

BLAS AS SITES FOR THE MESO-LEVEL DYNAMICS OF INSTITUTIONALIZATION: A CROSS-SECTORAL COMPARISON

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In this Article we seek to shift the focus from the texts of bilateral labor agreements (BLAs) to the context of their emergence and materialization. We argue that to study BLAs and evaluate their consequences and potential relevance, they must be read from the perspective of processes of institutionalization that shape the paths of different agreements. In Israel, a cross-sectoral comparison of the agricultural and construction sectors reveals that different agreements did not follow the same path and institutionalization process. The Israel-Thailand agreements for the agricultural sector and the agreements regulating migration to the construction sector did not generate similar dynamics of institutionalization. In both sectors, BLAs transformed recruitment practices and led to a sharp decrease of illicit migration costs extracted in the process. Yet due to differences in the structure of the sectors and the expected skill level of workers, significant variations remain, most notably in the effect of BLAs on the permit and quota system and in the rise of paths to import labor outside BLAs. Based on this cross-sectoral comparison, we offer in this Article a grounded analytical perspective for examining and evaluating BLAs in context. In discussing our suggestions, we will project our analysis to the more recent agreement covering the live-in care sector that is currently the largest employing sector of guest-workers in Israel.

INTRODUCTION

In a global mobility order of closed borders and selective immigration restrictions,¹ bilateral labor agreements (BLAs) have reappeared as renewed instruments in the regulatory apparatus of countries seeking noncitizen, temporary guest-workers.

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1 Hein de Haas et al., *Growing Restrictiveness or Changing Selection? The Nature and Evolution of Migration Policies*, 52 INT'L MIGRATION REV. 324 (2018).

Under the umbrella of immigration and economic development and the agenda of “planned and well-managed migration policies” that “[f]acilitate orderly, safe, regular and responsible migration and mobility of people,”² international organizations, mainly the International Organization for Migration (IOM) and the International Labour Organization (ILO), actively advance BLAs as indicators and best practice for regulating temporary labor migration.³ Some ministries of overseas workers in major sending countries have pursued agreements with the main receiving countries, to address issues that arise in the context of labor migration.⁴ In other cases the initiative was taken by receiving states with the aim of regulating different elements of entry, recruitment and placement of temporary migrant workers through BLAs.⁵

Historically, BLAs first emerged to qualify restrictions on immigration and noncitizen employment introduced in the interwar years,⁶ and later proliferated in the heyday of guest worker programs after World War II.⁷ Workers were then summoned to fill empty ranks in the production lines of industrialized economies and BLAs were accordingly tailored to suit labor demands in the receiving states and declined with the termination of such programs in the 1970s.⁸ As compared to their early predecessors, the renewed interest in and recourse to bilateral labor agreements seems to be taking a different path. Formal cooperation between sending and receiving states is sought by sending states and promoted by international organizations as a way to address the recurring problems of temporary low-skill

2 G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Oct. 21, 2015), <https://undocs.org/A/RES/70/1>.

3 Int’l Org. for Migration, *Migration and the 2030 Agenda: A Guide for Practitioners* (2018), https://publications.iom.int/system/files/pdf/sdg_en.pdf; U.N. Global Compact for Safe, Orderly and Regular Migration (July 11, 2018), www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf. See also Rupa Chanda, *Migration between South and Southeast Asia: Role of Interstate Cooperation* (Inst. S. Asian Stud. [ISAS] Working Paper No. 141-2, Feb. 2012), <https://tinyurl.com/3x774t9c>; IBADAT DHILLON ET AL., INNOVATIONS IN COOPERATION: A GUIDEBOOK ON BILATERAL AGREEMENTS TO ADDRESS HEALTH WORK MIGRATION (2010), http://www.aspeninstitute.org/sites/default/files/content/docs/GHD/GHD_Bilateral_Report.pdf.

Early agreements were entered into in the interwar period and in the postwar years, and a specific Int’l Lab. Org. [ILO] convention and recommendation on migrant labor were adopted in 1949. ILO, *Recommendation No. 86 concerning Migration for Employment (Revised)*, (July 1, 1949) (includes a model bilateral and is annexed to U.N. Convention No. 97 concerning Migration for Employment (Revised), July 1, 1949, 1616 U.N.T.S. 120).

4 Marion Panizzon, *Bilateral Migration Agreements and the GATS: Sharing Responsibility Versus Reciprocity*, 5 J. REFUGEE & MIGRATION ISSUES 70, 79-126 (2009). See also MULTILAYERED MIGRATION GOVERNANCE: THE PROMISE OF PARTNERSHIPS (Rahel Kunz et al. eds., 2011).

5 Avinoam Cohen, Transformative Forms: When do Bilateral Labor Agreements Make a Difference (Jan. 2022) (unpublished manuscript) (on file with authors).

6 Philip V. Cannistraro & Gianfausto Rosoli, *Fascist Emigration Policy in the 1920s: An Interpretive Framework*, 13 INT’L MIGRATION REV. 673, 679-81 (1979).

7 Nermin Abadan-Unat, *Turkish Migration to Europe*, in THE CAMBRIDGE SURVEY OF WORLD MIGRATION 279, 280 (Robin Cohen ed., 1995); KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* 20-49 (1992) (paperback ed. 2010).

8 The U.S. Bracero program was terminated in 1964; a decade later, in the face of the oil shock and a global economic recession, Germany ceased its recruitment programs as well. See DOUGLAS MASSEY ET AL., *WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION AT THE END OF THE MILLENNIUM* 73-74, 108 (1998).

migration programs (TLMPs). Such programs are infamous for exploitation practices throughout the migration process, precarious working conditions, irregularity and other human rights violations, including different forms of trafficking in persons.⁹ Still, more cautious observers remain skeptical about the transformative effect of agreements that are expected to serve the needs of the receiving countries.¹⁰

It is our understanding that the relevance and transformative potential of bilateral agreements for the protection of migrant workers does not depend only on their texts and forms. Their evolution and design are also a product of meso-level dynamics of institutionalization, that is, the cumulative processes that establish migration networks and lead to the incorporation of migrants and migrant labor in societies and domestic labor markets.¹¹ Beyond the legal scope of agreements and the specificity of their provisions and implementation protocols, we explore the institutional significance of agreements as a product of processes and power dynamics that occur at the meso-level. This concrete and conceptual domain, involving a range of networks, actors and intermediaries that operate between the overarching structures of the macro-level and micro-level decision-making and action by individual agents, is known to have a decisive influence over migration patterns.¹²

Since it is not just the text, but the context that matters, we expect BLAs to make a difference when their intervention at the meso-level becomes durable over time.¹³ Given that meso-level dynamics are context-specific and vary across employment sectors even within the same migration regime, our analysis is based on a cross-sectoral comparison that can capture and underscore contextual variations and their implications. The Israeli case study is well suited for this purpose, since during the past decade Israel entered a series of path-breaking BLAs to regulate the recruitment of overseas migrant workers. These agreements were an outcome of a declared policy to channel all guest-workers through the pre-departure screening and oversight mechanisms of BLAs.¹⁴ The policy was intended to cover all workers

9 Daniela Bobeva & Jean-Pierre Garson, *Overview of Bilateral Agreements and Other Forms of Labour Recruitment*, in *MIGRATION FOR EMPLOYMENT: BILATERAL AGREEMENTS AT A CROSSROADS* 11-29 (OECD Publication, 2004); DOVELYN RANNVEIG AGUNIAS & CHRISTINE AGHAZARM, INT'L ORG. FOR MIGRATION & MIGRATION POL'Y INST., *LABOR MIGRATION FROM COLOMBO PROCESS COUNTRIES: GOOD PRACTICES, CHALLENGES AND WAYS FORWARD* (May 2012), <http://www.migrationpolicy.org/pubs/colomboprocessbrief.pdf>; Yuval Livnat & Hila Shamir, *Gaining Control? Bilateral Labor Agreements and the Shared Interest of Sending and Receiving Countries to Control Migrant Workers and the Illicit Migration Industry*, 23 *THEORETICAL INQUIRIES L.* 65 (2022).

10 Aderanti Adepoju et al., *Europe's Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review*, 48 *INT'L MIGRATION* 42, 46 (2010).

11 Avinoam Cohen, *Democracy in Migration: Democratic Encounters in Migration Governance* (2018) (Ph.D. Thesis, Tel Aviv University); Yahel Kurlander, *The Marketization of Migration—On the Emergence, Flourishment and Change of the Recruitment Industry for Agricultural Migrant Workers from Thailand to Israel* (2019) (Ph.D. Thesis, Haifa University).

12 See also *infra* notes 25-6 and accompanying text.

13 Adam Cox & Eric Posner, *The Second Order Structure of Immigration Law*, 59 *STAN. L. REV.* 809 (2007).

14 4024 Government Resolution, *Permits for Employing Foreign Workers* (July 31, 2005), https://www.gov.il/he/departments/policies/2005_des4024.

from all countries of origin,¹⁵ and the same inter-ministerial team was entrusted with the new directive, yet the agreements are sector-specific and their implementation and effects vary from sector to sector.

The primary, explicit, policy aim of Israeli BLAs was to regularize guest-worker programs by suppressing illicit recruitment practices and regulating the migration industry that operates transnationally.¹⁶ Against previous assumptions about the ungovernability of transnational migration networks of recruiters and intermediaries, Israel successfully utilized BLAs to expand its regulatory capacity beyond its borders. It centralized the process of allocating working permits and shifted the main screening process to the ex-ante, pre-migration stage.¹⁷ This unusual achievement, which overcame or curtailed private migration industry interests, was not mirrored in the internal domain. The turn to BLAs did not result in enhanced enforcement of labor law or mandatory working conditions and has had only a minor effect on working conditions and worker remuneration. Within Israel, employment sectors differed in the organizational adjustments that followed the recruitment and placement mechanisms that were established by and within the framework of BLAs.

Understanding the consequences and meso-level sectoral dynamics in which BLAs intervene fleshes out the differential institutionalization processes and calls for a context-sensitive approach to evaluating the transformative potential of BLAs—or lack thereof. Shifting the focus to the context of the agreements reorientates our research questions. Looking at BLAs as potential interventions at the meso-level of migration processes, we seek to understand the function of BLAs in the institutionalization of migrant labor in specific labor market sectors, as for instance in temporary guest-worker programs. BLAs can (a) trigger institutionalization processes, (b) become integrated in or reflect ongoing institutionalization processes, or (c) remain detached from such processes. We suggest these typological alternatives as a conceptual framework for analyzing the embeddedness of BLAs in context. This analytical approach reflects our understanding that BLAs are part of a broader regulatory framework, and that its analysis requires taking a fuller account of the regulation of migration, from the pre-migration screening to inclusion in the domestic labor market and, eventually, return or secondary migration.

15 4408 Government Resolution, Foreign Workers in the Agriculture Sector (Mar. 15, 2012), https://www.gov.il/he/departments/policies/2012_des4408; 4194 Government Resolution, Foreign Workers and Encouraging the Employment of Israelis (Jan. 29, 2012), https://www.gov.il/he/departments/policies/2012_des4194; 3453 Government Resolution, The Encouraging of the Employment of Israelis and Quotas of Foreign Workers in the Construction Sector and Regulating the Entry of Foreign Workers in the Care Sector (July 10, 2011), https://www.gov.il/he/departments/policies/2011_des3453; 1274 Government Resolution, Foreign Workers Government Policy - Further Discussion (Jan. 24, 2010), https://www.gov.il/he/departments/policies/2010_des1274; 752 Government Resolution, The Employment of Foreign Workers in the Agricultural Sector (Sep. 14, 2009) https://www.gov.il/he/departments/policies/2009_des752; 3996 Government Resolution, Government Policy on Non-Israeli Workers and Increasing Employment Opportunities of Israelis (Aug. 24, 2008), https://www.gov.il/he/departments/policies/2008_des3996.

16 4024 Government Resolution, *supra* note 14.

17 Cox & Posner, *supra* note 13.

The Article proceeds as follows. Part I develops the analytical framework that draws on institutionalization and meso-level analysis and a sector-based comparison that considers sectoral characteristics and skill differences in low-skill migration. Part II lays out the background for the Israeli case-study and juxtaposes the role of BLAs in the agricultural and construction sectors. Part III discusses the main findings of the comparison and considers their extension to additional sectors, such as live-in care. The last Part concludes.

I. ANALYTICAL FRAMEWORK

Since bilateral agreements stem from different motivations, it is not surprising that their outcomes vary and that accounts regarding their desirability are mixed.¹⁸ There are some indications that BLAs can facilitate “safe, orderly and regular migration,” as is expected by promoters of multilateral cooperation and partnerships to enhance migration governance.¹⁹ BLAs can contribute towards reducing migration costs, protecting migrant worker rights and regularizing mobility across labor migration corridors.²⁰ Yet not all BLAs are similarly effective and some may even carry undesirable consequences. Receiving countries have utilized bilateral agreements as a means of entrenching and institutionalizing guest-worker programs that contribute to or exacerbate precarious working conditions.²¹ Seen from this perspective, BLAs can be merely old wine in new bottles.

The recent study of BLAs is gradually charting the current spread and makeup of bilateral agreements and filling gaps in our understanding of their contexts and effects. Chilton, Posner and Peters produced new datasets of agreements that provide macro-level analytical perspectives for examining BLAs as a broad global phenomenon.²² Implementation research has employed qualitative methods that add micro-level analysis and migrant worker perspectives in evaluating the outcomes of BLAs, as demonstrated in the research of Kushnirovich and Rajjman who follow the Israeli adaptation of BLAs.²³ Missing from the BLA literature is a systemic account of the meso-level and the potential, or lack thereof, of BLAs to intervene in meso-level relations and institutions that have a cardinal role in sustaining the

18 Margaret E. Peters, *Immigration and International Law*, 63 INT’L STUD. 281 (2019).

19 Global Compact for Migration, *supra* note 3, at 31 (Objective 23).

20 REBECA RAJJMAN & NONNA KUSHNIROVITCH, LABOR MIGRANT RECRUITMENT PRACTICES IN ISRAEL: FINAL REPORT 12 (2012) <https://tinyurl.com/5f4u44yy>.

21 Peters, *supra* note 18.

22 Adam S. Chilton & Eric A. Posner, *Why Countries Sign Bilateral Labor Agreements*, 47 J. LEGAL STUD. 245 (2018); Peters, *supra* note 18; Adam Chilton & Bartek Woda, *The Expanding Universe of Bilateral Labor Agreements*, 23 THEORETICAL INQUIRIES L. 1 (2022); Tijana Lujic & Margaret E. Peters, *Informalization, Obfuscation and Bilateral Labor Agreements*, 23 THEORETICAL INQUIRIES L. 113 (2022).

23 Nonna Kushnirovich, et al., *The Impact of Government Regulation on Recruitment Process, Rights, Wages and Working Conditions of Labor Migrants in the Israeli Construction Sector*, 16 EUR. MGMT. REV. 909 (2019); Nonna Kushnirovich & Rebeca Rajjman, *Bilateral Agreements, Precarious Work, and the Vulnerability of Migrant Workers in Israel*, 23 THEORETICAL INQUIRIES L. 266 (2022).

everyday dynamics of migration regimes and their patterns.²⁴ In migration studies, the meso-level is perceived as a conceptual and concrete space between macro-level structures and the micro-level of individual agents. At the meso-level, we find an “internal dynamics of migration” that occur and expand in “self-feeding processes of cumulative causation, usually in ways that reinforce existing staying/moving patterns.”²⁵ Hence, research that is tuned to understanding such dynamics and processes can focus on migration intermediaries, transnational migratory networks, social and economic structures of immigrant incorporation, migration corridors, etc.²⁶

This Article aims to fill the gap by examining BLAs through the trajectories of institutionalization processes that they trigger or become integrated in at the meso-level. Institutionalization occurs when social processes are “experienced as possessing a reality of their own.”²⁷ In the migration context, institutionalization occurs, for example, when a guest-worker program becomes a stable element of an industry or employment sector; when immigration policing and deportation policies instill uncertainty and precarity in the everyday lives of migration workers;²⁸ or even when illicit intermediaries create organized and long-lasting paths of migrant trafficking or smuggling. Such social, economic or political processes that are institutionalized do not have to be formal or official to become regularized. We suggest that the significance of BLAs is related to their potential contribution to processes of institutionalization. Following previous work in which we studied BLAs in context, we aim to evaluate and theorize the institutional effects of bilateral agreements by examining the meso-level dynamics they partake in.²⁹ Our guiding research questions are, therefore, whether BLAs contribute to structuration or institutionalization processes, and what broader insights can be generalized from specific case-studies.

Meso-level analysis is increasingly utilized in the study of migration and its institutionalization.³⁰ In Israel, Kemp and Rajjman utilized it to address and explain the gap between official labor migration schemes and contorted outcomes, including the importation of trafficked labor. By identifying actors, mechanisms and structures they demonstrated how the institutionalized logic at the meso-level contributed

24 Adriana Kemp & Rebecca Rajjman, *Bringing in State Regulations, Private Brokers, and Local Employers: A Meso-Level Analysis of Labor Trafficking in Israel*, 48 INT'L MIGRATION REV. 604 (2014).

25 Thomas Faist, *The Crucial Meso-Level*, in SELECTED STUDIES IN INTERNATIONAL MIGRATION AND IMMIGRANT INCORPORATION 59, 70 (Marco Martiniello & Jan Rath eds., 2010).

26 Linn Axelsson et al., *Re-visiting the 'Black Box' of Migration: State-Intermediary Co-production of Regulatory Spaces of Labour Migration*, 48 J. ETHNIC & MIGRATION STUD. 1 (2021); Sophie Cranston et al., *New Directions in Exploring the Migration Industries: Introduction to Special Issue*, 44 J. ETHNIC & MIGRATION STUD. 543 (2018); MICHAEL P. SMITH & MATT BAKKER, *CITIZENSHIP ACROSS BORDERS: THE POLITICAL TRANSNATIONALISM OF EL MIGRANTE* (2008).

27 PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* 249 (1967).

28 Rebeca Rajjman & Adrian Kemp, *The Institutionalization of Labor Migration in Israel*, 192 ARBOR 289a (2016).

29 Cohen, *supra* note 11; Kurlander, *supra* note 11.

30 Julien Debonneville, *An Organizational Approach to the Philippine Migration Industry: Recruiting, Matching and Tailoring Migrant Domestic Workers*, 9(1) COMP. MIGRATION STUD. 1 (2021); Irene Bloemraad et al., *Immigrant Organization*, 48 ANN. REV. SOCIO. (forthcoming 2022).

to the emergence of irregular migratory practices, including human trafficking.³¹ Whereas their convincing analysis focused on the national migration regime, we aim to take this understanding a step further by fleshing out sectoral variations within the broad labor migration regime. The Israeli migration regime is not monolithic. Apart from differences that relate to the specificities of clientelist constellations in each sector, we expect to find distinct trajectories of meso-level transformations due to differences in anticipated skill levels. Although both construction and agriculture are regarded as low-skill sectors fitted for temporary guest-worker policies, there is a significant difference in the perception of skills within each sector. While workers in construction are regarded as professionals and expected to arrive with a specific skill set, the agricultural sector does not expect specific skills or expertise.³²

As the case study will demonstrate, the difference in the significance accorded to skill in each sector is reflected in the presence or absence of skill tests embedded in the recruitment processes, before and within the institutional frameworks provided by BLAs. Yet its importance is not limited to the profiles of prospective workers. It is consequential for determining permit quotas in each sector and, at the other end, in creating bypasses for recruiting workers outside BLAs. It is also reflected in the different functions of meso-level intermediaries and therefore also in the place of BLAs in sectoral processes of institutionalization. This relationship between the perception of and remuneration for skill and the organization of the employment sector at the meso-level are more apparent in the live-in care sector³³ with its characteristic gendered markers.³⁴ These aspects, which will be addressed in the discussion, further underscore the distinctive effects of BLAs as a factor in the specificity and the institutional organization of respective employment sectors.

II. THE ISRAELI CASE STUDY: A CROSS-SECTORAL COMPARISON

The construction and agricultural sectors in Israel have been historically dependent on the cheap labor of noncitizens and, expectedly, were the first to turn to overseas

31 Kemp & Rajman, *supra* note 24, at 606-7.

32 For the construction sector, see 9.7.0002 Procedure for Skill Testing and Selection of Overseas Foreign Workers for the Construction Sector in Countries of Origin (updated July 7, 2016), https://www.gov.il/he/departments/policies/exams_for_construction_workers_in_their_origin_country; in agriculture informal capabilities test were conducted by recruitment companies in the past, but it has not been standardized, see Yahel Kurlander, *On the Establishment of the Agricultural Migration Industry in Israel's Countryside*, 21 GEOGRAPHY RSCH. F. (forthcoming 2022); Matan Kaminer, *The Oksana Affair: Ambiguous Resistance in an Israeli Warehouse*, 19(1) ETHNOGRAPHY 25 (2018).

33 Eileen Lagman, *Moving Labor: Transnational Migrant Workers and Affective Literacies of Care*, 3 LITERACY COMP. STUD. 1 (2015); Jenna Hennebray & Margaret Walton-Roberts, *Rebalancing Act: Promoting an International Research Agenda on Women Migrant Care Workers' Health and Rights*, in A RESEARCH AGENDA FOR MIGRATION AND HEALTH 88 (Bruce Newbold & Kathi Wilson eds., 2019).

34 Hanny Ben-Israel, *The Fragile String to Life Itself: Labor, Migration and Care between Altruism and Instrumentalism* (unpublished MA Thesis, Tel Aviv University, 2020) (on file with authors).

migrant workers.³⁵ They were also the first sectors in which BLAs were signed and implemented in Israel and are therefore the axis of the cross-sectoral comparison provided in this section. The comparison will proceed as follows. Subpart II.A lays out the contextual background of both employment sectors, against which subpart II.B recounts the main milestones in the entry of overseas migrant labor and in the evolution of a permit quota system for the regulation of domestic temporary low-skill migration programs (TLMPs) that are designated for overseas laborers, setting the stage for the use of BLAs. We then turn to assessing the meso-level intervention of BLAs in each sector. Subpart II.C offers a closer analysis of meso-level institutionalization processes in each sector; and II.D addresses the bypasses that have undermined the achievements of BLAs in different ways.

A. The Arrival of Noncitizen Workers to the National Labor Market in Israel

The construction and agricultural sectors in Israel are part and parcel of the Jewish-Zionist narrative. Through the early years of Jewish immigration and the establishment of the State of Israel, manual labor in construction and agriculture was idealized as participation in nation-building. Early on, however, these sectors came to rely on the employment of precarious workers. First were the Palestinian/Arab minority, who were subject to a permit regime for employment outside their areas of residence until the end of military rule, which lasted until 1966. After 1967, Palestinian residents of the Occupied Territories began to commute daily, with and without permits, filling the ranks in the lower tiers of these employment sectors. By the 1980s, circa 110 thousand Palestinians, nearly half of which were permit holders, made up approximately 6 to 7% of the working force in Israel. According to Bartram, up to 25% of all employees in agriculture and 45% of all employees in construction were Palestinian residents of the Occupied Territories.³⁶

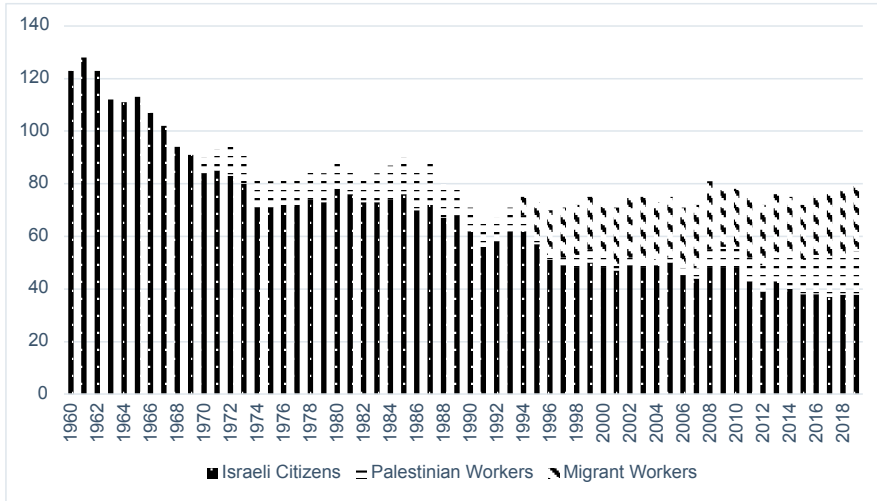
From the end of the 1980s, agricultural producers, construction companies and the powerful agricultural lobby sought to reduce their reliance on the Palestinian labor force and began to exert cliental pressure on the Israeli government to allow the entry of overseas migrant workers. Due to a combination of factors, ranging from security and control considerations to welfare state reorganization and retrenchment, the drive succeeded.³⁷ From the early 1990s, the share of oversea migrant workers grew steadily and partially substituted for Palestinians employed in construction and agriculture.

35 ADRIANA KEMP & REBECCA RAIJMAN, *MIGRANTS AND WORKERS: THE POLITICAL ECONOMY OF LABOR MIGRATION IN ISRAEL 72-80* (2008) (Isr.).

36 David V. Bartram, *Foreign Workers in Israel: History and Theory*, 32 INT'L MIGRATION REV. 303, 307 (1998).

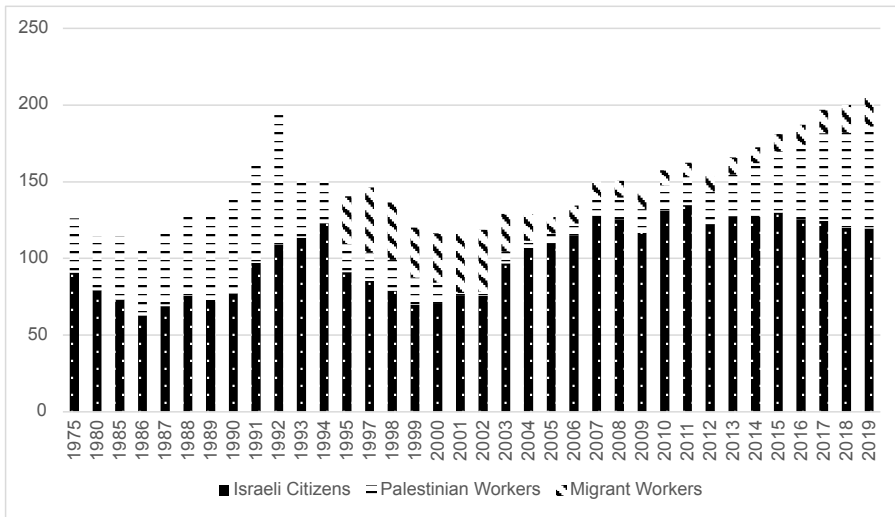
37 KEMP & RAIJMAN, *supra* note 35, at 72-80.

Table II.a: Employees in the Agricultural Sector, 1980-2019.



* Data generated based on Central Bureau of Statistics Annual Reports.

Table II.b: Employees in the Construction Sector, 1980-2019.



* Data generated based on the Central Bureau of Statistics Annual Reports.

The data shows that the entry of overseas migrant workers changed the composition of the labor force in both sectors. Yet it also demonstrates the different paths of migrant labor into each of the sectors. In agriculture, the entry of overseas migrant workers came together with the rapid decline in the numbers of Israeli agricultural

producers. As Table II.a demonstrates, half of all workers in agriculture are noncitizens, while the number of self-employed has dropped to a fourth of its level in 1980. This growing, extensive reliance on migrant workers is also reflected in the permit quotas, as shall be explained below. Meanwhile, as shown in Table II.b, the number of Israeli workers in construction has grown over the years, while the overall share of overseas migrant workers remains limited and the number of Palestinian commuters has fluctuated and risen after the decline of violence in the territories under military occupation. Thus, differential internal dynamics and modes of production that vary from one sector to the other have contributed to overall outcomes that differ as well.

Laying out the contours of TLMPs in Israel cannot be completed without reference to live-in care, which for the past two decades has been the largest employing sector of migrant workers. Overseas care workers arrived in the 1980s, alongside migrant workers in the construction and agricultural sectors.³⁸ Yet the evolution of the care sector has taken a different course. Unlike sectors that had been previously reliant on Palestinian, predominantly male commuters, the model of live-in care workers emerged with the arrival of overseas, predominantly women migrant workers.³⁹ The creation of this designated labor sector was triggered by the inclusion of home nursing insurance in the Social Security Law in 1986.⁴⁰ This law grants social benefits to support elderly and disabled persons so they can remain in their homes and communities. The low social security benefits proscribed by the new home nursing insurance program increased the reliance on migrant workers, who characteristically took on the difficult and demeaning tasks of live-in caregivers for low salaries. The rise of manpower companies and the growing segmentation of the Israeli labor market contributed further to a steady rise in the entry of migrant workers, most notably women from the Philippines.⁴¹

In contrast to the construction and agricultural sectors, where there was pressure to increase sector productivity and reduce the reliance on noncitizen workers, no similar policy restricted the rise in the number of migrant care-workers in Israel. There is no quota limit on entry and employment permits, as the sole criterion are dependency tests conducted by the National Social Security Institute. As a result, the care sector grew steadily and became the dominant employer of migrant workers, authorized and unauthorized alike.⁴²

38 Population and Immigration Authority [PIBA], Data on Foreigners in Israel—Summary of 2020 (Mar. 2021) (Isr.), https://www.gov.il/he/departments/publications/reports/foreign_workers_stats_2020.

39 RAIJMAN & KUSHNIROVITCH, *supra* note 20.

40 Amendment no. 61, Social Security Law, 5755-1995, SH 1882, 458 (Isr.), https://www.nevo.co.il/law_html/law01/039_002.htm.

41 KEMP & RAIJMAN, *supra* note 35, at 107.

42 By the end of 2020, the live-in care sector employed over 55 thousand workers (circa 56% of all authorized migrant workers in Israel) and over 13 thousand unauthorized workers (circa 73% of all unauthorized workers). PIBA, *supra* note 38.

B. The Emergence and Evolution of TLMPs: The Permit and Quota System in Agriculture and Construction and the introduction of BLAs

The changing composition of the workforce in agriculture and construction is not simply a consequence of supply and demand dynamics. Since the entry of noncitizen workers is conditioned on specific permits and employment restrictions, the Israeli immigration regime plays a significant role in structuring secondary labor market sectors within which these workers are employed. Immigration and labor market policies were implemented through the combination of a permit and quota system, serving as a key regulatory method whereby the government determines the scope, makeup, and employment domains of guest-worker programs.⁴³ Formally, the permit and quota regime applies across all sectors and to all noncitizens. Yet the process of determining quotas in each sector varies significantly. In construction and agriculture, the quota was set in each sector as an outcome of its specific meso-level dynamics and political-economic organization. By contrast, in the care sector no significant limits have restrained the steady rise of quotas for the past three decades.⁴⁴

Another prevalent category distinction is that between the permit regime that applies to overseas workers and the military-based permit regime to which Palestinian commuters are subjected.⁴⁵ Given the difference in legal structures and political logic operating against the backdrop of government policies and the institutionalization of these permit regimes,⁴⁶ BLAs apply only to the recruitment and placement of overseas guest-workers. Although this Article addresses institutionalization processes that involve BLAs, nonetheless the different segments of the overall regime are not completely separated, as the tables above have demonstrated.

A closer examination of the differences between the quotas for overseas migrant workers shows how volatile the quota in construction is as compared to that in agriculture. In both cases, however, the realities on the ground seem to contradict declared governmental policies of limiting the reliance on migrant labor.⁴⁷ This is evident not only in the context of agriculture, where the stability of the quota does not coincide with a limited-migration policy. In the context of construction, where the government succeeded in reducing quotas and the presence of migrant workers to a minimum, quotas nonetheless have been rising steadily since 2013. In both sectors there remains a gap between policy and implementation with respect to the steady or growing numbers of overseas workers, as is often the case where

43 KEMP & RAIJMAN, *supra* note 35, at 105.

44 Hila Shamir, *Migrant Care Workers in Israel: Between Family, Market, and State*, 28 ISRAEL STUD. REV. 192 (2013).

45 Yael Berda, *THE BUREAUCRACY OF THE OCCUPATION: THE PERMIT REGIME IN THE WEST BANK, 2000-2006* (2012); Yael Berda, *BETWEEN THE RULE OF LAW AND STATES OF EMERGENCY: THE FLUID JURISPRUDENCE OF THE ISRAELI REGIME* 173-76 (2017).

46 KEMP & RAIJMAN, *supra* note 35, at 105.

47 Zvi Eckstein, *Committee on Employment Policy Final Report* (2007), <https://www.tau.ac.il/~yashiv/eckstein1.pdf>; Zvi Eckstein, *Committee on Employment Policy Final Report* (2010), https://www.boi.org.il/he/Research/Pages/papers_paper19h.aspx.

declared, restrictive immigration policies are frustrated by conflicting clientelist and interest group politics that undermine exclusive policies.⁴⁸ In Israel, organized employer interest groups are constantly negotiating the level of quotas, ever since this regulatory regime was introduced. Their main counterparts at the governmental level are the Ministry of Finance and Population and the Immigration and Borders Authority (PIBA) at the Ministry of the Interior, with varying support of other ministries, such as the Agricultural Ministry and the Ministry of Trade and Labor. Only seldom have the negotiations over quotas become public, when employer organizations, most commonly agricultural producers, turned to public campaigns in order to preserve their quota against governmental pressures.⁴⁹

Table II.c: Number of Authorized Overseas Migrant Workers under the Quota and Permit System.



* Data based on the number of authorized migrant workers and generated from published PIBA reports. These figures do not include the number of foreign students (in agriculture) and workers of foreign construction companies, discussed below.

When Israel first became a recipient of global transnational labor migration, it refused to regulate that migration through BLAs.⁵⁰ Initially the government was

48 Stephen Castles, *Why Immigration Policies Fail*, 27 *ETHNIC & RACIAL STUD.* 205 (2004).

49 Shimon Shoshani, *Committee for the Evaluation of the Foreign Workers in the Live-in Care Sector: Intermediaries, Handling and Recruitment* (Sept. 2014), <https://tinyurl.com/7ujk55b2>; see generally Avinoam Cohen, *Migration Policy and the Labor Market*, in *AN ALTERNATIVE ANTI-TRAFFICKING ACTION PLAN: A PROPOSED MODEL BASED ON A LABOR APPROACH TO TRAFFICKING* 23 (TraffLab Research Group Policy Paper, Tel Aviv University, Hila Shamir & Maayan Niezna eds., 2020) (Isr.), <https://tinyurl.com/2zn724x2>.

50 Ze'ev Rosenhek, *Migration Regimes, Intra-State Conflicts and the Politics of Inclusion and Exclusion: Migrant Workers in the Israeli Welfare State*, 47 *SOC. PROBS.* 49 (2000). Back in 1999, Israel declined a

concerned about establishing any direct or even indirect responsibility for employment relations.⁵¹ Indeed, even the preliminary attempt to enter into an agreement with Thailand was originally couched as one between Thailand and the IOM, and the government of Israel was not intended to be a direct part of the agreement.⁵²

Yet with the understanding that overseas migrant workers would remain an integral part of the labor market, and in view of the persistent enforcement deficits, the government gradually began to reconsider its longstanding unilateral approach. In 2005, determined to “prevent the abuse of foreign workers and collection of exaggerated recruitment fees,” the Israeli government decided that agreements should guarantee that recruitment is conducted diligently, instructing that recruitment be supervised by the IOM and that permits only be allocated to workers recruited under such an arrangement.⁵³ In the ensuing period, Israel negotiated and entered a set of BLAs with sending countries. BLAs are sector-specific, and they have gradually come to address all areas of temporary guest-worker programs. Agriculture was the first field in which agreements were reached and implemented, followed by a set of agreements in the construction sector. Additionally, recent agreements that are yet to be implemented will regulate guest-worker programs in the hospitality and care sectors.

The evidence accumulated since the inception of the BLAs shows a clear positive effect on exploitative recruitment practices. Where BLAs were implemented there has been a drastic reduction of recruitment fees.⁵⁴ Indeed, BLAs have registered notable achievements in countering illicit recruitment practices and expanding to all guest-worker programs. As the case of Palestinian workers suggests, however, they provide only partial coverage of the field. In addition, and as we shall demonstrate below, even in terms of overseas migrant workers, additional paths have been created that circumvent the regulatory reach of BLAs.

C. Meso-Level Institutionalization—Agriculture and Construction Compared

The reliance of the agricultural and construction sectors on overseas migrants led to the development of complex meso-level networks of recruitment and placement of workers. Organized migration industries operated in both sectors, linking informal intermediaries as well as recruitment and manpower agencies in the sending state and in Israel. The power of private recruitment and manpower agencies in this system

proposal to enter into such an agreement with the Philippines. See Stella Go, *Fighting for the Rights of Migrants Workers: The Case of the Philippines*, in *MIGRATION FOR EMPLOYMENT, BILATERAL AGREEMENTS AT A CROSSROADS* 187, 189, 197 (OECD ed., 2004).

51 Kurlander, *supra* note 11, at 126-63.

52 Cohen, *supra* note 11, at 29-30.

53 4024 Government Resolution, *supra* note 14.

54 Mina Zemach, *Migrant Workers in Israel: Characteristics of their Entry, Working and Living Conditions—the Impact of Bilateral Labor Agreements 2019-2020* (July 2021), <https://tinyurl.com/2p85dpup>; REBECA RAIJMAN & NONNA KUSHNIROVICH, *THE EFFECTIVENESS OF THE BILATERAL AGREEMENTS: RECRUITMENT, REALIZATION OF SOCIAL RIGHTS, AND LIVING & EMPLOYMENT CONDITIONS OF MIGRANT WORKERS IN THE AGRICULTURE, CONSTRUCTION AND CAREGIVING SECTORS IN ISRAEL, 2011-2018* (2019), <https://tinyurl.com/4s2fnu5n>; RAIJMAN & KUSHNIROVICH, *supra* note 20.

derived first and foremost from state regulation. Avoiding direct responsibility for temporary migrant workers, the state apparatus turned to a mode of governance from a distance. It institutionalized the role of private agencies, with minimal enforcement of employment practices on the ground.⁵⁵ Once agencies were registered and formally regulated, they were also entrusted with the distribution and allocation of working permits, without effective governmental monitoring.⁵⁶ This combination strengthened the position of intermediaries seeking rents from the migration process. Contrary to formal policies that sought to limit and regularize guest-worker programs, illicit recruitment, including the extraction of prohibitive fees in the countries of origin, continued. Although such practice was prohibited by law and regulations that applied to the recruitment and placement agencies within and outside Israel,⁵⁷ enforcement was lacking. Until BLAs were entered into and implemented, the collection of illegal recruitment fees was standard practice in all migration corridors and across all sectors of recruitment and employment.

In terms of the recruitment segment of the migration industry, the BLAs that were implemented, first in agriculture and later in construction, were path-breaking. In its attempt to regularize recruitment and prevent any turn to irregularity after migration, the government became deeply involved in institutionalizing the migration recruitment process. The recruitment processes anchored in BLAs transformed previous practice by channeling workers to formal mechanisms that do not require additional, illegal payment.⁵⁸

On closer inspection, however, the institutionalization of recruitment in agriculture and construction followed different paths. In agriculture, the migration industry exerted political and legal pressure to challenge the policy directive that threatened to cut off its profits, but within less than a decade a BLA with Thailand was implemented. The new recruitment mechanism introduced new actors to the migration processes, leading to a comprehensive reorganization at the meso-level.⁵⁹ In Thailand, oversight functions were assigned to the IOM offices in cooperation with the Thai labor office. In Israel, a civil-society organization of sorts, CIMI (the Center for International Migration and Integration), an organization established by the JDC (Jewish Joint Distribution Committee), was contracted to support the connection with the IOM, operate a designated hotline for workers arriving under the BLAs, and follow the agreements with evaluative research. As the transnational ties of the private recruitment agencies were severed, many of them went out of business. The Israeli-Thailand BLA centralized the recruitment of workers and

55 Lea Pilowski, *Present and Absent: A Study of Manpower Companies, Their Handling of Migrant Workers in Israel, and their Relationship with the State*, in *THE NEW WORKER: WAGE EARNERS FROM FOREIGN COUNTRIES IN ISRAEL* 41 (Ruvi Nathanson & Lea Achdut eds., 1999) (Isr.).

56 Kemp & Raijman, *supra* note 24.

57 Employing Workers by Manpower Agencies Law, 5756-1996, LSI 1578 (1996) (Isr.), https://www.nevo.co.il/law_html/law01/116_001.htm; Employment Service Regulations (Payment of Job Seeker for Employment Intermediation), 5766-2006, LR 6481 (2006) (Isr.), https://www.nevo.co.il/law_html/law01/999_625.htm.

58 RAIJMAN & KUSHNIROVICH, *supra* note 20.

59 Kurlander, *supra* note 11.

channeled it through a novel cooperative entity, known as TIC (Thailand Israel Cooperation on the Placement of Workers). In Thailand, recruitment was originally handled by the Thailand office of the IOM. With the benefit of path dependence, the TIC endured even when in 2020 the IOM withdrew from its activities in the Israel-Thailand corridor and handed over responsibility to the Thailand Labor Ministry.⁶⁰

The trajectory of BLAs in the construction sector was different. The meso-level organization of the field had been transformed earlier, when a previous system that bound migrant workers to their employers was changed to employment by designated manpower companies. In this case, court-based litigation concerned with the exploitation of workers coincided with government-driven regulatory reforms guided by zero-migration policies. As a result, the government led a regulatory reform that required all workers in construction to be employed through sole purpose manpower companies. By adopting this new regulatory framework, the Ministry of Finance sought to resolve enforcement deficits in the field, while critics of the binding system hoped it will weaken the reliance of workers on employers and ameliorate the conditions of precarious employment.⁶¹ In 2004, a government resolution reaffirmed an inter-ministerial committee report that recommended a reform of the guest-worker program in construction, including the system of employment and permit allocation to employers.⁶² New regulations were issued in 2005, setting out a system of employment through designated manpower companies. Soon thereafter, the Supreme Court struck down the binding system, ruling that it was prone to exploitation.⁶³ As these regulatory developments occurred, there was a steep decline in worker quotas and a successful enforcement drive was conducted against unauthorized migrant workers. Confronted by a changing regulatory climate, the Israeli construction sector had to adjust, and designated manpower companies soon entered the field. Early on, 39 such companies were established, in which migrant workers registered as employees. This figure has remained relatively stable over the years.⁶⁴ As compared to the institutionalization processes in the agricultural sector, the meso-level transformations in construction occurred in the internal domain. The established migration industry continued unabated, as recruitment fees continued to rise. Moreover, the first BLAs signed, with Bulgaria and Romania, had only a minimal effect on the composition of the labor market.⁶⁵

60 Nanchanok Wongsamuth, *Labour Abuse Fears Rise for Thai Migrant Workers in Israel Under New Deal*, REUTERS & THE JERUSALEM POST (July 21, 2020), <https://www.jpost.com/israel-news/labor-abuse-fears-rise-for-thai-migrant-workers-in-israel-under-new-deal-635818>.

61 Inter-ministerial Report on the Planning the Employment System of Foreign Workers in Israel and Conditions for Allocating Permits for Employing Foreign Workers (Andorn Committee) (Aug. 2004), <https://tinyurl.com/mtvcyuma>.

62 2446 Government Resolution, Migrant Workers' Employment Arrangements (Aug. 15, 2004), https://www.gov.il/he/departments/policies/2004_des2446.

63 HCJ 4542/02 *Kav Laoved (Worker Hotline) v. The Government of the State of Israel* PD 61(1) 346 (2006).

64 PIBA, List of Manpower Companies Employing Foreign Construction Workers (2021), https://www.gov.il/BlobFolder/policy/authorized_corp_constructions/he/auth_corps_oct2021.pdf.

65 Nonna Kushnirovich et al., *The Impact of Government Regulation on Recruitment Process, Rights, Wages and Working Conditions of Labor Migrants in the Israeli Construction Sector*, 16 EUR. MGMT. REV. 909 (2019).

While textual examination of the respective BLAs in agriculture and in construction reveals only minor distinctions, their roles in the institutionalization dynamics are not equivalent. Whereas BLAs in agriculture impacted the migration industry, they did not have similar effects in construction where they facilitated the re-expansion of the guest-worker program through a steady rise of the permit quota and diversification of the countries of origin to include China, Ukraine, and Moldova. In agriculture, by contrast, BLAs had only a minimal impact on this aspect of migration policy. Thailand remains the main source country and we have seen the quotas remain largely unchanged. Finally, in both sectors BLAs provide only partial coverage despite official policies that require all migrant workers to be channeled through BLA-based mechanisms.

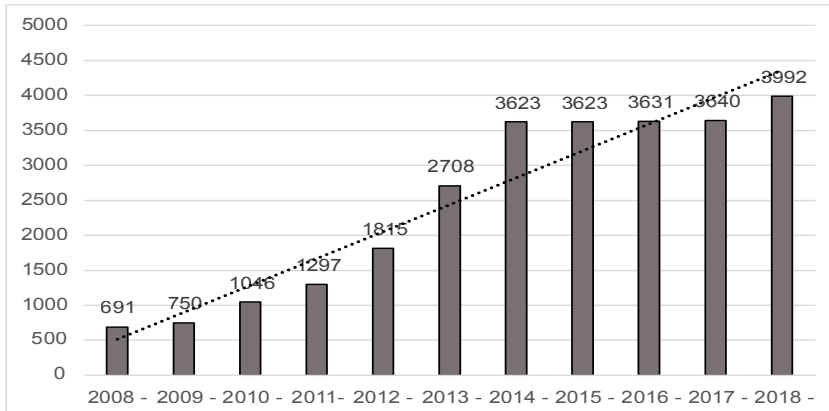
D. Construction and Agriculture—Bypassing BLAs

Both in construction and in agriculture, paths to filling the empty ranks of low-tier jobs were created long before BLAs were adopted. A trainee program in agriculture has operated in Israel since the 1950s and foreign construction companies that employ posted workers have been authorized to operate since the mid-1990s. Since both programs are still in existence, they bypass the formal policy of sole reliance on BLAs for admitting migrant workers. They may therefore preserve problematic recruitment and employment practices, in terms of prohibitive recruitment fees, de facto expansion of sector-based quotas, and the reappearance of problematic binding practices.⁶⁶

In agriculture, an age-old trainee system was established under the Ministry of Foreign Affairs, as a means of delivering technical aid to developing countries and gaining diplomatic support. Over the years, various non-state agents have been involved in the implementation of the trainee program. Yet since the turn of the millennium, even more significantly in the past decade, the training courses offered to international students from Asia, Africa and Latin America have become a path to bypassing BLAs. Students arrive for a period of 11 months under working visas and are only allowed to work as trainees in agriculture. Different indications of the real nature of these programs suggest that students pay excessive migration fees, including in the form of tuition, but become de facto workers. Moreover, the entry into force of the Israel-Thailand BLA seems to have accelerated the rise in the number of trainees working in agriculture.

66 Kurlander, *supra* note 11.

Table II.d: Students (Trainees) in Agriculture, 2008–2018.



In fact, subsequent government resolutions have raised the student-trainee cap to 4,000, adding it to an extended BLA-based guest-worker program cap, and directed that a designated administration be set up for handling student-trainees.⁶⁷ By 2021, these resolutions were followed by regulations that require student-trainees to be handled by designated companies, 6 of which are already active.⁶⁸

In construction, the path for foreign construction companies to operate in Israel and post their workers was opened in 1996, with the entry of the Turkish-based company Yilmazlar. The company's ongoing activity in Israel was later extended under a bilateral procurement agreement between Israel and Turkey. Twenty years later, in the wake of the slow implementation of BLAs in construction, it became a model that was extended to additional construction companies. A series of government resolutions affirmed this turn and changed the method of regulating foreign companies from a government-to-government approach to a market, tender-based approach. The number of posted workers has more than doubled since 2017 and exceeded 2,600 by the end of 2020.⁶⁹ The growth potential of this sector is significant: 9 companies are currently active in Israel, each authorized to post up to 1000 workers, and the government has authorized the operation of up to 12 foreign construction companies.⁷⁰ As in agriculture, the growing reliance on foreign companies, mostly Chinese-based, circumvents the BLA-based path of guest-worker programs and their recruitment and placement protocols. Furthermore, it allows the de facto binding

67 3431 Government Resolution, Governmental Policy in the Subject of Employment of Non-Israeli's and Government Decision Amendments (Jan. 11, 2018), https://www.gov.il/he/Departments/policies/dec3431_2018; 621 Government Resolution, Foreign Trainees in the Agriculture Sector and Government Decision Amendments (Dec. 6, 2020), https://www.gov.il/he/departments/policies/dec621_2020.

68 PIBA, Regulations on Student-Trainees in Agriculture (May 31, 2021), https://www.gov.il/he/departments/policies/foreign_trainees_in_agriculture.

69 PIBA, *supra* note 38.

70 4059 Government Resolution, Increasing the Pool of Foreign Construction Companies (July 26, 2018), https://www.gov.il/he/departments/policies/dec4059_2018.

of workers to their employers, with evidence suggesting that it can indeed lead to exploitation that even amounts to trafficking in persons.

This Part has explored the parallel institutionalization paths of the agricultural and construction sectors as sites of TLMPs, highlighting both the similarities and the variations. In both sectors, BLAs appeared as governmental, top-down regulatory attempts to intervene in the meso-level organization of the respective sector. In agriculture, the migration industry was substantially challenged by the new regulatory scheme, leading to a decade-long, and eventually failed, struggle to stall the implementation of the BLA. Yet in both sectors bypassing routes were gradually created, letting in new actors and limiting the reach and coverage of BLAs in the internal, domestic domain.

III. DISCUSSION AND FUTURE EXTENSIONS

The BLAs entered into by the Israeli government in agriculture and construction succeeded in centralizing the recruitment processes that occur within their ambit and shifting the selection of migrants to the pre-departure stage. The government thereby sought to overcome problems related to informal and unauthorized migration, including the exploitation of workers by employers, which were associated with the recruitment fees incurred in the migration process.⁷¹ The reduction of migration costs and removal of illicit agents of the migration industry from the migration process was expected to clear the system of irregularities, which undermined the declared scope of the TLMPs and were also a source of constant critique levelled against governmental conduct in the field.

Yet the distinctive organization of different employment sectors suggests that BLAs with similar aims do not perform equally. Indicative in this respect is the new agreement covering the live-in care sector, entered into in 2018 with the Philippines and implemented from July 2021. To allow ex-ante screening, the agreement stipulates that live-video interviews should be conducted, and such practice had indeed been adopted even before the agreement came into force. These interviews are conducted by prospective employers who are concerned about the anticipated “fit” of live-in care workers rather than their skill. Facilitating the interviews are the manpower agencies that, regardless of an embedded conflict of interest, handle both ends of the live-in care employment relations. As in agriculture (and unlike in construction), migrant workers are directly employed by individual employers and are expected to become an integral part of their households. Since BLAs in the live-in care sector are in their preliminary stages of implementation and the decisive majority of workers are not covered by the agreements, it is still too early to include this

71 In 2007, the Israeli Supreme Court justified the binding of posted workers to a foreign construction company, explaining that unlike in the general case of migrant workers who have paid excessive recruitment fees, workers that did not incur migration costs (according to the agreement that permitted the operation of the foreign company) can leave if problems arise regarding working conditions. H.C. 10843/04 *Hotline for Migrant Workers v. The Government of Israel* PD 62(3) 117 (Sept. 19, 2007).

significant case in the present comparative analysis. With the maturation of these agreements, however, they may supplement the present study with an important additional layer of comparison.

We suggested at the outset that BLAs can (a) trigger institutionalization processes, (b) become integrated in or reflect ongoing institutionalization processes, or (c) remain detached from such processes. In Israel, the processes leading to the BLAs covering TLMPs for the agricultural sector triggered institutionalization processes. The meso-level was reorganized to include new actors, accommodate the change in the role of governments, and exclude migration industry actors seeking rents from the migration process. In the construction sector changes had begun before the BLAs materialized and BLAs were integrated in the process, leading eventually to an increase in the quota of TLMPs in construction. The consequence of BLAs in the live-in care sector remains to be seen, given the unique characteristics of the sector and its strong inclination to achieve an employer-employee “fit” that is not simply about objective skill and is easier to achieve ex-post. Indeed, as regards the live-in care sector, what has been most conducive to bypassing the BLAs is the relative toleration of unauthorized employment and recurrent amnesties for workers with authorized employers.

Projecting the findings of the comparison between the agricultural and construction sectors on the potential consequences of the agreement that covers live-in care raises further questions regarding institutionalization processes in the meso-level organization of the field. Whereas the migration industry in agriculture could be separated from the economy of agricultural production; and designated companies in construction employ migrant workers directly; the economic viability of manpower companies in the live-in care sector is more dependent on the simultaneous handling of employers and employees.⁷² We therefore anticipate that the endemic problems of the care sector, which arise from the dual role of manpower companies that exacerbate workers’ vulnerability, will be more difficult to resolve through BLAs that focus on heavy regulation of the pre-departure phase.

A different, emerging case study in the Israeli context will be found in the hospitality sector. Previously an employer of precarious, noncitizen workers but not a target for TLMPs, a new BLA with the Philippines entered into in 2018 opened a new corridor for overseas migrant workers. As in the case of construction, the availability of BLAs justified the turn to TLMPs and a newly instated quota of workers. However, as the meso-level organization of this sector as a recipient of migrant workers is in its early stages, it remains to be seen whether and how BLAs will interact with its institutionalization processes.

72 Yahel Kurlander, *Private Companies and Manpower Corporation*, in AN ALTERNATIVE ANTI-TRAFFICKING ACTION PLAN: A PROPOSED MODEL BASED ON A LABOR APPROACH TO TRAFFICKING 49 (TraffLab Research Group Policy Paper, Tel Aviv University, Hila Shamir & Maayan Niezna eds., 2020) (Isr.), <https://tinyurl.com/2zn724x2>.

CONCLUSION

In this Article we sought to explore the place of BLAs in relation to the institutionalization processes they induce or are integrated in, positing that BLAs would make a difference when their intervention at the meso-level can become durable over time. Juxtaposing the construction and agricultural sectors has shown how a general policy directive, implemented through the BLA framework, did not generate coherent results. While BLAs had similar effects on the extraction of illicit recruitment fees, in both sectors bypasses were created, reintroducing problems that the BLAs aimed to resolve. The minor effect of BLAs over employment practices in Israel is coupled by further segmentation of the labor market by additional categories of employment, including Palestinian commuters, agricultural trainees and posted construction workers, who enter their respective sectors outside the regulatory framework of BLAs. Divergences are also apparent in the organization of the meso-level. Such is the case of permit quotas, which remained stable in agriculture while steadily rising in construction. The coverage of BLAs in their respective sectors also differs, as the entry of foreign construction companies with their posted workers outweighs the student-trainee path in agriculture, in terms of its dominance and potential expansion. The tender processes through which construction companies enter the field also stand in contrast to the tightly regulated programs in agriculture. Where the latter demonstrates unusual centralization and state dominance in the field, the opening of the gates to posted workers in tender-based processes suggests a different state-market alignment.

The meso-level organization of guest-worker programs in agriculture and construction as well as the different paths of institutionalization of these sectors, within and outside BLAs, resists a simple classification of agreements. It suggests that context, rather than text, is the key to evaluating the benefits, limits and difficulties of utilizing BLAs for the regulation of temporary migrant labor programs. While BLAs tend to focus on both ends of the migration continuum—enhancing pre-departure screening and facilitating return—our analysis suggests that they cannot be detached from the internal domain and its specific dynamics. In this context we posited that without addressing the dual role of manpower companies that exacerbate workers' vulnerability in the live-in care sector, heavy regulation of the pre-departure phase will not resolve the persistent problems of the field.

Agreements that involve meso-level actors in the regulatory process and address critical aspects of the institutionalization of migration programs can overcome implementation obstacles, as demonstrated by the BLAs in agriculture. At the other end, neglecting different segments of the migration continuum can lead to the sidelining of BLAs and the creation of bypasses that undermine their achievements. If BLAs are to be significant and endure over time, they must be more thoroughly embedded in their sectoral contexts and address the meso-level institutionalization processes in which they intervene.