



**Manila, Philippines, 27-30 October 2008**

**ROUNDTABLE 1: MIGRATION, DEVELOPMENT AND HUMAN RIGHTS  
(Coordinator - Ms Estrella Lajom Roman)**

**Roundtable Session 1.1  
Protecting the Rights of Migrants – A Shared Responsibility<sup>1</sup>**

**Co-chairs:  
Government of the Philippines  
Government of the United Arab Emirates**

**Wednesday 29 October 2008  
15.00 – 18.00 hours**

**EXECUTIVE SUMMARY**

What is the connection between protection of migrant rights and development? How are countries singly or jointly protecting the rights of migrants? This paper seeks to answer these questions and stimulate discussion in GFMD Roundtable 1.1 by examining a number of effective practices on the ground that follow international laws and principles of protection relevant to migrants.

There is increasing recognition that migration<sup>2</sup> can benefit development. But these benefits depend on the degree to which migrants are protected and empowered by the countries from which they come and the countries in which they live and work, regardless of their legal status. UNDP observes that people are the “real wealth of nations”, and their human development is the basis for any broader economic and other national development.<sup>3</sup> These broader development

<sup>1</sup> This paper has been consolidated by IOM in collaboration with: the Roundtable session Co-chairs, the Governments of the Philippines and the United Arab Emirates; ILO; and the Roundtable coordinator. It also draws on comments and input offered by the Roundtable session team member governments and from studies and findings of other experts and organizations. The aim of the paper is to inform and facilitate the discussion of Roundtable session 1.1 during the Manila GFMD meeting in October 2008. It is not exhaustive in its treatment of the RT 1.1 theme, and does not necessarily reflect the views of the GFMD organizers, or the governments or organizations involved in the GFMD process. Any reproduction, in part or whole, of this document, should cite the source.

<sup>2</sup> The term “migration” here refers to any kind of movement of people, whatever its length, composition or causes. It takes account of the fact that migration can be both temporary and longer term or permanent. A large number of migrants today, both skilled and lower-skilled, may be permanent or long term residents abroad. See, *Glossary on Migration*, International Migration Law, International Organization for Migration, Geneva, 2004.

<sup>3</sup> “Human Development is a development paradigm that is about much more than the rise or fall of national incomes. It is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. (...) Human development and human rights are mutually reinforcing, helping to secure the well-being and dignity of all people, building self-respect and the respect of others.

<http://hdr.undp.org/en/humandev/>

gains accrue to both origin and host countries,<sup>4</sup> and involve protection of the human rights of migrants<sup>5</sup> at all three stages of the “life cycle” of migration: pre-departure, arrival and work abroad, and return and reintegration. States have a primary role to ensure this, both through transparent laws, policies and practices and by cooperating with each other and other key players.

There is no one-size-fits-all approach, but examples of good practice exist in different regions of the world that may be replicated by other countries. The paper takes the “life-cycle” approach to migration in order to spotlight the respective protection responsibilities of countries of origin, transit and destination in that cycle. It also points to some useful lessons from these practices and possible further policy actions by governments.

## 1. CONCEPTUAL FRAMEWORK

### 1.1 Migration, Development and Human Rights

The international community is increasingly conscious of the need to take a holistic view of migration, one that goes beyond a purely economic or security analysis to incorporate the social, cultural and human aspects of this global phenomenon. New forms of labour mobility are emerging in response to demographic trends and labour market needs, with temporary and circular migration and overseas employment increasingly being pursued by individuals and governments alike to address their distinct needs and priorities. It is vital that the human rights of migrants are respected in all of these contexts and regardless of whether the individual is “productive”, if the challenges of migration today are to be addressed effectively and humanely and the positive contributions of migration maximized.

Human rights are universal, indivisible and inalienable. The Universal Declaration of Human Rights (UDHR) underscores that *all* people are entitled to respect for their human rights, regardless of their place of residence, status in a country, or state of productive employment. Development gains for countries of origin and destination and the protection of the rights of migrants are inseparable: economic data and research evidence increasingly reinforce the notions that protection of the rights of all migrants enhances the developmental and productivity impact of migration and, conversely, denial of rights and abuse carry significant costs not only to migrants, but also to countries of destination and origin.

The potential benefits of migration are well documented, particularly for countries of origin.<sup>6</sup> Migrants contribute to development and poverty alleviation in origin countries by reducing labour market pressures, sending remittances home, acquiring higher skills, making investments and establishing trade and employment networks. There can also be social, cultural, and political benefits at individual, community and national levels. In host countries, migrants contribute to

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<sup>4</sup> Host countries can also include transit countries.

<sup>5</sup> Human rights include, among others, civil, political, economic, social and cultural rights, such as labour rights.

<sup>6</sup> See, for example IOM , ‘*Migration for Development : Within and Beyond Frontiers*’, Geneva, 2006 for an overview, and case studies providing evidence of the several potential positive impacts that migration can have on development; Ratha, D. and Shaw W., ‘*South-South Migration and Remittances*’ World Bank Working paper No.102, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/SouthSouthMigrationandRemittances.pdf> for a discussion of the welfare implications for the poor of South-South migration; Development Research Centre on Migration, Globalization and Poverty Working Papers at <http://www.migrationdrc.org/>; for studies that provide evidence of the positive impact that migration can have on children’s health, see Hildebrandt *et al.* (2004), Kanaiaupuni and Donato (1999), Amankawaa *et al.* (2003), Brokerhoff, 1990.

development by filling labour market gaps, increasing the demand for goods and services, particularly where they receive decent wages and pay taxes and other public fees, and contributing their entrepreneurial skills. They also make important non-economic contributions in the social, cultural and political domains.

Conversely, migration also carries risks and potential negative impacts for countries of origin, including brain drain and remittance dependency. For countries of destination, potential negative impacts include displacement of local workers, particularly by migrants in an irregular status.

But inadequate attention has been paid to date to the circumstances or status of migrants in assessing their potential contribution to growth and prosperity of their countries of destination. Existing evidence suggests that protecting the rights of migrant workers has a positive effect on productivity, resulting in fewer lost hours of work, reduced health care costs, and increased output.<sup>7</sup> Protection of rights also prevents the development of migrant-dependent economic sectors and an unprotected underclass of working migrants, which can harm national workers by undermining their wages and working conditions.

There is also insufficient information about how different types of migration call for differentiated protection policies. People from all walks of life cross international borders to seek a better life, adventure, reunion with family and friends and a host of other reasons. Those seeking to work, or who work after migrating for other reasons, range across a diversity of skill levels: professional and highly skilled, lower-skilled and those with little or no previous work experience or formal training. Their circumstances are often determined by migration policies tailored to these differences; and while they may all contribute to the overall benefits of migration for development, their circumstances often vary widely and require different protection responses. For example, low skilled migration is considered to have the largest potential to reduce the depth and severity of poverty in communities of origin.<sup>8</sup> Yet lower-skilled migrants are likely to be in a weaker position to assert their rights, including the rights to decent wages and living and working conditions. Protecting the rights of the lower-skilled and other potentially vulnerable migrants is therefore a priority.

It is in the interest of all involved to promote opportunities for legal migration and combat smuggling and trafficking in persons, as irregular migration erodes the rule of law, public confidence and often exposes migrants in irregular status to serious violations of their human rights, thereby preventing them from realizing their potential and effectively contributing to development (see also RT 2.2).

Migrants themselves, of course, have the responsibility to respect the laws and policies of the host countries.

## **1.2. Shared Responsibility**

Effective protection of the human rights of migrants requires coordinated action by countries throughout the entire migration cycle (“life cycle”): departure, travel to and stay in the host

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<sup>7</sup> Migration and Development. A Human Rights Approach, Office of the UN High Commissioner for Human Rights, pp.3 -5, 8 – 10, [www.ohchr.org/english/bodies/cmw/docs/](http://www.ohchr.org/english/bodies/cmw/docs/).

<sup>8</sup> ‘Low-skilled migration has the largest potential to reduce the depth and severity of poverty in communities of origin’. International migration and development: Report of the Secretary-General, A/60/871, New York: United Nations, 2006. See also, World Bank, ‘Global Economic Prospects 2006- Economic Implications of Remittances and Migration’, Washington D.C., 2005.

country, and return and reintegration.<sup>9</sup> Individual states have the greatest authority and responsibility when the migrant is on their territory. However, inter-state cooperation can foster effective practices to protect migrants and further their rights across all phases of the migration cycle. A cooperative approach both benefits individual migrants and promotes mutual development and good relations between host and home countries.

### *1.2.1 Governments play a key role*

The discourse on the protection of the human rights of migrants often focuses on the obligations of destination countries and countries of transit. However, countries of origin have an important role to play in protecting their nationals prior to departure, whilst abroad, and on their return. If, prior to departure, governments can ensure that their nationals have sufficient information on the migration process, on their rights and duties in the countries of transit and destination, on the dangers of human trafficking and smuggling, on the actual terms and conditions of work in the country of destination, and the culture and conditions of life on arrival, their vulnerability to discrimination and abuse will be reduced. For example, countries of origin can provide information on the risks and consequences of irregular migration, and the responsibility of migrants to enter other countries through lawful channels. Particular attention to vulnerable groups is essential.

Ensuring that the recruitment process is regulated - with regulations enforced by the government - and that the migrant is aware of his or her right to consular protection and assistance are examples of ways in which countries of origin can fulfill their obligation to protect their nationals and contribute to a successful migration process. These measures can also serve to enhance the confidence of host governments, employers and local communities and thereby enhance support for migration policies.

States also have the right and the duty under international law to defend and protect their nationals abroad, wherever they may reside, and irrespective of their migratory status. When countries of origin continue to monitor the treatment of their nationals after departure, destination and transit countries have a greater incentive and develop a certain sense of obligation to protect their rights as well.

Countries of origin likewise need the knowledge, capacities and leverage to negotiate agreements on decent contracts, fair wages, social welfare and other insurances, particularly with countries that have weaker or non-existent labour laws or general protection mechanisms for non-citizens. They can also take their own initiatives and provide these standards for their migrants, as for example the Philippines does.

On the other hand, destination countries have a responsibility under international law to ensure that the rights of non-nationals are respected whilst under their jurisdiction. States have broad sovereign powers in determining the granting of nationality, admission, conditions of stay and removal of non-nationals, according to national circumstances and priorities. Once a non-national is in the territory of a State, the State must respect and ensure the human rights of “all individuals within its territory and subject to its jurisdiction... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

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<sup>9</sup> It should be noted that governments share the responsibility for the protection of the human rights of migrants, even if the migration process ends in the country of destination.

property, birth or other status.”<sup>10</sup> In principle, and with few exceptions such as some political rights, the rights contained in human rights instruments are guaranteed to all persons present in a State: nationals and non-nationals alike, and regardless of legal status.

In the context of national labour markets, it is important for migrant workers to be covered by labour laws; domestic workers, a particularly vulnerable and often neglected group, should be included if not currently covered. Laws providing equal treatment with national workers for equal work can guard against the development of sub-standard conditions and potential tensions with nationals. Laws and regulations protecting migrant workers require enforcement through such measures as adequate inspections and supervision of compliance with employment contracts.<sup>11</sup>

The laws and policies of countries of destination that reinforce respect for the social rights of non-nationals, such as the right to education, access to health and decent housing, enhance contributions to individual and societal development as well as prospects for a productive migration experience. Non-discrimination and effective integration policies help prevent social exclusion and xenophobia, and encourage recognition of migrants as productive members of society, thereby promoting social cohesion, an undeniable benefit to destination countries. Measures of protection that can be taken by destination countries, and where relevant, countries of transit, include preventing and addressing irregular migration - particularly trafficking and smuggling.

Establishing remittance services in cooperation with countries of origin for migrant workers to be able to transfer their earnings home safely and at low costs can empower migrants economically, thus helping to maximize the development benefits of migration.

Cooperation between countries to ensure equitable and humane conditions in connection with international migration is recognized by the international community as vital for effective migration management. International instruments call for cooperation between states to promote good governance of migration and protection of migrant workers.<sup>12</sup> Areas of cooperation between countries of origin, transit and destination which maximize protection include:

1. exchange of pre-departure information on relevant migration laws and policies, as well as employment conditions;
2. expanding avenues for regular migration and addressing irregular migration through measures such as training and technical cooperation, cooperation on border management, and document control (see Roundtable 2);
3. facilitating safe recruitment processes, decent work conditions and dispute settlement; (i.e., agreements/MOUs/standard contracts on work conditions, wage levels, social security, skills recognition, pension portability, remedies for violations of rights)
4. provision of consular and other needed services, including monitoring missions or joint committees with representatives from the countries involved; and
5. facilitation of the return and reintegration process.

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<sup>10</sup> See Art. 2 UDHR and Art 2(1), International Covenant on Civil and Political Rights (ICCPR). Similar non-discrimination clauses are included in the human rights treaties.

<sup>11</sup> ILO Migration for Employment, 1949 (No.97); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); ILO Declaration on Fundamental Principles and Rights at Work, 1999.

<sup>12</sup> See for example the International Convention of the Protection of the Rights of all Migrant Workers and Members of their Families, Protocol against Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

### **1.2.2 Other actors**

The migration process involves complex relations between the migrant and various public and private stakeholders in countries of destination, transit and origin. While the prime responsibility lies with States, respect for the human rights of migrants is best achieved through cooperation among all interested stakeholders, be they international or non-governmental organizations, the private sector, employers, trade unions or other members of civil society, including migrant associations and diaspora groups. Each of these actors can support States in their duty to ensure respect for the human rights of migrants and help governments to fully and effectively address the challenges and opportunities of migration and maximize migration's development potential. Engaging the private sector, and ensuring its effective cooperation with governmental policies, is particularly important in this regard, in view of the strong market forces driving labour mobility.

## **1.3 International Law and Policy Frameworks**

### **1.3.1 International instruments**

While there is no single instrument to govern global migration, treaties drawn from various branches of law provide an international legal framework not only to protect the rights of migrants but also for the development of national migration and labour legislation and policy, and international cooperation to manage migration. The Universal Declaration of Human Rights and the core human rights treaties apply to all human beings, including migrants.<sup>13</sup> Moreover, core labour rights provided for in fundamental Conventions of the ILO enshrined in the ILO Declaration on Fundamental Principles and Rights at Work covering forced labour, discrimination and freedom of association, and child labour – are applicable to all workers including migrant workers, without distinction of nationality, and regardless of migration status.

Three international Conventions apply specifically to migrant workers: ILO Migration for Employment Convention (Revised), 1949 (No. 97); ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the 1990 *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*. While ratification levels vary, their principles and guidelines have been used widely in national labour and migration legislation and practices.<sup>14</sup>

ILO Convention No. 97 applies to migrant workers in regular status and covers departure, journey and reception, transfer of earnings, recruitment, placement, and conditions of labour. Migrants in regular status are entitled to treatment no less favourable than that of nationals in most employment matters. ILO Convention 143 focuses on labour migration under abusive conditions and equality of opportunity and treatment. It addresses the suppression of clandestine movements

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<sup>13</sup> Including the ICCPR, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention on the Elimination of Discrimination against Women, the International Convention on the Elimination of Racial Discrimination, the Convention Against Torture, the International Convention on the Protection of All Migrant Workers and Members of Their Families. Each of the core human rights treaties has a treaty body monitoring and overseeing implementation of the respective treaties. For a comprehensive compilation of International Migration Law, see R. Perruchoud and K. Tomolova (eds), "*Compendium of International Migration Law Instruments*", Asser Press, 2007, and for a discussion of the application of some of these instruments to migrants, see the related volume by R. Cholewinski, R. Perruchoud and E. Macdonald (eds), *International Migration Law: Developing Paradigms and Key Challenges*, Asser Press 2007.

<sup>14</sup> At present, 47 States have ratified ILO Convention No. 97; 23 States have ratified ILO Convention No. 143, and 37 States have ratified the 1990 Migrant Worker's Convention. See contribution by the Committee on Migrant Workers to Roundtable 1,4 April 2008; ILO, Migrant workers, Report III (1B). <http://www.ilo.org/public/english/standards/realm/ilc/ilc87/r3-1b>.

of migrants and employment in irregular status by taking action against their organizers and employers (not the workers themselves) and promoting inter-State cooperation. It also calls upon States to respect the basic human rights of all migrant workers, irrespective of their status, and to ensure their equality of treatment with respect to certain rights arising out of employment.

The *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families* provides many areas of protection. Along with employment issues, it includes provisions on human rights, slavery and forced labour, liberty and security of person, protection against violence, confiscation of identity documents, expulsion, medical care, the education of migrant workers' children, family reunification, transfer of earnings, recruitment, the right to the protection and assistance of their countries' consular services, and other issues.

In addition, the *Protocol against Smuggling of Migrants by Land, Sea and Air* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*<sup>15</sup> provide for measures to address these forms of irregular migration, protect the individuals involved, particularly women and children, and promote international cooperation in addressing these phenomena. Several of these instruments have resulted in the establishment of institutions to monitor and oversee adherence to their provisions.<sup>16</sup>

In addition to universally applicable standards, regional human rights instruments such as the *African Charter on Human and Peoples' Rights*, the *American Convention on Human Rights* and the *European Convention on Human Rights*, are generally applicable to all persons regardless of nationality and legal status. Indeed, the courts established under the latter two instruments in particular have issued landmark judgments or advisory opinions relating to the protection of migrants.<sup>17</sup>

### **1.3.2 Non-binding policy frameworks**

The 2004 International Agenda for Migration Management, a product of the Berne Initiative, compiles common understandings and effective practices for a comprehensive approach to the management of migration. Based on wide inter-governmental consultations and lessons from government policy and practice, its scope includes, inter alia, international cooperation, labour migration, irregular migration, the human rights of migrants, and migration and development.<sup>18</sup> The 2006 ILO *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*,<sup>19</sup> an outcome of negotiations among governments, employers and workers, provides practical guidance to governments, employers and workers organizations for the development, strengthening and implementation of national and international labour migration policies. Taking a rights-based approach, it addresses decent work, international cooperation on labour migration, effective management of labour migration, social

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<sup>15</sup> Both are Protocols supplementing the United Nations Convention against Transnational Organized Crime, 2000.

<sup>16</sup> See, for example, the Committee on the Protection of All Migrant Workers and Members of Their Families and the Special Rapporteur on the Human Rights of Migrants, both associated with the Office of the High Commissioner for Human Rights.

<sup>17</sup> For example, see the Inter-American Court of Human Rights Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants, OC-18/03 of 17 September 2003, Series A No. 18 (<http://www.corteidh.or.cr/opinionones.cfm?idOpinion=24>).

<sup>18</sup> (<http://www.iom.int/en/know/berneinitiative/index.shtml>), French, ([http://www.iom.int/en/know/berneinitiative/index\\_fr.shtml](http://www.iom.int/en/know/berneinitiative/index_fr.shtml)) and Spanish ([http://www.iom.int/en/know/berneinitiative/index\\_sp.shtml](http://www.iom.int/en/know/berneinitiative/index_sp.shtml)).

<sup>19</sup> ILO (2006). *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, International Labour Office, Geneva. [http://www.ilo.org/public/english/protection/migrant/download/multilat\\_fw\\_k\\_en.pdf](http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf)



integration and inclusion, and migration and development. The 2006 OSCE/IOM/ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, and its 2007 Mediterranean Edition, provide supplemental guidance and examples of effective practices in this field.

In the regional context, it is also worth noting the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, adopted in January 2007.<sup>20</sup> While non-binding, the Declaration contains a commitment by ASEAN Member States to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers in the region.

Thus a comprehensive international legal and policy framework already exists for the protection of the human rights of all migrants, and further guidelines have been elaborated by governments through relevant international organizations to promote effective respect of the human rights of migrants provided under international law. The challenge remains, however, how to universally realise these rights in practice throughout all stages of the migration process. This Roundtable session will explore this from the perspective of existing practices.

## 2. EFFECTIVE PRACTICES<sup>21</sup>

### 2.1 The “life cycle” approach

Some country-specific programmes offer good practices: the Philippine “life-cycle” approach to fostering and supporting the Overseas Filipino Worker programme is a useful model for “protection beginning at home,” which is then reinforced through negotiated, rights-oriented partnerships with both host countries and other non-governmental stakeholders. The first line of defence for the protection of migrants’ rights is established in the country of origin, whether migration is by choice, necessity, or a combination of both.

The “life cycle” approach recognizes three basic stages in the labour migration process during which the rights of migrant workers must be protected: **pre-departure, arrival and employment on-site, and the return and reintegration stage**. This life cycle approach applies mostly to temporary or circular forms of migration characterised by these three stages.

#### *2.1.1 Pre-departure: best practices of origin and destination countries*

Since protection begins at home, the first stage clearly lies within the purview of the country of origin. The Philippines’ Department of Labour and Employment (DOLE) has a well-established, multi-agency programme for informing, training, documenting, registering and insuring migrants. This assists some one million overseas contract workers to move and work abroad every year.

Key good practices in protection include: job-skills matching, information provision, appropriate training, standard contracts, employer/recruiter liability, licensing and monitoring of recruitment practices and fees, welfare funds and personal documentation.

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<sup>20</sup> See the Association of Southeast Asian Nations (ASEAN) website at <http://www.aseansec.org/19264.htm>.

<sup>21</sup> Please note that this section emphasizes the roles that governments can and often do play in managing migration (and labour migration in particular), whereas for many countries it is the private sector that determines and handles much of the labour migration-related activity, in an enabling environment and pursuant to a legal framework established by the government.



Other large countries of origin for workers like Sri Lanka, Pakistan, Egypt and Tajikistan, offer varying types of pre-departure information and job-matching services; ranging from websites through classroom training to Migrant Information Centres (or Information Resource Centres), to inform about travel, documentation, admission and employment abroad, risks involved, etc.<sup>22</sup> although there is also increasingly productive collaboration with foreign employers and governments already at this stage. The format varies and may include information and counselling on topics such as legal migration options, return options, the risks of irregular migration and trafficking, etc. Some provide services such as reception and shelter for vulnerable migrants, vocational training, cultural orientation, etc., as well as referral to other service providers.

Some countries of destination also share in the responsibility of preparing their migrant workers during the pre-departure stage. Japan, Canada and Norway, for example, invest in training and preparing workers who come from the Philippines, which all help to reduce alienation, discrimination, abuse and disempowerment once abroad (although many of the beneficiaries are immigrants rather than temporary workers).

### ***2.1.2 Arrival and employment abroad: best practices of origin and destination countries***

While the workers are abroad (i.e. arrival and on-site employment), their protection becomes a direct responsibility of the host country. More regular, transparent access to labour markets is one effective approach, and this will be discussed in RT 2. A non-discriminatory, protective regulatory environment consisting of fair recruitment, equal treatment and working conditions, employer monitoring, access to basic health, social security, and portable pension benefits should form part of this approach. Some examples from host countries are given below.

- **UAE:** Direct electronic payment of wages to overseas workers helps protect against potential abuse.
- **Argentina** provides access to health care on a universal basis without discriminating between nationals and foreigners, and irrespective of migration status.<sup>23</sup> Health care providers include public and private institutions and many prepaid options exist. Enforcement of the principle of non-discrimination, aside from accordance with the *Universal Declaration of Human Rights*, makes it possible to manage public health issues in such a way as to guarantee uniform sanitary standards and minimize the possibility of medical emergencies arising where some groups have no health coverage.<sup>24</sup>
- **Spain** provides a Health Card for migrants in irregular status to access health care, which later can be a crucial document for regularization of status.<sup>25</sup>
- **Belgium** unilaterally provides portable health care for Moroccans through a “Mutuelle” society which allows them to go home and be treated at low cost at a hospital set up by

<sup>22</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p.54.

<sup>23</sup> Argentina’s Immigration Law 25871 mandates “equal access for all migrants to the protection and the rights afforded by Law to all Argentine born citizens, particularly to social services, education, justice, work, employment and social security.” In addition “no foreigner can be denied or restricted access to health care, social welfare, or medical treatment, whatever the migration status.”

<sup>24</sup>Jelin 2005. The Argentine Institute Against Discrimination, Xenophobia and Racism also has data of value for this topic. Admittance indicators of health care providers tend not to show nationality, as the collection of this data may be denied on the grounds of potential discrimination. However, studies indicate that the network of public hospitals covers the medical needs of 40% of the total population in urban areas, attracting especially those of lower income.

<sup>25</sup> See Arango, J. ‘Regularizing Immigrants in Spain: A new Approach’ Migration Information Source, Migration Policy Institute, September 2005, <http://www.migrationinformation.org/Profiles/display.cfm?ID=331>.

Moroccan diasporas. This serves the purpose of offering incentives for diasporas to invest in health care facilities which follow international standards (see also RT 1.2).<sup>26</sup>

NGOs providing humanitarian and legal assistance to migrants in irregular status have advocated for the adoption of practical measures to ensure effective access of irregular migrants to health care provision and other social rights. The Platform for International Cooperation on Undocumented Migrants (PICUM) cites several pertinent examples, including instances where more effective implementation of labour rights has been realized through workplace inspections or facilitated access to labour courts or tribunals and through careful balance between the protection of rights and immigration enforcement.<sup>27</sup>

But when these efforts are complemented by support from home, e.g. through strong consular and/or labour attaché services, the protection is both more complete and empowering. For example, Mexican consular officials provide counselling, inspection and advocacy on behalf of their nationals abroad. Also, several diaspora associations such as the Hassan II Foundation of Morocco offer services for diasporas abroad. The Philippine labour attaché and welfare worker networks, as well as the services offered by the Department of Foreign Affairs' Office for Migrant Workers' Affairs provide timely assistance to Filipino migrants in distress.<sup>28</sup> The Philippines and several other Asian countries of origin have established low cost migrant welfare funds, which provide an important safety net for migrants abroad and their families back home. This unique migrant welfare system warrants further consideration as a model for other countries of labour emigration.<sup>29</sup> Through the Philippine Government's comprehensive system of protection, Filipino migrants all over the world experience a relatively low incidence of abuse and exploitation.

### ***2.1.3 Return and reintegration: best practices of origin and destination countries***

Ensuring protection of the human rights of migrants who return to their countries of origin -- both during the return process and once back in the country of origin through reintegration processes -- is a critical element of a protective and empowering migration experience, and can directly impact on prospects for contributing to home country development. Few origin or host countries, however, invest in return and reintegration or seriously address the decent work deficits that often compel migrants to find employment overseas, often in unprotected and disempowering circumstances. A good practice is shown by **Senegal**, which has an office within the Ministry of Foreign Affairs to facilitate migrant workers' return and reintegration.<sup>30</sup> Ecuador has developed a comprehensive return plan (Plan Retorno) for Ecuadorians abroad based on principles of voluntariness, dignity and sustainability. The Plan focuses on the political, cultural, economic

<sup>26</sup> See the background paper for Roundtable 1.4 'How can circular Migration and Sustainable Return Serve as Development Tools?', Global Forum on Migration and Development, Brussels 9-11 July 2007, <http://www.gfmd-fmmd.org/en/system/files/RT+1+4+Background+paper++en.pdf>

<sup>27</sup> Le Voy and Verbruggen 2005.

<sup>28</sup> The Philippine Migrant Workers' Protection Act of 1995 (R.A. 8042) specifically provides for legal, consular, and repatriation assistance to all Filipino migrants, whether in regular or irregular status, who are facing problems abroad. This law also establishes an inter-agency mechanism for cooperation on policy-making and actual assistance between and among key government agencies dealing with migrant Filipinos.

<sup>29</sup> See the comparative study of migrant welfare funds in Asia undertaken as part of the Colombo Process Ministerial Consultations in: IOM (2005), "Welfare Funds for Migrant Workers – A Comparative Study of Pakistan, the Philippines and Sri Lanka" in *Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits*, p. 153-21, Geneva.

<sup>30</sup> ILO Multilateral Framework on Labour Migration, best practice no.125.

and physical dimensions of return, with relevant ministries taking action in each of these domains.<sup>31</sup>

The Philippines features a comprehensive return and reintegration program, which starts even before the migrant leaves the country of origin. Migrants and their families are taught financial literacy at pre-departure orientation seminars, which instills in them the value of saving and investing their potential income abroad. The Philippines also has Filipino workers' resource centers (FWRCs) that offer migrant workers varied livelihood skills-enhancement and training programs for when they return home. To help the readjustment and reinvestment of returnees, the Philippines has established a National Reintegration Center with local branches. In addition, a Commission on Filipinos Overseas engages Filipino diasporas abroad to help promote the return and reintegration of temporary migrant Filipinos through sharing of knowledge and financial assistance.

Some of the best frameworks for productive return and reintegration support have been negotiated bilaterally (see **Ecuador-Spain**), often for seasonal, circular labour migration, increasingly at government-private sector level (see RT 1.2 and 1.3 discussions in GFMD 1 of the labour agreements between Mexico, the Caribbean, Guatemala, Philippines and Canada). A key best practice is portability of pension benefits (Holzmann et al).<sup>32</sup> The European Commission's proposed general framework directive on a common set of rights for lawfully employed third country nationals also refers to the right to payment of acquired pensions when migrants move outside the EU.<sup>33</sup>

The Netherlands has financially supported a successful pilot project on "Temporary Return of Qualified Nationals" (TRQN), carried out by IOM. The objective of the project was to encourage highly qualified and skilled persons living in the Netherlands to support development efforts in their respective countries of origin through temporary returns and professional placements in priority areas of need. The countries included in this pilot project (Sudan, Sierra Leone, Bosnia and Herzegovina, Montenegro, Serbia and Afghanistan) find themselves in a post-crisis transition process. Not only have requests for return through this programme greatly exceeded the programme's available financial resources, but the participating migrants have indicated that they deeply value the chance to assist development in their home countries and at the same time feel more respected and integrated in the Netherlands as a result. An evaluation of the project shows that the training of trainers, which is central to the project, promotes knowledge and skills transfer, and that returning migrants can relate to capacity problems in local organisations because of their cultural and linguistic affinities with the community of origin.

In view of the success of this pilot project, a follow-up project (TRQN 2) was launched this year focused on Afghanistan, Bosnia and Herzegovina, Sudan, Sierra Leone, Ethiopia and Georgia. Also while mainly meant for unsuccessful asylum seekers, the Netherlands has a Return and Reintegration programme (carried out by IOM), which offers financial and/or in kind return and reintegration assistance to third country nationals who leave the Netherlands voluntarily.

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<sup>31</sup> Plan Retorno, [www.migranteecuadoriano.gov.ec](http://www.migranteecuadoriano.gov.ec).

<sup>32</sup> See the work of Robert Holzmann of the World Bank on this subject as well as the extensive discussion of this issue in the OSCE-IOM-ILO Labour Migration Handbook (Labour Migration Handbook, Chapter VII.5).

<sup>33</sup> Council of the European Union, *Proposal for a Council Directive on a Single Application Procedure for a Single Permit for Third Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third Country Workers Legally Residing in a Member State*, Presented by the Commission, Brussels 23.10.2007, <http://register.consilium.europa.eu/pdf/en/07/st14/st14491.en07.pdf>

Efforts must be strengthened to promote return and reintegration of female migrant workers who predominate in some of the most critical service areas in both origin and host countries, for example in nursing, domestic work and care-giving. In many countries, they are insufficiently protected by labour regulations. The Philippines strives to minimize gender abuse and exploitation by negotiating for standard and even special working contracts for vulnerable sectors (as in the case of its agreement with Jordan on domestic workers<sup>34</sup>). Recently, the Philippines doubled its minimum wage requirement for domestic workers in order to gain for them both higher wages and greater respect from employers. Domestic workers are also given the opportunity to learn other skills that will help them move out of their present dirty, difficult, and dangerous job classifications.

#### **2.1.4 Joint management of labour mobility works at various levels**

While country-specific programmes may offer good practices, joint management of labour mobility, whether through bilateral, regional, or multilateral agreements or cooperation mechanisms, can often achieve better protection for overseas workers and serve as a means to ensure respect for the human rights of migrants.

On the **bilateral level**, Turkey and the Philippines could offer good practices in terms of their large number of social security agreements with partner countries; and Algeria, Morocco, Tunisia and Turkey, among others, have concluded Association Agreements with the European Union that provide for social security protection to their citizens lawfully resident in EU Member States on an equal basis with nationals; Morocco also has social security agreements with Germany and France, which appear to encourage migrant returns. The Philippines' agreement with the UAE on social security provisions is worth mentioning, as it applies specifically to domestic workers.

Spain's bilateral agreements with Colombia, Ecuador, Morocco and Romania include provisions for equality of pay and working conditions with nationals, social security and return support, including development assistance. It is a mutually beneficial partnership between governments and with employers that ensures protection and helps realize the full economic, social and other human rights of the migrants and the development of their families and communities as well.

The *Unió de Pagesos* (Farmers' Union) of Catalonia, together with the farmers' unions of Valencia and Mallorca in Spain manage the hiring of seasonal farm workers from Colombia, Morocco and Romania in line with the labour needs of farms during the harvest period.<sup>35</sup> Its Hosting Programme, promoted by the Foundation "Agricultores Solidarios" or "Farmers for Solidarity," begins upon the arrival of seasonal workers with an introductory training and information course on labour laws, access to the health care system, remittances, basic knowledge of the language and local social resources. It also supports workers in the event of their hospitalization and organizes socio-cultural activities and training on subjects requested by the workers. Through a Development Programme, it promotes and supports seasonal workers who

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<sup>34</sup> Id. p. 143, Textbox VII.4. The 'Special Working Contract for non-Jordanians Domestic Workers in Jordan' endorsed in 2003 by the Ministry of Labour of the Kingdom of Jordan aims to limit the number of fake contracts or contracts not recognized or approved by the competent authorities and it guarantees migrant workers' rights to life insurance, medical care, a designated day off a week, rest days, and repatriation when their contracts expire. Also refer to the Press Release, 21 January 2003, <http://www.december18.net/web/docpapers/doc631.pdf>. See also Moreno-Fontes Chammartin, G. 'Domestic Workers: Little Protection for the Unpaid', Migration Information Source, Migration Policy Institute, April 2005, <http://www.migrationinformation.org/Feature/display.cfm?ID=300>.

<sup>35</sup> *Unio de Pagesos* defines and evaluates labour needs in the agricultural sector and manages quotas with the Ministry of Labour, the recruitment of workers, and logistics, such as visa issuance, transportation, housing and monitoring of work conditions.

wish to assist with the development of their communities of origin through collective initiatives, for example, the establishment of a women's information centre, a group of small milk producers or a cooperative for the marketing and sale of fruits.<sup>36</sup>

This “co-development” begins with the movement of seasonal workers between origin and host communities. They remain, on average, six months in the host society and six months at home. As a result, two parallel flows are created: (a) an economic flow of seasonal workers contributing with their work to the sustainability of the fruit sector in the host country. In return, they receive wages, which, to a large extent, become remittances for their families, and (b) a more intangible flow, namely the interchange of knowledge and experiences. The twinning programmes financed by the host community allow for the stabilization of temporary labour migration and affect in a positive way the impact of the migration process on origin communities.<sup>37</sup>

Similarly, **multilateral frameworks** offer good opportunities to leverage existing good practices and improve upon them. One recent practical example of intergovernmental cooperation is the *Abu Dhabi Declaration* adopted at the Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia, known as the “Abu Dhabi Dialogue.” At the Abu Dhabi Dialogue in January 2008, participating states launched a collaborative approach to address temporary labour mobility and maximize its benefits for development. Among the key areas identified for partnership between Asian countries of origin and destination is the promotion of welfare and protection measures for contractual workers abroad, to ensure their wellbeing and prevent their exploitation at origin and destination.<sup>38</sup>

Such consultations provide the opportunity to find common ground or shared goals for the migration management process and should ultimately contribute towards greater respect for human and labour rights of migrants and maximizing the development potential of mobility.

Many other partnerships with **non-state players** could, and already do, help protect and support migrants. There are no widely accepted criteria or benchmarks for ethical migrant recruitment practices, although the members of the ILO have adopted legally binding standards and guidelines for regulation of private employment agencies.<sup>39</sup> In the framework of the Colombo Process<sup>40</sup> and the European Commission-funded programme “Regional Dialogue and Programme on Facilitating Legal Migration between Asia and the European Union,” employment agencies in nine Asian countries of origin recently formed a regional “Alliance of Asian Associations of

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<sup>36</sup> In addition to obtaining money for their families, migrants, through their empowerment and the support of the “Agricultores Solidarios” network, can also promote socio-economic initiatives in their origin communities.

<sup>37</sup> OSCE-IOM-ILO Labour Migration handbook, Textbox VI.17: Circular Labour Migration and Co-development.

<sup>38</sup> The four key areas are:

- (1) Enhancing knowledge of labour market trends, skills profiles, temporary contractual workers and remittances policies and flows and their interplay with development in the region;
- (2) Building capacity for effective matching of labour demand and supply;
- (3) Preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers, to support their wellbeing and prevent their exploitation at origin and destination; and
- (4) Developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual mobility that satisfies the mutual interests of countries of origin and destination.

<sup>39</sup> See respectively ILO Convention concerning Private Employment Agencies (No. 181 of 1997), which prohibits the charging of any fees or costs to migrant workers, with some exceptions; the accompanying Recommendation (No. 188 of 1997); and the *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement*, International Labour Office, Geneva, 2007, available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/instructionalmaterial/wcms\\_083275.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_083275.pdf).

<sup>40</sup> Formally known as the “Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin in Asia.” <http://www.colomboprocess.org/ethicRecruitment.php>

Overseas Employment Service Providers”, among others to facilitate collaboration on developing transparent and fair recruitment practices, sharing information and providing a collective voice on issues of common concern. Working committees are being established to promote understanding of the conventions and instruments on the rights of migrant workers and the role of private employment agencies, to enhance partnerships with governments for protection of migrant workers; and discuss strategies for ethical recruitment practices.

As an outcome of the GFMD meeting in Brussels, 2007, some work has been undertaken on these issues with a view to feeding useful lessons into future discussions and action on these matters.

Corporate social responsibility organizations are beginning to take a greater interest in migration, and indeed several – such as Business for Corporate Responsibility and the International Business Leaders Forum -- are in the process of developing guidance for the business sector on fair and humane migration practices. These initiatives warrant encouragement.

IOM offers training on what is defined as ‘International Migration Law’ at the national, regional and global levels for governments, NGOs, international organizations, academics and other relevant stakeholders. Training is notably provided to government officials, including labor attachés and consular officers, to strengthen their capacities to promote and protect the human rights of migrants, in women migrants in particular within the context of CEDAW. IOM also maintains a database on international, regional and national legal instruments on migration, available online for all interested stakeholders, including information on the rights and obligations of States and migrants. This is supplemented by publications on International Migration Law, rights and obligations of States and migrants.<sup>41</sup>

Within the framework of the Programme to Empower Migrant Workers in Asia, UNIFEM has started a programme to empower migrant women workers in Nepal (EMWWNP). Using multipronged strategies, the EMWWNP has highlighted the concerns and rights of migrant women workers in the development dialogue. Aiming to promote gender-equal and rights-promoting policies, legislation and programmes for women migrant workers in both origin and destination countries, the programme works on many levels from policy advocacy to sensitization of and developing linkages with concerned stakeholders in both origin and destination countries.<sup>42</sup>

Technical assistance to governments in analysis and development of migration legislation in accordance with international norms is provided by ILO, IOM and other relevant institutions, both on the full range of migration law and policy and on targeted issues such as drafting and helping implement legislation providing temporary residence permits for victims of trafficking.

Some policy elements are beginning to emerge as common practices across countries to protect and support migrants, e.g. pre-departure language training, information and awareness-raising, standard contracts for domestic workers, monitoring of recruitment agencies, establishment of welfare funds, portable pension benefits, etc. Practical information is typically provided by many origin countries and sometimes by countries of destination as well about the country of destination, the rights and responsibilities of migrants under national, regional and international laws, community services available to newcomers, housing, education, health and legal systems, employment, money management, topics relating to cultural adjustment and integration, and language training. These practical measures empower migrants and ensure they receive objective information on their rights and duties before departure and during the migration process.

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<sup>41</sup> Available at [www.iom.int](http://www.iom.int).

<sup>42</sup> UNIFEM, (2003) Foreign Employment for Women-Challenges and Opportunities, Sancharika Samuha.

A transparent legal framework for entering and working in a country affords migrants the availability and accessibility of clear information, governance structures and legal recourse for those in need of protection. It also provides a range of standards and entitlements accorded to migrants regardless of the country of destination, particularly those related to wages, working conditions, benefits, recruitment practices and linkages to the private sector and other services providers, and the means to ensure that these are enforced in practice.

### **3. POLICY CHALLENGES**

A considerable gap still exists between the rhetoric of the universal application of human rights, and the enjoyment of these rights in practice by migrants. This can be due to lack of sufficient political will, technical capacity or human and financial resources, or a combination of these factors. This gap is particularly evident in the case of vulnerable migrants, such as children, those who work in jobs or sectors not covered by labour laws such as sex or domestic work or those who are present in the territory on an irregular or undocumented basis and may be suffering serious abuses. Future meetings of the GFMD may need to examine more closely the special needs of children and other vulnerable groups, which are not discussed here. More attention should also be paid to the special needs of temporary contract workers, as they are often deprived of the human development support structures available to longer term or permanent residents. The effective application and implementation of human rights and the principle of non-discrimination are particularly important in these contexts.

There is a need to intensify efforts across the board to ensure the commitments to the rights of migrants that states have entered into at the international and regional level are effectively put into practice. As argued above, promoting and protecting the human and labour rights of migrants applies to all countries in the migration life cycle – origin, transit and destination. Only through continued building of partnerships and cooperation can the full development potential of migration for all actors involved be realized. The experiences and activities outlined above provide a range of encouraging examples of good practices taken by states in this respect.

In addition, countries must, individually and collectively, make conscious efforts to build upon research and analysis of labour mobility trends, and explore ways of sharing vital information that may be useful to all. Sound policies and effective programs aimed at migrants' protection emanate from grounded evidence and practical experiences. The Brussels meeting of the GFMD and the preparations for the Manila GFMD have brought to light the importance of examining existing practices on the ground for evidence of the mutually reinforcing interplay of migration, human rights and development. While there remains a need to establish common indicators of success or best practices in harnessing the developmental impact of migration through enhanced migrant protection and empowerment, this proposition, for now, is accepted as self-evident, corroborated more and more accounts and experiences of origin and host countries.

### **4. QUESTIONS TO GUIDE THE DISCUSSION – POSSIBLE WAYS FORWARD**

This paper has raised some questions that could serve as stimulants for productive and outcome-oriented discussion at the Roundtable:

#### **4.1 Questions**



- 1) What are the key elements of effective migrant protection at all stages of the migration process, also as a shared responsibility between countries of origin, transit and destination?
- 2) How can countries learn from each other's experiences? What enabling factors can ensure the successful sharing of best policies and programmes among different countries?
- 3) How can we ensure that countries have the necessary capacity to manage migration and labour mobility in safe, fair and transparent ways that maximize development potential and promote good governance?
- 4) How can we build the evidence base across countries that would help governments assess whether or not current practices are effective in protecting the rights of migrants, in particular migrant workers?

## 4.2 Possible ways forward

*The following possible ways forward are offered for consideration and discussion in Roundtable Session 1.1. They build on the questions posed above and are offered with a view towards identifying practical and action-oriented outcomes in the session and moving these forward. They are not intended to preclude different or additional outcomes.*

1. A compendium of good practices in joint undertakings between governments, and between governments and other actors, to protect and support migrants at each stage of the migration life cycle, in order to promote the developmental impact of migration.
2. A survey of capacity building tools and mechanisms specifically targeted to good governance and co-management of migration, protection of the rights of migrants and promotion of the development potential of migration.
3. Case studies of countries across regions that observe legal and institutional protection standards for migrant workers in the context of the "life-cycle" approach to migration – showing how and why these practices work or do not work, and their impact on the personal development of migrants and their families and to development generally in countries of origin and destination.

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