

Towards a Global Compact for Migration: A Development Perspective

A Series to Inform the Debate

January 2018

Issue No. 3

Welcome to Work?

Legal Migration Pathways for Low-Skilled Workers

By Kathleen Newland and Andrea Riemer

Executive Summary

In countries whose native-born workforce has become ever more educated and ever more concentrated in medium- and high-skilled industries, many low-wage jobs that cannot be outsourced or automated—such as child and elder care, agriculture, and construction—are filled by immigrants. Yet legal migration pathways are most readily available not to workers who might fill such positions, but to highly skilled professionals with formal qualification. Where legal pathways for low-skilled migrants are too narrow to meet demand, employers and foreign-born workers alike often look to illegal migration to bridge the gap.

In the 2016 New York Declaration for Refugees and Migrants, UN Member States declared their intention to consider new “opportunities for safe, orderly, and regular migration,” including “labor mobility at all skills levels.” The promise of legal pathways for low-skilled workers is seen through a number of lenses. Some policymakers view such programs as tools to reduce unmanaged migration by diverting migrants from illegal to legal channels. Others view them as a humanitarian response that could spare future migrants the violence, abuse, and death too common to unauthorized journeys. And still others aim to further development goals, as migrants’ increased wages, exposure to new technologies, and international economic ties stand to benefit entire families and communities, in addition to the workers themselves.

Existing efforts to facilitate the legal movement of low-skilled labor take a variety of forms, from free movement areas and trade agreements to bi- and multilateral deals. The duration, geography, and sector of employment of the migration in question shape such policies. Destination countries generally prefer low-skilled migrants to enter through temporary employment programs, though such initiatives have been criticized for failing to safeguard workers’ rights. And while many migration agreements are built on long-standing historical, colonial, or cultural ties (e.g., between former colonies in Africa and European countries), some are shaped more directly by supply and demand for labor (e.g., South and Southeast



Asian laborers moving to Gulf states). Finally, of the few avenues of admission available to low-skilled migrants, most are for workers in male-dominated industries; women tend to work in sectors that are neither seasonal nor temporary, such as child and elder care, and the absence of legal channels to fill these positions creates particular vulnerabilities for female migrants.

The negotiation of a Global Compact for Safe, Orderly, and Regular Migration in 2018 represents a unique opportunity for states to take stock of what has and has not worked for low-skilled labor migration pathways in the past, as well as what might add value in the future. Among the key challenges policymakers will need to address are the need to improve coordination between destination and origin countries, balance clarity of program design with flexibility, and weave the protection of workers' rights and the evaluation of impact into the fabric of new initiatives.

I. Introduction

Legal migration,¹ particularly from less developed to more developed countries, is much more readily available to highly skilled people with recognized qualifications than it is to workers without formal qualifications. The latter are usually called "low-skilled workers," although they may have a rich endowment of acquired skills in fields such as horticulture, construction, traditional arts and crafts, or care occupations. The discussion that follows will use the conventional term "low skilled" for such workers, although it would be more precise to call them "low-waged" workers. Low-skilled workers are much more likely to be poor than those with formal qualifications, and to benefit from migration in life-transforming ways. They may earn in an hour what they would earn in

a day in their countries of origin, and thereby gain access to education for their children along with better housing, nutrition, and health care. Opening or widening legal pathways for such workers to move internationally would also mitigate many of the dangers they might otherwise face in illegal migration channels.

The Member States of the United Nations, on September 19, 2016, declared that they would "consider facilitating opportunities for safe, orderly, and regular migration, including, as appropriate, employment creation, *labor mobility at all skills levels*, circular migration, family reunification, and education-related opportunities."² It is a fairly weak commitment, only to consider but not necessarily to act. However, at the same UN General Assembly High-Level Plenary Meeting on Large Movements of Refugees and Migrants, states also committed to negotiating a Global Compact for Migration by the end of 2018. The outcome document of that meeting, known as the New York Declaration for Refugees and Migrants, described one possible element of the promised compact as the "[c]reation and expansion of safe, regular pathways for migration." States have repeatedly cited this aim as a vital part of efforts to achieve one of the other elements proposed for the compact, namely the "[r]eduction of the incidence and impact of irregular migration."³

This policy brief will explore the international migration opportunities available to low-skilled workers, the constraints on their movement, and the development impacts of these patterns. It will identify existing arrangements that permit the international migration of such workers, as well as important gaps in governance, and suggest policy approaches to some unresolved issues, including those that affect the quality of workers' migration experiences.

II. International Law and Labor Migration

The Universal Declaration of Human Rights recognizes that “[e]veryone has the right to leave any country, including his own, and to return to his country.”⁴ Aside from this mention and the framework for refugee law, international law has little to say about the right to migrate, though it has much to say about the rights of migrants. Migrants, of course, are covered by the core human-rights treaties that apply to all human beings, as well as the International Labor Organization (ILO) conventions and standards that cover all workers. However, only 49 countries have ratified or acceded to the core human-rights treaty that specifically addresses the rights of migrant workers, the UN International Convention on the Rights of All Migrant Workers and Members of Their Families.⁵ None of them are major destination countries—although some, such as Mexico and Morocco, are at once origin, transit, and destination countries. An additional 17 countries (again, none of them major destinations) have signed the convention, indicating an inclination to apply it, although signing is not a binding commitment.

Even fewer states have acceded to most of the ILO conventions concerning migrant workers. While the 1949 Migration for Employment Convention (No. 97) has 49 ratifications, all of the other migrant-specific conventions have fewer.⁶ Additional ILO conventions that are not specific to migrant workers nonetheless have great relevance to them because of the number of migrants employed in the fields they address—such is the case for conventions on nursing, domestic workers, and safety and health in agriculture. ILO conventions, even those with few ratifications, are regarded as establishing labor standards even if they are not binding.

Finally, some elements of international criminal law take aim at organized crime syndicates that count migrants among the “products” they transport illegally across international boundaries. Two protocols to the 2000 UN Convention against Transnational Organized Crime are directly germane to migrants: the Protocol

against the Smuggling of Migrants by Land, Sea, and Air and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.⁷ These two protocols are the most-ratified treaties dealing specifically with migration issues, aside from the 1951 UN Convention Relating to the Status of Refugees.

There are, in addition to these international instruments, a plethora of regional, bilateral, and unilateral frameworks, laws, and statements of principle that protect the rights of migrant workers at all skill levels and, in some cases, open legal migration pathways to low-skilled workers. Few instruments, however, provide easily accessible legal remedies to low-skilled migrant workers in cases where their human or labor rights are violated. Thus, the workers who most need such protections are often the least able to benefit from legal remedies at the international, regional, or national level.

III. Why Offer Legal Migration Pathways for Low-Skilled Workers?

Interest in legal migration pathways for low-skilled individuals has risen in recent years, in parallel to the numbers of migrants entering without authorization, overstaying, or violating the terms of their visas in high-income countries. The Mediterranean migration crisis of 2015–16 threw the problem of illegal or irregular migration to the top of the policy agenda in Europe and elsewhere. It is doubtful, for example, that the United Nations High-Level Plenary on Large Movements of Refugees and Migrants of September 2016 would have taken place if not for the policy panic engendered by the crisis in the Mediterranean.

The search for work is the primary motive for the majority of the world’s international migrants.⁸ The ILO estimated, using 2013 data, that more than 150 million of the world’s then approximately 232 million international migrants were in the labor force.⁹

As policymakers revisit the ways they manage migration, their deliberations would profit from a realistic view of the benefits legal channels offer both low-skilled migrant workers and destination countries. The value of opening legal migration pathways is construed in three ways. First, some policymakers see it as a migration-management tool that could replace chaotic, unplanned entries with orderly and predictable arrivals by diverting migrants from irregular channels into regulated ones. Second, some present it as a humanitarian response to the terrible dangers many unauthorized migrants endure on their journeys, perils that resulted in the deaths of at least 5,085 migrants in the Mediterranean in 2016 alone.¹⁰ Finally, opening new opportunities for low-skilled migrants to enter and work legally in a wealthier country can be seen as a development instrument, as it is all but guaranteed to raise migrants' wages by a significant margin over what they could earn at home and offers origin countries other benefits such as skills augmentation, technology transfer, and access to global networks of knowledge and economic partnership. Countries of destination also benefit through the importation of in-demand skills, the satisfaction of labor needs, and the release of native-born residents to enter the labor force or to seek higher productivity jobs.

Policymakers that endorse the *migration-management* framework often assert that opening legal pathways will reduce the need and the temptation among workers to move without authorization through channels that are illegal and often dangerous—thus increasing both orderliness and safety in international migration. This is the hoped-for, long-term outcome of international cooperation on labor migration, but many twists and turns along the road toward this end are to be expected. In the short term, expanded legal pathways may actually increase illegal migration, as it thickens the networks that help many people to migrate (with funding for the journey, information about the job market at destination, and help with accommodation and sustenance upon arrival) and exposes more people in the country of origin to the benefits of successful migration.¹¹ The reduction of unmanaged migration

in the medium term will likely depend on the capacity of legal pathways to accommodate the number of low-skilled workers who have the means and the motivation to emigrate, but lack permission to enter their desired destination.

The long-term reduction of illegal migration depends on many complex factors in both countries of origin and destination. In destination countries, the inadequacy of legal means to fill the demand for migrant labor is the major factor driving illegal migration, but other policies in areas such as family reunification and access to asylum may also affect unauthorized flows. In the country of origin, reductions in illegal migration can be traced to a number of developments, such as demographic changes, greater economic opportunity, improvements in governance, and sustained peace and security. Above all, it depends on a degree of confidence among potential migrants that their situation at home may improve rather than deteriorate over time.

It is important to keep in mind that the majority of international migrants do move through legal channels. In North America and Europe (excluding Eastern Europe), where half of the world's labor migrants reside, the widest existing legal pathways are those for family unification, humanitarian admissions, student programs, and high-skilled employment. The channels for low-skilled workers are far narrower. Correspondingly, low-skilled migrants in search of work are more likely to resort to illegal migration, and they become the primary targets of enforcement actions that aim to deter or prevent illegal entries and to remove migrants who are not authorized to stay in the destination country.

The potential *humanitarian* impact of legal pathways for low-skilled migrants is also bounded by the breadth of those pathways: whether they give enough opportunity to enough people to significantly diminish irregular flows. Many of the legal channels inspired by humanitarian concerns are, quite rightly, directed toward refugee populations—such as the European Commission's proposal to resettle 50,000 refugees from Africa in order

to deter unmanaged arrivals and disrupt the business model of people-smugglers.¹² But many of the migrants who try to reach Europe via North Africa or the United States via Mexico are not likely to be recognized as refugees and are instead seen as “economic migrants”—though many have been forced to leave their homes owing to circumstances beyond their control, such as organized criminal violence, class-based oppression, or environmental degradation that undermines livelihoods. Humanitarian pathways for legal migration are not likely to accommodate many low-skilled migrants seeking work.

The *development* rationale for the opening of legal pathways for low-skilled migrants has a broader application. There is ample evidence that legal migration is more beneficial for migrants than illegal migration, as those with legal status are able to get better jobs and are less likely to experience exploitation.¹³ Legal status comes with protections that, even if imperfect, are superior to those available to unauthorized workers. Research has also demonstrated a clear link between the ability of migrants to work in a developed country and the reduction of poverty in countries of origin as migrants remit money to their families,¹⁴ some of which is invested in health, education, productive assets, and business development.¹⁵ Poverty reduction, better health, and increased access to education are themselves markers of development and build a base for sustainable economic and human development. Migrants’ remittances also have a major impact on the macroeconomic stability of many developing countries as the major source of foreign exchange inflows supporting the balance of payments. In the longer term, diaspora communities of migrant origin may also facilitate new trading relationships, make or channel investments, transfer technology, and connect their homelands with networks of knowledge and influence—if the environment in the country of origin is conducive.

It is clear that migration alone cannot resolve structural obstacles to development such as weak infrastructure, tensions between ethnic

or religious groups, and low standards of governance as measured by corruption, lack of transparency, and inability to implement laws and policies. Development cooperation can address these obstacles, however, and strengthen the potential contribution of migrants to the development of their countries and communities of origin.

IV. The Dimensions of Legal Pathways for Low-Skilled Migrants

Legal admissions of low-skilled workers vary along several dimensions: time, economic sector, and geography. These intersecting aspects reveal much about the broad policy objectives of labor-migration laws and programs.

A. The Temporal Dimension

Permanent admissions programs for low-skilled migrant workers are rare. Most people without formal qualifications who are able to obtain permanent legal status with work authorization in a wealthier country do so indirectly, through family or humanitarian channels. Some countries that receive large number of refugees or that admit relatives of legal residents on liberal terms may be able to meet most of their needs for workers in low-waged occupations with people who arrive through these other programs, though restrictions in some countries on the rights of refugees, asylum seekers, or family migrants to work can block this channel. One risk of relying on indirect channels to fulfill demand for low-waged workers is that some of the migrants who occupy those positions may not in fact be low skilled, but have skills or qualifications that are not recognized in the country of destination. This can lead to “brain waste,” an undesirable labor-market outcome that deprives over-qualified migrants and their families of increased wages, destination coun-

tries of additional professional skills and income tax revenue, and origin countries of a potentially higher level of remittances.¹⁶

Countries of destination generally prefer low-skilled migrants to enter through temporary employment programs, preferring not to add low-waged workers to their permanent populations, since such workers are likely to be poor in local terms (even though the wages they earn in the destination country may put them in reach of middle-class status in the country of origin). As a consequence, most Organization for Economic Cooperation and Development (OECD) countries have some kind of temporary migration programs for low-skilled workers, with the most common being programs for seasonal work.

Temporary labor-migration programs are often criticized for failing to safeguard the rights of migrants workers. At best, such programs inhibit the integration of migrants into the destination-country society—indeed, that is often part of their purpose. But temporary status is problematic for temporary workers who may remain marginalized despite long or frequently repeated stays in a country. On the other hand, a temporary stay can hold some benefits for migrant workers; it may, for example, enable them to significantly increase their income without enduring a long separation from family and community. Some migrants may prefer this pattern, especially if it is possible to repeat the a temporary stay. The back-and-forth movement of migrant workers across the U.S.-Mexico border before enforcement efforts were stepped up in the 1980s indicated, as do other examples, that when migrants can circulate freely, they generally do.¹⁷

New Zealand has been a pioneer of facilitating seasonal migration within a development frame through its Recognized Seasonal Employer (RSE) scheme. The RSE program was launched in 2007 with the dual purpose of providing workers for New Zealand's agricultural sector and boosting incomes in the labor-supplying countries. Support for effective recruitment came from the New Zealand development assistance and labor ministries. In a much-cited example of good practice, evaluation was built

into the design of the scheme, with two economists, John Gibson and David McKenzie, gathering baseline data and then conducting surveys over four years to trace the effect of the scheme on participating households in two countries (Tonga and Vanuatu) that provided about half of the RSE workers. The income gains to the households with an RSE worker were on the order of 40 percent; in addition to higher incomes and even higher subjective feelings of economic welfare, the participating households were more likely to open bank accounts, improve their housing, purchase durable goods, and, in Tonga, see more of their children ages 15 to 18 attend secondary school.¹⁸

In a similar vein, Michael Clemens and Hannah Postel from the Center for Global Development have argued that short-term overseas work authorization could be incorporated into development assistance programs and that it compares favorably to more traditional forms of aid. In a study of the impact of a small pilot program that admitted Haitian migrants to the United States as temporary agricultural workers under the H-2A visa program, Clemens and Postel compared workers selected for the program with similar workers who applied but were not selected, finding that the average monthly income of the migrant workers was 15 times that of those who were not able to migrate. Between one and two months of work in the United States was enough to double the annual income of participating workers. In this instance, temporary work had two additional advantages: it brought economic gains to the countries of destination and origin, and many of the benefits went directly to poor families as the temporary workers brought more than 85 percent of their earnings back to Haiti. There, the money they spent created a multiplier effect equal to twice the workers' direct expenditures.¹⁹ In January 2018, however, the U.S. government removed Haiti from the list of countries whose nationals were eligible to participate in the H-2A program, ending the movement of low-skilled Haitian workers through this channel.²⁰

Structured temporary work programs may be beneficial for migrants and their employers, and by extension for countries of origin and destina-

tion. But in many cases, temporary work visas present problems of protection or fairness. They often tie the worker to a single employer, giving the worker limited recourse if the employer is abusive or does not live up to the terms of their contract. When the demand for work abroad exceeds the supply of visas, unscrupulous recruiters, travel agents, and legal advisors can skim off a considerable share of the difference between what the employer is willing to pay and what the migrant is willing to accept. Migrants may get trapped in debt bondage if they become indebted to such actors to secure a job or finance their move, with high fees absorbing nearly all their earnings once abroad for some period of time. To avoid human-rights problems of this kind and to maximize development dividends, temporary migration programs must be carefully designed, monitored, and their terms enforced.

For example, the recruitment for Haitian workers in the small temporary agricultural work program studied by Clemens and Postel was handled by two agricultural workers' cooperatives in Haiti that did not charge exploitative fees. Several countries have enlisted the International Organization for Migration (IOM) to assist with recruitment in the context of bilateral agreements, such as those between Ecuador and Spain and between Canada and its partners in the Seasonal and Agricultural Workers Program (SAWP). Other countries recruit foreign workers through state agencies. None of these approaches are immune to corruption, misleading claims, and excessive fees, but these problems are worse when many private recruitment agents and subagents operate in a lightly or ineffectively regulated environment in which demand for jobs abroad far outstrips supply.

For destination-country policymakers, the temporary migration of low-skilled workers may allow them to strike a delicate compromise. Such programs allow a destination country to both meet employer demand for foreign labor to fill low-waged jobs that most native-born workers shun, while avoiding an increase in permanently resident foreign workers, who may be quick to move out of low-wage sectors if they have the opportunity. Taking up this approach, South Korea has a program that provides temporary

work permits for about 55,000 migrant workers per year from 16 Asian and Pacific countries,²¹ and Canada admits more than 30,000 agricultural workers annually for up to eight months of work in a given year,²² the majority of whom return to work in subsequent seasons. Similarly, the number of visas issued to temporary agricultural workers under the U.S. H-2A visa program more than doubled in the five years leading up to 2016, when 134,000 visas were issued²³—though unauthorized migrants still outnumber H-2A visa holders by far in the U.S. agricultural sector.²⁴

For many labor-rights advocates, temporary status is inherently problematic. Migrant workers on temporary contracts generally have more limited civil, political, economic, and social rights. In some admissions programs, rights accumulate with length of stay or successful repetition of cycles of temporary work, though this is exceptional. For example, most low-skilled temporary migrant workers do not enjoy the right to family life while working abroad, and most cannot participate fully in destination-country politics. In some countries, they are forbidden to join labor unions. During an economic downturn, temporary migrant workers may also be sent home or find themselves ineligible for contract renewal, with the right to reside tied in most cases to employment. From a migrant-/worker-rights standpoint, the Spanish arrangement with Ecuador is an example of good practice, in that migrants workers who successfully complete four cycles of temporary employment (and return home between cycles) become eligible for permanent resident status.²⁵

B. The Sectoral Dimension

Certain categories of low-wage work cannot be easily outsourced or automated. Among others, these include child and elder care, domestic services, many forms of agricultural labor, food preparation and service, construction, hospitality, landscaping, and some health-care jobs. In many Western industrialized countries, jobs in these sectors are dominated by immigrants. A range of intersecting trends have reduced the

supply of native-born workers willing to take these jobs, while also increasing demand for the goods and services they produce—from higher levels of education among the native born, increasing affluence, and aging societies, to pressure on public expenditures, the decline of the extended family unit, and increased laborforce participation among women. In many countries, restrictions on the immigration of low-skilled workers, coupled with a failure to arrange other means of delivering needed care and services, have meant that low-waged jobs are often filled by unauthorized migrants.²⁶

The contours of low-waged labor are deeply gendered by sector. Domestic work, food service, and direct personal care (such as child care, elder care, and nursing assistance) are dominated by women; agriculture, landscaping, construction, and semiskilled manufacturing by men. The few and primarily temporary avenues of admission available for low-skilled migrants are more commonly found in male-dominated sectors, such as seasonal jobs in agriculture, landscaping, and construction. (Of course, there are exceptions to these patterns: strawberry pickers in Spain, for example, are mostly Moroccan women.²⁷)

There is some logic in offering temporary admissions for temporary jobs. However, the low-wage sectors in which women make up most of the workforce are for the most part neither seasonal nor temporary, making short-term admissions a poor fit for such industries. Someone seeking to hire a migrant woman to care for their children or elderly relatives, for example, does not want to have to develop a relationship with a new employee every six months or every year (although low pay and difficult working conditions may still encourage high turnover in personal services or domestic work). The absence of legal channels for migrants to fill low-paid, in-demand jobs that are traditionally thought of as “women’s work” creates particular vulnerabilities. Unauthorized migrants who provide domestic and care services within an employer’s household are among the least protected workers in high-income countries.

C. The Geographic Dimension

Migration between neighboring countries, rather than long-distance movements, is the most common form of international migration. Almost half of international migrants from the global South move to another country in the South, and 80 percent of that South-South movement is to a neighboring country.²⁸ Among the largest such flows are those between India and Bangladesh, Thailand and Myanmar, Indonesia and Malaysia, Ghana and Côte d’Ivoire, and Mozambique and South Africa. Other large flows between neighboring states take place between the United States and Mexico, Germany and Poland, Spain and Morocco, and Russia and Ukraine. Long-standing crossborder movements often persist even after legal frameworks change. For example, a large-scale guestworker program in the United States designed to address the shortage of U.S. laborers during World War II and extending into the 1960s (the Bracero Program) established patterns of low-skilled labor migration from Mexico that continued, often illegally, for decades after the program was ended.²⁹ Similarly, after the breakup of the Soviet Union, long-standing labor flows continued between less developed former Soviet republics and the Russian Federation, though this was encouraged within a new legal framework.³⁰

The geography of migration is also shaped by historical or colonial ties and by the resulting dense networks of family and community relationships. Such connections have sustained movement from Indonesia and Surinam to the Netherlands, Ecuador and Colombia to Spain, and from former colonies in Africa to France, Italy, Portugal, and the United Kingdom. Linguistic ties between metropolitan powers and countries in their spheres of influence also facilitate labor-market integration. Designing and managing temporary labor migration programs is more complicated for countries whose languages are not widely spoken abroad, such as Norway or even Germany; temporary migration may not give workers or employers enough time to recoup the investment required to teach and learn a new language.

Other migration flows are shaped primarily by supply and demand, rather than long-standing ties. This is the case for labor migration from South and Southeast Asia to the Gulf, with the added dimension of these destination states' preference for visible minorities (rather than migrants from populous Arab countries nearby) as such migrant workers are less likely to be able to integrate locally and, thus, more likely to return home after completing their contracts.

Still other labor-migration programs are set up as an instrument of policy in one or more domains, with migration cooperation and development assistance being the most common. The circular migration scheme between Mauritius and Canada was motivated in part by the desire to provide opportunities for labor migration to the people of a well-governed but physically isolated country.³¹ The EU Neighborhood Policy expands the concept of neighborhood beyond immediately contiguous countries to include low- and middle-income countries with which Member States have an established migration relationships, with the aim of building more effective partnerships across a range of policy domains. Opening opportunities for the nationals of a partner country to engage in legal migration is one way of enhancing and rewarding cooperation on migration issues; reducing them is a potent expression of dissatisfaction.

V. The Architecture of Legal Migration Pathways

The legal and political frameworks that facilitate or permit labor migration take a variety of forms, ranging from broad to targeted and from institutionalized to customary. The various frameworks also differ in how they treat low-skilled migrants. The most permissive approach to legal migration can be found in areas of free movement, which include both bilateral and regional agreements. Citizens of Australia and New Zealand, for example, can move between and work in both countries with very few restrictions. Nationals of EU Member States, as EU

citizens, have a similar right to reside and work throughout the bloc.

Other broad regional arrangements include MERCOSUR in South America, the Commonwealth of Independent States (CIS) covering 11 former Soviet states, and the Economic Community of West African States (ECOWAS), each of which accord the citizens of participating states varying degrees of free movement. Among them, MERCOSUR and the CIS have some labor-market dimensions. For countries with low rates of laborforce growth or that have difficulty attracting native-born workers to low-wage jobs, expanding free movement and the right to work to a broader area with a lower wage scale is one way to meet labor needs. However, it can also cause a backlash, as was seen in the salience of intra-EU migration in the UK referendum on whether to leave the European Union. Free movement can also be difficult to sustain in countries with high levels of social protection, as residents must either bear the costs of extending full benefits to low-wage migrant workers or live with the discomfort (both moral and relational) of a poorly integrated and underprivileged class of residents.

Some countries opt for explicit or de facto “soft borders” that permit crossborder labor movement without formally adopting such a policy. This was the reality of the U.S.-Mexico border in the past, and still is for the Romania-Moldova border. Romanian citizenship law is permissive toward Moldovans, allowing them to naturalize with relative ease, so many Moldovan migrants to Romania do not appear as such in immigration statistics. The ambiguity in soft-border arrangements may create tensions between the countries involved if the policy is unilateral, however, and it can leave migrants vulnerable to sudden shifts in how the policy is enforced.

Some trade agreements also include a migration dimension. The North American Free Trade Agreement (NAFTA) is one such treaty, but its coverage of labor migration is confined to highly qualified migrants, as are many similar agreements. The General Agreement on Trade in Services (GATS), agreed under the auspices of the World Trade Organization and signed in 1995,

deals with four ways in which services can be traded internationally. One of these is through the movement of people to provide services in another country, known as GATS Mode 4. Implementation of this treaty requires the negotiation of specific agreements, which, in theory, could provide for the movement of low-skilled migrants. Developing countries have pushed for such agreements. Yet almost no deals agreed in GATS Mode 4 cover low-skilled workers. In reality, GATS Mode 4 has had very limited application, and even that applies almost exclusively to highly qualified employees, chiefly intracompany transfers.³²

Bilateral agreements are the preferred path for many governments. Unlike GATS Mode 4 agreements (which operate under the most-favored-nation norm³³) or even regional arrangements, bilateral pacts can be tailored to the destination country's specific labor-market needs and can take into account historic or linguistic affinities with origin countries. Offers to admit migrant workers can be and frequently are packaged with other issues, such as cooperation on suppressing illegal migration or acceptance by a partner country of returned nationals (or even transit migrants). As some of the examples in the previous section show, bilateral agreements on legal pathways can also be designed as part of a development assistance strategy. Because they involve only two countries, bilateral deals are often simpler to negotiate, implement, and monitor, and compliance issues can be more easily addressed. In addition, many bilateral agreements are nonbinding (unless they are part of a treaty) and can be changed or ended if circumstances demand it.³⁴

VI. Conclusions and Recommendations

Despite the potential benefits of facilitating low-skilled migration—from the perspective of migration management, humanitarian response, and development assistance—legal channels remain narrow for most low-skilled migrant workers in most parts of the

world. (The major exception to this rule is the movement of foreign labor to Gulf countries, although this operates within a regime of severely restricted rights.) As states negotiate a Global Compact for Migration in 2018, they will have to consider what policy aims could be served by expanding or reimagining legal pathways for low-skilled migrants. Some expectations are likely to be fulfilled and others disappointed.

Among its proven benefits, migration has been shown to reduce the severity of poverty and to promote the development of human capital in countries of origin. It can underwrite the stability of families in settings where traditional livelihoods are being undermined by structural economic change or environmental degradation. As migrants return, carrying knowledge of new practices and technologies (drip irrigation, for example), they can contribute to development in their countries of origin. In some societies, women who migrate, or who assume *de facto* head-of-household roles when men migrate, have begun to overturn restrictive gender roles that hold back development. All of these benefits, and many others, are more likely to accrue when migrants can move through legal pathways rather than clandestinely.

Expanding legal pathways will likely produce disappointments as well. Perhaps the greatest: it will not stop irregular migration. This has always been an unrealistic expectation. No single policy intervention will solve the problem of unmanaged movements. History shows that both legal and illegal migration slow and eventually stabilize only when a complex array of economic, political, and social factors converge. Opening wider opportunities for legal migration can improve the ability of migrants, their families, and their origin countries to weather the storms of economic transformation. Migration can also bring negative social consequences for migrants at all skill levels, chiefly associated with the separation of families. Low-skilled migrants are much less likely than other mobile workers to be allowed to bring their families with them or to be able to afford to support a family in the destination country on a low-wage job.

For policymakers considering opening, expanding, or reshaping legal pathways for low-skilled migration, experience points to the following areas that are in need of particular attention:

- ***Regulating recruitment and protecting migrant workers against abuse.*** Since low-waged workers are especially vulnerable to the unscrupulous practices of some labor recruiters, steps to open more channels for legal international movement should be coupled with measures to safeguard those who use them against abuse. Access to justice and improved protection for migrant workers, especially those on temporary contracts, are two areas in which countries of origin and destination could benefit from cooperation; substandard wages and working conditions for migrant workers undermine labor protection and earnings for the native born as well.
- ***Balancing clarity with flexibility in the design of legal pathways.*** Perhaps the most important qualities of successful migration agreements, which can be found in existing regional and multilateral pacts as well as bilateral ones, are clarity, transparency, and specificity. Agreements should, as much as possible, avoid ambiguity in the definition of the categories of qualifying workers and jobs; permissible recruitment practices; employment terms and conditions (e.g., minimum wages, length of stay); admissions quotas; and whether workers can transfer from one employer to another or adjust to permanent resident status. Once these details are pinned down, implementation should be flexible, allowing the program to adapt to individual needs and changing labor-market conditions. In addition, the bureaucratic requirements involved in hiring migrant workers and demonstrating compliance with program conditions must not be so burdensome that both employers and foreign workers prefer unauthorized channels of movement.

- ***Improving communication and coordination between partner countries.*** Implementing legal pathways calls for close cooperation between the countries of origin and destination. Each must have confidence in the actions of the other, placing a premium on the institutional integrity of both private and public-sector actors across the migration spectrum. A national, binational, or multilateral ombudsman's office (in the case of regional or crossregional agreements) could be an effective instrument for maintaining transparency and investigating abuses. Several countries have designed bilateral agreements with a built-in role for the IOM during implementation, a role that could be further developed and utilized.
- ***Building regular evaluation into the design of migration programs.*** It would be wise for more countries to follow the good practice of New Zealand and build impact evaluation into the design of legal channels for low-skilled migrants. Doing so would allow states to monitor the results of their policies and make course corrections if necessary. For this and other forms of monitoring to prove successful, policymakers must commit to investing in the collection and analysis of high-quality data.

Direct and indirect calls to facilitate safe, orderly, and regular migration—including for individuals with limited formal skills or qualifications—have proliferated: in addition to the New York Declaration, they can be found in Agenda 2030 and its Sustainable Development Goals, the Addis Ababa Action Agenda on financing for development, and the 2017 Sutherland Report, to name only some of the most recent. The Global Compact for Migration can also be expected to give a central place to this ambition. Translating words into reality requires a commitment to cooperative action that is simultaneously broad in scope and specific in content. Expanding legal pathways for low-skilled migrants to access decent work may prove to be one of the most practical means to achieve the aspirations of the Global Compact for Migration.

Endnotes

- 1 Legal migration between countries, for the purposes of this brief, is migration authorized by the laws and regulations of the countries of origin and destination, as well as residence abroad that conforms to the terms and conditions of stay set by the destination country; it must also conform to the requirements of international law. Most illegal migration is illegal because migrants do not have permission to enter or stay from the authorities of the *destination* country. Illegal migration that violates the laws of the *origin* country is primarily migration that is organized by criminal actors or is undertaken with the intent to evade a legal obligation in one's own country—such as conscription, a criminal sentence, or taxes. Of course, the characterization of these actions as criminal is often controversial; conscription in some circumstances may be seen as akin to involuntary servitude (as it is in Eritrea), criminal charges may be brought for political reasons, and taxes may be levied in a discriminatory way. Any of these conditions may be grounds for claiming refugee status. But in most circumstances, refusing an individual permission to leave a country is seen as inconsistent with international human-rights norms.
- 2 This resolution was adopted by the UN General Assembly as the outcome document of the September 2016 High-Level Plenary Meeting on Addressing Large Movements of Refugees and Migrants. See UN General Assembly, “The New York Declaration for Refugees and Migrants,” paragraph 57, September 19, 2016, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1.
- 3 Ibid., Annex II, paragraph 8(m).
- 4 UN General Assembly, “Universal Declaration of Human Rights,” Article 13.2, December 10, 1948, www.un.org/en/universal-declaration-human-rights/.
- 5 UN General Assembly, “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,” December 18, 1990, www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx.
- 6 International Labor Organization (ILO), “Migration for Employment Convention (Revised), 1949 (No. 97),” 1 July 1949, www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242.
- 7 UN General Assembly, “Protocol against the Smuggling of Migrants by Land, Sea, and Air,” November 15, 2000, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-b&chapter=18&lang=en; UN General Assembly, “Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children,” November 15, 2000, https://treaties.un.org/Pages/View-Details.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en.
- 8 It should be noted, however, that while labor migration is the dominant form of migration, it is not the only one. People also move to escape violence or persecution, to join family, or to broaden their horizons through study or other kinds of nonwork experience. In many cases, these movements are closely connected to labor migration and also require legal pathways.
- 9 ILO, *ILO Global Estimates on Migrant Workers* (Geneva: ILO, 2015), www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang--en/index.htm.
- 10 International Organization for Migration (IOM), “Migrant Deaths and Disappearances Worldwide: 2016 Analysis” (issue brief no. 8, Global Migration Data Analysis Center Data Briefing Series, IOM, Berlin, March 2017), <https://gmdac.iom.int/gmdac-data-briefing-8>.
- 11 Another brief in this series delves into these complex dynamics in more depth. See Susan Fratzke with Brian Salant, *Moving Beyond “Root Causes”: The Complicated Relationship between Development and Migration* (Washington, DC: Migration Policy Institute, 2018), www.migrationpolicy.org/research/moving-beyond-root-causes-complicated-relationship-between-development-and-migration.

- 12 The European Commission allocated 500 million euros to pay Member States to resettle 50,000 refugees from Chad, Egypt, Ethiopia, Libya, and Sudan by late 2019. By late September 2017, 14,000 places had been pledged by 11 EU Member States. See Nikolaj Nielson, “EU Proposes to Resttle 50,000 African Refugees,” *EUobserver*, September 28, 2017, <https://euobserver.com/migration/139191>.
- 13 For example, one study found that unauthorized immigrants who were brought to the United States as children and received provisional protection from deportation and work authorization under the Deferred Action for Childhood Arrivals (DACA) program—which stops short of offering full legal status—saw a 42 percent increase in their average hourly wages. See Tom K. Wong, Greisa Martinez Rosas, Adrian Reyna, Ignacia Rodriguez, Patrick O’Shea, Tom Jawetz, and Philip E. Wolgin, “New Study of DACA Beneficiaries Shows Positive Economic and Educational Outcomes,” Center for American Progress, October 18, 2016, www.americanprogress.org/issues/immigration/news/2016/10/18/146290/new-study-of-daca-beneficiaries-shows-positive-economic-and-educational-outcomes/
- 14 Aggregated crosscountry data compiled by World Bank researchers showed that a 10 percent increase in international migrants as a share of population led to a 1.9 percent decline in the number of poor people in the country of origin. See Dilip Ratha, *The Impact of Remittances on Economic Growth and Poverty Reduction* (Washington, DC: Migration Policy Institute, 2013), www.migrationpolicy.org/research/impact-remittances-economic-growth-and-poverty-reduction.
- 15 Kathleen Newland, *What We Know about Migration and Development* (Washington, DC: Migration Policy Institute, 2013), www.migrationpolicy.org/research/what-we-know-about-migration-and-development.
- 16 See Jeanne Batalova, Michael Fix and James D. Bachmeier, *Untapped Talent: The Costs of Brain Waste among Highly Skilled Immigrants in the United States* (Washington, DC: Migration Policy Institute, 2016), www.migrationpolicy.org/research/untapped-talent-costs-brain-waste-among-highly-skilled-immigrants-united-states.
- 17 See Kathleen Newland, Dovelyn Rannveig Agunias, and Aaron Terrazas, *Learning by Doing: Experiences of Circular Migration* (Washington, DC: Migration Policy Institute, 2008), www.migrationpolicy.org/research/learning-doing-experiences-circular-migration.
- 18 John Gibson and David McKenzie, “The Development Impact of a Best Practice Seasonal Worker Policy” (working paper no. 286, Bureau for Research and Economic Analysis of Development, November 2010), http://ibread.org/bread/system/files/bread_wpapers/286.pdf.
- 19 Michael Clemens and Hannah Postel, “Shared Harvest: Temporary Work Visas as US-Haiti Development Cooperation” (brief, Center for Global Development, Washington, DC, January 23, 2017), www.cgdev.org/publication/shared-harvest.
- 20 U.S. Department of Homeland Security (DHS), “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs,” *Federal Register* 83, no. 12 (January 18, 2018), www.federalregister.gov/documents/2018/01/18/2018-00812/identification-of-foreign-countries-whose-nationals-are-eligible-to-participate-in-the-h-2a-and-h-2b.
- 21 Young-bum Park, “South Korea Carefully Tests the Waters on Immigration, with a Focus on Temporary Workers,” *Migration Information Source*, March 1, 2017, www.migrationpolicy.org/article/south-korea-carefully-tests-waters-immigration-focus-temporary-workers.
- 22 Canadian Council for Refugees, Affiliation of Multicultural Societies and Service Agencies of BC, Alberta Association of Immigrant Serving Agencies, Ontario Council of Agencies Serving Immigrants, *Migrant Workers: Precarious and Unsupported. A Canada-Wide Study on Access to Services for Migrant Workers* (Montreal: Canadian Council for Refugees, 2016), <http://ccrweb.ca/sites/ccrweb.ca/files/migrant-workers-2016.pdf>.
- 23 U.S. Department of State, “Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards) Fiscal Years 2012-2016,” accessed January 9, 2018, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXVIB.pdf>.

- 24 Philip Martin, *Immigration and Farm Labor: From Unauthorized to H-2A for Some?* (Washington, DC: Migration Policy Institute, August 2017), www.migrationpolicy.org/research/immigration-and-farm-labor-unauthorized-h-2a-some.
- 25 Newland, Agunias, and Terrazas, *Learning by Doing*.
- 26 For a more in-depth exploration of the trends affecting labor migration in Europe, see Anna Triandafyllidou, *A Sectorial Approach to Labor Migration: Agriculture and Domestic Work* (Geneva: IOM, 2017), <https://publications.iom.int/books/sectorial-approach-labour-migration-agriculture-and-domestic-work>.
- 27 Carmen González Enríquez and Miquel Reynés Ramón, *Circular Migration between Morocco and Spain: Something More than Agricultural Work?* (Florence: European University Institute, 2011), www.eui.eu/Projects/METOIKOS/Documents/CaseStudies/METOIKOScasestudySpainMorocco.pdf.
- 28 Dilip Ratha and William Shaw, “South-South Migration and Remittances” (working paper no. 102, World Bank, Washington, DC, 2007), <https://openknowledge.worldbank.org/bitstream/handle/10986/6733/400060PUB0REPL00Box317534B00PUBLIC0.pdf>.
- 29 Philip L. Martin, “Labor Migration and Economic Development” (working paper no. 3, Commission for the Study of International Migration and Cooperative Economic Development, February 1989).
- 30 Olga Chudinovskikh and Mikhail Denisenko, “Russia: A Migration System with Soviet Roots,” *Migration Information Source*, May 18, 2017), www.migrationpolicy.org/article/russia-migration-system-soviet-roots.
- 31 Government of Mauritius, “Circular Migration: More Mauritian Workers to Take Employment in Canada” (news release, June 21, 2012), www.govmu.org/English/News/Pages/Circular-Migration--More-Mauritian-Workers-to-take-Employment-in-Canada.aspx.
- 32 Rupa Chanda, “Mobility of Less-Skilled Workers under Bilateral Agreements: Lessons for the GATS,” *Journal of World Trade* 43, no. 3 (2009): 479–506.
- 33 Under the most-favored-nation principle, a Member State of the World Trade Organization (WTO) must extend preferential trading conditions to all signatories of a treaty on the most favorable terms it extends to any one of them.
- 34 Chanda, “Mobility of Less-Skilled Workers under Bilateral Agreements.”

About the Authors



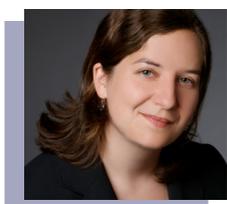
Kathleen Newland is a Senior Fellow and Co-Founder of the Migration Policy Institute (MPI). Her focus is on the relationship between migration and development, the governance of international migration, and refugee protection. She is also the Founding Director of the International diaspora Engagement Alliance (IdEA) during its incubation phase at MPI from 2011 to 2013; IdEA was established as a partnership among MPI, the U.S. Department of State, and U.S. Agency for International Development. She is a Member of the MPI Board of Trustees.

Previously, at the Carnegie Endowment for International Peace, she was a Senior Associate and then Co-Director of the International Migration Policy Program (1994–2001). She sits on the Board of Overseers of the International Rescue Committee and the boards of directors of USA for UNHCR, the Stimson Center, Kids in Need of Defense (KIND), and the Foundation for The Hague Process on Migrants and Refugees. She also is a Chair Emerita of the Women’s Commission for Refugee Women and Children.

Prior to joining the Migration Program at the Carnegie Endowment in 1994, Ms. Newland worked as an independent consultant for such clients as the UN High Commissioner for Refugees (UNHCR), the World Bank, and the office of the Secretary-General of the United Nations. From 1988 to 1992, Ms. Newland was on the faculty of the London School of Economics. During that time, she also co-founded (with Lord David Owen) and directed Humanitas, an educational trust dedicated to increasing awareness of international humanitarian issues. From 1982 to 1988, she worked at the United Nations University in Tokyo as Special Assistant to the Rector. She began her career as a researcher at Worldwatch Institute in 1974.

Ms. Newland is author or editor of nine books, including *All at Sea: The Policy Challenges of Rescue, Interception, and Long-Term Response to Maritime Migration* (MPI, 2016); *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries* (MPI and International Organization for Migration, 2012); *Diasporas: New Partners in Global Development Policy* (MPI, 2010); *No Refuge: The Challenge of Internal Displacement* (United Nations, 2003); and *The State of the World’s Refugees* (UNHCR, 1993). She has also written 17 shorter monographs as well as numerous policy papers, articles, and book chapters.

Ms. Newland is a graduate of Harvard University and the Woodrow Wilson School at Princeton University. She did additional graduate work at the London School of Economics.



Andrea Riestler is Deputy Head of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) Sector Project Migration and Development. Before joining GIZ in 2004, she worked at the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Migration Department in Paris.

In 2011, she received her PhD in social anthropology from Martin-Luther University Halle/Wittenberg with a thesis on the reintegration of Burkinabé labor migrants displaced from Côte d’Ivoire.

She is an associated member of the Max-Planck Institute for Social Anthropology in Halle.

Acknowledgments

This publication results from a partnership between the Migration Policy Institute (MPI) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, supported by the German Federal Ministry for Economic Cooperation and Development (BMZ). It is part of the series “Towards the Global Compact for Migration: A Development Perspective,” which aims to enrich the conversation around migration and development in the context of the ongoing discussions on the Global Compact for Migration.

The authors are grateful to GIZ and BMZ for their support for this brief. The brief benefitted from input from MPI colleagues, including the advice of Michelle Mittelstadt, the research assistance of Brittany Ebeling, the skillful editing of Lauren Shaw, and the layout expertise of Sara Staedicke.

© 2018 Migration Policy Institute.
All Rights Reserved.

Design and Layout: Sara Staedicke, MPI

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopy, or any information storage and retrieval system, without permission from the Migration Policy Institute. A full-text PDF of this document is available for free download from www.migrationpolicy.org.

Information for reproducing excerpts from this report can be found at www.migrationpolicy.org/about/copyright-policy. Inquiries can also be directed to: communications@migrationpolicy.org.

Suggested citation: Newland, Kathleen and Andrea Riester. 2018. *Welcome to Work? Legal Migration Pathways for Low-Skilled Workers*. Washington, DC: Migration Policy Institute.

The Migration Policy Institute (MPI) is an independent, nonpartisan, nonprofit think tank dedicated to the study of the movement of people worldwide. The Institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world.

[BIT.LY/GLOBALCOMPACT](https://bit.ly/globalcompact)

