



**'We wanted workers,
but human beings came' :
Human rights and temporary
labour migration programmes
in and from Asia and the Pacific**



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HUMAN RIGHTS
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¹ "Wir riefen Arbeitskräfte, es kamen Menschen", Max Frisch, 1965

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CONTENT

EXECUTIVE SUMMARY	i
PART I	1
1. INTRODUCTION	2
1.1 The major corridors for temporary labour migrations within and from Asia and the Pacific	4
2. PARAMETERS OF TEMPORARY LABOUR MIGRATION PROGRAMMES	6
2.1 Temporariness	7
2.2 Tied permits	8
2.3 Centrality of return	9
2.4 Irregular migrations	10
2.5 Embedding discriminations	10
2.6 Governance of Temporary Labour Migration Programmes	12
3. INTERNATIONAL HUMAN RIGHTS LAW AND TEMPORARY LABOUR MIGRATION	14
3.1 Responsibilities of duty-bearers: the role of the State(s)	16
3.2 Regulating private actors	17
PART II	19
HUMAN RIGHTS CONSEQUENCES OF TEMPORARY LABOUR MIGRATION PROGRAMMES	20
4. THE RIGHT TO AN ADEQUATE STANDARD OF LIVING	21
4.1 The right to adequate housing	21
4.2 The right to food	22
5. THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH	24
6. THE RIGHT TO SOCIAL SECURITY	27
7. THE RIGHT TO FAMILY LIFE AND THE RIGHT TO FOUND A FAMILY	29
8. PARTICIPATION RIGHTS	33
8.1 Freedom of peaceful assembly and association	33
8.2 Freedom of expression	35
8.3 Freedom of religion or belief	35
9. ACCESS TO JUSTICE	37
10. DIGITAL RIGHTS	40
11. LESSONS FROM THE PANDEMIC	42
12. CONCLUSION	44
13. RECOMMENDATIONS	46



Executive Summary

Temporary labour migration programmes (TLMPs) are a dominant feature of the migration landscape in and from the Asia-Pacific region, where millions of migrant workers move along these corridors usually to take up fixed-term, low-wage work in sectors such as agriculture, construction, care work or the service industry. This analytical study explores the consequences of these programmes for the human rights of migrant workers and of their families. Recognising that there are well-documented concerns about labour rights abuses on TLMPs, the study focuses on migrants' experiences beyond the workplace, understanding migrants not just as workers but as human beings and rights-holders fully entitled to all human rights.

The study explores the parameters of these programmes through a human rights lens. The temporariness that is central to TLMPs is used to justify restrictions on a range of human rights, even when migrant workers may undertake repeated migrations on TLMPs in one or more destination State for decades or even effectively for their whole (working) life. At the same time, and even in situations where the labour needs they are filling are permanent, migrant workers on these programmes are usually excluded from pathways to permanent stay or citizenship. Further, most TLMPs pay little attention to ensuring rights prior to, during and after return, while the restrictions inherent in these schemes can facilitate rather than deter irregularity of status.

Employment and residence permits that tie migrant workers to a specific employer for the duration of their stay create additional structural vulnerabilities and extreme power asymmetries. These are exacerbated in a human rights-sense through the practical delegation by States of varying degrees of responsibility for the operation and oversight of the schemes to employers and a range of other private intermediaries. Given that TLMPs reach into every aspect of migrants' lives, this effective privatisation of the governance of labour migration as well as of the access of migrants to services and justice creates protection and accountability gaps for migrant workers and their families.

Violations of migrants' human rights are directly affected by the consequences of the lack of decent work on TLMPs, including poor working conditions and unfair wages which impede an adequate standard of living for migrants and their families, exacerbated by their exclusion from public health systems and other public services. These programmes represent a profound disruption of migrant workers' personal lives through mandatory family separation as well as prohibitions on family formation. Denying or obstructing rights to expression, assembly and association, TLMPs undermine migrant workers' access to justice and the exercise of other fundamental rights. In consequence of the increasing use of digital systems in migration management, migrant workers are required to provide personal information including their biometric data, often repeatedly, to systems and States that lack adequate data protection laws and practices. The human rights deficits inherent in TLMPs are facilitated by and entrench multiple and intersecting forms of discrimination against low-wage migrant workers, including on the basis of gender, race, nationality, class and caste.

TLMPs promise economic benefits to destination countries and industries through meeting labour market needs; to countries of origin through remittances and the return of trained workers; and to migrants through gained skills and, crucially, better remuneration than they could achieve at home. However, as this study shows, migrant workers on TLMPs and their families often fail to gain even these benefits, while being exposed to a range of

human rights harms. The study contends that a comprehensive assessment of TLMPs should encompass migrants' full lived experience of temporary labour migration – at and away from the workplace – as well as the consequences of these programmes for their families and communities. In this light, the study concludes that TLMPs are often incompatible with States' human rights obligations and calls instead for States to implement rights-based, comprehensive labour migration policies that centre migrant workers and their families.

In addition to the guidance of international human rights and labour law and standards, lessons learned from the COVID-19 pandemic and the collective commitment of the Global Compact for Safe, Regular and Orderly Migration represent a toolkit of rights-based policy responses that are available to countries of origin and destination and migrants themselves. Making concrete such a reimagination of labour mobility would ensure that all migrant workers, whatever the duration or the work sector of their migration, their country of nationality, gender, race or class, as well as their family members enjoy the equal protection of all civil, political, economic, social and cultural rights.

PART 1



1. Introduction

This analytical study examines the human rights of Asia-Pacific migrant workers² on temporary labour migration programmes (TLMPs). While they lack a universally understood definition and have varied over time and within and between regions, TLMPs are defined by their temporality. They can accordingly be described as regulated, time-limited agreements for the provision of labour in identified sectors on the condition that the migrant returns to their own country at the end of the contract. Such programmes are generally considered the dominant form of migration in and from the region – including important corridors outside the region between Asia and the Middle - East and mainly involving migrations from lower- to higher-income countries within and from the region. The historical roots of such migrations can be traced in many ways to the organized movement of migrant workers in the nineteenth century including colonial indentured labour, noting in particular the long history and predominance of such migrations in and from Asia, and eventually in the late nineteenth-century to the emergence of formal temporary labour migration schemes.³ This legacy echoes in contemporary TLMPs, where concerns have long been raised that these programmes create or worsen situations of vulnerability for migrant workers and their families.⁴

In theory, TLMPs promise economic benefits to destination countries and industries through meeting labour market needs; to countries of origin through income from remittances and the return of trained workers; and to migrants through gained skills and, crucially, better remuneration than they could achieve at home.⁵ Although the focus of these programmes is economic, it is not accurate to label them solely as labour migrations. This singular description masks a range of migration drivers such as persecution and armed conflicts (driving movements in Asia-Pacific from Afghanistan and Myanmar, for example), the climate crisis (notably including migrations from Pacific Island states but also relevant in terms of movement from countries such as Bangladesh and Pakistan) and economic shocks such as rising costs of living and inflation (influencing contemporary migrations from Sri Lanka for instance). In such movements, work or income may be only part of the motivation or simply how migrants seek to cover the costs of their migration and support their families and communities.⁶

Moreover, narratives around TLMPs often, even if unintentionally, reduce migrants to the work for which they are contracted, a commodity rather than a person with inherent dignity and agency.⁷ In taking such a reductive approach to migrants – solely as workers - TLMPs omit the day-to-day quality of life and access to rights for

2 A migrant worker is defined in Article 2.1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. The ILO’s Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) also contain definitions in their Articles 11

3 ILO, 2022. *Temporary labour migration: Unpacking complexities Synthesis Report*. ISBN 978-92-2-037610-2

4 The literature on these programmes is vast and much of it is focused on the human and labour rights abuses that are frequently documented in these contexts, inter alia, Report of the Special Rapporteur on trafficking in persons, especially women and children: Trafficking in persons in the agriculture sector: human rights due diligence and sustainable development, A/HRC/50/33, 25 April 2022; Martin Ruhs, 2003. *Temporary foreign worker programmes: Policies, adverse consequences, and the need to make them work*. Social Protection Sector, International Migration Programme, International Labour Office: Geneva

5 Piyasiri Wickramasekara, 2011. *Circular migration: A triple win or a dead end?* Global Union Research Network. Geneva: International Labour Office; Stephen Castles and Derya Ozkul, 2014. Circular Migration: Triple Win, or a New Label for Temporary Migration? in Graziano Battistella (ed.), *Global and Asian Perspectives on International Migration*. Global Migration Issues, vol 4., Springer Cham., DOI 10.1007/978-3-319-08317-9_2, Chapter 2, pp.27-49; Kirstie Petrou and John Connell, 2019. Overcoming Precarity? Social Media, Agency and Ni-Vanuatu Seasonal Workers In Australia. *Journal of Australian Political Economy* 84, 116-46

6 ILO, Labour migration in Asia and the Pacific, at https://www.ilo.org/asia/areas/labour-migration/WCMS_634559/lang-en/index.htm; International Organization for Migration (IOM), 2021. *Spotlight on Labour Migration in Asia*. IOM. Geneva

7 Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia), 1944, Part I, para.(a)

migrant workers outside of the labour conditions of these programmes. This study explores the experiences of migrants on TLMPs in a more holistic human sense, existing within but also beyond the workplace and entitled to all their civil, political, economic, social and cultural rights. In this way, it is offered as a complement to the analysis and inquiry on the normative bases of temporary labour migration taking place within the context of the ILO system.⁸

While acknowledging that labour rights are indeed part of the international human rights framework, the study does not therefore address in any detail TLMP's labour rights issues within the workplace or their impacts on the labour market or industrial policy of the country of destination or the economic development of the country of origin. Instead, it is focused on what working on such programmes mean for migrants' lives outside of the work itself as rights-holders fully entitled to all human rights. Recently, the COVID-19 pandemic placed a spotlight on the vulnerable situations of migrant workers in and from the region on TLMPs, and the study explores some consequences of the pandemic response for migrants' rights.⁹ Although temporary labour pathways exist in many different sectors and wage levels, TLMPs are largely grounded in the precarity of low-wage migrant workers, and it is these people and their families who are the focus of the present analysis. Drawing on examples for Asia-Pacific migrant workers, the study explores what needs to change if such schemes are going to offer more than the three "Rs" of recruitment, remittances and return.¹⁰

It should be mentioned at the outset that one finding of this study has been that the relatively narrow focus on the work situation of migrants on TLMPs is so dominant even within advocacy and research agendas along migration corridors in and from the region that it has been difficult to obtain information on other aspects of migrants' lives and their ability to enjoy rights outside of the work context. It is hoped that this study will offer inspiration to researchers and practitioners to increase avenues of inquiry into the human rights context of TLMPs in the Asia-Pacific region and beyond.

The paper starts with a brief overview of the main migration corridors in and from the region, then moves on to a more comprehensive description of the parameters of these programmes. It explores the human rights consequences of TLMPs for Asia-Pacific migrant workers and their families and considers the relevant application of international human rights law and the responsibilities of duty-bearers towards migrant workers on these programmes. The analysis draws on a literature review of secondary sources from international human rights mechanisms and the ILO supervisory mechanism, UN agencies including ILO and IOM, academic literature and civil society. In addition, it is informed by an expert meeting with practitioners and researchers convened online in November 2021 and further informal expert consultations in 2022. It does not include first hand interviews with migrant workers themselves, although these are used from credible secondary sources for illustrative purposes. The relevant sections were shared in advance with the respective Member States for comment. The report and the examples of practice provided are intended to give an illustrative picture of human rights concerns related to TLMPs in and from Asia and the Pacific, while noting that operational modalities and precise human rights impacts may differ.

8 In 2022 the ILO Governing Body considered the question of temporary labour migration, see ILO, 2022. *Decision concerning temporary labour migration*, GB.346/POL/1/Decision, 3 November 2022. For more information and analysis of the scope and content of TLMPs from the perspective of international labour law and standards see also ILO, 2022. *Temporary labour migration*, and ILO Governing Body, 2022. *Temporary labour migration*, GB.346/POL/1, 13 October 2022

9 See also Report of the Special Rapporteur on the human rights of migrants, One and a half years after: the impact of COVID-19 on the human rights of migrants, A/76/257, 30 July 2021

10 Wickramasekara, 2011

1.1 The major corridors for temporary labour migrations within and from Asia and the Pacific

“The International Labour Organization (ILO) estimates that there are 169 million migrant workers in the world, constituting over 60 per cent of the global estimate of the number of international migrants and 4.9 per cent of the 3.5 billion workers in the world.¹¹ The Asia and Pacific region is the greatest point of origin for international migrants, with one-third coming from the region. While collecting accurate data on even the aggregate numbers of migrant workers on TLMPs is challenging, there is agreement that at a minimum these corridors from and within the Asia-Pacific region imply the temporary migrations of millions of people.¹² There is also little reliable data about the number or proportion of migrant workers on TLMPs compared with migrants who move and work independently, though most higher-income (destination) countries operate such programmes.¹³

That said, the temporary labour migration corridors within the Asia-Pacific region can be broadly clustered at the subregional level as being from South Asia to South East Asia, particularly the ASEAN destination countries of Malaysia, Singapore and Thailand; within South East Asia and corridors within the Greater Mekong Subregion (GMS); from South East to East Asia,¹⁴ and from Pacific Island States to Australia and New Zealand. There are also sizeable migrations for TLMPs from Asia-Pacific States to the countries of the Gulf Cooperation Council (GCC), especially from India, Bangladesh, Pakistan, Nepal and Sri Lanka in South Asia but also including the Philippines; this corridor comprises the largest destination for Asian low-wage labour migration.¹⁵ There are myriad other migration corridors from Asia-Pacific States to other countries in the Middle East (such as Lebanon and Jordan), as well as migrations to States in Europe and North America.¹⁶

Asia-Pacific migrant workers work across formal and informal sectors and the vast majority (86.5 per cent) are prime-age adults (aged between 25 and 64).¹⁷ The migrant labour sectors for low-wage migrants are highly gendered. Sub-regions in Asia-Pacific host approximately 14 per cent of the global estimate of migrant workers or 24.1 million people, mostly men (62 per cent to 38 per cent women) and migration to the Middle East (overall) is heavily male-dominated (82.6 per cent men to 17.4 per cent women).¹⁸ Migration for the care economy including domestic work accounts for the majority of women’s migrations from Asia-Pacific States, in particular those from

11 ILO, 2021. *ILO Global Estimates on International Migrant Workers – Results and Methodology – Third edition*, International Labour Office – Geneva

12 UN Economic and Social Commission for Asia and the Pacific (ESCAP), 2020. *Asia Pacific Migration Report 2020: Assessing Implementation of the Global Compact for Migration*. ST/ESCAP/2801

13 Asian Development Bank Institute (ADBI), the Organisation for Economic Co-operation and Development (OECD), and the International Labour Organization (ILO), 2021. *Labor Migration in Asia: Impacts of the Covid-19 Crisis and the Post-Pandemic Future*; Daniel Costa and Philip Martin, 2018. *Temporary labor migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration*. Economic Policy Institute, at <https://www.epi.org/files/pdf/152373.pdf>

14 Temporary migrants including from South East Asia account for over 40 per cent of all employed migrants in the Republic of Korea and over 25 per cent in Japan: ILO, 2022, *Temporary labour migration*

15 Ray Jureidini, 2019. Global Governance and Labour Migration in the GCC, in L. A. Pal, M. E. Tok (eds.), *Global Governance and Muslim Organizations*, International Political Economy Series, DOI: 10.1007/978-3-319-92561-5_14, pp.339-364

16 See data sources such as UN Department of Economic and Social Affairs (UN DESA), Population Division, *International Migrant Stock*, at <https://www.un.org/development/desa/pd/content/international-migrant-stock>; ILO, 2021. *ILO Global Estimates on International Migrant Workers*; ESCAP, 2020. *Asia Pacific Migration Report 2020*, at figure 9; noting that official data sources may use different combinations of countries to define the Asia-Pacific region or its sub-regions, may take different definitions of migrant and exclude migrants in irregular status

17 ILO, 2021. *ILO Global Estimates on International Migrant Workers*

18 The overall gender breakdown for this figure for Asia-Pacific is 9.2 million women: South East Asia and the Pacific (7.2 million migrant workers, of whom 7.9 per cent are women and 6.6 men), South Asia (4.2 million, of whom two per cent are women and 5.8 per cent are men), East Asia (2.8 million: 3.1 per cent women and 2.6 per cent men). Women account for fewer than 20 per cent of migrant workers in the Middle East States. All data from: ILO, 2021. *ILO Global Estimates on International Migrant Workers*

Indonesia, the Philippines and Sri Lanka – States that have promoted women’s labour migration as a remittance-generating strategy.¹⁹ Women migrants from and in the region also work in manufacturing, agriculture, and hospitality; some in South-East Asia also find work in the construction industry. Migration corridors to the GCC States are dominated by men who work there mainly in construction. The fishing sector in East and South-East Asia is also dominated by men migrant workers.²⁰ The TLMPs for migrant workers from the Pacific Islands Countries to the agriculture, horticulture, viticulture and other labour sectors in Australia and New Zealand are also heavily male dominated with men comprising 90 per cent or more of these programmes in New Zealand (2018/19) and 80 per cent or more in Australia (2019/20).²¹

19 For example, 70 per cent of migrants recorded leaving Indonesia in 2018 were women, as were 59.6 per cent of migrants leaving the Philippines in 2020, and a little under 40 per cent of migrants leaving Sri Lanka in 2020. See, respectively, Spotlight Initiative, 2020. *Making women migrant workers count: Sex disaggregation of labour migration statistics in ASEAN (2019 data)*, at https://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/documents/briefingnote/wcms_773226.pdf; Philippines Statistics Authority, 2022. *2020 Overseas Filipino Workers (Final Results)*. Reference Number: 2022-22, 7 March 2022, at <https://psa.gov.ph/statistics/survey/labor-and-employment/survey-overseas-filipinos>; Sri Lanka Bureau of Foreign Employment, n.d., *Outward Labour Migration in Sri Lanka*, at <http://www.slbfe.lk/file.php?FID=588>

20 See ILO, *Labour migration in Asia and the Pacific*; Rebecca Napier-Moore and Kate Sheill, 2016. *High rise, low pay: experiences of migrant women in the Thai construction sector*. International Labour Organization. – Bangkok: ILO; ILO, 2022. *Ship to Shore Rights South East Asia: Gender equality and women’s empowerment strategy*. ILO, Bangkok

21 Heather Nunns and Charlotte Bedford, 2020. *RSE Impact Study: Pacific stream report*, 12 May 2020, New Zealand Ministry of Business Innovation and Employment, at <https://www.immigration.govt.nz/documents/statistics/rse-impact-study-pacific-stream-report.pdf>; ILO, 2022. *Seasonal worker schemes in the Pacific through the lens of international human rights and labour standards*. Technical report



Photo credit: Sultan Mahmud Mukut/SOPA Images

2. Parameters of Temporary Labour Migration Programmes

“The short-term, temporary nature of employment and the likelihood of being in an irregular migration situation create high risks of exploitation.” Special Rapporteur on trafficking in persons, especially women and children²²

There is no internationally agreed definition of TLMPs, but they do have several identifiable elements.²³ Some States – usually countries of destination – use different terminology such as guest worker programmes, eschewing the migration framing;²⁴ or interns,²⁵ avoiding the migration and worker framings (see further discussion on discriminatory terminology in section 2.5). Circular migration is often used to describe the phenomenon of migrants making repeated cycles through the same programme interspersed with time back in countries of origin.²⁶ There is a high degree of overlap between the terms used to describe such programmes and they are used inconsistently across and within regions.²⁷

22 Special Rapporteur on trafficking, A/HRC/50/33, para.16

23 The ILO makes a similar point about the lack of a common definition of temporary labour migration in its recent report, noting that the phenomenon “manifests in different and complex ‘forms’, and the various schemes and programmes have also evolved over time”, highlighting also a “lack of clear conception of temporary migration, both from an academic and policy perspective”. ILO, 2022. *Temporary labour migration*, pp. VII and 6, respectively

24 For example, in GCC States, where such language derives from the Islamic Bedouin principle of hospitality towards foreigners. This originally included obligations and responsibilities of the employer towards the foreigner. It is the principle behind the kafala system: Jureidini, 2019

25 For example, the Technical Intern Training Program (TITP), a temporary labour programme for low-paid migrant workers in Japan

26 Wickramasekara, 2011; Report of the Special Rapporteur on the human rights of migrants: Labour exploitation of migrants, A/HRC/26/35, 3 April 2014

27 Castles and Ozkul, 2014

While acknowledging this definitional complexity, TLMPs can be understood as organised schemes of regular migration for contract labour that set conditions of entry, residence and access to rights. Some TLMPs impose age limits for eligibility to participate in the schemes or restrict access to specific sectors and occupations to designated nationalities and/or genders. TLMPs operate across countries of origin and destination, engaging State actors in both countries as well as a range of private actors that are involved throughout the process including in the initial recruitment of the migrant worker. TLMPs typically bind the worker to a specific employer, (see further discussion in the section on tied visas, in 2.2 below) who then exercises control over the migrant during their stay, including in many cases their access to services and remedies as well as migrants' ability to leave the country, for home visits and at the end of their contract.²⁸

Most notably the programmes, and therefore the migrations, are time-limited – with such durations ranging formally from a few months to several years of continuous employment – and set a mandatory return to the country of origin at the end of the contract.²⁹ Though in some contexts it may be extended or renewed on a limited basis, typically the visa or permit issued to the migrant worker on a TLMP is not renewable in the country of destination. In line with the significance of return embedded in TLMPs (see the discussion in 2.3), such exclusions also serve to deny migrants permanent residency and TLMPs mostly operate separately from pathways for permanent stay.³⁰ (See further in 2.1 below.)

The parameters described here apply across the spectrum of TLMPs in destination States but migrant workers in low-wage work usually live and work under more restrictions and with less access to justice and recourse to remedies than those in work that is accorded greater social value (and higher wages).³¹ This does not mean that migrant workers on higher wages are not affected by the temporariness of their situation but that they may be less limited by it in their everyday life.³²

The following sections describes in more detail some of the parameters of these programmes looking at relevant aspects of their governance, characteristics and regulation from a human rights perspective.

2.1 Temporariness

TLMPs formalise and enforce temporariness, enabling countries of destination to prioritise the economic benefits of labour migration without having to invest in integration. These programmes operate in practice to impede migrants' agency in deciding the length of stay and time of return, constricting their decision-making and plans about their wider lives, including family life, and limiting their ability to adapt their plans as their life circumstances evolve.³³ Further, although the migration is timebound, migrant workers are often filling permanent labour needs.³⁴

28 Sameena Hameed, 2021. India's Labour Agreements with the Gulf Cooperation Council Countries: An Assessment. *International Studies* DOI: 10.1177/00208817211055344

29 Return is also mandated in the regulations of these programmes if the migrant worker fails obligatory health tests and often, in practice, if they file complaints about their employer or working conditions

30 Special Rapporteur on migrants, A/HRC/26/35. For an overview of migration pathways in the Asia-Pacific region, see OHCHR, 2022, *Pathways to Migrant Protection: A Mapping of National Practice for Admission and Stay on Human Rights and Humanitarian Grounds in Asia and the Pacific*, at <https://bangkok.ohchr.org/pathways-to-migrant-protection/>

31 Catherine Dauvergne and Sarah Marsden, 2014. The ideology of temporary labour migration in the post-global era, *Citizenship Studies* 18(2), 224-242, DOI: 10.1080/13621025.2014.886441; Laura Merla and Sarah Smit, 2020. Enforced temporariness and skilled migrants' family plans: examining the friction between institutional, biographical and daily timescales, *Journal of Ethnic and Migration Studies*, DOI: 10.1080/1369183X.2020.1857228; Nicola Yeates and Nora Wintour, 2021. *Temporary labour migration: Two studies on workers' perspectives and actions*. ILO

32 Merla and Smit, 2020; Gennaro Errichiello and Line Nyhagen, 2021. "Dubai is a transit lounge": Migration, temporariness and belonging among Pakistani middle-class migrants. *Asian and Pacific Migration Journal* 30(2), 119-142. DOI: 10.1177/01171968211013309

33 Merla and Smit, 2020

34 Special Rapporteur on migrants, A/HRC/26/35

The temporariness of migrants' legal presence in the country determines their formal access to rights and services, and the ILO has highlighted that a common feature of TLMPs has been “*some form of restriction of migrants' rights, agency and bargaining power*”.³⁵ Invariably, these programmes impose a series of restrictions on human rights creating or worsening situations of vulnerability for migrant workers and preventing them from enjoying a wider civil, political, economic, social and cultural life. These exclusions often include the denial of civil rights such as the right to marry and to family life as well as limits on economic and social rights such as those around access to health services and adequate housing.

Temporariness, which is enforced both through dissuading migrants from developing enduring ties to the destination country in tandem with enforcing mandatory return to origin countries, also constitutes a major barrier to their being able to establish the necessary residency and other requirements for permanent residence. Migrant workers employed in low-wage sectors are often specifically denied access to permanent residence and other secure pathways including to naturalization and citizenship.³⁶

At the same time, migrant workers in these corridors may undertake several migrations on TLMPs in one or more destination State, interspersed with voluntary or compelled return stays in their origin countries. In this way, for some migrants, these temporary schemes may last a decade or more and for some, are effectively (working-) life-long, compelling them to live most of their lives in a situation of ‘permanent temporariness’. These complex realities are seldom acknowledged within TLMPs, where every time a migrant worker embarks on a new contract their migration is construed officially as a singular and temporary event, with little attention to the ties that migrants may have made to the destination country or lost in their country of origin.

Notwithstanding such ties, extended or repeated stay does not ameliorate the risks of the programmes' temporariness: longer but still temporary stays may increase situations of vulnerability as migrant workers have more invested in the country of destination including community ties and the employment relationship and therefore have more to lose.³⁷ The degree to which participation in TLMPs can be said to be beneficial for the migrant is undermined when there is no option to stay in regular status longer-term or access permanent residence. Denying this option also weakens the bargaining position of migrant workers in the terms of these programmes as it reduces their leverage.³⁸ Further, the denial of any permanent or secure longer-term form of membership of the destination State, even after decades of contributing their labour, contributes to migrants' dependency and therefore, their situation of vulnerability.

2.2 Tied permits

A major element of the regulation of TLMPs is that, under most schemes, prospective employers have to register to recruit migrant workers who are then tied to the employer for the duration of their stay. This is a form of sponsorship that effectively privatises migration governance and gives control over the migrant to their employer

35 ILO, 2022. *Temporary labour migration*, p.3

36 For example, Malaysia distinguishes 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), with the former generally unable to apply for permanent residence. Also see the gradation of work passes and permits available to migrant workers in Singapore: Kristel Anne Acedera and Brenda S. A. Yeoh, 2019. ‘Making time’: Long-distance marriages and the temporalities of the transnational family. *Current Sociology* 67(2), 250–272. DOI: 10.1177/0011392118792927

37 Alexander Reilly, 2011. The Ethics of Seasonal Labour Migration. *Griffith Law Review* 20(1), 128-152

38 Valeria Ottonelli and Tiziana Torresi, 2022. *Voluntariness, Mandatory Return and Democratic Legitimacy: A Response to Bauböck and Ruhs*. The Ethics of Migration Policy Dilemmas, 6 October 2022. Migration Policy Centre, at https://migrationpolicycentre.eu/docs/dilemmas/_5th_dilemma_1st_response_.pdf

and other intermediaries.³⁹ This requirement varies between countries and in particular with different wage levels, but in addition to administrative obligations on the sponsor (the employer), including costs to secure and manage the necessary documentation for the migrant workers, sponsorship requirements may comprise providing or covering costs of housing, meals, and transport; providing health benefits/insurance; and paying for travel including repatriation. Thus, at best, the inflexibility of TLMPs disadvantages migrant workers and gives disproportionate power to the employer.⁴⁰ At worst, temporariness becomes conditionality with migrant workers largely reliant on their employers for access to rights including their freedom of movement such as home visits or even in the context of return at the end of the contract, and for any chance of contracts being renewed or repeated. (See further on the role of employers in section 3.2)

This system of control generates situations of vulnerability for migrant workers due to their being in a country in which they lack citizenship attachment, their temporary legal status, as well as other barriers such as language and culture. In particular, the risk or threat of deportation and of being blacklisted by recruiters from future entry through TLMPs – with the associated loss of the financial investment made and debts incurred by the migrant – gives employers considerable power and forces migrant worker compliance with poor living and working conditions without complaint.⁴¹ This extreme power asymmetry, combined with the sanctioned divestment of many of the rights of migrant workers on these programmes, can too easily act as a licence for exploitation and other rights abuses. It can also drive precarious forms of migration: for example, the risk of exploitation when a migrant worker feels compelled to marry a national in order to stay in the destination country beyond their contract period.⁴² As a promising practice, some destination States in the region have established or are introducing ways to provide temporary migrants the flexibility to change employers.⁴³

2.3 Centrality of return

The rationale of TLMPs is centred on migrants returning – voluntarily or forcibly – to their countries of origin at the end of their contracts as a visible demonstration of the temporary nature of the migration.⁴⁴ Yet as various crises have demonstrated, this is not always fully under destination State control, nor indeed that of the migrant worker. For example, the closure of international borders in response to the COVID-19 pandemic enforced extended stays or early departures for many migrant workers. Despite the volume of returns generated through these programmes, as migrant workers cycle through several time-limited contracts, destination and origin States do not afford adequate consideration to ensuring migrants' rights during returns – in practice or in the agreements that govern TLMPs. This in turn jeopardises sustainable reintegration, particularly where the migrant has stayed for years or decades in the country of destination.⁴⁵ Further temporary migrations may then be necessary for migrant workers on low wages (which may be lower than expected due to deductions or unlawful underpayment) for them to recoup the initial investment in their migration.

39 Kristin Surak, 2018. Migration Industries and the State: Guestwork Programs in East Asia. *International Migration Review* 52(2), 487–523. DOI: 10.1111/imre.12308; Jureidini, 2019

40 Special Rapporteur on migrants, A/HRC/26/35; Special Rapporteur on trafficking, A/HRC/50/33

41 Ruhs, 2003; Reilly, 2011; Costa and Martin, 2018

42 Regional Thematic Working Group on International Migration including Human Trafficking, 2008. *Situation Report on International Migration in East and South-East Asia*. IOM, Regional Office for Southeast Asia: Bangkok

43 Committee on the Elimination of Racial Discrimination, Republic of Korea: The 20th, 21st and 22nd Periodic Reports on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, June 2022, CERD/C/KOR/20-22, para.65 and table 22; ILO, 2021. *Promoting internal labour market mobility in the Arab States*. Thematic Brief, November 2021; Hameed, 2021

44 Interim report of the Special Rapporteur on the right to food, A/73/164, 16 July 2018

45 On sustainable reintegration and rights-based returns more generally, see: United Nations Network on Migration, 2021. *Ensuring Safe and Dignified Return and Sustainable Reintegration*, Position Paper, March 2021, at <https://migrationnetwork.un.org/resources/position-paper-ensuring-safe-and-dignified-return-and-sustainable-reintegration>

2.4 Irregular migrations

TLMPs are intended to facilitate regular migrations, and many seek explicitly or implicitly also to reduce irregular migrations. However, the restrictions inherent in these schemes create situations where migrants are compelled or choose to enter into irregular status. Migrants' lack of control over the timing of their return from these programmes may drive some to move into irregular status in the country of destination rather than return at the end of their contract, for example if conditions in their country of origin have become unfavourable due to climate change and environmental degradation or political or economic turmoil.⁴⁶ Migrant workers on TLMPs who have entered into an irregular situation are often penalized prior to return, facing detention ahead of their deportation and may also face punishment on return where irregular emigration is penalized by their country of origin.

The administrative burden of these schemes may see some employers or recruiters fail to process the work permit and/or employment contract correctly, leaving migrant workers unknowingly in irregular status. With their residency tied to their employer, migrant workers who experience rights abuses at work may choose to leave the situation (if they are able) and move into irregular status, rather than report the mistreatment and risk being deported. Other forms of misconduct by the employer, such as visa trading and contract substitution, the former referring to the migrant worker's visa being unofficially "traded" or "sold" to another sponsor and the latter to the practice of unofficially changing the originally agreed terms of employment, may see the migrants on TLMPs become undocumented.⁴⁷

The limits on secondary visas for family members of migrant workers on these programmes may see some reunite in countries of destination through irregular channels. Where there are policies against migrant workers forming families with nationals, this too may see migrants in such relationships moving into irregular status.

In other situations, migrant workers may choose to remain beyond the permission to stay, in irregular status if they cannot secure another visa or permit, for example where their low income makes it difficult for migrant workers to pay off their debt and achieve savings targets. The time limited nature of the programmes may also have consequences for employers: they have an incentive to retain migrant workers who have performed well – also reducing their bureaucratic burden of repeated recruitments and trainings – and employers may encourage some migrants to stay even when they are not able to extend their documentation.⁴⁸

2.5 Embedding discriminations

The mandatory temporariness of TLMPs sends a strong message to citizens of the countries of destination that the migrant workers on these programmes are not full members of the society.⁴⁹ Such narratives fuel discrimination against these and other migrants (and others who are perceived to be a migrant) and perpetuates a negative view of migration.

Men are overrepresented on TLMPs in Asia and the Pacific in many cases because the access of women to these programmes is limited only to certain sectors (such as domestic work, care work and hospitality), restricted by

46 Ottonelli and Torresi, 2022

47 Hameed, 2021

48 Ruhs, 2003; Castles and Ozkul, 2014

49 Ottonelli and Torresi, 2022

the mandatory use of recruitment agencies, or denied completely through bans on their migration.⁵⁰ In this way, this gender bias becomes another way in which TLMPs drive irregular migrations and leaves many women migrant workers in irregular status and working predominantly in the informal sector. Even when women migrate on TLMPs they may be at risk of gender-based violence and discrimination. As domestic workers they are often excluded from legal protection, not recognized as workers and excluded from the protections of national labour laws. Consequently, these programmes can facilitate systemic discrimination against women.⁵¹

The historical legacy of TLMPs as rooted in racialised and unequal forms of mobility pervades their contemporary nature.⁵² As such it is unsurprising that discriminations are entrenched in other ways through these programmes, including along nationality, class and caste lines. Along corridors such as those from South Asia to the GCC or South Asia to South East Asia, race and class-based discriminations frame the experiences of low-wage migrant workers involved in TLMPs. For example, Nepali migrant workers in the GCC States often come from traditionally excluded castes.⁵³ Racial and ethnic stereotypes are applied to low-wage migrant workers and the structural conditions of TLMPs establish and reinforce societal associations between certain types of work and specific nationalities.⁵⁴ Low-wage migrant workers are also subject to class-based discrimination on the basis of their socioeconomic status.

Given their central role in facilitating TLMPs, recruiters and other intermediaries can also bear responsibility for these racialised and gendered employment patterns, for example where they favour particular nationalities as being more docile and compliant, contributing to wage hierarchies and other systemic discriminations.⁵⁵

50 ILO, 2015. *No easy exit – Migration bans affecting women from Nepal*. International Labour Office, Fundamental Principles and Rights at Work (FUNDAMENTALS); Labour Migration Branch (MIGRANT) – Geneva; Rebecca Napier-Moore, 2017. *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries*. International Labour Organization and UN Women. Bangkok: ILO and UN Women; Bilesha Weeraratne, 2021. *Ban on female migrant workers. Skills-differentiated evidence from Sri Lanka*, WIDER Working Paper 2021/44, UNU-WIDER, February 2021, at <https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2021-44-ban-on-female-migrant-workers-skills-differentiated-evidence-Sri-Lanka.pdf>; Maria Cecilia Hwang, 2021. Exit denied: women losing the right to leave in the Philippines, *Open Democracy*, 2 November 2021, at <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/exit-denied-women-losing-the-right-to-leave-in-the-philippines/>; Asia Pacific Forum on Women, Law and Development (APWLD), 2022. *It's a journey we travel together: Women migrants fighting for a just society*, at <https://apwld.org/its-a-journey-we-travel-together/>

51 UN Women, 2013. *Managing Labour Migration in ASEAN: Concerns for Women Migrant Workers*. UN Women, Asia-Pacific Regional Office

52 ILO Governing Body, 2022, GB.346/POL/1; see also, Omar Hesham AlShehabi, 2019. Policing labour in empire: the modern origins of the Kafala sponsorship system in the Gulf Arab States. *British Journal of Middle Eastern Studies* 48(2), 291-310. DOI: 10.1080/13530194.2019.158018

53 Dominick Shattuck, Sharada P. Wasti, Naramaya Limbu, Nokafu Sandra Chipanta and Christina Riley, 2019. Men on the move and the wives left behind: the impact of migration on family planning in Nepal, *Sexual and Reproductive Health Matters* 27(1), 248-261, DOI: 10.1080/26410397.2019.1647398; Anita Ghimire, Samjhana Bhujel and Riju Tiwari, 2019. *A Study on the Social Implications of Men's Migration on Women and Children in Sarlahi, Saptari and Dhanusha District*. Nepal Institute for Social and Environmental Research, April 2019

54 South Asian migrant workers in Qatar reported to the Special Rapporteur on Racism that their nationality often functions as a barrier to their advancement to higher paying jobs, even when they possess the necessary skills, in part because of stereotypes and implicit judgments by employers and others that fix Bangladeshis, Nepalis and Sri Lankans to low-income roles: Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Visit to Qatar. A/HRC/44/57/Add.1, 27 April 2020

55 Katharine Jones, 2021. Brokered discrimination for a fee: the incompatibility of domestic work placement agencies with rights based global governance of migration. *Global Public Policy and Governance* (1), 300-320. DOI: 10.1007/s43508-021-00017-8

Discriminatory terminology fuelling human rights abuses

Narratives around TLMPs are replete with terminology that is inaccurate or even dangerous for the migrant workers involved and for the wider public discourse on migration. These programmes are often described as a response to the supply of and demand for what is framed as low-skilled or unskilled workers.⁵⁶ This framing is informed by and perpetuates societal biases about what work and which workers matter, disregarding that most jobs undertaken in these sectors require the migrant worker to have or acquire considerable skills.⁵⁷

When such framing intersects with public narratives on migrants and migration, especially in the context of negative political and populist rhetoric around migration, this helps fuel discrimination, xenophobia, hate speech and even violence. The rhetoric of temporariness particularly when linked to policies that relegate low-wage migrant workers to the margins of societies positions such migrants as inferior and therefore not entitled to rights, justifying low wages and poor working and living conditions. The terminology of “sending” and “receiving” countries can also extend such a reductive reframing by casting people as commodities that can be moved between States, denying migrants’ agency and even humanity. Similarly, language of guest workers positions temporary migrant workers as ‘the other’, benefitting from the magnanimity of the destination State rather than as rights-holders with inherent and inalienable dignity and worth.

Such dehumanising language reflects multiple discriminations to which migrants on TLMPs are subject, including classism, racism and sexism.

2.6 Governance of Temporary Labour Migration Programmes

While such programmes can also be implemented on a unilateral or regional/multilateral basis, TLMPs from and within Asia and the Pacific are usually regulated through bilateral agreements negotiated between labour or immigration ministries or other relevant agencies of countries of origin and destination.⁵⁸ According to UN guidance, bilateral labour migration agreements (BLMAs) should be specific and to describe the responsibilities of each party and the actions they commit to take. These may take many forms including legally binding bilateral agreements as well as non-binding memorandums of understanding. Bilateral agreements should be legally binding and should also align with States’ existing human rights obligations.⁵⁹ However, most agreements in use in and from the Asia-Pacific region tend to be legally non-binding and vaguely worded and therefore difficult to enforce and monitor. In practice, they may explicitly deny, restrict or omit any reference to human rights or, where these

56 This is separate from classifying and aggregating occupational information from statistical censuses and surveys, on which see ILO, 2012. *International Standard Classification of Occupations 2008 (ISCO-08)*. International Labour Office, Geneva

57 Annie Lowrey, 2021. *Low-Skill Workers Aren't a Problem to Be Fixed*. The ATLANTIC, 23 April 2021; Natasha Iskander, 2022. *Does Skill Make Us Human? Migrant Workers in 21st-Century Qatar and Beyond*. Princeton UP Ideas Podcast, 30 March 2022

58 ILO, 2022. *Temporary labour migration*

59 UN Network on Migration, 2022. *Guidance on Bilateral Labour Migration Agreements*, February 2022. On the diversity of mechanisms regulating such migrations and guiding associated international cooperation, see Piyasiri Wickramasekara, 2015. *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*. Geneva: ILO

are referenced, the inclusion of human rights outside of labour rights is often cursory or non-existent; some provide little more than a quota agreement for migrant workers. Furthermore, these agreements are not always publicly available – a lack of transparency that makes it difficult to assess human rights compliance and creates a challenge to enforcement as well as to accountability.⁶⁰

In the Asia-Pacific region as well as along significant inter-regional corridors from Asia, TLMPs form the core of the current migration governance regime, with their objectives often going beyond the regulation of temporary employment of migrant workers to describe overarching goals of the contracting States in relation to enhancing existing friendly relations between the States and strengthening bilateral ties and relations and mutually beneficial cooperation. Some also include objectives relating to the prevention of irregular migration. Several destination countries in the region, including New Zealand and the Republic of Korea, frame their TLMPs in terms of contributing to the development of the migrant workers' countries of origin.⁶¹

With their focus on remittances, TLMPs are firmly situated within the wider context of economic development as well as the linked 'migration and development' agenda. State-led dialogues such as the Global Forum on Migration and Development,⁶² and Regional Consultative Processes such as the Abu Dhabi Dialogue⁶³ and the Regional Consultative Process on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process),⁶⁴ have long concentrated on the economic benefit of TLMPs to countries of origin and destination, with some attention to the welfare of migrant workers but with little focus on human rights.⁶⁵

60 Costa and Martin, 2018; Yeates and Wintour, 2021

61 Wickramasekara, 2015; Yoonyoung Cho, Anastasiya Denisova, Soonhwa Yi and Upasana Khadka. 2018. *Bilateral Arrangement of Temporary Labor Migration: Lessons from Korea's Employment Permit System*. World Bank, Washington, DC

62 For information see <http://www.gfmd.org>

63 For information see <http://abudhabidialogue.org.ae/>

64 For information, see <https://www.colomboprocess.org/>

65 The Abu Dhabi Dialogue highlighted in a recent statement a "broad consensus [in countries of destination] that migrant workers play a significant role in the economic development of receiving countries. The migration of temporary workers to the GCC also has a beneficial impact on the socioeconomic development of the countries of origin." Abu Dhabi Dialogue, 2022. *Submission to the International Migration Review Forum*, May 2022, at <https://migrationnetwork.un.org/system/files/docs/Abu%20Dhabi%20Dialogue%20-%20GCM%20Report%20FINAL.PDF>



3. International human rights law and temporary labour migration

In contrast to the centrality of temporariness in TLMPs, international law is designed to be enduring and provide long-term stability and legal certainty.⁶⁶ In that light, measures that curtail or restrict human rights cannot be justified under the cover of temporariness because the migrant remains a rights-holder throughout their migration; rights attach to the person not to a moment in time. That migrant workers are willing to tolerate poor standards on these programmes, or that countries of destination promise similar or better conditions than those in migrants' origin countries, does not in addition absolve States of their responsibility to ensure the human rights of all persons under their jurisdiction including in the design and practice of TLMPs.⁶⁷

The International Bill of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) requires non-discriminatory access for all migrants under the jurisdiction of the State to all civil, political, economic, social and cultural rights. It permits, but does not require, only limited exceptions or exceptional derogations.⁶⁸ International human rights law applies to all migrants, regardless of where they are, regardless of their nationality or migration status, their sector of work, and regardless of their length of stay in the country of destination.⁶⁹ All the international

66 Mónica Ambrus and Ramses A. Wessel, 2015. Between Pragmatism and Predictability: Temporariness in International Law. *Netherlands Yearbook of International Law* 2014, 45, DOI 10.1007/978-94-6265-060-2_1

67 Reilly, 2011

68 See note 5 in OHCHR and Global Migration Group, 2018. *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, p.3, at <https://www.ohchr.org/en/migration/migrants-vulnerable-situations>. See also International Covenant on Economic, Social and Cultural Rights, Article 2(3)

69 All international human rights instruments are relevant in the context of migration. In addition to those in the International Bill of Human Rights there are seven other core treaties: International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities

labour standards of the ILO apply to migrant workers, unless otherwise stated.⁷⁰

The fundamental prohibition of discrimination in international human rights law means that any differential treatment between nationals and non-nationals, or between non-nationals with different migration statuses or in different situations, such as those on TLMPs, must be lawful, proportionate and pursue a legitimate aim. Furthermore, the human rights framework places a focus on the most excluded, discriminated and marginalized groups in society, and in this way recognizes and seeks to address the particular precarity and situations of vulnerability of low-wage migrant workers on temporary labour programmes.

The primary purpose of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is to establish minimum standards that States parties should apply to migrant workers and members of their families, irrespective of their migration status.⁷¹ Similar to the other core international human rights instruments, the ICRMW does not support differentiating between migrant workers on the basis of the length of time they spend in the country of destination. Certain groups of migrant workers are, however, subject to specific restrictions under the provisions of the ICRMW – project-tied workers are not entitled to access social housing schemes for instance.⁷² Importantly, the ICRMW includes a savings clause meaning that implementation of these provisions cannot replace or undercut a State's existing obligations under the other core international human rights treaties that do not permit such restrictions.⁷³ The ILO guidance is also clear that any restrictions on the rights of temporary migrant workers should be compatible with relevant international standards.⁷⁴

Sub-regionally, the Association of Southeast Asian Nations (ASEAN)⁷⁵ Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) concerns the movement of migrant workers between ASEAN countries of origin and destination and calls for intensified efforts to protect the human rights of migrant workers. The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017) establishes a framework for cooperation on issues such as facilitation of family visits, equality before the law and reintegration support in origin countries. ASEAN has also issued Guidelines on Effective Return and Reintegration of Migrant Workers (2021).⁷⁶ The member States of the South Asian Association for Regional Cooperation (SAARC),⁷⁷ in the Kathmandu Declaration, adopted at the Eighteenth SAARC Summit held in Nepal in November 2014, agreed to *“collaborate and cooperate on safe, orderly and responsible management of labour migration from South Asia to ensure safety, security and wellbeing of their migrant workers in the destination countries outside the region”* (para.21).⁷⁸ The Arab Charter on Human Rights (2004) recognises the universality of rights (Article 1) and

70 ILO Multilateral Framework on Labour Migration, Principle 9

71 The Convention is little ratified by countries of destination; in Asia-Pacific, only Bangladesh, Indonesia, Philippines, Sri Lanka, Timor Leste are State parties; Cambodia is a signatory; none of the GCC States have taken action on the Convention: ratification information at <https://indicators.ohchr.org>

72 Article 61.1 with reference to Article 43.1(d)

73 Article 81; see also, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.7

74 ILO Multilateral Framework on Labour Migration, Guideline 9.7

75 The ten ASEAN Member States are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, see <https://asean.org>. In November 2022, ASEAN States agreed in principle to admit Timor-Leste to be the 11th member of ASEAN: ASEAN Leaders' Statement on the Application of Timor-Leste for ASEAN Membership, 11 November 2022, at <https://asean.org/wp-content/uploads/2022/11/05-ASEAN-Leaders-Statement-on-the-Application-of-Timor-Leste-for-ASEAN-Membership.pdf>

76 It should be noted that these frameworks are non-binding and subordinate to Member States' national laws. See ESCAP, 2020. *Asia Pacific Migration Report 2020*

77 SAARC has eight Member States: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, see <https://www.saarc-sec.org>

78 SAARC, 2014. Kathmandu Declaration, at http://mea.gov.in/Uploads/PublicationDocs/24375_EIGHTEENTH_SUMMIT_DECLARATION.pdf

includes a savings clause (Article 43), calling on States to extend to migrant workers on their territory “*requisite protection in accordance with the laws in force*” (Article 34.5).

At the international policy level, the Global Compact for Safe, Orderly and Regular Migration (GCM) is rooted in international law and standards as well as the 2030 Sustainable Development Agenda, explicitly noting *inter alia* through its Guiding Principle on human rights that it rests on the Universal Declaration of Human Rights and each of the core international human rights law instruments. The GCM positions TLMPs as a means of enhancing the availability and flexibility of pathways for regular migration while asserting that such pathways should be human rights-based and gender-responsive. It further calls on States to extend to workers on TLMPs equal labour rights and protections as all workers in the respective sector.⁷⁹

3.1 Responsibilities of duty-bearers : the role of the State(s)

States are the primary duty-bearers under international human rights law and are responsible for respecting, protecting and fulfilling the rights of all persons under their jurisdiction.⁸⁰ This includes a duty to protect against human rights abuses by non-State actors, including by private actors such as businesses, employers and labour recruiters.

The governance of TLMPs is the responsibility of both the country of origin and that of destination. Migrant workers effectively live transnationally in both countries during their time on these programmes. Their investment in joining the scheme predates actual travel and demands initial financial outlay and lengthy bureaucratic requirements including pre-departure trainings while they are still in their home country. Once in the country of destination, migrants’ emotional and social lives remain connected to the country of origin, as well as their economic lives through the sending of remittances.

Although migrant workers on TLMPs will mostly engage with private actors (see section 3.2 on regulating private actors below), governments remain the primary duty-bearers under international law and are required to establish and implement an appropriate regulatory environment for private sector activities and responsibilities to protect migrants’ rights.⁸¹ However, many origin States face multiple structural disadvantages and power asymmetries in their negotiations with destination countries including on the human rights basis of TLMPs. Competition among origin countries for access to destination country labour markets may also lead to a ‘race to the bottom’ in this regard, including through seeking to dissuade their citizens from raising concerns about TLMPs to avoid risking future opportunities. Countries of origin may also resist measures such as family reunification in destination States in order to ensure continued in-bound remittance flows. In countries of destination, migrant workers’ disenfranchisement from political participation and fear of retaliation for seeking justice; short-term perspectives on economic policy that view human rights as a constraint on national competitiveness;

⁷⁹ Objective 5, para.21(d) calls on States to: “Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply at all skills levels, including temporary, seasonal, circular, and fast-track programmes in areas of labour shortages, by providing flexible, convertible and non-discriminatory visa and permit options, such as for permanent and temporary work, multiple-entry study, business, visit, investment and entrepreneurship.” Also see Objective 6, para. 5 and the New York Declaration for Refugees and Migrants, A/RES/71/1, 19 September 2016, para.57

⁸⁰ Committee on Economic, Social and Cultural Rights, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017

⁸¹ OHCHR, 2011. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, HR/PUB/11/04 – see for example, commentary to Principle 3

over-burdensome administrative processes, and a lack of policy coherence between different government ministries, all create impediments to protecting human rights in the context of TLMPs.⁸²

While the reality of jurisdiction necessitates a focus on migrant workers' experiences in countries of destination,⁸³ it is important to recall that countries of origin play a critical role in protecting and promoting the rights of their citizens on TLMPs. In the first place, countries of origin have a duty to ensure adequate investment in realising rights in their societies and economies, to ensure that their citizens are not in vulnerable situations that might compel them to migrate and to do so from a disadvantaged position.⁸⁴ They are also responsible for providing adequate oversight of rights protections during the migration through monitoring and continued engagement with destination authorities via diplomatic channels and consular presence, as well as ensuring migrants' rights are realised on return.⁸⁵ The role of countries of origin in facilitating TLMPs encompasses the State as duty-bearer, responsible for, inter alia, ensuring that BLMPs incorporate human rights law and standards and are transparently agreed and publicly available. Countries of origin are also responsible for resourcing and providing human rights training for consular assistance as well providing accessible information to their citizens about their rights and avenues for remedy in countries of origin and destination.

3.2 Regulating private actors

Although TLMPs are formally government-run, employers and other private intermediaries including recruitment, brokerage and placement agencies usually exercise considerable influence and control over the governance of these schemes – which reach into every aspect of migrants' lives and rights within and outside the workplace – and in the context of the meaningful access of migrant workers to their human rights.⁸⁶ Companies have a responsibility to respect human rights that exists independently of States' duties and they need to become aware of, prevent and address adverse consequences of their actions for human rights.

States seek to delegate varying degrees of responsibility for the operation and oversight of the schemes to the employer in addition to requiring employers to enforce migration control measures.⁸⁷ In many TLMPs in and from the region, employers may further delegate their responsibilities to other private actors, from services for visas, the provision of transportation to and from the destination, accommodation or healthcare services and handling complaints. The economic and legal dependency of migrant workers on these private actors is especially true of kafala systems where there is “*no direct government control over migrant workers. Authority over workers*

82 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/71/385, 14 September 2016; Institute for Human Rights and Business, Submission to the United Nations Working Group on Business and Human Rights: Policy Coherence in Government Action to Protect Against Business-Related Human Rights Abuses, 17 June 2019

83 Committee on Economic, Social and Cultural Rights, E/C.12/2017/1

84 As provided in Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations, in E/1991/23, 1990; Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security (art. 9), E/C.12/GC/19, 4 February 2008

85 Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General comment No. 1 on migrant domestic workers, CMW/C/GC/1, 23 February 2011, paras.31 and 32; Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.10, 11, 23, 24; Mekong Migration Network, 2017. *Safe from the start: the roles of countries of origin in protecting migrants*. July 2017; OHCHR. *Human rights analysis of returns and reintegration of migrants in South Asia*, forthcoming 2023

86 Costa and Martin, 2018; Peter Norlander, 2021. Do guest worker programs give firms too much power? *IZA World of Labor*: 484, DOI:10.15185/izawol.484. In Asia there are only rare examples where private actors are excluded from TLMPs; the Employment Permit System (EPS) set up by the Republic of Korea in 2003 for instance is an exclusively Government-to-Government agreement: OECD, 2019. *Recruiting Immigrant Workers: Korea 2019*. OECD Publishing, Paris, DOI: 10.1787/9789264307872-en

87 Scott Leeb, Nancy Morowitz and Sandrine Krasnopolski, 2021. *Temporary Labour Migration: The Business Community Experience*. ILO

*is delegated to private citizens and residents, making them accountable for the workers”.*⁸⁸

This effective privatisation of labour migration governance often extends to all aspects of a migrant’s involvement in the TLMP. In the context of often inadequate regulation and oversight,⁸⁹ private actors seeking to maximize their profits may be reticent to invest in measures to realise the rights of migrant workers, including or even especially where they pertain to migrants’ lives outside the workplace. Migrant workers are caught in a web of competing interests in which they wield little power: between private corporate actors that administer the programmes and work permits, their own governments and those in the countries of destination. In this context,

88 Jureidini, 2019, p.346

89 Special Rapporteur on trafficking, A/HRC/50/33

90 OHCHR, 2011. *Guiding Principles on Business and Human Rights*, see principles 11 to 24

PART 2



Human rights consequences of Temporary Labour Migration Programmes

a critical lack of accountability creates protection gaps and fuels human rights abuses.⁹⁰

This section explores some of the implications of the governance of TLMPs on the ability of migrant workers and their families to access and enjoy their human rights, focused on migrants' lives outside the workplace. In many ways, violations of migrants' human rights are directly affected by the consequences of the lack of decent work on TLMPs, including the prevalence of working conditions that lead to violations of the right to life and the lack of fair wages which impede an adequate standard of living for migrants and their families. Violations of economic rights are particularly relevant in the context of the low-wage livelihoods to which many migrants on TLMPs are relegated. Across the region and along corridors, migrant workers are compelled to cope with inadequate wages (exacerbated by underpayment or unlawful deductions) and therefore unable to meet their needs. Migrations from lower- to higher-income countries, together with inflationary trends in many countries, exacerbate the risks to the economic rights of low-wage migrant workers on TLMPs, as their wages are already lower than average and are likely to be even lower in real terms, given upward price trends.

Without being an exhaustive examination of all relevant human rights, the analysis below should be considered the start of further reflection and consideration of these critical issues within and beyond the Asia-Pacific region.



Photo credit: Vichan Poti/Pacific Press/Sipa USA

4. The right to an adequate standard of living

An adequate standard of living is central to migrant workers' lived experience of TLMPs outside of the workplace. The right to an adequate standard of living is a composite right. Its components, including adequate housing, water and sanitation, and food, are interrelated and also linked to the right to life and the right to the highest attainable standard of health, as well as the dignity inherent in every human being.⁹¹

4.1 The right to adequate housing

Migrant workers on TLMPs may be responsible for the costs of accommodation and/or utilities, food, and other living expenses or they may have these expenses, in particular housing, provided or subsidised by their employer.⁹² Achieving an adequate standard of living on these schemes can be a struggle for low-wage migrant workers in higher-income countries, especially where they are likely to be prioritising remittances. Inadequate housing constitutes a rights violation and also jeopardises other rights including migrants' right to physical and mental health, to privacy, and to family life.

Whether obliged to live in overcrowded dormitory-style housing, prevented from renting accommodation in

91 International Covenant on Economic, Social and Cultural Rights, Article 11; Convention on the Rights of the Child, Article 27; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 43.1(d), 43.3, with respect to housing, see also Articles 61, 62, discussed above, on permitted restrictions for temporary migrant workers; Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, contained in document E/1992/23, 13 December 1991; Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food, contained in document E/C.12/1999/5, 12 May 1999; Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water, contained in document E/C.12/2002/11, 20 January 2003; Committee on Economic, Social and Cultural Rights, E/C.12/2017/1

92 ILO standards recognise that it is "generally not desirable" that the employer provides worker housing directly in most cases but that it may be necessary in some situations such as in remote areas (such as agriculture/plantation sectors) or where the worker is required to be available at short notice. See, Workers' Housing Recommendation, 1961 (No. 115), General Principles, para.12.2

certain neighbourhoods or able only to afford to rent low quality housing, many migrant workers on TLMPs are subject to de facto segregation and being compelled by law or circumstance to reside physically distant from the majority population.⁹³ This facilitates a greater degree of employer control and denies migrant workers the opportunity to be part of the wider community of the destination State or even connect with other migrant workers, which has consequences for social integration as well as for migrants' ability to access information about and organise for their rights. This segregation places them at risk of stigmatisation and social exclusion which in turn can fuel xenophobia and racism against low-wage migrant workers. National and municipal laws in Doha, Qatar, for example designate certain residential zones as 'family zones' and prohibit the rental of properties in these zones to low-wage migrants on TLMPs who are obliged to migrate without their families. This designation essentially relegates many South Asian and Sub-Saharan African migrants to the outskirts or industrial areas of the city.⁹⁴ While some of the newer dormitories for low-wage migrant workers in Singapore include recreational facilities (TV rooms, internet, sports facilities, cinema) and services (such as grocery stores, laundry facilities and health centres), a consequence of this can be to extend migrant worker segregation to their leisure time, especially where dormitories forbid visits from family members or friends, and effectively keep migrants out of public space and denying them interaction with wider society.⁹⁵

The COVID-19 pandemic drew widespread attention to the low standard of much of the housing provided or available to migrants on TLMPs in the region. The little private space and other poor conditions were a major risk factor for transmission of the virus, constituting a danger to them and to public health.⁹⁶ In the Maldives when migrant workers were not paid wages for months during the COVID-19 lockdown, some reported being unable to buy soap to maintain adequate hygiene in overcrowded housing.⁹⁷ Many temporary migrant workers in Australia were excluded from pandemic support packages and over 40 per cent of respondents in one survey shared that they feared they would be made homeless as a consequence.⁹⁸ And although its initial pandemic response measures were widely praised, Singapore's approach to its low-wage migrant workers greatly exacerbated their risk of infection and saw dormitory-housed workers account for the vast majority of its COVID-19 cases – more than 90 per cent of all cases by August 2020.⁹⁹

4.2 The right to food

The human right to adequate food is essential for the enjoyment of all rights. It also serves a powerful cultural role in maintaining ties with home as well as building social cohesion among migrant workers. The right includes as a core requirement ensuring the availability of and access to sufficient nutritionally-adequate food that is culturally acceptable and of good quality – for example across the diverse cultures of migrant workers.¹⁰⁰ Hunger and malnutrition can be a feature of TLMPs, through substandard conditions and restrictions, such as employer

93 ILO, 2022. *Home truths: Access to adequate housing for migrant workers in the ASEAN region*, at https://www.ilo.org/asia/publications/WCMS_838972/lang-en/index.htm

94 Special Rapporteur on racism, A/HRC/44/57/Add.1, paras.49-50

95 Simon Alexander Peth, Harald Sterly and Patrick Sakdapolrak, 2018. Between the village and the global city: the production and decay of translocal spaces of Thai migrant workers in Singapore. *Mobilities* 13(4), 455-472, DOI: 10.1080/17450101.2018.1449785

96 ILO, 2022. *Home truths*

97 Human Rights Watch, 2020. Maldives: Covid-19 Exposes Abuse of Migrants, 25 August 2020, at <https://www.hrw.org/news/2020/08/25/maldives-covid-19-exposes-abuse-migrants>

98 Laurie Berg and Bassina Farbenblum, 2020. *As if we weren't humans: The abandonment of temporary migrants in Australia during COVID-19*. Migrant Worker Justice Initiative (MWJI)

99 Kirsten Han, 2020. The Cost of 'Singapore Inc.'? A Coronavirus Outbreak Among Migrants. *The Nation*, 17 August 2020, at <https://www.thenation.com/article/world/singapore-coronavirus-migrant-workers/>; Singapore have since amended their dormitory standards, see ILO, 2022. *Home truths*, and will also expand the coverage of the Foreign Employee Dormitories Act (FEDA) to include migrant worker dormitories with seven or more beds by April 2023: Ministry of Manpower, 2022. Expanded Foreign Employee Dormitories Act To License 1,600 Dormitories Under Single Regulatory Framework, 6 September 2022, at <https://www.mom.gov.sg/newsroom/press-releases/2022/0906-expanded-fed-a>. Information provided by the Permanent Mission of Singapore, Geneva, Switzerland

or housing-provider rules that do not permit migrants to cook their own food, expense of quality food in destination countries, or other restrictions on access to adequate and culturally appropriate food and sufficient safe water for personal and domestic uses.¹⁰¹ Where migrant workers face restricted freedom of movement or work in remote locations, such as many agricultural or plantation workers, they may face particular challenges ensuring food security. South Asian migrant workers in the United Arab Emirates have reported that meals provided by their employers are very basic, such as two meals a day of plain white rice and lentil soup, and that it is often stale.¹⁰² Along other corridors and where meals are catered, migrant workers may not be permitted to bring in or to cook their own food and can be charged high costs for low quality food. Domestic workers on TLMPs have reported having to subsist on leftovers or nutritionally inadequate food – for example, a Filipina domestic worker in Hong Kong, SAR (China) described eating only noodles three times a day and developed anaemia as a consequence: “*It was the only thing my employer handed out and the only thing that I could buy with how little my food allowance was.*”¹⁰³

Pacific Island migrant workers’ right to food in New Zealand

New Zealand’s Recognised Seasonal Employer (RSE) scheme permits employers to recruit workers from eligible Pacific countries.¹⁰⁴ The scheme saw steadily increasing take up until the pandemic and set increased caps of 19,000 for 2022/23.¹⁰⁵ Although information on healthy eating and nutrition is provided both pre-departure and on arrival,¹⁰⁶ research has documented Pacific Island migrant workers on the RSE scheme relying on low nutritional value, high sugar content foods for energy, which carry potentially serious longer-term health consequences including diabetes, high blood pressure and cardiovascular risk. Costs and cultural differences contribute to their poor nutrition while in New Zealand. They are not familiar with local vegetables, which are expensive, and unable locally to source their preferred options (such as taro). The work itself may also present a barrier to adequate nutrition where workers on piece rates do not stop for a lunch break and the physicality of the work means that workers may look to make only a quick meal requiring minimal effort at the end of the day.¹⁰⁷ In some sites, migrants were not allowed to cook their own food and were required to purchase expensive meals from the employer.¹⁰⁸

100 See further on the criteria of adequate food in: Committee on Economic, Social and Cultural Rights, in E/C.12/1999/5, in particular paras.7-13

101 Yeates and Wintour, 2021

102 Raihan Jamil and Rati Kumar, 2021. Culture, Structure, and Health: Narratives of Low-income Bangladeshi Migrant Workers from the United Arab Emirates, *Health Communication*, 36(11), 1297-1308. DOI: 10.1080/10410236.2020.1750773. Under Council of Ministers Resolution No. 13 of 2009 food services are provided for migrant workers in designated accommodations. Information provided by the Permanent Mission of the United Arab Emirates to the United Nations, Geneva, Switzerland

103 Carlos M. Piosos III, Ron Bridget T. Vilog, and Jan Michael Alexandre C. Bernadas, 2022. Interpersonal Ties and Health Care: Examining the Social Networks of Filipino Migrant Domestic Workers in Hong Kong. *Journal of Population and Social Studies* 30, 86-102. DOI: 10.25133/JPSv302022.006

104 The Recognised Seasonal Employer (RSE) scheme enables horticulture or viticulture employers who cannot find sufficient New Zealand workers to plant, maintain, harvest and pack crops to hire migrant workers from eligible Pacific nations, currently Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu – see New Zealand Immigration, Recognised Seasonal Employer (RSE) scheme research, at <https://www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme>

105 Ministry of Business, Innovation and Employment, Recognised Seasonal Employer (RSE) scheme arrivals, at <https://www.immigration.govt.nz/documents/statistics/statistics-rse-arrivals.pdf>

106 The RSE Worker Training Programme offers skills training courses, including on cooking and hospitality. Information provided by the Permanent Mission of New Zealand to the United Nations, Geneva, Switzerland.

107 Heather Nunns, Charlotte Bedford, and Richard Bedford, 2019. *RSE Impact Study: New Zealand stream report*, 10 July 2019, New Zealand Ministry of Business Innovation and Employment; Rochelle Bailey, 2020. *Health Care Management in Australia’s and New Zealand’s Seasonal Worker Schemes*. Working Paper 2020/2, Department of Pacific Affairs, Australian National University; Rochelle Bailey, 2013. *Ni-Vanuatu in the Recognised Seasonal Employer Scheme: Impacts at Home and Away*. SSGM Discussion Paper 2013/4 State, Society and Governance in Melanesia School of International, Political & Strategic Studies, Australian National University New Zealand Human Rights Commission 2022. The RSE Scheme in Aotearoa New Zealand: A Human Rights Review. Wellington, Human Rights Commission, p 14, at https://www.hrc.co.nz/files/6116/7078/5593/The_RSE_Scheme_in_Aotearoa_New_Zealand_A_Human_Rights_Review_HRC_website.pdf

108 New Zealand Human Rights Commission 2022. The RSE Scheme in Aotearoa New Zealand: A Human Rights Review. Wellington, Human Rights Commission, p 14, at https://www.hrc.co.nz/files/6116/7078/5593/The_RSE_Scheme_in_Aotearoa_New_Zealand_A_Human_Rights_Review_HRC_website.pdf



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5. The right to the highest attainable standard of health

The right to health¹⁰⁹ is vital for the realisation of other rights and imposes immediate obligations on States. International human rights law provides that all persons, irrespective of their nationality, residency or migration status – or duration of visa or work permit – are entitled to preventive, curative and palliative health services and prohibits any discrimination in access to health care services and the underlying determinants of health.¹¹⁰

However, even with the proof of regular migration status that comes with TLMPs, many temporary migrant workers do not have full access to quality health care services on a par with nationals during their stay.¹¹¹ Migrant workers' health needs are also largely omitted from national health policy frameworks of destination countries. Barriers may be regulatory, financial or practical, such as long working hours with little time off, distance from services, and lack of information about what health services are available and accessible to them. Concern about the cost of services, where migrant workers feel pressure to save or remit as much of their earnings as possible, similar to pressures felt in relation to accessing housing or food, may be another reason for not seeking health care.¹¹² Bangladeshi migrant workers in Malaysia have reported having to pay high costs in order to access medical care as well as concerns about the standard of care that is provided through employer-provided clinics.¹¹³

109 International Covenant on Economic, Social and Cultural Rights, Article 12; International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e)(iv); Convention on the Elimination of All Forms of Discrimination against Women, Articles 11.1(f), 12 ; Convention on the Rights of the Child, Article 24

110 Committee on Economic, Social and Cultural Rights, General Comment No. 14, in E/C.12/2000/4, 11 August 2000, inter alia paras.12(b), 18-19, 21, 30, 34, 43(a); Committee on Economic, Social and Cultural Rights, E/C.12/GC/19, para.37; Committee on Economic, Social and Cultural Rights, E/C.12/2017/1, paras. 6, 12

111 Global Compact for Migration, paras. 22(i), 31(e)

112 Md. Mohsin Reza, Thirunaukarasu Subramaniam, and M. Rezaul Islam, 2019. Economic and Social Well Being of Asian Labour Migrants: A Literature Review. *Social Indicators Research: An International and Interdisciplinary Journal for Quality-of-Life Measurement* 141(3), 1245-1264. DOI: 10.1007/s11205-018-1876-5

113 Md Sayed Uddin, Muhammad Mehedi Masud, Qazi Muhammad Adnan Hye, 2020. Barriers to Health-Care Access: A Case Study of Bangladeshi Temporary Migrant Workers in Kuala Lumpur, Malaysia, *Humanities and Social Sciences Letters* 8(2), 215–223. DOI: 10.18488/journal.73.2020.82.215.223

Bilateral agreements governing TLMPs may only cover occupational safety and health services rather than the expansive socio-economic factors and underlying determinants of health that make up the right to health.¹¹⁴

The pandemic has underlined the need for TLMPs to cover health surveillance in relation to disease prevention.¹¹⁵ A person- rather than worker-centric approach would address the full range of the right to the highest attainable standard of physical and mental health, including sexual and reproductive health. The temporariness of migrant workers' stay in the country of destination cannot be a reason to ignore their health needs: anything that prevents them obtaining timely health care, such as delays in diagnosis and treatment, may have serious consequences. Such delays may also store up costs for the health systems of migrants' home countries and undermine the value of these schemes to the origin States.

Access to TLMPs is often contingent on passing a series of medical tests pre-departure, on arrival and during their time on these schemes. Some of this mandatory testing is discriminatory (such as for HIV or pregnancy),¹¹⁶ and migrants who do not pass these tests are denied visas or in some of the major destination countries along these corridors.¹¹⁷ Inadequate living conditions and unsafe or exploitative conditions of work can have direct and indirect impacts on the health of migrants. These are violations that regularly result in the injury or death of migrant workers, especially those engaged in low-wage work: violations of the right to life that authorities often attribute to "natural causes".¹¹⁸ At the same time, perceptions of health risks in migrants' countries of origin and stereotypes about their health behaviour can have negative consequences. The public health authorities in the GCC, for instance, framed low-wage migrant workers as high-risk and instituted targeted disease-screening measures long before the pandemic. This has created a stigma about ill-health among low-wage migrant workers exacerbating xenophobia towards migrants and creating another barrier to realising their right to health as they are unwilling to disclose to their employers when they feel unwell, fearing for their jobs.¹¹⁹

Studies have shown that precarious employment conditions are often linked to mental health problems such as psychological distress, depression and anxiety,¹²⁰ issues which are often compounded for migrants on TLMPs by the consequences of issues such as prolonged family separation, socio-cultural isolation and financial stresses.

114 Noting additionally that the WHO defines health as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity": World Health Organization, 1946. Preamble to the Constitution of the World Health Organization as Adopted by the International Health Conference in New York. Geneva, Switzerland: WHO

115 UN Network on Migration, 2022

116 See, inter alia, Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), in A/54/38/Rev.1, chap. I, 1999, para. 22; Committee on the Elimination of Discrimination against Women, CEDAW/C/2009/WP.1/R, paras.17-18; ILO Maternity Protection Convention, 2000 (No. 183), Article 9; ILO HIV and AIDS Recommendation, 2010 (No. 200), paras.24-29; New York Declaration for Refugees and Migrants, para.30

117 See for example UNAIDS, HIV-related travel restrictions, at <https://travelrestrictions.unaids.org>

118 Amnesty International, 2021. "In the prime of their lives": Qatar's failure to investigate, remedy and prevent migrant workers' deaths. 26 August 2021, Index Number: MDE 22/4614/2021, at <https://www.amnesty.org/en/documents/mde22/4614/2021/en/>; Vital Signs Project, 2022. *The Deaths of Migrants in the Gulf: Report 1*. FairSquare Projects, March 2022, at https://fairsq.org/wp-content/uploads/2022/06/Vital_signs-report-1.pdf

119 Md Mizanur Rahman. 2021. *COVID-19 and Migrants in the GCC states: Challenges, responses and key lessons*. Gulf Studies Center Working Paper No. 1. Doha: Qatar University Gulf Studies Center

120 Ozlem Koseoglu Ornek, Tobias Weinmann, Julia Waibel and Katja Radon, 2020. Precarious employment and migrant workers' mental health: a protocol for a systematic review of observational studies. *Systematic Reviews* 9, 50. DOI: 10.1186/s13643-020-01313-w

Health insurance challenges for migrant workers

Most countries of destination do not permit migrant workers on TLMPs access to public health services during their stay, requiring employers to ensure that workers have private health insurance. Where insurance is provided by the employer, this may only meet the minimum government requirements rendering the protection ineffective for migrants, and a lack of clarity and transparency about the coverage leaves migrant workers uncertain about how to use it or what charges they will incur. Where migrant workers have to pay for health insurance this can cost more than a months' pay, a significant additional financial burden for low-wage workers that undercuts the value they can gain from their migration.¹²¹

- Pacific Island migrant workers on TLMP schemes in Australia and New Zealand generally need to have private medical insurance as they are excluded from accessing public health care on a free or subsidised basis. New Zealand employers are responsible for securing health insurance for RSE workers.¹²² The private health insurance in both destination countries is very complicated and it is often difficult for migrant workers to identify a suitable and affordable policy and claim back costs if they need health care services. The complexities of the system deter some migrants from seeking health care. There are also some specific exceptions, for example Pacific Island migrant workers on TLMP schemes in Australia are also excluded from the public pharmaceutical benefits scheme, making contraception less affordable unless their health insurance also covers prescription medicines. However, the temporariness of these migrations has meant that waiting period clauses in health insurance policies bar migrant workers from accessing sexual and reproductive health care services.¹²³
- At present, migrant workers on TLMPs in GCC countries are only able to access affordable non-emergency care in public or private hospitals and clinics if they have either private health insurance or government issued health cards.¹²⁴ All GCC States have, or are in the process of implementing, mandatory private health insurance legislation for migrant workers thereby phasing out the government cards as part of a wider privatisation shift of the Gulf economies. Citizens will, however, continue to be able to access health care services funded by the State either through free care in government hospitals or via government-funded insurance. Migrant workers are only able to access healthcare if their employers or sponsors comply with their legal obligations to provide them with the identification they need or if they pay the insurance premiums themselves. The scope of the insurance coverage is also in the hands of the employer, determining the level of care available to migrant workers and the number of clinics they can access. Where employers do not meet their responsibilities – and if the government does not ensure compliance – migrant workers are responsible for all health care costs, which would be prohibitive for low-wage migrants. Even where their employers have ensured access, low-wage migrant workers such as those on most TLMPs still experience non-financial barriers to accessing health care services (such as arranging transport to clinics and cultural and language barriers).¹²⁵

121 Rati Kumar and Raihan Jamil, 2020. Labour, health, and marginalization: a culture-centered analysis of the challenges of male Bangladeshi migrant workers in the Middle East. *Qualitative Health Research*, 30(11), 1723-1736, DOI: 10.1177/1049732320922180

122 The scheme also requires them to provide pastoral care, which includes ensuring workers can access timely medical care through their insurance and are provided with information on health and well-being – including medical support: Information provided by the Permanent Mission of New Zealand to the United Nations, Geneva, Switzerland and the Permanent Mission of Australia to the United Nations, Geneva, Switzerland.

123 OHCHR. *The human rights experiences of Pacific migrant workers: Voicing a need for more reliable human rights protections*, forthcoming 2023

124 All migrant workers in these countries have access to free emergency care, regardless of nationality, migration status or health insurance coverage

125 ILO, 2021. Extending social protection to migrant workers in the Arab States region. Thematic Brief. Africa – Arab States Interregional Tripartite Meeting on Labour Migration, November 2021, at https://www.ilo.org/wcmsp5/groups/public/-africa/-ro-abidjan/documents/publication/wcms_831912.pdf; Vital Signs, 2022. The Cost of Living: Migrant Workers' Access to Health in the Gulf. Report 2: November 2022, at https://fairsq.org/wp-content/uploads/2022/11/Vital_signs_2_A2Health.pdf



Photo credit: Soe Zeya Tun/REUTERS

6. The right to social security

International human rights law provides everyone the right to social security, recognising that it is essential to ensure to everyone a minimum standard of dignity.¹²⁶ Migrant workers should enjoy the same treatment granted to nationals.¹²⁷ They should be able to access non-contributory schemes, such as those for affordable access to health care and family support, as well as for illness, injury or disability, and to benefit from any social security scheme to which they have contributed, including retrieving their contributions when they leave the country. Lack of access to social security benefits increases migrant worker dependence on their employers and creates or worsens their situation of vulnerability.¹²⁸ Given the important role in poverty reduction and alleviation played by the redistributive character of social security, denying or restricting access to migrant workers also undermines the value of TLMPs to migrants and to countries of origin.¹²⁹ Extending all social security rights is also central to ensuring protective labour law and guaranteeing decent work for all.¹³⁰ The Committee on Economic, Social and Cultural Rights have noted that temporariness constitutes a barrier to migrants' integration in social security

¹²⁶ See, inter alia, International Covenant on Economic, Social and Cultural Rights, Article 9; Committee on Economic, Social and Cultural Rights, E/C.12/GC/19; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 27; ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Articles 9.1, 10; ILO Social Security (Minimum Standards) Convention, 1952 (No. 102); ILO Social Protection Floors Recommendation, 2012 (No. 202); Global Compact for Migration, objective 22; and at one subregional level, ASEAN Human Rights Declaration, 2013, para.30; ASEAN Declaration on Strengthening Social Protection and its Regional Framework and Action Plan

¹²⁷ Committee on Migrant Workers, CMW/C/GC/1, para.38; Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para.47

¹²⁸ Committee on Economic, Social and Cultural Rights, E/C.12/2017/1, para.15; Committee on Migrant Workers, CMW/C/GC/1, para.24

¹²⁹ OHCHR, 2014. *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation*. HR/PUB/14/1

¹³⁰ Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/26/39, 1 April 2014, paras.56, 121

schemes and called for States to remove obstacles to access, paying particular attention to the most disadvantaged, including migrant workers.¹³¹ The Committee on Migrant Workers has expressed concern about the lack of information on how bilateral agreements on TLMPs guarantee social protection.¹³²

In reality, migrants on TLMPs (and their families) are usually not entitled to social security provisions in the country of destination, beyond basic health care, or lose out when employers avoid paying their contributions. Migrant workers on these programmes are expected to have minimal engagement with social services in the country of employment and then return to their countries of origin. This is by design of these programmes: most bilateral agreements limit coverage or do not include provisions on social security.¹³³ There may also be situations where migrant workers are on TLMPs in sectors of the labour market that are not covered by social security, for example domestic work.¹³⁴ Temporary migrants who have become undocumented, or who have family members in irregular status, may be unable to access social security schemes and fear doing so in the absence of a firewall between social services and law enforcement.¹³⁵

The focus on return in TLMPs may deny migrants adequate time to claim, finalise and access any social security benefit payments at the end of contract or other termination.¹³⁶ To ensure systematic access to accrued benefits, realising portability of social protection is crucial for temporary migrants. This requires cooperation between the social security institutions of origin and destination countries, best achieved as part of rights-based agreements governing TLMPs or ensuring that these have clear links with the relevant bilateral, regional or multilateral social security agreements.¹³⁷

131 Committee on Economic, Social and Cultural Rights, E/C.12/GC/19, para.34; Committee on Economic, Social and Cultural Rights, E/C.12/2017/1, para.15; Committee on Economic, Social and Cultural Rights, Social protection floors: an essential element of the right to social security and of the sustainable development goals. E/C.12/2015/1, 15 April 2015, para.8

132 See for example, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Bangladesh, CMW/C/BGD/CO/1, 22 May 2017, para.37; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Indonesia, CMW/C/IDN/CO/1, 19 October 2017, para.38

133 UN Network on Migration, 2022; Wickramasekara, 2015; ILO, 2021. *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners*. Geneva: ILO; Report of the Special rapporteur on human rights of migrants: Mission to Japan. A/HRC/17/33/Add.3, 21 March 2011, para.70

134 OHCHR, 2014; Committee on Migrant Workers, CMW/C/GC/1, para.24

135 Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/50/38, 19 April 2022, para.25; OHCHR, 2014

136 Nilim Baruah, Jonathan Chaloff, Jean-Christophe Dumont, and Rachael Kawasaki, *The Future of Labor Migration in Asia: Post-COVID-19 Pandemic*, in ADPI, OECD and ILO, 2021, pp.38-59; Marius Olivier, 2018. *Social protection for migrant workers in ASEAN: Developments, challenges, and prospects*. International Labour Organization

137 Global Compact for Migration, para.38 (Objective 22)



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7. The right to family life and the right to found a family

TLMPs disrupt migrant workers' personal lives in that they usually mandate family separation, or at least do not facilitate family unity. This is based on and reinforces migrant workers' temporary status. Minimising migrant workers' social ties or responsibilities during their stay underlines the centrality of return in TLMPs whereby family ties in the country of origin pull migrants back at the end of their contract. It is one of the major ways in which these programmes deny the full humanity of migrant workers.¹³⁸ The importance of these family ties is also cited to deny women migrants' agency and right to make their own decisions about their family life where countries of origin in Asia have gendered and age-related bans on migration, often citing family who would remain behind (see section 2.5, Embedding discriminations).

International human rights law is clear that everyone has the right to family life,¹³⁹ understanding that various forms of family exist.¹⁴⁰ Crucially, the opportunity, for everyone, to live and raise a family together is implied by the right to found a family.¹⁴¹ Parents should be enabled to fulfil their duties with regard to child development,

¹³⁸ Reilly, 2011

¹³⁹ Inter alia, International Covenant on Civil and Political Rights, Articles 17 and 23; migrant workers' right to family unity is also engaged through the human rights obligation to act in the best interests of the child: Convention on the Rights of the Child, Articles 9, 10, 16; Joint general comment of the Committee on Migrant Workers and the Committee on the Rights of the Child, CMW/C/GC/4-CRC/C/GC/23, para.27

¹⁴⁰ The diversity in forms of family has long been recognised by the international human rights mechanisms and affirmed by States, inter alia, Committee on the Elimination of Discrimination against Women, 1994. General recommendation No. 21: Equality in marriage and family relations, para.13; Beijing Platform for Action, 1995, para.29

¹⁴¹ The Human Rights Committee has argued that "the right to found a family implies, in principle, the possibility to procreate and live together. ...the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons." Human Rights Committee, 1990, General Comment 19: Protection of the family, the right to marriage and equality of the spouses, para.5

and children must be able to be with and raised by their parents. Rights related to family life require States to take positive measures to maintain the family unit, including through enabling family reunification in the destination country.¹⁴² This includes allowing migrant workers on temporary visas to sponsor family members.¹⁴³

Especially where migrants spend years on these schemes, this temporal overlay of migrant workers' working life and the years when most people found and raise a family affects significant decisions about life choices and plans, delaying some migrants' decisions to start a family but also driving irregularity.¹⁴⁴ The gendered migration in some corridors can deny migrant workers opportunities to form heterosexual relationships, for instance in the case of men migrant workers who live and work in sex-segregated conditions.¹⁴⁵ There are often laws or regulations in destination States to prohibit the unity or reunification of families of temporary migrant workers and/or restrictions of family formation and consensual sexual relations, at least outside of heterosexual marriage. The design of TLMPs does not recognise migrant workers as partners or parents. As TLMPs are only concerned with the migrant as a worker, pregnancy, childbirth and childcare represent an interruption to their purpose and are often prohibited or restricted, in law or in practice.¹⁴⁶

Where this is not the case, options for families to stay together can inform migrants' choice of labour sector.¹⁴⁷ However, even then, the assumption that migrant workers will not have children with them (through migrating together, accessing family reunion, or where children are born to in the destination country) mean that the rights of children are not included in the governance of TLMPs or in relevant policies. For instance, there may a lack of housing suitable for families of migrant workers, and families of migrant workers may also face practical and legal barriers to access suitable education, health or other necessary social services.¹⁴⁸ Ensuring the right to education can be particularly challenging where education policies do not take into account the needs of migrant children, especially those with temporary status. In Thailand for example and despite universal access in law to the right to education, an estimated 200,000 migrant children were not in school due to practical barriers such as a lack of understanding of policies and procedures by service providers, as well as challenges created by the frequent movement of families on TLMPs.¹⁴⁹

142 Convention on the Rights of the Child, Articles 18, 27; Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, para.19; Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017, paras.29, 41; Joint general comment of the Committee on Migrant Workers and the Committee on the Rights of the Child, CMW/C/GC/4-CRC/C/GC/23, see in particular section E. Also see Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth periodic reports of the Republic of Korea, CERD/C/KOR/CO/17-19, 10 January 2019, para 9

143 Committee on the Elimination of Racial Discrimination, Concluding observations on the eighteenth to twentieth periodic reports of Australia, CERD/C/AUS/CO/18-20, 26 December 2017, paras.34-35

144 Shattuck, et al., 2019; Merla and Smit, 2020

145 Antonio Donini, 2019. Social Suffering and Structural Violence: Nepali Workers in Qatar. *International Development Policy / Revue internationale de politique de développement* 11, 178-199, DOI: 10.4000/poldev.3077

146 Robin A. Harper and Hani Zubida, 2020, Thinking about the meaning of time among temporary labor migrants in Israel. *Time & Society* 29(2), 536–562. DOI: 10.1177/0961463X20909194 ; Mekong Migration Network, 2020. *Labour Migration from Mekong Countries of Origin to Japan*. And see the case study in this section

147 For example, in Thailand, women migrant workers have reported that they chose to work in the construction sector or agricultural sectors in order to be able to live with their husband/children: Napier-Moore and Sheill, 2016; Mekong Migration Network, 2020. *Migrant Agricultural Workers in Thailand*. Mekong Migration Network

148 Special Rapporteur on trafficking, A/HRC/50/33

149 UNICEF, 2022. *Children on the Move in South Asia: Regional Brief*. UNICEF, Kathmandu, at <https://www.unicef.org/rosa/media/17711/file/Children%20on%20the%20Move%20in%20South%20Asia:%20Regional%20Brief.pdf>; UNICEF Thailand, 2019. *Education Knows No Border: A Collection of Good Practices and Lessons Learned on Migrant Education*, at <https://www.unicef.org/thailand/media/3696/file/Education%20knows%20no%20border%20-%20report.pdf>

As well as denying migrants' right to family unity, this compulsory family separation also has consequences for the human rights of the partner of the migrant worker and for their minor children and wider family in the country of origin. For many migrant families, the separation, especially on longer or repeated migrations, may lead to family breakdown.¹⁵⁰ The separations can also change family structures and the division of labour in the household and wider community in the country of origin, including by increasing the care responsibilities placed on children.¹⁵¹ Family separation can have life-defining consequences for migrants' children where the nature of temporary migration and its often long or repeated separation periods can be particularly harmful to the parent-child relationship.¹⁵² For example, UNICEF notes that the separations of shorter-term temporary labour migrations of a few years can have a significant impact on a child where *"a few years in the life of a child are more formative than in that of an adult"*.¹⁵³ As one migrant worker described it: *"At the end of the day, you'll have seasonal workers who become seasonal parents or seasonal spouses at this end"*.¹⁵⁴ These situations can also inculcate TLMPs and family separation in the children of migrant workers, informing their life expectations.

Separations can also have harmful consequences for the partner who remains in the home community for the duration of the temporary migration. In Nepal for instance, research has documented women who remain behind after their husband embarks on a TLMP experiencing deprivation, sexual violence or harassment from family members or neighbours.¹⁵⁵ Concerns arising from family separation also contribute to detrimental mental health outcomes for migrant workers on TLMPs and for their families.¹⁵⁶ Maintaining family connections (contact, access) is an important support structure that helps migrant workers and their families in countries of origin deal with psychological stress associated with their situation.

Nonetheless, countries of destination are reluctant to accommodate migrants' families, in part on the grounds that it may make return less likely at the end of the contract. This can push migrant women and their children, in particular, into irregular status.¹⁵⁷ Children who grow up (or are born) in destination States may not have a connection with the country of origin of their migrant parent(s), including not speaking the language, making return difficult and possibly not in their best interests.¹⁵⁸ At the same time their return may be complicated as children of migrants on TLMPs may be de facto or de jure stateless depending on the circumstances of their birth.¹⁵⁹

Laws governing consensual sexual relations between adults and the discriminatory application of sanctions for adultery can see migrant workers, particularly women, criminalised if authorities in countries of destination become

150 Matt Withers, 2022. *Rapid analysis of family separation issues and responses in the PALM scheme – final report*. 12 August 2022, at <https://devpolicy.org/wp-content/uploads/2022/08/Rapid-analysis-of-family-separation-issues-and-responses-in-PALM.pdf>; ILO, 2022. *Seasonal worker schemes in the Pacific*; OHCHR, forthcoming. *The human rights experiences of Pacific migrant workers*

151 Ghimire, et al., 2019; Rasika Ramburuth Jayasuriya, 2021. *Children, human rights and temporary labour migration: protecting the child-parent relationship*. Abingdon, Oxon; New York, Routledge

152 OHCHR, 2022. Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31, 2 March 2022; OHCHR, 2022. Human Rights Council Holds Panel Discussion on Family Reunification in the Context of Migration, 9 March 2022, at <https://www.ohchr.org/en/press-releases/2022/03/human-rights-council-holds-panel-discussion-family-reunification-context>; Withers, 2022

153 UNICEF, n.d., *UNICEF Working Paper, Family Unity in the Context of Migration*, at <https://www.unicef.org/documents/working-paper-family-unity-context-migration>

154 Samoa interviewee in Withers, 2022, p.11

155 Ghimire et al., 2019

156 Committee on Migrant Workers, CMW/C/GC/1, para. 15; Jamil and Kumar, 2021

157 ILO, 2021. *The invisible workers: Bangladeshi women in Oman*

158 Joint general comment of the Committee on Migrant Workers and the Committee on the Rights of the Child, CMW/C/GC/3-CRC/C/GC/22, para.32((g); Jason M. Pobjoy, 2015, *The Best Interests of the Child Principle as an Independent Source of International Protection*, *International and Comparative Law Quarterly* 64, 327–363

159 ILO, 2021. *The invisible workers*; Harper and Zubida, 2020

aware of the relationships, or if they are victims of rape or other forms of sexual violence. As well as facing contract termination and deportation, women migrant workers risk imprisonment in some countries of destination if they become pregnant. For those in some GCC States, in addition to prohibitions on family unity/reunification and marriage to nationals, zina laws criminalise sex outside marriage as well as relationships between adults of the same sex.¹⁶⁰

Prohibition of marriage in Singapore

Singapore is a destination country for Asian migrant labour, mainly from Bangladesh, China, India, Indonesia, Malaysia, Myanmar, Pakistan, Philippines. According to official data, there were about 2.5 million migrants in Singapore as of mid-2020, slightly more women than men.¹⁶¹ It has been estimated that about one million of these are low-wage migrant workers.¹⁶² Migrant workers in Singapore face government regulation of their intimate life and sexual and reproductive rights. Work permit conditions in Singapore require that the migrant worker (of any gender) does not go through any form of marriage¹⁶³ to a Singapore citizen or permanent resident, within or outside the country, without the express permission of the government – a restriction that applies even after the work permit has expired, been cancelled or revoked.¹⁶⁴ The regulations go further, with a provision that prohibits “breaking up families in Singapore” as well as other “immoral or undesirable” activities.¹⁶⁵ The regulations also prohibit a migrant worker from getting pregnant or delivering a child in the country during the validity of their work permit (unless they are already married to a Singapore citizen or permanent resident and with State approval).¹⁶⁶ Women migrant workers are required to take mandatory pregnancy tests prior to departure from their country of origin and for these to be repeated on a regular basis.¹⁶⁷ Although pregnancy discrimination has been recognized as a form of gender-based discrimination, migrant workers are deported if found to be pregnant and may face difficulties if they attempt to re-migrate in the future.¹⁶⁸

160 United Nations Working Group on discrimination against women in law and in practice, 2012. Adultery as a criminal offence violates women’s human rights, Statement, 18 October 2012, at <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>; Committee on the Elimination of Discrimination against Women, Concluding observations on the combined third and fourth periodic reports of Saudi Arabia, CEDAW/C/SAU/CO/3-4, 14 March 2018, paras.33-34; Betsy L. Fisher, 2016. Gender Discrimination and Statelessness in the Gulf Cooperation Council States, *Michigan Journal of Gender & Law*, 23(2), 269-311

161 UN DESA, International Migrant Stock 2020

162 Transient Workers Count Too (TWC2), 2020. Protecting human rights during and after the COVID-19: Response to joint questionnaire of special procedures. 10 June 2020

163 The regulation specifies “any form of marriage or apply to marry under any law, religion, custom or usage” (section 6)

164 Permission to marry must be sought from the Controller of Work Passes. Employment of Foreign Manpower (Work Passes) Regulations 2012, Employment of Foreign Manpower Act (Chapter 91A), Fourth Schedule, Part VI, Section 6; Ministry of Manpower, Work Permit conditions, at <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/work-permit-conditions>

165 Employment of Foreign Manpower (Work Passes) Regulations 2012, Fourth Schedule, Part VI, Section 8

166 Employment of Foreign Manpower (Work Passes) Regulations 2012, Fourth Schedule, Part VI, Section 7

167 ILO, 2020. Public attitudes towards migrant workers in Singapore: Research Brief, December 2020. Those in the women-dominated domestic worker sector are subjected to six-monthly checks for pregnancy and sexually transmitted infections: Ministry of Manpower, Six-monthly medical examination (6ME) for MDWs, at <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/six-monthly-medical-examination>

168 Committee on the Elimination of Racial Discrimination, Concluding observations on the initial report of Singapore, CERD/C/SGP/CO/1, 2 February 2022, para.24(c); Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Singapore, CEDAW/C/SGP/CO/5, 21 November 2017, para.35(c)



8. Participation rights

“Most temporary or circular migration programmes structurally deny or inhibit rights to assembly and association and leave workers at the mercy of employers.” Special Rapporteur on the rights to freedom of peaceful assembly and of association¹⁶⁹

The realisation of migrants’ freedom of association, as well as related rights to peaceful assembly, free expression and opinion, and the right to information, serve to ensure that migrant workers are able to advocate for their own rights and counter situations of vulnerability created through TLMPs.¹⁷⁰ In this context, migrant workers being able to exercise their freedom of religion is also critical in providing another avenue for such participation.

8.1 Freedom of peaceful assembly and association

Though widely recognised throughout human rights law as an important enabler for the exercise of other rights, the right to freedom of association¹⁷¹ is explicitly restricted in some TLMPs. For example, the terms of the TLMPs often explicitly forbid migrant workers forming or joining a trade union or workers’ collective. There are also practical constraints. Migrant workers have little time for organising, may have no experience of trade

¹⁶⁹ Special Rapporteur on peaceful assembly and association, A/71/385, para.29

¹⁷⁰ OHCHR, 2014. Factors that impede equal political participation and steps to overcome those challenges: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/27/29, 30 June 2014, paras.34-40; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/26/29, 14 April 2014, for example at para. 25; Dauvergne and Marsden, 2014

¹⁷¹ See, inter alia, International Covenant on Civil and Political Rights, Article 22; International Covenant on Economic, Social and Cultural Rights, Article 8; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 26; ILO Freedom of Association and Protection of the Right to Organise Convention, (No. 87) 1948; ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98); ILO Declaration on Fundamental Principles and Rights at Work (1998). See fuller listing at <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/InternationalStandards.aspx>

unions, and may fear retaliation. Migrants may be living in isolated areas with limitations on physical and digital access or working in hard-to-reach sectors such as domestic work, limiting their access to information and ability to organise. Migrant worker temporariness also makes it difficult for trade unions to organise with them and there may also be gendered barriers to organising with formal unions often less able or open to organising women workers.

Worker centres can be especially useful in destination States that restrict or prohibit trade union access to migrants, and by taking a community-based approach can facilitate raising issues beyond immediate workplace concerns.¹⁷² Faith-based and social networks such as religious activities (see section 8.4), homeland associations, cultural and leisure groups are also important means to protect the right to association, to network, share experiences and exchange information with members of the wider community, and realise the human right to leisure.¹⁷³

The work of migrants rights organizations can be vital to protect the rights of migrants on TLMPs but the focus of these is often on labour rights abuses and operational details rather than on the wider migration experience and human rights concerns outside the workplace.¹⁷⁴ Embassies and consulates also have an important role in supporting their citizens and responding effectively to their needs, including by providing legal aid, help to access justice and obtain due process, and material assistance. However, consulates, where they exist in countries of destination,¹⁷⁵ do not always have sufficient human and financial resources, or staff with training in the laws of the destination State or in human rights to meet migrant workers' needs and the quality of services varies, with the result that migrant workers receive differing levels of support depending on their nationality. Furthermore, where this assistance is provided via dedicated labour attachés, they may be less attentive to migrants' needs and rights abuses outside of the workplace.

Community organising in Hong Kong, SAR (China)

Hong Kong, SAR (China), has a vibrant migrant-led labour rights movement, structured by nationality and industry. Migrants have organized on a range of social, economic and political issues outside of work-focused concerns, such as on LGBTIQ+ rights. Migrant domestic workers in Hong Kong, SAR (China), who are legally required to live in their employers' homes, have made use of their one day off a week for networking and advocacy (as well as socialising and rest). Gathering, often in public space, they have built a movement. This has included setting up formal structures such as trade unions and civil society organisations. However, they have also faced challenges, including in collective bargaining¹⁷⁶ and, although Chinese authorities report a 59 per cent increase in the number of registered trade unions from end-2019 to October 2022,¹⁷⁷ numerous trade unions and civil society groups have relocated or closed due to concerns about the implementation of the National Security Law.¹⁷⁸ Concerns have been expressed that these increasing restrictions on civic space are violating participation rights, including cooperation with the United Nations, and through that, the protection of other rights.¹⁷⁹

172 ILO, 2021. *Reclaiming space for workers in the 21st century: A literature review on workers' centres*

173 UDHR, Article 24

174 On some of the challenges of organizing across borders, particularly where countries restrict civic space, see Report of the Special Rapporteur on the situation of human rights defenders, A/77/178, 18 July 2022

175 Noting too that their location in capital or major cities may be out of reach of many migrant workers on TLMPs

176 ILO, 2021. *Reclaiming space for workers in the 21st century*

177 Information provided by the Permanent Mission of the People's Republic of China, Geneva, Switzerland

178 Human Rights Committee, Concluding observations on the fourth periodic report of Hong Kong, China, CCPR/C/CHN-HKG/CO/4, 27 July 2022 (Advance unedited version), paras.12-14, 46-47, 49-50

179 OHCHR, 47th session of the Human Rights Council Item 2: Human rights update by the High Commissioner, 21 June 2021; Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: Report of the Secretary-General, A/HRC/51/47, 14 September 2022, see Annex II.

8.2 Freedom of expression

The right to freedom of expression is a critical accountability mechanism.¹⁸⁰ It includes the right of individuals to access information from a variety of sources, online as well as offline, and of the media and other actors to access information and report on human rights abuses, without surveillance or other interference.

Migrant workers who have shared their experiences in destination States on social media or with broadcast media outlets have faced repercussions, which may amount to retribution.¹⁸¹ For example, Malaysia revoked the work permit of Rayhan Kabir, a Bangladeshi migrant worker and human rights defender, and subjected him to immigration detention, deportation and blacklisting after he participated in a 2020 Al Jazeera documentary “Locked Up in Malaysia’s Lockdown”, in which he defended the human rights of migrants following raids on undocumented migrant communities during the COVID-19 pandemic. The immigration authorities warned that foreigners including those on a Temporary Employment Pass who made statements that were “inaccurate and aimed at damaging Malaysia’s image” risked losing their work permits and would be deported.¹⁸² Another migrant worker and activist, Zakir Hossain Khokan, had worked in Singapore for 19 years before the authorities declined to renew his Work Pass citing public posts on social media that they characterised as “misleading, false or deliberately provocative”.¹⁸³

8.3 Freedom of religion or belief

Migrant workers on TLMPs are often unable to enjoy their right to freedom of religion or belief including to worship and manifest their religion alone or in community with others. Employers may be unwilling to allow migrants to perform prayers or religious rituals during working hours or to manifest their religion through wearing or displaying religious symbols. Although the Basic Law and the Hong Kong Bill of Rights Ordinance guarantees freedom of thought, conscience and religion,¹⁸⁴ Muslim Indonesian migrant domestic workers in Hong Kong, SAR (China) have reported being told they would be fired if they prayed or fasted while at work.¹⁸⁵ Pacific Islanders employed on seasonal schemes in Australia and New Zealand were expected to work on Saturdays or Sundays which interfered with their ability to attend church services with other community members, noting that days of worship carry both religious and cultural significance in the Pacific.¹⁸⁶

180 See, inter alia, International Covenant on Civil and Political Rights, Article 19; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 13

181 Concerns have been raised in relation to the collection and use of social media intelligence through covert means highlighting that as it amounts to an interference with a person’s privacy, such surveillance should be demonstrably necessary and proportionate to the achievement of a legitimate aim. See Privacy International, 2017. *Explainer on Social Media Intelligence*, at <https://privacyinternational.org/explainer/55/social-media-intelligence>

182 Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of migrants, Communication AL MYS 1/2021, 16 February 2021, at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26013>

183 Kok Yufeng, 2022. Migrant worker advocate whose work pass was not renewed made misleading public posts: MOM. *The Straits Times*, 22 June 2022, at <https://www.straitstimes.com/singapore/migrant-worker-advocate-who-did-not-get-work-pass-renewed-made-misleading-false-public-posts-mom>; Ministry of Manpower, 2022. MOM statement in response to media queries on the non-renewal of Mr Zakir Hossain’s work permit. 22 June 2022, at <https://www.mom.gov.sg/newsroom/press-replies/2022/0622-in-response-to-media-queries-mom-statement-on-non-renewal>

184 Article 15

185 Imam Subchi, Asep Saepudin Jahar, Maila D. H. Rahiem, Asrorun Ni’am Sholeh, 2022. Negotiating Religiosity in a Secular Society: A Study of Indonesian Muslim Female Migrant Workers in Hong Kong. *Journal of Population and Social Studies* 30, 147-169. DOI: 10.25133/JPSS 302022.010

186 OHCHR, forthcoming. *The human rights experiences of pacific migrant workers*

Many migrant workers may attend religious activities and groups for social connection and support, not only to practice their faith. They serve as essential networks of solidarity, which may be more familiar and accessible than formal structures and can also serve as critical sources of information, for example as in the case of Filipino workers in Hong Kong, SAR (China) who reported that networks of friends, relatives, and fellow Filipinos within their social environment were the most usual sources of information about health and well-being.¹⁸⁷ Opportunities to form and connect with social networks are therefore vital lifelines for migrants in important aspects of their daily lives including in terms of emotional support.¹⁸⁸

187 Pocos et al., 2022

188 Kathiravelu's study on social networks in Dubai starts with the story of the funeral of Edna, a Sri Lankan migrant worker who has died after falling ill, which is organized and attended by her friends, church workers and a local charity group, noting the importance of such informal social bonds of care for migrants. Laavanya Kathiravelu, 2016. *Migrant Dubai: Low Wage Workers and the Construction of a Global City*. Palgrave MacMillan



9. Access to justice

Low-wage migrants on TLMPs are consistently excluded by policy or practice from access to justice and remedies for human rights abuses whether in the workplace or outside.¹⁸⁹ Temporariness and migrants' dependency on employers as well as a range of other barriers essentially function to keep justice out of reach for many migrant workers on TLMPs. They face multiple barriers to navigating dispute resolution mechanisms or to access legal services and the judicial system. These include their lack of knowledge of the local law, the precarity of their status in the country, language barriers and the requirements of a foreign jurisdiction.¹⁹⁰ For example, litigation proceedings in the GCC countries are mostly document-based, requiring employers/sponsors to keep the necessary records and for all the migrant workers' documentary evidence to be translated into Arabic for any court proceedings.¹⁹¹ In addition, where there is no legal aid, or where that is not extended to migrants on TLMPs, the cost of pursuing justice may be prohibitive.

Denial of justice increases the human rights risks associated with TLMPs as abusive employers or other individuals know they can target temporary migrant workers with impunity, including for gender-specific forms of abuse such as sexual harassment and violence.¹⁹² This is especially the case for migrant workers employed in sectors that are not covered by national labour law or where their immigration status precludes equal access to the courts. Migrant workers who have become undocumented are more likely to face arrest, detention and deportation unless there are binding firewalls or other whistle-blower protections in place.¹⁹³

189 See, for example, Special Rapporteur on peaceful assembly and association, A/71/385

190 Special Rapporteur on migrants, A/HRC/26/35

191 Hameed, 2021

192 Yeates and Wintour, 2021

193 François Crépeau and Bethany Hastie, 2015. The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights, *European Journal of Migration and Law* 17, 157-183; ILO Committee of Experts, 2016. Promoting fair migration: General Survey concerning the migrant workers instruments, ILC.105/III(1B), paras.480-482

In most countries, labour inspectorates may not be mandated to cover the human rights aspects of the employer migrant relationship, such as where the employer or a third party contracted by them provides accommodation or healthcare. At the same time, National Human Rights Institutions (NHRIs) can play a significant role in ensuring the access to justice of migrant workers on TLMPs through monitoring and cross-border cooperation. Recently, the NHRIs of Nepal, the Maldives and the Philippines committed to investigate and receive complaints from migrant workers, while formal agreements have been signed between Malaysia and Nepal and the Philippines and Qatar.¹⁹⁴ Although not all NHRIs in the region are mandated to do so, some may also be able to provide legal aid and ensure equal access to judicial and legal services for migrants and their family members.

Where migrant workers do pursue a complaint, the temporariness of their presence in countries of destination means that migrants are more likely to see return than justice. Protracted criminal or civil justice processes may render them unviable for migrants who are only temporarily in the country of destination. In addition, migrant workers often fear retribution by their employer that could see their visa cancelled resulting in their deportation, or subject them to blacklisting for subsequent seasons or visas.¹⁹⁵ In particular, the tied-visa system underlying these programmes has a chilling effect on migrant workers' practical ability to submit complaints as they are dependent on employers for their immigration status and fear deportation.¹⁹⁶ They may also feel pressured by representatives of their country of origin (for example, diplomatic mission staff or recruiters) not to complain to prevent reputational risk to the country of origin in its relationship with the destination country.

On many TLMPs, mediation is often provided as the best – or only – justice mechanism available to migrants. These dialogue-based non-judicial grievance mechanisms are often advocated by diplomatic missions to address migrant worker complaints. While these are usually employer-operated in some contexts they are operated by labour ministries and can be mandatory before a worker is able to access courts. The intention of such mechanisms is that they provide the company with feedback to improve its approach, as well as redress for the worker.¹⁹⁷ Such schemes may reduce the legal, practical and other barriers to migrant workers accessing remedy, in particular for those on TLMPs who require access that is speedy and transnational.¹⁹⁸ However, the extent to which such mediation mechanisms are able to take up the issue of human rights violations outside of the workplace is not clear, while concerns have also been raised that such mechanisms further the trend of shifting responsibility away from the State in removing the settlement of grievances from the civil (and in some cases, criminal) justice system and formal oversight and potentially undermining the rule of law.¹⁹⁹

194 Migrant Forum in Asia, 2020, *National Human Rights Institutions Joint Statement on International Migrants Day*, 18 December 2020, at <https://mfasia.org/national-human-rights-institutions-joint-statement-on-international-migrants-day/> and Asia Pacific Forum of National Human Rights Institutions, 2019, *APF members sign partnership to support migrant workers*, 10 January 2019, at <https://www.asiapacificforum.net/news/apf-members-sign-partnership-support-migrant-workers/>

195 Bassina Farbenblum and Laurie Berg, 2021. *Migrant Workers' Access to Justice for Wage Theft: A Global Study of Promising Initiatives*. Migrant Justice Institute; RNZ, 2022. *Abused RSE workers in Australia too afraid to speak out*. *Radio New Zealand*, 16 May 2022, at <https://www.rnz.co.nz/international/pacific-news/467200/abused-rse-workers-in-australia-too-afraid-to-speak-out>

196 Committee on the Elimination of Racial Discrimination, CERD/C/AUS/CO/18-20, paras.34-35

197 See for example, Farbenblum and Berg, 2021; International Organization for Migration (IOM), 2021. *Operational Guidelines for Businesses on Remediation of Migrant-Workers Grievances*. IOM, Geneva

198 OHCHR. 2011, *Guiding Principles on Business and Human Rights*, Part III on Access to Remedy, in particular principles, 26-28, 31

199 Hazel Genn, 2012. *Why the Privatisation of Civil Justice is a Rule of Law Issue*. 36th F A Mann Lecture, Lincoln's Inn (UK), 19 November 2012, at <https://www.ucl.ac.uk/laws/sites/laws/files/36th-f-a-mann-lecture-19.11.12-professor-hazel-genn.pdf>

In line with the right to an effective remedy as a critical component of access to justice, States have a responsibility not only to prevent human rights abuses but also to provide effective remedies, including compensation, where they have occurred.²⁰⁰ The temporariness of their stay in countries of destination may be a barrier to migrants obtaining effective remedy and where temporary migrant workers do pursue their complaint they may find that the justice system places limits on the restitution available to them.²⁰¹

Some destination States offer short-term visas for migrant workers who bring complaints of rights abuses in order to provide them protection and to allow their participation in legal proceedings; in some cases these are only available to those who cooperate with law enforcement authorities or prove their case and may not include the right to work, rendering them prohibitive to many migrant workers.

200 OHCHR, *Guiding Principles on Business and Human Rights*, principles 25-27

201 On wage theft specifically, and as a useful overview of measures to overcome barriers to justice for migrant workers, see, Farbenblum and Berg, 2021



Photo credit: Mohammad Ponir Hossain/REUTERS

10. Digital rights

Digital systems are in increasing use in TLMPs; migrant visas, recruitment, pay, remittances, complaints and more are moving to online platforms, services and apps run by State and non-State actors.²⁰² The pandemic also saw an expansion in the use of digital technologies in the day-to-day experience and overall management of migration. Digital platforms are a critical enabler of human rights in the digital age, including in providing migrants with vital connections to their family and friends in their countries of origin as well as supporting social networks in countries of destination. However, the increasing digitisation of migration management can facilitate tracking, analysis and commodification of the personal data of migrants on TLMPs in violation of their right to privacy²⁰³ and can also hinder enjoyment of other rights.

Migrant workers on TLMPs continually face – often invasive – demands for their personal information, including their biometric data, to respond to the increasingly digitised bureaucracy of recruitment and migration. Many may make repeated migrations and therefore be required to submit their data multiple times through different platforms. Migrants' information is collected by and shared between multiple State and private sector actors, often between countries of origin and destination, without adequate safeguards or oversight mechanisms: for example, only 34 of 60 Asia-Pacific States have any data protection legislation.²⁰⁴ This presents risks to their rights that could persist after return and into future migrations.

202 There are numerous examples of online platforms and apps for use at different stages of migration – see, Bassina Farbenblum, Laurie Berg and Angela Kintominas, 2018. *Transformative Technology For Migrant Workers: Opportunities, Challenges, And Risks*. Open Society Foundations; ILO, 2019. *Digitalization to promote decent work for migrant workers in ASEAN*. Thematic background paper for the 11th ASEAN Forum on Migrant Labour (AFML); Aiko Kikkawa, Cindy Jane Justo and Pitchaya Sirivunnabood. 2021. Migtech: How Technology is Reshaping Labor Mobility and the Landscape of International Migration. In, ADABI, OECD and ILO, 2021, pp.60-102; Marie McAuliffe, Jenna Blower, and Ana Beduschi. 2021. Digitalization and Artificial Intelligence in Migration and Mobility: Transnational Implications of the COVID-19 Pandemic. *Societies*, 11(4), 135 DOI: 10.3390/soc11040135

203 Including, inter alia, International Covenant on Civil and Political Rights, Article 17; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 14

204 UNCTAD, *Data Protection and Privacy Legislation Worldwide*, as at 14 December 2021, at <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>. At the regional level there is the Asia-Pacific Economic Cooperation (APEC) Privacy Framework, 2004. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers recognizes the need for data-sharing (para.18) but does not contain any specific language on data protection or specific recognition of migrant workers' right to privacy

Particular concerns can arise in regard to systems that gather and hold migrants' most sensitive personal data (biometrics). There are numerous rights concerns around biometric data and strong safeguards are needed to ensure access to this data is limited to authorised actors and it is used only for the purpose for which it was originally collected. Participation in a TLMP should not permit the authorities or any private actors to hold on to data that can identify the person for their whole lifetime. In the absence of strong legal frameworks and strict safeguards, the use of this technology carries significant risks for human dignity, autonomy and privacy and the exercise of human rights in general.

On the other hand, digital communications technology plays a vital role in migrant families staying connected, enabling them to participate in events together, navigating the differences in time zone or catching up after the fact.²⁰⁵ Social media also allows migrant workers to document and share their living and working conditions and to make wider connections (see discussion on freedom of expression in section 8.3).²⁰⁶ Everyone has an equal right to access and use a secure and open internet, and such access is increasingly a requirement for migrant workers, including those on TLMPs. Internet access in the Asia-Pacific region overall remains limited: only 54 per cent of women and 59 per cent of men use the internet.²⁰⁷ However, there is a great deal of variability among Asia-Pacific migrants, including related to age, gender and rural/urban origin. One survey of South and Southeast Asian migrant workers in Malaysia found that 92 per cent of respondents owned a mobile phone, with three in five of them having a smartphone.²⁰⁸

Yet, access to a smartphone and an adequate data plan may not be possible for some migrant workers despite its increasing centrality to their lives on TLMPs and can function as another tax on low-paid workers.²⁰⁹ Enabling meaningful access to the internet for migrants on TLMPs also requires them to have or gain digital skills or confidence, as well as literacy (sometimes in another language), an electronic identity, and possibly also a bank account or credit card in the country of destination. Some or all of these may be out of reach for many migrants. Furthermore, some migrants, particularly migrant domestic workers, may be physically denied access to their mobile phone by their employer, greatly exacerbating the isolation of this work and increasing the risk of abuse.

Digital-only systems of migration governance exacerbate risks of rights-abusive surveillance of migrants by States and employers. Further, the centralised living situation of many migrant workers on TLMPs is often accompanied by digital surveillance tools such as the use of CCTV at entrances and key cards to gain entry. Some migrant domestic workers have reported that their employers place CCTV in their sleeping quarters, as well as throughout the house.²¹⁰ When migrant workers do protest their inadequate living or working conditions these surveillance tools are used to monitor such assemblies.²¹¹

205 Acedera and Yeoh, 2019; Harper and Zubida, 2020

206 For example, Eunice Chua, 2020. Staying plugged in: Video app TikTok gives migrant workers a means to stay connected for support. *The Straits Times*, 26 October 2020, at <https://www.straitstimes.com/singapore/staying-plugged-in-video-app-tiktok-gives-migrant-workers-a-means-to-stay-connected-for>

207 Aggregates sourced from ITU Statistics, 2020, at <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>, and quoted in UN Women, 2022. *Women and the Environment: An Asia-Pacific Snapshot*, at <https://data.unwomen.org/publications/women-environment-asia-pacific>

208 Survey cited in: Kikkawa, et al., 2021

209 Report of the Special Rapporteur on extreme poverty and human rights, A/74/493, 11 October 2019; Transient Workers Count Too (TWC2), 2019. *Impact of digital technology on social protection and human rights amongst migrant workers in Singapore*. Submission to the United Nations Special Rapporteur on extreme poverty and human rights, 16 April 2019; Julia Ticona, 2021. Smartphones Are a New Tax on the Poor. *Wired*, 16 December 2021, at <https://www.wired.com/story/phones-connectivity-tax-policy/>

210 ILO, 2022. Home truths; Maggy Lee, Mark Johnson, and Michael McCahill, 2018. Race, Gender and Surveillance of Migrant Domestic Workers in Asia. In: Mary Bosworth; Alpa Palmer and Yolanda Vasquez, eds. *Race, Criminal Justice and Migration Control: Enforcing the Boundaries of Belonging*. Oxford: Oxford University Press, pp. 13-28. ISBN 9780198814887

211 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: Protection of human rights in the context of peaceful protests during crisis situations. A/HRC/50/42, 16 May 2022



11. Lessons from the pandemic

The health, economic, and protection crises caused by the COVID-19 pandemic demonstrated that people who were already living in situations of poverty, marginalization, or discrimination were at most risk during the pandemic. The virus and response measures adopted by governments revealed – and in some cases exacerbated – the systemic inequalities and existing human rights and governance deficits routinely experienced by migrants and other groups.²¹² The “enforced transience” of TLMPs was abruptly curtailed along many corridors, as migrant workers were left stranded in destination countries due to border closures and travel restrictions while prospective migrants were unable to migrate through these pathways.²¹³ Lockdowns confined migrant workers to cramped and unsanitary housing in conditions that amounted to detention, when they were allowed out it was only to work in unsafe conditions without adequate protection, but they were unable to choose to ‘work from home’. Businesses closed, laying off migrant workers and those who would not or could not return home faced destitution, abandoned by their employers and excluded from State services and pandemic response measures including access to vaccines.²¹⁴ Those who did return to their countries faced difficult quarantine situations, struggled to reintegrate socially and economically, and were stigmatized as carriers of the virus.

At the same time, measures put in place by States along the Asia-Pacific TLMP corridors showed that rights-based responses to the entrenched situations of vulnerability faced by low-wage migrant workers were possible where there was political will. Across the region and along these corridors, migrants were recognised as frontline workers and the sectors they worked in – from the care economy and domestic work, food delivery, construction and agricultural work – as essential. Rights-based response measures included; visa and work permit extensions

212 Special Rapporteur on migrants, A/76/257

213 Yeoh notes that “[b]y chiselling away at the very foundations of a temporary migration regime, the contagion has both immediate and ramifying consequences”. Brenda S. A. Yeoh, 2022, Is the temporary migration regime in Asia future-ready? *Asian Population Studies* 18(1), 1-5. DOI: 10.1080/17441730.2022.2029159

214 Katharine Jones, Sanushka Mudaliar and Nicola Piper, 2021. *Locked Down and in Limbo: The global impact of COVID-19 on migrant worker rights and recruitment*. ILO

without requiring migrants to return to their origin countries; regularizing undocumented migrant workers; allowing migrants to change employers; extending health and other social services (including COVID-19 prevention, treatment and vaccination) to temporary workers; extending social security benefits to migrant workers in quarantine or on COVID-related sick leave; reducing immigration detention, developing action plans to reintegrate returning migrants and promoting positive narratives to confront discrimination and xenophobia against migrant workers on TLMPs.²¹⁵

While many of these measures were instituted as a temporary pandemic response and in many cases have now ended, their demonstrated benefits to migrants and their utility in advancing human rights argue for their continued use in origin and destination countries. More pragmatically, such measures can reduce the bureaucracy burdens of TLMPs for employers and migrants and undercut the exploitative migrant brokerage model. Indeed, the COVID-19 measures that facilitated migrant workers to change employers also helped businesses to address promptly the labour shortages that arose in some sectors such as health and food production.

At the same time, the space for TLMPs may be changing as a result of the experience of the pandemic. While some destination States along these corridors are enhancing their use of TLMPs to boost their economy, others are pushing a re-nationalisation of their (private sector) workforce, in part following their experiences of the pandemic, to address what is perceived to be an excessive reliance on migrant workers.²¹⁶

215 See, inter alia, OHCHR, 2020. UN experts call on Governments to adopt urgent measures to protect migrants and trafficked persons in their response to COVID-19, 3 April 2020; OHCHR South-East Asia Regional Office, 2020. UN Human Rights Office urges Asia-Pacific States to release detained migrants, suspend forced returns amid COVID-19 crisis, 9 April 2020; UN, 2020. United Nations Secretary-General's Policy Brief: COVID-19 and People on the Move, June 2020, at <https://unsdg.un.org/resources/policy-brief-covid-19-and-people-move>; UN ESCAP and the Regional United Nations Network on Migration for Asia-Pacific, 2020. Migrants in Asia and the Pacific at higher risk of COVID-19 and its socio-economic fallout, 18 December 2020; Special Rapporteur on migrants, A/76/257

216 Michel Penke and Faisal Ahmed, 2022. Please, go home: How COVID-19 halted labor migration. *Deutsche Welle*, 8 June 2022, at <https://www.infomigrants.net/en/post/41039/please-go-home-how-covid-19-halted-labor-migration>

12. Conclusion

In discussions of migration governance at the international or regional policy level, TLMPs are often positioned as benefitting all parties – the so-called ‘triple (or quadruple) win’ for destination countries (and industries), migrants, and their countries of origin.²¹⁷ It has been argued that TLMPs are instrumentally a necessary trade-off for access to the labour markets of destination countries (who are freed from the economic, social or political costs of integration) and more broadly that economic development gains justify temporariness,²¹⁸ that they offer more regulation than independently-organised labour migrations, that they enable economic development of origin countries through remittances and the return of trained workers. Critics of such programmes, particularly in relation to low-wage migrant workers, have argued instead that they increase the bureaucratic burden for all parties (migrants, employers, and State authorities), that the prominence of TLMPs on some migration corridors closes or restricts opportunities for independent migration, and that they may facilitate rather than reduce irregular migration and lead to a proliferation of informal economies in destination countries.²¹⁹

As this study has argued, a human rights-based assessment of TLMPs needs to go further, to encompass migrants’ full lived experience of temporary labour migration – at and away from the workplace – as well as the consequences of these programmes for their families and communities. The human rights framework makes clear that migrant workers are entitled to more than the promised, though not always realised, economic advantages of these programmes to truly benefit themselves and their families. Centring the migrant in the analysis, the legislated inequality of these programmes is obvious, creating a critical power imbalance that too often renders such claimed benefits a mirage. The reality is that for many migrant workers, the precarious and discriminatory conditions inherent in TMLPs result in immediate and long-term harms, in addition to impairing wider social discourse and undermining the value of these programmes to countries of destination and origin. The central focus on temporariness and a consequent “use-and-discard” approach mean that TLMPs embed precarity and are ill-equipped to respond to changing circumstances, evolving intentions and motivations of migrants, or indeed to the actual needs of labour markets.²²⁰

TLMPs are extractive in nature, and risk reducing people to disposable commodities by design or through their practice. In this way, the schemes are often incompatible with States’ human rights obligations, denying the goals that States have agreed for the full inclusion and social cohesion of migrants including the commitment to “minimizing disparities” of the Global Compact for Migration.²²¹ In the context of systemic human rights deficits that are embedded in many TLMPs, a critical lack of effective regulation,

217 Wickramasekara, 2011; Castles and Ozkul, 2014; Petrou and Connell, 2019. Underhill-Sem, et al., propose a “quadruple win-loss” framework to better assess the benefits as well as shortcomings of these programmes: Yvonne Underhill-Sem, Evelyn Marsters, Richard Bedford, Vijay Naidu and Ward Friesen. 2019. *Are there only winners? – Labour mobility for sustainable development in the Pacific*. New Zealand Institute for Pacific Research, at <https://apo.org.au/sites/default/files/resource-files/2019-05/apo-nid244881.pdf>

218 Martin Ruhs and Philip Martin. 2008. Numbers vs. Rights: Trade-Offs and Guest Worker Programs. *International Migration Review* 42(1), 249-265

219 Inter alia, Nicola Piper, 2022. Temporary labour migration in Asia: The transnationality-precarity nexus. *International Migration* 60(4), 38-47. For the perspective of the business community see Leeb, et al., 2021

220 A review of the views of Global Union Federations notes starkly that they do not support temporary and circular labour migration programmes. Trade Unions are concerned that temporary forms of migration are becoming a permanent feature of the labour market, where migrants are hired on temporary contracts for what in effect are permanent posts: Yeates and Wintour, 2021. See also, Brenda S. A. Yeoh, 2006. Bifurcated Labour: The Unequal Incorporation of Transmigrants in Singapore. *Tijdschrift voor Economische en Sociale Geografie* 97(1), 26–37

221 Para.13, objective 16 (para.32) New Zealand Human Rights Commission 2022

monitoring and enforcement create protection gaps and enable mistreatment of migrants by employers and intermediaries.²²²

The governance question that needs to be answered is what other models of labour migration could be utilised along these corridors within and from Asia and Pacific to achieve the same economic development goals while respecting, protecting and fulfilling the rights of migrant workers and members of their families? There is no reason that these objectives should be mutually exclusive. Systemic policy reform is required to address the exploitation at the heart of TLMPs. This will necessitate reconfiguring migration governance away from the fundamental inequality of enforced temporariness to a situation where migrant workers, even on a temporary stay, enjoy equal human rights and are able to demonstrate agency in their migration, and where a toolkit of rights-based policy responses including pathways to secure or permanent residence make choices available to migrants and countries of origin and destination.²²³ Such reform would also address the increasing privatisation of TLMP governance while reaffirming that States cannot delegate away their human rights obligations to employers and other private actor intermediaries and enabling effective accountability mechanisms in this regard.

There are good reasons to believe that such a re-evaluation is both timely and possible. As noted above, there are important lessons to be learned in the context of the COVID-19 pandemic, which called into question the structural sustainability of temporary labour migration programmes predicated on transience while at the same time demonstrating to States in Asia and the Pacific and along these migration corridors the wide array of alternative migration governance tools available to them.²²⁴ The FIFA World Cup placed a spotlight on temporary labour migration and catalysed some reforms, demonstrating that where there is political will, rights-based reforms of TLMPs are possible.²²⁵ And finally, the climate crisis has made increasingly clear that there is an important place for labour migration as an adaptive response to climate change and environmental degradation, but only in those circumstances where the human rights of migrant workers and members of their families are effectively protected in the scope and content of such adaptation strategies.²²⁶

As this study makes clear, the guidance provided by international human rights and labour law and standards, and the commitments to human rights-based and people-centred migration that are embedded in the Global Compact for Safe, Orderly and Regular Migration, should be leveraged by countries of destination and origin, in consultation with migrant workers themselves, to design and implement labour migration pathways in and from Asia and the Pacific that are human rights-based in purpose and effect.²²⁷

222 New Zealand Human Rights Commission 2022

223 Dauvergne and Marsden, 2014; UN Women, 2013

224 OHCHR, 2020. *COVID-19 and the human rights of migrants: Guidance*. Topics in Focus, 7 April 2020

225 See inter alia ILO, 2022, *Labour reforms in the State of Qatar: Coming together around a shared vision*, at https://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/-ilo-qatar/documents/publication/wcms_859843.pdf; Amnesty International, 2022. *Unfinished Business: What Qatar must do to fulfill promises on migrant workers' rights*. 20 October 2022, Index Number: MDE 22/6106/2022

226 OHCHR, n.d. *Human rights, climate change and migration: key messages*, at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMMigration.pdf>

227 The UN Secretary General has called the international community to “reimagine human mobility for the benefit of all while advancing our central commitment of the 2030 Agenda to leave no one behind.” UN, 2020. Secretary-General’s Policy Brief: COVID-19 and People on the Move. See also, Global Compact for Migration, para.13

13. Recommendations

Re-imagining human rights-based labour migration pathways

- Guarantee comprehensive, human rights-based labour migration policies along corridors in and from Asia and the Pacific as an alternative to TLMPs, ensuring that such pathways are available to all migrant workers from all nationalities and that ensure their rights outside of as well as within the workplace. These comprehensive labour migration pathways should include the following minimum requirements:
 - o Explicitly commit States to respecting, protecting and fulfilling all human rights during their migration, and including in the context of return. While ensuring fundamental principles and rights at work and promotion of decent work in labour migration, specifically ensure protection of migrants' human rights outside of the workplace.
 - o Allow migrant workers to travel and reside on permits that are issued for a reasonable duration to provide migrants with security of residence, that are personal to the migrant and not tied to their employer, and that, where they have to leave or otherwise lose their job, allow for reasonable time to find alternative employment within clearly set parameters or provide for avenues to transition to another status;
 - o Enable permit changes and extensions in-country without penalty and enable migrant workers to apply for permits themselves with minimal administrative complexity;
 - o Guarantee just and favourable conditions of work including fair wages and remuneration equal to that of nationals, to enable migrant workers to be able to realise an adequate standard of living for themselves and their families;
 - o Allow migrant workers their right to family life through migration with their family or enabling them to form families in the country of destination, ensuring that family members of migrant workers are able to access their rights while in the country of destination; and
 - o Offer pathways to stay with a secure legal status in order to foster better regulation and governance of both migration and labour markets and ensure that all periods of residence count towards long-term status.
- All labour migration governance policies and agreements should be gender-responsive and not treat migrants as a homogenous group, addressing the gendered specificities and consequences on migrant workers and their families.
- Commit to using rights-based, humane and constructive terminology to describe all migrants including those who are involved in temporary labour migration, consistent with international human rights law and standards including principles of equality and non-discrimination, towards ending intolerance, xenophobia, racism and other forms of discrimination against migrants and enabling them to live full and dignified lives.
- Improve cooperation within countries and between countries of origin and destination in order to enhance protection of the human rights of migrant workers including through the provision of legal

and other assistance. Ensure the inclusion of ministries such as social welfare, child protection, women's rights and other human rights relevant ministries in the design, implementation and monitoring and evaluation of labour migration agreements.

- In line with a whole-of-society approach guarantee that human rights actors such as National Human Rights Institutions, civil society and migrants' organisations can be meaningfully involved in the design, implementation and monitoring and evaluation of all labour migration agreements. All bilateral and regional agreements should be transparent and publicly accessible and stored in an online repository that can be easily accessed.

Realising human rights for migrant workers on TLMPs and for their families

The recommendations below address the reform of contemporary TLMPs where they remain in use, noting that many recommendations will be equally relevant to the design, implementation and monitoring and evaluation of the comprehensive, human rights-based labour migration policies referenced above:

- Ensure in law and practice that all migrant workers on TLMPs enjoy equal protection of their human rights without discrimination, irrespective of their gender, migration status, contractual status or the temporality of their contracts, including low-wage workers, domestic and agricultural workers or workers in other specific sectors, and with no distinction between nationality groups of migrant workers. All agreements governing TLMPs should specify human rights protections, set out the responsibilities of all parties involved and create legally binding rights and obligations, in line with international law.
- Conduct or support further research beyond the limits of the workplace to better understand the full range of human rights consequences of TLMPs on the lives of migrant workers and their families.

The right to an adequate standard of living

- Guarantee that the housing available to migrant workers on temporary labour programmes is habitable, with restrictions on sharing requirements, and sufficient space, sanitation and ventilation, and access to services. There should be housing large enough to accommodate families where relevant. Migrant worker housing should not create or exacerbate situations of geographic segregation and should be located to facilitate access to necessary services and social facilities.
- Ensure that a sustainable supply of nutritionally adequate, safe and culturally acceptable food is available and accessible to migrant workers on temporary labour programmes and their families, where they are with the worker in the destination State, whether this is for purchase and preparation by the migrant worker or provided by the employer.

The right to the highest attainable standard of health

- Remove any regulatory and practical barriers and ensure that migrants on TLMPs and their accompanying family members can access, on a par with nationals, non-discriminatory and gender-responsive diagnosis, preventive, curative and palliative health services, without fear of stigma or other recrimination, including for migrants whose status has become irregular.

- Guarantee migrant workers available, accessible, acceptable and quality sexual and reproductive health care services including access to contraception, emergency contraception, maternal and newborn health care, including emergency obstetric care, and access to safe abortion services and post abortion care, irrespective of their marital and migration status.
- End the use of mandatory or compulsory testing for conditions such as HIV, tuberculosis and pregnancy as part of migration policy.

The right to social security

- Expand and strengthen migrants' access to social security, including social protection floors, that take into account migrants' temporariness as a special circumstance and provide coverage regardless, include all labour sectors, are not tied to the workplace or employer, ensuring that any restrictions are non-discriminatory, reasonable and proportionate. Social protection systems should be shock responsive, able to extend coverage for all in response to crisis situations such as health or economic crises. Migrants' access to these schemes should not be tied to their workplace or employer and any restrictions on their access, including any required qualification period, should be proportionate and reasonable.
- Improve cooperation between countries of origin and countries of destination to facilitate the portability of social security entitlements and earned benefits.

The right to family life and right to found a family

- Avoid family separation and allow migrants to reunite with family members in countries of destination, particularly in cases of cumulative long stay in the country. Remove prohibitions on migrant workers forming families in countries of destination. Any differential treatment or restriction on access to family reunification based on migration status and the type and length of residence should be in accordance with the law, pursue a legitimate aim and remain proportionate to the aim pursued. Deal with applications for family reunification in a positive, humane and expeditious manner, respecting that various forms of the family exist. Effective and accessible family reunification should allow for both entry into and regularization on the territory. Give priority to applications for family reunification involving children and apply accelerated procedures in cases involving children.
- Ensure that family members of migrant workers are able to enjoy their human rights, regardless of their status, including access to housing, health care services, education and the right to work in the country of destination. Enable children of migrant workers to acquire a nationality in order to prevent statelessness.
- Temporary programmes, particularly those lasting longer than a season, should facilitate a home visit for migrant workers who want one, taking into account the relevant geographies and time needed to access more remote places of origin. Measures to facilitate temporary family visits and/or accompaniment in countries of destination should be agreed and implemented in TLMPs.

Access to justice

- Enable access to justice for migrant workers who experience abuses or violations of their human rights and ensure that their temporary status does not impede this access in law or practice. Protect migrants who seek justice from employer retaliation and immigration enforcement and stay returns decisions until the complaints process is completed.
- Provide permits to stay on human rights or humanitarian grounds to migrant workers who have experienced abuse and violations ensuring that these are not conditional on migrants' cooperation in judicial proceedings and ensure that migrant workers are aware of how to access such pathways. Permits should enable migrants to continue to work or otherwise provide financial support, adequate housing (particularly where they had previously been living in employer-provided accommodation) and other necessities to enable the migrant to live in safety and with dignity while pursuing avenues for remedy.
- Migrant workers pursuing complaints must have access to competent, free and independent legal aid as well as any necessary interpretation services and other necessary assistance. They must be provided with information about their rights as well as all details of the case and the complaints process in a language they understand and in accessible formats.
- Where necessary, set up independent complaints mechanism that are adequately resourced to review cases and provide effective remedies, ensuring that they are mandated to address abuse and violations of human rights. Where such mechanisms are in use, they should be available alongside formal judicial mechanisms, not in place of them. Such mechanisms need to be known to and accessible by all migrants and trusted by them to address concerns without exposing migrants to retaliation or further abuse.
- Strengthen corporate governance to hold employers, including sub-contractors, and other corporate and private actors involved in aspects of temporary labour migrations accountable.
- To be meaningful to migrant workers on TLMPs, grievance and redress mechanisms must be transnational and governments in countries of destination and origin should cooperate to facilitate continued access to effective remedy even after migrants have returned home.

Participation rights

- Guarantee the right of migrant workers on TLMPs to freedom of association and other rights including to free expression and the right to information, as well as freedom of religion or belief. Migrants should be enabled to establish and join trade unions and to participate freely in informal networks and associations, community and faith-based activities. Ensure that trade unions and their members can function free from reprisals related to trade union or political activity.

Digital rights

- Adopt and enforce strong, robust and comprehensive privacy legislation, including on data privacy, that complies with international human rights law in terms of safeguards, oversight and remedies, including in all digital platforms designed for use through the migration cycle.
- Ensure that data systems collecting, storing and processing migrant workers' biometric data and other sensitive personal data, such as health data, are subject to the highest level of protection, and that any use or sharing of migrants' personal information complies with the principles of legality, necessity and proportionality, guaranteeing that their personal data will not be used for other purposes, particularly that may negatively affect the migrant and interfere with their rights. Ensure that State and private actors managing migrant workers' data know that it must be deleted when no longer necessary for the specific purpose for which it was collected.
- Include explicit rights-based data protection guarantees in information sharing and exchange agreements between States and within States, including through explicitly committing to not tracking migrants' personal data in the development and implementation of all digital systems and tools used during the migration cycle, including access to services.

Firewalls

- Establish explicit and binding procedures and standards separating immigration enforcement from the criminal justice system, complaint mechanisms, labour inspectorates, health service providers, public or private housing providers, schools and other education service providers and other public and private service providers with whom migrant workers engage. This includes explicit data protection guarantees in information sharing and exchange agreements between and within States. Ensure that the firewalls are respected and remove any reporting requirement on health, school or other administrators, teachers, doctors and other public officials to report or share data on people's migration status.

Human rights monitoring

- Build in effective assessments of human rights risks in the design, implementation and monitoring and evaluation of TLMPs. Ensure sufficient sustainable resources for independent and confidential monitoring of the situation of migrant workers on TLMPs including with regard to international human rights law, complaints processes and redress mechanisms, protected by binding firewalls.
- The monitoring bodies of the international human rights instruments and the special procedures of the UN Human Rights Council should continue to take into account the human rights of migrant workers and their families and consider reflecting on the human rights consequences of temporary labour migrations in the conduct of their mandates.



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UN Human Rights
Office of the United Nations High
Commissioner for Human Rights
Regional Office for South-East Asia
6th Floor, Block A, United Nations
Building, Rajdamnern Avenue,
Bangkok 10200, Thailand