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Unfair and Unjust: Temporary Labour Migration Programmes in and from Asia and the Pacific as Barriers to Migrant Justice

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Introduction

Access to justice in the context of migration is often centred on the formal or practical access of migrants to systems of justice, both in the country of destination as well as their origin countries (in the context of portability of benefits or remedies, for instance) including access to informal institutions, such as customary frameworks, and quasi-judicial alternative dispute mechanisms. The United Nations (UN) Special Rapporteur on the human rights of migrants has asserted that “[e]ffective access to justice means that everyone, without discrimination, has the right to access the system provided for conflict resolution and the restoration of rights” (UN, 2018a, para. 7). He elaborates further that the key elements that make up effective access to justice include the right to legal aid and representation, the right to information and an interpreter, the right to consular assistance, the competent authority to which access is provided, as well as remedies and redress.

From numerous studies and the testimony of migrant workers employed on temporary labour migration programmes (TLMPs), we know that many are consistently excluded by policy or practice from access to justice and remedies for human rights abuses whether in the workplace or outside (UN,

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2022b). A range of barriers function to keep justice out of reach for migrant workers on such programmes, who face multiple obstacles in navigating non-judicial, often employer-led, dispute resolution and mediation mechanisms or accessing legal services and the judicial system. These include their lack of knowledge of the local law, the precarity of their status in the country, prohibition of or restrictions on their right to freedom of association, language and cultural barriers and the requirements of a foreign jurisdiction.

While we concur that enhancing remedy for migrant workers is an important facet of a rights-based approach to labour migration, we argue in this chapter that it is not enough. Improving access to justice for migrants on TLMPs or ensuring that the programmes themselves are “lawful” (in terms of their compliance with domestic legal standards), is not sufficient in itself to ensure that these pathways promote human rights and dignity in their design, scope and implementation. Nor would it prevent in the first place the human rights abuses often reported on the schemes. In this inquiry, we seek to go further in our understanding of the concept of justice within the context of TLMPs, including but going beyond the principle of “access to justice” and building on concepts of social justice and fairness.

Social justice as a societal organising principle can be understood in many ways as centring fairness in relations between individuals within society. It builds on an understanding of justice itself as a manifestation of fairness, and imports concepts of equity and non-discrimination, enabling people to live lives of dignity. The concept of fairness is equally rooted in the UN Sustainable Development Agenda’s focus on reducing inequalities within and between countries, aiming to ensure equal opportunity and reduce inequalities of outcome (UN, 2015). The UN has observed the persistence of inequalities based on characteristics such as income, race, class and opportunity, stating “We cannot achieve sustainable development and make the planet better for all if people are excluded from the chance for a better life” (UN, n.d.).

It is therefore through the lens of fairness as understood above that we come to explore the human rights (including access to justice) parameters of TLMPs. Do they reduce inequalities and promote equal opportunities? Do they respect, protect and fulfil the rights of the human beings involved? Are they fair?

In its 2014 report on *Fair Migration*, the International Labour Organization (ILO) called for the construction of an “agenda for fair migration” based on respect for the rights of migrant workers and one which offers them meaningful opportunities for decent work as well as the guarantee of a fair sharing of the prosperity which migration helps to create. The ILO notes that this

call is indeed premised on its social justice mandate and the related imperative to “inject a social dimension into globalization” (International Labour Office, 2014, para. 18).

There has long been recognition in the academy as well as in the policy-making context that TLMPs come with a high risk of abuse to migrant workers and their families (see, for example, Ruhs, 2003; Shamir, 2017; Strauss & McGrath, 2017). In its recent report entitled *We wanted workers, but human beings came’: Human rights and temporary labour migration programmes in and from Asia and the Pacific*, the UN Human Rights Office has called for a human rights-based assessment of TLMPs which examines migrants’ full lived experience of temporary labour migration—at and away from the workplace—as well as the consequences of these programmes for their families and communities (UN Office of the High Commissioner for Human Rights, 2022).

Temporary Labour Migrations in and from Asia and the Pacific

Labour migration dominates policy discussion on mobility in Asia and the Pacific. Within this, TLMPs,¹ fixed-term agreements which delineate organised schemes for contract labour, are often the only option for regular migration for low-wage workers in and from the region.² Though TLMPs also operate across different wage levels and labour sectors, the focus in this analysis is on migration to low-wage work because those migrants typically have fewer options for justice and remedy along these pathways. For Asia Pacific migrants, most labour migration is to destinations either within the region or in the Middle East. Major destinations for these migrations are the ASEAN destination countries of Malaysia, Singapore and Thailand and also East Asia including the Republic of Korea and Taiwan; migrants from South Asia in particular also migrate to the countries of the Gulf Cooperation Council (GCC) as well as Lebanon and Jordan; and Pacific Island State migrants go to Australia and New Zealand.

As well as offering time-bound contracts, TLMPs—particularly for low-wage workers—typically contain a range of restrictive terms and conditions, including that migrants must return to their states of origin on completion of the contract, that their visas tie them to one employer and that they are not permitted to change work sectors or specific employers, they are prohibited from seeking citizenship or entering other permanent or long-term residence pathways, they are often prevented from accessing public services and they

are not entitled to bring family members with them or to reunify with family once in the country of employment (Costa & Martin, 2018). Governed often by vaguely worded and non-legally binding agreements³ that may explicitly deny, restrict or omit any reference to human rights, especially outside of labour rights and the workplace, TLMPs have generated human rights concerns even where they are highly regulated and monitored (New Zealand Human Rights Commission, 2022).

The role that employers play—or that States require employers to play—in the governance of TLMPs is outsized. On the one hand, such a system enables unprincipled employers to abuse migrant workers with impunity. In particular, the threat or fear of deportation, in the context of debt burdens, consequent inability to recoup the investment already made and the socio-cultural impacts of “failed migration”, has a chilling effect on complaint and can force compliance in abusive working and living conditions (Costa & Martin, 2018; Reilly, 2011). On the other hand, the system enables States to delegate to employers nearly all responsibility for the well-being of migrant workers on TLMPs. From the provision of housing, sanitation, healthcare and other services to making travel arrangements and handling immigration procedures, employers—or the agents to whom they subcontract these responsibilities—loom large in migrants’ lives. Coupled with their temporary—often precarious—immigration status and other related barriers, the power differential that this dynamic creates can locate the migrant worker in a position of subservience and supplication vis-à-vis their employer—far removed from the equality of an employer–employee relationship demanded by human rights and decent work standards.⁴ While much focus has recently been placed on the misconduct of private recruitment agents and sub-agents, in view of the proliferation of intermediaries in temporary labour migration and while recruitment reform must be part of the solution, it is not in itself a solution to the inequalities that are built into TLMPs including in the context of enforced and coercive temporariness (ILO, 2015). That TLMPs either explicitly forbid or implicitly prevent migrant workers from enjoying their right to freedom of association, through forming or joining trade unions or knowing about and participating in other forms of association, serves to exacerbate this inequality, lack of voice and powerlessness.

While these human rights deficits are stark, TLMPs also demand our attention because they are widely *promoted* by a wide range of actors as the optimal governance model for safe, orderly and regular labour migration (Abu Dhabi Dialogue, n.d.; UN General Assembly, 2018 para. 21(d)). The schemes promise a quadruple win, focusing on the potential economic benefits of TLMPs—for the origin and destination States, the employing

industries and businesses, as well as for the migrants (Castles & Ozkul, 2014; Underhill-Sem et al., 2019; Wickramasekara, 2011).⁵ The Global Forum on Migration and Development (GFMD), a State-led forum established in 2007 for multilateral dialogue on migration, has long focused on temporary labour migration primarily from an economic development perspective. Through such forums, migration and development have been interconnected in the international policy space (Geiger & Pécoud, 2013; Hao'uli, 2013), where the focus has been on migration as a driver of economic development in countries of origin and destination, with an emphasis on economic remittances (Delgado Wise et al., 2013). Discussion of TLMPs is also centred in similarly informal and non-binding regional consultative processes devoted to migration governance along the Asia-Middle East corridors such as the Abu Dhabi Dialogue and the Colombo Process. As State-centric spaces, they have promoted TLMPs as the default governance model of labour migration along these corridors, often ignoring or downplaying the programmes' risks while exaggerating their benefits (Global Unions, 2010). The GFMD and similar spaces have also been criticised for lacking transparency and accountability in what has been described as a "politically-sheltered format" (Crépeau & Atak, 2016, 133).

TLMPs as Barriers to Justice

How can low-wage migrants on TLMPs access justice and effective remedy when through their design and implementation the programmes themselves constitute barriers to justice? Most obviously they are a barrier to economic justice, serving an economic model that subordinates large segments of the world's population and requires and produces inequalities by providing a low-cost flexible workforce without the economic, social or cultural demands made by integration (Triandafyllidou, 2022). They are a barrier to climate justice, for example in States' lack of mitigation efforts adequate to prevent the adverse effects of the climate crisis that drive some of these migrations and in the elevation of temporary labour migration as a preferred adaptive response to climate change with little regard to the conditions and impacts of these migrations. Moreover, TLMPs exacerbate injustice by creating a narrative that recasts unequal and racialised migration practices as development wins while ignoring the structural injustices that create and increase situations of vulnerability (UN Office of the High Commissioner for Human Rights & Global Migration Group, 2018) that drive and complicate temporary migrations.

The denial of the human rights of low-wage migrant workers on TLMPs is a means and a result of dehumanising them, which in turn enables other rights abuses including through preventing access to justice. Such dehumanisation is reflected in the narratives that commodify migrant workers as units of labour rather than fully human individuals—the use of language such as “sending” and “receiving” countries and statistical terminology of migrant “stocks” denies migrant agency and even personhood, minimising migrants and their work as low-skilled or unskilled. This resonates with populist usage of water metaphors (“waves”, “flows”, “floods”) or other pejorative and dehumanising terminology such as “swarms”, “hordes” or “invasion”.

TLMPs are a Barrier to Development Justice

The framing of migration as a development issue in the international governance of the migration, such as through the GFMD, has served as a justification for TMLPs, with a focus on maximising the strictly economic benefits for development in both countries of origin and destination, the former through the transfer of financial remittances and the latter through migrants’ low-wage labour in certain sectors. Some Asia Pacific countries of destination such as New Zealand and South Korea explicitly list development of the country of origin as an objective of their TLMPs (Cho et al., 2018; Wickramasekara, 2015). Similarly, where TLMPs are promoted as means to foster climate resilience in the Global South, again arguing in favour of economic remittances, this time as an adaptation strategy and again shifting the adaptation burden from the main carbon-emitting States to the Global South and even to migrants themselves (Draper, 2022; Gonzalez, 2020).

For countries of origin, instead of meeting their responsibility to invest in human rights inclusive economies (United Nations, 1990, 2008), TLMPs enable reliance on a model of privatisation and individual reliance. With remittances constituting an important macroeconomic income stream for countries of origin, often equal to or in excess of foreign direct investment (Barne & Pirlea, 2019), migrants’ own governments may be structurally dependent on their migration (UN, 2022a).⁶ Their reluctance to challenge unequal or even abusive conditions faced by their citizens—on grounds of the economic benefits of TLMPs—can lead to a “race to the bottom” as countries of origin compete with each other for the prized MOU or bilateral agreement, dissuading their citizens from raising complaints about conditions and outcomes of TLMPs.

However, there is at best mixed evidence that financial remittances generate equitable development outcomes for individuals, communities and countries

of origin (Withers, 2019). TLMPs thus represent an archetype of a limited approach to development, considerably at odds with the more expansive commitment in the 2030 sustainable development agenda to “leaving no one behind” (UN System Chief Executives Board for Coordination, 2017).

For migrant workers and their families, TLMPs’ claimed economic benefit can be—and often is—undermined by a range of factors from non- or underpayment of wages and benefits, lack of social protection of portability of accrued benefits and the exploitative recruitment costs and associated debt that many migrants carry. Similarly, the promised TLMP benefit of skills transfer is often undercut by there being little training or investment offered, the absence of processes to recognise skills, qualifications and competences that have been gained, or the reality that the experience gained abroad may not be relevant for the domestic labour market on return (Castles & Ozkul, 2014). Further, related costs to society such as the consequences of long-term family separation are rarely counted within the cost–benefit analysis of temporary labour migrations. Even within the economic development equation for countries of employment, it is often the case that the labour needs TLMPs are ostensibly responding to (including the structural deficits or crises that give rise to these needs) may be ongoing or permanent and not well served by the cyclical disruptions to the workforce (International Labour Organization, 2021).

TLMPs are a Barrier to Racial Justice

The historical legacy of TLMPs as rooted in racialised and unequal forms of mobility pervades their contemporary nature: as the ILO has noted “[c]ontemporary temporary labour migration schemes have their roots in colonial indentured labour and can be traced back to the end of the nineteenth century, when the idea first appeared of ‘creating an immigrant who could be made to leave.’ Since then, countries have experimented with multiple forms of temporary labour migration that have varied over time and within regions” (ILO, 2022, para. 5). These forces continue to demarcate who is entitled to occupy a social and physical space, that is, to move or to stay. In this way, TLMPs are based on and reproduce racial and other hierarchies that exemplify the management, instrumentalisation and exclusion of the undesirable Other (Bradley & de Noronha, 2022; Carstensen, 2021). In countries such as Qatar, for instance, the denial of space to racialised migrants is made physical reality through laws and policies which require single, male Asian and African migrant workers to reside in remote or segregated areas (UN, 2020).

Such barriers to physical presence replicate those faced by racialised migrants in a global sense; citizens from the South and Southeast Asian countries of origin for example are among those who face the most barriers to travel generally, with more destination countries requiring they secure a visa prior to travel (see, Henley & Partners, 2022). As such it is unsurprising that discriminations are entrenched through these programmes, including along nationality, class and caste lines. Any intersectional analysis of TLMPs must acknowledge the structural condition of many low-wage migrant workers on these programmes who are seeking to escape conditions of poverty and inequality (UN, 2022a), highlighting their disproportionate disadvantages and lack of bargaining power on the basis of their socioeconomic status. The structural conditions of TLMPs also embed racist and class-based societal associations between certain types of work and specific nationalities (UN, 2020). Class-based inequality is built into TLMPs particularly in those contexts where different standards are offered for workers framed as “high-skilled” in contrast to those for low-wage workers where, for example, the former are entitled to bring their families with them and to access social security benefits or pathways to permanent residence, while the latter are not (Dauvergne & Marsden, 2014; Triandafyllidou, 2022).

TLMPs are a Barrier to Gender Justice

TLMPs reinscribe gendered ideas about labour, operating mostly in highly gendered labour sectors for low-wage migrants and offering more opportunities for men who constitute the vast majority of migrant workers on TLMPs in and from Asia and the Pacific particularly in sectors such as construction in the GCC countries, fisheries in East and Southeast Asia and seasonal work to Australia and New Zealand (IOM, 2021). Bilateral agreements for these schemes often centre men’s migrations, for example, they usually do not include provision for sexual and reproductive health, an omission that discriminates against women in particular but is in keeping with the reduction of people to workers that would cast pregnancy as a hindrance to economic productivity. In some destination States where Asia Pacific women do migrate under these programmes, they are restricted to women-dominated sectors such as domestic work.

On the other hand, the assumption of maleness that dominates TLMPs itself subscribes to a retrograde stereotype that does not understand men migrant workers as fathers and partners engaged with child development and care or with family life broadly, or indeed as individuals needing protections

in the course of their migration such as health rights (including for mental health) (see for a related discussion, Arsenijević et al., 2018).

When TLMPs do consider the family lives of migrant workers it is generally to mandate family separation, both in terms of prohibiting the migration of workers' family members and imposing strict limits on forming families in the countries of destination. One example is Singapore where the government exercises a high degree of policing of migrant workers' intimate life and sexual and reproductive rights. The Employment of Foreign Manpower (Work Passes) Regulations (2012)⁷ prohibit marriage to a Singapore citizen or permanent resident without express government permission and involvement in any "immoral or undesirable activities, including breaking up families in Singapore" (Section 8). There are also prohibitions on migrants getting pregnant or delivering a child while in the country and women migrant workers are required to take mandatory pregnancy tests, a form of gender-based discrimination, prior to arrival in Singapore and at regular intervals during their stay (Ministry of Manpower, (n.d.). Given that most migrant workers undertake TLMPs at a time in their life when they would be expecting—or expected—to start families, this inability to make or sustain family life is particularly iniquitous.

Where migrants have made families in their countries of origin, enforced family separations have resulted in a range of harms ranging from abuse suffered by spouses who are left behind to breakdown of the parent–child relationship. Rasika Jayasuriya (2021) observes in this context that TLMPs undermine the child–parent relationship through structural features that create unnecessarily protracted periods of parental absence in children's lives.⁸ In another context, research in the Pacific has observed that the absence of men on seasonal labour migration places a greater burden of work on the women who have been left behind and tends to confine them to traditional gender roles—within the sphere of their house and family—thereby limiting the possibility of them being able to seek and sustain paid employment (Chattier, 2019). Any allowances for family life on TLMPs within South–South corridors are limited to close family members within a nuclear family structure and within patriarchal, heteronormative values and structures. Even in those few instances where family members are permitted to join the migrant worker, there may be a lack of housing suitable for families of migrant workers, and they may also face practical and legal barriers to access education, health or other necessary social services.

Temporariness

Temporariness is central to the privileging of TLMPs in contemporary migration governance. It allows policymakers to treat each migration as singular, time-limited event and, crucially, to normalise the imposition of various restrictions on the human rights of migrants undertaking TLMPs on the basis that their stay in the country of employment is fleeting (Dauvergne & Marsden, 2014). States justify these rights restrictions as acceptable because migrants are only temporarily present in the jurisdiction and some advocates argue they are a necessary trade-off for access to the State and its labour market (Ruhs, 2013). Countries of origin and destination view such restrictions, particularly those preventing low-wage migrant workers enjoying a wider economic and social life and denying their right to family life, as necessary to ensure that migrant workers make minimal demands on the destination State and return to their countries of origin at the end of their contract. In this way, TLMPs provide the required low-cost flexible workforce within a context of securitised migration control (Horvath, 2014). Further, by ensuring that migrants will not stay on longer than their short-term contracts, much less formally integrate into the societies in which they live, States claim that TLMPs enable a response to populist hostility towards migrants and migration. The essential unfairness of such utilitarian arguments is revealed not only in the questionable assumption that human rights—universal, inalienable rights—can be forfeited in the first place but is rendered more stark when we appreciate that in far too many instances of TLMPs the financial cost–benefit analysis does not actually land in favour of low-wage migrant workers. Many themselves directly assume steep costs to recruiters, brokers or other intermediaries, they are forced to accept high deductions, unpaid overtime, irregular or non-payment of wages, in addition to which they indirectly—by virtue of the fact that States do not incur costs for healthcare, housing or other rights—relieve the financial burden on these countries.

In a challenge to the notion of “temporariness”, along many of these corridors migrants often take on repeated TLMPs in the same or another destination State, such that although each TLMP lasts between a season and a few years, the migrant may spend a decade or more on these “temporary” schemes and for some, will spend effectively their whole (working) life on TLMPs. Extended or repeated stay does not ameliorate the risks of the programmes’ temporariness: longer but still temporary stays may increase situations of vulnerability as migrant workers have more invested

in the country of destination including community ties and the employment relationship and therefore have more to lose (Reilly, 2011).

However long they stay on TLMPs, in most cases the temporary labour migration pathway is completely untethered from options for longer-term or permanent stay.⁹ Although many workers on these programmes will migrate with no intention of staying long-term or permanently in the country of destination, the removal of this option renders TLMPs potentially abusive if or when circumstances change (if a changing climate and environmental degradation means that return to their homes is no longer possible for instance) or migrants' intentions evolve (if they form a relationship and/or have children in the country of employment for instance) (Merla & Smit, 2020).

TLMPs formalise, enforce and celebrate temporariness, operating in practice to impede migrants' agency in deciding the length of stay and time of return, constricting their decision-making and plans about their wider lives, including family life. That they do not permit migrants to have histories, families or aspirations and deny them full personhood, renders these programmes fundamentally unjust and unfair, "anchored in a fundamental subordination" (Dauvergne & Marsden, 2014, 237).

Indisputably, human rights standards are clear that every person remains a rights-holder when they cross an international border and become migrants. Human rights—fundamental albeit minimal standards to which we are all entitled without discrimination—attach to migrants as people and they are unchanging: they are not bestowed by countries of origin or citizenship, nor do they need to be renegotiated as people move across borders.¹⁰ The temporariness of a migrants' presence in the country or the delegation of duty of care or immigration functions to companies or private citizens do not therefore absolve States of their responsibility to respect, protect and fulfil the human rights of all persons under their jurisdiction including in the design and practice of TLMPs.

Yet, as is often the case, the devil lies in the detail. One challenge for advocates seeking policy change on temporary labour migration is the wide latitude in respect of migration governance ostensibly afforded to—and often loudly claimed by—States under the shroud of "sovereign prerogative". International human rights law permits limited differential—but not discriminatory—treatment on the basis of migration status. The question we must ask is whether, when and how are legal exclusions to human rights standards permissible in the case of migrants who are in a regular but temporary immigration status?¹¹ While the UN Committee on Economic, Social

and Cultural Rights has guided that *all* migrants within a State's jurisdiction are entitled equally to the right to health (UN, 2017), for example, and the near-universally ratified UN Convention on the Rights of the Child (1989) provides that it is in children's best interests to have their relationship with their parents and family life protected, these broad principles require further operational guidance—and then of course effective implementation—in order to be rendered meaningful to the lives of people embarking on TLMPs. For example, where does responsibility and accountability lie for the health rights of Bangladeshi construction workers in Malaysia who are dependent on sub-agents to grant them access only to sub-standard private medical clinics in a context where they are not entitled to sick leave (Uddin et al., 2020)? What are the duties of States of origin and of destination to protect the parent–child relationship in the context of prolonged family separation through TLMPs (Jayasuriya, 2021)? Whereas some international human rights mechanisms have issued broad-based guidance related to migrant workers (UN, 2013), further specific and targeted advice in respect of the parameters of legal inclusions and exclusions in TLMPs and the scope and content of the rights of migrants on these programmes is urgently needed as is normative guidance at regional and national levels. In their consideration of issues relating to the rights of migrant workers, these expert bodies could explicitly analyse temporariness and issue guidance to ensure that it is not being used to justify discriminatory treatment.

Conclusion

Viewing people on the move as an economic issue has led to a series of policies and practices that too often treat them as silent commodities to be exploited in the national labour market. ... They are, in effect, incorporated into the economy on terms not dissimilar to other inputs in the production process; their capacity to exercise their labour power is no more than a commodity. (UN, 2018b, para. 27)

TLMPs are extractive in nature, creating a situation where migrants are permitted only as labour, not as fully human. As currently conceived and managed, TLMPs derive from, thrive on and heighten the global inequalities that “create migration but constrict mobility” (Walia, 2022). They are prime examples of what Virginia Mantouvalou has termed “state-mediated structures of injustice” (2022, 711), legislating inequality and precarity. Seen

from a human rights perspective, the programmes are fundamentally unjust, often designed to reduce people to commodities.¹²

The reality is that for many migrant workers, TLMPs result in precarious and discriminatory conditions leading to immediate and long-term negative human rights consequences for migrants and their families, including in terms of access to civil, political, economic, social and cultural rights, including the right to family life, access to services and ability to access remedy for violations of their rights. This results in an unacceptably high human cost for migrants and their families, while the negative consequences of these programmes extend beyond temporary migrant workers to also worsen conditions more broadly in these industries and harm wider social discourse, as well as undermining the value of these programmes to countries of origin. Inhabiting a situation of “permanent temporariness”, many migrants are neither able to establish meaningful lives in their countries of employment nor in their home countries.

Migrant workers embark on TLMPs often knowing that the conditions they will face will not be optimal (see for a discussion on unfree labour, Strauss & Fudge, 2013; LeBaron & Phillips, 2019). It is also a fact that many—and particularly those migrants who experience the worst deprivations on TLMPs—are compelled to leave countries of origin in response to deep structural inequalities and exclusions (Lester, 2010). Yet, it is important too to respect that in undertaking these programmes, migrants are exercising their agency with experience or understanding of the realities of the poor living and working conditions offered to them, what Mai (2016) has described as “bounded exploitation”. That migrant workers are willing or have little option but to tolerate poor standards, or that countries of destination promise similar or better conditions than those in their origin countries, does not vindicate either the conditions offered by TLMPs or the lack of dedicated attention to the systemic failures in these programmes (Reilly, 2011).

TLMPs are often incompatible with States’ existing human rights commitments and deny the human rights goals that States have agreed for the full inclusion and social cohesion of migrants including through the objective of “minimizing disparities” agreed in the Global Compact for Migration (UN General Assembly, 2018, paras. 13 and 32). Reform is urgently needed. The UN Human Rights Office has called on States to devise and implement human rights-based labour migration pathways that function as effective alternatives to TLMPs and the human rights deficits that are at their heart (UN Office of the High Commissioner for Human Rights, 2022). These alternatives may indeed in part resemble those aspects of TLMPs that are

prized both by policy makers and migrants, enabling flexibility and responsiveness, for example. But systemic policy reform of labour migration needs above all to centre the migrant and their family in the design and implementation of the programmes to ensure that migrant workers, even on a temporary stay, enjoy equal human rights and are fully included under national laws and policies.

In seeking to understand the normative parameters of contemporary TLMPs, the overall context of fairness (and unfairness) in which these programmes are situated becomes paramount. Critical inequities in the global economic and financial architecture as well as neoliberal economies that present structural barriers to equality, social justice and sustainability lie at the heart of these migrations. The temporariness of legal status that is embedded in TLMPs then magnifies these systemic vulnerabilities faced by low-wage migrant workers in these countries and along these corridors. Rather than allowing those who are compelled to take to these pathways to become collateral damage within an agenda narrowly focused on economic growth at the expense of equity, we are called to reimagine and realise a world where migration is undertaken in dignity and justice leading to equitable, rights-based and fair outcomes for migrants and their families.

Notes

1. There is no internationally agreed legal definition of TLMPs and there are several terms in use to describe these programmes and the workers on them including: circular migrations, seasonal work, guest worker programmes, Technical Intern Training Program and others.
2. Such schemes are found in most, if not all, destination countries, not only those in the Global South.
3. Governments in Asia have become increasingly interested in TLMPs with IOM reporting that while only four agreements were signed by these governments between 1990 and 1999, 38 were signed between 2000 and 2009, and 18 more between 2010 and 2014 (IOM, 2021).
4. ILO Employment Relationship Recommendation, 2006 (No. 198). The ILO has observed that “[i]t is through the employment relationship, however defined, that reciprocal rights and obligations are created between the employee and the employer” (ILO, 2006, para. 5).
5. Also often described as a triple win, subsuming the industry benefits within the destination State.
6. Following his 2021 visit to Nepal, the UN Special Rapporteur on extreme poverty and human rights voiced concern about the government’s reliance on outward migration as a solution to unemployment arguing that it was

hindering the country's development, terming it "a symptom of structural problems that the Government must address" (UN, 2022a, para. 16).

7. See, Part VI, Sections 6–8.
8. Jayasuriya further notes that TLMPs force parents into a position where they must fracture their physical relationships with their children in order to provide materially for them.
9. There will be some cases in destination countries for Asia Pacific migrants where they are able to transition to a protection status having proved human rights harm or criminal acts against them, such as trafficking in persons or domestic violence, though barriers of access to justice render this option illusory for many low-wage migrants and in most cases this status too is temporary.
10. For more on this see, UN Office of the High Commissioner for Human Rights and Global Migration Group (2018).
11. In comparison to the "rights versus numbers" trade-off argument, we argue that these parameters arise not from the politics of TLMPs but from an inquiry into the permissible limitations on human rights through the lens of the principles of universality, interdependence and indivisibility and in the context of standards of necessity, proportionality and non-discrimination.
12. The International Labour Organization, the specialised agency of the United Nations dedicated to promoting decent work, is founded on the principle that labour is not a commodity (ILO, 1944, see Part I, para. (a)).

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