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Human capital development and labor mobility: Maximizing opportunities and minimizing risks

Session 1.2. Temporary labor migration as a contribution to development: sharing responsibility.

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Executive summary

Temporary labor migrationⁱ can be a flexible and convenient way of meeting labor shortages in higher income countries, while alleviating the demographic and unemployment pressures in developing countries, and spreading the developmental gains of migration more widely. It helps migrants keep their home base in the origin country, and return their earnings and other resources, including skills, to their families and home communities. Where temporary labor migration is carefully managed, it can help reduce the social, human and financial costs of migration for poor migrants. Decent working conditions are key to protecting and economically enabling migrants. Gender sensitive policies are critical to protecting and empowering female migrants as major contributors to the well-being of families, communities and national economies.

Bilateral labor arrangements can be efficient vehicles for many countries to negotiate favorable employment and social welfare terms, particularly for low-skilled migrants. By providing access to formal labor markets under mutually agreed conditions, they can better protect the human and social rights of migrants, and empower them as agents of development for their home communities. They can also help assure the temporariness of the labor migration by supporting migrant return and reintegration, and strengthen trust between countries for cooperation in other policy areas. But these favorable conditions can also be achieved by flexible unilateral migration systems.

This paper examines some current policies of countries of origin and destination on temporary labor mobility that can benefit migrants from developing countries and enhance their contribution to family welfare and development back home. It looks at how temporary labor migration can achieve balanced trade-offs between more openness by destination countries to low-skilled immigration and greater commitment and ability of origin countries to ensure more legal or regular migration. How can bilateral agreements work for development? How do unilateral migration regimes also work for development? What capacities do low income countries need to manage their end of any agreement?

The paper highlights some good practices and points to some model elements of bilateral temporary labor arrangements that could strengthen their contribution to development by giving access to foreign labor markets, notably for low skilled, while meeting labor needs in destination countries, controlling irregular migration and protecting the human and social rights of migrants.

Introduction and Context

Temporary forms of labor mobility are not a new phenomenon, but there has been a dramatic growth in the numbers of temporary migrant workers admitted legally to high income countries since the 1990s (OECD 2006; World Bank 2006; Agunias 2007, Cholewinski 2007).ⁱⁱ These range from skills-based programs, which increasingly include foreign student schemes that may lead to employment and longer-term residence in the host country, to low skilled programs **that** are often based on government-to-government agreements.

This trend is partly a function of globalization and the ease with which people can today move to find work elsewhere. For some OECD countries, it may well also reflect the current political reservations about more permanent forms of migration (World Bank 2006). Importantly, temporary labor migration programs are increasingly a part of developing countries' national development and labor planning strategies. The Philippines, with more than 4 million workers abroad, systematically plans its labor emigration to supplement its wider national program of job generation to alleviate poverty (Philippine Medium term Development Plan 2005-2010).

Temporary labor migration programs (TLMPs) are widely recognized as potentially beneficial for development, particularly when they occur within bilaterally agreed frameworks, and target low skilled migrants (GCIM, IOM, ILO, UNDESA, WB etc). Low skilled temporary labor migration is likely to bring greater benefits for developing countries of origin by relieving labor market pressures at home (Koettl 2006), increasing remittances and spreading their effects more widely. Through return or repeat migration, TLMPs can “re-invest” their skills, money and other assets in developing countries of origin. While it is relatively easier for highly skilled, professional workers to access permanent resettlement opportunities, temporary labor migration programs often are the only vehicle for lower skilled workers to access work opportunities in richer labor markets legally.ⁱⁱⁱ

For many higher income countries, temporary labor from abroad can help to adjust to low or negative population growth and labor shortages at home. It can increase the flexibility of labor markets to respond to seasonal and cyclical fluctuations in the economy, fill labor gaps in specific sectors or industries, and strengthen the competitiveness of certain sectors in the global market (Abella 2006). TLMPs can allow businesses at destination to tap into the global labor pool, and provide opportunities for developing countries to enter the global labor market.

There are also potential risks and dangers to temporary labor migration programs; and the right kind of policy framework could help to minimize those risks (Ruhs 2006). For example, in their zeal to ensure that a temporary program is truly temporary, some destination countries can expect return and readmission commitments from origin countries, which may not have the institutional capacity to honor such commitments. Too many strictures on the migrants, such as deductions to pay recruitment costs, may also serve to drive them underground if they can earn more. TLMPs can also have negative impacts on local labor conditions in destination countries. They may also entail sub-standard labor conditions for the foreign workers. And there can be socio-economic costs of family separation, since most temporary schemes do not permit families to accompany or join the migrants.

In recent years, there has been a shift from the unilateral “guest worker” schemes of the 50s and 60s in Europe and the US to “more carefully designed temporary migration programmes” that could address some of these challenges, and meet the economic needs of both countries of origin and destination” (Ruhs 2006). This has been widely recommended by other international and inter-governmental bodies (Abella 2006).^{iv} Opening up more temporary labor channels may be politically easier for governments to sell than permanent immigration. The right match between labor needs and supply will also raise comfort levels about migration, and help defuse sensitivities in destination countries about immigration.

The International Labour Conference of the ILO has also called for expanded regular labor migration avenues based on labor market needs and on the observance of international principles regarding admissions procedures and treatment of migrants (ILC 2004). The ILO Multilateral Framework provides a useful compilation of principles, guidelines and best practices for effective management of labor migration, which can enhance the development benefits of temporary labor migration of benefit to development.^v

Many of these new insights and approaches have grown out of the recognition that earlier versions of temporary labor migration, namely the guest worker schemes in Europe and the US in the 1950s-1970s, mostly failed because they did not help employers manage their demand properly (temporary workers for permanent jobs), and failed to protect the terms and conditions of employment of the workers (Ruhs 2006). There is a call for new, expanded TLMPs that are based on the linkage between a) a proper management of the role that foreign workers can play in meeting domestic labor demands, and b) the protection of the terms and conditions of the foreign workers. The failure to achieve a) can lead to the failure of b), which can be a vicious circle for the development potential of migration. The failure of a) has also led to market distortions and undue dependence on migrant labor, which in turn has led to greater rejection of

migrants by local workers; which in turn has influenced the restrictive immigration policies of destination countries (Ruhs 2006), driving millions of migrants in some parts of the world into the informal labor market, where they are unprotected, vulnerable to abuse, and earn and remit less. All of which reduces the developmental potential of migration.^{vi}

Most of the risks associated with temporary labor migration are likely to be minimized with policies that meet the three preconditions for making temporary labor migration programs work for all concerned: access to formal labour markets; protection and empowerment of the migrants; and a certain guarantee of temporariness.

Current policies and programs

Legal access

Legal, transparent and non-discriminatory avenues to access formal labor markets are a first obvious step towards optimizing the developmental benefits to migrants, their families and home communities. Too little legal labor mobility can lead to too much irregular migration (Martin 2007). Temporary labor migration schemes can cover a wide range of workers, including seasonal, contract and guest workers; service providers; self employed; working holiday makers; professionals and technical workers, students, trainees et al. Temporary labor mobility can occur under bilateral agreements, including less binding MOUs, or by unilateral entry schemes or multilateral agreements (GATS Mode 4, Free Trade Agreements and regional integration processes).

Unilateral labor admission programs

An ILO survey of its member states in 2003 revealed that there were few formal temporary labor migration programs, and those that do exist are mostly offered by high income countries.^{vii} The less developed countries, which may be hosting more labor migrants than developed countries,^{viii} generally do not have formal programs for temporary foreign workers.

For some time, unilateral labor immigration schemes offered by developed countries in Europe, the Americas and Australia have become more open and flexible, but mostly aimed at skilled persons. IT workers, executives, managers etc increasingly enjoy more flexible entry and residence provisions, easier transition to longer term and permanent residence,^{ix} spousal work rights, change of employer, or entry without guaranteed employment (see Australia's and Canada's points-based scheme for skilled workers; and the UK's Highly Skilled Migration program). There is increasing flexibility in Australia, Canada, UK, US, Spain and elsewhere for temporary workers or students to earn their way into permanent or longer term residence.

But there is also some growing flexibility towards lower skilled migrants. Canada's new global Low Skilled Pilot project allows low skilled workers to meet pressing labor shortages for up to 2 years.^x The UK is looking at the possible application of its new Points Assessment system to lower skilled.^{xi} Italy is poised to reintroduce a job-seeker visa to enable foreigners from developing countries to find a job placement in order to apply for temporary work in Italy. Cultural exchange and study programs are also offering more access to job opportunities abroad for people from low income countries: Australia's Working Holiday Maker scheme for young people to gain cultural experience while doing some itinerant work overseas has been expanded to developing countries such as Thailand and Egypt; and France has introduced a similar scheme for young professionals from some 12 partner countries, including Argentina, Morocco, Senegal and Tunisia, to finish their training, learn the language and collect work experience abroad (contribution from the Government of France).

Canada's unilateral foreign worker scheme is also being used by developing countries to establish large programs for their workers. The Philippines has a small flow of live-in caregivers

to Canada, unique in offering the chance of permanent residence after 2 years, alongside highly skilled/professional migrants, without the usual points testing for language skills, education, age etc.^{xii} But there has been no study by policy makers of the impact of this program on the country of origin, in particular the potential remittance erosion after the whole family has migrated. Also Guatemala has been able to negotiate, through the Quebec Farmers Association “Ferme” large seasonal movements of agricultural workers under Canada’s universal temporary foreign worker visa category. The latter program has been evaluated as highly successful in terms of almost 100% assured returns, high remittances, 20% female intake and improved family welfare back home.^{xiii}

Most European countries have some form of employer-tied, quota based, and labour market tested facility for temporary labor immigration; but low skilled intakes tend to occur through a myriad of bilateral arrangements, either for seasonal workers in agriculture, or contract workers in construction or the service industries, such as the German programs with Poland and other new EU countries, or Spanish programs with Morocco, Colombia or Romania. These schemes, each with its own admissions criteria and unique rules governing length of stay and adjustment of status, have replaced the one large guest worker program arrangements of the past (Martin 2007).

Bilateral labor agreements (BLAs)

In the absence of satisfactory multilateral solutions, a myriad of bilateral labor agreements have sprung up in the past decade or so, ranging from government-to-government framework agreements fully implemented by governments, or by employers, NGOs, recruiters, international organizations etc. to agreements on training, mutual protection of borders, information dissemination, counter trafficking, exchange of students or trainees, social security, readmission, mutual recognition of qualifications etc. Italy has more than 20 such agreements, many with African countries; the Philippines has more than 60 agreements globally. The Greek Government has bilateral labor agreements with Egypt, Bulgaria and Albania, mostly for seasonal workers, and believes that by establishing legal channels for migration, the agreements enhance inter-governmental cooperation at economic, social and cultural levels. Spain recruits most of its foreign labor under 9 bilateral agreements, most of them with countries in Africa and Latin America. In 2004, there were estimated to be more than 170 bilateral labor agreements negotiated by OECD countries, not all of them active (OECD 2004).

Bilateral agreements can be strictly government-to-government, with minimal involvement of private sector or other intermediaries, such as the Mexican-Canadian agreement on seasonal agricultural workers.^{xiv} But such agreements also increasingly involve support agencies from the private, NGO, international or labor union sectors: the agricultural union *Unio de Pagesus* in Catalonia provides valuable reintegration and retraining support to returning Colombian and other migrants. Bilateral agreements can also be on a government-to-local government basis (e.g. Philippines with Canada) or between government and manpower agencies (e.g. Guatemala with the Quebec Farmers Association FERME).

Agreements that do not permit the intermediation of private or other service agencies tend to be in the minority, because they can be a huge drain on public resources. The Philippines long ago discovered that it is more cost effective to allow the private sector to manage recruitment and other aspects of its foreign labor programs; but it applies strict laws and carrot-and-stick policies to regulate the behavior of private employment agencies, also by tying their responsibilities to those of employers. Where there are protective labor regulations and social security in the destination country, direct recruitment by agencies working with employers can also work well (e.g. Filipino caregivers to Canada).

However, most bilateral labor agreements do not explicitly aim at development or poverty reduction. Most serve destination country imperatives to meet labor needs and manage illegal

migration. Many in Europe, as in the case of Italy, where it is enshrined in law, are tied to readmission agreements, or ongoing negotiations of such agreements.^{xv}

Nevertheless, bilateral labor agreements can be effective vehicles to:

1. Promote economic relations and development (Nonnenmacher 2007). Germany's labor agreements with Central and Eastern European neighbours were also intended to help ease the countries' entry into the EU. Avenues have also existed for trainees from developing countries to upgrade or complete their skills training abroad. Canada's seasonal agricultural workers program with Mexico specifically selects rural workers from depressed regions in Mexico. It benefits these migrants through higher work opportunities and wages than at home, increased participation of women in the program (3% of the program in 2002, compared with no participation initially in 1974), high remittances and investment in the education of migrant children over time (Verduzco and Lozano, 2004).^{xvi} Greece sees its agreements with Albania, Bulgaria and Egypt as enhancing inter-governmental cooperation at economic, social and cultural levels (Greek contribution).
2. Set mutually beneficial terms and conditions of employment, and create a more equitable basis for cooperation between origin and destination countries. The mutual recognition of skills can ease entry to jobs in the partner country's labor market; and can come with capacity building for the origin country to ensure appropriate training to international standards. Few bilateral agreements, however, include this key element.
3. Establish safeguards against abuse of human rights by building in welfare and labor standards. They can also protect against brain drain: the UK's code of practice on recruitment of health workers encourages the use of bilateral agreements in the prevention of adverse consequences on developing countries (Nonnenmacher 2007).^{xvii} Agreements on mutual recognition of skills, bilateral agreements could help reduce brain waste.
4. Help lower the costs of migration and remittances, where governments or other agencies arrange low cost financial packages for the migrants with banks (Ecuador arranges cheap loans to repay the costs of migration for its seasonal workers with a local bank).

Nevertheless, questions have been raised about the limited skills enhancement potential of some of these bilateral programs, as the seasonal workers tend to have little opportunity for job mobility or transfer to more secure residence status.

France is experimenting with a co-management approach to its seasonal labor migration program with Morocco, in order to better balance the benefits of migration between the two countries. This relies on a close partner between the government employment agencies of the two countries (ANPE and ANAPEC respectively).^{xviii} Spain's programs with Colombia, Ecuador, Moldova, Morocco and Romania include aspects of "co-development" through building the capacities of migrants to transfer their skills and invest in small businesses in the origin country. Spain's new program with Senegal combines information, training, job placement, return support to migrants with encouragement of Spanish businesses to invest in Senegal. The impact of these strategies would be worth assessing.

Italy proposes to better co-plan its future foreign labor intake from traditional source countries like Egypt and Morocco through a two-pronged approach of offering a job seeker visa to aspiring foreign workers, and in cooperation with the origin countries, setting up databases of available workers in those countries. This will build on years of testing this kind of approach in such partner countries as Albania and Egypt (IOM Rome).

Thus there is today a new breed of TLMPs, smaller, more sector-specific, more circular and in some cases based more around incentives for legal and safe migration and voluntary return than

pure migration enforcement. Current temporary entry schemes for workers tend to be more liberal than multilateral arrangement, such as under GATS commitments, more flexible and adjustable to labor market conditions than the limited commitments of Mode 4.

Multilateral efforts

International treaties have had limited impact on migration from developing countries. Mode 4 of the General Agreement on Trade in Services (GATS)^{xxix} has the potential to broaden cooperation on labor services between origin and destination country, particularly through its non-discriminatory application to all party states. But Mode 4 has not helped substantially to increase cross-border labor movements from developing countries (World Bank, 2006). The few commitments to opening the market given to date by industrialized countries have been limited in number, type of work and duration of stay. Most positions available under GATS Mode 4 are for highly skilled (e.g. intra-corporate transferees), and their criteria for education and qualifications are restrictive. The numbers globally are very low.^{xx}

In contrast to trade, there is insufficient support for non-discriminatory, multilateral approaches to migration, because the economic implications of human mobility differ from those of movement of goods or capital. Competition between low and high cost “suppliers” conflicts with minimum wage and social security systems in many developed countries of destination (World Bank, 2006).

Temporary labor schemes can also be built into Free Trade Agreements, such as the Philippines nurses program to Japan (Nonnenmacher 2007). Following a series of workshops in 2003 and 2004 by WTO, IOM, OECD and the World Bank on migration and trade, there is ongoing analysis of those workable elements in bilateral agreements, which could help developed countries broaden their commitments under Mode 4 to temporary, low skilled labor movements from developing countries (Nonnenmacher 2007).^{xxi} World Bank experts suggest that governments may be more prepared to commit to Mode 4 if the movement is temporary, and there is the assurance of destination country cooperation in achieving this (Mattoo et al, 2002).

Protection can empower migrants as development agents

According to ILO, the development contribution of migration is closely linked to the social and economic protection of the migrants (ILO contribution). A comprehensive labor migration policy would equate such rights as the right to move, or such obligations as the recognition of occupational qualifications, with maximizing a migrant’s potential to contribute to development efforts. ILO Conventions 97 and 143 define some useful parameters for recruitment, decent employment contracts, training, family reunification and access to employment tribunals or courts in the event of unjustified termination of employment or expulsion.^{xxii}

Labor immigration policies in most high income countries tend to be more restrictive towards low skilled than towards high skilled migrants (Ruhs 2006). Many low skilled migrants can be particularly vulnerable if they are prepared to trade off their rights for the opportunity to earn more. One of the major causes of migrant vulnerability is the requirement that migrants work only for the employer linked to their work permit. In some countries, this has opened the way for exploitation and abuse of the migrant worker by employers. Similarly, if the work permit allows less time for employment than migrants need to cover the migration costs or other commitments back home, they may overstay and resort to illegal work. This can lead to potential exploitation, and reduce migrants’ capacity to bank their money, send remittances home legally, earn credit for loans and generally contribute to development.

Visas or resident permits that restrict the movement of migrants back home during their temporary stay in the host country can also make unfair distinctions against the principle of

family unification. This has in some cases led to illegal immigration of family members. Illegality is clearly one of the biggest obstacles to optimizing the development benefits of migration, as illegal migrants are excluded from most public services, social welfare and the financial services essential for safe, credit-attracting remittances and other transfers back home. In the US, this has been addressed through the “matricula consular” system by which illegal Mexican migrants can open a bank account via regulated financial institutions and remit their earnings with an ID issued by their Consulate. While this may empower migrants economically, it may also be driven more by economic and security motives than migrant-supportive ones. Some migrants in vulnerable circumstances (such as asylum seekers) may also not avail themselves of a facility offered by the authorities of a government they may be seeking asylum from.

Social security has been recognized as a basic human right,^{xxiii} yet many countries globally still have no national social security systems.^{xxiv} While there is some universal health care for migrants in many industrialized countries, most migrants do not enjoy social security abroad or for their families back home.^{xxv} This is in part due to the high numbers of migrants in irregular status, with no legal right of access to welfare. Exceptionally, Spain permits illegal migrants to register locally for a health card to access medical care; and this also serves as a valid basis for eventual regularization of status. Some migrant-receiving countries like Argentina and Albania provide free medical treatment for all migrants. More generally, countries like Pakistan, the Philippines and Sri Lanka have set up *Welfare Funds*, to which migrants contribute (US\$25), that help to protect them abroad and support their families back home, e.g. through loans, legal support, pensions, scholarships. This “good practice” has many potential lessons for other countries of origin.^{xxvi}

Similarly, there are few *social security agreements* between countries to cover migrants, particularly from developing countries (the US has 20 such agreements; but mostly with OECD countries). The Philippines, through its national Social Security System, has forged bilateral agreements with a range of countries to ensure the portability of the workers’ social security contributions in their host countries (ILAC/DOLE 2006). See also below discussion of standard contracts as a safety measure.

Mainstreaming gender concerns into migration planning for development

Females occupy an increasingly larger space in the labor migration world, and have been shown to make major contributions to household welfare, education and health, both as senders and recipients of remittances (World Bank 2006). For example, in Indonesia, the Philippines and Sri Lanka, three major remittance-receiving countries, females comprise between 60-80% of the overseas workers. Yet few countries build gender considerations into their labor migration policies; or collect gender-disaggregated data on which to build their policies.

At the destination end, the traditional immigration countries Australia and Canada have extensive resettlement support programs that cater to the special needs of women, children and the aged. Canada also has a longstanding Gender Based Analysis approach to all new migration policies.^{xxvii} Few destination countries in the largest receiving regions of Asia, the Middle East and Africa provide for such special needs. Notably, Jordan has recently endorsed a special working contract for foreign domestic workers to protect these predominantly female workers, despite a general lack of laws to cover domestic workers (ILO 2006).

Labor market segmentation may occur along gendered lines, and females are frequently concentrated in low skilled, unprotected sectors, more vulnerable to illegal migration and exploitation. Women at that end of the market tend to be least informed and have the least opportunities to upgrade their skills, hence are more vulnerable to abuse. (But women from developing countries are also increasingly migrating at the high end of the skills spectrum, and

for many of them access to the requisite education and compliance with highly specific visa requirements still remain problematic in many poor countries).

Information and training both prior to departure and in the host country can help raise women's awareness of gender-specific risks, and empower them through legal advice, re-skilling, skills upgrading, medical assistance and general social and cultural support. Filipina welfare officers both in the Philippines and overseas tend to be women. The Philippines have set up centres abroad to provide personal and vocational development support, reskilling, re-training, legal advice and support to runaways. Sri Lanka organizes similar community out-reach services to its women migrant workers abroad. In Manila, the Overseas Workers Welfare Agency (OWWA) has set up a half-way house to assist returned Filipinas who have suffered abuse abroad.

UNIFEM also works with recruitment agencies in Asia, under its Regional Programme on Empowering Women in some Asian countries to negotiate favorable contracts, benefits and working conditions for women; and to inform them of their rights. This has led to increased gender awareness among migrants and agents alike, and to the establishment of a Covenant of Ethical Conduct and Good Practices of Overseas Employment Service Providers (2005). It would be useful to monitor the practical implementation of this in labor recruitment practices.

Standard contracts are an important means of ensure respect for core human rights and labor standards, particularly for female migrants, across different bilateral labor agreements. The Philippines and Sri Lanka have set standard contracts as a means to enforce 'benchmark' or minimum wages for their migrant workers; and these are increasingly also being pursued by other Asian countries of origin. These prevent the deployment of their migrants in positions where wages and age requirements are lower than the pre-defined standards, or the standards applied to nationals of the host country. The Philippines' benchmarks for domestic workers (90% female) give regard to the particular vulnerabilities of this sector (under-regulation, gender abuses, high dependency on employers or long working hours), which many countries' laws do not adequately address. In a sector characterized by low education, skills and pay, the Philippines Government finds that it needs to negotiate on behalf of its migrants.^{xxviii}

Return/temporariness

The assurance of temporariness is key to ensuring acceptance of temporary labor migration by destination countries. Return migration is most likely to happen if temporary migrants are placed in temporary jobs, not permanent ones; and where there are real incentives to return. The biggest incentive is likely to be growth and development in the home country, but other policies related to migration and labor planning, or social and financial empowerment, can also work.

As a wide range of experts discovered about the guest worker programs of Austria, France, Germany and others in the 1960s and early 1970s, temporary migrants in inherently permanent jobs are likely to become permanent migrants. Over time, many temporary migration schemes can lead to some long-term settlement (OECD 2006). Policies that recognize this can aim for temporariness while preparing for possible permanence. Factoring the possibility of longer stay, repeat or circular migration into temporary schemes could serve as an effective filter for eventual immigration and integration (Koettl 2006). Some good practices include the H-1B dual intent visa program in the US,^{xxix} the seasonal programs between Spain and Colombia, Morocco and other countries, or the Live-in Caregiver program in Canada which sets high entry standards for the eventuality of permanence after 2 years. Spain's option of more permanent status for seasonal workers after four years of legal residence and work in Spain is seen by the government as an incentive to remain legally, or at least to delay the permanence for 4 years.

Incentives that strengthen the ties between origin and destination countries are likely also to encourage voluntary return. These can include easing re-entry into the destination country after

return home, i.e. not insisting on a new visa after each visit home (Kapur and McHale 2005).^{xxx} Enhancing the portability of retirement pensions and health benefits can also encourage voluntary return. Low cost portable social security packages may be an important benefit both to the destination and origin country (Koettl 2006).^{xxxi}

As stated above, bilateral labour agreements can be useful vehicles for facilitating return migration. Many agreements in Europe are linked to readmission commitments by the country of origin, although these do not necessarily guarantee that migrants will not overstay. More and more programs in Europe have built-in return and reintegration assistance packages, often described as “co-development” (France-Morocco; Spain-Colombia/Ecuador), because they help build the capacities of migrants, and provide financial assistance to set up small enterprises or be self-employed upon return. These appear to be working well within the scope of the particular program, but they would warrant further evaluation of their development impacts.

The Philippines has a high return rate of its temporary overseas labor force, among others because of the huge support infrastructure that offers training, skills upgrading and multi-skilling courses both abroad and at home, and direct reintegration support for the migrants and their families after return. Information or resource centres in origin and destination countries, as set up by the Philippines, using its welfare officers and labor attaches as resources, can help prepare migrants for return and reintegration. The Canadian program with Mexico has high return rates also because of the certainty of being selected again next year. Greece intends to establish Labour Offices in Albania for returnees under a Reintegration Agreement, with EU funding. These would help the returnees to re-insert themselves in the local labor market.

Employers and recruiters can also be held responsible for ensuring the return of their migrants, e.g. through imposing a bond on employers, or penalizing recruiters. The recent New Zealand seasonal program for Pacific Islanders obliges employers to ensure that migrants return or pay a penalty if they overstay. Other mechanisms discussed in the literature to promote return include schemes to retain part of the salaries or benefits to be paid in the country of origin upon return. But these schemes can be debatable from an equity perspective and, in some cases, may even constitute an inducement for working in irregular condition (Arango).

There will always be a certain degree of non-compliance regarding return, particularly in countries with liberal regimes.^{xxxii} This paper does not linger on the contentious question of whether more legal migration will mitigate illegal migration but rather on the fact that a) lack of legal opportunities or difficulties in accessing opportunities, because of lack of information, education, or the high costs of migration, or b) the lack of institutional support, can cause people to lock themselves in, often illegally, in the host country. Similarly, mis-matches between permanent labor needs and migration systems that only allow temporary labor admissions, and a lack of incentives to return, can encourage people to overstay illegally.

Cooperation for mutually beneficial solutions

This paper has pointed to some new cooperative forms of temporary labor migration that better link management of demand and supply in origin and destination countries with development considerations. These new approaches may help to meet the essential criteria for success of migrant labor mobility for development: closer matching of labor needs and supply; more managed, legal access, protection and empowerment of the migrants, and temporariness encouraged more by incentive than force.

Another way for countries of origin to address these issues is to strengthen solidarity amongst themselves, to share and agree on good practices and discuss these as a group with destination countries. The Asian Labour Ministers’ Conference of several years’ standing (the “Colombo Process”) is one such concrete effort, which has resulted in some useful compendia of good practices.^{xxxiii}

Lessons learned

- Temporary labor migration, particularly for low skilled, can be beneficial for developing countries, if it is designed carefully to match skills supply to real needs at destination, protects and empowers the migrants, and provides some assurance of temporariness.
- Bilateral labor agreements may offer some of the best examples of how countries of origin and destination can share the responsibilities and the benefits of such migration.
- There are three pre-conditions for temporary labor migration programs to work for both origin and destination countries:
 - Access to foreign legal labor markets: – admissions programs that are non-discriminatory, transparent and cost effective, including equal access for women; and information about legal migration options, e.g. through migrant resource centres.
 - Protection and empowerment of the migrants: fair work and wage conditions, social security cover, family support and access to financial systems abroad and back home can strengthen the migrants’ assets for development.
 - Assured temporariness of the migration. The certainty of return and temporariness can strengthen trust and cooperation between governments. Incentives for voluntary return are likely to yield greater benefits for development through the circulation of migrants’ skills, earnings and other resources, than forced return.

Some useful models of how to achieve these pre-conditions are given by experienced labor-sending countries of origin like the Philippines and Morocco, and the programs of labor-receiving countries like Canada, Spain and France. Some useful policy toolkits have also been made available by international expert agencies to guide policymakers in achieving the above, e.g.:

1. The ILO Multilateral Framework on Labour Migration - a guide to labor migration policies and practices that guarantee the rights of migrant workers, reinforce their protection and enhance their contribution to development
(www.ilo.org/public/protection/migrant/download/tmmflm-en.pdf)
2. The OSCE/IOM/ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination – a guide on policies, laws, programs and partnerships for better national and global management of temporary labor mobility, also for development effect. The Handbook has been translated into Russian and a version tailored to the Mediterranean region is being translated into Arabic (OSCE, IOM, ILO 2006).^{xxxiv}

The way forward for policymakers

The following “good practice” policy elements may be drawn from some of the initiatives discussed above, across the range of available program types (bilateral labor agreements, universal visa schemes, GATS Mode 4 facility). The optimal vehicle is likely to be an agreement between origin and destination country, which sets agreed terms of contract and employment that protect and empower the migrants and their families, and consider gender issues. Cooperative operational arrangements between governments and private recruiters, employers, non-profit service agencies etc can tend to lower the costs of migration for the migrants, and ensure a network of protection and support, if planned and managed smartly.

Country of origin:

1. Mechanisms to negotiate decent, equitable wage and working conditions.
2. Institutional linking of labor and migration planning – observatories, strategic reporting from missions overseas.
3. Standard contracts: for decent wage and work conditions, basic rights and gender equality.
4. Standard recruitment/placement fees (e.g. Philippines’ formula of 1 months’ salary)

5. Pre-departure and pre-employment information and orientation; including on rights and obligations, financial management, remittances, credit and loans schemes; gender-specific risks and support service. One-stop migrant centres may be a useful venue for this;
6. Skills training: cross-sectoral training or multi-skilling for lower skilled, prior to migration, while overseas and after return
7. Affordable welfare protection schemes; e.g. the Welfare Fund used by Pakistan, the Philippines and Sri Lanka: or private schemes that are appropriately regulated (see RT 1.3)
8. Affordable and sound documentation and ID (passport, ID card, work certificate etc)
9. Licensing and regulating recruiters and other agents involved in hiring and placing overseas workers;
10. Joint liability of recruiting agency and employer in ensuring adherence to the terms of the contract and protection of migrants; sanctions against and blacklisting of offenders;
11. Support structure abroad for legal advice, advocacy, training, skills upgrading, contract or mobility negotiation, etc.; e.g. the global labor attache network of the Philippines;
12. Return incentives, such as training and support for business start-ups, job opportunities etc., such as provided to migrants in Spain by *Unio de Pagesus*;
13. A system for proper recognition of qualifications from abroad.
14. Mainstream migration into the national poverty reduction plans (e.g. the PRSPs).

Country of destination

1. Non-discriminatory entry programs that give equal access to women; these can exist either within a bilateral labor agreement or a unilateral visa/entry permit scheme.
2. Legislation and procedures to ensure migrants are treated in the same way as nationals with respect to wages, working conditions, health care and other entitlements;
3. Flexible work permits to permit movement between jobs. This can still be within a sector. Where possible, authorization to work for migrants who have some legal temporary status.
4. Standard contracts (see above).
5. Monitoring implementation of the work permits and contracts; and appropriate blacklisting and sanctions against offenders;
6. Prosecution of employers who engage migrant workers without valid work permits; or otherwise abuse or exploit migrant workers.
7. Licensing and regulating the activities of recruiters and other agencies involved in the hiring and placement of migrant workers;
8. Return incentives and support: e.g. multiple entry visas, longer contracts; special savings accounts (Ruhs 2006); portability of pensions (Holzmann, Koettl and Chernetsky 2005)
9. Information on rights, obligations, risks, opportunities, integration or return options; and legal assistance if the migrant is in trouble; and access to medical staff who speak the migrant's language. One-stop migrant resource or information centres, set up by governments and serviced by NGOs, migrant associations, private sector, international organizations etc could be a useful venue for migrants to receive such services.
10. A mechanism to exchange information with countries of destination on labor market needs.
11. Systems for the recognition of qualifications and vocational training from abroad.

ⁱ Temporary migration can be defined in a range of ways, depending on the respective country's laws, regulations and labor migration programs; also for purposes of entitlements. For the purposes of this paper, a broader definition of temporary migrants is being applied, similar to that adopted by Abella and Ruhs, i.e. "those whose legal status is temporary, regardless of the amount of time they may have actually stayed in a country" (Abella 2006).

ⁱⁱ It is generally believed that the majority of foreign workers in developing countries are illegal, or undocumented, due inter alia to a lack of legal admission programs in those countries.

ⁱⁱⁱ Most higher income countries today offer multi-year or open-ended work and resident permits, family reunification, change of status options, spousal work permits etc.

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- ^{iv} See also the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2007. "On Circular Migration and Mobility Partnerships between the European Union and Third Countries," May.
- ^v See also the Berne Initiative's International Agenda for Migration Management (IAMM): http://bfm.mit.ch/fileadmin/user_upload/Themen_deutsch/Internationales/The_Berne_Initiative/IAMM_E.pdf
- ^{vi} Informal employment of migrant workers is not only due to failures in management. Economic structures and labor markets in destination countries are also crucial determinants.
- ^{vii} The survey showed that only the higher income countries operate seasonal worker programs; only the highest income countries admit working holiday makers and trainees; and only 2 of 26 lower middle income countries have programs for professionals, scientists and managers (see Abella 2006, p. 7).
- ^{viii} The Gulf Countries, for example, host over 12% of the world's migrant workers (ILO contribution).
- ^{ix} In 2004, more than 61% of status adjusters were already in the US.
- ^x This is part of Canada's universally applied Temporary Foreign Worker program.
- ^{xi} Tier 3 of the UK's Points System is assigned to temporary lower skilled work, although it will not be introduced until the UK Government determines that it is unable to fill lower skilled jobs with nationals from the new EU Member States. And implementation of the points system as a whole will only start in 2008. See <http://www.ind.homeoffice.gov.uk/aboutus/newsarchive/newpointsbasedsystem>
- ^{xii} The program is open to a range of semi-skilled and educated persons, including college graduates, those with incomplete graduate courses, and non-graduates who have worked as nannies in Hong Kong, Singapore and elsewhere (COA/IOM, Manila)
- ^{xiii} Every program participant has been found on average to benefit 5 other family members (IOM Guatemala).
- ^{xiv} Note that Canada does not intend to repeat such bilateral agreements, in light of WTO Mode 4 options.
- ^{xv} Readmission agreements are concluded to "facilitate the removal or expulsion of "persons who do not or no longer fulfil the conditions of entry to, presence in or residence" in a destination country" (Cassarino 2007 citing the European Commission's *Community Return Policy on Illegal Residents*, 26.
- ^{xvi} There is a high return rate of the migrants, and up to 70% of them are selected personally by their Canadian employers. Savings are high (up to C1,000 a month). Similarly, for the Jamaican program with Canada, reportedly almost 100% of the Jamaicans return regularly every year, and their remittances have contributed to poverty alleviation, also through new businesses in Jamaica, better health care and education (e.g. adopting Jamaican schools), and higher investments (Dunn and Mondesire, 2002).
- ^{xvii} Also the Commonwealth Code of Practice for health professionals and Protocol for the Recruitment of Commonwealth Teachers recommend the use of bilateral labor agreements to prevent brain drain. The UK is currently assessing the effectiveness of its code of practice.
- ^{xviii} ANPE - l'agence de l'emploi française; ANAEM - l'agence de l'accueil des étrangers et des migrations; ANAPEC - l'agence de l'emploi marocaine.
- ^{xix} Mode 4 under GATS covers the temporary movement of persons across borders for the purpose of supplying a service. It does not explicitly define "temporary", but excludes permanent migration (World Bank 2006).
- ^{xx} For example, in 2004, 5,900 foreign workers entered Canada under NAFTA, 2,641 under GATS and 19 under the Canada Chile Free-Trade Agreement. The majority under NAFTA were from the US.
- ^{xxi} The purpose would be to provide concrete examples of activities or commitments countries of origin could engage in to encourage destination countries to apply more favourable policies. This would cover combating irregular migration and related illegal activities and facilitating the matching of labour supply and demand. Such examples could be transformed into a model agreement for countries of origin commitments in exchange for greater access for their nationals to destination countries under Mode 4 (Nonnenmacher 2006),
- ^{xxii} See ILO's Migration for Employment (Revised) Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and their accompanying recommendations for guidance on such a comprehensive approach.
- ^{xxiii} See the General Discussion on Social Security at the International Labour Conference in 2001.
- ^{xxiv} ILO estimates that fewer than 8% of people in Africa are covered by statutory social security schemes (*Report of the ILO Director General: The Decent work Agenda in Africa, 2007-2015* (11th African Regional Meeting, Addis Ababa, April 2007)).
- ^{xxv} Ursula Kulke, ILO, 2006
- ^{xxvi} See the evaluation of these Welfare Funds by Edita A. Tan in *Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits*, by IOM, 2005.

^{xxvii} Gender-based analysis (GBA) is an analytical tool that systematically integrates a gender perspective into the development of policies, programs and legislation, as well as planning and decision-making processes. See http://www.swc-cfc.gc.ca/pubs/gbaperformance/index_e.html

^{xxviii} In December 2006, the Government doubled the minimum monthly wage for its domestic workers abroad to USD400. The objective is to ensure access to higher niche jobs.

^{xxix} All of the categories H-1B specialty occupation, L-1 intra-company transferee, and the O-1 temporary workers with extraordinary abilities/achievements waive the eligibility requirement of not intending to stay permanently in the US (Batalova 2006).

^{xxx} See also the US' "Return of Talent" Act (S. 1949), introduced by Senator Joseph Biden in 2003, to allow legal aliens in the US to return to their country of citizenship temporarily in a postconflict reconstruction situation (and other special reasons) without losing that time against their five year residency requirement (Kapur and McHale 2005).

^{xxxi} A recent study of the portability of pensions and health care benefits for migrants found that only 20% of migrants worked in countries where portability of such benefits existed.

^{xxxii} Arguably, temporary migration works best in countries with less liberal regimes (Kapur and McHale 2005).

^{xxxiii} See the web site of the Colombo Process: <http://www.colomboprocess.org/>.

^{xxxiv} OSCE, IOM, ILO "Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination", Vienna, 2006: <http://www.osce.org/item/19187.html>

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