



***Managing Temporary Labour Mobility:
Building an Effective Institutional
Framework***

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Introduction:

The very basis for international trade, be it of goods or services (including factors of production), is to exploit differences in relative prices flowing from diverging factor endowments. The larger the differences, the greater the likely gains from opening up international trade. Studies show that the gains from even a modest liberalisation of temporary labour mobility could exceed those expected to flow from a full elimination of barriers to merchandise trade (Walmsey and Winters, 2002; World Bank, 2004). Walmsley and Winters (2002) estimated that if the industrialized countries allowed an increase of 3 percent of their workforce, the world welfare will increase by more than US\$150 billion per year. Their general equilibrium model suggest that both developed and developing countries stand to benefit from liberalising the temporary movement of labour, particularly unskilled labours. The temporary movement of skilled labours also yield substantial benefits to both the developing (from remittance inflows) as well as developed countries. However, there are a number of reasons, such as brain drain and loss in human capital that make the movement of highly skilled workers a less favourable option for many of the developing countries.

Allowing for temporary labour mobility also brings substantial gains to the recipient countries. Temporary foreign labours help these countries to quickly respond to the changing demand patterns in their domestic labour markets. Having the option of tapping into an army of foreign labour reserve *as and when the need arises* and not be obliged to provide them with permanent employment, immigration or other social benefits entitled to citizens, is perhaps one of the important reasons why temporary foreign labours are preferred by the industrialised governments as well as private businesses.

However, moving people across borders is not the same as moving goods or capital. In order to ensure that temporary labour mobility benefits the sending country, the recipient country and the workers themselves, it is of paramount importance to ensure there are proper institutional arrangements governing temporary labour mobility.

The objective of this policy brief is to identify and discuss six core components necessary for an institutional framework that create win-win-win outcomes out of the temporary movement of labour. These six core components have been identified by reviewing some of the existing good practices, i.e. existing institutional arrangements in managing temporary labour mobility.

These arrangements include, among other things, monitoring provisions and incentives to ensure return migration and brain circulation; measures to mitigate downside labour market and migratory risks in recipient markets; as well as measures to ensure that workers' rights are protected in recipient countries. Some

of the practices are part of the bilateral labour or trade agreements between countries while others are adopted unilaterally by the different governments. The six components discussed in this paper will highlight what can be learned from the existing arrangements for future agreements on temporary labour mobility, including a potential framework for labour mobility in North America.

The Six Core Components:

- 1) *There needs to be built-in incentives and sanctions for both the employers as well as the foreign labour to ensure that the temporary nature of worker mobility is maintained:***

One important gain in ensuring the temporariness of labour mobility is *brain circulation*. The new skills that the temporary migrant worker learnt in their destination countries could be utilized in their country of origin upon their return. This phenomenon of skills transfer is referred to as brain circulation. However, there needs to be proper re-integration programmes in the country of origin whereby these new acquired skills by the migrant workers are recognized and put to productive use in the domestic economies after their return.

Another way to ensure the temporariness of the labour mobility arrangements is through having bilateral labour agreements, whereby the Memorandum of Understanding (MOU) is signed by the governments of the labour sending and receiving countries. In principle a MOU of this sort will make sure that both the governments will play an active role in making sure that the employers (primarily under the jurisdiction of the labour receiving countries) as well as the employees (primarily under the jurisdiction of the labour sending countries) are abiding by their respective terms of contract. It is to the advantage of both governments to ensure the perpetuation and proliferation of these sorts of agreements because of the benefits that these countries stand to reap from temporary labour arrangements. One example of this is the MOUs that have been signed for the temporary movement of agricultural workers between the government of Canada (labour recipient country) and the governments of Mexico, Jamaica and ten other Caribbean governments (labour sending countries). This temporary labour programme is known as the Canadian Seasonal Agricultural Workers Program (CSAWP). These MOUs are non-binding in nature; nevertheless, they set clear objectives for the different stakeholders ---public sector, private sector employers and the employees. Furthermore, the employment contracts are signed by the employers, the employees as well as the government agent of the sending country. By incorporating specific clauses spelling out the consequences that will happen in the case of a breach of contract by any of the parties will ensure that the temporary nature of the contract is maintained. Nonetheless, it is important to take into consideration the fact that certain existing arrangements such as CSAWP, have controversial

clauses regarding the enforcement of the contracts. For instance, under the agricultural labour contracts Canadian employers have the legal right to repatriate the foreign temporary worker “for non-compliance, refusal to work or any other sufficient reason” (Blouin, 2005, p. 887). It is at the employer’s and the government agent’s discretion to interpret the repatriation clauses under the contract. The foreign labours under this arrangement do not have the provision to appeal once the decision has been made (Verma, 2004). In order to ensure a sustainable institutional framework the incentives and the sanction systems within it need to be made fair and transparent for all the involved actors including the migrant worker.

Apart from sanctions, another way to uphold the temporary nature of the contract is by providing workers and employers incentives to respect the contract. If workers are aware that once they finish their first contract successfully there might be a chance that they might be selected for another contract in the future, then this alone might be a good enough incentive for workers to respect the clauses under their first contract. Essentially, the *possibility* of having circular labour migration will mean that this have the essence of a *repetitive game* (as defined under game theory), whereby all the actors know that this might not be a onetime deal, rather, there are chances of repetition in the future. This will help to foster a trust in the system by all the involved actors. The CSAWP scheme follows the circular migration approach. Canadian employers can ask for the same worker once their contract is over. This is beneficial for the employer as they do not have to again invest in training a new worker. The migrant worker also gains as they have become familiar with their employer, their work, the local community and their co-workers.

2) *There need to be well-defined rules regarding the public and private recruitment and the selection procedure of workers and eligible employers:*

Philippines provides an excellent example of a country that has an institutional framework which is based on, *inter alia*, well-defined rules and regulations regarding the recruitment of the Filipino workers by the public and private agencies.

Philippines has a successful employment-driven emigration policy that focuses on the temporary labour mobility of the Filipino workers ensuring their protection while being abroad. The government researches, identifies and assesses the labour market demands abroad and arranges an “orderly supply of Filipino workers through supervised recruitment by foreign employers, recruitment agencies and the foreign governments based on bilateral agreements” (ILO website, 2009). The Philippines Overseas Employment Administration (POEA) coupled with the Overseas Workers Welfare Administration (OWWA) is in charge of implementing the Migrant Workers and Overseas Filipinos Act (1995). The POEA has an effective mechanism to implement the national migration policies. It also monitors the

departure of their workers, provides them with pre-departure orientation training in cooperation with the local government units to inform and educate them about their rights and the possible negative impacts (such as human trafficking). POEA also regulates Philippines based private recruitment agencies through a licensing system. The private recruitment agencies must enter into legally enforceable work contracts with the potential migrant worker seeking employment abroad. These contracts need to be approved by the POEA who then monitors the execution of the contract and is in position to prosecute violators (both the agency and the worker) of the recruitment standards.

Furthermore, POEA plays a critical role in ensuring high-standards when selecting private recruitment agencies. For instance, in 2007 there was approximately a 44 percent decrease in the number of new licenses issued to private recruitment agencies (ILO website, 2009). Additionally, the repatriation programme that is in place reported a 92.4 percent compliance rate by recruitment agencies that were notified to repatriate a distressed or stranded Filipino worker (ILO website, 2009).

The governments could also involve international organizations and other institutions to help them go through this process effectively. For instance, in conjunction with the International Organization for Migration (IOM), the government authorities of Colombia, Honduras and Mauritius, established mechanisms for the identification, pre-selection, and recruitment of migrant workers who are then sent to work for private entities in Canada (IOM, 2008).

Without having a proper system that ensures safe and orderly outflow of labour migrants, it will be difficult to sustain any kind of temporary labour mobility arrangements. Regulating the recruitment process also reduces the risks for the workers of being involved with fraudulent recruitment agencies.

3) Access to and portability of social protection for workers and their families (pensions, insurance, health and social services) need to be taken into consideration:

This element is an important one because in the absence of legal health insurance policies and pertinent social services, temporary workers will find themselves in precarious situations while being abroad. This in turn will undermine the expected benefits that migrants have intended to receive from their temporary movement abroad.

Both the labour receiving as well as the labour sending countries can enter into an agreement whereby they work out a mechanism to ensure that the various elements of social protection are in place to ensure a safe stay for the migrant labour. Countries can also undertake unilateral steps to ensure such protection. For instance, in Canada, the public sector and the private sector work together to provide health insurance to some groups of temporary foreign workers. Under CSAWP, the Canadian private farm employers have to provide private health insurance to their guest workers

for the first three months of the contract (Blouin, 2005). After the first three months, their health insurance is covered by the public health insurance offered by the provincial governments of Ontario and Quebec (Blouin, 2005). The migrant workers are insured under the Workplace Safety and Insurance Act (WSIA) (IOM, 2008). Furthermore, under CSAWP, maternal and paternal leave benefits are also provided to migrant workers. The migrant workers contribute to the Canadian Pension Plan (CPP) and are entitled to benefit from it if they suffer from severe disability during the working years or once they are 60 years of age (IOM, 2008).

Similar to the labour recipient countries (such as the above example of Canada), it is also possible for labour sending countries to unilaterally enact policies or install mechanisms in place to provide for social protection for their migrant labours. For instance, in the Philippines migrant workers are required to sign-up for medical insurance costing them 900 pesos (approximately, USD 20). This insurance covers them for up to one year (ILO website, 2009).

Apart from unilateral interventions, countries can engage in bilateral cooperation to provide for social protection services and to ensure the portability of these services. For instance, the agreement between Spain and Bulgaria on social security enables the reciprocal portability of the social security benefits of the migrant workers of these countries who are working and residing in the other country. This agreement also contains provisions on pensions as well as compensations including, *inter alia*, for temporary work disability, maternity leave, occupation related disease or accident (IOM, 2008). Similarly, under the reciprocal agreement signed between India and Belgium, workers from both these countries can transfer their social security entitlements, pensions and disability between the two countries (IOM, 2008). A similar arrangement also exists between Greece and Egypt (IOM, 2008).

Furthermore, the embassies of the labour sending countries, particularly the labour attachés have an important role to play in ensuring that other pertinent social protection related needs of their workers (nationals) are dealt with due process and consideration.

4) Effective adoption and application/enforcement of labour laws and occupational, health and safety regulations for temporary foreign workers:

Migrant workers are often not aware of the laws and regulations protecting them in recipient countries and of the mechanisms available to them to ensure the application of these laws and regulations. Therefore, they are often more vulnerable to abuses and may require special protection to ensure that the relevant laws and regulations are applied in their workplace.

There are several examples of bilateral labour agreements that ensure adoption and effective enforcement of labour laws, occupational, health and safety regulations for temporary workers. Among these are the

Agreement on the Regulation and Planning of Migratory Flows between Spain and Ecuador, bilateral labour service cooperation agreement between Mauritius and the People's Republic of China, bilateral labour agreement between Egypt and Greece and the CSAWP mentioned earlier.

The Spain-Ecuador agreement explicitly mentions the equality of rights between the Ecuadorian temporary workers and the Spanish nationals with regards to pay, access to social security, the right of association, the right to family reunification and other work benefits. This agreement provides the workers with the right to move freely and not be expelled from the country subject to compliance with the agreement (Damm, 2007). The Canadian scheme also has similar elements to that of the agreement between Spain and Ecuador. However, under the CSAWP, labours employed by one farm cannot move to another farm unless their present employer approves the transfer. Furthermore, CSAWP attributes disproportionate power in the hands of the employers who can ask for the worker to be repatriated due to non-compliance or other elements without giving the worker a right to appeal (Verma, 2004).

The Agreement between Mauritius and China states that Mauritius, through its labour inspection services, will protect the rights and the interests of the Chinese foreign labours in their country as provided for in Mauritian law as long as the workers are in possession of valid work and residence permits (IOM, 2008).

Similarly, under the reciprocal regulations between Egypt and Greece, temporary workers from both the countries are entitled to equal rights similar to that of the nationals of the individual countries in regards to wages, working conditions and leave from work. Furthermore, the temporary Egyptian workers in Greece can freely change employers (unlike the CSAWP) while in Greece and stay for up to three months once their employment contract expires in an attempt to find another job in Greece (IOM, 2008).

Further to ensuring the effective implementation and enforcement of the laws, it is also important to ensure that there is a mechanism in place whereby workers can bring claims for exploitation, abuse or violation of the conditions of the contract. For instance, Spain unilaterally has introduced a claims mechanism whereby migrant workers can report their abuses and exploitation and seek remedy (IOM, 2008). The Spanish Administration also inspects to ensure the compliance by the Spanish employers with regards to issues such as provision of adequate housing to the migrants and the paying of wages as agreed in the migrant labour contracts.

The success and general satisfaction by the workers and the governments of both the labour sending and receiving countries regarding the above bilateral agreements and unilateral interventions underscore the importance of having effective and transparent enforcement of labour laws and other related regulations.

5) Measures to reduce the transaction costs for transfer of remittances and enabling productive uses of remittances:

One of the fundamental reasons why people engage in temporary migration is for economic benefits. Migrants spend time working abroad in order to afford a better standard of living for themselves as well as their families back home. Hence, it is important to ensure accessibility to safe and secured means through which migrants can transfer remittances to their country of origin. To ensure remittance flows through formal channels it is important to reduce the transaction costs of these money transfers. Given the development impacts of remittances on the country of origin, it is both in the interest of the migrants as well as the government and the private sector of the labour sending countries to create an enabling environment whereby remittances could be used for productive purposes. There are already several institutional arrangements in place that are easily accessible by migrant workers living abroad to send money with ease to their countries of origin.

Reduction in Transaction Costs

There is an arrangement between the Banco Solidario of Ecuador (a private financial institution) and a number of Spanish banks whereby a special savings account called “My Family, My Country, My Return” is designed for the migrant workers. It helps them to remit their money with ease to Ecuador and it also allows the migrants to fully control their finances while they are in Spain and accumulate savings to invest upon their return to Ecuador. Similarly, another agreement between Caixa Español (a Spanish bank) and 53 Ecuadorian financial institutions is in place to reduce the transfer costs of remittances (IOM, 2008).

Programmes directed towards productive use of Remittance:

Mexico’s 3X1 program is a well-cited program about the ways remittance could be productively used in the greater benefits of the local communities of the migrant workers. This scheme is a matching grant scheme that tries to direct the money sent by the migrant organizations abroad (home town associations) to the provision of public and social infrastructure and other productive projects. Three layers of the government--- municipal, state and federal match the amount sent by hometown associations by 3 to 1. So, when migrants sent their money back, they could benefit their communities 3 times more.

Philippines also present a successful case where the local communities have tremendously benefited from productive use of remittances. For instance, in Mabini, Batangas, a mountainous village has

overcome rural poverty and is now known as the ‘little Italy’ due to the enormous inflow of remittances from Filipino workers mostly in Italy (Cacdac, 2007). With the help of the hard-earned money by Filipino nannies, domestic helpers, hospital aid workers and factory workers, this little village has transformed into one with nice houses and private schools where the children of the migrant workers go for education. The Philippines government also provides the returnee migrants with business development counseling and informs them about ways to invest in their own country. Migrants are also given business loans to complement their remittances and help them to start their own businesses (Cacdac, 2007).

Furthermore, in order to maximize the economic benefits of migration other arrangements that could be considered include providing preferential exchange rates for remittances and foreign currency accounts, fiscal incentives and preferential customs duties.

6) Provisions regarding the recognition of professional credentials and associated licensing-related matters (including granting temporary licenses in regulated professions)

This is also an important component in helping the migrants as well as the countries of origin and destination to reap maximum benefits from international labour mobility. Many existing bilateral labour agreements ensure the recognition of the skills of the migrants. For instance, under the CSAWP, rural workers from depressed regions in Mexico are selected for taking up jobs in the Canadian farms. The skills of these foreign workers are assessed and recognized under the skill level C and D in the National Occupation Classification (NOC) system (IOM, 2008; Blouin, 2005). Similarly, temporary construction workers in Canada are classified under NOC level C and D in recognition of their skills (Blouin, 2005).

Similar to unskilled workers, there need to be arrangements to recognize the skills of skilled workers. The agreement between UK and Spain provides recognition to the skills of the Spanish nurses coming into UK as temporary workers. Spain also has an agreement with Philippines whereby the skills of the Filipino nurses as well as other high-skilled workers are recognized in Spain. Nevertheless, it is important that skill recognition be preceded by a proper skill assessment procedure to ensure that the professional credentials of the workers are recognized while not compromising the overall quality and standard of the services in the recipient countries. For instance, the residents of the recipient countries need to be assured that only foreign workers with *comparable skills* are being given license to be doctors, nurses, engineers, etc. These sorts of arrangements help to ensure that all the three parties involved in international labour migration---the migrant worker, the country of origin and the country of destination ---reap maximum benefits.

Concluding Remarks:

The objective of this paper was to highlight six essential components that need to be present within the institutional framework managing the temporary movement of labour. These six components is by no means an exhaustive list of the components needed to make the institutional framework successful, but rather, can be considered as a minimum of what should be considered when governments are designing or negotiating frameworks to manage temporary labour mobility.

As the paper discusses, many of these six elements are being taken into active consideration by several governments. In cases, where the bilateral or the multilateral arrangements fall short in incorporating these crucial elements, some governments engage in unilateral intervention to ensure the implementation of these elements. We have provided some illustrations of the different forms that these elements have taken in existing agreements or unilateral practices. These examples can provide inspiration for the development of a North American approach to temporary labour mobility. In the North American context, a negotiated framework could focus on a list of occupations and professions of interests to all parties. This would facilitate the process of recognition of credentials. More generally, by integrating the concerns and interests of all parties to temporary labour mobility (recipient and sending countries and workers), a negotiated framework is more likely to gain support across the region. A final note we should highlight is that such a framework would have to reflect the fact that temporary labour mobility is very much influenced by business cycles; demand for foreign workers is much lower during recessions or period of slower economic growth. Hence, the need for built-in flexibility is critical.

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