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**Ensuring Temporariness:  
Mechanisms to Incentivise Return Migration  
in the Context of GATS Mode 4  
and Least Developed  
Country Interests**

**By Uri Friedman  
and  
David Zafar Ahmed**

*English Français Español*



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# EXECUTIVE SUMMARY

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During negotiations in the Doha Development Round at the World Trade Organisation, least developed countries have expressed a strong interest in gaining market access for their service providers to work on a temporary basis abroad. This cross-border movement is envisaged through the mode of supply defined as the presence of natural persons (Mode 4) in the General Agreement on Trade in Services. In particular, LDCs have placed an emphasis on securing market access for their semi-skilled and unskilled service providers in sectors where they believe they possess a competitive advantage against other economies, though identifying and prioritising specific sectors has proven a difficult task for many of these countries without corresponding technical assistance. LDCs cite the benefits from the development dividends of this process, namely the remittances sent home by workers overseas and the knowledge and skills acquired abroad that these workers would bring back on their return to their countries of origin.

However, trade negotiators and politicians from the US and EU argue that one reason GATS Mode 4 is unworkable, particularly for semi-skilled and unskilled service providers, is because source countries cannot guarantee the return (and hence the ‘temporariness’) of their service providers working abroad. Failure to return makes GATS Mode 4 a migration issue rather than a trade issue, and thus a politically unpalatable topic to discuss in many developed countries. But agreements between certain developed and developing countries that have enabled workers from the latter to enter the former on a temporary basis indicate that the GATS Mode 4 process may be feasible for all parties. By analysing the mechanisms that are in place in these agreements to ensure the return of migrant workers, LDCs can formulate implementable policies to strengthen their position at negotiations on trade in services. Of particular interest in this study are the incentive mechanisms used to ensure the return of temporary migrant workers in these unilateral and bilateral agreements. These are categorised

in two broad groups: negative incentives, which include systems of monitoring and penalties for overstay, and positive mechanisms, which include investment and training schemes to enable workers to integrate both in the host country where they hold temporary work contracts and on their return to their country of origin after the duration of their contract.

The bilateral accord from 2001 between Spain and Ecuador has seen a substantial rise in Ecuadorian temporary workers entering Spain on short-term contracts. Building on the historical links between the two countries, both sides have played an active part in creating a multi-faceted screening process for participants in the work programme. Despite the existence of the programme, Spain had had to fashion legal modifications to reduce the number of Ecuadorians entering the country and then illegally residing there. In combination with regulations in the Royal Decree, the bilateral agreement uses negative incentive mechanisms such as premature repatriation, worker disqualification, and employer sanctions linked to the social security system. Positive incentive mechanisms are also incorporated into the agreement as well as featured in the Ecuadorian government’s policy and investment initiatives. Specifically, legislation allows for the extension of temporary workers’ short-term contracts and prevents national employment situations from influencing the re-entry of seasonal workers into the country. Grassroots opportunities such as social networks, the free transfer of savings to the home country, and investments for property procurement in Ecuador have also provided incentives for the return of temporary workers. It is equally important to note the role of co-development between Spanish and Ecuadorian municipal authorities in improving living conditions, both on a local level in Ecuador and on a national level with regards to Spanish labour conditions and social insertion. These steps forge a positive relationship between the source country and host community, and facilitate the circular migration of Ecuadorian temporary workers in Spain.

Canada has developed institutional mechanisms with its Mexican and Caribbean partners to allow temporary workers to enter the country, namely under the Canadian Seasonal Agricultural Workers' Programme. Data from recent years point to a high return rate of Mexicans and Jamaicans participating in the programme, although these participants form only a small percentage of the total number of workers employed in the regional labour market. Canada has developed an elaborate process of selection and screening for Mexican workers in collaboration with various Mexican government ministries, as well as with support from Canadian employers' organisations. Restricting worker mobility is a major negative incentive mechanism used by Canada to ensure the return of temporary workers, with penalties both for employers and employees when workers are hired illegally outside the remit of the programme. Premature repatriation is also enforced in the case of worker non-compliance. Positive incentive mechanisms for return include flexible contracts, prioritising name-hiring based on an individual's past record in the programme, the covering of transport costs by employers from source country to host country, loyalty recognition payments, systems to avoid double taxation, and mandatory remittance transfers to the home country. However, participants in the programme have criticised some of these mechanisms, questioning both their effectiveness and the doors they open for exploitation by employers.

The Philippines has been sending its workers abroad for over three decades, notably to West Asia and the United States, to work on short-term contracts. Many of these migrant workers are employed in the semi-skilled sector. However, the Philippines, at least officially, does not include its temporary work programmes overseas as part of its economic development objectives. These temporary work programmes are managed by the Philippines Overseas Employment Administration and Overseas Workers Welfare Administration, which use highly developed screening mechanisms along with pre- and on-the-job training facilities. The Philippines has been particularly effective in engaging the private sector in the recruitment process and creating

networks in the host country where Filipino workers are sent. Despite issues with illegal immigration and recruitment, the Philippine authorities have collaborated with agencies to resolve cases of illegal recruitment and map the location of overseas Filipino workers. Alongside penalties for over-stay and illegal recruitment, the Philippines government has also invested in many positive mechanisms such as resource and advisory centres in the countries where their workers are employed. The interests of Filipino migrant workers are also represented at parliamentary level. The government has worked alongside many non-governmental organisations on extensive programmes for the education and training of migrant workers, as well as developing savings and investment schemes for their remittances sent home. Importantly, the government and NGOs have created programmes to assist with the re-integration of migrant workers on their return to the Philippines in order to benefit from the knowledge and entrepreneurial skills they have acquired after working overseas.

Due to a lack of data on return rates of participants in the programmes detailed in this report, it is difficult to conclusively state which mechanisms best ensure the return of temporary workers. However, studies indicate that many migrant workers do desire to return to their home countries and that the conditions and opportunities available to them in their countries of origin are a major factor in encouraging their return. These factors, alongside capacity building to develop incentive mechanisms, are issues of which LDCs should be mindful when developing policies and negotiating positions to gain market access for their service providers on a temporary basis. It is important to note that many of the levers developing countries have in the bilateral context, such as the joint development of regulatory systems responding to specific irregular immigration patterns, labour market needs, or other political considerations at a given moment in time, and historical, cultural, and linguistic affinities with partner countries, are not necessarily available at negotiations on a multilateral level. The WTO negotiating mechanism presents both deficiencies and strengths for LDCs in meeting their policy objectives on trade in services.

# INTRODUCTION

During the current Doha Development Round of World Trade Organisation (WTO) negotiations, Least Developed Countries (LDCs) have argued that “Mode 4” of the General Agreement on Trade in Services (GATS), which provides for the temporary movement of natural person service suppliers across national borders, can help LDCs seize upon their “comparative advantage” in exporting non-high skilled service providers to developing and developed countries. Non-high skilled professions are frequently labour intensive and are normally identified as those for which workers are not obliged to hold at least a first university degree. They range from those requiring a certain number of years of training (e.g. a nurse or care worker) and described as “semi-skilled,” to those entailing very little pre-job training (e.g. construction work) and qualified as “low-skilled.”

Sending these service suppliers abroad could alleviate problems of unemployment and surplus labour in LDCs while addressing concerns regarding aging populations, low birth rates, and low-skilled labour shortages in developed countries. According to many LDCs, the expansion of Mode 4 commitments by WTO Members during the Doha Round or the granting of special priority market access to LDC service suppliers could also act as catalysts for the accrual of financial and human capital in LDCs, stimulating domestic development through:

Remittances sent from service providers abroad to their families in countries of origin. Greater liberalisation could facilitate the legal migration of more LDC nationals, thus increasing the volume of remittances. Higher earnings in the host country permit the households of temporary workers to benefit from wage differentials, fuelling investment in education and infrastructure that could increase standards of living. Studies have indicated that the proportion of a worker’s wages channelled toward remittances is considerably higher when the worker is based abroad temporarily as opposed to permanently, since he or she has little motivation to invest in the host country and since his or her family is less likely to take up residence in the destination

country.<sup>1</sup> Moreover, some scholars argue that high-skilled workers are less likely than their lower skilled counterparts to remit because they often come from relatively wealthy families, tend to spend longer periods of time abroad, and are more likely to reunite with their closest relatives.<sup>2</sup>

Exposure of LDC service providers to advanced work methods, job-specific social networks, and cutting-edge technologies in developed economies. More efficient and productive service providers could transfer their newly-acquired skills, resources, and technological know-how to fellow nationals upon returning to the source country, thus helping to plug brain drain. A number of studies suggest that return migrants exhibit a greater than average tendency to choose self-employment or entrepreneurial activity, with the potential to create additional jobs through private ventures.<sup>3</sup> Certainly, the capacity to exercise entrepreneurial skills also depends on prevailing macroeconomic conditions when a worker returns to his or her home country.

In the aftermath of the Uruguay Round (1986-1994), WTO Members scheduled Mode 4 commitments mainly on intra-corporate transfers of high-level personnel or on executives, managers, specialists, and business visitors. During the Doha Round, developed countries have resisted further liberalisation of these commitments. Disagreements regarding domestic regulation (particularly recognition of professional qualifications) and economic needs tests have hindered movement on Mode 4. Many developed countries—the majority of which are currently engaged in efforts to combat increasingly problematic and politicised illegal immigration in their respective societies—have also argued that LDCs need to guarantee the temporary stay of their service providers in host countries if they are to acquire greater Mode 4 market access.

Particularly when a skills shortage exists in a developed country, high-skilled foreign workers do not encounter many obstacles in gaining employment. This is especially true nowadays in

sectors such as engineering and medicine, since the European Union and the United States of America (USA) have experienced declines in the number of domestic graduates in these fields (particularly throughout the 1990s, although the trend has recently reverted in the US), as well as decreases in global share of science graduates.<sup>4</sup> The potential permanent settlement of these high-skilled workers in the host country is normally not a major concern for developed countries, given the “brain gain” and the fact that a majority of the sunk costs associated with the education and training of these workers is shouldered by countries of origin.

If, on the other hand, LDCs hope to export non-high skilled service providers under a liberalised GATS Mode 4, then they must submit convincing requests to potential host countries that include specific measures to assure the “temporariness” of service providers. These measures should ideally be designed to promote “sustainable voluntary return,” in which migrants willingly reintegrate themselves into the home society and contribute to its development.<sup>5</sup> L. Alan Winters maintains that the monitoring of temporary service providers so that they do not become illegal immigrants in the receiving country after their temporary work experience is perhaps the most sensitive issue related to Mode 4 liberalisation, though other scholars point to divisive issues such as entry requirements based on the labour market or the protection of local workers as the most problematic<sup>6</sup>

In December 2005, the delegation of Pakistan issued a communication to the WTO’s Council for Trade in Services listing schemes to ensure the return home of service providers under Mode 4. One proposition was to have source countries maintain a database of workers holding a “GATS visa” and require migrants to report their departure and arrival back home, while another was to revalidate the GATS visa at regular intervals during the migrant’s stay in the host country.<sup>7</sup> Further studies regarding the palatability and feasibility of implementing such measures for Mode 4 in the multilateral GATS framework have proven quite limited.

Where on the multilateral level LDCs have encountered difficulties in advancing their interests, on the bilateral level the governments

of developing and developed countries have reached accords providing for the temporary movement of non-high skilled workers and for the fashioning of incentive mechanisms to entice these migrants to temporarily or permanently return to the source country once the work period has expired. These agreements have spawned additional, often-unforeseen mechanisms, some with the explicit purpose of managing return and others on a de facto basis having the potential to do so.

As used in this paper, “positive” incentive mechanisms refer to measures that promote the return of temporary workers to the country of origin by rewarding migrants or other interested parties, whereas “negative” incentive mechanisms refer to measures that endorse return migration by penalising or inconveniencing migrants or other interested parties.<sup>8</sup> Some mechanisms defy a rigid positive or negative classification; nevertheless, for simplicity’s sake each mechanism discussed below has been categorized as either one or the other. An important dimension of the discussion not treated below involves whether incentive mechanisms function differently for female and male migrants, a pressing question given the increasing “feminisation” of labour deployment in countries such as the Philippines.<sup>9</sup> For example, women earning stable incomes overseas and acting as breadwinners for their households may be reluctant to return home and adjust to more traditional, patriarchal family norms.<sup>10</sup>

A number of recent studies have suggested that positive mechanisms may be the wave of the future in incentivising return, given the lacklustre performances, human rights concerns, and potentialities for kindling “negative circularity” (e.g. unemployment or poor investment climates once the migrant returns) of programmes relying heavily on negative mechanisms.<sup>11</sup> Experts are increasingly taking a positive incentive angle when enumerating motivational factors for return migration. A 2003-2004 report by the House of Commons’ International Development Committee, for example, affirms, “Migrants will only return home if home is a place where they feel they can live secure and productive lives, free from hardship.”<sup>12</sup> A recent book by Filipino scholars posits that migrants will reintegrate into

origin communities only if “the conditions [in the home country] that pushed them to work abroad are reversed.”<sup>13</sup> Nevertheless, in host countries where immigration is a highly-sensitive issue, positive incentive mechanisms such as flexible contracts or re-entry possibilities may be a harder sell.

Dovelyn Rannveig Agunias and Kathleen Newland maintain that the main policy challenge in devising an effective “circular migration”

regime (in which workers can migrate and then return to the source country with the possibility of subsequent re-entrance into the host country) is “not just a matter of finding an existing programme and taking it to scale or adopting a programme from one region and implementing it in another. Rather, it is about cherry-picking different elements of policy design among various programmes that may work if put together in the particular socioeconomic and political contexts of the countries involved.”<sup>14</sup>

## RESEARCH OBJECTIVES

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The following paper will, in a “best practices” manner, analyse incentive mechanisms in three bilateral agreements between mid-income developing countries and developed countries to manage the movement of non-high skilled workers:

1. The accord between Spain and Ecuador regulating migratory flows,
2. Canada’s Seasonal Agricultural Workers Programme (CSAWP) with Mexico and the Caribbean, and
3. The partnerships between the Philippines and countries ranging from South Korea to the United Arab Emirates.

This kind of investigation may be helpful for LDCs hoping to negotiate with developed countries on GATS Mode 4 but lacking an arsenal of ideas for guaranteeing temporariness. Since none of the case studies features an LDC as a negotiating party, the paper’s conclusion will explore whether or not LDCs have the capacity to implement these types of incentive mechanisms and, if so, which mechanisms would be the most beneficial for them. Given that the case studies are either unilateral or bilateral in nature and deal with a wider range of temporary migration than Mode 4 service provision, the question of whether these mechanisms could retain their value in the multilateral GATS framework will also be raised.

Though the paper does not analyse regional integration agreements, this is an important arena for further research given the many similarities between these accords and the GATS framework. For example, the Caribbean Community (CARICOM) allows service providers of all skill levels and from any of the participating states to move freely within the Community. Organizational initiatives such as the United Nations Volunteers’ Transfer of Knowledge through Expatriate Nationals programme and the International Organisation for Migration (IOM)’s Migration for Development in Africa programme are also highly instructive. It is also

important to consider the wider question of how the government regulates employers and recruitment agencies, particularly during the selection and hiring processes of temporary workers. Practices for regulation and monitoring not only differ between developed and developing countries but also within these two groups.

While the analysis will centre upon incentive mechanisms, it would seem that other aspects of these bilateral programmes have a bearing on whether migrants choose to return home or stay on in the host country irregularly. One such aspect is 1) the forging of close, viable, and long-standing working relationships between contracting countries, between various governmental institutions within each country, between government and the private sector/civil society, and between all the aforementioned institutions and the workers themselves. These types of relationships imply trust-building among interested parties, shared notions of programme ownership and responsibility, multiple outlets for information dissemination, the reliable functioning of a well-oiled regulatory machine (including the sorting out of inevitable kinks along the way), and effective coordination in the event that the system goes awry. Such relationships are frequently predicated on historical, cultural, linguistic, developmental, or geographic ties.

Another aspect is 2) the measures adopted by contracting countries to curb the countervailing forces of illegal recruitment and illegal immigration. Reducing incentives to “go illegal” while increasing incentives to return to the source country is imperative for the smooth operation of these programmes. Other important topics include pre-selection screening procedures, the transparency of agencies and individual actors, pre-departure orientation and training programmes, work contract duration, and the nature of the prescribed work.

Each case study will thus relate a basic history of the programme, briefly treat the topics of cooperation and irregular migration, and then discuss both negative and positive incentive

mechanisms in greater depth. The success of incentive mechanisms should be measured not only by migrants' rates of return, but also by the return's impact on the welfare of the migrant, his or her family, and the sending and receiving countries as a whole.<sup>15</sup> One problem plaguing research on incentive mechanisms is the scarcity of data on rates of return. Empirical studies of "out-migration" generally lack the longitudinal data on immigrants necessary to

directly identify individual returnees. Instead, many studies use cross-sectional data, such as a national census, and can only approximate out-migration patterns.<sup>16</sup> The Philippines, for example, issues statistics on the number of Filipino workers deployed overseas and the number of re-hired migrants on a monthly basis, but has no official data on returning migrants.<sup>17</sup>

# EMPIRICAL EXAMPLES

## Spain and Ecuador

### History

In the late 1990s, an economic crisis in Ecuador sent sizable waves of Ecuadorian migrants to Spain. In 2000, the Spanish government enacted major changes to its alien legislation with the passage of Law 4/2000 (Ley orgánica or Ley de extranjería)—also known as the Law on Aliens. The Development Regulation (Reglamento de desarrollo) of Law 4/2000 was approved in Royal Decree 2393/2004 (Real decreto 2393/2004). This legislation provides the national regulatory framework within which Ecuadorian migration to Spain occurs.

Spain's Law on Aliens 14/2003 asserts that seasonal job offers should be directed towards countries with which Spain has signed an agreement regulating immigration.<sup>18</sup> Spain has signed bilateral agreements managing labour migration flows with Morocco (1999; 2001), Ecuador (2001), Colombia (2001), the Dominican Republic (2001), Poland (2002), Romania (2002), and Bulgaria (2003).

The number of work permits granted by Spanish authorities to Ecuadorians has increased sharply in recent years: from 19,995 in 2003 to 29,641 just in the period between January 1 and August 31, 2004.<sup>19</sup> Most Ecuadorian migrants to Spain are wage-earners (only 4% are self-employed) with short contracts (only 8% have contracts of indefinite duration).<sup>20</sup>

### Teamwork

The Agreement on the Regulation and Planning of Migratory Flows (Acuerdo entre el Reino de España y la República del Ecuador relativo a la Regulación y Ordenación de los Flujos Migratorios), signed between Spain and Ecuador on May 29, 2001, discusses both the permanent and temporary migration of Ecuadorian migrants.<sup>21</sup> The Agreement reaffirms the cultural and historical links between Spain and Ecuador, and is built upon the foundation of past agreements

such as the 1960 Hispano-Ecuadorian Agreement on Social Security and the 1964 Agreement on Dual Nationality.<sup>22</sup>

Transatlantic collaboration is promoted through initiatives such as the Technical Unit for the Selection of Migrant Workers (Unidad Técnica de Selección de Trabajadores Migratorios (UTSTM)), which the Government of Ecuador and the IOM jointly established in Ecuador in 2002. Ecuadorian workers who meet Spanish employers' labour profiles are called in to UTSTM for a multi-faceted screening and selection process conducted by Ecuadorian and Spanish authorities as well as Spanish employers. UTSTM helps workers settle contract and visa matters, provides pre-departure training, and even has a representative accompany migrant workers to the airport. Between the years 2002 and 2006, UTSTM selected 2,577 Ecuadorian workers out of 2,700 Spanish employment offers received, with the majority of migrants working in the agriculture, restaurant, and personal services sectors.<sup>23</sup> As of 2003, UTSTM boasted 22,236 Ecuadorians in its labour database.<sup>24</sup> Immigrant and labour organisations in Spain, however, have complained about their lack of involvement in UTSTM activities and have deemed UTSTM screening and selection processes occasionally corrupt and often "opaque."<sup>25</sup> Spanish quotas for temporary Ecuadorian workers have, in fact, fluctuated since 2001, declining markedly between 2002 and 2003 relative to other countries such as Colombia.<sup>26</sup>

Article 21 of the Spain-Ecuador Agreement calls for the establishment of a Mixed Committee (Comité Mixto) to meet alternatively in Ecuador and Spain at the request of either one of the contracting parties at least once a year, thus institutionalizing a recurring forum to evaluate the programme.<sup>27</sup> In practice, however, the Mixed Committee has met less frequently.<sup>28</sup> The Agreement provides for flexibility and mutual accountability between Ecuador and Spain in that either one of the contracting parties can suspend the accord for reasons of state security, public order, or public health (Ch. VI, Art. 22, Par. 5).<sup>29</sup>

## Combating Illegal Recruitment and Illegal Immigration

As part of the 2001 Agreement, Spanish authorities promised to pay for the return flight of illegal Ecuadorian migrants in Spain at that moment, while guaranteeing that residence and work visas for these workers would be processed in a preferential manner and in the shortest time possible so that they could return to Spain to work as legal migrants if they so desired (Ch.V, Art. 14, Par. 3).<sup>30</sup> Approximately 24,000 Ecuadorians benefited from this program, with only around 3,000 having to return to Ecuador to obtain a visa as initially proposed.<sup>31</sup>

Despite the existence of the bilateral agreement after 2001, during the period 1998-2004 many Ecuadorian migrants took advantage of the ability to come to Spain as tourists without visas under an existing agreement between Spain and Ecuador in order to enter the underground economy as low-skilled workers. When the law was changed in 2003, the number of Ecuadorians crossing into Spain was drastically reduced, perhaps by as much as 80%.<sup>32</sup> The successful measure suggests ways that illegal immigration flows can be reduced outside the orbit of the bilateral migration regime.

In 2002, 5,558 Ecuadorian migrants were repatriated from Spain while in 2003 the number only increased, with 6,476 migrants repatriated.<sup>33</sup> On December 31, 2002, 115,301 Ecuadorians were recorded in Spain as possessing a valid residency permit, while on January 1, 2003 (one day later), 390,297 Ecuadorians were registered on the census.<sup>34</sup> This is a gap of 274,996 Ecuadorian nationals—the largest differential among nine other major source countries for immigration to Spain included in the study. Taking into consideration mistakes in the census system, this difference helps in approximating the number of Ecuadorian nationals in an irregular legal situation at the time. The estimated number of unlawful Ecuadorian nationals is in fact larger than the number possessing valid residency permits. It is also over a hundred times as many people as were processed through UTSTM between the years 2002 and 2006, thus exposing the very limited scope of the bilateral agreement in relation to illegal immigration flows. In fact, during Spain's

massive 2005 regularisation programme for undocumented workers, authorities granted over 400,000 undocumented Ecuadorians legal status.<sup>35</sup> Ecuadorian nationals constituted 21% of total applicants—the largest percentage of any source country.<sup>36</sup>

Nevertheless, it is possible that irregular immigration from Ecuador to Spain is decreasing in tandem with the opening of more legal migration channels and with increasing crackdowns on former avenues for illegal movement. As of December 31, 2006, 363,245 Ecuadorian nationals held a valid residence authorisation in Spain.<sup>37</sup> The January 1, 2007 census recorded 421,384 Ecuadorian nationals in Spain.<sup>38</sup> That is a substantially smaller differential than in 2003—suggesting a potential total of 58,139 Ecuadorians in an irregular situation.

Despite the diminution of illegal immigration from Ecuador to Spain in recent years, the bilateral migration regime established between the two countries continues to be hampered by factors such as bureaucratic blundering and the incapacity to process the entire migratory phenomenon between the regions. As Lorenzo Chachón asks, “Why would a Spanish employer hire workers in Ecuador when the employer has them here [in Spain], albeit without official papers?”<sup>39</sup>

In its section on temporary migration, the Royal Decree states that work and residence authorisations can initially be denied if, among other reasons, the employer has been sanctioned in the previous 12 months for serious immigration infractions, the employer does not guarantee the worker continued activity throughout the duration of the authorisation, the economic, material, and personal means of the employer are deemed insufficient to meet the obligations enshrined in the contract, or false documents or inaccurate assertions have been utilized during the petitioning process (Ch. II, Sec. I, Art. 53).<sup>40</sup> Denial of work authorisations for Ecuadorian migrants decreased between 2005 and 2006, with 11,117 the first year and 6,929 the following year, possibly indicating smoother functioning of the programme.<sup>41</sup>

## Negative Incentive Mechanisms

1. Worker disqualification/employer sanctions linked to social security system

The Royal Decree states that if a worker has not become affiliated with the Spanish Social Security system within a month of his or her entrance into Spain, the authorities can cancel the migrant's work authorisation. If the employer does not offer any justification or if the reasons enumerated appear insufficient for why the labour relationship has not been initiated, the authorities can deny the employer's future requests for workers (Ch. II, Sec. II, Art. 57, Par.10).<sup>42</sup> While not addressing return migration per se, monitoring the migratory process by incorporating it into the existing mechanism of the social security system may encourage migrants and employers alike to abide by the rules from the outset. Along with increases in overall immigration flows from Ecuador, the number of Ecuadorian workers affiliated with the Spanish Social Security system has steadily increased from 7,749 in January 2000 to 270,937 in May 2007.<sup>43</sup>

2. Premature repatriation

The 2001 Agreement states that any temporary migrant who has not complied or has stopped complying with requirements for entrance or residence will be repatriated to Ecuador at the cost of the Spanish government (Ch.V,Art. 14, Par. I; Ch.V,Art. 17, Par. I).<sup>44</sup> According to Ecuadorian ambassador Carlos López Damm, as of April 2007 there had only been eight cases on record where migrants from Ecuador left their jobs prematurely under the bilateral agreement. López Damm affirmed that in these cases, departure was due to "misleading information from 'friends and relatives' rather than 'disillusion' at the process that brought them to Spain."<sup>45</sup> Provisions for premature repatriation could help stymie migrants' entrance into the black market prior to the termination of employment.

3. Promise to return

Under the 2001 Agreement, temporary workers must, before they are hired, sign

a commitment to return to Ecuador once their work permit has expired. Within the maximum period of a month after their return, these migrants must present themselves in front of the same Spanish Consular Office in Ecuador from which they were issued their visa. Failure to fulfil this commitment disqualifies workers from future employment in Spain (Ch. IV,Art. 12).<sup>46</sup>

The Royal Decree adds that authorities at the Spanish Consular Office must communicate the worker's return as quickly as possible to Spain's Ministry of Foreign Affairs and Cooperation and Ministry of the Interior for their annotation in the Central Register of Foreigners (Registro Central de Extranjeros). According to the Royal Decree, failure of the worker to appear at the Office can signify the denial of subsequent requests for work authorisation by the migrant for three years following the expiration of the original authorisation (Ch. II, Sec. II,Art. 56.1C).<sup>47</sup>

## Positive Incentive Mechanisms

1. Maintenance of social networks

The Association of Ecuadorian Migrants Llactacaru (Asociación de Migrantes Ecuador Llactacaru) in Barcelona, Spain has created a community centre called Telecentro in Ciudadela Tarqui, Sector Mena Dos in Ecuador, which houses computers with internet access designed to facilitate communication between migrants and their family members and friends, with options for more personal contact such as web cameras. Telecentro was established in this particular zone because of its high indices of migration to Spain (currently around 900 people).<sup>48</sup> The centre helps assure that the links between migrant and family and migrant and source country are not severed during the temporary work experience and that the prospects of a "broken family" or shattered social networks do not propel migrants into the underground economy in the host country. If the migration regime is successful, preserving social bonds also means that migrants' positive reports to friends and family will only spur further participation in the programme.

## 2. Political investment

In 2005, Ecuador passed legislation allowing Ecuadorians living overseas to vote in presidential elections. During the November 2006 presidential election, 84,110 Ecuadorians living in 42 countries around the world voted.<sup>49</sup> Though not linked directly with the bilateral migration programme between Spain and Ecuador, suffrage can further invest Ecuadorian overseas workers in current events back home while giving them a say in the future direction of a country from which they previously felt the need to migrate, if only temporarily. While these factors could inform migrants' decisions to return in a positive way, an unfavourable election outcome could actually make migrants less willing to return. Moreover, the infrequency of elections coupled with the short duration of temporary migration stints calls into question how influential suffrage can be as an incentive mechanism for return migration.

## 3. Flexible contracts

The Royal Decree states that temporary authorisations can be extended for up to an additional year for the realisation of the same work or service specified in the initial contract. Seasonal authorisations can be extended for six to nine months according to the type of visa and the period of the initial contract (Ch. II, Sec. II, Art. 57, Par. 8).<sup>50</sup> Since temporary work contracts, especially for low-paying jobs, are frequently not long enough for migrants to earn sufficient wages to cover all financial costs associated with migration (e.g. debts or placement fees) or to acquire adequate skills, develop viable social networks, or save enough money to establish businesses or meaningfully invest upon return, migrants may have greater incentive to remain in the temporary migration system if there exists a possibility for work extension.<sup>51</sup>

Statistics indicate that Ecuadorian workers may, in fact, be taking advantage of work extensions while not going so far as to opt for permanent migration. Only 8% of Ecuadorian nationals currently in Spain have an “initial

residence authorisation,” while only 12% have permanent residence authorisation. On the other hand, approximately half have an authorisation of “first renovation.”<sup>52</sup>

## 4. Disregarding national labour situation for re-entry

Each year, the Spanish government approves a quota (contingente) for foreign workers, while it also develops a regional, trimesterly “catalogue of difficult coverage occupations” (catálogo de ocupaciones de difícil cobertura). Nevertheless, the Royal Decree stipulates that the national employment situation will not be taken into account to obtain a residence and work authorisation for those migrants who have held work authorisations for seasonal activities during four natural years and who have returned to their home country at the end of each authorisation (Ch. II, Sec. II, Art. 56.1D).<sup>53</sup> This provision could have interesting implications for the debate over economic needs tests and GATS Mode 4. One potential drawback from a developmental standpoint is that returnees could choose not to implement their new skills in Ecuador, instead biding their time until the next overseas deployment.

## 5. Livelihood capacity-building in source country

Banco Solidario, an Ecuadorian bank, eliminates transfer charges for migrant remittances so that the saved money can be reserved for housing or micro-enterprise, provides for separate savings plans within the same account for migrants returning from Spain through the Futuro Seguro (“Secure Future”) savings account, and grants microcredit to individuals and groups hoping to start up small enterprises in rural areas.<sup>54</sup> Thirty percent of the bank's current transfers are free.<sup>55</sup> The bank estimates that \$6,023,137 has accrued in total savings from free transfers, and that instant credit has been granted to a total of 1,631 migrants and migrant families.<sup>56</sup> While not boasting any formal ties with the bilateral migration programme, Banco Solidario's initiatives illustrate how bilateral migration agreements can have unanticipated “spin-

off” effects in generating collaboration from others actors in government, civil society, business, and the international community.

Nevertheless, any remittance schemes designed to promote “productive investments” by migrants in income- or employment-generating activities such as micro-business development or agriculture must be viewed with caution, since numerous studies have proven that remittances are used for basic household needs such as education, food, clothing, healthcare, and new houses or house repairs, as well as to cancel outstanding debts, well before migrants and their families contemplate business start-ups or acquiring farm land.<sup>57</sup>

On a more grassroots level, the Association of Ecuadorian Migrants Lactacaru also sponsors the Housing Project of Guayllabamba (Proyecto de Vivienda de Guayllabamba), which helps migrant families in the Ecuadorian village of Guayllabamba attain their own houses. Two hundred and fifty families have moved into houses thus far under the project.<sup>58</sup>

Through remittances, migrants invest part of themselves in the future success of their family and of their community of origin, while at the same time improving the attractiveness of the environment to which they will decide whether or not to return. Professional or business opportunities in Ecuador, or the prospect of owning a home, may only enhance the lure of the hometown. In a recent visit to Spain, Ecuador’s President Rafael Correa proposed a pilot Return Plan (Plan Retorno) that would encourage Ecuadorian workers to bring home the very machines or material goods with which they worked in Spain in order to launch business projects.<sup>59</sup>

## 6. Co-development

The Spanish Agency of International Cooperation (Agencia Española de Cooperación Internacional) and the Esquel Foundation (Fundación Esquel) in Ecuador have jointly developed a pilot programme

called the Cañar-Murcia Co-Development Project (Proyecto Codesarrollo Cañar-Murcia), between the canton of Cañar in Ecuador and the province of Murcia in Spain. The programme, which was initiated in 2006 and which will extend until 2010, has totalled nearly USD \$6 million in investments since its launch.<sup>60</sup> The wide-ranging organisations participating in the project include the Ecuadorian Ministry of Foreign Relations, the government of the Autonomous Community of the Region of Murcia, the Commission on Human Rights of Cañar, and Murcia’s local tourism organisation. Among the project’s objectives are:<sup>61</sup>

- 6.1. The improvement of living conditions and development possibilities in Cañar including the
  - strengthening of the local economy (e.g. agriculture; tourism) and endogenous business capacities,
  - the improvement of the environment and the management of natural resources,
  - the enhancement of technical occupational experience for young people,
  - the implementation of social and productive infrastructure projects over the foundation of collective remittances and communal work, and
  - the strengthening of cantonal educational systems. It is estimated that 2,500 families will benefit from all of the above activities, around 70% of the total population of the canton (17,733 inhabitants).<sup>62</sup>
- 6.2. The improvement of living conditions and labour and social insertion of immigrants from Cañar in Murcia.

There is currently as maintaining ties to the country of origin for the proper functioning of circular migration. Success in the host country, for example, allows “circular migrants” to sustain transnational businesses in the source country through networks in the destination country.<sup>64</sup>

# Canada, Mexico, and the Caribbean

## History

Canada's Temporary Foreign Worker (TFW) programme allows Canadian employers to hire foreign workers to meet human resource needs when Canadian workers are not readily available ("Canadians First Policy"). The programmes developed under this umbrella are jointly administered by Citizenship and Immigration Canada (CIC) and Human Resources and Social Development Canada/Service Canada (HRSDC/SC), and operate under the authority of Canada's Immigration and Refugee Protection Act and Regulations (IRPA).

The Canadian Seasonal Agricultural Worker's Programme (CSAWP) is actually a series of government-to-government memoranda of understanding (MOUs) designed so that, during peak harvesting and planting periods in Canada when farmers often suffer from acute shortages of qualified Canadian workers, foreign seasonal agricultural workers can be hired to fill the gaps. The programme began in 1966 subsequent to negotiations between Canada and Jamaica. Trinidad and Tobago and Barbados became participants only a year later. Canada signed an agreement with Mexico pursuant to the same programme in 1974, and then in 1976 the agreement was extended to include the Organisation of East Caribbean States. These MOUs can be terminated with only three month's notice.<sup>65</sup>

The average length of stay for a seasonal worker in 2005 for all participating CSAWP countries was 19 weeks, though migrants are technically permitted to work for a maximum period of eight months.<sup>66</sup> In 2006, Canada accepted 112,658 temporary foreign workers into its borders whereas, in 1980, the figure stood at 58,728.<sup>67</sup> The flow of workers under CSAWP increased from under 6,000 in 1980 to 18,887 in 2004—with 10,777 coming from Mexico and 8,110 from the Caribbean States.<sup>68</sup>

The 2003-2004 report by the House of Commons' International Development Committee noted that under the CSAWP, no Mexicans had overstayed in Canada in 28 years.<sup>69</sup> Only 5% of

Mexican migrants have returned before their visas expired.<sup>70</sup> In the year 2005-2006, 5,995 Jamaicans were recruited to work on Canadian farms under the CSAWP. Of those, 5,531 completed their contracts, with 196 classified as "AWOL," 24 changing their status, 56 breaching their contract, 51 sent home for domestic or medical reasons, and two passing away.<sup>71</sup>

It is important to keep in mind that the percentage of workers making use of CSAWP is quite small compared to the number of persons employed in regional labour markets (under 1%), and that workers often have a low level of certification for farm work, causing little skills transfer to take place once the workers return home.<sup>72</sup> The average number of years of schooling among workers interviewed in a 1999-2000 study was 5.5 years (or incomplete primary education).<sup>73</sup> And while often proffered as a joke, the high rates of return for seasonal workers in Canada may have as much to do with factors such as long, harsh Canadian winters than with incentive mechanisms.<sup>74</sup>

Though not treated below, the TFW programme recently launched the Pilot Project for Occupations Requiring Lower Levels of Formal Training (National Occupation Classification "C" and "D"), allowing for the temporary entry (up to 24 months) of foreign workers into lower-skilled occupations in Canada that usually require at most a high school diploma or a maximum of two years of job-specific training.<sup>75</sup> Some parties are concerned that the programme will undermine the CSAWP. During the first three quarters of 2006, the largest numbers of temporary foreign workers (30,636) entered Canada in skill level C (intermediate and clerical, which includes most seasonal agricultural workers).<sup>76</sup>

## Teamwork

HRSDC works closely with the Canadian embassy in Mexico and provides employers and CIC with Labour Market Opinions (LMOs) that describe the impact the entry of a temporary foreign worker would have on the Canadian labour market and also develops Regional Lists of Occupations under Pressure, which contain jobs for which employers are not required to undertake comprehensive advertising efforts before applying to hire a foreign worker.

Canadian employers typically submit employment requests for foreign seasonal workers to the local Service Canada Centre (SCC), and an elaborate process ensues. Under the Mexican-Canadian agreement, for example, once notice has been received by the Mexican Ministry of Labour of the number of workers Canadian employers require, it, along with the Mexican Ministries of Foreign Affairs, Health, and the Interior—and in coordination with the State Employment Service and the Mexican Consulates in Canada—must complete the recruitment, selection, and documentation of workers and then promptly notify Canadian authorities. Mexico is, in fact, always required to maintain a pool of 300 qualified workers (or 10% of the total number of workers requested each year) ready for departure to Canada in the event that it receives emergency requests from Canadian employers. Mexico is also required to dispatch one or more liaison officers to Canada to ensure the smooth functioning of the programme. These government agents relay information back to Mexico such as arrivals and repatriations, transfer notices, or records of migrants absent from work without leave.<sup>77</sup>

During the recruitment process, Mexican authorities give preference to applicants who are married and have many children, which can serve as a “collateral” against non-return.<sup>78</sup> When the migrant arrives in Canada, he or she must show a letter of authorisation to an immigration officer, who will only then give the migrant a work permit. Once workers arrive at their place of employment, they are given a 14-day probation period where farmers prepare a written evaluation of each worker and then send it back to source country authorities.<sup>79</sup>

In recent years, Canadian grower (employer) organisations such as the Foreign Agricultural Resources Management Services (FARMS) have been working with federal agencies to assume former governmental responsibilities in the CSAWP relating to admissions, transportation, employment decisions, dispute settlement, research, and policy recommendations. Organisations such as FARMS maintain up-to-date mailing lists of all employers in the programme and track the location of migrant workers at all times. FARMS also works with CanAg Travel Services Ltd., the only authorized travel agent for transporting seasonal workers.

## Combating Illegal Recruitment and Illegal Immigration

These measures are well-integrated into CSAWP incentive mechanisms.

### Negative Incentive Mechanisms

#### 1. Restricting worker mobility

While in Canada, the migrant worker is required to live on the grower’s property in free, approved housing provided by the grower (the worker must also be provided with meals or cooking facilities on-site). The migrant cannot legally work for any other grower without the approval of HRSDC and the supply country’s liaison officer. If an employer aids or encourages a worker in the CSAWP to perform unauthorized work for another person or to perform non-agricultural work, the employer will be liable to a penalty up to \$50,000 or two years imprisonment, or both, under immigration laws.<sup>80</sup> The foreign worker and the employer to whom the foreign worker is loaned or transferred will also be prosecuted. In addition, foreign workers jeopardize insurance coverage if they are injured or become ill while working for the illegal employer. Unauthorized employment can lead to the termination of assistance by the Canadian and foreign governments to the employer in facilitating the movement of seasonal agricultural workers. This sanction can also be used against the employer if foreign workers do not return to the home country at the end of the employment contract. Loaning or transferring workers appears to be the main area where abuses in the programme have occurred.<sup>81</sup>

Lack of mobility and restrictions on the “transfer process” keep vigilance high, making it more difficult for migrant workers to enter the environs of the informal economy. Constraints on movement also limit contact with the general population—especially since authorities direct labour mainly to rural areas, mitigating the prospect of migrants establishing strong ties with individuals in the host country (e.g. through marriage or pregnancy) that would make

returning home unappealing. A recent survey of over 5,000 Jamaican seasonal workers found that around 67% of them reported socializing mainly with fellow Jamaican migrant workers when not working, with only approximately 3% saying they interacted with individuals from the greater community.<sup>82</sup> Of course, this phenomenon could also be due to factors such as discrimination or cultural affinities. Tanya Basok writes, “In the US braceros who stayed behind were assisted by other resident Mexicans or Chicanos and were easily absorbed into the economic infrastructure which feeds off undocumented labour...In Canada, neither the social networks nor the economic infrastructure which would facilitate non-return is present.”<sup>83</sup> Nevertheless, mobility restrictions can also provide fertile ground for human rights violations. Canadian government requirements that employers provide workers with minimum working and living standards may help decrease chances of worker desertion.<sup>84</sup> Interestingly, foreign seasonal workers are also granted rights regarding family reunion. Spouses or common-law partners and children of temporary workers can accompany these migrants to Canada or visit them in Canada, provided they meet all requirements for temporary residents to Canada including satisfying an immigration officer that they will only be staying in Canada temporarily and proving that they have no criminal record.<sup>85</sup>

### Premature repatriation

The CSAWP Employment Agreement between Canada and Mexico (a similar accord exists between Canada and the Caribbean) allows the grower to repatriate a worker for “non-compliance, refusal to work, or any other sufficient reason.”<sup>86</sup> The distribution of repatriation costs demonstrates how penalties for non-compliance with programme regulations can place the onus on the employer to hire responsible workers, and the incentive on the worker to persevere in the programme or risk monetary repercussions. The provision stipulates that:<sup>87</sup>

1. If the worker was originally requested by name by the employer, the full cost of

repatriation must be paid by the employer (i.e. southbound flight only);

2. If the worker was unnamed and selected by the Government of Mexico, and 50% or more of the term of the contract has been completed, the full cost of returning the worker will be the responsibility of the worker (i.e. southbound flight only);
3. If the worker was unnamed and selected by the Government of Mexico, and less than 50% of the term of the contract has been completed, the full cost of the northbound and southbound flights will be the responsibility of the worker.

This provision, however, is not without its human rights concerns. The vague language creates a situation in which employers could arbitrarily remove workers without recourse to appeal. Nevertheless, the agreement stipulates that if it is determined that the employer has not satisfied obligations under the accord, alternative agriculture employment in Canada will be arranged for the worker. If this is not possible, the employer will cover the full costs of repatriation of the worker to Mexico City.<sup>88</sup>

### Positive Incentive Mechanisms

1. Flexible contracts

Provisions do exist within CSAWP's legal framework for “transfer workers,” or workers who have completed their first term of employment with a CSAWP-approved employer and whose initial period of employment, combined with the transfer period of employment, does not exceed the eight month maximum. Employers accepting transferred workers only have to pay the inter-Canadian airfare, and they get an experienced worker who is available immediately. Migrants can work for a longer period of time and for more wages. This approach helps minimise dissatisfaction with the characteristics or the duration of the initial employment as a push factor for entrance into the underground economy. In 2004, 1,863 of the 16,986 farm vacancies filled through CSAWP in Ontario were filled through worker transfers.<sup>89</sup>

## 2. Mandatory remittance

Though highly ambiguous in terms of being a negative or a positive incentive mechanism, the Employment Agreement between Canada and the Caribbean requires a 25% mandatory remittance from worker wages for each payroll period called the “Compulsory Savings Scheme” (CSS). The deduction is remitted to the country of origin’s liaison officer and then given back to the worker once he or she returns home.<sup>90</sup> The source country’s government retains 5-8% of the funds for administrative expenses.<sup>91</sup> It might be difficult for a migrant to abandon hard-earned money in the source country in order to work illegally abroad, while setting aside this portion of the salary can help the migrant invest or launch development projects once he or she returns.

Many workers like the idea of the CSS—in 2002 positive support ranged from 79% in Jamaica to 51% in Barbados to 42% in Trinidad and Tobago.<sup>92</sup> Nevertheless, migrants are frequently critical of the percentage deductions made given the amount of their weekly pay, and also of the length of time it takes to receive their savings (sometimes as long as four months) after returning to the country of origin. Several workers complain about the discrepancies between the amount received and the amount deducted in Canada.<sup>93</sup> Though not necessarily a problem under the CSAWP, it is also important to ensure that employers are not using such a scheme to circumvent minimum-wage legislation. Another problem with the deferred wages system is that its force is weakest early on in the migrant’s engagement—a worker with a week’s wages has less incentive to return home than one with eight month’s worth of salary.<sup>94</sup> One suggestion for improving the scheme is to allow workers to withdraw some of the money for family needs or to support family-owned businesses while the workers are still in Canada.<sup>95</sup>

## 3. Avoiding double taxation

Frequently, a tax treaty between Canada and the worker’s home country ensures that the worker does not have to pay tax

twice (double taxation) on the same income. If Canada does not have a treaty with the home country, the worker’s liaison officer is advised to contact the tax authority in the source country to determine whether the amount of tax payable to that country can be reduced by the amount of tax paid to Canada.<sup>96</sup> Provisions against burdensome taxation might induce the worker to remain in the programme rather than flee from it as a result of financial strain.

Nevertheless, in practice this remains a highly contentious issue under the CSAWP. Avoiding double taxation on income tax is not guaranteed, while workers pay Canadian Employment Insurance (EI) premiums and contribute to the Canada Pension Plan. However, to collect EI benefits migrants essentially would have to remain in Canada illegally. Though eligible for Canadian pension benefits, pension amounts are low given the workers’ limited earnings in Canada and the fact that they normally draw their pensions before they are 60 or 65.<sup>97</sup> Experts have suggested exempting workers entirely from paying EI premiums or at least reducing the premiums. Other proposals include pooling EI premiums in a fund from which workers can draw working capital for starting a business back home, or directing EI contributions to work-related training in Canada in areas such as pesticides or farm machinery.<sup>98</sup>

## 4. Covering transportation costs

In order to hire a temporary worker under the CSAWP, the employer must cover the migrant’s full transportation costs to and from the place of employment in Canada, helping to prevent return from appearing prohibitively expensive to the worker. The employer is partly reimbursed for these expenses, however, through payroll deductions at a rate of 4% of the worker’s gross pay, with aggregate payment normally ranging from \$150-\$425.<sup>99</sup>

## 5. Name-hiring

To apply for a Canadian work visa outside Canada, migrants must convince visa officers that they will leave Canada promptly at the end of the employment.<sup>100</sup> The CSAWP’s

provision allowing the employer to re-hire a worker year after year by requesting him or her by name may make this obligatory return trip more palatable. Applications are kept on file to facilitate the recalling of programme participants, workers must report back to source country authorities and present them with evaluations of their work written by employers to be considered, and name-hire orders are processed as priority.<sup>101</sup>

Seasonal re-entries of temporary workers have increased in Canada from 2,809 in 1980 to 17,381 in 2006.<sup>102</sup> According to the North-South Institute, between 70-80% of migrants under the CSAWP are rehired by name each year.<sup>103</sup> The average worker interviewed in 2002 had seven years work experience in Canada.<sup>104</sup> Statistically, Caribbean workers are more likely to be “named” than Mexican workers.<sup>105</sup>

Through this mechanism, workers can feel more secure about future employment and reasonably expect to return the following year, while farmers can hire experienced workers. The system also has the potential to foster stable relationships between workers and the host country and “paternalistic” relationships between workers and their employers (in Mexico, Canadian employers are often referred to as *patrones*, though not all workers are fond of them), in which workers might think twice about abandoning them in favour of the underground economy.<sup>106</sup> Name-hiring may also have developmental implications, since studies show that workers participating in the CSAWP for long periods tend to have children with higher levels of schooling.<sup>107</sup> Nevertheless, naming can also put the migrant in a vulnerable position in relation to his or her employer, since the employer has the ability to determine the worker’s future participation in the CSAWP.<sup>108</sup>

Employers can also choose the supply country in employment requests, thus incentivising source country officials to step up efforts to market and improve their respective programmes. Nevertheless, such a provision may also render source countries less willing to voice concerns about the programme and thereby risk encouraging employers to turn to other countries for workers.

## 6. Loyalty recognition payment

The Canada-Caribbean Employment Agreement provides for a recognition payment of \$4.00 per week to a maximum of \$128 for workers with five or more consecutive years of employment with the same employer, payable at the completion of the contract and not subject to the CSS.<sup>109</sup> Twenty-eight percent of Jamaican workers have reported receiving end-of-season bonuses.<sup>110</sup> The amount of money may not be substantial enough to impact worker motivations.

## The Philippines

### History

In 1974, the Philippine government institutionalised an international employment programme as a response to the surge in demand for Filipino workers in the Middle East, a region undergoing a construction boom as a result of the newfound strength of the OPEC countries in the global petroleum industry. While the programme was originally intended to be temporary, it has since morphed into a highly elaborate system of temporary labour export governed by the Philippines Overseas Employment Administration (POEA) and the Overseas Workers Welfare Administration (OWWA), both under the supervision of the Department of Labour and Employment (DOLE). Economic growth during the 1980s and 1990s in East and Southeast Asia has diverted a substantial number of Filipinos to these regions. There are currently over eight million overseas Filipinos workers (OFWs)—nearly 10% of the country’s population—living or working abroad.<sup>111</sup>

Within this “culture of migration,” government-sponsored temporary movement is each year accompanied by other forms of migration. As of April 2007, approximately 3,180,000 Filipino migrants had “immigrant” or “permanent resident” status worldwide, around 3,590,000 were “documented OFWs,” and around 1,290,000 were “irregularly documented OFWs.” That is a percentage permanent-to-temporary-to-irregular of approximately 39%-45%-16%.<sup>112</sup> 2006 Percentage distributions

in certain areas of the world are particularly telling. In East and South Asia (e.g. Japan, Malaysia, etc.) it was 16%-65%-19%. Fifty-two percent (125,000) of Filipino workers in Malaysia were there irregularly. In West Asia (e.g. Saudi Arabia, Kuwait, etc.), it was .2%-94%-6%. The United States alone had more Filipino workers than any other geographic region in total (2,728,209) and had an approximate percentage distribution of 90%-5%-6%.<sup>113</sup>

In 2006 alone, (land-based and seafarer-based) OFW remittances totalled 12,761,308 as compared to 10,689,005 in 2005, a 19% year-over-year change.<sup>114</sup> That year, the total number of OFWs deployed in 197 country destinations reached an historic-high of 1,062,567, rising by 7.5% from 988,615 recorded in 2005.<sup>115</sup> A global leader in labour outflows, the Philippine government denies that it has an “explicit policy” of sending Filipinos overseas to work, asserting instead that the government acts only as a facilitator in responding to global market forces, an assertion that is subject to much debate.<sup>116</sup>

Under the current migration regime, the government pinpoints labour market niches in countries with which it has concluded bilateral agreements. Sending out mainly production, transport, and construction workers in the 1970s and mid-80s, deployment has since shifted to a rising proportion of service workers, especially domestic helpers.<sup>117</sup> In addition to low-skilled workers, the Philippines now exports many professionals (e.g. medical, IT, and health workers) and middle-skilled workers (e.g. caregivers, entertainers, and seafarers).<sup>118</sup> The migration regime in the Philippines differs from the previous two case studies in its comprehensiveness, its heavy reliance on positive mechanisms for return, and its unilateral nature as a developing country calling the shots in many ways despite sending its nationals abroad as a result of bilateral accords. Though whether its various incentive mechanisms have been successful is a matter of controversy, much can be learned from the creativity various actors have employed in designing such a holistic approach to managed migration.

### Teamwork

The POEA conducts market research based on the decentralised “desk officer system” in

which individual offices are assigned particular regional or skill-based market segments. As part of its “personal selling” tactic, the POEA dispatches special and often high-powered marketing teams on field missions and Labour Attachés or POEA representatives on client calls or field reconnaissance in order to network directly with government and private sector officials in the host country.<sup>119</sup> The government agency aspires to the “country team approach” in which all overseas Filipino officials associated with the temporary worker programme act in unison. The organisation boasts a tripartite governing board consisting of the Secretary of Labour and Employment, a worker’s representative from the Trade Union Congress of the Philippines, and an employer’s representative from the association of private recruitment agencies.

Foreign employers send their manpower requirements to POEA-licensed private recruitment and deployment agencies, which advertise job vacancies and conduct preliminary screening and interviews of applicants. A foreign employer that is a government entity or a government-owned company can hire through the POEA’s Government Placement Branch. Prospective applicants for overseas jobs must participate in Pre-Employment Orientation Seminars, while hired workers are obliged to take Pre-Departure Orientation Seminars.

One example of the POEA’s government-to-government partnerships is its cooperation with the Korean Ministry of Labour (MOL) in building computer infrastructure to facilitate the pre-selection and employment of Filipino workers under the South Korean Employment Permit System (EPS), which allows Filipino migrants to work for a maximum of three years with each labour contract not exceeding one year.<sup>120</sup> The Philippines is continuously solidifying new bilateral accords, such as its recent Memorandum of Agreement on Cooperation for the Management of Migratory Flows with Spain, which provides for a four-year Proyecto Piloto (Pilot Project) allowing for the staggered entrance into Spain of Filipino workers in the healthcare sector or the hotel, restaurant, tourism, construction, and metal industries.

Republic Act No. 8042—also known as the Migrant Workers and Overseas Filipinos Act of

1995—establishes an inter-agency committee composed of the Department of Foreign Affairs (DFA), the Commission on Filipinos Overseas, the DOLE, the POEA, the OWWA, the Department of Tourism, the Department of Justice, the Bureau of Immigration (BI), the National Bureau of Investigation (NBI), and the National Statistics Office to implement a shared government information system for migration. Shared data includes master lists of departing and arriving Filipinos (Sec. 20).<sup>121</sup>

### Combating Illegal Recruitment and Illegal Immigration

Among the findings amassed in 2001 by a joint DFA-International Labour Organisation research team in Japan was that despite the monthly examination of legal documents conducted by Philippine immigration officials in Japan, undocumented or clandestine workers had been able to elude authorities, some for as long as ten years. The team also concluded that estimates on the number of undocumented and ‘irregular’ workers were based mainly on guesswork, implying the need for the Philippines to design a more effective monitoring mechanism.<sup>122</sup>

In a visit to the Philippines a year later, the Special Rapporteur of the United Nations Commission on Human Rights noted that a recurring phenomenon in host countries is that of “runaways,” or OFWs leaving their employment to escape a difficult situation or to seek different employment before the mandatory return to the Philippines. Apparently, the phenomenon was particularly common in countries where unskilled migrants were admitted with contracts of very short duration.<sup>123</sup>

In Section 7 of the Migrant Workers and Overseas Filipinos Act, penalties for illegal recruitment range from six years to life imprisonment, and include fines of up to one million Philippine pesos (P 1,000,000).<sup>124</sup> The POEA licenses and continuously monitors the private, Philippines-based recruitment and deployment agencies. Foreign employers are only able to recruit Filipino workers once their accreditation documents are verified by the nearest Philippine Overseas Labour Office

(POLO) at the Philippine Embassy or Consulate. Foreign employers may be suspended or banned from hiring Filipino workers for default on contractual obligations to the migrant worker or violations of the laws governing overseas employment. The Philippine Foreign Service Posts report cases of trafficking and illegal recruitment involving Filipinos to the Home Office, which are then forwarded to law enforcement agencies for examination and action. The POEA provides free legal assistance to victims of illegal recruitment, prosecutes illegal recruiters, monitors persons and entities suspected to be engaged in illegal recruitment, and conducts informational and educational campaigns to combat the illegal migration process. It also oversees a system of watch listing for contract workers who are facing charges or complaints arising from the violation of employment terms.

In 2006, surveillance operations conducted in partnership with the NBI and the Philippine National Police-Criminal Investigation and Detection Group, resulted in the arrest of 50 suspected illegal recruiters (as opposed to 4 recruiters in 2005). A total of 316 (as against 250 in 2005) illegal recruitment cases involving 694 victims were filed for preliminary investigation. The POEA issued and implemented a total of 890 orders of reprimand, suspension, fines, and cancellation of license of faulty agencies—a figure significantly higher than the 574 recorded in 2005.<sup>125</sup> As of December, 2006 there were 1,422 active agencies, 1,374 of which were in good standing.<sup>126</sup> It is unclear whether this data indicates increasing problems with illegal recruitment or more effective measures to combat it.

One relatively recent POEA initiative is to create a Global OFW Mapping and Profiling Programme to allow the agency to pinpoint the whereabouts of OFWs abroad, in addition to identifying skills in demand in the global market. This would work in conjunction with e-Services Delivery Infrastructure, which is designed to enable the POEA to get timely and accurate information about foreign employers and OFWs.<sup>127</sup>

## Negative Incentive Mechanisms

### 1. Penalising countries for non-compliance

Section 5 of the Migrant Workers and Overseas Filipinos Act declares that the Philippine government, in pursuit of the national interest or when public welfare so requires, may terminate or impose a ban on the deployment of migrant workers. The government has the authority to suspend or cease the deployment of workers to certain countries in cases of repeated abuse.<sup>128</sup>

Under the South Korea-Philippines agreement, if the number of Filipino workers staying illegally in the Republic of Korea exceeds a certain percentage or if irregularities are found to exist in the sending process, the Korean MOL may take measures such as reducing the allocated number of job seekers, temporarily suspending the Philippines' ability to send workers, or terminating the MOU altogether.<sup>129</sup> In general discussions on incentive mechanisms, some experts have suggested allocating temporary migration quotas to migrant-sending countries that are regularly revised depending on how many migrants have returned in the past. However, it is important to bear in mind that quotas do not necessarily translate into jobs. It would be necessary to complement such a system with continued matching between job availability and the profile of workers from the migrant-sending country.

Some argue that sanctioning employers or, in this case, countries as a whole might encourage compliance among workers as a result of social pressure, since going illegal will jeopardise the possibility of future employment for fellow nationals back home, but others are critical of altruism as a motivating factor.<sup>130</sup>

### 2. Publicly humiliating non-compliant workers

According to the Rules and Regulations for land-based OFWs, unjustified breach of the employment contract by the worker will, on the first offence, lead to a two to six month suspension from participating in the overseas

employment programme. On the second offence, it will result in anything from a six month and one day to a one year suspension from participating. On the third offence, it will lead to permanent disqualification.<sup>131</sup>

On its website, the POEA lists by name Filipino workers deleted by South Korea's Human Resources Development (HRD) from the job seekers pool. Reasons for deletion range from "illegal stay" (restriction period for reapplication: "forever") to "contract refusal" or "incongruent work condition" (restriction period for reapplication: "one year from deleted date"). Only three illegal stays were registered as of December 23, 2006.<sup>132</sup>

## Positive Incentive Mechanisms

While recognising the contributions Filipino migrant workers make to the national economy through foreign exchange remittances, Section 2c of the Migrant Workers and Overseas Filipinos Act declares that the Philippines does not promote overseas employment in order to sustain economic growth and achieve national development, but rather to safeguard the dignity and human rights and freedoms of Filipino citizens. In pursuing this goal, the State "shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development."<sup>133</sup>

Many incentive mechanisms associated with OFW migration are predicated on a strong belief in an effective welfare system. This principle is reflected in figures regarding the OWWA's trust fund, which consists of membership contributions from foreign employers, land-based and sea-based workers, and investment and interest income. During the period from 1995 to 2005, the OWWA's fund balances more than quadrupled from P 2,188,304,580 to P 8,566,919,809. In 2006 the OWWA had 994,191 member-OFWs.<sup>134</sup> While the OWWA sponsors a plethora of return and reintegration programmes, criticisms of the government agency do exist. Some detractors maintain that the annual administrative costs of the OWWA Fund have been greater than the actual services provided to migrant workers, which at times are shared with non-members such as undocumented workers.

Below, the psycho-social component of the OFW Reintegration Programme will be treated first, the economic component second.

#### 1. Migrant Workers Resource Centre

Section 19 of the Migrant Workers and Overseas Filipinos Act calls for the establishment of a Migrant Workers and Other Overseas Filipinos Resource Centre in countries where there are large concentrations of Filipino migrants, theoretically open 24 hours a day and seven days a week, including holidays. The Centre monitors daily situations and circumstances affecting migrant workers and other overseas Filipinos, while developing schemes to compel existing undocumented Filipino workers to register with the Centre. In countries categorised as highly problematic by the DFA and the DOLE, the Philippine government must provide a lawyer and a social worker for the Centre. The Centre is granted a counterpart 24-hour information and assistance centre at the DFA in the Philippines to ensure a continuous coordinative mechanism at the Home Office. Nevertheless, many of these centres have yet to be truly operationalised due to personnel and budget constraints.<sup>135</sup> There are approximately 30 centres worldwide.<sup>136</sup> If functioning properly, these institutions could serve as support networks for overseas workers while allowing close monitoring of OFWs. This would make it more difficult for workers to stay in the country beyond the time of their contract and enter the informal job market.

#### 2. OFW advisories

The POEA posts on its website advisories for OFWs regarding tricky situations they may encounter that could fuel irregular situations. One recent advisory declares, “Beware! Fake certificates of employment are sold by syndicates in Saudi Arabia to runaway and overstaying OFWs on the false promise that ‘waraqa’ makes them immune from arrests,” while another states:

Korea has abolished the Alien Industrial Trainee System and stopped issuing trainee

visas effective January 1, 2007... The POEA is the only government organization authorized to implement the EPS in the country. Filipinos working as industrial trainees in Korea are advised to come back to the Philippines upon expiration of their contract and re-apply under the Employment Permit System (EPS) instead of going illegal. According to [President of Korea’s Human Resources Development Service] Dr. Yong-Dal Kim, a huge number of overstaying workers will affect the labour quota that will be given to the Philippines under the Employment Permit System. Former trainees who wish to continue working legally in Korea can register with the POEA... Former trainees should, however, wait for at least six months before they could go back to work in Korea. Employers will face stiff penalty for employing illegal foreign workers in Korea.<sup>137</sup>

The POEA’s emphasis on informational campaigns also raises awareness of incentive mechanisms among migrant workers. Nevertheless, because advisories are usually published in English and not broadcast by regional media, this information does not reach all migrant workers.<sup>138</sup>

#### 3. Maintenance of social networks

In partnership with Microsoft Philippines, the DOLE and the OWWA launched the Tulay or Bridge Education Programme, which provides OFWs with Information Technology (IT) training and access to technology that will enable migrants and their families and friends to communicate through the internet. The programme is part of Microsoft’s Unlimited Potential, a global initiative to provide technology and skills to underserved individuals. OFWs and their families learn the basics of computer applications such as Microsoft Word, PowerPoint, and Excel, as well as how to use internet and e-mail at Community Technology Learning Centres in the Philippines and overseas. The hope is that IT skills will also increase the value of OFWs in the workplace, especially upon return to the country of origin.

## 4. Political Investment

To allow OFWs to participate in the policy-making process and represent migrant concerns, the Migrant Workers and Overseas Filipinos Act empowers the president of the Philippines to appoint two migrant workers to act as sectoral representatives for OFWs in the House of Representatives, with at least one of the representatives being female. All nominees must have at least two years experience as migrant workers (Ch. IX, Sec. 34).<sup>139</sup>

In 2003, the Philippines passed the Overseas Absentee Voting Act to allow overseas migrants to vote in Philippine elections. Filipino immigrant or permanent residents in the host country are disqualified from voting under the Act unless they sign an affidavit when registering to vote declaring that they have not applied for citizenship in another country and that they will resume “actual physical permanent residence” in the Philippines no later than three years after the approval of the registration. Failure to return signifies the removal of the immigrant or permanent resident’s name from the National Registry of Absentee Voters and his or her permanent disqualification to vote in absentia (Sec.5d).<sup>140</sup>

## 5. National Reintegration Centre

Pursuant to the Migrant Workers and Overseas Filipinos Act, the DOLE created a Re-Placement and Monitoring (RPM) Centre for returning Filipino migrant workers. Nevertheless, as of 2005, the RPM Centre employed only two full-time personnel, and the majority of its work consisted of referring returned migrant workers to other agencies such as the Technical Education and Skills Development Authority (TESDA) or the Technology Livelihood Resource Centre.<sup>141</sup> In 2001, the RPM Centre referred 887 clients for employment, and placed only 14 of these. The number of clients referred for skills enhancement training decreased from 148 in 1999 to 40 in 2001, while the number of clients referred for livelihood (self-employment) enhancement decreased from 43 in 1999 to 16 in 2001. The Centre

conducted business planning training for 38 clients in 1999, followed by zero in 2000 and 2001.<sup>142</sup>

To replace this institution, Philippine President Gloria Macapagal-Arroyo inaugurated a National Reintegration Centre for OFWs (NRCO) in March 2007 in Manila as a “one-stop shop” and “networking hub” of reintegration services.<sup>143</sup> The Personal Reintegration Unit’s responsibilities include helping OFWs with local or overseas job searches and counselling on business or savings mobilisation schemes. The Community Reintegration Unit cooperates with other government agencies such as the Department of Tourism, the Philippine Retirement Authority, and the Commission on Filipinos Overseas, as well as with NGOs, to encourage OFW returnees, OFWs who are still abroad, and Filipino immigrants to share their expertise, skills and investible funds with communities or local government units (LGUs) in developing Small and Medium Enterprises or community projects. The Economic Reintegration Unit networks with financial institutions and other entities to develop entrepreneurial opportunities or investments portfolios that will encourage higher savings and earnings for OFWs. One feature of the centre is a Job Search Assistance Kiosk where returning workers can enter specific jobs they wish to apply for into a computer that, in turn, produces a list of potential employers.

On the topic of skills transfer, one government agency doing interesting work (though it does not involve OFWs) is the Japan International Training Corporation Organisation (JITCO), which encourages human development in the private sectors of developing countries such as the Philippines by facilitating the transfer of Japanese techniques and skills through an Industrial Training Programme (ITP) and a Technical Internship Programme (TIP). In the ITP, trainees are not permitted to fill local labour shortages, nor engage in any activity for remuneration. The programme involves on-the-job training for professions in the Philippines of which they are guaranteed

once they return home. To enrol in the program, it must be impossible or difficult for the trainee to obtain the desired technology, skills, and knowledge in the Philippines. The TIP is a next step, designed to assure the mastery of technical skills by giving trainees a chance to practice them and this time earn wages rather than a technical allowance like in the ITP. From 1992-2005, 25,168 Filipino trainees were enrolled in the ITP, while from 1993-2005 TIP applicants from the Philippines numbered 7,214.<sup>144</sup>

Though the initiative involves high-skilled workers, the Philippine Brain Gain Network (BGN) offers a compelling case study for how skills transfer could operate in practice outside the government's purview in the source country. The BGN is an online social/business network that connects professionals and students hoping to boost the global competitiveness of the Philippine high-technology economy. The goal is for overseas Filipinos to know what opportunities might be in store for them if they re-locate to the Philippines and with whom they could collaborate on projects such as start-up ventures or NGO consultancies for technology transfer to Philippine companies. The BGN invites "techie" from the Philippines and abroad to sign up. Business service professionals such as venture capitalists or marketing experts who work with high-technology companies are also encouraged to join, in addition to institutions like universities.<sup>145</sup>

#### 6. Name-hiring

The Namehire Processing Unit is a special unit of the POEA that evaluates and processes the employment documents of all name hires. These workers are able to find employment without the help of a licensed recruitment agency. In 2006, 21,300 land-based OFWs were contracted by name-hire at the central office, 1.7% of total OFW contracts processed by that office. Another 15,710 OFWs were hired in regional centres.<sup>146</sup> Though not name-hiring per se, the number of rehired OFWs deployed abroad in 2006 expanded from

450,651 in 2005 to 470,390, representing approximately 44% of total deployed OFWs that year.<sup>147</sup>

Filipinos in Korea under the EPS who have worked for three consecutive years with only one employer and who have obtained a Certificate of Re-employment from the employer indicating a desire to extend the worker's contract can return and work for the same employer for another three-year contract after only one month in the Philippines.<sup>148</sup>

#### 7. Publicly recognising exemplariness

In addition to sponsoring national holidays such as OFW Family Day and performance awards for model OFWs and OFW families, the OWWA features migrant success stories on its website. The July 2007 feature story related the history of OFW Vilma Paringit, who worked in the United Arab Emirates for five years in the 1980s. Upon returning to the Philippines, Paringit established a "rolling store" with her husband from her savings. The earnings from the store allowed the couple to buy a house, send their children to school, and eventually start up a successful wholesale, retail, and construction business.<sup>149</sup>

Each year at the Ninoy Aquino International Airport, Philippine President Gloria Macapagal Arroyo honours OFWs returning to the country to take their Christmas vacations through the Pamaskong Salubong ng Pangulo sa OFWs. In 2005, surprise gifts from the President included Norkis-Yamaha mobile "livelihood" stores for four OFWs.<sup>150</sup> From the beginning of the vacation period until the last arriving flight on December 31, and from January 1 to 15 when vacationing workers are expected to return to their jobs overseas, all OWWA arrival counters at international airports in the Philippines facilitate the arrival and exit from the airport of returning OFWs. During this month-long Pamaskong Handog for OFWs, major Philippine malls house kiosks for renewal of OWWA membership, payment of Phil-Health membership fees, or processing of exit documents or Overseas Employment Certificates (OECs).<sup>151</sup> The 2006 Pamaskong Handog cum Presidential Salubong for vacationing OFWs boasted

3,285 participants.<sup>152</sup> These holiday breaks allow Philippine officials to publicly recognise OFWs abiding by the rules while at the same time checking up on them in the midst of their work experience and allowing them to strengthen ties with family and friends.

#### 8. Halfway Home

In 2005, the OWWA inaugurated a Halfway Home at the OWWA Building in Manila—which also houses a low-cost OWWA Hostel—in order to address lack of lodging for temporarily stranded and distressed OWWA-member OFWs returning to the Philippines and having financial difficulties, especially those from the provinces who cannot easily get home once landing at the airport. The OWWA provides the rooms with meals, bedding, and personal hygiene kits for free. The Halfway Home, which accommodates up to 40 OFWs, also has recreational activities such as television and table games to encourage group interaction and help “remove the mental baggage” of OFWs. Social workers are also available at the facility as part of a reintegration programme. Offices abroad notify OWWA officials regarding migrants they must assist at the airport. “House parents” from the OWWA’s Repatriation Division supervise the migrants’ activities and facilitate the delivery of services like transport and medical needs. Some detractors maintain that OFWs suffering psychological problems for reasons such as unpleasant work experiences should not be placed immediately in a group environment, and that the Halfway Home only serves as a momentary amusement for OFWs without the lasting impact of other reintegration programmes. Nevertheless, overseas migrants worrying about their short-term reintegration in the source country might be more willing to return given options such as the Halfway Home.<sup>153</sup>

#### 9. Educational and training programmes in the source country

The Education for Development Scholarship Programme (EDSP) is a grant amounting to P 30,000 per semester offered to dependents of OWWA-member OFWs who intend to

enrol in any four to five-year baccalaureate course. The OWWA currently lists the 100 qualifiers by name for school year 2007-2008 on its website.<sup>154</sup>

In coordination with TESDA, the OWWA offers a Skills-for-Employment Scholarship Programme to OWWA-member OFWs or their dependents. Applicants may avail themselves of either a one-year technical or a six-month vocational course offered in the Philippines. Course offerings are sensitive to land- and sea-based skills requirements and range from “agriculture and fishery” to “tourism.” Financial assistance for the one-year programme is P 14,500, while for a six-month programme it is P 7,250.00.<sup>155</sup> In 2006, 999 scholars qualified for the one-year technical course and 982 scholars qualified for the six-month vocational course.<sup>156</sup>

The Migrant Workers and Overseas Filipinos Act set up a Congressional Migrant Workers Scholarship Fund for migrant workers or their immediate descendants below 21 years of age who intend to pursue courses or training primarily in the fields of science and technology. It provided an initial seed fund of P 200 million with P 50 million from the “unexpected Countrywide Development Fund for 1995” in equal sharing by all members of Congress and the remaining P 150 million from the proceeds of Lotto (Ch. IX, Sec. 37).<sup>157</sup>

In May 2007, the Third National Conference of OWWA Scholars featured more than 200 scholars from the EDSP and Congressional Migrant Workers Scholarship programmes. According to the OWWA’s website, scholars gained information on present migration realities, enhanced their appreciation of their own experiences as members of OFW family, acquired knowledge regarding other OWWA programmes and services, and obtained insights into the role of Filipino youth in nation-building.<sup>158</sup>

In the Tuloy-Aral Project, the DOLE and the OWWA, with the assistance of the Department of Social Welfare and Development (DWSD), identify elementary and high school children of former OFWs

needing financial assistance for school. POLOs are tasked to identify OFWs who are successful, financially stable, and in good standing to act as foster parents, though OFW organisations may also volunteer. Foster parents are requested to provide USD \$100 worth of financial support per year to the child-beneficiary for the continuance of his or her education. The amount helps cover expenses such as books, school supplies, materials for projects, transportation, authorised school contributions, and allowance for the school year. OWWA Family Welfare Officers monitor each child's progress in school. The project is currently being replicated in each region of the country.<sup>159</sup>

Overseas migrants might be enticed by educational or training opportunities for themselves or their children if they return to the source country. Children may imbibe OFW values through these programmes, while current OFWs can establish links to the source country by acting as donors for children of former OFWs hoping to gain access to education.

#### 10. Exit Clearance

This is another initiative that could just as well be termed a negative mechanism depending on one's perspective. All departing OFWs are monitored by the POEA and the BI at international airports and other exit points in the country to ensure that they are properly documented before proceeding to overseas job sites. The POEA issues migrant workers an "exit clearance" in the form of an E-Receipt or an OEC certifying the regularity of a worker's recruitment and documentation. While thus serving as a monitoring mechanism, the exit clearance also benefits migrants by exempting workers from travel tax and airport terminal fees. The E-Receipt or OEC serves as the worker's personal identification card and as proof that he or she is covered by Philippine government protection and benefits as well.<sup>160</sup> It can also act as an OWWA membership card and as an international ATM card.<sup>161</sup> Given the

many uses of the exit clearance, migrants might be less willing to become illegal and render the document useless.

#### 11. Credit, savings, investment, and livelihood schemes in the source country

The Loan Guarantee Fund acts as a credit programme not exceeding P 40,000.00 for newly-hired OFWs (Pre-Departure Loan or PDL) that can be used to defray the cost of pre-departure requirements such as payment for medical examinations or subsistence allowances. Possessing money initially helps prevent situations in which migrants are taken advantage of by illegal recruiters early on in the migratory process. The Loan Guarantee Fund also serves as a loan window for family or dependents of OWWA-member OFWs (Family Assistance Loan or FAL) that may be used for any emergency purposes or family needs. In 2006, 137 PDL applications were approved by the OWWA totalling P 4,934,768, while 543 FAL applications were approved totalling P 25,383,000.<sup>162</sup>

The Home Development Mutual Fund (Pag-Ibig) Overseas Programme (POP) is a voluntary savings programme in the Philippines providing all OFWs with the opportunity to receive a housing loan of as much as P 2,000,000 to purchase a house and/or lot or to construct or renovate residential homes.<sup>163</sup> POP members contribute an amount equivalent to US \$5 monthly, and upgrade their membership accordingly if they decide to apply for a housing loan. Monthly contributions result in tax-free dividend earnings, government-guaranteed savings, and portability of savings.<sup>164</sup> Accumulated savings can only be withdrawn at the end of five, ten, fifteen, or twenty years. As of June 2007, POP housing loans had totalled P 8,878.260 for 15,846 units and 16,213 borrowers.<sup>165</sup>

The DFA and Department of Finance have been collaborating on designing OFW Savings Bonds or Migrant Workers Bonds, which are dollar denominated, guaranteed by the Philippine government, and predicted to raise approximately USD \$100 million.<sup>166</sup>

Interest earnings rates are tied to LIBOR (London inter-bank rates) and US Treasury Bonds. While the interest rates for dollar holdings in the global market are lower compared to the rates of peso deposits in the Philippines, the value of the dollar has proven to be more stable compared to the peso. These bonds are negotiable instruments—they may be used as collateral or pledges for investment projects as well as for housing, educational, and business loans. The bonds may also be used to finance large infrastructure development projects in which collectives of migrants with pooled funds can invest, such as those under the “build-operate-transfer” programme (e.g. bridges, port development, etc.).<sup>167</sup> These bonds have the potential to create a win-win situation by acting as additional sources of funds for national development purposes in the case of the government, and as low-earning but safe and stable investments for migrant workers. Though a negative mechanism, some experts have proposed obliging the worker or the employer to purchase a financial security bond that would be confiscated by the host government if the worker overstays.

The Asian Migrant Centre (AMC), an NGO based in Hong Kong, partners with the Philippines-based NGO Unlad Kabayan in the Migrant Savings for Alternative Investments (MSAI) programme, which promotes the formation of Savings Associations among Filipino migrant workers stationed in Hong Kong and Japan and from the same community or region in the Philippines to initiate productive investment projects back home.<sup>168</sup>

At the pre-departure stage, MSAI conducts education and training on work-related skills and migrant rights, as well as on the risks and realities of migration in the various host countries. MSAI also discusses issues migrants may face upon their return and reintegration. While onsite in the host countries, members of the Savings Associations—which are usually composed of five to ten individuals—are encouraged to contribute to a Capital Build-Up Fund.

In Hong Kong, each member of the group saves an amount ranging from HK \$200 to 400 every month.<sup>169</sup>

Unlad deposits the collected money in Philippine financial institutions with overseas offices such as the LBC Bank. Unlad’s 1999 contract with LBC mandates “social value added” services and benefits for migrant savers such as a free medical/accident insurance packages, preferential savings interest rates, a loan window with preferential rates for migrant investments in the Philippines, and emergency loan incentives.<sup>170</sup> Once the money is deposited, migrants and their families select potential enterprises from a list recommended by Unlad, and a feasibility study is conducted to determine if the selected enterprise is viable within the locality. If results are positive, Unlad encourages migrants to travel to the Philippines and mobilise household members to attend training on bookkeeping and management. Migrant savers are also eligible for educational courses on savings, investments, and entrepreneurship conducted by Unlad and other NGOs. An advisory group for migrant families is formed to issue recommendations. The business enterprise is started as soon as the recommendations are approved by the Savings Association members, and stock certificates are issued to the migrant investors.<sup>171</sup>

As of 2005, the aggregate assets of the various migrant enterprises under Unlad had reached P 12.3 million. The first four years of operations created jobs for 383 people, 62% of whom were female and 38% of whom were male.<sup>172</sup> At present, capitalisation of migrants’ social enterprises range from USD \$5,000 to USD \$50,000, all derived from migrant savings. The enterprises are mainly agriculture-based.<sup>173</sup> Between 1996 and 2000, Unlad Kabayan reported that there were 214 migrants who generated savings of over P 4 million, or approximately P 20,000 per migrant. Half the participants were domestic helpers, a fifth were seafarers, and the rest were factory workers. Some businesses are group-owned while the rest are family-owned or single proprietorships.<sup>174</sup> An organic

chicken raising enterprise financed by the earnings of seafarers provides a compelling case study: the business began in the backyard of one of Unlad's workers, but Bohol—an island province of the Philippines—was not market ready for the chicken. To resolve the problem, Unlad established an eatery at a nearby McJack food complex that increased the popularity of the product. The expansion of the enterprise, however, continues to be hampered by insufficient capital.<sup>175</sup>

It is important to recognise that in terms of the volume of funds generated and the number of migrant workers involved, the programme's gains are still quite limited. Both AMC and Unlad Kabayan identified the low salary levels of target migrant worker communities, the personal circumstances of the migrant workers themselves (e.g. pre-departure debts, big families to support, limited education or non-entrepreneurial cultural background), and the limited amount of money allocated to investments in productive projects (collective resources are often sufficient only for small-scale retailing and trading activities) as stumbling blocks in channelling remittances towards savings, investment, and enterprise rather than basic needs consumption.<sup>176</sup>

The Unlad Kabayan programme is strong in areas such as its demand for discipline among savers, its novel commitment to group savings, its rigorous technical and financial assessment of proposals, and its close collaboration with NGOs and governmental, private, and development agencies. Weaknesses of the programme include its difficulties in enticing migrant workers to set aside funds for projects that do not yet exist, complications in reassuring migrant workers about contributions held in a bank for a period of time, and problems navigating through a system of savings and investment involving so many actors and stages that it often becomes overly-bureaucratic.<sup>177</sup> Moreover, some migrants do not disclose their participation in savings groups to family members in the Philippines because families tend to prefer that their relatives' savings remain within the family rather than let strangers work with it.<sup>178</sup>

The Entrepinoy programme, meanwhile, is a livelihood training project that has enjoyed success in Hong Kong, producing around 5,000 graduates from 2000-2001.<sup>179</sup> The programme is conducted by the private corporation Executive Centre for Professionals Inc. (ExCenPro), whose objective is to motivate migrants to become entrepreneurs before they return to the Philippines (the word "entrepinoy" is actually a fusion of the words "entrepreneur" and pinoy, or Filipino).

Part of the programme is a home-study lasting six months and consisting of 16 study workbooks and six two-hour lectures. The modules touch on themes such as "Risk-taking," or "Business Danger Signs" rather than on technical topics such as tax policy. The materials are geared toward strengthening the resolve of migrant workers to return home without considering further overseas employment and are written in "Taga-lish" (a mixture of Tagalog and English) to make them more accessible to students. There are weekly meetings held for different batches of migrants and monthly plenary assemblies consisting of 300-500 students. Corresponding courses are offered to migrant household members in the Philippines so that migrants and their families can formulate business plans to be implemented at the conclusion of the programme.

The Entrepinoy Network Family programme works in partnership with other business groups to present migrants with 17 unique services that Entrepinoy members can take advantage of to start a business. These services include:<sup>180</sup>

1. Order Negosyo—A franchising project of the Philippine International Trade Corporation (PITC) that permits "Entrepinoys" to be franchisees of established businesses like Mister Donut, Goto King, Mr. Quickie, and Bench.
2. Credit Access—The Philippine Business for Social Progress helps improve the loan portfolios of countryside-based financial institutions for the benefit of small and medium enterprises ventured into by Entrepinoys.

3. Agribusiness and Crop Production—ExCenPro disseminates technical know-how on vegetable and fruit growing and crops marketing in collaboration with the Harbest Agribusiness Corporation.
4. Poultry Business—A joint project by ExCenPro and the Royal Chicks Farm that offers information on how to raise and profit from raising kabir chicken.
5. Lying-in and Birthing Home Business for Entrepinoy Health Care Professionals—Entrepinoys interested in establishing health care centres are guided by the Midwives Foundation of the Philippines.
6. Bayan ng Entrepinoy Resources Option Venture—In partnership with the ABS-CBN Bayan Foundation, this programme provides micro-lending services to migrants who want to expand their business operations.

Instead of encouraging borrowing for start-up projects, the programme advocates monetary pooling by several migrant savers in accordance with geographical or regional origin to guarantee resource accessibility by both returning migrant workers and their families while the migrants are working overseas. The programme reports that bonding among classmates during the six-month training period is so common that many classes eventually end up organising their own corporations for projects involving pooled savings. Graduates have gone on to establish enterprises such as a rice mill and fertiliser distribution centre in Iloilo, a mobile hamburger business in Pampanga, and poultry and piggery projects in various parts of the country.<sup>181</sup>

The Entrepinoy programme's strengths include its focus on self-empowerment as the initial motivating factor for migrant workers to learn more about entrepreneurship, its efforts to enlist families of migrant workers in business development, and its facilitation of migrant networking. As in the AMC-Unlad programme, targeting migrants at an earlier stage when they have stable jobs in the host country rather than returning migrants with less stable prospects appears to be a more logical way to conduct business orientation and development

programmes. Among the weaknesses of the programme are the lack of monitoring by the overseas migrant of the family's implementation of the business plan in the Philippines, and the risks involved due to lack of business infrastructures and guarantees for private ventures in origin communities.<sup>182</sup>

The OWWA-National Livelihood Support Fund (NLSF) Livelihood Development Programmes for OFWs (LDPO) seek to improve access to entrepreneurial development opportunities and credit facilities for OFWs, their families, and associated organisations. Possible enterprises include: trading (general merchandise and buy-and-sell), services (repair shops, restaurants, parlours), manufacturing (meat or fruit processing, shoes), and agri-business (tilapia culture, piggery, poultry). The OWWA-NLSF LDPO now has two loan packages: the Collateral Loan Window for individual and group borrowers and the Non-Collateral Loan Window for individual borrowers. The loans can be used for working capital (for purchase of merchandise goods or raw materials), business assets acquisition (except lot, for purchase of machines or equipment), or business site construction or improvement.<sup>183</sup> In 2006, 198 projects were released under the OWWA-NLSF LDPO, amounting to P 34,102,000.<sup>184</sup>

The OFW Groceria Project aims to improve the socio-economic situation of OFWs and their families by providing livelihood and self-employment opportunities through the establishment of 1,000 grocery stores nationwide. Intended beneficiaries include OFW Family Circles (OFCs), and OFW associations.<sup>185</sup> The project is an interest-free, non-collateral loan assistance package extended in the form of merchandise goods worth P 50,000 per beneficiary nationwide. It is payable in two years with two months grace period.<sup>186</sup> The project site must boast a strong presence of OFW organisations or OFCs in the area. Prior to receiving goods, the OFC is given Entrepreneurship Development Training (EDT) to prepare members for management of the Groceria. In 2006, 261 OFW Grocerias were established by OFCs/OFW Organisations, amounting to P 10,500,000 in loans. That same year, 970 Batches of EDT training Sessions were conducted nationwide (14,261 participants). 1,030 OFCs/OFW Organisations had been formed

as of December 2006, with 25,233 total active members.<sup>187</sup>

The Philippine Center for Entrepreneurship (PCE) is a non-profit organisation co-founded by eight prominent Filipino entrepreneurs. As the website states, “By conducting interventions in the key stages of the Entrepreneur’s Life Cycle, PCE aims to spawn the creation of “Go Negosyo” communities around the country... where the norm and way of life is for the academic, business and government sectors to seamlessly collaborate on improving the lives of the people through entrepreneurship.”<sup>188</sup> Go Negosyo forums and expos feature successful entrepreneurs sharing their business experiences; one such forum—Teen Negosyo—targets around 2,000 students and teachers nationwide and includes interactive business games. On Go Negosyo’s website, one can log in to consult trustees of the organizations or entrepreneur “mentors” from various fields. The website also features public forums on topics such as “Entrepreneurship 101” and “Scams, Frauds, and the Black Market.” The digital GoNegosyo Toolkit includes business plan samples, list of micro-finance institutions, and investment ideas.

One POEA initiative requires all OFWs to join an OFW “Flexi-Fund Programme” (also known as the National Provident Fund) prior to departure, which acts as a retirement protection scheme. The Fund permits flexible and voluntary contributions to and flexible terms of withdrawals from the Philippine Social Security system (SSS), while guaranteeing higher and safer yield returns because contributions are invested in risk-free government treasury bills. Flexi-Fund earnings can be drawn anytime with interest in lump sum, pension, or both. Members who are 60 years old or older are entitled to retirement benefits. If invested, the fund could be used for business, housing, education, or pension during retirement. A simulation of projected yield indicates that members with P 2,000 monthly contributions would get about P 349,000 after 10 years and P 1,000,000 in 20 years.<sup>189</sup> Of the eight million OFWs currently estimated to be working abroad, about 650,000 of them were listed as SSS members as of March 2007.<sup>190</sup>

The Development Action for Women Network (DAWN) in the Philippines has a programme called Sikhay (which is short for

the Filipino phrase *sikap buhay*, meaning “self-empowerment”), which began in 1996 as a sewing project designed as therapy for migrant women, as a training ground for entrepreneurial development, and as a way to highlight the continuing plight of migrant women. Initially, the programme consisted of two borrowed sewing machines and several batik cloths in a small room in the DAWN office. Currently, Sikhay has high-speed sewing machines, an edging machine, button-holders, a cutter, weaving machines, dyeing vessels, and its own production room. Training is conducted at the DAWN Centre and Sikhay’s sewing room, and at various training centres such as TESDA, DSWD, and the Philippine Textile Research Institute. The products are marketed and sold in various local bazaars, especially in Japan. DAWN also assists women members in setting up small-scale livelihood projects that they can manage on their own.<sup>191</sup> DAWN provides hands-on computer training course for women, particularly on MS Word and MS Excel, to promote livelihood capacity as well.

In a co-development initiative, the Economic Resource Center for Overseas Filipinos (ERCOF)’s Bansalan Project seeks to address oversupplies of fresh fruits in the Philippine municipalities of Bansalan, Matan-ao and Magsaysay by establishing a community-owned fruit processing plant jointly owned by farmers, LGUs, and OFWs to support over 1,800 local small farmers. OFWs act as investors and selling agents in host countries for domestic products. The initiative aims to encourage local economic growth and create jobs, provide stable income to farmers, and create income opportunities for OFWs or OFW groups in the host country.<sup>192</sup>

In a similar vein, the PITC’s Order Regalo Programme allows OFWs to purchase Philippine-made products ranging from computers to motorcycles to send home to family or friends from PITC-accredited and Philippines-based Order Centres. Merchandise sold under the programme is tax and duty free. In some cases, prices are 10% lower than retail prices in the Philippines because manufacturers enjoy tax rebates.<sup>193</sup> There are currently 45 Order Centres in 21 countries. Order Regalo helps the Philippine government capture foreign exchange that would otherwise be spent abroad, since sales generated through the programme are remitted into the

Philippine banking system. Furthermore, Order Centres link OFWs to the source country and help encourage patronage of Philippine-made products, enhancing the country's economic development through increased production, consumption, and employment.

The *Balikbayan* programme offers Filipino citizens who have been continuously out of the Philippines for a period of at least one year, OFWs, or former Filipino citizens who have been naturalized in a foreign country and come or return to the Philippines the chance to shop at any Duty Free outlet for up to \$1,500-worth of Duty Free items within 15 days upon arrival (30 days during the Christmas season). "Balikbayans" are also entitled to a *Kabuhayan* shopping privilege worth \$2,000 exclusively for the purchase of livelihood tools.<sup>194</sup>

The success of all these programmes is debateable. Many returnees eventually become unemployed instead of becoming business owners due to inadequate savings and weak investments.<sup>195</sup> While OFWs are now considered a growing middle class, the majority of OFW households remain in the lower levels of the income bracket.<sup>196</sup> Rough calculations by economics show overseas deployment only slightly reducing domestic unemployment, although results remain highly controversial.<sup>197</sup>

In her Report to the UN Commission on Human Rights on her 2002 visit to the Philippines, the Special Rapporteur on the Human Rights of Migrants noted that temporary migrants often have no savings, deployment debts, and few chances to find employment upon return. POEA statistics at the time revealed that about 70-80% of overseas contract workers were unable to save enough money for their return.<sup>198</sup> Migrants interviewed by the Special Rapporteur emphasized that reintegration in the family was difficult: sometimes spouses or partners had begun new relationships or children had faced psychological issues because the parent has been overseas for so long. Since families had come to depend on migrant workers' incomes, they often had not engaged in alternative income-generating activities. If the returnee found a job, the wages were normally not sufficient to meet the needs of his or her family. The small number of OFWs

who managed to save money set up a business upon return frequently failed because of lack of planning, training, and information on business conditions in the Philippines. Many times, OFWs felt no recourse but to migrate once more.<sup>199</sup>

### Emergency repatriation from Lebanon

One compelling way to analyse how the Philippine return and reintegration regime operates in practice is to examine the way in which the Philippine government evacuated OFWs during the 2006 Lebanon War. Using monies from the OWWA Emergency Repatriation Fund, the Philippine Foreign Affairs Undersecretary collaborated with the OWWA and the Lebanese government to form search teams, since many Lebanese employers were reportedly taking advantage of the ceasefire to persuade Filipino domestic workers to stay. The Lebanon Quick Response Desk was set up in the Philippines to provide returning OFWs immediate re-deployment and reintegration resources. As of August 20, 2006, a total of 20,000 OFWs were still in Lebanon.<sup>200</sup> As of September 11, 2006, 6,562 OFWs had been repatriated, with hundreds receiving psycho-social assistance including stress debriefing examinations and counselling, and 1,471 receiving Training for Work Scholarships worth P 5,000 each from the TESDA. The OWWA also provided 510 OFWs from Lebanon with livelihood entrepreneurship assistance in the form of start-up capital to open small businesses in retailing, vending, and food processing. 1,062 repatriates were referred to recruitment agencies cooperating with the DOLE and the POEA to facilitate workers' re-deployment overseas, while another 777 repatriates who preferred local employment were referred to Public Employment Service Offices for possible placement in local firms.<sup>201</sup> The Philippines has since established a total ban on the deployment of OFWs to Lebanon, though reports suggest that the illegal deployment of OFWs to the Middle Eastern country continues.<sup>202</sup>

Some argue that the Philippine government only seriously puts forward measures for return migration and reintegration reactively; that is, when it is a matter of necessity and fears exist that external factors such as war or political-economic conditions in host countries will generate returnees.<sup>203</sup>

# CONCLUSION

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It is difficult to conclusively assess the effectiveness of the incentive mechanisms outlined above given the dearth of published longitudinal data stating the rates of return of workers participating in these schemes, as well as the lack of adequate follow-ups with workers who have sought permanent residency or become illegal in host countries to ascertain the factors that enabled them not to return and their reasons for doing so.

Nevertheless, the plethora of positive incentive mechanisms is suggestive. In his analysis of Italian return migration from the USA, Francesco Cerase identified four reasons why migrants return: 1) failure, 2) conservatism, 3) retirement, and 4) innovation.<sup>204</sup> Positive incentive mechanisms generally focus on “innovation”—demonstrating that “enabling migrants to comply with the rules is as important as the rules themselves.”<sup>205</sup> Mechanisms that frame return as a pathway to a sustainable career in the source country could be crucial given that when migrants view migration as a career in and of itself, return migration prior to retirement logically signifies failure.<sup>206</sup> Agunias’ and Newland’s affirmation that “an environment that helps migrants to reach their goals—as manifested for instance by accumulated savings, newly acquired skills, and successful business ventures—is most likely to foster temporary or permanent return” is increasingly being echoed in expert circles.<sup>207</sup> And studies have indicated that contrary to popular conceptions, many migrants do find return migration appealing. A recent World Bank survey, for instance, found that 60-75% of migrants from Bosnia/Herzegovina, Romania, Georgia, Bulgaria, the Kyrgyz Republic, and Tajikistan would rather work in Western Europe on a temporary basis.<sup>208</sup>

A key theme that emerges from the analysis of the temporary worker programmes in bilateral and unilateral settings is that efforts to gain market access in developed countries for service providers from the LDCs must be complementary to fundamental development policies. Firstly, it is only through economic development that

countries can begin to implement screening and monitoring systems to oversee service providers across borders. More importantly, however, it appears that an essential element in attracting workers back to their countries of origin is the availability of opportunities to use the skills and experience they have gained abroad to increase their earning potential in the home country. It is this feature, coupled with economic and political stability, which will allow any of these mechanisms to work. The example of the Philippines demonstrates that even with extensive investment in incentive mechanisms, there may still be a high rate of attrition in the countries where workers are posted. The most notable case is that of the USA, where both the numbers of Filipinos who have sought permanent residency (1,979,408) and estimated number of irregular migrants (510,000) are high compared to other regions.<sup>209</sup> However, it is unclear from this study what percentage of either group came through the POEA and OWWA programmes.

It would be advisable for LDCs to study the feasibility of implementing schemes to guarantee temporariness that have so far proven successful in the cases of Ecuador, Mexico, the Caribbean and the Philippines, since all have gained market access in developed economies through their bilateral trade agreements. Certain mechanisms outlined in this study have low-cost features that require little initial investment to initiate. For example, the name-hiring system using in the CSWAP programme requires no more than a database to record the details of workers leaving the country on temporary work contracts and noting the dates of their return. LDCs should consider their human and financial resource restraints, as well as their access to technology and equipment, when culling mechanisms that might work for them. LDCs should also devote resources to equipping their nationals with appropriate levels of training and building state capacity to identify and prioritise sectors in which they have a comparative advantage so as to improve upon human resource development and labour “exporting” strategies. To ensure

better recruitment and job-matching that would mitigate the chance of migrant desertion in the host country, LDCs can take advantage of their natural advantage in access to information about migrant backgrounds, qualifications, and training.

Civil society's involvement in the Philippine system is also intriguing. Organisations have helped train migrants and encouraged them to exercise entrepreneurial skills gained during their overseas work experience once they return, thus enhancing economic development. LDCs may need to strengthen coordination between the government, private sector, and civil society if mechanisms such as those outlined above are to be truly effective.

An aspect in the multilateral setting that LDCs must take into consideration is the reciprocity with which they can accept temporary service providers into their own economies, particularly in the non-high skilled sector. Although a special request has been submitted to the WTO for market access in particular sectors and differential treatment, LDCs have to consider long-term planning to ensure that the competitiveness and quality for their own service providers are comparable or better than other developing countries across several sectors in which they are to benefit from an agreement on GATS Mode 4. This is especially pertinent to African LDCs, since neighbouring non-LDC countries have a tradition of producing high quality staff in several non-high skilled sectors but do not have such a wage differential as to deter these workers gaining market access in LDCs.

In terms of how the above-mentioned incentive mechanisms might function in the multilateral GATS context, the cooperation between sending and receiving country entities so prevalent in the case studies might prove unwieldy and unworkable among 151 WTO Members, thus reducing the extent to which all interested parties become invested in assuring the return of migrant workers. The WTO is also a trade body, so the parallel measures combating illegal recruitment and illegal immigration in bilateral agreements could not be incorporated into Mode 4 commitments. In its current manifestation, the GATS framework seeks

primarily to encourage host countries to make commitments allowing the entry of service providers, whereas the case studies mete out rights and obligations (not always equally) regarding return and reintegration among both source and host countries.

Bilateral labour agreements also afford contracting countries the ability to manage temporary work migration and changing circumstances with a degree of flexibility not present in binding WTO commitments. For instance, in bilateral accords host countries can require that there be a proven domestic labour shortage before migration can occur (a main reason for the hesitancy of countries to make commitments under Mode 4 is the changeability of market conditions), regular administrative summits can adjust the operating guidelines of the agreement as necessary, and countries can terminate the agreement with short notice if the need arises. The prospect of binding commitments in the GATS often renders countries reluctant to make extensive market access commitments, particularly on the movement of natural persons. As Marion Panizzon states, bilateral agreements can “reconcile the sending country's interests with the receiving country's fears in a more effective way than the GATS could do.”<sup>210</sup> On the other hand, GATS' flexibility in the sense that Members choose in which sectors they want to make binding commitments and in which they do not differs from more stringent bilateral agreement requirements in which rights and obligations must be honoured in a uniform manner.

Moreover, bilateral agreements are frequently borne out of a particular mutual need at a distinct historical moment—or alternatively triggered by historical, cultural, linguistic, developmental, or geographic ties—and therefore frequently trump political concerns regarding labour migration and involve high levels of commitments and obligations-sharing among both parties. For example, Spain and Ecuador reached an agreement at a time when illegal immigration from Ecuador to Spain was getting out of hand and when Spain was increasingly in need of temporary low-skilled workers in certain occupations. Concluding an accord was made easier because of the historical, cultural,

and linguistic ties between two countries that already had concluded a number of agreements together—making possible incentive mechanisms such as the “co-development” initiatives between regions in both countries. The sense of urgency that in many ways created these bilateral accords may not be present in the WTO as it stands today, while LDCs also enjoy less negotiating leverage relative to developed countries than the developing countries mentioned in this study. However, it is important to note that a majority of LDCs are in a unique position in that they have ties with Anglo-Saxon and Francophone countries in the developed world—an affinity that may be underestimated during negotiations. This is also advantageous on issues of trade capacity building, domestic regulation, and mutual recognition of educational qualifications, all of which have not formed part of this study. While the sensitivity of illegal immigration in many developed countries is a potential hurdle for LDCs, stakeholders sometimes forget that this very sensitivity can afford LDCs with more bargaining power than they have in other global issues if they can propose attractive and viable migration regimes.<sup>211</sup>

Recent discussions in the US Senate on a proposed “Y” non-immigrant visa category demonstrate that governments in the developed world are ready to speak on an official level about the value of foreign temporary workers in their economies. In fact, support in the US for the proposed “Y”-visa came from many industries employing semi-skilled and unskilled workers, including tourism and hospitality in the services sector.<sup>212</sup> There is potential for LDCs to engage with business groups in advanced economies who seek temporary workers in sectors of interest to facilitate dialogue on this issue at a political level and thereby gain leverage in the negotiating forum.

Incentive mechanisms can be incorporated into national regulatory frameworks on immigration when two countries negotiate (and can often actually shape domestic migration policies and laws), but tailoring these mechanisms to 151 WTO Members—all with distinct immigration policies, national visa regimes, licensing and qualification requirements, etc.—might prove a great deal more difficult.

Nevertheless, mechanisms such as Spain’s disregarding of the national labour situation for the re-entry of programme participants is intriguing in light of the debate over economic needs tests in the WTO. It is important to keep in mind, however, that the migration regimes mentioned above are much wider in scope than the service-supplier movements covered by the WTO.

Moreover, while bilateral agreements imply a relatively straightforward two-way exchange in which commitments and gains are often quite clear, horizontal Mode 4 commitments are often criticised for their lack of transparency and uniformity.<sup>213</sup> While two contracting countries can size one another up without much difficulty and tailor regimes to fit the needs of both States, government officials working in the multilateral context of Mode 4 often lack basic or detailed information on the temporary entry regulations, domestic immigration regime, labour market development, or Mode 4 commitments of other WTO Members. Mode 4 concepts and definitions need to be better integrated into national regulatory schemes for successful implementation of Mode 4 commitments.<sup>214</sup> However, if Mode 4 was subject to greater liberalisation, it is not inconceivable that the framework and guidelines could then filter down to both regional and bilateral initiatives.

Bilateral agreements accord specific nationalities privileged labour market access. In these agreements, the main goal of receiving countries is to fill labour shortages and encourage interstate cooperation, while sending countries seek to provide employment for surplus labour, protect the rights of their citizens while abroad, and improve domestic welfare.<sup>215</sup> Within the GATS framework, however, the Most Favoured Nation (MFN) principle—according to which all trading partners must be treated equally—negates this idea of selective liberalisation. Commitments made by Japan in multilateral negotiations, for example, would no longer exclusively benefit the Philippines, instead applying to all WTO Members. Greater market access in Japan might even hurt the Philippines as other foreign workers could enter Japan, replacing OFWs and reducing the market share of Filipino workers in the host country. Since

under the GATS principle of reciprocity any request for greater market access for Filipino workers in Japan would have to be matched by a corresponding offer, the Philippines would also have to open its economy to Japanese professionals and workers.<sup>216</sup> Under the MFN principle, countries could not be sanctioned for non-compliance with return policies like in the agreement between the Philippines and South Korea, though countries probably could use punitive measures against erring companies or deployment agencies. Name-hiring might also be questionable from a discriminatory standpoint. In addition, if “special and differential treatment” modalities in the GATS—legal provisions that allow developing countries to depart from the MFN principle and take exception to rules and commitments agreed in multilateral trade rounds—are operationalised in the WTO, these could be used to fashion commitments that would be more along the lines of bilateral agreements. Devesh Kapur and John McHale, however, maintain that labour-importing countries are likely to opt for bilateral rather than multilateral agreements so that they can control who gets into the country (as distinct from how many), leading to continued ethnic bias in immigration policies.<sup>217</sup>

The numbers generally indicate that the incentive mechanisms outlined above are limited in scope, even if some are quite elaborate. Some experts maintain that the small size of bilateral migration regimes is one of the keys to making them effective because of benefits such as tighter control over participants.<sup>218</sup> Other experts believe, however, that only a grassroots approach can make these mechanisms operational. As Agunias and Newland state, “Only after careful experimentation, through small-scale pilot programs, followed by incremental adjustments, will initiatives begin to work as well on the ground as they promise to on paper.”<sup>219</sup> Given this idea of starting small, some argue that managing the temporary movement of low-skilled workers is best accomplished in the bilateral rather than the multilateral context, or that countries should at least experiment at the bilateral and regional level before graduating to the multilateral framework.

Nevertheless, others argue that the recent flurry of Preferential Trade Agreements (PTAs) have diverted a substantial amount of resources and attention away from the Doha services negotiations and that many countries that have made significant commitments in their PTAs that have, at the same time, made only modest offers under GATS during Doha and unexceptional, GATS commitments beforehand. These findings appear to contradict the “domino theory” that freer trade in PTAs will spur Mode 4 liberalisation.<sup>220</sup> At the end of the day, it is important for countries to remember that the GATS is the key internationally recognised framework for managing the temporary movement of individuals for work. Moreover, the GATS framework allows for tradeoffs between the GATS and other WTO agreements—for instance, an industrialised country maintaining high agricultural subsidies in exchange for letting in more migrant workers—that could not occur in bilateral agreements.

Bearing these factors in mind, it is useful to summarise the mechanisms from the case studies outlined in the report that may be useful for LDCs to implement in order to ensure the temporariness of their services providers who seek employment abroad, and thus gain leverage in negotiating positions:

The examples of livelihood capacity-building and co-development projects in Ecuador provide a tangible and relatively low-cost example of how LDCs can fashion frameworks to productively use remittances sent from their workers overseas. Modifications in the banking system for remittance transfers (as exercised by Banco Solidario) can help improve the living standards of local communities from which these workers emigrated. These improved conditions could motivate workers to return to their home country once the temporary work period has expired.

The examples of teamwork, mandatory remittance provisions, and name-hiring in Canada, the Caribbean and Mexico demonstrate the benefits for LDCs in developing robust screening processes and systems to hold data on workers seeking employment overseas. These instruments, in turn, would also increase the

effectiveness of negative incentive mechanisms such as restricting worker mobility, thus making it difficult for workers to enter the informal sector and remain in the host country beyond the duration of the work contract. There exists scope for LDCs to demand assistance in building capacity to develop such systems and thus create a win-win situation with developed countries for trade in services.

The Philippines provides a rich source of illustrations for mechanisms to facilitate the movement of labour and ensure temporariness. The links that have been formed between government ministries, civil society groups and the private sector on issues of training, education and integration processes for migrant workers can be replicated in the LDC context where government resources may be strained. The role of civil society has often been neglected when LDCs strategise policies on Mode 4 to create an environment conducive to circular migration and facilitate trade in services. The extensive networks developed by NGOs in the Philippines to promote investment in communities through remittances as well as

promoting entrepreneurship has strengthened the view that the country wants to attract back and reintegrate those citizens who have sought employment abroad.

Regarding the future of the discussion on Mode 4, Louka Katseli, the former director of the OECD Development Centre explains that since most OECD countries have limited experience with Mode 4 movements, beginning formal negotiations on further Mode 4 liberalisation is currently premature and counterproductive. Instead, Katseli recommends “the initiation of an informal but inclusive policy dialogue among all relevant stakeholders to explore the conditions under which contract service provision could allow receiving countries to better manage migration flows and sending countries to profit from labour circularity. This will in fact be the principle challenge for policy making in the next decade: how to resolve existing incoherencies between trade, migration and development policies and how to promote policy coherence for expanded trade, better management of migration and sustainable development.”<sup>221</sup>

## APPENDIX : Glossary of Abbreviations

|       |   |
|-------|---|
| AMC   | Asian Migrant Centre (Hong Kong)                                  |
| BGN   | Brain Gain Network (The Philippines)                              |
| BI    | Bureau of Immigration (The Philippines)                           |
| CC    | Caribbean Community   |
| CIC   | Citizenship and Immigration Canada                                |
| CSAWP | Canadian Seasonal Agricultural Workers Programme                  |
| CSS   | Compulsory Savings Scheme   |
| DAWN  | Development Action for Women Network                              |
| DFA   | Department of Foreign Affairs (The Philippines)                   |
| DOLE  | Department of Labour and Employment (The Philippines)             |
| DWSD  | Department of Social Welfare and Development                      |
| EDSP  | Education for Development Scholarship Programme (The Philippines) |
| EI    | Employment Insurance (Canada)                                     |
| EPS   | Employment Permit System (South Korea)                            |
| ERCOF | Economic Resource Centre for Overseas Filipinos                   |
| FAL   | Family Assistance Loan (The Philippines)                          |
| FARMS | Foreign Agricultural Resources Management Services (Canada)       |
| GATS  | General Agreement on Trade in Services                            |
| HRD   | Human Resources Development (South Korea)                         |
| HRSDC | Human Resources and Social Development Canada                     |
| IOM   | International Organisation for Migration                          |
| IRPA  | Immigration and Refugee Protection Act (Canada)                   |
| ITP   | Immigration and Refugee Protection Act (Canada)                   |
| JITCO | Japan International Training Corporation Organisation             |
| LDC   | Least Developed Country   |
| LDPO  | Livelihood Development Programmes for OFWs (The Philippines)      |
| LGU   | Local government unit   |

|       |  |
|-------|--|
| LIBOR | London inter-bank rates  |
| LMO   | Labour Market Opinions   |
| MFN   | Most-Favoured Nation   |
| MSAI  | Migrant Savings for Alternative Investments (The Philippines)  |
| NBI   | National Bureau of Investigation (The Philippines)   |
| NGO   | Non-Governmental Organisation  |
| NLSF  | National Livelihood Support Fund (The Philippines)   |
| NRCO  | National Reintegration Centre for OFWs (The Philippines)   |
| OEC   | Overseas Employment Certificate (The Philippines)  |
| OECD  | Organisation for Economic Co-operation and Development   |
| OFC   | OFW Family Circle (The Philippines)  |
| OFW   | Overseas Filipino Worker   |
| OPEC  | The Organisation of the Petroleum Exporting Countries  |
| OWWA  | Overseas Workers Welfare Administration  |
| PCE   | Philippine Center for Entrepreneurship   |
| PDL   | Pre-Departure Loan (The Philippines)   |
| PITC  | Philippine International Trade Corporation   |
| POEA  | Philippines Overseas Employment Administration   |
| POLO  | Philippines Overseas Labour Office   |
| POP   | Pag-Ibig Overseas Programme  |
| PTA   | Preferential Trade Agreements  |
| RPM   | Replacement and Monitoring (The Philippines)   |
| SC    | Service Canada   |
| SCC   | Service Canada Centre  |
| SSS   | Social Security System (The Philippines)   |
| TESDA | Technical Education and Skills Development Authority (The Philippines)   |
| TFW   | Temporary Foreign Worker programme (Canada)  |
| TIP   | Technical Internship Programme (Japan)   |
| UTSTM | Unidad Técnica de Selección de Trabajadores Migratorios<br>(Technical Unit for the Selection of Migrant Workers) |
| WTO   | World Trade Organisation   |

## Endnotes

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