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► Temporary labour migration: Unpacking complexities

Synthesis Report



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► Abbreviations

BLMAs	Bilateral Labour Migration Arrangements or Agreements
CAQ	Quebec Acceptance Certificate
CARICOM	Caribbean Community
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDA	Committee for Economic Development of Australia
CIS	Commonwealth of Independent States
CODETRAS	Collectif de défense des travailleur-euses étranger-ères dans l'agriculture
DGB	Deutscher Gewerkschaftsbund (German trade union confederation)
DHS	Department of Homeland Security (United States)
DTA	Deep Trade Agreement
ECOWAS	Economic Community of West African States
EEA	European Economic Area
EFTA	European Free Trade Association
EMN	European Migration Network
EPS	Employment Permit System (Republic of Korea)
EPZ	Export Processing Zone
EU	European Union
GATS	General Agreement on Trade and Services
GCC	Gulf Cooperation Council
GUF	Global Union Federation
ILC	International Labour Conference
ILO	International Labour Organization
IMP	International Mobility Program (Canada)
IOM	International Organization for Migration
ITS	Industrial Trainee Scheme (Republic of Korea)
JIEPA	Japan-Indonesia Economic Partnership Agreement
JPEPA	Japan-Philippines Economic Partnership Agreement
LFS	Labour Force Survey
LMIA	Labour Market Impact Assessment
LSPP	Low-Skill Pilot Project (Canada)
MBIE	Ministry of Business Innovation and Employment (New Zealand)
MERCOSUR	Mercado Común del Sur
MFLM	Multilateral Framework on Labour Migration
MOU	Memorandum of Understanding
MRC	Migrant Resource Centre
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organization
OAS	Organization for American States
OECD	Organization for Economic Cooperation and Development
OSH	Occupational Safety and Health

PALM	Pacific Australia Labour Mobility
PLS	Pacific Labour Scheme (Australia)
PTA	Preferential Trade Agreement
REC	Regional Economic Community
RSE	Recognized Seasonal Employer (New Zealand)
SADC	Southern African Development Community
SAWP	Seasonal Agriculture Worker Programme (Canada)
STPS	Secretaria de Trabajo y Previsión Social (Secretary of Labour and Social Security, Mexico)
SWP	Seasonal Worker Programme
TFW	Temporary Foreign Worker
TFWP	Temporary Foreign Worker Programme
TLM	Temporary Labour Migration
TSS	Temporary Skill Shortage (Australia visa scheme)
UN CESCR	UN Committee on Economic, Social and Cultural Rights
US	United States
USDOL	United States Department of Labor
USMCA	United States- Mexico-Canada Agreement
WB	World Bank
WPS	Wage Protection Systems
WTO	World Trade Organization

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Ecologists and biologists long ago learned that they were studying complex phenomena composed of many parts at multiple levels and that their challenge was to unpack the complexity in order to understand it. Our challenge as social scientists is to harness knowledge about complex systems and not simply to call for their simplification”.

Elinor Ostrom, 2010¹.

Introduction

In 2017, the International Labour Conference and the Governing Body of the ILO tasked the Office with addressing the issue of temporary migration (ILO 2017a). The expansion of different forms of temporary migration has become a prominent feature of the global economy and taking into consideration the variegated forms and the competing interests of actors involved in this issue, the Office produces this background report providing a synthesis analysis. It is accompanied by two input studies that gather views on and experience with temporary labour migration from the perspectives of workers’ organizations and the business community respectively (see ILO 2021a, 2021b).

On 11 March 2020, the World Health Organization declared the COVID-19 outbreak as a pandemic (WHO 2020), and since then the world is grappling with its consequences and devastating effects on economies and societies at large. COVID-19 has exposed the structural inequalities in the world, and shown the important role that migrant workers, including so-called “temporary migrants”, play in several economic sectors world-wide.

Temporary labour migration (TLM) manifests in different and complex “forms”, and the various schemes and programmes have also evolved over time. They put into question the “contours” of migration policy, as an inquiry into their effects pushes the analysis beyond “admission” (as regulated by visa categories and forms of entry) to include policies around integration and inclusion, and undeniably labour rights. Temporary migrants are not often eligible for any integration support, and this adversely affects their economic integration and protection of their rights (EC 2011: 10-11). Thus, understanding the nature and scope of temporary labour migration requires broadening our lens to assess in what ways these schemes could contribute to decent work and a human-centred approach to the world of work as we rethink recovery in a post-pandemic world.

This Report is organized as follows: Part I sets the scene by providing a brief historical account of the evolution of TLM. It presents a basic typology considering the admission of migrant workers, the schemes’ institutional design and explains TLM manifestations. It provides a statistical snapshot and reflects on the meaning of “impacts” and “effects” in the context of TLM. Part II presents key elements that characterize these schemes and how their interrelations pose challenges to policy design and implementation. The protection of migrants’ rights acquires a central role in this section, as there is mounting evidence that TLM schemes contribute to fragmentation and potential selective application of rights. Part II also addresses the issue of temporariness and briefly describes the link between preferential trade agreements and temporary migration. Part III concludes and suggests areas for action.

¹ Elinor Ostrom, ‘A Long Polycentric Journey’, *Annual Review of Political Science*, 2010. <https://www.annualreviews.org/doi/full/10.1146/annurev.polisci.090808.123259>. Ostrom received the 2009 Nobel Prize in Economic Sciences for her research demonstrating that ordinary people are capable of creating rules and institutions that allow for the sustainable and equitable management of shared resources.

Part I.

Setting the scene

► 1. Historical background

Contemporary manifestations of TLM schemes have their roots in the development of colonial indentured labour and older forms of “guest work”, such as Chinese labour in Malaya and the Dutch East Indies, and Indian “coolies” in the West Indies (Connell 2010). In the nineteenth century the expanding global sugar market and a shortage of cheap, servile labour revived the “indentured labour system”. The abolition of the slave trade and slavery and the subsequent actions by the imperial powers, particularly the United Kingdom, had enormous worldwide consequences. The “new” indentured system relocated millions of Asians to work under contract on sugar plantations in the Caribbean, Peru, Hawaii, Réunion, and Mauritius. Asian indentured labourers were also often used in the exploitation of natural resources or in other jobs demanding hard physical labour in new economic activities. Examples of such activities were the exploitation of guano in Peru and rubber production in Southeast Asia, underlining the point that Asian indentured labour was also used in Asia itself (Hoeft 2018: 363).

There were also Europeans who wished to immigrate to the Americas for lack of opportunity in their homelands but could not pay their passage and therefore agreed to “pay back” their fare via labour for an unknown employer at destination who had advanced the funds. Many indentured servants signed five-year (and sometimes longer) contracts that bound them to a specific employer but often based on deceptive information about their living and working conditions (Northrup 1995). The indentured labourers of the 19th and early 20th century were usually encouraged to stay after the expiration of their contracts – a fact that distinguishes them from most migrants under current TLM programmes who are expected to leave their destination countries at the end of their contracts.

Migration to the Gulf was also deeply influenced by colonialism and global commodity production and extraction beginning with pearls and dates. After the British Government signed protectorate agreements with the Gulf governments in the 19th century, a migration system was developed in Bahrain (and later spread to other parts of the Gulf) that tied labour to sponsorship – thus a ship captain had to act as guarantor over the pearl divers in his ship, in which he took responsibility for ensuring their eventual departure from Bahrain without any “misbehaviour” (AlShehabi 2019).

According to Cindy Hahamovitch (2003: 72-73), temporary labour migration schemes, namely programmes based on the “idea of creating an immigrant who could be made to leave” first appeared at the end of the 19th century and were “state-brokered compromises designed to maintain high levels of migration while placating anti-immigrant movements”. In a period of State-building, Prussia and South Africa set up programmes that (i) served industrialists in sectors undergoing rapid change²; (ii) where the State became involved because of rising public opposition to foreigners; and (iii) that segregated foreign workers from local populations and provided employers with the threat of State sanctions in the form of deportation in case workers “misbehaved”.

With the outbreak of World War I, other countries followed suit and abandoned their more liberal or *laissez-faire* approaches to immigration. For example, in the United States, wartime regulations reversed a 30-year-old congressional ban on bringing in contract labour from abroad and required instead that temporary foreign (mainly farm) workers sign contracts and that employers sign performance bonds wherein they were made personally liable for making workers leave at the end of their contracts (Hahamovitch 2003).

While the Great Depression brought temporary migration programmes to a halt in most countries, interest in the recruitment of new temporary foreign workers was spurred only a few years later by war mobilization (that had led to rising wages for local workers). During World War II, foreign workers in Germany and Japan rapidly turned into forced labourers or were “recruited” for forced labour from the beginning, while in other countries the terms and conditions of employment of temporary migrants

² In Prussia, manufacturing and coal mines were booming; in South Africa, gold and diamonds were discovered; and in both cases, commercial agriculture expanded.

were negotiated between origin and destination countries. Indeed, treaties to regulate migration had spread throughout the world during the 19th century, but they were mostly concerned with processes of immigration and settlement. It was only after World War I that governments started to draw up agreements jointly to organize and regulate the *temporary* transfer of labour between their territories (Rass 2012: 193).

The year 1942 marked the birth of the well-known *bracero* programme between Mexico and the United States, officially called “Emergency Farm Labor Supply Program”. This programme was run with considerable Government involvement on both sides, similarly to a parallel scheme created in 1943 between the United States and British colonial officials for the recruitment of British West Indian men. The terms of the agreements provided the Mexican and Caribbean workers with minimum wages, decent housing and free transportation to and from the US, and abuses could be reported to liaison officers (Mexican consuls and British colonial officials). However, efforts by origin territories to improve conditions and protect their workers by withdrawing them from particular states in cases of mistreatment (as in 1946 when Mexico refused to send workers to Texas) tended to be undermined by competition from other source countries. For example, when, also in 1946, Jamaicans were pulled out of Florida, Barbados offered to step in (Hahamovitch 2003: 83).

Soon after the end of World War II, in 1947, the US Government stopped being the official manager of the wartime emergency farm labour programmes but still allowed employers to bring in workers from Mexico and the Caribbean, provided the Labor Department certified the employer’s need for workers from abroad. In 1963, President John F. Kennedy announced the end of the *bracero* programme saying that *braceros* were “adversely affecting the wages, working conditions, and employment opportunities of our own agricultural workers” (Craig, 1971: 172-173). *Bracero* recruitment ended on 31 December 1964.

Meanwhile the post-war economies of Central, Western and Northern Europe lacked workers in their reconstruction efforts and set up what became to be known as “guest worker programmes”. The term was coined in Germany (“*Gastarbeiter*”), presumably to avoid the term “*Fremdarbeiter*” (foreign worker) that was tainted by its Nazi use and connotation of forced labour.

The “guest workers” came from the South of Europe, from Greece, Italy, Spain, Portugal, former Yugoslavia, from Turkey and North Africa. The “guest worker” programmes of the 1950s and 1960s were characterized by significant Government involvement (for example, German officials from the Labour Ministry would go to Turkey and take part in the selection of Turkish workers); they were usually based on bilateral agreements; and they were large-scale programmes in which admissions varied with the overall unemployment rate in the receiving State. The latter differentiates the “guest worker” programmes from the smaller-scale programmes that were established as from approximately the 1990s in Europe. The newer or “micro programmes” all have their own admission criteria, unique rules governing length of stay, etc. (Kuptsch 2005). Employers have more power over admissions and employment than they did in the “guest worker” programmes. A relationship between admissions and general economic indicators, such as unemployment and other labour market variables, no longer exists (Martin, Abella and Kuptsch 2006).

In the course of the “guest worker” era that lasted until the mid-1970s (European countries stopped recruitment in 1973/74 because of the oil crisis that led to rising unemployment), conditions improved for the migrants, for two reasons: (i) competition for migrant labour between host States and (ii) trade unions embracing migrant workers. For example, Switzerland had concluded its first bilateral guest worker agreement with Italy in 1948. By the early 1960s, with many other European countries recruiting guest workers, Italy demanded better conditions for its nationals and forced a new agreement in 1964 that facilitated permanent residency and family reunification (Piguet and Mahning 2000). The guest workers’ working conditions also improved because many of them worked in highly organized industries such as construction, metal work and the automobile industry where trade unionists supported the migrants’ right to organize and strike and believed that they should enjoy the same treatment as local workers (Castles and Kosack 1985). Moreover, many European countries delivered separate work and residence permits so that, for the “guest workers”, losing one’s job did not automatically entail having to leave the country.

The OPEC's decision to raise oil prices in 1973 that led to the "oil crisis" in Europe started the "oil boom" in the Middle East and this boom opened up a new phase of temporary migration programmes. Saudi Arabia and other oil-exporting Gulf States attracted foreign firms and workers to build roads, airports, hospitals and skyscrapers. The workers initially came from Arab States, such as Egypt and Jordan, and from South Asia, but over time also from further abroad such as Indonesia and the Philippines (Martin, Abella and Kuptsch 2006). The schemes differed from the "guest worker programmes" in several ways: (i) employers were given a large role as "sponsors" of foreign workers and in the context of "kafala systems", an "exit permit" restricted workers from being able to leave the country without the permission of the employer; (ii) there was a strict enforcement of the temporariness of the workers' stay; (iii) workers usually lived in compounds or "labour camps" and had no rights to bring their families; and (iv) highly skilled professionals were also attracted on a temporary basis to help build the infrastructure of the destination countries (with possibilities for family reunion if they met certain salary thresholds).

Besides more temporary labour migration opportunities for "global talent", from the 1980s, the world also saw an increasing feminization of temporary labour migration, largely driven by the demand for household help and carers in the Gulf Cooperation Countries (GCC) countries and elsewhere (e.g. the Four Asian Tigers) and the fact that countries such as Bangladesh, Indonesia, Pakistan, the Philippines and Sri Lanka promoted the employment of domestic workers abroad (Hahamovitch 2003: 91). In the meantime, many other countries (for example in Africa and Latin America) also rely on the steady flow of remittances sent by women migrant workers.

Although TLM programmes have evolved to show variation in design and application, a common feature has been some form of restriction of migrants' rights, agency and bargaining power (ILO 2004, 2014, 2017a). As this glimpse on the past of temporary labour migration programmes reveals, historically, the threat of deportation has put temporary migrant workers on unequal terms with local workers; it has made them more vulnerable to pressures from employers.

The ILO, however, has traditionally stood for the protection of migrant workers via equal treatment with national workers. In reference to its constitutional mandate, the "protection of the interests of workers when employed in countries other than their own" (see the Preamble of the ILO Constitution), the ILO has elaborated two international labour standards specifically designed to protect migrant workers, which both underline the importance of equal treatment with local workers, namely Migration for Employment Convention (Revised), 1949 (No. 97), and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), supplemented by Recommendations No. 86 and No. 151.

ILO Convention No. 97, adopted in 1949, in a context of (anticipated) migration flows in the aftermath of World War II is about information sharing and migration governance while protecting workers crossing borders. It requires ratifying States to give "immigrants lawfully within its territory treatment no less favourable than that which it applies to its own nationals' on issues relating to remuneration, family allowances, and where applicable, hours of work, overtime arrangements, holidays with pay, membership of trade unions, and the benefits of collective bargaining and social security" (Art. 6.1).³ It aims to ensure equal treatment for migrant workers by encouraging States to sign bilateral agreements – much in line with the practice of the early "guest worker" programmes. From 1949, officials drafting new treaties could also take inspiration from Recommendation No. 86 that accompanied Convention No. 97 and featured in its Annex a Model Bilateral Agreement.

Convention No. 143 (1975) was enacted after the European recruitment stopped. Convention No. 143 deals with "clandestine" migration (expected to increase with regular migration channels being closed) on the one hand (Part I) and with the integration of settled migrants on the other (Part II) – again reflecting the realities of the time. Part I represents the first attempt at international level to secure certain rights for workers in irregular situations and to address irregular migration and employment (Böhning 1988, ILO 2016). It makes it very clear that migrants in irregular situations are not stripped of all rights; in particular, migrant workers shall enjoy equality of treatment in respect of rights arising out

³ The Convention also calls upon ratifying Member States to ensure cooperation between their employment services and other administrative units in charge of migration and to grant migrants free services by public employment agencies (Art. 7).

of past employment as regards remuneration, social security and other benefits.⁴ In this way, Convention No. 143 establishes that immigration law should not trump labour law: migrant workers, even if they are in irregular situations, who have been dismissed and thereby lost their right to stay in the country cannot simply be deported without having being paid. Part II, directed at migrants in regular situations, moves beyond equality of treatment and also provides for equality of opportunity.

It is worth noting that in general Conventions No. 97 and No. 143 do not differentiate between temporary migrant workers and those in a more settled status. However, the definition of “migrant worker” in Part II of Convention No. 143 (Article 11) excludes from Part II certain “temporary” categories, such as frontier workers (also excluded from the Article 11 definition in Convention No. 97), students, trainees and posted workers.

The ILO held a General Discussion on migrant workers at the 92nd Session of the International Labour Conference (ILC) in June 2004 that gave rise to a Resolution calling for a “fair deal” for migrant workers. Recognizing the challenges for temporary and domestic migrant workers, it called for a “multilateral” approach to labour migration governance. Introduced in 2006, the ILO’s Multilateral Framework on Labour Migration (MFLM) provided guidelines on the need to secure worker protection in temporary labour migration schemes. For example, Guideline 5.5 reads “ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 of this Framework” (ILO 2006).⁵

The topic of TLM received attention in 2014 in the Director General’s Report to the International Labour Conference that states: “the trends are sufficiently important to merit a closer examination of the nature and extent of temporary or otherwise restricted migration systems. If governments are indeed to have increased recourse to such schemes to fill short-term gaps in their labour markets, or to meet niche skills needs, it seems essential to identify those elements that must be built into the design of the schemes to ensure that they meet basic considerations of fair treatments” (ILO 2014: 13). It was also identified that a “temporary migrant subject to a specific regime is likely, by definition, to be working within specific parameters which can cause difficulties in the application of equal treatment” (ILO 2014: 14). In 2016, a general survey on labour migration instruments was conducted by the ILO Committee of Experts on the Application of Conventions and Recommendations, and in 2017 the International Labour Conference General Discussion was held⁶ giving place to the Resolution concerning fair and effective labour migration governance, which included tasking the Office with new knowledge development on TLM.

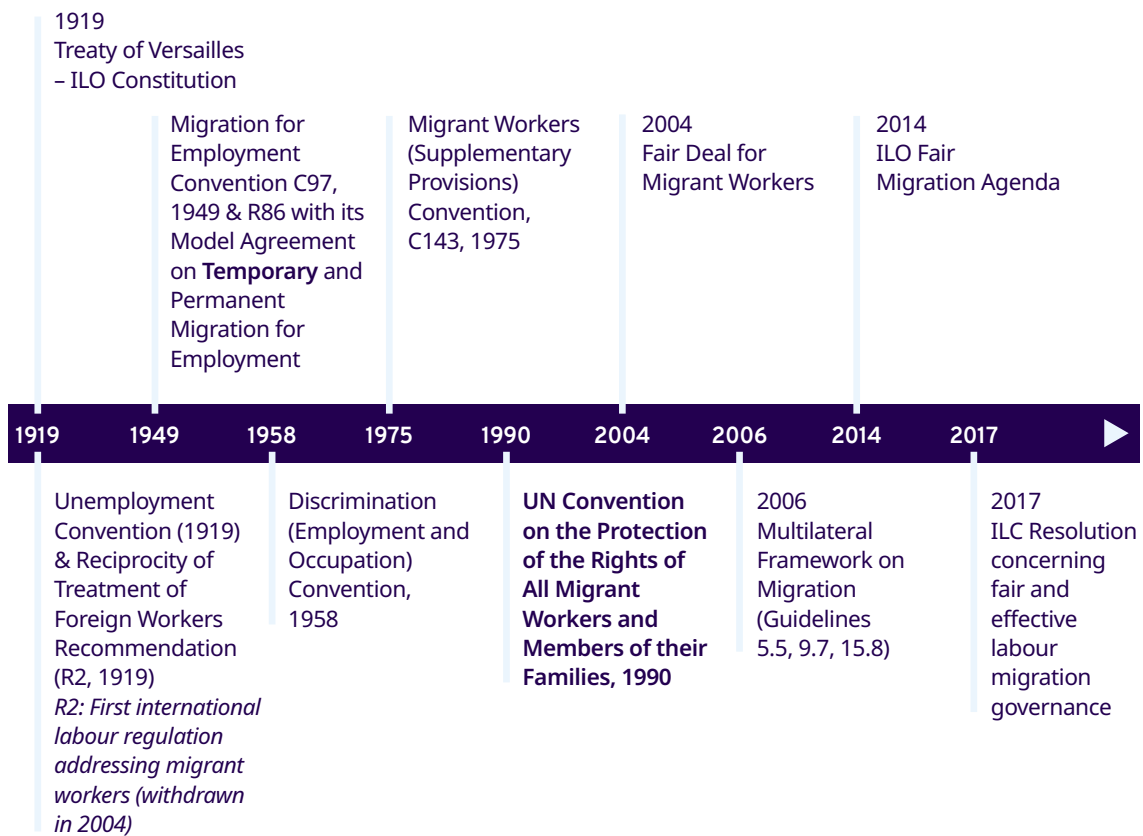
Temporary migration schemes and/or programmes have evolved over time, and they have become popular in many parts of the world. The ILO has been cognizant of this phenomenon as [Figure 1](#) shows. The next section addresses the different manifestations that TLM has taken.

4 A key provision of Convention No. 143 is Article 1 (“Each Member for which this Convention is in force undertakes to respect the basic human rights of *all* migrant workers” – emphasis added), in respect of which the Committee of Experts on the Application of Conventions and Recommendations (CEACR) brings into play the ILO fundamental Conventions reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and the core international human rights instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990. See ILO (2016), paras 275-280. For a review on the scope of application of Convention No. 143, other norms protecting migrants in irregular situations and practices addressing irregular migration in general, see ILO (2021c).

5 Principle 8 refers to the promotion and respect of the human rights of all migrant workers, regardless of their status; and Principle 9 refers to the application of international labour standards to all migrant workers.

6 Based on the Report “Addressing governance challenges in a changing labour migration landscape” (ILO 2017) that featured TLM in various parts.

► Figure 1. ILO Timeline: Temporary labour migration



Note: The ILO was heavily involved in the drafting process of the 1990 International Convention on the Protection of the Rights of Migrant Workers and Their Families, see Böhning (2008).

Source: Own elaboration.

► 2. Contemporary forms of temporary labour migration

2.1. Definitional issues

The landmark ILO Report *Towards a Fair Deal for Migrant Workers* (2004) established three forms of entry channels, namely: *permanent*, *temporary for all types of employment* and *temporary for time-bound employment*. The main difference between the two categories under “temporary” was that the former covered “guest workers” to fill vacant jobs that persisted, such as nursing, and the latter was to fill seasonal jobs and jobs that would end with the completion of a project, e.g. construction or service providers (ILO 2004:10).

Since then, we witness a lack of clear conception of temporary migration, both from an academic and policy perspective. Categories have evolved to include other forms such as “mobile workers” and international students among others, rendering categories overlapping.

In 2011, the European Migration Network (EMN) created under the Council Decision 2008/381/EC with the aim to provide updated, objective, reliable and comparable information on migration and asylum, conducted a study on “Temporary and Circular Migration” and reflected in its methodological section that: “neither temporary nor circular migration are clearly defined in most Member States, and where definitions exist, there are marked differences between them. This makes it challenging to analyse and compare how these forms of migration are developing across the EU” (EC 2011: 12). Moreover, when “defining” temporary migration, the understanding of how long “temporary” should be varies greatly, ranging from three months to two years (e.g. Finland) and even up to five successive years in some EU countries (e.g. Netherlands). Some national definitions incorporate a time limit such as Portugal’s (EC 2011: 14). In this light, the EMN proposes the following definition:

► Temporary migration is defined as ‘migration for a specific motivation and/or purpose with the intention that, afterwards, there will be a return to the country of origin or onward movement’”

(EC 2011:12).

The IOM uses an adaptation of the EMN definition in its Glossary on Migration (IOM 2019). Another definition is provided in a publication by the Organization for American States (OAS) and the OECD, which includes broader categories of temporary migrants:

► A temporary migrant is a person of foreign nationality who enters a country with a visa or who receives a permit which is either not renewable or only renewable on a limited basis. Temporary immigrants are seasonal workers, international students, service providers; persons on international exchange, etc.”

(see OAS and OECD 2015: 3).

In turn, the OECD takes “permanent migration” (Lemaitre et al 2007) as a reference point to define “temporary migration”:

■ A permanent migrant is someone whose status enables him or her to stay in the host country indefinitely under the circumstances that prevailed at the time they arrived. In contrast, a temporary migrant is someone whose status at entry does not enable him or her to remain in the host country without a status change subject to additional conditions”

(OECD 2019: 121).

More destination than origin countries tend to use the category “temporary migration”, although some origin countries have opted to define it such as the Philippines. As a major emigration country, the Philippines have developed a policy approach that covers all phases of migration (pre-departure, while abroad, return and reintegration). Temporary labour migration is defined as temporary work overseas, and covers work contracts of two years for land-based workers and 6-10 months for sea-based workers, reflecting the policies in the destination countries (Pitkanen and Haakawa 2019: 261).

As countries keep their sovereignty in the establishment of visa schemes and modes of admission of foreign nationals, definitions necessarily vary. For example, France has a migration policy aimed at encouraging labour migration, but only in a temporary form: the system of residence permits set up in 2006 to implement national migration policy are time-limited and accompanied by return obligations (EC 2011:32). In turn, the Netherlands has no explicit policy on temporary migration, but in a sense all immigration is temporary at the outset, due to the practice of issuing one-year residence permits which must be renewed (Reslow 2019: 218). Chile passed a new immigration law in 2021 by which a series of categories are established for temporary admission, including for employment.⁷

At the current juncture, the lack of common definitions and legal practices creates a multiplicity of statuses, often temporary, which determine not only the right to enter a territory, but determine the nature of the employment relations enjoyed (Costello and Freedland 2014: 7). As a “policy category”, TLM will continue to be used in migration debates, however, for regulatory purposes, and especially in the achievement of decent work, it might be turning into less of a useful working category as we witness evidence that temporary visas continue to be extended while labour markets needs in particular sectors continue to be long-term or permanent, as the COVID-19 pandemic revealed. In addition, definitional variety translates into data collection inaccuracy and difficulties of comparability as will be addressed in following sections.

⁷ See Law No. 21.325, *Migration Law* ([Ley de Migración y Extranjería](#)).

2.2. Manifestations: A basic typology

2.2.1. Institutional design (Parties involved in the design of schemes): unilateral/bilateral/ multilateral (regional)

In setting the contours of debates around “temporary migration”, an important distinction needs to be made between schemes or programmes whose specific goal is to attract a particular migrant population for a specific period of time, and at times, for a specific sector, from (im)migration policies regarding temporary migration. Some programmes are established through visa schemes that cover a particular sector of employment and/or skill and target particular migrant workers. When these programmes are set up without engaging in any form of negotiation and/or deliberation with another government, they are considered “**unilateral**” as is normally the case with visa types determined in admission policies.

When the programme is based on negotiations over the admission in one country of workers from another country under specific provisions (and for a particular sector of employment), it is considered “**bilateral**”. Bilateral Labour Migration Agreements (BLMAs) can take various more or less legally binding forms, from international treaties to Memoranda of Understanding (MOUs) between labour administrations⁸. In the context of the European Union, mobility partnerships are an example of bilateral *framework* agreements based on political declarations. Mobility partnerships that come under the EU’s Global Approach to Migration and Mobility are mainly concluded with EU neighbouring countries and cover short and long-term mobility, at times including forms of circularity.

Temporary labour migration can also occur under regional economic integration schemes and is thus based on a **multilateral decision**.⁹ Under **free movement agreements**, a person has the right to migrate for work (or other motivation) to a different country from her own party to the agreement. The movement can be temporary but also with the possibility to settle, leading towards a permanent migration. These are important movements and mostly admissions under regional agreements are not considered “(im)migration policy” *per se*, but movement of persons as part of a wider range of policies such as free trade, investment, etc.

Migrants within free-movement areas may choose their duration of stay in the host country. They are not subject to the same mobility restrictions as third country nationals: they can migrate temporarily to study, provide a service, work for a certain period, or settle indefinitely. They do not need a permit nor a visa to move within the free-movement area. One key point here is that such forms of migration (at times circular) are based on the freedom of individuals and groups to decide about their own cross-border movements (Castles and Ozkul 2014).

One such example is the Trans-Tasman Travel Arrangement that regulates free movement between Australia and New Zealand. Upon arrival in Australia, New Zealand citizens are granted Special Category visa (subclass 444). It allows New Zealanders to live, study and work in Australia as long as they hold a New Zealand citizenship, and Australians have the same rights in New Zealand.

8 For a review of BLMAs see OECD (2004), Wickasemara (2015), Cholewinski (2015), Chilton and Posner (2018) and The Special Issue in Journal Theoretical Inquiries in Law (TIL) No. 23(2) 2022, edited by Hila Shamir and Tamar Megiddo. See also UN Network (2022). Wickramasekara (2015: 21) identifies five broad types of bilateral labour migration agreements in different regions: i) MOUs; ii) Memorandum of agreement; iii) Bilateral Agreement; iv) Inter-Agency understanding, and v) protocols.

9 It is worth noting that regional economic communities and regional cooperation bodies across the world have adopted a variety of labour migration governance models. They range from free movement (see the EU model, the Economic Community of West African States (ECOWAS) or the Southern Common Market (MERCOSUR)); facilitation of movement for specific categories of workers (as under ASEAN, CARICOM and SADC); mere visa reciprocity agreements or regular exchange of information (Arab Maghreb Union (AMU)); or protection of the subregion’s workers in destination countries outside the region (South Asian Association for Regional Cooperation (SAARC)). See ILO (2017).

The Economic Community of West African States (ECOWAS)¹⁰ Protocol on Free Movement of Persons, Right of Residence and Establishment is a further example. It was established in 1979, and a number of supplementary protocols and regulations towards facilitating the flow of goods, services and labour within the ECOWAS region have been formulated subsequently. The protocols adopted a phased approach for the implementation of free movement which started with the abolition of visas for all community citizens providing them with 90-days visa-free access to another country within the community. In the following phases, the right to residence and the right to establishment are guaranteed by the protocols. Member States are required to ensure that migrant workers enjoy the same treatment as nationals in terms of access to socio-cultural, health facilities and the security of employment (Yeboah et al. 2020: 2).

In turn, the MERCOSUR¹¹ Residence Agreement grants residence and work permits to citizens of signatory States with no requirements other than nationality, upon presentation of a valid passport, birth certificate and police clearance certificate. Citizens benefited by the Agreement may apply for a temporary residence permit of up to two years in another country of the block and may apply for permanent residence before expiration of the temporary residence permit. The beneficiaries of the Residence Agreements enjoy the same rights and civil, social, cultural, and economic freedoms as nationals of the host country. They have, for example, the right to engage in any activity - on their own or for third parties - under the same conditions as nationals; and the right to family reunion¹².

In 2020, the IGAD Region adopted the Protocol on Free Movement of Persons.¹³ In its Article 3.1, it states that members shall: a) accord to citizens of Member States the right of free movement of persons and guarantee right of entry, stay, move freely and exit the territory of other Member States; b) extend the right of free movement of workers and self-employed persons and their dependants and guarantee them the right to apply for employment, conclude contracts and accept offers of employment and accord the right of the worker to be accompanied or joined by dependants in the territory of other Member States; and c) progressively realize the right of establishment and residence of citizens of other Member States in their territory.

The best known and most studied case of temporary migration that occurs under a regional integration scheme is the European Union¹⁴ where the free movement of persons is considered as one of the four fundamental freedoms, besides the free movement of goods, services and capital. The free movement of persons is a part of the European Single Market and already appeared in the Treaty of Rome in 1957.¹⁵ The scope of the common or “internal” market and the reach of the four fundamental freedoms was enlarged with the creation of the European Economic Area (EEA) in 1994 by an agreement between the EU and the three European Free Trade Association (EFTA) countries Iceland, Liechtenstein and Norway. Switzerland, the fourth EFTA country, is not part of the EEA Agreement, but has a set of bilateral agreements with the EU that include provisions on the free movement of persons. As a fundamental freedom, the free movement of persons also includes the possibility to work in another Member State of the common

10 The 15 members of the Economic Community of West African States are Benin, Burkina Faso, Cabo Verde, Cote d’Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

11 Mercado Común del Sur (MERCOSUR). Member States are Argentina, Brazil, Paraguay, Uruguay and Venezuela (the latter’s membership has however been suspended in 2016).

12 See Mercosur Residence Agreement in ILO, MIGRANT Good practices database, available at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=187

13 See ‘Protocol on Free Movement of Persons in the IGAD Region’, Office of the Executive Secretary, IGAD Secretariat, Republic of Djibouti, available at: [Final IGAD PROTOCOL ENDORSED BY IGAD Ambassadors and Ministers of Interior and Labour Khartoum 26 Feb 2020.pdf \(iom.int\)](#). In 2021, IGAD Ministers signed a Declaration on Labour, Employment, and Labour Migration, establishing the IGAD Ministerial Committee on Labour, Employment and Labour Migration, while adopting the IGAD Bilateral Labour Agreements Regional Guidelines, see [IGAD Ministers signed a Declaration on Labour, Employment, and Labour Migration \(ilo.org\)](#). As of 2022, IGAD Member States include Djibouti, Ethiopia, Eritrea (currently inactive), Kenya, Somalia, South Sudan, Sudan and Uganda.

14 In 2022, the EU had 27 members as follows: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

15 The free movement of persons as a fundamental freedom of the EU is sometimes confounded with “free movement” under the Schengen system that was established from 1985 among certain EU Member States (and later also non-EU Member States) to reduce border controls. Schengen signatories share information regarding visa and asylum applications. The Treaty of Amsterdam brought the Schengen Agreement into the corpus of EU law in 1999 but EU Member States are not automatically members of Schengen.

market, not only to reside there¹⁶. Workers from another Member State enjoy “preferential treatment”, namely the same as nationals. For example, where jobs are subject to labour market tests, employers will have to show that no national but also no EU worker could be found before a third-country national can be hired. Obviously, under such free movement arrangements, it is difficult to know how many workers actually take up work in another country (see also 2.3. Statistical snapshot).

Many countries offer possibilities for temporary migration under all three institutional designs: unilateral, bilateral and regional/multilateral. Canada is an example. In the case of the Seasonal Agriculture Worker Programme (SAWP), both States, origin and destination, are involved in the movement of workers, whereas the formerly known Low-Skill Pilot Project (LSPP) takes a decentralized approach to admitting migrants as managed by lower levels of government (Hennebry and Preibish 2012). While the SAWP is bilateral (based on bilateral negotiations that Canada has concluded with Mexico and several Caribbean nations), the LSPP is unilateral as Canada advertises its needs and potential migrant workers apply. A less formal organizational structure characterizes the LSPP and an absence of implemented protective legislation for workers who participate in this programme. Third-party actors have “stepped in” to fill the administrative gaps and some of these actors might not necessarily have an interest in migrant workers’ rights (Hennebry and Preibish 2012). This relates to the well-documented issue of the “migration industry” that has developed in conjunction with TLM schemes. In cases where administrative gaps are important, unscrupulous recruitment agencies might operate.¹⁷ Finally, a multilateral option for temporary migration to Canada has been created under the North American Free Trade Agreement (NAFTA) which has been substituted by the United States-Mexico-Canada Agreement (USMCA) from 1 July 2020 – even if the Treaty between the three North American countries does not foresee free movement comparable to that of the EU. Temporary migration for certain professionals is facilitated under this regional agreement. Thus, applicants in Canada are exempt from the Labour Market Impact Assessment (LMIA) requirement and professionals wishing to work in Quebec are also exempt from the Quebec Acceptance Certificate (CAQ) requirement (currently some 60 occupations are concerned). The maximum length of work permits is three years.¹⁸

2.2.2. Specifically designed programmes

Whether unilaterally designed or negotiated with one or more partner(s), countries opt for specific programmes to address the needs of particular segments of the labour market such as in the health sector, tourism or agriculture and they focus on migrants of various skill levels. Such an approach does not necessarily mean the presence of one single coherent programme as many can co-exist with different notions of what constitutes “temporariness”, including in the same economic sector. As indicated in the historical overview, schemes have become ever more targeted, all with their particular rules and frequent programmes changes, a fact that is criticized by businesses who call for more transparency and predictability (see ILO 2021b) and which makes it difficult to categorize them or even keep abreast of new developments. What follows is an attempt at classification, including country illustrations, albeit without any claim to exhaustiveness and using terms/designations widely cited in policy and academic debates.

Seasonal workers programmes

The first common association of TLM is migration for the purpose of seasonal work. In the context of international migration, seasonal workers are not usual residents of the country of employment, they

16 When new countries join the EU, Member States have the possibility to “protect” their labour market for a transition period, as most countries did following the EU’s ever largest accession in 2004 (of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia).

17 In its unilateral dimension and without origin countries having any leverage, the LSPP has occasionally been compared to the H2-A visa programme in the United States that has been documented to present challenges for the protection of migrant workers’ rights (Martin 2009, Gabriel and Macdonald 2012).

18 See [NAFTA Professional Work Permits](#).

carry out work that is dependent on seasonal conditions and that is performed during part of the year (ILO 2018: 7). Seasonal work opportunities exist in the tourism sector, e.g. in skiing resorts, in forestry, fishery, the construction sector where weather conditions prevent year-round work or can concern persons such as travelling performers, entertainers and others, but the bulk of seasonal work occurs in agriculture.

In Australia, the Pacific Australia Labour Mobility (PALM) scheme includes two initiatives: the well-established Seasonal Worker Programme (SWP) for jobs in the agriculture sector across Australia for up to 9 months, and the Pacific Labour Scheme (PLS) for jobs between one and three years (not only in the agriculture sector but also in other sectors). The PALM allows eligible employers to recruit workers from nine Pacific island countries¹⁹ and Timor-Leste when there are not enough Australian workers available.

In New Zealand, the Recognised Seasonal Employer (RSE) scheme operates since 2007 and allows recognized employers to hire foreign workers in the horticulture and viticulture industries when there are not enough New Zealand workers. The RSE establishes a cap on the number of workers that can enter every year²⁰ and normally workers can stay for up to seven months during any 11-month period. Workers from Kiribati and Tuvalu are exempted and can stay for nine months due to the distance from New Zealand and the cost of travel.

In the Republic of Korea, the Seasonal Worker Program (SWP) allows hiring foreign workers for short periods to address labour shortages during the farming and fishing season. The SWP was introduced by local governments with quota limits per household and local government, after assessing local government's management capacity. In the agriculture sector, industries acknowledged by the Ministry of Justice might request workers for up to 90 days through the C-4 visa, and up to 5 months with the E-8 visa.²¹

In the Canadian agriculture sector, the long established Seasonal Agricultural Worker Programme (SAWP) is used along with other Temporary Foreign Worker (TFW) streams. In the SAWP, temporary foreign workers must be from Mexico or other participating Caribbean countries²². In the TFW Agricultural stream, temporary foreign workers can be from any country and they can be hired for a maximum period of 24 months (when Canadian and permanent residents are not available), whereas under the SAWP, workers can be hired for a maximum period of 8 months.²³

In the United States, the H2-A Temporary Agricultural Workers Program allows employers to offer temporary or seasonal jobs to foreign workers upon request to the US Department of Labor (US DOL) for up to a maximum period of three years (upon extensions, depending on the time authorized on the temporary labour certification). In order to obtain permission to bring these workers, employers have to demonstrate that there are not enough US workers willing or qualified to do the job, and they have to show that H2-A workers will not adversely affect the wages and working conditions of similarly employed US workers. A long list of countries are eligible to take part.²⁴

19 As of 2022, participating countries include Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. See ILO (2022c) for a detailed analysis of the RSE scheme and the Australia SWP in light of human rights and labour standards.

20 The cap was maintained at 14,400 for 2020/21, this was not increased as originally planned due to the impact of COVID-19 on international travel. Countries eligible to the RSE include Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu (See [New Zealand Immigration, Recognised Seasonal Employer \(RSE\) scheme research](#)).

21 See [Ministry of Justice, Korea Immigration Service, The Seasonal Worker Program \(SWP\)](#).

22 As of 2022 participating countries include Mexico, and the Caribbean nations of Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. See [Government of Canada, Hire a temporary worker through the Seasonal Agricultural Worker Program](#).

23 Between 1 January and 15 December, provided that employers are able to offer workers a minimum of 240 hours of work within a period of 6 weeks or less. Due to the COVID-19 pandemic, for the 2021 SAWP season, work permits for SAWP indicated a 9-month work duration instead of the usual 8-month duration to accommodate the quarantine period required (See [Government of Canada, Hire a temporary foreign agricultural worker](#)).

24 For the list of countries, and other operational details of the H2-A Programme see [US Citizenship and Immigration Services \(USCIS\), H-2A Temporary Agriculture Workers](#).

In Europe, the EU's Seasonal Workers Directive (2014) represents an effort to harmonize seasonal programmes in European countries by establishing a set of common rules pertaining to admission, residence, and rights of non-EU seasonal workers. The Directive limits migrants' stay between five and nine months per year, it does not provide for family reunification and it allows workers to change employers. The Directive is comprehensive but Member States have discretion to decide how many migrants they admit, in which time range, and whether to allow return. Seasonal work is understood as "an 'activity dependent on the passing of the seasons', [namely] an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations".²⁵

Circular migration schemes

From the 1960s circular migration has been at the centre of debates about urbanisation and development in Africa, Asia, the Pacific Islands, and parts of Latin America (Wickramasekara 2011), but the establishment of so-called "circular migration programmes" has only become in vogue from approximately the mid-2000s. While circular migration (including across borders) may be a lived reality, particularly in contexts of geographical proximity it was invented as a *policy tool* by the European Commission in a development cooperation logic. In May 2007, a European Commission Communication stated: "Circular migration can be defined as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries". The document puts the emphasis on legal and managed mobility, and the Commission also clearly indicated that the new tool was about temporary migration: "...if not properly designed and managed, migration intended to be circular can easily become permanent and, thus, defeat its objective" (European Commission 2007). Numerous development actors and in particular the International Organization for Migration (IOM) bought into the idea that circular migration schemes would be "triple win", namely for the destination country, the origin country and the migrants themselves and promoted the setting up of "circular migration programmes".²⁶ Circular migration was also widely discussed in the Global Forum on Migration and Development, and circular migration schemes now often "overlap" with other forms of TLM, in particular seasonal worker programmes.

Unlike "traditional" temporary foreign worker programmes such as the European "guest worker" programmes of the 1950s and 1960s that were based on the idea of a one-time-only migration per worker and the rotation of cohorts of workers, circular migration schemes foresee repeated temporary stays of individual migrant workers. Under circular migration schemes migrants may be offered sort of a "re-entry premium" in the destination country once they return (Cassarino 2008). Circular migration schemes require important financial and logistical resources, for example mechanisms and institutions for selecting the migrants, training them and ensuring their return.

Young Professional programmes

Certain temporary labour migration schemes focus specifically on young migrant workers for the purpose of improving their skills through on-the-job training. The programmes are usually governed by bilateral agreements or MoUs which fix annual quotas, and not all the quotas are regularly used. The majority of these agreements stipulate that trainees must be between 18 and 35 or 40 years of age. There is reciprocity under the schemes, e.g. a South African can come to Switzerland as a trainee and a Swiss trainee can go to South Africa²⁷, although in practice in each of the bilateral relationships the programmes are mainly used by trainees from the less affluent country who move to the economically better-off country.

25 See [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](#). All Member States except for Denmark and Ireland have accepted the Directive and transposed it in national law.

26 See for example IOM NEWS GLOBAL, 25 July 2011, "Regional Conference on Migration in Africa Promotes Circular Labour Migration", <https://www.iom.int/news/regional-conference-migration-africa-promotes-circular-labour-migration> and https://www.gfmd.org/docs?search_api_views_fulltext=circular+migration

27 See <https://www.sem.admin.ch/sem/en/home/themen/arbeitspraktikum.html>

The schemes are directed at lower and mid-level professions (crafts and trades, hotel and catering services, etc.) and their chief objective is improving the vocational and language skills of the young participants. There are built-in mechanisms to achieve these objectives, e.g. the German programmes require(d) that for each trainee there be at least four German-speaking regular staff in the enterprise that employs the trainee²⁸. The young migrants stay in their host country for 12 months with a possibility to extend their cross-border training experience by another 6 months, i.e. their stay is limited to 18 months at the maximum. Besides cooperation at government level and between labour administrations, some of the schemes provide for social partner involvement in the implementation of the schemes. Salaries, conditions of work, and social protections are in line with the terms negotiated under local collective agreements or legislation in the host country. The schemes are also intended to stimulate job creation upon return.

On the other hand, certain trainee schemes have been denounced for being exploitative and not providing real training, and trainee programmes as such are therefore oftentimes looked at with suspicion.²⁹ Because of such criticisms, the Republic of Korea discontinued its Industrial Trainee Scheme (ITS) created in 1994 and instituted the Employment Permit System (EPS) in 2003 (Kim 2015).

Posted workers

Within the EU, *posted workers* are employees sent by their employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency. Posted workers are different from *EU mobile workers* in the sense that they remain in a host Member State for work of a strictly defined scope and do not integrate into the host country labour market.³⁰ A service provider may win a contract in another country via a tender procedure and send his employees there to carry out the contract. On the contrary, EU mobile citizens go to another Member State on their own initiative to seek work and they are entitled to equal treatment with nationals in access to employment, working conditions and all other social and tax conditions.

Despite the fact that posted workers are employed by the sending company and subject to the law of where the sending company is based, they are entitled to a set of core rights in force in the host Member State such as minimum rates of pay, maximum work periods and minimum rest periods, minimum paid annual leave, the conditions of hiring out workers through temporary work agencies, and health, safety and hygiene at work.³¹

Cross-border workers

Cross-border workers or frontier workers can commute on a permanent basis but can also work in the neighbouring country for the season or otherwise temporarily, depending on the agreements between countries.

In some cases, cross-border workers can be part of free-movement areas, for instance the OECD found that within the EU/EFTA countries, free-movement cross-border workers make up the majority of temporary migrants in Luxembourg and Switzerland, reaching 53 per cent and 22 per cent of the share of employed migrants, respectively (OECD 2019: 117). In the context of the EU, cross-border workers are persons who work in one EU Member State but live in another. The definition of what exactly constitutes

28 See Kuptsch (1995) for programme details and an assessment of the schemes that Germany had in place with several Central and Eastern European partner countries in the past. Many of the German agreements on young professionals ("*Gastarbeitnehmer-Abkommen*") became obsolete with the accession of new Member States to the EU. There were 5,891 Young Professionals in Germany in 2000 but only 15 in 2015 (Bundesministerium des Innern 2015: 64).

29 A case in point is the Japanese Technical Internship Programme (TIP) that has been critically assessed in the migration literature, see Kamibayashi C. (2010). See also in the media, for example <https://observers.france24.com/en/asia-pacific/20220419-unbearable-hours-threats-of-being-fired-the-abuse-of-migrant-interns-in-japan>

30 Guided by the [Directive 2018/957/EU amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#).

31 See [European Commission, Rights and Rules for posted workers](#).

“cross-border work” varies according to whether one looks at tax law, right of residence, and welfare entitlements.³²

Cross-border movements are also prominent in other regions. For example in the Southern African region, short-term cross-border movements (as well as circular movements) are characteristic, linked to cross-border trade as livelihood strategies (Carciotto 2020). Thailand has border pass arrangements with Cambodia and Myanmar. The visa has to be renewed every month, and the work permit every three months, by crossing back over to the countries of origin for the renewals.

Working holiday-makers

Working holiday-makers constitute another important category in many countries. In Australia, the “working holiday visa” and the “work and holiday visa” are primary examples, in the United States it is the “summer work travel visa” (a subcategory of the J1-visa) and in Canada the International Experience Canada work permit. The OECD estimated that these represent 30 per cent in Australia and New Zealand of permits issued in 2017. Their numbers are important to note because these workers sustain portions of the economy while not necessarily being reported as migrant workers.

Intra-company transferees

They represent another form of temporary migrants. Mostly high skilled, this category allows international companies to temporarily transfer qualified employees to their subsidiaries in a different country (see ILO 2021b). The EU has a Directive on intra-corporate transferees that establishes the conditions under which non-EU nationals can enter and work in the EU for an intra-corporate transfer.³³

► Table 1. TLM manifestations: A basic typology

Institutional Design		
Unilateral	Bilateral	Regional
Categories in immigration law (visa categories)		
	BLMAs	
	Circular migration schemes	
	Young Professional programmes	
Seasonal worker programmes		
		Free movement migrants
		Posted workers
	Cross-border workers	
Working holidaymakers, Intra-company transfers, Other forms of TLM (spouses, students, etc.)		

Source: Own elaboration

³² See [European Commission, Taxation and Customs Unions](#).

³³ [Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of intra-corporate transfer](#).

Other forms of temporary migration

Finally, another important dimension is that not all migrants who participate in the labour market have a visa that designates them as workers. They may be working legally as a spouse or dependent, be international students, be part of cultural exchange programmes, etc. It is important to quantify these contributions to properly understand labour market dynamics and labour rights as they interrelate with other visa categories and TLM schemes.

2.3. Statistical snapshot: Complications in capturing TLM

In high-income countries, temporary migration programmes, understood as policies that grant migrant workers temporary residence and employment status on arrival, constitute over 90 per cent of labour immigration policies (Ruhs 2013). Considering a sample of 30 countries, Gest and Boucher (2021) find that temporary flows comprise at least 50 per cent of all admissions in sixteen of the cases they examine, and in several States concentrated on the Arabian Peninsula, 100 per cent of economic migration is temporary.³⁴

Not all censuses and labour force surveys cover temporary labour migration; therefore, measuring the size of employed temporary migrant populations across the globe remains work in progress.³⁵ For example, inflows of temporary migrants on an annual basis are available for most OECD countries, however, translating these into employment continues to be a challenge as duration of stay and migrant categories will need to be addressed. In this light, systematic and rigorous comparisons across countries remain a challenge.

At the national level, some countries use arrival and departure records to estimate the number of temporary migrants, such as the Department of Homeland Security (DHS) in the United States. However, this might not necessarily indicate whether these migrants are in the labour market as the objective is to capture what is called “non-immigrant populations”.

In 2019, the OECD provided a first estimate of the contribution of temporary migrants to the host economies in 20 OECD countries. Based on a specifically constructed dataset of permits and visas collected for the study, in combination with other methodologies to capture free movement migrants in the context of the EU, their study found that (OECD 2019: 117):

- In six out of 20 OECD countries, temporary migrants add 2 per cent or more to the total employed population in the host country in full-year equivalent terms.
- Temporary migrants account for over 40 per cent of all employed migrants (temporary or permanent) in the Republic of Korea and over 25 per cent in Japan. In New Zealand, their share is 13 per cent and between 5 per cent and 8 per cent in Australia, Canada, and the United States. Within EU/EFTA countries, temporary migrants account for the largest shares of employed migrants in Luxembourg (53 per cent) and Switzerland (22 per cent).
- Migrant workers account for three-quarters or more of the total contribution of temporary migrants in all countries, except Australia, Canada and New Zealand. Working holidaymakers and international students work for only part of their stay in the country of destination. Nevertheless, the number of

³⁴ Given that Arab countries – particularly the GCC – only have temporary labour migration programmes, it can be assumed that almost all (or at least, a very significant proportion) of the 24.1 million migrant workers in the region in 2019, according to the [latest ILO Global Estimates](#), were temporary labour migrants.

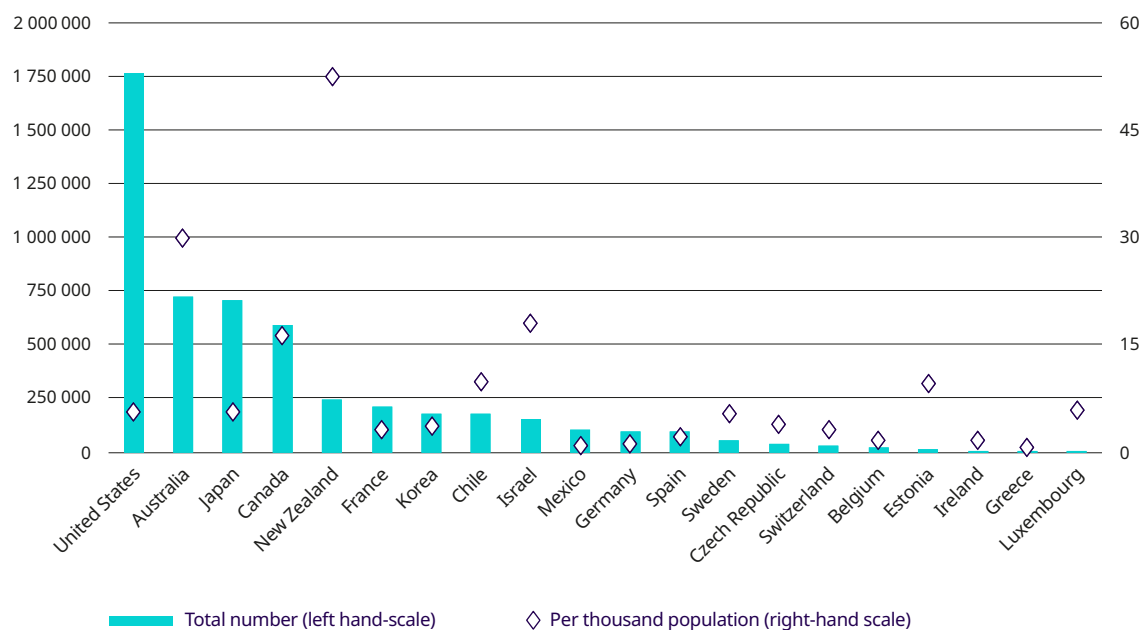
³⁵ Statistical definitions are based on frameworks that aim to distinguish between an “usually resident population” and a “temporary population”, where the distinction is based on duration of stay within a 12-month period. Those staying most of the time in a 12-month period are considered part of the resident population of the country, others are part of the temporary population. This basic breakdown does not align with the notions of TLM schemes, and migrant workers under these schemes could be either exclusively a part of the temporary population in the destination country (e.g. as cross-border workers) or spread across the two populations given the durations of the schemes as per the examples included in this Synthesis report.

working holidaymakers is large enough to imply a significant contribution to the resident employed population in full-year equivalent terms in Australia and New Zealand. Similarly, international students contribute significantly to employment in Australia and Canada. In contrast, the contribution of accompanying family members to the resident employed population is estimated to be less than 10 per cent of the total contribution in all countries considered.

- On average in EU/EFTA countries, free-movement migrant workers, including cross-border workers, add close to 1 per cent of the total resident employed population. Fully accounting for posted workers could increase the contribution of free movement temporary migrants by one third. According to data collected by the European Commission, over 1.7 million postings to another EU/EFTA country were declared in 2017.

Relying on the OECD (2019) data, [Figure 2](#) depicts the number of permits issued to temporary migrants. The United States issued the largest number of permits, followed by Australia, Japan and Canada. In the EU/EFTA countries, the number of permits issued is relatively modest taking into consideration that many temporary migrants come from within the free-movement area and do not need to apply for a permit.³⁶

► **Figure 2. Permits issued to temporary migrants according to OECD data**



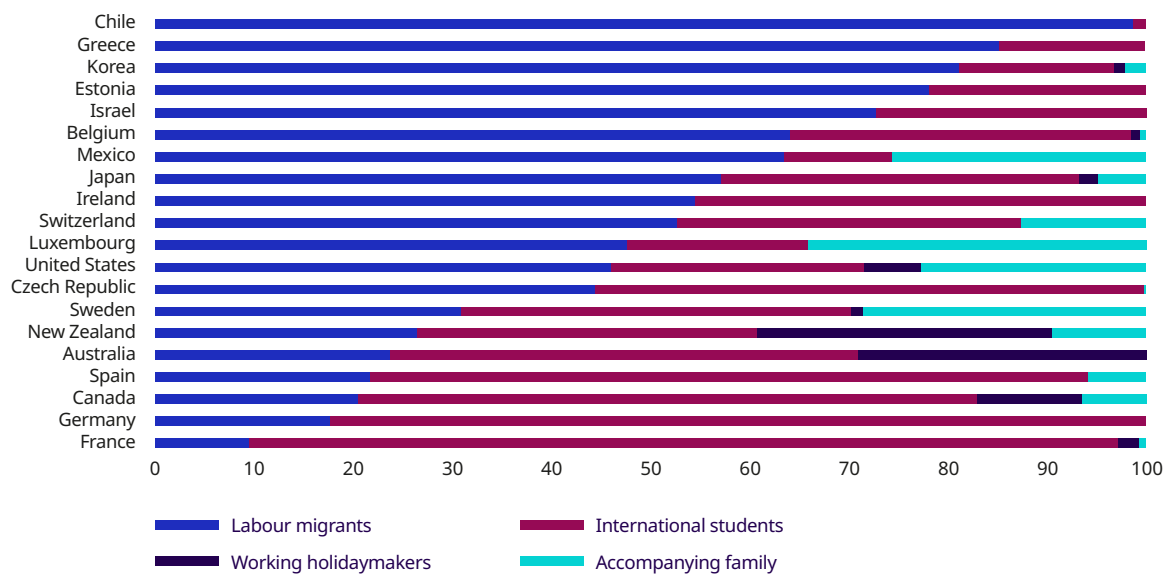
Source : OECD (2019 : 122).

Note: In most countries, the permits in the dataset are residence permits that may also provide access to the labour market. Data for Ireland and Belgium is employment permit data instead of residence permit data. Data for Germany for labour migrants refers to authorizations to work and not to permit data.

³⁶ As cautioned by the OECD (2019: 122), the number of permits issued is not equivalent to the number of temporary migrants arriving in the host country in a given year. Issuance of a permit might not correlate to migration, as the individual might have decided not to migrate, and only three quarters of permits issues were first permits, the rest being renewals, thus, covering migrants already in the host country.

Figure 3 shows the different categories of permits for temporary migrants of which temporary migrant workers are a subset. Chile, Greece, the Republic of Korea and Estonia present the higher number of migrant workers' permits while France, Germany, Canada, Spain and Australia show the higher number of international students' permits.

► Figure 3. Share of permits issued to the different categories of temporary migrants, 2017



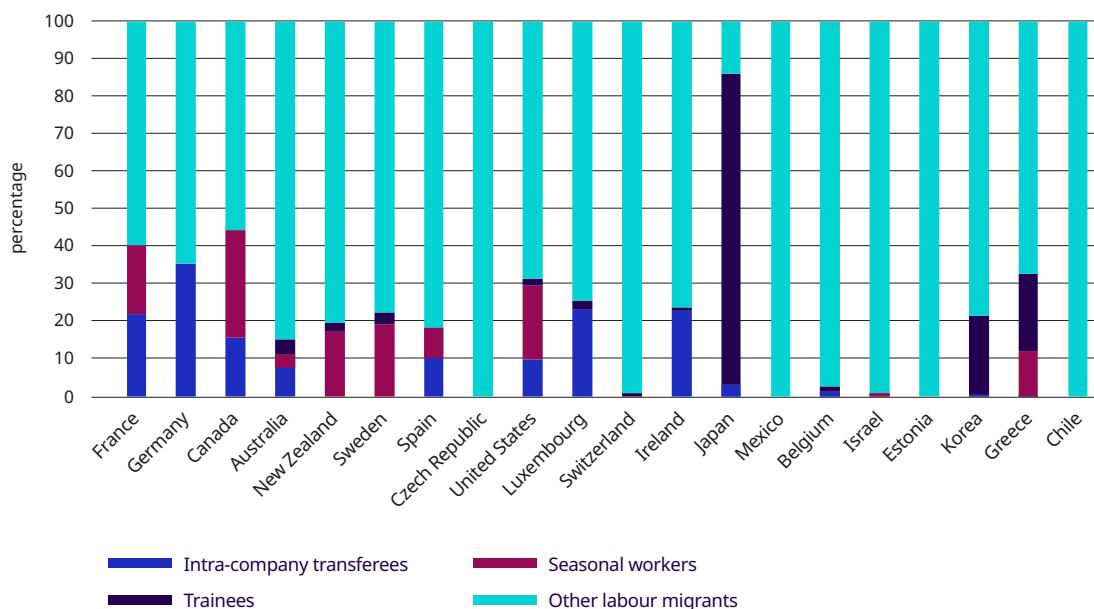
Note: Permits issued to dependents in Australia and Chile are reported together with permits issued to principal applicants. No permit data for international students is available for Ireland. Data for Ireland and Belgium is employment permit data instead of residence permit data. Data for Germany for migrant workers refers to authorizations to work and not to permit data. Permit data for accompanying family is not available for Belgium, Germany and Ireland. Only data on permits for spouses/partners with labour market access is available for Canada and New Zealand under the category Accompanying family.

Source: OECD (2019: 124)

Figure 4 presents a breakdown of the temporary permits issued to migrant workers. Almost two-thirds of all the permits issued to migrant workers belong to a category "other migrant workers". This category is composed mainly of permits issued to workers who have a job offer from a host country employer. It includes large temporary migration programmes in the OECD such as the Temporary Foreign Worker Programme in Canada (excluding seasonal workers), the H1-B visa in the United States or the E-9 visa in the Republic of Korea. Some countries do not have specific permits for intra-company transferees, seasonal workers and trainees. Hence, these workers cannot be identified in the data and are classified in the category "other migrant workers" (OECD 2019: 124).

In Japan and the Republic of Korea, trainees represent the majority of temporary migrant workers. Seasonal workers represent 28 per cent of temporary labour migration permits issued in Canada, 24 per cent in France, 20 per cent in the United States and 17 per cent in New Zealand according to OECD (2019). These are pre-pandemic figures, so we estimate that numbers have gone down during 2020-2021.

► Figure 4. Different permits issued to temporary migrant workers, 2017



Note: Some countries do not have specific permits for intra-company transferees or trainees. Migrants are therefore issued a more generic permit and classified under “other temporary migrant workers” in the analysis. For example, Switzerland does not issue a specific permit for intra-company transferees. In other cases, the number of permits issued is too small to be visible in the Figure.

Source: OECD (2019: 125).

2.4. Reconsidering the notions of “impacts” and “effects” in the context of TLM

Taking into consideration the preceding statistical snapshot conducted prior to the COVID-19 pandemic and the difficulty in global quantification of the nature of temporary labour migration, analysing “effects” and “impacts” poses serious challenges. As there is no unified definition, no systematization in data collection across countries, the implications of TLM in labour markets is varied and data gaps and differences in design make it difficult to analyse and compare TLM programmes of different countries and measure the impact on workers’ rights in countries of destination and origin.

This report takes a holistic approach to “impacts” also bearing in mind that issues of impacts in the migration literature have traditionally been addressed from the economics literature and focussed on permanent migration (Peri and Sparber 2009, Dustmann, Glitz and Frattini 2008, Blau and Khan 2015, Peri 2016).³⁷ By broadening the notion of impact to address a cross-disciplinary perspective, this report analyses various categories of reference (which are described in depth in the following section) vis-à-vis impact and complements two input studies that show the perspectives of workers’ and employers’ organizations (see ILO 2021a and ILO 2021b). Limitations on statistics, the divergent nature of schemes in countries as well as means to collect data, and the heterogeneity of groups of migrants covered through

³⁷ OECD (2019) observes that the impact of temporary migrants on the host country is under-studied in the economics literature. In 2018, the OECD and ILO produced a series of studies on how immigrants contribute to developing countries’ economies with some references to the challenges of temporary visas for integration and pathways to residency. See OECD/ILO (2018).

visa categories require a focus on specific categories and country-specific schemes, as both input studies address. Assessing the impacts of “temporary migration” implies revisiting assumptions and realities of the labour market while providing an honest account of what can be captured by those methodologies. Thus, relying on other approaches in the social sciences remains paramount.³⁸

Another important challenge in estimating impacts is noted in a study produced by the Committee for Economic Development of Australia (CEDA): It showed that if a migrant moves from a temporary visa to a permanent one, this is not captured in the net overseas migration statistics (CEDA 2019:33). The same study explains that migrants on a temporary visa in Australia will either leave the country or transition to a permanent visa, yet the Australia Bureau of Statistics only measures which visa migrants arrive on, and which visa they leave on (visa transitions are not captured in net overseas migration statistics). Recording these visa transitions would allow to estimate the contributions of temporary migrants to population growth, and therefore, these data should become readily available (CEDA 2019:33).³⁹

The Ministry of Business Innovation and Employment (MBIE) of New Zealand conducted an impact study in 2018 using econometric modelling to estimate whether temporary migrants had an impact on employment outcomes for New Zealanders. The study covered all working-age people in New Zealand who received wage and salary employment earnings from January 2000 to December 2015. The overall results showed that there were no significant indications of migrants crowding out New Zealanders for jobs, and, in particular, no overall effects on employment in the same industry or other industries.⁴⁰ This means that, on average, temporary migration has no direct effect on the months worked by New Zealanders in the same industry (holding all the other variables constant). In addition, temporary migration had some positive effects on the earnings of New Zealanders over 25 years but not on youth, and there were no effects on new hires (MBIE 2018:iv).

On assessing the economic impacts of free-movement migrants in some regions, these workers might be invisible in numbers but visible as concerns the realities of the functioning of the labour markets. To address this gap, the OECD 2019 study uses a novel methodology to identify free-movement temporary migrant workers based on data from the EU labour force survey (EU-LFS). Free movement temporary migrants are defined, for the purpose of this exercise, as individuals who declare working in a country other than their country of usual residence. As long as individuals work, or intend to work, abroad for less than one year, they are still considered residents of the country of origin. Using this definition allows to capture not only individuals who migrate to another EU/EFTA country for less than one year, but also cross-border workers. While these are not traditionally considered migrants, it is important to include them in the analysis to capture all participants in the host country labour market.

Using this methodology, an estimated 1.6 million free-movement temporary migrant workers were employed in EU/EFTA countries in 2017. This number increased by over 20 per cent in the period 2013-17 relative to a 5.5 per cent increase in total employment in the EU/EFTA. Switzerland was the host country with the largest number of temporary migrants (410,000) in 2017, followed by Germany (398,000), and then Luxembourg, Austria, the Netherlands and the United Kingdom, each hosting between 100,000 and 200,000 temporary migrants (OECD 2019: 139).

In the case of Mexico, the country's involvement in the SAWP with Canada since 1974 was evaluated from the government's perspective only twice, in 2005 and 2016. In 2016, 23,790 workers were placed in nine Canadian provinces, and since its enactment, more than 326,000 agriculture workers have been placed (CGSNE 2016: 7). The 2016 evaluation mostly focussed on the operational aspects of the programme

38 Bauböck and Ruhs (2022: 9) note that the multitude of impacts of TLM programmes in the host economy makes it very difficult to speak about an “overall impact” (or benefit) for the host country.

39 The same Report showed student visa transitions per a special request of data to the Department of Home Affairs.

40 In the study, two sorts of models were fitted to the data: direct effects models and combined effects models. Direct effect models consider the impact that migrant employment might have on the outcomes of New Zealanders in the same industry and region. Combined effects models consider direct and indirect effects. Indirect effects are the effects that changes in migrant employment in an industry in a region might have on the employment of New Zealanders in another industry in the same region. The total effects model shows no significant indications of migrants crowding out New Zealanders for jobs, and, in particular, no overall effects on employment in the same industry (direct effects) or in other industries (combined effects) (see MBIE 2018: iv and p. 10 for method).

and did not have a framework to measure impacts on workers' experiences (in addition to earnings, savings, etc.). Nevertheless, it indicated based on workers' interviews that most of the participants were already experienced agricultural workers who could apply their knowledge and benefited from the SAWP. The evaluation therefore suggested that, in future, participation in the SAWP could be offered to workers in less favourable situations (CGSNE 2016: 232). From a destination country perspective, a similar consideration should be made in assessing the "impacts" of TLM programmes.

The literature is vast and portrays mixed results when it comes to the benefits for origin countries in terms of remittances, and brain circulation. Origin countries might benefit from certain remittances generated by workers' participation in TLM programmes but this may come at the expense of restricted rights for their workers abroad or further inequalities within the country (Escobar Latapi and Janssens 2006; Escobar Latapi 2012). Consequently, determining whether a particular TLM scheme generates an overall benefit for a specific origin country is not as simple to quantify as suggested by some advocates of these programmes.

To sum up, defining the meaning of migration-related benefits for countries is by no means easy: labour market impacts might be easier to define than social effects but impacts may also differ across regions. To assess the overall effect, the relative importance of a multitude of impacts must be weighted which is an inherently normative exercise as decisions must be made on which types of impacts for which groups of people should be prioritized (Bauböck and Ruhs 2022).

Part II.

Unpacking complexities

► 1. Key design elements and their interrelations

This section describes the different elements that characterize TLM programmes, with a specific focus on immigration and labour law. These are important because they condition the potential of certain labour market institutions to protect migrant workers' rights. They apply across the forms of TLM described in the Typology in section I. 2.1. This description of the elements also helps identify critical policy areas and institutional mechanisms that could foster policy coherence⁴¹ towards the realization of decent work for migrant workers, which contributes explicitly towards sustainable development.

As shown in the previous sections, two interrelated layers of complexity lie at the heart of TLM schemes. First, the heterogeneity of the group of workers labelled "temporary migrant workers" and those that might not be included in such groups but still perform as such (e.g. students, spouses, etc.). Second, the varying governance forms that regulate them as different visa categories and free-movement areas coexist.

These intertwined complexities are also affected by gender relations and norms. The establishment of particular schemes in sectors have historically made men take up posts due to cultural norms of having to fulfil their roles as "economic providers", and have made them worry that they might "fail" in this role if they are unable to send remittances. In recent decades, the "feminization of migration" refers not only to the rise in numbers of women migrant workers but also to the fact that they engage in migration independently of their partners and family (Bastia and Haagsman 2020). One of the reasons for this change lies in the changing global division of labour that demanded female labour in the form of domestic and care work from the so-called "Global South" in the "Global North". It is noteworthy that the "North-South" divide in migration debates does not accurately reflect dynamics occurring in some parts of the world such as the Middle East, where domestic and care work is largely performed by migrant workers. Some observers therefore define as "Global North" all more affluent countries, no matter where they are located geographically.

Traditionally, preferential access to a national (domestic) labour market stems from citizenship. In many contexts, long-term residents with permanent residence status are also given preferential access. Different categories of (im)migration statuses are constructed to delimit access, therefore, the various combinations of elements give place to high heterogeneity conditioning participation in the labour market. For example, in the EU context, the "community preference" principle establishes that:

► **Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national or Community manpower or by non-Community manpower locally resident on a permanent basis in that Member State and already forming part of that Member State's regular labour market"**

(Council Resolution 1996 OJ C274/3 in connection with Council Regulation EEC 1612/68 cited in Ruhs 2014: 62).

⁴¹ In policy circles, the literature emphasizes that ideally, to attain "coherence", the design of different policies needs to take into account relevant interactions, and coordination and calibration to achieve a desirable policy mix at the international, regional, national and subnational levels (see OECD 2008 as an example). For this background report, the aim is to diminish dissonance between admission (entry requirements) as established in immigration laws and labour protection to reduce decent work deficits.

The following elements condition TLM schemes, namely, objectives; agencies involved; sponsorship; mobility; skill level required; sector of employment; type of permits issued; representation; pathway to citizenship; and enforcement.

1.1. Objectives

The “stated objective” of a TLM programme is normally presented in public sources and declarations by national authorities on the aims that the selected scheme is supposed to achieve. “Stated objectives” are normally constructed to justify particular programmes and make them politically acceptable at different historical moments. We described in Part I how in the early days of TLM, the programmes pursued the double aim of alleviating labour market shortages while pacifying anti-immigrant sentiments.

The stated objectives change according to historical circumstances, and scholars and practitioners have classified these in different ways. For example, classic broad subgroups documented include: i) to alleviate labour shortages, ii) to address undocumented migration; iii) to foster cultural ties and provide training, as in the case of students and apprenticeships (Ruhs 2006). Outright foreign policy considerations may also dominate the establishment of TLM schemes. For example, from 1989 Germany set up seasonal, young professional and services contract programmes (*Werkvertragsabkommen*) for workers from Central and Eastern Europe because the German Government was convinced that it had obligations towards States whose nationals had previously worked in the German Democratic Republic. Indeed, Poland made the continued employment in Germany of a certain number of Polish nationals a topic of discussion during negotiations concerning the recognition of the Polish-German border. It was considered an “obligation of the West to support the process of reform in Eastern Europe with the means of the social market economy” (Heyden 1991: 6). The policy objectives of TLM schemes are thus not necessarily linked to labour market concerns.

From an origin country perspective⁴², there may also be developmental objectives as participation in TLM schemes might represent a means to alleviate poverty, secure income through remittances, increase job opportunities for their citizens, and it can be a proactive adaptation strategy to (future) forced displacement as a result of climate change.

Temporary movements are not only of an economic nature of course. There are social repercussions in terms of separation of family members and gender relations which might not necessarily be factored under the “stated objectives”. For this reason, “unintended consequences” need to be analysed from different angles and interests’ perspectives. Skeldon (2011: 61) reflects on the trauma of separation among young couples from India, when male migrants go to the Gulf for work. While leaving wives in charge of children and the household could empower them by placing them in higher positions of responsibility, separation also brings distress, as for instance, in the handling of remittances.

In the case of the EU, starting from the mid-2000s for several years almost all temporary migration into the EU, then mostly labelled circular migration (see Part I.2.2.), was considered under a “migration and development” discourse. Another important aspect is how “return” is conceptualized and embedded within the design of particular schemes. It is not always clear that the end of a temporary permit would imply return; it requires a system of “higher” management to do so. For example, the case of Sweden shows that no special measures are taken to ensure return to the country of origin when a job and the associated work permit expire. The rules and regulations anticipate that persons whose residence and work permits expire will also leave Sweden. However, it has been observed that many foreign workers also want to obtain permanent residence permits to stay in Sweden. The view of Sweden is that in principle, increased mobility of migrants is fundamentally positive for the EU, migrants and third countries and this should be facilitated but not “forced” (EC 2011: 33).

⁴² Despite the fact that no country is fully a destination or origin country solely, in global policy debates and as a heuristic device, countries are classified into origin, destination and transit even accepting that these are not clear-cut distinctions.

In the case of Australia, Wright and Clibborn (2017) find that the focus on maintaining an official policy based on skilled migration entering through what they call “front doors” (highly regulated mechanisms of selection and control), has been complemented through various “side door” temporary work visa schemes that exist outside of the scope of traditional work visas, such as student and working holiday visas. In addition, there is a growing number of unauthorized migrants who overstay their visas or work in breach of their visa conditions, which can be labelled as access to the country and labour market via “back door” migration channels (see Howe et al 2016).

1.2. Agencies involved

Countries show vast variation in terms of the different agencies and ministries involved in the migration process from the design of specific visa categories, to actually enforcing and monitoring the application of particular programmes. To mention a few, agencies include Ministries of Interior, Migration, Foreign Affairs and Labour and the administrations reporting to them at various levels (for example consular services and placement offices).

Temporary migration is defined differently by countries, and thus, policies implemented in various ways as they involve multiple governmental departments and institutions of often opposing interests and capacities, and this exacerbates the complexity of the national policies (Pitkänen and Hayakawa 2019: 259). Tensions among institutions arise reflecting different views. For example, in the Netherlands, the Ministry of Foreign Affairs is open to creating more channels of legal migration for non-EU countries, but the Ministry of Social Affairs and Employment oversees the Dutch labour market and the implications of migration upon it.

In addition, when looking at the agencies involved, the governance of temporary labour migration also involves the so-called “migration industry”⁴³. Various agencies and companies facilitate access to regular migration and at times, even to undocumented migration. In countries with temporary migration schemes, it has been widely documented that when permits (or slots) are limited, private enterprises are increasingly brokering access, often offering a package deal to set up everything including translation, start-up loans, job contracts, housing, legal paperwork and transportation (Hennebry 2008, Hernández-León 2008 and Rosales Sandoval 2013). These companies may work under license or agreement with the governments. For example, in Japan, two-thirds of medium-to-large firms make use of such agencies (Surak 2013).

The Employment Permit System (EPS) set up by the Republic of Korea in 2003 is the rare example – at least in the Asian context – of a TLM programme that operates at the complete exclusion of private sector recruiters or agencies. The programme is non-seasonal and concerns several economic sectors, namely manufacturing, construction, agriculture, services, and fisheries. It is based on bilateral Government-to-Government MOUs between the Republic of Korea and selected origin countries. These MOUs stipulate that the recruitment, selection and placement of workers is to be managed entirely by the Government ministries in charge of labour migration of the two countries (or their affiliated entities). Non-governmental actors and private service-providers can be involved in preparing potential EPS workers ahead of the selection process or in facilitating the workers’ adjustment to life in the Republic of Korea after entry (for example as concerns Korean language lessons), however, the selection process itself is the prerogative of the Government of the Republic of Korea and its counterparts in the origin

43 The concept “migration industry” can be defined as encompassing not only the service providers who facilitate migration, but equally the “control providers” such as private contractors performing immigration checks, operating detention centres and/or carrying out forced returns (Gammeltoft-Hansen and Nyberg Sørensen 2013: 6). There have been instances of abuse in the recruitment process by some actors within the migration industry with cases pertaining to forced labour and human trafficking. In 2014, the ILO launched the Fair Recruitment Initiative to address these abusive recruitment practices, and in 2016 and 2019 respectively, the [General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs](#) were published to guide ILO constituents in improving recruitment practices.

countries. This exclusive Governmental control was intentional from the start. The EPS was designed to bring to a halt irregular overstays that were associated with the earlier Industrial Trainee Scheme (ITS) as well as to avoid abuses characteristic of private sector-based recruitment in the region. In June 2011, the programme received the UN Public Service Award for its contribution to increasing transparency and combatting corruption, due mostly to this exclusive Government-to-Government arrangement.⁴⁴

In the administration of the SAWP between Canada and Mexico, from the Mexican perspective, agencies involved include the Secretary of Labour and Social Security (*Secretaría de Trabajo y Previsión Social*, STPS in Spanish), through the General Coordination of the National Employment Service (*Coordinación General del Servicio Nacional de Empleo*, CGSNE in Spanish), the National Employment Service (*Servicio Nacional de Empleo*) in the federal entities, and agencies in charge of administrative procedures involving work visas, medical examinations and migration related-administration. In Canada, Mexican consulates are in charge of assisting migrant workers on issues pertaining to information in general.

In sum, the nature of agencies involved in the administration of a TLM varies across countries and jurisdictions. Countries establish workplace protection at a particular jurisdictional level, while immigration is decided at the federal/national level. These divergences further exacerbate misalignments in protection. Specifically-designed TLM programmes have contributed to regulatory separation between admission and labour protection which often causes decent work deficits for migrant workers.

1.3. Sponsorship

Sponsorship refers to the agent or employer who supports the admission of migrant workers through an institutional arrangement that justifies the admission. Governments have granted business substantial capacity to determine which migrant workers enter the destination country and on what terms, albeit within State-mandated parameters specifying in most instances minimum requirements around skill levels and employment conditions (Wright, Groutsis and van den Broek 2017, Howe 2016).⁴⁵

Caps and targets can apply to migrants across the skills spectrum, sectors and occupations, geographical regions and in some cases, according to countries of origin. Flexible mechanisms around TLM schemes are less likely to have quotas (even though this varies) as employers' demand for migrant workers is the primary determinant of the number of temporary work permits and visas issued.⁴⁶

In many instances, a job offer is a precondition for entry, for example, in the previous Tier 2 (General) visa scheme of the United Kingdom, a job offer was the basis of a mandated employer sponsorship of the migrant's visa. In the case of the United States, employers must satisfy preadmission certification criteria, which means that employers must advertise for local workers and offer at least a government-set wage in advertisements that are reviewed by the Department of Labor, offer housing to workers in some cases, and satisfy other job-related requirements. Under post-admission attestation, government checks of employers occur only in response to complaints after migrants are at work (seen in the H-1B professionals category) (Martin, Abella and Kuptsch 2006: 96).

Numerous governments run labour market tests and provide shortage occupations lists that allow employers to sponsor migrants. In the first case, the requirement of a job offer is accompanied by a labour market "test" to assess whether employers' requests for migrant labour represent genuine shortages that cannot be filled with qualified residents. In the second case, a list of occupations that are considered to be in "shortage" is determined and reviewed periodically. This list can be drawn up

44 For more information and a full assessment of the EPS' strength and weaknesses, please refer to Kim (2015) and for an analytical overview of State-facilitated digital technology platforms, including the South Korean example, see ILO and IOM (2020).

45 In some instances, sponsorship is possible through individuals, as evidenced in the case of sponsorship of domestic workers in Asia and the Middle East.

46 More permanent migration programmes commonly feature an overall planning target that is adjusted from year to year.

by stakeholders' consultations, employers, industry groups, trade unions and local authorities, or by a group of independent experts (this process is not absent of contestation and negotiation).

One of the key challenges identified in the literature in discussions over sponsorship is that the vulnerability of temporary migrant workers derives centrally from their being beholden to one employer (Lenard and Straehle 2010, Wright, Groutsis and van den Broek 2017, Depatie-Pelletier, Deegan and Touma 2021). One potential solution would be to enable them to work within an industry (ILO 2017d, Ruhs 2013, Lenard and Straehle 2010) permitting migrants the option to leave potential abusive employment relationships.

An important aspect in sponsorship refers to the nature of the contracts. There is evidence that conditions in the contracts are not fully respected (Mayer 2005, Lichtenstein 2007, Ruhs 2006). An area of work remains providing mechanisms for temporary migrant workers to secure the conditions outlined in the contracts in destination countries as well as prior to departure. One way to assure contract provisions would be to guarantee procedures by which temporary migrant workers who are victims of contract violations can launch complaints without fear of job loss and immediate deportation (see Boucher 2019).

All in all, sponsorship is deeply interlinked with the type of "immigration model" that a country chooses to follow. In employer-led systems, which are demand driven, reliance is put on employers to select (im)migrants. This contrasts with the points-based approach, by which people are selected to meet broader labour market priorities and these are administered by governments. These systems also vary in terms of the skill-level required, as points are "awarded" according to certain skills, education levels, language proficiency, professional experience, age, etc.

1.4. Mobility

Mobility, also known as "internal labour market mobility" refers to the ability of workers to terminate employment, switch to a different employer, renew their work permit or leave the destination country without the approval of their employer (ILO 2017d:2). In many countries, migrant workers under temporary arrangements can only work for their employer who has sponsored them.

In Sweden for example, work permits bind employees to specific employers for a maximum of two years with the option of a two-year extension where the migrant worker must work in a specified occupation rather than for a particular employer. During the initial two-year period when migrants are tied to their employer, they cannot change jobs without applying for a new work permit. However, if workers lose their jobs, they have four months to obtain another permit, otherwise their temporary residency is withdrawn (Swedish Migration Board 2014 cited in Wright, Groutsis and van den Broek 2017: 1861).

In the Canadian context, temporary migrant workers have less capacity to switch employers and their mobility to other provinces is also restricted, in the case of the SAWP, for example. The lack of mobility under the Temporary Foreign Worker Program has produced problems relating to mistreatment of migrant workers and their capacity to exercise labour rights, particularly for those workers in lower-skilled occupations, which account for a growing share of the programme (Vosko 2018, Fudge 2012, Lenard and Straehle 2010).

Mobility is highly restricted in the context of Asia (Kouba and Baruah 2019) and the *kafala* system in the Middle East⁴⁷. As Dito (2015) analyses, the unique characteristic of the *kafala* system is that the nation-states in the Gulf Cooperation Countries (GCC) "delegate" the authority needed for a migrant to enter the country to the local employer who thus becomes the owner of the work permit (and therefore, the *kafeel*). The Bahraini government attempted to improve the mobility of migrant workers in 2009 by allowing them to change employment without their employer's consent after a notice period set in the

⁴⁷ It is important to note that the *kafala* system is also a sponsorship system.

worker's employment contract. This move was strongly opposed by employers, and by mid-2011 a new regulation was passed by which migrant workers were obliged to stay with their employers for one full year before they could change jobs without employer consent (Dito 2015: 69). In addition, Bahrain introduced the "flexi-permit" for certain categories of migrant workers, allowing them to live freely and work in any non-specialized occupation without a sponsor. This permit is renewable for a period of one to two years. It provides for labour mobility, although at a price as the permit is expensive and workers effectively become self-employed and appear not to be covered by the protections in the Labour Law.⁴⁸

In September 2020, Qatar introduced reforms to its labour law that allow migrant workers to change jobs before the end of their contracts without employer permission.⁴⁹ This has been a key aspect of the *kafala* system and has been linked to incidences of forced labour, thus, the reform is considered a step in the right direction.⁵⁰ This change also applies to domestic workers, who are outside the scope of labour law. Between September 2020 and March 2022, over 300,000 workers (including 7,000 domestic workers) changed jobs.⁵¹ However, many workers still face challenges in changing jobs and there are also cases of employers retaliating against workers who wish to change jobs.⁵² Many countries in the Arab States have been initiating reforms but there is limited opportunity to study how these are being implemented, what impact they have on worker welfare, productivity, wages and number and type of labour disputes. More surveys with workers and employers as well as further research can help guide the development of future reforms (ILO-AUC 2021:11).

1.5. Skill level required

Skill requirements for migrant workers eligible for application to the programme constitute a fundamental feature of many TLM schemes. Skill is a term with various connotations, and it can be interpreted and operationalized in different ways: education, qualifications, work experience, and other competencies, even earnings (Kuptsch 2013; Ruhs 2013). ILO Guidance on skills divides them into three broad groups: "low", "medium" and "high".⁵³ Skills classifications vary from country to country.

Skill is very important in debates on TLM programmes. It has been documented that high-skilled workers are less likely to be subject to restrictive rules, including restrictions on whom they can marry, and whether they can travel with their families (Lenard and Straehle 2010: 290, ILO 2012). A specific example

48 See Labour Market Regulatory Authority, Kingdom of Bahrain, available at: <https://lmra.bh/portal/en/home/index>

49 The Amendment to Qatar's 2015 Law No. 21 regulating the entry, exit, and residence of expatriates (applying to all migrant workers, regardless of their inclusion in labour law) removed the required permission in the form of a "No Objection Certificate" (NOC) from an employer to allow a migrant worker to change jobs. It should be noted that, in line with the provisions of the Labour Ministry, migrant workers still need to notify their employers within a prescribed notice period. In Saudi Arabia, the government introduced a "Labour Reform Initiative" in 2020, which came into effect on 14 March 2021 as part of the "National Transformation Program". The reforms are not as extensive as those in Qatar and also do not apply to domestic workers, for a comparison, see Kagan and Cholewinski (2022:8-9). Qatar also introduced a non-discriminatory minimum wage for all workers regardless of nationality, including domestic workers. After Kuwait, Qatar is the second country to introduce minimum wages for migrant workers in the GCC region.

50 See [ILO's Progress Report on the technical cooperation programme between the Government of Qatar and the ILO](#).

51 See [ILO Arab States, Overview of Qatar's labour reforms](#).

52 As of 2022, migrant workers and their dependents still rely on their employers for entry, residence and employment in the country. If an employer fails to follow administrative procedures in time, a migrant worker could fall into undocumented status.

53 According to the ILO, a "low-skilled worker" is defined as a worker engaged in elementary occupations in accordance with ISCO Broad Occupations Groups (even if the person is actually highly educated). These workers are employed in occupations that mainly "consist of simple and routine tasks which require the use of hand-held tools and often some physical effort". A "medium-skilled worker" is a "skilled manual worker", whose work is characterized by routine and repetitive tasks in cognitive and production activities. These include workers in occupations such as skilled agriculture, fishery, clerical work, craft and related trades and plant machine operators and assemblers. A "highly-skilled worker" includes managers as well as professionals; such workers are broadly employed as legislators, senior officials, managers, technicians and associate professionals. "Professionals" are understood to increase the existing stock of knowledge: apply scientific or artistic concepts and theories, teach about the foregoing in a systematic manner or engage in any combination of these activities. See *How to Facilitate the Recognition of Skills of Migrant Workers, Guide for Employment Services Providers*, Geneva: ILO, 2017b: 91 and [2020 updated version](#) pp.95-96.

is the EU Blue Card Directive where it is stated that “Favourable conditions for family reunification and access to work for spouses should be a fundamental element of this Directive in order to better attract highly qualified workers from third-countries” (Preamble, para. 50).⁵⁴ This is different to treatment of third-country migrant workers in the EU covered by the Single Permit Directive and the Seasonal Workers Directive. This shows that the human rights to which temporary migrant workers are subject are dependent on the organization of skills and the political priorities of host countries which determine those rules (in both cases, temporary labour migrants do not participate in the determination of those rules that govern their admission, working conditions and social and economic rights).

The literature also seems to converge on how migrant workers under temporary schemes suffer from differential treatment based on their perceived skills. However, both skilled and low-skilled workers share that their migration opportunities – at least from the admission’s perspective – are largely dependent on market forces (and labour market needs) in receiving societies (Lenard and Straehle 2010). Both high and low-skilled workers are subject to a set of conditions that they should meet in order to reside in the host country. These conditions are different for both groups of workers and also among countries. For example, in Gulf countries, highly skilled migrant workers are eligible for self-sponsorship while lower-skilled foreigners are not. In addition, high-skilled workers typically have easier access to more secure or permanent residence and citizenship than low-skilled workers. It has also been documented that highly skilled workers receive more support from their employers and feel more welcome in the destination countries than lower-skilled migrants. For example, Thailand attracts European tourists but allows a long-term residence and work permit only to a limited number of Europeans (Pitkänen and Hayakawa 2019: 260). Some countries explicitly implement “welcome-the-skilled and rotate-the-unskilled” policies. Singapore, with high shares of migrant workers in their labour force is a case in point (Kuptsch and Martin 2011: 34).

Malaysia maintains a distinction between migrants who are “contract foreign workers” (workers in elementary occupations) and those who are “expatriates” (high-skilled workers in managerial, professional, or technical positions). In Thailand, migrant workers in elementary occupations are recruited through bilateral MOUs on labour with Cambodia, the Lao People’s Democratic Republic, Myanmar, and Viet Nam. Employment of migrant workers in Thailand is further restricted by the list of occupations and professions appended to the Occupations and Professions Prohibited for Foreign Workers Royal Decree B.E. 2522.⁵⁵

1.6. Sector of employment

Many programmes are restricted to a particular sector or sectors of employment and/or occupations in the host country. For example, specific visa categories for domestic workers are common in the Middle East and Asia and, as previously described, numerous countries operate specific programmes for the seasonal employment of migrant workers in the agriculture sector.

In the case of Austria, for instance, temporary work permits are only issued for work in tourism and agriculture/forestry – except for a small quota for the EURO 2008 football event and the world ski championship in Austria in 2012/2013 (Biffl and Skrivaneck 2016: 96). World sporting events are occasions in which countries adjust their quota of permits to attract migrant workers according to particular needs; this is also the case of Qatar in light of the 2022 World Cup.

⁵⁴ See [EU Directive 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC](#). Article 17 addresses family members.

⁵⁵ See Royal Decree Prescribing works relating to occupation and profession in which an alien is prohibited to engage, B. E. 2522 (1979).

In the construction sector, the ILO found that while international migrants have long been a crucial source of labour for construction globally, migration through temporary forms of residency, such as international student visas, working holiday visas, temporary work visas and asylum claims is becoming more commonplace in some countries (Buckley et al. 2016).

The tourism sector offers both permanent and temporary work opportunities to international migrants. For example, work in tourism is prominent in Young Professional Programmes conceived for on-the-job training for up to 18 months (see under I. 2.2). ILO research has shown that migrant workers in the hotel industry are recognized to bring a skills profile that is frequently unavailable in the local labour market, and they are perceived as being particularly committed (Baum, 2012). Also, a study in the Australian hospitality industry found that employers' claims of the "superior soft skills" of migrant workers were related to the attributes created by the conditions of sponsored temporary visas, namely that migrant worker were more "controllable" (Wright, Knox and Constantin 2019). Some observers see a divide along ethnic lines and national extractions in the roles and responsibilities of migrant employees in this sector, often with those from poorer countries working at the lower skills end of the workforce spectrum and those from developed countries taking senior managerial and technical positions. As a result, the experience of migrant workers varies greatly across the industry (ILO 2022a). Indeed, the tourism industry employs migrants in various functions and they work under various types of contracts and have different immigration statuses. Under the differential "skill-related" policies seen above, a hotel manager is more likely to have a permanent immigration status and a long-term employment contract including social protection than a housekeeper.

A comparison of the results of three ILO studies on migrant workers in agriculture, construction and mining confirms the need to distinguish between low-skill and high-skill jobs: In agriculture, few workers are able to climb the ladder from seasonal to year-round worker or farm operator (Martin, 2016). In construction, growing skills shortages and competition for migrants with hard-to-find qualifications may result in upward mobility for some migrants and work opportunities that they were not able to access in their home countries (Buckley et al. 2016). In mining, frequently regulations do exist for highly skilled migrants with regard to legal migratory status and working conditions, less so for migrant workers with lower qualifications (Coderre-Proulx, Campbell and Mandé 2016).

The studies also reveal commonalities across sectors: They all found higher OSH risks for low-skilled migrants. Governments often have difficulty enforcing labour and health and safety laws because few workers complain of violations and workers are exempt from labour and OSH laws while labour inspectors are few in number and/or do not have access to inspect (as in the case of domestic work). Temporary foreign labour is, in general, more vulnerable to the risks of employer exploitation than local members of the permanent work force. Temporary migrant workers are not always paid at current market rates for the work. Employer-provided accommodation makes migrants extremely reliant on their employer.

As regards the care economy, demographic shifts pose many challenges in terms of care services and the health sector. This trend has been more marked in industrial societies, but it is becoming a prominent feature around the world. Many high-income countries have attempted to address this issue by resorting to temporary labour migration. Singapore, and Hong Kong have allowed the entrance of home-based care workers on short-term contracts, and Canada has well-established programmes that offer opportunities for temporary migration into skilled and low-skilled care work positions which could eventually lead to permanent residency. Japan has also opened up its hospitals and residential care facilities to foreign workers (Ford and Kawashima 2013). The Japanese case is interesting because the door was opened through trade negotiations (not labour migration policy): The Japan-Philippines Economic Partnership Agreement (JPEPA) signed in 2006 included provisions for the employment of 400 nurses and 600 carers in Japan. The Japan-Indonesia Economic Partnership Agreement (JIEPA) was signed in 2007 with an initial target of 200 nurses and 300 care workers per year for two years (Ford and Kawashima 2013:431).

In the Middle East, and in GCC countries in particular, migrant domestic workers have made substantial contributions to the care economy. In Kuwait, for example, administrative data indicate that 90 per cent of domestic workers are from Bangladesh, India, the Philippines and Sri Lanka. Workers from India

and Bangladesh tend to be men, while those from the Philippines and Sri Lanka, as well as Ethiopia, Madagascar and Nepal, tend to be women (ILO 2021e: 39).

The care economy lies at the intersection of migration, employment and care regimes which are highly gendered as it is influenced by cultural norms and social relations that define people's expectations and behaviours which will manifest in national differences in terms of gender, class, ethnicity, race and location (King Dejardin 2019: 50). [Table 2](#) shows the combination of care and migration regimes by providing some country examples to illustrate the different regulatory dimensions to which temporariness is subject in the context of this sector.

► **Table 2. Care and migration regimes: Some country examples from ILO study**

		Care regime: Principal care institution			
		Family	State	Market-Private	Mixed
		Familiarist. Primary reliance on family for care. Minimal-low level of publicly funded care services	Public services. High level of publicly funded care services. State offers generous childcare and eldercare benefits.	Private sector dominates. State offers means-tested assistance	Statutory social insurance and strong State coordination
Male breadwinner norm	Migration regime				
Strong	Highly-regulated. Reliance on care-specific foreign worker scheme	GCC countries			
	Lightly managed migration, less restrictive	Italy			
	Closely managed immigration. Liberal towards skilled, restrictive towards less-skilled.				Germany
Medium	Highly-regulated. Reliance on care-specific foreign worker scheme				
	Lightly managed migration, less restrictive				
	Closely managed immigration. Liberal towards skilled, restrictive towards less-skilled.			United Kingdom	
Weak	Highly-regulated. Reliance on care-specific foreign worker scheme	Singapore			
	Lightly managed migration, less restrictive				
	Closely managed immigration. Liberal towards skilled, restrictive towards less-skilled.		Sweden/Canada	United States	Netherlands

Source: King Dejardin (2019: 62)

“Sectoral approaches” to labour migration run the risk of creating further segmentation in labour markets and exacerbating “migrant-dominated” sectors with low wages. These approaches also carry consequences for gender dynamics as gender is an important variable in segmentation processes. For example, during the European “guest worker” period 1958-1972, workers were mainly recruited to fill vacancies in mining and the steel industry (Schrover 2018:461). This explains why 80 per cent of the “guest workers” were men, leading to a masculinization of temporary labour migration during that time and years to come. In contrast, the care economy and domestic work sectors have been traditionally dominated by women migrant workers.

As previously described, immigration policies are designed at the national level, and different labour market needs manifest regionally and at sector levels. This is when policy dissonance becomes acute because it is difficult to achieve synergies among agencies and trade-offs between policy domains emerge. For example, rural and agriculture policies do not necessarily present a focus on migration, placing more emphasis on other priorities such as land productivity, access to fertilizers, etc. even when migrant workers are an important component of the rural workforce.

In addition to sector of employment, many destination countries in Asia for example, have built their labour migration schemes around lists of approved countries of origin. The Republic of Korea has signed agreements with sixteen countries, thirteen of which are in South or Southeast Asia. Those seeking work in Malaysia must come from South Asia, Kazakhstan, Turkmenistan, Uzbekistan, or from some countries in ASEAN. In Japan, eligibility is not formally tied to nationality except in care worker schemes, but temporary migrant workers are sourced from the small number of countries with which Japan’s International Training Cooperation Organization has an internship agreement (Ford 2019: 23).

Gender-specific hiring is common in the domestic work and care sectors, as well as in construction, manufacturing, seafood processing, fishing, hospitality and entertainment. Some governments facilitate gender-based hiring in official processes for recruitment and hiring of migrant workers. For instance, in Malaysia employers submit a request to the government for a migrant worker recruitment quota. Quota request forms (to officially ask for migrant workers) include the option to choose desired characteristics of migrant workers, including specification of whether an employer wants a man or woman worker. Discriminatory hiring practices such as these that are based on gender create effective barriers for people of certain genders to access employment in work that is considered “men’s work” or “women’s work” (Napier-Moore 2017). As of 2022, men migrating to Malaysia are barred from entering domestic work. Further, no Indonesian men workers are allowed in manufacturing⁵⁶.

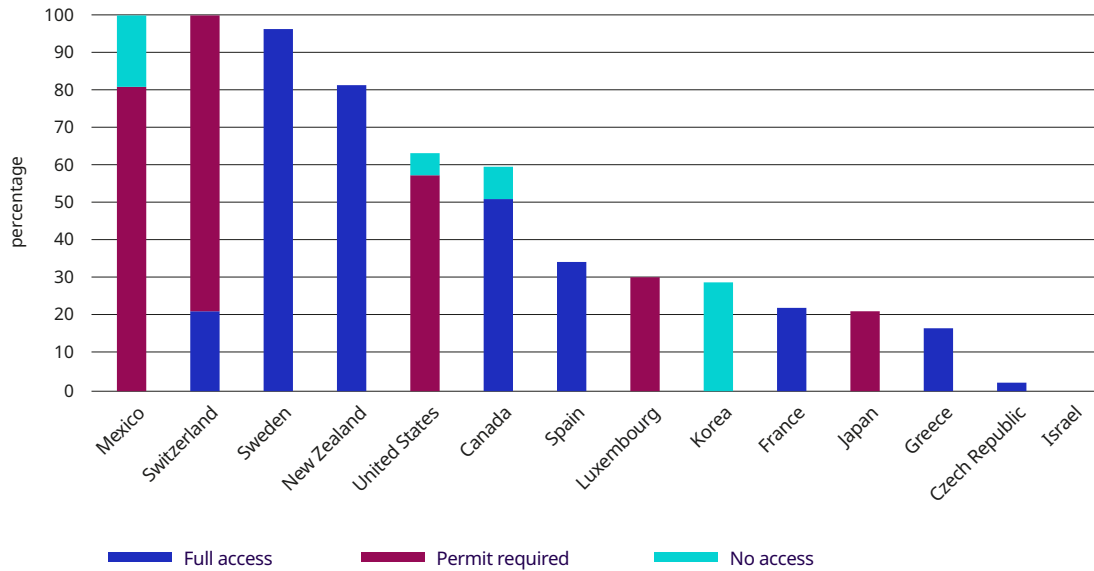
1.7. Type of permit

Types of permit and visas vary across countries in terms of duration, and coverage of rights. Also, they vary in terms of the permit holder’s access to the labour market, the maximal duration of the initial permit, its renewability, and the right of accompanying family members to reside and work in the host country (see [Figure 5](#)). Section 2.3. showed statistical data on permits issued in some countries per the OECD (2019) study in relation to statistical information that could be gathered from permit analysis. However, the number of permits issued is not equivalent to the number of temporary migrants arriving in the host country each year. While temporary migrant workers normally work for the whole duration of their stay in the host country⁵⁷, other categories of temporary migrants may work in limited ways or may not have access to the labour market. [Figure 6](#) shows the distribution of temporary permits issued in OECD countries by the maximal allowed duration of stay according to permit rules for the year 2017.

⁵⁶ [Immigration Department of Malaysia, Ministry of Home Affairs, Foreign Domestic Helper \(FDH\).](#)

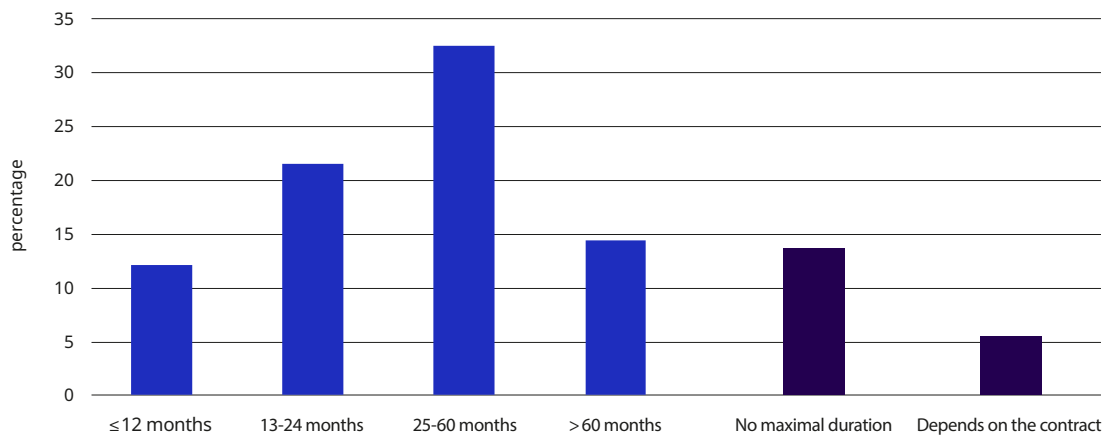
⁵⁷ The COVID-19 pandemic somewhat disrupted this pattern as is documented in an ILO assessment of the global impact of COVID-19 on migrant worker rights and recruitment, see Jones K., S. Mudaliar and N. Piper (2021).

► **Figure 5. Share of permits issued to temporary migrant workers that allow sponsoring accompanying family and their access to the labour market, 2017 (selected countries)⁵⁸**



Source: OECD (2019: 130)

► **Figure 6. Distribution of temporary permits (OECD selected countries, in months, 2017)**



Source: OECD (2019: 127)

⁵⁸ Data gathered by the OECD on permits issued to temporary migrant workers only. This data collection exercise also varies enormously by country. For example, in Switzerland, temporary migrant workers may apply for family reunification, although there is no established right. Permits issued to dependents in Australia and Chile are reported together with permits issued to principal applicants.

Some programmes require an authorization from a designated public agency prior to any permit delivery, for example in relation to labour market tests as a means to confirm that requirements have been met before the work permit application for employing a migrant worker can be submitted. In the context of regional mobility arrangements, in most cases no special permits are required.

A further issue in the context of permits is whether the work permit and the residence permit are separate documents. As seen earlier, this may have important repercussions on whether migrant workers lose their right to stay in the country when they lose their jobs.

In addition, most programmes that admit migrant workers on the basis of a job offer require employers to pay administrative work permit fees. Some countries, such as Singapore and Malaysia, charge levies to employers based on sector of occupation, skill level and geographical location.

Several countries issue permits linked to occupation-based restrictions by nationality or sex. For example, temporary migrant workers from many countries can work in Singapore's construction, marine and processing industries, but acceptable countries of origin for manufacturing and services are limited to China, Hong Kong (China), Macao (China), Malaysia, The Republic of Korea, and Taiwan (China). In Malaysia, Indian workers may be employed in a limited number of occupations, while Indonesian women migrant workers are present in manufacturing (Ford 2019: 24).

1.8. Representation

Representation refers to the possibility within the scheme to allow migrant workers under temporary arrangements to join trade unions and/or access institutional mechanisms for representation. In countries where trade union organizing for migrant workers is restricted by law⁵⁹, civil society actors have been filling that vacuum and collaborating with trade unions.

Though a fundamental principle and right at work under international labour standards applicable to all workers including migrant workers, representation remains a challenge for many temporary migrant workers. It has been documented that trade unions have a dual position in relation to these schemes. On the one hand, they have an interest in ensuring that immigration does not adversely affect wages and employment conditions of national workers and they may therefore attempt to "limit" migration in countries where they are involved in the work permit application process or in quota setting mechanisms. Particularly in countries with strong collective agreements and wide union coverage, trade unions have often played such a role (Watts 2002). One example is Sweden, before the migration reform of 2008, when admissions of migrant workers were consulted with trade unions. On the other hand, strong unions may also attempt to bring migrants into their midst and make them members, including via agreements with their counterparts in the migrants' origin countries (see ILO 2021a: 53-54 for illustrations).

Austria is an example of a country where there is a correlation between unionization and quotas for migrant workers. As concerns seasonal work permits (for third country nationals and citizens of EU Member States affected by transitional arrangements as long as they were applicable) in tourism and agriculture/forestry, annual quotas are fixed by the Ministry of Labour and Social Affairs, on the basis of an agreement between the social partners and the provinces (Biffl and Skrivaneck 2016: 93). Annual quotas are not set in the construction sector. The interests of construction workers are well represented in the construction sector via a high degree of unionization and an important role of work councils at the firm level, but this is not the case in the agricultural/forestry and tourism sectors that are dominated by SMEs (small and medium-sized enterprises) and a limited degree of unionization (Biffl and Skrivaneck 2016: 93).

59 See (ILO forthcoming) Barriers to Freedom of Association and Collective Bargaining for Migrant Workers.

In Canada, for the programmes on temporary migrant workers, employers in certain sectors must consult unions as part of the process of obtaining a “positive labour market opinion” (a certification requirement) before the work permit application can be processed. In Taiwan (China) employers wishing to recruit low-skilled migrant workers must notify and consult relevant trade unions and provide full details about the job vacancy.

In relation to access to representation and trade union rights for temporary migrant workers, we also find variation in country cases. For example, in Australia, only 7 per cent of respondents to a survey conducted in 2014 with 457 visa holders were members of a union (DIBP 2014 cited in Wright et al. 2017:1863)⁶⁰. A literature review seems to indicate that sponsored migrants face structural barriers to representation. Despite these structural barriers, campaigns by unions and community organizations in different countries have tried to address these limitations (see also ILO 2021a).

Vosko (2018) shows how in contexts where temporary migrant workers can exercise their rights to organize and bargain collectively (as in the province of British Columbia under the SAWP) migrant workers may still face challenges because the institutional design of the programme under which they work allows for spaces of deportability or the possibility of removal from the programme. This is well illustrated by the fact that temporary migrant workers who exercise their rights in light of the collective agreement, might be subject to unjust threats and acts of termination (normally prompting premature repatriation), and non-renewal of permits for a future season (as the collective agreements are tied to the parameters of the SAWP).

In Asia, where temporary labour migration is a dominant feature and access to the right to freedom of association is limited in some countries, trade unions have managed to embrace other tactics to engage with temporary migrant workers such as providing services and engaging with other non-governmental organizations (NGOs) to maximize reach. The Global Union Federations (GUFs) have supported this work through project development and capacity building (ILO 2021a; Ford 2019).

1.9. Pathway to permanent residency and citizenship

In cases where programmes include a pathway to citizenship, countries manage their citizenship access in very different ways with specific requirements and varied timescales. Some programmes might grant pathways to permanent residency which is different from citizenship, excluding certain political rights in particular. In many instances, permanent residence needs to be obtained first before an application for citizenship can be made.

In the case of Canada, for instance, differential arrangements are present. Temporary Foreign Workers Programmes’ subcategories exist. While it is relatively easy for workers in the higher-skilled subcategories and the former Live-in-Caregiver Program⁶¹ to apply for permanent residency and citizenship, workers in lower-skilled categories, often from developing countries, face barriers and in certain cases are not eligible. Some analysts fear that this differential treatment could lead to the racialization and segmentation of the Canadian labour market (Depatie-Pelletier, Deegan and Touma 2021).

60 The Temporary Work (Skilled) visa (known as subclass 457) was abolished in 2017 and replaced by the Temporary Skill Shortage (TSS).

61 As of 2022, the Live-in Caregiver Program is closed to new applicants, and an alternative provided to hire a new caregiver is through the Temporary Foreign Worker Program, the Home Child Care Provider or Home Support Worker pilots. Alternatively, a caregiver through the Live-In Caregiver Program can be hired if a caregiver already has a work permit in the Live-in Caregiver Program and is looking for a new employer and has been approved for a labour market impact assessment that shows the caregiver has agreed to live in the home. There is no longer a requirement in Canada for the caregiver to reside with the sponsoring family. See [Government of Canada, Live-In Caregiver Program](#).

The case of the Canadian Live-in Caregiver Program has often been cited as a “model for emulation” because even though the visa issued was temporary in nature, it allowed women who had completed their domestic labour as a resident in the home of an employer to apply for permanent residency and they were then no longer required to work in the domestic care industry (Lenard 2012). In addition, the Canadian Provincial/Territorial Nominee Program allows provinces to create programmes in which temporary migrants are permitted to apply for transition to permanent status, but this is at the discretion of the provincial government (Lenard 2012: 287).

In Sweden, sponsored workers that maintain employment for four years within a seven-year period can apply for permanent residency. However, Wright, Groutsis and van den Broek (2017: 1865) found that in 2009, only approximately 15 per cent of workers were granted permanent residency, either because their initial two-year visa was not renewed or because they chose to leave their employment.

The case of Switzerland illustrates the political dilemmas faced by governments in granting seasonal workers the right to change status. Before 2002, Switzerland’s migration policy allowed foreigners who were employed at least 36 months in four consecutive years under nine-month A-seasonal permits to “earn” a B-annual and eventually a C-permanent residence permit. Entitlement to status change was a particular feature of Swiss immigration policy.⁶² However, influential studies by the University of Basel that looked at the period 1984-1994 came to the conclusion that those foreign workers who opted for resident status in Switzerland were a “negative selection” (de Wild and Sheldon 2000: 4) of all new arrivals: Those opting to stay were the same categories of persons who faced unemployment and stayed long-term unemployed above average, namely people with low qualifications. In 2002, Switzerland completely overhauled its migration policy, inter alia abolishing the seasonal foreign worker programme (Martin, Abella and Kuptsch 2006: 118-119).

Countries show variations in terms of transitions from temporary visas to residence. While pathways may be relatively prompt for some individuals, others spend several years on different visas with no guarantee of being granted residence rights. In Aotearoa/New Zealand, 94 per cent of registered nurses who had received their first essential skills work visa in 2011/12 had been granted residence after three years, by contrast, 50 per cent of retail managers, 39 per cent of carpenters, 32 per cent of chefs and 2 per cent of dairy farm workers had been granted residence after three years (Immigration New Zealand 2016 cited in Collins 2020: 71).

1.10. Enforcement

This element refers to the presence of provisions within the scheme and/or programme to allow any form of institutional design to guarantee enforcement of labour rights within it. This aspect relates closely to the role of labour inspectors and mechanisms for workers to access justice. The enforcement of labour standards by government inspectorates is an important factor influencing the treatment of temporary migrant workers. This is also linked to representation, and whether workers’ representatives take the cause of temporary migrant workers in their operations.

In Australia, the Fair Work Ombudsman was created in 2009 as a government labour inspectorate to inspect workplaces to ensure that employers comply with responsibilities and to uphold workers’ rights within the former 457 visa scheme (Wright, Groutsis and van den Broek 2017: 1863). In Canada, the Federal Government introduced in 2015 a new legal regime to govern employers hiring migrant workers

62 Spain is another case to illustrate entitlement to status change. The ‘Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration’ provides that “Those who have had temporary residence in Spain for five years continuously, and who meet the conditions established by regulations, shall be entitled to long-term residence. For the purposes of obtaining long-term residence, periods of previous and continuous residence in other Member States, as an EU Blue Card holder, will be taken into account. Residence shall be considered to have been continuous even if, due to holiday periods or other reasons established by regulation, the foreign national has temporarily left the national territory.” (Art. 32 para.2). See [Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social](#).

through Canada's Immigration and Refugee Protection Act. Under this system, considered unique to uphold provincial workplace standards, federal agents are afforded the power to investigate, search and make arrests and penalties are imposed on employers who fail to meet the required conditions.

As concerns compliance mechanisms under BLMAs, a review of 155 bilateral treaties and MOUs carried out by Wickramasekara (2015) showed that 93 per cent of the agreements mention a specific implementation mechanism, commonly through a joint committee from both countries which have signed the agreement. However, the same review highlights that "what is more crucial is actual practice" (Wickramasekara 2015: 3), meaning that it is less clear how those provisions materialize on the ground even though they appear on paper. A key recommendation that stems from this research is to adopt a system of regular monitoring and periodic evaluation of the agreements, particularly through revitalized Joint Committees. Participation of other stakeholders (workers, employers and civil society) in those Committees should be considered and minutes/records of meetings should be disseminated. Finally, no agreement should be renewed without a formal evaluation.

Access to justice for temporary migrant workers may exist on paper under certain TLM programmes, however, Costa and Martin (2018) raise the connection between the structures of TLM programmes and the access to legal services or availing of workers' protections that labour standards enforcement agencies could provide. First, the threat of deportability in TLM programmes, as previously discussed, diminishes the potential for temporary migrant workers to exercise their voice because of fear of retaliation and not being selected for future seasonal employment. In addition, temporary migrant workers are discouraged from reporting legal violations to the origin country government when they believe they may be removed from employment or not selected for future seasons.⁶³

Another important element is the creation of a "firewall" between labour standards and immigration enforcement agencies. When a labour or employment law violation occurs in a workplace where temporary migrant workers are employed—for instance, non-payment of wages or thwarting of legally protected concerted activities—it is essential that the affected temporary migrant workers be available to assist investigators from labour standards enforcement agencies. But if an immigration enforcement agency becomes aware of the investigation because migrant workers are involved, and the immigration enforcement agency begins its own investigation, or begins an investigation simultaneously with the labour standards enforcement investigation, workers will be at a higher risk of being removed before the investigation has concluded because of their temporary visa status.⁶⁴ This may occur, for example, if the employer decides to dismiss temporary employees because an investigation is ongoing, or if immigration enforcement agents discover that the employer engaged in any type of fraud (Costa and Martin 2018: 45-46).

63 Another study focussing particularly on "wage theft" presents potential channels for workers to improve access to lodging claims and a review of promising initiatives, see Farbenblum and Berg (2021).

64 In this context, it should be noted that the ILO Committee of Experts has emphasized that the primary duty of labour inspectors under the ILO Labour Inspection Convention, 1947 (No. 81), is to protect workers. See ILO: Labour Inspection, General Survey, Report III (Part 1B), International Labour Conference, 95th Session, Geneva, 2006, para. 78.

► 2. Further layers of complexity

2.1. Temporariness and policy design

The elements presented above do not operate in isolation. Some countries run one major labour immigration programme (e.g. Sweden and Belgium), while others have different programmes admitting migrant workers along different categories, for example, Canada has two major labour migration programmes: the International Mobility Program (IMP) and the Temporary Foreign Worker Program (TFWP) created in 1973. This latter programme, in turn, has four streams: the high-wage stream, the low-wage stream, the primary agriculture stream (including the SAWP) and the global talent stream. As of 2014, the Live-in Caregiver Program is no longer a stand-alone stream. In TFWP, employers must file a labour market impact assessment (LMIA) showing that no Canadian or permanent resident worker is available to take up the job.

The issue of “temporariness” within these schemes is highly disputed (Dauvergne and Marsden 2014). The nature of temporariness affects the “policy design” perspective and also the migrants’ position: certain types of “temporariness” mean that a person must eventually leave the country (and become subject to deportability), and in any case “temporariness” implies an insecurity of residence status that curbs possibilities to build one’s life with a long-term perspective. In addition, gender relations, and women’s and men’s social roles shape these processes giving formation of gendered migration streams with consequences for places of origin and destination.

In crafting schemes, States secure the “temporary” nature of migration through issuing temporary visas valid for months to a few years. Securing this temporary status lies at the heart of these programmes so that migrant workers are restricted in terms of access to citizenship and full participation in the political community. The management of this temporariness also varies according to States. However, “there is nothing more permanent than a temporary foreign worker” (Martin 2001). For example, the French activist group CODETRAS (*Collectif de défense des travailleur-euses étranger-ères dans l’agriculture*) denounces that numerous migrant workers fill jobs in the “agro-industry” that is based on year-round intensive production in greenhouses and open fields, and individual workers come back year after year on seasonal contracts that make them “permanent seasonal workers”. According to CODETRAS, the “fiction of a natural seasonal temporality [...] allows the sector to justify a flexible workforce, revocable at any time, cheaper and uninformed of its rights” (CODETRAS 2022).

In the Gulf, there has traditionally been little interest in considering the incorporation of these temporary migrants as permanent residents or citizens. Contracts are often granted for the period of two years, and they are renewed constantly.⁶⁵ It has been documented that migrants reside in the Gulf for nearly twenty or thirty years (Lenard 2012: 288).

Temporariness is much more complex and multifaceted than the schemes tend to assume. The simplistic nature of temporary migration schemes fails to take into account that people’s intentions and life situations change over the course of time, and in practice it is very difficult to govern temporary migration (Korpela and Pitkanen 2017: 9). We are dealing with “moving targets”, that is over periods of time, actors normally change their goals, strategies and behaviour.

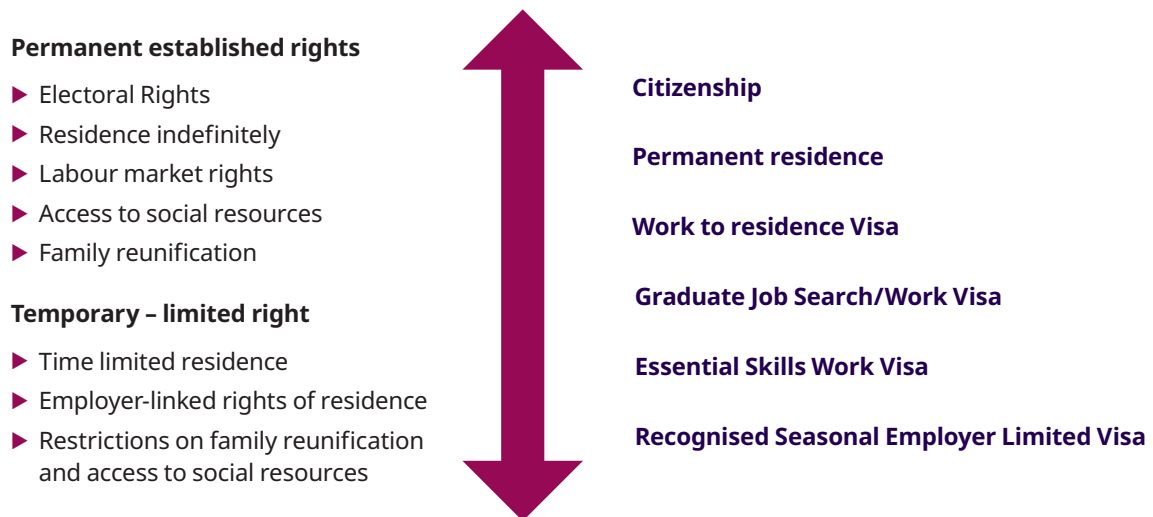
The experience of “guest worker” programmes shows that these tend to become larger than originally planned and to last longer than anticipated because of “distortion” and “dependence”. *Distortion* refers to assumptions by employers: Labour markets are flexible, so jobs can be structured in a manner that assumes the presence or absence of migrants. Wherever businesses make investment decisions that assume migrants will continue to be available, employers will resist policy changes that would limit

⁶⁵ For renewal, until recently, most GCC countries had a requirement that workers had to return to the country of origin after each contract. Some workers’ permits can be renewed on an ongoing basis, though it is also the case that many of the workers who have remained in the country for decades are in an irregular status.

the influx of foreign workers. *Dependence* refers to the fact that migrants, as well as their families, communities, and occasionally country of origin governments, start to rely on earnings from foreign jobs, so they too resist policy changes that would reduce emigration opportunities, which is why recruitment stops are often followed by irregular migration (Martin, Abella and Kuptsch 2006: 85).

In this vein, the temporariness in the policy design is linked to restrictions on the type of jobs that migrants can be employed in, the ability to change employers, the maximum length of their visa, the provision of a right to be accompanied by family members as well as other possibilities to access education, skills recognition and health. These factors render a continuum of migration statuses and associated rights (see Figure 7).

► Figure 7. Continuum of migration status and associated rights in the New Zealand context



Source: Collins, F. (2020: 27)

While Figure 7 represents the case of New Zealand, the situation of (im)migration policy that creates graduated statuses for different kinds of temporary migrants is present in many other countries, where varying degrees of rights are attached to particular visa systems. This has become a pattern in immigration policy over the last two decades and across many regions (see ILO 2021b). These various statuses produce socio-legal inequalities that intersect with the functioning of labour market institutions affecting the lives of migrants and their place in hosting societies.

2.2. Temporary labour migration and international trade agreements

In the context of international trade, a connection to temporary migration can be found under the General Agreement on Trade in Services (GATS) Mode 4 on movement of natural persons. Mode 4 refers to services traded by individuals of one World Trade Organization (WTO) member through their presence in the territory of another. It covers employees of services firms and self-employed service suppliers.⁶⁶ This involves the cross-border mobility of employees and entrepreneurs. The concept resembles but is not identical to the posting of workers under EU law (Engblom, Kountouris and Ekman 2016: 72). GATS Mode 4 distinguishes itself from labour migration of employees by the fact that the person performs the work in a different country from where the company supplying the service that employs him/her is located (which means it is based in a different country). In its Annex, GATS Mode 4 strictly mentions in its article 2 that “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”⁶⁷. Thus, the location of the employer takes a prominent role, and this has normally been applied to highly educated professionals. WTO members, in particular destination countries of migrants have not fully utilized Mode 4 to liberalize the movement of service suppliers on a broader scale and have been hesitant with regard to low-skilled migration. Mode 4 is the one mode where WTO members have opened up the least. Actual commitments under GATS mode 4 are country and sector-specific and rather limited (Panizzon 2010).

A study for the World Bank sets out to examine the extent to which preferential trade agreements (PTA) address migration beyond GATS Mode 4. It reviews the World Bank database of 279 PTAs in force and notified to the WTO up to November 2015. It aims to cover “visa and asylum” (which is different from labour) provisions as a proxy for certain types of movement of people.⁶⁸ After applying their methodology⁶⁹, the researchers coded 100 PTAs for migration provisions. The inclusion of visa and asylum provisions in PTAs shows an upward trend, particularly since the early 2000s (see Figure 8). Of the 30 Regional Economic Communities (RECs) in the WB database, 17 include visa and asylum provisions. This confirms that deep economic integration agreements⁷⁰ among like-minded countries within a given region tend to include these provisions (Pauwelyn, Nguyen and Kamal 2020: 233).

66 For a general description of GATS Mode 4 see: [WTO, movement of natural persons \(mode 4\)](#).

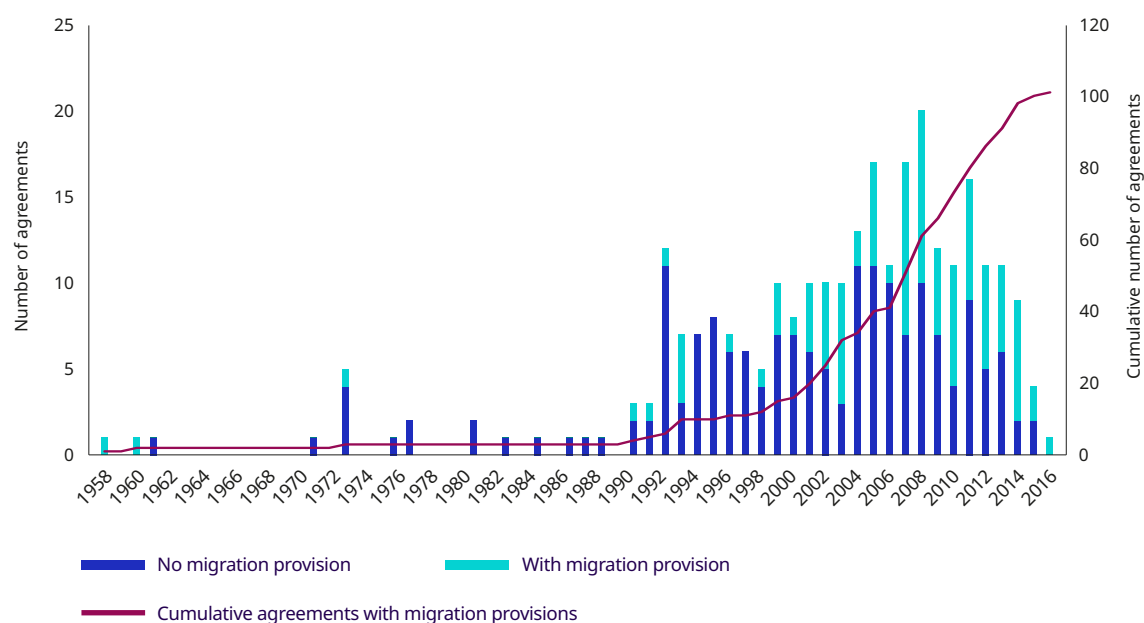
67 See Article 2, [Annex on movement of natural persons supplying services under the Agreement](#).

68 Labour provisions in trade agreements refer to certain minimum standards of labour protection in the domestic laws of countries party to PTAs. It has received vast attention in the literature, see Ebert and Posthuma (2010) and Raess and Sari (2020).

69 The methodology included a word search in the database of terms such as ‘investors’, ‘key personnel’, ‘visa’, ‘migration’, ‘asylum’, ‘refugee’, ‘citizenship’, ‘employment’ and ‘residence’. From the list of 279 registered PTAs, Pauwelyn, Nguyen and Kamal (2020) found 175 PTAs that contained terms related to migration. Since migration provisions appear in deep regional economic communities (RECs), researchers included additional PTAs such as MERCOSUR, CARICOM, CIS, and SADC (See Pauwelyn, Nguyen and Kamal 2020: 229-231 on methodology).

70 “Deep Economic Integration Agreements” based on “Deep Trade Agreements” (DTAs) are reciprocal agreements between countries that cover not just trade but additional policy areas, such as international flows of investment and labour, the protection of intellectual property rights and the environment. These matter for economic development as the rules embedded in DTAs influence how countries transact, invest, work, etc. See [World Bank, Deep Trade Agreements, Data, Tools and Analysis](#).

► Figure 8. Number of PTAs that include migration provisions over time



Source: Pauwelyn, Nguyen and Kamal (2020: 233).

Table 3 shows the number of PTAs with migration provisions by country and REC. The EU tops the list with 28 PTAs, followed by Japan and Chile.

► Table 3. Number of countries or RECs with visa and asylum provisions in PTAs

	Country/REC	No. of PTAs with visa and asylum provisions
1	European Union	28
2	Japan	12
3	Chile	11
4	Republic of Korea	10
5	Mexico	9
6	Australia	7
7	Panama	6
8	China	6
9	Colombia	5
10	United States	4

Source: Pauwelyn, Nguyen and Kamal (2020: 234).

While the 100 PTAs cover visa and asylum issues, 72 explicitly exclude employment on a permanent basis. This shows that migration is limited to temporary movement and excludes permanent employment (Pauwelyn, Nguyen and Kamal 2020: 240). As migration is governed by various instruments and tools⁷¹, it would be expected that these are referenced in PTAs, however, findings of this study show that these are rarely mentioned, only 3 per cent of them refer to BLMAs and 4 per cent to multilateral instruments, showing that the issue of migration is treated in isolation, without linking it or making reference to instruments in international law governing migration (Pauwelyn, Nguyen and Kamal 2020: 241).⁷²

To sum up, the focus of PTAs when they refer to migration is on high-skilled and temporary movements of persons. Visa and asylum provisions are often legally binding subject to State-to-State dispute settlement, and where this mechanism is used, violations are backed up by retaliation or trade sanctions. This was found in 60 of the 100 PTAs coded in the referenced study. Despite the fact that visa and asylum provisions are mentioned more often, the study finds that they are mentioned in a “thin” way focussing on procedural issues rather than opening migration corridors/flows, while RECs mention more substantial issues (Pauwelyn, Nguyen and Kamal 2020: 245). In addition, mobility schemes⁷³ aligned with PTAs are becoming an area of expansion that deserves further attention. For example, trade agreements negotiated by Canada in recent years, with the EU, Peru and the Republic of Korea provide temporary migration opportunities for management trainees and graduate trainees for the purpose of intra-company training (IRCC 2014 cited in Vosko 2020: 15). The length of time varies according to the trade agreement, in the case of the Canada-Peru agreement, it is for six months.

71 Examples of tools include BLMAs, and international instruments include ILO Conventions on migration as well as the UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

72 We need more research on the linkage between international agreements, BLMAs and PTAs when it comes to migration and what implications this has for the protection of migrant workers.

73 These mobility schemes do not require labour market tests and they seem to evolve independently of labour market needs, but provide employment opportunities for those who participate (for an overview in the context of Canada, see Vosko 2020).

Part III.

Towards addressing
complexities

► 1. Conclusions

This background report has presented a basic typology of TLM programmes based on institutional design. It has shown that design only constitutes one dimension that conditions TLM and influences migrant rights' protections and life courses as well as employers' ability to reach over borders for additional workers and to retain them. The basic typology also reveals that over time the concept of "temporary labour migration" has evolved to include not only specifically designed programmes (such as "guest worker" programmes set up in the aftermath of World War II) but also specific categories of visa types in immigration law administered unilaterally, and in line with the notion of State sovereignty. Moreover, free movement schemes as they exist all over the world have opened space for temporary movements (at times including cross border migrants). Thus, (im)migration regimes continue to vary across developing and developed countries.

Indeed, the various elements presented in Part II overlap, giving place to a continuum of migration statuses with associated rights. Illustrated for the case of New Zealand, this continuum could be taken as a "stylised fact" describing the reality of co-existing visa regimes and schemes in many countries, in particular in what have been traditionally considered "immigration countries". There is a trend towards moving to more temporary forms of labour migration, not only in traditional settlement countries such as Australia, Canada, New Zealand and the United States, but also in other parts of the world, especially in Asia (Ford 2019, ILO 2014, OECD 2019, Gest and Boucher 2021).

As TLM 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. Hence, addressing this dissonance through policy coherence mechanisms remains paramount.

International law champions the principle of equality of treatment for foreign and national workers, enshrined in the UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Conventions. However, the appetite for their ratification is low. In any event, international human rights law takes an ambivalent approach to migrant workers: embracing the principle of equality while also deferring to the sovereign discretion of States to set criteria for immigration admissions (Berg 2015).

Considering this, Part II captured the complexity of schemes and their dynamic and evolving nature. There is nothing "static" about TLM, so that policy discussions around TLM schemes must consider, on the one hand, how specific historical, geographical, political and legal contexts determine scheme design, which in turn has effects on different migrant categories. On the other hand, socio-cultural conditions also affect migrant workers' agency as they may decide to leave the country before their permit allows, stay longer or change category (when possible). Migrants re-adapt and "calibrate" their decisions according to political contexts in both origin and destination countries, but also according to their needs.

For many years, the global policy debate has justified limits on migrants' stays from a purely economic efficiency perspective: migrants were to cater to cyclical or seasonal industries, to fill "labour shortages" or their temporary stay was to reduce the risk of them becoming dependent on benefits (OECD 2019). The COVID-19 pandemic has shown us that this one-dimensional way of conceptualizing workers contradicts a human-centred approach to the world of work and the principle enshrined in the Declaration of

Philadelphia that “labour is not a commodity”.⁷⁴ The re-labelling of many workers as “essential”, performing in sectors with a high prevalence of migrants (retail, services, agriculture, domestic work, care and health) provides the opportunity to re-align migration policies with employment laws within macroeconomic frameworks. The ILO Global Call to Action to deliver on “recovery” urgently requires steering employment, industrial and health policies towards sustainable and resilient economies and societies, and migrants are an integral part of this.

TLM schemes do not operate in a vacuum. They are also embedded in production structures within international trade. As shown, more PTAs are including clauses on admission and visas in addition to labour rights. Countries at different levels of development may decide to use trade agreements according to their institutional needs. In the past, the narrowing of “policy space” in terms of industrial policy development has created constraints for developing countries regarding their autonomy to decide the right policy mix to balance their developmental needs while securing access to international markets for their exports. Including clauses on admissions and visas together with labour rights, while engaging in multilateral trade poses its own challenges which deserve further exploration. The tendency towards regionalization in trade (also under discussion due to the global supply chain disruptions suffered during the COVID-19 pandemic) is manifesting throughout the world, and labour migration tends to be intra-regional.⁷⁵ Thus, the drivers of the proliferation of extra continental mobility schemes as well as their underpinning interests and incentives need to be further explored to assess impacts on employment and growth.

The review presented here shows a bias in the literature towards industrialized countries that are more experienced in developing and sustaining TLM programmes. Studies are emerging on other parts of the world as well as on the asymmetries in power involved in the use of TLM but remain limited. This bias is also evidenced in the amount of policy and academic studies that cover broad aspects of TLM schemes, including their institutional design, with more evaluations carried out by government agencies of long-standing immigration countries (e.g. Australia, Canada, New Zealand). As TLM expands and develops in other parts of the world, there is a serious need to put in place mechanisms to properly evaluate and analyse emerging programmes.

The overarching question continues to be whether there is a way to design temporary labour migration schemes that consider workers’ agency and respect their labour rights while delivering on their promise to match labour supply and demand across borders. The following section offers some ideas towards developing a human-centred approach to TLM.

⁷⁴ See also Mieres and Kuptsch (2022).

⁷⁵ In 2020, nearly half of all international migrants at the global level were living in their region of origin. Europe had the largest share of intra-regional migration, with 70 per cent of all migrants born in Europe residing in another European country. Sub-Saharan Africa had the second largest share of intra-regional migration globally (63 per cent). By contrast, Central and Southern Asia had the largest share (78 per cent) of its diaspora residing outside the region. Other regions with large shares of their transnational populations residing outside their region of origin included Latin America and the Caribbean (74 per cent) and Northern America (75 per cent). See UNDESA (2020: 2).

► 2. The way forward

2.1. Towards a new generation of BLMAs: Strengthening labour protection

Unilaterally, destination countries can decide that their immigration regulations prevail over national labour law concerning temporary foreign workers, for example, when workers who do not possess proper resident permits or visas are deported before being paid their wages, even if this is in violation of international labour standards, e.g. as set out in ILO Convention No. 143 and the Protection of Wages Convention, 1949 (No. 95). Destination countries can also, and some do, set two types of minimum wages, one for nationals and a lower one for migrant workers, or exclude migrant workers from national minimum wages.

BLMAs can be a useful tool to prevent such situations and deter the exclusion of migrants from protective labour market institutions. They can bring labour protection to the forefront. For this reason, the conclusion of BLMAs is encouraged in line with guidance by the United Nations Network on Migration, which aims to assist countries of origin and destination to design, negotiate, implement, monitor and evaluate rights-based and gender-responsive BLMAs, based on a cooperative and multi-stakeholder approach. The guidance was developed by a Thematic Working Group of the Network, composed of representatives of UN agencies, employers' and workers' organizations, academia, and civil society organizations and was co-led by the ILO and IOM (see UN Network 2022). However, BLMAs cannot operate in a vacuum, particularly if these protections are not enshrined in the laws and regulations of origin and destination countries.

In the context of negotiations of BLMAs, destination countries have a particular responsibility in current times, including vis-à-vis their own citizens. They have to prevent downward spirals in working conditions that can occur because of misalignments between immigration and labour regulation but also since there might be competition among origin countries. Regarding the latter, destination countries should not agree on one set of treatment of migrant workers under the BLMA with country A and on another one with origin country B (in any case, equal treatment with national workers should be established).

Even though evaluations are scant, there is emerging evidence that the implementation of BLMAs has achieved the goal of making the recruitment process more transparent in some parts of the world, and migrants have not been required to pay illegal fees. For example, Kushnirovick, Rajman and Barak-Bianco (2019) show that for the case of Israel, since the implementation of the BLMAs with Bulgaria and Moldova, all migrants entering the country to work in the construction sector are recruited through official venues without the involvement of private agencies, in either the countries of origin or destination. While BLMAs were highly effective in protecting workers' rights during recruitment, maintaining and/or improving wages or rights at the workplace were not guaranteed (Kushnirovick, Rajman and Barak-Bianco 2019). Expanding the scope of bilateral agreements to include labour standards enforcement is fundamental to securing that migrants' rights are upheld. In this vein, a new generation of BLMAs could bring improvement of both recruitment and working conditions at the same time, while origin countries could utilize the BLMAs that they conclude as a tool within a broader framework of national employment policy and job generation strategies.

Building on ILO's experience in terms of recruitment, the time is ripe for fostering the implementation of the General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs in ILO Member States and among constituents through the Fair Recruitment Initiative so that they can be applied in an integrated way in line with labour market needs while catering to working conditions. This will require expanding work on policy coherence as previously stated.

A new generation of BLMAs could also offer opportunities for dialogue between origin and destination countries on return and sustainable reintegration – where this is genuinely desired by both sides. UN Network guidance is available on this point (see UN Network 2022, 2021). And the “Happy Return Program” under the EPS of the Republic of Korea is an example of a scheme that facilitates the long-term employment or business start-up plans of temporary migrant workers upon their return where activities are undertaken both in the destination and the home country of the migrants: counselling and training, an online job-matching platform that connects former EPS workers with South Korean employers or companies operating in the worker’s home country, and more (see Kim 2015).

2.2. Enlarging the “gains” for migrant workers (by addressing sources of vulnerabilities)

Freedom to change employer

Freedom to choose one’s employment is a basic tenet of national and international law. Tying migrants to a particular employer, occupation or sector can, on human rights grounds, be only an exceptional, time-bound measure in particular circumstances.⁷⁶ In 2006, the Supreme Court of Israel declared unanimously that the binding of migrant workers to their employer was unconstitutional. It ruled that the issuance of employer-tied work permits was an unjustified violation of workers’ liberty-implied right to resign⁷⁷. The judges went as far as stating that “the foreign worker has become his employer’s serf” and that “the restrictive arrangement has created a modern form of slavery.”⁷⁸

On economic grounds, the practice of tied employment in selected sectors should be avoided because it is tantamount to a measure of protection of employers, occupations or sectors benefiting from access to foreign workers at the expense of other employers in the same country or abroad. In other words, restrictions on workers’ mobility are akin to a subsidy to particular employers, occupations or sectors. In addition, restrictions to migrant workers’ ability to terminate their employment contract and/or move between employers without the permission of the first employer contributes to inefficient labour markets by restricting workers from being able to be employed in a job that is most suited to their skills and interests, and by restricting employers from being able to benefit from the skills of migrant workers (ILO-AUC 2021:2).

An important dimension to address, applicable to the Middle East, refers to the misuse of the “absconding” offence by some employers. Absconding refers to an administrative or criminal offence, whereby charges can be filed by employers against workers who absent themselves from work, and are commonly applied against migrant domestic workers in particular (even though there are cases in the construction sector where workers absent due to illness were absconded). The “absconding system” is documented in opaque circulars or confidential administrative procedures, and are prone to misuse by employers aggravated by a worker’s contract termination. A transparent regulatory system that enables

76 For instance, being tied to an employer, occupation or sector is inherent in the moves of intra-company transferees and usually happens with their full consent because it is part of the workers’ career, and this mostly applies to high-skilled workers whose level of agency and bargaining power is higher than that of lower-skilled workers. The ILO 2016 General Survey concerning the migrant workers instruments, notes “(...) some employers’ and workers’ organizations indicated that migrant workers encountered difficulties in changing employer or workplace. The ITUC, the FNV of the Netherlands and the New Zealand Council of Trade Unions (NZCTU) drew specific attention to increased vulnerability and lack of protection of migrant workers’ rights due to the high dependency of the worker on the employer, live-in requirements and employer-tied visas, including in temporary and seasonal migration programmes. With regard to these programmes, the Committee draws the attention of member States to the long-term impact of the indefinite renewal of temporary permits limited to a specific occupation or employer on the human and labour rights of migrant workers” (see ILO 2016 at para. 364).

77 Kav LaOved Worker’s Hotline v. Government of Israel (2006), 1 IsrLR 4542/02; HCJ 4542/02 (Supreme Court of Israel) at para. 32.

78 Kav LaOved Worker’s Hotline v. Government of Israel (2006) at para. 314

employers to take disciplinary action against workers who do not show up should be rooted in labour laws (ILO-AUC 2021: 10-11).

Another measure to address internal labour market mobility, is to provide “grace periods” to enable workers to look for alternative employment so that they do not lose their status for a period. Some visa categories can be transferred from one employer to another (e.g. H-1B in the United States) and have already grace periods. These are commonly found in visas related to “highly skilled workers” but low-paid job workers could also benefit from this in many parts of the world.

Housing

Several categories of temporary migrants cannot be expected to have the time and resources to enter a country, look for housing and then start to work.⁷⁹ Where governments have the responsibility for their move or where such responsibility falls on the employer, particularly in the case of seasonal and project-tied workers, accommodation must be provided which meets appropriate standards upon commencement of work and if rents need to be borne by workers, these should be reasonable in relation to wages earned. However, migrant workers should not be bound to stay in employer-provided accommodation if they do not wish to do so.

Wage deductions as accommodation fees need to be subject to regulation. For example, in the United Kingdom the amount that an employer can deduct for accommodation is controlled by the National Minimum Wage Regulations 1999/584, reg. 36. Unfortunately, such regulations can be evaded by providing housing through another legal entity and then charging rent (Davies 2014), so these cases will also have to be regulated.

Where the provision of accommodation is necessary, for example where farms are isolated, this creates dependence on employers. The COVID-19 pandemic highlighted how dependent certain temporary migrant workers are on the goodwill of their employer in respect of safe workplace and living arrangements. The pandemic exposed practices ranging from cramped living quarters and non-observance of distancing measures to lack of protective equipment such as masks. These practices are unacceptable for the migrants, they present a public health risk and create unfair competition for those employers who respect the rules which can sometimes be costly.

Countries should adapt national housing standards that also include migrant workers in accordance with international norms⁸⁰. The UN Committee on Economic, Social and Cultural Rights (UN CESCR) has specified that for housing to be considered adequate, it needs to meet seven criteria, at a minimum, namely: (i) legal security of tenure; (ii) availability of services, materials, facilities and infrastructure (including safe drinking water, energy and space for food storage and preparation, etc.); (iii) affordability; (iv) habitability (i.e. protection against cold weather, damp, heat, etc.); (v) accessibility; (vi) location; and (vii) cultural adequacy (UN CESCR 1991)⁸¹. These criteria overlap substantially with the general principles and suggested methods of application of the ILO Workers’ Housing Recommendation, 1961 (No. 115). The criteria are also interconnected: for example, housing affordability is linked to its habitability.

79 Other categories such as students, cross-border service providers and intra-company transferees will normally be able to look after themselves adequately or have their needs taken care of through their institutional affiliation.

80 For example, Article 43 of the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families guarantees equal treatment in access to housing, including social housing schemes, and protection against exploitation in respect of rents to regular migrants and their families. ILO Convention No. 97 concerning Migration for Employment (Revised) (1949) also addresses the equality of treatment of migrant workers with nationals in respect of accommodation (see Art. 6.1.(a) (iii)).

81 See also [OHCHR and UN HABITAT \(2014\). The Right to Adequate Housing. Human Rights Fact Sheet No. 21 \(rev\).](#)

Although developed in a regional context, the ILO report *“Home Truths - Access to adequate housing for migrant workers in the ASEAN region”* offers detailed recommendations that are applicable worldwide. The report proposes over 50 measures towards the provision of minimum standards of adequate housing for all migrant workers, some to be implemented by governments, some by employers, considering the UN CESCR criteria but also others such as safety, freedom of movement and accountability (ILO 2022b).

Skills and life-long learning

Temporary labour programmes are organized around the skill spectrum and the different perceptions of what constitutes skills by creating an “ordering of skills” that governs admissions. Low-paid employment has historically been linked to the notion of “low-skill”, and the sources of vulnerability are higher for these workers as they face limitations in terms of access to certain rights, as shown throughout this report. The ILO Centenary Declaration for the Future of Work (2019) underlines the importance of life-long learning and states that the ILO must direct its efforts to promoting the acquisition of skills, competencies, and qualifications for all workers throughout their working lives as a joint responsibility of governments and social partners (II A. (iii)). This statement is in no way exclusionary of temporary migrant workers. Programmes can be conceived with built-in learning opportunities, as is exemplified by some of the Young Professional Programmes.

Providing for skills recognition while allowing portability would also help in this context. For example, one could create certificates that show that workers have achieved X hours of harvesting, pruning, etc. and have knowledge in different crops. These issues are important to reduce turnover of workers but also with a view to complying with quality standards that are needed in many sectors (including agriculture), in particular where products are to be exported.

Continue addressing information gaps for migrant workers

There are already large efforts underway to provide temporary migrant workers with information about what to expect in destination countries, what their rights are, etc. Pre-departure information is provided under official BLMAs, but not exclusively, and in some cases Migrant Resource Centres (MRCs) have been instrumental in providing these services⁸². But information is equally important for workers migrating outside of BLMAs, i.e., who are not covered by the governmental protection offered under negotiated programmes, for example for workers who have to fend for themselves because they travel under the free movement provisions of a REC. In these contexts, transnational advisory service networks for migrant workers could be set up with the involvement of the social partners and migrant organizations, and modern technology could be used, e.g. centralized information services in the form of service apps for migrants. These could cover also more ground than only pre-departure information as information gaps continue to exist for migrants while they work at destination (e.g. on whom they can turn to in cases of conflicts with employers).⁸³

It would strengthen migrants’ positions, if central referral mechanisms were to be created where workers can go in case of doubts – whether at regional or national level. The German Fair Mobility Project (*“Faire Mobilität”*) is an example of information and advisory services delivered to temporary migrants (in this case EU mobile workers from Central and Eastern European countries) in their own language, free of charge and concerning all branches of the economy. Union representatives and service centre staff

82 For the case of Asia, see [Migrant Resource Centres \(MRCs\) and the provision of support services](#), for the case of Arab States, see [“10 Things you should know about migrant resource centres in the Arab States”](#) and in Mexico see [CROC and ILO inaugurate Resource Centre for Migrant Workers in Tijuana, Baja California](#).

83 See the [Comprehensive Information and Orientation Programmes \(CIOP\)](#) under the auspices of the Abu Dhabi-Dialogue, which provides a coordinating framework for pre-employment, pre-departure, and post arrival orientation for temporary contractual workers in the Gulf region.

collaborate with local institutions to inform and advise on all questions of social and labour law as the project's objective is to assist in the enforcement of fair wages and working conditions for migrant workers on the German labour market.⁸⁴ Services can be obtained independent of union membership. The project was launched by the Executive Board of the DGB (*Deutscher Gewerkschaftsbund*, the German trade union confederation) in collaboration with other partners in 2011 and has meanwhile established twelve service centres throughout Germany. It is financed by the Ministry of Labour and Social Affairs (90 per cent) and the DGB Executive Board (10 per cent).

2.3. Buttressing institutions of the world of work

Wages and other terms of employment

Since 1919, the principle of equal remuneration for work of equal value has formed part of the ILO's Constitution and it was also clearly set out in Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) para 2(b)(v) and Migrant Workers Recommendation, 1975 (No. 151) para 2(e). Neither nationality nor temporary employment constitute valid grounds for exceptions. The equality principle is also applicable to other terms of employment for migrant workers who perform the same activity as national workers, notably with respect to customary wage supplements, bonuses, overtime entitlements, maximum daily and weekly working hours.

As per the Protection of Wages Recommendation, 1949 (No. 85) employers should be required to keep records of wage payments and deductions in respect of each worker⁸⁵. This would provide clarity for everyone and be helpful in cases of disputes over issues of remuneration. The Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949 provide elements to ensure that wages are paid to all workers, including temporary migrant workers. The application of Convention No. 95, and in particular the effective enforcement of wage payments, require: (a) efficient control; (b) appropriate sanctions; and (c) means to redress the injury caused (ILO 2003).⁸⁶

A key principle enshrined in Convention No. 95 refers to the freedom of workers to dispose of their wages as they choose. This is sometimes strained in practice by "deferred pay" or "compulsory remittance" systems through which a portion of a worker's monthly wage is retained (which is often more than half of the agreed remuneration) and transferred to the country of origin on the pretext that it is in the worker's interest to recover a substantial amount upon returning home.⁸⁷

The GCC countries have developed Wage Protection Systems (WPS) as well as insurance funds in some cases to compensate workers in particular circumstances. WPS do not cover migrant domestic workers, who in several countries comprise more than 25 per cent of total employment. There are areas of improvement as WPS do not address wage manipulation (miscalculation of overtime, end-of-service gratuity payment) or prevent deception by an employer who withdraws cash on behalf of the worker (ILO 2019). It would be important in many contexts to create non-discriminatory minimum wages that assess

⁸⁴ The project also conducts studies, produces educational materials and fosters transnational dialogue among trade unions. For more information, please see <https://www.faire-mobilitaet.de/en/ueber-uns>.

⁸⁵ See paras 7 and 8.

⁸⁶ The COVID-19 pandemic led to an increase in non-payment of wages, with some employers taking advantage of the pandemic to unlawfully dismiss migrant workers and to withhold wages and benefits that were owed to them. In some instances, migrant workers saw their salaries reduced, forcing them into unpaid leave without their consent, and unlawful deductions from their salaries. For an analysis and recommendations of these issues in the context of the Arab States see ILO (2021f).

⁸⁷ This was formerly applied to migrant workers employed in South Africa and recruited from Lesotho, Malawi and Mozambique, where 60 to 90 per cent of the wages earned were not paid directly to the migrant workers, but were transferred to their home countries as deferred pay which could only be received as a lump sum upon the completion of their contract. See ILO (2013) *General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949*, paras 179 and 401.

cost of living in the country of destination (rather than the country of origin), so that migrant workers do not have to engage in overtime to compensate for lower salaries.⁸⁸

To combat and rectify abuses occurring on a significant scale, one suggestion would be to make employers deposit the equivalent of the basic wage or salary due in the first month in an account from which compensation could be paid in cases where institutions composed of representatives of employers and workers, or tripartite institutions, determine that migrant workers suffer non-payment or underpayment of wages, supplements, bonuses and overtime entitlements.

Trainees may be paid allowances reflecting their status when they undergo training, but when they carry out an ordinary activity they should benefit from the same wages and terms of employment as national workers.

Freedom of association

Temporary migrant workers, without distinction whatsoever, should have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.⁸⁹ While the majority of countries recognize in general terms the right of migrant workers to establish and join trade unions, certain States continue to require citizenship for the establishment of trade unions, require a certain proportion of members to be nationals, or subject foreign nationals to conditions of residence and reciprocity in terms of eligibility for trade union membership (or membership of migrant workers in existing trade unions is permitted but not in leadership positions). In a number of countries, labour legislation does not allow migrant workers to establish trade unions or restricts this right to foreigners who have taken the nationality of the host country⁹⁰. As previously described, even if access is guaranteed under a TLM scheme, the potential for deportability and the nature of tied visas limit the full enjoyment of this right in practice.

In this light, temporary migrant workers should enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection should apply more particularly in respect of acts calculated to: (a) make the employment of a temporary migrant worker subject to the condition that (s)he should not join a union or should relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a temporary migrant worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.⁹¹

Occupational Safety and Health

Even before the outbreak of the COVID-19 pandemic, migrant workers have been subject to a number of OSH risk factors in a greater measure than national workers. These risks are linked to (a) migration factors *per se*, such as the lack of legal status in the destination country, or a residence status tied to the

⁸⁸ As an example, in Jordan, the minimum wage for nationals differs from those of migrant workers, and there is even a differential for migrant workers in EPZs. See [ILO Factsheet Regulatory framework governing migrant workers, 2019](#).

⁸⁹ This wording derives from the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2, with the addition of the words “temporary migrant” before the word “workers”.

⁹⁰ In certain countries, relevant legislation regarding the right to freedom of association may exclude certain categories of workers (see ILO 2016, para. 409). For example, in the United States, the National Labor Relations Act (NLRA) 29 U.S.C., §§151.169 (sections 1[§151] and 2[§152(3)] of which provide freedom of association and collective bargaining does not cover agricultural labourers and domestic workers, among others.

⁹¹ This wording is taken from the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 1(1) and (2). The term “temporary migrant” has been added before “worker(s)”. Freedom of association and the effective recognition of the right to collective bargaining constitute fundamental principles and rights at work as per the ILO Declaration on Fundamental Principles and Rights at Work (ILO 1998 and amended in 2022).

contract of employment as it is the frequent case of temporary labour migrants; (b) factors related to the worker's characteristics (language skills, education, etc.) and (c) factors that can be attributed specifically to the destination country (such as access to social protection, sector of employment and access to representation). Deficiencies in one area of working conditions can aggravate other working conditions, including OSH, which became more evident during the COVID-19 pandemic.

The adoption of Occupational Safety and Health as a fifth category of Fundamental Principles and Rights at Work,⁹² shows the key role of OSH systems and protocols in mitigating workplace safety and health risks. To reduce risks during the pandemic, various countries adopted protocols and new guidance that often benefitted temporary migrant workers so that, according to sectors, handwashing stations were put in place in farms, tasks and work shifts were adjusted to allow for physical distancing, shared equipment and tools were disinfected, and personal protective equipment were provided to cite general examples. Gaps in implementation and monitoring of the updated provisions also became apparent.

OSH measures need an urgent update, in particular in those sectors that have been labelled "essential" during the pandemic. There is a need to close gaps in regulation and coverage, as well as improve enforcement. OSH measures should also be provided in a gender-responsive manner to prevent gender-based violence and harassment at work (Jones, Mudaliar and Piper 2021).

2.4. Equality of treatment and opportunity for all workers

International human rights law grants equality of treatment between nationals and non-nationals. However, the situation in practice continues to diverge from this principle. Rights of migrants remain unfulfilled and there is an opportunity to address this by introducing paced reforms in the nature and role of TLM programmes. The ILO Committee of Experts has underlined that the four ILO instruments concerning the protection of migrant workers apply generally to all categories of workers, including short-term and seasonal workers: "No distinction can be made, within the provisions of the instruments, between migrants for permanent settlement and migrants who do not intend to stay for any significant length of time in the host country, such as seasonal workers" (ILC 87th Session, 1999 cited in Olney and Cholewinski 2014: 278).

Social protection

Migrants in time-bound employment or their family members should not suffer lack of protection by the mere fact of temporary absence from the home country or the temporary nature of their activity in the country of employment. However, this is often the case because of either legal or practical obstacles or both at the same time (see ILO 2022d).

The pregnancy protection of Pacific Islanders who work in agriculture in New Zealand may serve as an illustration of this point. While under both the SWP scheme and the New Zealand RSE Scheme "migrant workers are entitled to the same formal labour rights and protections with regard to pregnancy as nationals, these general provisions do not address the specific vulnerabilities that may be experienced by pregnant Pacific Island countries' workers in remote locations. Medical costs incurred by a pregnant worker will not be covered under existing health insurance policies available to workers, as pregnancy coverage is subject to waiting periods (though complications arising from pregnancy are covered up to 24 weeks under the policy for workers in New Zealand). Information on pregnancy is not included in the pre-departure booklets issued to workers in either the SWP or RSE. No official information is collected on worker pregnancy in either country, and it appears that workers rely on the assistance of communities

92 See ['International Labour Conference adds safety and health to Fundamental Principles and Rights at Work'](#).

and employers until they can return home and they are not provided with an option to complete their season of work unless they pay for their return themselves after giving birth” (ILO 2021g: 17 and ILO 2022c).

Countries should consider the ratification of relevant ILO conventions and conclude bilateral and multilateral social security agreements to operationalize the Conventions’ provisions⁹³. In fact, some of the principles established in these standards are particularly important for temporary labour migrants, such as the equality of treatment principle, the maintenance of acquired rights and provision of benefits abroad and the maintenance of those rights in course of acquisition, sometimes also referred to as “totalization” of social security entitlements and benefits (for details, please refer to ILO 2022d).

In addition, countries may unilaterally implement measures based on the principle of equality of treatment, for instance they may gradually extend coverage to presently excluded groups of migrants, such as domestic workers who are often women in temporary employment. The ILO has developed Intervention Models with succinct practical guidance to this effect⁹⁴.

There are numerous ways of granting social protection to temporary migrant workers as well as their families – whether the latter had to stay back in the country of origin or not. Suffice it here to cite the establishment of national social protection floors (see ILO Social Protection Floors Recommendation, 2012 (no. 202)); the creation of flexibility in schemes that allows migrants to meet qualifying conditions or, where appropriate, allowing temporary migrants to stay affiliated to their home country schemes. In parallel, measures addressing the practical obstacles faced by migrants should be adopted such as providing information in languages that they can understand, simplifying administrative procedures, etc. In 2021, the ILO brought out a guide for policymakers and practitioners “*Extending social protection to migrant workers, refugees and their families*” offering practical guidance on all the above policy measures and many more (ILO 2021d).

Exemption of temporary migrant workers from social protection coverage does not only imply lack of access to benefits for the migrants (including future problems where pensions are concerned), it also means making temporary migrants “cheaper” than other workers and therefore introduces an element of unfair competition between employers who have access to temporary migrant workers and those who do not, and between national and migrant workers.

Immigration and labour regulations aligned to real labour market needs

The review in this background report and the intersecting elements in the design of TLM programmes call for a careful reconsideration of their objectives. Immigration and labour regulations need to be aligned to labour market needs, thus a prudent analysis of whether TLM programmes are the best way to achieve this is due. Where TLM programmes are set up, there is a risk of creating a “parallel reality” in labour markets with the potential of leading to (further) labour market segmentation and the establishment or consolidation of “migrant jobs” and “migrant sectors” that local populations will (continue to) shun.

A careful economic and labour market analysis of the sectors with a high participation of migrants and where TLM programmes exist would include analysing gaps in regulations between admission and labour rights, to align these and reduce segmentation. Such an analysis, of course, would include the need to improve decent work in these sectors. In many countries, given the jurisdictional differences, such analysis would imply considering regional differences. In addition, temporary migration stocks and flows should be factored into government planning, for example in the assessment of social and economic development such as infrastructure and service delivery needs.

⁹³ Cross-references between BLMAAs and bilateral social security agreements are helpful in this domain.

⁹⁴ In 2022, Intervention Models existed for extending social protection to migrant domestic workers; migrant seasonal agricultural workers; migrant workers in an irregular situation; and refugees and asylum seekers. See [ILO Intervention Models](#).

The adoption of Occupational Safety and Health as a fifth category of Fundamental Principles and Rights at Work provides the opportunity to strengthen policy coherence between immigration, labour and OSH laws to secure broad coverage to workers, including migrant workers in temporary arrangements. The production of goods and services cannot be done at the expense of low OSH regulations in sectors where there is high density of migrant workers. These preoccupations also became evident during the COVID-19 pandemic and are currently part of ILO's "recovery efforts".

2.5. Strengthening enforcement

Labour standards enforcement is weak in TLM programmes. A national strategy to improve oversight and enforcement through strengthening the role of labour inspectorates will contribute to increased transparency and fulfilment of labour rights. This should start with an extensive data collection exercise on behalf of agencies responsible in the administration of programmes to get a good sense of numbers of workers involved and working conditions in the destination country. Upon return, workers should be systematically interviewed in the origin country⁹⁵ to assess the fulfilment of promises regarding working conditions, data collection on rights violations such as non-payment of wages or owed benefits, and one should work towards improvements and a reduction of gaps that arise. This data collection exercise would also enrich labour market information systems contributing to evidence-based policymaking.

As previously mentioned, strengthening labour inspectors includes implementing clearly defined "firewalls" between labour standards enforcement agencies and immigration enforcement agencies, while training labour inspectors on issues around fair recruitment and cultural practices. In cases where enforcement depends upon a complaint system by workers⁹⁶ (this applies mostly to highly skilled workers), there is a need to cover more workers, in particular to improve labour inspection in sites that are of difficult reach, such as farms, export processing zones and private households. This will require budgeting and financing an adequate labour inspectorate according to the number of workers in various sectors.

Another area of potential reform as part of a national strategy includes linking compliance with labour laws with the migration regime. Since many TLM programmes are demand-based (i.e. employer-driven), admission of workers could be linked to compliance with labour laws, and OSH laws, including local labour regulations when applicable. This would provide further transparency to the programme and contribute to further collaboration and cooperation between labour and immigration agencies.

2.6. Temporary labour migration programmes as transitional steppingstones

Learning from history, and the recent COVID-19 pandemic, there is an opportunity to redesign TLM programmes so that they enhance the human and labour rights of migrant workers while securing a stable and steady labour force for industries in need. At the moment, TLM programmes for the highly skilled allow a pathway to permanent residency, but this is not the case for programmes that cover "lower" skilled jobs. The COVID-19 pandemic has exposed the structural role of and need for key workers

⁹⁵ Under TLM programmes, access to returning migrants should be possible thanks to their registration with the national authority in charge, public employment service, the certified recruitment company or a mechanism established through the signing of a BLMA. The difficulty of reaching out to return migrants is recognized, thus, towards strengthening enforcement, mechanisms can be put in place to increase transparency in registration that would facilitate interviews.

⁹⁶ In the case of the H-1B visa in the United States, there is almost no enforcement unless US or H-1B workers complain, and there are few complaints since most H-1B workers become removable if they are fired and most hope to be sponsored by their employer for permanent immigrant visas (as the H-1B programme allows this). See Costa and Martin (2019).

in sectors such as agriculture, hospitality, health, domestic/care work and retail among others. As borders reopened and economic activity took off again in many parts of the world, the newly evidenced “labour shortages” could be addressed, not only by improved internal labour market mobility but also by allowing temporary migrant workers access pathways to residency. Such a move would also bridge the existing gap between highly skilled and lower-skilled temporary migrant workers in terms of their rights, treatment and vulnerability to rights violations, a gap that has accentuated inequalities.

When it comes to seasonality in some sectors, experience shows that different stages of production require workers with specific skills, thus, in some cases, seasonal migrant workers could be trained and retrained within the same branch of activity to create a stable labour pool. In line with ILO Employment Policy Recommendation, 1964 (No. 122), measures to even out seasonal fluctuations in employment may include the training of workers in seasonal occupations for complementary occupations - instead of relying on TLM programmes that become ever more expensive as there are recruitment and administrative costs (ILO 2021b). This retraining would also allow to transition towards more inclusive societies while resolving the issue of restricted mobility.

Prolonged separation and isolation of family members lead to hardships and stress affecting both the migrants and the dependants left behind, which may give rise to social, psychological and health problems, and even affect workers’ productivity. In line with the Universal Declaration of Human Rights and other international human rights instruments and labour standards, including the 1990 UN Migrant Workers Convention and ILO Convention No. 143, allowing for family reunification would secure this human right and provide a happier stable workforce to the host country. The COVID-19 pandemic has exposed mental health issues associated with family separation and isolation (Singh 2021), which could be overcome by allowing this provision.

2.7. Bridging gaps in regulation to secure access to labour rights while strengthening social dialogue

Where security of presence, through pathways to permanent residency, is provided, the fear of deportation is eliminated, and migrant workers are better placed to exercise their rights. This means that an enabling environment for the extension of the right to freedom of association and collective bargaining can be introduced and implemented. It was previously described that securing these rights on paper did not guarantee their full enjoyment as fear of deportation embedded in TLM programmes limits the exercise of these rights by migrant workers in practice.

In some destination countries, the presence of TLM programmes might keep wages artificially low (despite being higher in comparison to origin countries). This has not resolved the issue of perceived labour shortages and might have contributed to further “distortion” as explained earlier. Aligning labour migration policy to employment policy and macroeconomics could contribute to fairer wages and diminish instances of social dumping. There is also a need to rethink working-time policies and arrangements, as the temporariness associated with TLM programmes, as well as the low wages in less-skilled occupations, makes migrant workers want to do more overtime to maximize their remitting prospects, with consequences for the migrants’ health and general occupational and health impacts.

Taking the ILO and UN standards as a normative framework, while recognizing and building on the complementary nature of instruments in international law, governments and social partners in origin and destination countries can enhance social dialogue mechanisms to improve labour migration governance considering labour market needs while contributing to policy coherence.

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