

**EIGHTY-SIXTH SESSION**

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**WORKSHOPS FOR POLICY MAKERS: REPORT**

**LABOUR MIGRATION**

Labour migration, or the cross-border movement of people for employment, is an increasingly important feature of the globalizing world. Currently, one person out of 35 is a migrant, which means that there are approximately 175 million migrants in the world. Labour migration represents the largest part of the flows of contemporary migration: it is estimated that there are nearly 81 million labour migrants (with or without authorization), accompanied by as many dependants.

The workshops on labour migration held in November 2003 covered a variety of issues related to this subject: best practices in labour migration management, challenges and opportunities posed by international labour mobility, possible ways of solving existing problems and maximizing benefits for all parties involved.

During the discussions, it was observed that labour migration is a highly complex phenomenon as, while economically driven, it is also interwoven with a variety of humanitarian/human rights issues.

## **1. ECONOMIC ASPECTS OF LABOUR MIGRATION**

Pressures that drive labour migration are predominantly of economic nature. On the supply side, these forces include: large differentiation in income levels between the developed and developing world, the pressures of growing populations and unemployment in many developing countries. On the demand side, the ageing population in industrialized countries, which leads to a change of the ratio between workers and retirees with its social and economic implications, and resulting labour market shortages, particularly in the health and personal care sectors, are the major factors that continue to fuel labour migration. It was noted, however, that labour migration no longer takes place exclusively between developed and developing countries, as there is also a significant amount of intraregional migration. Generally, therefore, the demand for foreign workers arises when the resident labour force is unable to satisfy the demand of the domestic labour market due to the insufficiency in numbers, level or type of skills, inability of quick mobilization, or unwillingness to take certain types of job which are poorly paid and not highly regarded.

Effects of labour migration on both receiving and sending countries depend on a variety of factors including volume and characteristics of migration flows, economic, demographic and labour market conditions, as well as policies related to labour mobility in host and source countries. Nevertheless, the participants recognized that labour migration has the potential of bringing significant economic gains for all parties. A number of states, among them the UK, Mexico, Australia and the Democratic Republic of Congo, emphasized the positive experience their countries had with a variety of labour migration schemes.

### **1.1. Impact of labour migration on receiving countries**

Labour migration helps to address labour shortage problems and contribute to the human capital in the countries of destination, thus, improving the flexibility and productivity of their economies. In the UK for example, it is estimated that ten per cent of the GDP is generated by persons originating from another country (eight per cent of the UK population).

However, labour migration is associated with a number of concerns in the receiving countries. Protection of the domestic labour force is one of the principal challenges of the receiving

countries and is among the main reasons for restrictive immigration policies. In most destination countries, admission of foreign workers is subject to quotas or satisfaction of labour market tests. It was pointed out, however, that in circumstances of rapidly changing economic conditions both of these mechanisms often prove to be not flexible enough for the private sector and hinder the effective filling of labour market gaps.

In this respect, the participants emphasized the importance of recognizing the significance of the private sector and market needs in driving labour migration. It was suggested that while the state can play a role in attempting to map in advance the needs of the private sector and tailor its immigration policy to the results of these projections, accurate forecasts are hard to make as labour market shortages usually arise quickly. Employer discouragement by anticipated delays in foreign and national bureaucracies can result in the use of irregular channels. Consequently, it is important that states set guidelines that are clear, agile and effective and create a flexible system which would allow employment at short notice. One of the experts gave an example of a method developed by the International Organization for Migration (IOM) to facilitate migration of workers from Tunisia and Egypt to Italy. This scheme is aimed at helping employers to recruit foreign workers quickly by means of establishing Internet databases in the language of the receiving country containing profiles of workers available at short notice. The significance of the Internet as a tool for providing relevant information and making employment procedures more easily accessible for both employers and workers was underlined.

Another major concern of the host countries is the control of irregular migration. Some of the participants noted that fundamentally, irregular migration stems from the lack of regular routes of access for foreign workers: an attempt to establish a barrier between the demand for foreign labour and its supply fuels undocumented migration.

The difficulty in achieving public acceptance for an increased inflow of migrants was identified as one of the main reasons for restrictive immigration legislation. Among causes for the public uneasiness associated with migration is security. A number of participants expressed their concern in relation to the current trend towards seeing migration as linked with terrorism.

Xenophobia, intensified by terrorism fears, and the existence of a negative perception of migrants as being not authorized and criminal were also identified as causes for the lack of public acceptance of labour migration and as representing a considerable challenge for many receiving countries.

In the course of the discussions, it emerged that in most countries, public acceptance is particularly hard to achieve in relation to lower skilled foreign workers, which makes opening legal channels for this category of migrants difficult for governments. As a result, the unsatisfied market demand is often filled through irregular migration, thus, exacerbating the negative public image of migrants.

In this context, it was noted that although in many cases the public in the destination countries endorses the immigration of highly skilled workers while feeling less comfortable with lower skilled migrants, it is not always the case. There are many examples of successful schemes for lower skilled workers, especially in the agricultural sector (e.g., Canada, Germany). The situation in Germany also demonstrates that in some countries, the opposite is the case: while lower skilled worker programmes are accepted by society, it is difficult to achieve public consent to immigration of highly skilled workers. The reason for such a negative public attitude is the high level of unemployment among skilled resident workers in Germany. One of the participants

enquired about the reasons for the need for foreign skilled workers in Germany in the presence of a high rate of unemployment among the highly qualified local labour force. It was explained that, as was demonstrated by the OECD Programme for International Student Assessment (PISA) study, the German education system does not focus on developing the expertise needed for the growth and competitiveness of the German economy. As a consequence, there is a mismatch between the skills supplied and demanded in the domestic labour market. German reunification was identified as an additional reason for this discrepancy. At the same time, retraining the unemployed highly qualified domestic workforce is difficult and expensive.

It was recognized that labour migration is a highly complex, multifaceted issue, which has not only economic, but also social and political impacts and involves competing interests of different stakeholders. Therefore, development of successful labour migration management policy should involve consultations between all parties concerned. In Australia, for example, where the migration experience has been generally positive, a wide consultative process is carried out between the federal and state governments, businesses, unions, environmental groups, churches, NGOs and community groups (including migrant groups).

It was suggested that involvement of a variety of stakeholders in the consideration of labour migration related issues and open public discussions can help to alleviate the problem of the negative image of migrants and promote their social acceptance.

## **1.2 Impact of labour migration on sending countries**

It was observed that labour migration could be used as an instrument of development, conferring benefits in the form of remittances, skill-transfers and creation of business networks.

The significance of remittances for the developing countries was discussed at length. The participants were informed that approximately 80 billion dollars of remittances are currently transferred from the developed countries back to countries of origin through official channels, compared with 50 billion dollars of overseas aid provided by the same developed countries. In many of the less developed states, remittances represent a large proportion of the GDP and constitute a major contribution to the stability of foreign exchange.

Research aimed at establishing the impact of remittances on reducing poverty at the household level has been carried out and produced evidence demonstrating that migration is a contributing factor to development. It was noted, however, that there is a great variation between different sending countries in the volume of remittances received and their beneficial effect. The experts emphasized that the extent of the development impact of remittances, as well as other effects of migration, depends on migration management policies. In this context, the importance of channelling remittances through the banking system and reducing transfer costs, which in some cases represent as much as 20-23 per cent of the total amount sent by the migrant, was underlined. Development of investment schemes was named as another important way of maximizing the positive impact of remittances.

The experts also drew attention of the participants to the necessity of managing the returnee flows in order to avoid the waste of skills acquired by the migrants while working abroad. In this respect, concern was expressed that while brain circulation might indeed benefit development of sending countries, there is an associated risk of brain drain in case of non-return of highly skilled workers. Many participants suggested that when destination countries recruit highly skilled professionals from abroad in order to fill labour shortages, instead of investing in their own

nationals, an unacceptable transfer of wealth from sending to receiving countries takes place, due to the loss of investment in training and education in countries of origin. Brain drain, especially in such vital sectors as health, was recognized to be a major concern for the sending countries and a factor which undermines the development potential of migration. Participants stressed the necessity of developing effective policies to mitigate the potential negative impact of brain drain.

Finally, the importance of establishing comprehensive labour migration management policies in sending countries, which would benefit migrants, their families and the economy, thus, maximizing the development impact of labour migration, was underlined.

## **2. HUMAN RIGHTS AND WELFARE ASPECTS OF LABOUR MIGRATION**

Inadequate protection of rights and welfare of migrants was identified as a serious concern for the international community, which should be addressed in labour migration management policies of both host and source countries.

Among the issues discussed in this context were racism, xenophobia, wage and labour violations that migrant workers are often subject to, as well as lack of access to health and social services. Further human rights issues related to migration which should receive more attention include: immigration detention, trafficking and forced labour, and family reunification. It was explained that both regular and irregular migrants are increasingly being detained in receiving countries, where immigration detention is often used as a deterrent and as a means of determining the status of a migrant and verifying his/her documentation. It was pointed out that such use of detention is problematic from a human rights perspective, particularly since migrants often do not have access to legal advice and are not well informed about their rights and entitlements.

Trafficking for forced labour purposes was identified as one of the gravest human rights violations associated with labour migration. Typically, states do not have adequate laws that prohibit forced labour or provide appropriate victim protection and rehabilitation programmes. In general, trafficking victims are treated essentially as undocumented migrants, subject to deportation or expulsion.

Another human rights issue discussed was the possibility of family reunion for labour migrants. It was remarked that persons are more willing to participate in labour migration with the knowledge that their families will be able to join them subsequently in the host country. In this respect, the recent European Directive on Family Reunification<sup>1</sup> was critically examined: it was noted that the treatment of family reunion in the Directive is problematic with regard to a number of issues such as the age of children eligible to be reunited with their parents and the definition of what constitutes a “family” (e.g., whether children are of one or both parents, whether parents need to be married, etc.).

A number of participants underlined the necessity of particular attention to the protection of vulnerable groups: low-skilled, irregular migrants, and especially women. It was clarified that the International Labour Office (ILO) convention no. 143 provides a standard for the basic human rights of migrant workers irrespective of whether they are in a regular or irregular status. However, in practice, temporary low-skilled vulnerable migrants, such as men working in the

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<sup>1</sup> Council of the European Union (2003) Directive 2003/86/EC on the right to family reunification, *Official Journal of the European Union* L.251, 03/10/2003 pp. 0012 – 0018, Brussels.

construction industry or women employed in domestic service sectors, often suffer from violations of basic human rights. In this context, it was stressed that the issue of the feminization of migration, and particularly the exploitation and trafficking of low-skilled women is yet to be fully addressed. It was also suggested that victims should be rehabilitated rather than criminalized and punished for their irregular status through deportation. Finally, the importance of ensuring that migrants in an irregular situation are treated with dignity was emphasized.

The rights of migrant workers are protected by international law, with labour migrant rights' protection falling under the ILO mandate, outlined in the ILO Constitution and various ILO conventions. The ILO and UN conventions contain detailed provisions regarding protection of the rights of workers outside their countries of origin. One of the participants asked whether international conventions provide for reciprocal treatment of migrant workers. It was clarified that international conventions are only binding on those states that have ratified them, and rates of ratification of, for example, the ILO conventions which refer to the rights of migrants, have remained fairly low: convention no. 97 on Migration for Employment, has been ratified by 42 countries, and No. 143, which addresses Irregular Migration and Migrant Rights, has been ratified by 18 predominantly sending countries. In the case of countries that have ratified, trade unions, employers, and governments can bring complaints to the attention of the ILO and its supervisory machinery is used to investigate complaints. Trade unions in countries that have not ratified the conventions can still lodge a complaint with the ILO, while governments cannot. It was noted that the ILO conventions are fairly flexible and contain standards, norms and good practices which are often taken into consideration by governments when drafting national legislation even if they have not ratified these conventions.

Several experts reiterated that effective protection of migrants' rights is only possible through the development of regulatory frameworks and principles in the area of labour migration which are universally binding and enforceable. It was also stated that countries which respect their international obligations should be entitled to reciprocal treatment for their citizens in other countries.

### **3. MANAGEMENT OF LABOUR MIGRATION**

Participants recognized that labour migration, whether regular or irregular, seen from a sending or receiving country perspective, is an issue of concern to all states. It was suggested that it is in the interests of each state to put resources into the development of an effective labour migration management programme in order to alleviate problems related to international labour mobility and ensure that it works in tandem with development objectives. It was also stressed that economic and human rights/welfare facets of labour mobility are closely interconnected and a successful labour migration policy should address both. Moreover, it became evident that various policy measures suggested would have a positive effect in terms of addressing concerns associated with labour migration, related to both economic considerations and the wellbeing of migrants.

Many participants advocated promoting a positive image of labour migration as a driving force for development in both sending and receiving countries. A broad and open consultation process, as well as public awareness campaigns with information dissemination concerning labour market shortages and contributions made by migrants to the economy of the country concerned were seen to significantly contribute to a change in public opinion with regard to labour migration. It was pointed out that development of the positive image of migration could make admitting more labour migrants and opening more routes for migration politically easier, which would not only

benefit employers and the economies of host countries, but also reduce the scope for irregular migration. Additionally, a more positive attitude towards labour migration is likely to diminish instances of xenophobia.

It was recognized that social integration of migrants and their families is essential for increasing social cohesion and combating xenophobia in host countries. Existing social integration programmes typically include language and cultural orientation. The Government of Chile, for example, also provides educational services to children of both regular and irregular migrants, as well as medical and health assistance to migrants and their dependants. It was noted that in Chile's experience, regularization of migrants and education of migrant children reduces xenophobia within the broader Chilean population and enhances the benefits of labour migration both for the country and for individual migrants.

Pre-selection, as well as training and orientation of migrants, were pointed to as effective measures to provide for easier integration of migrants into the host country society and maximization of the positive effects of migration. In relation to pre-selection mechanisms, the system used in Australia was described. In Australia, labour migrants are selected through a points system on the basis of objective criteria, notably skills level, language proficiency, age and experience. It was explained that this programme is aimed at selecting individuals with characteristics and skills that will enable them to actively participate in and contribute to the Australian economy. Generally, migrants accepted under this programme have a high and rapid rate of employment and, as surveys suggest, tend to be satisfied with their experience in Australia. It was emphasized that the criteria and the process for the selection of migrants have to be clear. It was suggested that incidences of such crimes as trafficking and smuggling in human beings may increase when the selection process is ambiguous.

The issue of whether training and orientation should be provided by the host or source country was debated. Some participants stated that it should be the responsibility of sending countries to train and equip their nationals intending to go abroad. But it was noted that in some cases, displacement of persons is a result of uncontrollable and unpredictable events. It was argued that when a country of origin has no control over the destination of its citizens' migration, the orientation of migrants, as well as the protection of their human rights, is the responsibility of the country of destination. Traditionally, it is largely the receiving countries that provide training and orientation services to migrants. Studies, however, suggest that pre-departure orientation in the home country raises migrants' awareness of their rights, thus, providing them with a safeguard against exploitation. Research also indicates that migrants are more effective in the workplace and integrate more easily into their host society if they receive pre-departure orientation. Some countries, such as Tunisia and the Philippines, provide pre-departure services to persons moving abroad. There are also some cases where pre-departure training is organized by the country of destination. For example, Norway, which recruits large numbers of seafarers from the Philippines, has established bases in the Philippines designed to provide training to the local citizens before departure. It was noted with regret, however, that pre-departure orientation remains an exception rather than the rule.

Training and orientation of migrants can bring significant benefits to all parties, but in order to develop effective and comprehensive programmes, collaboration and allocation of responsibilities between sending and receiving countries is required. Some participants expressed the view that a bilateral framework is necessary for effective management of labour migration.

It was remarked in this context that the distinction between sending and receiving countries is becoming less clear, as an increasing number of states both host and send abroad migrant workers. Australia, for instance, while generally known as a receiving country, also has approximately a million expatriates living abroad. It was underlined that experience sharing and cooperation between traditional host and source countries can help governments to adapt to and benefit from the potential of changing circumstances.

It was observed that cooperation between sending and receiving countries is essential for resolving a number of concerns which arise in the process of labour migration, such as the negative effects of brain drain. Consultations and cooperation between countries of destination and origin can help to enhance the development impact of labour migration and prevent the drain of skilled workers necessary for home economies through ethical recruitment, provision of assistance to countries of origin in planning emigration, as well as encouraging migrant workers to return to their home countries.

Considerable attention was devoted to the issue of return of migrant workers and temporary labour migration in general. The participants considered temporary labour migration to be a promising way to both harness the advantages of workers' mobility and avoid many problems caused by permanent migration. From the sending countries' perspective, temporary migration helps to avoid brain drain, while ensuring the benefits of remittances and skills development through brain circulation. Temporary migration is also very attractive to receiving countries, as it offers flexibility in satisfying labour market needs and avoids the need for social integration of migrants, especially in cases of short term programmes. As demonstrated by the agricultural labour migration programmes successfully carried out in a number of countries, it is also easier to achieve public acceptance of temporary labour migration.

The main concern expressed with respect to temporary labour migration programmes was related to ways of ensuring the returns of migrants. Representatives from the countries participating in successful temporary schemes shared their experiences. Participants were informed, for example, that in the case of the Canada-Guatemala agricultural work programme, which is implemented by IOM, the return rate was very high: there were no overstays, and although three migrants tried to escape, they were arrested. It was emphasized that the contract signed with a migrant worker should include a clear requirement for his/her return at the end of the employment period in the destination country. It was explained that the Canada-Guatemala programme also offers return incentives such as financial benefits, including the entitlement to retirement funds after 10-15 years, as well as the opportunity of participating in the temporary programme in the future. It was recognized however, that a high rate of return is best guaranteed when the work performed by migrants is temporary by nature, as is the case with work in the agricultural sector.

It was repeatedly stated in the course of the discussions that effective labour migration management cannot be dealt with unilaterally. In order to address the challenges of labour migration, information and responsibility sharing between sending and receiving countries is necessary. It was suggested, however, that labour mobility should not be thought of in binary terms – as a movement between a source and a host country- but rather in global terms. It was posited that effective labour migration management policy can only be formulated within a multilateral context. However, no agreement on managing migration flows has been concluded so far at the multilateral level, although the General Agreement on Trade in Services (GATS), which includes provisions for the supply of services through temporary migration of persons, is currently being negotiated. Nevertheless, it was noted that the ILO takes a multilateral approach to the issue of protection of labour migrants and sees cooperation between states as fundamental



to addressing the challenges of this phenomenon. Finally, it was posited that it is necessary to develop a framework of principles and standards applying to the management of labour migration that would be recognized globally.