

# Research Group Migrant Workers

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## 1. Starting points

According to the ILO, ‘labour migration is an increasingly complex and dynamic phenomenon taking place within and between all regions of the world.’<sup>1</sup> One reason for this is that ‘temporary labour migration, particularly of low-skilled workers, is exceeding permanent flows, and this presents a significant governance challenge in terms of ensuring decent work and reducing migration costs for this category of migrant workers’.<sup>2</sup>

On the other hand, the World Economic Forum in 2018 identified the global race for talent as one of the most important ways in which competitiveness and growth are fostered. Many policy-makers face the challenge of attracting the ‘best and brightest’. The most attractive prospects include start-ups<sup>3</sup> and investors. According to the OECD, ‘mobile individuals are picking and choosing countries in which to study, work and invest based partly on how favourable the policies regarding family members and longer-term settlement are. Although employment conditions are key to attracting talents, migration policies do make a difference. The OECD Talent Attractiveness indicators show that many countries could improve their ranking by more favourable migration policies for highly qualified labour migrants’.<sup>4</sup>

The situation concerning the largest group of labour migrants in the world, however, the so-called ‘low skilled’ – such as seasonal and domestic workers – is rather different. Exploitation and inhuman conditions are rampant. In this case the question is seldom how we could change the nexus between labour law and migration law to make it more attractive to enter a country, but rather how to safeguard decency, fairness and basic human rights.

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<sup>1</sup> International Labour Office, Report IV Addressing governance challenges in a changing labour migration landscape, Report IV International Labour Conference 106<sup>th</sup> Session 2017, p 5. (hereafter ILO 2017)

<sup>2</sup> Ibid.

<sup>3</sup> OECD Migration Policy Debates N 21, January 2020, p 1.

<sup>4</sup> Ibid p 2.

At the last world congress in Turin, Professor Kübra Dogan Yenisey presented a comprehensive report with the title ‘Safeguarding the rights of migrant workers: another challenge for labour law?’.<sup>5</sup> She ended the report as follows: ‘To implement the principle of equality between migrants and nationals as regards labour and social security rights, labour law should develop a specific approach, which will prevent vulnerabilities and exploitation in the market and strengthen labour law institutions. The risk mutualization may help to capture the insights of the complex migration phenomenon’.<sup>6</sup>

The questions raised are still relevant and in this project we will touch upon them at least in the part concerning low-skilled labour migrants (Section 3). But we will also broaden the perspective and discuss questions more related to high-skilled labour migrants, such as challenges related to the recognition of skills and skills partnerships. To this end we shall focus on a particularly interesting group, health professionals.

Covid-19 has had a huge impact on labour migration, which was already fraught with complexity. One of the major topics we invite you to reflect upon is the consequences of Covid-19 for any of the targeted groups in your country.

In what follows the topic is introduced through some recent basic facts collected from the ILO, the OECD and the IOM (Sections 1.1–1.5), before the suggested starting points for our common work are described (Sections 2–4).

## 1.1 Development in numbers

The 2020 IOM World Migration report states that ‘the number of international migrants is estimated to be almost 272 million globally, with nearly two-thirds being labour migrants’.<sup>7</sup> The country from which the largest group of migrants originate is India, followed by Mexico, China, the Russian Federation, Syria, Bangladesh, Pakistan, Ukraine and the Philippines.<sup>8</sup> Specific corridors have developed, the largest tending to be from developing countries to larger economies, such as the United States, France, the Russian Federation, the United Arab Emirates and Saudi Arabia.<sup>9</sup> In the Gulf states, over 95 per cent of the labour force in construction and domestic work comprises migrant workers.<sup>10</sup>

Other important, though narrower corridors exist throughout the world.<sup>11</sup> Even if the majority of migrant workers are in high-income countries, the proportion there has declined slightly.

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<sup>5</sup> Kübra Doğan Yenisey, *Safeguarding the Rights of Migrant Workers: Another Challenge for Labour law?* In *Transformations of Work- Challenges for the Institutions and Social Actors* (eds) Giuseppe Casale and Tixiano Treu, *Bulletin of Comparative Labour Relations* – 105 (Wolters Kluwer, 2019), p 227-291.

<sup>6</sup> *Ibid* 291.

<sup>7</sup> IOM, *World Migration Report 2020*, p.2.

<sup>8</sup> *Ibid*, p 26.

<sup>9</sup> *Ibid*, p 2.

<sup>10</sup> *Ibid*, p 34; ILO 2017 (footnote 1) p 7ff.

<sup>11</sup> IOM, 2020 (footnote 7) p 58 ff.

Between 2013 and 2017, a slight drop was noted, from 112.3 to 111.2 million. Upper middle-income countries experienced the opposite development, with a rise from 17.5 million to 30.5 million.<sup>12</sup> This shift may be explained by economic growth in middle-income countries and/or changes to labour immigration regulations in high-income countries.<sup>13</sup> The share of migrant workers in the total workforce across country income groups was quite small in low income (1.9 per cent), lower income (1.4 per cent) and upper middle-income countries (2.2 per cent), but much larger for high-income countries (18.5 per cent).<sup>14</sup>

Within the OECD, more than 4.9 million labour migrants entered OECD countries through temporary migration programmes in 2017, an increase of 11 per cent since 2016.<sup>15</sup> Permanent labour migration increased by 6 per cent.<sup>16</sup> Poland was the top OECD destination for temporary labour migrants, with 1.1 million new authorisations issued to non-EU workers and 21,000 intra-EU posted workers. The United States remained the second most popular destination with 691,000 new temporary workers in 2017.<sup>17</sup> ‘In the OECD area, temporary migrants [come in] a number of different categories at varying skill levels, including highly skilled engineers, IT consultants, intra-company transferees and posted workers, and lower-skilled seasonal workers and working holidaymakers’.<sup>18</sup> Other recipients of temporary labour migrants are Brazil, the Russian Federation and the Gulf states.<sup>19</sup>

Intra EU/EFTA posted workers represented the main recruitment channel of temporary workers, with almost 2.7 million postings. With about 800,000 new work authorisations granted in 2017 a 16 per cent increase on 2016, seasonal programmes were the second largest channel for temporary labour migration,<sup>20</sup> although in some countries their share was significantly higher (in Poland it was 47 per cent and in the United States it was 23 per cent).<sup>21</sup>

Ageing populations and declining labour forces in most advanced economies and some large emerging economies suggest that migrant workers will play an important role in maintaining labour supply and filling labour shortages, as well as in contributing to social protection funds in these countries.<sup>22</sup>

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<sup>12</sup> Ibid, p 3. On the share see also ILO Global Estimates on International Migrant Workers, 2018, p xi.

<sup>13</sup> IOM, 2020 (footnote 7) p 33; see also ILO *ibid*.

<sup>14</sup> IOM, 2020 (footnote 7) p 33.

<sup>15</sup> OECD International Migration Outlook 2019, p 18, p 25. On temporary labour migration see also ILO 2017 (footnote 1) p 12 ff.

<sup>16</sup> OECD 2019 (footnote 15) p 24. On permanent migration to the OECD-countries see also ILO 2017, footnote 1, p 11f.

<sup>17</sup> OECD, 2019 (footnote 15) p 18.

<sup>18</sup> ILO 2017 (footnote 1) p 13.

<sup>19</sup> *Ibid*.

<sup>20</sup> OECD, 2019 (footnote 15) p 18, p 29.

<sup>21</sup> *Ibid*.

<sup>22</sup> ILO 2017 (footnote 1) p 10.

## 1.2 Gender composition

There are about 96 million male migrant workers (58 per cent) and 68 million female migrants workers (42 per cent).<sup>23</sup> The higher proportion of men among migrant workers may be explained by the higher likelihood that women will migrate for reasons other than work, as well as possible discrimination, which reduces their employment opportunities.<sup>24</sup>

## 1.3 Sectors

Different categories of migrant workers are often distinguished on the basis of skills. These skills can refer to the work carried out in the destination state or to the skills a particular labour migrant has. High-skilled labour migrants generally find it easier to settle in a destination country than low-skilled workers.<sup>25</sup> Nevertheless, it is important to keep in mind that the distinction between high-skilled and other labour migrants is not always clear.<sup>26</sup> In many cases, labour migrants selected for their skills are ‘nonetheless unable to practice in an occupation due to difficulty in professional licensing’. ‘Skill mobility partnerships’ between destination countries and origin countries has been one way forward in some countries.<sup>27</sup> Over one-third of all labour migrants are considered to be so-called skill-based.<sup>28</sup> It was estimated (ILO) in 2012 that there would be ‘a potential global shortage of up to 85 million highly skilled and medium skilled workers in 2020’.<sup>29</sup> Sectors and/or professions mentioned in this regard are health care, engineering and information technology.<sup>30</sup>

Lower skilled labour migrants constitute the large majority of migrant workers worldwide. Furthermore, their share has been growing in recent years. This gives rise to serious concerns regarding the efficiency and equity of labour migration.<sup>31</sup>

Over 71.1 per cent of all migrant workers in 2013 worked in the service sector. Of these 7.7 per cent were domestic workers (there were 11.5 million domestic workers in total). Many labour migrants work in industry, including manufacturing, and in agriculture (11.1 per cent).<sup>32</sup> Low- and medium-skilled workers are involved mainly in agricultural activities, construction, manufacturing and freight transport.<sup>33</sup>

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<sup>23</sup> IOM, 2020 (footnote 7) p 3; ILO 2018 (footnote 12), p 6.

<sup>24</sup> ILO 2018 (footnote 12) p 6.

<sup>25</sup> ILO 2017 (footnote 1) p 11.

<sup>26</sup> Weinar et al, *Highly Skilled Migration: Concept and definitions*, Springer 2020.

<sup>27</sup> Ibid.

<sup>28</sup> ILO 2017 (footnote 1) p 12 et seq.

<sup>29</sup> Ibid p 14.

<sup>30</sup> Ibid p 16.

<sup>31</sup> Ibid p 11.

<sup>32</sup> Ibid p 8 f.

<sup>33</sup> OECD 2019 (footnote 15) p 25.

## 1.4 What should govern regulation of labour migration

Perspectives on labour migration differ between stakeholders. The OECD's starting point in its Migration Outlook for 2019 is as follows: 'The main objective of labour migration policy, and one of the main objectives of migration management in general, is to ensure that migration contributes to growth while avoiding negative effects – especially negative labour market impact – on residents'.<sup>34</sup> They continue: 'The main benchmark for the success of labour migration programmes – beside performance of migrants – is that they provide labour and human resources without negative effects on resident workers'.<sup>35</sup> Granting a temporary stay is one of the main policy tools to achieve this objective:<sup>36</sup> 'temporary stays ensure that the migrants do not end up unemployed. Workers in low-skill or low-wage jobs may be subject to limits on their stay to reduce the long-term risk of benefit dependence'.<sup>37</sup>

New criteria for seasonal temporary programmes have been adopted. In Ireland, a new scheme was developed because the salary threshold for a work permit could not be met in the horticultural sector.<sup>38</sup>

Similarly, the OECD reports that countries continue to adjust the criteria upon which their labour migration programmes are based, thereby ensuring better selection to meet their skills needs. Several countries have modified their points system to this end.<sup>39</sup> The systems described in the OECD report seem to focus on talent and highly skilled labour migrants.<sup>40</sup> Another aspect is to use these mechanisms to encourage skilled and/or seasonal labour migrants to take up jobs in remote areas. Examples include Australia, Canada, New Zealand<sup>41</sup> and Korea.<sup>42</sup>

In the OECD Migration Policy Debate No. 21 January 2020, the OECD asks how to make labour migration management future-ready?<sup>43</sup> National examples are highlighted, including sector-specific pilot measures targeting agri-food in Ireland, Canada and the United Kingdom.<sup>44</sup> Others direct the focus to specific regions within a state.

The ILO has taken another starting point in its report 'Addressing governance challenges in a changing labour migration landscape' from 2017.<sup>45</sup> The starting point is fairness. In 2014 the ILO published the report 'Fair migration: setting an ILO agenda'. This perspective does not

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<sup>34</sup> Ibid p 119.

<sup>35</sup> Ibid p 4.

<sup>36</sup> Ibid p 119.

<sup>37</sup> Ibid p 120.

<sup>38</sup> Ibid p 52.

<sup>39</sup> Ibid p 19, p 47ff .

<sup>40</sup> Ibid p 47ff.

<sup>41</sup> Ibid p. 51.

<sup>42</sup> OECD Migration Policy Debates, Nr 21, January 2020, How to Make Labour Migration Management Future-Ready? P1.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> ILO 2017 (footnote 1) p1.

prevent the ILO from discussing ‘the governance of labour migration in the light of the rapidly changing nature of work, widening economic and demographic disparities, and the need for skills and job matching to meet labour market needs’.<sup>46</sup> But the focus and concerns are very different: The challenges in governing labour migration will grow, according to the ILO, due to trends such as technological changes, evolution of the employment relationship and erosion of the social contract between the state and other actors’.<sup>47</sup> Less-skilled migrant workers are exposed more frequently to ‘decent work deficits and bear higher migration costs’.<sup>48</sup>

On the international scene, Goal 8 on decent work and economic growth in the 2030 Agenda for Sustainable Development – namely target No. 8.8 – underscores that labour rights and safe and secure working environments should be protected for all workers, including migrants, in particular women migrants and those in precarious employment.<sup>49</sup>

The Global Compact for Safe, Orderly and Regular Migration adopted is described ‘as the first internationally negotiated statement of objectives for migration governance, striking a balance between migrants’ rights and the principle of states’ sovereignty of their territory’.<sup>50</sup> The implications thereof must also be carefully considered.

## 1.5 Management of migration under COVID-19

The pandemic has had severe effects on migrant workers. The combination of closed borders, work shortages and unsafe working conditions has hit migrant workers hard. The measures taken have to a great extent affected the most vulnerable migrant workers, such as seasonal and irregular workers. A number of exemptions to the travel bans have been put in place, however, notably for cross-border workers, seasonal workers and health professionals.<sup>51</sup> A number of important measures have been taken in the OECD countries to respond to the unique situation caused by Covid-19. At the same time, it has been very clear that migrant workers carry out work that is crucial for their host countries. In order to safeguard the harvest, exemptions have been adopted with regard to entry bans on seasonal agricultural workers. These workers are performing essential services.

In some countries, migrant workers have been entitled to remain despite that the original permit has expired, (Australia, Greece, Israel, Italy, Norway, the Czech Republic and the USA).<sup>52</sup> Similar measures were taken in Belgium and Canada. Migrants who were previously forbidden to work were henceforth entitled to do so, in certain places. In other countries, short-term or permanent regularisation measures have been taken – in Greece, for example, ‘to help address

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid p 11.

<sup>49</sup> UN transforming the world 2016, <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

<sup>50</sup> IOM, 2020 (footnote 7) p 291.

<sup>51</sup> OECD, Managing international migration under COVID-19, Update 10 June 2020, 2020, p 2.

<sup>52</sup> Ibid 4.

urgent labour needs in agriculture'. As hitherto it has sometimes been difficult for migrants to access immigration authorities, 'blanket relief measures or the possibility to remain' have been offered. In some countries, the possibility to remain must be applied for and applies only to those who cannot return home. Italy is undertaking 'a potentially large-scale regularisation programme'.<sup>53</sup> Employment restrictions have been eased. The ceiling on students' maximum hours of work has been removed in a number of countries. In others, the rules on changing employers, reducing hours or working for lower wages if the change in employment is Covid-related have been loosened.<sup>54</sup> Regularisation measures have been taken in Portugal to make it possible to offer migrants free health care. The OECD has suggested that the gradual exit from lockdown will not lead to a quick return to 'business as usual'. With regard to labour migration, they suggest that 'pending work authorisations may become ineligible due to changes in the labour market situation – either because the employer no longer needs the worker or because a weaker post-pandemic labour market leads to more restrictions on recruitment from abroad'.<sup>55</sup> Labour migrants 'may have been unable to depart and overstayed their visa, making them ineligible for further extensions'. Those who benefited from a temporary, pandemic-related extension of their visa may find themselves in an uncertain situation at the end of the shutdown, with limited prospects for return.<sup>56</sup> This will also affect highly skilled workers.<sup>57</sup>

From the OECD report and elsewhere it is clear that the pandemic has affected migrant workers, and in particular migrant workers with temporary permits. Other reports also show that settled migrants have also been hit hard by the pandemic because what have come to be called 'frontline occupations' during the pandemic are held in large part by migrants. In this project, we will focus on the consequences for unsettled migrant workers. On one hand, reports show that the already very poor working and living conditions for many seasonal workers in the agri-food sector has led to a very high exposure to risks related to Covid-19, and in many cases it seems that no protective measures have been taken. Farm workers and their representatives from Italy, the United Kingdom, the United States and Canada have even faced increased vulnerabilities because of the lack of adequate – or any – safeguards against Covid-19.<sup>58</sup>

Other workers – in particular less skilled – have suffered increasingly during the pandemic. There are, for example, reports about Ethiopian domestic workers in Lebanon being dumped outside the Ethiopian embassy. Their former employers can no longer afford to pay them and

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<sup>53</sup> Ibid 5.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid 7.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid 8 f.

<sup>58</sup> See for example the recording from a seminar on farm workers experiences of Covid-19 organised by Tomaso Ferrando, Manoj DiasAbay and Brid Brennan supported by Bristol university and TNI etc. - <https://www.youtube.com/watch?v=mAom91BiG1E>

so opted to leave them at the door of their home embassy, which then failed to act address the problem.<sup>59</sup>

Other examples are more hopeful, however. Many countries have adopted measures to ease the situation of migrant workers during lockdown.<sup>60</sup>

These examples highlight the contradictory world of labour migration, the topic we will address – with your support – at the ISLSSL world congress in Lima in 2021.

The changes highlight, in some cases with almost unbearable clarity, the shortcomings of existing systems and the cruelty that is all too often part and parcel of so-called ‘managed migration’. However, there are also examples of measures that have been adopted that have long been demanded. Is the pandemic also providing an opportunity for the relevant authorities to learn how to strike a fairer balance between the interests at stake? We should also keep in mind that the negative tendencies identified before the outbreak of Covid-19 have in many ways been exacerbated by it. Trying to establish where we were in February 2020 will also help us to understand the consequences and measures taken since the outbreak of Covid-19.

## 2. Set-up

Migrant workers are an inherent part of almost every labour market in the world. The concept of ‘migrant workers’ can cover all workers in a labour market – regular or irregular – born in another state, irrespective of why they are working abroad. The concept could also be limited to mean people who move to another country in order to apply for or start to work. We will focus our work on the latter category of migrants, whether regular or not. We will not focus directly on the fact that there may be other, complementary reasons for leaving their home country. Such issues can be dealt with indirectly.

In what follows we will present the questions we would like to touch upon in the report to the World Congress in Lima, which we invite you to engage with. Section 3 will be divided into two main topics: high skilled migration and less skilled migration.

Through this paper, we are reaching out to you and asking for national and/or regional input to this report. We would very much appreciate it if you could touch upon one or more of the specific questions we raise or choose another labour migration-related topic that is more relevant in your national and/or regional context.

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<sup>59</sup> Thomas Colson, Ethiopian maids are being dumped onto the street by once wealthy Lebanese families who can no longer afford servants, 21 June 2020, Business insider: <https://www.businessinsider.com/lebanon-ethiopian-maids-dumped-onto-the-street-as-crisis-intensifies-2020-6?r=US&IR=T>

<sup>60</sup> OECD, Managing international migration under COVID-19 (footnote 51) p 1.

We therefore suggest that the focus of the report to the World Congress in Lima be the following:

The main challenges and opportunities with regard to labour migration up to the pandemic; the impact of the pandemic; and possible learning outcomes of the pandemic with regard to the main challenges and opportunities identified before its outbreak.

We would be very grateful for your expert input. This could take the form of a full paper you would present individually at the Congress, or a short paper highlighting some aspects you find important. It could also be an already published or accepted paper that highlights issues relevant to the report. Your contribution will be clearly acknowledged in the report and you will of course be free to use your input in any other way you choose as well.

## 2.1 Timeline

We would like to have your input at the latest by **1 December 2020**. We may then ask for clarifications at the beginning of 2021. The deadline for submission of the world report on migrant workers is May 2021.

Please send your input to:

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## 3. Subtopic I

### 3.1 The main challenges and opportunities with regard to less skilled labour migration up to the pandemic

The challenges of governing labour migration will continue to grow because of trends such as technological change, evolution of the employment relationship and erosion of the social contract between the state and other actors.<sup>61</sup> One explanation is that ‘temporary labour migration, particularly of low-skilled workers, is exceeding permanent flows, and this presents a significant governance challenge in terms of ensuring decent work and reducing migration costs for this category of migrant workers’.<sup>62</sup>

If there were no positive effects for low-skilled temporary labour migrants from working abroad they would not do it. The ILO highlights a number of positive effects, such as increased income, increased school enrolment rates and a reduction in child mortality. Remittances are also central.<sup>63</sup> There are many other positive effects, too, for migrants, the sending states and the

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<sup>61</sup> ILO 2017 (footnote 1) p 1.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid p 15

destination states.<sup>64</sup> Most research concerns high-income countries; the impact on developing destination countries is less known.<sup>65</sup>

Less-skilled migrant workers in particular suffer from significant problems with regard to decent work, including ‘violations of fundamental principles and rights at work and other infringements, when seeking to obtain employment abroad and during their stay in the country of employment’.<sup>66</sup>

The large supply of less-skilled workers in relation to the jobs available abroad means that they tend to be recruited under temporary migration schemes, often after paying fees to labour recruiters, and into sectors characterised by non-standard forms of employment and greater informality, and where decent work is in short supply.<sup>67</sup> The risk of forced labour is higher for this group in particular in sectors such as agriculture, domestic work, fishing and the electronic industry.<sup>68</sup>

Migrant women workers ‘face a double penalty in terms of labour market segregation and discrimination’. They are ‘over-represented in non-standard employment such as temporary agency work and part-time jobs, which is also the result of discrimination, poor transferability of skills and low bargaining power’.<sup>69</sup>

The ILO, FRA and scholars have identified a number of factors that foster problems with regard to decent work. We would ask you to highlight and discuss examples and experiences from your national context that address these challenges. But good and positive examples would also be welcome, alongside the problems. Below we suggest a number of issues for your consideration. But others may be more relevant from your standpoint.

### **3.2 Questions that could be addressed**

*Domestic workers* are often in a very precarious situation – they are hidden from the outside world and also, in some cases, ignored by trade unions and their employment is exempted from labour protection law. The adoption process of ILO Convention No. 189 on decent work for domestic workers (2011) highlighted the exploitation these workers face. Migrant female domestic workers may work, on average, as many as 155 hours per week.<sup>70</sup> They may also be exposed to sexual abuse and forced labour.

Seasonal workers share many of these experiences. They often also work in isolation from other parts of the labour market. Limits with regard to internal labour mobility have been identified as an obstacle to decent work for these groups. The situation leads to social dumping and labour

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<sup>64</sup> Ibid p 16.

<sup>65</sup> Ibid p 17.

<sup>66</sup> Ibid p 17.

<sup>67</sup> Ibid p 17.

<sup>68</sup> Ibid p 18.

<sup>69</sup> Ibid 19 (ILO 2016 pp 144-152).

<sup>70</sup> Ibid p 20.

market segregation, ‘with low-skilled and low-paid jobs becoming the exclusive domain of migrants’.<sup>71</sup> This is the case not only for domestic and seasonal workers but also other parts of *the service industry, including construction*. The recruitment channels are identified as a particularly challenging part of the structure.

- How is migrant domestic work regulated (migration and labour law, and other relevant legal areas) in your country/region and to what extent has national regulation been successful in preventing abuse and exploitation of domestic workers?
- How is seasonal migrant work regulated in your country/region (migration and labour law and other relevant legal areas), and to what extent has your national regulation been successful in preventing the abuse and exploitation of seasonal workers?
- Are there any other less skilled migrant programmes in your country/region that you find important to share with us?
- To what extent has national regulation in your country been successful in preventing abuse and exploitation of migrant workers in low skilled service sectors and construction? Please explain.
- To what extent does irregularity lead to further exposure and are there any actors engaged in preventing and mitigating these risks?
- Are discrimination and wage gaps between migrants and national workers a problem in your national context?
- Are fair recruitment channels safeguarded? Please explain how!
- To what extent are trade unions and collective representation structures in your country including labour migrants in their work?
- Are there any other actors who are addressing migrant workers’ interests?
- Are there effective enforcement mechanisms? To what extent do they manage to keep a ‘firewall’ between labour law and migration law?
- Are there effective sick leave and occupational injury provisions?
- Do you have any suggestions – what else could be done?
- Has any specific Covid-19 measures been adopted to address the situation of less skilled migrant workers? What have they lead to? Could anything be learned from those measures?
- Has the Global Compact for safe orderly and regular migration led to any concrete measures in your country? What are these measures?

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<sup>71</sup> Ibid p 23.

## 4. Subtopic 2

### 4.1 The main challenges and opportunities with regard to skilled labour migration up to the pandemic

#### Recognition of skills, qualifications and competences

One of the main preconditions for labour mobility is recognition of formally acquired skills. Often, the main obstacle to fast and efficient recognition are complex national professional regulations, primarily protecting persons who acquired formal qualifications in the national education system. In recent years, discussions on mutual recognition agreements have commenced with the purpose of speeding up the process of recognition and facilitating licensing for migrant workers with minor skills deficits that they can make up through a tailored programme of training or additional work experience.

With the aim of remedying the credentialing gaps that keep many immigrants from fulfilling their professional potential, migration destination countries have developed strategies to extend skills recognition to include informally acquired skills.

A third important novelty in the area of skills recognition is global discussions on the adoption of remote, online skills development programmes for all workers, including migrant workers.

In fact, it seems that we are witnessing the emergence of innovative mechanisms for skills recognition, replacing traditional formal qualification recognition.

To this end, national reports could address the following questions:

- Does your country have any innovative solutions for the recognition of formally and informally acquired skills, formal qualifications and particular competences of migrant workers?
- Are there any innovative ways of using technology and digitalisation to evaluate and recognise skills more comprehensively?
- What is the availability of remote or online skills development and matching programmes for migrants?
- Does your country promote demand-driven skills development to optimise the employability of migrants?
- Are there bilateral, regional or multilateral mutual qualification recognition agreements? What arrangements are in place and for which professions?
- What is the availability of on-the-job training for migrant workers who have credentials gaps?
- Is there recognition of skills acquired on the job or through training in order to optimise the benefits of upskilling and facilitate migrant workers' ability to transition from one job or employer to another?

## Skilled migration partnerships

The New York Declaration for Refugees and Migrants, adopted in 2016 by the 193 UN Member States, recognised the need for a comprehensive approach to human mobility and enhanced cooperation at the global level. A second important regulatory mechanism is the Global Compact for Safe Orderly and Regular Migration, adopted in December 2018. Implementation of the objectives of this Global Compact will be reviewed every four years in the UN General Assembly and the first review will take place in 2022. Regional reviews will start already in 2020.

Two Global Compact objectives are particularly relevant for research into skilled migration partnership agreements: objective 18 ('Invest in skills development and facilitate mutual recognition of skills, qualifications and competencies') and objective 23 ('Strengthen international cooperation and global partnerships for safe, orderly and regular migration'). To this end, the Global Compact on Migration underlined the need to build global skills partnerships among countries that strengthen the training capacities of national authorities and relevant stakeholders, including the private sector and trade unions, and also foster the skills development of workers in countries of origin and migrants in countries of destination, all with a view to preparing trainees for employability in the labour markets of all participating countries.

One example of a successful migration partnership agreement is Germany's 'Triple Win' project under which nurses were recruited to work in Germany for a limited period under agreements with several countries, including Serbia, Bosnia and Herzegovina and the Philippines.

To this end, national reports could address (but are not limited to) the following questions:

- Does your country have regional, multilateral or bilateral migration partnership agreements?
- Which sectors and professions are involved in skilled partnership agreements?
- What are the working arrangements pertaining to facilitated mobility?
- Do the agreements promote mutually beneficial skills development opportunities for migrants?
- How do the agreements in place promote skills development, mobility and circulation, such as student exchange programmes, scholarships, professional exchange programmes and trainee- or apprenticeships?
- What is the agreed duration of existing skilled partnership programmes?

## Labour migration of health professionals

The labour migration of health professionals is an aspect of skilled migration that tends to attract more attention from researchers and practitioners because of its possible consequences for migrant workers' country of origin. In the past decade, the IOM and the WHO have strongly emphasised two burning problems arising from the migration of health care providers: the global shortage of health professionals, and the consequent global imbalances between the availability of health workers and the burden of disease (the WHO gives the example of Sub-Saharan Africa, which has the world's lowest density of doctors and nurses, at only 3 per cent, the highest disease burden, at 24 per cent, and less than 1 per cent of the world's financial resources to respond to this burden). The IOM points out that the well-managed migration of health workers can play a key role in development overall, as well as in building the capacity of health systems, not only in receiving countries, but also in countries of origin. In order to promote good practices and prevent any negative effects of health worker migration, the WHO has developed the Global Code of Practice on the International Recruitment of Health Personnel, with strategies to enable both sending and destination countries to decrease their reliance on foreign-trained health workers and mitigate the negative effects of health personnel migration on the health systems of developing countries. These include, for instance: aligning government education spending with employment opportunities; not hiring directly from countries with the lowest health care worker to population ratios; and adopting innovative financing mechanisms, allowing local and private entities to provide complementary funding to government subsidies to health worker training (IOM, WMR 2020).

In national reports, it would be interesting to obtain information on the following:

- The effects of the migration of health professionals on the national health system, with a statistical breakdown of inflows and outflows of health professionals in the past five years.
- Any measures to prevent the brain drain of health professionals or measures to ensure circular or temporary migration of health professionals.
- Strategies to reduce push factors for the emigration of health care professionals.
- Entry conditions for the employment of foreign health workers in the national labour market, including analysis of potential additional requirements, such as a fixed period of on-the-job training as a requirement for full-time health care employment.
- Level of local language proficiency of migrant health workers and availability of specialized medical language training courses.
- National requirements for the emigration of medical professionals (reimbursement of medical specialisation costs, reimbursement of medical residency costs or similar financial obligations).
- Possible existence of medical education in foreign languages to satisfy a global demand for mobility or migration of medical professionals.

## **4.2 The impact of Covid-19 on labour migration and possible learning outcomes of the pandemic**

The Covid-19 virus has globally affected almost all workers through sudden changes in their work status (essential and non-essential workers); changes in their place of work (remote working); or economic consequences of the imposed restrictions on movement and temporary closure of businesses, leading to furloughs or layoffs. Vulnerable workers, including migrant workers, have been the most affected and the first to lose their jobs. While it is still too early to estimate the consequences of the Covid pandemic, we might assume that migrant workers will be the hardest hit because of the unexpected rise in domestic unemployment worldwide. Therefore, it is essential to research in more depth various aspects of the current and any future health crisis insofar as they affect migrant workers. Legal policies regulating the labour and residence rights of migrant workers are key to a more precise assessment of reopening labour markets to the employment of migrant workers. National reports could reflect on general trends of migrant employment and possible challenges during the Covid-19 pandemic, with particular focus on the following:

- Were specialised migrant workers allowed to enter your country during the pandemic?
- Did your country introduce exceptions to the general entry ban due to the pandemic?
- Were migrant doctors, nurses and other medical staff or migrant workers in the food sector declared essential workers or were they downsized and expected to leave their country of employment because of Covid-19?
- How will Covid-19 changes in migrant employment affect your national labour market on the long run?
- Do you expect that national workers will be trained to permanently replace migrant workers due to the rise in domestic unemployment?
- What is the eligibility of migrant workers for unconditional emergency unemployment cash benefits or one-off payments due to the pandemic and a possible residency requirement?
- If the state has introduced financial incentives for job retention, what is the eligibility of migrant workers for such incentives (either as partial or full salary cover).
- Is there a no-recourse to public funds clause as a residence requirement for migrant workers in times of pandemic and other emergencies?
- Possible exceptions in times of emergency or crisis to visa permits linked to the employment status of migrant workers or particular employers.
- Consequences of emergency unemployment payments with regard to visa extension eligibility.
- Duration of period permitted between jobs before a migrant worker's visa expires.
- Continued employment as a precondition for visa extension and, because of the health emergency, unconditional visa extensions for migrant workers or temporary regularization of residence status, regardless of work status.
- What are the learning opportunities and possible learning outcomes of the pandemic in terms of migrant work for your national labour market?