



**¿QUO VADIS?
RECLUTAMIENTO
Y CONTRATACIÓN DE
TRABAJADORES MIGRANTES
Y SU ACCESO
A LA SEGURIDAD SOCIAL:**

*dinámicas de los sistemas
de trabajo temporal migratorio
en Norte y Centroamérica*

Alejandra Constanza Ancheita Pagaza
Gisele Lisa Bonnici

**QUO VADIS?
RECRUITMENT AND
CONTRACTING
OF MIGRANT WORKERS
AND THEIR ACCESS
TO SOCIAL SECURITY**

*The Dynamics of
Temporary Migrant
Labor Systems in
North and
Central America*

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Prologue

Human territorial mobility between countries is a central issue of our times. Thousands of people cross international lines in search of better life opportunities or greater security for them and their families. Although some migrants move seeking to improve their wages, many others are forced to abandon their places of origin due to poverty or hunger, others due to natural disaster and some move fleeing from violent conflicts or because they are persecuted.

By the year 2000, there were approximately 150 million migrants throughout the world; by 2010, this number had grown to 214 million people. If the number of migrants continues to grow at this rate, by 2050, some 450 million people will be migrants. It is difficult to know the exact magnitude of the number of migrants who move throughout the world for labor reasons since many countries do not register these figures; however, there is no doubt that this is a significant and consistently growing phenomenon. The International Organization for Migration (IOM) estimates that there are currently more than 86 million economically active migrants. Nevertheless, it is possible that these aggregate international figures are underestimated due to the enormous difficulty of gathering this type of data, particularly in certain regions of the world. Despite the huge volume of labor migrant flows, a large amount of migrant workers continue to face a series of problems and violations to their labor rights, with irregular migrant workers being the most vulnerable.

The majority of migration flows occur between neighboring countries yet due to technology and modernization of the media and transportation, every day a greater number of countries are affected by or benefit from the phenomenon

of migration. Some countries are considered to be sending countries, others receiving countries and yet others transit countries; some countries have all three of these traits at once.

Today, the reality is that different regions and countries of the world face a serious need to design and make use of necessary policies and resources to better manage worker migration, thus ensuring the welfare and human rights of these people who, in the end, are of benefit to their society of origin, as well as the receiving society.

Although international labor migration may turn out to be productive for many people, many of these migrant workers have unsatisfactory living and working conditions. While it is likely that their labor conditions are better than in their own country, in many cases they are inferior to the working conditions of nationals in their receiving country. Despite international standards to protect migrant workers, their labor rights are frequently abused, especially if they have immigrated in an irregular fashion.

In this context, the *Instituto de Estudios y Divulgación sobre Migración, A.C.* (INEDIM), —an institution dedicated to the analysis, evaluation and dissemination of information about migration and asylum in order to contribute to plural, participatory debate on migration policy and programs— seeks to facilitate analysis and information exchange on issues of migrant workers, among other key issues. To this end, INEDIM took on the task of developing an integral and comprehensive document regarding different migrant worker and visa systems in Central and North American. Hence, INEDIM entrusted the development of this study to consultants Alejandra Ancheita and Gisele Bonnici.

The work presented here holds enormous value for delving in-depth to the forms of management of temporary migrant workers, as well as their access and guarantees to social and labor protection in North and Central America. The document *Quo Vadis? Recruitment and Hiring of Migrant Workers and Their Access to Social Security: Dynamics of Temporary Labor Migration Systems in North and Central America* addresses the problem of management of labor migrant flows among countries in our region. This is complete study

based on an ordered and scrupulous methodology in which different migration systems and visa schemes for the hiring of temporary migrant workers are analyzed from the perspective of protection, respect for, guarantees and promotion of human rights.

The study analyzes six systems that seek to regulate temporary migration in the region along the Central and North American corridor. The countries involved in these six systems are El Salvador, Guatemala, Mexico, Canada, the United States, Costa Rica and Nicaragua. The authors carry out a thorough and well-structured study based on two focuses of analysis: first, the processes for recruiting and contracting migrant workers and secondly, access to social protection for temporary migrant workers by means of the right to social security. From these two focuses, the authors are able to identify and demonstrate structural insufficiencies and gaps in the analyzed systems, which should guarantee labor security and social security for these workers.

The authors conclude that in the current economic context and a more globalized situation of migration, governments in different countries will continue to search for new options to promote and regulate or discourage labor mobility in different regions. They tell us that meaningful restructuring is necessary in order to establish migratory systems that are coherent with the current context of these countries, integrated to a policy framework on labor migration that protects and promotes the social, economic and civil rights of men and women migrant workers. The authors stress that we can only make progress in the protection of men and women migrant workers' rights, as well as offset abusive practices during recruitment and hiring processes, if governments from these countries adopt a more active role in regulation, preferably, say the authors, acting in a bilateral or multilateral coordinated fashion.

The book concludes with a series of 29 recommendations grouped in the following categories: general recommendations, on recruitment and hiring, on social security and supervision, monitoring and fulfillment of standards.

This work will quickly become a necessary reference for different governments in the region that seek to improve and organize their labor migration flows. International mobility of workers is a phenomenon that will continue

in the future due to demographic inertia and the economic and labor needs of our new globalized world. The book *Quo Vadis? Recruitment and Hiring of Migrant Workers and Their Access to Social Security: Dynamics of Temporary Labor Migration Systems in North and Central America* offers an excellent opportunity for coming to know the current status of this phenomenon in-depth, in addition to the chance to improve migration policy and program design and implementation focused on protecting the rights of temporary migrant workers in the region.

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Quo Vadis? Recruitment and Contracting of Migrant Workers and Their Access to Social Security: Dynamics of Temporary Labor Migration Systems in North and Central America

By Alejandra Ancheita and Gisele Bonnici*

Executive Summary

Temporary labor migration systems¹ have increased around the world, posed as successful models to respond, on the one hand, to the lack of employment in developing countries, as well as the need for unskilled labor in developed economies. On the other hand, States have sought to use these temporary labor migration systems to control and regulate migration flows in contexts where, for different geographical, historical, economic and social reasons, these movements have been facilitated and even normalized. In both cases, the protection of women and men migrant workers has been of secondary importance despite the

* The authors are independent consultants for the Instituto de Estudios y Divulgación sobre Migración (INEDIM). Alejandra Ancheita is a lawyer and expert in labor rights, as well as founder and Executive Director of the Economic, Social and Cultural Rights Project (ProDESC, by its acronym in Spanish). Gisele Bonnici is a lawyer and an expert in migrant and refugee rights; she currently serves as the Regional Coordinator for the International Detention Coalition in the Americas and as an INEDIM Board member.

1 In this study, we employ the definition “temporary labor migration systems” based on the definition of “system” by the Royal Spanish Academy (from Latin *systema*, originally from Greek σύστημα). **1.** masculine gender. A group of rules or principles regarding a matter that are rationally interconnected. Available at: <http://lema.rae.es/drae/>. This definition helps us to understand that so-called “temporary labor migration programs” are actually a group of basic principles that seek to order labor migration flows and are far from being programs designed under principles of bilateralism and respect for human rights of women and men migrant workers.

diversity of international human rights conventions and treaties that establish standards of protection. While efforts to include these standards have been made by certain labor-sending countries and/or countries of employment, their effective application continues to be a challenge.

The increase in complaints filed by human rights organizations, migrant rights organizations and unions regarding systematic abuses of temporary migrant workers, as well as the evident failure to use temporary labor systems to arrest flows of migration and their adverse consequences, reveal the need today, more than ever, to analyze these systems from a rights-based approach that considers the protection, respect for, guarantees and promotion of human rights. In this sense, the purpose of this document (as an executive summary of the research report) is to improve our understanding of existing temporary labor migration and visa schemes and systems in the region, with a special focus on recruitment and contracting mechanisms, as well as on the access of women and men migrant workers and their families to social protection. With this study, we hope to contribute to dialogues by decision makers involved in the development of such systems, providing recommendations to effectively introduce a rights-based approach to engage in and address the realities of labor migration.

This study is based on a diagnostic analysis² of six different systems to regulate temporary labor migration in the region along the Central to North American corridor. Three of these systems involve El Salvador, Guatemala and Mexico with Canada; another addresses traditional flows of migration towards the United States; and the final two are concerned with south-south migration associated to relations between neighboring countries and border populations: a) the bilateral program for seasonal migrant workers between Canada and Mexico; b) the private system for Guatemalan seasonal migrant workers in Canada; c) the national program for Salvadoran seasonal migrant workers in Canada; d) the H-2A visa scheme for temporary or seasonal agricultural workers and H-2B visa for non-agricultural workers that the United States offers to Mexican workers; e) the bilateral cooperation program for temporary employment between Costa Rica and Nicaragua; and f) the border visa scheme for temporary work for Guatemalans and Belizeans in southern Mexico.

² The research for this study concluded in May 2012.

This study focuses on two issues: (i) recruitment and contracting processes, and (ii) access to social protection for women and men migrant workers through their right to social security, analyzed in the light of maximum standards of protection for the rights of migrant workers and their families, including labor rights, as established under international law.³ We aim to identify and bring to light the structural deficiencies and gaps in these systems for guaranteeing labor and social security for temporary migrant workers and their families. Conceptually speaking, the terms “temporary migration,” “temporary labor,” “temporary migrant workers” and “migrant temporary workers” are all understood in the context of the objectives of the existing systems and schemes, that is to say, to add workers to the labor force without adding residents to the population. Likewise, these terms are understood in relation to a defined and limited period of permission that imposes a temporary legal situation, regardless of the person’s actual period of residence in the country of employment.

Throughout the investigation, working from a rights-based perspective, we corroborated that forms of recruitment should be addressed under more general terms of the hiring conditions, which depend on the very design of the systems of temporary employment. Similarly, the topic of access to social security rights for temporary migrant workers and their families is developed based on rights acquired under their condition as temporary migrant workers. From the systems themselves, we studied aspects of labor security and social security that are defined by and operate according to the labor relations agreed between States involved in temporary labor systems and during hiring. Generally, these systems lay the foundations for the deficiencies identified that prevent temporary migrant workers and their families from obtaining decent work and access to social security rights.

In regards to the stage of recruitment and contracting of migrant workers, this analysis focused on the mechanisms and procedures currently in practice under the systems and schemes under study, including the initial, important stage that regulates and frames labor relations. In this sense, we analyzed abuses that resulted from or that are associated to this stage, also taking into consideration the role of participating actors such as immigration authorities, ministries of labor, international institutions, public and private recruitment agencies, private companies, independent recruiters and social networks.

³ See: <http://www.hchr.org.mx>

From this perspective, the recruitment process should be free of deception and threats. It should be institutionalized under a legal framework that regulates recruitment agents, whether public or private, whose purpose is to facilitate the mobility of women and men workers across national borders and to place these workers in jobs in another country. In the case of private agencies, States should determine conditions to regulate their functioning, by means of a licensing or authorization system, including clear regulations regarding the gratuitousness of these services for workers. States should also guarantee adequate protection for migrant workers who are recruited by private employment agencies; they should prevent workers from falling subject to abuses and should establish sanctions when abuses do occur. Likewise, the hiring process should be formalized through the signing of an employment contract that clearly stipulates labor conditions and that should be filed on a public registry in the sending country. Finally, throughout all these processes, abuses such as child labor, forced labor, trafficking of persons and labor exploitation should be prevented.

Given that the hiring of women and men migrant workers under these systems and schemes gives rise to the application of a social protection framework, we studied the mechanisms and procedures to secure access to social security rights for these workers and their families. The existence or absence thereof of regulation, both in the country of origin and destination, was considered, as were the pursuant human rights violations. From this perspective, we examined labor conditions, access to health care, unemployment insurance, paternity or maternity leave, and conditions for withdrawal from or termination of employment due to illness, disability due to work accidents or old age. We also reviewed how these rights are extended to the families of women and men migrant workers.

We grounded our analysis in the principles of social protection that are stated hereinafter, as well as the obligations of States to develop schemes that comprehensively fulfill these principles and that also concurrently address socioeconomic realities and development issues of the countries analyzed. Social protection is comprised of principles of universality, comprehensiveness, immediacy, sufficiency, as well as unity and equality of treatment.⁴ This means a guarantee for all people, regardless of their economic, labor, social conditions or tax status: it seeks universal and timely coverage for all people in the face of

4 Miguel Ángel Fernández Pastor, Nora Inés Marasco, Luciana Belén Maccarini, Juan José Zermeño, Gelacio Ramírez, et al., 2010. *Migración y Seguridad Social en América*, Centro Interamericano de Estudios de Seguridad Social, p. 38.

any and all contingencies. The principle of sufficiency implies that the coverage of risk should include the totality of the harm caused and the principle of unity establishes that social security systems should be coherent with each country's sociopolitical conditions. We also find that the principle of equality of treatment establishes that norms and requisites should be identically applied to all members of the community.⁵

In our analysis, when speaking of access to social protection, we are referring to real conditions of access for women and men migrant workers to the systems and their benefits, both in their country of origin and in the country where they work, using the maximum standards established by the human right to social protection as a reference.

More detailed information can be found in the research report: *Quo Vadis? Recruitment and Contracting of Migrant Workers and Their Access to Social Security: Dynamics of Temporary Labor Migration Systems in North and Central America.*⁶

⁵ Ibid, p. 47.

⁶ See: www.estudiosdemigracion.org

Conclusions

Throughout the analysis, we observed a great diversity of temporary labor migration systems operating in the region. Two common objectives of receiving countries are to regulate the flow of labor migration and to incorporate temporary migrant workers to the labor force. The systems are differentiated both by their vision and their specific objectives, as well as by the participation of different actors, the formality of the systems regarding the terms of employment and, thus, the human rights of women and men migrant workers that are guaranteed under these systems.

Despite the existence of numerous international standards established in the field of labor migration, serious gaps continue to exist for the protection of migrant workers' rights in all of the countries and systems analyzed here. The diversity of the systems allows us to also identify positive aspects to contribute to the debate on labor migration, in order to achieve better living conditions for women and men migrants and the enjoyment of their rights by strengthening recruitment and contracting mechanisms, as well as the access to rights concerning social protection.

In regards to the characteristics of the labor migration systems

1. In the six systems of temporary labor migration studied here, we have corroborated the existence of a tendency to resolve the labor market needs of the economies of countries of employment (Canada, the United States, Mexico and Costa Rica) without necessarily taking into consideration the principles of bilateralism and equity in regards to the availability of the supply of workers from countries of origin. This approach is limited to considering the migrant worker as a unit of labor, rather than a rights-bearing subject. This tendency has directly affected migrant workers' access to their human and labor rights.

2. Concurrently, we corroborated that some of the systems analyzed were created to resolve existing problems of flows of migration. In this way, States seek to regulate migration and facilitate the temporary admission of migrants for labor purposes, without offering them access to residency. This approach is limited to seeing migrant workers as just another number in migration statistics, without considering their contribution to the labor market and the society of the receiving country.
3. We identified only two systems in which, at least in the text of the signed agreements, bilateralism exists between labor-sending and labor-receiving countries. This is the case of the Seasonal Agricultural Workers Program (SAWP) between Canada and Mexico and the Nicaragua-Costa Rica Co-development Agreement.
4. The others are not programs rather unilateral systems for temporary labor migration management.
5. Although some of the systems resemble bilateral agreements, none of them fulfill the standards established by the International Labor Organization (ILO).⁷
6. There is no existing comprehensive labor migration policy⁸ in the region that develops systems of temporary labor migration that guarantee attention for both needs – the demand of receiving countries and the supply of sending countries – in a responsible way that respects national and international human rights standards.
7. We observed a progressive tendency towards the privatization of agents involved in temporary labor migration systems, which leads to precarious hiring conditions for women and men migrant workers in countries of origin. In other words, these countries are willing to accept worse hiring and labor conditions for their workers.

7 See the ILO's standards for recruitment and social protection in the research report: *¿Quo Vadis? Recruitment and Hiring Migrant Workers and Their Access to Social Security: Dynamics of Temporary Labor Migration Systems in North and Central America*. Available at: www.estudiosdemigracion.org

8 When we talk about comprehensive labor migration policy, we are referring to policy developed from a rights-based perspective for women and men temporary migrant workers, in which the secretaries or ministries of labor, health and foreign affairs participate and that not only attempt to “control” the flow of migration rather to ensure decent recruitment, hiring and working conditions, which are free of exploitation and discrimination.

8. The need to strengthen legal frameworks and the administration of each of the systems analyzed became evident in order to guarantee access to justice and the protection of migrant workers' rights.
9. In the systems studied, State participation in the management, operation and supervision of temporary migrant labor has been weakened, which reflects diluted responsibilities and guarantees. The best practices found include two recent treaties in Central America: the Co-development Agreement which involves the ministries of labor from Nicaragua and Costa Rica and the El Salvador Program that seeks to safeguard migrant workers' rights.

Opportunities for the development of the role of key agents

During our analysis of the different systems, we identified examples of support to temporary migrant workers on behalf of certain key actors; these actions could be replicated in order to contribute to effective access to migrant rights.

10. Unions can play an important role in representing temporary migrant workers before companies, thus ensuring the fulfillment of rights and benefits for workers and their families. For example, the United Food and Commercial Workers of Canada (UFCW Canada) has promoted standards for labor guarantees and their fulfillment in different provinces. This union also recognizes the importance of the participation of temporary migrant workers. Unlike practices in the United States, UFCW Canada has a specific policy regarding temporary migrant workers; although they are not allowed to join the union, it backs migrant worker support centers and has built a national alliance to work in their favor.
11. Civil society organizations also play an important role in the defense and promotion of the rights of temporary migrant workers. CSO's carry out fundamental work to document and monitor conditions of their work and stay in different countries. In some cases, they substitute the tasks of supervision and monitoring that government agencies should perform. In other cases, some organizations support the causes of women and men migrant workers and others work directly with them.
12. At times, consular representations provide support and access to information to migrant workers; nevertheless, in most cases, due to the

lack of comprehensive labor migration policy, many consulates work in detriment to migrant workers' rights.⁹

Recruitment and contracting

13. The majority of countries of origin and destination lack sufficient sources of official information regarding labor migration and fail to register the entrance and exit, location, and type of employment of men and women migrant workers. Although several receiving countries require evidence of insufficient availability of national workers and even though agencies exist who are obligated to estimate labor market supply and demand, there is no systematized information available regarding the number or categories of professionals required by receiving countries, neither about women and men candidates for migration from sending countries.¹⁰
14. Modalities of hiring tend not to be regulated and, thus, contractual terms for migrant workers are left to the discretion of labor market demand. Nevertheless, the procedure foreseen for the SAWP between Canada and Mexico can be considered good practice, since it is regulated and implemented exclusively by government agencies, preventing bad practices associated with the participation of private agents.
15. The absence of a legal framework to regulate recruitment agencies and contractors leads to the violation of migrant workers' rights. Even though in some cases, countries have regulatory arrangements, they tend not to enforce them.
16. Since the majority of the systems analyzed do not derive from bilateral agreements, labor contracts are executed with difficulty and men and women migrant workers must maneuver in environments with limited enforceability of labor standards.
17. In all of the systems analyzed, occupational mobility depends upon the employer's will, hence restricting migrant workers' rights. Mexico's

⁹ For some examples of consulates that act in a negligent fashion, see the final report: *Quo Vadis? Recruitment and Hiring of Migrant Workers and Their Access to Social Security: Dynamics of Temporary Labor Migration Systems in North and Central America*. Available at: www.estudiosdemigracion.org

¹⁰ Existing information about the entrance and exit of temporary workers is not uniform; for example, in the migration system for H-2A and H-2B temporary worker visas, the United States Department of Labor provides different figures than US consulates in Mexico, which are the agencies that issue visas to workers.

Border Worker Migration Form is noteworthy since it allows the worker to change his or her employer without having to leave the country.

18. In a general fashion, in all of the systems analyzed, women and men migrant workers lack sufficient information about their rights during the hiring process.
19. In most of the systems studied, systematic violations of temporary migrant workers' rights occur during recruitment and contracting processes, such as the lack of truthful information, wrongful charges, fraud, non-payment of wages, unjust deductions from wages, discrimination and the confiscation of documents.
20. While labor inspection is an obligation of labor authorities, in practice, it is carried out on a very limited basis, thus making it difficult to identify non-compliance and to undertake action to remedy such situations.
21. The Co-development Agreement between labor and immigration authorities from Nicaragua and Costa Rica has been identified as a good practice due to joint participation, coordination and formalization of the agreement through bilateral procedures. Another good example is participation of the Mexican National Employment Service in the Seasonal Agricultural Workers Program (SAWP) between Canada and Mexico.
22. It is also important for the country of origin to implement programs to safeguard the rights of its own migrant workers, as in the case of El Salvador's management model that seeks to protect its workers abroad by regulating recruitment and contracting processes.

Social security

23. In most systems, the lack of bilateral agreements prevents involved States from securing economic benefits, such as wages, payment for overtime, holiday and vacation leave, extra pay and access to social security benefits, derived from migrant workers' labor contracts.
24. Most of the systems fail to establish obligations in regards to equal treatment for taxes, fees and contributions to be paid by the migrant worker, nor do agreements exist between States parties to avoid double taxation.

25. One of the main problems identified with all of the systems is the absence of mechanisms, both in countries of origin as well as in countries of destination, to secure basic rights to social security, such as access to health care, access to satisfactory working conditions, the right to retirement due to age or disability, compensation for work accidents, and maternity or paternity leave. Costa Rica is the country with the most universal system of protection and its new law stipulates the obligation to register all migrant workers for social security.
26. In the cases analyzed, none of the governments determined the type of social security to which migrant workers should rightfully have access in their temporary labor migration systems or worker visa schemes.
27. Analysis confirmed the lack of mechanisms to identify the rights to social protection in course of acquisition or acquired on the job. Neither does the possibility exist to exercise the rights of the receiving country, nor to bear the rights from one's country of origin, thus preventing the payment of contributions and the use of benefits abroad. The result is a lack of access to social security.
28. An important working condition is the right to accommodation or housing, which is not fulfilled or not even contemplated by most of the systems. In cases in which it is considered, the conditions of said housing are not stipulated and they are generally found to be deficient.
29. The absence of bilateralism, oversight and State administration in the case of most of the temporal labor migration systems analyzed causes frequent violation of workers' rights to health care, satisfactory working conditions, a regulated workday or shifts, maternity or paternity leave, and retirement, in addition to payment for overtime, workplace accident compensation and training.

Recommendations¹¹

The temporary labor migration systems studied here are founded in a power imbalance or differential both between employers and workers, as well as between countries with a labor force demand and countries with an ample labor force supply. Given the current economic context and the global situation of migration, it is evident that countries will continue to seek out options to promote, regulate or discourage labor mobility (depending on the country). These recommendations aim to balance or reduce the different levels of power to help migrant workers and their families from continuing to face existing conditions of defenselessness and risk.

For this to occur, significant restructuring is required at different levels in order to establish coherent systems in the current context that are integrated to a labor migration policy framework and, with the support of institutions that coordinate government responsibility, that can protect and promote migrant workers' social, economic and civil rights and eliminate the differential treatment derived from prior models. In this way, the necessary conditions could be forged to foster situations of mutual advantage for the sending country, the receiving country and for the workers themselves and their families.

Upon evaluation of some good practices from the six systems analyzed, we can conclude that it will only be possible to make progress towards the protection of migrant workers and to offset abusive practices in recruitment and contracting processes if governments adopt a proactive role in regulation, which preferably should be bilateral or multilateral and coordinated. Greater government participation from sending and receiving countries in matters that constitute labor migration would help to compensate the power imbalance that allows governments and employers in receiving countries to place migrant

¹¹ These recommendations were formulated based on two criteria: impact and feasibility, that is to say in general and specific terms.

workers in situations of disadvantage. In addition, in order to improve access to social protection for temporary migrant workers, the obstacles that are preventing them from exercising their rights must be eliminated. In this case, bilateralism would also benefit equality of treatment for migrant workers and national workers.

General recommendations

1. In 1999, the ILO called attention to the advantage of bilateral agreements for adapting to the distinctive characteristics of specific groups of migrants; it explained that both the sending State and the receiving State share responsibility for guaranteeing suitable living and working conditions, as well as for actively overseeing and organizing labor migration processes as a whole. Furthermore, in 2004, the ILO deemed that although bilateral instruments¹² do not provide a comprehensive solution to matters related to international workforce migration, they are a useful tool for guaranteeing greater protection for migrant workers and an effective medium for managing the flow of workforce migration.¹³
2. In theory, temporary labor migration systems must be grounded in the empirical ascertainment of a country's workforce deficit. Agreements must not only reflect the situation of the labor market but must also be flexible enough to adapt to possible fluctuations: this component establishes the foundation for the sustainability of a bilateral agreement.¹⁴ Temporary labor migration systems must be based on studies of the supply and demand for migrant temporary workers both in countries of origin and destination in order to be able to protect their rights. These studies, with the contributions of labor market research units operated by governments, consulates, research institutes, independent consultants and the private sector, can contribute to the creation of sources of employment.

12 ILO Recommendation 86 contains an agreement that specifies the methods for applying the principles established under ILO Convention 97 and its recommendation, which is aimed to provide a model to States for celebrating bilateral agreements.

13 Eduardo Geronimi, 2004. "Acuerdos bilaterales de migración de mano de obra: Modo de empleo", in *Estudios sobre Migraciones Internacionales*, no. 65, ILO.

14 See ILO Recommendation 86.

3. Temporary labor migration systems must be framed by comprehensive labor migration policy in both the country of origin and destination. In addition to other factors, the following should be considered during policy formulation: the advantages and disadvantages of the existing system, the opinions of different sectors involved (employers, workers, civil society, academia, etc.), development policies in each of the countries, national and international legislation, and the budget allocated to sustainable program implementation.
4. Multilateralism is another element to be considered for the development of temporary labor migration systems in order to establish minimum parameters for decent working conditions among sending countries. This would prevent unfair competition between the supply and demand of temporary migrant workers.
5. Institutions responsible for labor, immigration and social security policy from countries of origin and destination should be involved in system design in order to strengthen internal and bilateral coordination. Moreover, interinstitutional and intersectoral mechanisms should be established for the purposes of system design and modernization.
6. Governments should incorporate procedures and resources for appropriate planning, monitoring, evaluation and follow-up of the systems.
7. Countries interested in developing bilateral temporary labor migration systems should reinforce their domestic legislative frameworks by means of signing, ratification and adhesion to fundamental human rights conventions issued by the United Nations and the ILO, in particular, those that specifically protect migrant workers' rights in regards to hiring and access to social security, such as: Conventions 97 and 143 (relating to migrant workers); Convention 181 (relating to regulations for private employment agencies); the Palermo Protocols (relating to trafficking in persons and the illegal smuggling of migrants); and Conventions 102 and 118 (relating to minimum standards for social security and equality of treatment for social security, respectively); in addition to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Recruitment and contracting

8. From the analysis, we observe that the existence of a program for the protection of migrant workers' rights, whether bilateral (such as the SAWP between Canada and Mexico and, to a certain extent, the Co-development Agreement between Costa Rica and Nicaragua) or unilateral (such as El Salvador's program with private companies with the mediation of the International Organization for Migration), can be useful for the following: to regulate recruitment, selection and hiring processes, as well as working conditions for a certain number of migrant workers; to eliminate contractor intermediation; to formalize hiring by means of contracts and, thus, to minimize the violation of migrant workers' rights.
9. In the face of increasing privatization of the management of temporary labor migration systems, it is necessary for governments of both countries of origin and destination to become involved in the management, operation and oversight of these systems. Efficient internal regulatory measures must be legislated to ensure that governments supervise and monitor recruitment, hiring and placement of migrant workers.
10. Regardless of the party that carries out each process, both countries' governments should regulate worker recruitment, selection and hiring in accordance with current national and international legislation. These should be transparent and fair processes that fully respect migrant workers' rights. We especially recommend establishing procedures to regulate private companies' activities when hiring migrant workers.
11. Temporary labor migration systems should guarantee a worker the right to change his or her job and/or employer (visa portability) in order to prevent situations of defenselessness in the face of mistreatment by employers or violations to labor rights.
12. We recommend providing migrant workers with ample support services, in a language they speak fluently, in both the country of origin and the country of destination, including among others: provision of information pre-departure and upon arrival in the receiving country through consulate representation, classes on labor rights and obligations, legal aid and social assistance in the country of destination, as well as training for the job they will be carrying out.

13. Some of the recommended mechanisms for regulating private recruitment agencies include:
- a) to set up registries in both countries so that recruiters are registered with government agencies;
 - b) to establish effective procedures to control and oversee the actions of recruiting agents during recruitment and hiring processes;
 - c) to introduce joint liability of recruiters and employers so that migrant workers have greater resources for making them comply with their contract in the case of violations, even upon return to their country of origin;
 - d) to eliminate and prohibit fees that recruiting agents charge migrant workers;
 - e) to establish obligatory licenses which make it necessary for recruiting agents to pass a test certifying their knowledge of migrant workers' labor rights;
 - f) to establish government offices for labor intermediation that concentrate administrative procedures and services;
 - g) to define minimum standards that all employment contracts must fulfill;
 - h) to require employment contracts that must be validated by the governments of the country of origin and destination;
 - i) to mandate employers to file a deposit with the labor institutions in the countries where they are hired, as a guarantee for harm caused to temporary migrant workers.

Social security

14. This study shows that pension benefits and health care are of vital importance to women and men migrant workers and their families. Bilateral or multilateral agreements on social security among governments of participating countries in temporary labor migration systems are a necessary tool for ensuring the right to social protection through social security programs for migrant workers and their families. To make

progress in this regard, we recommend that governments of countries of origin and destination engage in permanent dialogue on standards of the right to social protection for migrant workers and their families.

15. Temporary labor migration systems that are designed bilaterally, with the participation of the governments of countries involved, ensure access to social security programs in more concrete ways. In the case of the SAWP between Canada and Mexico, hiring has been achieved without intermediaries and in a direct fashion between government agencies; however, access to unemployment protection and health care for families continues to be limited and poorly accessed by migrant workers and their families. We recommend that governments, in the framework of bilateralism, construct a mechanism for administrative information exchange between participating countries, with the aim to provide information to migrant workers about social security systems, their benefits and ways to access said benefits.
16. Social security policies that accompany labor migration policies should include migrant workers whether temporary or not. Sending and employing governments must also identify social security mechanisms and the types of benefits to which migrant workers and their families are entitled, as well as inform them in this regard upon hiring.
17. The lack of bilateralism in the design of temporary labor migration systems generally leads to migrant workers paying taxes in their country of origin and in the country where they are employed, resulting in double taxation. Given this situation, we recommend that governments in countries participating in temporary labor migration systems do whatever is necessary to prevent double taxation.
18. We recommend that governments from countries participating in temporary labor migration systems identify the existence or lack of equality of treatment between migrant workers and nationals, in addition to the design of mechanisms to guarantee equality of treatment.
19. We also recommend that governments in participating countries establish a mechanism to identify rights in course of acquisition and acquired rights for migrant workers once the labor relation has been established, and the possibility of receiving benefits for contributions made abroad. In order

to ensure the procurement of social security benefits, we recommend the creation of a mixed committee to permanently oversee conditions of access to social security for migrant workers.

Oversight, monitoring and compliance with standards

20. The task of inspection is fundamental to the guardianship of labor rights, not only for migrant workers but also for workers in general. Countries that receive temporary workers should pro-actively carry out periodic inspections to verify the fulfillment of labor rights in the workplace. Inspection has a triple dimension: dissuasive (to persuade the employer to comply with standards), educational (to inform employers how to comply with labor law) and indicative (to orient employers on how to improve compliance with the law).
21. In order to extend protection of migrant workers, sending countries should strengthen their capacity for monitoring and review of labor conditions. In this field, the labors of protection that should be performed by consulates are fundamental, making it indispensable for countries of origin of migrant workers to define a very clear policy line on protection that respects workers' rights to organize and demand their rights.
22. States must promote mechanisms for effective access to labor justice for migrant workers who are hired through temporary labor migration systems.
23. Although they do not participate in the temporary labor migration agenda, we recommend that unions adopt temporary migrant workers' issues on their domestic and international agendas. We also recommend that unions help to disseminate information about labor procedures and migrant workers' rights.
24. In consideration of the important work that civil society organizations carry out to document and monitor the issues at hand, we recommend that governments in the countries studied here, as well as foundations and international cooperation institutions, support CSO institutional capacity building, particularly for documenting and monitoring working and living conditions of temporary migrant workers and for the defense of exemplary or strategic cases that can help to evidence the structural problems of temporary labor migration systems.

25. Given the importance of previously mentioned stakeholders, we recommend that governments of the countries analyzed under this study open up plural spaces for participation, in which they guarantee the inclusion of said actors in the design and evaluation of temporary labor migration systems.
26. We recommend that civil society organizations and unions participate in interinstitutional and intersectoral processes dedicated to the design and modernization of temporary labor migration systems, in addition to promoting actions to evaluate the impact of these systems, particularly in regards to fulfillment of human rights and access to labor justice. Likewise, we recommend they help to identify good practices that contribute to improving conditions for temporary migrant workers.
27. We recommend that civil society organizations in sending countries and countries of employment work in coordination to develop regular reports on the situation of temporary migrant workers, seeking to generate greater awareness of their conditions and to contribute to improvements in the design and functioning of different migration systems.
28. We recommend that consulate representatives develop capacities for the protection and representation of temporary migrant workers. We recommend that information services for temporary migrant workers be strengthened (in terms of language and accessibility) and that representatives work in greater proximity with migrant workers when they develop activities abroad. Likewise, we recommend that monitoring systems be developed to review the conditions under which temporary migrant workers are hired.
29. We recommend that the Inter-American Human Rights System incorporate the development of a special report on the situation of temporary migrant workers to the functions of the Special Rapporteur on the Human Rights of Migrant Workers and their Families.



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