

MECHANISMS FOR LABOUR MIGRATION IN MESOAMERICA

Costa Rica. El Salvador. Guatemala. Honduras. Mexico. Panama



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MECHANISMS FOR LABOUR MIGRATION IN MESOAMERICA

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FOREWORD

Labour migration has become a crucial element for the development of many countries. This mobility benefits not only the home communities that receive remittances and experience reduced pressures on their own labour market, but also the destination countries where some sectors of the economy depend largely on the skills of migrant workers and which also receive important fiscal and socio-cultural contributions from this population.

In the field of labour migration, the International Organization for Migration (IOM) works to promote synergies between labour migration and development, while encouraging the opening of regular labour migration channels as an alternative to irregular migration. In addition, one of the objectives of IOM is to facilitate the development of policies and programs that are of interest to migrants and society in general, providing effective protection and assistance to migrant workers and their families.

With this same desire to order labour migration flows, both origin countries and destination countries in Mesoamerica have developed different strategies and actions, including treaties, agreements, memoranda, and other mechanisms on labour migration. Despite these efforts, the region needs greater articulation between these mechanisms to overcome the important limitations observed in the generation of information about their implementation, continuity, and effectiveness. Such limitations hinder data-based decision making and, thus, the creation of solutions that truly benefit both States and migrants.

This study addresses the need to overcome these information gaps, in order to promote the generation of regular migration channels that are established as part of comprehensive labour migration policies. Counting on effective policies is crucial to address, in a comprehensive manner, the challenges of migration governance, and this requires recognizing the great needs there are around the regulation of labour migration.

This study provides insight on the regular channels available in the region for migrant workers; at the same time, it shows the need to adapt existing mechanisms as well as the generation of new processes that meet changing migration dynamics and contribute to safe and orderly labour migration. We are confident that this one-of-a-kind report in this region will provide valuable information to governments, the private sector, and decision makers in general about the operation, use, and condition of existing mechanisms. In addition, we hope that it will help identify improvement areas, including the potential for creating mechanisms that, by promoting ethical recruitment, improving working conditions, and supporting the return and reintegration processes, address both the needs of the region's labour markets and the protection of migrant workers' rights.



Michele Klein Solomon

IOM Regional Director for Central America, North America, and the Caribbean

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ACRONYMS AND ABBREVIATIONS

AECID	Spanish Agency for International Development Cooperation (acronym in Spanish)
BCAC	British Columbia Agricultural Council
CA-4	Agreement creating the Central American Single Visa for the free movement of foreigners among the Republics of El Salvador, Guatemala, Honduras, and Nicaragua
FFSC	Fair Food Standards Council
CCSS	Costa Rican Social Security Fund (acronym in Spanish)
CE-SICA	Executive Committee of the Central American Integration System (acronym in Spanish)
CETTSA	Special Seasonal Worker category for the Agriculture, Agro-export or Agro-industrial sectors (acronym in Spanish)
CGSNE	General Coordination of the National Employment Service of Mexico (acronym in Spanish)
CONAPO	National Population Council of Mexico (acronym in Spanish)
RCM	Regional Conference on Migration
DGME	General Directorate of Immigration and Alien Affairs (Costa Rica) (acronym in Spanish)
DOL	United States Department of Labor
DOS	United States Department of State.
FCCA	Florida-Caribbean Cruise Association
INM	National Institute of Immigration of Mexico (acronym in Spanish)
IRIS	International Recruitment Integrity System
MoU	Memorandum of Understanding
MINTRAB	Ministry of Labour and Social Welfare of Guatemala (acronym in Spanish)
MITRAB	Ministry of Labour of Nicaragua (acronym in Spanish)
MSPA	Migrant and Seasonal Agricultural Worker Protection Act
MTSS	Ministry of Labour and Social Security of Costa Rica (acronym in Spanish)
OCAM	Central American Commission of Migration Directors from the member countries of the Central American Integration System (acronym in Spanish)



SAWP	Seasonal Agricultural Workers Program
SEGOB	Ministry of the Interior of Mexico (acronym in Spanish)
SICA	Central American Integration System (acronym in Spanish)
SIMEL	Labour Market Information Systems (acronym in Spanish)
SNE	National Employment Service of Mexico (acronym in Spanish)
STPS	Secretariat of Labour and Social Welfare of Mexico (acronym in Spanish)
STSS	Ministry of Labour and Social Security of Honduras (acronym in Spanish)
TFWP	Temporary Foreign Worker Program
NAFTA	North American Free Trade Agreement
USMCA	United States-Mexico-Canada Agreement
TVR	Regional Visitor Card of Mexico (acronym in Spanish)
TVTF	Border Worker Visitor Card of Mexico (acronym in Spanish)
USCIS	United States Citizenship and Immigration Services

EXECUTIVE SUMMARY

Historically, migration flows in the Mesoamerican region have been driven by several factors, with economic appeal and momentum being the main drivers. Migrants in the region move mostly in search of better job opportunities,¹ and they tend to be employed in occupations with a high level of informality where there are few guarantees for the protection of their rights.²

Recognizing the importance labour migration flows have for both the countries of origin and destination, governments in the region have developed mechanisms aimed at facilitating and regulating migratory movements for work purposes. These labour migration mechanisms have been established in different ways in terms of timing, the actors involved, and many other variables; for the purposes of this study, the mechanisms were classified into four types: bilateral agreements, memoranda of understanding, temporary work programmes, and free trade agreements with labour migration clauses.

These pathways to regulate labour migration are important elements in the structures of national and regional migration governance. However, there are still challenges, especially those regarding the incorporation of mechanisms as part of comprehensive labour migration policies to respond to these migratory flows, so that the changing needs of labour markets are addressed, and the protection of migrant workers is ensured. In addition, migrant workers often have difficulty finding clear and reliable information about these mechanisms, and still face several risks in their migratory cycle stages that are not usually covered in or mitigated as part of established labour migration mechanisms.

Moreover, this study allows us to conclude that there is a significant limitation regarding available information on results and the achievement of objectives of the various agreements, memorandums of understanding, programmes, and treaties. The scarcity of monitoring and evaluation systems, coupled with the lack of data regarding the levels of participation, use, and implementation of the mechanisms, make it difficult to know the actual effects and benefits generated for both migrants and the origin and destination communities.


This report presents a number of findings that allow a clearer understanding of these challenges, and, at the same time, identify good practices and recommendations to strengthen labour mechanisms in the region as part of comprehensive policies that promote the benefits of labour migration for all parties involved.

¹ IOM, 2018a.

² SISCA, 2013, p. 28.

MAIN FINDINGS OF THE STUDY

- The most used labour migration mechanisms in the region are those whose destination country is the United States and Canada.
- Of the 25 labour migration mechanisms identified, 14 were entered into bilaterally, that is, signed only between two states.
- 56 per cent of the total number of identified mechanisms are classified as temporary work programmes.
- 45 per cent of the identified mechanisms are geared to the primary sector, which requires migrant labour with low qualifications, with agriculture and construction as standout activities.
- The mechanisms of labour migration in the region have a relative impact on migrant labour flows; it has been observed that many migrant workers still use irregular or alternative means to work abroad.
- Some challenges identified with respect to the use of these mechanisms by migrant workers are, the need to have a job offer previously, the payment of fees, and the lack of accessible and reliable information on the procedures. On the other hand, a major challenge for employers is the complexity of some migratory processes, which may result in many of these people choosing to use the services of intermediaries who operate outside the legal framework for hiring foreign labour.
- Overall, the labour migration mechanisms being studied contain provisions that reflect a gender approach, and the most widely used mechanisms focus on economic sectors where there is little participation by women.
- The guidelines that govern these mechanisms are often unclear on the applicable legislation with respect to the rights and obligations of migrant workers and employers.
- The portability of pension or other social security benefits is not contemplated in almost all the identified mechanisms.
- Considerations for relevant aspects regarding the return and reintegration of migrant workers are limited. Most mechanisms only include provisions related to the payment of return tickets to the country of origin; sometimes they contemplate a follow-up report once [they are] returned to the country of origin.
- Formal coordination between the government and employers is scarce. Moreover, cooperation and partnerships between countries of origin and destination must be strengthened to



promote the exchange of information on these mechanisms and to improve monitoring systems. In this regard, there are reports indicating a higher incidence by countries of destination compared to those of origin during the development and negotiation of these mechanisms.

- During the pandemic caused by COVID-19, some countries of destination eased immigration procedures for the regularization of migrant workers in the country and strengthened health and safety measures. This is in response to the productive sector's concerns and needs with respect to being able to count on this labour.

INTRODUCTION

In 2020, the world's migrant population was estimated at 280.6 million people,³ and in 2017 there were 164 million migrant workers.⁴ When it is well managed, labour migration has the potential to provide many benefits and opportunities for both the countries of origin and those of destination, even for migrants. However, maximizing these benefits and minimizing potential challenges depends on the existence of policies and mechanisms for the proper governance of these migration flows.

In the Mesoamerican region,⁵ most migrants move for work-related purposes, both at the intra-regional and extra-regional level. Most of the countries in the region are characterized by being predominantly countries of origin, and this has had a major impact on the development of their economies and labour markets. In 2017, Mexico received 37.4 per cent of the remittances to Latin America and the Caribbean, and the Central American countries, 25.9 per cent.⁶

In recent years, intraregional migration in Mesoamerica has shown continued growth, turning some of the countries in this region into major recipients of migrants. This confirms the importance of strengthening governance systems that include comprehensive migration governance systems including proper coordination between the countries of the region regarding this matter. Effective migration governance depends on lasting inter-institutional partnerships at the national and international level, with neighbouring countries, other countries within and outside the region, international organizations, civil society, the private sector, and other stakeholders.⁷

The mechanisms that facilitate labour migration play a crucial role as part of the governance structures and as a channel through which the States can operationalize labour policies according to their development strategies and needs. In addition, the mechanisms for labour migration can serve as a tool to protect the rights of migrants who, although representing only 4.4 per cent of the global workforce, are much more likely than other workers to be victims of practices that violate human rights, such as forced labour.⁸

Countries in this region count on different mechanisms that facilitate labour migration. However, it is unclear to what extent these instruments respond to the needs of the States, the private sector, and migrants. This study provides an overview of the mechanisms implemented in the region, as well as an in-depth analysis of the most widely used mechanisms.

³ UNDESA, s.f.

⁴ ILO, 2018.

⁵ The term Mesoamerica is understood as the region composed by the countries of Central America and Mexico.

⁶ IDB, 2017.

⁷ IOM, s.f.a.

⁸ ILO, 2017, p. 19.

METHODOLOGY

The methodology followed a five-step process:



SECONDARY DATA COLLECTION METHODS

First, a search was undertaken for reports from international organizations, academic research, legislation, and public policy documents of the countries participating in the study.⁹ This exercise was conducted using the following criteria:

1. Exploration of bilateral/multilateral labour agreements between the countries participating in the study or with countries outside the region of Mesoamerica.
2. Research about other mechanisms implemented in the participating countries that, directly or indirectly, allow labour migration.

In order to systematize the information, an array of secondary data was used to classify the literature according to geographical coverage and type of mechanism.

The types of formal mechanisms were subdivided into:

- a) Bilateral/multilateral labour agreements;
- b) Memoranda of Understanding;
- c) Temporary work programmes;
- d) Trade agreements with labour provisions.

This classification allowed us to identify how many mechanisms there are in different countries, their levels of implementation, and what the most important mechanisms for the region are in terms of their usage and the number of beneficiaries or mobilized people.

In addition, a stakeholder mapping was performed in order to determine a list of key informants in the government, civil society, employer, and academia sectors.

⁹ These countries are: Costa Rica, El Salvador, Guatemala, Honduras, Mexico, and Panama.

PRIMARY DATA COLLECTION METHODS

In-depth interviews were carried out remotely with stakeholders in the government, civil society, private sector, international organizations, and academia. These interviews allowed the collection of both qualitative and quantitative data on the implementation of the mechanisms, their monitoring, and their usage level.

CASE STUDIES

For the development of the chapter on “Case Studies: Analysis of mechanisms at all stages of the labour migration cycle”, an internal analysis tool was created with 55 binary and open questions. The questions were grouped into 15 indicators related to the implementation process of the mechanisms, the involvement of governments and the private sector, and compliance with national and international labour standards and best practices. The gender approach and solutions were also considered as an indicator in each of the stages, including specific questions to evaluate their inclusion and implementation.

The results were coded according to the stages of the labour migration cycle:¹⁰

- Stage 1: Recruiting
- Stage 2: Stay abroad
- Stage 3: Return and reintegration


The mechanisms that were reintroduced in the case studies were chosen based on their level of use by workers in the region during the last year and their relevance to the Mesoamerican context.

LIMITATIONS

The IOM carried out this report within a context of several limitations. It is important that the following challenges be considered within the context of the findings and recommendations of this document.

- The research was conducted during the COVID-19 pandemic, making it difficult for IOM to contact key players -who were either working remotely or focused their work on the health crisis and its economic and social effects. Therefore, even if the research team interviewed actors from the private sector, the report could have

¹⁰ For analytical purposes, the labour migration process can be divided into the following stages: recruitment, placement (when migrant workers leave their country), employment, and return or subsequent migration. For the purposes of this study, the placement and employment stages are integrated into the term “stay abroad”.



been benefited from a greater number of perspectives from this sector. In addition, it was not possible to contact migrant workers who had mobilized through the mechanisms found in this report; however, this may have enriched the panorama of implementing them.

- IOM included additional information about how COVID-19 has affected the proper operation and implementation of the mechanisms discussed in this report; however, it is important to mention that health care restrictions and health measures may have changed or stopped after writing this report.
- Available information on labour migration mechanisms in Mesoamerica is quite scarce; sometimes it was difficult to find formal or official documentation on these mechanisms, as well as details about the number of workers who move using certain mechanisms. The limited availability of information was especially prevalent with respect to the implementation of the different instruments. For this reason, this report is based on the latest available data for each of the labour mechanisms.

1

MECHANISMS FOR LABOUR MIGRATION IN MESOAMERICA



1. LABOUR MIGRATION IN MESOAMERICA¹¹

This chapter provides an overview of labour migration in Mesoamerica, including a description of the main trends in labour migration and mobility and a general review of the governance systems of labour migration in the region, as well as laws, policies, protocols, or national agreements relevant to this topic.

LABOUR MIGRATION AND MOBILITY IN MESOAMERICA

In the last two decades, there has been an increase in the intensity and complexity of the migration phenomenon in the countries of Mesoamerica.¹² Worldwide, by 2020 migrants from Central American countries numbered more than 5 million people, while in Mexico this number was 11.2 million migrants.¹³

In some countries in the region, the number of migrants represents a significant percentage of their total population. In the case of El Salvador, it is estimated that approximately 46.67 per cent of the population born in this country resides abroad¹⁴ 93.5 per cent of them reside in the United States of America, becoming the second largest population from Latin America in that country, surpassed only by the Mexican population.¹⁵



In 2018, remittances accounted for 2.7 per cent of Mexico's GDP.¹⁶

In 2016, this figure was 17.1 per cent in El Salvador, 11 per cent¹⁷ in Guatemala, and about 20 per cent in Honduras in 2019.¹⁸

¹¹ For the purposes of this study, the Mesoamerican region includes Costa Rica, El Salvador, Guatemala, Honduras, Mexico and Panama.

¹² ECLAC, 2018, p. 13.

¹³ United Nations Department of Economic and Social Affairs (UN DESA), "International migrant stock 2020", s.f., última consulta 12 de febrero 2021, disponible en www.un.org/development/desa/pd/content/international-migrant-stock.

¹⁴ IOM, 2019b, p. 25.

¹⁵ Government of the Republic of El Salvador, 2017, p. 26.

¹⁶ BBVA Bancomer Foundation and the Government of the United Mexican States, 2019, p. 148.

¹⁷ IOM, s.f.d.

¹⁸ SICA, 2020.

Table 1. Total population and migrant population by country according to the latest data reported

Country	Total population	Total immigrants	Immigrants as percentage of population	Total emigrants	Emigrants as percentage of population
Costa Rica	5,059,730	477,466	9.43%	215,834	4.26%
El Salvador	6,642,767	42,617	0.64%	3,100,506	46.67%
Guatemala	18,065,725	82,160	0.45%	2,301,175	12.73%
Honduras	9,023,838	38,900	0.43%	800,700	8.87%
Mexico	124,900,000	1,074,000	0.85%	12,900,000	10.32%
Panama	4,158,783	185,100	4.45%	161,000	3.87%

Source: Costa Rica: INEC Costa Rica 2018 and DGME 2018, El Salvador: DIGESTYC 2019 and IOM 2019, Guatemala: INE s.f. And IOM 2017, Honduras: INE 2018 and IOM 2019, México: INEGI s.f. and BBVA, CONAPO and SEGOB 2019 and Panamá: INEC Panamá s.f. and IOM 2019.

Regarding the profile of the migrant population from these countries, the high participation of women in migration flows is worth noting. The feminization of migration in Mesoamerica is a trend that has seen a gradual increase in recent years, both to countries in the same region and extra-regional destinations.¹⁹ In the United States of America, 50 per cent of Central American migrants are women -whilst with respect to intra-regional migration within the Central American Integration System (SICA) countries,²⁰ the figure is 53 per cent.²¹ From 2010 to 2017, in Mexico the participation of women in the total emigration numbers from the country grew by 0.4 per cent, reaching 46.7 per cent of the total migrant population.²²

Both in the case of Central American countries and Mexico, the migrant population in the United States of America is made up mostly of young people. In the case of Central America, the average age is 25.2 years, while in Mexico is 28.9 years; in both cases this represents a lower average age of migrants compared to other regions.²³

Another feature of the migrant population coming from Mesoamerica is their low levels of schooling. Over 55 per cent of them have not finished elementary school, and only 20 per cent have some level of higher education.²⁴

¹⁹ IOM, UNHCR and SICA, 2019, p. 25; ILO, 2016b, p. 67.

²⁰ The Central American Integration System (SICA), established in 1991, is the institutional framework of the Regional Integration of Central America. It comprises eight countries: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Belize, Panama and the Dominican Republic. See SICA, s.f.

²¹ IOM, UNHCR and SICA, 2019, p. 72

²² BBVA Bancomer Foundation and the Government of the United Mexican States, 2018, p. 38.

²³ ECLAC, 2018, p. 16.

²⁴ *Ibid.*, p. 17.

One of the main features of migration in the region has been its multicausality; however, migratory movements have been significantly marked by their labour and economic nature.²⁵ Different interviews conducted by IOM to migrants in transit toward the north of the American continent indicate that the motivation of most people for migrating were, seeking better living conditions, violence/insecurity, and family reunification.²⁶



Labour migration refers to the movement of persons from one State to another, or within their own country of residence, for the purpose of employment.

Moreover, the economies in the migrants' countries of origin are strongly linked to the informal sector. In Mexico, 56 per cent of those working does so in the informal sector,²⁷ while estimates for Central America range from 48 per cent to 62 per cent;²⁸ this significantly weakens economic growth and places those working in these conditions in vulnerable situations.

Table 2. Percentage of informal employment in Central America

Country	Last year available	Men	Women	Total
Costa Rica	2019	36%	43.2%	38.8%
El Salvador	2019	67%	72.2%	69.1%
Guatemala	2017	80.1%	80.2%	80.1%
Honduras	2017	83.6%	81%	82.6%
Nicaragua	2012	81.3%	82.4%	81.8%
Panama	2019	54.2%	50.9%	52.8%

Source: ILO, s.f.c

The predominantly labour-related nature of Mesoamerican migration is reflected in the high rates of participation of this migrant population in economic activities in the United States of America, the main destination for these migratory flows. In this country there is a shortage of labour, 38 per cent of which is covered by Latin American immigrants -Mexicans and Central Americans contribute more than 80 per cent of them.²⁹ It is estimated that about one-third of Central American migrant workers in the United States of America work in the services sector; 23 per cent work in extraction, construction, and maintenance activities; and 19 per cent work in the production, movement, and transportation of materials.³⁰

²⁵ *Ibid.*, p. 6.

²⁶ IOM, 2020d.

²⁷ Ordaz, 2019.

²⁸ FECAGRO, ILO and IOM, draft, p. 40.

²⁹ ECLAC, 2018, p. 36.

³⁰ IOM, UNHCR and SICA, 2019, p. 25.

Different migration realities coexist at the regional level, which make visible the importance of labour migration among the nations in the region. In 2016, it was estimated that 52 per cent of all work visas and permits issued to migrants in countries belonging to SICA³¹ were for nationals of another member country of this organization.³² As shown on Map 1. Main intra-regional labour migration corridors. The region has countries of destination (Costa Rica and Panama), of origin (Honduras, Nicaragua, Guatemala), and countries that are both recipients and countries of origin of workers abroad (Mexico and El Salvador). In particular, the flow of people from Nicaragua, Panama, and other Central American nations to Costa Rica for temporary or permanent work is a migration flow that stands out. On the other hand, there is a very important migratory corridor between Guatemala and Mexico, corresponding to a circular, recurring cross-border flow, part of the demographic configuration of the border between the two countries.³³

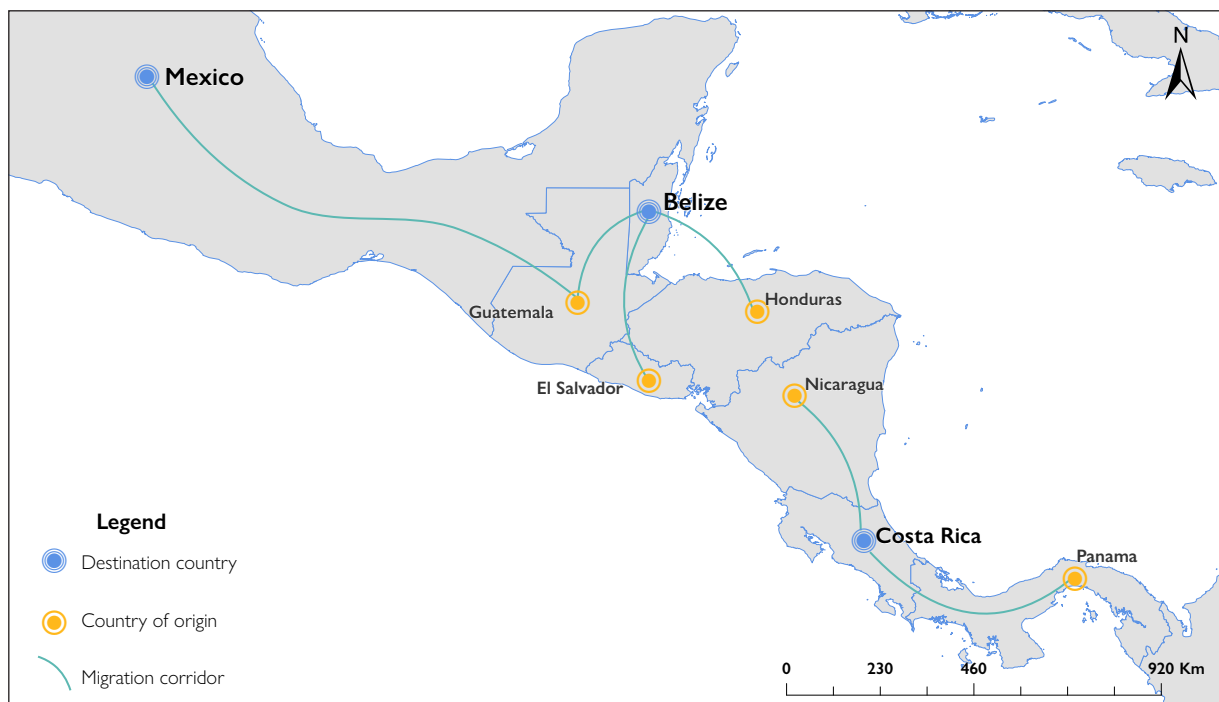
Recognizing that migration in this region is significantly influenced by economic factors and that the migrant population is highly active in the countries of destination, it is necessary to drive efforts in the region, both through national legislation and international cooperation, to strengthen the governance of labour migration in order to facilitate such dynamic, with a focus on human rights and ensuring that the countries of origin and destination and the migrants themselves reap the benefits of the proper governance of migration processes.

³¹ SICA Member States include: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic.

³² OECD and OAS, 2017, p. 28.

³³ ECLAC, 2018, 14.

Map 1. Main intra-regional labour migration corridors



Source: Changala, 2014; ECLAC, 2017; 2018, IOM, UNHCR and SICA, 2019 and interviews.

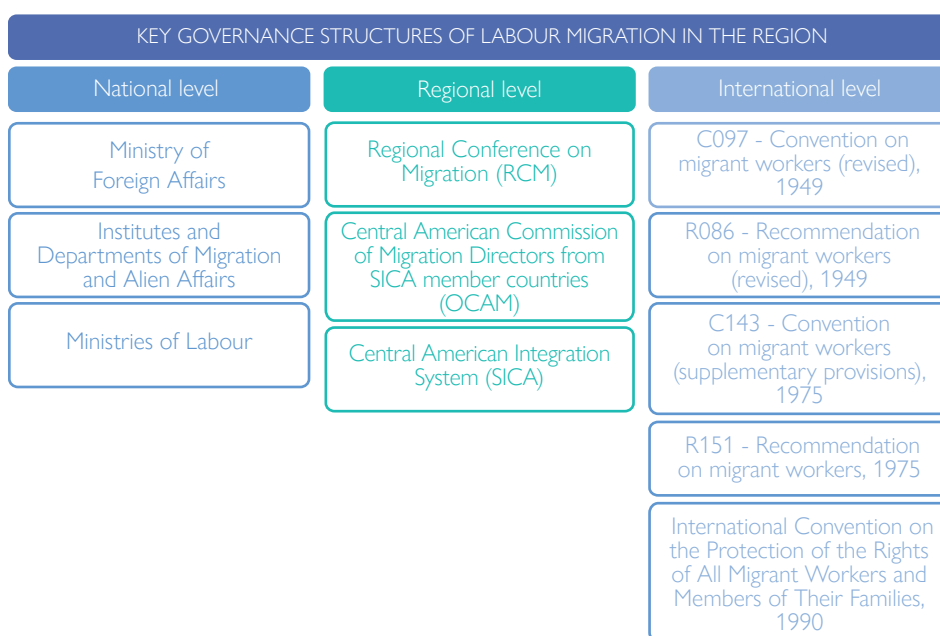
Note: This map is for illustration purposes only. The boundaries and names on this map, as well as the terms used therein, do not imply official endorsement or acceptance by the International Organization for Migration.

GOVERNANCE OF LABOUR MIGRATION IN MESOAMÉRICA

IOM understands migration governance as a set of legal rules, laws, regulations, policies, traditions, and organizational structures and processes that regulate and determine the actions by States in response to migration in all its forms, addressing both rights and obligations and encouraging international cooperation.³⁴ Although States are the main actors regarding migration, mobility and nationality, other actors such as citizens, migrants, international organizations, private sector, trade unions, NGOs, communities, religious organizations, and academia can also contribute to migration governance through their interactions with the State and with each other.³⁵

The countries of the Mesoamerican region have undertaken significant efforts to strengthen migration governance, thus recognizing the importance of this phenomenon in the region. These efforts have included actions both at the national and international level, which are shown below. These binding and non-binding architectures play an essential role in the establishment, implementation, and monitoring of labour migration mechanisms.

Figure 1. Structure of labour migration governance in the region



Source: Author's elaboration.

³⁴ IOM, 2019c.

³⁵ IOM, 2015.

At the national level, the countries in the region have institutions and legislation aimed at migration management and, specifically, labour migration. However, despite the progress made towards a more comprehensive migration governance, the dominant approach remains the regulation of traffic on the national territory, leaving aside the multidimensional impact of the migration processes, which is often evident by the exclusion of this issue in other policies such as employment.³⁶

Some countries in the region, mainly those that are countries of origin of migrant workers, have, within their institutions responsible for labour matters, departments specializing in labour mobility, which they support by contacting the population of their country with companies that want to recruit workers through previously established programs. For example, El Salvador recently created the Labour Mobility Unit under the Ministry of Labour and Social Welfare. Another example is Guatemala, where the Ministry of Labour and Social Welfare developed the Labour Migration Program within the Department of Labour Mobility in order to link workers in Guatemala with employment opportunities abroad through safe, orderly, and regular migration.³⁷

Likewise, the Secretariat of Labour and Social Welfare (STPS) of Mexico has a Labour Linking Service that develops the Labour Mobility Mechanism linking Mexican nationals with temporary work programs in Germany, Canada, and the United States of America. More recently, on Mexico's northern border a temporary employment pool or job bank was established, aimed at the labour and productive integration of migrants in Mexico while they wait for asylum proceedings in the United States of America. Also, the STPS, in collaboration with IOM, launched the information campaign *Employers of the world, leaders of tomorrow*, to explain to the private sector the opportunities and benefits of hiring migrant workers, the regulations that allow their safe, orderly, and regular recruitment, and which government institutions can facilitate and support this process.³⁸

Costa Rica's the Ministry of Labour and Social Security (MLSS) and the General Directorate of Immigration and Alien Affairs (DGME) are in coordination to exchange information on [work] permits and priorities depending on the behaviour of the labour market. In addition, the National Immigration Council, in accordance with the framework of *Decree No. 38099-G*, approved the *National Development Plan (2013-2023)*, which contemplates that migrants are to be inserted into economic activities and sectors that are of interest to the State and to achieve other strategic aims regarding migration.³⁹

³⁶ IOM, UNHCR and SICA, 2019, p. 53.

³⁷ Government of the Republic of Guatemala, s.f.

³⁸ IOM, s.f.b.

³⁹ ILO, s.f.d.

Moreover, the Ministry of Labour and Social Security of Honduras, with support from IOM and ILO, is in the process of formulating a draft *Special Labour Authorization Law for Foreigners* in order to facilitate the integration of migrants into the labour market. This law provides for the establishment of a national register of migrant workers that classifies work permits and establishes regularization paths for workers and employers, as well as the registration of contracts.⁴⁰

The importance of these units lies in that, through them, labour migration policies and programs can be made operational, including the mechanisms discussed below, to increase the scope of the channels for safe, orderly, and regular migration, thereby contributing to reduce the use of irregular channels for labour migration and ensure that migrants are not victims of scams and unscrupulous recruitment practices.

Migration from Mesoamerica is highly dynamic and complex, and the role of labour markets as elements that both attract and drive migration is evident. Despite this, the region still faces challenges in building and strengthening systems that allow the generation of information on migration flows and their links to labour markets, as was recently documented by IOM and ILO in the study entitled *Information Systems on the Labour Market (SIMEL in Spanish) in El Salvador, Guatemala, Honduras, and Mexico: Towards greater integration of migration*. This study found that these challenges are related to financial sustainability, poor allocation of human resources, scarce coordination between the institutions generating information, and lack of data exchange mechanisms.⁴¹ Likewise, governance of labour migration in the countries of the region has been hampered by the difficulty of collecting data on labour markets, demographics, and cross-border movements,⁴² among others, which is essential to develop national policies aimed at strengthening the governance of labour migration.

In addition, the highly porous borders between the countries in the region facilitate the movement of migrants with irregular immigration status, which further hinders the collection of data on migration. This results in that precarious, low-skilled jobs are still considered an option for migrants, who often take them while accepting wages below the minimum established by law and without labour guarantees, undermining their own labour rights.⁴³

⁴⁰ IOM, 2019e.

⁴¹ IOM, 2020a.

⁴² IOM, 2019b, p. 9.

⁴³ FECAGRO, ILO and IOM. draft, p. 29.

As for the efforts made at the international level, the issue has not yet been fully incorporated and operationalized in regional agreements and spaces related to migration and/or labour issues, despite the increasingly recognized importance of managing labour migration in the region in a coordinated manner. Usually, regional commitments on labour migration are not prioritized beyond those related to border control.⁴⁴ Despite this, in the region there are several platforms for regional dialogue and coordination, summarized below, where the governance of labour migration is discussed.⁴⁵

The platforms listed include the Regional Conference on Migration (RCM), a space composed of all Central American countries, Belize, Canada, the United States of America, and the Dominican Republic. The RCM was established in February 1996 as a result of the Tuxtla II Presidential Summit with the aim of coordinating policies and promoting cooperation on migration. In the last years, dialogue on labour migration has been reinforced in this inter-State process with the technical cooperation of observer organizations such as IOM and ILO, and with the participation of non-traditional players in this space such as representatives of labour ministries, statistics institutes, unions, and the private sector. These efforts were consolidated in 2019 with the establishment of an RCM working group specialized in labour migration.



Within the context of the RCM, six workshops on labour migration were held in the last decade. These included the capacity building workshop for consular authorities on the protection of the labour rights of migrant workers, a workshop on Consular Protection of Migrant Workers, and a Regional Workshop on the Governance of Labour Migration: Towards planned, integrated policies, and a cycle of videoconferences called Labour migration and the challenge of economic recovery: Contributions from the public sector and businesses, organized jointly with the International Organization of Employers (IOE), IOM, ILO, and UNDP.

Another important instance of regional migration coordination is SICA, which is part the *Action Plan for the Comprehensive Management of Migration in the Countries of the Central American Integration System (PAIM- SICA)*, whose purpose is to manage regional migration in accordance with international standards and the priorities identified of Member States.⁴⁶ While SICA does not have a specialized agency for the management of labour migration, PAIM-SICA includes a specific axis on the subject, whose monitoring would be advisable by means of the assignment of a specific office or committee. In addition, the Central American Commission of Migration

⁴⁴ ILO, 2016b, p. 78.

⁴⁵ The initiatives included herein are not a comprehensive list; there are other valuable efforts with a broader approach, such as the Special Committee on Migration Issues of the OAS, and participation by the region in the Global Forum on Migration and Development (GFMD), among others.

⁴⁶ IOM, UNHCR and SICA, 2019, p. 83.

Directors from the member countries of the Central American Integration System (OCAM), led by the heads of migration, operates as a regional coordination, consultation, and definition mechanism to address migration issues.⁴⁷

In terms of intra-regional mobility, there is the *Agreement creating the Central American Single Visa for the free movement of foreigners among the Republics of El Salvador, Guatemala, Honduras and Nicaragua (CA-4)*, signed in 2005 by the governments of Guatemala, Honduras, El Salvador, and Nicaragua, which considers the free movement of persons “for official reasons or to participate in scientific, humanitarian, religious, artistic, sporting, entertainment and other public activities”;⁴⁸ However, this Agreement does not contain provisions regarding labour migration and, therefore, the mobility of people is not permitted for these purposes without having previously managed a work permit.

There are also challenges at the regional level regarding the ratification of international conventions on labour migration. Of the seven main ILO conventions on migration and labour rights,⁴⁹ the *Forced Labour Convention* (No. 29) is the only one that has been ratified by all the countries in Mesoamerica. As for the *Convention on Migrant workers* (No. 97), it has been ratified only by Guatemala, while the supplementary provisions of that Convention (No. 143) have not been ratified by any country in the region. Regarding the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, it has not been ratified by Costa Rica or Panama.

⁴⁷ IOM, 2020b.

⁴⁸ Government of the Republic of Guatemala, Government of the Republic of El Salvador, Government of the Republic of Honduras, and Government of the Republic of Nicaragua, 2005.

⁴⁹ Conventions number 97, 181, 189, 143, 29, and 90, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Table 3. International conventions on the protection of migrant workers and ratification status per country

Convention	Costa Rica	El Salvador	Guatemala	Honduras	Mexico	Nicaragua	Panama
Forced Labour Convention, 1930 (No. 29)	✓	✓	✓	✓	✓	✓	✓
(Revised) Convention on Night Work of Young Persons (Industry), 1948 (No. 90).	✓		✓		✓		
Convention on Migrant Workers (revised), 1949 (No. 97)			✓				
Convention on Migrant Workers (supplementary provisions), 1975 (No. 143)							
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		✓	✓	✓	✓	✓	
Convention on private employment agencies, 1997 (No. 181)							✓
Convention on domestic workers, 2011 (No. 189)	✓				✓ (It will enter into force in July 2021)	✓	✓

Source: Prepared internally from ILO data, 2020

2 MECHANISMS FACILITATING LABOUR MIGRATION IN MESOAMERICA



2. MECHANISMS FACILITATING LABOUR MIGRATION IN MESOAMERICA

In an increasingly interdependent world with deepening globalization, increasing digitization, and rapid urbanization, the need to improve governance and international coordination on migration and labour issues becomes more and more necessary. This is crucial to facilitate safe, orderly, and regular migration that guarantees the rights of migrants and allows people to meet the needs of labour markets, demographic dynamics, and sustainable development efforts. Proper management of labour migration “constitutes a valuable path to not only solve issues related to migration flows but also to improve diplomatic relations between countries when irregular migration has been a sticking point.”⁵⁰

Good governance of migration and related policies should promote the socio-economic well-being of migrants and society in general. Poverty, instability, lack of access to education and other basic services, these are just some of the factors that encourage people to migrate. Therefore, a suitable management of migration would promote stability, opportunities for education and employment, and reduce the factors driving forced migration; however, even if the factors driving forced migration were eliminated, people would still choose to emigrate, for example, in search of better job opportunities or to join their families. Therefore, it is necessary that migration and related laws and policies be designed to enhance the socio-economic benefits for migrants as well as the communities of origin, transit, and destination.

Governments have implemented various practices and tools as part of the governance of labour migration, both in countries seeking to attract foreign labour (countries of destination) and those with a high percentage of their nationals working abroad (countries of origin).⁵¹

⁵⁰ IOM, 2010, p. 71.

⁵¹ Organization for Security and Co-operation in Europe (OSCE), International Organization for Migration (IOM), and International Labour Organization, 2006, p. 14.

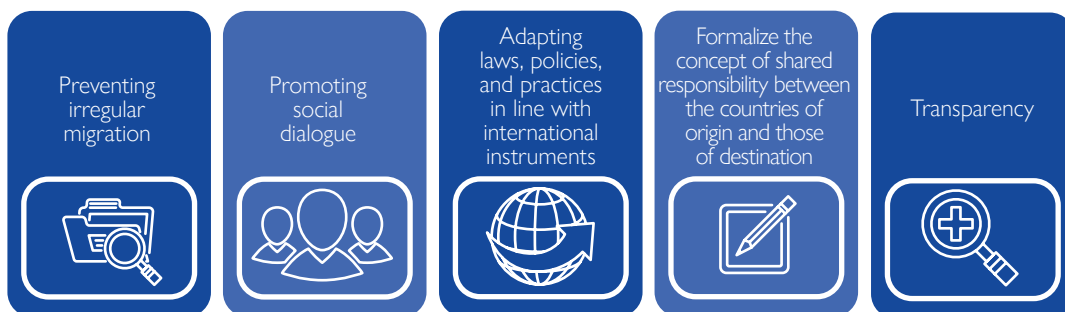
Figure 2. Best practices in the management of labour migration



Source: Author's elaboration.

Formal mechanisms within these instruments are understood as those procedures developed and regulated by one or more governments. These are the most commonly used in the region to manage labour migration and mobility, as they promote guaranteeing decent treatment of workers, and allowing equitable consideration of the interests of the migrants' countries of origin as well as the countries of destination.⁵² The availability of adapted and consolidated labour mechanisms offers a number of opportunities that greatly benefit States, businesses, communities, and individuals.

Figure 3. Main benefits of an orderly and well-managed labour migration



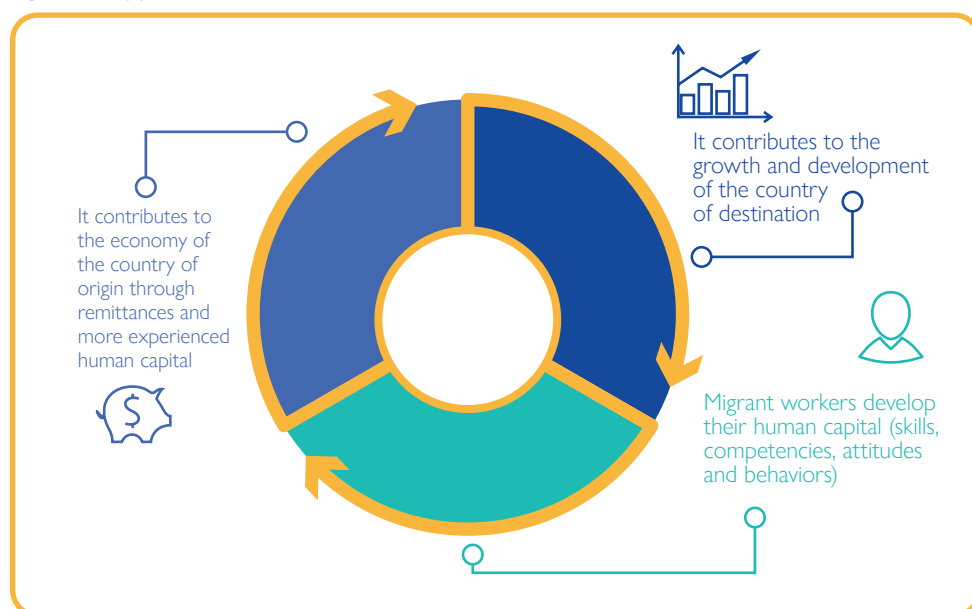
Source: Author's elaboration.

⁵² ILO, 2014, p. 27.

In addition, the mechanisms to facilitate labour migration in the region may also provide benefits to all stakeholders: countries of origin, of destination, employers, and workers.

According to the literature and diagnostic interviews, a total of 25 existing formal mechanisms have been found, which facilitate, directly or indirectly, labour migration in the region, although not all are currently implemented. It is worth noting that, despite having reviewed different documents and news reports and consulted with governments in the region, the mechanisms presented in this study do not necessarily reflect all existing mechanisms.

Figure 4. Opportunities of labour mechanisms




Source: Author's elaboration.

The mechanisms found for the purposes of this study were classified as:⁵³

1. Bilateral/multilateral labour agreements
2. Memoranda of Understanding
3. Temporary work programmes
4. Trade agreements with labour provisions

⁵³ The classification was made according to the documents found.



The following pages include information about the mechanisms found in these four categories, as well as their validity status, use, and implementation. The information varies according to the availability of data on each mechanism.

In addition, although these types of mechanisms exist throughout the region, some migrant workers may opt for other migration management instruments for the purposes of labour migration, even if this is not their original purpose. This study also provides a non-comprehensive list of such instruments and discusses the risks related to their use, as well as the challenges they may pose to the successful operation of labour mechanisms.

BILATERAL AGREEMENTS ON LABOUR MIGRATION

These are agreements between two or more States that are legally binding and essentially refer to interstate cooperation regarding labour migration.⁵⁴ They also provide employment exchange options in accordance with specific supply and demand of the countries involved. The following table shows some general data on the bilateral agreements identified: name of the agreement, countries participating, year of ratification, and economic activity sector or focus for each instrument.

Table 4. Bilateral labour migration agreements identified in Mesoamerica

NAME OF THE AGREEMENT ⁵⁵	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	SECTOR / FOCUS	VALIDITY
Treaty of Friendship, Commerce and Navigation	Panama - Italy	1966	Economic and professional	✓
Migration Management Procedures for Temporary Workers Costa Rica - Nicaragua	Costa Rica - Nicaragua	2007	Agriculture, agribusiness, and construction	✓
Agreement on the Coordination Mechanism for Migration Flows for Employment and Occupation	Costa Rica – Panama	2015	Agriculture and construction	✓
Protect migrant labour in the domestic sector	Panama – Paraguay	2017	Domestic	✓
Agreement on the Regulation of Labour and Employment	El Salvador – Qatar	2018	Engineering, banking, communications, medicine, and services	✗
Agreement on Cooperation in Labour Matters between the Government of the Republic of Guatemala and the Government of the United Mexican States	Guatemala – Mexico	2018	Agricultural	✓

Source: Author's elaboration.

⁵⁴ IOM, 2019, p. 16.

⁵⁵ The names of the agreements include links to the official document of the agreements available online.

Six bilateral labour migration agreements were identified in the region. Below is a brief description of the characteristics of the mechanisms and their current implementation status according to the information available:

- The *Treaty of Friendship, Commerce and Navigation between Panama and Italy* was signed in 1966. Under this agreement, the citizens of each of the Contracting Parties may enter, remain in, settle down, travel, and move within the territory of the other Party, and to engage freely in any economic activity, with the exception of retail trade and restricted professions, as long as the applicant meets the requirements, including a verification of financial solvency.
- The *Migration Management Procedures for Temporary Workers Costa Rica - Nicaragua* was signed in 2007 and is still in force. However, according to the information collected during interviews with government officials and people from the academic sector, this agreement has not yielded the expected results in terms of facilitating intergovernmental communication and reducing irregular labour migration.⁵⁶
- The *Agreement on the Coordination Mechanism for Migration Flows for Employment and Occupation*, signed between Costa Rica and Panama in 2015, is also in force. However, according to interviews, employers have expressed their dissatisfaction because it involves highly bureaucratic processes that hamper its implementation, especially for small businesses. It is worth noting that this Agreement has a workgroup that monitors both its progress and obstacles with respect to the governance of these migration flows.⁵⁷
- The agreement between Panama and Paraguay to *Protect migrant labour in the domestic sector* is in force since 2017; however, no information was available about its implementation status.
- The *Agreement on the Regulation of Labour and Employment* signed in 2018 by El Salvador and the State of Qatar, is the only bilateral agreement collected for this document that has not entered into force yet. While this agreement includes occupations such as engineering, banking, communications, medicine, and services, it has focused on promoting construction labour in the State of Qatar for the 2022 World Cup.
- The *Agreement on Cooperation in Labour Matters between the Government of the Republic of Guatemala and the Government of the United Mexican States* was first signed in 2014, then signed again in 2018. The agreement aims to design and implement a temporary (guest) worker program for Guatemalan nationals who want to work in Mexico in agricultural activities, build a binational register of authorized recruiting agencies, and carry out information campaigns for migrant workers and employers about their rights and responsibilities.⁵⁸ It currently counts on an intergovernmental technical working group for information exchange.

⁵⁶ Interview with a representative of the Government of Costa Rica.

⁵⁷ *Ibid.*

⁵⁸ Government of the Republic of Guatemala and Government of the United Mexican States, 2014.

MEMORANDA OF UNDERSTANDING (MOU)

MoUs are administrative or private agreements that are not legally binding. Despite this, in many cases they are subject to the labour, administrative, and immigration laws of the signatory countries.⁵⁹ Some general aspects of the MoUs identified in Mesoamerica are detailed below:

Table 5. Memoranda of Understanding on labour migration identified in Mesoamerica

NAME OF THE AGREEMENT	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	SECTOR / FOCUS	VALIDITY
MoU in Labour Cooperation between the Ministries of Labour and Social Welfare of the United Mexican States and the Republics of El Salvador, Guatemala, and Honduras	Mexico – El Salvador, Guatemala, Honduras	2016	Agriculture and services	x
Memorandum of Understanding between the Government of Honduras and the Florida-Caribbean Cruise Association (FCCA)	Private sector – Honduras	2016	Maritime	✓

Source: Author's elaboration.

⁵⁹ IOM, 2010, p. 68.

With respect to these MoUs, the following information was identified about their characteristics and validity:

- The *Memorandum of Understanding on Labour Cooperation between the Ministries of Labour and Social Welfare of the United Mexican States and the Republics of El Salvador, Guatemala, and Honduras*⁶⁰ is considered the first step towards the construction of a pilot program that will allow the creation of a safe, legal mechanism to regulate labour migration between the four countries.⁶¹ With the signing of this Memorandum, the Temporary Labour Migration Program was established. It allows workers from the three Central American countries to work in Mexico in agriculture and services for a period not exceeding 180 days, during the times of higher demand, and also allows highly skilled Mexican people to be temporarily employed in those countries.
- The *Memorandum of Understanding between the Government of Honduras and the Florida-Caribbean Cruise Association (FCCA)*⁶² provides job offers for sailors, nautical executive staff, technicians, and service personnel, who must speak English as a requirement and approve the training courses and certifications required for each type of work. In addition, the Government has the National Seafarers Program, whose aim is to train and place on cruise ships qualified Honduran sailors who have added value.⁶³

⁶⁰ Government of the United Mexican States, 2016e.

⁶¹ ILO, s.f.b,

⁶² During the emergency caused by COVID-19 virus, although the Government of Honduras banned the entry of people from Europe, China, Iran, and South Korea either by air, land or sea, with the exception of cruise ships that are members of the FCCA because they have implemented prevention measures that meet the epidemiological surveillance protocols approved by the Ministry of Health under the International Health Regulations in accordance with a public notice by Spain's Ministry of Industry, Trade, and Tourism (2020).

⁶³ Government of the Republic of Honduras, s.f.

TEMPORARY WORK PROGRAMMES

The term “seasonal worker” refers to a migrant worker whose work is, by its nature, dependent on seasonal conditions and is performed only during part of the year.⁶⁴ These programmes may have different forms with respect to their legality; they can be binding agreements such as treaties between States, or they may also refer to fewer formal agreements to regulate the mobility of migrant workers that are undertaken by and between States, secretariats, companies or employment agencies.⁶⁵ The information shown in the table includes general details about the mechanisms and the number of beneficiaries for 2019, in the case of mechanisms for which data are available.

Table 6. Temporary work programmes for labour migration identified for Mesoamerica

NAME OF THE AGREEMENT	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	SECTOR / FOCUS	TIME OF STAY	VALIDITY
Exchange Visitor Visa (J-1)	United States of America – Costa Rica, El Salvador, Guatemala, Honduras, Mexico, and Panama	1961	Academia, research assistants, students, trainees, specialists, <i>Au Pairs</i> (nannies), and camp counsellors, among other occupations	Three years maximum	✓
Beneficiaries, fiscal year 2019, J-1 visa: Costa Rica: 1,089 Honduras: 344 Nicaragua: 131 El Salvador: 424 Mexico: 11,119 Panama: 526 Guatemala: 280					
<u>Temporary Foreign Worker Program (TFWP)</u>	Canada – Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Mexico, Panama	1973	Four streams: high-wage jobs, salary jobs, primary agricultural jobs, and to support permanent residence process	Six years maximum	✓

⁶⁴ United Nations, 1990.

⁶⁵ IOM, 2010, p. 67.

NAME OF THE AGREEMENT	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	SECTOR / FOCUS	TIME OF STAY	VALIDITY
Beneficiaries, fiscal year 2019, TFWP: Costa Rica: 75 Mexico: 30,960 El Salvador: 50 Nicaragua: 480 Guatemala: 11,935 Panama: 5 Honduras: 385					
<u>Seasonal Agricultural Workers Program (SAWP)</u>	Canada – Mexico	1974	Agriculture	Eight months maximum	✓
Beneficiaries, fiscal year 2019, SAWP: 26,407					
H-2A visa for hiring seasonal agricultural workers	United States of America – Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama	1986	Agriculture	Three years maximum	✓
Beneficiaries, fiscal year 2019, H-2A visa: Costa Rica: 205 Mexico: 188,758 El Salvador: 157 Nicaragua: 593 Guatemala: 2,537 Panama: 7 Honduras: 306					
<u>H-2B visas for hiring non-agricultural seasonal workers</u>	United States of America – Costa Rica, El Salvador, Guatemala, Honduras, Mexico, and Panama	1986	Different non-agricultural activities (hospitality, services) during seasonal periods, high season, intermittent periods or one-time periods	Three years maximum	✓
Beneficiaries, fiscal year 2019, H-2B visa: Costa Rica: 397 Mexico: 72,339 El Salvador: 653 Nicaragua: 111 Guatemala: 3,269 Panama: 62 Honduras: 829					

NAME OF THE AGREEMENT	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	SECTOR / FOCUS	TIME OF STAY	VALIDITY
<u>Border Worker Visitor Card (TVTF) Program for Guatemalan and Belize nationals in the areas of Campeche, Chiapas, Tabasco, and Quintana Roo</u>	Mexico – Guatemala and Belize	2012	All sectors (emphasis on construction, agriculture, and services)	One year	✓
Beneficiaries, year 2019, TVTF: Guatemala: 10,015 Belize: 3					
<u>Agreement between Guatemala and Belize on a seasonal worker program</u>	Belize – Guatemala	2014	Agriculture	-	x
Agreement with the Ministry of Labour and Social Security (STSS) of Honduras and IBERSHIP	Private sector – Honduras	2015	Maritime	Eight months	✓
<u>Japan Exchange and Teaching (JET) Program</u>	Japan – Mexico	2015	Internationalization and translation/interpretation activities	One year	✓
Beneficiaries 2019, JET: 2					
Agreement between the Secretariat of Labour and Social Welfare (STPS) and the Fair Food Standards Council (FFSC) of Florida for H-2A Visas	Mexico – Private sector	2016	Agriculture	Three years maximum	✓

NAME OF THE AGREEMENT	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	SECTOR / FOCUS	TIME OF STAY	VALIDITY
Cooperation and Technical Assistance Agreement for the Implementation of the Seasonal Migrant Worker Program in Quebec, Canada, between the Foundation for Foreign Agricultural Worker Recruitment (FERME in French) and the Ministry of Labour and Social Security	Honduras – Foundation for Foreign Agricultural Worker Recruitment (FERME)	2017	Agriculture	Eight months maximum	✓
Agreement between the Ministry of Labour and Social Welfare and the Spanish company IBERSHIP	Private sector – El Salvador	2017	Maritime	Eight months	✓
Mechanism for Labour Mobility: Pilot program with Germany	Germany – Mexico	2017	Engineering, health, and information technologies (ICTs)	Four years maximum	✓
Card issuance for day labourers in the sugarcane harvest	El Salvador – Honduras and Nicaragua	2019	Agriculture	-	✓

Source: Author's elaboration.

Temporary work programmes appear to be prevalent in this region since they comprise 56 per cent of the identified mechanisms. Although most are established between two or more countries, these are usually initiated and managed by the countries of destination in response to labour needs in specific sectors, such as agriculture or services, during certain periods of the year. A brief characterization of these programmes is given below:

- The *Exchange Visitor J-1 Visa*,⁶⁶ issued by the Government of the United States of America, allows more skilled temporary workers to access the jobs included in this mechanism. Applicants can come from any country and must have a sponsor authorized by the Government of the United States of America.
- The *Temporary Foreign Worker Program (TFWP)*, established by Canada, is accessible to all countries in this region for different economic sectors. Of the region, Mexico and Guatemala are the countries with the most statistics regarding the number of nationals who were granted such permits in 2019.
- The *Seasonal Agricultural Workers Program (SAWP)* between Canada and Mexico stands out because this is the only country in Mesoamerica that has been incorporated into this scheme. The participation of Mexican nationals in the program shows sustained growth since its implementation, recording in 2019 the participation of 774 women.⁶⁷
- The *H-2A and H-2B visas*⁶⁸ of the Government of the United States of America were established within the framework of the *Immigration Reform Act* of 1986. They are currently accessible to all countries of Mesoamerica; for H-2A visas, however, a list of eligible countries is issued every year. The H-2A visa is for seasonal migrant agricultural workers, and there is no limit on the number of visas issued per year. On the other hand, the H-2B visa is for temporary migrant non-agricultural workers, with a cap of 66,000 visas issued for a fiscal year. This limit was expanded by 35,000 visas for 2020, of which 10,000 were allocated to the countries of northern Central America.⁶⁹ In order to have access to these visas, applicants must have a standing job offer and the employer must go through formalities that include numerous requirements. To facilitate access, the governments of the main countries of origin, El Salvador, Guatemala, Honduras, and Mexico,⁷⁰ have become involved in the registration of people interested in the program.⁷¹

⁶⁶ These visas are currently suspended until the end of 2020 due to the COVID-19 pandemic.

⁶⁷ Information from the STPS.

⁶⁸ The list of eligible countries for these visas can change annually. You can query eligible countries at the following link: www.uscis.gov/news/alerts/uscis-announces-countries-eligible-for-h-2a-and-h-2b-visa-programs.

⁶⁹ Álvarez, 2020.

⁷⁰ According to statistics of the Department of State (DOS) of the United States of America, during fiscal year 2019, and including all countries in the Caribbean, Central America, and Mexico, the United States of America granted 95.5 per cent of visas issued for these countries to Mexico, and 82.2 per cent of the H-2B visas. Guatemala is the country in the region that obtained the second greatest number of such visas during the aforementioned period.

⁷¹ In February 2020, El Salvador signed an MoU between the MTPS and the United States Embassy on the temporary worker program for H-2A and H-2B visas. In July 2019, Guatemala signed an Agreement between the Government of the United States of America and the Government of the Republic of Guatemala on the temporary agricultural worker program; Honduras signed the Agreement on temporary agricultural and non-agricultural worker programs in September 2019 with the United States Department of Labor. Mexico maintains coordination actions concerning H2A and H2B visas through the STPS and the United States Embassy in Mexico.


- The *Border Worker Visitor Card Program (TVTF) for Guatemalans and Belizeans in Campeche, Chiapas, Tabasco, and Quintana Roo*, was implemented by the Mexican Government in order to strengthen the management of flows of cross-border temporary migrant workers. The use of TVTF decreased by almost 16 per cent from 2015 to 2018, which could be related to the fact that many Guatemalan workers work in sectors where informality predominates.⁷²
- The *Agreement between Guatemala and Belize on a seasonal worker program* aimed at establishing a framework for the formulation of a program for seasonal workers, so as to facilitate the order of these flows and ensure the rights of workers. The agreement was signed in 2014, although it has not been implemented yet.
- Spanish company IBERSHIP has signed partnerships with the ministries of labour of El Salvador and Honduras for the recruitment of workers in the maritime sector. Nationals of these countries can work in different countries or in international waters in accordance with the location of company ships.
- The *Japan Exchange and Teaching (JET) Program* is another temporary employment mechanism that highly qualified Mexican workers can access. According to the numbers of beneficiaries, the mechanism is rarely used.
- The *Agreement between Mexico's Secretariat of Labour and Social Welfare (STPS) and the Fair Food Standards Council (FFSC) of Florida for H-2A Visas* links interested Mexican workers with 25 companies participating in the FFSC. Both parties to the Convention agree that the rights of eligible employees are not to be violated by third parties during the recruitment process, and that labour mobility is in accordance with Mexican and US laws.⁷³
- In 2017, the Government of Honduras signed the *Cooperation and Technical Assistance Agreement for the Implementation of the Seasonal Migrant Worker Program in Quebec, Canada, between the Foundation for Foreign Agricultural Worker Recruitment (FERME in French) and the Ministry of Labour and Social Security*. This agreement made available the Bureau for Orderly Labour Migration of the STSS for the preselection of Hondurans interested in registering in the Seasonal Migrant Worker Program in Quebec, and a FERME representation liaison was established in Honduras to expedite immigration procedures.⁷⁴ In 2017, the availability of approximately 3,800 seats was announced for Hondurans interested in working in Canada.⁷⁵
- Through the *Labour Mobility Mechanism of Mexico*, the Government of Mexico coordinates with foreign employers to recruit and select qualified Mexican workers in all sectors of the economy. Under this program, Mexico has established partnerships with Germany,

⁷² Government of the United Mexican States, 2019a, p. 20.

⁷³ Government of the United Mexican States, 2016b.

⁷⁴ Proceso Digital, 2017.

⁷⁵ El Herald, 2017.



Canada, and the United States of America.⁷⁶ With respect to Canada, the aim is to track job offers in sectors other than agriculture; regarding the United States of America, the use of H-2A and H-2B is promoted; and with Germany, the focus is on professions such as engineers, software developers, radiology technicians, and nurses, among others.

- The *Card issuance program for day labourers in the sugarcane harvest*, developed by El Salvador, allows access for Hondurans and Nicaraguans to its labour market by obtaining a license issued by the General Directorate of Immigration. The document allows cross-border workers to carry out the migration process at customs and facilitate their passage across the border.

⁷⁶ STPS, 2017.

TRADE AGREEMENTS WITH LABOUR CLAUSES

The inclusion of the issue of labour migration in free trade and investment agreements is advisable in order to allow inclusive management of the integration process and respect for human rights.⁷⁷ The following table shows general data on the trade agreements with labour provisions identified in Mesoamerica.

Table 7. Trade agreements with labour provisions identified in Mesoamerica

NAME OF THE AGREEMENT	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	LABOUR PROVISION	VALIDITY
<u>Dominican Republic-Central America Free Trade Agreement with the United States (DR – CAFTA)</u>	United States of America – Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic	2004 ⁷⁸	(a) Technical assistance programs, including the provision of human, technical, and material resources, as appropriate; (b) exchange of official delegations, professionals, and specialists, through, among others, study visits and other technical exchanges.	✓
<u>United States-Mexico-Canada Free Trade Agreement (USMCA)</u>	Canada – United States of America – Mexico	2020	Regarding transparency, application processing and cooperation between the Parties to allow temporary mobility of businesspeople in the following categories in accordance with Annex 16-A: a) Business Visitors, b) Traders and Investors, c) intra-Corporate Transfers, and d) Professionals	✓

Beneficiaries in 2018 of the visas granted by the US government under the old NAFTA:⁷⁹
17,950

⁷⁷ IOM, 2010, p. 61.

⁷⁸ All participating countries have ratified the Treaty on different dates: El Salvador ratified it in 2004; the United States of America, Guatemala, Honduras, Nicaragua, and the Dominican Republic ratified it in 2005; and Costa Rica ratified it in 2007.

⁷⁹ Government of the United Mexican States, 2019b.

NAME OF THE AGREEMENT	PARTICIPATING COUNTRIES	YEAR OF RATIFICATION	LABOUR PROVISION	VALIDITY
Marrakech Agreement	All members of the World Trade Organization	1997	Businesses with fewer than ten employees will be allowed to recruit and obtain temporary entry for at least one foreigner, under the conditions set out in the existing legislation ⁸⁰	✓

Source: Author's elaboration.

⁸⁰ Government of the Republic of Panama, Law No. 23, 1997, p. 92.

Migration Management Instruments Used For Labour Migration

The list shown below is not to be considered comprehensive. It is based on data provided by key informants on the main instruments, permits or categories related to migration that, although not created to facilitate labour migration but for other purposes like regulating migration (such as managing the mobility of tourists, or establishing special categories for some migrant groups), often they used for this purpose.

Table 8. Migration management instruments used for labour migration in Mesoamerica

NAME OF THE MECHANISM	PARTICIPATING COUNTRIES	YEAR OF CREATION	VALIDITY
<u>Central American Free Mobility Agreement (CA-4)</u>	Guatemala, Honduras, El Salvador, and Nicaragua	2006	✓
<u>Law to protect the right to Costa Rican nationality for cross-border indigenous people and guarantee of integration of cross-border indigenous people</u>	Costa Rica – Panama	2019	✓
Regional visitor card (TVR in Spanish) for a seven-day stay to visit the states of Chiapas, Campeche, Quintana Roo, Tabasco, and Yucatan	Mexico – Belize, El Salvador, Guatemala, and Honduras	2019	✓
Tourist visa	All countries in the region have these visas	N/A	✓
Application for refugee status	All countries in the region have this category	N/A	✓

Source: Author's elaboration.

Below is a brief description of these migration management instruments:

- The *Central American Free Mobility Agreement (CA-4)* facilitates the mobility of nationals of the signatory countries from one State to another. However, the agreement does not have labour provisions. Despite this, informants interviewed as part of this study agreed that this is a channel commonly used by temporary migrant workers.
- The *Law to protect the right to Costa Rican nationality for cross-border indigenous people and guarantee of integration of cross-border indigenous people*,⁸¹ issued by Costa Rica, allows the Ngäbe Bugle cross-border population to obtain legal citizenship and, therefore, have access to other fundamental rights.
- The *Regional Visitor Card (TVR)* from Mexico allows nationals of Belize, El Salvador, Guatemala, and Honduras to visit for seven days the states of Campeche, Chiapas, Tabasco, Quintana Roo, and Yucatan, without the right to work. The card has a validity of five years.
- According to applicable regulations, tourist visas are migratory channels that all citizens of the countries in this region have the right to request. Key informants have reported that these migration instruments often permit relatively easy access to the country, which in some cases is leveraged to access the informal labour market.
- The category of applicant for refugee status is also accessible to all foreigners seeking international protection in all countries in the region. According to international guidelines, this category must allow access to the labour market. According to reports from key informants, there are concerns about the use of this form of protection for people who do not fully meet the requisites for applying for Refugee Status.

The use, for work purposes, of migration management instruments that were not created with this intention presents a number of challenges for both migrants and the States. In the case of migrants, the scarcity of mechanisms for labour migration, together with the lack of access to or even knowledge about existing formal mechanisms, can become a factor that encourages these practices. At the same time, the presence of mixed flows in the region and the confluence of several driving factors have important implications: for example, an applicant seeking refuge may, at the same time, be compelled to migrate in search of job opportunities.⁸²

This situation entails several challenges at the level of migration governance, especially since these are often practices that are performed irregularly, and that these workers often work in informal sectors of the economy. This makes it difficult to generate reliable information on the

⁸¹ In April 2020, the closing of the border between Panama and Costa Rica to stop the spread of the virus responsible for COVID-19 resulted in more than 2,500 irregular migrants being stranded in Panama. A significant number of migrants stranded in Panama and Costa Rica were Nicaraguan nationals who were not allowed to go back to Nicaragua by the authorities, since a requirement for entry was to have a negative COVID-19 test. In Costa Rica, the private sector and NGOs helped more than 300 people so they could have this test.

⁸² IOM, UNHCR and SICA, 2019.

phenomenon, which is essential to generate effective and sustainable responses. In addition, their inclusion in the informal sector hinders access of these workers to social guarantees, labour rights, and equitable remuneration.⁸³ In the specific case of asylum seekers, being a legal form of international protection the provisions of the *Convention Relating to the Status of Refugees of 1951* should prevail, according to which States must allow access to paid employment to these people in order to promote their integration into the productive life of the country.

The complexity implied by controlling the use of several of these migration management instruments reinforces the need to create labour mobility mechanisms that respond to the changing dynamics of the region, becoming key but articulated elements of comprehensive policies on labour migration.

⁸³ ECLAC, 2017, p. 21.

3 ANALYSIS OF THE MECHANISMS THAT FACILITATE LABOUR MIGRATION IN MESOAMERICA



3. ANALYSIS OF THE MECHANISMS THAT FACILITATE LABOUR MIGRATION IN MESOAMERICA

According to the characteristics, needs, and aspirations of the migrant population, and the availability of different mobility schemes, labour migration can occur through different channels and in different conditions. Therefore, it is essential that, in addition to tools that facilitate these migratory flows, the different actors involved in labour migration governance have a clear understanding of the main features of these mechanisms, so that it can be identified whether these instruments achieve the purpose for which they were created, assess potential adjustments over time, and consider new developments.

This chapter provides an analysis of (a) the common characteristics of the mechanisms; (b) the main challenges in their implementation; and (c) systems for their monitoring and evaluation.

COMMON CHARACTERISTICS OF THE MECHANISMS THAT FACILITATE LABOUR MIGRATION IN MESOAMERICA

This section analyses some of the trends identified in the use, implementation, and content of labour migration mechanisms in the region. Selected trends are features and elements shared by most of these mechanisms, either at their stage of development or implementation. Five general trends were identified:



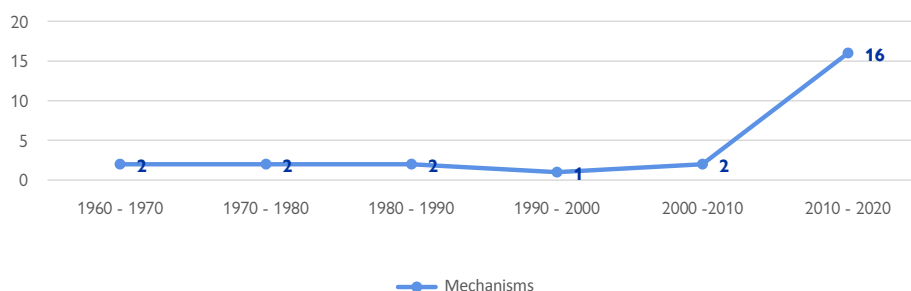
1. Increase in the number of mechanisms established

In the last decade, the number of mechanisms established has significantly increased, especially those related to the temporary movement of migrant workers, coinciding with a sharp increase in intra- and extra-regional migratory flows. The increase in the development of these mechanisms could be the outcome of States understanding how gaps in skills, training, and legislation can hinder the effective operation of the labour markets at the national and regional levels.⁸⁴ Likewise, and in parallel, this coincides with increased international cooperation among States and different stakeholders with respect to migration governance, reaching new milestones during the last decade –in the past, and historically, “migration governance had been treated primarily as an internal matter of each State, with migration policies and regulations being usually developed at the national level”.⁸⁵

⁸⁴ World Bank, 2013, p. 44.

⁸⁵ IOM, 2019a, p. 299.

Graph 1. Labour migration mechanisms established by decade



Source: Author's elaboration.



2. *Tendency towards bilateral negotiations*

Of the 25 mechanisms identified, 14 have been signed bilaterally. This may be due to difficulties implementing coordinated labour migration governance practices in the region despite having cultural, social, and similar economic characteristics. Also, this may relate to the historical behaviour in the region to respond to migration flows, which has shelved the adoption of joint practices to comprehensively address migration and labour.⁸⁶ This limited regional coherence has generated asymmetries, gaps, and fractures among the region's countries as expressions of fragmentation regarding the governance of labour migration corridors.⁸⁷

⁸⁶ FLACSO, 2012, p. 8.

⁸⁷ ILO, 2016b, p. 79.

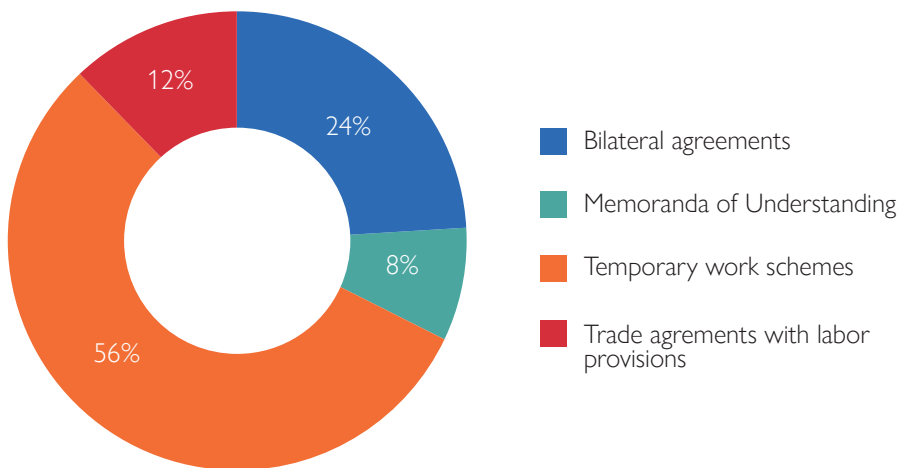


3. Preference for temporary work Programmes

The use of temporary work programmes as a mechanism to promote regular migration of temporary migrant workers has been increasingly prevalent in the region, showing greater predominance in negotiations with the United States of America and Canada. Of the 25 mechanisms found, 56 per cent are temporary work programmes; 8 per cent, MoUs; 24 per cent are bilateral labour agreements; and 12 per cent, trade agreements with labour provisions.

In the case of Mexican nationals, about 300,000 people used temporary work programmes in 2019, of which over 90 per cent had the United States of America as destination.

Graph 2. Classification of labour mechanisms



Source: Author's elaboration.

Some features of these programmes that may be influencing this trend:⁸⁸

- They cover specific sectors with labour shortages in the country.
- They define worker quotas by economic sector, allowing a flexible response to market needs.
- They facilitate ordering the recruitment processes and are easier to establish compared to other mechanisms.
- They involve the private sector, where employers are committed to receiving migrant workers.
- There are existing circular labour migration schemes⁸⁹ promoting the revitalization of the economies of both the countries of origin and destination.

⁸⁸ OSCE, IOM, ILO, 2006.

⁸⁹ Circular migration is the way in which people repeatedly move between two or more countries. IOM, 2019, p. 29.

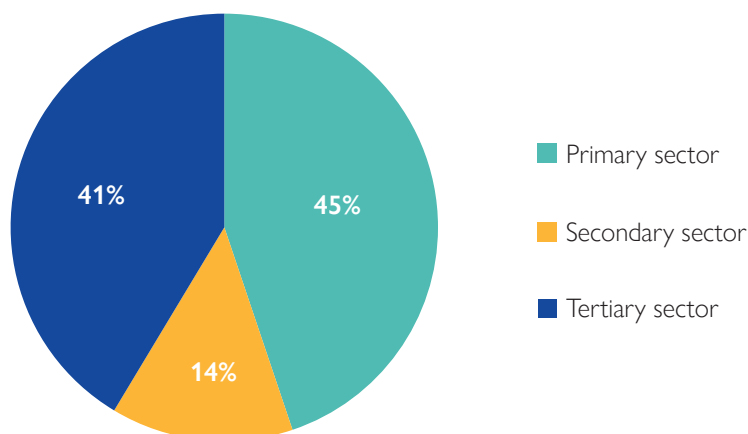
Although these programmes often contain legal provisions for implementation, they do not always require the direct involvement of the State. For example, there are programs for recruiting and hiring temporary workers who are developed directly between the private sector and the workers, with the intervention of the embassy of the country of destination only for issuing visas.⁹⁰



4. Predominance of mechanisms for low-skilled migrant labour

According to the mapping of the mechanisms carried out in the region, we see that, in addition to being instruments focused on the temporary recruitment of migrants, a significant percentage of these mechanisms are focused on productive sectors requiring low-skilled migrant labour, such as the primary and secondary sectors that include activities like agriculture and construction.

Graph 3. Labour migration mechanisms by economic sector



Source: Author's elaboration.

According to the graph, a significant percentage (45 per cent) of the mechanisms are geared to the primary sector, driven by demand for foreign labour from the United States of America and Canada. Likewise, the mechanisms respond in great measure to meet the needs of foreign labour for the tertiary sector, especially the service sector.

⁹⁰ IOM, 2010, p. 72.



5. Inclusion of labour clauses as part of trade agreements

The aim of labour clauses in trade agreements is to facilitate the entry and temporary stay of a foreign country to another for business purposes or to offer a commercial service. The inclusion of the issue of labour migration in these agreements is a useful tool to raise awareness of the social and labour dimensions of globalization; it integrates social partners in the stages of negotiation and implementation of trade agreements and develops cooperation activities in order to strengthen the capacity of national institutions to improve the promotion of labour standards.⁹¹ The inclusion of these clauses has become a necessity, mainly for large transnational corporations that have operations in several countries. The case of the old NAFTA, renegotiated as USMCA, is a clear reference to the growing importance of these clauses. The government of the United States of America issued 171 visas in 1997 under this agreement, a figure which reached 17,950 in 2018.⁹²

According to interviews conducted with government representatives, labour clauses are increasingly included in trade agreements; however, in the region labour migration is not being promoted, rather the approval of policies and national labour laws with international standards for protection of the rights of migrant workers.

⁹¹ ILO, 2016, p. 2.

⁹² Government of the United Mexican States, 2019b.

CHALLENGES FOR THE IMPLEMENTATION OF LABOUR MIGRATION MECHANISMS IN MESOAMERICA

After analysing the main features and trends of labour migration mechanisms in the region, it was noted that there are still a number of challenges that hinder achieving the highest potential of these instruments so that they can respond to growing migration flows and the rights and needs of migrants.

1. Greater supply of migrant workers than demand for foreign labor:

This is particularly evident in the most widely used programs. In the region, the mechanism that has the largest number of beneficiaries and involves the most countries is the H-2A Visa Program of the Government of the United States of America. With respect to this program, a pilot scheme was implemented in El Salvador, with about 60,000 people applying. Of those, 17,000 who met the requirements were selected, and finally 50 workers were recruited.⁹³

Moreover, in Guatemala it is estimated that, by 2020, 35,000 people have enrolled in the Labour Migration Program, which has placed 8 people in Canada and 28 in the United States of America – although it is important to clarify that this program is still quite recent. In the case of SAWP, in Mexico it is estimated that, each year, of 65,000 assessments 13,000 are eligible.⁹⁴

It should be noted that this challenge could be significantly reduced if the mechanisms implemented were focused on a greater diversity of sectors, such as hotels and tourism, and that these were willing to attract workers with different skill levels, expanding the job supply.

2. Difficulty to adapt the mechanisms to changing migration flows and trends in labour markets:

In the region, most States face the challenge to quickly adapt their mechanisms to the dynamics of labour markets and new migration trends. For example, this was a major challenge for the *Agreement between Guatemala and Belize on a seasonal worker program*, which was ratified in 2014 but not implemented. According to interviews with government officials, this could be because the initial demand for foreign labour in agriculture and construction may have been offset by the surge of Guatemalan asylum seekers, leaving aside the need to consolidate a program for temporary workers to hire migrant workers through this Agreement.

⁹³ Interviews.

⁹⁴ Interviews.

3. Limited labour clauses as part of trade agreements:

Regarding trade agreements that include a labour clause, in practice they are not widely used because, in some destination countries, it is easier to use a visitor's or tourist visa, which are provided for short periods and have no requirements. According to subject matter experts, labour clauses are not very broad in free trade agreements because there are often significant differences regarding labour migration and the institutional capacity to enforce the legislation in the countries included in the treaties. Moreover, the dynamics of historical migration between these countries complicate the inclusion of these provisions. However, in countries like the United States of America and Canada, where entrance under other categories is more limited, these clauses play a fundamental role and are particularly necessary for private sector companies.

4. Complex procedures for labour migration mechanisms:

In general, with respect to mechanisms aimed at facilitating labour migration, during the interviews it was pointed out that formalities for employers can be long and complex, which requires resources and generates discomfort for both migrant workers and employers, particularly when it comes to small businesses. In addition, intermediaries are often used, who are responsible for hiring a group of people to work in agriculture or construction; they have their own crew, and though these workers are not protected by labour guarantees, the process is facilitated for employers. It was further noted that there are not enough inspectors to ensure that the rights of workers are fulfilled; other obstacles are often related to costs, institutional capacity, and the operation of the agreements themselves.⁹⁵

5. Limited dissemination of information on the mechanisms:

The interviews that were conducted also determined that the dissemination of information concerning these agreements is very limited, and that greater efforts should be made to get information to the most remote areas of the countries of origin. Moreover, sometimes the limited interinstitutional coordination among the agencies involved adversely affects the proper dissemination of information.

⁹⁵ Interviews.

MONITORING, ASSESSMENT, AND FOLLOW-UP OF LABOUR MIGRATION MECHANISMS IN MESOAMERICA

Monitoring, evaluation, and follow-up systems refer to a process of measuring changes in programs, policies or agreements to assess their impact and progress.⁹⁶ These systems focus on performance, analysing whether the quality of the results was good or if key results were achieved, in order to report effective performance management, accountability, and planning.⁹⁷ The implementation of monitoring, evaluation, and follow-up systems as part of the implementation of labour mechanisms is essential for effective decision-making in the medium and long term.

Figure 5. Purpose and benefits of monitoring and evaluation in agreements and mechanisms



Source: Author's elaboration.

Since both countries of origin and destination share responsibility for ensuring adequate living and working conditions to migrant workers who use these mechanisms,⁹⁸ organizing or actively monitoring the labour migration process through monitoring, evaluation, and follow-up systems is of significant importance to ensure the protection of migrants throughout the labour migration process and the achievement of the objectives of the mechanism.

⁹⁶ OECD, 2008.

⁹⁷ ILO 2012, p.3.

⁹⁸ ILO, 2004, p.1.

While governments in the region have taken steps towards strengthening the monitoring, evaluation, and follow-up mechanisms, there is still a long way to go. The following aspects are highlighted with respect to these systems within the framework of the labour migration mechanisms included in this study:



1. Monitoring, evaluation, and follow-up systems within the mechanisms to facilitate labour migration are scarce

In the region there are exceptional cases such as SAWP, which has a monitoring and evaluation mechanism previously defined and set up. This mechanism consists of a binational meeting between Mexico and Canada, held annually, where achievements and challenges are reviewed for each work year. However, when these assessments are performed, usually they are not made public according to the interviews conducted for this study, which could impair the degree of transparency regarding the proper operation of this type of programmes.

The countries in the region usually rely on their consulates to monitor these programmes in the countries of destination, which in principle is a good practice, but often does not allow proper monitoring given the human resources limitations faced by most consular offices. In addition, according to key informants who were interviewed, although some countries try to visit workplaces, the outcome of these visits does not necessarily result in action points or usually there is no follow-up regarding the recommendations. The same occurs in circular migration processes. In certain cases, there are attempts to follow up on people returning to their country of origin; however, this does not result in concrete actions to improve the effectiveness of the mechanisms.⁹⁹ In the case of SAWP, it is established that when workers return from Canada, they must submit a return report to the SNE.¹⁰⁰



2. Increased use of technical round tables and binational meetings

In most cases, the programmes or agreements do not have monitoring and evaluation systems. This entails an absence of measures to improve the mechanisms, and thus a limited ability to improve the protection of the rights of migrant workers. However, as an alternative, many countries have technical round tables and binational meetings where information is exchanged between countries of origin and destination with respect to the needs, progress, challenges, and roadmap, among other issues related to the mechanisms. These processes are not formally established in an official document or program but are called upon when the need arises.

⁹⁹ During the interview with representatives of the Government of El Salvador, it was noted that the pilot program for workers with H2-A visas tried to track the return of these people, but because of the COVID-19 virus this process was hampered.

¹⁰⁰ Government of the United Mexican States, 2016a, p. 187.

Government officials said that the absence of monitoring, evaluation, and follow-up systems is due to the recent involvement by government agencies of the countries of origin in the process of linking nationals with labour migration programmes, so these systems are still under construction. However, the above is only applicable to those with recently implemented mechanisms and should not be generalized to all cases.



3. Importance of good bilateral relations

Diplomatic relations between the countries of origin and destination play a key role in the monitoring and evaluation of these programmes. According to key informants and indicators for some mechanisms, communication difficulties between governments hinder the ability to implement such mechanisms, and especially the implementation of monitoring, evaluation, and follow-up systems. Also, the countries of origin and destination rely significantly on their consular representatives to monitor these mechanisms, and through these and other government agencies the countries of origin have sought to open communication channels with recipient countries to maximize the benefits of labour migration mechanisms.

Another aspect to consider, which was pointed out by some of the people interviewed, is that often the countries of destination have the greatest impact on defining the rules for agreements or labour migration programmes; therefore, the existence of monitoring systems depends on the political will of both countries for their establishment. This not only affects the monitoring and evaluation processes, but also the different negotiating positions of the countries of origin with respect to those of destination may create pressures on the first to accept lower levels or of review or none or deepen some fundamental issues.¹⁰¹

¹⁰¹ ILO, 2017, p. 37.



4. Best practices that strengthen monitoring, evaluation, and follow-up systems

Partner participation

- Working in partnership with non-government entities such as recruitment agencies, employers, trade unions or civil society organizations.
- Clear definition of responsibilities between the parties.
- Holding meetings or coordination committees between the parties.
- Implementation of a comprehensive government approach, coordinating between public institutions through different levels or sectors.

Renewal Terms

- Establishing conditions for the renewal of the agreement or mechanism.
- Continuation of data collection processes after the period established in the mechanism to ensure the sustainability of outcomes.
- Continued monitoring and evaluation of the mechanisms are automatically renewed to ensure the implementation and updating of the terms.
- Public dissemination of information about monitoring and evaluation before each renewal period.

4

CASE STUDIES: ANALYSIS OF MECHANISMS BY LABOUR MIGRATION CYCLE



4. ANALYSIS OF MECHANISMS BY LABOUR MIGRATION CYCLE

This chapter provides an in-depth analysis of four of the most relevant labour migration mechanisms in Mesoamerica:

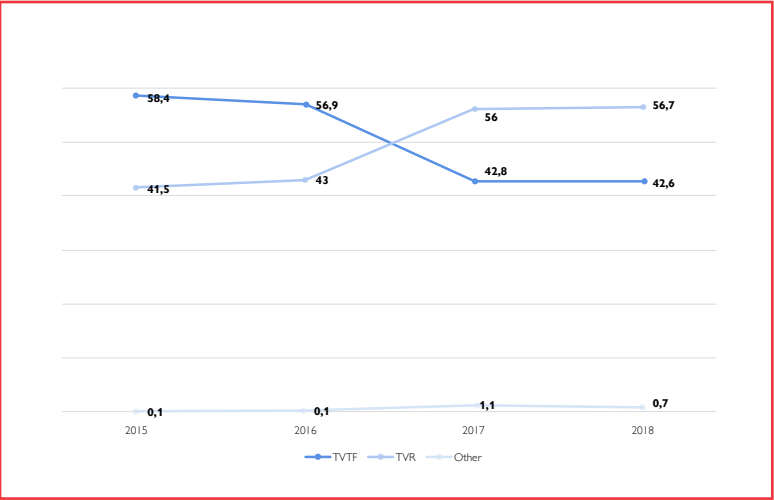
1. *Border Worker Visitor Card (TVTF) Program for Guatemalan and Belize nationals in the areas of Campeche, Chiapas, Tabasco, and Quintana Roo; between Mexico, Belize, and Guatemala.*
2. *Seasonal Agricultural Workers Program (SAWP) between Mexico and Canada.*
3. *H2-A Visa Program for hiring seasonal agricultural workers of the Government of the United States of America.*
4. *Migration Management Procedures for Temporary Workers Costa Rica – Nicaragua, also known as the Co-development Agreement.*

Some of the criteria used to define the level of relevance include the status of implementation of the agreements, and the number of people benefiting from or mobilized by these agreements. The cases are analysed according to the three stages of the labour migration process, in which issues have been identified with respect to the inclusion of a gender approach, best practices, and alignment with international standards for the protection of migrant workers.

CASE 1: BORDER WORKER VISITOR CARD (TVTF): MEXICO, BELIZE, AND GUATEMALA

Border Worker Visitor Cards (TVTF) started being issued in 2012. This is a labour migration mechanism allowing Guatemalan and Belizean national to work in the southern border states of Mexico, specifically, Campeche, Chiapas, Tabasco, and Quintana Roo.

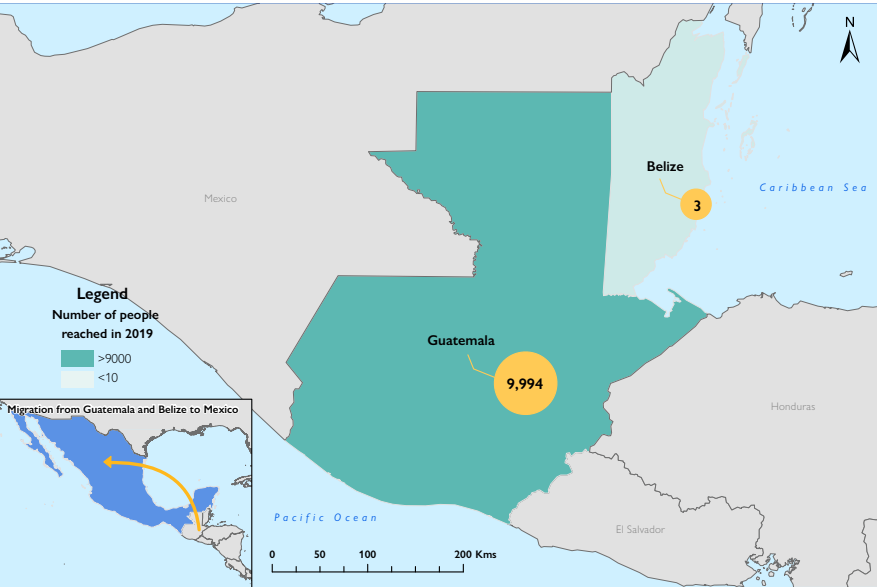
Graph 4. Percentage of the migrant flow from Guatemala, by type of document used to enter Mexico



Source: Government of the United Mexican States, 2020.

PHASE 1: RECRUITMENT

Map 2. Number of TVTFs issued by country in 2019



Source: Government of the United Mexican States, 2020.
 Note: This map is for illustration purposes only. The boundaries and names on this map, as well as the terms used therein, do not imply official endorsement or acceptance by the International Organization for Migration.

TVTFs are directly managed by Mexico's National Institute of Migration (INM), and no public-private partnership is contemplated with recruiting companies or employers. Mexico collects data related to the number of cards issued, the demographic characteristics of the target population, and wages, among others, and some of this information is available as part of government statistics.

By obtaining a TVTF no work permit or additional residence is required, as this document certifies legal immigration status. Applications for these cards can be submitted in any of the seven INM land crossing points located on the southern border of Mexico, where a federal immigration agent compares documents and conducts an interview. The mechanism guidelines do not contemplate that the transportation costs to these points be covered by the employer.

Although the contract language for the beneficiaries of TVTFs is not specified in the *Guidelines for Immigration Procedures*,¹⁰² according to the *Federal Labour Law in Mexico* "Documents submitted in foreign languages must be accompanied by a translation",¹⁰³ so, in general, contracts must be in Spanish.

The requirements for the TVTF include that applicants must be 16 years of age or older. Those under 18 must have a document certifying their authorization to work in the country and to leave it, given by their legal guardians before a notary public in the event of Guatemalans or a Justice of the Peace in the case of Belizeans.¹⁰⁴ Another requirement is to cover a certain amount as payment of fees. However, if it is found that the income to be received for the labour activity is equivalent to the general minimum wage in force in the area where the service is provided, no payment has to be made.¹⁰⁵ Regarding the foregoing, and according to Principle One of the International Recruitment Integrity System (IRIS),¹⁰⁶ migrant workers should not incur any financial costs related to the recruitment process. On the other hand, it is necessary that applicants have a job offer at the time of submitting the application. This offer must be presented at the time the application is submitted, and must indicate: occupation, required period, integrated or minimum wage, workplace, and proof of registration of the employer.¹⁰⁷

¹⁰² The TVTF is considered a migration process, so it is regulated by means of this document.

¹⁰³ Government of the United Mexican States, 1970, Art. 809.

¹⁰⁴ Government of the United Mexican States, 2012a.

¹⁰⁵ Government of the United Mexican States, 2017a.

¹⁰⁶ IOM, s.f.c.

¹⁰⁷ Government of the United Mexican States, 2019b.



- ✓ Personal identification document (DPI) for Guatemalan nationals, passport or identity and valid travel documents for Belizeans and Guatemalans
- ✓ Job offer in writing, free style
- ✓ Proof of payment of fees (with exceptions)
- ✓ Three passport-size photographs (two front and one right profile with white background, without glasses and without earrings)
- ✓ Special documentation for minors.

Presenting a medical examination is not a requirement of this mechanism. Nor is it necessary to have specific skills or a certain level of schooling.

Regarding requirements for employers who wish to hire foreigners in Mexico, they must be enrolled in an INM Registry and have an *employer certificate* (it is obtained by presenting a list of foreign and Mexican personnel, copies compared with the originals of all company documents, and registration with the Ministry of Finance, among others).

Regarding migrant workers in Mexico, it has been noted that in the case of Guatemalan nationals, recruitment is often organized directly by employers or sometimes facilitated by other informal contractors or intermediaries who often operate outside the existing legal and regulatory framework.¹⁰⁸ To obtain information on the process of obtaining the TVTF, the INM has made available official information on the Internet and also by telephone.

The duration of the TVTF is one year; it cannot be renewed. Once the period is over, the beneficiaries must leave Mexico and go through the procedure again to obtain the card.

The beneficiaries of this stay condition may apply for the entry of their spouse, partner or equivalent, and their children or adolescents if they are under their legal tutelage, or if they are of legal age but in a state of interdiction and under their legal tutelage, and prove kinship.¹⁰⁹



Due to the emergency caused by COVID-19, the border between Guatemala and Mexico remained closed for a period of approximately 4 months. Both governments organized the reopening of the border by developing safety and health protocols that allow managing the migratory flows and trade between the two countries in a safe manner.¹¹⁰

¹⁰⁸ ILO, 2019a.

¹⁰⁹ Government of the United Mexican States, 2012b.

¹¹⁰ Government of the United Mexican States, 2019a, p. 18.

PHASE 2: STAY ABROAD

In the stay abroad stage, immigration authorities may carry out migration verification visits to check the veracity of the job offer, the existence of the promoter or other information provided by the applicant in accordance with the *Migration Regulations*. In addition, the *Federal Labour Law* indicates that the Labour Inspectors of the Secretariat of Labour and Social Welfare (STPS) have the obligation to regularly inspect companies and establishments.

With regard to the legal framework that protects the rights of these migrant workers, Mexico ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, so its provisions are binding in this country and the State must ensure that they are enforced. Moreover, despite the program guidelines not covering discrimination by gender or nationality, the *Federal Labour Law* (Art. 56) does indicate that this cannot be grounds for discrimination regarding working conditions. The *Political Constitution of Mexico* also includes protection guidelines; for example, it stipulates that equal work must result in equal pay without taking into account sex or nationality.¹¹¹ Also, all people in Mexico, regardless of their nationality or migration status, are entitled to receive free and timely manner any kind of urgent medical care.

People who bear the card have a migration status limited to the states of Chiapas, Tabasco, Campeche, and Quintana Roo, so going or staying outside these states is non-compliance.

Employers are forbidden from retaining the TVTF or a foreign national.¹¹² TVTF beneficiaries can report abuse and violations of their rights through the INM. However, no provisions were found regarding protection against reprisals for reporting abuses, or clear procedures for migrant workers to be able to access dispute resolution processes, tribunals, or other effective remedies. Thus, in agreement with the *Montreal Recommendations on Recruitment*,¹¹³ it would be advisable for governments to take measures to ensure the availability and operation of dispute resolution mechanisms, which should be practical, fast, and affordable.¹¹⁴

¹¹¹ Government of the United Mexican States, 1917.

¹¹² Ancheita and Bonnici, 2013, p. 107.

¹¹³ The *Montreal Recommendations on Recruitment* are the result of the Global Conference on the Regulation of International Recruitment, and provide different practical guidelines to governments to facilitate a more effective regulation of international recruitment and the protection of migrant workers.

¹¹⁴ IOM, 2020c.

Some important elements that were not identified within the guidelines of the TVTF are the portability of social security benefits or facilitating remittances with reasonable costs. The guidelines do not include provisions on trade union membership, despite the *Federal Labour Law* giving this right to migrants with the exception that they may not be part of the board.

Figure 6. Rights of migrant workers under the TVTF



Source: Author's elaboration.

PHASE 3: RETURN AND REINTEGRATION

The TVTF does not include provisions for the return and reintegration of migrant workers.¹¹⁵ Despite this, in the case of Guatemala and with the support of IOM, a Municipal Reintegration Strategy was recently developed. This initiative includes partnerships with civil society, the private sector, and the government, to ensure sustainability in the process of reintegrating migrant populations returning to the country. The strategy involves two key aspects that complement return migration: The *Municipal Route of Psychosocial Care and its Derivation into sustainable reintegration programs*, which is implemented in 10 Guatemalan municipalities.¹¹⁶



Factors affecting a successful reintegration¹¹⁷

- ✓ Length of stay in the place of destination
- ✓ Migration experience in transit
- ✓ Skills and knowledge acquired
- ✓ Development opportunities offered by the country of origin

¹¹⁵ Forced returns from the United States of America and Mexico did not stop during the COVID-19 pandemic. The Guatemalan government focused its efforts on providing basic services to returnees, although there are significant limitations in their capacity to provide assistance.

¹¹⁶ *Ibid.*

¹¹⁷ IOM, 2019d.

This mechanism does not provide lines of action to facilitate the exchange of information with the migrants' countries of origin and destination. However, in 2014 Mexico and Guatemala signed an Agreement on Cooperation in Labour Matters between the Government of the Republic of Guatemala and the Government of the United Mexican States, signed again in 2018. This agreement contemplates the exchange of information between the two countries, the creation of a labour observatory on migrant workers, and the establishment of an intergovernmental technical working group, the generation of a binational registry for the registration and authorization of recruiting agencies to operate, among other cooperation activities. This agreement brought about the structure of the Intergovernmental Technical Working Group, chaired in Mexico by the STPS and the Secretariat of the Interior (SEGOB), and in Guatemala by MINTRAB and the Ministry of Foreign Affairs.¹¹⁸

Best practices identified

- Allows family reunification
- No additional migration documents required to reside or work in Mexico once the TVTF is obtained
- People with wages equal to the minimum in force are exempt from paying fees for the TVTF
- The employer is forbidden from retaining the TVTF
- Migrant workers can report abuse to the INM
- Mexico ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Challenges identified

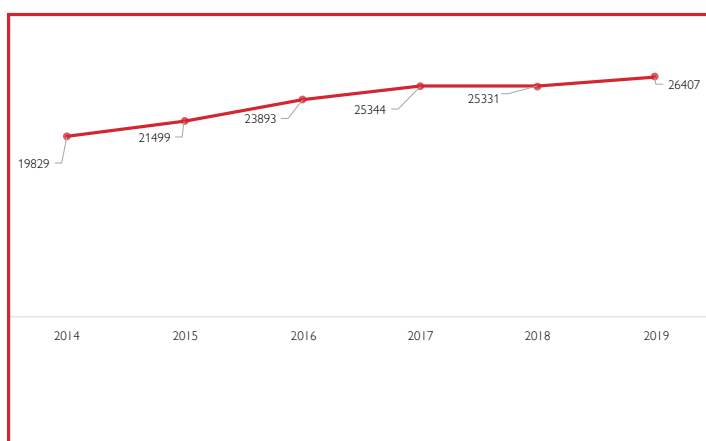
- There is no indication that the employer must cover the TVTF fees or duties, or other costs related to the migration process
- No health insurance coverage is specified for migrant workers
- The application must be made by the beneficiary in person at an entry point on the Mexican border
- The TVTF is not renewable, so the beneficiary must leave the country and go through the procedure again
- The movement of the beneficiaries is limited to four states
- There are no provisions regarding their return and reintegration or the inclusion of a gender approach

¹¹⁸ Navarrete and Stein, 2018, p.93.

CASE 2: SEASONAL AGRICULTURAL WORKERS PROGRAM (SAWP) CANADA – MEXICO

The Seasonal Agricultural Workers Program (SAWP) is a program that facilitates the entry of temporary agricultural workers into Canada to meet the labour demand in this sector. The agreement between Mexico and Canada was signed 46 years ago, and in the last decade the number of participants has grown steadily.

Graph 5. Participants in SAWP per year



Source: Government of Canada, 2020b.

PHASE 1: RECRUITMENT

The recruitment process within the framework of the SAWP is managed directly by the offices of the National Employment Service (SNE) in Mexico according to the number of vacancies authorized by the General Coordination of the National Employment Service (CGSNE).

The following entities are involved in the operation of SAWP: Ministry of Employment and Social Development of Canada, Ministry of Citizenship and Immigration of Canada, the Canadian Embassy in Mexico, the Offices of Labour Standards in Canada, and Service Canada. Canada also participates in the following employer associations: *Foreign Agricultural Resource Management Services* (FARMS), *Fondation des Entreprises en Recrutement de Main-d'œuvre Agricole* (Foundation for Foreign Agricultural Worker Recruitment, FERME), and *British Columbia Agricultural Council* (BCAC). In Mexico, the dependencies involved are the STPS, the Secretariat of Foreign Affairs (SRE), SEGOB, and the Federal Secretariat of Health.

Map 3. Number of participants in SAWP in 2019



Source: Government of Canada, 2020b

Note: This map is for illustration purposes only. The boundaries and names on this map, as well as the terms used therein, do not imply official endorsement or acceptance by the International Organization for Migration.

Regarding the definition of available vacancies, employers interested in participating in the program must submit an application to the Government of Canada and submit a Labour Market Impact Assessment (LMIA), which is a document confirming that it is necessary to employ a foreign worker to occupy the position in question and that no Canadian worker is available to do the work.¹¹⁹

On the other hand, those interested in participating should submit an original and photocopy of the required documentation at the offices of the SNE. Participants must be older than 22 years of age and younger than 45. During the interview, participants are required to demonstrate that their main occupation for the last three years has been agricultural workers or farmers. In addition, they must have a schooling level of at least elementary school but no more than freshman year in high school, and have to read and write in Spanish. The application and procedures for the program are free and personal, which is in line with the second Montreal Recruitment Recommendation, that governments should take steps to eliminate fees for contracts and expenses related to workers and job seekers.¹²⁰

If accepted into the Program, the Government of Canada is committed to issue a permit and work visa for the workers.

¹¹⁹ Government of Canada. 2019.

¹²⁰ IOM, 2020c, p. 6.

Employers can use third-party services to hire temporary workers if they wish; in this case their representatives must be previously authorized by the *Immigration and Refugee Protection Act of Canada*.

According to SAWP regulations, it is the duty of employers to provide training on safety, machinery operation, and tools at no cost to the worker. In addition, they must provide protective equipment free of charge, formal and informal training, and supervision, when the law requires it, on the use of pesticides and dangerous chemicals.

REQUIRED DOCUMENTS



- ✓ Current voter credentials of the candidate and wife or partner
- ✓ Second official identification: preliminary and military service ID card issued and resealed if applicable
- ✓ Elementary or middle school certificate with photo, or passport, birth certificate of the applicant and their dependents
- ✓ Marriage certificate or proof of domestic partnership
- ✓ Proof of official address in the name of the interested party, or a valid voter registration card with the same address as proof of residency in a rural area
- ✓ Unique Population Registry Code (CURP in Spanish)
- ✓ Proof of last years of education with minimum schooling level of third grade and maximum level of high school freshman

The contract will be printed in English, Spanish, and French, which will have the same legal validity. The contract must be signed by the selected and recruited worker before arriving in Canada, in line with Principle Three of IRIS stating that the contract should be provided to migrant workers before their mobilization.¹²¹ In addition, employers in Canada must sign the Contract for the employment in Canada of Seasonal Agricultural workers from Mexico and send it to the Secretariat of Labour and Social Welfare of Mexico. This contract indicates the Program provisions they must comply with. If the employer fails to comply with the contract, the workers could be removed from the workplace and the employer could be suspended from the program.

The program foresees that roundtrip air transportation costs shall be covered entirely by the employer, except some special cases such as, for example, the early termination of a contract. Participants also have to undergo a medical examination, whose costs are covered by the Government of Mexico. According to the guidelines of the program, during the recruitment and mobilization process it is observed that migrant workers will not have to cover any expenses, which is a best practice referred to in Principle One of IRIS.¹²²

¹²¹ IOM, s.f.c.

¹²² *Ibid*

SNE state offices must locate the agricultural areas of their own State in order to focus actions for the dissemination of SAWP on them, avoiding industrial or urban areas.

SAWP has a minimum duration of two months and a maximum duration of eight months. The employer may decide on the early termination of the contract after consultation with the Government representative of Canada for different reasons, among them: the worker did not pass the test period, unjustified breach of contract, behavioural problems, committing a crime, and others. If after having finished the trial period the decision is to terminate the contract, the worker must be notified least seven days in advance.¹²³



Due to the spread of COVID-19, SAWP was temporarily paused. In order to protect migrant workers and those jobs that benefit both countries and generate remittances by 300 million Canadian dollars annually, the governments of Mexico and Canada reached an agreement to strengthen the sanitary measures imposed. Some of these measures were related to providing more spacious accommodations and eliminate overcrowding; in addition, when traveling from Mexico to Canada, migrant workers must isolate for a 14-day quarantine with wages.

The program does not allow providing any reports on applicants for services to third parties, unless there is a court order,¹²⁴ which complies with Principle Four of IRIS on respect for confidentiality and data protection.¹²⁵ However, both employer and employee agree that any personal information held by the Government of Canada may be shared with other aforementioned government institutions and associations.

Recruiting services will be provided without discrimination on grounds of age, sex, race, marital status or religion.¹²⁶ In this regard, in 2016 the STPS signed an agreement with the United Food and Commercial Workers International Union (UFCW) to eliminate discriminatory recruitment practices based on gender. Employers can nominate workers.

The program does not contemplate the possibility of applying for family reunification.

¹²³ Government of Canada, 2020a, p. 16.

¹²⁴ Government of the United Mexican States, 2016c, p. 8.

¹²⁵ IOM, s.f.c.

¹²⁶ Government of the United Mexican States, 2016c, p. 7.

PHASE 2: STAY ABROAD

During the stay abroad, the employer shall provide adequate accommodations free of charge.¹²⁷ Accommodation for migrant workers must pass an annual inspection by provincial authorities responsible for health and hygiene; in the absence of such authorities, the employer must have the approval of the Consular Agent.¹²⁸ In addition, employers may be subjected to different types of inspections to validate compliance with the Program guidelines. These inspections can be random visits, compliance reviews with the employer or be performed under ministerial guidance. The reasons for inspection can be suspected breach, prior non-compliance, or random selection.

Within the framework of the Memorandum of Understanding between Mexico and Canada, it is mentioned that Mexican workers have rights and obligations as any Canadian citizen. However, the observation has been made that different laws in each province may hinder access by Mexican workers to equal labour rights, and they are excluded from minimum wage standards in most jurisdictions.¹²⁹ Consulates play an important role responding to these cases, because they facilitate the link between the STPS, private agencies representing employers, the employers themselves, and workers.¹³⁰

All workers from Mexico incorporated into the Canada labour market under SAWP must have access to the following benefits:

Figure 7. Benefits given to all workers incorporated into SAWP



Source: Author's elaboration.

¹²⁷ With the exception of this provision in British Columbia.

¹²⁸ Government of the United Mexican States, 2016d, p. 19.

¹²⁹ Ancheita and Bonnici, 2013, p. 21.

¹³⁰ Government of the United Mexican States, 2016d, p. 49.

Other benefits include parental benefits, which are a right granted by the Government of Canada to seasonal agricultural workers who are unemployed after completing their work contract, who have returned to Mexico and have new-born children or children younger than one year of age. Regarding union rights, the SAWP Guidelines indicate that unionized workers are outside the area of intervention of the Employment Standards Office counsellors.¹³¹

SAWP allows, in some cases, the portability of social security benefits. Contributions to the *Retirement Pension Plan*, which also serves as insurance for widows and orphans or the *Régime de Retraite du Québec* (Quebec Retirement Fund) are tax obligations of both workers and their employers. This system provides Mexican workers the right to a retirement pension. However, in some cases low annual income and low contributions to the fund (for a short period) result in the Mexican national not being able to accumulate enough credits for a retirement pension. The requirements for access to the fund are, having contributed for at least 10 years, being 60 or 65 years old, and apply for the pension in Canada or Mexico.

The program does not consider the gender perspective in most of its provisions, and also excludes other benefits such as maternity, paternity, or compassionate leave.¹³² Moreover, no reference is made to the facilitation of remittances at reasonable costs or to communication with the country of origin and their communities.

Should a worker wish to file a complaint, there are systems for confidential reporting using the phone lines and websites of the Government of Canada; however, there are no measures to ensure confidentiality to avoid reprisals against workers. If differences were to arise between the migrant worker and their employer, the contract will guide the resolution of disputes. The parties may contact the Ministry of Labour of Canada in the case of demonstrable breach of contract where no resolution has been reached, including possible compensation.

If the employer fails to fulfil the terms of the contract, Consulmex,¹³³ after consultation with the Department of Employment and Social Development of Canada, will proceed to terminate the workers' contract, remove them from the workplace, and transfer them to another worker. If this is not possible, the workers will be repatriated, and the employer must cover the cost of return transportation. Once the season ends, Consulmex, in consultation with Mexican authorities, will determine the status of the employer in SAWP, who could be withdrawn from the program.¹³⁴

¹³¹ Government of the United Mexican States, 2016d, p. 62.

¹³² Niagara Migrant Workers Interest Group (NMWIG), s.f.

¹³³ CONSULMEX refers to the Consulates General of Mexico abroad, in this case in the different provinces of Canada. Consulmex play a central role in SAWP, ensuring the protection of migrant workers and acting as liaison and/or representation of these people before organizations and the Government of Canada.

¹³⁴ Government of the United Mexican States, 2016d, p. 30.

PHASE 3: RETURN AND REINTEGRATION

Regarding their return, it is mentioned that the employer must cover the cost of air transportation back to Mexico (recovering part of it in exceptional cases).¹³⁵

Once migrant workers return to Mexico, they have to prepare a return report within a maximum period of five days and submit it to the SNE. In that report, the general conditions in which they worked are recorded, including if they had housing and other necessary conditions to live with dignity.¹³⁶ Also, they should append an income report to the return report, which consists of a breakdown of income and deductions. Something that has been identified is that a percentage of the workers do not turn in their return report, so valuable information the program could use to generate statistics is lost.¹³⁷ On the other hand, once this report has been delivered, there is no follow-up until the worker is requested again by the employer or assigned to a new contract.¹³⁸

If Mexican workers meet the aforementioned requirements regarding the Retirement Pension Plan, they can access it from Mexico.

If migrant workers successfully fulfil their contract in Canada, they may participate in the program again and even be requested by previous employers.

Regarding reintegration, although it is not an element mentioned in the SAWP, Mexico has a *Working Returnees Sub-program*¹³⁹ that supports selected job seekers who have been repatriated by a state on the northern border or one of the airports indicated by migration authorities as points of repatriation of Mexican nationals who indicate to the Office of the National Employment Service that they do not have intentions of emigrating abroad again and that they are interested in finding a job in their place of origin or residence, and who have not benefited from this sub-program.



REINTEGRATION PROGRAMS IN MEXICO FOR MIGRANTS COMING FROM CANADA

- ✓ Working Returnees Sub-program
- ✓ Repatriation Program

¹³⁵ In case of premature repatriation due to breach of contract or non-compliance without justification by the worker or an early return due to physical or medical conditions, the Government of Mexico will cover the cost of repatriation. If attempts are made to transfer a worker to another employer without success and that person requests to return to Mexico, if the worker was selected by the Government of Mexico, the costs will be covered by the worker. If the worker does not have the necessary solvency, the Government of Mexico will reimburse the employer for the costs according to the Employment Agreement.

¹³⁶ Government of the United Mexican States, 2016a, p. 187.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ Government of the United Mexican States, s.f.

The Repatriation Program also provides Mexican nationals repatriated from the United States and Canada services for their return and reintegration, including psychosocial care and access to employment.¹⁴⁰

No measures were identified to facilitate the recognition of skills and certificates obtained abroad or to facilitate the dissemination of the acquired knowledge.

Regarding the exchange of information between the country of origin and the country of destination, SAWP Evaluation Meetings are held annually. Different ministries from both governments involved participate in these meetings, as well as Canadian employer associations, in order to analyse the problems faced during the season and make the necessary changes to the Employment Agreement.¹⁴¹

Best practices identified

- Public private partnerships were identified
- It specifies that the process of recruitment and mobilization is free for the beneficiaries, covered by the governments and employers
- Employers must provide training and protection equipment
- The contract must be signed by the migrant worker prior to their mobilization
- Workers are covered by occupational and non-occupational insurance
- There is the possibility of portability of social security benefits
- Migrant workers must submit a return report when they come back
- Employers must provide suitable, free accommodations to migrant workers, which are subject to annual inspections

Challenges identified

- The mechanism does not contemplate family reunification
- Migrant workers are excluded from minimum wage standards in most jurisdictions
- The scheme does not include provisions with gender approach
- Maternity, paternity, or compassionate leave are excluded as benefits
- It does not contain provisions regarding the reintegration of migrant workers

¹⁴⁰ Government of the United Mexican States, 2020a.

¹⁴¹ Government of the United Mexican States, 2016d, p. 41.

CASE 3: H-2A VISA FOR HIRING SEASONAL AGRICULTURAL WORKERS. UNITED STATES OF AMERICA – MESOAMERICA

H2-A visas work through interagency coordination between the United States Department of State (DOS), which issues these visas through consulates, the Department of Labor (DOL), responsible for issuing H-2A labour certifications and monitor the application of labour laws, and the United States Citizenship and Immigration Services (USCIS), which reviews the applications for H-2A visas.¹⁴²

Map 4. Number of H-2A visas issued by country in 2019



Source: Government of the United States of America, s.f.

Note: This map is for illustration purposes only. The boundaries and names on this map, as well as the terms used therein, do not imply official endorsement or acceptance by the International Organization for Migration.

While the regulations do not mention it specifically, the Government of the United States of America collects data through the visa mechanisms on the migrant workers who access these visas and their employers.¹⁴³

¹⁴² Ancheita and Bonnici, 2013, p. 70.

¹⁴³ Government of the United Mexican States, s.f.e.

PHASE 1: RECRUITMENT

The H-2A visa process starts with a request for temporary work certification of the employer before the DOL. Once approved and when the certificate is awarded, the employer can start the recruitment process. This can be done personally or through recruiting agencies, provided they are registered at the DOL. Also, through their ministries of labour, countries like El Salvador, Guatemala, and Mexico register their fellow citizens who are interested in the program, and link them with job opportunities in coordination with the consulates of the United States of America in these countries. In the case of Mexico, the Government maintains a public-private partnership by means of an agreement regarding H-2A visas with Florida's Fair Food Standards Council (FFSC).

The employer must file Form I-129 with the USCIS on behalf of the worker so the latter can apply for the visa. After the USCIS approves this form, the worker may proceed with an online application for the visa by completing form DS-160, attaching a photo and making a payment of USD 190 for the visa; then an interview at the consulate is scheduled.



Given the situation of COVID-19, the Government of the United States of America has made temporary amendments to the procedures for the H-2A visa in order to secure formal employment for migrant workers who are in the country and secure the necessary labour to ensure the food supply chain is not affected. Amendments have been aimed at easing the requirements to facilitate the recruitment of H-2A migrant workers who are already in the United States of America and extend the visa limit, so those who have already reached the maximum stay can remain working in the country longer.

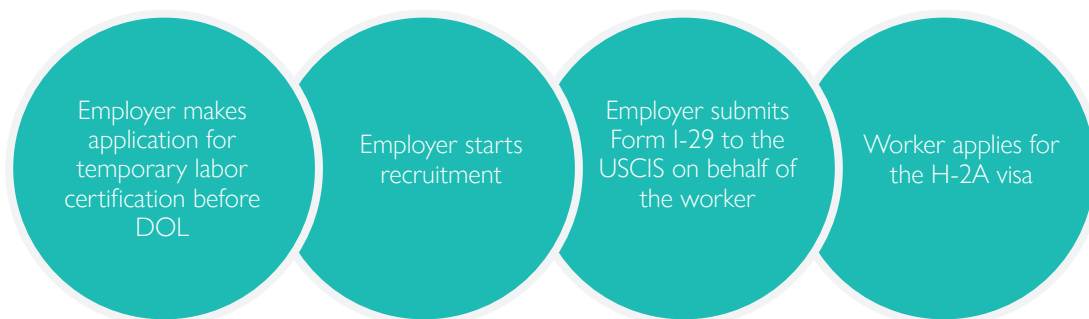
The main requirement to access this temporary work scheme is to be a national from one of the eligible participating countries, which are designated every year by the DOS. The only personal document that is required is a valid passport. Visa applicants must be agricultural workers. The minimum age to participate is usually 18 years old, but this depends on the regulations of each State. For agricultural operations, the employment of children under 16 is prohibited during school hours and for certain jobs deemed dangerous.¹⁴⁴ Participants will undergo a medical examination in most cases, although this is not in the official requirements for obtaining a visa in accordance with the government agencies of the United States of America.

Once the beneficiaries have obtained this visa, they do not require additional permits to enter the United States of America or to work exclusively in the agricultural sector. Migrant workers who are already in this country can also obtain this visa.¹⁴⁵

¹⁴⁴ Government of the United States of America, s.f.d.

¹⁴⁵ Because of COVID-19, the limit of the H2-A visa has been extended to more than three years in order to ensure that the country count on sufficient agricultural workers and that they are under regular migration status.

Figure 8. Summary of the application process for the H-2A visa



Source: Author's elaboration.

The duration of the visa shall be for the period specified in the Labour Certification the DOL issued to the employer. Visas can be extended for terms ranging from one year to a maximum of three years. If a migrant has had a H2-A visa migration status for three years, they must leave the United States of America for three months before applying again for this visa.¹⁴⁶



Due to the characteristics of the work and shared living conditions, many farm workers with H-2A visas were affected by COVID-19. The Government of the United States of America issued guidelines and recommendations for employers, which included separating workers who showed symptoms, performing tests to screen cases, and to quarantine positive cases. In addition, it was requested to provide training to workers about the virus and the main protective measures in a language they understand.

Employers must give every worker a copy of the employment contract no later than the first day of work, in a language the worker understands, and which describes the terms and conditions of employment.¹⁴⁷ In this regard, according to Principle Three of IRIS, contracts must be provided before starting employment.¹⁴⁸

The employer shall provide or reimburse workers for reasonable expenses incurred for transportation and food when the worker has completed 50 per cent of the employment contract term,¹⁴⁹ as well as regarding transportation back to their country. In case the salary minus travel and visa costs is less than the minimum wage in the United States of America, the employer shall reimburse these costs in the first week of work.¹⁵⁰ This does not completely match Principle One of IRIS, which indicates that no migrant worker should cover recruitment

¹⁴⁶ Government of the United States of America, 2020b.

¹⁴⁷ Government of the United States of America, s.f.d

¹⁴⁸ IOM, s.f.c.

¹⁴⁹ Government of the United States of America, s.f.c.

¹⁵⁰ Government of the United States of America, s.f.b.

or related costs. However, it does establish that the employer should not attempt or receive payment in any form from workers for any expenses incurred regarding the H-2A labour certification, including attorney's or agent fees, application fees or recruitment costs.¹⁵¹

Workers may seek family reunification with their spouse and unmarried children under 21 who are eligible to apply for admission under the H-4 non-immigrant classification. This immigration status does not allow family members to work.

No measures against discrimination were found in the recruitment stage or regarding the protection of the personal information of migrant workers.

PHASE 2: STAY ABROAD

The functions of the DOL include investigating abuses and verifying the application of the rules of H-2A visas. On average, every year from 2008 to 2018 2 per cent of employers under H-2A were fined, most for minor infractions.¹⁵² Fewer than 20 employers from 2008 to 2018 committed violations that were severe enough to be suspended from the program, an annual rate of 0.27 per cent of employers.¹⁵³ This is consistent with Montreal Recommendation Four, which indicates that governments should require all relevant actors to act in accordance with the law.¹⁵⁴ If the employer provides housing to its workers or owns or controls a facility that houses foreign workers, it must be certified by a state, local or other suitable agency to ensure compliance with safety and health standards.¹⁵⁵ Employers could charge some employees for housing, but this charge has to be reasonable and be stated in the employment contract.¹⁵⁶ Housing facilities must have separate toilets for women and men. Employers must also provide, without cost, abundant fresh drinking water throughout the work shift and at the least a clean glass.¹⁵⁷ In addition, if workers remain in the fields for more than three hours, employers must also provide a toilet and a hand washing station for every 20 workers.¹⁵⁸

While agricultural jobs must be offered first to United States nationals and should prioritize them, the wages for H-2A workers and American workers that perform the same functions have to be equal. Migrant workers who have the H-2A visa may travel freely within and outside the United States of America. No employer may withhold the passport of the workers or any other immigration document.

¹⁵¹ Government of the United States of America, s.f.c.

¹⁵² Bier, 2020.

¹⁵³ *Ibid.*

¹⁵⁴ IOM, 2020, p. 9.

¹⁵⁵ Government of the United States of America, 1983.

¹⁵⁶ Government of the United States of America, s.f.a, p. 24.

¹⁵⁷ *Ibid.*, p.28.

¹⁵⁸ *Ibid.*, p. 29.



REQUIREMENTS FOR WORKER HOUSING

- One bed for each person
- Cold and hot running water
- Heating available when it is cold outside
- Windows that open to provide proper air flow in each room
- Metallic screen doors with automatic closing devices
- Adequate lighting
- No sign of infestations (e.g. rodents, pests, insects, cockroaches in the dwelling)
- Clean kitchen area with a place to store food so it does not spoil
- Clean, durable trash cans with lids to keep away flies and rodents
- A place to wash and dry clothes
- First aid kit
- Fire extinguisher
- Toilets
- Separate toilets for men and women; at least one toilet for every 15 people, and an adequate amount of toilet paper
- At the least one shower for every 10 people (every 15 in older fields)
- The area around the house should be clean; i.e. there should be no sewage, garbage or weeds

The *Migrant and Seasonal Agricultural Worker Protection Act (MSPA)* indicates that migrant workers with H-2A visa must be provided with state compensation or equivalent in each state, at no cost, in case of work-related accidents or injuries. This compensation guarantees medical and wage benefits in these cases; however, some states restrict coverage of agricultural workers. The MSPA stipulates that employers must inform workers if they will be provided workers' compensation coverage and what their rights and benefits are.¹⁵⁹

Generally, in the United States farm workers are not covered by the law establishing the right to organize and collective bargaining. However, many states have their own laws to include agricultural workers. Although it is not clear whether agricultural workers under the H-2A visa can be part of such unions.¹⁶⁰

¹⁵⁹ Commission for Labour Cooperation, s.f.

¹⁶⁰ Russo, 2018, p. 11.

Workers with H-2A visas do not have to contribute to public funds.

If workers decide to get a social security number or taxpayer identification number, they must coordinate with their employer, so the corresponding deductions are made. It does not clarify if, once in their country of origin, workers can recover these contributions.¹⁶¹

In the regulations of this scheme, it does not indicate whether these workers can access maternity or paternity leave. Something else not mentioned are mechanisms to facilitate sending remittances at reasonable costs or communication with their home communities. Overall, this program does not consider the gender approach in a significant manner.

To report abuse or file a complaint, it can be made confidentially by internet, telephone or in person by visiting the DOL. The MSPA indicates that if any of the parties involved is harmed by a violation of this Act, they may file a claim in any district court of the United States of America having jurisdiction over the parties, without taking into account the amount in dispute, the citizenship of the parties or the exhaustion of alternative administrative resources set forth herein. At the request of the plaintiff and in the circumstances deemed fair by the court, the court may appoint a lawyer for the plaintiff and may authorize to start proceedings.¹⁶²

“Employers may not discriminate against anyone or terminate without cause for filing a claim or having consulted a lawyer or an employee of a legal assistance program, or have testified or otherwise exercising or having affirmed for themselves or for others any right or protection provided by section 218 of the Immigration and Nationality Act or the H-2A Regulations”

¹⁶¹ Government of the United States of America, 2020c.

¹⁶² Government of the United States of America, 1983.

PHASE 3: RETURN AND REINTEGRATION

At the end of the contract, the employer must provide or pay for return transportation and food. The scheme does not take into account the reintegration of migrant workers. However, some of the countries of origin provide reintegration services for migrants returning from the United States of America such as Mexico, Guatemala, and El Salvador, which include, among others, actions for economic reintegration and psychosocial care. On the other hand, these same countries have been linked to this scheme through their respective ministries of labour, and they have made efforts to follow up on those who return to the country after having migrated through this mechanism.

No mechanism for exchanging information with countries of origin was identified. However, the Governments of Mexico and the countries of northern Central America have established agreements with the Government of the United States of America regarding this labour migration mechanism, which has led to greater communication to address the issue, in particular between the ministries of labour of these countries and the consular representations of the United States of America.

At the end of the maximum visa extension period, those wishing to re-acquire this immigration status will have to leave the country for three uninterrupted months before re-applying.

The program does not explicitly take gender perspective into account.

Best practices identified

- A public private partnership was identified
- Governments in some home countries have been involved in recruitment activities for this program
- The program includes the possibility of family reunification
- If the employer provides accommodations, they must be certified by a state agency
- It is indicated that beneficiaries have freedom of movement within the United States of America, and can also leave the country
- The retention of passports or any other migration document is forbidden
- Migrant workers are covered by state compensation in the event of a work-related accident
- There is a clear reporting mechanism and a provision prohibiting retaliations

Challenges identified

- The beneficiary must cover the cost of the visa, which should be reimbursed later
- Agricultural workers are not covered by the right of unionization or collective bargaining
- Some states restrict state compensation coverage to agricultural workers
- The scheme does not include provisions regarding the inclusion of gender approach
- The scheme does not include provisions with respect to the reintegration of beneficiaries

CASE 4: BINATIONAL AGREEMENT: MIGRATION MANAGEMENT PROCEDURES FOR TEMPORARY WORKERS COSTA RICA - NICARAGUA

Costa Rica and Nicaragua have one of the largest migration flows in the region, so since 1995 several instruments have been generated in order to regularize labour migration. In addition, and within the framework of diplomatic relations between the two countries, joint declarations were signed to recognize respect for human rights and promote further action with the support of international cooperation.¹⁶³ As part of these new initiatives, the *Binational Agreement on Migration Management Procedures for Temporary Workers Costa Rica-Nicaragua* was signed in 2007. This instrument, also known as the Co-development Agreement, was developed with the support of IOM and the Spanish Agency for International Development Cooperation (AECID), with the aim of strengthening institutional capacities in both countries and generating mechanisms within a pre-existing framework of bilateral agreements to implement joint procedures in recruitment and labour matters.¹⁶⁴

Map 5. Number of people reached with the Co-Development Agreement by 2019 per country



Source: General Directorate of Immigration and Alien Affairs of Costa Rica.

Note: This map is for illustration purposes only. The boundaries and names on this map, as well as the terms used therein, do not imply official endorsement or acceptance by the International Organization for Migration.

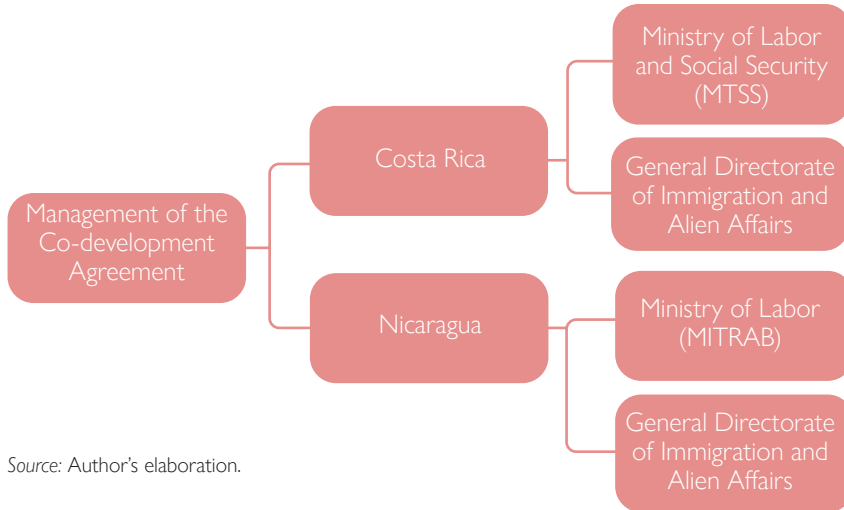
¹⁶³ Changala, 2014.

¹⁶⁴ Ancheita and Bonnici, 2013, p. 137.

PHASE 1: RECRUITMENT

This mechanism is managed through the directorates of immigration and alien affairs of each of the countries involved, as well as the respective ministries of labour.

Figure 9. Co-development Agreement Management Scheme



Source: Author's elaboration.

Other institutions involved in the procedures of this agreement, particularly regarding health and social benefits, are the Costa Rican Social Security Fund (CCSS) and the National Insurance Institute (INS) of Costa Rica.

Under this model, employers should submit the application for the recruitment of Nicaraguan workers to the MTSS/CR (specifically, the Department of Labour Migration of the National Employment Directorate). The application includes data about the company, activity, number of workers required in each occupation, estimated duration of the contract, project location, hiring form, CCSS certification indicating the registration of the contractor as an employer, and the identity and residence of the legal representative.¹⁶⁵ Once the MTSS has issued its decision, if favourable the employer must provide the MITRAB with a copy of the employment contract format, a copy of the document from the MTSS/CR office, a special power authenticated on behalf of the person who will mobilize the migrants, and a copy of the company's legal personality.

The employer can manage the recruitment process on its own, provided it is under the supervision of MITRAB. Once the worker has been recruited, the employer must generate the employment contract and submit it either to the MITRAB 10 days before the departure

¹⁶⁵ Ancheita and Bonnici, 2013, p. 139.

of the workers to Costa Rica, or to the MTSS. These institutions must endorse the contracts. Workers can also be hired in Costa Rica, provided they have entered the country in regular fashion and are within the authorized period of legal permanence under the tourist migration category.

In addition, the employer must request the temporary work permits from Costa Rica's General Directorate of Immigration and Foreign Affairs (DGME), which cost USD 20 as security deposit. This payment is the employer's obligation and is refundable, so workers should not be charged for it or see it deducted from their wages. This provision complies with Principle One of IRIS that migrant workers should not cover recruitment or related expenses,¹⁶⁶ as well as Recommendation Two of the *Montreal Recommendations on Recruitment* indicating that the potential employers and not the workers should be the ones incurring recruitment expenses.¹⁶⁷ In addition, the employer is responsible for the stay in and departure from Costa Rica of each hired worker.¹⁶⁸

In 2016, migrants from Nicaraguan accounted for 77.3 per cent of the foreign population in Costa Rica

The requirements for recruited workers are to have a valid passport with at least six months of validity or a safe conduct, and two recent photographs. Migrant workers under this scheme will obtain the immigration subcategory status of "temporary worker". To be hired through this program, workers do not need to demonstrate specific skills or educational or vocational training or undergo a medical examination.

Interested workers can register in the applicant databases of the Public Employment Service, General Directorate of Employment and Wages, as well as the databases of other sources of recruitment. It was not possible to determine whether this service is currently provided online or must be face-to-face.

The procedures do not indicate a maximum or minimum duration for which the permits are issued. However, it is stipulated that, after the employment contract ends, the worker must leave the country unless a contract extension is obtained -said extension is authorized only once.¹⁶⁹

¹⁶⁶ IOM, s.f.c.

¹⁶⁷ IOM, 2020, p. 6.

¹⁶⁸ This section refers to the recruitment of Nicaraguan labour through this particular mechanism. However, according to interviews with representatives of the Government of Costa Rica, although it remains in force, the use of this mechanism has been discontinued in part because the Government of Nicaragua decided not to become more involved in the hiring process. Therefore, most Nicaraguan workers do not have access to the benefits of this mechanism.

¹⁶⁹ Ancheita and Bonnici, 2013.

The contract language is not specified; however, in Costa Rica, pursuant to Art. 6 of the *Labour Code*, “Any company, regardless of its nature, must give orders, instructions, and arrangements to the workers in the Spanish language”.

No provisions were identified for employers to train their workers, to protect the migrant's data or about family reunification rights.

Whereas no provision was found under this agreement to fight discrimination, Art. 68 of the *Political Constitution of Costa Rica* states that “Discrimination cannot be made with respect to wages, advantages or working conditions between Costa Rican nationals and foreigners, or regarding any group of workers”.

PHASE 2: STAY ABROAD

The Government of Costa Rica, through the Ministry of Labour and Social Security, has the obligation to ensure minimum working conditions and compliance with labour legislation. However, some have pointed out that, in practice, inspections have not been adequately regulated, and the necessary resources have not been allocated for its implementation.¹⁷⁰

Employers are required to register their workers in the CCSS and INS, otherwise they may face sanctions.

Costa Rica counts the CCSS and the INS to ensure the occupational safety and health of all workers. CCSS insurance includes the risks of sickness, maternity, disability, old age and involuntary unemployment, as well as a share of the maternity, family, widowhood and orphanage burdens, and the provision of a fee for funeral expenses. This insurance is mandatory for both Costa Rican and foreign workers. Any immigration procedure should contemplate as basic requirements to have the insurance provided by the CCSS in order to ensure access to social security for migrants. On the other hand, the *Costa Rican Labour Code* obligates the employer to have insurance against occupational risks for the benefit of the workers, exclusively from the INS.¹⁷¹

The *Costa Rican Labour Code* states that foreign workers enjoy the same rights as nationals. The agreement mentions that employers may not retain or safekeep the original passports or safe conducts. In addition, foreign nationals who are authorized to remain in the country may move freely throughout the national territory for as long as indicated in the authorization. Costa Rica still has

¹⁷⁰ Ancheita and Bonnici, 2013, p. 142.

¹⁷¹ *Ibid*, p. 147.

not ratified some international instruments for the protection of the rights of migrant workers,¹⁷² which undermines the adherence of this agreement to international standards in this area.

The *Political Constitution of Costa Rica* allows foreign workers to unionize freely; however, it prohibits them from occupying leadership or authority positions within trade unions.

With regard to gender approach, this scheme excludes sectors where migrant workers from Nicaragua are most active, such as the domestic and service sector, which puts Nicaraguan women seeking work in Costa Rica in vulnerable situations. An ILO study in 2011 from a sample indicated that around 34 per cent of women had health insurance, against 69 per cent of men.¹⁷³



During the COVID-19 health crisis, the Government of Costa Rica deployed inter-agency inspection operations, particularly in agricultural enterprises, to ensure that the rights of migrant workers were respected, and decrees were issued to facilitate and promote the regularization of migrant workers in the agricultural sector. The regularization of the migration status of these people was considered vital to ensure their protection and to meet the need for more than 70,000 agricultural workers during the harvest months.

The agreement does not contain provisions for maternity leave, but through the CCSS insurance, four months of paid leave for working women are granted.

Other items not covered in the agreement are the portability of social security benefits, provisions against retaliation for migrants who have made reports, methods for sending remittances easily and at reasonable costs or means to facilitate communication with families and communities of origin.

The General Law of Migration states that “all foreigners shall have the right of access to justice, respect for the guarantees of due process, the right to defence, and the right to petition and response”.¹⁷⁴ On the other hand, this agreement does not state explicitly the system or procedure for reporting these situations of abuse or for dispute resolution. In Costa Rica and in the specific case of migrant women, it is recognized that “unawareness about labour laws and the procedures to make a labour complaint, together with the perception of not being rights-holders, often prevent women from filing complaints at the MTSS or labour courts”.¹⁷⁵

¹⁷² At present, Costa Rica has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) or the ILO Conventions on the subject, such as Convention 97 on Migrant Workers; Convention 19 on Equality at Work (work-related accidents); Convention 118 on equal treatment of nationals and foreigners with respect to social security; convention 143 on migration under abusive terms and the promotion of equal employment and treatment of workers.

¹⁷³ ILO, 2013, p. 5

¹⁷⁴ Government of the Republic of Costa Rica, 2009, Art. 31.

¹⁷⁵ Government of the Republic of Costa Rica, 2013.

PHASE 3: RETURN AND REINTEGRATION

This scheme does not refer to the phase of return and reintegration of migrant workers, only that the employer must arrange for the departure of the migrant worker from the country. However, in Nicaragua some local authorities and civil society organizations provide assistance to returnees, like psychosocial and socio-economic support. However, no updated information was found about these programs or their link to the Binational Agreement.¹⁷⁶

The MTSS collects some statistics regarding the recommendations, which are then forwarded to the DGME for the hiring of Nicaraguan labour. With respect to the exchange of information between these countries, such a mechanism was not contemplated in the agreement.

Neither is it mentioned whether migrant workers will have access to this mechanism several times or how they could do it. The agreement does not refer to measures regarding the transfer of the knowledge gained or to certify the new skills that have been acquired.

Finally, although it is established that workers must contribute to the CCSS, the Agreement does not mention that workers will have the right to portability of the CCSS benefits or that they may recover what they have contributed.

¹⁷⁶ IOM, 2012.

Best practices identified

- The contract must be endorsed by MTSS or MITRAB
- It specifies that the work permit fee has to be paid by the employer
- Employers are obligated to register migrant workers in the CCSS and acquire occupational accidents insurance from the INS
- Migrant workers have the freedom to unionize
- Onsite monitoring visits are performed jointly by the MLSS and MITRAB

Challenges identified

- The mechanisms do not include the right to family reunification
- Difficulties in complying with the labour legislation have been demonstrated with respect to labour inspections
- Gender approach is excluded. In fact, the scheme does not include the occupations in Costa Rica with greater participation of migrant women
- Costa Rica has not yet ratified important international protection instruments such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and others
- The mechanism does not include provisions with respect to the return and reintegration of beneficiaries
- Most of the actions within this mechanism have been implemented thanks to international cooperation support, which puts their sustainability at risk

CONCLUSIONS AND RECOMMENDATIONS

This report allows expanding the existing knowledge about the main mechanisms that facilitate labour migration in Mesoamerica. The study identified a total of 25 labour migration mechanisms and performed an in-depth analysis of four of these instruments. Although available information on their provisions and implementation status is scarce, data obtained through a review of the literature and interviews with key actors permitted the delimitation of the following conclusions and recommendations:

Most intra-regional mechanisms are bilateral in nature and are not part of integrated processes:

This is because often these agreements have very specific priorities and serve specific populations. Considering intra-regional migration dynamics and international labour markets, it would be pertinent to consider an integrated regional approach with respect to the management of labour migration, through which agendas, agreements, and measures can be agreed to generate coordinated responses before the different situations faced by the region. In this sense, the standardization of regulations and procedures between these countries to allow for a regulated access to labour markets could have a positive effect on ordering intra-regional labour migration flows.

In addition, a building block approach regarding the establishment of multilateral mechanisms could facilitate their alignment with regional interests and promote, in a coordinated manner, the guarantee of migrants' rights to work with equal treatment and opportunities, especially in terms of wages, working conditions, and social security. A more ambitious endeavour, through consular offices or labour attachés, could be to direct efforts towards generating mechanisms with non-traditional destination countries, according to their labour demands and the interests of the countries of origin.

It is necessary to strengthen coordination between countries of origin and destination and public-private partnerships:

Several of the mechanisms identified in the region correspond to migration categories developed and implemented unilaterally by the governments of destination countries. Although in recent years there have been efforts by the countries of origin to serve as a link between workers and employers during recruitment processes, this intersectoral articulation is also essential in the stay abroad phase, and in the phase of return and reintegration. To this end, it is necessary to strengthen the provision of public job boards abroad in order to prevent unethical recruitment practices and serve as a guide to private recruitment agencies.¹⁷⁷

¹⁷⁷ ILO, 2015, p. 46.

Also, active communication between consular representations with their fellow citizens and with destination governments could be beneficial in guaranteeing the rights of migrant workers and monitoring adequate compliance with established agreements. It is also recommended that countries regularly check the treatment and work conditions of migrant workers as well as compliance with the terms of reference of the agreements, since the data collected by the verification and control procedures “are valuable for the analysis of root causes, which will help policy makers to identify gaps in policies”.¹⁷⁸

Public-private partnerships related to labour migration are also scarce. Strengthening this aspect would provide better support in the implementation of mechanisms, and would allow governments to adopt measures to eliminate unethical recruitment and hiring practices and related expenses.¹⁷⁹ These partnerships could also boost the development of labour migration mechanisms that are more sensitive to the realities and needs of the stakeholders.

Most mechanisms are not part of a comprehensive policy on labour migration, and focus on the primary sector of the economy that usually hires low-skilled labour:

Although this is because activities such as agriculture have historically been essential to the economies of the region, opening the mechanisms further to include a diversity of skills and migration profiles could help destination countries employers meet their demand for foreign labour in other sectors such as industry and services.

In this regard, the formulation of mechanisms as part of a comprehensive labour migration policy could allow both countries of origin and destination to adjust these mechanisms to their strategies and national development vision. As part of this mechanism alignment and contextualization process, it would be essential to generate reliable and regularly updated information on the needs of labour markets and the profiles of migrant workers. This would allow making evidence-based decisions with respect to the supply or demand of migrant labour and their needs for protection.

Several mechanisms are not very specific in terms of rights and obligations: The official documentation of some of the mechanisms listed only the necessary migration formalities to participate in a program or acquire a certain migration status, without specifying the rights or obligations of the workers and employers involved. While in some cases other national regulations contain provisions that apply in this type of contract, by not being explicitly included in the mechanisms this can generate a knowledge gap for all parties involved. This same lack of clarity could place migrant workers in an especially vulnerable situation.

In this context, it is of great importance to increase and improve the protection of the population using these mechanisms, ensuring that their guidelines clearly establish a priori the rights and obligations of both parties, and that there are provisions to ensure that the mechanisms and provisions will be published and widely disseminated. This would help ensure

¹⁷⁸ IOM, 2020c, p. 9.

¹⁷⁹ IOM, 2020c, p. 5.

that all participants in the process understand the provisions and resources at their disposal if they need to file a complaint.¹⁸⁰ It is necessary that the countries of origin and destination work together to ensure that migrant workers have access to systems to redress grievances and conflict resolution for free and in their native languages during their stay abroad, without this giving rise to situations of discrimination or retaliation.¹⁸¹

Limited inclusion of gender perspective: This aspect is an important missing piece in the labour mobility mechanisms that have been identified in the region, especially considering that women represent a high percentage of migration flows and are increasingly becoming providers for their families. Most of the identified mechanisms focus on economic activities that predominantly recruit male labour, neglecting other sectors where there is greater participation of women. In addition, usually they do not include protective measures with gender perspective during the stay abroad or return phases.

Taking into account the above, it is necessary that governments in the region develop measures to identify the different needs of migrant women, and that the sectors where they are most active not be excluded from regulation so as not to exacerbate the situations of vulnerability and prevent them from being victims of abusive labour and recruitment practices.

Limited assistance in their return and reintegration: The return of migrants and their reintegration in their communities of origin have been a challenge for those governments that have a large number of their citizens abroad. Although several mechanisms specify that employers must cover the cost of transporting migrants back to their country of origin, other assistance and reintegration tasks are often assumed by the governments of the countries of origin. In this regard, many of these countries have specific agencies to receive returnees. However, often they have limited capabilities and tend to focus more specifically on forcibly returned populations.

In that sense, the recommendation is to promote coordination between countries of origin and destination in order to generate initiatives that can support the return and reintegration processes for the migrants participating in these mechanisms. The programs that are more focused on these populations could be aimed at facilitating the use and transfer of the skills and knowledge acquired abroad, to help insert them in temporary economic activities or establish investment initiatives to maximize the use of remittances over the long term. Moreover, the joint efforts made to establish Resource Centres for migrants in the destination countries, including multilingual staff to provide information on health care, housing, credit initiatives, and free legal assistance, can facilitate the migration process as well as their return and reintegration into the country of origin.¹⁸²

Little inclusion of provisions to allow social security portability: Of the mechanisms that have been studied in depth, it was observed that only one considers the portability of social security in some cases -only when migrant workers have reached a certain number

¹⁸⁰ ILO, 2015, p. 45.

¹⁸¹ IOM, 2020c, p. 15.

¹⁸² IOM, 2020c, p. 20.

of years working within the program. This represents a challenge for migrant workers who participate in these temporary or circular mechanisms, because if their income and contributions are not recorded in the country of origin, they can find themselves without financial protection when they return and at the end of their productive age.

The possibility of transferring rights obtained in other social security regimes in labour migration mechanisms is essential to ensure the welfare of migrant workers, so it is recommended that the countries of origin and destination consider this aspect during the development and negotiation of these mechanisms, and to establish agreements or partnerships to ensure that migrant workers can access these benefits and rights when they return to their country of origin.

Absence of monitoring, evaluation, and follow-up systems Only one identified mechanism had a properly established monitoring, evaluation, and follow-up system. This limitation affects the collection of data on the impact of the mechanisms, and consequently hinders the ability to identify strengths and improvement opportunities.

From a comprehensive government approach, the effectiveness of the monitoring and evaluation systems is strongly influenced by the level of participation of all the countries and sectors involved. It is also important to establish means and long-term sustainable tools that are realized within the mechanism¹⁸³ and applied at all stages of the labour migration cycle, such as recruitment phase, stay in the country of destination, and the return to the country of origin, maximizing benefits for all stakeholders.

Low incidence of labour mechanisms in migration governance: The data suggest that the mechanisms implemented in the region have little effect on expediting migration governance, especially in the prevention or reduction of irregular migration and the inclusion of migrant populations in informal labour markets. This can be said in the light of the continued increase in the number of migrant workers moving through alternative mechanisms and irregular channels, while many migrants continue to be inserted to informal labour markets, increasing their vulnerability.

The prevalence of these phenomena points to the need to adapt existing mechanisms or create new ones to respond effectively to the migration governance needs of the countries and private sector, but also to the population to be mobilized in search of better job opportunities. While the mechanisms available in the region are not intended to regulate sectors where informality prevails, if circumscribed in a labour migration framework or comprehensive policy, they can play a crucial role in the creation and formalization of regular labour migration channels.

¹⁸³ ILO, 2015, p. 46.

Particular incidence of the countries of destination in the definition of mechanism guidelines:

The motivation and objectives to establish these agreements between the countries of origin and destination often differ.¹⁸⁴ Overall, it was observed that, in some cases, the countries of destination are the ones that set the terms of reference of the agreements, and sometimes the countries of origin may be pressured to accept conditions that are not ideal or that do not meet the needs of that country or its nationals.

It is worth noting that, while developing and negotiating these mechanisms, it is recommended that the parties make sure their provisions are fair and respond equally to the needs and benefits of both countries of destination and those of origin, and to ensure at all times the protection of migrant workers in a comprehensive fashion. Moreover, the principles governing cooperation between countries should be clearly described in the agreement, for example, equal access and opportunities, transparent processes and decision-making, accountability, prioritization of development, and risk mitigation.¹⁸⁵ Considering the abovementioned, it is advisable to include all parties involved in the consultative, development, implementation, and monitoring processes regarding these mechanisms.¹⁸⁶

United Nation agencies, including IOM and ILO, have developed a range of tools to advise and support the countries that want to review or develop new mechanisms from a perspective of inclusiveness and alignment with international standards..

There are difficulties to access the mechanisms: It has been determined that one of the main factors that hinder participation in labour migration mechanisms are economic costs associated with the application processes, the lack of clear and accessible information, and the need to have a prior job offer.

In that sense, it is important to promote coordination between the countries of origin and destination to facilitate access to these mechanisms for migrant workers, establishing reasonable costs for the target population, providing clear information on the application procedures, online accessibility to them, and setting up mechanisms to link migrants with jobs that fit their profiles.

Changes in the management of labour migration during the pandemic caused by COVID-19: Migrant workers are essential in the economic activity of the countries of destination. However, during the crisis caused by COVID-19, they have been particularly vulnerable for several reasons, including working and housing conditions, the scarcity of information provided to them in some cases, and their migration status.

¹⁸⁴ ILO, 2017, p. 37.

¹⁸⁵ *Ibid.*

¹⁸⁶ ILO, 2015, p. 46.

Making migration procedures more flexible to ensure that the greatest number of migrant workers are under regular migration status was identified as good practice. Notwithstanding, it is important that these measures include migrant workers from all sectors, not just specific sectors. Beyond flexibility, it is important to develop guidelines to protect the health of this population, as well as guides to follow in case of contagion in accordance with international standards. Important elements include, for example, supplying information and the necessary protective equipment to prevent infection and protect health. In addition, measures must be in place to ensure that employers comply with these guidelines and procedures.

Moreover, the COVID-19 pandemic may detonate new forms of labour migration or recruitment since the situation has left many migrants without employment or livelihood. This will present new challenges to the countries, which include guaranteeing that migrants can participate in health and social protection schemes, and to establish clear regulations regarding the remote hiring of foreigners.

ANNEX: TABLE OF INTERNATIONAL STANDARDS AND GOOD PRACTICES

Document	Recruiting	Stay abroad	Return and reintegration
International standards			
Migration Governance Framework (MiGOF)	Principles 1, 2, and 3; Objectives 1, 2, and 3	Principles 1 and 3,	Objectives 1, 2, and 3 Principles 1, 2, and 3
Sustainable Development Goals (SDGs)	Goal 5 (Gender Equality): target 5.2. Goal 8 (Decent Work and Economic Growth): targets 8.5 and 8.7. Goal 10 (Reducing inequality): targets 10.2, 10.3, and 10.7. Goal 16 (Peace, Justice, and Strong Institutions): targets 16.2 and 16.7. Goal 17 (Partnerships for the goals): 17.14 and 17.17.	Goal 5 (Gender Equality): targets 5.2, and 5.C. Goal 8???? (Decent Work and Economic Growth): targets 8.5 and 8.8. Goal 10 (Reducing inequality): targets 10.2, 10.3, and 10.7. Goal 16 (Peace, Justice, and Strong Institutions): targets 16.2 and 16.3, Goal 17 (Partnerships for the goals): 17.14 and 17.17.	Goal 5 (Gender Equality): target 5.C. Goal 10 (Reducing inequality): targets 10.3, and 10.3. Goal 16 (Peace, Justice, and Strong Institutions): target 16.3. Goal 17 (Partnerships for the goals): 17.14 and 17.17.
Global Compact for Safe, Orderly and Regular Migration	Objectives 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 17, 18, and 23.	Objectives 1, 3, 6, 7, 10, 14, 15, 16, 17, 18, and 23.	Objectives 1, 3, 7, 11, 14, 16, 17, 18, 21, 22, and 23.
Migration for Employment Convention (revised), 1949	Articles 3, 4, 5, 6, and 7	Articles 5, 6, and 8	Article 6
Migrant Workers (Supplementary Provisions) Convention, 1975	Articles 1, 10, and 12	Articles 1, 9, 12, and 13	Articles 1 and 4
Migrant Workers Recommendation (revised), 1949	Articles 5, 6, 8, 9, 11, 13, 14, 16, and 17	Articles 5, 10, and 16	Articles 16, 18, and 20
Convention on Domestic Workers, 2011	Articles 2, 4, 7, 8, 9, and 11	Articles 2, 3, 5, 6, 7, 12, 13, 14, 15, and 17	Article 5

Workers with Family Responsibilities Convention, 1981	Articles 3, 4, and 6	Articles 3, 4, 6, 7, 8, and 9	Articles 4, 5, and 6
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990	Articles 7, 59, 61, 65, 66, and 68,	Articles 7, 11, 12, 13, 14, 16, 21, 22, 23, 25, 26, 27, 30, 33, 37, 38, 39, 40, 43, 44, 45, 53, 59, and 61	Articles 7, 8, 46, 47, 48, 59, and 67
Worst Forms of Child Labour Convention, 1999	Articles 6 and 7	Articles 6 and 7	N/A
Minimum Age Convention, 1973	Articles 1, 2, 3, and 9	N/A	N/A
Private Employment Agencies Convention, 1997	Articles 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14	Articles 8, 11, 12, and 14	N/A
General principles and operational guidelines for fair recruitment, and Definition of recruitment fees and related costs	General principles 1-13 Practical guidelines 1-31	Practical guidelines 8	Practical guidelines 31
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000	Articles 9 and 12	N/A	Article 8
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Articles 2, 3, 5, 6, and 11	Articles 3, 5, 11, and 12	Article 5
Best practices			
International Recruitment Integrity System (IRIS)	General Principles A and B Principles 1-5	N/A	N/A
Montreal Recommendations on Recruitment: A Road Map towards Better Regulation	Recommendations 1, 3, 7, 8, 9, 12, 15, 22, 39, 41, and 42	Recommendations 5, 15, 22, 34, 36, 37, 40, 46, and 48	N/A
Dhaka Principles for Migration with Dignity	Key principles A and B Principles 1, 2, 3, 4, 6, and 10	Key principles A and B Principles 3, 4, 5, 7, 8, and 9	Key principles A and B Principle 110

Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community	Document used as general reference in the three phases of the labour migration cycle
Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination	Document used as general reference in the three phases of the labour migration cycle
Return and Reintegration: Women's Participation and Gender-Responsive Interventions. A Participatory Action Research	Document used as general reference in the three phases of the labour migration cycle

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