

Manila, Philippines, 27-30 October 2008

**ROUNDTABLE 2: SECURE, REGULAR MIGRATION CAN ACHIEVE
STRONGER DEVELOPMENT IMPACTS**

Roundtable Session 2.1

Fostering More Opportunities for Regular migration¹

Co-chairs:

Government of Bangladesh

Government of Canada

Wednesday 29 October 2008

15.00 – 18.00 hours

1. Executive Summary

This paper supports the aim of Roundtable 2.1 and looks at practical ways and factors that can foster more opportunities for temporary foreign worker programs, which optimize benefits for migrant workers, employers, source countries and destination countries, the so-called “win-win-win” situation. It does so by outlining the basic features of managed temporary foreign worker programs and identifying the policy questions that governments and other stakeholders need to address.

The paper does not propose answers, nor does it suggest that there are, in fact, “right” answers to these questions. Each country needs to find answers that work within its own legal, political and social environment. Existing managed migration programs may offer examples, but they are seldom fully transferable. The paper, nonetheless, explores the key considerations at both labour sending and receiving ends to foster more opportunities for “win-win” regular migration.

¹ This paper has been prepared by the co-chairs, Mr. Brian Grant (Director General, Citizenship and Immigration Canada), Government of Canada and Dr. Hamid Rashid (Director General (UN and MEA), Ministry of Foreign Affairs), Government of Bangladesh. It draws in part on comments and inputs from the Roundtable session team member governments and from studies and findings of other non-governmental experts and organizations. The aim of the paper is to inform and facilitate the discussion of Roundtable session 2.1 during the Manila GFMD meeting in October 2008. It is not exhaustive in its treatment of the RT 2.1 theme, and does not necessarily reflect the views of the GFMD organizers, or the governments or organizations involved in the GFMD process. Any reproduction, in part or whole, of this document, should cite the source.

2. Context

There are a number of different migrant worker programs, which are well known, if not always well understood: guest worker programs, seasonal worker programs, temporary foreign worker programs, circular migration schemes. There are well established programs, supported by legal frameworks, codes of conduct and support networks; and there are more rudimentary programs that technically allow a migrant worker to enter a country legally, but offer little else in terms of a policy and program structure. And then there are countries in which there are no legal means for migrant workers to work, but in which migrants nonetheless do so. It is helpful to recognize that restricting opportunities for regular migration, and absence of well established foreign worker programs, may increase the propensity for, and incidence of, illegal or irregular migration.

Temporary foreign workers usually receive lower wages and many of them accept jobs that residents are often unwilling to take up. Both these factors offer employers savings on the wage bill. Governments of the receiving countries also benefit from the presence of temporary foreign workers, as they often pay pay-roll taxes and contribute to social security funds. Temporary foreign workers also offer economic benefits to the governments of their own countries, as their remittances help their central banks build up foreign exchange reserves and support strong exchange rates. Remittances can also help their families back home attain higher standards of living, fostering economic development in the countries of origin.

But this level of abstraction is not very helpful in suggesting how more opportunities for regular migration might be fostered, particularly programs that respect legal requirements, meet employer needs, provide fair compensation for workers, identify workers' rights and provide the potential for contributing to the development of migrants in their own countries. For that we need a more detailed understanding of what are the basic components of a managed migration program.

Let us begin with a definition. Roundtable 2.1 will look at temporary migration only. Temporary migration has been usefully defined by Martin Ruhs as "residence and employment on the basis of a work permit, which alone does not create an entitlement to stay permanently in the host country". Philip Martin has added that the purpose of migrant worker programs is to add workers temporarily to the work force, but not encourage them to become settled residents in the host country.

Who migrates for work and why? Temporary migration covers all skill levels from high to semi and low-skilled, although the evidence suggests that the bulk of temporary migrants are low skilled and work in low paying jobs that many in the destination country are often unwilling to accept. The reasons people migrate are widely varied, ranging from a labour surplus in their home country, to the search for better economic opportunities and higher wages, to simple curiosity about living and working abroad (e.g. working holidaymaker programs).

3. Stakeholders

Who are the various stakeholders and what they are looking to achieve through temporary labour migration?

Governments – Governments have an interest in the economic benefits of migration, allowing temporary foreign workers to fill labour market needs or relieve labour market pressures, sending them to a foreign country to create a source of financial revenue or investment, through remittances for example. Governments tend to think of themselves as either a sender or receiver of labour: the reality is that most governments are both.

Governments also have an interest in ensuring that non-citizens in their territory have a legal right to be in their country and have permission to carry out various activities such as working, thereby ensuring that protection of the domestic labour market and issues related to licensing and accreditation are properly addressed.

Governments have an interest in ensuring that the integrity of the workplace is maintained through the creation of basic employment and safety standards that offer workers protection from exploitation.

Governments also have an interest and responsibility to ensure that individuals who have access to their territory do not pose a security, criminal or public health threat.

Finally, governments have an interest in ensuring that their own citizens are fairly treated when they migrate to other countries for work and that there is development dividend in the countries of origin.

Employers – Employers are interested in ensuring that workers are qualified to carry out their tasks and also that workers carry out tasks at minimum cost and in controlling the cost of labour.

Workers – Workers are interested in earning as much money as possible over time, learning new skills and gaining experience, and in avoiding exploitation. Workers are also interested in their own health and safety and in ensuring that their families back home optimally utilize their remittance to enhance family welfare, especially welfare of their children.

Intermediaries – there can be a number of stakeholders that act as intermediaries between governments, employers and workers. These include workers' representatives such as unions and advocates whose interests lie primarily in winning greater benefits for their members from employers and governments. Other intermediaries might include agents who act on behalf of employers to recruit workers or who act on behalf of workers during the job search and migration processes.

4. Anatomy of a Temporary Foreign Worker Program

There are basically two ways of fostering more opportunities for regular migration. The first is to expand existing programs. The second is to establish temporary foreign worker programs where none exist.

Creating a temporary foreign worker program requires interested governments to work through a series of questions or issues and make decisions, taking into account the costs and benefits of starting a new foreign worker program. It is worthwhile looking into these considerations because of the value to all stakeholders in an ordered and transparent system to manage the movement of foreign labour into and out of a country. For receiving governments, a transparent and managed system can allow for: better management of the needs of the domestic economy for foreign workers; lower enforcement costs if less irregular migration results; and, for sending governments, it can help reduce transaction and placement costs of temporary work programs and better management of their citizens' expectations when working abroad.

For workers, transparency should equal informed decision-making. Knowing the rules governing employment in a foreign country, regardless of the country or the specifics of their rules, should empower workers to be able to better decide where they want to work assessing the benefits and

costs of working abroad. For employers, a transparent and managed system should allow for a more reliable and predictable supply of labour. For intermediaries, a transparent and managed system should give them more clarity and accountability around their roles.

Since most governments deal with temporary foreign workers – whether they are incoming or outgoing - it is worth exploring their roles. Useful questions would include the following:

i.) For countries receiving temporary foreign workers:

What are the objectives of the temporary foreign worker program? Programs can be designed to deliver on a number of goals. Many aim to primarily meet short term or cyclical labour market needs in specific industries or regions. Others are designed to formalize the status of those migrants, who entered illegally and subsequently found employment, or to establish a pool of potential permanent immigrants. A key consideration for governments, regardless of the aim, is whether the mechanisms are in place necessary to monitor and measure whether or not its program has reached any or all of its objectives.

If the aim is to meet labour market needs then current information or forecasts on the national, regional or local labour markets could be used in the design and running of a temporary foreign worker program, but governments would have to decide how such information would be so incorporated.

Governments should also consider their capacity to judge whether any unintended consequences of the foreign worker program arise. Using temporary foreign workers to fulfill short term labour market needs could lead to long term dependence on such workers by certain employers or entire industries. If this is something governments wish to avoid then mechanisms to monitor the labour market impact of a program would be recommended.

What are the legal rules surrounding entry to a country for the purpose of working? There are a number of mechanisms to regulate admissions. Possibilities can run from quotas in certain industries or for certain “in-demand” skill sets to open admissions based on employer demand and the government’s capacity to process admissions. Health and security screening may also form part of the suite of rules governing the entry of foreigners for the purpose of temporary work. A critical consideration is how the rules are publicized and enforced. Governments may wish to consider the appropriateness, mechanism and possible scope for employers, intermediaries, and other governments in publicizing and helping to enforce the rules surrounding entry and stay in a country.

Is there a transparent legal basis for deciding who may enter a country and who may work in a country? This could take the form of legislation, regulation or policy. Central to fostering transparency is whether there are measures in place to ensure the accountability of the person who decides a foreigner can enter a country for the purposes of work or refuse such entry, and whether the foreign worker has recourse to respond to decisions affecting their ability to enter and work in the country. One important consideration is whether citizens of all countries should have equal opportunity for employment in a particular country. Alternatively, it may be that some states prefer to base their programmes on bilateral or multilateral arrangements which may facilitate temporary workers from those particular countries.

What is the legal status of a migrant worker? Creating the opportunity for legal migration assumes that the migrant worker will have some sort of legal status in the country. When designing a temporary foreign worker program governments will need to consider what this status will entail and how it will recognize the worker as having that status. For example, will documentation be

provided to migrant workers guaranteeing their status? Governments will also need to consider whether the principle of national treatment should uphold?

What limitations are placed on migrant workers? The answer to this question may be best informed by the programs objectives. Often the solution to meeting short term labour market needs without creating situations of undue dependence on foreign workers is to limit the duration of their stay. In most existing temporary worker programs permission to work ranges from 3 months to 5 years, shorter durations being more prevalent in those sectors where the nature of work is seasonal. Governments may wish to consider whether or not to build in mechanisms that allow workers the possibility to extend their stay in those cases where the short term needs become longer than expected.

At the same time governments should be wary of creating bureaucratic inefficiencies by mandating reviews of workers' status that are not consistent with labour market needs (e.g. granting permission to work for a period of one month, when the employer requires the worker for three months and then obliging the employer and worker to submit to another process to have the original permission extended).

In programs that are driven by employer demand, governments may have to decide whether the worker should be tied to specific employer for the duration of their work term or whether they will be free to change employers, engage in different types of work, or travel within the country and between their country of work and country of origin. Currently most programs require migrant workers to work for a specified employer. This makes sense when an employer invests upfront costs that require amortization over the length of the work contract. The alternative - to release the migrant from any obligations to the employer - could require a compensation mechanism for the employer, provided the employer incurred the upfront cost. This would add costs and operational complexities to the program itself, but may be more beneficial to the worker and may make the labor market more competitive.

What benefits are migrant workers entitled to? This would include the rules governing compensation and taxation. For example; are migrant workers paid the same as domestic workers; is there a minimum wage that applies; do migrant workers pay income tax; what deductions are made from basic pay for income tax and employment benefits; what access do migrants workers have to domestic health and social services; will they be provided health insurance - essentially what benefits are guaranteed the worker in exchange for their labour? Governments will need to consider whether they should uphold the principle of 'national treatment', i.e. giving foreign workers the same rights that are enjoyed by local workers.

Does the government want to regulate or authorize the activities of foreign or domestic agents that recruit overseas workers? Agents and recruiters authorized or otherwise, can play an important facilitating role in the temporary migration process; however, where there is insufficient transparency by recruiters or agents, there is a risk that temporary migrants may be given financial or other expectations that are not ultimately met. Workers may also be compelled by agents to pay costs, such as recruitment, transportation or lodging fees, that were not made clear by the agent at the outset of the migration process. One option may be for recruiters and agents to be regulated in the way that they disclose all pertinent information – to have the compensation, deductions, benefits and accommodation costs, or net financial gains stated in the contract that constitutes a tripartite binding agreement between the employer, employee and government. Governments will have to estimate the non-disclosure premium that the intermediaries reap and how regulations can make it a 'win-win' outcome for the foreign workers, employers and intermediaries. However it falls to the

government to make the determination over the extent to which they will manage the functioning of such intermediaries.

How will a sending government's interest in ensuring fair treatment for their citizens working abroad be managed? This could be done in the course of usual bilateral or multilateral relations, by simply allowing or facilitating consular access or through more formal agreements that spell out specific responsibilities and recourse mechanisms. Again it falls to governments to make the determination about what would work best based on their own legal, political, and economic environment.

ii.) For Countries of origin of temporary foreign workers

What is the objective of a temporary foreign worker program? Again the responses to this question can vary – from easing excess supply in the domestic labour market, to earning remittances, providing opportunities for skills training and professional development abroad, or sending abroad “cultural ambassadors.” While the answers may vary, as for when it aims to import labour, a key consideration should be the mechanisms in place that enable a government to assess whether the program is meeting stated objectives.

How will the interest in securing fair treatment for those nationals working abroad be realized? Again this could be done through the provision of consular services, through the course of bilateral and multilateral relations with the receiving country or through more formalized agreements. Additionally some governments have undertaken to provide pre-departure orientation and counseling to workers so they are aware of their rights and responsibilities when abroad.

Will the government play a direct role in recruiting its citizens to work abroad or will it regulate the work of intermediaries? Intermediaries can have both a positive and negative impact on the foreign work experience. Governments may want to consider what role they could play and what levers they possess to ensure that intermediaries are a positive force.

How can the government take the most advantage from workers' time and experience abroad? Remittances, skill development and cross-cultural interactions are potential gains from a worker's time abroad that a government could harness to the advantage of their own national economy. Governments may wish to explore how remittance flows could be facilitated and/or channeled to sustainable development; what tax or pension incentives are in place for those with foreign work experience; and how they can be re-integrated into the domestic economy upon their return.

How will the social costs of working abroad be managed? The growth of temporary labour has been dramatic in the recent years and it is likely to continue to accelerate and evolve, given demographic trends in certain regions, notably Asia-Pacific, home to 59% of the world's population in the working age group (15 to 64 years). Social costs can manifest themselves in many ways: children growing up without parents, lengthy separation of spouse that may contribute to higher rate of family break-up, minimal or no supervision of youth that may contribute to higher rate of crime, academic underperformance, etc. Again how a country chooses to address such costs will be governed by its unique political, social and cultural environment.

5. Questions for round table discussion

The purpose of the discussion is to further explore the central issues to be considered when fostering more opportunities for legal migration through temporary foreign worker programs. Round table participants should come to the table ready to discuss:

- What other questions need to be addressed in the anatomy of a temporary foreign worker program?
What standards and norms governments can pursue to maximize the benefits of temporary foreign workers?
- How would your country define a successful temporary migration program?
- What do you see as the most pressing gaps in your country's policies with respect to temporary migration?
- What role is there for the Global Forum in addressing these gaps?
- Where do we take the discussion from here?