Part IV are reserved for those migrants in regular status. Similar to ILO Convention No. 143, the ICRMW excludes students and trainees from its application.¹¹ On the other hand, the ICRMW clearly applies to several categories of temporary migrant workers, which are listed in Article 2(2), namely seasonal workers, itinerant workers, project-tied workers and specified-employment workers.¹²

Part V of the ICRMW, however, contains a number of additional provisions applicable to these categories of temporary migrant workers, which introduce a degree of flexibility with respect to the application of the rights found in Part IV. For example, seasonal workers are entitled to those rights “that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year”.¹³ This implies that enjoyment of some of the rights in Part IV may be restricted, although no further details are given as to the rights concerned. Potential restrictions can also be applied to other categories of temporary migrant workers, although in the case of project-tied and specified-employment workers, the provisions in question are expressly identified, and in both cases concern equality of treatment with nationals in relation to access to “vocational guidance and placement services”, “vocational training and retraining facilities and institutions” and “social housing schemes”.¹⁴ Moreover, the provision in Part IV concerned with free access to employment, subject

10 “The fundamental prohibition of discrimination in international human rights law means that any differential treatment between nationals and non-nationals, or between non-nationals with different migration statuses or in different situations, such as those on [temporary labour migration programmes], must be lawful, proportionate and pursue a legitimate aim” (OHCHR 2022, 15).

11 ICRMW, Art. 3(e). It should be recalled, however, that this exclusion in Convention No. 143 only relates to Part II of that instrument.

12 ICRMW, Arts 2(2)(b), (e), (f) and (g), respectively. The ICRMW also applies to frontier workers and self-employed migrant workers, unlike Conventions Nos 97 and 143. ICRMW, Art. 2(2)(a) and (h).

13 ICRMW, Art. 59(1).

14 ICRMW, Art. 43(1)(b–d).

to specific conditions, does not apply to these two categories of temporary migrant workers.¹⁵

In contrast to these restrictions, there are also provisions in Part V that call for more favourable treatment. For example, States parties are urged to “consider granting seasonal workers who have been employed in [their] territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements”.¹⁶ While not interfering with the State sovereign prerogative to regulate the entry and residence of foreign nationals, this provision encourages States parties to provide opportunities to those seasonal workers who have in effect “established” themselves in the country by affording them access to a more secure employment status.

Temporary labour migration in global dialogues on migration and development and ILO tripartite discussions

Since the adoption of international legal frameworks relating to the protection of migrant workers – and in respect of which there have been no ratifications among the so-called established immigration countries and European Union (EU) Member States since 1992¹⁷ – discussions on international migration, including on labour migration, have largely taken place at the intergovernmental level and on a tripartite basis in the ILO. Until the adoption by the UN General Assembly of the GCM in December 2018 (see below), these discussions were initially limited to the migration and development nexus, either in the two UN General Assembly High-Level Dialogues on International Migration and Development in 2006 and 2013 or in the Global Forum on Migration and Development (GFMD), which held its first summit meeting in 2007. Given the focus of the migration and development discourse on realizing the elusive “triple win” for origin and destination countries, as well as for migrants and their families, it is not

¹⁵ ICRMW, Art. 52.

¹⁶ ICRMW, Art. 59(2).

¹⁷ While nine and five EU Member States have ratified Convention No. 97 and Convention No. 143, respectively, no EU Member States are among the 58 countries that have ratified the ICRMW. Norway has also ratified both Conventions Nos 97 and 143, and the United Kingdom has ratified Convention No. 97. Slovenia ratified both Conventions Nos 97 and 143 in May 1992 before it joined the EU.

surprising that the prevailing paradigm in this discourse was and continues to be (in the case of the GFMD) defined by temporary and/or circular migration.¹⁸

Global Commission on International Migration

Prior to the first High-Level Dialogue in 2006, the UN Secretary-General established the Global Commission on International Migration (GCIM), which issued a groundbreaking report in 2005. While serving as an important evidence base for the subsequent discussion at the High-Level Dialogue, the GCIM report engaged with both permanent and temporary migration. The report recognized that the “predominant form of migration varies considerably from one part of the world to another”, noting that “in Asia, ... many migrants move on the basis of temporary labour contracts” and “[t]raditional countries of immigration, such as Australia, Canada, New Zealand and the USA continue to accept migrants for permanent settlement and citizenship, while the countries of the Middle East usually admit international migrants for fixed periods and without any expectation of integration” (GCIM 2005, para. 18).

The GCIM argued that “the world would benefit substantially from a well regulated liberalization of the global labour market” (GCIM 2005, para. 30).¹⁹ While the GCIM commended the permanent migration programmes of traditional destination countries, recognizing their contribution to economic growth and their role in meeting the economic, social and protection needs of the migrants concerned, thus enhancing their integration in society (GCIM 2005, para. 31), it also observed that “countries in the developing world stand to make more gains from the temporary and circular migration of their citizens than from their permanent departure” (GCIM 2005, para. 32). In this context, the GCIM referred specifically to the economic benefits of overseas employment to a country of origin like the Philippines in terms of remittances (GCIM 2005, para. 32). The GCIM concluded, therefore, that “the old paradigm of permanent migrant settlement is progressively giving way to temporary and circular

18 Circular migration has been defined by the European Commission (2007) as “a form of [temporary] migration that is managed in a way allowing some degree of legal mobility back and forth between two countries” that differs from “traditional” temporary foreign worker programmes “based on the idea of a one-time-only migration per worker and the rotation of cohorts of workers” (ILO 2022a, 12).

19 “Such an approach would contribute to the growth of the global economy and enable the international community to achieve a better match between the supply and demand for migrant labour. It would ensure that citizens of countries in the South have better access to the labour markets of the North and enable those people to contribute towards the development of their own countries. It would assist the industrialized states to meet their emerging demographic challenge, and enable employers to engage the workers they need. A well regulated liberalization of the global labour market would also be preferable to the current situation, in which labour market gaps are filled in part by means of irregular migration and unauthorized employment” (GCIM 2005, para. 30).

migration”, and underlined “the need to grasp the developmental opportunities that this important shift in migration patterns provides for countries of origin” (GCIM 2005, para. 42).

While clearly expressing a preference for temporary labour migration, the GCIM devoted considerable space to the design of effective temporary migration programmes based on dialogue between countries of origin and destination, and with the involvement of employers, trade unions and other stakeholders (GCIM 2005, paras 33–34). To this end, the following issues needed to be given careful consideration (GCIM 2005, para. 34):

- ▶ providing pre-departure information on migrants’ rights and conditions of employment, including the requirement that they return to their country of origin once their contract has expired;
- ▶ ensuring equality of treatment between migrants and nationals with respect to wages, working hours, healthcare and other entitlements;
- ▶ giving temporary migrants the right to transfer employment during the period of their work permit, thereby enabling them to respond to changing labour market conditions and avoiding a dependence on unscrupulous employers;
- ▶ providing women with equal access to temporary labour migration programmes;
- ▶ monitoring the implementation of the work permits and employment contracts provided to temporary migrants, with a view to “blacklisting” countries and employers that violate the provisions of such documents;
- ▶ prosecuting employers who engage migrant workers without valid work permits, and allowing for the removal of migrants who continue to work after their permit has expired;
- ▶ licensing and regulating the activities of recruitment agencies;
- ▶ granting visas to temporary migrants that would enable them to travel easily between the country where they are working and their country of origin, thereby assisting them to keep in contact with their family and community; and
- ▶ supporting the reintegration of temporary migrants when their period of employment has expired and they have returned to their country of origin.

The GCIM also drew particular attention to the importance to migrants of social security entitlements and portability of benefits, observing that governments, employers and trade unions should explore this issue in greater detail and arguing for the conclusion of more bilateral social security agreements between countries of origin and destination (GCIM 2005, paras 35–37).

In terms of the GCIM recommendations, the three cited below were the most pertinent to temporary labour migration:

1. States and the private sector should consider the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination (GCIM 2005, para. 3).
2. States and international organizations should formulate policies and programmes that maximize the developmental impact of return and circular migration (GCIM 2005, para. 11).
3. While temporary migrants ... are not usually granted the right to integrate in the society where they are living, their rights should be fully respected and they should be protected against exploitation and abuse (GCIM 2005, para. 22).

In summary, the GCIM report laid the ground for the recognition of temporary and circular migration as an important tool for promoting development in countries of origin, which was pursued in subsequent global debates, but it also drew particular attention to the need to design temporary labour migration programmes on the basis of social dialogue and to ensure labour protection, as well as the continued relevance of permanent migration.

High-level Dialogues on International Migration and Development

Despite temporary labour migration being at the heart of the migration and development nexus, the outcome documents of the two UN General Assembly High-Level Dialogues on International Migration and Development make limited reference to it. The summary of the first High-Level Dialogue in October 2006 noted that “a number of countries had taken measures to strengthen ties with their nationals abroad and to encourage highly skilled workers in the direction of return and circular migration” (UNGA 2006a, para. 13). The importance of labour migration for the world economy was also underscored, with the summary observing that “in some countries, the labour market was highly dependent on foreign workers”, while “in others, temporary labour migration allowed for the filling of specific labour needs” (UNGA 2006a, para. 15). The second High-Level Dialogue, held in October 2013, resulted in the adoption of a negotiated outcome document in the form of a Declaration on International Migration and Development, annexed to a UN General Assembly resolution. However, the Declaration made no explicit reference to temporary labour migration, or for that matter to permanent migration, although it did emphasize the need

to consider circular migration with reference to the migration of highly skilled persons with due regard to its development impact on countries of origin.²⁰

Global Forum on Migration and Development

A more lasting outcome of the first High-Level Dialogue in 2006 was the establishment of the informal, non-binding and State-led process known as the Global Forum on Migration and Development (GFMD), which held its first meeting in Brussels in July 2007 under the central theme of “Migration and socio-economic development”. Two days were devoted to a governmental meeting and one day to a civil society meeting. Three of the four sessions in the roundtable on “Human capital development and labour mobility: Maximizing opportunities and minimizing risks” focused on temporary labour migration and its contribution to development, the role of the private sector and other non-State agencies in temporary labour migration, and how circular migration and sustainable return can serve as development tools (GFMD 2008a, 19). Recommended actions included the development of “a compendium of good practice policies on bilateral temporary arrangements that can contribute to development and give access to foreign labour markets, notably for low-skilled, while controlling irregular migration and protecting the human and social rights of migrants” (GFMD 2008a, 65), as well as pilot projects based on the Canada–Guatemala seasonal worker model in other countries along a well-used migration corridor (GFMD 2008a, 74). In follow-up to the roundtable session on temporary labour migration, the compendium of good practices was prepared as a living document drawing on, among others, the ILO Multilateral Framework on Labour Migration (see the next section below) and the *Handbook on Labour Migration* (OSCE, IOM, and ILO 2006).

Since this first GFMD meeting in Brussels, GFMD summits have been held on almost an annual basis, alternating between governments of countries of destination and origin as GFMD chairs.²¹ Given the GFMD’s focus on the migration and development relationship, it is not surprising that temporary labour migration and circular migration have become regular items on GFMD agendas. For example, “Labour mobility and development” was one of the three thematic clusters in the meeting organized under the Swiss GFMD Chair (2011) (GFMD, n.d.-a), while the first roundtable under the Mauritius GFMD Chair (2012)

²⁰ The Declaration states in paragraph 26: “Recognize the necessity to consider how the migration of highly skilled persons, especially in the health, social and engineering sectors, affects the development efforts of developing countries, and emphasize the need to consider circular migration” (UNGA 2013).

²¹ Belgium (2006–07), Philippines (2007–08), Greece (2009), Mexico (2010), Switzerland (2011), Mauritius (2012), Sweden (2013–14), Turkey (2014–15), Bangladesh (2016), Germany/Morocco (2017–18), Ecuador (2019–20), United Arab Emirates (2020–21), France (2022–23) and Colombia (2024–25). See <https://www.gfmd.org/>.

was devoted to “Circulating labour for inclusive development” (GFMD, n.d.-b).²² Under the broader theme of “Migration as an enabler of inclusive development”, the Swedish GFMD Chair (2013–14) devoted one of its roundtable sessions to “Enhancing the development impacts of labour migration and circular mobility through more systematic labour market and skills matching” (GFMD, n.d.-c). In a follow up to the New York Declaration for Refugees and Migrants,²³ which called for the adoption of the GCM, the Germany–Morocco GFMD Co-chairs (2017–18) coordinated the preparation of a GFMD *Thematic Recollection 2007–2017*. This document constituted the GFMD’s contribution to the process leading up to the GCM’s endorsement by the UN General Assembly in December 2018. “[L]abour mobility, including temporary or circular migration” was identified as one of the themes of the GCM focus area of irregular migration and regular pathways, together with fair and ethical recruitment of migrant workers and skills recognition and development (GFMD 2017, 14–15). The GFMD also established a Platform for Partnerships featuring government policies and programmes inspired by GFMD discussions, and which contains a Migration and Development Policy and Practice Database, including examples of a range of temporary and circular migration initiatives.²⁴

ILO discussions

The migration and development discourse in the High-Level Dialogues and the GFMD, however, often overlooked the rich policy discussions on labour migration that took place within the ILO among its tripartite constituents. Not least among these are the International Labour Conference (ILC) General Discussions on migrant workers/labour migration in 2004 and 2017, which both resulted in negotiated outcome documents, as well as the ILC discussion on the ILO Director-General’s Fair Migration Agenda in June 2014. The 2004 General Discussion is also notable for setting the ground for the subsequent adoption of the ILO Multilateral Framework on Labour Migration, endorsed by the ILO Governing Body in 2006.

Prior to the ILC General Discussion on migrant workers in June 2004, the ILO convened the World Commission on the Social Dimensions of Globalization (WCSDG), which observed that “no comprehensive multilateral framework exists for the cross-border movement of people”, despite the scale of this movement, which involves temporary migration but also migration leading to permanent settlement. The only exceptions were the General Agreement on Trade in

²² A GFMD Workshop on Creating Development Benefits through Circular Migration was also held in Mauritius in September 2008.

²³ The New York Declaration for Refugees and Migrants was adopted by acclamation at the UN Summit for Refugees and Migrants, a high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, on 19 September 2016.

²⁴ See <https://www.gfmd.org/pfppd/temporary-and-circular-labour-migration?page=1>.

Services (GATS) Mode 4, which was restricted to the temporary movement of service providers and therefore covered only a tiny fraction of the cross-border movement of labour, and a number of international Conventions that sought to protect migrant workers and combat trafficking in persons (WCSDG 2004, paras 428–429).

While recognizing the problem of the brain drain, which in its view could be addressed by “skills circulation”,²⁵ the WCSDG called for dialogues between countries of origin and destination on key policy issues of common interest, which could extend to the regional level. The subject areas identified for such dialogues included exchange of information on surpluses and shortages of labour; coordination of policies among countries of origin; harmonization of policies among countries of destination; regulation of (recruitment) intermediaries; building a more effective system for the prevention of trafficking in persons; and addressing irregular migration. The WCSDG also saw these dialogues as a way of helping to “build common approaches to major policy issues such as the *rules for temporary migration*, the brain drain and the contribution of migration to development, and the alignment of social security and labour market policies” (WCSDG 2004, paras 442–443, emphasis added).

It is not hard to see, therefore, how a number of these elements subsequently found their way into global and regional dialogues on migration, including those at the ILO, and it is also interesting to note the reference to the need for “rules for temporary migration”, which has been one of the primary preoccupations of the ILO and its tripartite constituents.

The immediate outcome of the 2004 ILC Discussion was the Resolution and Conclusions on a fair deal for migrant workers in a global economy, which contained only a few – but nonetheless pertinent – references to temporary labour migration. Importantly, the Conclusions noted the legal and practical gaps in the protection of temporary migrant workers: “Temporary workers [and migrant domestic workers] often have limited legal rights, may be excluded from social security benefits and may face multiple disadvantages” (ILO 2004, para. 7). In this regard, the Conclusions called for due consideration to be given to “the various categories of temporary migrant workers, including seasonal workers” (ILO 2004, para. 28). The Conclusions also referred to the complex relationship between migration and development, which was attracting increased attention. In this regard it observed that while “the potential long-term benefits of circular migration, cross-fertilization of skills and technology exchange have been recognized, the permanent loss of critically skilled workers

25 The WCSDG (2004, para. 437) noted that “the measures to stimulate such a process of ‘skills circulation’ that could be considered include the acceptance of dual citizenship by both host and sending countries, the easing of re-entry conditions for non-permanent migrants, and tax and other incentives to stimulate the return of skilled migrants to their home countries”.

in many developing countries is nonetheless an increasing issue of concern” (ILO 2004, para. 28).

The 2004 ILC Conclusions contained an ILO plan of action for migrant workers, which included a call for the “development of a non-binding multilateral framework for a rights-based approach to labour migration which takes account of labour market needs, proposing guidelines and principles for policies based on best practices and international standards” (ILO 2004, para. 21). The ILO Multilateral Framework on Labour Migration was discussed and adopted at a tripartite meeting of experts in 2005, and approved by the ILO Governing Body for publication and dissemination in March 2006 (ILO 2006). The Multilateral Framework has been described as bringing “issues fundamental to migrant workers’ protection out of the shadows” (Vosko 2011, 366), and noted for going beyond the substantive scope of ILO and UN instruments, particularly in the application of the principle of non-discrimination (Vosko 2011, 377–378). However, it displays a similar tension between the concern of States to preserve national sovereignty in the migration field and the need for concerted international action to protect migrant workers (Vosko 2011, 379). With regard to temporary labour migration, the Multilateral Framework recognizes the potential economic and development benefits of temporary labour migration programmes,²⁶ while underscoring the need to ensure that such schemes respond to established labour market needs, that they respect the principle of equal treatment between migrant and national workers and that restrictions on the rights of temporary migrant workers do not exceed relevant international standards (ILO 2006, paras 5.5 and 9.7). In accordance with equivalent provisions in Convention No. 97, the Multilateral Framework on Labour Migration also supports the adoption of measures “to ensure that migrant workers admitted on a permanent basis are allowed to stay in the country in case of incapacity to work” (ILO 2006, para. 9.6).

The need to enhance the protection of migrant workers in temporary labour migration was also underscored in the Conclusions of the ILO Tripartite Technical Meeting on Labour Migration held in November 2013, which called on the ILO to:

Advance and disseminate knowledge and studies on the impact of migration policies and schemes, including temporary and circular migration schemes, on equal treatment of migrant workers and nationals, including in respect of wages and working conditions, the right to freedom of association and the right to collective bargaining, and access to public services and justice (ILO 2013, para. 5(vii)).

²⁶ In this context, the Multilateral Framework on Labour Migration refers to the adoption of “policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies” (ILO 2006, para. 15.8).

The ILO Director-General's report on Fair Migration, submitted to the 103rd Session of the ILC in 2014, contained several important reflections on temporary labour migration, including in relation to permanent migration, which are summarized below:

- ▶ “There is no definitive overall move away from permanent towards temporary migration”, and the two types of mobility coexist – with some traditional permanent immigration countries relying increasingly on temporary labour migration to fill labour market gaps, while others that preferred temporary labour migration now wishing to attract more highly skilled migrants with offers of permanent residence on admission (para. 72);
- ▶ “A de facto segregation has emerged between the concentration of lower skilled workers in temporary migration schemes and higher skilled workers who have much greater chances of permanent residence” (para. 74);
- ▶ In those contexts where there is a long-term or permanent demand for migrant workers, these workers should also be entitled to permanent work and residence status (para. 76); and
- ▶ The application of equal treatment between migrant and national workers is difficult in certain sectors and occupations which are effectively “migrant” sectors and in occupations where there is no national comparator. In such circumstances, “there could then be a need to design [temporary labour migration] schemes which embody the idea of equivalent protection or benefits, or apply measures such as a national minimum wage” (para. 78).

The principal conclusion on temporary labour migration in the ILO Director-General's report was as follows:

It has been noted that migration is increasingly taking place through schemes providing for temporary or circular movement of workers or for the movement of workers with specific skills. Such schemes raise important questions about the provisions required to ensure decent treatment of the workers concerned and equitable consideration of the interests of sending and receiving countries. The ILO should develop its own understanding and capacity to assist in the design of such schemes (ILO 2014, para. 120).

Temporary labour migration was also a key feature of the ILC General Discussion on migrant workers in 2017. The report prepared for the discussion underscored the need to devote particular attention to the design of temporary labour migration schemes, with a view to ensuring a balance between their apparent benefits and labour market and protection concerns:

While temporary and circular labour migration schemes are viewed as a flexible means of filling short-term labour and skills gaps, careful consideration needs to be given to their formulation, implementation and monitoring, in collaboration with ministries of labour and workers' and employers' organizations, to ensure that they fulfil the specific purpose for which they were designed, are not used to fill long-term or permanent jobs, and that workers who migrate under such schemes are not unfairly disadvantaged in terms of equality of treatment in respect of trade union rights, wages, working conditions and social protection (ILO 2017a, para. 64).

The resulting ILC Resolution and Conclusions concerning fair and effective labour migration governance drew attention to the growing diversity and complexity of labour migration and to the fact that temporary labour migration was becoming more widespread (ILO 2017b, para. 2). At the core of the Conclusions relating to temporary labour migration was the following paragraph, which recognized the value of temporary labour migration for labour markets, but also identified risks in terms of ensuring equality of treatment and decent work for migrant workers:

Temporary labour migration can be positive for labour markets of countries of origin and destination and can fill genuine short-term labour and skills gaps in certain sectors. However, careful consideration needs to be given to effective governance of [temporary labour migration] to protect the rights of migrant workers and national workers, ensure decent work, afford equal treatment in accordance with national laws and regulations and international obligations, and respect the fundamental principles and rights at work (ILO 2017b, para. 13).

Consequently, the Conclusions called on the ILO, as a priority action, to “conduct a comparative analysis of temporary and circular labour migration schemes, including employer sponsorship programmes, to examine their impact on migrant and national workers and on national labour conditions and markets, and put the outcomes before the Governing Body for its consideration” (ILO 2017b, para. 17(g)).

In November 2017, the ILO Governing Body endorsed a plan of action (2018–22) to give effect to the priority actions in the ILC Conclusions, in which the ILO committed to undertake a mapping of existing knowledge concerning the scope, use and effects of circular and temporary labour migration schemes. The ILO was also tasked to prepare a synthesis report containing a typology of these schemes; a comparative, gender-sensitive analysis regarding their impact on migrant and national workers and on national labour conditions and markets; and policy recommendations for good practice, to be submitted to the Governing Body for its consideration (ILO 2017c, para. 12(e)). The synthesis report was published

in October 2022 (ILO 2022a), and its key findings and recommendations were presented in a paper to the ILO Governing Body in November 2022 (ILO 2022b). The Governing Body requested the ILO Director-General “to take into account its guidance concerning the proposed ways forward to maximize the opportunities and minimize the risks associated with [temporary labour migration]” (ILO 2022b, para. 49).

These ILO discussions and outcomes have clearly influenced the wider policy debates on international migration, including in relation to temporary migration, whether directly through the interventions of ILO officials or indirectly through the ILO’s tripartite constituents. Given that the ILO outcomes draw strongly on the international labour standards framework, their principal contribution has been to instill rights-based elements into the broader dialogues at the global level, while emphasizing the important role of social dialogue and working to counteract the instrumental treatment of migrants and migrant workers in the migration and development nexus in line with the ILO constitutional principle that “labour is not a commodity”.²⁷

Temporary labour migration and policy positions of non-governmental stakeholders

Temporary labour migration has featured in the global positions of social partners and other non-governmental stakeholders, including civil society groups and coalitions focusing on migrant rights’ issues. These positions are important to examine, as they also influence discussions within the ILO as well as wider dialogues on migration governance at the UN and in other intergovernmental forums, whether at the global or regional level.

Trade unions generally express serious reservations regarding temporary labour migration programmes for a range of reasons, which include the concern that that such programmes are often used to fill labour market shortages in what are effectively permanent jobs; the limited rights’ protections afforded to migrant workers, including restrictions on freedom of association; and that temporary labour migration programmes can exacerbate the social and economic costs of migration and its gendered impact, particularly in female-dominated sectors (Yeates and Wintour 2021, 63–64). Global trade union federations have demanded that governments scale up rights-based and gender-sensitive regular migration pathways for both migrants and refugees, with a clear preference for permanent migration:

²⁷ ILO Constitution, Annex – Declaration concerning the aims and purposes of the ILO (Declaration of Philadelphia), para. I(a).

These pathways should involve humanitarian resettlement options and other rights-based channels, which allow migrants freedom to move, settle, work and fully participate in society, instead of temporary or circular work programmes that lead to precarity and undermine decent work (ITUC 2023, 6).

This position resonates with that of civil society, which has also called for the elimination of the use of temporary labour migration programmes that “systematically and structurally expose migrant workers to exploitation by recruiters, employers and others” (Civil Society Action Committee 2021, 7).²⁸

On the other hand, employers’ main concerns relate to the need for governments to actively consult employers on their skills needs when undertaking reforms; predictable and efficient immigration processing systems for the issue of visas and work permits; and flexible laws to address evolving business needs, such as enabling the admission of foreign nationals to complete short- and medium-term assignments (Leeb, Morowitz and Krasnopolski 2021, 18). While employers are supportive of a range of labour migration options, there is a clear synergy in the view of employers with that of trade unions in also supporting migration for permanent work, including for low- and semi-skilled workers (Leeb, Morowitz and Krasnopolski 2021, 22): “The legal migration system should create mechanisms that allow the employment of foreign nationals in essential worker positions. Shortage categories must facilitate both seasonal and indefinite work that meets essential labour market needs”.

The Global Compact on Migration and temporary labour migration

The New York Declaration for Refugees and Migrants, adopted by the UN General Assembly in September 2016, called for a Global Compact for Safe, Orderly and Regular Migration (GCM) and for a Global Compact on Refugees (UNGA 2016). The Declaration did not reference temporary labour migration specifically, only circular migration, which appeared in the paragraph of most relevance to labour migration:

We will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related

²⁸ “Eliminate the use of temporary (circular, sponsorship, or guest-worker) labor migration programs that systematically and structurally expose migrant workers to exploitation by recruiters, employers and others. Temporary migration programs should not be used as a solution to labor shortages, humanitarian crisis, climate change, or irregular migration” (Civil Society Action Committee 2021, 7).

opportunities. We will pay particular attention to the application of minimum labour standards for migrant workers regardless of their status, as well as to recruitment and other migration-related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people (UNGA 2016, para. 57, emphasis added).

In its Annex, the New York Declaration listed several elements that the GCM could contain, including “Protection of labour rights and a safe environment for migrant workers and those in precarious employment, protection of women migrant workers in all sectors and *promotion of labour mobility, including circular migration*” (UNGA 2016, Annex para. 8(q), emphasis added).

The adoption of the GCM with its ten guiding principles and 23 objectives, including a number of objectives of particular relevance to decent work and labour migration,²⁹ is generally viewed as a milestone in global migration governance. The GCM has been lauded as the first comprehensive global framework addressing all aspects of international migration (Newland 2019, 2). While the GCM describes itself as a legally non-binding cooperative framework (para. 7), it rests on international law (para. 2)³⁰ and is also rooted in the 2030 Agenda for Sustainable Development (para. 15(e)), which recognizes the positive contribution of migration and migrants to development and thus to some extent reinforces key messages in the global dialogues on the migration and development nexus (UNGA 2018). The 2030 Agenda contains several Sustainable Development Goal (SDG) targets relating to migration, not least SDG targets 8.8 on labour rights and 10.7 on migration policy,³¹ which dovetail with several GCM objectives, in particular objectives 5 and 6.

Temporary labour migration and circular migration appear in GCM objective 5 – “Enhance availability and flexibility of pathways for regular migration”,³² as well as in GCM objective 22 – “Establish mechanisms for the portability

29 GCM objectives 5 (regular pathways), 6 (fair recruitment and decent working conditions), 18 (skills development and recognition) and 22 (social security).

30 Despite the GCM purporting to rest on international law, a few discrepancies emerge “when some of the more detailed actionable paragraphs under the GCM’s 23 objectives are examined, particularly in sensitive areas of migration governance such as addressing irregular migration and affording migrants access to basic social rights” (Cholewinski 2019, 325).

31 SDG target 8.8 – Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment. SDG target 10.7 – Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.

32 GCM, para. 21: “We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration” (UNGA 2018).

of social security entitlements and earned benefits”.³³ Interestingly, and in a clear departure from the global dialogues on migration and development, GCM objective 5 envisages labour mobility schemes in broad terms to include convertible and non-discriminatory visas and (work) permit options, including for permanent employment:

Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply at all skills levels, including temporary, seasonal, circular and fast-track programmes in areas of labour shortages, by providing flexible, convertible and non-discriminatory visa and permit options, such as for permanent and temporary work, multiple-entry study, business, visit, investment and entrepreneurship (UNGA 2018, para. 21(d)).

GCM objective 22 calls for the conclusion of social security agreements at the bilateral, regional or multilateral level with respect to migrant workers at all skills levels or the integration of social security provisions into other relevant agreements, including those on long-term migration and temporary labour migration.³⁴

After the GCM’s adoption, the ILO revisited its 2018–22 plan of action giving effect to the 2017 ILC Resolution and Conclusions³⁵ by preparing a paper for discussion at the ILO Governing Body in March 2019. With regard to temporary labour migration specifically, the paper observed that the ILO’s work involving mapping of existing knowledge concerning the scope, use and effects of circular and temporary migration schemes “should contribute important evidence for the development of rights-based and gender-responsive labour mobility schemes as encouraged in GCM objective 5(d)” (ILO 2019, para. 10).

33 GCM, para. 38: “We commit to assist migrant workers at all skills levels to have access to social protection in countries of destination and profit from the portability of applicable social security entitlements and earned benefits in their countries of origin or when they decide to take up work in another country” (UNGA 2018).

34 GCM, para. 38(b): “Conclude reciprocal bilateral, regional or multilateral social security agreements on the portability of earned benefits for migrant workers at all skills levels, that refer to applicable social protection floors in the respective States and applicable social security entitlement and provisions, such as pensions, health care or other earned benefits, or integrate such provisions into other relevant agreements, such as those on long-term and temporary labour migration” (UNGA 2018).

35 Indeed, the report to the ILC (ILO 2017a, para. 4) and ILC Resolution and Conclusions (ILO 2017b) anticipated the subsequent adoption of the GCM, with the Resolution requesting the ILO Director-General to “communicate the conclusions to the relevant global, regional and international organizations for their attention, and take them into account when providing the ILO’s inputs to the [GCM]” (ILO 2017b, para. 3(b)).

The International Organisation of Employers expressed its general satisfaction with the outcome of the negotiations on the GCM, which it observed included language on the need for predictable and transparent migration policies that reflect demographic realities and labour-market needs; specific language on flexible labour-mobility schemes; references to the need to cooperate with the private sector and employers; and a focus on skills development and recognition of foreign qualifications (IOE 2018, 5). On the other hand, trade union representatives reiterated their call that regular pathways in the GCM should give priority to permanent migration: “Given that serious humanitarian and human rights concerns gave rise to the GCM, implementation strategies must prioritise regularisation schemes and rights-based channels over expanding temporary or circular work programmes” (Misra and Lederer 2022).

The Progress Declaration of the International Migration Review Forum (IMRF) – convened under the GCM to review progress on its implementation and annexed to a UN General Assembly resolution adopted in June 2022 – makes no explicit reference to temporary labour migration or circular migration, or for that matter to permanent migration, but focuses mainly on labour protection of migrant workers in accordance with international labour standards, with a particular focus on women migrant workers, including those in paid and unpaid care work and domestic work and those in the informal economy.³⁶

This brief overview of temporary labour migration in the GCM indicates that the migration and development paradigm is no longer as influential in shaping commitments towards the creation of more regular migration pathways as expressed in GCM objective 5. The new elements in the GCM have the potential to lead to more balanced temporary labour migration programmes in the future as well as renewed engagement in migration for permanent employment.

Conclusion

The international legal framework governing labour migration does not view it purely as a temporary phenomenon, which is also reflected in the first ILO instruments adopted 75 years ago establishing minimum standards in this field and underscoring the central role of the non-discrimination and equality

³⁶ Progress Declaration of the IMRF, para. 10: “We recognize the value and dignity of the labour of all migrant workers in all sectors, emphasizing the importance of promoting fair labour conditions and decent work and upholding international labour standards, and, in this regard, we also recognize the work of women migrant workers, including in paid and unpaid care work, domestic work and the informal economy, and emphasize the need to ensure that they are legally protected against violence, harassment and exploitation”. Paragraph 63 of the IMRF Declaration is devoted solely to women migrant workers, in particular “to enhancing cooperation to address violence, including sexual and gender-based violence, and harassment against women migrant workers” and “to eliminate situations of vulnerability for women migrant workers by promoting decent work, such as minimum wage policies, [and inter alia] by facilitating safe and effective access to justice” (UNGA 2022).

principle in advancing the protection of migrant workers. Indeed, both temporary labour migration and permanent migration for employment feature in these instruments, and this position holds in the ICRMW, which does however devote one section (Part V) to certain categories of temporary migrant workers, where there is also a call to treat more favourably those migrant seasonal workers who have effectively established themselves in the destination country.

While not ignoring the labour protection shortcomings inherent in temporary labour migration, the main preoccupation of the global discussions on migration and development have been on the development gains that temporary labour migration can generate, particularly to countries of origin in terms of remittances and skills. This largely instrumental treatment of labour migration, however, has always been difficult to reconcile with the ILO constitutional principle that “labour is not a commodity”, which explains why the ILO’s tripartite constituents have not only given more attention to the labour protection dimension of temporary labour migration but have also argued that jobs that are effectively “permanent” should not be filled by temporary workers – migrant or otherwise.

With the adoption of the GCM, global debates on migration governance have come full circle in the sense that there is now clear recognition that migration for the purpose of both temporary and permanent employment is a legitimate policy objective in the context of enhancing regular migration pathways (GCM objective 5), and that the rights of migrant workers engaged in temporary labour migration need to be safeguarded in accordance with the established international legal framework. It remains to be seen whether this shift in emphasis can be realized through UN Member States’ implementation of the GCM, with some commentators taking the view that the gap between the GCM’s ideals and aspirations for labour migration policies and the current labour market realities in countries that host most of the world’s migrant workers is insurmountable (Ruhs and Martin 2019). However, while inequality of treatment between temporary migrant workers and nationals continues to be an unfortunate labour market reality in many countries, the international legal frameworks governing labour migration and the protection of migrant workers on which the GCM rests – in particular the ILO instruments – represent an important bulwark against those forces that may seek to undermine protections in pursuit of short-term economic gains.

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Chapter 3.

► Mobility within the European Union: Capturing its complexity to guide policy

Christian Schramm

Introduction¹

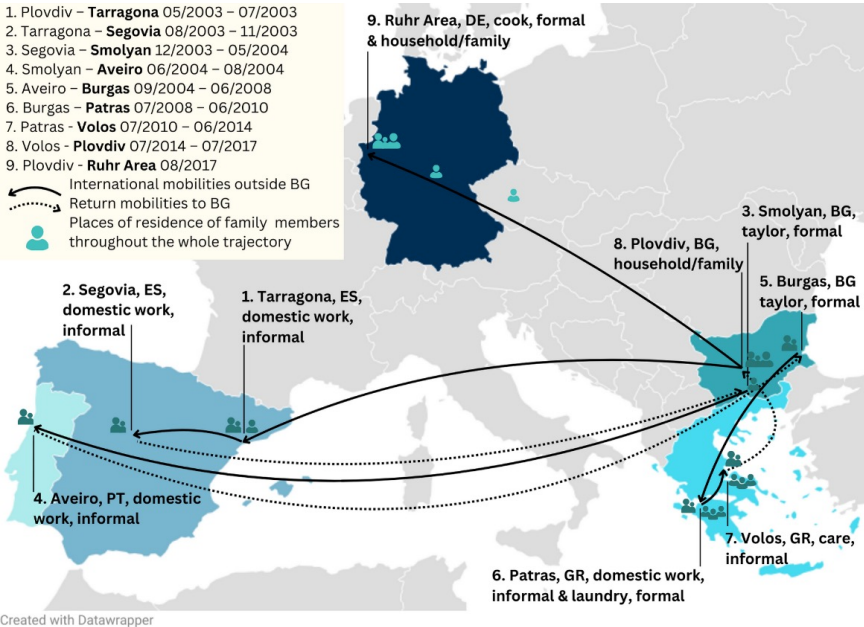
Viktoria, born in 1977, left Plovdiv, Bulgaria, for the first time in May 2003 because “life in the country was not easy and I wanted to give my child a better future”. For several months she worked informally as a domestic worker in Spain and later in Portugal. In the autumn of 2004 she returned to Bulgaria, to the city of Burgas. In 2008 she went to Greece, and after a period of informal work, again in the domestic sector, she managed to find formal employment in a laundry and later again informally as a care worker. In 2014 she returned to Plovdiv, where her second child was born. She looked after the household and family until 2017, when she moved to Germany. There she initially worked as a cook with a formal contract, but later decided to stay at home to care for her family exclusively. At the time of the interview in 2022, her partner was considering taking up a job in another European Union (EU) country, so she had to decide whether to move again.

Throughout her mobility trajectory, Viktoria was part of a changing transnational family arrangement, with some family members living in the same place and others in different countries. She experienced divorce, new partnerships and new motherhood. **Figure 1** summarizes Viktoria’s trajectory.²

1 All of the data presented here was collected and analysed as part of the project “ZuSudo: Migration from South East Europe – Enabling participation and cohesion at the municipal level”, a project focussing on migration dynamics between Romania/Bulgaria and the German Ruhr area. For more information, see Schramm and Pries (2024) and: <https://eu2migraruhr.eu/>.

2 For anonymization purposes, exact placenames have been replaced by larger administrative units.

► **Figure 1. Viktoria's migration**



Source: ZuSudo project.

Viktoria's case illustrates multiple movements between different EU countries, starting in 2003 when she was not yet an EU citizen with the right to free movement in the region. There were a number of longer and shorter stays both abroad and in the home country (in different places). Initially, one finds recurring configurations of the type and conditions of employment she experienced in the home and host countries (formal work as a tailor versus informal domestic/care work), which begin to diversify after the end of the transitional arrangement for workers from Romania and Bulgaria and the application of full freedom of movement in Greece in 2009. Her migration project is rather of a contingent character and linked to the course of the events when she says that "it all depends on the mood and where we've got to and what the future holds". Her decisions to move were based on different reasons, sometimes more economic, sometimes more family-related, sometimes more individual. Her social relationships and self-positionings span several changing countries. At one moment they are more clearly centred in one place, at another less so. Throughout her mobility and work trajectory, she has been classified as a *migrant* and *third-country national*, as a *long-term mover* in need of comprehensive integration support, and as a *short-term mover* who only wants to work abroad for a limited period of time.

State and non-state actors – such as nation States, EU institutions, trade unions, local municipalities and migrant organizations – all apply categories on which they base their respective policies of support and/or control and restriction. But in which category would we place Viktoria’s case? Is she a long-term migrant or is she exercising temporary labour mobility – and at what stage(s) of her trajectory could she be considered either? What is the significance of her international social, economic and other life references? What might a programme look like that addresses her changing needs over time in terms of access to labour and social rights in different EU countries? What about recognition of acquired experiences? Or a programme that supports her in managing a work–family balance and finally provides tailored information to guide her towards future biographical projects? Where should such programmes be implemented, and by which type(s) of actors?

To answer these questions, it is first necessary to clarify the understanding of migration as a complex social process (Massey 1987; Pries 2020). Migration takes place in interaction with a variety of actors, rules, norms and principles at different levels (local, regional, national, international). Migrants are always embedded in social networks (of kinship, religious or political groups, professions, and so on) and should not be considered as isolated actors. They are in a constant process of negotiation with themselves and others, which makes migration projects always open to change. Cross-border migration generally contributes to the internationalization of the individual life worlds of both migrants and non-migrants.

Viktoria’s example illustrates a specific type of linking of different places across national borders, which could be classified as transnational migration and which we will describe in more detail below. The term “transnational” is used here to refer to the processes by which migrants “forge and sustain multi-stranded social relations that link together their societies of origin and settlement” (Basch, Schiller and Szanton 1994, 6). Transnational migrants exhibit cross-border economic, social, cultural and political practices and pluri-local life references in several countries. Where these are sufficiently persistent, dense and frequent, they form transnational social spaces that have a significant impact on the everyday lives of migrants and non-migrants (see also Levitt and Jaworsky 2007; Tedeschi, Vorobeva and Jauhiainen 2022). In contrast to the understanding of migration as a complex social process, the term mobility here refers to spatial movement over a certain period of time between and within countries of origin and arrival.

The main thesis of this chapter is that we first need to better understand the complexity of intra-EU migration and mobility in order to develop appropriate migration and social policies. Therefore, we propose a typology of intra-EU migration that helps to identify the specific characteristics of different types of mobile EU workers. Based on this typology, specific programmes could address the needs associated with each of these types. As an empirical example, we present an analysis of Romanian and Bulgarian (temporary) labour migration. We use a mix of quantitative and qualitative data – a survey with 600 respondents and eleven semi-biographical interviews, with a special focus on mobility and work trajectories – collected in the German Ruhr Area and in places of origin in Romania and Bulgaria in 2021–22.

Romania and Bulgaria joined the European Union in 2007, in the second round of the EU's eastward enlargement. Similar to the first round in 2004, this enlargement was met with controversy in many Western European countries due to concerns about the potential negative impact on national labour markets and welfare states. Until 2014, some countries limited the full right of movement for workers and restricted access to labour markets and welfare entitlements (Barbulescu and Favell 2020). Challenges faced by both state and non-state actors, particularly in the areas of local integration or law monitoring and enforcement, are linked to the high level of socio-demographic diversity among migrants, the complex patterns of mobility, the related modes of participation in the labour and housing market as well as schooling, and the differentiated entitlements and access to social rights (Black et al. 2010; Recchi 2015; Engbersen et al. 2017). Labour migrants from Central and Eastern Europe, including Romanians and Bulgarians, are an essential workforce in various occupational sectors such as hotels and catering, agriculture, construction, manufacturing, domestic work and the medical professions. However, they often face challenges such as overqualification, lower wage levels and occupational status, atypical employment relationships, precarious working conditions and labour exploitation (DGB Bildungswerk 2023; Leschke and Weiss 2023; FRA 2019).

This chapter is structured as follows. The next section provides an overview of the framework of the intra-EU labour migration regime and the main labour mobility patterns. Subsequently, a brief literature review on intra-EU migration is presented, with a special focus on Central and Eastern European migrants. In the main section of the chapter, we present quantitative and qualitative empirical data to illustrate the different types of migration and their related needs. Finally, we outline the main features of potential support programmes for migrants.

The intra-EU labour migration regime

The regime setting³

In the European Union, international labour migration under the principle of freedom of movement is a fundamental right for EU citizens, guaranteed by article 45 of the Treaty on the Functioning of the European Union (TFEU) and article 15 of the EU Charter of Fundamental Rights. EU Regulations and Directives specify the rules for employment, equal treatment, workers' families and conditions to reside in another EU country for more than three months. As case law applies to the free movement of workers, the Court of Justice of the European Union has played an important role in further defining categories of workers, the right of residence for jobseekers and the access to social benefits (European Parliament, n.d.-a).

EU law distinguishes between standard labour migration of workers with a regular dependent employment contract and a residence in the respective Member State and various forms of seasonal employment, cross-border workers (between neighbouring countries), self-employment and the posting of workers. This implies differences in employment and working conditions, freedom of association and opportunities for participation in collective bargaining, social security and tax obligations, as well as different configurations of national regulatory frameworks to which workers are subjected (Wagner and Hassel 2016; Ulceluse and Kahanec 2023; Siöland et al. 2023). The most complex transnational configurations between companies, workers and authorities are to be found in the case of posted workers, to which article 56 TFEU relates (De Wispelaere, de Smedt and Pacolet 2022; ETUC 2016). To address these complexities and the increasing difficulties faced by national authorities in monitoring compliance with and enforcing existing international regulations, the European Labour Authority (ELA) was established in 2019. The ELA supports the creation of fair European labour markets and welfare systems (Cremers 2020), and was established following consultations with Member States, trade unions and employers' associations.⁴

Interacting state and non-state actors are located at the international, national, regional and local levels (Scholten and Van Ostajen 2018). Local authorities in origin and arrival countries have limited capacity to inform (potential) migrants of how to avoid and respond to fraud and abuse. To address this issue, some European trade unions have established transnational advisory networks

³ Here we understand a migration regime as a set of institutionalized rules, expectations and practices related to mobility, involving a variety of state and non-state actors.

⁴ Following the principle of social dialogue (European Parliament, n.d.-b).

and introduced new forms of flexible membership for mobile workers.⁵ There is also a wide range of different types of formal and informal intermediaries that provide and shape employment relations, access to housing and social protection in general. They are located in countries of origin and arrival as well as in other EU countries, and may have different types of organizational structures (Shire et al. 2018; FRA 2019; Voivozeanu and Lafleur 2023).

In this setting, decisions to move to a certain place, for how long, into which sector of employment, with or without the family members and so on are not restricted by visa requirements or influenced by quotas set by States or employers.⁶ Migration projects and mobility trajectories are instead shaped by individual experiences, preferences, expectations and available resources, and are embedded in networks of social relationships.

Intra-EU labour mobility patterns and measurement intents

The enlargements of the EU in 2004 and 2007 significantly altered mobility patterns both in terms of volume and direction. It is estimated that in the short period between 2003 and 2009 approximately 3 million “new” EU citizens moved into the “old” EU-15 countries (Holland et al. 2011, 49). Since the turn of the century, the total number of European citizens residing in a Member State other than their own has more than doubled, reaching approximately 15 million (Wiśniowski, Aparicio-Castro and Yildiz 2023, as cited in Sanchez Gassen 2023, 8).⁷

Data on intra-EU labour mobility is usually drawn from Eurostat and the European Union Labour Force Survey, or it is estimated through specific methodologies. Data collection has proven to be challenging due to the characteristics of these movements, and because the different instruments that Member States use to measure movements have in themselves deficiencies and are not easy to harmonize (see Fries-Tersch et al. 2020, Annex 3). The European Commission nevertheless makes an effort to classify intra-EU mobility into “long-term movers” (residence for at least 12 months in another country) and

5 See the network Fair European Labour Mobility assisting mobile EU workers from Central and Eastern European countries: <https://www.fair-labour-mobility.eu/>.

6 Yet there are also efforts to create recruitment programmes for certain sectors. An example is the project “Fair recruitment procedures for workers in the meat industry”. Negotiations were initiated in 2021 between the German state of North Rhine-Westphalia, the employers’ association of the German meat industry, trade unions and EURES (European Employment Services), but no results have been achieved.

7 The data used in this and the following section follows the logic of presentation in Hassan et al. (2023). It may include citizens from EFTA countries (Iceland, Norway, Switzerland, Liechtenstein) but usually does not include the United Kingdom of Great Britain and Northern Ireland. For detailed information see Hassan et al. (2023).

“short-term movers” (residence abroad for less than 12 months). These two groups can be further subdivided, partially based on legal grounds. Cross-border workers (residence in one country but employed or self-employed in another with regular movements across borders) are classified as short-term and include mainly frontier workers (between neighbouring countries) but also refer to seasonal workers and some posted workers. The European Commission further collects data on returnees as long-term movers, the number of postings of workers and the overall number of posted workers (see Fries-Tersch et al. 2020, 17-19 and 80-113).

The Eurostat data on the stock of long-term movers show that in 2021, 10.2 million EU citizens of working age (20 to 64 years) were living in another EU Member State, making up 3.9 per cent of the total EU working-age population. In 2020, 589,000 long-term returnees were counted (Hassan et al. 2023, 21-22). To estimate the extent and development of short-term mobility, data on posting of workers, cross-border workers and the length of employment contracts are considered. The general trend shows a growing importance of the posting of workers and short-term contracts limited to 12 months throughout the EU. However, different corridors between countries of origin and arrival can show their own characteristics regarding shorter or longer stays. For example, short-term mobility was very high between Poland and the Netherlands, while long-term mobility predominated between Poland and Austria (Fries-Tersch et al. 2020, 80-113). In 2021, there were an estimated 2.6 million posted workers and 1.7 million cross-border workers (Hassan et al. 2023, 22). One form of short-term mobility is seasonal work, which is particularly difficult to capture and can only be roughly estimated at 650,000 to 850,000 seasonal workers (Siöland et al. 2023). Germany remains the most important single destination country, receiving around 40 per cent of intra-EU migrants, followed by Spain, Italy, Switzerland and France. Romania is by far the most important country of origin, accounting for 27 per cent of the migrant population, followed by Poland, Italy, Portugal and Bulgaria (Hassan et al. 2023, 34-39). Romania and Bulgaria are among the EU countries with the highest percentage of their working-age population living in another Member State. In 2020, Romania ranked first with 18.6 per cent; Bulgaria was fourth with 10.3 per cent (Eurostat 2020).

EU data on flows show millions of EU citizens enter or leave an EU country (including their own) every year. In 2019, this figure was 3 million people (Hassan et al. 2023, 47-50). While Germany has been leading the net immigration statistics for years, Romania remains by far the main net sending country even during the COVID-19 pandemic (Hassan et al. 2023, 31). The growth rate of the number of Romanian and Bulgarian citizens living abroad has slowed down, but the inflow and outflow mobility for both countries remains high (Hassan et al. 2023, 47-50). In recent years, the number of third-country nationals moving to Central and Eastern European countries that were previously characterized by emigration, such as Poland, Croatia or Romania, has risen sharply. These

third-country nationals are being recruited abroad by a rapidly growing number of private agencies seeking to meet the labour demand in these countries (Rannveig Mendoza 2020).

Labour market participation patterns

On average across the European Union, EU migrants have slightly higher activity rates and fairly similar employment rates compared to nationals, though there are few differences between long-term and short-term migrants. However, unemployment is higher in the aftermath of the COVID-19 pandemic. In terms of the type of employment relationship, EU migrants on average have much lower rates of self-employment than nationals and higher shares of fixed-term contracts and part-time employment (Hassan 2023, 62-73). The largest employment sectors for EU migrants are manufacturing, wholesale and retail trade, and construction (Hassan et al. 2023, 82). Compared to nationals, EU migrants are under-represented in occupations requiring higher skill levels and over-represented in occupations requiring low to medium skills, such as cleaners and helpers; labourers in mining, construction, manufacturing and transport; building and related trades workers; and personal service workers (Hassan et al. 2023, 142.). In these occupations, EU migrants are more likely to be overqualified (Hassan et al. 2023, 146-149).

However, these overall averages can vary considerably depending on the country corridors and nationalities studied. Cross-border workers, referring mainly to the legal category of frontier workers, are usually analysed by macro-region, but in general it can be said that they are more likely to be employed in manufacturing and construction than other EU migrants (Hassan et al. 2023, 103). For posted workers, construction and international road freight transport are the main sectors, again taking into account certain differences such as the importance of agriculture and shipbuilding in France, or live-in care from Poland to Germany (De Wispelaere, De Smedt and Pacolet 2022, 43). Seasonal workers fill labour demand when local supply is not available at certain times of the year. They do this mainly in agriculture and in the hospitality and tourism sectors (Siöland et al. 2023).⁸ Another increasingly important form of labour mobility is human trafficking for the purpose of labour exploitation. This occurs mainly in the construction, agriculture, forestry, food processing, hospitality, cleaning services, and domestic work sectors, and affects many Central and Eastern European migrants (Pamporov 2023; GRETA 2019).

8 Estimations for Germany, for instance, indicate that during the peak months of May and June, around 26 per cent of the total workforce in agriculture are seasonal workers, mainly from Poland, Romania and other Central and Eastern European countries (Siöland et al. 2023, 21).

Research on intra-EU migration

As shown in the previous section, labour mobility in the EU and individual migration projects are highly complex. There have been many academic efforts to characterize them. Research can be broadly grouped into three strands: the first adopts a macro-regime perspective, emphasizing linkages across national and international levels; the second examines the specific dynamics in places of arrival or of origin, including policy responses and micro-level impacts on migrant workers and their families; and the third adopts a more pronounced transnational perspective.

In the first strand we find studies that examine the interrelationship between different types of labour mobility, their legal categorization, contextual conditions (for example, transitional arrangements) and changes in labour markets, welfare systems and policies (Dølvik and Eldring 2016; Engbersen et al. 2017; Heindlmaier and Blauberger 2017; Arnholtz and Leschke 2023; Michel and Schmitt 2023). In the second strand we find studies that focus on the integration of Central and Eastern European migrants in places of arrival (labour market, housing, schooling, health, social protection/welfare state) and the interactions with local authorities, organizations and other intermediary networks (Jennissen et al. 2023; Scholten and Van Ostajen 2018; Voivozeanu and Lafleur 2023). Besides the focus on how to manage complex migration/integration patterns, the emphasis of the second research strand is often on precarious working and living conditions in general. Some studies focus on the origins and discriminatory effects of categorizations based on ethnic-cultural attributions (Magazzini and Piemontese 2019; Ratzmann 2022; Lewicky 2023). There are also studies that look at the demographic, social, political and economic impacts in countries of origin, namely political participation of migrants, brain drain, youth drain, labour shortages, unequal development, remittances and returns that influence social structures (Anghel, Fauser and Boccagni 2019; Garrote-Sanchez, Kreuder and Testaverde 2021; King et al. 2022). We also find studies here that apply a life-course approach (Vlase and Voicu 2018), and some edited volumes seek to integrate these different perspectives (Black et al. 2010; Glorius, Grabowska-Lusinska and Kuvik 2013).

The third line of studies aims to analyse the different countries or places of origin and arrival within an integrated perspective, including transnational approaches to cross-border mobility. While these studies may cover different regions of the world, they are helpful in developing more appropriate typologies of cross-border labour migration. They combine the spatial and temporal aspects of *mobility* with the subjective self-perceptions of migrants, their varied cross-border life references and the constant negotiations with themselves and others during the complex social process of *migration* (Massey et al. 1987; Pries 2004; Favell 2008; Vertovec 2009; Engbersen et al. 2013; Andrijasevic and Sacchetto 2016; Fauser and Anghel 2019; Paul and Yeoh 2020; Salamońska

and Czeranowska 2021; Ahrens and King 2023). Within this discussion, Ludger Pries (2004) suggests five ideal types of migrants,⁹ four of which are relevant here:

- ▶ **Immigrants/emigrants:** Their goal is a permanent change of the centre of life, with perhaps shorter visits to relatives back in the country of origin, but the goal is a new life in the place of arrival for themselves and their children.
- ▶ **Return migrants:** Their aim is a medium-term stay in the country of arrival for education or to save money, with a clear intention to return. The family migrates only to a limited extent, and there are clear projects in the country of origin.
- ▶ **Transnational migrants:** Here, centres of life are distributed over different places and countries. There is no clear arrival/return strategy, and successive–iterative migration patterns are visible.
- ▶ **Circular migrants:** This type involves fairly frequent and purposeful (often seasonal) commuting between fixed places of residence in the country of origin and various places of work in one or more other countries (see **table 1** for a recent adaptation).

▶ **Table 1. Four ideal migration types**

	Emigration/ immigration	Return	Circular	Transnational
No. of changes of countries	1	2	many	many
Geographical references	bi-local	bi-local	pluri-local	pluri-local
Centre of life, social relations	from origin to destination	origin	origin	pluri-local
Migration reasons and contexts	complex, better life	work, education, forced	work, often seasonal	complex “risk diversification”
Socio-ethno-cultural self-perception	from origin to destination	origin	origin	transnational

Source: Pries (2024).

⁹ Ideal types are conceptual constructions that emphasize certain characteristics of a social phenomenon, thereby creating consistency and making it easier to understand and explain. Empirically, these combinations of characteristic values can rarely be found (Weber 1968).

Constructing EU migration types using the empirical case of Romanian and Bulgarian migration

In this main section, we will first show complex patterns of labour mobility that go beyond the rather rough Eurostat data. We then draw on the migration typology of Pries (2004) presented above and relate it to our empirical data from a survey of 600 Romanian and Bulgarian nationals and from qualitative interviews¹⁰. Among the 600 survey interviews, a total of 506 were conducted in the German Ruhr Area and an additional 94 were done with (temporary) returnees in Romania and Bulgaria.¹¹

Mobility patterns

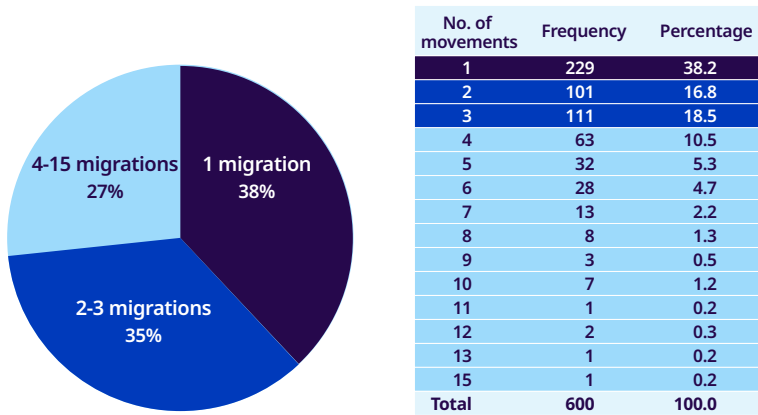
In order to capture individual mobility trajectories, we started with the survey respondents' first international movement and then recorded all subsequent international or intra-national movements.¹² Our sample can be roughly divided into three groups: Individuals with one movement (38 per cent), those with 2 to 3 movements (35 per cent) and those with 4 to 15 movements (27 per cent). Across the sample group, the number of respondents decreases rapidly from the fourth movement onwards ([figure 2](#)).

10 This includes: 50 ethnographic interviews, 11 biographical qualitative interviews with migrants, 63 interviews with municipal representatives for migration/integration, in agencies and migrant organizations in the Ruhr region and 9 interviews with municipal representatives in Romania.

11 In all, 98 per cent of the respondents were of working age (16 to 65) at the time of the interview. There was a small percentage of people who were not of working age at the beginning of their international mobility trajectory and who were above 65 at the time of the interview. The sample was drawn mainly according to gender (50 per cent female and 50 per cent male), educational qualifications (20 per cent up to primary school; 60 per cent secondary school, vocational training or high school diploma; 20 per cent university degree) and nationality (Romanian: 55 per cent, Bulgarian 45 per cent). All persons with Romanian and Bulgarian citizenship were eligible to participate, including persons who also had Moldovan citizenship and whose trajectory began in a country other than Romania or Bulgaria. For reasons of clarity, we have refrained from mentioning these and other special features of the data. It is difficult to define the structural characteristics of the population when we are considering mobile populations and achieve representativeness through a random sample. Our sample is no exception in this regard, but it shows many similarities with the data available at the Romanian, Bulgarian and German national levels in the categories of gender, age, education, religion, language group, length of stay and in some aspects of labour market participation.

12 For methodological reasons, circular movements of several weeks or a few months over a longer period of years had to be recorded as one mobility event. This applied to 42 respondents.

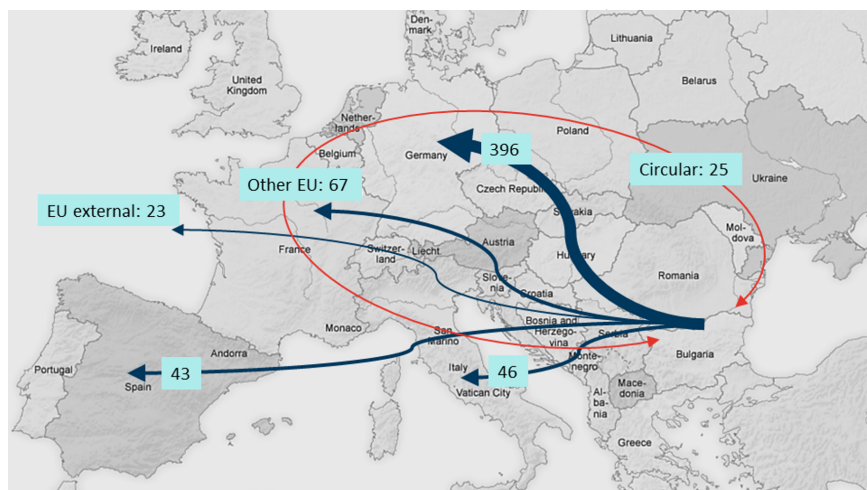
► **Figure 2. Number of movements among survey respondents (n=600)**



Source: ZuSudo project.

In total, we counted 33 different countries of arrival, of which 21 were inside the EU (including the United Kingdom) and 12 were outside. [Figure 3](#) shows the first movement of Romanian and Bulgarian nationals to different countries. Two thirds first went to Germany, which is not surprising given that the bulk of survey respondents were interviewed in that country. Italy and Spain were the next most common first destination, with each accounting for roughly 7.5 per cent of respondents. A slightly bigger share was distributed among a mix of other EU countries. Italy and Spain were typical destinations for Romanians, while Bulgarians were more spread out between these and other EU countries, such as the United Kingdom, France and Greece. Two smaller groups went to countries outside of the EU or engaged in circular movements.

► **Figure 3. First movement from Romania and Bulgaria among survey respondents (n=600)**

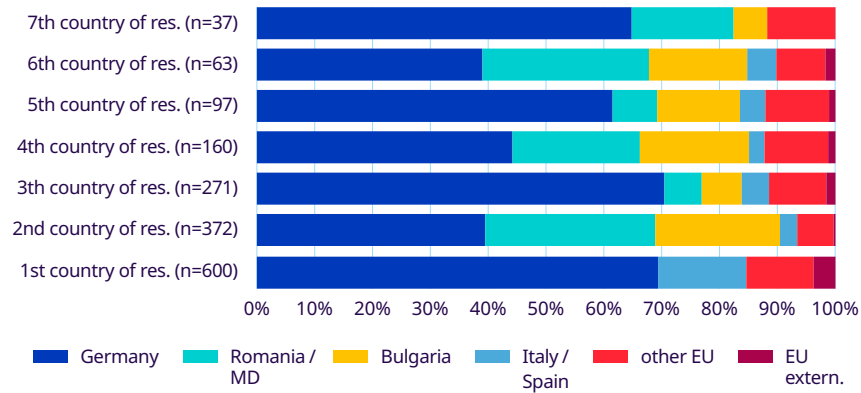


Source: ZuSudo project.

When analysing the combinations of destination countries throughout respondents' entire mobility trajectory, we find that the vast majority of people with two to three mobilities have either moved within Germany; moved from Italy, Spain or another EU country to Germany; or they had a return experience before moving to Germany.¹³ For those with more than three mobilities, Germany and Italy/Spain were less important destinations at the beginning of their trajectories, while other EU countries and Romania/Bulgaria were more important. Later on in their mobility paths, the range of the movements narrows to destinations inside Germany or between the countries of origin and Germany. **Figure 4** shows the sequence of countries of residence with a wave-like pattern, which is mainly caused by the oscillating mobility pattern between Germany and the countries of origin. From the third movement onwards, the importance of "other EU countries" remains more or less the same.

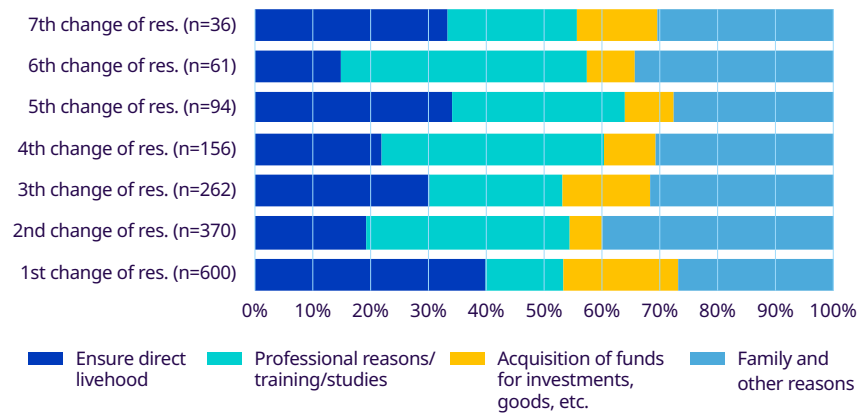
¹³ Of the 94 returnees interviewed in Romania/Bulgaria, 30 per cent had two to three movements, the larger share had moved four or more times.

► **Figure 4. Sequence of countries of residence, first to seventh movements**



Source: ZuSudo project.

► **Figure 5. Sequence of reasons for mobility, first to seventh movements**



Source: ZuSudo project.

Figure 5 shows the frequency of the different reasons for moving, which follow a fairly similar pattern, suggesting a link with the destination countries shown in figure 4. Here we find the greatest variation in the categories of “ensuring direct livelihood” and “professional reasons/training/studies”. Moving to Germany seems to be very often associated with the first category. “Family or other reasons” (such as, homesickness or seeking medical care) seem to remain relatively stable, with a slightly larger deviation for the second movement.

Types of migration

Typologies serve to organize our knowledge of social phenomena, and in doing so they help us to explain and understand them. Typologies highlight certain characteristics and create consistency, but at the same time, they have a certain degree of contingency and should *not* be read as deterministic classifications. There are four main variables that have guided the empirical construction of these types: (1) number of changes of residence; (2) average length of stay per residence; (3) total number of changes of employment relations or of employment status (employed versus unemployment/education) during the whole trajectory; and (4) current place of residence of partner and children. These variables are presented here with their average values for each type, after which a description of other characteristics follows. The presentation of the types immediately below follows a comparative logic, while statistical terminology is kept to a minimum.¹⁴

1. **Immigrant/emigrant families:** Respondents grouped into this type had on average, changed their place of residence 1.6 times and had changed their employment relations/status 2.6 times. Both of these average values are the lowest compared to all the other types. On the other hand, they had the longest duration of stay per residence, at an average of 6.5 years. These immigrants had moved with their partner and children, and they make up almost half of the sample. Their migration projects most commonly started in the period between 2014 and 2019, under conditions of full freedom of movement. They tended to have migrated for family-related reasons and to secure an immediate livelihood, and they did not send as much money abroad as others. They had above-average contact with the authorities and expressed a need for support in all areas of life. Language learning is an important part of personal development and is linked to social mobility in the host society. For example, from the perspective of a meat factory worker interviewed for the study, changing one's employment sector is very closely linked to language, and "only those who cannot do more in their lives stay in the factory". However, immigrant families also expressed a desire for help with their children's education and with access to health more frequently than other types. And even if the initial period of adjustment in the host society was often described as difficult, immigrants tended to have a "you either adapt or you go back if you are unhappy" attitude. Having adapted successfully, they were more positive than the other types about their chances of living up to their expectations, and they intended to stay for the long term.

¹⁴ The typology is the result of a two-step cluster analysis. The first four resulting clusters/types were then subjected to a bivariate analysis with several variables (contingency tables) to test for characteristic features. Unless otherwise stated, all the variables mentioned have shown significant associations with the respective clusters/types (min. 95 per cent).

2. Bread-winner returnees: This first subtype of returnees showed medium-level values compared to the other types in terms of the average number of changes of residency (2.8), the average number of years spent in each place (4.4) and the average number of changes in employment relations/status (3.7). At the time of the interview, they lived alone in the place of arrival, while their partner and children were in another country (mainly in the country of origin). This type represents 15 per cent of the sample. The time of the initial migration was more or less equally distributed before and after 2014. Securing an immediate livelihood was a more important reason for both their first and most recent movements. For their most recent movement, more general reasons related to employment or education had also become more important. As mentioned above, the typical mobility trajectories of these moderately mobile individuals included either a Southern European country or Germany as the first destination and very often a return to the country of origin before moving to their current location in Germany. It seems that for this type, securing a decent standard of living for their family by the means of migration was only a temporary solution, and after a certain period of return home, during which professional and material livelihood expectations were not met, a new movement became necessary: "If I were better off in Romania, I would go back home. ... I stay out of necessity. I lose two more years, but not more." They tended to send monthly remittances back home. Respondents in our sample who belonged to this group were disproportionately male and over 40 years old. More often than others they had no contact with local authorities or organizations, and they had the lowest values in terms of daily contact with neighbours or other people who are not compatriots or work colleagues. Also, more frequently than other types, they had an irregular residence status at the time of the interview and lacked health insurance, indicating a certain degree of precariousness. This is also suggested by the fact that respondents in this group had a greater need for support in the area of housing. This could indicate a desire to bring the family with them but an inability to do so. They also had a rather negative view of life in their current place of residence and intended to move again in the near future. The majority intended to return to Romania/Bulgaria.

3. Young singles with a return/onward migration orientation: This second subtype of returnees showed similar average values to the bread-winner returnees in terms of number of changes in place of residence (2.2), years lived in each place (3.7) and number of changes of employment relations/status (2.9). They tended to be younger, between 16 and 31 years old, have above-average values relating to professional education or a high school diploma, and they were mostly without a partner or children. They make up around 13 per cent of the sample. Their migration project started mainly after 2014 and was more often linked to professional/educational reasons or to future investments, or as one interviewee put it: "to get even further

and make more money". Like older returnees, they had less contact with local authorities or organizations, and more often an irregular residence status at the time of the interview. This type was neither overly positive nor overly negative about their chances of leading a life according to one's own expectations at the current place of residence. The intention to move again in the near future was more pronounced and, for some, probably linked to a certain achievement of previously set goals, as the same person said: "I have run enough for the money, now it is time for the money to come to me." However, this group of younger people seemed to have less clear plans. Among those who would consider moving, half would move back to Romania or Bulgaria and half would move elsewhere, mainly within Germany.

4. **Transnationally oriented families:** This transnational type has the highest average number of changes of residence (5.1) and of changes of employment relations/status (7.2) compared to the other types, and the lowest average number of years lived in each place (3). In other words, they have moved much more, stayed for shorter periods and changed their employment relations/status more often than others. They were more likely than other types to have had their first international movement either before 2007 or between 2007 and 2013 and, similar to the young singles, they were more likely to have been motivated by work or earning money for investment. While half of this group travelled alone for their first move, a large majority travelled together with their partner and children from the second movement onwards. In our empirical sample, therefore, we cannot speak of transnational nuclear families scattered across different countries, but rather of transnationally oriented (nuclear) families with varied life references in different countries, as the case of Viktoria in the introduction to this chapter illustrates. About a quarter of the total sample can be classified as belonging to this type. In terms of remittances, the interviewees tended to send some money abroad, but not with the same frequency as the breadwinner returnees. They had less contact with local authorities and organizations than the immigrant families, but more than both types of returnees. Similar to the immigrant families, they more often expressed a need for assistance with their children's education. These respondents most commonly belonged to the younger middle age group of 31 to 40 years old, and they were over-represented among those with a high school diploma or university degree. They also had more knowledge of languages than the other types, probably acquired during their more varied mobility trajectory. They showed significant differences from the other types in regard to perceiving more discrimination, in expressing a more negative outlook on the possibility of living a life according to one's own ideas in their current place of residence, and in their more pronounced intentions to move again in the coming years. However, they generally did not want to move back to Romania or Bulgaria and were less certain about where they will go next.

5. Circular migrants¹⁵: The circular migrants in our sample mostly moved alone between specific rural and urban locations in different countries, and over a shorter period of time (from at least three weeks to a few months). On average they did this for six years, with the shortest reported period of circular movement being seven months and the longest being more than 15 years. These circular movements usually involved the countries of origin and one specific destination country. However, we also found a few cases where the country of origin was not part of the circular pattern or where three countries were involved. In two thirds of the circular movements identified, the respondents were employed in the destination country, mainly in agriculture and construction, and were unemployed at home; in the remaining third, they would work in both countries. In about half of the circular movements described, employment relationships were informal and there was no provision for health insurance. More than half of the circular migrants were involved in circular movements at the beginning of their mobility trajectory. Most of them would later be classified as “immigrants” or as “returnees”. The other half of the circular migrants showed these short-term circular patterns at some point in their overall trajectory and very few were still circulating at the time of the interview. These respondents tended to have the characteristics of *transnational migrants* with movements involving several countries and with some respondents choosing circular patterns more than once in their overall trajectory.

In terms of commonalities across the five types, the majority in all types expressed a need for support in the area of work and training at the current place of residence. Overall, we found only a small number of irregular stays and employment relationships at the time of the interview. However, looking at the whole mobility and work trajectory, we found that all five types quite often experienced at least one informal employment relationship during their first stay abroad, with this particularly being the case among breadwinner returnee respondents (49 per cent) and transnationally oriented family respondents (45 per cent). As respondents moved from location to location the proportion holding at least one informal job per location decreased with each successive movement, but this decrease was less pronounced for the transnational type. There were similar tendencies in the area of health insurance, with access becoming increasingly common with each successive movement, although less commonly so among breadwinner return type respondents. In terms of whether belonging to one of the various Romani- and Turkish-speaking minority groups was linked with a particular type of migration, we found only a weak

15 The fifth type of “circular migrants” was not constructed using cluster analysis because not all of their stays abroad could be accurately captured in the survey. We therefore used frequency analysis of variables related to the number of movements, places of residence and work, time periods, moments when circularity occurred in the overall mobility trajectory and other work-related aspects.

association.¹⁶ The data show that they are slightly over-represented among immigrant families. This finding contradicts certain stereotypes, such as the supposed prevalence of high mobility among Roma and rather points to the general diversity of these groups and their mobility patterns (Toma, Tesăr and Foszto 2018).

Conclusion and way forward

Temporary labour migration takes different forms, ranging from frequent seasonal cross-border mobility, one-off stays and return migration to pluri-local transnational migration. Based on a survey and qualitative interviews with Romanian and Bulgarian migrants, we proposed to distinguish five types of intra-EU migration: emigration/immigration, circular migration, transnational migration and two subtypes of return migration. Such a distinction seems important because each type relates to specific vulnerabilities and resources. We also argued that people might shift between these types.

In terms of policy implications for authorities and organizations at the international, national and local levels, we consider it important as a first step to develop differentiated programmes that address the needs of each specific type, while recognizing the dynamic and contingent nature of migration processes, during which these needs can change rapidly. This implies that any consideration of migration programmes needs to be closely linked to issues of (pluri-local) integration. National and lower-level actors at destination focus more on immigration and the challenges of integration, a context in which mobility is perceived as an obstacle. National and lower-level actors in the countries of origin included in this study tend to have little incentive to proactively prepare people they perceive as potential emigrants, for fear of losing them in the longer term. Their temporary mobility and transnational engagement, whether political, cultural or economic, is viewed with ambivalence. On the one hand, it is encouraged, but on the other hand, it also challenges the status quo. Finally, organizations and authorities at the international level tend to focus more on the issues related to different forms of mobility, the way it is organized and its consequences for migrants, employers and the countries involved. For example, trade union networks or the European Labour Authority (ELA) look at how situations of fraud and abuse arise and how to respond to them, while other EU bodies are concerned with regulating access to and the portability of social security rights. Bearing in mind the potentially fluid nature of the five types, we will use them for the recommendations that follow.

¹⁶ We used mother tongue as an analytic category to capture ethnic self-identification (see Messing (2019) on further methodological considerations).

For **type 1, family immigration**, the most appropriate programmes are multi-dimensional integration programmes at the local level that address all areas of life, including family and child support, education and culture, housing, decent work, political involvement and so on, and which enable equal participation. As migration and integration are to be understood as open processes in which needs and expectations can change, different types of measures should be offered simultaneously. An important improvement could therefore be to further differentiate these programmes into services for:

1. Migration, where data and knowledge on potential countries of origin, global and European trends are continuously developed.
2. Arrival, where basic information on registration, job search, housing, schooling and access to networks is provided; where open language courses, including literacy, are offered; with clearing centres for health insurance and so on.
3. Participation, focusing on the selected areas of life – for workers, this may be housing, labour rights, the recognition of qualifications or further vocational training.
4. Integration as participation with equal opportunities in all areas of society (see Schramm and Pries 2024, 229-230).

Type 2, older bread-winners returnees, are the most vulnerable (as concerns employment, housing and social relations in the host society) and need support in the destination country but also in the country of origin where their partner and children live. They are less mobile, but tend to be more connected to their own socio-cultural contexts and countries of origin. As such, they need a mix of services that should include integration services provided by local authorities and organizations, but also transnationally oriented services, such as those recently set up by trade unions targeting more mobile people. At the transnational level, they may face particular challenges in claiming the social rights that derive from formal employment in the country of destination and that relate, for example, to benefits for children living in the home country. They should also receive advice before and after returning, for example, on pension rights and claiming procedures.

For **type 3, the young singles with return or onward migration intentions**, the search for professional opportunities and investment possibilities takes place mainly between the country of destination and the country of origin. On the one hand, they are the ones who are most likely to be reached by vocational training programmes (see Jeon 2019). On the other hand, they are also likely to be the most receptive to advice on investment – for example, in their own businesses in the country of origin.

Type 4, the transnationally oriented families, have the widest range of resources as well as the widest range of needs. They have a wider variety of work and other experiences acquired in other countries, which are often not recognized in the current country of residence. Recognition of prior formal and informal learning is key to positioning this type in the labour market (see ILO 2020), but can also play an important role beyond that, for example, when dealing with authorities or when children enter the host country's school system. They will also find it more difficult than others to claim their social rights, given their complex work trajectories. Finally, they also face the greatest challenges in terms of intra-family negotiation processes regarding the future spatial localization and the corresponding life orientations of the different generations. All in all, they need the broadest portfolio of support and advice: very local on the one hand and with a strong transnational orientation with an EU-wide focus on the other.

Type 5, the circular migrants, locate the centre of their lives in their place of origin. At the same time, they are most likely to experience precarious living and working conditions abroad. The work of the authorities in monitoring and enforcing regulations in the country of arrival, as well as the relevant counselling services for circular migrants, which are currently provided mainly by trade unions, need to be complemented by a dense network of easily accessible counselling centres in countries of origin. However, in order to be successful, any counselling service in countries of origin or arrival must take into account the often complex intertwining of interdependencies in migration networks involving a variety of actors, from relatives to companies to authorities, and the resulting configurations of interests.

In conclusion, all of the temporary migration types would benefit from greater cross-border cooperation between authorities and organizations at all levels. The content and scope of services – such as those currently provided by the European Employment Services (EURES)¹⁷, part of the ELA and responsible for providing information and services to workers and employers – appear to be insufficient, particularly in relation to Central and Eastern European countries. Current proposals to strengthen the network of trade union advice centres under the umbrella of the ELA and following the principle of “fair mobility” (Michel and Michon 2023) are a first step.

¹⁷ For more information about EURES, see: <https://www.ela.europa.eu/en/eures-network>.

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Part

2.

Revisiting temporary movements
in the global economy:
“Problematic” migration versus
“unproblematic” mobility?

Chapter 4.

► Challenging the global migration/ mobility programme policy construct: Labour market (in)security under Canada’s “new” International Mobility Program

Leah F. Vosko

Introduction

Migrant workers are an important source of labour in high-income receiving States worldwide. In the case of Canada, since the post-World War II period, many have entered via the Temporary Foreign Worker Program (TFWP) and its forerunners to address qualitative labour shortages – or demands for workers to fill precarious jobs in occupations and industries undesirable to workers domestically. Starting in 2014, however, the Government of Canada began to reduce and more strictly regulate programmes under the TFWP. This move is partly a response to public outcry over the exploitative conditions confronting workers migrating under the programme’s auspices, yet it also reflects a protectionist impulse based on the assumption that certain “Canadian jobs” need to be preserved for Canadians (Marsden, Tucker and Vosko 2021a). In this context, avenues for migration have nevertheless expanded, specifically through Canada’s decision to inaugurate the International Mobility Program (IMP). This dual strategy of slowing the growth of the TFWP while extending opportunities for mobility via the IMP continues to inform Canada’s approach to temporary labour migration today (Vosko et al. 2020). From a policy perspective, the TFWP is assumed to involve migrant workers compelled to take up employment abroad on a temporary basis due to limited job opportunities in countries of origin, a large proportion of whom labour under 3-D – that is, dirty, dangerous and degrading – conditions in industries such as agriculture (Vosko 2019; Vosko, Basok and Spring 2023).¹ Distinctly, the IMP formally targets mobile workers motivated by commitments to reciprocity and national competitiveness (Canada, ESDC 2014, 1), with these “mobile workers” viewed as being those who,

1 The Canadian government policy uses the term “temporary foreign workers” (or TFWs) to describe this group. However, this term neglects workers’ agency, it risks reproducing a problematic distinction between “foreigners” and “nationals”, and it fails to recognize that TFWP participants fall along a complex permanent/temporary divide (Rajkumar et al. 2012). Therefore, this chapter instead uses the terms “migrant workers” or “TFWP participants”.

on account of their socially-recognized skills and qualifications, opt to take up high-quality employment opportunities overseas – a characterization that is questionable.

Assessing the validity of the migration/mobility programme distinction unfolding in Canada, as elsewhere (for example, in other settler States, such as Australia and Aotearoa New Zealand), this chapter traces the origins, evolution and contemporary contours of the IMP vis-à-vis the TFWP through a survey of laws, policies and administrative practices shaping the emergence and governance of its core domains and a statistical profile of the quality and character of employment among participants in its largest domains. Challenging the novelty and validity of this distinction – and the mobility programme policy construct in particular – reveals that many programmes/schemes (known as “categories” and “streams”) under the IMP are not “new” but, rather, have long histories² emanating from exemptions to Labour Market Impact Assessments (LMIAs), Canada’s version of labour market tests typically applied in the admission of migrant workers and required of employers under the TFWP and its precursors or reciprocal intergovernmental agreements. Regardless of their origins in novel or longstanding agreements promoting reciprocity or in mounting imperatives to address emergent national competitive interests, the IMP’s major categories and streams also do not necessarily yield high-quality employment opportunities for work permitholders. Indeed, revealing the varied origins of categories under the IMP, together with their wide-ranging policy rationales, highlights that key components deviate from official justifications for the umbrella programme and neglect to provide for the labour market security that its associated policies promise. In fact, such components may fuel precariousness in relation to employment – namely, uncertainty in continuing employment, low wages, a lack of control over the labour process and limited access to regulatory protection (Vosko 2006; Vosko 2010) – and in relation to residency status (or what some term “precarious status” or “precarity” – see, for example, Goldring and Landolt 2013).

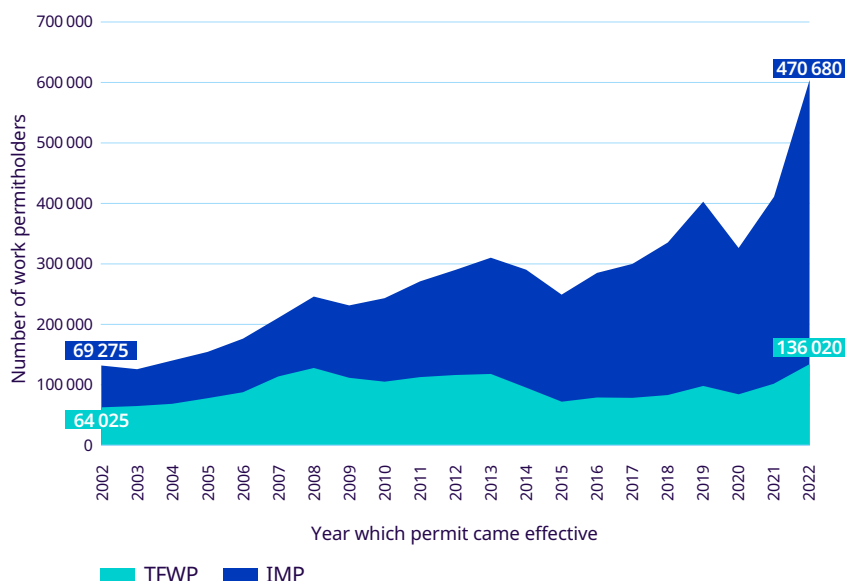
The growth of the IMP and the contraction of the TFWP

From the early 2000s to the late 2010s, Canada experienced considerable growth in international migration for employment. As [figure 1](#) shows, work permitholders under both the IMP and the TFWP grew from a total of 133,300 in 2002 to 606,700 in 2022. This growth was driven by the expansion of the IMP, which began to outpace the TFWP in 2009. Thereafter, permitholders under the IMP continued to increase while their numbers under the TFWP contracted

2 Editors’ note: see also Piguet (Chapter 11) in this volume.

and then plateaued before experiencing a moderate uptick in 2021–22 post-pandemic. Consequently, by 2022 three and a half times as many transnational workers³ held new work permits under the IMP than the TFWP.

► **Figure 1. Annual numbers of work permitholders under the TFWP and IMP, 2002–2022***



Notes: * 2022 is the latest available complete calendar year for which publicly accessible Immigration, Refugees and Citizenship Canada (IRCC) data documenting permitholders is available. Values between 0 and 5 are suppressed, all values are rounded to the nearest 5 to maintain anonymity.

Sources: Customized data requests to the IRCC: (i) CR-21-0358: Canada – Work Permit Holders by Program, Country of Citizenship and Year in which Permit(s) Became Effective, 2002 – 31 March 2021; and (ii) CR-23-0177: Canada - Work Permit Holders by Permit Holder Type and Year in Which Permit(s) Became Effective, 2021–2022.

Whereas Canada issued 69,275 permits under programmes subsequently reclassified to fall under the IMP in 2002, it issued fully 470,680 in 2022 (figure 1). Meanwhile, it issued 64,025 and 136,020 permits under the TFWP in

³ Henceforth, the phrase “transnational workers” is used to refer to all workers migrating to Canada for employment on a temporary basis (that is, regardless of the umbrella programme in which they are enrolled). In so doing, the aim is to encompass work permitholders on both sides of the “mobility/migration” policy construct to avoid reifying particular categories and understandings. This concept is also used to avoid methodological nationalism, because the nation State as a “container” assumes a national labour market populated by citizen-workers.

those respective years. The constriction of streams of the TFWP, whose largest subprogrammes are widely recognized to be highly exploitative, and the expansion of those of the IMP, presumed to be less so, marked this period.

Origins of the IMP

While the IMP emerged in its current form in 2014 partly in response to public calls to guard against exploitation and ensure Canadian workers had access to jobs in certain industries and occupations (Marsden, Tucker and Vosko 2021a), some of its subprogrammes were created much earlier and are linked to the intensification of globalization via free trade. Indeed, formally, Canada's IMP aims to facilitate employment of limited duration among transnational workers, often under conditions that may be established by international agreements that promote reciprocity, on the one hand, and competitiveness in the global economy, on the other hand, two drivers that overarch the programme's main categories and streams. Under contemporary trade law, "reciprocity" means that "any advantage that is granted to one state has to be reciprocated by the beneficiary state" (Pellerin 2008, 41). Yet the reciprocity principle has also long applied to selecting parties to intergovernmental agreements that provide for various forms of movement, including to gain work experience abroad. Likewise, since the late twentieth century, "competitiveness" has been equated with the process of "opening up" via "free trade" – a process that advanced considerably with the adoption of the North American Free Trade Agreement (NAFTA) – even though some subprogrammes of the IMP fostering this principle find analogues in the early post-World War II era. In this context, both drivers of free trade came to influence the rationale for and design of programmes aimed at attracting transnational workers to a profound degree (Pellerin 2008). For example, Annex 1603 of NAFTA (1994) prohibited the use of labour market tests (such as LMIA's) to authorize temporary entry for employment, creating a powerful exemption from processes designed to tightly control which occupational groups could enter signatory countries to engage in employment temporarily. This prohibition, while not unprecedented insofar as certain groups were long exempt from such requirements (for example, reciprocal employees, participants in exchange programmes and so on) (Canada, Citizenship and Immigration Canada 2004, 50), expanded considerably the use of NAFTA as an entry channel. It effectively discharged employers in highly competitive industries critical to trade from providing proof of domestic labour shortages to gain access to transnational workers. The prohibition of labour market tests/LMIAs symbolized Canada's mounting effort to align the mobility of professionals with its pursuit of "competitiveness" through trade. Consequently, within the bi- and multi-lateral trade agreements that Canada maintains with various countries, common types of work permitholders associated with particular IMP subprogrammes include traders, investors, professionals and intra-company transfers (ICTs) (Pellerin 2017, 359). The legitimization of such

subprogrammes thus utilizes the cross-border mobility of workers to advance negotiations on trade and investment liberalization (OECD 2014)⁴, casting the receiving State as a recruiter with wide-ranging discretionary powers, a dynamic accelerating in the early 2000s.⁵

Since the prohibition of labour market tests under key trade agreements, the absence of a requirement for an LMIA in Canada has come to unify the subprogrammes of the IMP. On the one hand, groups of workers, such as ICTs, are migrating under trade-related streams that empower employers in the selection process, such that they are no longer required to demonstrate domestic labour shortages, and on the other hand, participants in youth mobility schemes and spouses, for example, have been retroactively reclassified as LMIA-exempt for reasons unrelated to trade. Under the IMP, a large subset of transnational workers participating in these varied subprogrammes receive Open Work Permits (OWPs), some of which provide opportunities for renewal and/or pathways to permanent residence. Yet the provision of such permits simultaneously translates into a lack of coverage under a comprehensive suite of labour protections extended to holders of Closed Work Permits (CWP)s,⁶ introduced to stem exploitation under the TFWP in the mid-2010s.

The expansion of the IMP took place against this backdrop. As [figure 1](#) illustrates, starting in 2009 the number of work permitholders under its auspices came to exceed that under the TFWP. Meanwhile, the administration of the IMP, distinct from that of the TFWP, came to be directed at regulating mobility across national borders even though dynamics unique to Canada's labour market, such as employer demand, may, in practice, function as a central driver of entries into Canada with the contraction of TFWP subprogrammes targeting industries characterized by qualitative labour shortages (Chartrand and Vosko 2021, 95).

4 Editors' note: This dynamic is also pointed to by Lavenex et al. in Chapter 5 of this volume.

5 For example, in the agreements with Costa Rica in 2002, Colombia and Peru in 2008, the European Free Trade Agreement region in 2009, Panama in 2013, Honduras in 2014 and the Republic of Korea in 2015, Canada used positive lists of professions, cast by Pellerin (2017, 359) as lists that authorize mobility solely for professional categories cited explicitly, indicating Canada's capacity to negotiate the mobility of persons as a recruitment tool for specific professions. This gesture, which may, on the surface, indicate closure, on the part of Canada, to nationals from signatory countries, more accurately reflects Canada's willingness to establish specific conditions for the mobility of professionals, beyond the simple reciprocity requirements that apply to trade agreements (Pellerin 2017, 359).

6 Editors' note: Closed work permits are generally role- and employer-specific. This means that the worker cannot work in any other role or with any other employer without permission of the immigration authorities. These are commonly referred to as "employer-tied" permits or visas.

The evolution of the IMP vis-à-vis the TFWP

At a certain level, the IMP and the TFWP both address the same policy goal: the recruitment of workers internationally to engage in employment on a temporary basis in Canada. However, the TFWP's roots lie in its earliest forerunner – the Non-Immigrant Employment Authorization Program (NIEAP) of 1973. Representing the first overarching programme governing migrant work and providing mainly CWPs, the NIEAP served to “categoriz[e] ... certain (im)migrants as migrant workers ... legally through [a] regulatory framework ... entrenched within successive Canadian Immigration Acts” (Sharma 2007, 163). This framework defined a migrant worker as a “‘foreign worker’ who upon arrival ... [has] with her or him an official *temporary employment authorization* from the Canadian state”, a precursor to the contemporary LMIA (Sharma 2007, 163, emphasis added). From the inception of the NIEAP, migrant workers under its auspices were subject to a labour market test. In contrast, the Immigration and Refugee Protection Act (2002), which replaced the Immigration Act that had been in place since the 1970s (albeit amended continually) and had permitted the Minister of Immigration to pass regulations governing the issuance of work permits to foreign nationals, allowed for the creation of LMIA-exempt migration streams (Immigration and Refugee Protection Regulations, SOR/2002-227, sections 204–208). Accordingly, after 2004, when Canada issued its consolidated “Foreign Worker Manual”, exempt streams, whose subprogrammes expanded through to 2013, included:

- ▶ those tied to international agreements;
- ▶ streams deemed of “significant benefit” to Canada;
- ▶ reciprocal employment;
- ▶ streams designated by the Minister, initially comprised of those tied to research, educational and training programmes and those tied to “competitiveness and public policy” (for example, spouses of students and skilled workers, post-graduates, postdoctoral fellows and grantees); and
- ▶ asylum-seekers/refugees and applicants for permanent residency.

In the early 2000s, the expansion of such LMIA-exempt subprogrammes took place alongside the accelerated growth of a variety of TFWP streams, not only streams in agriculture and domestic work, the two most longstanding domains in which Canada's migrant worker programmes have operated and in which exploitative conditions are common, but in industries ranging from food and beverage and accommodation services to mining and construction. Yet in the 2010s, as workplace problems, such as wage theft, excessive overtime and unjust dismissal (often triggering premature repatriation) (see Vosko 2019) mounted among TFWP participants, CWP holders in particular came under greater scrutiny (Marsden, Tucker and Vosko 2021b). Awareness

of the adverse conditions of work and residency facing migrants enrolled in TFWP subprogrammes mounted. So too did protectionist concerns stemming, on the one hand, from the apparent harmonizing down of wages in sectors and industries reliant on migrant workers (Marsden, Tucker and Vosko 2021a), and on the other hand, the desire to preserve entry-level jobs for citizen and permanent resident youth (Canada, ESDC 2014).⁷ This awareness, and the concerns it engendered, sparked public outcry prompting Canada to "overhaul" and scale back the TFWP in 2014.⁸ Consequently, the TFWP maintained its form yet shrunk to encompass principally its most longstanding subprogrammes

7 In response to the latter concern, Employment and Social Development Canada (ESDC) announced a moratorium on the hiring of migrant workers in food services and retail trade sectors under the TFWP in 2014. However, in the long run, the suspension was retained only for "positions that require little or no education or training" in economic regions with annual unemployment rates higher than 6 per cent. The justification: in these regions, "for many youth, these [food services] jobs are their first opportunity to participate in the labour market and each time an employer hires a temporary foreign worker in one of these jobs it potentially deprives a Canadian from that all-important first job" (Canada, ESDC 2014, 11).

8 In moving towards this overhaul of the TFWP, in 2013 the Federal Government introduced reforms including an immediate suspension of the programme that permitted employers to pay foreign workers up to 15 per cent less, and halted the provision of accelerated Labour Market Opinions, the precursor to the contemporary LMIA. Later that year, as Marsden, Tucker and Vosko (2021b) document in chronicling events spurring action at the federal level, the Government promulgated a regulation (RAIRP Regulations 2013) implementing other policy changes aimed at protecting the integrity of the Canadian labour market by providing enhanced authority to verify employer compliance with TFWP requirements (such as efforts to hire Canadians) and to apply penalties for non-compliance, as well as to protect TFWP participants from abuse. Other changes introduced during this period, directed specifically at the TFWP, included a switch from high/low skill levels to high/low wage levels to classify job categories, a 10 per cent cap on the percentage of low-wage TFWP participants an employer could hire, limiting access to low-wage TFWP participants in areas of high unemployment, and limiting the duration of stays. Also at this time, the Federal Government announced reforms to the caregiver programme under the TFWP. Framing these October 2014 changes as addressing concerns about mistreatment, they included ending the live-in requirement, clearing the backlog of applications for permanent residency made by caregivers who had satisfied the work requirement, and new criteria for a pathway to permanent residency (Canada, ESDC 2014).

Pertinent to the exclusion of OWPs from increased protection, subsequently, the Federal Government stepped up enforcement efforts by:

- increasing the number and scope of inspections so that one in four businesses employing temporary foreign workers were inspected by the TFWP annually;
- increasing the number of programme requirements that inspectors could review from 3 to 21;
- expanding the TFW Tip Line (a hotline where migrant workers can report workplace problems) and creating a new "Complaints" website;
- augmenting publicity of employers who have been suspended and/or under investigation under the TFWP, and those employers who have had an LMIA revoked and are banned from participation;
- providing greater funding for the Canada Borders Services Agency to increase the number of criminal investigations of employers/recruiters;
- improving information sharing among departments and agencies involved in overseeing the TFWP, including provincial and territorial governments; and
- introducing significant monetary fines of up to CA\$100,000 (Marsden, Tucker and Vosko 2021a; 2021b).

(those in agriculture and domestic work) plus a handful of “high-skilled” categories (Vosko, Basok and Spring 2023). Meanwhile, in 2014, many LMIA-exempt subprogrammes, permitted under the Immigration and Refugee Protection Act (2002), first distinguished solely as subprogrammes of the TFWP not requiring labour market tests, were reclassified as falling under a separate umbrella programme known as the IMP.⁹ Thus, while the IMP is often cast as a “new” programme introduced in the mid-2010s, chief subsets more accurately represent a rebranding of existing subprogrammes.

Another development occurring in 2015 alongside this recalibration and/or redistribution of subprogrammes between the TFWP and the IMP merits attention here: namely, Canada’s introduction of a new protective regime aimed at bolstering the enforcement of workplace rights among transnational workers (Marsden, Tucker and Vosko 2021b). This regime is, however, characterized by key design flaws, the foremost of which relate to its scope. Specifically, its terms apply exclusively to those holding CWPs, most of whom fall under the TFWP. As such, relatively few IMP participants, including those participating in its largest subprogrammes, benefit from this new protective regime, even though OWP-holders can face *de facto* restrictions in relation to their employer, type of work or occupation, and location and duration of work (on the precariousness among participants in the Postgraduation Work Permit Program, see for example, Vosko 2023).¹⁰

Given such exclusions, distinctions between the countries of origin from which major IMP and TFWP subprogrammes recruit permitholders are also noteworthy, both in terms of the TFWP versus the IMP, as well as within the IMP itself. Whereas the main origin countries of workers under the TFWP are in Latin America and the Caribbean, the IMP draws heavily upon permitholders from a greater diversity of countries, with the notable exception of Latin America and the Caribbean. As **table 1** shows, a majority of workers from India and the United States – two of the three largest source countries for the TFWP and IMP combined – enter Canada under an IMP work permit. This situation is even more pronounced for those from other top sources of TFWP migrants and IMP permitholders, such as Australia, China, France, Germany, Ireland or Japan (Canada, IRCC, n.d.-a).¹¹

9 Simultaneously, through the use of previous administrative data on “temporary foreign workers”, government officials also retroactively split programme/entry categories into either the new TFWPs or IMPs (Chartrand and Vosko 2021).

10 Also problematic is the compliance orientation of the protective regime; that is, the regime is devoted to ensuring the enforcement of provincial workplace laws that are themselves deficient. For example, the Employment Standards Act of Ontario exempts fully or partially various types of agricultural workers (such as, harvesters and farm employees), many of whom are migrants holding CWPs, from a series of minimum standards.

11 Also as per data from the IRCC derived via customized data request: CR-23-0177: Canada – Work Permit Holders by Permit Holder Type and Year in Which Permit(s) Became Effective, 2021-2022.

► **Table 1. Top 15 source countries for the TFWP and the IMP by share of permitholders, cumulative totals for 2013–22 (percentage)**

Countries of origin ranked according to total number of permitholders	% of TFWP total	% of IMP total
1. India	8.3	25.4
2. Mexico	29.7	1.6
3. United States	3.7	9.6
4. France	1.5	8.0
5. Philippines	14.4	3.0
6. China	1.1	7.6
7. United Kingdom and Territories	1.7	3.8
8. Jamaica	10.2	0.5
9. Guatemala	10.5	0.02
10. Ukraine	0.6	3.6
11. Republic of Korea	1.9	3.0
12. Australia	0.3	3.0
13. Japan	0.5	2.4
14. Brazil	0.6	2.4
15. Ireland	0.5	2.2
Total	85.5	76.1

Note: 2022 is the latest available complete calendar year for which publicly accessible IRCC data documenting permitholders is available.

Sources: Customized data requests to the IRCC: (i) CR-21-0358: Canada – Work Permit Holders by Program, Country of Citizenship and Year in which Permit(s) Became Effective, 2002 – 31 March 2021; and (ii) CR-23-0177: Canada - Work Permit Holders by Permit Holder Type and Year in Which Permit(s) Became Effective, 2021-2022.

Considering the decade between 2013 and 2022, top source countries of the IMP included a mix of wealthier and powerful countries in Europe and in East, South-East and South Asia, as well as the United States and Australia (**table 1**).

Six such source countries are signatories to a trade agreement with Canada, namely, Australia, France, Japan, the Republic of Korea, the United Kingdom and the United States. In these years, at least 80 per cent (and in many cases over 90 per cent) of all permitholders from each of these countries came under the IMP rather than the TFWP.¹² At the same time, neither India, by far the top country of origin for the IMP, nor China, representing the sixth largest, have signed a trade agreement with Canada.

Contemporary contours of the IMP: Structure and permit conditions of predominant categories and streams

As an “umbrella programme”, the IMP itself encompasses seven umbrella categories organized by LMIA exemption code, which are themselves comprised of streams divided further by subprogramme. The largest categories are Agreements (comprising 5 per cent of all IMP permitholders in 2022) and Canadian Interests (comprising 73 per cent of all IMP permitholders in 2022) (figure 2).¹³

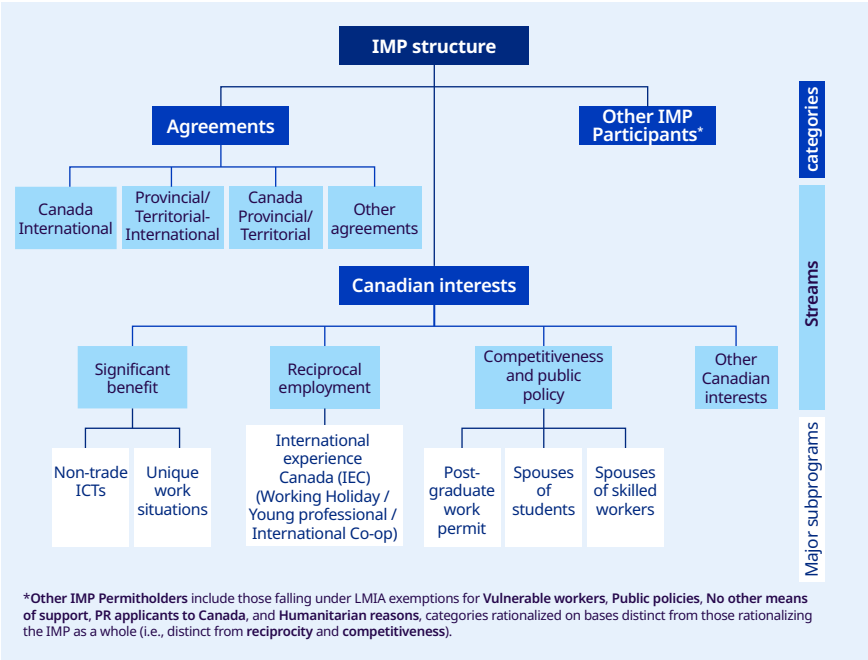
12 As per data from the IRCC derived via customized data requests: (i) CR-21-0358: Canada – Work Permit Holders by Program, Country of Citizenship and Year in which Permit(s) Became Effective, 2002 – 31 March 2021; and (ii) CR-23-0177: Canada - Work Permit Holders by Permit Holder Type and Year in Which Permit(s) Became Effective, 2021-2022.

13 The remaining five categories, which likewise emanate from LMIA exemption codes, include:

1. “Public policies” – A narrow grouping encompassing generally temporary policy measures to facilitate entry for particular groups – for example, temporary and permanent residence measures for Hong Kong (China) youth, family reunification for residents of Hong Kong (China) with relatives in Canada (the Temporary to Permanent Residency pathway was also processed under this category);
2. “No other means of support” (exemption code R206) – a small grouping comprised of refugee claimants awaiting determination on their status and persons that are under an unenforceable removal order;
3. “PR applicants to Canada” (R207) determined eligible as members of certain in-Canada permanent residence classes, including protected persons, whether or not they have applied for permanent resident status, and the live-in-caregiver class;
4. “Vulnerable workers” (R207.1) – a category for TFWP participants in Canada on valid employer-specific work permits deemed to be experiencing abuse, or be at risk of abuse, in the context of their employment; and
5. “Humanitarian reasons” – a small subcategory with two sub-streams that allows for the issuance of work permits to foreign nationals who cannot support themselves without working and who are study permitholders who have become temporarily destitute through circumstances beyond their control or temporary resident permitholders who have a permit of at least six months (Canada, IRCC, n.d.-a).

Collectively, these five categories represented just over 21.6 per cent of total IMP permitholders in 2022. As they emanate from exemptions rationalized on bases (such as humanitarianism) that are distinct from the twin notions of “reciprocity” and “competitiveness” forming the overall policy rationale for IMP, they are not a focus in the analysis to follow.

► **Figure 2. IMP categories, streams and major subprogrammes, 2022**



IMPs offer a mix of CWP and OWP ranging from one month to seven years in duration (some of which may be extended), although OWPs predominate. Issuing mostly CWPs, the Agreements category encompasses streams pursuant to largely trade-related reciprocal international agreements. As such, its major subprogrammes – namely, Canada–international, provincial/territorial–international and Canada–provincial/territorial – facilitate entry for business visitors pursuant to these agreements, typically traders, investors, professionals, technicians, ICTs of varying kinds and, in certain cases, spouses of work permitholders entering under Agreements. Reflecting Canada’s trade obligations, the top three source countries of entrants under Agreements in 2022 were the United States, Mexico and Colombia, with which Canada also has a trade agreement, though its nationals represent a small share of permitholders overall.

Involving the issuance of both CWPs and OWPs, Canadian Interests – the IMP’s largest umbrella category – comprises a variety of sub-streams related to advancing Canada’s economic, social and cultural interests. Its two main streams are:

1. “Significant Benefit”, providing the Government with the flexibility to respond to situations in which the employment activities of a “foreign national would create or maintain significant social, cultural or economic benefits or opportunities for Canada” (Canada, IRCC 2019);¹⁴ and
2. “Reciprocal Employment”, enabling “foreign nationals to take up employment in Canada when Canadians have similar reciprocal opportunities abroad ... [that] result in a neutral labour market impact” (for example, academic exchanges and youth mobility programmes) (Canada, IRCC, n.d.-b).

A third stream, “Designated by the Minister”, is subdivided into “Research” (for example, educational co-ops) and “Competitiveness and Public Policy”, encompassing subprogrammes deemed “necessary for public policy reasons related to the competitiveness of Canada’s academic institutions or economy” (for example, medical residents) (Canada, IRCC, n.d.-a). A fourth stream of Canadian Interests is “Charitable and Religious Work”.

Under the Significant Benefit stream, in which permitholders from India, the United States and France are the most numerous, Canada issues CWP, with a few exceptions (for instance, OWPs are issued to live-in caregivers and their spouses with permanent residency applications submitted and to applicants holding Bridging Open Work Permits). The Reciprocal Employment stream, in which permitholders from France, the United Kingdom and Australia predominate, also mainly issues CWP. However, under the Working Holiday subset of International Experience Canada, participants receive OWPs of up to 24 months, depending upon their country of origin. And, while Canada issues a mixture of OWPs and CWP under the Competitiveness and Public Policy stream, in which permitholders from India, China and the Philippines are most numerous, those enrolled in its two largest subprogrammes also receive OWPs, namely: (1) spouses (and dependents) of high-skilled workers¹⁵ and full-time students, whose permit duration is pegged to that of the “principal applicant”, and (2) postgraduation work permitholders, whose permit duration is up to three years maximum.¹⁶

14 For example, unique work situations, non-FTA ICTs, bridging open work permits.

15 In 2023, Immigration, Refugees and Citizenship Canada (IRCC) created a pilot programme to extend the possibility of holding OWPs to spouses of migrant workers requiring LMIA, namely participants in the TFWP’s high-wage stream and, eventually, participants in TFWP’s low-wage stream.

16 As per data from the IRCC derived via customized data requests: (i) CR-21-0358: Canada – Work Permit Holders by Program, Country of Citizenship and Year in which Permit(s) Became Effective, 2002 – 31 March 2021; and (ii) CR-23-0177: Canada - Work Permit Holders by Permit Holder Type and Year in Which Permit(s) Became Effective, 2021-2022.

The nature of employment permitholders in the two largest IMP programme categories

Indicators utilized by researchers individually and cumulatively to establish degrees of labour market (in)security in a given job are useful in discerning the quality of permitholders' employment in the Agreements and Canadian Interests categories of the IMP – for example, degree of control over the labour process, income level and access to regulatory protection (see for example, Vosko 2006; Vosko 2010; Vosko et al. 2020). To this end, I have utilized the most recent data available via the Canadian Employer and Employment Dynamics Database (CEEDD),¹⁷ one of the few vehicles tracking the labour force experiences of temporary work permitholders, to analyse:

- ▶ **rates of unionization**, a good proxy for degrees of control over the labour process¹⁸;
- ▶ **firm size**, an indicator of access (or lack thereof) to minimum terms and conditions of employment, as evidence suggests that workers in firms of 20 employees or more are more likely to see their labour standards enforced than those employed by smaller firms;
- ▶ **income from employment**,¹⁹ a central means of attaining resources required for individual and household subsistence;
- ▶ **multiple jobholding**, another measure relevant to income adequacy in one's main job, as its presence highlights a strong motivation to secure income from employment; and
- ▶ **industry of employment**, also offers supplementary insight into labour market (in)securities confronting permitholders by revealing key domains in which permitholders are employed, and whether or not precarious jobs are common therein.

The presence of one indicator of labour market insecurity or working in an industry in which precarious jobs are common does not necessarily denote a high degree of precariousness among work permitholders. However, experiencing more than one indicator of labour market insecurity arguably entails precariousness (Vosko 2006; Vosko 2010). In analyzing employment outcomes among IMP participants, I thereby constructed and utilized an index

¹⁷ CEEDD 2018 data were accessed at Statistics Canada's Research Data Centre at York University (contract number 1-MAPA-YRK-7112).

¹⁸ In the CEEDD, this variable encompasses not only workers covered by a collective agreement but those represented by a professional association, making the variable less robust as a proxy for control than its label suggests but nevertheless valuable to this analysis.

¹⁹ Annual employment income is the measure used in this analysis, as income is only reported on this basis in the CEEDD and the number of hours of work is not included in the dataset, making it impossible to measure hourly wages. This indicator nevertheless helps reveal migrant workers' level of dependency on paid employment.

wherein if two or three of the foregoing indicators (that is, no trade union, small firm, multiple jobs) are common among work permitholders under a given stream or subprogramme, their job is deemed to be precarious.²⁰

Exploring these dimensions of labour market (in)security or precariousness in employment within Canadian Interest and Agreements categories reveals that a greater proportion of work permitholders under Agreements have high annual employment incomes compared to the proportion of permitholders under the Canadian Interests category, who are overrepresented in lower income categories (see **table 2**). In addition, a larger proportion (44 per cent) of permitholders enrolled in streams falling under Canadian Interest than those under Agreements (24 per cent) are multiple jobholders. The proportions working in small firms are similar under both categories, and only slightly more permitholders under Canadian Interests than Agreements are unionized. Not surprisingly, therefore, considering the indicators of precariousness cumulatively, fully 44 per cent of work permitholders under Canadian Interests hold precarious jobs compared to 35 per cent of those falling under Agreements when the aforementioned index is applied to these two umbrella categories.

► **Table 2. Characteristics of employment in select IMP categories and streams, 2018**

Category		Annual income (CA\$)					Indicators of precariousness			
		Less than 30K	30–50K	50–70K	70–90K	90K+	Not unionized	Small firm	More than 1 job	Precarious
Agreements		46%	27%	14%	11%	20%	80%	24%	24%	35%
Canadian Interests		64%	20%	8%	4%	4%	75%	23%	44%	44%
Streams	Significant benefit	27%	25%	14%	13%	21%	84%	24%	25%	18%
	Reciprocal employment	67%	18%	7%	3%	3%	60%	26%	38%	36%
	Competitiveness and public policy	61%	24%	9%	4%	2%	79%	24%	48%	49%

Source: CEEDD 2018 data accessed via Statistics Canada’s Research Data Centre at York University (contract number 1-MAPA-YRK-7112).

20 Because of the limitations of this measure noted above, employment income is not included in the index. However, as annual income helps reveal workers’ degree of dependence on paid employment, I use this indicator of labour market (in)security to contextualize the index.

Canadian Interests category

Canadian Interests represents the foremost category under IMP, and by breaking it down by its various streams²¹, differences in employment outcomes among their respective permitholders surface. As **table 2** illustrates, the rate of unionization is higher for Reciprocal Employment stream permitholders (40 per cent) compared to other permitholders, such as those migrating under the Competitiveness and Public Policy stream (20 per cent) or the Significant Benefit stream (16 per cent).²² While employment at a small firm is consistent across major streams, permitholders under Competitiveness and Public Policy and Reciprocal Employment also have higher rates of multiple jobholding (48 per cent and 38 per cent, respectively) compared to those under the Significant Benefits stream (25 per cent). In turn, considerably more permitholders under Significant Benefits (fully 34 per cent) report high employment income (70K+) on an annual basis compared to their counterparts under Reciprocal Employment and Competitiveness and Public Policy, two streams in which only 6 per cent of permitholders report earnings at this level.

One potential explanation for such differences in income level relates to industry: as Appendix shows, Significant Benefit permitholders are overrepresented in professional, scientific and technical services, and underrepresented in retail, administration, and food and accommodations services; whereas those under the Reciprocal Employment stream are overrepresented in food and accommodations services and those falling under the Competitiveness and Public Policy stream are overrepresented in retail, as well as administrative and support services, industries associated with high levels of precariousness (for example, in contexts such as Ontario, Canada's largest and most industrially diverse province) (Vosko et al. 2020). Viewed alongside dynamics by industry,

21 These include: Significant Benefit; Reciprocal Employment (encompassing all International Experience Canada subprogrammes, including the Working Holiday programme); Competitiveness and Public Policy (including the Spousal Work Permit and Post Graduate Work Permit programmes); and all other streams (including "Research, Educational, or Training Programs" and "Charitable or Religious Work").

22 In 2018, intra-company transfers (ICTs) accounted for a significant proportion of permitholders under the Significant Benefit sub-stream (14,555 out of 26,265, or 55 per cent). Notably, their numbers in and percentage share of this sub-stream grew substantially between 2018 and 2022, such that 21,444 out of 31,390 (68 per cent) of Significant Benefit permitholders were ICTs in 2022. As Tucker (2020) shows, fissuring can profoundly affect this group, including in firms employing large numbers of people holding different citizenship and employment statuses. Indeed, in Tucker's assessment, based on a novel case study, ICTs can face fissuring in two dimensions: the first is the "fissuring employer responsibility because of a blurring of the lines of legal responsibility between the parent firm and the sending and receiving subsidiaries" (Tucker 2020, 373); and the second is at the level of the workforce in a given firm, whereby workers with several different immigration statuses and types of employment contracts are part of the same workforce, producing "organized disorganization" (Tucker 2020, 373; see also Costello and Freedland 2016). As such, even though ICTs are often destined for relatively more secure industries and occupations than other groups falling within this sub-stream, access to collective representation (that is, unionization) can be challenging.

the prevalence of both multiple jobholding and low annual employment income among Reciprocal Employment and Competitiveness and Public Policy permitholders highlights a disjuncture between such permitholders' employment situations and the formal aims of these streams and the mobility programme policy construct underpinning the IMP, which associates such streams with labour market security (Canada, ESDC 2014, 1). This disjuncture underscores the risk of upholding a regime enforcing labour and social rights among CWP holders exclusively, on account of an analogous assumption that migration programme participants are the principal group in need of protection given the well-documented exploitation under the TFWP. Attesting to the danger of overlooking transnational workers in need of protection, the precariousness index reveals that 18 per cent of permitholders under the Significant Benefit stream and fully 36 per cent and 49 per cent of permitholders under the Reciprocal Employment and Competitiveness and Public Policy streams, respectively, experience two of the three indicators of labour market insecurity in their main jobs (table 2).

Conclusion

Together with the sheer size of the largest streams of Canadian Interests, Reciprocal Employment, and Competitiveness and Public Policy, these findings highlight the importance of engaging in further research exploring the degree to which indicators of labour market insecurity are present, both individually and cumulatively, in all IMP subprogrammes. The magnitude of this exercise is considerable given the large number of IMP subprogrammes. Yet early research directed towards this end suggests that significant numbers of permitholders in certain subprogrammes hold precarious jobs (for instance, working holiday-makers and post-graduate/study work permitholders) (Vosko 2022; Vosko 2023). Having revealed the varied origins of IMPs and that key components of certain streams deviate from official justifications for the programme as a whole, such findings call into question the migration/mobility programme construct. They challenge the assumption prevalent at a global policy level that IMP participants hold high-quality jobs and therefore merit entry to Canada on account of its commitments to reciprocity and national competitiveness, an assumption used by the Government of Canada to justify limiting new protective regimes to CWP holders, most of whom are effectively deemed "migrants" as permitholders under the TFWP.

Further inquiry is thus required to determine whether such programmes operate to provide a supply of transnational workers to fill precarious jobs. If so, despite the moderation of the size of the TFWP and the creation and operation of a regime governing the enforcement of workplace laws, Canadian (im)migration policy design is poised to continue to respond to demands for labour in the face of qualitative labour shortages.

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Appendix. Industrial distribution of permitholders among select IMP categories and streams

	Agric. and mining or utilities*	Construction	Manufacturing	Whole-sale trade	Retail trade	Transport and warehouse	Info. and cultural indust.	Finance and ins.	Real Estate and rental and leasing	Prof., scientific, and technical services	Mgmt. of comps. and enterprise	Admin. and support services	Educ. services	Health care and social asst.	Arts, entertain., and recreation	Accomm. and food services	Other services	Public admin.
Agreements	6%	5%	11%	5%	6%	6%	6%	3%	1%	13%	5%	3%	4%	3%	1%	18%	2%	2%
Canadian interests	1%	3%	6%	3%	12%	3%	3%	4%	2%	11%	4%	13%	6%	4%	2%	21%	3%	1%
Significant benefit	2%	3%	8%	5%	5%	3%	6%	4%	2%	30%	4%	5%	2%	6%	2%	9%	3%	1%
Reciprocal employment	2%	4%	4%	2%	10%	2%	3%	2%	3%	8%	5%	9%	3%	2%	7%	31%	3%	1%
Competitiveness and public policy	1%	2%	6%	3%	13%	3%	2%	5%	1%	9%	4%	15%	9%	4%	1%	17%	3%	1%

Source: Statistics Canada 2018.

* Agriculture, forestry, fishing and hunting, mining quarrying, and oil and gas extraction, and utilities, are combined into one to ensure minimum cell counts were achieved for each IMP category and stream.

► Business mobility as a privileged form of temporary labour migration: Insights from the MITA database and Switzerland

**Sandra Lavenex, Mariana Alvarado,
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Introduction¹

Research on international labour migration observes the assertion of a “market model” in countries’ migration policy mix that privileges temporary labour migration as flexible human capital while sidelining social and economic rights traditionally associated with migrants’ integration into liberal democratic welfare States (Boucher and Gest 2018, see also Dauvergne and Marsden 2014a and b; Vosko 2022). The trend towards temporary mobility regimes while “preventing migration” finds confirmation in a recent empirical analysis of liberal democracies’ immigration policies between 1980 and 2010, which concluded that “liberal democracies tend to be more permissive on the entry of immigrants than on their subsequent stay” (Lutz 2023, 20). Similarly, a recent analysis of States’ integration policies covering 36 European Union (EU) and Organisation for Economic Co-operation and Development (OECD) countries found that “while migrants’ rights have been extended, long-term settlement has been limited” (Solano, Schmid and Helbling 2023, 3). These observations resonate with the prominent hypothesis of a trade-off between the admission of migrants (numbers) and their integration (rights). Accordingly, States that have more open admission policies also tend to grant these immigrants less social, economic or political rights (Ruhs and Martin 2008; Ruhs 2013).

So far, the rights versus numbers hypothesis and the observation of the “market model” of temporary migration have been postulated only for low-skilled migration: “in high-income countries the demand for low-skilled migrant labor is downward sloping with respect to rights that have costs” (Ruhs and Martin

1 This chapter is based on a research project conducted in the framework of the Swiss National Center of Competency in Research for migration and mobility studies (NCCR on the move) – for more information see: <https://nccr-onthemove.ch/projects/migration-governance-through-trade-mobilities/>. Funding by the Swiss National Science foundation (grant number: 51NF40-182897) is gratefully acknowledged.

2008, 252). Similarly, Dauvergne and Madsen (2014a, 526) state, “High-skilled workers simply do not generate the same practical or theoretical tensions: states do not seek to ensure their departure and pathways to membership are generally available.” The positive discrimination of highly skilled migrants finds support in analyses of global inequalities in the freedom to move, where migrant rights are reserved primarily for citizens of rich countries (Avato, Koettl and Sabates-Wheeler 2010; Mau et al. 2015).

These literature and migration policy debates more broadly underestimate the fact that States’ approach to highly skilled migration too often privileges temporary schemes that clearly circumscribe migrant rights. A particularly salient case are what we call “business migrants”: workers who are sent abroad by multinational companies or who are hired for specific service contracts, rather than being employed directly. This form of business migration constitutes up to 40–50 per cent of non-EU/EFTA² labour immigration flows in a number of industrialized economies, including the United Kingdom and Switzerland (Alvarado et al., unpublished; ILO 2022; Salt and Brewster 2023). The regulatory framework for business migration represents a heightened version of the market model, as migrants retain their employment contract with their home company and hence are considered as not entering the labour market of the host country. This deprives them of many of the rights granted to national employees or regular labour migrants.

In this chapter, we first discuss some overarching structural factors marginalizing the “rights” versus the “work” dimension in business migration, including the commodification aspect, the empowerment of employers and the discrimination of the business migrants – three factors commonly associated with the “market model” of migration policy. We then offer an empirical assessment of States’ promotion of business migration as reflected in Preferential Trade Agreements (PTAs) using the Migration Provisions in Trade Agreements (MITA) database (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023a; 2023b). Largely neglected by the migration policy literature, trade agreements have become an important venue for the liberalization of labour migration over the last few decades. Mobility provisions figure in PTAs roughly as often other non-trade issues that have received more scholarly attention, such as environmental clauses or labour rights (see Lechner 2019). Typically, these provisions facilitate the temporary admission of business migrants linked to trade in services, such as intra-corporate transferees (ICTs), contractual service suppliers or business visitors, who retain their work contract in their home country but are deployed for periods ranging from below one year to several years to work in the PTA partner country. In order to account for the

2 EFTA refers to the European Free Trade Association.

“numbers” versus “rights” tension in PTAs, we also look at the development of the migrant rights content in PTAs, and at the relationship between mobility and rights provisions in PTAs. To illustrate the importance of business migration in domestic migration policies, the last section zooms in on the implementation of business migration regulations in Switzerland. Drawing on population register data, our analysis corroborates the quantitative significance of this venue of labour recruitment. The national regulatory framework reproduces the features associated with the “market model” of migration, while a representative survey shows that business migrants are not per se in favour of temporary stays.

The rights dimension in business migration

Introduced in international and bilateral trade agreements as a mode of supply in trading services, business migration is not “self-initiated” and tied to regular employment patterns, but instead happens outside of regular markets and follows the needs of multinational companies and global service markets. The 1995 General Agreement on Trade in Services (GATS) introduced the mobility of natural persons as so-called “mode 4” mobility next to electronic commerce, the mobility of the customer or foreign direct investment as one out of four modes of cross-border supply of services (Lavenex and Jurje 2015; Mattoo and Carzaniga 2003; Dawson 2013).

Mobility provisions in PTAs have since facilitated the admission of temporary migrants beyond what the GATS provides, *inter alia* via admission commitments, the abolition of economic needs tests (ENTs), the easing of quotas, the facilitation of qualification requirements or expeditious visa procedures. These facilitations apply for specified categories of persons, most frequently intra-corporate transferees (ICTs), but also more generally executives, managers, investors, contractual service suppliers, business visitors and, less frequently, independent professionals (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023a).

Typically, trade and immigration officials like to refer to this kind of migration not as migration but as “mobility” and part of a commercial transaction. We refer to it as “business migration” to reflect the link to a business transaction, but also to the fact that this temporary mobility needs to be regulated in domestic immigration systems, including visa, work and residence permit rules, even if the work contract remains in the home country and the person is formally excluded from the domestic labour market (see also GATS annex on the mobility of persons). In this way, business migrants resemble the case of posted workers in the EU internal market who are most often non-highly skilled and “return to their country of origin after the completion of their work without at any time gaining access to the labour market of the host Member

State”.³ Hayes and Novitz (2013) observe here the legal construction of “workers without footprints”.

The combination of temporary work contract and exemption from the labour market (and hence of an employee–employer relationship in the host country) bears at least three types of structural risks:

1. the commodification of the migrant;
2. the empowerment of the employer over the employee; and
3. discrimination in comparison to locally hired employees regarding fundamental economic and social rights such as change of employer, wage parity, freedom of association, or shift towards permanent residence.

First, the impetus for the liberalization of high-skilled business migration through trade policy stems from companies that need to move their labour force flexibly across borders and therefore are most clearly interested in liberalizing admission rather than expanding rights. As put by Costello and Freedland (2016), mobility provisions in trade agreements “do not significantly advance the agenda for more liberalised labour mobility, but rather reflect a strongly pro-trade and investor stance, which leaves workers out of the equation. To put it crudely, TTIP [the Transatlantic Trade and Investment Partnership] and similar instruments aim to protect the capacity for profit, and provide mechanisms where capital can challenge domestic laws that impact on future profits.” Indeed, ICTs move as a corollary of foreign direct investment liberalization via the establishment of foreign branches in a multinational company. Similarly, contractual service suppliers move within the framework of their employers’ trade in services with another country.

Liberalization thus leads to the commodification of highly-skilled migrants as part of a wider economic liberalization agenda, where migrants are seen as “mobile assets” of firms rather than bearers of rights.

Second, these categories of workers clearly strengthen the rights of the employers vis-à-vis those of the employee in the migration process. This is because the migrant’s work and residency permit are tied to their employer and the firm’s right to do business in the host country. The migrant’s entitlements are limited to the duration of that business. According to Costello and Freedland (2016), this implies that “their labour rights may be determined according to corporate policy, not real connection to or participation in any particular workplace or country”. Business migrants’ exclusion from the host countries’ broader set of labour or migration provisions is also explicitly provided for in the

3 C-113/89 *Rush Portuguesa v Office national d’immigration* [1990] ECR I-1417; [1991] 2 CMLR 818 [1990] ECR 1417, para. 15.

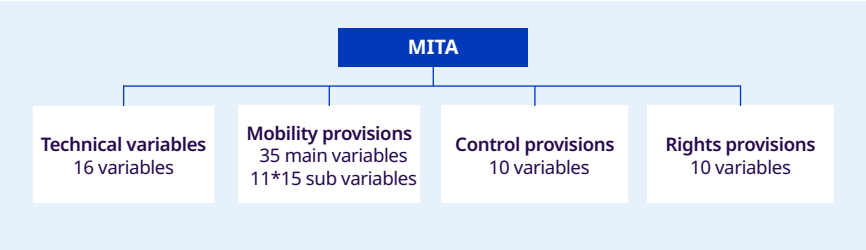
GATS Annex on movement of persons article 2, which reads: “The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.” GATS and PTA commitments only allow for temporary stay – often 90 days for business visitors or contractual service suppliers – but for ICTs, they often provide for longer length of stay of several years (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023). The specificities of these immigration flows are also reflected in immigration legislation. By way of example, the EU Directive on ICTs adopted in 2014 creates an EU-wide immigration scheme for ICTs and facilitates their intra-EU mobility, but does not grant ICTs full equal treatment with their locally employed colleagues (Friðriksdóttir 2017). National legislation often grants exemptions from usual admission requirements for ICTs and contractual service suppliers, thus making this migration channel more attractive for those companies that can transfer personnel internationally (Alvarado et al., unpublished). Immigrating as an ICT or foreign service provider, however, also often entails being exposed to conflicts at the national level between trade and immigration law (Schlegel and Sieber-Gasser 2014), and not being treated as an employee (Jacobsson 2015), leading to lower levels of social and labour market protection.

Third, this employer dependence is likely to facilitate exploitation in a similar way as has been discussed in the context of low-skilled immigration. Research on the situation of ICTs in Canada and Australia corroborates the discriminatory effects that this precarious status can have on migrants’ rights. Referred to as “closed” or “employer-tied”, the respective work permits create a segmentation in the local workforce of the host country, thereby creating imbalances among workers. In practice, migrants are in a vulnerable position that facilitates exploitation, including via the payment of lower wages, because they lack the possibility to change employers and have no access to collective bargaining – or because effective labour inspections are lacking (Vosko 2022; Howe 2016; Verschuere 2018). A recent analysis of ICT immigration in the United Kingdom corroborates the preponderance of employer interests in this kind of immigration when it observes the “symbiotic relationship between government and major companies to the mutual benefit of both” as the driving force (Salt and Brewster 2022, 376). These concerns have also been uttered by trade unions. For instance, the European Trade Union Confederation has lobbied for the equal treatment of ICTs and regular labour migrants (ETUC 2010), while the biggest trade union in the United States has criticized mobility provisions in PTAs generally for “trading away migrant rights” (Fanning 2016). As pointed out by Babar, Ewers and Khattab (2019) and Isaakyan (2022) migrants from less wealthy countries are particularly vulnerable to these dynamics, as they often work as temporary business migrants not out of choice but out of a lack of prospects for permanent residence or employment.

Business mobility in PTAs

Much in contrast to their overall reluctance vis-à-vis binding international norms on migration, more and more States have committed to the facilitation of business mobility in PTAs. The Migration Provisions in Trade Agreements (MITA) dataset⁴ documents this trend by coding the migration-related content of 797 preferential trade agreements signed worldwide between 1960 and 2020.⁵ The MITA dataset distinguishes between mobility, migrant rights and migration control provisions covered in a total of 236 variables, which permits us to measure the scope and depth of countries' commitments (figure 1).

► **Figure 1. Structure of the MITA dataset**

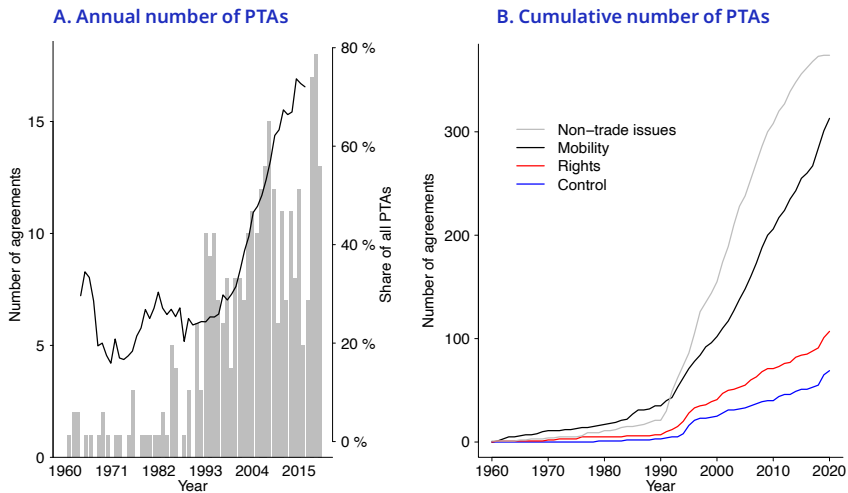


4 The complete dataset is deposited on Zenodo, DOI 10.5281/zenodo.7699054 (Lavenex, Lutz and Hoffmeyer- Zlotnik 2023b). The endeavor to establish this dataset fits into the broader trend of quantifying policies in the fields of migration (De Haas et al. 2014; Helbling et al. 2017) and trade, including non-trade issues such as environmental and labour standards or security provisions (Ariel and Haftel 2021; Dür, Baccini and Elsig 2014; Lechner 2018; Milewicz et al. 2018; Morin, Dür and Lechner 2018; Raess and Sari 2018).

5 The most detailed existing measurement of migration provisions (Pauwelyn, Nguyen and Kamal 2020) is part of the World Bank Deep Trade Agreements dataset, which includes provisions falling in the “Visa and asylum” category developed by the World Trade Organization (WTO). This is based on the international categorization scheme, the list of WTO-X policy areas that includes “illegal immigration”, “visa and asylum” and “social matters” as migration-related regulations (Horn, Mavroidis and Sapir 2010). The policy area of “visa and asylum” includes the exchange of information, drafting legislation and training (including the international movement of persons). The area of “illegal immigration” comprises re-admission agreements and the prevention and control of illegal immigration. The area of “social matters” is migration-related, as it includes the coordination of social security systems and non-discrimination in working conditions. Covering 100 trade agreements and coding a selection of 30 variables that capture commitments “beyond what is covered under GATS mode 4” (Pauwelyn, Nguyen and Kamal 2020, 228) this dataset is less comprehensive than ours both in terms of variables and agreements coded.

The longitudinal analysis shows the proliferation of migration provisions in PTAs, with the number of PTAs facilitating business mobility growing at a similar pace to non-trade issues such as environmental or human rights provisions (figure 2). This trend has accelerated after the 1995 GATS agreement and is unabated. The number of PTAs including migrant rights and control provisions has also increased (figure 2b), yet at a slower pace.

► **Figure 2. Evolution of PTAs with migration provisions**

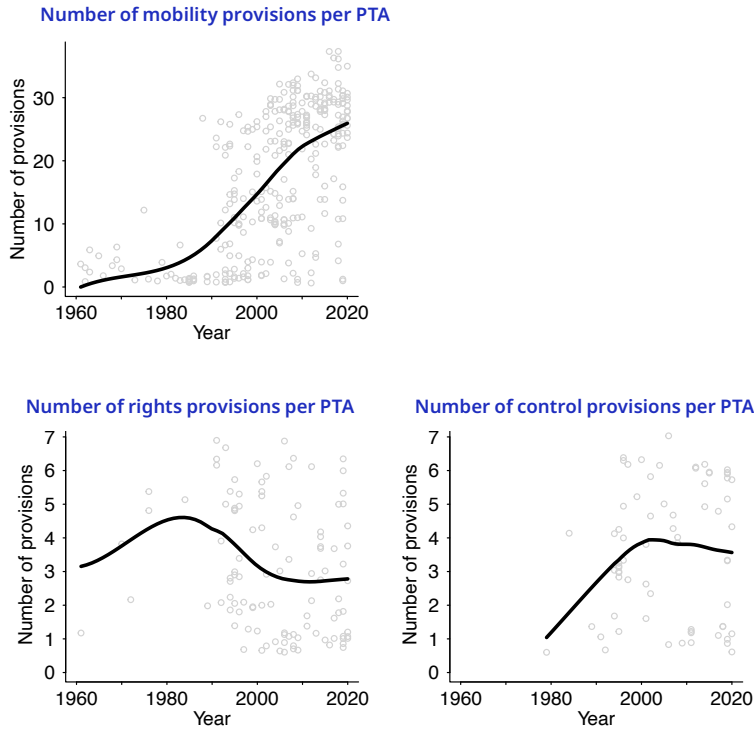


Note: Descriptive statistics based on the MITA dataset. The figures display the frequency of PTAs with at least one migration provision. Panel A shows the annual number of new signed PTAs that include migration provisions (bars) and their share of the total number of signed PTAs as a moving average over a decade (line). Panel B displays the cumulative number PTAs with the three types of migration provisions over time, as well as PTAs with non-trade-issues (corruption, environment, labour issues). Based on N=797 agreements.

Source: Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

What is more, while the number of mobility provisions per PTA has seen a constant rise, thus indicating a deepening of liberalization commitments (figure 3), the average number of migrant rights provision per PTA has seen a decline starting in the mid-1980s before stabilizing at 1960 levels.

► **Figure 3. Average depth of PTAs with migration provisions**

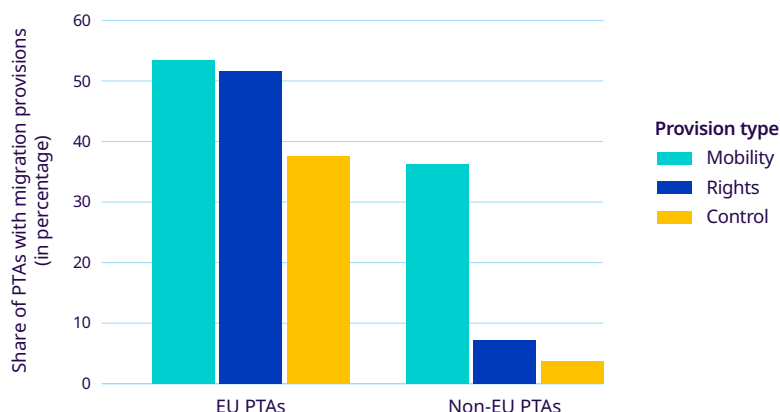


Note: The figures display the depth of migration provisions in PTAs with at least one such provision. The smoothed lines display the average number of mobility, rights and control provisions per PTA over time. Data points jittered to reduce overplotting.

Source: Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

Finally, the comparison of EU and non-EU PTAs shows that the inclusion of migrant rights and even more migration control provisions is particularly pronounced in EU PTAs, which cover the three types of migration provisions to comparable extents (figure 4). In the rest of the world, the migration policy content of PTAs concentrates on facilitating mobility.

► **Figure 4. Migration content of EU and non-EU PTAs**



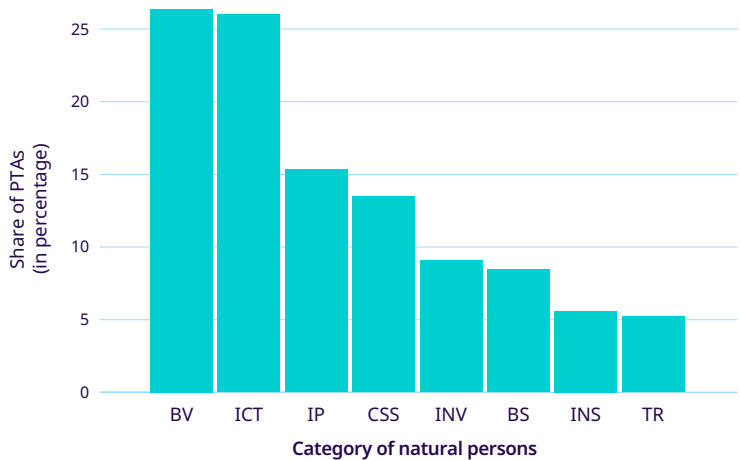
Note: Grouped bar plot displaying the share of EU and non-EU PTAs with migration provisions (N = 109 EU PTAs and N = 682 non-EU PTAs between 1960 and 2020).

Source: MITA database (Lavenex, Lutz and Hoffmeyer-Zlotnik 2023b), Figure reproduced from Hoffmeyer-Zlotnik, Lavenex and Lutz (2023).

As in the GATS, the majority of mobility commitments concern highly skilled business migrants linked to commercial presence and investment, that is business visitors and ICTs (figure 5). The main provisions facilitating mobility are exceptions from economic needs tests, provisions on the recognition of professional qualifications, expansions of sectors opened up for this mobility, spouses' rights, exemptions from or limitation of quotas, fee limitations, facilitated application and entry procedures, visa renewal mechanisms, information provision concerning immigration procedures, or regulatory cooperation to tackle mobility impediments. A few PTAs also provide for the right to domestic employment, however, this is very much the exception and concerns only a few mainly EU association agreements with Poland, Hungary (both 1991), the Republic of Moldova, Slovakia and Romania (all 1994) – that is, countries that have all obtained candidate status to EU membership or eventually joined the EU (for the full list of variables see appendix).⁶

⁶ The only non-EU PTAs giving the right to domestic employment are the 2014 Australia–Japan EPA – interestingly, for independent professionals only – and the 1988 United States–Canada PTA for contractual service suppliers. The 2019 United Kingdom–Georgia PTA finally grants domestic employment to ICTs.

► **Figure 5. Frequency of mobility categories in PTAs**



Note: The bar plot displays the share of PTAs that facilitate the mobility of different categories of natural persons. These are: business visitors (BVs), intra-corporate transferees (ICTs), independent professionals (IPs), contractual service suppliers (CSSs), investors (INVs), business sellers (BSs), installers (INSS) and trainees (TRs). Based on N=797 agreements.

Source: Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

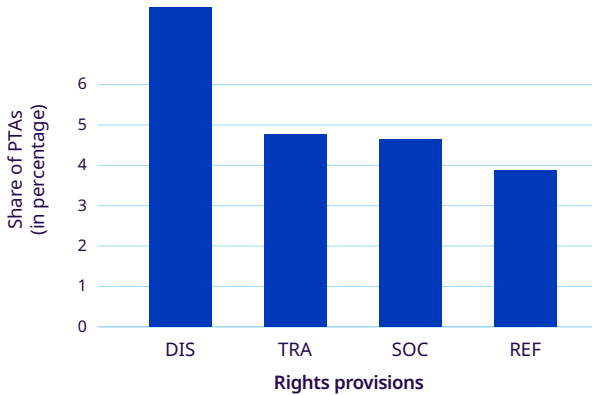
Provisions for migrant rights are much rarer than overall mobility provisions, with about 10 per cent of all PTAs in our dataset containing at least one such provision. With a total of ten variables coded, these provisions are also much more general than mobility provisions. The most frequent provision is a general non-discrimination clause, followed by commitments to the transfer of social insurance and access to social benefits. Less than 4 per cent of all PTAs include provisions for refugee protection (see [figure 6](#)).

The lack of dynamic evolution of migrant rights in PTAs may have different causes. In contrast to mobility commitments – which are considered as being part and parcel of economic integration – migrant and refugee rights are not a corollary of commercial interests. Furthermore, they are subject to stronger multilateral codification in dedicated forums (ILO Conventions, the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW) and the 1951 Geneva Convention on Refugees). The low ratification patterns of the two migration-related ILO Conventions⁷ and

7 Namely the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

the CRMW, however, corroborate rich liberal democracies' limited interest in signing up to international migrant rights (Lönnroth 1991; Pécoud 2021).

► **Figure 6. Frequency of rights provisions in PTAs**



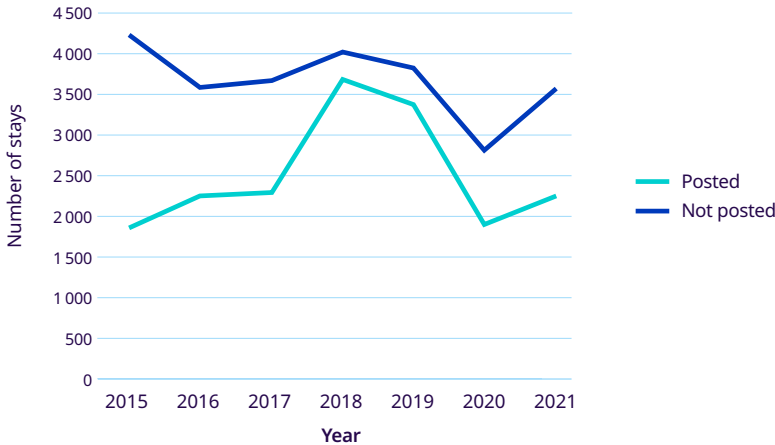
Note: The bar plot displays the share of PTAs that include substantive provisions for migrant rights. DIS = non-discrimination of migrant workers; TRA = social insurance transfer; SOC = access to social security; and REF = commitment to protect refugees. Based on N=797 agreements. Figure replicated from Lavenex, Lutz and Hoffmeyer-Zlotnik (2023a).

Business migration in Switzerland

The relevance of business migration is sometimes downplayed with the argument that it concerns only a fraction of international migrants. First attempts to quantify this form of international migration dispute this assumption. Data differentiating between “posted” business migration (that is, migrants retaining their work contract in the home country) and non-posted migration is notoriously hard to receive, and does not exist in most countries. Based on UK statistics, however, Salt and Brewster (2022) find that in the United Kingdom between one third and two thirds of all managed migration (that is, from non-EU/EFTA countries) in the last three decades has consisted of ICTs.

Swiss statistics have allowed one to identify posted migrants since 2015. For our research project we have been able to assess rich microlevel population register data (STATPOP) and come to a similar result as seen in the United Kingdom. Within the limits set by the annual quota for non-EU/EFTA immigration, posted business migrants make up for between a third and nearly half of all third-country labour migrants (figure 7).

► **Figure 7. Annual number of third-country labour migrant stays by type (posted/not posted), Switzerland (2015–2021)**



Note: Swiss register data STATPOP. Figure reproduced from Alvarado et al., unpublished.

From a trade perspective the relevance of business mobility can also be measured in terms of the wealth generated by this type of cross-border transaction. The WTO has engaged in an effort to measure the trade generated by the four different modes of cross-border supply of services (see the [TISMOS database](#)) underscoring the commodification aspect of business mobility.

The analysis of the regulatory framework addressing business mobility in Switzerland also shows the privileges enjoyed by this form of labour migration. These privileges, however, benefit the firms moving the migrants – not the migrants themselves. We briefly discuss this aspect for the case of ICTs, which is the category of persons benefiting from the longest periods of stay among business migrants and therefore approximate most to “ordinary” labour migrants.⁸

Under the Swiss GATS schedule, ICTs employed by firms in another WTO Member State and falling within one of 93 listed sectors can be admitted for a duration of up to three years, which can be extended to four years (Schlegel and Sieber-Gasser 2014, 8; WTO 2003). They have to be managers, executives

⁸ The following section draws on Hoffmeyer-Zlotnik, Lavenex and Lutz (forthcoming) and Alvarado et al. (unpublished).

or specialists⁹ and need to have been employed by the sending company for at least a year preceding the stay in Switzerland. Beyond the GATS, Switzerland has undergone mobility commitments for ICTs in 18 out of its 53 total PTAs concluded as part of the EFTA or bilaterally up to 2020.¹⁰ These commitments feature exclusively in newer PTAs signed since 2000 with non-European countries. PTA commitments often provide for longer stays for ICTs of up to five years and expand commitments to more sectors

Switzerland's GATS commitments provide for important exceptions to what is commonly described as a restrictive immigration system (Hercog and Sandoz 2018; Nguyen 2010). Three features mainly account for this description. First, the admission of non-EU/EFTA nationals is limited to managers, specialists and other qualified workers (art. 23 of the Foreign Nationals and Integration Act (FNIA)) who have secured a work contract before applying for a permit, and is subject to the discretion of authorities (FNIA, art. 18). In principle, labour migrants have to prove good prospects for a "sustainable integration into the Swiss labour market" in order to be admitted (FNIA, art. 23). Second, a priority test is applied before admission: employees are in principle only admitted when no Swiss or EU citizen could be found to take up the respective employment (FNIA arts 18 and 21). And third, a quota system limits the number of annual residence permits for work purposes. In this system, a maximum number is defined each year for labour migrants coming from outside the EU/EFTA for a period longer than four months (FNIA, art. 20, and Ordinance on Admission, Residence and Employment (OARE), art. 19). The overall maximum number of permits is divided into quotas for the 26 cantons and a federal reserve. If cantons have used up their maximum number of permits, they can apply to make use of the additional federal quota, which can be allocated based on their needs and the interests of the economy as a whole (OARE, arts 19–20).¹¹

9 Definitions in the schedule:

Executives and senior managers: Persons who primarily direct the enterprise or one of its departments and who receive only general supervision or direction from high-level executives, the board of directors or the stockholders of the enterprise. Executives and senior managers would not directly perform tasks related to the actual provision of services of the enterprise.

Specialists: Highly qualified persons who, within an enterprise, are essential for the provision of a specific service by reason of their knowledge at an advanced level of expertise in the field of services, research equipment, techniques or management of the enterprise (WTO 2003, 5).

¹⁰ Commitments for ICT are coded in MITA for the following PTAs (year = year of signature): EFTA–Mexico (2000), EFTA–Singapore 2002, EFTA–Chile 2003, EFTA–Republic of Korea 2005, EFTA–Canada, 2008, EFTA–Colombia 2008, EFTA–Gulf Cooperation Council 2009, Switzerland–Japan 2009, EFTA–Peru 2010, EFTA–Ukraine 2010, EFTA–Hong Kong (China) 2011, Switzerland–China 2013, EFTA–Central America 2013, EFTA–Philippines 2016, EFTA–Georgia 2016, EFTA–Turkey 2018, EFTA–Indonesia 2018, EFTA–Ecuador 2018.

¹¹ For the year 2020, the quotas are set to a maximum of 4,000 L permits (of which 2,000 are allocated to the cantons) and 4,500 B permits, which are valid for one year (of which 1,250 are allocated to the cantons; Annexes I and II to the OARE).

While ICTs enter Switzerland via the regular immigration route for employees (FNIA, art. 18) or service providers (FNIA, art. 26), the firms recruiting the ICTs are privileged compared to other employers recruiting third-country nationals in all three of the above dimensions: the limitation of labour migration to “managers and specialists” is itself reflective of the GATS commitments for ICTs (Switzerland SEM 2020, para. 4.8.1.1) and of the ICT provision introduced in 1990 while the GATS negotiations were ongoing. Intra-company transfers are also specifically mentioned as a ground for an exception from certain requirements of admission, such as a proven prospect for integration into Switzerland’s society and labour market (FNIA, art. 23; Switzerland SEM 2020, para. 4.8.1.1). If ICTs fulfil the admission conditions, they are entitled to be granted an entry and stay permit, with no discretion for authorities (FNIA, art. 18; Switzerland SEM 2020, para. 4.8.1.7). This is a direct result of Switzerland’s commitment to admit ICTs in its GATS schedule. ICTs and cross-border service providers are also exempted from the labour market priority test, as required by the Swiss GATS commitments. Regarding the quota system, even though the quota also apply to ICTs, intra-corporate transfers and the related GATS obligations are specifically mentioned in the Government’s immigration law guidance as one of the reasons to allocate federal quota to a canton (Switzerland SEM 2020, para. 4.2.1).

Besides these exceptions integrated into Swiss law in the context of the GATS negotiations, some PTAs provide for further privileges for ICTs, such as a longer maximum length of stay and, in some cases, ICT admission without quantitative restrictions, meaning ICTs from China, Hong Kong (China) and Japan are entitled to a residence permit even when the maximum number of permits to be issued has been reached (Schlegel and Sieber-Gasser 2014, 15).

Taken together, these exceptions give employers privileged access to the scarce resource of residence and work permits, to the potential disadvantage of other labour migrants and domestic firms in need of foreign labour (Schlegel and Sieber-Gasser 2014, 15). The system thus incentivizes multinational firms to use intra-company migration as a preferred channel, as opposed to more cumbersome local hiring.

Regarding the third aspect of the “market model” of immigration policy highlighted above, the discrimination of the migrant, we can rely on the Migration Mobility Survey, a representative survey conducted within the “on the move” framework of the National Center for Competence in Research (NCCR) on migration¹². This survey is conducted every two years, starting in 2016, on the foreign population in Switzerland. To enhance comparability with the register data presented above, we focus on the subset of respondents coming from

12 See <https://nccr-onthemove.ch/research/migration-mobility-survey/> for more information on the survey.

non-EU/EFTA countries in the 2016, 2018 and 2020 waves.¹³ One of the questions in the survey allows us to identify ICTs by asking respondents whether they came to Switzerland as a transfer within their same company.¹⁴ In what follows, we will compare ICTs to other third-country foreigners coming to Switzerland with a job offer. This leaves us with a total sample of 2,229 respondents, 41 per cent of which are ICTs, a figure similar to the overall number of posted workers in the register data.¹⁵

In accordance with what we know about immigration regulations regarding business migrants, the vast majority of ICTs (89 per cent) report having a tertiary education. Furthermore, relative to other non-Europeans moving to Switzerland with a job, ICTs are shown to be a privileged type of labour migrants: they have a better financial situation; they are more likely to have received support from their employer when moving to Switzerland; they are more likely to report that their job uses their skills and knowledge to a high extent; and they are also more likely to have been in full-time employment prior to moving to Switzerland. On the other hand, while ICTs are more likely to report high levels of satisfaction with their life in Switzerland, they appear to be less integrated (they are less likely to be fluent in the local language and less likely to be interested in Swiss politics). A clear plurality of them also say they would like to stay permanently. As ICTs, however, they are excluded from this perspective and are tied to the work contract they have with their employer abroad.

Conclusion

The proliferation of temporary labour migration schemes and the advent of a “market model” of migration governance is usually associated with low-skilled migration. This common association neglects the fact that a sophisticated, hardly transparent and excessively technical array of regulations have developed at the national and international level to facilitate market-led temporary labour migration for highly skilled persons. This is the case of business migration, a form of labour migration for temporary stays of posted migrants who retain their work contract at home and are “delivered” for a predetermined period of

13 The Migration Mobility Survey has a panel component complemented with refresh samples added in each wave. The analyses presented below pool all third-country respondents from the three waves mentioned in the text (2016, 2018, 2020).

14 Unfortunately this question does not allow us to differentiate between those ICTs maintaining their contract in their home country – and thus counted as posted workers in the register data – and those coming with a new, Swiss contract. While there is a question about contract type in the survey, it is only asked in 2020 and responses indicate that information levels are low, making it unreliable.

15 The distribution of countries of origin also confirms what we found in the register data: more than 50 per cent of ICTs come from India and the United States alone.

stay to work in another country either within the same company (ICTs, business visitors), on a contract basis (contractual service suppliers), or, less often, as independent professionals, trainees and others. As part of the international agenda for the liberalization of international trade, business mobility (or “mode 4” in the GATS jargon) effectively commodifies business migrants as part of commercial relations. Our analysis of migration provisions in PTAs worldwide signed between 1960 and 2020 shows that States have fostered this kind of international mobility quite a bit. The codification of migrant rights, by contrast, has been much less dynamic and has rather stalled at a very general, shallow level – at least in the context of trade agreements. In order to further investigate the “market model” aspects of business migration, we have delved into the case of Switzerland. Population register data allows to identify the share of business migrants among the immigrant population since 2015, and shows that they make up to 45 per cent of all third-country labour migrants in Switzerland (comparable to what is seen in the United Kingdom). The domestic regulatory framework corroborates the “exceptional” status of this kind of temporary migration as well as the exclusion of business migrants not only from domestic employment, but also associated expectations such as local integration. In sum, this type of migration clearly benefits international businesses who compete with local employers for limited immigration quotas. As the Migration Mobility Survey shows, however, this also benefits international businesses more than the business migrants themselves, who, while mostly enjoying good working conditions in Switzerland (probably also when compared to their home country), report missing the perspective of acquiring residence.

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Appendix. MITA Dataset: list of variables

- MOBOBJ: Does the agreement mention the objective of facilitating migration?
- MOBCHP: Does the agreement contain a dedicated part on the mobility of natural persons?
- MOBLAB: Does the agreement allow access to the labour market for natural persons?
- MOBSER: Does the agreement allow access to the service market for natural persons?
- MOBMRA: Does the agreement contain a commitment on the mutual recognition of qualifications?
- MOBDSM: Does the agreement contain a dispute settlement mechanism for mobility provisions?
- MOBPER: Does the agreement mention limitations of mobility commitments regarding permanent settlement and citizenship?
- MOBREG: Does the agreement contain a commitment on regulatory cooperation regarding the mobility of natural persons?
- MOBMFN: Does the agreement contain a most-favoured-nation (MFN) clause for the included mobility provisions?
- MOBNTR: Does the agreement contain a national treatment clause for the included mobility provisions?

MOBFEE: Does the agreement contain a commitment on the limitation of application fees?

MOBINF: Does the agreement contain a commitment on the provision of publicly available information regarding the mobility of natural persons?

MOBSEC: Does the agreement contain a limitation of mobility commitments based on security interests?

MOBTEC: Does the agreement contain technology transfer requirements?

MOBRES: Does the agreement contain within-country mobility restrictions?

MOBVIS: Does the agreement contain a commitment on visa facilitation?

MOBPRC: Does the agreement contain a commitment on the facilitation of the application process?

MOBGTS: Does the agreement require compliance with the 'General Agreement on Trade in Services' (1995)?

MOBCOM: Does the agreement require compliance with an international agreement that facilitates the mobility of natural persons?

MOBIP: Does the agreement allow the movement of independent professionals?

MOBBV: Does the agreement allow the movement of business visitors?

MOBICT: Does the agreement allow the movement of intra-corporate transferees?

MOBCSS: Does the agreement allow the movement of contractual service suppliers?

MOBTR: Does the agreement allow the movement of (graduate) trainees?

MOBINS: Does the agreement allow the movement of installers?

MOBINV: Does the agreement allow the movement of investors?

MOBEXE: Does the agreement allow the movement of executives?

MOBMAN: Does the agreement allow the movement of managers?

MOBSPC: Does the agreement allow the movement of specialists?

MOBBS: Does the agreement allow the movement of business (service) sellers?

MOBCUL: Does the agreement allow the movement of artists, sportsmen or fashion models?

MOBOBP: Does the agreement allow the movement of other business people?

MOBTRS: Does the agreement allow the movement of tourists?

MOBEDU: Does the agreement allow the movement of students and/or researchers?

MOBENT1: Does the agreement contain an ENT reservation?

MOBENT2: Does the agreement contain an ENT exemption or limitation?

MOBQUO1: Does the agreement allow for the imposition of quotas?

MOBQUO2: Does the agreement prohibit the imposition of quotas?

MOBDRN: Does the agreement define maximum length of stay for the mobility of natural persons?

MOBEMP: Does the agreement contain employment restrictions for the mobility of natural persons?

MOBEXT: Does the agreement contain a mechanism for the extension of stay for the mobility of natural persons?

MOBEXP: Does the agreement contain a requirement of prior professional experience for the mobility of natural persons?

MOBSKL: Does the agreement contain a skill-level limitation for the mobility of natural persons?

MOBSCT1: Does the agreement contain a sector limitation for service mobility?

MOBSCT2: Does the agreement contain a sector expansion beyond services?

MOBSPS: Does the agreement contain a provision for the rights of spouses and dependents?

MOBPRE: Does the agreement contain a pre-employment requirement for the mobility of natural persons?

MOBDOM: Does the agreement contain a provision allowing for employment in the receiving country?

MOBDIR1: Is the mobility provision asymmetric?

RIGOBJ: Does the agreement mention the objective of protecting migrant rights?

RIGCHP: Does the agreement contain a dedicated chapter on migrant rights?

RIGDIA: Does the agreement contain a commitment on dialogue on migrant rights?

RIGTRA: Does the agreement include a commitment on social insurance transfers?

RIGDIS: Does the agreement include a commitment on non-discrimination of migrant worker?

RIGSOC: Does the agreement include a commitment on equal access to social security?

RIGDSM: Does the agreement contain a dispute settlement mechanism for migrant rights provisions?

RIGREG: Does the agreement include a commitment on regulatory cooperation on migrant rights?

RIGREF: Does the agreement include a commitment to the protection of refugees?

RIGCOM: Does the agreement require compliance with an international agreement regulating the right of migrants?

CONOBJ: Does the agreement mention the objective of migration control?

CONCHP: Does the agreement contain a dedicated chapter on migration control?

CONDIA: Does the agreement include a commitment on a dialogue on migration control?

CONREA: Does the agreement include a commitment to re-admit nationals?

CONRTN: Does the agreement include a commitment to support the reintegration / hosting of (returned) migrants and refugees?

CONIRR: Does the agreement include a commitment to prevent irregular migration?

CONDISM: Does the agreement contain a dispute settlement mechanism for migration control provisions?

CONREG: Does the agreement include a commitment on regulatory cooperation on migration control?

CONDEV: Does the agreement draw a link between migration control and the development of sending countries?

CONCOM: Does the agreement require compliance with an international agreement regulating migration control?

► Forced migrants as a neglected group of temporary labour migrants? Empirical evidence from migration trajectories of refugees and migrants in Mexico and Türkiye

Ludger Pries and Berna Şafak Zülfikar Savcı

Introduction

Studies on temporary labour migration tend to focus on issues such as circular labour migration, precarious work in informal settings, growing cross-border mobility, different forms of circularity, policies and partnership programmes. When dealing with temporary labour migrants, researchers and policymakers rarely include forced migrants, that is, people who had to flee their home because of armed conflict, organized violence or life-threatening disasters. The division of labour between different agencies of the United Nations (UN) system, such as the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the ILO, makes it even more unlikely to address forced migrants as temporary workers. Nevertheless, most forced migrants are temporary labour migrants in the sense that they have to work and acquire resources along the way because their journeys extend in time and space.¹ Since 2022, the UN estimates the global number of forced migrants as being over 100 million, and this number is increasing constantly due to violent conflicts, impacts of climate change and disastrous conditions for earning a living. Most forced migrants have to work under precarious conditions and are among the most vulnerable labour migrants. Not having legal work permits and, in many cases not even possessing legal residence, they have to accept precarious jobs, not least because unscrupulous employers are well aware of their situation.

In this chapter, based on secondary data analysis, we first present a basic overview of forced migrants who have to work while on their migration trajectories around the world. Based on the findings of a survey with 700 transit migrants in Mexico and Türkiye and on biographical interviews, we then analyse the types of employment and working conditions in the context of

¹ It is worth noting that international labour standards developed at the ILO do cover forced migrants in their capacity as workers.

precarious protracted mobility under conditions of organized violence.² We find that forced migration normally extends over considerable periods, longer than expected; it is an iterative stepwise process of searching for and making a new home. Resources for meeting living costs during the migration course include joint investments by families and households, but migrants normally have to generate additional supply along the way. This gives informal and precarious work a systematic place in forced migration. We then extend our argument based on a secondary analysis of the IAB–BAMF–SOEP Survey of Refugees,³ a representative examination of almost 4,500 refugees in Germany. Finally, we draw conclusions for further research, and offer policy recommendations, including that, beyond the socio-economic assistance that charity organizations and semi-public agencies can grant, the international community and States should develop models that provide opportunities to integrate larger numbers of forced migrants into the formal economy and expand possibilities for employment as registered workers. These possibilities can range from formal employment relations to other registered forms of work permits that would be in compliance with ILO standards. Trade unions, non-governmental organizations (NGOs) and public agencies could grant and overview such work permits and serve as a checkpoint for claims making.

Laying the ground: The (informal) work of forced migrants around the world

Forced displacement is often referred to as a humanitarian crisis, but it is also a development problem in the context of a broader definition of development.⁴ Years of political instability, violence and repression in many countries, including war and armed conflict in some cases, as well as economic turbulence, poverty, lack of access to basic living standards and the now more visible climate crisis, have led to the displacement of many people around the world. The UNHCR's

2 We focus on organized violence as the deliberate implementation or serious threat of social action that inflicts physical injury and/or mental distress on individuals or groups in a collective manner, with the intent to achieve collective goals. Certain types of violence may first be seen as generalized acts of violence perpetrated by individuals; these acts may also exhibit facets of organized violence. See Pries (2022) for a thorough discussion of the concept of violence and approaches to addressing organized violence.

3 The Institute for Employment Research (IAB), the Research Centre of the Federal Office for Migration and Refugees (BAMF-FZ) and the Socio-Economic Panel (SOEP) at DIW Berlin are in charge of conducting this study. The survey is a panel research on the living circumstances of forced migrants, with the goal of providing accurate data on this population. This survey started in 2016 with a first wave of 4,465 adults, its eighth wave was done in 2023. For details see: <https://www.bamf.de/SharedDocs/ProjekteReportagen/EN/Forschung/Integration/iab-bamf-soep-befragung-gefluechtete.html>.

4 See World Bank, "[Forced Displacement: Refugees, Internally displaced and Host Communities](#)".

report for 2022 on global trends in forced displacement estimates that 108.4 million people have been displaced by various circumstances (UNHCR 2023). This figure has more than tripled in just 32 years, with the overall population of forcibly displaced people equalling the size of the 13th most populous country in the world. This large population is not evenly distributed around the world, however, with three quarters staying in low- and middle-income countries, which are themselves struggling to develop (UNHCR 2023). Therefore, migrants fleeing from various crises face new problems due to the structural problems and economic conditions of the countries they arrive in.

Studies on forced migration, whether focused on its causes, the contexts in which people are displaced, or the current conditions or future plans of forced migrants, are nearly all done from a humanitarian perspective; while studies on temporary labour migration tend to exclude forcibly displaced people in their analyses. Forced migrants, regardless of their legal status, struggle for existence in the countries they reach in search of a safe space, with many becoming temporary labourers. Lack of access to rights, unsustainability and exploitative working conditions, which are often emphasized in temporary labour migration studies (Bauböck and Ruhs 2022; Nuti 2018), are also crucial topics in the case of forced migrants and should be considered more extensively from this perspective. In this chapter, we shift the perspective on temporary labour migration from its legal constructs and the potential signing of agreements among countries, to a better understanding of the intersection of forced migration and temporary employment of a “forced nature”. We propose an extended view of temporary labour migration by analysing how forced migrants become “forced temporary workers” in transit countries given that their status is temporal and often undocumented. In the process of becoming “forced temporary workers”, two interlocking forces are at play: (i) the compulsion to leave the country; and (ii) while in transit, the need to look for work under highly precarious conditions for lack of any other choices.

When we look at the general economic conditions and current levels of development in the five countries hosting the world's largest forced migrant populations, we realize that migrants often do not possess a legal status, and even if they do, they have limited access to the labour market (table 1). In some cases, they have to spend years in these countries in order to have a chance to build a life there. Therefore, the economic conditions of the countries in which forced migrants reside have an impact on the kind of life they are able to build for themselves during their stay. According to UNCHR, 76 per cent of all forced migrants reside in middle- or low-income countries. A closer look at the economic conditions of some of the most relevant host countries of forced migrants can provide insight into the living conditions of refugees.

► **Table 1. Basic economic and labour force indicators in the top five countries hosting forced migrants, 2021**

Indicator	Colombia	Germany	Iran, Islamic Rep. of	Pakistan	Türkiye
Age dependency ratio (% of working-age population)	43.504	56.356	45.320	69.957	46.755
Old-age dependency ratio (% of working-age population)	12.51	34.66	10.72	7.17	12.30
Consumer price index (2010 = 100)	149.56	116.48	1031.66	219.08	314.81
Employment in agriculture (% of total employment)*	15.93	1.25	16.25	37.54	17.12
Employment in industry (% of total employment)*	20.15	27.62	34.35	25.18	26.54
Employment in services (% of total employment)*	63.92	71.12	49.40	37.28	56.33
GDP growth (annual %)	11.02	3.16	4.72	6.51	11.44
GDP per capita (current US\$)	6 182.71	51 426.75	4 084.20	1 506.11	9 742.21
Human Development Index score	0.75	0.94	0.77	0.54	0.84
Female labour force participation rate (%)*	57.09	75.25	16.28	26.05	36.74
Male labour force participation rate (%)*	82.28	82.48	73.62	83.62	75.31
Unemployment, total (% of total labour force)*	13.90	3.57	10.82	6.34	11.98

* ILO modelled estimates.

Sources: World Bank, n.d.; UNDP, n.d.

As can be seen in **table 1**, Germany has a different economic position than the other four countries hosting the highest numbers of forced migrants. With a per capita income of over US\$51,000, a high human development index of 0.94 and a low unemployment rate, Germany is a desired destination country for many migrants and forced migrants. The country is at risk of facing a labour shortage because of an increasingly ageing population, as evidenced by the age dependency ratios in **table 1**. Türkiye, as a country of preliminary arrival and transit, is home to 3.6 million registered forced migrants, and is the strongest economy after Germany, with a per capita income of almost US\$10,000 and a human development index of 0.84. However, high unemployment, low female labour force participation and high inflation indicate that there are structural problems in the economy. Colombia, with 2.5 million registered forced migrants, has a per capita income of US\$6,182, a human development index of 0.75 and the highest unemployment rate of all five countries (13.9 per cent). After

Germany, Colombia has the highest female labour force participation rate. The Islamic Republic of Iran, which hosts the second-largest number of registered forced migrants, is experiencing severe economic problems, with a low GDP per capita, high unemployment and a depreciating currency. Pakistan, on the other hand, with a forced migrant population of 1.7 million, provides very low levels of human development and GDP per capita for its inhabitants. Age dependency ratios in Pakistan are high due to the large child population, and women's participation in the labour force is one of the lowest among the five countries, with only the Islamic Republic of Iran's being lower. With the exception of Germany, these countries are unable to create adequate living conditions even for their own citizens or are experiencing turbulences.

According to the World Bank's estimates of informal output for 2018, based on a dynamic general equilibrium model, Türkiye produced 25.6 per cent of official GDP informally, which is a higher share than was seen in Germany (15 per cent) and the Islamic Republic of Iran (16.1 per cent), and lower than what was seen in Colombia (30.2 per cent) and Pakistan (32.4 per cent) (Elgin et al. 2021). Where large levels of informality exist, forced migrants are also more likely to find work in the informal economy. However, informal work is often characterized by low levels of labour regulation, exploitation, marginalization and poor living and working conditions, especially for forced migrants without legal status (Canefe 2016; Karadağ 2021; Makovsky 2019; Gültekin et al. 2021; Dayioğlu, Kırdar and Koç 2023).

The hidden agenda: Evidence from biographical interviews with forced migrants

The scientific research project ForMOVE⁵ ran from 2019 to 2022 and was led by researchers from the Free University of Berlin and Ruhr-University Bochum – including the authors – and supported by teams in Mexico and Türkiye. The project was funded by the German Research Foundation (DFG). In conducting the ForMOVE project, we used both quantitative and qualitative research techniques, including a standardized questionnaire, biographical narrative interviews of forced migrants, expert interviews and ethnographic fieldwork at migrant shelters and organizations. Using a longitudinal perspective, the ForMOVE project specifically examined various forms of organized violence before and during the migration trajectory for various groups of people who originated from El Salvador, Honduras and Guatemala (in the case of Mexico) and from Afghanistan, Iraq and the Syrian Arab Republic (in the case of Türkiye). Despite having a lengthy history of emigration, both countries'

5 The project "Organized violence, new migration patterns, and development: A comparative study in Europe and the Americas" was funded by the German Research Foundation. See <https://www.migration-violence.org/>.

current migration patterns primarily reflect those of transit countries, selected by some migrants for a temporary stay and by others as a first safe haven. We contextualized the project's primary data derived from surveys, biographical interviews with forced migrants and expert interviews with representatives of States and NGOs with a secondary analysis of macro data at the level of countries and regions. The ForMOVE project included field research in three provinces of Türkiye and three states of Mexico. In the two transit countries, we focused on critical areas, such as places where migrants were passing through and had easy access. In this multi-sited, multiscale research we used mixed methods integrating a standardized survey, biographical and expert interview. All findings were analysed by an interdisciplinary team of demographers, sociologists and anthropologists.

In total, we conducted 32 biographical interviews with forced migrants (17 in Türkiye and 15 in Mexico, each lasting, on average, for 1 hour and 45 minutes). Most of these migration histories mention a protracted journey that extended much more than expected due to natural and border obstacles as well as exposure to a variety of forms of violence and fraud. Migrants often had to choose alternative routes because of police, border agencies, gangs and organized crime that tried to push people back, extort money from them, ask for bribes or detain persons for trafficking. Our interviewees also reported robberies, assaults and loss of documents or other assets. All in all, many of them had to look for temporary work during their journey or after arriving at certain places in Mexico or Türkiye. The following story of one migrant from Afghanistan interviewed in Istanbul is an example of what many of the migrants had to experience.

The interviewee, we call him Amir, is a 33-year-old man from Afghanistan. He defines himself as being of Uzbek ethnicity. Since 2008 he has lived in Türkiye, at the time of the interview his adoptive mother and all his siblings also live there. His biological parents both died during armed conflicts in Afghanistan when he was a baby, and thus, he cannot remember them. The person he calls his mother raised him; his adoptive father also died in the war in Afghanistan. Amir never went to a formal school, and during his childhood he only ever received some informal teaching in the street. He left Afghanistan at the age of 17, giving poor living conditions and constant violence as the reasons for his departure (see [figure 1](#)). He reports that organizing the trip was quite simple, because all that was required was to let it be known around the neighbourhood that he wanted to depart to Türkiye. "People who offer their smuggling services will then contact you," he stated. Amir and his family estimated that the trip would cost around US\$500 to US\$1,000; so they had to sell their cows to obtain the money to go.

In Pakistan, additional costs arose when the police detained Amir. He had left the house where he and other migrants were waiting until the smugglers would

set them up on a flight to the Islamic Republic of Iran. A Pakistani policeman blackmailed him, and he had to pay a bribe. On his trip through the Islamic Republic of Iran, policemen and gangs robbed him of his money and his mobile phone three times, persecuted Amir and asked for a ransom. He had to work in a factory producing refrigerators and as watchman, and ultimately staying nine months in the country saving up the money needed for the onward trip to Türkiye. He passed into Türkiye by land near the city of Van and went to the Zeytinburnu neighbourhood of Istanbul, where thousands of Afghans live. From there, and based on a recommendation of a policeman, he went to the city of Konya to work on a farm from 2009 to 2010. After he was cheated out of part of his wages by his employer in Konya, he returned to Istanbul and had to stay for some days in a hotel, with his “money ... slowly running out”. As he did not know anyone locally, he applied for informal jobs and became aware that he needed personal documents. With the help of the Uzbek community in the Turkish city of Hatay, Amir applied first for an Afghan passport and then for a Turkish residency permit: “My identity journey started with the passport, residence permit, expenses, fees. These are all expenses. We have to pay two times more. For example, the mediator asks us double money for any document, information.”

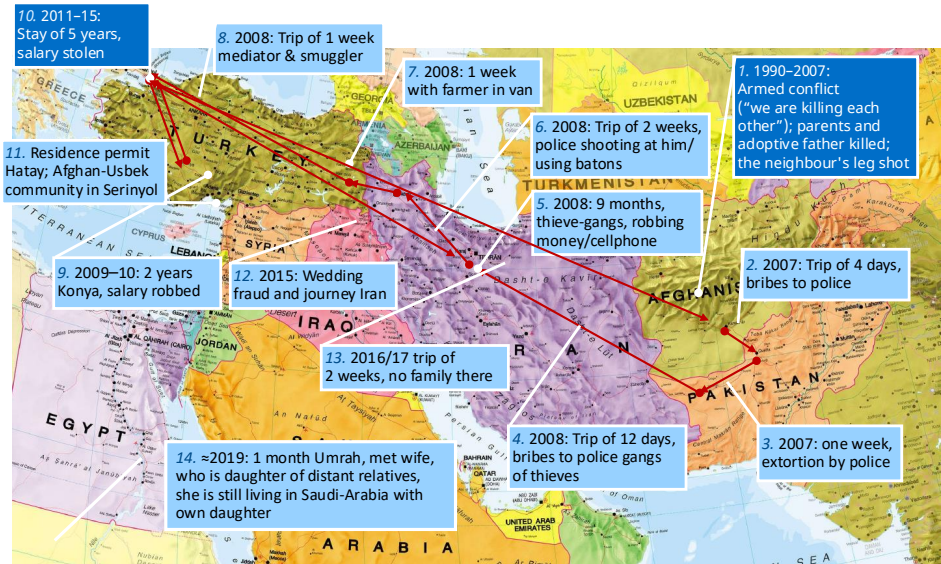
In Istanbul he worked informally in tourism as a guide, as by now he spoke both Turkish and Arabic: “I was earning \$3,000, \$4,000, \$5,000 dollars a month, and the year was 2014–15.” With a friend he opened a small shop, investing some US\$5,000, but he clashed with his partner, and left the business losing a lot of money – “No good for me from this shop: either he shoots me, or I shoot him”. He went back to working in tourism in Istanbul, but experienced another swindle when he paid some US\$7,000 as a bride price for marrying an Iranian girl that he had known on his migration journey from Afghanistan. But after the wedding ceremony the girl and her family disappeared through the back exit from the alleged house of the bride’s parents. At the moment of the interview, Amir worked in his own shop in Istanbul. He earns TRY 3000–4000 per month⁶ and has no social security, but sends “some of my salaries to my family”.

The migration history of Amir is singularly his own, but it has characteristics shared by most of our interviewees. To finance the journey from Afghanistan, the whole family mobilized a lot of money, in this case by selling their cattle. Nevertheless, that money was insufficient, as the costs for the journey went up due to various contingencies (robbery, bribes, extortion) and the extended duration of the trip. Therefore, forced migrants like Amir have to work during their migration trajectory – and even after arriving in the destination country (in this case Türkiye) – under precarious conditions in the informal economy. People exploit the undocumented by withholding salaries and through fraud. Thus, forced migrants have to engage as temporary labour migrants under

6 Due to the volatility of the exchange rate, at the time of the interview this amount was between US\$230 and US\$300, and at the time of the analysis between US\$100 and US\$140.

challenging and unstable conditions with little in way to defend themselves. These facts are confirmed by the findings of a quantitative survey of forced migrants conducted as part of the ForMOVE project (see next section).

► **Figure 1. Sequence of Amir's migration trajectory and forms of violence he was exposed to**



Source: Authors' elaboration based on ForMOVE data.

ForMOVE survey data

The team of the ForMOVE project deployed a survey covering 709 forced migrants who were interviewed face-to-face in Mexico and Türkiye between September and December 2020. The research was designed to analyse the entwined relationship between forced migration and organized violence through a comparative perspective on Türkiye and Mexico. The findings of previous research and empirical studies in both countries had raised the attention of the scientific community to the harsh working conditions of forced migrants during their stays in both countries. With a view to capturing organized violence in all its dimensions and dynamics, we examined, on the one hand, physical violence, including kidnapping and armed attacks, and on the other hand, violence in the form of exploitation, marginalization and exclusion.

Due to the challenge of establishing a comprehensive sampling frame encompassing different categories of forced migrants – such as migrants under protection, irregular migrants and transit migrants – a non-probabilistic sampling approach was employed.⁷ The proposed methodology has limitations in terms of accurately reflecting the population, which called for the use of certain criteria to increase the diversity of the participants. It is important to note that the process of selecting forced migrants was based on three primary criteria. First, the selection process undertaken involved the identification of a province located in close proximity to the border experiencing an influx of migrants, a second province that provided diverse employment opportunities for a substantial number of forced migrants, and a third province situated near the departure port. The second criterion concerns countries of origin, and the last criterion is around the basic socio-demographics of the registered forced migrant populations. This process resulted in the surveying of 709 forced migrants, with 350 surveys collected from Türkiye and 359 from Mexico. It was particularly difficult to adhere to age and gender criteria because of the exceptional conditions presented by the COVID-19 pandemic.

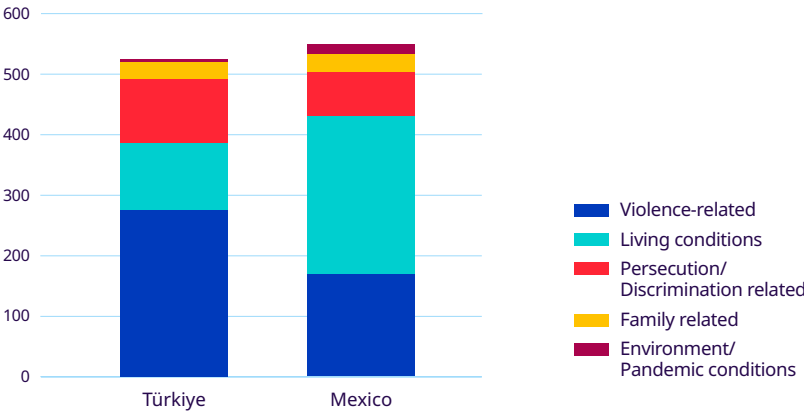
Among the 709 forced migrants who participated in the ForMOVE survey, almost three quarters were male migrants. The proportion of female migrants was higher for the Turkish sample. More than a third of the migrants fled to the transit country from Honduras and a quarter from the Syrian Arab Republic. Also included in the sample were migrants from El Salvador and Guatemala who were residing in Mexico and migrants from Afghanistan and Iraq who had fled to Türkiye. Thirty-six per cent of the migrants in the sample reported having completed less than a secondary level of education, while one quarter had a tertiary level of education. Most of the migrants were clustered at the secondary level. Two thirds of the interviewees stated that they were single, and 20 per cent were married. For characterizing the people in our sample, the classic distinction between voluntary labour migration and involuntary refugee migration becomes increasingly blurred. Violence in its various forms played a key role in their decision-making processes, even though there may always be a complicated mix of reasons and motivations for leaving one's place of residence via migration. Additionally, almost all of those interviewed who declared having left their home for economic reasons had become victims of organized crime and violence *during* their migration, a fact restricting substantially the scope of their decision-making.

7 The sampling frame of migrants under protection should be accessible because these migrants are registered migrants. However, obtaining a sampling frame for a study that aims to reach other categories of forced migrants, such as irregular migrants, presents difficulties. Please refer to Müller-Funk et al. (2019) for challenges on reaching hidden populations and sampling techniques for this population.

In both research and policy, migrants leaving Central America are frequently referred to as “economic migrants” or as a “mixed group of forced and labour migrants” (chapters in Alba Villalever et al. 2024; Pries and Zülfikar Savcı 2024). Afghan migrants leaving their country are frequently cited as fleeing due to the country’s violent environment or to look for a better life. In our study we found that almost all of the surveyed persons decided to leave their home based on a mix of reasons and motives that nearly always included aspects of violence, and then they experienced different forms of violence during their trajectory and in the country of transit. Therefore, “mixed forced migration” better describes their experienced reality. Pries and Linsel (2024) and Pries and Zülfikar Savcı (2024) emphasize that interviewed Afghan and Central American migrants often declare that improving their living conditions and economic situation have been relevant motives for leaving the country. Nevertheless, careful analysis of the data and the biographical narrations brings to light that violence is often experienced from the very beginning, and at the latest while on the move and at arrival. Especially for Afghans, but also for increasing shares of migrants from Central America, violence is such a crucial part of their everyday life that it is taken for granted and therefore not worth emphasizing. They often try to minimize their negative and frequently traumatic experiences of violence, and therefore mention it just as an aside (Pries and Linsel 2024). While there are always various limitations, causes and reasons for leaving one’s place of residence through migration, the connection between violence and economic deprivation is especially obvious in countries where violence has long been normalized.

The forced migrants in our sample expressed various reasons for fleeing their countries of origin (see [figure 2](#)). For the migrants who reached Türkiye, the most prominent motive for leaving is the violence in their country of origin. These reasons include factors such as fear of war and conflict, fear of being forcibly recruited into an armed organization, family concerns about violence and crime, and domestic violence. For the forced migrants in the sample collected in Mexico, poverty conditions prevailing in their home countries and low living conditions, that is, economic conditions and living standards in their home countries, were the most frequently articulated reasons for fleeing their home countries – although in many cases organized violence by gangs played a crucial role. In the Türkiye sample, reasons related to economic conditions were mentioned at almost the same frequency as the category covering discrimination due to religion, ethnicity, gender, gender orientation and political affiliation. Reuniting with family or other family-related decisions were equally reported by the samples in both countries. Unlike for Türkiye, environmental conditions were also cited as a reason for migrants in the Mexico sample.

► **Figure 2. Reason for leaving country of origin (no. of responses)**



Note: More than one response possible.

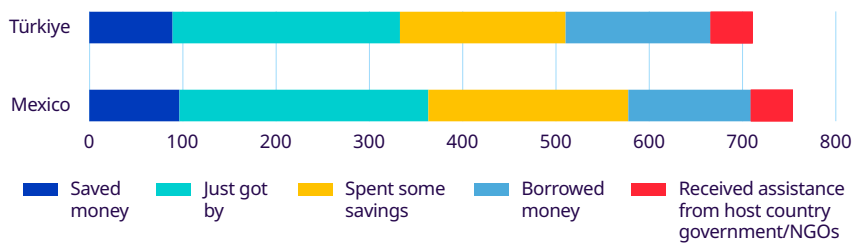
Source: Authors' elaboration based on ForMOVE data.

After fleeing their country, only one third of the interviewees reported having received help from anyone while crossing the borders of Mexico or Türkiye. Among those who did receive assistance, it was mostly from smugglers in the Mexico sample, while in the case of migrants in Türkiye it was relatives who provided assistance. Forced migrants in Mexico, who were forced to leave their country due to the push effects of difficult economic conditions (and gang violence), reported being exposed to many forms of violence, such as robbery and detention, during their journey and after reaching Mexico. For migrants in Türkiye, financial exploitation and forms of violence at the individual level were the most commonly reported experiences of violence.

But what level of economic power did these migrants have while living in their home countries? Did the conditions in their home countries permit them to generate sufficient funds to sustain themselves over long migration trajectories with their savings alone? To understand this, we tried to find out whether they were engaged in any economic activity while living in their country of origin and, if so, the type of economic activity they had been engaged in. The share of respondents who reported having a regular job while living in their country of origin was more than three quarters in the Mexico sample, while in the Türkiye sample it was around 30 per cent. However, these jobs were mostly in the service sector with precarious working conditions. Almost 60 per cent of the migrants who reported having worked while in their country of origin were working in informal jobs. These informal working conditions were more prevalent among migrants in Mexico. Only half of the migrants reported that their income covered their basic needs while living in their home country.

Forced migrants have to work once they arrive in the transit country, and one third of those surveyed stated that they were currently working in the transit country. These jobs are mostly precarious daily wage jobs, self-employment and unpaid family work. Respondents in Türkiye were more likely to report that they were engaged in some form of economic activity compared to those surveyed in Mexico. This difference may be related to the migration dynamics of the forced migrant populations in Mexico and Türkiye, respectively. While the movements of the forced migrants in the Mexico sample occurred more in the form of short-term stays throughout the migration trajectory, forced migration in the case of interviewees in Türkiye was more frequently characterized by family migration and – as neither returning to the origin country nor moving on towards European Union (EU) countries were perceived as desirable or feasible – extended stays under temporary protection were typical. In general, migrants interviewed in Mexico had largely decided to transit towards the United States as soon as possible, whereas forced migrants in Türkiye, on average, did not have such strong plans to move on (towards the EU or elsewhere). Therefore, in order to survive in this state of limbo and prolonged uncertainty, they need to earn a living and consequently have to work. Analysing the specific reasons for each migration movement of the migrants in the Mexico sample, we find that they regularly follow a specific migration plan and path. They want to arrive quickly at the northern border of Mexico and are sustained throughout this journey by resources gathered by the overall family network. Therefore, working as a temporary labourer is not as frequent in Mexico as it is in Türkiye.

► **Figure 3. Economic conditions of migrants in the 12 months preceding the survey (no. of responses)**



Note: More than one response possible.

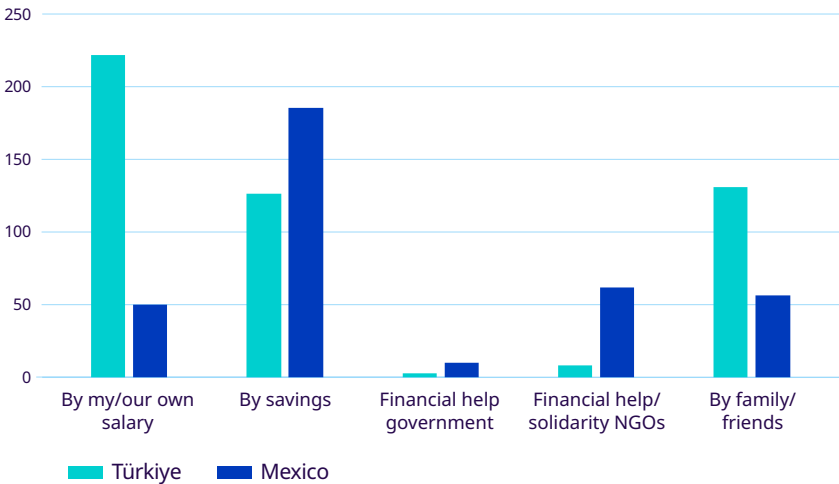
Source: Authors' elaboration based on ForMOVE data.

Figure 3 shows the economic conditions of the surveyed forced migrants in the year preceding the date of the survey. Forced migrants in both Türkiye and Mexico reported living on a shoestring in the year preceding the survey. Migrants in Mexico more frequently than migrants in Türkiye reported having

spent their savings; while migrants in Türkiye were more likely to borrow money to support themselves. The receipt of NGO and/or state aid was equally reported in Türkiye and Mexico.

Our survey also shed light on the working conditions of this specific group of temporary labour migrants. The average daily working hours of working migrants was 9.1 hours. Working migrants in the Mexico sample worked an average of 7.9 hours per day and 6.1 days per week, while migrants in the Türkiye sampled worked an average of 9.7 hours per day and 5.6 days per week. The most dramatic working hours were reported by Afghan migrants in Türkiye, who work an average of 11.6 hours a day. When asked whether they find their personal income satisfactory, only a small proportion of working migrants were satisfied with their personal income (15 per cent). The extended working hours and inadequate income levels reported indicate high levels of economic exploitation of forced migrants, who provide a temporary labour supply.

► **Figure 4. Economic resources utilized during their stay in transit countries (no. of responses)**

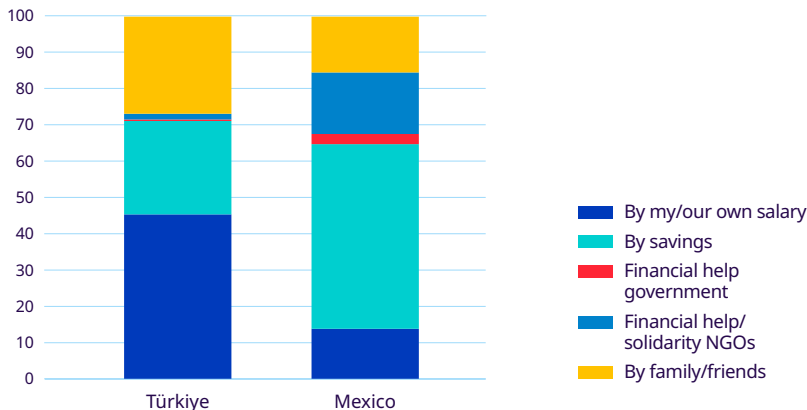


Note: More than one response possible.

Source: Authors' elaboration based on ForMOVE data.

The sources for meeting their living costs were quite different for forced migrants in Mexico and in Türkiye. The conditions for sustaining their lives at the moment of the interview were more challenging in the case of Mexico than Türkiye. Migrants in the Mexico sample normally move along migration corridors where their accommodation is mostly in shelters (60 per cent), but almost a third of the sample had no accommodation at all. Migrants in Türkiye, whether they had legal status (mostly under temporary protection) or were in irregular situations, stay longer in the country. They frequently were living in rented apartments or in their own rooms in shared houses. **Figure 4** shows how respondents' living costs at the time of the survey – including accommodation, food, transportation and so on – were financed. Savings were reported as an important way of financing accommodation in both countries. For the Türkiye sample, income generated through one's own by work was the most commonly reported source of funds, followed by savings and help from family and friends. In Mexico, savings were the most commonly reported source of funds to meet living costs, followed by civil society organizations (especially shelters run by religious organizations). Earning their own money via work was not as frequently reported as it was in the Türkiye sample. Government/public funds are almost neglectable for both countries. **Figure 5** presents the same data as percentages of all valid answers by country. In the case of Türkiye, earning money through work remains crucial, while in the case of Mexico, living on savings predominates.

► **Figure 5. Sources of funding for meeting current living costs (percentage of all responses)**



Note: Percentages indicate the share of all valid answers, and not the share of respondents.

Source: Authors' elaboration based on ForMOVE data.

In the case of Türkiye, the long stay in the country, the impact of family migration, and the political dynamics in the region and its consequences on forced migration have led to forced migrants becoming quite an important part of temporary labour migration in the country – although the informal and precarious work performed by forced migrants is increasingly undermining minimum standards in the Turkish labour market. For many Syrian refugees, Türkiye is shifting from a country of preliminary protection and transit to a country of extended stay and “forced arrival”. While, on the one hand, the existence of a large informal economy enables these migrants to sustain their lives in the transit country for longer periods, on the other hand, the conditions of work and employment are highly precarious. Our results are in line with the 2020 ILO study *Syrian Refugees in the Turkish Labour Market* to which Erdoğan (2022, 82) refers: “According to the study conducted with the ‘indirect detection method’, the number of Syrians working in Türkiye is 940,921 as of 2017.” In the same study, it is stated that “862,039 (91.6 per cent) are working informally in low-skilled positions where productivity is relatively low. It is also stated in the research that there are 126,000 children working in the 5–14 age group, of which approximately 17,000 are girls and 109,000 are boys.”

According to our survey and biographical data, many migrants reported a mix of experiences of violence, precarity and labour exploitation as well as discrimination on their migration trajectory, which all together shape their migration projects for the future (Pries and Zülfikar Savcı 2024; Zülfikar Savcı, Pries and Halstenberg 2024). The more precarious the conditions for temporary labour migrants, the more probable their aspiration to move forward to other places and countries. This is not limited to Mexico and Türkiye, as Gordon (2019) stresses in her study on Jordan and Ethiopia, as well as in another study (2024) on Venezuelans: forced migrants are rarely accepted as workers on regular contracts, and therefore, they mainly have to work in the informal economy.

Moving beyond countries of transit, a closer look into the migration trajectories of forced migrants who successfully reached their intended destination offers the opportunity to better understand the role of their integration into labour markets for their livelihood and ongoing mobility. The IAB–BAMF–SOEP Survey of Refugees is helpful in this respect.

Evidence from the IAB–BAMF–SOEP Survey of Refugees

This section presents findings derived from an examination of a segment of the German Socio-Economic Panel Study. This panel study offers comprehensive data on various dimensions of the German population, including household composition, educational attainment, income and employment status, well-being, housing and other relevant factors, owing to its representative structure.

Due to the increased influx of individuals seeking asylum in Germany since 2015, the Socio-Economic Panel (SOEP) at DIW Berlin in cooperation with the Institute for Employment Research (IAB) and the Research Centre at the Federal Office of Migration and Refugees (BAMF-FZ) opened a new survey dataset focusing on refugees. The IAB-BAMF-SOEP Survey of Refugees employs a random sampling method using the sampling frame derived from the Central Register of Foreign Nationals. A standardized questionnaire is administered to gather information on various aspects, including living conditions, family structure, migration history and the characteristics of registered migrants in Germany who have been subjected to forced migration. The survey offers a comprehensive analysis of the forced migration patterns towards Germany, providing in-depth insights into migrants' present circumstances in Germany as well as their experiences during their migration journey.

Here we concentrate on analysing data of 4,465 adult forced migrants who were interviewed in 2016 as part of the IAB-BAMF-SOEP Survey. Almost half of these migrants were from the Syrian Arab Republic, and one third were born in Afghanistan, Eritrea or Iraq.⁸ Thirty-eight per cent of this sample are female forced migrants, and 62 per cent are male. The survey respondents were aged between 18 and 83, with the mean age being 33.6 years. The survey concentrated on the process of arriving and beginning integration in Germany, but also provides some information concerning the occupational conditions of forced migrants in their origin country and their migration trajectory. Almost 20 per cent of the interviewees who reported any economic activity while living in their country of origin were self-employed (which includes family labour). This category is followed by white-collar workers without any managerial duties and then by workers without directive functions and agricultural work. Slightly more than half of the forced migrants, who had previously worked in the country of origin, had been formally employed in sectors such as construction and wholesale and retail. In general, more than three quarters of women and half of men were formally employed. On average, they spent 48.2 hours a week working in their home countries, although almost one in five people born in Afghanistan, Iraq or the Syrian Arab Republic reported working 60 hours or more. The survey also shows that while most migrants reported high levels of satisfaction with the employment status of their last job in their country of origin, they reported lower levels of satisfaction with the income generated by these jobs.⁹

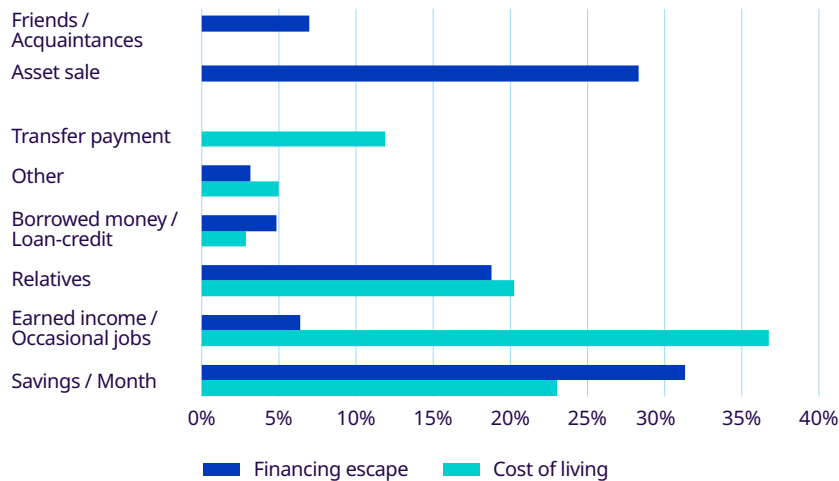
The more recent Syrian migration, especially to neighbouring countries, can be characterized as family migration, or even as movement of entire social and community groups. The Syrian Arab Republic had previously not been a

8 The rest are from Albania, Algeria, Armenia, Bosnia and Herzegovina, Gambia, Georgia, India, the Islamic Republic of Iran, Kosovo*, Nigeria, North Macedonia, Pakistan, Russian Federation, Serbia, Somalia, Ukraine and "Other Country of Birth". * As defined in UN Security Council resolution 1244 of 1999.

9 We present unweighted results in this chapter.

country with a high homicide rate or characterized by violence in the public space. Due to the sudden and spreading violence since 2011, people had to flee their country in order to survive. As noted above, Syrian migrants accounted for nearly half of the survey sample, and one question in the survey concerning how migrants financed their escape from their countries of origin serves to illustrate the perceived need for a rapid escape. The most commonly reported financial instrument used by migrants to flee their country were their previous savings. Financing their escape journey through the sale of their assets was the second most frequently mentioned financial instrument. Another important source of funds was through social networks (broader family and friends). Relatives and friends appear to be an important support mechanism for forced migrants seeking refuge in Germany. The data shows that the use of loans or credit, or income from work are not among the prominent instruments used during escape journeys (figure 6).

► **Figure 6. Means of financing their escape and cost of living in the last country of stay (percentage of responses)**



Note: More than one response possible. Percentages indicate the share of responses.

Source: Authors' calculations based on IAB-BAMF-SOEP survey, v.34.

This study also collected information on the countries the forced migrants passed through during their journey and asked how migrants covered their living expenses in their last transit country. As mentioned above, migrants fleeing conflict and intense violence tend to migrate to neighbouring countries, rather than planning long-distance routes. Such bordering countries are often

plagued by economic turbulence and political instability, but the prevalence of informal economies can potentially allow forced migrants to actively engage in economic activities in these countries for a while. That is, on these escape routes, forced migrants become temporary labour migrants in transit countries. **Figure 6** above supports the argument that forced migrants are most likely to earn their livelihood while in transit by working in the country where they stayed before reaching Germany (reported by more than a third of all interviewees). While there was no question in the survey as to whether this work was formal or informal in nature, the extensive literature on the economic exploitation and poor working conditions of forced migrants shows that forced migrants are mostly employed in the informal economy.

Not all the countries of origin of the forced migrants included in the IAB-BAMF-SOEP survey were characterized by high levels of violence and conflict. However, some of the migrants' countries of origin were violence-intensive social spaces where conflict and violence have been normalized and taken for granted due to long years of violence. Therefore, it was thought that categorizing migrants according to their country of birth could provide some differences in these assessments, which we made through simple descriptive analyses. For this categorization, we used the World Bank's Fragile and Conflict-Affected countries list, which is based on two main categories for classifying countries affected by violence: (i) countries identified by indicators of high levels of institutional and social fragility ("fragile countries"); and (ii) violent conflict zones defined by the number of deaths due to conflict relative to the population ("violence-intensive regions"). Taking this list of countries into account, survey respondents were categorized according to their country of origin and their means of earning a livelihood in their last country of stay. **Table 2** shows that working ("earned income") is the most prominent financial means to sustain their livelihoods in transit countries, especially for forced migrants from violence-intensive regions who fled these countries to seek asylum in Germany.

Forced migrants escaping violence-intensive spaces normally have little savings or capital, as years of violence in their country of origin have wrecked most of the infrastructure and economy. The money they gather for their journey based on shared or sold family assets often proves to be insufficient. This is why during the move they have few alternatives other than selling their labour. Even in the event that they had sold land, livestock or real estate properties (as in Amir's story above) unforeseen robberies, fraud or bribes during the migration course might force them to work temporarily. As such, many forced migrants both migrate and work at the same time. This situation offers a "special" labour force to transit countries and leads to employment situations characterized by precarity, compulsion and existential need.

► **Table 2. Means of subsistence/earning a living in the last country of stay before reaching Germany, by country of origin category (no. and percentage of respondents)**

Country of origin category	Savings/month	Earned income	Transfer payment	Relatives	Borrowed/loan	Other assistance	Total
Violence-intensive regions	399	608	152	316	48	63	1 586
	25.2%	38.3%	9.6%	19.9%	3.0%	4.0%	100%
Fragile countries	27	53	34	56	4	19	193
	14.0%	27.5%	17.6%	29.0%	2.1%	9.8%	100%
Other countries	51	99	61	48	8	21	288
	17.7%	34.4%	21.2%	16.7%	2.8%	7.3%	100%
Total	477	760	247	420	60	103	2 067

Source: Authors’ calculations based on IAB-BAMF-SOEP survey, v.34.

Conclusions

Forced migrants such as refugees, internally and internationally displaced persons, and other groups of people of concern to the UN, are often not considered as part of the world’s many temporary labour migrants. While even the more formalized forms of temporary labour migration give rise to complex concerns, such as unequal treatment, protection challenges and lack of access to social security, special consideration is required in the case of forced migrants who become part of the labour market given their particular vulnerability.¹⁰ Empirical evidence shows that many forced migrants must work at least occasionally during their extended journeys to find a safe place to live. Given their increasing volume and highly precarious conditions of employment and life, this highly vulnerable group of migrants should be part of larger debates on how to protect temporary labour migrants.

Many actors are involved in the governance of migration processes, and these actors are giving support to forced migrants at various levels. However, given the reality of forced migrants being subjected to violent living conditions and many violations of their basic rights, the support and assistance of national and international organizations should more explicitly address this group and its specific needs. As the example of work permits for Syrian refugees in Jordan demonstrates, cooperation and consistent coordination between and within international organizations, as well as the involvement of numerous parties can

¹⁰ See ILO (2022) for a detailed discussion on the different definitions, categories and complexities of temporary labour migration, and see Mieres and Kuptsch (2022) for a human-centred approach during global crises.

help to establish legal, semi-flexible working circumstances and legal status for forced migrants during their migration trajectory.¹¹ Trade unions, national and international NGOs, and government agencies can all help to coordinate these processes and implement standards of decent work and social justice for this extensive and still increasing group of people of concern.

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¹¹ For more information on these work permits, see: UNHCR, "[Work Permits for Syrian Refugees in Jordan](#)", and ILO, "[Towards Formalisation: Work Permits for Syrian Refugees in Jordan](#)".

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Part

3.

Protection and power
structures: Policy tools
under scrutiny

► Addressing challenges in the design and implementation of temporary labour migration programmes: Policy coherence and the social partners

Natalia Popova

Introduction

Recent debates on labour migration often portray it as a temporary phenomenon or as having a circular nature. Labour migration policies in destination countries frequently focus on the immigration of highly skilled workers (Popova 2014; Kuptsch 2020). Labour migration opportunities for low-skilled migrants are usually limited, or of a very short duration, despite strong labour demand. Low-skilled migrants may be exposed to more difficulties in labour market integration compared to highly skilled workers, especially in the context of an economic crisis or other emergency situations, such as the COVID-19 pandemic. The successful integration of low-skilled migrants is also a key factor in improving economic productivity and social cohesion in countries of destination (OECD and ILO 2018).

All labour migration, regardless of its duration, should be rights-based and value the skills of migrant workers (ILO 2010). However, temporary labour migration may present some specific policy challenges. The existence of various policies, often not well coordinated, may create vulnerabilities in the labour market for temporary migrant workers (ILO 2014; ILO 2023a). That is why temporary migration scenarios call for a coordination among labour migration, employment, and education and training policies to achieve better labour migration governance and skills portability. Skills anticipation, recognition and development are more important than ever and should be considered at each stage of the labour migration process. Such considerations also need to go hand-in-hand with improving protection for temporary migrant workers at all skill levels. The ability to develop concrete policy approaches and measures will depend on the specific country context, institutional capacities and policy attention, as well as the effective engagement of governments and social partners.

In drawing on ILO's labour migration policy research and analyses in numerous origin and destination countries, this chapter addresses the need to work further towards policy coherence between labour migration policies and the regulation of skills, education, training and employment, as well as the role of

the social partners in achieving such cohesion. It will also include some results from a collaboration with the World Bank, within the framework of the Global Knowledge Partnership on Migration and Development (KNOMAD), covering Costa Rica and Italy, as examples of an upper-middle-income and a high-income destination country, respectively.¹

Policy coherence and national labour migration policies

The issue of policy coherence, and how to achieve it, is linked to the nature of the “national labour migration policy” and its design, implementation and monitoring, and whether such a national policy exists. For the purpose of this chapter, the “classic” ILO definition of policy coherence in migration is used, namely “ensuring that policies and programmes regarding migration and other areas do not conflict with each other, either directly or unintentionally” (ILO 2010, 146). However, newer approaches in policy coherence have been developed that are participatory and call for stakeholder involvement, emphasizing the key role of social partners (ILO 2021).

Any national labour migration policy can, in principle, be articulated along the following elements:

- ▶ overview of labour migration trends and socio-economic profile of migrant workers;
- ▶ policy objectives and priorities;
- ▶ legislation and administrative framework;
- ▶ institutional framework, including accountability and resource allocation;
- ▶ implementation measures; and
- ▶ monitoring and evaluation.

Ideally, the policy is comprehensive and includes both objectives and a multi-stakeholder strategy on how to achieve them. In some cases, one finds separate labour migration policy and strategy documents, with the policy document representing a consensus-building exercise on the objectives, while the strategy is the instrument for operationalizing them, and it usually goes with a detailed labour migration plan of action (ILO 2023b).

An increasing number of countries have been developing specific national labour migration policies and strategies, and related action plans; an example is Sri Lanka’s [National Policy and Action Plan on Migration for Employment](#)

¹ As per the World Bank’s classification of country income groups.

[2023–2027](#). At the regional level, one can cite the African Union’s [Migration Policy Framework for Africa and Plan of Action \(2018–2030\)](#). In other instances, labour migration policy may not exist as a separate policy, but instead may be part of a broader international migration policy or included in other policies, such as on employment or poverty reduction. Given these various scenarios, labour migration policies are designed, implemented, monitored and evaluated in many ways. The level of complexity involved depends on the country’s policy priorities, the role of labour market institutions, the presence of social dialogue and the fulfilment of international commitments (for example, implementation of relevant ratified UN and ILO instruments and labour migration-related agreements) (ILO 2020a).

The governance of labour migration often requires coordination among many actors and the settlement of competing interests. There are multiple arrangements, which vary by country, on the distribution of competencies on labour migration (ILO 2020a). In some countries, there is a specialized ministry (for instance, the Ministry of Migration and Asylum in Greece or the Ministry of Nationality, Immigration and Gender Affairs in Botswana) or a dedicated entity to govern the migration process (such as the State Migration Service in Ukraine and Azerbaijan).

Temporary labour migration policies and programmes

Temporary labour migration policies and programmes are a subset of migration policy, but they also present specificities. The need to adopt policies on temporary labour migration may sometimes conflict with long-term migration policy objectives; for example, meeting current labour market demand may call for temporary migration measures, while rapid population ageing, the global competition for talent and surges in asylum-seekers will call for more permanent policy solutions. Public opinion in many countries does not seem to readily accept more permanent labour migration, as evidenced by the rise of anti-immigration discourse (Lesińska 2014). As a result, policymakers often present migration as a temporary phenomenon. This has also led to “segregation” and differential treatment of lower-skilled workers vis-à-vis highly skilled workers. The former tend to be relegated to temporary migration schemes, whereas the latter stand a much greater chance of securing permanent residency. This segregation poses important questions in terms of ensuring the protection of migrant workers’ rights, which include the possibility to change employers, access to training opportunities, access to the right of freedom of association and collective bargaining, access to social protection, and the ability of family members to join the migrant worker, to name but a few (ILO 2023a; ILO 2022).

Temporary labour migration policies and programmes do not always consider labour market needs and impacts in their design. Thus, some programmes cannot address the structural demand for migrant labour, especially given ageing workforces in destination countries. The COVID-19 pandemic evidenced this, and the need to ensure the sustainable provision of essential goods and services confirmed the key role played by low- and medium-skilled migrant workers (Anderson, Poeschel and Ruhs 2020). Certain jobs were affirmed as “essential”, and their associated tasks were carried out by “key workers” (ILO 2023c). For instance, in the European Union (EU), on average 13 per cent of key workers were migrants, including those typically considered “low-skilled”, such as crop pickers, food processors, care assistants and cleaners in hospitals (Mazza and Fasani 2020).

Key policy challenges related to temporary labour migration

When it comes to policy design, implementation, monitoring and evaluation, temporary labour migration and national labour migration policies present similar challenges. This section will address the need for a robust evidence base as an important component for the design of labour migration policies, as well as key dimensions related to skills, such as anticipation, forecasting, recognition and matching.

The need for a robust evidence base

The benefits of labour migration, including temporary movements, can be diminished when policies are not informed by up-to-date and quality statistics. Although data collection capabilities vary across different institutions and countries, several key statistics should be considered at the national level as “priority data” to enhance temporary labour migration policies, as well as to promote comparability of results and their analysis. Data collection and analysis prioritization should focus on two vital questions:

1. What are the socioeconomic profiles of and labour market outcomes for temporary migrant workers?
2. How does temporary labour migration contribute to addressing:
 - a. skills gaps and labour demand in destination countries, and
 - b. current economic and development challenges in origin countries?

At the same time, there is also a need to indicate which data collection tools and methodologies (including concepts and definitions) are necessary to have common international standards when it comes to measuring temporary labour migration (GMG 2017). In addition, there is often a lack of longitudinal data that would allow individual migration patterns to be traced over time, especially when it comes to circular movements. An important measurement challenge in this regard is that short-term residency may be subject to little or no administrative registration (UNECE 2016).

Temporary labour migration statistics may be collected from administrative sources (such as, border data collection systems, population registers, work permits). However, it should be noted that only a few countries have records on the entry and exit of their residents, and it is even rarer to register temporary movements, such as those under circular migration schemes (Constant, Nottmeyer and Zimmermann 2013). In addition, administrative records may only cover certain groups of temporary migrant workers, for example, those for whom permits or visas are necessary, which generally would not cover those who have migrated through irregular channels. Temporary labour migration statistics could also be gathered through field inquiries, which include population censuses and sample surveys (see box 1).

Box 1. Ukraine short-term migration

In 2012, the State Statistics Service of Ukraine, in collaboration with the ILO, integrated a migration module into the national labour force survey to measure labour migration and analyse the demographic and socio-economic characteristics of Ukrainian migrant workers. In particular, the following characteristics were examined: regular migration status, language skills, training undertaken abroad, employment status, type of employment activity, occupation, skill matching, employment agreement, hours of work, labour remuneration and remittances. The coverage was extended to capture short-term migrant workers, as the geographic focus was on border regions characterized by cross-border migration movements. The questionnaire consists of four parts (A, B, C and D): Part A is used to identify migrant workers; Part B gathers detailed information on their demographic and socioeconomic characteristics; Part C aims to identify potential migrant workers by asking non-migrants and return migrant workers about their intentions to migrate in the six months following the survey date; and Part D collects information on remittances received by households.

Source: ILO 2017b.

The ILO International Conference of Labour Statisticians (ICLS) Guidelines concerning Statistics of International Labour Migration, currently under revision, provide definitional guidance on the duration of stay in the country of labour attachment² and on the nature of international labour migration – including its permanent or temporary character (ILO 2018). The Guidelines contain suggested core indicators that refer to temporary and circular movements, however their measurement remains a challenge.

Further, when reliable empirical evidence is lacking, evaluating the developmental impact of temporary labour migration schemes is difficult (Gibson, McKenzie and Rohorua 2013; Schech et al. 2024). It is also not easy to draw definite conclusions because of the lack of a control group to determine what recipient countries' households would have experienced in the absence of migration (Basok 2000; Schech et al. 2024).

Use of skills anticipation and forecasting

The role of skills is central to labour migration governance. Consequently, the anticipation and forecasting of skills are crucial for identifying, measuring and forecasting market trends in the supply of and demand for competencies and qualifications, as indicated by the ILO Human Resources Development Recommendation, 2004 (No. 195). Skills anticipation may use different methods that summarize labour market information to assess skill shortages and imbalances. Forecasting usually resorts to quantitative methods, such as macroeconomic modelling (ILO 2017a; Awad, Panzica and Popova 2023). The data-intensive skills anticipation methods are mostly used in high-income countries, since their implementation needs considerable financial and human resources (ETF, CEDEFOP and ILO 2016). In low- and medium-income countries, a possible approach could be the use of qualitative methods, also with the involvement of the social partners.

Conducting sector studies could be particularly useful for anticipating skills needs (at the occupational level) for the design and implementation of temporary schemes. One potential risk is that, in some origin countries, these studies may be conducted on a mostly ad hoc basis due to lack of established institutional mechanisms and information resources. That is why it would be important to incorporate pilot-based skills anticipation exercises, linked to specific project activities, into the national education and training systems to ensure a consistent approach to skills anticipation in the future. Skills anticipation is important not only for labour migration, but also for the national

2 The ICLS Guidelines state that the “*country of labour attachment* is the country in which the international migrant worker was supplying labour to resident producer unit(s) during the specified reference period used for measurement” (ILO 2018, para. 25(a)).

labour market. Thus, efforts originally driven by labour migration skills needs could also contribute to enhancing education and training, at a systemic level, for all participants in the labour market (Sabadie et al. 2010; ILO 2015a; Awad, Panzica and Popova 2023).

An example of how to identify the short-, medium- and long-term skills needs for labour migration at the sector level can be found in ILO research conducted in the Republic of Moldova and Ukraine, and relevant destination countries (particularly EU Member States). This research also focused on identifying mechanisms for filling job vacancies (Popa et al. 2013). Another example of a sector-specific approach to skills anticipation is offered by the ILO Skills for Trade and Economic Diversification (STED) Programme.³ The programme provides training to national and sector partners to enhance their capacity to analyse specific sectors' development and growth opportunities and anticipate skills needs (WTO and ILO 2017). It has been implemented in Bangladesh, Egypt, Kyrgyzstan, North Macedonia, Tunisia and Ukraine. The STED approach could contribute to analysing skills needs in terms of labour migration (Gregg and Klok 2021), potentially including temporary movements.

Another important aspect, when it comes to skills anticipation, is the systematic incorporation of the results into the design of labour migration policies, including temporary labour migration schemes (see box 2). This challenge applies to both origin and destination countries. Skills anticipation can serve different purposes, such as the updating of the national education and training system, the creation of national economic development plans and other uses. However, skills anticipation efforts are most often only applied nationally, and are rarely extended to meeting future demand for migrant labour (Awad, Panzica and Popova 2023).

Technology could offer new solutions and opportunities not only for lowering costs but also for facilitating data collection for skills anticipation, including for temporary labour migration purposes. Recently, there have been some pilot experiences with "big data" to collect skills anticipation information, especially by using online vacancies. A possible limitation here could be that some skills are not listed in the vacancies, as they are probably considered to be implicitly included in the vacancies' requirements (ILO 2019; ILO 2020; Awad, Panzica and Popova 2023). In addition, there may be a limited capacity to implement such methods in countries with reduced internet connectivity and large informal economies.

3 STED is a methodology developed by the ILO that provides guidance for the integration of skills development in sectoral policies. It takes a forward-looking perspective anticipating a sector's development and growth opportunities based on its global competitive position and market development. For further information, see: <https://www.ilo.org/projects-and-partnerships/projects/skills-trade-and-economic-diversification-sted-0>.

Box 2. Labour migration and skills anticipation mechanisms in the short term

In Italy, a regular survey is carried out monthly by the Excelsior system through a detailed compulsory questionnaire aimed at collecting information on occupational needs, recruitment channels and hard-to-fill vacancies. The survey is not specifically targeted at migrant workers, but it does include a question on migrant labour: “Has your company already decided to or does it plan to hire immigrant personnel for this position?”

The survey is based upon the Computer-Assisted Web Interviewing (CAWI) methodology and allows for an estimation of labour demand for the following quarter. The results of this continuous survey also allow for the determination of yearly estimates. In general, the system works well because it is based on mandatory information provided by enterprises registered in the chamber of commerce. In regard to labour migration, a key limitation of the survey is that it does not cover agriculture and the care economy, which are key sectors for migrant workers. In addition, the quality and relevance of companies’ responses are not always consistent.

In Costa Rica, the Ministry of Labour and Social Security carries out an annual labour market analysis that is used for ensuring complementarity of skills between migrant and national workers. Based on the yearly analysis, the quota of work permits is determined for each economic sector. At the sector level, some companies in construction and agriculture make their own short-term future labour demand forecasts, such as the forecast conducted by the Costa Rican Coffee Institute (ICAFE).

Short-term skills anticipation is thus present in both Italy and Costa Rica, however, the actual use of this information for labour migration policy development and implementation could be further enhanced.

Sources: Awad, Panzica and Popova 2023; Panzica and Popova 2021; Voorend, Alvarado and Oviedo 2021; Italy, Unioncamere 2023.

Inadequately addressing labour market demands for all levels of skills is likely to be costly for employers, because it may lead to re-training and could also result in the inefficient utilization of scarce public funds for education and training. In addition, the lack of systematic skills anticipation could lead to an increased precarity in the labour market, since the unrecognized demand for low- and medium-skilled jobs may often end up being filled with short-term national contract workers and agency workers, as well as irregular migrant workers. This may also raise the likelihood of workers shifting to the informal economy. The structural nature of such skills shortages and the growing concentration of migrant labour in certain economic sectors (such as, agriculture, construction

and manufacturing, among others) indicates that these jobs are not always of a temporary nature (Popova 2014; ILO 2020a; Awad, Panzica and Popova 2023).

Skills development, recognition and matching

To respond to constantly evolving labour market demands, education and training systems should be based on lifelong learning principles. In practice, this should translate into individuals of all ages, including migrant workers, having equal access to quality learning to maintain their employability throughout their lives. This requires adequate policies and institutional set-up, as well as human and financial resources (Sabadie et al. 2010; Popova 2014).

Many countries have developed or are in the process of establishing qualification frameworks, providing mechanisms to link education and training to labour market needs. Currently, there are more than 140 national qualifications frameworks (NQFs) globally, at one stage or another of design and implementation (UNESCO, ETF and CEDEFOP 2022). The establishment of an NQF sets out the levels against which a qualification can be recognized.

Skills development, recognition and matching for temporary labour migration should be understood in the contexts of challenges experienced by the education and training systems of origin and destination countries. In origin countries, skills portability and skills harmonization along migration corridors have been driven to a great extent by labour migration. Continuous or adult training may not be sufficiently developed. This might be attributed to several elements: the lack of a conceptual framework, the need for effective engagement of the social partners in education and training, as well as resource availability (Sabadie et al. 2010; Popova 2014).

Recognition of foreign qualifications, validation of prior learning and skills development are critical for migrant workers' labour market integration at destination, even on a temporary basis. Yet, the cost implications are often not considered, or are disregarded (ILO 2020a). According to ILO (2015b) research that reviewed 147 bilateral agreements for low-skilled workers, only ten contained provision for recognition of skills and qualifications in the destination country. The inclusion of skills clauses in bilateral/multilateral agreements for temporary labour migration could be of particular use when national qualification frameworks are still in the process of development. Alternatively, if national qualification systems are in place and functioning, agreements could reference these systems and use them for the recognition process, rather than creating parallel recognition pathways.

It should be noted that the creation of an NQF may be a long-term and costly process. A short- to medium-term solution – and a stepping-stone for developing a full-fledged framework – can be the creation of sector occupational requirements committees/councils. The role of such sector skill bodies is usually to improve the labour market relevance of training by contributing to skills needs analysis and the development of occupational standards (see box 3). The validity of the work of these committees depends very much on the companies involved, the level of government support and the effectiveness of the engagement of employers' and workers' organizations (ILO 2020a; ILO 2020c).

The above tools refer mainly to the formal education system, but recognition of prior (non-formal/informal) learning is also viewed as a means of strengthening employability and skills portability. In many origin countries, a significant portion of employment is informal, and no certificates are delivered regarding qualifications acquired or experience gained, yet workers do enhance their skills on the job over time. Validation of prior learning can assist workers in finding jobs in the formal economy. The establishment of a functioning NQF will address the recognition of prior learning too.

Box 3. Country and regional recognition arrangements for low-, medium- and high-skilled occupations

Temporary labour migration schemes, and their implementation, are also impacted by the low-skilled versus high-skilled policy dichotomy. Arrangements for recognition of high-skilled occupations are more frequently in place at regional or occupational levels. The Diploma Recognition and Equivalency Program (PRED) of the African and Malagasy Council for Higher Education (CAMES) is one such example.* Under the Association of Southeast Asian Nations (ASEAN), a mutual recognition agreement exists for eight professional categories: engineers, nurses, surveying service providers, architects, accounting service providers, medical practitioners, dental practitioners, and tourism professionals. At the occupation level, the Washington Accord, established in 1989 and signed by 20 countries (plus seven holding a temporary status) sets the accreditation terms for mutual recognition of engineering qualifications.

At the national level, in the Republic of Moldova and Ukraine, the ILO provided support for the establishment of systems for the recognition of qualifications and the validation of “non-formal and informal learning”. These efforts were important for both labour migration and the national labour market. In Ukraine, 15 occupational profiles were designed in tourism, construction and agriculture in collaboration with the relevant government institutions and the social partners. In the Republic of Moldova, six occupational standards were developed for blue-collar jobs in the agriculture and construction sectors.

At the regional level, in order to enhance training systems and the mutual recognition of skills, the ILO has developed the Regional Model Competency Standards (RMCSs) in close consultation with governments, employers and workers. The main purpose of the RMCSs was to contribute to ASEAN regional integration by facilitating the mutual recognition of the workers' skills across borders. RMCSs have been developed in agriculture and aquaculture, tourism, construction and mechanical services.

* CAMES came into being in 1972 through the Lomé Convention. Diplomas issued in each of the 19 Member States are recognized through the PRED, which also focuses on quality assurance. See: <https://www.lecames.org/>.

Sources: ILO 2006; Mansfield and Downey 2013; ILO 2015c; ILO 2015d; ILO 2016a; ILO 2016b; ILO 2016c.

The role of participatory approaches: Towards well-functioning labour migration governance?

For labour migration governance mechanisms to function well, they need to be participatory. At the national level, labour ministries and employers' and workers' organizations are often not provided a role to engage in migration dialogue processes, including in the specific case of temporary labour migration.⁴ However, the participation of these stakeholders is important for bringing legitimacy and effectiveness to this policy field through a tripartite approach. Bringing them to the negotiation table and building their capacities to effectively contribute to all stages of the temporary labour migration policy cycle would help to improve the labour market relevance of the policies and their respective measures/schemes.

At the international level, there is a need for stronger dialogue on suitable governance mechanisms between countries of origin and destination, with inputs from workers' and employers' organizations, to anticipate skills shortages and address them in a timely manner. Having institutionalized rather than ad hoc approaches, where all key stakeholders are involved from the start, will ensure ownership and commitment.

Numerous temporary labour migration programmes exist thanks to the conclusion of bilateral labour migration agreements (BLMAs).⁵ To be an effective labour migration governance tool, BLMAs have to be evidence-based and bring coherence between employment and labour migration policies (see box 4).

4 Editors' note: An exception being the Australian Migration Review analysed by Howe in Chapter 12.

5 These can take the form both of binding treaties and of memoranda of understanding between administrations. For other types of temporary migration schemes and a typology, see ILO (2022).

A precondition for this is that the BLMAs reflect labour market needs assessments, and this can hardly be achieved without the contribution of the social partners, who are embedded in the realities of the world of work. Social dialogue, thus, plays a crucial role in the preparation and effective implementation, monitoring and evaluation of these agreements, so that they cover the entire migration cycle and benefit equally origin and destination countries, local communities and temporary migrant workers.⁶

Some categories of temporary migrant workers may present multiple layers of vulnerability and could face additional challenges in the migration process due to sector-specific aspects and the limited duration of their employment. In this regard, one of the key issues lies in the dissonance between the admission policy and the protective scope of labour law. For instance, in different country contexts, some occupational safety and health (OSH) policies may leave out migrants when they are not covered under labour law (ILO 2022). That is why it is important to reflect where these vulnerabilities lie while designing, implementing, monitoring and evaluating BLMAs to effectively address such issues (ILO 2022; UNNM 2022). This will often not be possible without drawing on the specific knowledge of workers' and employers' representatives.

The categories of temporary migrant workers that may be particularly vulnerable and/or face additional challenges in the migration process may include seasonal workers, for example, those in tourism, hospitality, construction and agriculture. Seasonal workers may experience deceptive forms of recruitment; an increased risk of discrimination, exploitation and forced labour; scarce OSH protection; and lack of clarity on wages and working conditions (UNNM 2022). In addition, their access to training opportunities remains very limited, which in turn may reduce the developmental impact that their migration might otherwise have on their countries of origin (Bailey and Howard 2021).

Another category of workers that may present vulnerabilities in the labour market is migrant domestic workers, who often migrate under temporary worker schemes. Domestic workers tend to be excluded from social protection and, on many occasions, even from basic health services. Given the secluded nature of their workplaces in private households, migrant domestic workers are one of the most marginalized migrant worker groups, who may be subject to discrimination and abuses. They have very limited opportunities to access skills recognition processes or training (Tayah 2016), which in turn impacts their future opportunities for labour market integration, both abroad and back at home. BLMAs for migrant domestic workers should take on board these realities.

6 See also the [discussion of the ILO's Governing Body on Temporary Labour Migration held in November 2022](#) and the call for more social partner involvement in temporary labour migration policymaking.

Box 4. Temporary labour migration to Italy and Costa Rica through BLMAs

Italy has signed BLMAs with several countries. Some of the agreements in force cover seasonal work, such as the agreements with [Egypt \(2005\)](#)¹, [Albania \(2008\)](#)², the [Republic of Moldova \(2011\)](#)³, and [Sri Lanka \(2011\)](#)⁴. The agreement with Morocco (2005) focuses on “the regulation and organization of labour flows between the two countries” through their competent agencies. This has been accompanied by a wide range of trainings, in collaboration with local Moroccan institutions (such as the Ministry of Agriculture and Maritime Fishing) and other agencies, focusing on seasonal workers. The [agreement with Mauritius \(2012\)](#) has a specific reference to circular migration. All the above agreements include provisions for skills portability.

The implementation of these BLMAs has, however, proved to be challenging due to the quota mechanisms introduced by Italy in 1990⁵ and the time it takes for migrants to obtain visas and work permits. Very few migrant workers have come to Italy through these agreements. Many migrant workers have instead come through irregular channels and then been subsequently regularized. That is why BLMAs have had a reduced effect on labour demand.

Under the quota system, for the three-year period of 2023 to 2025, a total of 452,000 foreign citizens will be admitted into Italy for reasons of seasonal and non-seasonal salaried work and self-employment. These admissions will include 2,000 permits (“units”) for entries for multi-year seasonal work (this applies to countries that have already concluded migration agreements with Italy), 41,000 units for the agricultural sector and 31,000 for the tourism sector. In addition, 12,000 quotas are reserved for citizens of other countries for which migration agreements are not yet in force but that will come into force in the coming months. Another 3,000 are reserved for workers from States that promote media campaigns aimed at raising awareness on the risks of irregular migration and trafficking.⁶

In the case of Costa Rica, the Binational Agreement with Nicaragua, concluded in 2007, aims at regulating recruitment of temporary migrants and formalizing Nicaraguan workers’ integration in different sectors, especially agriculture. No other agreements have been signed by Costa Rica allowing for skills recognition, portability of social benefits and so on. However, the implementation of the agreement has come with challenges. There have been issues associated with the time and costs of the recruitment process. In addition, there have been difficulties related to defining and negotiating adequate quotas. At the same time, workers have remained vulnerable because the agreement requires the signing of an employment contract, but does not envisage mechanisms to enforce compliance, which could potentially result in unjustified lay-offs and lack of access to redress mechanisms.

In both Italy and Costa Rica, for BLMAs to be effective, there is a need to have in place implementation mechanisms, which could be periodically reviewed. In both countries, the social partners could be more actively engaged in the BLMA cycle of government-to-government agreements.

Trade union-to-trade union cooperation agreements on migration have been signed with workers' organizations in major origin countries. For instance, Italian trade unions (CGIL, CISL, UIL) and their counterparts from the Republic of Moldova and Ukraine signed key cooperation agreements committing the signatory organizations to promoting and protecting the right of migrant workers in line with UN and ILO Conventions.⁷ In the case of Costa Rica, the Asociación Nacional de Empleados Públicos (ANEP) signed a bilateral trade union agreement with Nicaragua's Frente Nacional de los Trabajadores (FNT) "[f]or the organization and defence of human and labour rights of migrant workers". The scope of this agreement is to strengthen knowledge of labour, economic and social rights in order to protect salaried and non-salaried migrant workers in Costa Rica, especially those from Nicaragua. It also provides guidance on the regularization of migratory status.

- 1 Article 3 covers the recruitment of Egyptian nationals on a seasonal basis.
- 2 The MOU for the implementation of the labour migration agreement covers seasonal work in article 3.
- 3 Article 6 makes a reference to voluntary circular migration, and article 8 refers to seasonal workers.
- 4 Article 4 covers seasonal employment in Italy.
- 5 In Italy, Law 39/1990 initiated a mechanism for the annual identification of Italy's labour market needs that can be addressed by a certain number (quota) of migrant workers for seasonal and non-seasonal work.
- 6 See: Italy, [Integrazionemigranti.gov.it](https://www.integrazionemigranti.gov.it/), "Decreto flussi 2023-25 - Le quote in dettaglio".
- 7 See: ILO, "[Press Release on Labour Standards: Unions from Italy, Moldova and Ukraine Sign Cooperation Agreements](#)", 16 May 2013.

Sources: IRET-UNA 2009; Voorend and Robles Rivera 2012; Di Bartolomeo, Gabrielli and Strozza 2015; ILO 2013; ILO 2014; ILO 2017c; López 2012; Panzica and Popova 2021; Voorend, Alvarado and Oviedo 2021.

Could enhanced policy coherence provide a solution for better temporary labour migration policies and programmes?

A global policy mapping conducted by the ILO (2017d) shows that policy coherence in areas linked to labour migration is often limited or entirely absent. This can be attributed to the specific policy arrangements at the national or regional levels, and to the scarce involvement of some key stakeholders, such

as the social partners. This finding applies to temporary labour migration as a sub-policy area.

The labour migration policy domain is characterized by fragmentation. As previously discussed, at the national level, labour migration frequently does not exist as a separate policy area, but instead other policy domains, such as employment, education/training and/or trade, may contain provisions covering labour migration issues. On the other hand, where labour migration policies do exist, they may only cover specific aspects, which does not always allow for capturing the complexities of labour migration – including, for instance, temporary movements (ILO 2017d).

Policy coherence is equally important in all phases of the policy cycle, and therefore engaging the right institutions and stakeholders from the start of the process is key. Temporary labour migration policies and programmes will benefit if the institutions responsible for skills anticipation, recognition and development – such as public employment services, national qualifications authorities and training centres – are consulted in a timely manner and the data and reports they have produced are duly taken on board. It would be important that the lead institution for labour migration policy in the country proactively solicits the guidance of these stakeholders/institutions on skills issues and coordinates with them (ILO 2017d). Further, this body should take into account the specific characteristics and vulnerabilities of different groups of migrant workers in the labour market to put in place targeted policies, such as those needed for temporary labour migration. The COVID-19 crisis clearly demonstrated the urgent necessity, on the one hand, to develop a well-defined and robust labour migration policy, and on the other hand, to maintain the ability to respond to unexpected events and fluctuations in labour demand. To respond to these levels of complexity, there is a need to consider the specificities of temporary labour migration and to continuously engage with the real actors in the world of work – the social partners.

It should also be noted that there is a stream of literature that takes a more critical view of policy coherence and what it can do to improve policy effectiveness, and this points to the implementation challenges and political nature of the process (Browne et al. 2023; Brand, Furness and Keijzer 2021). This critical view argues that, on their own, efforts to align policy content or improve coordination with other policy domains will not be sufficient to address issues requiring political will and political risk-taking that goes beyond technocratic answers. Such arguments therefore point again to the need for participatory approaches, where consensus can be fostered from the start of the temporary labour migration policy cycle.

Conclusions and areas for further research

A “one size fits all approach” to temporary labour migration policies does not work, since policy, process, practices, procedures and institutional logic are country-specific. Dialogue on appropriate governance mechanisms between origin and destination countries should be built on labour market needs assessments, with a view to contributing to sound and evidence-based policies that bring coherence between employment and labour migration. This dialogue should also be based on enhancing the participation of the social partners in the various stages of the policy cycle, namely the design, implementation, monitoring and evaluation of temporary labour migration schemes of all types.

At the national level, providing capacity-building for skills needs anticipation and analysis is important and should be part of the overall improvement of labour market information systems. The results of these analyses should be factored into the policy design process and validated with key stakeholders, including the social partners. This will help origin countries to move to more evidence-based labour migration policies, including for temporary movements, and destination countries to secure better matches for their skills needs.

The strong policy attention on the temporary nature of labour migration can result in an unfair differentiation among migrant workers of different skill levels, offering more migration opportunities and better protections to those with more qualifications. As a result, there can be many challenges in the application of equal treatment for low-skilled workers in temporary migration schemes.

In developing their national labour migration policies and temporary labour migration programmes, policymakers, in collaboration with the social partners, should integrate all skill levels and consider sectoral needs. This can also be extended transnationally in negotiations between origin and destination countries. The inclusion of the social partners can also lead to migrant voices being heard in the policy cycle when migrants have access to representation in workers’ organizations. Employers’ organizations can contribute by providing timely information on skills needs and gaps.

Potential areas of intervention for enhancing the employability of temporary low- and medium-skilled migrant workers include accurate labour market needs assessment, skills anticipation and facilitating access to training opportunities. These actions need to go hand-in-hand with improving protection for all migrant workers, regardless of their skill levels.

Areas for further research include measuring the developmental impact of temporary labour migration policies and schemes (beyond remittances) and analysing labour market outcomes for different groups of temporary migrant workers, including women, ethnic minorities, youth and so on, for the design of

targeted policies. Other research could cover the effects of enhanced access to re-training and upskilling for temporary migrant workers.

Finally, new developments are impacting labour markets globally and are also transforming temporary labour migration trends and skills needs. Studying the effects of technological progress, the greening of economies and demographic dynamics on temporary labour migration flows would be key for evidence-based policymaking.

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► Is portability a panacea? Changing employers in US temporary migration programmes

Daniel Costa

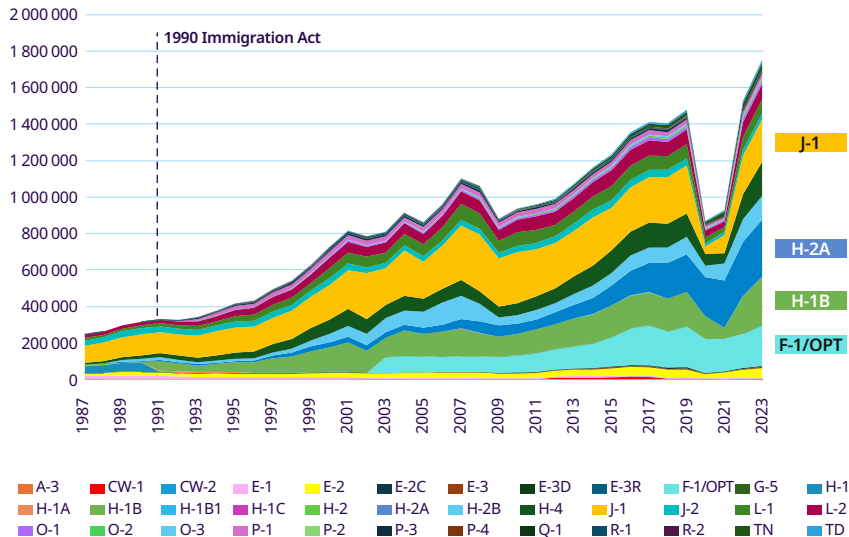
Introduction

There is growing evidence that employer use of temporary labour migration programmes has increased rapidly in recent decades in the United States and around the world (Gest and Boucher 2018). The Organisation for Economic Co-operation and Development (OECD) focused the 2019 edition of its *International Migration Outlook* report on temporary labour migration, finding that the 4.9 million temporary labour migrants who entered OECD countries in 2017 were “almost as many ... as permanent migrants in all categories combined” (OECD 2019). OECD also reported that 1.8 million temporary residence visas were issued in the United States in 2017.

In the United States, temporary labour migration has continued to increase, with data showing that the country is by far the top destination for temporary migrant workers across the OECD, accounting for one third of all temporary migrant workers across all 20 OECD countries (OECD 2023). Ever-increasing usage of temporary labour migration programmes by US employers represents a continuing long-term trend dating back more than 30 years. [Figure 1](#) shows the number of new visas issued in 36 nonimmigrant visa classifications that represent US temporary programmes, or programmes that allow spouses and children to accompany the principal temporary migrant worker, between fiscal years 1987 and 2023.¹ The dotted line in [figure 1](#) shows the point at which the last major immigration reform was passed, when the Immigration Act of 1990 was enacted.

1 The data in figure 1 do not represent the total population of temporary migrant workers who are currently authorized to be employed or who were authorized to be employed at a particular point in time, because many visas are authorized for employment that lasts more than one year. The data in the figure only represent new visas issued in each fiscal year (see discussion in the next section).

► **Figure 1. US temporary nonimmigrant work visas issued, including principal and derivative beneficiaries, 1987–2023**



Note: The Immigration Act of 1990 was enacted on November 29, 1990. J-1 visa section includes 11 J-1 programs that authorize employment and excludes 8 non-work programs.

Source: Author’s analysis of U.S. Department of State, Nonimmigrant Visa Statistics; Interagency Working Group on U.S. Government-Sponsored International Exchanges and Training; U.S. Department of State, “Bridge USA” (formerly the J-1 Visa Website); Government Accountability Office, Commonwealth of the Northern Mariana Islands: DHS Implementation of Immigration Laws, Statement of David Gootnick, Director, International Affairs and Trade, GAO-19-376T (February 27, 2019); U.S. Immigration and Customs Enforcement, “International Student and Exchange Visitor Data,” Student and Exchange Visitor Program; USCIS, I-765 approval data, various years. *Economic Policy Institute*.

Figure 1 shows that despite no major changes in US law, the number of temporary work visas issued grew from roughly 325,000 in 1992 to 1.8 million in 2023 – well over a fivefold increase in three decades. Temporary work visa programmes even continued to grow during the years of the Trump administration², only taking a major dip because of the bureaucratic slowdowns and shutdowns that occurred during the COVID-19 pandemic, which impacted visa processing and adjudication. The Biden administration’s efforts to restore visa processing and adjudication have resulted in record numbers of temporary work visas being issued in 2022 and 2023.

² For a fuller discussion of how the use of temporary work visa programmes continued to increase during the first Trump administration, see Costa (2021).

While 1.8 million new nonimmigrant visas authorizing employment were issued in 2023, the number of temporary migrant workers who are currently authorized to be employed, or who are authorized to be employed at a particular point in time, is distinct from the number of temporary migrant workers who receive newly issued nonimmigrant visas in a given year. Costa (2021) has estimated that the total number of temporary migrant workers who were employed in the US labour market in 2019 was nearly 2.1 million, which represented an increase of nearly 13 per cent from the end of the Obama administration in 2016. In total, temporary migrant workers represented 1.2 per cent of the US labour market in 2019. Given the sharp increase in visas issued in 2022 and 2023, this total is certain to be higher today, driven mainly by growth in the H-2A and H-2B visa programmes.³

The growth of temporary labour migration programmes is a concern for migrant worker advocates, and should be a concern for policymakers because these programmes usually tie migrant workers to one employer who controls the worker's visa status, giving employers control over migrant workers' right to remain in and be employed in the destination country. There have been countless documented cases of wage theft, various forms of abuse and exploitation, and even human trafficking through temporary labour migration programmes in the United States, many of them a logical result of the employment relationship and power imbalance between workers and employers that is facilitated by the legal frameworks of these programmes. As a result, temporary labour migration programmes have been widely criticized by migrant worker advocates, human rights experts and government officials for many years, some of whom have even dubbed them as "close to slavery" and "the new American slavery" (SPLC 2008; SPLC 2013; Garrison, Bensinger and Singer-Vine 2015a).

What does it mean to have a labour migration system structured to be increasingly made up of temporary workers with few rights and who cannot easily change employers, rather than permanent immigrants who have full rights on par with US citizens?

To begin to address this predicament, some experts and advocates have recommended portability for migrants in temporary labour migration programmes – in other words, "un-tying" visas from employers, and thus allowing workers to switch jobs – as an obvious solution that will protect workers and improve the credibility of the programmes in the eyes of the public. What portability looks like in practice, however, can take many forms in different countries and among different schemes within the same country. Some programmes already permit migrant workers to switch employers if they are able to find an employer willing to file the necessary paperwork, while other programmes may permit changing employers in limited circumstances, for example, when abuses or labour disputes occur. Additionally, some programmes may allow for an open

3 On these visa programmes, see below under "Background: H-2A and H-2B".

work permit or the ability to work for different employers so long as the migrant worker stays within a particular industry, while others only allow remaining in the same visa status and under similar conditions.

This chapter discusses the mechanics and effectiveness of existing forms of portability for migrants in different temporary labour migration programmes in the United States, as well as the promise of recent developments. It also assesses whether portability alone can result in decent work in the United States, and by extension, destination countries around the world – and if not – what are the challenges that remain and which policy solutions are required.

The promise of portability in temporary labour migration programmes

One of the primary solutions offered to improve US temporary labour migration programmes – which arguably, has even been framed as a sort of panacea – is allowing migrant workers to change employers while they are employed in their temporary status. Allowing temporary migrant workers to change employers is something that both critics of temporary labour migration programmes and proponents of expanding them have called for, for many years, including by a diverse group of advocates, ranging from legal aid lawyers and corporate representatives to development economists.

Advocates with diverse views on temporary labour migration programmes call for portability

The Migration that Works (MTW) coalition has repeatedly called for temporary migrant workers to be able to “control their work visas” and “change jobs or industry sectors” (MTW n.d.-a; MTW 2022). This coalition of US-based groups describe themselves as “a coalition of labour, migration, civil rights, anti-trafficking organizations and academics advancing a labour migration model that respects the human rights of workers, families and communities and reflects their voices and experiences” (MTW, n.d.-b).⁴ Some MTW member organizations represent temporary migrant workers directly and advocate on their behalf.

In addition, researchers, policy advocates and even business representatives who prioritize expanding and deregulating temporary labour migration programmes have also called for portability. A key difference is that these latter proponents often emphasize that portability alone is a panacea for temporary labour migration programmes – one that can even substitute for additional

⁴ Disclosure: The author’s employer organization is a member organization of Migration that Works.

labour standards regulation, enforcement and worker protections. In other words, according to these proponents, temporary migrant workers would be able to benefit from, and even be protected by, the “free market”, because they could offer their services to the employer offering the highest wages and benefits and the most desirable workplace conditions.

For example, take the public comments of Michael Clemens, a prominent professor at George Mason University, who previously represented the Center for Global Development, a think tank in Washington, DC. While hosting an event in 2016 to unveil a proposal for a bilateral worker programme between the United States and Mexico, Clemens discussed the inherent problems of temporary migrant workers being unable to change employers:

*By far the **largest problem with the bracero program** – and it was a deep and poisonous flaw – was **tying the workers to single employers**. Meaning they had no power to go down the road or go across the country, or in practice to organize. ...*

*This [changing employers] is a critical protection, not only for their rights, but for the rights of US workers who are often working alongside them, to **make sure the law is complied with** (emphasis added).⁵*

Consider also the views of Alex Nowrasteh of the libertarian Cato Institute, who is perhaps one of the most prominent voices calling for the expansion and deregulation of US temporary labour migration programmes. In his 2013 paper “How to Make Guest Worker Visas Work”, Nowrasteh writes:

*Visa portability that lets guest workers change jobs with a minimum of paperwork or notice to employers as long as the worker notifies the government after the fact deprives abusive employers of employees, incentivizes good behavior, and **acts as an enforcement mechanism that punishes employers** who do not treat employees as well as competing firms. **Visa portability allows workers to regulate their own work environment or change it at will.** (emphasis added).*

⁵ Comments of Michael Clemens at “Shared Border, [Shared Future: A Blueprint to Regulate US-Mexico Labor Mobility](#)”, an event hosted by the Center for Global Development on 13 September 2016.

Another example comes from Vivek Wadwha, an author and technology company entrepreneur who has long advocated for expanding and deregulating the H-1B visa programme. Wadwha has argued that portability alone would fix the H-1B programme. While acknowledging that the lack of mobility and portability are problematic and restrict rights and lower wages for temporary migrant workers in H-1B, Wadwha nevertheless went on to argue against additional regulatory measures:

And the problem is that this visa ties the worker to the employer, which is where the indentured servitude comes from ...

This is what makes America great, is the free market. Let's go back to that. Let's not have more regulation or more loopholes that can be subverted, which is what we were talking about. Simple. Untether the two things, let the free market rule. (emphasis added).⁶

Are the advocates for portability correct to argue that the legal ability to change jobs will provide protection from exploitation? If so, is portability enough on its own?

There have been few attempts to measure the impact of portability

While it seems simple enough, and commonsense, that portability for migrant workers in temporary labour migration programmes would represent an improvement relative to the status quo in terms of their human and labour rights, there have only been a few serious attempts to measure the impact of the lack of portability – or the impact that portability could have – on temporary migrant workers, in terms of wages and other outcomes. One example is a paper by Naidu, Nyarko and Wang (2014), which found that workers who were allowed to find a new employer after a reform to the *kafala* (sponsorship) system in the United Arab Emirates increased their earnings by 10 per cent. A paper by Gibbons et al. (2019) examined employer monopsony power created by the lack of portability in three major US temporary labour migration programmes – namely H-1B, H-2A and H-2B visa programmes – and the impact it has on the wages of temporary migrant workers in those programmes. Apgar (2015) compared the wages of similarly situated Mexican workers with H-2A and H-2B visas with those of unauthorized migrants in the United States, finding no wage premium for having an authorized temporary immigration status versus being unauthorized, and a wage penalty compared to permanent residents, and

⁶ Comments by Vivek Wadwha on the *PBS Newshour*, “[How Could the H-1B Visa Program for Foreign Workers Be Improved?](#)”, 18 April 2017.

pointed to the lack of portability as the likely cause. Lalani (2011) assessed data on migrant domestic workers in the United Kingdom, finding that between 2003 and 2010, 41 per cent of migrant domestic workers who changed employers cited abuse and exploitation as the reason for making the change.

There have also been few assessments of how portability will function in practice, and whether it will in fact lead to decent work for temporary migrant workers and improved protection of their human and labour rights. In fairness, what portability looks like in practice can vary from country to country and even from visa to visa, making it difficult to measure or assess.

Whether portability alone is enough to improve temporary labour migration programmes and put them on the path towards meeting standards for decent work, is a separate question, which has also not been tested or evaluated, at least not in the United States. The claims made by Clemens, Nowrasteh and their ilk are therefore quite bold and made without evidence. There is ample reason to believe that portability alone may not be enough, when considering the reality that a significant share of US workers who have the legal ability to change jobs – meaning those who are US-born citizens, naturalized US citizens or permanent residents – currently face major challenges in the workplace on a grand scale. While these workers can change employers freely at any time, significant shares of them are the victims of wage theft.⁷ According to the logic of Clemens, Nowrasteh and others, US workers should be well protected from lawbreaking employers, given all the power purportedly afforded to workers in the free market. But in addition to wage theft, US workers are frequently subjected to other abuses, many of which are legal, such as employee misclassification, and through the use of non-compete clauses, the ability of US workers to change jobs within the same industry can legally be restricted. In other words, the portability of US workers between employers can be partially restricted, which is similar to the case of temporary migrant workers.⁸

Thus, as this chapter argues, the legal ability to change jobs does not alone provide protection from exploitation. While this is a pervasive assumption in basic economics, it is a generally incorrect assumption that is finally being called into question.⁹ Instead, we should think about the ability to change employers as a fundamental freedom for workers, and one that should be coupled with other protections – and not an excuse to abandon labour standards enforcement.

It should be noted that this chapter does not attempt to measure the utility, effectiveness or value of portability in temporary labour migration programmes. That is a worthy goal and hopefully one that other researchers will examine;

7 See, for example, Bernhardt et al. (2009); Cooper and Kroeger (2017); and Mangundayao et al. (2021).

8 See, for example, Schmitt et al. (2023); Colvin and Shierholz (2019); Shierholz, Schmitt, and Sanders (2023); and Jeffers (2017).

9 See, for example, the Economic Policy Institute's [Unequal Power](#) project, started in 2020.

rather this chapter is simply a modest attempt at providing a brief overview of how portability functions in practice in a few key temporary work visas programmes in the United States, while also offering commentary on whether portability alone can make temporary labour migration programmes more consistent with basic human and labour rights.

Visa portability on paper and in practice

A number of US temporary labour migration programmes already offer some degree of portability between employers for temporary migrant workers. But the degree of portability and the process involved vary for each programme – for example, there can be partial portability or portability on paper but not in practice; there may be some portability but with middlemen involved that must approve job changes; or there may be near total portability that is mostly controlled by the worker. Unfortunately, public data on temporary migrant workers who change jobs are extremely limited, making it difficult to assess whether and how many migrants are benefitting from existing portability provisions. This section offers a description of how portability functions in a few major US programmes and cites current ongoing challenges for workers within each of the major programmes that offer some degree of portability.

Low-wage workers in the H-2A and H-2B visa programmes have some portability on paper, but changing employers is difficult in practice

Background: H-2A and H-2B

Two of the most well-known temporary labour migration programmes in the United States are the H-2A and H-2B visa programmes. H-2A is a programme that allows farm employers to hire temporary migrant workers if they anticipate a shortage of US workers to fill temporary and seasonal jobs in agriculture (over 90 per cent of H-2A workers are employed on crop farms, according to data from the Department of Labor (DOL)). There is no annual limit on the number of H-2A workers, who now account for 10 per cent to 15 per cent of the US farm workforce (Costa 2023a). The H-2B programme is a similar programme intended to be used when employers face labour shortages in temporary and seasonal jobs outside of agriculture, with the most common occupations including landscaping, construction, forestry, seafood and meat processing, traveling carnivals, restaurants, and hospitality.

Changing employers in H-2A and H-2B

Before hiring an H-2A or H-2B worker, US employers must submit an application for a labour certification to the DOL showing that they have tested the labour

market and describing the positions they wish to hire H-2A and H-2B workers for, along with other requirements. US Citizenship and Immigration Services (USCIS), a subagency of the US Department of Homeland Security (DHS), must then approve the next bureaucratic step, and workers outside the United States must be issued a visa by the US Department of State (DOS).

Under US law and regulations, employers of H-2A and H-2B workers can file petitions (using USCIS Form I-129) asking to extend the visa validity of an H-2A or H-2B worker, and the visas can be extended for a total of up to three years, after which the worker must depart the United States for three months before they can be readmitted in H-2A or H-2B status. After the expiration or termination of a job contract, H-2A workers have 30 days to depart the United States and H-2B workers have 10 days.¹⁰ The same form to extend an H-2A or H-2B visa with the same employer can also be used to petition for a “change of employer” in the same visa classification. A new employer that wishes to hire an H-2A or H-2B worker who is already in either status must first apply for and obtain an approved labour certification from the DOL.

Thus, a temporary migrant worker in either the H-2A or H-2B programme can, legally speaking, change employers – in other words, they have portability on paper. Changing employers in H-2A is more restricted: H-2A farmworkers can only change employers if the new employer participates in USCIS’s E-Verify programme, which is a voluntary electronic employment verification system. But few agricultural employers use E-Verify because a significant share of farmworkers are in an irregular status and thus lack employment authorization, which limits the ability of farm employers to hire. That requirement serves to limit the universe of employers that H-2A workers can be hired by. And in both H-2A and H-2B, employers control the entire process – employers are required to apply for labour certification with the DOL and file petitions with USCIS – leaving temporary migrant workers with little agency or power in terms of the bureaucratic process.

A temporary migrant worker who wishes to change jobs would need to find a new employer with an open position (and in the case of H-2A, the employer would also have to participate in E-Verify) and request that they file the necessary paperwork with the DOL and USCIS and pay the costs associated with the filings, which also need to be completed within the appropriate timelines, which can take many months. H-2A jobs, on average, are certified for six months and H-2B jobs are certified for just under eight months,¹¹ leaving H-2A and H-2B workers with little time to find a position with a new employer and be hired for it.

¹⁰ At the time of writing, DHS has proposed a regulation to align the time to depart for both visas to 30 days, although the regulation has not been finalized (discussed in more detail later in this chapter).

¹¹ Author’s analysis of Office of Foreign Labor Certification, [Disclosure Data](#) for H-2B, fiscal year 2021 data file (unpublished, on file with the author); Philip Martin, analysis of Office of Foreign Labor Certification, [Disclosure Data](#) for H-2A, fiscal year 2020 data file.

Unless they are provided with assistance, the workers – nearly all of whom do not have a university degree – would also need to understand the application process, which is likely to be difficult if they do not speak English or have a background in immigration law.

As discussed in Costa (2021), in response to the onset of the COVID-19 pandemic in early 2020, which led to bureaucratic slowdowns and shutdowns at federal agencies that process visa applications and petitions for all US temporary work visas, the Trump administration put in place temporary “portability” provisions in the form of emergency regulations to streamline the process for extending H-2A and H-2B visas and for changing employers, including waiving the requirement that H-2A workers can only work for a new employer if they participate in E-Verify.¹² This was done so that the workers who were already present in the United States could continue being employed, given that new workers were unlikely to enter the United States from abroad in the near term. While the measures have since expired for H-2A, they have continued to be extended for H-2B via temporary regulations. A measure was also separately put in place at US consulates, allowing consular officers to waive the usual required in-person interviews, so that some new H-2A and H-2B workers could continue to enter the United States. This authority to waive the in-person interviews has remained in place.

Issues and challenges remain in H-2A and H-2B despite portability on paper

As noted above, in practice, changing employers is not simple or straightforward in H-2A and H-2B. The obstacles are likely insurmountable for most workers, making it an unreasonable option for them if they are in a situation with an employer that breaks the law or subjects them to unreasonable conditions or abuses.

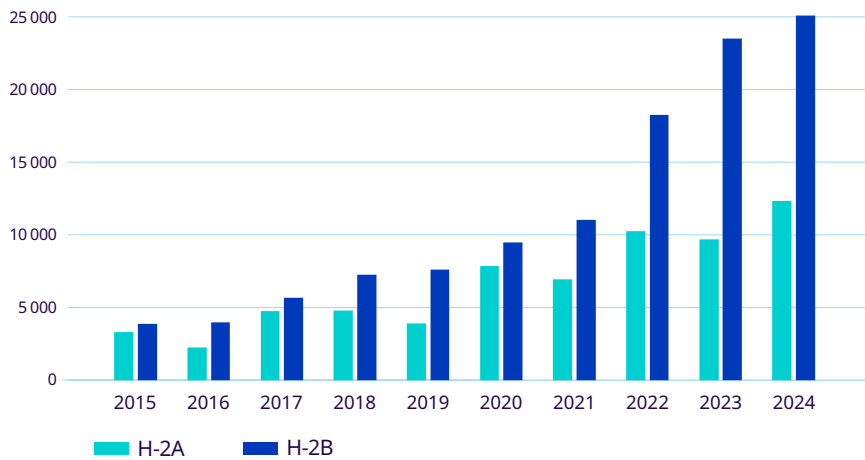
However, available data suggest that the temporary regulations put in place at the start of the pandemic led to more H-2A and H-2B workers being able to extend their stays and change employers. New data published in late October 2024 from USCIS reveal the extent to which H-2A and H-2B workers have successfully changed jobs since 2015. [Figure 2](#) shows that the number of H-2A workers whose petitions for a change of employer were approved went from 3,299 in 2015 to 12,337 in 2024, an increase of 274 per cent. The increase of workers changing employers was even greater in the H-2B programme, going from 3,866 in 2015 to 25,056 in 2024.

While portability was increasing slowly for both programmes from 2015 to 2019, the increase was greater after the 2020 temporary regulations were put in place, especially in H-2B. The difference leading to the greater increase in H-2B is likely explained by the expiration of the temporary legal authority making it easier for H-2A workers to change employers – which ended in December 2020 – while the

¹² See discussion in Bruno (2023) and Costa (2021).

authority was extended in H-2B through 2024. The (slower) post-2021 increase in portability in H-2A that nevertheless occurred might be explained simply by the rapid growth occurring in the H-2A programme during this period (Costa 2023a). And/or it is possible that more employers signed up to participate in E-Verify after becoming aware of the portability option after the issuance of the now-expired temporary regulation.

► **Figure 2. Number of approved H-2A and H-2B petitions for change of employer, 2015-24**



Note: Totals reflect approved petitions for change of employer, as reported in USCIS Employer Data Hubs for H-2A and H-2B .

Source: AU.S. Citizenship and Immigration Services, H-2A Employer Data Hub and H-2B Employer Data Hub, fiscal years 2015-2024, U.S. Department of Homeland Security.

Nevertheless, the reality of the bureaucratic and practical hurdles in place for workers seeking to change employers suggests that the temporary regulations were likely useful tools for employers and recruiters – rather than a tool for H-2A and H-2B workers to find better employment opportunities or who needed protection from an abusive situation, such as a lawbreaking employer. The regulations allowed employers and recruiters who knew how to navigate the bureaucratic system to hire H-2A and H-2B workers who were already in the United States.

In addition, even with the increasing portability in H-2A and H-2B, it is also true that some of the worst abuses of H-2A and H-2B workers have occurred in recent years, including since the temporary regulations were put in place to provide workers and employers with flexibility. Perhaps the most well-known case is one

that has been dubbed “Operation Blooming Onion” – one of the largest human trafficking cases ever prosecuted by the US Department of Justice (DOJ). The defendants in the case had petitioned for over 70,000 H-2A workers, subjecting them to conditions DOJ described as “modern-day slavery”.¹³ Numerous other investigations in the past two years have also uncovered extreme abuses revealing how H-2A and H-2B are “essentially modern indentured servants”.¹⁴

College-educated workers in the H-1B visa programme have near total portability, but employer sponsors are required

Background: H-1B

The H-1B visa programme allows US employers to hire college-educated migrant workers as well as fashion models from abroad. It is the largest temporary labour migration programme in the United States, with nearly 600,000 workers (United States, USCIS 2020), making it the main temporary labour migration pathway for college-educated workers. The programme is dominated by major technology companies like Amazon and Microsoft, as well as by staffing firms that specialize in information technology outsourcing, accounting and consulting (Costa and Hira 2023).

The H-1B programme is intended to be used when employers face labour shortages in professional jobs, with the most common occupations being in computer and engineering occupations, healthcare and teaching. However, most employers are not required to first test the labour market for an available US worker. H-1B visas can be approved for three years and renewed once for a total of six years, but workers waiting for permanent residence can be extended indefinitely.

Changing employers in H-1B

For an H-1B worker, changing employers is relatively straightforward, but not simple in practice. If an H-1B worker finds a new employer, they can work for them if the employer is willing to file the necessary paperwork. The required paperwork consists of a petition requesting an H-1B worker from USCIS, along with associated fees, which can range between US\$2,000 and US\$6,000, depending on the type of employer, excluding attorney’s fees which may cost additional thousands of dollars.¹⁵ Unlike with the H-2A and H-2B programmes, there is no need to seek approval from the DOL.

¹³ See, for example, Grinspan (2023).

¹⁴ Guerrero (2023), but see also, for example, Cotsirilos (2023) and Vasquez (2023).

¹⁵ The cost of an attorney to process the necessary paperwork could increase the total cost by many thousands of dollars. See for example, Anderson (2024).

Under the current rules, H-1B workers can begin their employment with the new employer immediately after the petition to USCIS has been filed – they do not need to wait for the petition to be approved – although if the petition is denied, the H-1B worker must cease their employment. In cases where an H-1B worker is fired or laid off, or voluntarily terminates their employment before finding a new employer, under current DHS regulations, the H-1B worker has a 60-day grace period to seek and find new employment before their visa status is terminated. For these workers, the process is similar to that of H-1B workers who change employers: the new employer must be willing to file the paperwork and pay the fees, and the H-1B worker can begin employment as soon as the petition is filed with USCIS.

Unlike with most other US temporary labour migration programmes, the US Government publishes the number of H-1B workers who changed employers. Data show that an increasing number of H-1B workers have been changing employers – in other words, exercising their portability – every year, with the numbers climbing from 23,760 in 2005 to a high of 130,756 in 2022, and 117,153 in 2023.¹⁶ To provide a sense of the share of total existing H-1B workers who are changing employers, we can make a rough estimate. If we assume that the USCIS's estimate that there are 583,420 total H-1B workers employed in the United States as of 2020 (United States, USCIS 2020) has remained constant in 2023, we can then consider that in 2023, there were 118,948 new H-1B workers hired (United States, USCIS 2024). Those new hires should be subtracted from the total population because they are not expected to change jobs yet. That leaves 464,472 H-1B workers who are employed and not new hires. Of these, 117,153 petitions in 2023 were for H-1B workers changing employers. That means that roughly one-quarter (24 per cent) of H-1B workers who were not initial hires were able to change employers in 2023, a significant share.

Issues and challenges remain in H-1B despite portability

As the discussion above details, changing employers in H-1B is relatively straightforward, and many have successfully changed employers. But the process is difficult in practice because the universe of employers who might be willing to complete the bureaucratic paperwork and pay thousands of dollars in associated fees are likely to be a small share of all US employers – which has the effect of restricting the portability H-1B workers ostensibly have on paper.

H-1B workers are college-educated and many earn relatively high wages compared to average wage rates in the United States, and they have had access to visa portability for at least two decades. Has portability been enough to protect H-1B workers from abuses and exploitation? There was a natural experiment in 2022 and 2023 that tested the utility of portability, when US technology

¹⁶ See the H-1B petition reports at US Citizenship and Immigration Services, [Reports and Studies](#) (accessed 24 April 2024). See also the discussion in Bier (2024).

companies laid off roughly 430,000 workers.¹⁷ Many of the companies laying off thousands of workers were some of the biggest employers of H-1B workers (Costa and Hira 2023). Amazon, for example, was at the top of the list in terms of both hiring new H-1B workers and layoffs as of early 2023. (Amazon hired 6,400 new H-1B workers in 2022 and hired the most new H-1B workers in 2021 as well, when it hired nearly 6,200 workers.) As of early 2023, Amazon had laid off or planned to lay off 27,150 of its employees, more than twice the number of H-1B workers it hired in 2021 and 2022 combined.

Although anecdotal, there were numerous news reports that many H-1B workers were dismissed as part of recent layoffs, including at least 300 at Meta.¹⁸ Because H-1B visas are tied to a specific employer – even if a worker, on paper, can change to another employer – H-1B workers are in a precarious position if they are terminated. If they wish to remain in the United States, as noted earlier, they must find a new employer to sponsor their visa within 60 days. Finding a new job in 60 days is no easy task for any worker, but it is even more difficult during a time of mass layoffs in the primary industry hiring H-1B workers. If a laid-off H-1B worker cannot find a new job within the time allotted or adjust to another valid immigration status, they will have to depart the United States, along with any family members who are on a derivative temporary visa that is tied to the H-1B.

While all H-1B workers have little power to bargain with employers because of their temporary visa status, laid-off workers are also in an extraordinarily weak bargaining position. With the 60-day clock ticking and massive layoffs in their industry sectors and occupations, many surely felt pressure to accept a job offer that pays substandard wages and offers poor working conditions just to remain in the country. And that is if they were lucky enough to find an employer willing to file the required paperwork and pay thousands of dollars in fees.

The H-1B workers who remained employed during the mass layoffs were faced with other substantial pressures. For those workers, the very real threat of a future layoff likely constrained their ability to complain about longer hours, cuts to benefits and pay, and other forms of workplace exploitation – which in turn could degrade labour standards for all similarly situated workers. And those who had prospects for becoming permanent residents may have lost their chances, because some major tech companies, such as Google, decided to pause their efforts to obtain green cards for their H-1B workers in light of the layoffs (Kreighbaum 2023).

In addition to the recent layoffs which caused hardship for thousands of H-1B workers, there have been many documented abuses of H-1B workers over the years, which have included technology workers being put into financial bondage,

¹⁷ See the [Laoffs.fyi](https://laoffs.fyi) website.

¹⁸ See for example, Werner (2023) and Dixit (2022).

teachers who were victims of human trafficking and nurses subjected to forced labour.¹⁹ Evidence of mass scale wage theft in H-1B has been uncovered (Hira and Costa 2021), and the rules for H-1B workers permit employers to pay H-1B workers much less than the local average wage for the occupations they are employed in (Costa and Hira 2020). Portability in H-1B and the 60-day grace period have surely helped many workers to find new and better employment opportunities. But for too many, like in these cases and in the case of mass layoffs, portability alone has not been sufficient to protect H-1B workers from extreme abuses, wage theft and joblessness.

College-educated workers in the TN visa programme have total portability, but extreme abuses still occur

Background: TN

The TN visa programme was created as part of the North American Free Trade Agreement (NAFTA) between Mexico, Canada and the United States, and which is now known as the US-Mexico-Canada Trade Agreement (USMCA). Chapter 16 of NAFTA, “Temporary Entry for Business Persons”, contains provisions for the temporary entry into the United States of professional workers who are Canadian and Mexican nationals, including the requirement that the applicant for a TN visa or status possess “at least a baccalaureate degree or appropriate credentials demonstrating status as a professional” and be employed in a job that is “in a profession set forth in Appendix 1603.D.1 of the NAFTA” (now the USMCA).²⁰

Before hiring a TN worker, US employers are not required to test the labour market first for available US workers through the DOL or pay a prevailing wage (like in H-2A and H-2B), nor are they required to file an attestation (like H-1B, which also requires a prevailing wage). There is no limit on the number of TN workers that US employers can hire, unlike in H-1B and H-2B. The fees for TN applications are also relatively lower than in the H-visa programmes. Together, the lower fees, lack of a labour market test or a prevailing wage, and no annual limit on TN visas make it easier and cheaper for employers to hire through TN as compared to the H visas.

The TN programme authorizes employment initially for a period of up to three years, but the TN visa or status can be renewed indefinitely. To qualify for TN, the applicant must be seeking employment in one of the listed professional occupations, which include positions like economist, engineer, psychologist, university professor, several medical occupations like dentist, physician and

19 See for example, Smith, Gollan and Sambamurthy (2014); Stockman (2013); and McGhee (2013).

20 See the [North American Free Trade Agreement \(NAFTA\)](#), 1992.

veterinarian, and positions in the sciences, like animal scientist, physicist, geo-chemist and meteorologist.²¹

Changing employers in TN

In the TN programme, changing to a new employer is relatively straightforward, although workers are technically not allowed to change employers. Instead they file for new employment and a new TN visa or status with a new employer, rather than petitioning to change employers, and they must pay the associated fee, which is roughly US\$1,600. A TN worker may also work for more than one employer at a time as long as two separate TN visas and/or statuses have been approved (one for each employer). The worker and employer can either file the paperwork for a new employer by mail with USCIS or the worker may depart the United States and apply for a new employer through the existing available routes, either at a port of entry (for Canadians) or at a US embassy or consulate (primarily for Mexicans). In the case of TN, the worker is not permitted to begin working until the petition is approved – unlike H-1B, where the worker can begin employment upon the filing of the petition, rather than after approval. The DHS does not publish any data on TN workers who apply for new employment with new employers while they are already in TN status, which makes it impossible to quantify how many TN workers are using their right to begin new employment with a new TN visa or status.

Issues and challenges remain in TN despite total portability

In the case of the TN programme, numerous cases of worker abuses and exploitation have been coming to light in recent years and advocates have begun sounding the alarm about the TN programme (Mauldin 2018). One case was in Wisconsin, where US farms recruited at least 23 college-educated workers from Mexico to work as veterinarians and animal scientists – both of which are permitted occupations for TN – but these workers ended up working as low-wage labourers milking cows and cleaning manure, and alleged that they had been deceived by employers multiple times (Perez 2020). In another case, a staffing firm for auto companies in Georgia recruited Mexican college graduates for engineering work, but after they arrived, the TN workers were required to perform auto assembly line work instead, including 12-hour shifts doing heavy lifting (Grinspan 2022). The employer allegedly lied to the TN workers about the nature of the position and violated the law because assembly line work is not permitted under the TN visa. Other reported abuses include TN workers being required to pay illegal recruitment fees, not receiving written contracts, being subjected to contract breach fees, as well as being victims of discrimination, retaliation and wage theft (Mauldin 2018).

²¹ For the full list of eligible professional occupations for the TN visa, see Appendix 1603.D.1 of the USMCA (Chapter 16).

The TN programme arguably offers the most flexibility to temporary migrant workers who want to change employers out of all the US temporary labour migration programmes. Yet TN workers have been subjected to very similar types of exploitation and employer lawbreaking as temporary migrant workers in other temporary labour migration programmes where mobility is much more restricted, suggesting that portability on its own is insufficient to allow TN workers to easily escape abusive situations.

In H-2A, H-2B and H-1B, the DOL is at least required to examine job offers from employers, and employers are required to pay a “prevailing” wage rate that, in theory, should correspond to what workers in the United States are earning for that occupation in the local area where the H-visa workers are employed, which is intended to prevent employers from driving down wage standards. While adequate enforcement of the standards in those programmes has been justifiably criticized, in TN there is no DOL involvement whatsoever and no specific worker protections exist for TN workers. This lack of protections has likely contributed to the ability of employers to pay TN workers less than the going rate for their work with impunity. The *Milwaukee Journal Sentinel* found that Mexican professional workers with TN visas were paid “25% to 50% less than the prevailing entry-level wage in the counties where they were hired to work”. One example they cited was in Twin Falls County, Idaho, where they found that “the prevailing wage for animal scientists was \$25.92 an hour, but the Funk Dairy [TN] workers were making about \$10 an hour” (Perez 2020).

Foreign students in F-1 Optional Practical Training and exchange visitors in the J-1 visa programme have portability, but middlemen are involved

Background: F-1 OPT and J-1

The Optional Practical Training (OPT) programme allows foreign graduates of US universities with valid F-1 nonimmigrant student visas to remain and work in the United States for up to one year immediately following graduation in an occupation that is related to their field of study. (This is known as post-completion OPT.)²² F-1 graduates with degrees in qualifying STEM fields (science, technology, engineering or mathematics) are permitted to extend their OPT employment authorizations by 24 months, meaning that an F-1 graduate with a qualifying STEM degree may work in the United States for up to a total of three years. The graduate may also repeat the process once if another qualifying degree is earned, for a grand total of six years in STEM OPT status.

²² Post-completion OPT and STEM OPT combined are the largest OPT programme and the focus of this section, but there is also a pre-completion OPT programme, which takes place prior to a student’s programme end date and can last up to 12 months, as well as a Curricular Practical Training (CPT) programme that takes place prior to a student’s programme end date.

OPT has no specific rules that protect the foreign graduates who work through OPT, and there is no involvement from the DOL, the main labour standards enforcement agency. There are no wage rules for OPT workers – who sometimes work without pay – and there is no annual limit on the number of OPT workers that employers can hire. US employers are not required to recruit and advertise jobs to US workers before hiring OPT workers. In recent years, OPT has grown to become one of the largest de facto temporary labour migration programmes in the United States, and has been described as “the U.S.’s largest pipeline for skilled guest workers”, despite “no legislation from Congress” that authorizes the programme (Rosenthal 2021).

In order to apply for OPT, foreign graduates in F-1 status must first request that the designated school official at their university recommend and approve them for OPT, by endorsing their application form and then updating the graduate’s status in the DHS’s database system for foreign students. After that, the graduate becomes eligible to apply to USCIS for an Employment Authorization Document (EAD); once the EAD is approved and issued, the foreign graduate may commence employment (Boundless 2024).

J-1 visas are issued to foreign nationals who participate in the Exchange Visitor Program, an international cultural exchange programme managed by the US Department of State (DOS). The J-1 Exchange Visitor Program encompasses 16 separate programmes, each with its own purpose and rules. Eleven of these programmes authorize employment – in low-, middle- and high-skilled occupations, depending on the programme – and the duration of the programme can range from four months to seven years. The J-1 programmes allow US employers to hire au pairs to provide childcare for US residents; low-wage workers for restaurants, amusement parks, hotel staff, public swimming pools, camp counselors for summer camps; as well as college-educated physicians – to just name a few of the occupations.

As with OPT, there is no involvement from the DOL in the J-1 programme. And except for one of the 11 programmes that authorize employment in J-1 (for au pairs), the programmes have no specific wage rules. J-1 employers are not required to advertise jobs and attempt to recruit local workers before hiring a J-1 worker (Costa 2011). Nearly all of the programmes that authorize employment have no annual limit on the number of J-1 workers who can be hired, except for Summer Work Travel.

An aspect of the J-1 programme that is unique is the system of enforcement and accountability that has been set up by the DOS. The DOS – an agency which has no mandate or expertise in regulating, monitoring or enforcing labour and employment laws – governs the programme. However, the DOS has outsourced management and oversight of the programme and the protection of J-1 workers to “sponsor” organizations, which are private organizations that can be for-profit or non-profit, and which charge fees to J-1 workers to participate as their

main source of revenue. Other than occasional voluntary audits of worksites, the DOS does not undertake labour enforcement actions against employers that hire J-1 workers, nor does it directly regulate them. Instead, the sponsor organizations – which partner with employers and charge fees to workers – are tasked with ensuring that employers follow the law and that workers are treated and paid fairly.

The fact that sponsor organizations profit from the J-1 programme but are also tasked with finding and satisfying employers and host families, and are primarily in charge of protecting the temporary migrant workers who participate, is an obvious and unconscionable conflict of interest. Furthermore, when labour and employment laws are broken, the DOS does not punish employers – instead, they punish sponsors by either reducing the number of J-1 workers they can recruit (which reduces sponsor revenue) or by banning them from the programme entirely (which rarely occurs). Since sponsors are the only party that is ultimately punished for any wrongdoing, there is a strong incentive for sponsors to cover up employer lawbreaking and silence workers who complain.

Changing employers in F-1 OPT and J-1

Under OPT rules, changing employers is relatively straightforward and simple. An F-1 graduate who is employed with an EAD technically possesses an open work permit that is subject to OPT rules. Thus, OPT workers may switch employers if they find a new employer – although the position must be related to their field of study – and the change must be reported to the university's designated school official. The designated school official must approve the change and modify the graduate's record in the DHS database.

In the J-1 programmes, it is possible for J-1 workers to change employers, however, they cannot do so on their own. Any changes must be approved by the J-1 worker's DOS-sanctioned sponsor organization. In the case of J-1 au pairs, the sponsor must assist the au pair to find a new host family and approve the change. Like with OPT, J-1 sponsors, if they approve a change of employer, must also update the worker's records in the same DHS database. Sponsors also have the ability to terminate a J-1 worker's participation in the programme in the database, which causes the worker to lose their J-1 visa status, leading to them becoming deportable after a short period.

Issues and challenges remain in F-1 OPT and J-1 despite portability

The DHS does not make public any data on how many OPT workers change jobs after being hired at their initial place of employment, so it is impossible to know how many are benefitting from portability. It is clear though that the OPT workers who have a work permit and simply need an approval from a university officer to change jobs, benefit from having a relatively simple path for changing employers. Nevertheless, there are documented problems in the programme that raise concerns for OPT workers.

An investigative news report described the OPT programme as “a pathway into a shadowy world of white-collar indentured servitude”, citing the few options for employment that foreign graduates have, leaving them desperate to find work and remain in the United States – and without any applicable labour or wage protections (Swaminathan 2017). A lack of university oversight was also cited: responsible officials at universities are tasked with ensuring that students are engaged in appropriate employment and that conditions are fair for OPT workers, but university officials are not experts in labour and employment laws – and reportedly rubber stamp applications without vetting employers or job offers and without reviewing key aspects of the employment, like wages and working conditions (Swaminathan 2017). In some more extreme cases, universities have been caught operating as “visa mills”, simply to provide temporary residence and OPT work permits to students, and partnering with brokers to recruit foreign students (Hensley-Clancy 2018). In one such case, a sting operation by the DHS resulted in the arrest of 22 brokers “who acted as middlemen between students and fraudulent schools”, charging fees for foreign students to obtain F-1 visas and eventually work authorization (Robbins 2016a; Robbins 2016b).

For J-1 workers, neither the DOS nor DHS makes public any data on how many J-1 workers change jobs after being hired at their initial place of employment, so it is impossible to know how many are benefitting from portability. What we do know is that DOS’s flawed system of oversight and enforcement described above has resulted in numerous cases of extreme abuses of J-1 workers, which have come to light through investigative news reports and worker advocates.²³

For example, after paying thousands of dollars in programme fees to sponsors, J-1 workers have been: found working in physically demanding jobs while being paid less than the federal minimum wage; placed with employers that have been sued for labour violations and human trafficking; forced to work in adult night clubs and massage parlours; and forced to work 25-hour shifts in fast food restaurants – and in many of these cases the workers were also threatened with arrest and deportation.²⁴ In one case, J-1 workers at a chocolate factory were subjected to difficult conditions and illegally low pay. After one of the J-1 workers complained to the sponsor, the sponsor terminated their visa, and with it the worker’s right to work in the United States. Hundreds of J-1 workers eventually went on strike to protest the conditions, which garnered national attention (Preston 2011). Living conditions for J-1 workers are also often deplorable, with documented cases of J-1 workers paying exorbitant fees for substandard housing and transportation, being forced to sleep on the floor, being denied

²³ For an analysis produced by worker advocate groups in the Migration that Works coalition, see ILRWG (2019).

²⁴ See, for example, Mohr, Weiss and Baker (2010); Allen (2007); Kopplin (2017); Wulfhorst (2018); Jordan, Maher and Jargon (2013); CDM (2018); Stewart (2014); and Bryan (2016).

food, and showing up at charities to receive free meals. Complaining often results in retaliation, leading to even worse conditions.²⁵

Portability for J-1 workers could have served as an important lifeline for workers to escape exploitative situations and illegal treatment. But when problems occur for J-1 workers, the organizations in charge of approving and facilitating portability for workers – the sponsor organizations – may be participating and partnering with the employers and families that are perpetrating the worker abuses. Thus, the portability that exists to help J-1 workers escape an abusive and illegal situation may likely be theoretical for the most part.

The DOS, which approves and vets sponsor organizations, is ultimately in charge of the J-1 programme and of ensuring that sponsors meet their obligation to supervise and protect J-1 workers. But in practice they are mostly hands off when it comes to ensuring J-1 workers are safe and treated fairly, and the DOS has few staff in charge of compliance. The DOS manages an emergency hotline for complaints, but as investigative news reports and complaints from advocates have revealed, the DOS does not review or resolve many of the complaints, and J-1 workers have told advocates that “they received either an inadequate response or no response at all” from the DOS hotline (Kopplin 2017; Stewart 2014). Thus, the ultimate backstop to protect J-1 workers barely exists either.

Portability is not a panacea for temporary labour migration programmes: Other reforms are needed

As the previous section explained, even in temporary labour migration programmes where portability is an option on paper, there are bureaucratic and structural hurdles that prevent workers from benefitting from portability – and extreme worker abuses have continued to occur despite recent temporary rule changes to make portability more accessible to some temporary migrant workers. In the programmes where portability is a realistic option – as in the TN programme – extreme worker exploitation still occurs, suggesting strongly that portability, on its own, is not enough to protect workers and lift standards to make temporary labour migration programmes consistent with the standards of decent work. Too many gaps remain in the current legal frameworks that must be improved if portability is to become a realistic form of protection for workers.

²⁵ See, for example, Kopplin (2017); Wulfhorst (2018); Jordan, Maher and Jargon (2013); CDM (2018); and Stewart (2014).

Portability in US temporary labour migration programmes should nevertheless be improved and expanded because there is no question that tying temporary migrant workers to employers leads to exploitation and various forms of law-breaking. Thus, the executive branch and Congress should implement regulations and pass laws firmly establishing that temporary migrant workers will no longer be tied and indentured to their employers through their visa status.

In sum, expanded portability rights should be coupled with other structural improvements in order to maximize the benefits to workers. The following section discusses some of the additional reforms to temporary labour migration programmes that are required.

In addition to portability, other major reforms are needed

Some of the other key necessary improvements to temporary labour migration programmes can be accomplished by the executive branch of the US Government through regulations – indeed, some have been proposed recently and will be discussed later in this section – but the reality remains that the most transformative and lasting solutions will require congressional action. An added benefit of these more durable solutions from Congress is that they will set a useful baseline of protections for temporary migrant workers, improve labour standards for them, and lift the floor for all workers, which will increase bargaining power and raise wages.

Revise rules in temporary labour migration programmes

Congress should reform temporary work visa programmes by passing laws to update, simplify and standardize the rules for all of them in ways that make them consistent with basic human and labour rights and that complement portability. And the executive branch should use the full extent of its legal authority to regulate and improve labour standards in US temporary labour migration programmes.

Congress could begin such reforms by requiring employers hiring through any temporary labour migration programme to recruit and offer jobs to qualified US workers before being allowed to recruit workers abroad. Proponents of temporary labour migration programmes assume that labour shortages exist, but offer little or no concrete evidence to demonstrate that shortages are real. Using temporary labour migration programmes only when shortages are legitimate will prevent employers from utilizing temporary labour migration programmes to lower wages and job quality.

Congress and the executive branch should also ensure transparency in the recruitment process for potential migrant workers who may wish to participate in temporary labour migration programmes, so these potential migrant workers

can vet job openings and employers before they leave for the United States. Congress should require that employers are held accountable for the actions of the labour recruiters they partner with abroad, given the number of abuses that occur in countries of origin during the recruitment process.

Employers hiring through all temporary labour migration programmes should be required to pay the temporary migrant workers they hire a fair wage that is commensurate with the value of their labour – by requiring that all workers with temporary visas are paid no less than the local average or median wage for their job. In some cases this may be accomplished through regulation, but for others it will require new legislation from Congress.

One of the most important reforms that Congress could make to protect temporary migrant workers would be to limit the time that temporary migrant workers are in a temporary status by allowing them to self-petition for permanent residence after a short provisional period, but preferably no longer than 18 months. After 18 months in a temporary labour migration programme, for example, a worker would be allowed to apply for permanent residence without the involvement of an employer and without the constraint of an annual numerical limitation. Such an arrangement would reduce the chance that an employer will use a permanent residence application as a point of leverage to control the worker.

Enact new protections from retaliation and adequately fund labour standards enforcement agencies

Because of how perpetually underfunded the DOL and other key labour standards enforcement agencies have been (Costa et al. 2024), Congress should appropriate much more funding to enforce these updated rules and strengthen the DOL's mandates to conduct adequate oversight, including random inspections of employers – rather than relying primarily on complaints from workers. Congress should also pass laws permanently banning any employer from hiring through temporary labour migration programmes if that employer has violated labour, employment, anti-discrimination or anti-trafficking laws – and the DOL, DHS and DOS should explore their authority to do this without Congress. Investigative news reports have revealed that even when the DOL sanctions an employer for labour violations committed against temporary migrant workers, the employers are often required to pay only nominal fines and are allowed to continue hiring new workers through temporary labour migration programmes.²⁶

An updated, anonymous and streamlined system for submitting complaints to the DOL should also be developed. The DOL does not investigate employers in temporary labour migration programmes unless there is a complaint from an

²⁶ See, for example, Tabachnik (2024); Cotsirilos (2023); and Bensinger, Garrison and Singer-Vine (2016).

aggrieved worker, but workers have little incentive to complain if few resources are available to investigate their complaint, and if they might be fired in the meantime, causing them to lose their visa status, their salary and their ability to pursue claims against their employers. Some of the few temporary migrant workers who file complaints in the United States do so with the assistance of representatives from worker advocacy organizations or trade unions, but there are too few resources and staff to assist the number of likely victims.

Congress should also prioritize reintroduction and passage of the Protect Our Workers from Exploitation and Retaliation (POWER) Act, or legislation similar to it.²⁷ The POWER Act is perhaps the single most important piece of legislation aimed at protecting workers, regardless of immigration status, from the threat of employer retaliation and deportation. It would expand access to humanitarian “U” visas for migrant workers who report workplace violations (U visas are currently available to victims of certain qualifying crimes who are cooperating in a related investigation or prosecution), increase the number of U visas available, and extend eligibility to more labour-related crimes. The POWER Act would also strengthen the investigative powers of labour standards enforcement agencies and permit postponing the deportation of migrant workers who file a bona fide workplace claim or are a material witness to one, so they can remain in the country to pursue the claim. They would also be eligible for employment authorization so they can work during that time.

Recent proposals in the United States may enhance portability for some temporary migrant workers

In 2023, there were two notable items that are worth highlighting in the context of portability, both of which originated from the Department of Homeland Security (DHS). One is a recent innovation that is already making a positive impact in terms of portability and protection of temporary migrant workers, and the other is a proposal for enhanced portability in the H-2A and H-2B programmes, which includes some elements that have the potential to benefit workers if implemented.

Deferred action for labour standards enforcement

In January of 2023, the DHS announced a streamlined process that provides clarity on how migrant workers who are victims of, and witnesses to, labour and employment violations can come forward to request temporary protections, including protection from deportation through what is known as deferred action (technically a postponement of deportation), coupled with access to employment authorization – an open work permit – if they assist government

²⁷ The POWER Act was last introduced in the House of Representatives in March 2023 by Rep. Judy Chu (D-Calif.) and Ranking Member of the full Education and Workforce Committee, Rep. Bobby Scott (D-VA) (see Scott 2023), and was last introduced in the Senate in 2019.

agencies in the enforcement of labour and employment laws (United States, USDHS 2024; United States, USDHS 2023a; Costa 2023b). This process has been referred to as deferred action for labour enforcement or deferred action for labour disputes, and is based on the executive branch's existing authority to grant deferred action. This interagency initiative by the DHS formalized the process and provided stakeholders and workers with information on how to access this form of immigration relief, which is intended to be used to assist local, state and federal labour standards agencies to enforce the law and hold employers accountable for labour and employment law violations.

The main beneficiaries of this initiative are temporary migrant workers and migrant workers in irregular situations, who will be able to pursue claims against employers without the threat of retaliation and deportation. The DHS's legal authority to do this on a case-by-case basis is well-founded; as is their capacity to provide workers with open work permits – formally known as Employment Authorization Documents (EADs) – so the migrant workers can support themselves financially while their claims are investigated and resolved. Having an EAD allows workers who formerly had status through a temporary labour migration programme to work for any US employer; whereas previously they were only allowed to work for the employer that sponsored their visa. Having an EAD also gives former temporary migrant workers labour and workplace rights, because having protection from deportation and a portable EAD means that, in practice, workers can report workplace violations to government officials without fear of retaliation that can lead to deportation. An EAD also allows workers to be eligible for remedies that workers who lack an immigration status may not be eligible for.

The National Immigration Law Center, an advocacy group, published a report that provides useful background and information about deferred action for labour enforcement (Cabell, Pearson and Hahn 2024). In terms of the number of workers who have been approved for deferred action through this route, there is no current available count of approvals, although the DHS noted in January 2024 that it had approved over 1,000 applications and the Migration Policy Institute reported that the DHS received more than 2,000 requests in 2023 (United States, USDHS 2024; Chishti, Bush-Joseph and Putzel-Kavanaugh 2024).

Like other forms of administrative immigration relief, deferred action – whether for labour enforcement or other purposes – is only temporary and does not lead to a permanent status on its own, and USCIS can decide to terminate or decline to renew a grant of deferred action for an individual, which would leave that individual without protection from removal and without authorization to work in the United States. Nevertheless – even though the initiative is still in the early stages – for temporary migrant workers, the deferred action for

labour enforcement process is a promising avenue for worker protection and portability that is already proving to have some success.

DHS's proposed rule on "Modernizing H-2 Program Requirements, Oversight, and Worker Protections"

In November of 2023, the DHS published a Notice of Proposed Rulemaking (NPRM) entitled "Modernizing H-2 Program Requirements, Oversight, and Worker Protections", which proposes to amend many of the regulations governing the terms and conditions of employment in the H-2A and H-2B visa programmes, including many important new enhancements to provide workers with more protections and flexibility in their employment. The NPRM invited public comment for 60 days, and nearly 2,000 comments were submitted in response by individuals, advocates, employers and industry groups (United States, USDHS 2023b). As of late October 2024, the final version of the proposal has not yet been announced or promulgated.

The main relevant provision in the proposed rule would allow an H-2A or H-2B worker to "start new employment upon the proper filing ... of a nonfrivolous H-2A or H-2B petition on behalf of such alien requesting the same classification that the nonimmigrant alien currently holds, or as of the requested start date, whichever is later" rather than having to wait for the petition to be approved by USCIS (United States, USCIS 2023). This provision and process, if implemented in a final version of the rule, would create a nearly identical portability rule as the one for H-1B visas (discussed in the previous section), although the new employer would have to get an approved labour certification for the position (which is not required in H-1B).

Several advocates have argued that for these portability provisions to function in practice and benefit workers – rather than solely benefiting employers – both the DOL and DHS must improve transparency in the systems that document and post available employment opportunities and information about employers seeking to hire H-2A and H-2B workers (MTW 2023). The DOL could, for example, make their online job portal for advertising H-2A and H-2B jobs more user-friendly and have it include additional information about key job terms and requirements, as well as housing and transportation. That would allow workers to find open positions more easily and enable them to better vet employers. The DHS for its part, could also make it possible for H-2A and H-2B workers to verify information about their own immigration status and where their applications are in the process. At present, workers do not have direct access to this information.

The other important draft provision is the proposal to grant H-2A and H-2B workers with a 60-day grace period to seek and find new employment before their visa status is terminated, which is identical to the grace period that the H-1B programme and other temporary labour migration programmes for college-educated workers provide. Under current law and regulation, H-2A workers

have 30 days before they must depart the United States and H-2B workers have 10 days. Having a 60-day grace period, combined with the ability to begin working upon the filing of a new petition by a new employer, makes portability much more realistic and attainable for H-2A and H-2B workers. It does not, however, resolve the issue that H-2A and H-2B workers must still find an employer that is willing to not only hire them, but also file the required paperwork with the DOL and DHS and pay the associated filing fees.

Even if portability is improved for workers, some practical challenges remain

Increased portability will lead to other practical challenges, which policymakers should be aware of and account for.

Cost sharing between employers

One source of likely pushback to expanded portability may come from employers, who could argue that portability imposes unreasonable costs and uncertainty on them. US employers make investments that can range from a few thousand dollars to tens of thousands of dollars in administrative and attorney's fees and transportation costs to hire one temporary migrant worker. The fact that the worker they hire could begin searching for another job and be eligible to work for another employer as of their first day of employment may worry employers and reduce the likelihood that they will make the up-front investment to hire a temporary migrant worker. Policymakers should consider rules for cost-sharing between employers when temporary migrant workers change employers, so long as no labour or employment violations are alleged to have taken place.

Labour market tests and shortage determinations in the context of expanded portability

In some temporary labour migration programmes like H-2A and H-2B in the United States, as well as in other developed countries, employers must satisfy certain government requirements for proving that migrant workers are needed to fill vacant jobs; that is, they must undergo a labour market or economic needs test to ensure that local workers are not available. In the United States, this is known as a temporary "labour certification", whereby the Government certifies the employer's need for a temporary migrant worker.

While it can be argued credibly that the DOL, the agency in charge of labour certifications, does not do an adequate job and mostly rubber stamps applications, the role of the labour certification process is nevertheless key to a credible and functioning temporary labour migration programme. When implemented correctly, the process should give local workers in destination countries the confidence to know that employers are not gaming the immigration system

to degrade local wage rates and workplace standards, and/or to replace local workers with underpaid and indentured temporary migrant workers.

In the context of expanded portability, if temporary migrant workers can change jobs and go to new employers who have not gone through the labour certification process, it will diminish the utility and legitimacy of the labour certification that allowed the original employer to hire the worker, and which arguably gives the temporary labour migration programme a degree of credibility from the perspective of protecting standards for local workers.

The temporary portability provisions discussed earlier for H-2A and H-2B have required that workers who change jobs first find employers with approved labour certifications. While this creates an additional bureaucratic hurdle for workers to find new employment, there are simple solutions that can make it easier for workers. For instance, a registration system for employers could be created with a centralized database of employers with approved labour certifications that is updated in real-time.²⁸ Policymakers should consider ways to improve and integrate the labour certification process into a system of expanded portability.

Annual numerical limits and expanded portability

Two of the largest US temporary labour migration programmes, H-1B and H-2B, have annual numerical limits, often referred to as annual “caps”, on the number of new workers that can enter the programme. H-1B and H-2B workers who extend their status or change employers are exempt from being counted under those annual caps. The fact that workers who extend their status or change employers are not counted against the caps has already contributed to the true size of the programmes expanding far beyond the 85,000 cap in H-1B and the 66,000 cap in H-2B (and beyond the expanded 131,000 H-2B cap via appropriations legislation). If this practice continues, expanded portability in programmes with annual caps will increase the size of the programmes far beyond what Congress intended, leading to many more temporary migrant workers in the United States who are still vulnerable due to the other structural flaws in temporary labour migration programmes, as discussed in this chapter and book.

The proposed DHS regulation on portability for H-2A and H-2B is a prime example, as it would provide employers with a way to evade the statutory limits set in the H-2B cap. If H-2B workers fill additional jobs beyond their first job for up to three years, and if USCIS continues to make available the maximum number of supplemental H-2B visas (as it has in recent years), the true size of

28 The Seasonal Worker Solidarity Act, for example, is a piece of legislation introduced in the US House of Representatives that would create a similar registration system and recruitment platform to enhance portability and give H-2B workers more control over their visa status and employment. See [H.R.7549](#), 117th Congress (2021–2022).

the H-2B programme could approach triple the size of the total expanded cap of 130,716 (Costa 2023c). It is unlikely that Congress intended such an outcome.

Permitting temporary migrant workers to have the basic freedom to change jobs in the US labour market is an urgent priority. But Congress and regulatory agencies should not use portability as a loophole to grow temporary programmes. Instead, Congress should focus efforts on passing legislation to provide permanent residence to temporary migrant workers so they can remain in the United States with full labour and employment rights and a path to citizenship and full integration.

Conclusion

All labour migration pathways can and should comport with universal human and labour rights standards, so they can be “safe, orderly and regular” as called for in the Global Compact on Migration (UN 2019). The ability to change employers and have portability in temporary labour migration programmes should be a basic fundamental freedom for all workers – without it, labour migration will never be safe, orderly or regular. As this chapter has argued, on its own, portability in temporary labour migration programmes will not protect migrant workers due to the many other structural failings in temporary labour migration programmes and the lack of adequate labour standards enforcement.

Portability remains of upmost importance and an urgent priority – but it is the bare minimum for a temporary labour migration programme that comports with basic human and labour rights – and certainly not an excuse to abandon other labour standards enforcement measures and protections, as some have argued. Instead, new and improved governance frameworks in temporary labour migration programmes are required, which integrate accessible and expanded portability for migrant workers and increased oversight from labour agencies.

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► Migration diplomacy between African and Middle Eastern countries: The role and impact of Bilateral Labour Migration Agreements

Sophia Kagan

Introduction

The dynamics of global migration are profoundly shaped by demographic pressures, employment prospects, and wage differentials, compelling young African men and women to seek opportunities abroad. This movement is intensified by substantial employment deficits in Africa and anticipated demographic surges, especially in Sub-Saharan Africa, and further driven by the impacts of conflict and climate change on livelihoods. Consequently, and because of a lack of regular pathways to countries of destination in Europe, an increasing number of African men and women find themselves in low-wage labour in the Middle East. The six Gulf Cooperation Council (GCC) countries¹ operate some of the largest temporary labour migration programmes in the world. The vast majority of the 24.1 million migrant workers in the Middle East (2019) are temporary migrant workers (ILO 2022). This includes Ethiopian women working as domestic workers in Lebanon and Jordan, but also increasingly East African domestic workers, nurses, hospitality staff, security guards and delivery drivers working in the GCC. Ethiopian men are also known to have travelled in significant numbers to Saudi Arabia, irregularly by land via Yemen (IOM 2023).

While temporary labour migration programmes are touted for their “triple benefits”, the reality often reflects asymmetrical power dynamics favouring destination countries, undermining the interests and needs of migrant workers coming from Sub-Saharan Africa. Concerningly, the push to recruit more African workers, including through new bilateral labour migration arrangements (BLMAs),² is seen by some commentators as a way for Middle Eastern countries

1 Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

2 This chapter will use the terminology of bilateral labour migration arrangements (BLMAs) to encompass both (binding) bilateral agreements (BAs) and (non-binding) memoranda of understanding (MOUs). In practice, the distinction between binding and non-binding agreements is often irrelevant in terms of the enforceability of the provisions of the respective agreements.

to source “cheaper” workers, as Asian countries of origin demand higher “minimum reference wages”³ and improved working conditions for their nationals (ILO 2020). In 2022–23 alone, at least nine BLMAs were signed between Sub-Saharan African countries (particularly Ethiopia, Uganda and Kenya) and Middle Eastern countries (particularly Saudi Arabia).

Studies on African migration diplomacy have largely focussed on migration diplomacy between African countries and the European Union (EU) (Geddes and Maru 2020; Maru 2021), particularly since 2015 when a new and aggressive migration diplomacy emerged from the EU to pressure and encourage African countries to contain or stop migration to Europe (Castillejo 2018). However, Africa–Middle East labour migration remains under-studied, and little is known about the migration diplomacy in this corridor,⁴ including the reasons for and impact of the proliferation of BLMAs in the corridor.

This chapter addresses this gap in migration diplomacy research by unpacking the motivations of key actors in Africa and the Middle East, especially in GCC countries, for engaging in BLMAs, as well as the role of international organizations such as the ILO in supporting these agreements. Migration diplomacy is commonly defined as the use of diplomatic tools to manage cross-border population mobility, including strategic migration flows and diplomatic methods to achieve migration-related goals. This diplomacy is influenced by the power dynamics and interests of the States involved, with tactics ranging from the cooperative to the coercive. The chapter contributes to empirical and theoretical debates on migration diplomacy and temporary labour migration by examining the “positive sum” dimensions of migration diplomacy between African countries and the Middle East, particularly the GCC, Lebanon and Jordan. Through the prism of negotiating and implementing BLMAs, the chapter will ask why African and Arab States sign BLMAs, why international organizations such as the ILO support such BLMAs and examine the unfulfilled promise of BLMAs in ensuring workers’ protection.⁵

3 For example, the Philippines Government requires a minimum wage of US\$400 per month in any country of destination.

4 In this chapter, the notion of a “migration corridor” is used as a frame for observation of continuous movement from one region to another, and is not limited to the relations between two countries only.

5 Non-binding MOUs are far more common than binding labour migration agreements in the interregional Africa–GCC corridor.

African workers in the Middle East

Migration trends on African workers in the Middle East are hard to assess because of a scarcity of reliable data in the administrative data sets of individual countries of origin and destination.⁶ A recent ILO analysis of administrative data from GCC countries, Lebanon and Jordan found that, although Asian workers continued to predominate, there was a rapidly increasing number of Sub-Saharan African workers in certain Middle Eastern countries, including Saudi Arabia. The table below shows the number of migrant workers in Saudi Arabia in the private sector. The number of Kenyan, Nigerian and Ugandan workers in the private sector increased rapidly in the years 2020–22 – with roughly threefold increases seen in the cases of Kenya and Uganda.

► **Table 1. Saudi Arabia: Workers employed in the private sector by country of citizenship, 2020–2022**

Region/country of citizenship	Private sector		
	2020	2021	2022
Arab countries	1 991 432	2 081 271	2 338 123
Asian countries	4 393 768	4 364 020	5 237 893
Ethiopia	18 914	18 044	16 719
Kenya	7 929	20 871	22 415
Nigeria	6 087	7 775	10 651
Tanzania	512	542	688
Uganda	9 970	26 406	34 922
Sub-Saharan African countries	88 165	120 828	136 844
Total migrant workers	6 501 955	6 594 677	7 744 139
Total workers (migrant + national)	8 285 417	8 516 072	9 937 146

Sources: GLMM (2020); GLMM (2021); GLMM (2022); GLMM (2023a).

⁶ Only a small subset of countries of destination disaggregate some data on the basis of country of nationality, including by specific African countries of origin. Given their small numbers, African migrants rarely appear in published statistics, which focus on major countries of origin. Moreover, many migrants from African countries are considered to be in irregular administrative situations in countries of destination.

Domestic work is one of the most important sectors for African workers in the Middle East. For example, in Q4 2023 there were estimated to be 3.82 million migrant domestic workers in Saudi Arabia, including 71 per cent men and 29 per cent women, comprising roughly a quarter of the labour force (Saudi Arabia, General Authority for Statistics 2023).⁷

African countries' own data also suggest a rapid increase in migration to the Arab States, especially the GCC. According to the Ugandan Government, the number of women domestic workers deployed from Uganda to the GCC countries and Jordan increased from 2,539 in 2016 to 93,396 in 2022.

As domestic workers are excluded from labour laws in the Middle East, African domestic workers are deeply vulnerable to decent work deficits. In particular, many may arrive legally but then fall into irregularity as a result of the application of the rigid sponsorship system known as *kafala*.⁸

Another clue as to the number of African workers in the Middle East can be gleaned from the number of forcible returns. Between 2017 and 2023, the International Organization for Migration (IOM) recorded more than half a million Ethiopian migrants forcibly returned from Saudi Arabia. The vast majority – 91 per cent – were men (IOM 2023).

Migration diplomacy in the Africa–GCC corridor

Building on literature on the interplay between foreign policy and population mobility, Adamson and Tsourapas (2018, 278) define migration diplomacy as “the use of diplomatic tools, processes, and procedures to manage cross-border population mobility, including both the strategic use of migration flows as a means to obtain other aims, and the use of diplomatic methods to achieve goals related to migration”. The nature of this diplomacy, much like traditional diplomacy, is shaped by the power dynamics and interests of the States involved. Thus, in their diplomatic interactions, States may adopt a “zero-sum” strategy, where one State’s gain is considered another’s loss, or a “positive-sum” strategy, where all involved parties benefit, though possibly to varying extents. The diplomatic tactics used by countries of origin, transit or destination can be coercive (Tsourapas 2017; Tsourapas 2018; Malit and Tsourapas 2021),

⁷ The exact number of African domestic workers in Saudi Arabia is unknown, as there is no nationality-level disaggregation in publicly available data for domestic workers (GLMM 2023b).

⁸ In Kuwait, the number of African workers, especially Ethiopian domestic workers, rapidly decreased from 46,823 in Q4 2015 to 7,932 in Q2 2023. Kuwait’s administrative data showed that nearly 40 per cent of all residents in irregular status from 2015 to 2022 were Sub-Saharan African workers, leading to the hypothesis that many Ethiopian domestic workers remained in the country but in irregular status. See, for example, ILO (2017).

cooperative (Tsourapas 2017; Malit 2023), or involve linking various issues together (Tsourapas 2017), particularly in managing cross-border migration and their relations with other States.

In the context of countries of origin, there has generally been an emphasis in academic literature on coercive tactics, such as repatriation (forced return of migrant workers) or restriction of migration flows (including migration bans by countries of origin) to push for increased labour protections for their nationals. For example, Malit and Tsourapas (2021) demonstrated how the Philippines Government managed to compel stronger destination countries like Kuwait and the United Arab Emirates to enter into strengthened BLMAs to safeguard domestic workers by employing coercive migration diplomacy tactics such as migration bans.⁹ Through these actions, even in the face of significant power disparities, a country of origin can, in certain contexts, negotiate better cooperation in the long-run by posing a short-term risk to the interests of more powerful States. The effectiveness of such strategies, however, hinges on the concept of “migration interdependence” – that is, the country of destination’s “vulnerability” to the economic and political costs imposed by the origin country’s actions (Tsourapas 2018). If the destination country cannot mitigate these costs internally or find alternative sources of labour from other countries, then the tactics by the country of origin are more likely to be successful.

BLMAs, on the other hand, are examples of positive sum migration diplomacy, though the reality is that both sides do not gain equally. This can mainly be attributed to power asymmetry between States during negotiation and implementation, but also the eagerness of countries of origin not to ask for “too much”, lest the negotiations break down and countries of destination opt instead to negotiate with other countries (Cholewinski 2015).

GCC countries’ approach to BLMAs

Although having its origins in the British mandate in the Gulf during the nineteenth century, temporary labour migration to the GCC was sparked by the 1973 “oil boom” in the Middle East following the decision of the Organization of the Petroleum Exporting Countries (OPEC) to raise oil prices that year. Arab workers from neighbouring countries were drawn to the region to work in construction and manufacturing, but the “guestworker programmes” were unique for the degree of dependence that workers had on their employers as part of the *kafala* sponsorship system (ILO 2022; Al Shehabi 2009; Fargues and De Bel-Air 2015). The 1990s and early 2000s witnessed an increasing feminization of temporary labour migration, with significant flows of female

⁹ Editors’ note: see also Piguet (Chapter 11) in this volume on Italy deploying similar tactics vis-à-vis Switzerland in the 1960s.

domestic workers to the GCC; although the intersection of *kafala* restrictions and the isolation of workers in individual homes triggered widespread allegations of labour abuses and insufficient government oversight (ILO 2022). Unlike other migrant-receiving countries, the GCC countries highly restrict any opportunity for citizenship or permanent residency, creating perhaps the largest and most enduring “guestworker programmes” of any region. Although longer residency has now been offered to investors and some high-skilled workers, the vast majority of migrants (called “temporary expatriates” to erase any connotation of permanent movement) are employed on two- to five-year contracts and must return to their country of origin if their sponsorship is not renewed (Kagan and Cholewinski 2022).

In the past two decades, BLMAAs have functioned as a mechanism to open new migration corridors, as GCC countries continue to require increased numbers of construction, hospitality, facilities management and domestic workers (ILO, unpublished). In this regard, decision-making and migration policy are shaped not just by government policy but also by a range of non-State actors, particularly recruitment agencies, corporations and domestic institutions, as well as local and expatriate economic elites who accrue significant rents from migration and wield lobbying power over GCC governments and governments in countries of origin (Malit and Tsourapas 2021). Power asymmetries are important to consider not only at a bilateral level, but also in the context of internal country dynamics, where employers and recruitment agencies can have a powerful voice in supporting or shutting down BLMA negotiations, while workers’ voices are rarely, if ever, considered (Mieres and Kagan 2022).

GCC countries have historically utilized BLMAAs to secure diverse labour supply from various African and Asian countries, in order to decrease the risk of migration interdependence on any one country of origin – for reasons including economic stability, resisting the kind of coercive diplomacy noted above, as well as national security.¹⁰

In the 1980s, the signing of BLMAAs was largely dominated by Qatar, which signed a raft of agreements with a diverse set of countries in Asia and Africa (Chilton and Posner 2017; Chilton and Woda 2021), as shown in the Appendix of this chapter. During the period from 1990 (end of the Cold War) to the early 2000s, when BLMAAs proliferated globally at an astounding pace, most countries in the region (other than Qatar) had still not engaged very actively in BLMA negotiations. During this period, however, major changes were happening in migration flows to the Arab States, namely the replacement of Arab migrant

10 Many GCC countries mandate “demographic diversification” rules requiring companies to maintain a range of nationalities in their workforce. This can be seen as a way to avoid worker organizing and mobilization, which often occurs on a nationality basis (see, for example, Fragomen 2024).

workers with Asian workers due to Gulf regimes' fear of Arab immigrants' political activism and the perception of certain migrant groups siding with Iraq during the 1990 Gulf War, which led to significant expulsions of Palestinian, Iraqi and Egyptian workers (Thiollet 2011).

Despite these major policy changes, and the rapid influx of Asian migrants to replace Arabs, there remained few BLMAs between Asian countries and GCC countries until the years 2006–2008, when a rapid uptake of BLMAs led to 20 agreements signed between GCC countries and South Asian countries (specifically Bangladesh, India and Pakistan) and the Philippines (Chilton and Posner 2017). However, this surge in agreements did not yet include the biggest country in the region – Saudi Arabia – which started signing BLMAs in 2013 with South Asian countries and quickly expanded to Sub-Saharan Africa to boost migration flows.

The text of agreements between GCC countries and Asian and African countries has often followed a somewhat similar template since the 1990s. For example, the Qatar–Philippines BLA (1997) required the Philippines Government to screen workers and inform them about life in Qatar in advance of travel. Employers were required to bear the cost of workers' travel, unless the workers broke their contract. Written contracts were mandatory, and provisions were required to be in place in Qatar to resolve disputes between workers and employers (Chilton and Posner 2017). A joint committee was to be set up to monitor the agreement. Qatar was also one of the first countries to append model contracts to bilateral agreements, which had not previously been the practice. However, the use of model contracts negotiated bilaterally between countries has also been critiqued on the bases that they are rarely enforceable in the country of destination and set up grounds for discrimination based on nationality, especially where they differ from the standard model contract that countries of destination have in place (Wickramasekara 2015).

Some aspects of BLMAs have evolved over the decades, including as a result of migration diplomacy by countries of origin such as the Philippines and India, which were successful in pushing provisions for a minimum wage and 24-hour worker assistance to be included in their respective BLMAs. As noted by Malit and Tsourapas (2021), this often came as a result of intense coercive migration tactics by country of origin officials, which were triggered by high-profile cases of abuse of domestic workers.

Some of the other notable changes that can be seen from an analysis of Africa–Middle East BLMAs include:

- ▶ Occasional reference to the need to ensure human rights and dignity of workers, especially female workers' health and safety, given their vulnerabilities (United Arab Emirates–Uganda BLMA, 2019, article 6(4));
- ▶ Occasional reference to compliance with international labour standards, including ensuring that the employment contract is "in accordance with applicable international instruments, including ILO declarations and principles and Conventions to which both countries are party" (Lebanon–Ethiopia BLMA, 2023, article 7(3));
- ▶ The requirement by the country of destination to "facilitate the opening of a bank account by the employer under the name of the domestic worker for the deposit of his/her salary" (Saudi Arabia–Uganda Agreement on Recruitment of Domestic Workers, 2023, article 4(3); also found in the Jordan–Uganda BLMA, 2017, article 10(1)); and
- ▶ Requirement for destination countries to educate employers about their responsibility, to "ensure the employer's knowledge of the terms and conditions of the employment contract in compliance with the applicable laws, rules and regulations" (Saudi Arabia–Uganda BLMA on Recruitment of Domestic Workers, 2023, article 4(5)).

African countries' approach to BLMAs

Arguably, in terms of policy discourse, migration was not a high priority for African countries until the last two decades. National migration governance debates began to get more attention around 2005 with the development of the Migration Policy Framework for Africa at the encouragement of the EU. This led the African Union (AU) and its Member States to focus on creating continent-wide policy and effective migration governance frameworks, including at the AU, regional economic community and national levels (Maru 2021). With increased pressure for cooperation and financial support from the EU, the migration agenda became even more embedded in policy discourse, especially after the EU–Africa Valletta Summit on Migration in 2015 (Castilejo 2018). As of 2020, more than 39 African countries had developed or were in the process of adopting policies, strategies, migration profiles and action plans, with particular emphasis on countering irregular migration, trafficking in human beings and people smuggling (Maru 2021).

While EU–Africa migration diplomacy centred around structured dialogues imposed by EU countries, Africa's diplomacy with GCC countries was initially ad hoc and unilateral, as evidenced by temporary unilateral migration bans imposed (but rarely enforced) in response to sporadic media attention to

the exploitation of African workers in the Middle East. Ethiopia implemented a ban on labour migration to Middle Eastern countries in 2013. The decision was prompted by widespread reports of abuse and exploitation of Ethiopian workers, particularly in Saudi Arabia and Lebanon. The ban was partially lifted in 2018 after Ethiopia negotiated labour agreements with several GCC countries, but remained on paper in regard to Lebanon until a BLMA was signed in 2023. In 2014, Kenya temporarily suspended the recruitment of Kenyan workers to Saudi Arabia following reports of mistreatment. The ban was lifted in 2017 when a BLMA was signed with Saudi Arabia (Atong, Mayah and Odigie 2018). Uganda introduced a short-lived ban from January 2016 to March 2017 on domestic workers migrating to Saudi Arabia only. Other countries, such as Ghana, have not removed their unilateral ban on workers going to the Middle East, though migration flows continue unabated (Saraswathi 2023).

With increasing flows of African workers heading abroad, including to the GCC, the importance of remittances as a source of foreign currency and development finance for the government became more prominent, and many of the migration bans were abandoned.¹¹ Discourse on migration, including to the GCC, became elevated in AU and African regional economy community meetings. Minimum guidelines on BLMAs were developed, including with ILO support, such as the African Union Guidelines on Developing Bilateral Labour Agreements (AUC 2022) and the Intergovernmental Authority on Development (IGAD) Regional Guidelines on Rights Based Bilateral Labour Agreements (IGAD 2022). At a 2019 High Level Meeting of African Ambassadors of main countries of origin of African migrants in the Middle East, a commitment was made to organize “a regional consultation on labour migration, in order to move towards a common position at the continental level and [to] speak with one voice, to ensure the protection of African migrant workers” (AUC 2019, 14). A 2020 Regional Ministerial Forum on Harmonising Labour Migration Policies in East and Horn of Africa held in Nairobi on 20–21 January 2020 also concluded the need for a harmonized regional strategy on negotiation of BLMAs with the EU and with GCC countries. At the ILO–AU Africa Labour Migration Conference in 2023, participating countries committed to involving social partners in negotiating BLMAs, to making BLMAs publicly available and to considering common positions and minimum standards to avoid a “race to the bottom” (AU, ILO, ITUC-Africa and IOE 2023).

However, migration diplomacy is just one facet of broader foreign policy objectives between Africa and the Middle East, which now include heightened trade and investment relations with the GCC. GCC countries are especially interested in Africa’s agribusiness sector, to ensure sustainable food supplies to

11 According to the Global Knowledge Partnership on Migration and Development (KNOMAD), in December 2023, remittances made up 3.6 per cent and 5.3 per cent of the GDPs of Kenya and Nigeria, respectively (KNOMAD 2023).

the GCC (Gbadamosi 2023). Saudi Arabia, for instance, has invested significantly in Africa's agribusiness, particularly in East Africa, promising more than US\$25 billion and financing US\$10 billion in exports. The United Arab Emirates is also a significant investor in African business, though with a more diversified portfolio. Closer relations are also seen in the context of aid and development, including the launch of Saudi Arabia's King Salman Development Initiative in Africa, which promises development projects of US\$1 billion, as well as US\$5 billion in additional development financing to Africa until 2030 (Gbadamosi 2023).

Thus, African countries may be unlikely to engage in bold, coercive diplomatic strategies with GCC countries to protect workers' rights given how much is at stake in broader national policy goals. The complexity involved is demonstrated in the case of diplomacy between Kenya and Saudi Arabia in 2021–22. Despite a BLMA concluded between the countries in 2017, reports of exploitation of Kenyan domestic workers dominated the national press in Kenya. In April 2021, a Kenyan Parliamentary delegation was sent on a study visit to Saudi Arabia to review compliance with the BLMA. The report of the delegation, tabled in Parliament in October 2021, found a lack of implementation of BLMA protections and recommended the immediate suspension of all labour migration of domestic workers to Saudi Arabia until issues were resolved (Kenya, Senate Standing Committee on Labour and Social Welfare 2021). Attempting to balance the rights of workers with the promotion of employment for its nationals abroad, the Ministry of Foreign and Diaspora Affairs supported the temporary ban, but the Ministry of Labour and Social Protection vetoed it (Mutai 2021). Continuing domestic pressure led the Kenyan leadership to advocate with Saudi Arabia for more regular meetings of the BLMA joint committee, including fortnightly virtual committee meetings between government officials from March 2023, as well as high-level visits of Kenyan officials to Saudi Arabia and vice versa. Uganda, too, managed to get the Saudi Government to agree to diplomatic discussions around stronger worker protection, and signed a new BLMA with the Saudi Government in March 2023. The new agreement improved on the previous version by incorporating strengthened protections, including 24-hour assistance by the Saudi Government to domestic workers and expedited settlement of violations, and instituted more regular meetings of the joint committee. Why did Kenyan and Ugandan migration diplomacy succeed? The timing was likely connected with a halt in deployments of Filipino workers to Saudi Arabia in late 2021 due to the alleged mistreatment of workers, as well as reports of unpaid wages to construction workers (Rappler 2023). Given Saudi Arabia's structural reliance on foreign domestic workers, and the significant impact of the Philippines ban, the Saudi Government was likely more susceptible to diplomatic pressure from other countries of origin.

The role of international organizations in promoting BLMAs

International organizations like the ILO and IOM have long advocated for BLMAs as tools for effective labour migration governance and the protection of migrant workers' rights (Migration for Employment Convention (Revised), 1949 (No. 97); ILO 1999; IOM 2008; Cholewinski 2015; United Nations Network on Migration 2022).

The ILO supervisory bodies have emphasized the important role of BLMAs in promoting effective labour migration governance and the protection of migrant workers' rights (Cholewinski 2015; ILO 1999), especially when in accordance with the 1949 ILO Model Agreement appended to the Migration for Employment Recommendation (Revised), 1949 (No. 86). The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted that "the advantages of such agreements are that they can be adapted to the particularities of specific groups of migrants and that both the sending and receiving State can share the burden of ensuring adequate living and working conditions as well as monitoring and more actively managing the pre- and post-migration processes" (ILO 1999, para 76). The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), provides that:

Members, both countries of employment and countries of origin, should, when it is necessary, taking fully into account existing international labour Conventions and Recommendations on migrant workers, conclude bilateral and multilateral agreements covering issues such as right of entry and stay, the protection of rights resulting from employment, the promotion of education and training opportunities for migrant workers, social security, and assistance to workers and members of their families wishing to return to their country of origin (Paragraph 44).

In 2022, the ILO and IOM, under the auspices of the United Nations Network on Migration's Thematic Working Group on BLMAs and ostensibly pursuant to Objective 5 of the Global Compact for Safe, Orderly and Regular Migration¹², co-developed guidance on BLMAs. The criteria set out in the document are intended to help "governments, workers' and employers' organizations, as well as other interested stakeholders [to] assess existing practices" on BLMAs (United Nations Network on Migration 2022, 7), but are deeply aspirational and do not match the current reality of most BLMAs.

¹² Which calls for promoting regular pathways for migration and actions, including to "develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders".

The author's review of 18 BLMAs negotiated between Africa and the Middle East between 2018 and 2023, including ILO comments requested by either the origin or destination country, shows that very few of the ILO's core recommendations were incorporated into the final version of the respective BLMAs. These recommendations largely focused on ensuring that the BLMA:

- ▶ is jointly negotiated and implemented with social partners;^{13,14}
- ▶ is made publicly available, including to migrant workers;
- ▶ ensures equal treatment of migrant workers with nationals or at least other migrant workers in the labour market not covered by the BLMAs;¹⁵
- ▶ is gender-sensitive; and
- ▶ is in line with international labour standards and the ILO General Principles and Operational Guidelines on Fair Recruitment and Definition of Recruitment Fees and Related Costs.

In many cases, the drafts reviewed by the ILO included protections well *below* those already accorded to all (migrant) workers in the country of destination under respective labour and immigration laws, and ILO recommendations focused on ensuring consistency with those minimum standards already in place.

13 Wickramasekara (2015) identified social dialogue involving other concerned stakeholders (employers and workers, and their organizations, in countries or origin and destination, and civil society organizations) as a good practice in the development and implementation of bilateral labour agreements. Principle 6 of the ILO Multilateral Framework on Labour Migration also states, "Social dialogue is essential to the development of sound labour migration policy and should be promoted and implemented" (ILO 2006, 13). Principle 7 highlights that governments and social partners should consult with civil society and migrant associations on labour migration policy. The Conclusions concerning fair and effective labour migration governance adopted by the International Labour Conference in June 2017 consider that bilateral labour agreements "can be more beneficial if they are based on social dialogue". The ILO instruments on migrant workers recognize the pivotal role the social partners can play in the effective governance of labour migration issues, requiring them to be consulted and involved. This includes the Migration for Employment Recommendation (Revised), 1949 (No. 86), Paragraph 4(2), which encourages States to consult the appropriate organizations of employers and workers on all general questions concerning migration for employment, and the Migrant Workers Recommendation, 1975 (No. 151), which calls for the consultation and collaboration with the social partners on specific themes, including those related to the prevention and tackling of migration in abusive conditions.

14 Editors' note: see also Popova (Chapter 7) in this volume.

15 Because of the nature of segmented labour markets in the GCC – where some sectors such as construction, cleaning and domestic workers are exclusively staffed by migrant workers – comparison with the rights of nationals can be especially challenging.

The unfulfilled promise of BLMAs

There is a dearth of empirical research looking at the impact of BLMAs on workers' labour rights. While there is some data suggesting that, as a result of BLMAs, migrants pay lower recruitment costs in the Israel–Thailand migration corridor (Kurlander and Cohen 2022), a study of Chinese and Thai migrants in Israel (construction and agriculture, respectively) based on surveys conducted among workers arriving before and after the adoption of BLMAs, demonstrated that a few years after their entry into force, the working, living and safety conditions of migrant workers remained poor or even deteriorated, particularly with respect to migrant workers' relative wages (Kushnirovich and Rajjman 2022).

No such empirical research has been conducted on the Africa–Middle East BLMAs. Yet looking broadly at some of the requirements specified in these BLMAs, it can be noted that numerous institutional changes in countries of destination have not been implemented. For example, despite several BLMAs requiring the provision of a 24-hour hotline for migrant workers, no country in the Middle East has developed such a service other than the general police emergency number and – in the case of Bahrain – a hotline for reporting cases of trafficking (ILO 2023). As noted above, several BLMAs in the corridor created a requirement that employers of domestic workers open a bank account for their worker, yet anecdotal evidence suggests that this is not mandated. In practice, many banks are reluctant to open accounts for workers due to their low salaries, and Wage Protection Systems exclude most domestic workers, except a small number in the United Arab Emirates (ILO 2023). Moreover, few countries of destination have taken steps to improve employers' knowledge of the terms and conditions of their domestic workers' employment contracts, other than posting information on the respective Ministry of Labour website. Only preliminary steps have been taken in Bahrain to introduce a (voluntary) orientation programme for employers, and most countries continue to focus only on educating workers. Most significantly, despite every BLMA requiring the establishment and regular meetings of a joint committee, some committees simply do not meet at all. This is unsurprising. Even the Philippines, with its arsenal of migration diplomatic tools, has found it challenging to ensure regular meetings of joint committees with countries in the Middle East. Among the ten countries with which the Philippines has BLMAs, only three countries have had frequent joint committee meetings with the Philippines (Mangulabnan and Daquio 2018). Ultimately, the power asymmetry that is ever-present in the negotiation of BLMAs also comes to bear on their monitoring and implementation, and African countries often have limited leverage to enforce joint committee meetings, except in particular cases.

While there has been an increasing number of aspirational commitments by the African Union Commission and regional economic communities to promote transparency and common positions, little appears to be changing in reality. “No one shares their BLMAs, even those that have already been signed”, noted one high-level government official.¹⁶ The secrecy around BLMAs is well-known (Lujic and Peters 2022), and despite some governments such as the Philippines and India making their BLMAs available online, most countries, including in Africa, have not followed suit. Similarly, an IGAD report based on interviews with dozens of government officials noted that while interviewees expressed concern that all IGAD countries “lose” when neighbouring IGAD countries allow themselves “to be played off in competition with each other for increased ‘market share’” (including by agreeing to BLMAs with lower levels of protection), most were unwilling to change the status quo. Even if aspirational goals included multilateral negotiations, the fear of repercussion from GCC countries was strongly felt. “One can ... expect,” noted the report, “that destination countries, especially GCC countries, might simply ‘not come to the table’ to negotiate with a collective IGAD” (IGAD 2022, 37, 71).

At the same time, some exploratory forms of informal cooperation are emerging among African countries of origin. A Ugandan Government delegation was invited by the Government of Burundi to share their experience of negotiating BLMAs with the GCC. They provided the Burundian Government with reflections on what worked and what did not in the context of BLMA negotiations. “This year, we want to reach out to the Kenyan Government to learn about return and reintegration, and visit Ethiopia as their Government’s process on pre-departure (medical, passport acquisition) seems faster than ours,” one Ugandan government official noted.¹⁷ This openness was shared by another Ugandan official: “I am very focused on the fact that I share [information] with Kenya, I share with Burundi, and I share also with Ethiopia because of my experience, and I think, for the case of Saudi Arabia, apart from the Philippines, we have crafted a very strong system to protect the welfare and rights of our people.”¹⁸ While this is far from the sophisticated multilevel migration diplomacy of the Philippines (Malit 2023), it represents one small innovation in South–South migration diplomacy that merits further research.

However, at a more fundamental level, it is difficult to see how BLMAs – even if more transparent and robust in their *de jure* protections – might lead to a real change in workers’ lives. Kurlander and Cohen (2022) argue that it is not so much the text of the BLMA that changes how workers are treated in the labour market, but rather the meso-level dynamics of institutionalization – that is, whether the BLMA represents an institutional change to the cumulative

¹⁶ Interview with Ugandan senior official in Kampala.

¹⁷ Interview with Ugandan senior official in Kampala.

¹⁸ Interview with Ugandan senior official in the GCC.

processes that establish migration networks and the roles of different parties (Kurlander and Cohen 2022). If the new processes include new actors, accommodate the change in the role of governments, and exclude migration industry actors seeking rents from the migration process, then genuine change might be possible. One example is a switch from a private recruitment model to public employment services or government-to-government agreements – a shift that was seen in the establishment of the Republic of Korea’s temporary labour migration programme in the 2000s (Kim 2015; ILO and IOM 2020). Yet, with the power that private recruitment agencies hold over governments in both Africa and the Middle East, such a change seems unlikely in the near future.

Conclusion

Bilateral labour migration agreements between African countries and the GCC are instrumental in framing migration diplomacy, reflecting the complexities of bilateral relations and broader migration policies. However, despite their role as diplomatic tools, BLMAs, in their current form and implementation, fall short of significantly impacting migrant workers’ lives. Ultimately, BLMAs serve a joint purpose of African and Middle Eastern governments to open new migration routes and symbolize diplomatic goodwill, but they do not substantially improve the working conditions or rights of migrant workers. This is consistent with a small number of empirical studies in other migration corridors suggesting that BLMAs have had only a limited impact on recruitment costs and offered no significant enhancement in working conditions, underscoring the need for more than just high-level agreements to effect real change. This outcome points to the need for a broader dialogue on migration governance, emphasizing more inclusive, transparent and effective approaches to ensure the protection and rights of migrant workers in the GCC and beyond.

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Appendix. BLMAs concluded by Middle East and African countries, 1981–2023

1981	Qatar–Morocco; Qatar–Sudan; Qatar–Tunisia
1983	Jordan–Morocco; Qatar–Somalia
2007	Jordan–Egypt; Lebanon–Egypt; Qatar–Gambia; Jordan–Ethiopia; Saudi Arabia–Kenya; Saudi Arabia–Ethiopia; Jordan–Uganda
2014	Qatar–Mauritius (BLA)
2015	Jordan–Ghana
2016	United Arab Emirates–Mauritius (MOU); Jordan–Uganda (MOU)
2017	Saudi Arabia–Uganda (BLA)
2018	Kuwait–Philippines (domestic workers); United Arab Emirates–Ethiopia (MOU); United Arab Emirates–Kenya (MOU)
2019	United Arab Emirates–Uganda
2022	Jordan–Uganda; Saudi Arabia–Sierra Leone; Saudi Arabia–Ethiopia; Saudi Arabia–Burundi
2023	Saudi Arabia–Kenya (domestic workers); Saudi Arabia–Kenya (healthcare workers); Saudi Arabia–Uganda (domestic workers); Lebanon–Ethiopia (domestic workers); Jordan–Ethiopia (domestic workers)

Sources: Until 2015 – Chilton and Posner (2017); ILO, n.d. After 2015 – Various internal ILO sources.

Part

4.

**A longer-term view on
temporary labour migration:
Learning from the past to
prepare for the future**

► Temporary labour migration from North Africa: Historical legacies and future dilemmas

Aurelia Segatti

Introduction

North Africa is being confronted with renewed pressure in terms of demand for its low-skilled labour, particularly due to the exponentially growing needs of European Union (EU) Member States' agriculture, tourism and hospitality, and non-medical care sectors. Data show that this trend is likely to continue to grow, at least in the middle term (Astrov et al. 2021; BNP Paribas 2023; Corrado, Pisacane and Ferrari 2024). However, in spite of a history of organized labour flows to Europe through bilateral agreements, including social security agreements that are among the most encompassing in the world, new challenges continue to emerge. The current movement of workers from North Africa to Europe is only partly taking place under the ambit of well organized, formal, regulated frameworks and processes. And both within existing agreements and outside them, substantive numbers of North African migrant workers continue to experience serious abuses and general decent work deficits, particularly in terms of their concentration in 3D (difficult, dirty and dangerous) occupations, lack of social protection and precarious working conditions.

The present situation is not only serious in terms of the conditions currently faced by North African migrant workers, but also does not bode well for the future socio-economic consequences that these workers and their families are likely to face in the decades to come in terms of household cohesion, children's education and pension prospects. However, while all North African countries are concerned about exposing their labour force to risky and unsatisfactory conditions of work, not all of them seem to have fully grasped the potential longer-term consequences. Mitigation instruments, such as those related to social protection, seem to be underutilized, at least currently, and require more attention to serve as a buffer against the most negative implications of the dynamics at play. Envisaged from a broader historical perspective, this situation raises questions concerning the role played by North African labour in relation to Europe's economic needs and the resulting impact on North African developmental prospects.

This chapter will tentatively explore which guarantees EU Member States and their North African partner governments have put in place to ensure that this relatively new phase of temporary labour migration – which we situate from the late 2000s onward with the signature of new bilateral schemes¹ – does not put workers further at risk than they already are and yields its presumed developmental benefits as summarized by the hackneyed “triple win” idea.² In particular, the chapter will try to articulate the dilemmas posed by this form of migration to the employment versus developmental prospects of North African countries in years to come. Are the socio-economic reintegration and social protection measures currently in place sufficient to ensure that this new surge in temporary labour migration does not jeopardize the socio-economic developmental prospects of North African countries – with specific focus on sustainable livelihood prospects for low-skilled women migrant workers and their families in communities of origin?

What this chapter will insist on is the fact that the manner in which temporary labour migration schemes re-emerged and are currently being shaped between North Africa and Europe is dependent on essentially three variables:

1. labour demand from the European private sector and value chains’ contrasted logics (Corrado, Pisacane and Ferrari 2024);
2. migration policy fluctuations among EU Member States’ governments; and
3. North African countries’ diplomatic strategies.

The shift towards more public strategic approaches to labour markets and employment management is only very recent and worth exploring further. Overall, the chapter aims to demonstrate that immediate protection concerns and the longer-term developmental impact are hardly accorded the attention and the resources that would be required to avoid negative short- and long-term consequences for workers themselves, for instance, consequences linked to occupational diseases or to dependents left behind, particularly the educational attainment or health outcomes of children, which have been observed in other contexts.

While the main focus of the chapter will be on “organized, formal temporary labour migration”, it also broadens the debate by considering irregular short-term mobility between countries for the purpose of work for a period of less

1 While periodization of temporary labour migration schemes to North Africa would certainly require a more in-depth analysis, the inventory of agreements since independence reveals a neat resurgence from the early to mid-2000s in Algeria, Morocco and Tunisia. See footnote 19 of this chapter, which provides the details of agreements.

2 The “triple win” in labour migration envisages benefits for the migrant workers, the country of destination and the country of origin.

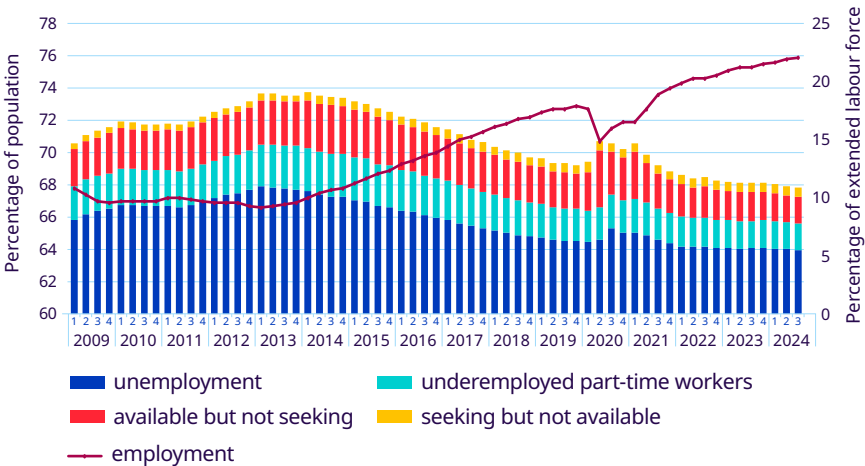
than a year. The chapter will also look at private sector initiatives that cut across formal and informal lines.

The chapter will first take stock of European labour market needs based on currently available data and will then provide an overview of temporary labour migration flows from North Africa to Europe. A rapid assessment of measures in EU Member States and in North African countries to prevent abuses will then be undertaken, before finally looking into the reality of the socio-economic mechanisms in place for North African temporary migrant workers and the households they originate from, with a specific emphasis on social protection, and how these mechanisms can be improved and made sustainable.

EU labour market context in key countries of destination: France, Spain and Italy

While there remain high levels of unemployment in some EU countries, for instance, in Italy (11 per cent) and Spain (13 per cent), the average unemployment rate in the EU fell to 6.4 per cent in 2021 (figure 1) and has continued to drop since. Germany’s unemployment rate, for example, had been oscillating between 3.86 per cent in 2020 down to nearly 3 per cent in 2022 (although it has increased since early 2024 to reach 6 per cent in October 2024).

► **Figure 1. Employment rate (line – left axis) and labour market slack (bars – right axis) in the EU, Q1 2009 to Q3 2024**



Note: Seasonally adjusted data covering population aged 20 to 64. **Source:** Eurostat (lfsi_sla_q) and (lfsi_emp_q).

However, this “full employment” situation conceals huge discrepancies between countries and within countries (Peterson 2022), as well as new situations of jobs in tension, as seen in the job vacancy rates found in table 1 below.

► **Table 1. Job vacancy rates (whole economy) by country in the Euro area, Q4 2022 to Q4 2023 (percentage)**

Country/region	2022Q4	2023Q1	2023Q2	2023Q3	2023Q4
Euro area	3.1	3.1	3.0	2.9	2.7
EU	2.8	2.8	2.8	2.6	2.5
Austria	5.1	5.2	4.9	4.6	4.1
Belgium	4.5	4.7	4.6	4.7	4.4
Bulgaria	0.8	0.9	0.8	0.8	0.7
Croatia	1.4	2.1	1.7	1.6	1.4
Cyprus	1.9	2.8	2.9	2.9	2.8
Czechia	4.2	3.9	3.8	3.6	3.4
Estonia	1.8	1.9	1.8	2.0	1.6
Finland	2.0	3.3	2.2	1.8	1.8
Germany	4.4	4.1	4.1	4.1	3.9
Greece	0.9	1.5	1.6	1.6	1.7
Hungary	2.5	2.6	2.5	2.4	2.3
Ireland	1.3	1.4	1.3	1.2	1.0
Latvia	2.5	2.7	2.8	2.8	2.5
Lithuania	1.7	1.9	2.0	2.0	1.9
Luxembourg	2.4	2.2	1.9	1.8	1.5
Malta	2.5	2.6	2.7	2.9	2.9
Netherlands	4.5	4.7	4.7	4.5	4.2
Poland	0.9	0.9	0.9	0.9	0.8
Portugal	1.5	1.3	1.5	1.4	1.3
Romania	0.8	0.9	0.8	0.8	0.7
Slovenia	2.5	3.0	2.9	2.7	2.2
Slovakia	1.0	1.1	1.0	1.1	1.1
Spain	0.9	0.9	0.9	0.9	0.8
Sweden	2.6	3.7	3.2	2.2	2.1
Iceland	2.6	3.6	2.5	2.8	2.0
Norway	3.4	4.3	4.1	3.5	3.1
Switzerland	2.2	2.3	2.2	2.0	2.0

Source: Eurostat, n.d.-a.

Table 2 shows the future evolution of labour demand in EU countries over the period from 2020 to 2030 by sector of activity. There are contrasting developments from one sector to another: the agriculture, forestry and fisheries sector are anticipated to experience the largest decline (-3 per cent) across the EU, followed by the extractive industries sector (-1.67 per cent). Conversely, the accommodation and catering sector and the health and social services sector are projected to experience the highest annual growth rates: +1.07 per cent and +0.97 per cent, respectively. Achieving these hiring levels requires that the vacancies are effectively filled. However, these same sectors are currently being affected by structural shortages.

► **Table 2. Indicator of future annual employment growth:
Estimate of the expected annual percentage change in job demand
by sector for EU27 and selected countries, 2020–2030**

Sector	EU27	Spain	Belgium	Germany	France	Italy	Netherlands
Accommodation and catering	1.07	0.92	0.04	1.01	1.34	0.93	1.37
Administrative services	0.7	1.69	1.2	0.34	0.39	1.5	-0.63
Agriculture, forestry and fisheries	-3.05	-2.35	-0.03	0	-5.98	-4.76	-6.69
Arts and leisure	0.37	0.52	0.38	-0.71	1.23	0.57	-0.58
Construction	0.51	1.82	0.24	0.16	1.14	0.27	0.49
Teaching	0.63	2	0.09	0.09	0.09	0.16	1.09
Energy supply services	0.65	0.69	0.63	0.9	0.3	-0.11	0.74
Finance and insurance	0.12	1.95	-1.13	0.07	-0.95	-0.6	0.73
Human health and social work	0.97	-0.34	2.19	0.83	1.28	-0.02	0.55
ICT services	0.86	1.33	1.64	-0.04	1.96	0.64	0.25
Manufacturing	-0.29	-0.92	-0.06	0.13	-1.91	-0.37	-0.3
Mining and quarrying	-1.67	-1.4	0.42	-2.3	0.25	-2.45	-3.16
Professional services*	0.83	0.41	1.48	0.69	0.99	0.16	0.8
Public sector and defence	0.4	0.94	-0.47	0.09	0.14	-0.2	1.14
Transport and storage	0.52	-0.06	-0.46	0.84	0.98	0.4	-0.55
Water and waste treatment	-0.13	0.67	0.59	0.35	-1.57	0.15	1.27
Wholesale and retail trade	0.55	1.2	0.54	0.35	0.61	0.64	0.34

Note: * “Professional services” includes architectural and engineering services, research and development, advertising and market studies.

Source: CEDEFOP, n.d.

Despite the anticipated overall decline in employment projected for the agriculture sector in EU, the sector’s need for migrant agricultural labour still appears to be the most pressing – and also here to stay. Kalantaryan, Mazza and Scipioni (2020), analysing the impact of COVID-19 on the agricultural sector and assessing the sector in terms of dependency on migrant workers, concluded: “Movers into agriculture are mostly migrant men older than 19 living in a rural area and with low qualification [and] native workers can only partially fill potential vacancies in the sector.” The numbers in table 3 below point to a more nuanced gender divide on a country-by-country basis, with Spain hiring mostly women and Italy men, but in both countries it can be seen that authorizations for seasonal work in agriculture in the pre-COVID period were already overwhelmingly issued to third-country nationals, a trend which has only become clearer in the post-COVID period (see table 4).

► **Table 3. Number of first-time authorizations granted by Spain and Italy to third country workers for seasonal work, by sector and gender, 2017–2019**

		Number of first-time authorizations that were granted to third-country nationals for seasonal work	Percentage of first-time authorizations that were granted to third-country nationals for seasonal work in agriculture	Disaggregation by gender (% of women in the Agriculture sector)
Spain	2017	5 752	98%	86%
	2018	13 789	99%	93%
	2019	11 368	95%	92%
Italy	2017	2 308	64%	11%
	2018	3 578	61%	9%
	2019	2 650	63%	9%

Source: Adapted from EMN (2020, 35-36) from Eurostat (migr_ressw2), extracted 15 October 2020.

Overview of temporary labour migration trends from North Africa to Southern Europe

Against the backdrop of a general recruitment stop, following the oil crisis of 1973³ and with declining demographics, European countries have developed various temporary labour migration schemes over the past 40 to 50 years.

3 It is important to consider that this turn away from large-scale labour immigration for reconstruction and economic development purposes in the post-World War II period is considered by French historian Patrick Weil (1991) as having preceded the oil shock of 1973.

The wording itself has evolved with the general politicizing of immigration in Europe. “Temporary” or “short-term” labour migration are the terms mostly in use in academic publications at present. However, “circular migration” had been trendy for a while, but seems to have receded more recently, perhaps as a result of considerable theoretical and empirical assessments of the concept and its use (Castles 2006; Skeldon 2008; Delgado Wise, Marquez Covarrubias and Puentes 2010; De Haas 2010; Vertovec 2007; Wickramasekara 2011), which have also seriously questioned the historical validity of circular migration and alleged benefits (the famous “triple-win” situation).⁴

The current situation is somewhat of a paradox: on the one hand, there are increasing data and analyses, including from EU institutions (such as the Joint Research Council), recognizing declining demographic trends in EU labour markets and labour force deficits in specific sectors, subsectors and occupations,⁵ but on the other hand, EU Member States’ governments, have increasingly been faced with xenophobic attitudes, which far-right parties have promoted as political platforms, in turn reducing the scope for longer-term immigration schemes.⁶

In this context, and often away from media attention, temporary labour migration schemes have been on the increase again since the early 2010s. This is clearly visible in the granting of seasonal labour permits in all major EU Member States and in terms of EU policy trends. In 2014, the European Commission adopted the Seasonal Workers Directive,⁷ followed in 2020 by the Guidelines on Seasonal Workers in the EU in the Context of the COVID-19 Outbreak (2020/C 235 I/01). In 2022, the European Commission launched a targeted study on the need for and potential policy avenues to better protect third-country seasonal workers under the Seasonal Workers Directive. This study is supposed to feed into the work on the First Implementation Report on the Seasonal Workers Directive, scheduled to be adopted in 2024.

4 Also depicted by Delgado-Wise (2015) as the “Win-Win-Win fiction” or by Wickramasekara (2011) as a “dead end”. Delgado-Wise explains that the “triple win” is “a perspective, which has dominated both the academic and policy agendas” and presents migration “management” “as a core element in the design and implementation of migration policies that are apparently beneficial for all parties”. Delgado-Wise dismisses the approach as a “fiction” that largely “ignores the costs of migration for the countries of origin; costs that go far beyond the overemphasized ‘positive’ impact of remittances”.

5 For instance, the European Commission estimates that more than 100,000 non-EU seasonal workers come to the EU every year.

6 With the notable exceptions of Germany and Portugal, where additional labour migration programmes were introduced despite an upsurge in xenophobia.

7 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

For instance, the Collective Management of Recruitment at Origin (GECCO) scheme conceived between the Spanish Government and the Government of Morocco in the late 2000s⁸ has gone up from about 3,000 workers initially to nearly 20,000 in the 2023 campaign (albeit with ups and downs linked to diplomatic tensions and the COVID-19 crisis).⁹ Spain sees this programme as “one of the most valuable tools for promoting regular, circular, orderly and safe migration”, and European publications such as those of the European Migration Network promote this programme as an example of regulated seasonal work (EMN 2020).

In 2022, France issued 22,000 seasonal work permits to non-EU nationals out of 26,000 applications. This is twice as many as in 2021 and four times as many as in 2019. This sharp increase is explained by “the lifting of health constraints and increased tensions on the labour market”, according to the Directorate-General for Foreign Nationals in France (DGEF). The use of seasonal workers is particularly important in farms in the southern regions of the country.¹⁰ Among the non-European seasonal workers issued permits, 75 per cent are Moroccans. The increase seen in the use of seasonal workers points to the declining attractiveness of certain occupations for the European labour force. For instance, the French hotel and restaurant industry is facing a severe shortage of workers, and on 30 June 2022, the industry’s leading trade union, UMIH, signed an agreement with the Tunisian Public Employment Service (ANETI).

From a European perspective, temporary labour migration is increasingly seen as a means to face highly fluctuating labour needs, often in critical or essential jobs. Some sectors with such needs were negatively affected by the COVID-19 pandemic, resulting in severe job losses, but many sectors face labour challenges that predate the COVID crisis and are part of a longer-term trend. One essential sector that fits this latter description is agriculture. In the EU, agriculture is a main source of employment and income for less than 4 per cent of the population, and this rate is falling. This is partly due to the arduous nature of agricultural occupations and the fact that they generate less income than many other activities. The recruitment of local and youth labour is complicated in agricultural and rural areas, especially in remote areas, which generally suffer from a poorer quality of services and lower attractiveness. In addition, the agricultural production cycle is characterized by high variability and unpredictability due to alternating seasonal cycles, weather conditions and variations in food demand. This is a typical example of a sector in need

8 A specific regime and procedure linked to labour migration, established in article 39 of Spain’s Organic Law 4/2000 and developed by article 167 et seq. of the Regulation implementing Organic Law 4/2000.

9 Data shared by ANAPEC and the Spanish Consulate in Rabat, Morocco.

10 Namely, Provence-Alpes-Côte d’Azur, Nouvelle-Aquitaine, Auvergne-Rhône-Alpes and Occitanie.

of a versatile, temporary and flexible workforce that will be sourced either through formal schemes (when they exist) or through any other channels, with an implacable cost-efficiency calculation undertaken by some employers: shifting the burden of mobility costs onto workers themselves allows massive savings in terms of operational costs. In the words of Decosse and Helio (2015), “Foreign seasonal workers are present in the most intensive sectors: as soon as an agricultural area specialises and industrialises, in short intensifies its production, effective channels for recruiting non-native labour are set up: the only labour force likely to accept the proposed pay and working conditions.” Most of the current employment schemes in the EU target migrant workers within specific sectors, such as IT, construction, tourism or agriculture, while seasonal workers concentrate in three sectors: agriculture and forestry; manufacturing; and tourism (EMN 2020).

Consequently, the decade from 2010 saw a reactivation of temporary labour schemes from North African countries to EU Member States after a pause in the early 2000s. As described by Nicolle (2021), in agriculture and tourism over the period from April 2018 to March 2019, 1,050,000 people (both nationals and non-nationals) were hired on seasonal contracts in France.¹¹ The agricultural sector alone accounted for 270,000 of these seasonal workers, which represented a third of all agricultural employees over the period (France, DARES 2019). France receives around 16,000 foreign seasonal workers each year, of which a combined 50 per cent come from Morocco (7,000, around two thirds of whom are recurring) and Tunisia (1,000) on the basis of labour agreements allowing seasonal workers to be brought in under a simplified procedure. As such, declared seasonal migrants from Morocco and Tunisia working in France’s agricultural sector represent roughly 3 per cent of the declared seasonal workforce. Nicolle (2021) considers this to certainly be an underestimate, as it only takes into account declared contracts. The migrant workforce from Morocco and Tunisia, particularly in intensive arboriculture (fruit picking) and greenhouse gardening, is actually much larger if undeclared workers are taken into account. In some French regions, no production would be possible without their contribution: horticulture in Bouches-du-Rhône, asparagus in Gard, strawberries in Dordogne and so on.

Table 4 below shows that Morocco features in the top five countries of issuance of first residence permits (3- to 12-month permits) in 2022 in the EU Member States and EFTA countries.

¹¹ This section draws on the analysis of temporary labour migration from North Africa to Europe produced for the first regional conference of the project Towards a Holistic Approach to Labour Migration and Mobility in North Africa (THAMM). See Nicolle (2021).

► **Table 4. Top five non-EU countries whose citizens received a first resident permit in 2023, by EU Member State and EFTA country**

Citizens of	number	%	Citizens of	number	%	Citizens of	number	%	Citizens of	number	%
Belgium			Bulgaria			Czechia			Denmark		
Morocco	7 020	9,4	Türkiye	5 631	29,1	Ukraine	9 457	21,6	India	4 856	11,3
Syria	4 600	6,2	Russia	4 745	24,5	Vietnam	3 125	7,1	United States	4 835	11,3
Türkiye	4 454	6,0	Uzbekistan	1 254	6,5	Philippines	2 860	6,5	Iran	3 494	8,2
Afghanistan	4 116	5,5	Ukraine	814	4,2	United States	2 639	6,0	China including Hong Kong	2 976	7,0
India	4 050	5,4	United Kingdom	731	3,8	India	2 512	5,7	Nepal	2 225	5,2
Others	50 126	67,4	Others	6 200	32,0	Others	23 199	53,0	Others	24 419	57,0
Germany			Estonia			Ireland (1)			Greece		
Syria	107 898	18,4	Ukraine	5 114	60,5	India	21 844	24,7	Albania	12 628	17,8
Afghanistan	50 217	8,6	Russia	633	7,5	Brazil	13 241	14,9	China including Hong Kong	7 740	10,9
India	40 432	6,9	India	288	3,4	China including Hong Kong	6 632	7,5	Palestine**	6 725	9,5
Türkiye	37 412	6,4	Türkiye	249	2,9	United States	4 794	5,4	Afghanistan	6 434	9,1
Kosovo*	23 040	3,9	Uzbekistan	163	1,9	Philippines	3 320	3,7	Bangladesh	6 163	8,7
Others	327 145	55,8	Others	2 012	23,8	Others	38 764	43,8	Others	31 231	44,0
Spain (2)			France (3)			Croatia			Italy		
Morocco	89 501	16,3	Morocco	36 648	10,9	Nepal	12 604	15,5	Bangladesh	38 342	9,8
Venezuela	67 584	12,3	Algeria	31 943	9,5	Bosnia and Herzegovina	11 339	13,9	Albania	34 113	8,8
Colombia	67 369	12,3	Tunisia	22 639	6,8	Serbia	9 878	12,1	Egypt	31 177	8,0
Peru	29 195	5,3	China including Hong Kong	14 602	4,4	India	9 016	11,1	Morocco	28 695	7,4
Honduras	23 627	4,3	United States	12 153	3,6	Bangladesh	6 751	8,3	Pakistan	28 470	7,3
Others	271 421	49,5	Others	217 089	64,8	Others	31 759	39,0	Others	228 745	58,7
Cyprus			Latvia			Lithuania			Luxembourg		
Russia	12 029	34,7	India	2 172	21,3	Belarus	16 174	28,8	India	1 173	12,0
India	3 852	11,1	Uzbekistan	1 729	17,0	Uzbekistan	7 580	13,5	Russia	583	6,0
Nepal	3 148	9,1	Russia	1 635	16,0	Kyrgyzstan	5 086	9,1	Syria	547	5,6
Sri Lanka	2 147	6,2	Ukraine	640	6,3	Tajikistan	4 960	8,8	China including Hong Kong	504	5,2
Syria	1 846	5,3	Belarus	568	5,6	India	3 819	6,8	Brazil	429	4,4
Others	11 672	33,6	Others	3 449	33,8	Others	18 454	32,9	Others	6 504	66,8
Hungary			Malta			Netherlands			Austria		
Vietnam	15 681	20,2	India	10 589	25,3	Syria	18 214	13,8	Syria	18 409	29,3
Ukraine	7 504	9,7	Nepal	6 515	15,5	India	13 477	10,2	Serbia	4 303	6,8
Philippines	7 122	9,2	Colombia	3 648	8,7	Türkiye	10 248	7,8	Bosnia and Herzegovina	3 938	6,3
China including Hong Kong	4 589	5,9	Philippines	3 535	8,4	China including Hong Kong	9 041	6,9	Türkiye	3 804	6,0
India	3 815	4,9	China including Hong Kong	2 336	5,6	United States	6 947	5,3	Afghanistan	3 651	5,8
Others	38 768	50,0	Others	15 304	36,5	Others	73 858	56,0	Others	28 785	45,8
Poland			Portugal			Romania			Slovenia		
Belarus	255 595	39,8	Brazil	38 686	28,5	Nepal	11 673	20,5	Bosnia and Herzegovina	11 978	37,6
Ukraine	240 634	37,4	India	12 113	8,9	Sri Lanka	10 163	17,9	Kosovo*	6 492	20,4
Türkiye	17 843	2,8	Bangladesh	10 072	7,4	India	4 846	8,5	Serbia	3 888	12,2
India	13 684	2,1	Angola	8 527	6,3	Türkiye	4 166	7,3	North Macedonia	2 906	9,1
Georgia	12 403	1,9	Cabo Verde	8 050	5,9	Moldova	3 896	6,8	Russia	1 327	4,2
Others	102 630	16,0	Others	58 459	43,0	Others	22 176	39,0	Others	5 264	16,5

(1) low reliability data.

(2) break in series for education reasons.

(3) provisional data except for family reasons.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

** This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual position of the reporting country on this issue.

Citizens of	number	%	Citizens of	number	%	Citizens of	number	%	Citizens of	number	%
Slovakia			Finland			Sweden			Iceland		
Ukraine	7 028	24,4	Russia	4 963	9,2	India	9 818	12,8	Vietnam	459	12,9
Serbia	4 041	14,1	Philippines	4 499	8,3	Thailand	7 455	9,7	United States	357	10,0
Georgia	2 951	10,3	India	3 934	7,3	China including Hong Kong	4 874	6,4	Philippines	327	9,2
India	2 119	7,4	Sri Lanka	3 438	6,3	Afghanistan	3 773	4,9	Palestine**	243	6,8
Vietnam	1 554	5,4	China including Hong Kong	2 967	5,5	Syria	3 363	4,4	Venezuela	162	4,5
Others	11 057	38,5	Others	34 377	63,5	Others	47 435	61,8	Others	2 019	56,6
Liechtenstein			Norway								
Switzerland	487	54,0	Syria	7 020	9,4						
Brazil	48	5,3	India	4 600	6,2						
Türkiye	39	4,3	United Kingdom	4 454	6,0						
United States	36	4,0	Philippines	4 116	5,5						
Kosovo*	22	2,4	Vietnam	4 050	5,4						
Others	270	29,9	Others	444 050	67,4						

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

** This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual position of the reporting country on this issue.

Source: Eurostat, n.d.-b.

Spain and Italy present two types of seasonal worker profiles: circular and permanent. Spain is the world's top exporter of strawberries and 90 per cent are produced in the province of Huelva. Strawberry farms are heavily reliant on the 50,000 seasonal workers, mainly foreign, who come each year. Most guestworkers are eastern Europeans, followed by Moroccans and Latin Americans. Seasonal workers typically come to Spain through local temporary migration programmes for a period of three to six months per year, and many have been coming regularly for multiple years, some up to 13–14 years. The numerous Moroccan women employed in the strawberry fields are recruited in their country of origin. They generally do not speak Spanish and are mostly illiterate, which means that they are entirely dependent on their employers. Most of the 7,000 Moroccan women who had managed to come to Huelva before Morocco closed its borders on 13 March 2020 during the COVID-19 pandemic found themselves in a dire situation at the end of the strawberry harvest season in May. Their contracts had expired in mid-June 2020 but their home country was keeping its borders closed, having adopted a conservative stance to limit the spread of the pandemic. They remained stranded in Spain for weeks, with very little money, before the Spanish and Moroccan governments came to an agreement to repatriate them (Mendiola Gonzalo 2020). In February 2020, the United Nations' Rapporteur on Extreme Poverty and Human Rights stated that some of these migrant workers lived in shantytowns "with far worse conditions than a refugee camp, without running water, electricity or sanitation" (OHCHR 2020). The situation of these "strawberry ladies, with fairy fingers", as nicknamed by anthropologist Chadia Arab (2018), has been the focus of multiple

human rights organizations and UN rapporteurs' reports, as well as exposed through several court cases for sexual harassment and assault.¹²

While there is still too little in the way of regular, reliable data on seasonal migrant workers from North Africa to Europe (for instance, data on Algerians and Egyptians are seriously lacking),¹³ it seems clear that North African governments have increasingly resorted to temporary labour migration as a relief instrument in situations of structural unemployment, particularly of women (who have some of the lowest employment rates in the world at around 20 per cent across North Africa) and youth (around 30 per cent on average across the subregion).

Alongside formal temporary labour migration schemes, it is evident that other massive informal, irregular and/or illicit sourcing systems exist, and in addition to undermining efforts to grow regular pathways, pose serious protection issues for the workers that use them. While it is by definition difficult to gather information on illicit systems, my review of existing data points to the following trends. In Italy, Moroccan or Tunisian seasonal workers in the Piana del Sele region (Salerno Province) are often in an irregular situation. They enter agricultural activities through personal networks or via an illegal intermediation system known as *caporalato*. The Italian agricultural sector is said to attract irregular seasonal workers who have entered the country via irregular means – such as with tourist visas or false contracts – but also seasonal and non-seasonal workers with permanent European permits, often from Spain. In Italy, the official figure of 370,000 migrant workers being involved in agriculture (or 27 per cent of the regular agricultural workforce) does not reflect the fact that the bulk of seasonal agricultural work is carried out by undocumented migrants or asylum-seekers. It is estimated that Italy's agricultural sector actually employs between 400,000 and 500,000 migrant workers, accounting for around half of the total agricultural workforce, with a significant and growing proportion of Romanians, Albanians and North African workers (Forin 2018). In Southern Italy, official statistics indicate that migrants account for about half of the labour force employed in agriculture, but independent reports suggest that this figure could actually be as high as 80 per cent if undeclared and irregular migrants were included (Borges and Huet 2020).

12 See: Alami (2019); Andreu and Jimenez (2010); Rosati and Martín (2019); Cabanillas (2018); Etcheverría (2018).

13 For instance, Greece, which is one of the main destinations for Egyptians, has not released data for first permits issued for three years in a row (2019, 2020 and 2021); see: Eurostat, "Single Permits Issued by Type of Decision, Length of Validity". Data from Algeria and Egypt are scarce and discontinued. For instance, Egypt, which used to provide bulletins through its national statistics office for overall issuance of work authorizations to engage into employment abroad, has discontinued these since 2021, with the latest number of Egyptians issued an authorization to an EU country standing at over 17,000 (Egypt, Egypt Statistics, "Annual Bulletin of Work Permits for Egyptians to Work Abroad in 2021"), but without a breakdown per type of occupation or country.

The scenario described above is not limited to Italy. According to the results of a joint research project by the Research Unit of Germany's Expert Council on Integration and Migration (SVR) and the Migration Policy Institute Europe, official figures in many European countries do not reflect reality, as many migrant seasonal workers go unrecorded (Hooper and Le Coz 2020). Likewise, according to the Milan Center for Food Law and Policy and the European Federation of Food, Agriculture and Tourism Trade Unions, irregular employment in agriculture is estimated to exceed 20 per cent in Italy, Greece and Spain.

A single September 2023 police operation coordinated by Europol and targeting human trafficking for the purpose of labour exploitation in the agricultural sector can also serve as a proxy for the size and scope of these illicit networks. The operation, which involved a wide range of law enforcement authorities, including police, immigration and border guards, labour inspectorates and tax authorities from 17 EU countries, led to 38 arrests, the identification of 43 suspected traffickers, the initiation of 20 new criminal investigations, and the identification of 1,583 workers subjected to exploitation and labour violations (including 353 identified as possible victims of human trafficking). In addition, a total of 687 employers committing labour violations were identified.¹⁴

It is therefore clear that at least three "regimes of temporary labour migration" coexist from North Africa to Europe. These include: (1) the well established and growing formal temporary labour migration schemes (such as those between Morocco and Spain, Morocco and France, and Tunisia and France); (2) individual, small-scale initiatives driven by the private sector and relying on a myriad of more or less reliable intermediaries essentially seeking to satisfy the rapidly evolving needs of European employers, particularly in sectors prone to seasonal fluctuations (agriculture, tourism, long-term care); and (3) underground sourcing networks operating under well organized, mafia-type organizations reaping highly lucrative gains.

Developments post-COVID-19, and the announcement by the EU of the Talent Partnership initiative with three North African countries as pilots will also raise expectations and create new momentum, since the initiative is open to low-skilled seasonal migrant workers and schemes covering them. In spite of the rise in xenophobic opinions (and often largely away from the eyes of the media), EU Member States are currently increasing their resources and attention focused on sourcing new labour forces for in-demand jobs and sectors. The chapter now turns to examining the protection implications and actions taken.

¹⁴ See, in particular: Europol, "[Press Release on 38 Arrests in Action Against Agricultural Labour Exploitation](#)", 16 October 2023.

Protection measures and prospects for improved protection

As noted in the ILO Report to the Governing Body *Temporary Labour Migration: Unpacking Complexities*:

*As TLM [temporary labour migration] has been on the rise, there is an urgent need to create policy solutions that can close the protection gaps that emerge from the **dissonance between admission and labour market regulations**. It is labour law that grants access to labour market institutions and conditions integration measures, and we observe that immigration laws that apply to temporary migrants tend to bring them outside of national labour laws, creating a “parallel reality” on the labour market. By crafting temporary migratory statuses, immigration law thus has an impact on labour law’s coverage and on the reach of labour market institutions, distorting the employment relationship, and rendering migrant workers less protected than national workers (ILO 2022, 45, emphasis added).*

This section explores prospects for improved protection and the challenges stemming from the above dissonance. It is beyond the scope of this chapter to provide a detailed study of all measures taken, so this section will instead point to broad trends in relation to the protection of migrant workers. It is worth noting at the outset that all parties involved – North African governments, the European Commission, the European Parliament, EU Member States, employers and trade unions – have put forward the perspective that protection gaps affecting temporary labour migrants should urgently be addressed. In addition, while the protective measures currently in place include a mix of policies at the European and national levels, provisions in some temporary labour migration agreements, as well as charters and non-binding commitments, these have ultimately demonstrated little actual measurable progress in terms of protection outcomes.

European Commission and European Parliament

At the level of the European Commission and the European Parliament, the 2014 Seasonal Workers Directive is considered the key piece of legislation to ensure equality of treatment. For the first time, the Directive provided a set of harmonized rules for the admission, residence and rights of third country seasonal workers. Seasonal workers have the right to equal treatment with nationals of the host country as regards terms of employment, such as the minimum working age, working conditions (such as pay and dismissal, working hours, leave and holidays) and health and safety regulations. The right to equal

treatment also applies to social security benefits linked to sickness, invalidity and old age, as well as training and advice on seasonal work.

During the COVID-19 period, however, mobility restrictions cut off the usual inflows of seasonal workers into the EU from third countries, disrupting harvests in the spring of 2020 and curbing the sector's productivity (particularly in countries such as Italy and Spain where they play a key role). This prompted the European Parliament to adopt on 19 June 2020 a resolution on the protection of seasonal workers, calling on the European Commission and Member States to ensure proper implementation of the relevant EU legislation and issuance of new specific and long-term solutions. The resolution acknowledged that cross-border and seasonal workers had been particularly hit by the COVID crisis and measures taken to contain the spread of the disease – with many of them being “stuck in the country of employment without income, protection or transport, sometimes even without shelter or access to healthcare and food” (Augère-Granier 2021, 11). However, it is unclear to date what actual impact this resolution had, especially considering that the European Commission and Member States had little weight or even any intention to influence the decisions taken by North African countries to close their borders, particularly in the case of Morocco, which had extended periods of border closure in 2020 and 2021 before finally reopening them for good in February 2022.

Main countries of destination

Spain, under the GECCO scheme (Spain, Government of Spain 2023), passed progressive provisions in the context of the COVID-19 pandemic highlighting the essential nature of certain sectors and specific occupations within them. The role of seasonal workers was acknowledged as key, especially in agriculture, as they performed a crucial activity in sustaining this essential sector. For this reason, Spain adopted Order ISM/1289/2020 in December 2020, which regulated the collective management of hiring at source for 2021 and incorporating reinforced health protection measures in line with the public health measures contained in Royal Decree-Law 21/2020,¹⁵ in order to guarantee the health and safety of workers. An independent assessment of this measure is yet to be undertaken.

In the lead-up to resuming the GECCO scheme following a COVID-19-induced pause – and in the context of numerous reports, media coverage and court cases showcasing serious abuses – Spain also decided to undertake several qualitative improvements to the programme, such as:

- ▶ improved pre-departure preparation of the workers and cooperation of the labour authorities in both countries;

¹⁵ Royal Decree-Law 21/2020, of June 9, on urgent measures for prevention, containment and coordination to address the health crisis caused by COVID-19.

- ▶ an increase in meetings with social agents¹⁶ in the Huelva Province and with non-governmental organizations;
- ▶ introduction of the figure of “mediators” to develop social work in permanent contact with workers, helping them with their needs and with any doubts and problems that may arise;
- ▶ strengthening the preventive surveillance tasks of the State Security Forces and the Labour and Social Security Inspectorate;
- ▶ elaboration of an ethical, labour and social responsibility plan by the contracting companies themselves within the framework of a commitment to transparency and responsible recruitment. (Spain, Government of Spain 2023, 16).

In terms of inspection, Spain also felt the need to address these challenges on the ground in order to safeguard fair working conditions for seasonal workers, albeit by essentially relying on the Action Plan of the European Labour Authority,¹⁷ which has been jointly implemented by the European Commission, EU Member States and social partners. As part of this integrated action, the 2021 communication campaign “Rights for All Seasons” was designed to raise awareness among seasonal workers in the EU and their employers about their rights, obligations and available advisory services (Ireland, WRC 2021). Workshops were being organized with national administrations and social partners to collect and share practices on the dissemination of information and the provision of assistance and services available to seasonal workers and their employers.

Unlike Spain, in the post COVID-19 period, France and Italy have not implemented major changes to their existing seasonal migrant worker mechanisms. This is obvious, for instance, in France’s lack of commitment to the implementation of the Global Compact for Migration,¹⁸ for which it has no national plan of action and no monitoring and evaluation framework. This means that as far as the situation of seasonal migrant workers is concerned, French actors have tended to continue operating on a very ad hoc basis, albeit with regional specificities (Jouzier and Marrel 2022).

¹⁶ Social agents are designated social workers who serve as intermediaries between workers and employers, and help workers with a range of social issues (housing, medical care, cultural integration, and so on).

¹⁷ The full text of the Action Plan is available at: <https://www.ela.europa.eu/sites/default/files/2021-06/Action-Plan-Seasonal-Workers.pdf>.

¹⁸ The Global Compact for Safe, Regular and Orderly Migration, which was adopted in Marrakesh, Morocco, in December 2018, is the first inter-governmentally negotiated agreement, prepared under the auspices of the United Nations, covering all dimensions of international migration in a holistic and comprehensive manner. It is a non-binding document that respects States’ sovereign right to determine who enters and stays in their territory and demonstrates commitment to international cooperation on migration. States can formulate pledges to meet the objectives of the Compact.

North African governments

Whereas the different instruments at the disposal of governments in North Africa have been undeniably strengthened towards serving a protection agenda, particularly in relation to commitments made under the Global Compact on Migration, there remain serious limitations to a fully protective, gender-sensitive approach aligned with international labour standards and operationally effective in addressing the needs of migrant workers in temporary labour migration schemes, particularly those of the most vulnerable such workers.

Starting with bilateral labour migration agreements (BLMAs), there has been an increase in their number and renewals between all North African countries and EU Member States,¹⁹ perhaps with the exception of Egypt, which has made announcements concerning agreements, but these have not been confirmed to date. Recent BLMA negotiations – for instance, between Morocco and Spain, Morocco and Portugal, Tunisia and Italy, and Egypt and Greece – have often been the subject of much media coverage and announcements, but by and large they have not been any different than earlier agreements in terms of transparency or the inclusiveness of social partners. The BLMA documents themselves continue to be confidential to such an extent that it remains hard to assess what protection provisions are actually contained in the agreements, let alone how they are implemented. These agreements, and labour migration mechanisms in the subregion more broadly, whether temporary or longer term, continue to operate largely outside of results-based policy implementation frameworks. In addition, BLMAs are still seen as diplomatic instruments, over which Ministries of Foreign Affairs retain strong control, albeit not on technical matters, and which are subject to the fluctuations of diplomatic relations.²⁰ The recent agreement between Tunisia and the EU is a case in point; as was the

19 Morocco has signed the following bilateral labour agreements: Belgium (1964), France (1987), Germany (1963), Italy (2005) and Executive Protocol on Labour (2007), Jordan (1983), Libya (1983), Netherlands (1969 and 2017), Qatar (1981) and Additional Agreement on Labour (2011), Spain (2001, 2005 et 2022), United Arab Emirates (1981) and Portugal (2022) – for the latest with Portugal, see Januzi (2022). In addition, there are “Conventions d’établissement” (Settlement Agreements) between Morocco and the following countries: Algeria (1963, revised in 1969), Senegal (1964) and Tunisia (1964). Morocco has also signed 19 social security agreements, 15 of which are ratified and enforced and 4 that are signed but not yet ratified. For a list of and full text of Morocco’s social security agreements, see <https://www.cnss.ma/fr/content/conventions-internationales>.

Tunisia has signed bilateral labour agreements as follows: Convention tuniso-française relative à la gestion concertée de la migration et au développement solidaire (2003 and 2005); Accord tuniso-suisse en matière d’échange des jeunes professionnels (2012); and Convention tuniso-qatarie en matière d’emploi des tunisiens au Qatar (2010) (Tunisia, Ministry of Vocational Training and Employment, n.d.). The list of Social Security agreements signed by Tunisia is available here: https://www.cnss.tn/fr/web/non-salarie/non_sal_asset_services/-/asset_publisher/w1WU/content/pays-couverts-par-une-convention.

20 Editors’ note: see also Kagan (Chapter 9) in this volume.

agreement between Morocco and Spain, the signing of which was suspended due to the freezing of diplomatic relations between Rabat and Madrid and which then resumed only once the political divergence had been addressed. Some analysts even go as far as to claim that Morocco's migration policy is mainly dictated by geo-political preoccupations (Benjelloun 2020).

On paper, progress can be observed in terms of the closer coordination and convergence between labour migration and employment policies (in Tunisia, in Morocco and even in Egypt to some extent), with the mainstreaming of labour migration into national employment strategies and, vice versa, the rooting of labour migration strategies into national employment objectives. However, in terms of protection of temporary labour migrants, for now, this merely means that Ministries of Labour commit to ensuring that temporary labour migration schemes are harmonized with international labour standards, that situations of abuse and decent work deficits are addressed in the agreement, and that certain protection measures are adopted. Yet, in the absence of strong whole-of-government approaches, results-based frameworks and the political will needed to render protections effective, matters remain largely programmatic. Lastly, in these new policies, temporary labour migration schemes are not questioned in terms of the gender and socio-economic issues they raise, but merely seen as "good" mechanisms to be peripherally improved.

That said, one promising area of improvement that could potentially lead to better conditions for temporary migrant workers is the change seen in the approach to recruitment, which can be observed among public employment services (PES) in North Africa as well as by governments' attempts to better understand and regulate private recruitment intermediaries. Influenced by the ILO and International Organization for Migration's fair and ethical recruitment approaches, PES in North Africa have developed new guidelines and standard operating procedures and provided training to their counsellors to improve recruitment conditions and better prepare workers for their migration journey. This is the case with Morocco's National Agency for the Promotion of Labour and Competencies (ANAPEC), Tunisia's National Agency for Employment and Self-Employment (ANETI) and the Egyptian Ministry of Labour. As far as private employment agencies (PEAs) are concerned, Tunisia has drafted pioneering legislation introducing penal sanctions and establishing a corps of controllers for PEAs organizing placement of Tunisians abroad. While this legislation has, unfortunately, not yet been validated due to the institutional situation in Tunisia, this could represent an important operational improvement and help prevent major recruitment abuses.

Sensitization campaigns against the risks of irregular recruitment and migration – such as *Koune Alabal* in Morocco and multiple campaigns in Tunisia – have been funded, mostly by EU funding sources (multi- and bilateral), but they remain entirely dependent on foreign aid and are not embedded in any ministry's

regular sensitization plan. In addition, protection coordination systems and referral directories are not clearly in place to respond efficiently to complaints.

Lastly, as far as consular services are concerned, there have been some improvements in the numbers of North African consular staff in some EU Member States (Morocco's missions in Belgium, Spain, Italy and France, for instance). However, coordination between Foreign Affairs and Labour ministries seems to remain a major obstacle. In Morocco, the creation of labour attaché positions has been stalled for years, despite all of the technical tools to support such positions being available.

Social partners in EU and North African countries

From a series of workshops organized between 2020 and 2022 with the Réseau Syndical Migrations Méditerranéennes Subsahariennes (RSMMS) network, and supported by the ILO-IOM-GIZ Towards a Holistic Approach to Labour Migration and Mobility in North Africa (THAMM) programme, it was revealed that although EU Member States' trade unions and North African trade unions belonged to the same networks and had collaborated for years, there were only limited initiatives to establish bilateral trade union agreements, or to create specific action plans to strengthen the protection of seasonal migrant workers. For example, the Spanish trade union federation *Comisiones Obreras*, while associated with the GECCO scheme, does not directly take part in the recruitment process in Morocco due to lack of resources. France's General Confederation of Labour (CGT) and the Tunisian General Labour Union (UGTT), while having close contacts, have no plans to establish a bilateral agreement to allow the UGTT to support the protection and unionization of Tunisian workers in France. Presenting a full elaboration of the reasons underpinning this reluctance or lack of interest goes beyond the scope of this chapter, but a few points are useful to make:

- ▶ Trade unions in North Africa are generally uncomfortable with the irregular status of substantive numbers of their nationals involved in temporary labour migration, particularly in seasonal jobs; just as they are also undecided on how to address the question of informal and irregular workers at home (with the exception of UGTT which has developed an original approach);
- ▶ All trade unions still very much conceive of their actions as being contained within national boundaries and bearing on workers whose employment relation is located within the national territory. In general, trade unions have limited capacity to work at strategic level on de-territorialized employment relations, let alone the resources to operationalize this kind of work.

However, this certainly does not mean that nothing has been done in the North Africa subregion by the social partners to support migrant workers. The UGTT in Tunisia has been proactive in opening migrant worker information and protection centres across the country since 2018 (six such centres have been opened to date), and the Moroccan social partners²¹ developed and officially adopted a Charter for the Protection of Migrant Workers in 2022. These developments point to a preference for taking action on their own territory rather than using BLMAs as a protection tool.

In general, protection measures to substantially improve the situation of temporary migrant workers remain limited and strictly focused on workers involved in formal schemes, despite estimates showing a much broader audience of migrant workers in need of protection. This, of course, does not take into consideration actions taken by law enforcement institutions at the national, European, and interregional or bilateral levels to target forced labour, irregular employment and trafficking networks, whose activities and cooperation have intensified in recent years.²² Fundamentally, North African countries have not (yet) fully grasped the longer-term risks posed by the increase in temporary labour migration from the region, particularly for the low-skilled.

Longer term socio-economic and developmental impact

As noted above, to a large extent temporary labour migration schemes continue to be seen by North African countries as means to alleviate difficult employment situations while offering workers higher incomes and labour market experience, and to some extent, in doing so, defuse political tensions. Decision-makers in North African countries have been cautious not to be associated with abuses incurred by migrant workers and have tried to avoid two pitfalls: (1) to be seen as exposing their most vulnerable workers to inhumane conditions of work; and (2) to be perceived as bleeding the country of its most needed talents and skills, though this latter consideration does not directly concern seasonal agricultural work.

21 Specifically, the employers' organizations the General Confederation of Moroccan Enterprises (CGEM) and the three representative trade unions: the Moroccan Workers' Union (UMT), the General Union of Moroccan Workers (UGTM) and the Democratic Confederation of Labour (CDT).

22 Key informant interview with French and Moroccan law enforcement experts, January 2024.

Labour migration system shift

What has been lacking, whether in public and policy discussions or even in the academic literature on North Africa (unlike Southern Africa), is a thorough analysis of the shift between post-World War II labour migration systems and the current situation so as to enable countries to avoid making the same mistakes and introducing the same operational inefficiencies that hampered earlier migration regimes. This section presents a very brief overview along these lines.

There are many lessons to be drawn from the very organized (albeit not perfect) large-scale mobility schemes put in place by several European countries in the decades following World War II, which gradually led to labour migration into Europe and then to greater levels of immigration for family reunification purposes. In addition, as migrant workers began to be integrated into national workforces, these mobility schemes were buttressed by social protection schemes and increasingly by bilateral social security agreements. Throughout the 1990s and 2000s, progressive shifts took place with a general increase in labour migration flows from North Africa into Europe, despite a trend among political decision-makers to offer statements giving the impression of a general closing of borders between the Southern and the Northern shores of the Mediterranean. As described by Gérard-François Dumont in 2009, the Mediterranean migratory area had in fact become, during the 2000s, number one in the world in terms of migration flows, surpassing the America–Mexico border. Dumont (2009) identified three major structural changes over the 2000s that led to this situation: (1) the combined effects of globalization (in all its forms); (2) changes in family reunification and nationality acquisition policies, which have become much more flexible across EU Member States compared to the previous period; and (3) changes in access to the labour market and student visas, as well as to regularization policies, which became more generous in comparison with the limitations observed since the early 1970s, particularly in terms of access to the labour market (Dumont 2009).

This brings us to the current period of the 2010s and 2020s, during which there has been a blurring of categories. Morocco exemplifies this as an emigration country that has now also turned into country of transit and destination, in addition to seeing the rise of return migration, circular schemes and the off-shoring of European businesses to Morocco (De Haas 2005).

This complexification of migratory dynamics in the recent period should be envisaged in combination with a mounting political paradox both within EU Member States and between them and the European Commission, as well as among North African countries. In the European context, demographers, labour markets analysts, as well as employers in specific sectors point to an increasing dependency on and need for migrant labour, but at the same time a resurgence

of far-right parties adopting anti-immigrant platforms is making proactive migrant labour recruitment schemes more difficult for many governments to openly promote. Even when far-right parties do find themselves in power, they have had to strike deals on migrant labour with North African countries, as exemplified by the case of the Meloni Government in Italy.

North African countries are also faced with their own contradictions. They are increasingly criticized by their citizenry for poorly addressing domestic employment situations, leaving the youth and the highly qualified without other options but to emigrate *en masse*. They also stand accused by EU Member States to let too many irregular migrants through, including their own nationals, and get diplomatically “punished” for their leniency, through decreased visa allocations, as was the case between 2021 and 2023 with France vis-à-vis Morocco, Algeria and Tunisia. However, North African governments claim to need more resources to be able to implement efficient controls, and they negotiate regular inflows of considerable resources with EU Member States. At times, this power struggle spirals out of control, resulting in deaths and violence against migrants, as has been regularly the case in the jumping of fences in the Spanish enclaves of Ceuta and Melilla on the Moroccan side, or in the attacks against Sub-Saharan migrants in Tunisia in 2023 (Ben Hamadi 2023).

One major difference in outcomes between past and existing (temporary) labour migration systems, both between regions of the world and between similar countries, resides in the degree to which they are supported by social protection schemes, whether through bilateral social security agreements or unilateral measures.

Looking at contemporary migration systems, it is clear that migrant workers enjoy better social protection in South–North and North–North corridors than under South–South migration systems – an observation confirmed by Sabates-Wheeler and Koettl (2010). If one compares two reasonably comparable migration systems in terms of duration, industrial sectors and size of flows – such as the Southern African labour migration system and the North Africa–Europe system from the 1960s until the 1990s – major differences in outcomes can be attributed to the ability of North African countries and the willingness of European recipient countries to grant full access to the labour market, equality of treatment therein and establish social security agreements (thus ensuring effective coverage for the contingencies of ill health, occupational diseases and old age). While these North Africa–EU social security agreements were – and still are – far from perfect (in particular concerning the recognition of marriages and the portability of old-age social aid, as opposed to pension benefits, that can be exported, due to reciprocity issues), they have proved important in providing positive outcomes for migrant workers (Wels, Bensaid and Legros 2015). No such equivalent to these agreements were seen in the Southern African case,

resulting in large scale occupational disease pandemics (silicosis especially) without compensation until very recently (Kitsanamy et al. 2018; Ehrlich et al. 2023). For example, France granted social security coverage for occupational diseases to Moroccan mine workers from 1965 onward (Rosental and Devinck 2007), whereas occupational diseases are still subject to class action in South Africa.

With the gradual dwindling of employment under these historical schemes (and generally losses of jobs in many of the sectors in which they operated, mining in particular), these more structural long-term protection guarantees have also vanished. Even if Spain and France, for instance, implement equality of treatment, including for temporary migrant workers, the changes to migration legislation and permit duration in particular have slowly but surely led to a deterioration of social protection. This is something that could well be turned around, under the effect of a new realization within the European Commission and among EU Member States that there is a need to reinforce social protection, particularly if one considers that labour needs will have to be satisfied over the long term.

Policy gap

As for the impact of temporary labour migration schemes on developmental prospects in communities of origin, there is too little research to be categorical, although research in other contexts points to a neutral or negative impact (Mercandalli 2013). In general, none of the existing temporary labour migration schemes have been accompanied by robust, structured socio-economic reintegration programmes, whether from the EU or the North African side. Numerous recent reports have noted the serious limitations of existing mobility schemes and reintegration processes. A 2019 ITC-ILO and FIERI report looking specifically into existing cooperation projects and national programmes, with a focus on the case of Morocco, concluded that there were very clear limitations to these initiatives, which consisted of very thin national programmes addressing the reintegration of seasonal migrant workers, particularly their professional reintegration, and multiple but largely disjointed international cooperation projects with limited to no impact on the most vulnerable target groups, that is, those most in need of financial and technical support (ITC-ILO and FIERI 2019).

Due to this lack of coordinated national policy and prioritization among cooperation projects, seasonal migrant workers – particular women workers – remain in a precarious situation upon return, as most of them lack a stable income generating activity that may offer them financial and economic stability and independence. In fact, they usually live on the salaries they earned while in migrant work to sustain themselves and their family members, and generally do not have access to social protection. They are typically not aware of any

possibilities to improve their situation locally and, even if they are, they lack the necessary skills and financial means to do so. Returning women migrant workers also have to face additional gender-related cultural constraints to launching their own income-generating activities upon return. The impact of their earnings from their time in the country of destination is therefore short-term and merely consists in alleviating poverty effects at the household level. Once their earnings are exhausted, the pressure to return to seasonal migration is increased, leading to a vicious cycle of dependency on seasonal migration earnings. The seasonal nature of their employment abroad is not conducive to developing skills, nor does it offer the stability needed to build a lifelong project, as their presence would be required in Morocco to access meaningful funding (Gabrielli and Franco-Guillén 2018) and to establish the relevant networks to support an income-generating project, let alone benefit from social protection. Most of the vocational training programmes currently available do not take into consideration the seasonal migration factor. The lack of social protection, whether maternity and sickness insurance, unemployment benefits or, later in life, pension benefits, only aggravates their already dire socio-economic conditions. Another dimension is that, back in the country of origin, these workers are considered to be like any other jobseekers by public employment services, and until recently, did not benefit from any particular form of support to reintegrate into the labour market. It should be noted, however, that Morocco's National Agency for the Promotion of Labour and Competencies (ANAPEC) is implementing a new approach as a pilot (the WAFIRA project described below).

Most European countries satisfy themselves with return and reintegration grants, covering travel and some minimal capital amount (€3,000 to €5,000 at most) without any longer-term form of backing that would include monitoring and evaluating the sustainability of income-generating activities over time. One pilot project, however, is trying to explore new grounds. The Women as Financially Independent Rural Actors (WAFIRA) project,²³ funded by the EU and implemented by Spain and the ILO, targets 250 Moroccan women seasonal workers involved in Spain's GECCO scheme to assist them with the development of sustainable income-generating activities, combining different approaches adapted to these mostly illiterate beneficiaries, who are trained, coached and provided financial education and seed funding in the craft and agricultural sectors, and provided with the possibility to register for social protection. In addition, Morocco's public employment service, ANAPEC, is being supported by the WAFIRA project in the development of tools and accompanying pathways towards reintegrating these seasonal migrant workers.

23 For more information on Wafira, see: Wafira, "[Qu'est-ce que Wafira](#)", and ILO, "[WAFIRA – Women as Financially Independent Rural Actors](#)".

While it is too early to tell whether this project will yield a replicable intervention model, even if a mid-term evaluation has already provided interesting indications,²⁴ it is obvious that breaking the cycle of circular migration and ensuring that seasonal migrant work becomes an empowering experience will necessitate long-term accompanying mechanisms and a strong commitment to supporting reintegration over time – and therefore, matching resources need to be provided through partnerships between EU Member States and North African governments. The whole question of scaling up such pilot schemes will become critical as EU Member States continue to demonstrate their need for such labour and North African countries continue to support temporary labour migration schemes.²⁵

Social protection for temporary labour migrants: Insuring the future?

A promising – albeit still unsatisfactory – area is that of social protection. The social protection coverage of North African seasonal migrant workers can be deemed unsatisfactory because, as revealed in a recent report by the European Trade Union Institute (ETUI), many seasonal migrant workers coming to Europe for short periods of time do contribute into European social security schemes but then cannot access the benefits they have paid for (Bogoeski and Rasnača 2023). In the case of Italy, for instance, the report concludes that:

third-country-national seasonal workers do not enjoy unemployment benefits and family allowance. ... Besides, short-term migrants cannot access social provisions reserved for long-term residents and foreigners holding a residence permit with a validity of more than one year. Other restrictions on migrants are widespread in Italian social security legislation. Moreover, short-term migrants also suffer from the fact that work casualisation deeply affects the value of in-cash benefits. Indeed, the benefits received risk being very low, both in the case of the reduction of the normal working time and in the case of short-term contracts (Borelli 2023).

24 The text of the mid-term evaluation report is available (in French) at: <https://www.ilo.org/fr/publications/rapport-d%E2%80%99C3%A9valuation-de-l%E2%80%99C3%A9valuation-%C3%A0-mi-parcours-du-projet-wafira-women>.

25 Articles in the press confirming the trends reviewed above include: AFP (2023); Carretero (2023); *EcoActu* (2024); Pascual (2022); Pascual (2023); *Algérie 360°* (2024); *InfoMigrants* (2023); Al Youm (2023); Reuters (2022).

A comparison of social protection benefits for seasonal workers across EU countries from the same ETUI report shows the following:

► **Table 5. Comparison of social protection benefits for migrant seasonal workers in selected EU Member States**

Member State	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Belgium	Yes	Yes	In principle (but need work authorization or to meet conditions for work authorization)	Yes (depending on immigration regime)	Yes	Yes (provided children have legal residence in Belgium or an EEA country)
Germany	Yes	Exemption from payment if marginal employment ("mini jobs")	No	No	Yes	No
Greece	Yes	Yes	Yes	Yes	Yes	Yes
Italy	Equal treatment with local workers	Equal treatment with local workers	No	No (typically, their permit is valid for less than one year, so they do not qualify)	Equal treatment with local workers	No
Portugal	Yes	Yes	Yes	Yes	No	No
Spain	Yes	Yes	Yes	Yes	Yes	No (only if permanent or at least temporary resident)

Source: Bogoeski and Rasnača (2023).

Table 5 points to a lack of uniform coverage and benefit access across EU countries for temporary migrant workers. Two areas in particular are in need of attention because of the long-term consequences that they may imply: namely, insurance against accidents at work and child benefits. The ETUI report also notes the specific precarious natures of certain sectors, such as seasonal agricultural work, hospitality, food processing and platform work, each of which were more likely to have gaps in social protection coverage (Bogoeski and Rasnača 2023).

Because of the central role played by bilateral social security agreements for previous generations of migrant workers and the fact that many of these agreements, even if imperfect, still remain active, there may be hope in terms of extending social protections to temporary migrant workers. One of the challenges faced by seasonal workers is that their period of contribution into the destination country social protection system tends to be rather brief, impacting their ability to accumulate benefits, but some EU countries have started extending the duration of seasonal work permits, which will allow for longer contribution periods. For instance, since April 2023, France has established a multi-year “seasonal worker” permit for three years, which therefore allows for greater portability of accumulated rights into the Moroccan or Tunisian social protection systems. Spain also started issuing its first multi-year permits for seasonal workers in October 2023, which will also support easier portability of rights (*L'Économiste* 2023).

The case of Spain and Morocco is an interesting example of how political commitment and a combination of available tools (bilateral social security agreements, respective social security regimes and migration permits) can lead to actual improvements in accessing benefits. But while the actions taken by the two countries showcase a number of very promising developments, room for improvement remains. A recent study of obstacles preventing Moroccan seasonal agricultural migrant workers from fully accessing the social security benefits provided under the Morocco–Spain BLMA shows that numerous practical and legal barriers remain (ILO 2024).

The analysis carried out by the ILO on current mechanisms highlights the following elements:

- ▶ **The need to raise awareness among women seasonal migrant workers on the transferability of benefits to Morocco:** It appears that women seasonal migrant workers accumulate social rights transferable to Morocco that concern them directly and/or their family members, particularly in terms of sickness and maternity benefits and family benefits. However, effective access would require specific support that is currently lacking to help them complete the necessary formalities to transfer these benefits to Morocco.
- ▶ **Exemption from the waiting period to benefit from medical coverage upon return to Morocco as a self-employed person:** To allow seasonal migrants to benefit from continuity of medical coverage upon their return to Morocco, totalization should be activated for contribution periods between the Moroccan Compulsory Medical Insurance (AMO) scheme for self-employed workers and the Spanish social security scheme. To do this, various legislative changes would be urgently necessary.

- ▶ **Totalization of insurance periods to benefit from pensions:** To avoid the situation of harmful double contributions, the problem of overlapping insurance periods for the pension system for self-employed workers should be tackled. To do this, it is recommended to allow for exemption from contribution payments due to the Moroccan pension scheme during periods of work in Spain.
- ▶ **Improvement of coordination between the administrations of the two countries through digitalization:** To ensure good coordination between the Moroccan and Spanish administrations that manage the flows of circular migration and migrants' social rights, the use of digitalization could simplify the relationship and the management of social protection for this population by streamlining the exchange of data.
- ▶ **The need to take into account the situation of workers engaged in circular migration in the development of legislative texts for the extension of family allowances and unemployment benefits:** Work on the development of legal texts for the implementation of universal social protection coverage in Morocco must take into consideration the situation of workers engaged in circular migration, in terms of the pension system, as has been specified above, but also concerning family and unemployment benefits.

Similar work has also been carried out in Tunisia. A 2023 National Social Security Fund (CNSS) report examining barriers to effective access to social protection for Tunisian migrant workers in France, Germany, Morocco and Egypt yielded operational recommendations that have already led to the training of over 100 officials from the CNSS to reduce substantially processing times and address administrative challenges. This will be furthered through bilateral meetings between staff in Tunisia and France and the digitalization of the claims processes. There is a plan to expand this arrangement to other countries of destination, such as Italy and Germany, with a specific emphasis on temporary migrant workers (ILO 2023).

Conclusion

This discussion in this chapter leads to four conclusions. First, European and North African demographic and labour market dynamics point to a long-term trend increasing labour migration of seasonal workers to Europe – in spite of the political backlashes seen in certain EU Member States.

Second, three channels of temporary labour migration between North Africa and Europe currently coexist: (1) well established and growing formal temporary labour migration schemes (such as Morocco–Spain, Morocco–France, and Tunisia–France); (2) individual, small-scale initiatives driven by the private sector relying on a host of more or less reliable intermediaries; and (3) underground sourcing networks yielding highly lucrative gains and established and coordinated by mafia-type organizations.

Third, commitment to and investment in regular migration pathways for seasonal workers have, to date, been way too limited, particularly in terms of mitigating the longer-term negative impact of temporary labour migration on countries of origin and harnessing the developmental potential of such schemes. The protection of temporary migrant workers could be much more proactive, through bilateral trade union agreements and by reinforcing the capacity of public employment services in the countries of origin. The development of new sustainable reintegration programmes for returning temporary migrant workers (and the scaling up of existing programmes) should become central to any new partnerships between North African countries and EU Member States.

Fourth, bilateral social security agreements – one of the trademarks of North Africa–EU cooperation on labour migration – should be systematically reinforced and expanded, and be combined with unilateral measures, sensitization of beneficiaries and digitalization of schemes. In addition, strengthened cooperation between social security institutions should be systematically encouraged.

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► Temporary labour migration in Switzerland: The life, death and rebirth of the “guestworker”

Etienne Piguet

Introduction

Switzerland has a long tradition of temporary labour migration. At the end of the last century, however, short-term migration schemes came under heavy criticism for their disregard of fundamental rights. With the entry into force of the free movement agreement with the European Union (EU) in 2002 and the abolition of seasonal work permits, the era of temporary workers seemed to be over. Since then, in a context of growing economic pressure for flexibility, some sectors of the Swiss economy have shown a sustained appetite for short-term contracts. Contradictory forces are at work: on the one hand, the extension of the legal rights of immigrants encourages longer stays and greater stability; on the other hand, economic competition and structural changes stimulate short-term contracts and mobility. What is the outcome of these tensions? This chapter provides answers based on an overview of temporary labour migration to Switzerland from the end of the Second World War to the present. We test the hypothesis of a “return of guestworkers” and identify the economic sectors and regions in which they are most present.

In 1986, Stephen Castles wrote an obituary of the guestworker in Europe (Castles 1986). The “death throes” lasted for a long time in some emblematic guestworker countries, such as Switzerland, where the seasonal recruitment programme continued until the year 2000, but on the whole Castles’ diagnosis was correct. There is a tension in liberal democratic States between temporary labour migration programmes and the fundamental rights of immigrants to social participation, family unity, decent work and secure life prospects in the destination country. At the same time, however, trends towards economic globalization have accelerated, pushing national economies towards greater flexibility, more labour migration and perhaps the growth of a “new precariat” (Milkman 2020). If traditional guestworker programmes are over, short-term mobility is on the rise. Within Organisation for Economic Co-operation and Development (OECD) countries, several million temporary migrant workers are currently on the move each year (OECD 2023). As Saskia Sassen had already noted 25 years ago, an increasing number of new migrants are not in search

of a new home in a new country, but rather are in circulation in a global labour market (Sassen 1999, 141). These mobile workers are not only highly qualified professionals but are also involved in “many occupations ranging from seasonal farm labour, through domestic service, construction workers and oilrig operators, to doctors, nurses, teachers, scientists, managers and many others” (Richmond 2002, 712). Do they differ so much from the guestworkers of the past? This question did not go unnoticed by Stephen Castles himself, who, 30 years after his obituary, imagined a “resurrection” (Castles 2006). Indeed, for Ana Triandafyllidou (2022, 3847), “[t]emporariness has become an increasingly salient feature in international migration”, and this trend justifies a renewed interest in theorizing, monitoring and analysing temporary labour (Piper and Withers 2018; Withers and Piper 2022; OECD 2023), as well as in normative debates to assess the compatibility with fundamental rights (Dauvergne and Marsden 2014; Bauböck and Ruhs 2022; Mieres and Kagan 2023).

However, few studies have attempted to make a comparison between temporary migrant workers in the past and current patterns. This is precisely what this chapter attempts to do for Switzerland, a fascinating case given its highly internationalized economy, low unemployment and persistently high immigration rates. The aim of the chapter is to assess which forms of temporary work have (re)emerged recently and to what extent they differ from the traditional models of the 1960s. In order to answer this question, we will compare the volume of past and current temporary migration flows, as well as the workers’ economic profiles and regional destinations within Switzerland.

The chapter is divided into three parts. The first part will recapitulate the history of the “saisonniers” (seasonal foreign workers) model in Switzerland and how it was officially abandoned. The second part will rely on statistical data on “saisonniers” from the past and more recent data on short-term permits to compare the amplitude of the two phenomena. The third part will analyse the economic structure of current temporary labour migration to Switzerland and its geographical distribution in comparison with the era of the “seasonal workers”. The chapter concludes with some suggestions for future research.

The life and death of the “saisonniers”

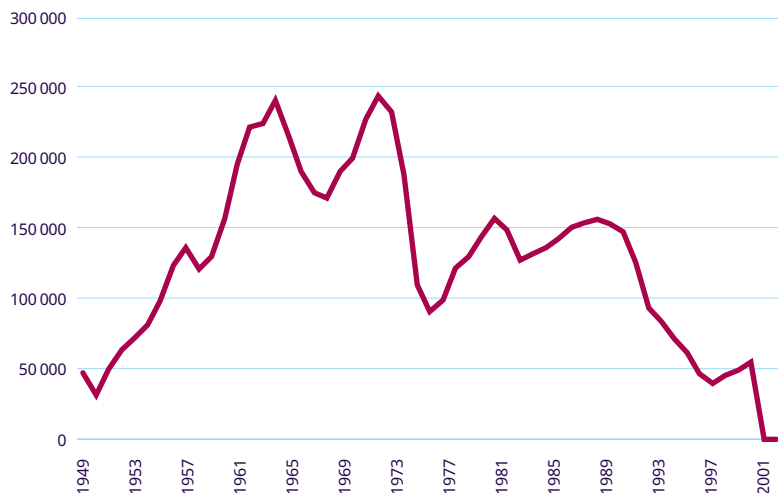
A Swiss tradition

The status of “seasonal worker”, established in Switzerland in 1931 by the Federal Law on the Residence and Settlement of Foreigners, reflected the anxieties of the time, which contrasted with the openness and optimism of the period before the First World War. It was part of a compromise migration policy aimed at guaranteeing the flexibility required by the economy, while at the same time

combatting the identitarian concerns of “foreign overpopulation” (Arlettaz and Arlettaz 1990). In 1924, the Federal Government had declared that temporary migrants were welcome – but not settlers.

Still modest before the Second World War, migration took off at the end of the 1940s when Switzerland faced an acute lack of labour. Its production infrastructure had not suffered from the war, and it responded to an important domestic and international demand for goods. In 1948, the Swiss Government signed an agreement with Italy concerning the recruitment of manpower. This led to a steady increase in immigration. About one half of the workers entering Switzerland every year were seasonal workers. Up from 50,000 in 1950, the number of annual entries reached 100,000 in 1955 (figure 1). These were high numbers, representing an annual influx of 2 per cent of the country’s total population (of 5 million in 1955).¹ In 1957, seasonal workers represented 26.5 per cent of the total number of foreigners occupied in the Swiss economy (Arlettaz 2012). Most other foreigners had a sojourner permit (“B permit”),² which allowed them to live in Switzerland but would be revoked in the event of unemployment.

► **Figure 1. Number of entries of seasonal workers in Switzerland, 1949–2001**



Source: Author’s calculations based on State Secretariat for Migration data.

1 Although many of these workers ultimately returned to their country of origin, a significant part of them settled down: without any immigration at all since 1950, the population of Switzerland would be two thirds of its current size (Piguet 2017) [9 million in 2024].

2 The “B” permit is valid for one year and is renewable.

Holders of the seasonal workers permit ("A permit") faced numerous restrictions to what are today considered fundamental rights and decent work (Piguet 2009). They were allowed to stay for a maximum period of nine months a year without their family (or without their children if the spouse had also an A permit). It is now recognized that some of them actually did stay the whole year long in precarious conditions, while others brought and hid their families during the "season". Thousands of children – now called by historians "kids of the cupboard" ["enfants du placard"/ "Schrankskinder"] – had to live with the fear of being caught and were without access to formal education (Schulz 2022). Seasonal workers were also not allowed to change their employer nor their canton of residence, which created a massive asymmetry of power in case of workplace difficulties, as the employers ultimately decide whether the worker can stay in the country or not.

More rights for the guestworkers

A significant shift happened in 1964. For a long time, the Italian Government had been critical of the poor conditions of stay offered to its 474,000 nationals in Switzerland, and especially to the 170,000 seasonal workers among them. Italy suggested giving seasonal workers the right to turn their permit into an annual B permit upon simple request, but Switzerland decidedly rejected this idea. Both countries then led difficult negotiations on family reunification, length of stay, medical insurance and unemployment benefits. The diplomatic arm wrestling finally turned in favour of Italy, certainly in part because the country was, since 1957, part of the European Economic Community. On 10 August 1964, despite Swiss media outrage in a context of growing xenophobia, the Federal Council (the Swiss Government) granted the right for Italian seasonal workers to transform their permits into annual authorizations after five consecutive seasons and a total of 45 months of work (Switzerland, Federal Council 1964). Because of this mechanism, an inflow of seasonal workers could for the first time be transformed into an inflow of immigrants.³ Simultaneously, Italian B permit workers who had resided in Switzerland for at least five years were granted the right to change jobs and offered improved renewal conditions for their permit (Piguet and Mahnig 2000). Family reunification was also facilitated for B permit holders, by reducing the waiting period from 36 month to 18 months, but not for "saisonniers".

³ When the Swiss Government attempted to postpone these automatic transformations at the beginning of the 1970s, the Italian Government reacted quite roughly, threatening to suspend the recently signed EU–Switzerland Free Trade Agreement on goods, a cornerstone of EU–Swiss trade relations.

These improvements went against the ongoing attempts of the Swiss Government to limit the foreign population, but were justified from an economic point of view: that is, maintaining the capacity of the Swiss economy to compete in the international market by keeping it attractive for immigration (Cerutti 2004). It is important to remember that Switzerland had always struggled to recruit the manpower it needed. After World War II, Italy was the only neighbouring country to accept emigration to Switzerland, while France, Germany and Austria rejected Swiss attempts to recruit workers on their territory. During the 1960s, Switzerland had to extend its recruitment area to Spain and Portugal and later to Yugoslavia and Türkiye. The economic situation in Italy improved during the 1960s with the so-called “Italian economic miracle”,⁴ such that some concessions had to be made to continue the recruitment agreement.

In order to fight the growing popular support of xenophobic movements in Switzerland, the improvement of the sojourn situation of foreign workers was coupled with a tightening of immigration rules and an attempt to implement caps on new immigrants arrivals following the classic immigration policy trade-off between numbers and rights (Ruhs 2013).⁵ Each canton⁶ was entitled to a certain number of foreign workers and competed to retain them, which was an easier task in regard to seasonal workers, as their ability to shift from one canton to another was strongly restricted. Migration policy during this period went hand in hand with a regional policy of support to peripheral regions (Dhima 1991). By imposing quotas, the Government contradicted strongly the free-market policy that had dominated the 1950s and 1960s. The new system gave rise to a negotiation procedure involving the local administrations, employers and trade unions.⁷

4 With Rosita Fibbi, we have argued that emigration to Switzerland did contribute through financial and knowledge transfers to the economic success of Italy, but this contribution remains to be quantified (Fibbi and Pigué 1995).

5 Martin Ruhs' *The Price of Rights* articulates the trade-off between the extent of rights granted to migrant workers and the openness of a country's labour immigration policy, suggesting that more rights for migrants often correlate with more restrictive immigration policies.

6 Administrative regions within Switzerland. The country is divided into 26 cantons.

7 To calm the anger of the economic sectors most heavily dependent on migration and of peripheral regions that relied heavily on foreign workers, the Federal Council maintained limitations to internal migration even for foreign workers with a B permit: they had to stay with the same employer for one year after their arrival, and for a period of three years, they were not allowed to change their canton of work or their profession (Niederberger 1982, 87).

The oil shock as stress test

At the beginning of 1975, the consequences of the first oil shock hit Switzerland with full force. The number of foreign workers with residence permits regressed by more than 100,000, and the number of seasonal workers declined by a similar amount. The absolute number of foreigners in the country decreased for the first time since World War II, and the share of foreigners in the total population dropped from 18 to 16 per cent. Through the non-renewal of the permits of unemployed foreigners, the administration gave the economy the opportunity to use foreigners as an “economic buffer” without increasing domestic unemployment. Out of a total of 340,000 job losses between 1975 and 1977, 228,000 (67 per cent) were among foreign workers. At this moment, Switzerland was probably a unique case of a strict guestworker system in the sense defined by Gary Freeman (1986, 59).⁸

Again, following a “number versus rights” trade-off, the decrease of the foreign population (numbers) allowed Switzerland in 1976 to extend the possibility (rights) to transform a seasonal permit into a B permit to nationals of countries other than Italy. In 1977, all seasonal workers became eligible for unemployment insurance.

In this context, Swiss trade unions faced a difficult dilemma: on the one hand, foreign workers were possible competitors driving down salaries and working condition and potentially taking jobs. This should lead trade unions to support immigration restrictions. On the other hand, class solidarity commends to support foreign workers, and their high number makes them an interesting group to enrol as trade union members. Indeed, the position of trade unions will evolve from an anti-immigration standpoint to a much more supportive attitude. The solidarity movement reached a high point in 1981 with the popular vote on the “Solidarity Initiative”, which sought to promote complete equality between settled foreigners and Swiss citizens. The Solidarity Initiative proposed that the length of stay should not be limited anymore and that seasonal status – considered inhumane because of the impossibility of family unification – should be abolished. Employers who relied heavily on seasonal workers, such as in the building, catering and agricultural sectors, were among the strongest opponents to the Initiative. Their lead was ultimately followed: the massive rejection of the bill by 84 per cent of voters on 5 April 1981 showed that the old “compromise” of temporary migration still convinced a solid majority of the Swiss population.

8 Gary Freeman defines a guestworker system as a policy framework designed to admit foreign nationals for the purpose of temporary employment without offering them a pathway to permanent residency or citizenship and only for as long as they are needed by the economy.

The last decade of the guestworker policy

At the end of the twentieth century, the defeat of the Solidarity Initiative, but also the marginalization of anti-immigration groups who failed to break the policy status quo and to implement ceilings on all forms of migration (Piguet and Mahnig 2000), gave rise to a new balance of power in the immigration policy arena that was very favourable to employers. Considering the economic recovery of the 1980s, the needs of businesses were clear: abundant immigration to maintain low salaries and meet labour demand, but fragile permits to retain flexibility in case of a new crisis. This explains the extended duration of the Swiss seasonal workers model in comparison with other European countries, where immigration bans were implemented following the oil crisis and where settlement policies including family reunification were set up for already present immigrants (Castles 1986).

As in previous periods, immigration to Switzerland was managed on the basis of negotiations between the different regions of the country and between different economic sectors. This situation will continue for many years to come. Gradually, however, several developments will undermine this policy. In the course of the 1980s, the traditional emigration countries of Southern Europe experienced marked economic growth, which reduced the number of candidates for emigration. In a good position to negotiate with competing immigration countries, they managed to substantially improve the situation of their nationals abroad. In 1989, under pressure of the Spanish Government, the minimum length of stay necessary to obtain a long-term residence permit in Switzerland was reduced from ten years to five years for Spanish workers. One year later, the same was done for Portuguese foreign workers, who were now treated the same way as Italians since the agreement of 1964. This situation accelerated a phenomenon of stabilization of the foreign population. In 1970, the share of permits limited to one year accounted for 70 per cent of the active resident foreign population, against the 30 per cent who held long-term permits. By 1990, the situation had reversed, with long-term permit holders accounting for 75 per cent. Additionally, as the whole foreign population was now granted unemployment benefits, most workers were allowed to stay – at least for a certain period – even if they lost their job. The margin of the Swiss Government to adjust the foreign population to economic fluctuations by not renewing annual permits effectively disappeared. These changes considerably rigidified the whole immigration system, and the role of temporary foreign labour as an “economic buffer” became much less effective. The economic benefits of strong low-skilled immigration during periods of growth also appeared less attractive in light of the risk of a surge in unemployment in the event of a downturn.

The Free Movement Agreement puts an end to the traditional temporary labour migration schemes

A second change related to the international context was the growing isolation of Switzerland in relation to the European integration process. This situation was increasingly seen as a significant disadvantage for the Swiss economy, as well as for Swiss universities and foreign relations in general. As the EU viewed free movement as a cornerstone for a global agreement, steps were being taken towards negotiating a radical U-turn in Swiss immigration policy, even if it would put an end to the guest and seasonal workers system.

This perspective was made more acceptable by three simultaneous factors. First, the Swiss economic circles that previously supported the temporary labour migration programmes were now divided between those who advocated for greater openness towards Europe and those who preferred to maintain the flexibility of the guestworker system (Mahnig 2005). Second, the Swiss temporary labour migration programme was – as forecasted by Castle for all liberal democracies – becoming more and more in contradiction with international law. For example, the UN Convention on the Rights of the Child, adopted on 20 November 1989, grants a right to family union, which was in contradiction with the Swiss “saisonniers” model. For this reason, Switzerland only ratified the Convention in 1997, with a shameful reservation on family unity for temporary immigrants. Finally, the economic outcomes of the past immigration policy were criticized by prominent economists. They argued that “importing low-skilled labour” was detrimental to Switzerland’s long-term economic interests, hindering efforts to increase capital intensity and modernize production methods. In a 1994 article, two experts stated that “all things considered, the economic benefits of Switzerland’s labour market immigration policy have proved insignificant in the past” (Straubhaar and Fischer 1994, 145). Similarly, the effectiveness of dispersing seasonal and annual workers among cantons to promote interregional equity towards peripheral regions was being questioned. A 1991 study on the internal migration of foreigners revealed that although many entered Switzerland through such schemes, they tended to migrate towards the more central and economically prosperous cantons, where they often encountered difficulties when trying to integrate into the labour market (Dhima 1991).

The Free Movement Agreement with the European Union was being negotiated in this context⁹. It was approved by the Swiss people in May 2000 and came into

9 An [annual report](#) is published to evaluate the consequences of this agreement on the Swiss Economy (Switzerland, SECO n.d.).

force in June 2002.¹⁰ Four years later the agreement was extended to ten new EU countries.¹¹ As shown in **figure 1**, the number of seasonal workers entering Switzerland had already declined to about 50,000 in 2001 in anticipation of the new policy. It fell to zero with the cancelation of the A permit in 2002. After 15 years of delay, Castles’ prediction had come true: Switzerland, the emblematic guestworker country, appeared to have finally put an end to temporary labour migration.

The end of history?

For most observers, the agreement on the Free Movement of Persons with the EU was about to radically transform immigration to Switzerland. In concrete terms, it provided for almost total freedom to EU nationals: working people would have the right to move to Switzerland to take up any job or become self-employed. They only had to register in order to get an official permit. Non-working people (pensioners, students and so on) were to be admitted if they have sufficient financial means to ensure their subsistence. Everyone would have the right to change their place of residence and work within the country, and to bring their spouse, children under the age of 21 and even ascending relatives under certain conditions.¹² The last and only reminder of the guest-workers system can be found in relation to non-EU countries: quotas of short-term permits are set each year to allow for the recruitment of highly qualified (so-called “specialists”) from overseas. However, these quotas are limited to a few thousand each year.¹³

10 On 24 September 2000, the Swiss people also clearly rejected, by 63.8 per cent of the vote, an initiative aimed at reducing the share of foreigners in the Swiss population to 18 per cent. The fact that this proposal, which risked jeopardizing the whole process of rapprochement with the European Union, was rejected shows that the Government may finally have found the way to a consensus.

11 It will be subsequently extended to Bulgaria, Romania and lastly Croatia.

12 With the exception of political rights, the bilateral agreements give European immigrants the same rights as nationals. The only important reservation is that a person who has never been gainfully employed in Switzerland will not be able to settle in the country and receive social benefits or unemployment insurance. The agreement applies symmetrically to Swiss nationals wishing to settle in the EU. It has also been extended to nationals of (non-EU) European Free Trade Association (EFTA) countries (Iceland, Liechtenstein and Norway).

13 The basic principle is that borders are closed for non-EU/EFTA citizens, with exceptions for highly qualified workers. The latter will only be able to obtain permits within the framework of limited annual quotas and if no national, resident or EU/EFTA workers with a similar profile can be found. A clear distinction is made between short-term permits (less than one year), which are in principle linked to specific projects/contracts, and long-term residence permits. There is no automatic conversion from one to the other. The aim here is obviously to prevent short-term permits, such as the defunct seasonal status, from becoming a gateway for long-term immigration.

A book published in 2008 by a well-known Swiss economic think-tank illustrated the prevailing views on the future. Entitled *The New Immigration* (Müller-Jentsch 2008), it argued that current and future immigration to Switzerland would be highly skilled and mostly European. Future immigrants would be granted long-term permits, which would put them in a similar sojourn situation to the native population. According to the authors: “The dark ages of the guestworkers, saisonniers, quotas and other unsuccessful control mechanisms ... are bygone” (Müller-Jentsch 2008, 16).

The return of temporary labour migration?

Despite its very gradual entry into force – some quotas were maintained until 2016 – the Agreement on the Free Movement of Persons between Switzerland and the EU led to much more intense immigration than initially expected. This was largely due to the sustained dynamism of the Swiss economy. Considering the long-term character of the rights granted to EU immigrants, the cumulative impact of the positive migration balance on the resident population of Switzerland between 2002 and 2023 nearly reached 1 million inhabitants (Switzerland, SECO 2023). This important population issue focused the policy debate and the attention of researchers away from that of temporary migration. However, the possibility for Swiss immigration authorities to issue short-term so called “L permits” for durations of less than one year still exists for EU citizens as well as for citizens of the rest of the world. In the remainder of this chapter, the evolution of the use of the L permit will be outlined, showing parallels with the defunct A permit (saisonniers) and leading to interesting new questions.

The legal situation

According to current Swiss laws and international agreements, “short-term residents are foreign nationals who reside in Switzerland for a limited period of time, usually less than a year, for a certain purpose with or without gainful employment. EU/EFTA [European Union and European Free Trade Association] nationals are entitled to this permit provided they are in possession of an employment contract valid from three up to twelve months”.¹⁴ L permits can

14 The period of validity of the permit is identical to the term of the employment contract. It can be extended for a total period of less than 12 months. Employment contracts of less than three months’ duration within a calendar year are not subject to a permit but are regulated via an online notification procedure. This is also the case when a person employed by a multinational firm works temporarily in Switzerland. The latter are not considered immigrants and are not considered in the following analysis. This case is regulated by a specific law (Ldét – Loi sur les travailleurs détachés). Conceptually, however, one could consider those persons as being part of the pool of temporary foreign workers.

also be granted to jobseekers from all EU/EFTA States during their job search,¹⁵ but without the right to social assistance (Switzerland, SEM, n.d.).

Overall size of the phenomenon

To make a valid comparison with seasonal workers, only L permits issued for work are to be considered here. As shown in [figure 2](#), the issue of L permits has been far from rare over the years 2002–2023.¹⁶ The mean annual number of entries with an L permit for work is about 92,000, and corresponds to 70 per cent of the mean number of seasonal permits entrances between 1949 and 2001 (132,000).¹⁷ The share of women is also similar to the one witnessed at the end of the seasonal workers area (30 per cent)¹⁸. Unlike under the seasonal worker scheme, family reunification is possible for L permit holders, but it remains a small phenomenon. In 2022, L permits for family members accounted for only 5 per cent (3,611) of the 76,000 entries for work (Switzerland, SEM 2023).¹⁹

The apparent decline observed in [figure 2](#) over the last 20 years is – apart from the 2020–21 COVID drop – most likely explained by the fact that, in the years following the Free Movement Agreement with Europe, B permits were still subject to quotas. In this context, L permits were used as a transitional instrument to allow immigration before B permits were issued.

¹⁵ The number of such “job search” permits appears to be marginal, but the phenomenon would merit further investigation.

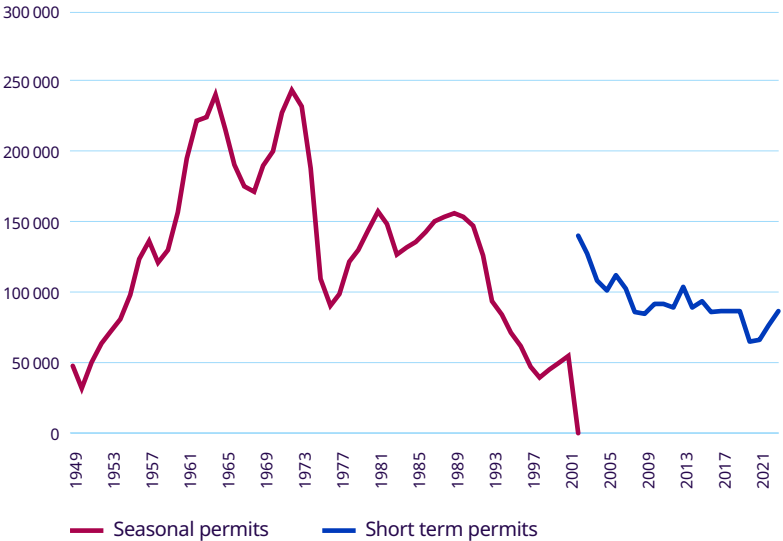
¹⁶ Further research is needed on L permits issued before 2002.

¹⁷ These numbers most probably underestimate the level of “temporariness” of current labour migration to Switzerland, as some holders of long-term B or C permits are allowed to spend significant periods of the year outside of Switzerland, hence living *de facto* the life of seasonal workers, without any statistical visibility.

¹⁸ The share of women was higher immediately after World War II, but dropped to about 10 per cent at the height of the seasonal workers period during the 1960s.

¹⁹ The total number of entries (91,000) also includes categories of non-workers other than family members, such as foreign students (Riaño, Lombard and Piguet 2018). No data exist for short-term permits before 2002.

► **Figure 2. Number of seasonal permits issued (annual entries 1949–2001) and number of short-term work permits issued (annual entries 2002–2023)**



Source: Author's calculations based on State Secretariat for Migration data.

Comparison between A permits and L permits

Comparison by economic sector

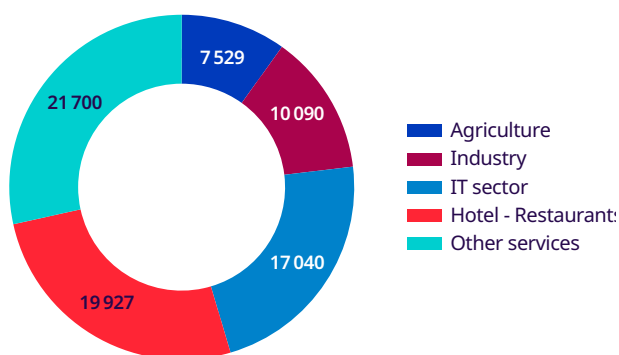
Between 1950 and 1980, most seasonal workers were employed in the construction sector, and it is the high and lows of this branch that largely explains the overall fluctuations. The number of seasonal workers in construction fell sharply between 1970 and 1975, never to return to pre-crisis levels.

A growing number of seasonal workers – since the beginning of the 1980s even a majority – were also recruited in the hotel, catering and tourism sector. The crisis of the mid-1970s did little to reverse this trend. Indeed, the share of seasonal workers in the hotel industry increased more than hotel activity itself, as shown by the comparison of the overnight stays statistics with seasonal workers numbers (Piguet 2001).

During the whole period, agriculture was also a significant recruiter of seasonal workers, with a mean of 10,000 entries a year. Agriculture is characterized by a higher degree of stability in the use of seasonal labour, with the number of entries varying little year after year.

In conclusion, seasonal workers’ activities were concentrated in three economic sectors during the whole period. The current L permits show a much greater diversity in occupations (**figure 3**), with the most prominent new activity into which L permit holders are recruited being the IT sector (17,000 or 22 per cent in 2022). Agriculture still recruits 7,500 short-term workers – roughly the same number as the past A permits. The share of the hotel, catering and tourism sector has significantly decreased, but still amounts to about 20,000 entries annually.

► **Figure 3. Immigration with a short-term permit (L) by sector, 2022**



Source: Author’s calculations based on State Secretariat for Migration data.

Countries of origin

In the 1960s, most seasonal workers in Switzerland came from Italy (83.3 per cent of entries in 1967) (Arlettaz 2012). This share then fell steadily: one third in the 1970s, one fifth in the 1980s and about 15 per cent at the end of the seasonal permit in 2001. In the 1970s, the Italians were gradually replaced by Spaniards and Yugoslavs, but at the turn of the 1990s, the share of these two groups decreased in favour of Portuguese nationals. From 6 per cent in the 1970s, the share of Portuguese seasonal workers reached 50 per cent by 1997.²⁰

²⁰ Author’s calculations based on the data of the Swiss central register of foreigners.

The countries of origin of L permit holders in 2022 were not very different from those of seasonal workers in the past, as most still come from the European Union (87 per cent of annual entries). However, there has been a significant diversification: the traditional countries of origin shrank to 10 per cent Italian, 4 per cent Spanish and 12 per cent Portuguese, while new origin countries include Poland (10 per cent) and Romania (8 per cent), but also Germany (16 per cent) and France (9 per cent). Although still small in number, workers from India (1,726 entries), the United States (1,305)²¹ and China (457) are among the new temporary workers.

Geographic distribution

As mentioned above, Switzerland has traditionally used immigration policy as a component of regional policy, the central idea being to ensure a steady supply of labour to peripheral regions despite a general trend of internal migration towards urban centres. Such an objective was relatively easy to achieve, given that seasonal permits were linked to a specific canton and employer. In fact, some cantons made great use of this possibility and continued to recruit a steady number of seasonal workers, even during periods of economic downturn²².

In particular, the mountain cantons, especially Graubünden and Valais, show a high number of new entrants throughout the whole period of seasonal labour recruitment. The average entry rate has reached 14 seasonal worker entries per 100 inhabitants in Graubünden, 6 per cent in Valais and around 4 to 5 per cent in Obwalden, Nidwalden and Uri, while in most of the other cantons it is around 2 per cent. This specific situation can be explained by the structural needs of the local economy, particularly in the tourism sector, and by the fact that these cantons succeeded in securing relatively high quotas of seasonal permits from the central Government (Piguet 2001, 32).²³

The regional policy dimension of the Swiss migration policy was criticized by liberal economists during the negotiations on the Free Movement Agreement (Dhima 1991). It was considered as a distortion of the free market to bring cheap labour to peripheral regions, discouraging them to invest in more capital-intensive activities. The end of this component of the policy and of specific

21 The case of the United States is specific with a majority of entries for very short stays (less than four months).

22 As well as holders of annual permits, whose mobility was also limited.

23 In those cantons, the crisis of the 1970s reduced the number of new entrants by only a third, whereas in most of the other cantons it fell by at least half. Subsequently, the canton of Graubünden, in particular, maintained a high level of inflows of seasonal workers, while inflows fell everywhere else, confirming the specificities of the structural needs in that canton. By contrast, the canton of Zurich, which was the main recruiter of seasonal workers in the early 1970s (more than 30,000 new arrivals annually, most probably due to the booming construction sector), had only 3,244 new arrivals in 1998. Ticino took in 17,181 seasonal workers in 1972, compared with 1,459 in 1998.

cantonal quotas was therefore not seen as a problematic loss at the level of the Swiss economy as a whole. The winners were clearly the most internationalized urban actors of the economy against more traditional domestic sectors. It is therefore surprising to discover, 30 years later, that the geographical pattern of L permits remains close to that of seasonal workers. Indeed, the three cantons that currently welcome the highest shares of L permits in relation to their population – namely, Graubünden, Valais and Obwalden – are the same that had the highest shares of seasonal workers in the past. In absolute terms, Valais issues more than 13,000 L permits per year, and Graubünden almost 10,000.²⁴ These figures are similar to those of Zurich, Switzerland’s most important economic centre and most populous canton. This confirms the striking historical continuities and would deserve further analysis. A hypothesis is that – although European L permit holders are formally free to move from one canton to another – some peripheral cantons manage to maintain a certain level of fuzziness regarding the strength of the link between the permit and the cantons in order to retain their precious workers. Indeed, it remains rather complex for foreign workers to navigate the Swiss immigration regulations at different administrative levels. Far from being in a position to act as perfectly informed “*Homo oeconomicus*” they have to rely on fuzzy administrative messages that might keep them in a subordinate situation and prevent them from fully making use of their rights.

Conclusion: “Old wine”, new permits?

On 27 December 2023, a broadcast from the Swiss public TV channel RTS described the efforts of many Swiss ski stations to attract “seasonal workers” (RTS 2023). The use of this legally obsolete terminology shows how important temporary workers still are in some sectors of a highly developed economy like Switzerland. In this chapter we have shown that, in volume as well as in terms of gender balance, economic sectors and geographical repartition, the current holders of L-permits do not differ fundamentally from the traditional guest-workers of the past and more specifically from the iconic “*saisonniers*”. However, there are important differences in the diversification of countries of origin and the emergence of new sectors of activity. Contrary to popular belief, the latter are not exclusively related to low-level jobs, as the thousands of L permit holders now working in the Swiss IT sector attest.

In 2000, Andreas Wimmer and I showed that asylum-seekers and refugees were, to a limited extent the “new guestworkers” (Piguet and Wimmer 2000), but the scope of this substitution was far more limited at that time than the developments shown in this chapter regarding L-permits (which were used instead of A-permits to bring in “guestworkers”) since the entry into force of

24 Author’s calculations based on the data of the Swiss central register of foreigners.

the Free Movement Agreement. This discovery obviously requires further research. At an analytical level, the issues related to the economic “needs” of precarious and temporary workers and to the gender and regional dimensions of the phenomenon should be at the centre of future inquiries. At a more ethical and normative level, the issue of the agency of temporary migrant workers is fundamental. Is their situation better than that of their “saisonnier” predecessors? They seem to benefit from extended rights, but to what extent can they make use of them? In this context, it should not be forgotten that although most temporary workers are EU citizens, and theoretically well protected by the bilateral agreement, several thousand come from further afield and are not protected by any such agreements. Another question would be – as in the “saisonniers” era – to what extent does the temporary nature of the permit really corresponds to a temporary stay?

My hope is that this exploratory chapter will raise the awareness of policy-makers and researchers to pay more attention to the clearly underestimated phenomenon of new guestworkers.

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► A brave new (post-pandemic) world: A principles-based approach to regulating temporary labour migration in Australia

Joanna Howe

Australia's migration system is broken. It is unstrategic. It is complex, expensive, and slow. It is not delivering for business, for migrants, or for our population.
– Clare O'Neil, Australian Minister for Home Affairs, 2023¹

Introduction

The COVID-19 pandemic exposed the fragility of the alleged “triple win” of temporary labour migration in Australia (Howe and Owens 2016, 20; Castles and Ozkul 2014). As the “destination country”, arguably the main beneficiary of temporary labour migration (Costello and Freedland 2016), Australia shed temporary migrant labour quickly during the pandemic and cut pay with minimum formality (Partridge 2020). The Australian Government told temporary migrant workers to return to their home countries (McCauley and Chung 2020) and excluded this group from additional social security benefits during the pandemic (*The Conversation* 2020). The fragility of temporary migrant workers’ place in Australia was exposed during this time. Yet the end of the pandemic and the advent of open borders has produced an opposite response from the Australian Government towards temporary migrants, as it now increases its efforts to make Australia an attractive destination country once more.

Although migration is essential to the Australian economy, temporary labour migration is a more recent phenomenon. Despite Australia comprising only 0.3 per cent of the world’s population, 2.8 per cent of the world’s immigrants live there (Parkinson, Howe and Azarias 2023). In 1996, Australia introduced the subclass 457 visa programme as a discrete initiative to bring over highly skilled temporary migrant workers, but a decade later the intake of skilled migrants had doubled and today temporary migrants on a diverse array of visas with work rights account for approximately 7 per cent of the Australian labour force (Mackey, Coates and Sherrell 2022).

¹ See Australia, Office of the Minister of Home Affairs (2023).

The temporary visas introduced in 1996 for highly skilled migrants were considered a significant policy innovation. Until that time in Australia, all visas for economic and family migration entitled visa holders to permanent residence, as they were based on the understanding that migrants were valuable additions and contributors to the Australian community. The introduction of temporary labour migration visas reflected a change in national culture in response to shifting international realities, most notably the increased movement of people around the world for economic purposes.²

Despite the initial bipartisan political support for temporary labour migration and a lack of public concern about its effects, there is now a growing awareness of its adverse aspects. Numerous government inquiries (Australia, Parliament of Australia, Senate Education and Employment References Committee 2016; Australia, Fair Work Ombudsman 2016; Australia, Parliament of Australia, Senate Economic References Committee 2022), scholarly articles (McKenzie, Baker and Hasam 2016; Underhill and Rimmer 2016; Campbell, Boese and Tham 2016) and media reports (Sarwal 2022; Hendy 2023) have exposed endemic worker exploitation, displacement of local job opportunities and the emergence of certain sectors with a structural reliance on employing temporary migrants in non-compliance with Australian labour laws and standards. There has also been growing recognition of the labour market contribution of and vulnerability of temporary migrants outside of the temporary skilled programme, such as working holiday makers and international students.³ Scholars have critiqued these schemes as being *de facto* work visas providing “side door” entry into the labour market (Wright and Clibborn 2017). However, labour market experience of international students has been fraught, with more than 50 per cent working below their skill level (Parkinson, Howe and Azarias 2023, 109) and 49 per cent being paid below the minimum wage (Farbenblum and Berg 2020, 8). At the same time, employer associations and certain sectors have asserted that the temporary labour migration programme does not meet their needs because it is inflexible, inefficient and narrow in scope (Howe et al. 2019). By the time of the pandemic, it was apparent Australia’s labour migration programme had gone awry. However, during the period of closed borders, significant reform was not undertaken.

A change in government ushered in a new desire for reform. In 2022, Clare O’Neil, the Minister for Home Affairs, announced her intention to conduct an independent expert panel to review the entire migration programme in Australia, except for unlawful immigration. Minister O’Neil appointed three reviewers to examine the migration system, one of whom was the author (Australia, Office of the Minister for Home Affairs 2022), and the report that

² For previous analyses of the 457 visa, see Tham and Campbell (2011) and Howe (2010).

³ Note, the 457 visa was replaced with the Temporary Skill Shortage visa (subclass 482) in 2017.

culminated the Migration Review was presented to the Government in March 2023 (Parkinson, Howe and Azarias 2023). Minister O'Neil described this as an "urgent", "long overdue" and "once-in-a-generation" review to provide advice to the Government about how to reform the migration system for Australia's future. The establishment of this review points to the continuing quest for a migration programme that can simultaneously address labour market demands and worker vulnerability. This chapter provides the author's reflections on the Migration Review's key contributions.

The Migration Review

The Review was conducted over a five-month period, receiving 483 public submissions and conducting eight policy roundtables. The Review proposed new objectives and guardrails to govern the migration programme. Although this overarching framework has been accepted by the Federal Government (Australia, Department of Home Affairs 2023; Australian Labor Party 2023), at the time of writing, the Government has not announced its policy reforms arising from the Review.

The Migration Review proposed five objectives for the migration programme:

1. building Australia's prosperity;
2. enabling fair labour markets;
3. building a community of Australians;
4. protecting Australia's interests in the world; and
5. ensuring a fast, efficient and fair system.

The first four objectives point to the need for migration to drive economic success, produce fair labour market outcomes, build social cohesion and improve Australia's geostrategic position. These objectives are about **what** the migration programme should achieve. The final objective is about **how** this will be achieved. Of these five, it is the inclusion of "enabling fair labour markets" that is the most innovative, as previously the articulation of Australia's migration programme has been focused on driving economic outcomes and meeting employer needs.

In addition to the objectives, the Migration Review proposes five guardrails to guide how skilled migration policy is made. Skilled migrants are migrants who hold the qualifications and skills that are required to fill Australia's skill shortages, as set out in the Australian Government's skilled occupation list (Australia, Department of Home Affairs, n.d.-a). The proposed guardrails are a tripartite approach; universality; an evidence-based approach to identification of labour market need; mobility (the ability to change employer); and integrity. These guardrails address some of the longstanding points of conflict within the

debate around the skilled migration programme that have emerged since 1996 and may assist in driving political consensus in migration policy. They provide a mechanism through which tripartite governance and independent identification of labour market needs are used to resolve these conflicts, with core values of universality, mobility and integrity governing the approach.

Taken together, the objectives and guardrails make a significant normative contribution that help frame discussions around visa settings, a subject to which we now turn.

Key contributions from the Review

Prioritizing fairness

A key contribution of the Review is the establishment of “enabling fair labour markets” as one of five core objectives of the Australian migration programme. This primary objective is delineated into two sub-goals. The first is “[c]omplementing employment, wages and conditions of domestic workers” (Parkinson, Howe and Azarias 2023, 22). This speaks to the importance of temporary labour migration being used to supplement local workers – rather than replace or displace them – and to have a positive effect on local wages, conditions and job opportunities. There were widespread concerns that employer-conducted labour market testing was insufficient to achieve this. The second sub-goal is “[p]reventing [the] exploitation of migrant workers and ensuring they have opportunity to reach their full potential, are free from exploitation and have meaningful access to complaints mechanisms and legal remedies” (Parkinson, Howe and Azarias 2023, 22). This speaks to the realization of the promise of the “triple win” for temporary migrants and the need for active state intervention to ensure that their vulnerability as non-citizens does not produce exploitation and that they are able to access remedies and enforce their workplace rights. Research by Australian scholars Laurie Berg and Bassina Farbenblum (2018) revealed that temporary migrants were owed more than 1 billion Australian dollars in unpaid wages and entitlements but rarely accessed legal remedies to recover their entitlements. The sub-goal of “ensuring they have the opportunity to reach their full potential” recognizes that temporary migrants have their own individual goals and aspirations that should be supported through the Australian migration programme.

This articulation around fair outcomes for workers is stronger than what is currently enshrined in the Migration Act 1958 (Cth). The first and central object of this Act is to regulate the entry of non-citizens into Australia in achievement of the national interest, as set out in section 4. This overarching object is then delineated into three aspects for Australia’s temporary labour migration programme, outlined in section 140AA: first, to address genuine skill shortages;

second, to ensure local job opportunities and training; and third, to protect temporary migrant workers and uphold their rights. This trio of objectives could be seen as incorporating elements of fairness into the process of temporary labour migration. The first purpose seeks to meet employer needs by alleviating skill shortages; the second purpose is concerned with fairness for local workers by ensuring there are appropriate safeguards around local job opportunities and training; and the third purpose is protective, recognizing the vulnerable position of many migrant workers in the labour market and the need to ensure their workplace rights are upheld. Notably, the stated goals in the Migration Act only pertain to the Temporary Skill Shortage Visa, which accounts for less than a tenth of the temporary migrant workforce in Australia.⁴

Even though these stated objectives recognize the various interests of the parties, in practice, the regulatory design of Australia's temporary labour migration programme has tended to prioritize the first objective (addressing skill shortages) at the expense of the others. This is unsurprising. The genesis of Australia's contemporary temporary labour migration programme was a 1995 report written by an inquiry committee chaired by businessman, Neville Roach ("Roach Report"). The Roach Report recommended the creation of one temporary visa class for skilled temporary labour migration which would meet the needs of business (Australia, Parliament of Australia, Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists 1995). The Roach Report clearly articulated the national economic interest as the central purpose of temporary labour migration, stating unequivocally that "the primary principle governing the temporary entry of key business personnel needs to be that it is of benefit to Australia". This objective was delineated in a subsequent paragraph of the report as referring to the pursuit of "certainty", "transparency", "simplicity", "consistency", "business flexibility" and "speedy processing" (Australia, Parliament of Australia, Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists 1995, 3). No mention was made of fairness or any similar kind of normative idea. The Roach Report's focus on economic goals is present today in the employer-driven nature of the temporary skilled programme, which is designed to ensure employers can flexibly and easily meet domestic skill shortages through nominating and sponsoring temporary migrant workers. By contrast, the Migration Review elevates fairness as a core goal of the programme, ensuring it applies universally across the programme and is met with respect to all visas with work rights, not just the dedicated Temporary Skill Shortage visa. This recognizes the significant labour market contribution of mobility visas and the importance of addressing the issue of precarious work within this cohort, such as for working holiday makers and international students.

⁴ There are approximately 1.8 million temporary migrant workers in Australia and about 105,000 Temporary Skill Shortage visa holders (Parkinson, Howe and Azarias 2023, 42, 61).

Although the identification of “fairness” as a core objective of the migration programme is a new development in Australia, this concept, and in particular the Australian idea of “a fair go”, has long been a touchstone of Australian labour law. The framers of the Australian Constitution and the Conciliation and Arbitration Court’s early members sought to shape “the political economy according to the national ethos of the fair go” (Macintyre 2001, 31). Emerging in the jurisprudence of the Australian Arbitration and Conciliation Court was the success of compulsory arbitration for nearly a century that was due to “egalitarianism and fairness” considered emblematic of the Australian character, with its pursuit of fair and reasonable outcomes (McCallum 2006, 101; Rickard 1984, 261). While seemingly a colloquialism, the “fair go” became deeply embedded in Australia’s labour laws and jurisprudence, including Australia’s current unfair dismissal law (Howe 2016, 101–2, 111). According to Australian labour law scholar Joellen Riley (2007, 13):

The “fair go” is an idiomatic expression of the Australian commitment to an egalitarian democracy which respects the autonomy and dignity of its citizenry. Those who engage workers and those who work are all working citizens, and as such they are entitled to equal respect and consideration in the determination of matters affecting their working lives.⁵

Similarly, in the United Kingdom, the development of statutory labour law was partly motivated by a desire for this statutory regime to act as a counter-vailing force, moderating employer power and creating a fairer and more equal employment relationship (Kahn-Freund 1966, 43; United Kingdom, Royal Commission on Trade Unions and Employers’ Associations 1969).

The application of this labour law concept of “fairness” to migration law recognizes the considerable labour market impact of temporary migrant work. The tendency for migration law to divide labour law’s worker-protective mission is observed by Cathryn Costello and Mark Freedland (2014), a result of a seemingly unquestioned economic philosophy that temporary labour migration programmes need to be less regulated by government and instead driven by the needs of business, with market responsiveness, timeliness and flexibility as the key indicators of success (Howe and Owens 2016, 3). This objective of “enabling fair labour markets” recognizes the importance of ensuring that benefits of migration are realized by both local and migrant workers.

To achieve fairness, migration law (like labour law) must engage in a series of trade-offs to strike an effective balance between the national interest and the needs of employers, local workers and migrants. This approach requires

⁵ Similarly, the President of the New South Wales Industrial Relations Commission observed that the “notion of a fair go is a profound one, firmly rooted in the Australian psyche” (Boland 2010).

the regulation of temporary labour migration to resolve an inherent tension between the needs of the destination country to be mobile, flexible and have access to workers without delay on the one hand, and the needs of workers for decent work, labour market opportunities, and fair wages and conditions on the other. The ILO's landmark 2014 report on "fair migration" advances the notion that employers' and national needs must be tempered by realizing dignity for migrant workers. The report contends that this means:

Constructing an agenda for fair migration which not only respects the fundamental rights of migrant workers but also offers them real opportunities for decent work. Recognition of the contribution that they make to the societies from which they come and where they work has to be translated into instruments of governance which guarantee a fair share of the prosperity which migration helps to create (ILO 2014, para. 18).

The achievement of fairness involves a difficult balancing act between the competing interests of parties. A policy seeking fair outcomes for one party may increase the likelihood of unfair outcomes for another. For example, affording a temporary migrant worker the freedom to choose employment may result in reducing the security of labour supply for the employer. In the case of working holiday makers who can earn a visa extension if they complete "specified work" in certain sectors (such as farm work), this restriction prevents their access to the labour market, but for employers in these sectors, this creates a more certain labour supply. In practice, this visa extension has been heavily relied upon by the Australian horticulture sector to meet its harvest labour needs. However, it has also been strongly critiqued as a mechanism that produces endemic exploitation because of working holiday makers' dependence on farm work to achieve a migration outcome (Howe et al. 2019). Mindful of these competing interests, the Review proposed returning the working holiday maker programme back to its original intention of being a cultural exchange programme by removing the possibility of a visa extension (Parkinson, Howe and Azarias 2023, 9, 89). This example illustrates that the achievement of fairness in the regulation of labour migration necessitates a series of trade-offs to strike an effective balance between costs, efficiency and the needs of employers and workers (both local and migrants). This is likely to produce a more balanced regulatory framework for labour migration, which ultimately will increase public confidence and support for migrant workers (Wright 2014), and limit its politicization (Australia, Productivity Commission 2015, 5). There are, therefore, sound reasons for the Review's proposal that fairness counterbalance the traditional goals of national prosperity and employer needs in the drafting and implementation of Australia's labour migration programme.

Contesting employer dominance

The Migration Review challenges the demand-driven orthodoxy that has underpinned the temporary labour migration programme since 1996 when the subclass 457 visa was introduced. From its inception, the system was predicated on meeting the needs of employers, and was based on an undemanding model of employer attestation to determine the existence of a skill shortage. In so doing, the design of the subclass 457 visa, and subsequently the Temporary Skill Shortage visa programme, outsourced to individual employers the determination of whether a skill shortage existed. Shortly after the inception of the subclass 457 visa, Australian public law scholar Mary Crock (1997, 141) observed that the most striking aspect of the temporary labour migration programme was “the emphasis that is placed on the needs and wishes of employers”. The Australian orthodoxy at the time, which remained virtually unchallenged in the ensuing two decades until the Migration Review, was that a demand-driven approach is the most efficacious way to meet skill shortages in the domestic labour market.

Since 1996, skilled temporary migration has been uncapped, so employers determine how many temporary migrant workers enter Australia. Employers initiate the migration process by making a request to the immigration department to sponsor a temporary migrant worker.⁶ Only temporary migrant workers with a job offer from an Australian employer are eligible for a sponsored visa. A few regulatory constraints moderate employer demand. These include a temporary migrant worker’s occupation being skilled and present on an occupational shortage list, the migrant worker’s salary exceeding the threshold set by the Government, and the worker being paid in accordance with market salary rates for that occupation. The programme’s aim is “to enable employers to address labour shortages by bringing in genuinely skilled workers where they cannot find an appropriately skilled Australian” (Australia, Department of Immigration and Border Protection 2014).⁷

The subclass 457 visa surpassed expectations of how interested employers would use it as a way of recruiting staff and has become a central pathway into the labour market for overseas workers. Conceived in the Roach Report (Australia, Parliament of Australia, Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists 1995, 84), it was primarily about “intra-company transfers”, “not meant to apply to the traditional skilled trades or to professions like nursing and teaching” and was never intended to

6 The government department responsible for the Temporary Skill Shortage visa is the Department of Home Affairs. At the time of the introduction of the subclass 457 visa, it was called the Department of Immigration and Multicultural Affairs.

7 This objective is set in policy (not legislation). The legislative and regulatory framework for the subclass 457 visa, and now the Temporary Skill Shortage visa, does not include an objects clause, despite calls by some scholars for it to include this (Tham 2013).

become “an instrument for overcoming long term labour market deficiencies” (p. 4). It was envisaged to be a means of giving Australian employers access to highly skilled workers in a competitive global market (Cerna 2011). The programme was underpinned by employer demand because employers would have to make themselves attractive in order to recruit internationally, otherwise migrant workers would travel to other countries. In this way, employer demand would match migrant worker supply in the labour market, which would result in the right wages and labour conditions being offered to the worker. In the years since its inception, the subclass 457 visa and now the Temporary Skill Shortage visa programme, can no longer be accurately described as only allowing the importation of highly skilled workers, morphing instead into a general labour supply visa.

The Migration Review identified three aspects of the Temporary Skill Shortage visa for reform, with each of these aspects arising from critiques of the demand-driven model of the visa. The Review found that the visa was governed by short-term employer interests rather than the national interest, was insufficiently connected to domestic education and training systems, and had design features that heightened the risk of worker exploitation (Parkinson, Howe and Azarias 2023, 73). The first two problems are interconnected and stem from the primacy of employers in identifying skill shortages in the design of the visa. The Review noted the unresponsive nature of occupation lists tied to the Temporary Skill Shortage visa and the problematic nature of employer-conducted labour market testing to verify whether a shortage exists. The Review criticized the occupation lists as being out of date (as they rely on a 2001 industry structure) and being beholden to vested interests lobbying for additions to the lists. The Review also criticized the employer demand model as an inaccurate reflection of genuine labour market needs because it ostensibly relied on “recruitment difficulties identified by employers as prima facie evidence of a shortage – without reference to wages, conditions, location or employer reputation” (Parkinson, Howe and Azarias 2023, 75). The Review, drawing on the work of Australian scholars Chris F Wright and Stephen Clibborn (2022, 11), argued that employer demand was underpinned by a preference for precarious workers encompassed in a desire for certain “behavioural traits”:

An analysis of the reasons for why employers sponsor temporary skilled visas found that while many did so to address shortfalls of suitably qualified workers, in accordance with the scheme’s objective, large proportions of employers in industries reliant on skilled trades workers used the scheme to recruit workers perceived as having certain “behavioural traits”. These “behavioural traits” related to the perceptions of employer sponsors that temporary skilled visa holders had better attitudes, stronger work ethics, and were more loyal and harder working than other groups of workers. The

single-employer sponsored nature of the temporary skilled visa scheme was identified as a reason for these perceptions.⁸

The Review proposed reforming two existing mechanisms to develop a more robust and evidence-based method for determining skill shortages. The establishment of Jobs and Skills Australia (JSA) in 2022 fulfilled an election commitment of the new Labor Government led by Prime Minister Anthony Albanese. It was not conceived as a body intended to partake in the migration programme but was created to replace the National Skills Commission.⁹ Managed through a tripartite board, JSA is an independent statutory agency responsible for providing advice to the Australian Government to underpin its response to current, emerging and future labour market and workforce skills and training needs. The Review recommended that JSA's remit be expanded to migration through creating "a more forward-looking, data-driven model for identifying skills needs that also takes account of domestic training and workforce planning efforts" (Parkinson, Howe and Azarias 2023, 77). The Review recognized greater resources would need to be provided to JSA given this expanded remit. Although JSA would be staffed by labour market economists, its work would be connected to the ten Jobs and Skills Councils that cover all industries across Australia. This would also include stakeholder input and quantitative and qualitative data collection and analysis to determine labour market needs. For this model to be more effective than its predecessor, JSA would need to ensure that its work is responsive, timely and capable of demonstrating a nuanced, regionally-aware approach.¹⁰

The Review also proposed reforms to the Ministerial Advisory Council on Skilled Migration (MACSM). The MACSM was introduced by an earlier Labor Government in 2012 and given the task of providing expert advice on the role of skilled migration in the Australian economy (Australia, Office of the Minister for Immigration and Citizenship 2012). At its inception, the MACSM had an independent chair and equal representation from trade unions and employer peak bodies, but over time its composition became bloated and heavily weighted towards employer interests, with its remit unclear. The Review proposed reconstituting the MACSM to ensure equal representation from the social partners and to enable it to make requests of JSA for labour market data and analysis that the MACSM could use to make recommendations to the Minister for Immigration built on a consensus approach. Although the Review notes achieving consensus will be challenging, it states (Parkinson, Howe and Azarias 2023, 187):

8 Emphasis added. See further: Wright and Constantin (2021).

9 The National Skills Commission previously provided expert advice on Australia's labour market, including current, emerging and future skills needed in the workforce.

10 As far back as 2008, it was recommended that there be salary floors and occupational lists for regional areas, see Deegan (2008).

MACSM's independent Chair, through the Department of Home Affairs, would refer the particular issues raised to Jobs and Skills Australia which would be asked to conduct a professional, factual, evidence-based labour market analysis of the particular sectoral issue. The result of JSA's analysis would be presented and discussed at a following meeting of MACSM. In some cases there will be consensus among MACSM members on the desirable way forward, although realistically differences may be more common than consensus. In the latter case, the matter would be referred by the Chair to the Department for it to take the appropriate recommendations to the Minister.

The third aspect of the reform to the Temporary Skill Shortage visa was the recognition that the demand-driven model heightened the risk of migrant worker exploitation because it effectively tied migrant workers to their employer. The Review noted (Parkinson, Howe and Azarias 2023, 81):

Visa conditions can increase the risk of migrant exploitation by regulatory conditions driving power imbalances between employers and migrants. Restrictions on a visa holder's ability to change employers and dependence on an employer's continued support to access the Australian labour market and, perhaps, eventual pathways to permanent residence, limit a migrant worker's capacity to resist, report or leave exploitative conditions.

The Review proposed addressing this issue through increasing visa holders' portability by allowing six months for a temporary skilled migrant to find new employment in the same sector or job family (Parkinson, Howe and Azarias 2023, 85). Instead of the onerous process of employer sponsorship, the Review proposed a "light-touch" registration of employers engaging temporary skilled migrants and for fees to be paid in monthly instalments to enable greater portability for workers (Parkinson, Howe and Azarias 2023, 85). The registration requirement would ensure that all employers engaging a visa holder would be required to register their details online via a government website. Employer associations have expressed concerns that this will prevent them from ensuring security of labour supply, as workers will be free to move in the labour market (McIlroy and Read 2023). The importance of facilitating internal labour market mobility through ensuring workers can exit their employment is recognized in international Conventions. A limited ability to exit is likely to drive the aforementioned employer preference for certain "behavioural traits" identified by Wright and Clibborn and has a chilling effect on the ability to report exploitation or seek suitable redress, including pursuing a claim for backpay (Berg 2015, 287; Zou 2016, 150; Wright and Constantin 2021; Anderson 2010; Farbenblum and Berg 2021, 25–6). Although the introduction of greater portability represents a paradigm shift and will require employers

to accept that workers will have more mobility, it is essential for guaranteeing that temporary migrant workers are on an equal footing with local workers. The Review also recommended that all temporary migrants receive targeted training on workplace laws and conditions via in-person information sessions within one month of arrival (Parkinson, Howe and Azarias 2023, 86). Built on the worker induction model in the Pacific Australia Labour Migration (PALM) scheme, a temporary labour migration programme for Pacific Island workers, these sessions would connect temporary migrants with Australian organizations that can assist them with workplace issues. As the Review observed (Parkinson, Howe and Azarias 2023, 87):

In particular, the Panel believes induction sessions, preferably in person, within one month of arrival, would be extremely valuable. Such sessions could introduce new migrants to relevant community support, networking opportunities, workplace rights and pathways to legal remedies if necessary. Government sponsorship of this engagement, with the participation of the Fair Work Ombudsman, community groups and relevant unions, would legitimise migrants engaging with these entities in the event of issues emerging.

Cumulatively, these three policy initiatives embed tripartism, which, to date, has not been part of the story of skilled temporary migration in Australia. This approach also seeks to elevate the importance of the national interest and to achieve policy coherence between migration, education, and training and employment, rather than seeking to satisfy employer demand without moderation.

Finding a way forward for low-skilled migration

The Review also tackled the issue of low-skilled migration, but is less prescriptive in relation to this area than in other aspects of its report. Noting that working holiday makers and international students congregate in low-skilled, low-wage work, the Review observes that “Australia *already* has a large migrant workforce engaged in lower paid work” (Parkinson, Howe and Azarias 2023, 91). For example, the submission to the Review by the National Farmers’ Federation, an employer association in the agriculture sector, stated, “[i]t cannot be overstated just how important that source of worker is ... it’s no exaggeration to say that the [horticulture] sector was brought to its knees when borders closed” (2022, 9).¹¹ The Review suggests that designing a dedicated pathway for low-skilled work requires a whole-of-government approach, taking into account its interaction with existing labour mobility programmes for students and working holiday

¹¹ Emphasis omitted.

makers, and the likely impact on the value of the Pacific labour programmes, particularly the PALM scheme, to Australia's partners in the region. There is a concern that the introduction of a new low-skill work visa will result in less employer reliance on PALM.

There is some difficulty in ascertaining whether a labour shortage exists for low-skilled work or whether any such shortage arises from low wages and conditions and the norm of non-compliance with labour standards in certain sectors. The Review notes that "there are challenges in identifying reliable data on shortages in lower paid occupations and the available analysis does not consider the impact of possible improvements to wages and conditions on the number of Australians engaging in these occupations" (Parkinson, Howe and Azarias 2023, 92). In fact, many of the industries that are most vocal about the need for low-skilled temporary migrant labour are also known for their non-compliance with labour standards, for example, horticulture (Howe et al. 2019), hospitality (Campbell, Boese and Tham 2016) and aged care (Charlesworth and Howe 2018; Charlesworth and Isherwood 2021). The submission by the Australian Manufacturing Workers Union (2022, 2) notes this concern and the importance of robust identification of shortages:

Shortages should be identified using a robust, evidence-based process involving labour market data, alongside consultation with unions and industry. In addition to identifying shortages, this process should seek to determine the various levers – including but not exclusively temporary migration – to attract more applicants to sectors in the short-, medium- and long- terms. This could include greater investment in training, improving wages and conditions, and/or providing more career development opportunities.

The Review's proposal to rely on JSA to achieve policy coherence will, for the first time, allow the identification of shortages across the skills spectrum to be linked to quantitative data on wages and qualitative input from stakeholders via the Jobs and Skills Councils. The Review suggests that if a dedicated pathway for low-skilled migration is created for certain occupations "it will need to be supported by other interventions for all workers in that sector that address employment conditions, career pathways, training, workplace health and safety and pay rates" (Parkinson, Howe and Azarias 2023, 95).

The Review suggests one vehicle that could achieve this is the use of sector-level tripartite labour agreements. Although labour agreements have a long pedigree (Howe 2019, 109–10), a new type was launched in May 2023 when the Minister for Aged Care announced that a new Aged Care Industry Labour Agreement would be introduced to "promote increased recruitment and retention in the aged care workforce". This Labour Agreement was considered essential given

direct care occupations in the aged sector are in national shortage, but notably, it was introduced following extensive consultation with the relevant trade unions and incorporated strong worker protections as part of the agreement (Australia, Department of Health and Aged Care 2023; Australia, Office of the Minister for Immigration, Citizenship and Multicultural Affairs 2023). In order to access overseas workers, employers will first need to enter into a Memorandum of Understanding (MOU) with the relevant industry trade union.¹² The Labour Agreement provides incentives for migrants to work in aged care because it includes an expedited two-year pathway to permanent residency, and newly sponsored migrant care workers will have an opportunity to speak with their trade union shortly after commencing (Australia, Department of Health and Aged Care 2023). Employers can use the Aged Care Industry Labour Agreement to sponsor Temporary Skill Shortage visa workers in direct care occupations (such as nursing support, personal care assistant, and aged or disabled carer). Alternatively, employers can sponsor overseas workers for permanent residence under the Employer Nomination Scheme (subclass 186) visa programme. These workers must have at least two years of full-time work experience in Australia in a relevant direct care occupation. However, the two years of work experience is not tied to a particular employer or visa subclass, which means it is open to spousal visa holders, working holiday makers and international students who have worked in care (Australia, Department of Home Affairs, n.d.-b). Although there have been some employer concerns that the new aged care labour agreement provides too much power and access to trade unions (Marin-Guzman 2023), others have noted this development as “welcome” and “promising”, as it allows the entry of low-skilled, low-wage workers through a framework that addresses their inherent vulnerability in the labour market due to their temporariness and the danger that they may become “permanently temporary” (Clibborn 2023; Australia, Parliament of Australia, Joint Standing Committee on Migration 2023, 36).

In raising other concerns around public confidence, local worker displacement and greater risk of exploitation, the Review highlights the ethical challenges associated with temporary labour migration for low-skilled work without a pathway to permanent residency. The Review states that such a scenario would “risk creating a ‘permanently temporary’ underclass of lower paid guest workers, which is unlikely to be acceptable to the Australian community” (Parkinson, Howe and Azarias 2023, 94). The Review articulates a concern “that the migration system needs to ensure Australia does not continue to allow cohorts of permanently temporary migrants to emerge” (Parkinson, Howe and Azarias 2023, 102). The Review notes that this requires “hard choices” that necessitate a balancing act between growing the migration programme at a reasonable level, maximizing the economic benefits of the programme,

12 The relevant trade unions are the Australian Nursing and Midwifery Federation, the Health Services Union and the United Workers Union.

and the ethical obligations to migrants who have been in Australia for a long time (Parkinson, Howe and Azarias 2023, 102). Notably, the Review does not propose a concrete solution to these challenges and suggests that “Australia needs a strategy to balance these factors” (Parkinson, Howe and Azarias 2023, 102). In my view, this requires rethinking Australia’s uncapped, demand-driven temporary skilled programme and the heavy reliance on the labour market contribution of working holiday makers, international students and the capped permanent programme. The current migration programme has created a large temporary migrant workforce competing over access to a smaller number of places in the permanent programme. This is a tension that needs to be resolved, because it produces tremendous uncertainty and precarity for temporary migrant workers (Ruhs 2013; Mares 2016; Reilly 2016).

Conclusion: Future directions for Australian migration policy

In December 2023 the Australian Government released its Migration Strategy responding to the Review. The objectives and guardrails were accepted, and a new Skills in Demand visa was proposed as a central reform. This visa is to have three streams based on skill and wage thresholds, with greater control and protective mechanisms for those on lower wages and employed in low-skilled work. The Government also committed to reforming the points test for permanent migration, introducing a new exploitation visa that would allow workers extended stay if they have experienced exploitation in the labour market, and to addressing regional labour challenges more systematically, including but not limited to reforming the Working Holiday Maker programme incentives for second- and third-year visa extensions. Cumulatively, these reforms will go some way to addressing the problems identified in the Review, although the challenge for the Australian Government will be in the implementation.

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Conclusion

► Temporary labour migration: Building pathways to social justice

Fabiola Mieres and Christiane Kuptsch

Over the past two decades, migration has moved to the centre of political agendas across the world, in both developing and developed countries and no matter the “migration identity” of the nation, that is, regardless of whether it is considered a “traditional immigration”, “reluctant immigration”, “new destination”, “origin” or “transit” country. The combination of voluntary and forced movements triggered by political conflicts, environmental degradation, international trade and other factors described in the contributions to this volume, have made nations “question” and “revisit” their approach to international migration – and to labour migration more specifically.

Greater attention is being paid to the global architecture of migration governance and regulation, with renewed interest in “temporary labour migration”. This has been accompanied by a burgeoning scrutiny of the legal frameworks for temporary migrants, the categories of temporary forms that emerge from them and the expansion of regulatory efforts to protect the labour and human rights of temporary migrants (see Cholewinski in [Chapter 2](#) of this volume; ILO 2022a; OHCHR 2022). The regulation of temporary labour migration continues to be plagued by complexities, as it lies at the intersection of law, politics, economics and social developments influenced by fragmentary forces in the global economy that stem from myriad ways of production, the constant fissuring of the workplace, trade relations and newer forms of technological development.

Policymakers have an uneasy relationship with “complexity”, as the art of policymaking requires making the right choices and controlling certain variables to render the best outcomes for the intended objectives. This is even more challenging in the field of labour migration, as migration involves the combination of structure and agency at various levels, which means migration projects inevitably change over time and space, as was shown in the critical appraisal by Skeldon ([Chapter 1](#)) and well illustrated in Schramm’s examination of mobility opportunities in the European Union ([Chapter 3](#)) and Pries and Zülfikar Savcı’s exploration of forced migrants as a category of temporary labour migrants ([Chapter 6](#)). Thus, reaching policy coherence in relation to labour migration and interrelated policy fields requires skilful negotiation and inclusion of the social partners throughout the whole process (see Popova in [Chapter 7](#)).

The contributions in this volume have shed light on the multifaceted dimensions of temporary forms of migration by questioning traditional paradigms and reimagining new ones towards social justice. This conclusion provides a final reflection on the work that lies ahead, highlighting the foundations we can build upon, such as the ILO normative system, and recent progress in migration policy reforms. We are conscious that we are writing at a time of “polycrisis”, plagued by conflicts, climate degradation, mistrust in the democratic institutions and polarization. It seems that the energies to “build back better” that guided much thinking and action during the COVID-19 pandemic have waned, giving place to pessimism and even despair. However, humanity has faced no shortage of crises in the past, and in doing so has managed to build systems of solidarity and renewal that have allowed us to move forward. It is with this spirit that these concluding reflections trace ideas for a better future for migrants, their families and the societies that host them, while charting new directions for policy innovation and further research. Taking inspiration from the four intertwined dimensions identified in the ILO Director-General’s Report *Advancing Social Justice* (ILO 2023a), the ideas presented below are organized around these four interrelated areas: universal human rights and capabilities, equal access to opportunities, fair distribution, and just transitions.

Building social justice: Universal human and labour rights and capabilities

Temporary labour migration continues to pose significant challenges to the protection of migrant workers. The contributions in this volume show the diverse facets of how these challenges manifest, including in relation to “newer” forms of mobility. This section reflects on the sources of vulnerability for migrant workers that stem from legal constructions and regulations, and it argues that reforms in these domains can represent a pathway to social justice for migrant workers.¹

The contributions in this volume once again remind us that the boundary between temporary and permanent migration is blurred due to the presence of various categories emerging from the administrative decisions of nation States (see Skeldon in [Chapter 1](#)) as well as from migrants’ own experiences, as manifested in migrant trajectories in contexts of mobility (see Schramm in [Chapter 3](#)). We have reached a point of conceptual fuzziness where the term

1 We focus here on the sources of vulnerability stemming from the legal systems that create specific categories of temporary migrants with particular rights. In the case of low-wage migrant workers, vulnerabilities also emerge from the fact that they hail from regions of the world where there are less opportunities, prompting them to take “dirty, dangerous and demeaning” jobs (also known as “3D jobs”).

“migrant” has become an umbrella notion to designate other forms of mobility, including in forced migration contexts where rights and opportunities are differentiated (Rajkumar et al. 2012).

Time as a governance tool of the nation State has always been evident in the design of mobility and temporary migration programmes, but in certain contexts, the monopoly over the regulation of time has been challenged by migrants. This is more evident in contexts of mobility, such as in the European Union, where migrants are able to exercise their mobility rights by leading transnational lives, by changing residence many times, bringing their families with them and even becoming “returnees” (see Schramm in **Chapter 3**). The point is that as policies change, migrants adapt their trajectories as well.

One key theme that emerges from studies of temporary labour migration is the legal construction of vulnerabilities (Dias-Abey 2024; ILO 2022a; Wright and Clibborn 2019). These vulnerabilities do not only emerge from the gap between immigration policies² and the protections established in labour laws, but also by regulation in other domains, such as international trade regimes. The case of business migrants, whose migration is not always “self-initiated” but instead required by their employer, illustrates this. This migration, often based on international agreements on trade in services, occurs “outside” the “regular labour market”, driven by the demands of multinational companies and global service markets. These business migrants are traditionally considered to be better off than other groups of migrants, and in a way they are – as their temporary mobility is accompanied by more rights, such as the right to bring their family members – but they are subject to similar vulnerabilities that originate from legal constructions where these workers sit outside the standard employment relationship in the host country. This exacerbates the risks of commodification, the empowerment of the employer over the worker and discrimination in comparison to locally hired employees in terms of fundamental rights such as freedom to change employer, freedom of association and wage parity (see Lavenex et al. in **Chapter 5**).

The case of business migrants reveals yet another example of the widely analysed dissonance found in other temporary foreign worker programmes: namely, the disparity between protections afforded in labour law versus those afforded in immigration law. It illustrates how regulations derived from trade regimes can exacerbate the production of vulnerabilities. Furthermore, the multitude of legal statuses, each conferring different rights and obligations, also condition migrants’ lives in multifaceted ways.

2 Policies that govern the conditions for migrants’ admission and stay.

In the pursuit of social justice, providing labour protections that address the diverse needs of migrant workers across various statuses invites us to treat human rights as inseparable from labour rights. In principle, international human rights and labour standards apply to all migrant workers regardless of their length of stay in the destination country. They do not grant migrant workers any privileged status on the basis of their skill level – even if many temporary migration programmes afford higher-skilled migrants a larger bundle of rights. The international instruments concerned apply to migrant workers who come to a destination country for either temporary or permanent employment. In the application of international labour standards, permissible distinctions between temporary and permanent migration are extremely limited (see Cholewinski in **Chapter 2**).

Universal human rights and capabilities constitute an important dimension of social justice, and for the case of temporary migrant workers, the body of international human rights law has emphasized the principles of equality of treatment and non-discrimination, which will be further discussed in the next section. Capabilities refer to people's ability to perform actions that are deemed valuable, and as an approach it considers not only the resources that are necessary for human development, but also what people can “be and do” with those resources (see Sen 1999; Nussbaum 2011). Thus, human and labour rights provide entitlements to certain basic capabilities, and especially, the right to equality of treatment and non-discrimination, which is crucial for migrant workers.

In the context of temporary migration programmes, it has been well documented how some provisions in these programmes limit people's agency, and therefore, their capabilities. One of those limitations is the impossibility of changing one's employer in tied-visa systems. Costa (**Chapter 8**) reviews programmes that offer the possibility to change employers through visa portability, and notes that even if portability is an important advancement towards labour market mobility, the right cannot be fully enjoyed if it is not accompanied by other institutional reforms, such as providing further funding to enforcement agencies to improve labour inspections and to enhance the complaint systems so that migrants can actually exercise their voice and denounce labour abuses. Addressing the source of vulnerability that emerges from tied visas is, however, a step in the right direction towards ensuring social justice for migrant workers.

Another governance tool that can be improved to secure the human rights and capabilities of migrant workers is bilateral labour migration agreements (BLMAs). Acclaimed as an important tool to foster cooperation among origin and destination countries (UNMN 2022), there is ultimately little empirical evidence of their effectiveness. BLMAs are used as diplomatic tools in the context of some African countries and Middle Eastern countries with little apparent incidence on workers' lives (see Kagan in **Chapter 9**). There is still an important need to

comprehensively assess the impact of BLMAs while enhancing monitoring mechanisms (which should be of a tripartite and participatory nature) and highlighting the role of social partners as discussed in debates around policy coherence in the areas of labour migration, employment and training (see Popova in **Chapter 7**).

All in all, the universal applicability of human and labour rights serves as a foundational element in creating fertile ground for social justice for migrant workers.

Realizing equal access to opportunities and equal treatment

The second dimension refers to “equal access to opportunities” for employment and productive activity that enables people to pursue their material well-being in conditions of economic security (ILO 2023a, 8). This dimension centres on opportunities to engage in economic activity, and to be rewarded for such effort, including the opportunity to attain meaningful work and contribute to society. In this vein, it can be argued that temporary forms of migration do provide opportunities for people to participate in a global labour market by engaging in economic activities in host economies willing to receive them. This would also mean that migrant workers have “equality of opportunity” to exercise their freedom to move (in this case for employment), even if that move implies a choice of temporary employment abroad. This notion of ever-expanding opportunities is embraced by the global policy agenda in favour of “temporary migration programmes” (see for example the Global Compact for Safe, Orderly and Regular Migration).

However, we are still left with the question of what happens to migrant workers who engage in employment under a temporary migration programme in terms of the principle of equal treatment. The ILO technical instruments on the protection of migrant workers and the governance of labour migration³ rest on the principle of non-discrimination and equality between migrant workers and nationals, which “is at the heart of these instruments” (see Cholewinski in **Chapter 2**). This equality of treatment with nationals extends to wages, working conditions, trade union membership, collective bargaining, accommodation, social security, employment taxes and legal proceedings. Convention No. 143 in its Part II goes even further and aims to promote equality of opportunity and to eliminate discrimination against migrant workers (see Cholewinski in **Chapter 2**). Also, non-discrimination and the principle of equality are present

3 The Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying non-binding Recommendations Nos 86 and 151.

in other ILO instruments relevant to migrant workers, such as the Domestic Workers Convention, 2011 (No. 189).

In practice, there is still a long list of reforms to make in many temporary migration programmes to secure this important principle for all. For instance, the practical ability to change one's employer is an important step, as previously discussed, but there are still many visa regimes across the world that do not allow this, thereby also affecting wages and the freedom to exercise other labour rights.

Another important aspect of the full realization of access to equal opportunities and equal treatment is the possibility for temporary migrants to extend their stay by introducing pathways to residency; some scholars even argue that the possibility to become a full citizen would contribute to making these temporary migration programmes just (Lenard and Straehle 2011). Taking a historical perspective, the case of Switzerland provides an example of how Italy's efforts to negotiate on behalf of its citizens led to significant improvements in the working and living conditions of Italian seasonal workers in Switzerland. Specifically, the negotiations resulted in extended permit durations, which not only provided more stability for the workers but also allowed them to access additional rights. By extending the duration of their stay, migrants were able to transition from precarious, short-term employment to more secure and better working conditions, such as the right to change jobs, which reduced dependence on employers, and migrants were offered conditions to renew permits towards the future (see Piguet in **Chapter 11**). Thus, creating work visas that provide the possibility for longer durations of stay and eventual pathways to permanent residency contribute to social justice. This point has also been previously discussed by ILO constituents, leading to the recommendation that "TLM [temporary labour migration] programmes should consider, where appropriate, incorporating measures that would render TLM schemes as 'stepping stones' towards forms of labour migration of a permanent nature benefiting migrant workers and their employers, while recognizing the need to prepare national workers to meet future labour demands" (ILO 2022b, 12).

The possibility of longer durations of stay – and eventually citizenship – would also contribute to the social inclusion of migrants in host societies and would provide them with the opportunity of becoming full members of the societies in which they live and work. Access to membership in the communities where they operate, would give them entitlements to increase their capabilities and lead to being treated as an equal rather than as expendable commodities. This aligns with the foundational ILO principle that "labour is not a commodity" – a cornerstone of social justice (see Mieres and Kuptsch 2022).

The brief length of stay among most temporary migrant workers impacts not only their integration prospects but also poses a significant challenge, as their contributions to social security systems are often of short duration and difficult

to access. Segatti describes this challenge in relation to the case of seasonal migrants in Europe (see **Chapter 10**), where shorter durations limit migrants' ability to accumulate benefits. To address this problem, some EU countries have begun to extend the duration of seasonal work permits to allow for longer contribution periods. Since April 2023, France has implemented a multi-year "seasonal worker" permit valid for three years, enabling greater portability of accumulated rights to social protection systems in countries like Morocco and Tunisia. Similarly, Spain introduced its first multi-year permits for seasonal workers in October 2023 facilitating portability of rights.

Finally, policies in other domains may be at times more powerful in shaping migration than actual migration policies. Thus, when it comes to securing equal access to opportunities for all, migrant populations should be considered as part of a "whole of society" approach to education and lifelong learning, employment policies, care policies and approaches to addressing informality. As Castles (2004, 869) once noticed: "The failure to grant social rights to any group of residents leads to social divisions that can undermine the rights of the majority."

Towards fair distribution: Migrants' value and contribution to societies

The ILO has no position on the amount of migration that is desirable, nor does it encourage any particular policy in this domain. However, the ILO does support the idea that migration should be a choice, not a necessity (ILO 2014), and recognizes the agency of migrant workers to leave their homes and seek opportunities elsewhere. Debates on distributive justice and migration adopt many angles in terms of whether free movement is a requirement of justice without necessarily being a requirement of distributive justice in particular (Fine 2018). It is not the objective of this concluding section to thoroughly review this debate, but rather it is sufficient to say that international migration can be a source for enhancing one's capabilities and realizing one's aspirations when this migration is a choice.

In turn, fair distribution concerns the distributional outcomes once migrants (in any category, either temporary or permanent) are in host societies. The question is how to share the benefits of growth equitably, including how to direct a fair share to the attention of the most disadvantaged, for example, migrants in low-paid jobs and suffering from other dimensions of low job quality described in the contributions in this volume. We advance the notion that there is a way to recognize the value of the work performed by this group of workers by making labour market institutions inclusive of migrant workers in order to address inequality and advance towards shared prosperity (see also ILO 2023b).

No analysis of “fair distribution” can be oblivious of the structure of labour markets and how the constant fissuring of workplaces and segmentation have created “migrant sectors” that are structurally dependent on migrant workers. Vosko in **Chapter 4** shows how Canada has filled these positions with temporary migrants to cater to “qualitative labour shortages”, that is shortages due to the 3D conditions that those job opportunities offer. Vosko analyses indicators of labour market insecurity for participants in the streams of Canada’s International Mobility Program and calls for further research in this area to understand these schemes both individually and cumulatively. Extending her analysis will provide further evidence on the questioning of what she calls “the migration/mobility construct”, which refers to the conceptual framework of separating “migration” from “mobility” as distinct phenomena. Her contribution invites us to reflect on whether it is permissible to limit protections to closed work permit holders, most of whom are classified as “migrants” under Canada’s Temporary Foreign Worker Program. These workers face employment restrictions inherent in the closed nature of their permits. By contrast, workers participating in the International Mobility Program are granted entry to Canada based on the country’s commitment to reciprocity and national competitiveness. These individuals are often perceived as holding high-quality jobs, a notion that aligns with ideas of “unproblematic mobility” discussed in the introduction to this volume.

A related perspective is developed by Lavenex, Alvarado, Hoffmeyer-Zlotnik and Lutz in **Chapter 5**, highlighting the risk of labour market insecurity for business migrants, as they may suffer from discrimination in comparison to locally hired workers regarding their fundamental economic and social rights. Business migrants are normally destined to work in relatively more secure industries and occupations than other groups, but access to collective representation can be challenging.

The nature of labour markets and the notions of labour shortage that underpin demands for temporary labour need to be re-assessed. Proponents of temporary migration programmes assume that labour shortages exist but offer little or no concrete evidence to demonstrate that these shortages are real. Thus, resorting to temporary labour migration programmes only when shortages are legitimate will prevent the lowering of wages and job quality (see Costa in **Chapter 8** and Howe in **Chapter 12**).

The role of women’s work is central to understanding labour market dynamics and reliance on temporary migration programmes. In **Chapter 10**, Segatti highlights how North African governments increasingly use temporary labour migration as a tool to alleviate structural unemployment, particularly among women, who have some of the lowest employment rates in the world, averaging around 20 per cent. She illustrates the challenging conditions these women face, for example, in Spain’s agricultural sector, where Moroccan women often struggle due to language barriers and a lack of integration into the host country.

Furthermore, due to uncoordinated national policies and competing priorities in cooperation projects, seasonal migrant workers—particularly women—remain in precarious situations upon their return. Most returnees lack access to stable income-generating opportunities that could provide them with long-term financial stability and independence. Instead, they often rely on the wages earned during their time abroad to support themselves and their families. Many have no access to social protection and are typically unaware of local initiatives that could improve their circumstances. Even when opportunities exist, they often lack the skills or financial resources needed to take advantage of them. Additionally, returning women migrant workers may face gender-specific cultural constraints that hinder their ability to launch independent income-generating activities. These constraints exacerbate their economic vulnerability and limit their potential to achieve sustainable livelihoods after returning home, showing that further work needs to be done to enhance how women's work is valued in these contexts.

Contributions in this volume addressing international trade regimes and mobility programmes have shown that when the regulatory regimes that govern mobility do not intersect with either migration or labour protections, temporary migrants' access to labour market institutions becomes restricted. Therefore, in addressing distributional outcomes for migrant workers, these overlapping regimes of mobility regulation – trade, (im)migration and protections in labour law – need to be analysed together to foster policy coherence.

This being so, the case of Australia – while jurisdiction-specific – offers some general lessons that can be drawn to inspire other contexts. Australia underwent a review process of its (im)migration system that culminated in a report published in March 2023 (Parkinson, Howe and Azarias 2023). The vision of “enabling fair labour markets” is one salient aspect of the review (inspired by the ILO Fair Migration Agenda), which sought to present temporary labour migration as complementary to local workers, rather than displacing or replacing them, and to prevent the exploitation of migrant workers to make sure that they reach their full potential (see Howe in [Chapter 12](#)). The reforms proposed under this review suggest a comprehensive system of guardrails, and in our reading, they establish mechanisms of fair distribution. In December 2023, the Australian Government released its Migration Strategy responding to the review, and some important reforms have been undertaken. One example is the introduction of an exploitation visa that would allow workers to extend their stay if they encountered decent work deficits. Also, regional labour shortages are being addressed more systematically by reforming – among other policies – the Working Holiday Maker Program incentives for second- and third-year visa extensions.

Finally, recognition of the value of the essential work that migrants – including those on temporary visas – make to societies comes out once again as a policy

priority. The various contributions in this volume have illustrated the relevance of migrants in particular sectors of host economies. This essential relevance and the demographic transformation taking place in many regions of the world, characterized by ageing populations, call for a re-valuation of migrant work in terms of pay, social rights and working conditions.

Just transitions and the work ahead

The debate over a just transition captures the manner in which transformations in many domains affect people's well-being over time. This includes transformations associated with globalization, technology, demography and the environment, among others, in a context of compounding crises (ILO 2023a, 9). The concept of a just transition also includes the implications of these changes for workers and jobs and what governance mechanisms should be prioritized to shift away from a fossil fuel energy paradigm.

The concept of a just transition has not been the focus of this volume, however, many contributions speak to its various dimensions: international trade, crises that lead to forced movements across borders and the structural needs of migrants in key sectors of highly developed economies (such as the case of North African migrants in the EU, described by Segatti in [Chapter 10](#)). By including the connections between temporary forms of migration and these issues, this volume aims to advocate for a “human-centred approach” by analysing the barriers that prevent the full realization of rights and suggesting policy solutions to engage with these transformations and their impacts on the world of work.

One important theme that emerges relates to the role of power. Many contributions in this volume have analysed the role of high-income countries in shaping the contours of temporary labour migration and mobility debates, giving us a sense of “destination-State bias” in knowledge accumulation on this topic. Kagan in [Chapter 9](#) addressed the power imbalance in migration diplomacy among a selected group of countries in Africa and the Middle East. Future research should broaden the scope of perspectives to consider much more comprehensively – and critically – the role of origin countries in shaping not only political debates but, most importantly, outcomes for migrant workers. This is crucial for global justice debates, as it helps to evaluate and enhance the prospects for effective global cooperation. As we navigate a world of polycrisis that demands action to build more resilient societies and advance a just transition, this effort is imperative.

Further work on the perspectives of origin countries would include analysing: the labour market impacts of the decline in family structure as a result of the migration of parents; the hostility towards returned migrants who have adopted new forms of life and values; and the means to eradicate xenophobia

and discrimination in the labour market. Moreover, in addition to the impact of economic remittances, which has received much attention from a developmental perspective, the links between temporary migration programmes and “social remittances” (Levitt 1998) warrants further investigation. An analysis of social justice would not be complete without a fully conceptual and empirical engagement with perspectives from origin countries and their social and economic transformations. Some work has started on this front, for example, Withers (2023) shows how the Pacific Australia Labour Mobility scheme has spatially and temporally reconfigured care practices, skills formation and communal labour in Pacific Island Countries as a driver of uneven development.

The approaches to temporary labour migration collected in this volume portray the various “social contracts” that societies have decided to put in place. These social contracts are not set in stone, and the various transformations call for a revision of the threads that sustain social fabrics. As we look towards the future, many questions will need to be addressed, such as: Can countries afford to receive migrants, directly offering them the prospect of a more permanent stay and granting them more rights, given that many regions in the world, with the exception of Africa, are showing ageing populations and rising dependency ratios? What will the nature of labour shortages be? Will this debate open up to consider the qualitative roots of shortages in relation to debates over minimum wages and the value of work? What will be the impact of demographic shifts on women’s work? Attention needs to be broadened to other categories of migrants who participate in the labour market, such as forced migrants (see Pries and Zülfikar Savcı in **Chapter 6**), international students (see Howe in **Chapter 12**), spouses, dependents and irregular migrants (Segatti in **Chapter 10** discusses irregular migration in relation to North Africa and some selected countries in Europe). A further area that requires careful attention is the role of climate change in driving temporary forms of movement, and whether temporary mobility can be used as a climate mitigation strategy. The debate has begun, but robust evidence on this topic is still lacking.

The contributions in this volume explore the multifaceted foundations of social justice in the world of work, highlighting both barriers and regulatory innovations, as well as instruments that enhance entitlements and mechanisms for achieving social justice. Examples include visa portability in a context of extended reforms, extension of rights to address the historical disadvantage faced by temporary migrants, means to rebuild “fairer labour markets”, and policy coherence tools, among others. Achieving social justice through decent work also requires strong enforcement and implementation institutions, supported by the political will to sustain them. Innovative ideas and cases have been provided in this volume, which hopefully will inspire future generations of scholars and practitioners.

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Inspiration for anyone wishing to make social justice for migrant workers a reality.

Temporary labour migration has long been a central concern for policymakers and a subject of intense academic debate. While being touted as a tool to promote development and enhance global welfare, it also presents complex challenges and is persistently associated with decent work deficits. The rich analysis and insightful examination of various aspects of temporary labour migration that this volume provides will appeal to scholars, practitioners and general readers alike.

This volume explores the barriers to social justice arising from the design of temporary labour migration programmes and suggests ways to overcome these obstacles. It presents a variety of perspectives from different academic disciplines and regions of the world, showcases innovative advancements in migration policy design and examines what we can learn from the past.

It also offers reflections on the many different forms of temporary labour migration, including on the transient nature of migrant categories and their policy implications, while broadening the debate by incorporating emerging areas that impact migration governance, such as international trade, the growth of labour mobility programmes and the complexities of forced migration and mixed migration flows.

The authors delve into the critical questions of how to protect migrant workers within today's global economic power structures, among them who to include in the category of "temporary labour migrants" eligible for such protection. By highlighting how the exclusion from labour laws creates multifaceted problems for migrant workers, the chapters in this volume contribute to ongoing global debates on the state of social justice throughout the world.

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