

MANAGING MIGRATION FOR DEVELOPMENT?
THE PROMISE OF TEMPORARY WORKER SCHEMES

A Thesis
submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Master of Arts
in Development Management and Policy

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Washington, DC
November 29, 2008

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INTRODUCTION

International labor migration is making a remarkable re-entry into the political agenda of leading multilateral and bilateral development organisations. Beginning in the early 21st century, the study of the existing linkages between migration and development has been promoted by a large number of international conferences and the creation of inter-agency bodies and commissions. Temporary work programs figure prominently as a way of promoting circular migration patterns which are considered key in reaping the development potential of international labor migration. This study examines the development understanding that informs temporary worker schemes. I focus on the extent to which they meet the conditions for the development and exercise of individual capabilities as the defining principle of human development.

Recent efforts among governments and international organisations to enhance international cooperation on issues pertaining to international labor migration surfaced out of a growing awareness about the dramatic increase in the cross-border movement of people. In the last 25 years the number of international migrants doubled reaching approximately 191 million in 2005. Also, women are migrating independently in considerably greater numbers than in the past, and now comprise about half of all migrant workers (GCIM 2005: 1; ILO 2006: 3). High income countries as a whole registered the biggest increase of international migrants between 1990 and 2005 with a total of 41 million. In 2005 three quarters of all migrants lived in just 28 countries, with one in every five migrants living in the United States (UN 2006: 12). Of the estimated 191 million migrants worldwide, more than 86 million are thought to be labor migrants. This figure is much higher, if one includes accompanying dependants (OSCE et.al 2006: 11). Temporary migration is also increasing. Since 2000 temporary migration to high

income countries grew at about 4 to 5 percent a year (Abella 2006: 8).¹ It is expected that developmental and demographic disparities, as well as differences in the quality of governance will further increase the number of international migrants in the years to come (GICM 2005: 12). Along with the rise of international labor migration, the remittances migrants send back home grew at impressive rates. The United Nations puts the figure of official global remittances at \$167 billion in 2005 alone, exceeding all forms of international aid combined (UN 2006: 6). The amount of unofficial flows is estimated to be much higher still (Vertovec 2007: 2).

Given the sheer volume of these transfers and their importance for household survival strategies (i.e. the payment of basic items such as food, clothing, consumer goods, education and health) national and international development agencies are starting to incorporate migration into their policy agendas. Temporary work programs are viewed as a promising development strategy that can bring benefits to all the involved constituents. From the perspective of receiving countries it could secure the supply of labor that cannot be met by the national workforce while avoiding politically contentious issues of social integration. Additionally, temporary migration schemes would help curb undocumented migration by offering alternative channels for legal migration, hence reducing security risks.

Sending countries on the other hand are thought to profit from a reliable flow of remittances and the return of workers with potentially more skills and knowledge about modern technology. Moreover, the temporary nature of migrant's employment abroad could help prevent the permanent loss of human capital and the drying up of remittance transfers through family reunification while easing pressure on the domestic labor market (IOM 2005: 212).

Finally, migrants are expected to profit from increased access to legal but temporary employment opportunities in higher income countries. Their regularized status is viewed to represent in itself an improvement of their economic and personal security. One can therefore

assess a convergence of interests regarding temporary worker schemes among a variety of different actors reaching from national and regional stakeholders to multilateral and bilateral development agencies.

A striking feature of contemporary debates surrounding the desirability of temporary work programs as a development strategy is the focus laid on the expected economic returns for migrant sending and receiving countries. Although the call for protection and respect of migrants' human rights form part of the proposed temporary worker schemes it remains so far unclear in what way these programs contribute to human development of the migrant workers. The opportunity to earn higher wages abroad usually involves severe restrictions of migrants' rights and freedoms within the host society, particularly in the case of unskilled labor (IOM 2005: 212). This may include the right to family reunification, the liberty to choose employment or change employers at will, right to associate and participate in union activities, as well as access to health and education facilities among others. At the same time the transnational setting of temporary worker schemes poses challenges to democratic forms of governance as a necessary condition for the development and exercise of capabilities. This is particularly true for the agency aspect of human development, understood as the ability to act and partake in the economic, social and political arrangements affecting a person's life.

This study explores the implications of temporary work programs for the development and exercise of migrants' capabilities. Drawing from the ongoing international consultation process on migration and development together with the German experience with guest worker programs, I will examine whether the proposed temporary worker schemes can provide the necessary conditions that will enable migrants to develop and apply their basic capabilities as a necessary requisite for human development. From this preoccupation follows the guiding

research question of the investigation: *Are the proposed temporary worker schemes putting the necessary conditions in place that will not only maximize the economic benefits of international labor migration for sending and receiving states but, more importantly, allow migrants to exercise and develop their capabilities?*

The research question is grounded in the hypothesis that the possibility of migrant workers to develop and make use of their capabilities is hampered by the absence of institutional arrangements that obey democratic principles of participation and accountability. Current proposals lack considerations for securing migrants the fundamental ability to partake in the economic and social arrangements that govern temporary work programs. This impinges on their ability to enact agency in areas pertaining to their gainful employment, which, according to the principles of human development, is a precondition for the fundamental freedom of taking control over the circumstances that shape your life. A secondary question that follows from this hypothesis is *under which conditions temporary work programs may contribute to the exercise and development of capabilities*. I will argue that the proposed temporary work schemes need to incorporate norms and mechanisms of democratic governance if they wish to conform to principles of human development.

STRUCTURE OF THE STUDY

The study is structured in four parts. The first chapter develops the theoretical framework that will serve to assess temporary workers scheme's presumable contribution to development. I draw from the capabilities approach as developed by Amartya Sen and Martha Nussbaum including its critique towards utilitarian policy judgements. Economic, political and social development is evaluated in terms of the substantive freedoms people enjoy expressed and mediated through individual capabilities. Special emphasis is laid on democratic forms of governance as a condition to develop and exercise human capabilities and also legitimize a given set of policy choices.

Chapter two sets the stage for a detailed analysis of temporary work programs. I begin with examining the conditions that drive international labor migration in the first place. This covers the impact of economic liberalization on domestic labor markets and socioeconomic security. Lasting efforts to improve global market integration together with the retrenchment of the welfare state and the deregulation of labor markets are all important factors encouraging the cross border movement of people. The discussion of the structural conditions underpinning labor migration is complemented with migration theories explaining the motivation and social dynamic of migration flows and how they are maintained over time. I proceed with a brief account of the international consultation process on migration and development and the common understandings concerning the alleged migration-development nexus, especially regarding the benefits associated with circular migration patterns.

Chapter three examines temporary worker schemes as a strategy to promote circular migration and development. Specifically, I discuss the stated objectives and expectations international stakeholders and the European Union attach to temporary worker schemes in conjunction with

the German guest worker program implemented between 1954 and 1973. The latter is widely considered a policy failure because the stated objective of return migration was not achieved leading instead to permanent settlement of the recruited workers. Additionally, sending countries were not able to profit as expected from the export of their domestic labor force. The German experience gives important indications about the prospects of contemporary proposals to contribute to human development. This refers in particular to the provisions aimed at protecting migrants' rights and freedoms. To this end I examine in what way the terms and conditions of guest worker admission to Germany affected the development and exercise of human capabilities. In the remaining part of the third Chapter I proceed to discuss how contemporary approaches explain previous policy failures and in what way the new proposals intend to overcome them. Policy concerns focus primarily on efforts to secure the temporary nature of these programs, while protecting migrants' human rights and guaranteeing their sustainable return or reintegration in their country of origin. The analysis will show that expectations and objectives associated with guest worker programs remain largely consistent over time. They differ insofar as today's proposals call for a set of technical adjustments in response to an increased awareness over the socioeconomic dynamic that drives international labor migration. A fundamental difference of today's programs however pertains to the political economy in which temporary worker schemes are embedded. This finds one of its most notable expressions in the reduced involvement of the state in the management of these programs and the concomitant proliferation of private actors.

The fourth and final chapter analyzes the development understanding of temporary worker schemes and how they conflict with the capabilities approach. The study will show that the overriding development paradigm underpinning temporary worker schemes taps into a utilitarian framework in line with liberal economic growth theories. Considering that human

development represents a critical response to this school of thought, such an outlook suggests a fundamental discordance with the capabilities approach and the presumable contribution of temporary work programs to development. A central concern is that the workers lack opportunities to partake in the decision making process regarding their employment and living conditions abroad. Reliance on international human rights to protect migrants is insufficient and suffers from operational shortcomings as a consequence of low ratification rates and escape clauses of the relevant treaties. Secondly, classic liberal human rights conceptions are characterized by a generalized detachment from a collective body politic where democratic forms of deliberation can take place. Viewed from the perspective of the capabilities approach this deprives migrant workers of an essential condition to identify common interests and needs together with the power to negotiate and challenge existing socioeconomic arrangements pertaining to their situation in the host society. I conclude this chapter with a discussion of the viability and necessity to introduce principles of democratic governance in the management of temporary worker schemes.

On a final note it is worth pointing out, that the study is primarily concerned with temporary worker schemes for unskilled labor. There are a number of factors that give reason to this limitation. Numerically, unskilled workers comprise the largest category of migrant workers. Moreover, the terms and conditions for the admission of foreign workers differ substantially according to skill and employment category. Workers entering foreign labor markets at the lower end of the employment spectrum tend to be exposed to far more constraints regarding their rights and freedoms than skilled employees. The rotational principle of temporary worker schemes is also monitored more closely to prevent long-term settlement in the host society.

Finally, the German guest worker program was primarily concerned with the recruitment of unskilled workers making a comparative analysis contingent on matching skill levels of the workers in question. However, I do not perform an exhaustive analysis of the German case especially concerning permanent settlement of the recruited guest workers and how Germany has since dealt with the integration of its foreign population, as it would exceed the scope of this study. Treatment of the German experience is contingent on its pertinence for contemporary proposals. This refers in particular to the stated objectives and expectations together with an approximation of possible implications of temporary worker schemes for human development. The same is true for more specific arrangements concerning the introduction of democratic governance principles. The study focuses on identifying where and why current proposals conflict with principles of human development. Farther reaching considerations concerning their improvement are of indicative nature for further investigation.

METHODOLOGY

The temporary worker schemes that are being discussed within the international development community have either not been applied yet or are in a very early stage of implementation. They are presented as a possible strategy that could enhance the development gains resulting from international labor migration. The proposals and guidelines are instrumental to the implementation of pilot projects that will eventually determine the overall viability of temporary worker schemes as a development strategy.

Given their nascent character this study is mostly confined to an analysis of the development understanding informing these temporary worker schemes. It is also a policy evaluation in so far

as I will assess the theoretical premises of these schemes on the grounds of their stated objectives and expected results. I will draw from the main conference papers and policy frameworks developed so far during the ongoing consultation process. Based on these documents I will examine the way the foreseen provisions allow migrants to develop and exercise their capabilities. Reference to the German guest worker program will further support the analysis of contemporary proposals. Commonalities and differences are expected to indicate how today's approach may or may not trigger policy outcomes conducive to the objectives of human development. The evaluative benchmark that will be employed is the human development concept as employed by the United Nations Development Program together with the capabilities approach as its main philosophical point of reference. As an interpretative study this paper is therefore of an entirely qualitative nature.

Though the proposals remain largely confined to a discursive level, the analysis of their relevance and implications for human development are pivotal for sound policy implementation. Multilateral and bilateral development agencies can play an important role in crafting policy arrangements that are responsive to the principles of human development. States are the primary actors shaping 'transnational social fields' by exercising political control over admission procedures of migrant workers and as providers of entitlements, but development agencies are now emerging as a new set of actors that are shaping the way migration policy is understood and can contribute to legitimize or challenge a given set of policy options and choices.

CHAPTER I: THE HUMAN DEVELOPMENT PARADIGM

The human development approach was adopted by the United Nations Development Program (UNDP) as its leading policy framework in 1990. Herein development is defined as a process of enlarging people's choices (UNDP 1990: 10). This, in turn, requires promoting human capabilities as they determine what people are able to do and be in life. According to UNDP the most basic capabilities for human development is

to lead long and healthy lives, to be knowledgeable, to have access to the resources needed for a decent standard of living and to be able to participate in the life of the community. Without these [capabilities], many choices are simply not available, and many opportunities in life remain inaccessible.²

UNDP's focus on enhancing people's choices by promoting their capabilities as the goal and purpose of development was a direct response and challenge to orthodox economic growth theories that dominated much of development thinking and practice throughout the 1980s. With the introduction of the human development concept UNDP sought to place people back at the center of development analysis and planning (UNDP 1990: 10; cf. Nussbaum 2006: 71).³

What distinguishes human development from other approaches that emphasize growth in income and GDP is not choice by itself but the stated conditions that are attached to freedom of choice. Human development objects to the idea that growth in national income alone is positively correlated to the expansion of individual choices (UNDP 1990: 10). Mahbub ul Haq, founder of the Human Development Report series, argues that many goods and values people consider necessary for a good life and human well-being are not sufficiently, if at all, reflected in economic growth figures. These may include among others access to knowledge, improved nutrition and health services, secure livelihoods, protection from crime and physical violence, satisfying leisure hours as well as a sense of participating in the economic, cultural and political

activities of your community (UNDP 1990: 9; cf. Nussbaum 2000: 61). Quoting a much popularized Aristotelian phrase that *wealth is evidently not the good we are seeking, for it is merely for the use of something else*⁴, UNDP emphasizes in its human development concept the instrumental value of economic growth but contends further that it falls short of providing a full account of human well-being and therefore development (cf. Sen 1999: 4). Although economic growth may be important to meet essential human objectives, the primary concern must be focused on the way growth in income or gross national domestic product translates – or fails to translate – into human development (UNDP 1990: ii; cf. Sen 1999: 44).

Defining and Assessing Development as Freedom

The theoretical foundation of UNDP's human development approach defined as a process of *enlarging people's choices and enhancing human capabilities and freedoms* draws directly from the work of Amartya Sen and his capabilities approach.⁵ For Sen development comprises a process of expanding the real freedoms people enjoy. Freedom is considered to be both the primary end and the principal means for development. This understanding accounts for the analytical distinction he makes between the intrinsic value of freedom as the overriding objective of development and its instrumental use for the development process.

Freedom as a development objective refers to the immanent importance substantive freedoms have for the enrichment of human life as such. These freedoms may include fundamental capabilities like leading a long and healthy life, but also freedoms associated with literacy, political participation and free speech. Sen argues that political participation and dissent, for example, are defining features of development. Even when people without political liberty or civil rights do not lack adequate economic security they are deprived of important freedoms in leading their lives. This principle also holds when the person in question has no immediate

interest in exercising these freedoms. She would still be deprived of her fundamental freedom of choice on these matters (Sen 1999: 36p). Sen thus attaches importance to opportunities that may or may not be taken up. This is consistent with his position that choosing itself comprises a substantive freedom (ibid: 76). Another criterion for judging freedom of choice is the attractiveness of the available options. In other words, choice is not a matter of disposing over a large number of alternatives but of having options that are both distinct and desirable (ibid: 118).

This intrinsic relevance of freedom as the defining principle of development differs from its instrumental use and effectiveness for the promotion of other freedoms. Different kinds of rights and opportunities are viewed to be instrumental to the expansion of human freedom in general and thus development. Because different kinds of freedom interrelate with one another one type of freedom can greatly help advance other freedoms rendering the development process generally more effective (ibid: 37).⁶ Conversely, unfreedom of one kind may impinge negatively on other freedoms. A prominent example is how low educational levels can affect people's ability to take control over their lives, make informed choices and exercise their rights. Sen argues further that although individual freedoms may require appropriate social and political arrangements, their enhancement equally depends on the use people make of their freedoms in making the arrangements more appropriate and effective. Sen describes this as the two-way-relationship between public policy and people's capabilities. Capabilities can be enhanced by public policy for example through facilities for education and health care, as well as political and civil rights, including the liberty to participate in public discussion and scrutiny (ibid: 3; UNDP 1990: 83). The direction of public policies, however, is also heavily influenced by the effective use of capabilities on part of the public through participation and collective action (cf. Lister 1997: 37). The instrumental effectiveness of freedom is therefore thoroughly

dependent on the free agency of people (Sen 1999: 4). Sen refers to human agency as the power to act and achieve the goals one values (ibid: 18). The core idea is

that of the human being as a dignified and free person who shapes his or her own life in cooperation and reciprocity with others, rather than being passively shaped or pushed around by the world in the manner of a 'flock' or 'herd' animal (Nussbaum 2000: 72).

In this way the capabilities approach sets itself apart from welfarist development concepts that tend to see people primarily as passive recipients of rights or benefits.

However, Sen also emphasizes that the specific use individuals make of their freedoms is conditional on the existing social relations, particularly on the interactive formation of public perceptions and the collaborative comprehension of problems and remedies (Sen 1999: 31).

Individuals are understood to be social beings in the sense that self-development occurs in the context of social relations.

This feature exposes the neo-aristotelean roots of the capabilities approach. Also known as positive theories of freedom, the aristotelean school of thought argues that the ability to make choices as an autonomous agent is not a given human quality but a capacity that needs to be developed in and through society. According to Charles Taylor

the claim is that living in society is a necessary condition of the development of rationality or of becoming a moral agent or of becoming a fully responsible, autonomous being (Taylor 1985: 191).⁷

Autonomy requires a certain kind of self-understanding, one in which the aspirations to autonomy and self-direction become conceivable and desirable. The self-perception of being an autonomous agent capable of choice is developed at least in part in conversation with others and the common practices in society (ibid: 209).⁸ Above all it is developed within a certain *kind* of society. Ultimately we learn to conceive of alternative choices that will lead us to a definition of

what we really want (ibid: 204). Thus agency, and more generally freedom, is subject to the formative power of the socio-economic environment that informs individual character and action. Taylor concurs,

that the identity of the autonomous, self-determining individual requires a social matrix, one for instance which through a series of practices recognizes the right to autonomous decision and which calls for the individual having a voice in deliberation about public action (Taylor 1985: 209).

The connection between the formative quality of social interaction on individual identities and the simultaneous need for a public space that can provide a platform in which human agency becomes manifest is also pointed out by Hannah Arendt. She argues that it is only within a shared social and public space of appearance where action and speech as a mode of being together becomes manifest, that the reality of one's self, of one's own identity, and the surrounding world is established (Arendt 1998: 208). Thus the development and exercise of agency requires a public space in which people can meet in order to speak and act freely as a body politic:

Without a politically guaranteed public realm, freedom lacks the worldly space to make its appearance. Engagement within the public sphere enables freedom to become manifest (Arendt cited in Bell 1996: 89).

Arendt argues further that

the chief difference between slave labor and modern, free labor is not that the laborer possesses personal freedom –freedom of movement, economic activity, and personal inviolability – but that he is admitted to the political realm and fully emancipated as a citizen (Arendt 1998: 217).

Given the social construction of individual identities and aspirations, a person's freedom may be hampered as a cause of both external and internal obstacles. The latter includes motivational

impediments such as fear, lack of awareness or inauthentically internalized standards that may cause someone to thwart her aspirations toward self-realization (Taylor 1985: 215). External obstacles on the other hand refer to shortcomings in the legal and institutional arrangements. From this follows the necessity to create a social, political and economic order that will produce two distinct types of capabilities: internal and external ones. Internal capabilities refer to the conditions of the person - of body, mind and character. These kinds of capabilities are promoted by schemes of education, health care and appropriate labor relations. External capabilities on the other hand comprise internal capabilities in addition to the necessary material and social conditions that provide the individual with the necessary opportunity structures to exercise her freedom (Nussbaum 2002: 74).

The political task that follows is to ensure that each person receive the institutional, material, and especially educational support necessary to develop their capabilities proper to human functioning so they can make choices according to their individual needs and interests (Tessitore 2002: 8; Sen 2005: 153; UNDP 1990: 61; cf Nussbaum 2002: 47). In particular, the legislator must not only ensure that people can develop their capabilities but also that a capable individual has the chance to function in accordance with her capabilities. This calls for another, slightly different set of concerns with labor and the circumstances of personal and social life (Nussbaum 2002: 74). Both the capability to choose good functioning within each sphere and the capability of choosing at all, quite generally, have complex social and material necessary conditions, conditions that are not likely to exist without strong and comprehensive government support (ibid: 85).

Finally, by making capabilities and not actual functionings the legislator's goal the liberal primacy of freedom of choice, meaning the ability to realize these functionings according to one's own practical reasoning, is safeguarded (ibid: 70). The capabilities approach does not aim

directly at producing people who function in certain ways, but to provide people with the training and the resources so they can choose valuable functionings (ibid: 59). However, policies need to conform to the fundamental principle of treating each person as an end and by no means subordinate the ends of some individuals to those of others (Nussbaum 2000: 74). For Nussbaum trade-offs of this kind lie at the center of what exploitation is, treating a person merely as an object for the use of others (ibid: 73). In fact the principle of treating human beings as an end is a prominent part of critical reflections about working conditions and how these ought to protect human dignity. Considerations of this sort have become particularly relevant in view of the dynamics of a global economy that pushes for the deregulation of labor standards and low wages in order to extract higher profits. As Nussbaum contends, people are surely treated as means when corporations put them to work in substandard conditions in order to maximize the expected economic output (Nussbaum 2006: 277).

On the grounds of this positive understanding of freedom the capabilities approach evaluates development performance on the basis of capabilities and human functionings.⁹ A person's capability refers to the life projects or aspirations that are feasible for her to achieve (Sen 1999: 75). These are largely defined by the prevailing social, economic and political conditions including education and health care facilities to develop individual potentialities.

Functionings on the other hand are the actual outcomes of a person's capability set. They describe what a person actually does according to her opportunities and abilities.¹⁰ A Turkish citizen, for example, may have the opportunity to complete a professional formation as a teacher. But if she feels compelled to leave her country and work at an assembly line in a German factory because her profession will not suffice to make a decent living she is clearly deprived from the opportunity of putting her capabilities to use. In other words, her functionings are not commensurate with her capabilities. The situation may be compounded by difficulties

arising out of being employed in a foreign country. Language barriers may limit her ability to engage in convivial relationships with others in the host society or enjoy upward mobility at the workplace. The distinction between capabilities and functionings allows one to evaluate both what a person actually does (for example, the kind of labor relations she is subject to) and the capability set of alternatives or opportunities she is free to pursue (for example, choosing and exercising a profession) (Sen 1999: 25)¹¹.

Viewing opportunity in terms of capability draws a qualitative line between the ability of a person to do the things she values and the means, instruments or permissions necessary to pursue her goals (Sen 2005: 153). In this way, the approach underscores the fact that equal access to resources does not necessarily translate into equal opportunities and that these two factors may be related but quintessentially respond to different dynamics:

Perhaps the biggest difficulty in the real-income approach to well-being lies in the diversity of human beings. Differences in age, gender, special talents, disability proneness to illness, and so on can make two different persons have quite divergent opportunities of quality of life even when they share exactly the same commodity bundle. Human diversity is among the difficulties that limit the usefulness of real-income comparisons for judging different persons' respective advantages (Sen 1999: 69).

The capabilities approach acknowledges that individuals vary greatly in their needs for resources and in their abilities to convert resources into valuable functionings, thus, helping to design commensurate policies for the needs of different types of peoples (Sen 2005: 154; Nussbaum 2000: 69). Sen insists for this reason that it is in the space of capabilities that questions about social equality and inequality is best raised (Nussbaum 2002: 13). The distinct needs of female workers in terms of reproductive health care exemplify this very well. Another example would be the highly gendered employment conditions of domestic workers. Their position creates significant obstacles to claim even those rights that are legally available and to

secure some sort of protection from physical and sexual abuse as well as from violation of labor rights. The isolated and privatized nature of domestic service calls for distinct arrangements that can offset vulnerabilities stemming from these circumstances. Standardized labor laws and provisions frequently fail to provide sufficient protection for this kind of work.

In sum, the freedom to lead the life one has reason to value, as Sen puts it, requires that people have opportunities to develop and exercise their capabilities or, in other words, achieve valuable functionings. This implies putting the social, economic and political conditions in place that allow the development of individual capabilities of personal autonomy and empowerment as well as the establishment of the institutional and legal channels for the effective realization of personal aspirations and life goals.

Democratic Governance and Development

From the above it becomes clear that democratic forms of governance are a central component of development as defined in the capabilities approach. Democracy is instructive to freedom on all ends. Not only does it have intrinsic importance by conferring and protecting political and civil rights, but also makes important instrumental contributions by enabling people to hold authorities accountable for their actions, providing them with protection and security, or giving citizens the opportunity to influence public policies in ways that make them more responsive to people's needs and interests (Sen 1999: 152; Gould 2004: 192). Democracy also fulfils an important constructive role in the genesis of values and priorities (Sen 1999: 246). Sen argues that our conception of needs is associated with our ideas of the preventable nature of some deprivations, and our understanding of what can be done about them. In the formation of these understandings and beliefs, public discussions play a key role. Thus, political rights, including freedom of expression and discussion, are not only pivotal for inducing social responses to

economic needs, they are also central to the conceptualization and formulation of economic needs (Sen 1999: 154; Nussbaum 2000: 96).

The need for democratic forms of governance responds to the stated conditions for developing and exercising agency within a shared public space open to deliberation. Against this backdrop Sen argues that freedom necessarily includes both process and opportunity. As a process it implies liberty of actions and decisions. People need to be able to participate and shape the decision-making process on issues that affect their lives. UNDP argues in a similar vein stating that

people must be free to actively participate in economic and political life – setting developmental priorities, formulating policies, implementing projects and choosing the form of government to influence their cultural environment (UNDP 1990: 84).

Sen's understanding of democracy is not limited to its procedural dimension. It also calls for adequate social and economic opportunity structures, including the enabling conditions of good health and basic education (Sen 1999: 17; UNDP 1990: 84). In this way, the capabilities approach sets itself apart from theories that either focus on policy outcomes or conversely focus on fair and transparent processes. Confining attention to appropriate procedures ignores the importance of socio-economic conditions for people to pursue their choices and effectively exercise their capabilities according to individual needs and interests. On the same token, the nature of the processes that bring social, economic and political opportunities about and the fundamental freedom of choice comprise equally important features of freedom. Process and opportunity are viewed to be closely intertwined and mutually reinforcing elements of development (Sen 1999: 8). Unfreedom can arise either through inadequate processes or opportunities to lead the life one has reason to value (Sen 1999: 17).

The idea that the political system needs to do justice to both process and opportunity in terms of capabilities suggests a social democratic form of governance, thus reaching far beyond minimalist or procedural conceptions of democracy. This has implications for citizenship. By emphasizing the need for adequate social and economic opportunity structures to develop and exercise capabilities, the range of entitlements that need to be conferred to people surpasses constitutional guarantees of political and civil rights. It further includes economic and social ones as well.

Social and economic rights are justified on the grounds that they help promote the effective exercising of civil and political rights by groups who are disadvantaged in terms of power and resources. Without social rights, it is said, gross inequalities would undermine the equality of political and civil status (Lister 1997: 16p).¹² At the same time, opportunities for democratic participation are considered the best guarantee of economic and social well-being (Gould 2004: 194). In fact, both Sen and Nussbaum label the capabilities approach a human rights concept of development that covers the so-called first generation rights (political and civil liberties) and the second generation rights (economic and social rights) (Nussbaum 2000: 97).

This broad rights understanding, and by extension citizenship, is a logical consequence of neo-aristotelean notions of the specifically human condition. Rights are defined in virtue of a capacity that has worth and commands respect and as such suggests a commitment to foster them (Taylor 1985: 193). In this vein, Nussbaum insists that the best way of thinking about rights is to see them as combined capabilities. The right to political participation, the right to religious free exercise or the right of free speech can all be considered capacities to function. Thus, to secure rights to citizens in these areas is to put them in a position of combined capabilities to function in that area (Nussbaum 2000: 98).

Conceptualizing rights in terms of capabilities shows that an entitlement to political participation for example does not materialize until effective measures are taken to make people truly capable of exercising it (Nussbaum 2000: 98). The mere acknowledgement of a set of rights is not only insufficient but would be inconsistent with the way in which positive conceptions of freedom justify human rights.¹³ Thus, the capabilities approach not only combines broad notions of citizenship as a status, characteristic of liberal traditions, but includes with its emphasis on the instrumental and constructive role of agency republican ideals as well. The latter showing a stronger concern for citizenship as a practice through individual engagement in public affairs (Lister 1997: 41).¹⁴

The Neo-Aristotelean Challenge to Utilitarianism

The philosophical premise that informs the capabilities approach and by extension UNDP's human development concept sets it apart from a number of other competing schools of thought. Central criticisms advanced toward economic growth theories were addressed at the outset of this chapter. However, a more influential opponent to the capabilities approach and of particular relevance for the discussion of temporary worker schemes is utilitarianism.

In utilitarianism the goal of development is understood as the maximization of total or average utility. Traditionally "utility" is defined as happiness or pleasure, and sometimes as the fulfilment of desires. Such comparisons of people's dispositions received much critique for lacking empirical measurability and significance. In response to this objection the identification of utility with pleasure or desire-fulfilment was largely abandoned in favor of seeing utility as the numerical representation of a person's choice or preference (Sen 1999: 67).

For utilitarianism satisfaction of desires or preferences is the only way of objectively assessing good human functioning because the individual is viewed to be the final judging authority.

Other accounts of good human functioning are not considered necessary or even desirable since second-guessing over people's motivations through an external authority is considered illegitimate. Such discriminations in motivation, it is argued, may trigger forms of authoritarian tutelage or in the least, questionable metaphysical presumptions lacking empirical forms of verification. Either way, second-guessing would undermine individual authority over the matter in question (Nussbaum 2002: 58).

The requirements of utilitarian evaluations can be split into three components. The first one is consequentialism, meaning that all choices, rules or institutions must be judged by the results they generate. This focus on the consequent state of affairs sets utilitarianism apart from other normative theories, including the capabilities approach, that regard some principles to be right irrespective of their results (Sen 1999: 58). Individual freedoms and other considerations relevant to quality of life which are not reflected in the statistics of pleasure do not form part of utilitarian evaluations. They only play a part through their indirect impact on utility numbers, that is, to the extent that they influence mental satisfaction, pleasure or happiness (ibid: 57).

The second component is welfarism. This entails judging the utility of policy choices according to the prevailing state of affairs rather than on an abstract set of normative ideals of the common good. In combination with consequentialism, welfarism bases decisions on their utility for the relative improvement of existing social, political or economic arrangements.

The third and last component is so-called sum-ranking. Here a conclusive assessment of a given set of policy options is made by evaluating their aggregate merit for the affected populace. The different utilities people may obtain are added together and when exceeding possible negative trade-offs, sufficient grounds are thought to be there to justify their application (ibid: 59).

Taken together, the three components account for the classic formula of judging every choice by the sum total of utilities generated through that choice. Under these criteria, injustice consists

in aggregate loss of utility compared with what could be achieved (ibid). This utilitarian benchmark to evaluate a given set of policy options and choices has been criticized on several levels.

- Utilitarian accounts tend to rely on both aggregate and average utility. Like resource-based approaches, average utility is hampered by distributional indifference (Nussbaum 2000: 52; Sen 1999: 62; Scarre 1996: 152; cf Taylor 1985, 244). It doesn't provide any information on where the top and bottom segments of the distribution lies neither does it say enough about different types of people and their relative social placements (Nussbaum 2000: 61p). Additionally, utilitarians tend to aggregate across distinct elements of lives. This may include such diverse aspects as liberty, economic well-being, health or education. By aggregating across different social and political goods, utilitarianism encourages trade-offs between them in order to produce the largest social total or average. It therefore accepts in principle deprivation of some people as long as net social utility is increased. For both Sen and Nussbaum, utilitarianism's refusal to attach an intrinsic importance to claims of rights or other non-utility concerns can create problems for marginalized or deprived people, for whom some of the opportunities that utilitarianism puts at risk may be especially important (Nussbaum 2000: 62; Sen 1999: 62).
- Secondly, the projection of a development goal centered on a particular state or condition of a person underestimates the contribution of agency to development and the importance of self-determination. Social and economic factors such as basic education, elementary health care, and secure employment are important not only on their own, but also for the role they can play in giving people the opportunity to approach the world with courage and freedom (Sen 1999: 63). Contentment, Nussbaum argues, is not the only thing that matters in a human life; so does active striving (Nussbaum 2006: 73).

- Finally, objections are raised against using levels of satisfaction to judge the desirability or pertinence of certain policies. This critique is of particular importance for the upcoming discussion of temporary worker schemes. Sen and Nussbaum argue, that people adjust their aspirations or expectations to the kind of life they can actually achieve. Desires are formed in relation to habits and ways of life. Differences in options construct differences in thought. Utilitarianism fails to deal with the problem of adaptive preferences and creates a bias by skewing the development process in the direction of the status quo by aiming at satisfaction of desires and preferences. This utility calculus, it is argued, can be deeply unfair to those who are persistently deprived because people tend to come to terms with their deprivation. As a result they may lack the courage or mindset to demand any radical change, and adjust their desires and expectations to what they see as feasible. Hence, utilitarian approaches are unable to reveal the ways in which habit, fear, low expectations, and unjust background conditions form people's choices and even their wishes for their own lives (Nussbaum 2000: 114). While desire can be one important thing to ask in determining how well arrangements enable people to live using a mental metric of pleasure or desire is considered too malleable to be the sole guide to deprivation and disadvantage or conversely the human good (Sen 1999: 63; Nussbaum 2002: 58).

In sum, general benchmarks based on utility or command over resources turns out to be insensitive to contextual variation and to the way circumstances shape preferences.

The capabilities approach on the other hand not only asks about a person's satisfaction with what she does, but extends the inquiry into what she does, and what she is in a position to do: that is, her opportunities and liberties in terms of capabilities. In this way it is able to show adequate concern for individual variation in relation to the functional role instrumental goods

can have for people (Nussbaum 2002: 54). It also goes beyond a mere assessment of the amount of available resources by examining how these are invested and in what way they enable you to function in a fully human way placing special emphasis on contextual particularity and individual variation. It is in terms of these capabilities to function in certain core areas that quality of life is measured and compared to others (Nussbaum 2000: 71). Under these conditions any assessment of temporary worker schemes as a development resource has to focus on the extent to which they can make a significant contribution to the enhancement of migrants' freedoms by developing and exercising their capabilities.

CHAPTER II: MIGRATION, DEVELOPMENT, AND THE MERITS OF CIRCULAR MIGRATION PATTERNS

This chapter sets the stage for a detailed discussion of temporary worker schemes and how they are thought to contribute to development. I first delineate common understandings concerning the motivations and dynamics driving international labor migration. I continue with a brief account over the most recent efforts to place migration and development on the global policy agenda followed by an examination of the claimed migration-development nexus and the merits associated with circular migration patterns.

MOTIVATIONS AND DYNAMICS DRIVING INTERNATIONAL LABOR MIGRATION

International labor migration forms an integral part of the international political economy. It is driven by existing disparities between industrialized states and Third World countries in terms of economic prosperity, social conditions, security and human rights. According to Castles the claimed migration ‘crisis’ is in reality a crisis in North-South relations, caused by uneven development and gross inequalities, making migration control essentially an effort to regulate North-South relations (Castles 2007: 39).¹⁵

This linkage becomes evident when considering the structural conditions underpinning the sharp and mostly unanticipated rise in international migration flows beginning in the second half of the 1980s (cf. Philip Martin 2005: 3). With the end of the Cold War and the dissolution of the Soviet Union a massive migratory movement was unleashed aiming primarily towards Western Europe and the United States. The disruption of the bipolar world system gave way to the formation of new states and a dramatic upsurge in ethnic conflicts, most notably in the

Balkan region, followed by a wave of refugee and asylum seekers. Migration was additionally spurred by the structural changes in the global economy since the early 1980s.

This period marked the beginning of a worldwide move toward economic liberalization and the dismantling of state sponsored economic and social development. The policy shift was the consequence of a deep recession that hit the developing economies as they were struggling with a pressing foreign debt burden, fiscal imbalances and the protracted deficiencies of the import substituted industrialization model. Under considerable pressure of major lenders such as the World Bank and the International Monetary Fund, most countries of the southern hemisphere undertook radical measures to restructure their economies according to free market principles in an effort to resume national growth figures through an export-led development strategy. The so-called structural adjustment policies entailed economic liberalization, de-regularization of the labor market and large-scale privatization of public enterprises. This led to reduced public sector employment and bankruptcy of formerly protected industries that were now unable to compete on the global market. Low wages became crucial to the new scheme as a way of reducing the costs of exports and securing a comparative advantage in labor intensive industries. Also public budgets for social expenditures and subsidies previously aimed at basic foodstuff and urban services plummeted (Latapí 1998: 189p; cf. Sassen 2001).

Women were disproportionately affected by the austerity measures. Cutbacks in the provision of social services not only added to their reproductive work load but undermined their position in the labor market since the welfare state had been an important employer of female labor, albeit at the lower ranks of the employment ladder (Lister 1997: 171). Labor markets were additionally strained by high demographic growth levels in many developing countries. The result was a dramatic increase in poverty as well as un- and underemployment.

Though it is often stressed that the market-oriented reforms did succeed in improving the economic competitiveness of some countries, there is little doubt that it failed to create sufficient jobs to absorb a growing labor force, especially for people without education and training. The informal sector absorbed the bulk of new workers, particularly women, youth and the poor. The UNDP report of 1990 found that in Latin America 56% of the workers entered the informal sector between 1980 and 1989. In Africa the informal sector accommodated approximately 75% of the new entrants into the labor force between 1980 and 1985, with the formal sector accounting for a mere 6% (UNDP 1990: 26). While some workers entered the domestic informal economy others opted to seek new employment opportunities overseas. In this view, international migration can be considered one among many responses to the social ramifications following economic restructuring. The Salvadorian sociologist Carlos Guillermo Ramos brought this tellingly to the point stating that *migration and remittances are the true economic adjustment program of the poor in our country* (cited in Portes/deWind 2007: 10). Migration helped individual households to cope with the new conditions imposed by neoliberal economic policies by expanding job opportunities and compensating for low wages and diminishing levels of state support (GICM 2005: 58; cf. Cohen 2006: 132).¹⁶

The lack of opportunities to make a decent livelihood in migrant sending countries is met with a strong demand for migrant labor in receiving countries. The growing competitiveness of the global economy exerts considerable pressures on private and public sector employers to minimize costs and maximize the use of cheap and flexible labor – precisely the kind of labor migrants, with or without documents, are able to provide (GICM 2005: 13). Additionally, many industrialized states are experiencing low and declining birth rates accounting for a progressively smaller and older population. As a result they are facing difficulties in

maintaining existing levels of economic productivity that will sustain their pension and social security systems (ibid: 6). Also, the growth of the middle class, and the increasing number of women participating in the labor force creates a strong demand for care work that is being filled by female migrant workers. In fact the outsourcing of care work in migrant receiving countries and the simultaneous retrenchment of social services and employment opportunities in both migrant sending and receiving countries lies at the heart of the so-called feminization of international migration.¹⁷ Women in developed states joined the formal economy in large numbers, just as neo-liberal economic policies began to dismantle the welfare state. These developments encourage the proliferation of a transnational economy of reproductive labor in which former state responsibilities toward citizens is replaced by migrant labor, especially that of foreign women. These are increasingly performing care work to children, the disabled, and the elderly (Maher 2004: 144). While men's earning power was traditionally subsidized by women's unpaid social reproduction, today it is often the low-paid labor of migrant women that subsidizes the earning power of both men and women in middle and higher income households (ibid: 145).

The economic imperative of the neoliberal development model has farther reaching consequences than frequently suggested by its advocates. Karl Polanyi argued half a century ago in his seminal work *The Great Transformation* that changes in the organization of the market necessarily entails changes in the organization of labor which in turn alters the organization of society itself. The world-wide move toward economic liberalization and the structural adjustment policies of the 1980s and 1990s confirms this hypothesis.

The deregulation of the labor market and the state's successive withdrawal from providing basic social services produced a partial deflation of citizenship, thus reducing it to its political and

civil components. What used to form part of a social and economic rights catalogue, such as entitlements to health care, education or unemployment benefits, underwent a process of commodification through their partial or complete privatization (Somers 2006: 60; Sassen 2006: 17). As a result, human well being and access to social services in particular is less determined by membership in a political community than on individual purchasing power. Freedom and personal autonomy acquire a materialistic interpretation as the ability to access the offers of a free market economy independently from the state and its social institutions. The state's role is reduced to its regulating functions in providing the institutional setting that will support the expansion of a free market economy (Stöger 1995: 65p). By transferring welfare to the market social life becomes highly individualized and private. This in turn discourages collective forms of struggle and interest representation. As commodity bundles social and economic arrangements that may be considered necessary for a good life lose much of their political quality. They are no longer negotiated or claimed among members of a given body politic as part of a socially guaranteed good or freedom. Quality health care and education, affordable transportation or housing become part of a depoliticized service economy lacking a public space in which people can collectively negotiate their distribution in dialogue with the responsible public authorities. In this regard, the adoption of free market principles not only established a new economic model but also changed people's relationship to the state and wider society as whole, albeit to varying degrees. It led to a re-definition of the state's role in the development process affecting the terms and conditions of citizenship, social interaction and collective struggle.

Under these circumstances, the conditions for human development that were identified in the capabilities approach appear to be undermined by market-led reform strategies of this kind and the overall retrenchment of the welfare state.

For Arendt privatization makes us look at society and its institutions in an instrumental way in pursuit of individually defined goals and interests rather than a place where socioeconomic arrangements are negotiated in pursuit of a common good. Social goods lose much of their intrinsic worth because nothing possesses an 'objective' value but is subject to the changing estimations of supply and demand (Arendt 1998: 166). Activities that enable individuals to see themselves and to be seen by others are reduced to consumption activities that require money. In many ways commodities ultimately begin to mediate membership, providing symbols of belonging, social integration and identity (Walzer 1983: 106). Charles Taylor argues insightfully that

Industrial society has brought about a privatization of life. By this I mean here a generally accepted picture of happiness and the good life as that of a man alone, or more exactly a nuclear family alone (...). Increased individual control (which) means disposing of an increasing number of individual consumer goods (Taylor 1985: 304).

As a result people tend to withdraw from public institutions or spaces altogether (Taylor 1985: 304). Ultimately society is subjected to the logic of the market rather than the economy being embedded in the social system. In Polanyi's words, that is ultimately why *the control of the economic system by the market is of such overwhelming consequence to the whole organization of society it means no less than the running of society as an adjunct to the market. Instead of the economy being embedded in social relations, social relations are embedded in the economic system* (Polanyi 2001: 60).

The individualized and economically inspired rationale of the prevailing development model finds its correlate in migration theory. Economic theory offers two different perspectives to explain migrants' motivation to work abroad. Income differentials lie at the heart of neo-classical economic theory (NE). In this view, the decision to migrate is shaped by a known or

expected increase in individual earning power in destination countries relative to what could be earned in places of origin. The basic argument is that people move to maximize their individual utility. The purpose to increase net lifetime earnings tends to encourage permanent settlement unless the discrepancy in earning power between sending and receiving countries is levelled out or otherwise compensated. As a result migrants are willing to endure relatively long separations from their family until adequate arrangements can be made to bring them over. It is assumed that once the cost benefit equation changes people will cease to move (Constant/Massey 2002: 11; Taylor 1999: 66; cf. Portes 2006: 35).¹⁸

This model has been largely overhauled by an approach known as the ‘New Economics of Labor Migration’ (NELM). Developed in the 1980s, it stipulates that migration is foremost a response to market failures in places of origin rather than just an adjustment to labor market imbalances. Under this model people seek to migrate abroad not permanently but temporarily either to remit earnings or accumulate savings in anticipation of an eventual return home. Migrants are considered targeted earners that return home once they can meet their earning goals (Constant/Massey 2002: 10). In explaining why people migrate, NELM also places emphasis on the notion of “relative deprivation”. Communities exhibiting high levels of emigration tend to instil a sense of disadvantage among non-migrant families as they compare their situation with those that have migrants abroad. In this way, sentiments of relative deprivation are reinforced through new consumption expectations among the population (Portes 2007: 76). Under these circumstances migration helps resolve the tension between growing consumption expectations and the lack of economic resources to attain them (Portes 2007: 77). The NELM therefore challenges the neoclassical presumption that migrants act in isolation. Instead it emphasizes how the decision to migrate is negotiated within the family which in turn is affected in its decisions by the broader socioeconomic environment of the community they

live in. By generating remittances, migrants are able to diversify household income and manage risk in their place of origin in the absence of well-functioning insurance markets. More importantly saving a portion of their income over a fixed period of time allows migrants and their families to compensate for missing capital or credit markets hence accumulating sufficient funds for investment or consumption in their home communities (Constant/Massey 2002: 11; Taylor 1999: 74; cf. Castles 2007: 36).

In this regard, neoclassical economics and the new economics of labor migration posit very different motivations for international migration. The former assumes that people move abroad permanently to maximize lifetime earnings whereas the latter assumes that they leave temporarily to overcome market deficiencies at home (Constant/Massey 2002: 5). The theories are not mutually exclusive, that is, some migrants may wish to settle permanently to maximize lifetime earnings while others see themselves as temporary sojourners striving to achieve a particular earning target before returning home (Constant/Massey 2002: 33). Also the original strategy may change over time in response to the specific migratory experiences. Constant and Massey found that migrants who remit regularly tend to be target earners behaving according to the postulates of the NELM whereas those who do not send money are usually income maximizers acting in accordance with the logic of NE (Constant/Massey 2002: 27).

It is also widely acknowledged that economic opportunity costs and benefits alone cannot explain large-scale emigration. Once an international labor flow sets in, social networks emerge between migrants and their places of origin that make the movement self-sustaining over time. Word begins to spread from one family or village to another about the possibilities for gainful employment. At later stages, social networks are also central for the consolidation of transnational organizations and communities further securing channels for ongoing labor

mobility (Hollifield 2007: 66). These networks not only link migrants with their kin and communities in sending countries but also connect employers in receiving areas to migrants. Such ties account for the emergence of chain migration, long-distance referral systems to fill job vacancies, and the organization of a dependable flow of remittances back to sending communities (Portes 2006: 9; Castles 2007: 35).¹⁹ Advances in communication technologies further facilitate the dissemination of data on migration routes and work opportunities making it very easy for migrants to gather the information they need to make decisions on whether to move or not. This is matched by a significant reduction of the cost for long distance travel thus turning migration into a much more affordable option than it was in the past (Castles 2007: 40; Hollifield 2007: 70).

Moreover, social networks are instructive to the development of a migration industry which provides the logistical support for the cross-border movement of people, including travel agents, lawyers, bankers, labor recruiters, brokers, interpreters, and housing agents among others (Castles 2007: 36).²⁰ All these factors taken together significantly diminished individual risks and costs associated with international labor migration.

Networks tend to develop such strength and momentum to support continuing migration even after the original economic motives have declined or disappeared (Portes 2007: 6). In this way, both emigration and immigration countries can become structurally dependent on migrant labor. Where governments encourage emigration it can become a long term structural feature of the economy that can create a culture of emigration, in which people migrate because it is considered a relevant life experience (Castles 2007: 37).

Economic demand and structural dependency on migrant labor supported by social networks and a prospering migration industry make it very difficult for migrant receiving states to control migration once the initial flows develop (cf. Portes 2007: 6). The rapid exchange of information

and the flexibility of social networks can easily bypass official efforts to channel or suppress migration flows. To this Castles adds that restrictive immigration policies per se seldom propel migrants to comply with the rules and stay in their home countries. He argues that emigrants' perception of the state is overwhelmingly formed by experiences of inefficiency, corruption and violence. Most people learn to cope despite the State not because of it. From this perspective migration rules are just another barrier that need to be overcome in order to survive. In other words, migrants perceive migration policies as a set of opportunity structures that are compared and negotiated with each other (Castles 2007: 37).

In sum, international migration is considered a response to differences that make one place more appealing than another. The three principle factors driving the cross border movement of people are demand-pull in destination areas, supply push in origin areas, and network factors linking them together. Networks help people move across borders and sustain migration over time by enabling people to learn about opportunities abroad and providing a migration infrastructure of brokers and transporters that facilitate the movement across national borders as well as the overall adjustment to destination countries (Philip Martin 2005: 6). The three determinants usually do not have equal weights in migration decisions, and their importance can change over time. Generally, demand-pull and supply-push factors are strongest at the beginning of a migration flow, and network factors become more important as migration streams mature (ibid: 5). Finally, migration cannot be reduced to an economic cost-benefit analysis. It is a social process that tends to develop its own inherent dynamic, driven by the prevailing conditions in both migrant sending and receiving countries as well as supporting networks and facilities that mediate the migratory process as a whole (Castles 2007: 47).

It is noteworthy that this explanatory framework of international labor migration reflects the individualist orientation of the prevailing development model. The 'New Economics of Labor Migration' may rightly emphasize how the decision to migrate is negotiated within the family as part of a broader strategy to diversify the household income and cope with the austerity measures following economic restructuring. In this regard, the motivation to migrate is associated with the intention to compensate for presumable market failures in countries of origin by saving enough money to set up new businesses or make other investments upon return. What receives less attention is the private nature of this endeavour. It is a private answer to the social ramifications and contradictions inherent to a development model that has given priority to securing a comparative advantage in the global economy at the expense of redistributive policies and socioeconomic security. On a similar note, the social networks that help mediate the migratory movements are in the first instance instrumental to achieving individually defined goals. They are not instructive to finding solutions to shared problems or needs. Though migrants and their families certainly exhibit agency as decision makers in crafting their survival strategies and adapting to the opportunity structures that present themselves, it is not articulated in relation to the state or wider society as a whole.

Under these conditions, both the motivation and dynamic driving international labor migration are at odds with human development as understood in the capabilities approach. The workers migrate due to lacking opportunities to make a decent livelihood in countries of origin. Rising levels of un- and underemployment together with the state's withdrawal from providing basic social services such as quality health care and education are all important factors contributing to the rising levels of international labor migration. In the hopes of raising their standard of living and providing their families, especially their children, with better opportunities the workers make significant sacrifices often risking their personal security and safety by seeking

employment abroad. But it is not only the social infrastructure that suffered from large scale privatization and the deregulation of the labor market. The full or partial commodification of social services compromises the possibility of finding political solutions to these problems. In principle it can be argued that the political economy in both sending and receiving countries undermines the structural conditions necessary to develop and exercise individual capabilities. Aside from the institutional arrangements pertaining to social services and labor market regulation it further reduces the availability of political spaces in which people can define and challenge the existing arrangements once the goods considered necessary for a good life are transferred to the market.

The following section examines how international development agencies are currently framing the migration-development nexus. In particular it recapitulates the conditions under which international labor migration is thought to contribute to development and why temporary worker schemes are presented as a promising development strategy that could bring benefits to all the involved stakeholders.

LABOR MOBILITY, DEVELOPMENT, AND CIRCULAR MIGRATION

Over the last couple of years national and international stakeholders have been showing a vital interest in managing international labor migration in ways that will serve development purposes. Remittances, the money migrants send to their families and communities of origin, as well as the skills they may acquire during their migration experience have been rediscovered as a potentially valuable development resource. This renewed interest in tackling migration as part of a broader development policy was spurred by a spectacular surge in remittances over the past few years. For many developing countries they are a more important source of income than official development assistance or foreign direct investment (GICM 2005: 5).

Today's optimistic and even euphoric embracement of migration as a development resource contrasts with the rather pessimistic stance prevalent throughout the 1980s and well into the 1990s. UNDP's first human development report (1990) presents the growing cross-border movement of people primarily as a response to deteriorating living conditions and lacking opportunities to make a decent livelihood at home. The report also emphasizes how the emigration of skilled workers stripped especially African countries of their already scarce pool of professionals. The massive loss of highly skilled professionals is viewed to further strain the development prospects in these countries. Although the report does refer to the positive contribution of remittances as a source of foreign exchange for migrant sending countries, the general outlook is one that underscores migration as a consequence of underdevelopment rather than a potential drive for development (UNDP 1990: 28; cf. McRae 1980: 20). Fifteen years later the connection between migration and development is viewed in a different light. According to a UN report on migration and development from 2006

International migration constitutes an ideal means of promoting co-development, that is, the coordinated or concerted improvement of economic conditions in both areas of origin and areas of destination based on the complementarities between them (UN 2006: 1).

The International Labor Organization gives an equally positive assessment of international labor migration as a development resource:

Labor migration can have many beneficial elements for those countries which send and receive migrant workers, as well as for the workers themselves. It can assist both origin and destination countries in economic growth and development (ILO 2006: 3)

Though wage differentials and the lack of opportunities to make a decent livelihood at home are still considered major factors driving out-migration, it is also believed that the cross-border movement of people can, under certain conditions, contribute to development.

Within only a few years, beginning in the early 21st century, a remarkable consultation process emerged among governments and leading international development agencies on migration related issues. Conferences on migration and development have been held at national, regional and global levels. Several commissions, inter-governmental bodies and inter-agency forums dedicated to migration were initiated to promote international cooperation on fair and sustainable labor migration policies and practices. Activities focus on studying the linkage between migration and development and further explore ways of managing international labor migration to the benefit of both migrant sending and receiving countries as well as for the migrants themselves.

The Berne Initiative launched in 2001 by the Swiss Federal Office for Refugees is a prominent example. So far it hosted two international conferences: Berne I in 2001 and Berne II in December 2004. The most important outcome of the Berne Initiative is the development of the International Agenda for Migration Management (IAMM). The IAMM is a non-binding reference system and policy framework on migration management that intends to facilitate

cooperation between states to plan and manage the movement of people. It offers a set of policies and practices for a coherent approach to migration management based on existing legal principles, including those related to the protection of migrants' rights.²¹ In the same year the International Labour Organisation launched its own non-binding Multilateral Framework for a rights based approach to labor migration (ILO 2004: 3).

The Global Commission on International Migration (GCIM) played a key role in promoting the international consultation process on migration and development. Established in 2003 on encouragement of UN Secretary General Kofi Annan, the Commission was charged with promoting a comprehensive debate among states and other actors on migration and with conducting further analyses of existing gaps in current immigration policy. As an independent body it was given the mandate to develop a framework for the formulation of a coherent, comprehensive and global response to the issue of international migration (GCIM 2005: vii). The Commission's final report was published in October 2005 and provided an important background paper for the High-Level Dialogue on International Migration and Development held by the UN General Assembly in September 2006. This was a landmark event in the contemporary discussion on migration and development. For the first time the United Nations hosted a major multilateral discussion devoted exclusively to global migration which helped place the issue more firmly on the global policy agenda. This new commitment of the United Nations to migration and development was underscored by the appointment of a Special Representative on International Migration and Development by the UN Secretary General in January 2006.

From the High Level Dialogue emanated the Global Forum on International Migration and Development (GFMD). As an informal, voluntary and state-led forum it seeks to provide a platform for policy makers to share information on ideas, good practices and policies referring

to migration and development. More specifically, the GFMD intends to produce concrete and action-oriented outcomes, including new policy recommendations, innovative pilot programs, the development of partnerships, and the possibility to learn from each other's experience. Belgium hosted the forum's first meeting in July 2007. The second meeting is scheduled for October 2008 in Manila, Philippines.

The Migration-Development Nexus

Most accounts concerning the migration-development nexus focus on skills transfer and the impact of remittances in terms of both individual and collective contributions from home town associations. An additional issue of concern is the emigration of highly skilled professionals and its implications for the development of sending countries. The Berne Initiative summarizes the main features of the ongoing discourse as follows:

Properly managed, international migration can contribute to the development of both countries of origin and destination. International migration has the potential to contribute to sustainable development through remittances, investments, skills transfer, brain circulation (reducing the impact of brain drain) and Diaspora networks (Berne Initiative 2004: 58).

Remittances are probably the most visible, stable, and tangible link between migration and development.²² In many recipient countries, remittances now play an essential role in sustaining national and local economies. The World Bank estimates that the annual value of formally transferred remittances in 2004 was about \$150 billion, representing a 50 per cent increase in just five years (GICM 2005: 26).²³ Remittances are now close to triple the value of the official development assistance (ODA) provided to low-income countries and comprise the second-largest source of external funding for developing countries after foreign direct investment (FDI). Remittances tend to be more predictable and stable than FDI or ODA. During the Asian

financial crisis, for example they continued to rise even after flows of FDI fell. Evidence collected by the World Bank suggests that when a country encounters political or economic difficulties, citizens who are living and working abroad support their compatriots by increasing the amount of money they send home (GCIM 2005: 26).

Remittances are primarily used for consumption purposes such as food, clothing and housing. Large quantities also go the education of family members while only a fairly small amount is saved or spent on business investment (World Bank 2007: 64). As an additional contribution to the household income, they are viewed to be an efficient form of social welfare and risk insurance targeted directly to migrants' families. It is said that in this way remittances can contribute to alleviating poverty levels in countries of origin (GCIM 2005: 23).²⁴ When remittances are used to purchase goods and services, or when they are invested in community based projects and other ventures that demand labor, they are also thought to benefit a broader range of people other than family members who receive them directly from relatives working abroad (GCIM 2005: 26).

Some scholars consider the overall preference for consumption expenditure an impediment to remittance's contribution to output growth and the development of migrant sending countries in general. However, the World Bank together with the GCIM challenge this position and argue that remittances have a positive impact on economic growth simply by increasing migrant's household income, regardless whether this additional income is spent on consumption or savings (World Bank 2007: 65; GCIM 2005: 28). Remittances, it is argued, can generate positive multiplier effects if consumed by creating new demand for locally-produced goods and services. The construction industry is a typical sector that benefits strongly from the inflow of remittances. Governments also benefit from consumption through indirect tax receipts. At a macro-economic level, remittances are often a key source of foreign exchange that can improve

migrant sending countries' creditworthiness and access to international capital markets. As opposed to other capital flows remittances don't burden the country with debt servicing and may even be counter-cyclical in times of recession (World Bank 2007: 62). These findings prompted the World Bank among others to concede an overall positive impact of remittances on economic growth, whether through increased consumption, savings, or investment (ibid: 66). The collective remittances migrants' home town associations make to their countries of origin are an additional resource in support of home country development. They often provide for basic services and infrastructure such as new or improved health clinics, schools, churches, and roads (Levitt et.al. 2007: 202; GICM 2005: 28; Berne Initiative 2004).

The NELM played an important role in the positive turn current appraisals took with respect to the potential contribution of migration to the development of sending countries. The position international stakeholders assume today largely reflect the propositions stipulated in the NELM. As indicated earlier, this school of thought doesn't reduce its analysis to the behaviour of individual migrants but extends the analysis to the entire household economy and its interaction with the wider community as a whole. It provides in this way a more complete picture of the indirect multiplier effects migration and remittances may bring to migrant sending countries and communities. The argument is that individual households and firms are linked together through markets. Hence consumption expenditures transmit the impact of remittances from the receiving household to other households and production firms in the local economy (Taylor 1999: 70). Migration may positively influence production in migrant sending areas by providing households and firms with scarce capital while benefiting national economies through savings and foreign exchange. Increased consumption of migrant households can expand demand and the production of locally produced goods and services which in turn can create new jobs and

thus increase overall income levels in migrant sending economies (ibid). Moreover, migrant households may also specialize in migration and provide credit for other villagers who are primarily responsible for carrying out local investments and production further easing capital and risk constraints on local production. Other contributions to development include investments in the education of family members or housing facilities which may entail an overall improvement of individual well-being. On these grounds the NELM contends that migration can set in motion a development dynamic by lessening production and investment constraints faced by families in imperfect market environments and creating significant income growth linkages (Taylor 1999: 63).²⁵

It's not surprising then that many developing countries consider emigration to be a convenient way of easing the pressure on the domestic labor market by reducing unemployment rates, improving the balance of payments, securing skills and investment capital while stimulating the overall development of migrant sending towns and regions. In response, investment policies are put in place to attract and channel remittances with increasing support from the international donor community. This is done for instance by improving financial and banking systems, lowering the costs for sending remittances, easing access to loans through micro-credit facilities and other sources of investment for business projects in their countries of origin (cf. Martin et. al. 2006a: 231; GICM 2005: 28; Berne Initiative 2004: 58; ILO 2006: 29). A popular policy pioneered by Mexico, is to match the portion of remittances that are invested with public funds to spur economic development (Martin et. al 2006a: 3; cf. GICM 2005: 28).

By capturing the loyalties and resources of their expatriate community sending country governments expect not only to attract remittances and the transfer of useful skills. It is also argued that the Diaspora contributes to the development of their home countries in ways that

often exceeds purely economic gains. The emigrant population is frequently viewed as a domestic political force that can help advance the economic and foreign policy interests in the host society (Bauböck 2003: 709p; Levitt et.al. 2007: 198). Martin et.al suggest further that emigrants tend to push more forcefully for political reforms in their countries of origin once they experience democratic decision-making processes in host societies be it at their work places, schools or in community groups (Martin et. al 2006). Similarly the Berne Initiative stresses how diasporas in addition to their financial engagement can help foster innovation, learning processes, and civic participation in their countries of origin (Berne Initiative 2004: 59). For women migration is viewed to be an opportunity to move away from societies with traditional and patriarchal forms of authority. Although women are particularly vulnerable to exploitation and social isolation when they migrate for marriage, domestic labor, or to work in the entertainment and sex industries moving abroad can, under certain circumstances, also be an empowering experience. In some cases it permits economic mobility, independence, and even a means of escape for women who might otherwise be trapped in abusive situations. The chance to work and earn money usually comes along with the exercise of greater decision making power in their daily lives (Maher 2004: 139; cf. GCIM 2005: 49).

These non-monetary returns of international labor migration including improved access to health care and education are frequently referred to as ‘social remittances’ are thought to comprise the contribution of international labor migration to human development. It is important to note however, that this understanding of human development is not necessarily consistent with the capabilities approach. As laid out in the theoretical section to this study human development, as it is understood by Sen and Nussbaum, calls for a comprehensive institutional structure together with political spaces open to democratic forms of deliberation and participation to identify common interests, needs and policies. While migration certainly

can and does contribute to individual well-being by improving access to education and health care for migrants' families via remittances or enhances individual autonomy and decision making power of female migrants through increased control over monetary resources, it doesn't necessarily occur under the conditions the capabilities approach establishes for self-development. First of all health care and education continues to be mediated through monetary resources often at the cost of great sacrifice and deprivation migrants endure in the process. Secondly, these accounts focus almost exclusively on policy outcomes with little regard for the involved process that is the conditions under which these labor arrangements, and by extension migrants' improved household income, are brought about. In this regard, the positive estimations are validated without concern for the process focusing exclusively on the outcome and the relative improvement of their situation compared to what they were originally facing in countries of origin.

However, the overall positive assessment international stakeholders and leading scholars are making of migrants' contribution to the development of their countries of origin is counterbalanced by the acknowledgement that large-scale emigration can equally have negative consequences for migrant sending countries and regions. It can increase economic inequality in sending regions and cause high levels of dependency on remittances which may perpetuate underdevelopment by consolidating a migrant economy (GICM 2005:29). Some scholars found that income from remittances can be plagued by a moral-hazard problem permitting migrant's family members to reduce their work effort (World Bank 2007: 67). Similarly, migration can decelerate active efforts by sending country governments to promote autonomous national development, since it provides a short-term solution to domestic unemployment and fiscal bottlenecks (Portes 2006; GICM 2005: 29). Under these conditions migration becomes a substitute to development rather than a contribution to it. The inflow of remittances can further

cause a real appreciation of the domestic currency, or postpone a depreciation of the exchange rate, thus, negatively affecting export performance and hence limit output growth and employment (World Bank 2007: 66).

Additionally, the growing density and institutionalization of social networks can have an ambiguous impact. They may function as a temporary escape valve that helps compensate for local market deficiencies and further offset indirect multiplier effects associated with remittances. But the progressive lowering of the costs of migration can also lead to severe depopulation of sending towns and regions especially when migrants bring their families with them making return migration less probable. In the end, there may be few people left to send remittances to and no productive apparatus to be re-energized by migrant investment or increased local demand (ibid: 10; cf. Taylor 1999: 64).²⁶

Finally, high levels of skilled emigration can cause a so-called brain drain that is the loss of critical human capital for sending regions. This deprives the state of revenue and prevents countries of origin from gaining an early return on the investment they made in education and training. For Hamilton the loss of skilled citizens to foreign labor markets imposes a double penalty on developing countries. The cost of education becomes a subsidy to already rich countries which is compounded by the pure loss of talent and potential contributions to the domestic economy (Hamilton 2003: 3). More importantly, when it involves the departure of professionals in sectors such as health and education, migration can adversely affect the supply and quality of essential services (GICM 2005: 23). In many countries in sub-Saharan Africa, for example, the departure of essential workers seriously impeded the delivery of health services to local populations, especially those living in remote rural areas (ibid: 24).²⁷

In sum, international labor migration could lead to vastly different consequences in migrant sending states. On the negative side it may trigger economic stagnation, the emptying out of

sending places, and the massive loss of talent. On the other hand migration can also energize local economies, lead to new productive activities, and make significant contributions to scientific and technological development in addition to reducing unemployment by increasing labor market participation, particularly of low skilled workers (GFMD 2007). Social remittances are thought to contribute to human development by improving access to health and education facilities for migrant families, challenging patriarchal gender relations and promoting civic values and virtues through the experience of living in democratically governed societies. In what way this understanding of human development matches the capabilities approach and to what extent temporary worker schemes for unskilled workers can actually generate social remittances will be further discussed in Chapter IV.

Circular Migration and Development

Alejandro Portes identifies two essential conditions that are likely to determine whether migration will lead to either positive or negative development outcomes: government intervention and the character of migration itself (Portes 2006: 10).

Remittances, he argues, can support the development process only if emigration countries provide an environment conducive to economic growth (Portes 2006; GICM 2005: 26). The GICM and World Bank contend in a similar vein that the impact of remittances on macroeconomic growth and development is to a certain extent conditional on the quality of the recipient country's political and economic policies and institutions. Without sound financial systems, stable currencies, a favourable investment climate and an honest administration, even large-scale and long term remittance receipts are unlikely to contribute to sustainable growth (GICM 2005: 28; World Bank 2007: 67). Again, this position is very much in line with the NELM. It stipulates that the economic environment encouraging out-migration in the first place

equally limits the potential for migrant remittances to stimulate development in migrant sending areas. Poor market infrastructure, especially in rural areas, discourages the production of tradable goods. Similarly, incomplete or missing credit markets in migrant sending areas make it difficult to harness remittances for local investment.

The World Bank argues that improvements in the overall quality of life in sending countries could have the potential to reduce out-migration rates, induce migrants in the diaspora to return home and, finally, provide incentives for migrants to use the human and financial capital they accumulated abroad at home (World Bank 2007: xii). Governmental programs in the form of public works, subsidies and support for productive activities together with the launching of employment-creating enterprises are all considered key components that will provide the necessary conditions to capitalize on migrant resources. Even when some families choose to live off remittances, the demand for goods and services that they generate would be met by other working adults in the community such as merchants, farmers or construction crews generating the predicted spin-off effects (Portes 2007: 79). Past failures to capitalize on the development potential of international labor migration occurred according to Taylor only in those countries that didn't comply with models of sound macro-economic management or broad-based growth-oriented development. In this regard he suggests that *creating a fertile ground for migration and remittances to contribute to broad-based income growth in migrant sending areas is the key to promoting development from migration* (Taylor 1999: 81).

For Portes more important still than establishing a commensurate economic and political setting is the character of migration itself. More specifically, circular migration patterns are considered critical to enhance development gains deriving from international labor migration. Circular migration can take many forms, but essentially describes a situation where migrants can move

more freely between the countries where they work and their places of origin (EC 2007).

According to Newland this migration pattern is based on a continuing, long term, and fluid relationship among countries that occupy what is now increasingly viewed to be a single economic space (Newland et. al 2007: 2). It is necessary to distinguish between regulated and unregulated circular migration. The latter describes migration flows that are established by the migrants themselves. This is an old phenomenon that links migrants' place of work with their homelands. Formal or regulated systems, by contrast, are those which are created by employers or states to recruit, transport and employ workers from abroad (Vertovec 2007: 5).

Portes argues that remittances will cease to flow under two opposite circumstances: with permanent return migration and with family reunification and full integration in the receiving country. Remittances will be then maximized if migrants move back and forth or if they stay for good but retain a strong myth of return.²⁸ Returnees or migrants that leave families behind are much more likely to send sizeable remittances back, save, and make productive investments at home. On the other hand, when it is formed by entire families, the cumulative depopulation effects of migration are much more likely to occur. Entire families seldom return and migrant workers have less incentives to send large remittances or make sizeable investments in places of origin when their spouses and children no longer live here (Portes 2006: 10). Thus, cyclical labor migration is viewed to have positive development effects, especially at the community level. The GCIM concurs *that the developing world stands to make more gains from the temporary and circular migration of their citizens than from their permanent departure* (GCIM 2005: 17). The World Bank views circular migration in an equally positive light. It is thought to potentially facilitate development in migration-sending countries by increasing migrants' human and financial capital, assist international skills transfers, build cross-border trade and investment while preventing long-term separation of families (World Bank 2007: xiii).

Similarly, the Berne Initiative suggests that the development and improvement of skills through education and training abroad can play an important role in the transfer and infusion of knowledge, skills and technology into the countries of origin. The challenge is to develop mechanisms that can avoid as far as possible the negative effects of brain drain and encourage the return of qualified nationals resulting in brain gain and their contribution and investment in the development of the country of origin (Berne Initiative 2004: 60). Again, under these conditions it is argued international labor migration would contribute to human development in the sense that it allows migrants to effectively put their capabilities to use upon their return. However, this presumes that the workers acquire valuable skills during their stay abroad. The case for circular migration is further supported by findings indicating that migrants themselves often have an interest in maintaining relations with their home country, either permanently moving back or making frequent trips between their host and home nation.

The expected positive returns of circular migration did not remain unnoticed among migrant sending country governments. A number of states have undertaken efforts to engage their Diaspora in ways that will encourage circularity. Some states pursue homeland policies that encourage contact with temporary migrants to facilitate their return. Others develop global nations' policies that support enduring links to permanent settlers abroad to ensure their continued national membership and loyalty rather than their return. As a result the conceptual and sometimes real notions of state boundaries and citizenship are expanded (Hamilton 2003: 1). Many countries are granting dual citizenship or nationality, the right to vote from abroad and even run for public office. Some political parties operate abroad, especially if emigrants settled in considerable numbers and with sufficient ties to influence elections in the homeland. For example Mexican, Dominican, and Haitian politicians campaign in the United States on a

regular basis. Contact is further facilitated through reformed ministerial and consular services designed to be more responsive to emigrant needs. These and other symbolic policies and rhetoric serve to reinforce emigrants' sense of enduring membership. In these cases national borders are no longer thought to delimit membership in the nation-state (Levitt et. al. 2007: 200).

The attractiveness of circular migration patterns also lies in its potential to meet the interests of migrant receiving countries. Despite the economic need for migrant labor receiving country governments face considerable political resistance in admitting large numbers of foreign nationals. Public resentment over high levels of immigration is mostly rooted in fears that a growing influx of migrant workers could depress employment and wage standards. Moreover, the admission of foreigners is often opposed out of fear it could disrupt prevailing value systems and notions about collective and cultural homogeneity within the host society. Such anxieties are readily employed by opponents of liberal immigration policies to rally in support of beefed up border protection measures and nationalist identity politics. Nonetheless, migrant receiving states are not able to consistently and effectively control their borders against the combined forces of migrant networks, the migration industry, and the persistent structural demand for foreign labor (Portes 2006: 21). In the absence of sufficient legal immigration channels this situation is leading to a growing influx of undocumented migration. In the past this was met by a certain degree of tacit toleration in order to comply with the economic need for migrant labor (cf. GICM 2005: 16; Hollifield 2007). Today, however, high levels of undocumented migration is increasingly viewed by politicians and the public alike to pose a serious security threat, especially after the terrorist attacks of September 11th. The practice of tolerating undocumented migration is losing its appeal and confronts governments with the challenge to develop a set of

policies that can do both meet economic demands while tackling domestic employment and security concerns. Circular migration patterns seem to offer a good solution. They are particularly appealing for politicians that need to balance domestic concerns over the presence of foreigners with the economic demand for migrant labor. In this vein the World Bank notes that

circular migration programs may be an important step in resolving a key migration paradox: there is demand for migrant labor yet often little public support for permanent migration – particularly unskilled migration (World Bank 2007: xiii).

In sum, it is possible to sustain that the current discourse surrounding the migration-development nexus shows a strong concern with the contribution of remittances and skill transfer to the economic development of migrant sending countries. These variables frame the further inquiry into the conditions that can help maximize the positive returns of labor migration while mitigating its negative effects. The proposed measures and strategies range from creating an adequate political and institutional setting over sound fiscal policies, and support of business investments. In a similar way circular migration patterns are discussed in terms of their ability to support the economic sustainability of international labor migration. Human development forms part of the catalogue of benefits associated with international migration in the form of social remittances. As indicated, the compatibility of this understanding of human development with the capabilities approach is open to question and will be discussed in further detail in Chapter IV. However, the idea that circular migration patterns work best for both migrant sending and receiving countries prompted a number of states, development agencies and the European Union alike to reconsider temporary worker schemes as a promising development strategy that can induce circular migration patterns.

CHAPTER III: THE REINVIGORATION OF TEMPORARY WORKER SCHEMES FOR DEVELOPMENT

In January 2007 EU Immigration Commissioner Franco Frattini announced a new guest worker scheme for Africa piloting with a job centre in Mali. The project aims at boosting the EU's ageing workforce and assist economies of developing countries by allowing their workers to develop skills and earn money – both of which it is hoped they will take back home. In return, Frattini expects Mali to reinforce its cooperation in the fight against illegal immigration to the EU and sign a treaty on the repatriation of undocumented immigrants. The temporary worker scheme will cover seasonal workers in sectors such as agriculture, personal care and construction work.²⁹ The underlying idea is to provide legal opportunities to come to the EU temporarily for work on the condition that, at the end of the period for which the workers are granted entry, they must re-establish their main residence and their main activity in their country of origin. If successful, the EU intends to establish a network of job centers across Africa (Deutsche Welle 2007).

The project exemplifies the efforts currently underway within the European Union to enhance cooperation with third countries in the management of international migration. Mali serves as a testing ground for the latest proposal of the European Commission to deal with international migration flows through so-called 'mobility partnerships'. The European Union is responding in this way to both a lasting demand for migrant labor and the challenges posed by low fertility rates to maintain social security and pension systems. It is argued, that the zero immigration policy of the last 30 years is becoming increasingly dysfunctional to the needs of the European Community. A more progressive and cooperative immigration policy is necessary if the EU wants to stabilize populations and the economy of the welfare state (Martin et.al. 2006a: 75).³⁰

The mobility partnerships are thought to provide a general but country specific framework of cooperation to manage international labor flows between interested destination and source countries in collaboration with the European Union. The intention is to offer various forms of legal movement between participating parties in exchange for enhanced cooperation in areas pertaining to unauthorized migration, including human smuggling and trafficking (COM/2007/248).³¹ To this end, the European Union plans to provide assistance to migrant source countries in developing the logistical and institutional capacities in areas concerning the management of legal migration. EU assistance could include the provision of reliable and updated information on employment opportunities and conditions in the EU, job-matching services, the development of effective cross-border labor intermediation services, pre-departure linguistic or technical training,³² facilitate the transfer of migrant remittances and mitigate the risks of brain drain by promoting circular or return migration among professionals.³³

EU support for temporary worker schemes is congruent with the proposals and recommendations emanating from the global consultation process on migration and development. The Global Commission on International Migration and Development for example concludes in its final report that

states and the private sector should consider the option of introducing carefully designed temporary migration programs as a means of addressing the economic needs of both countries of origin and destination (GICM 2005: 16).

Other inter-governmental bodies and agencies express equal support for temporary worker schemes including the Berne Initiative, the World Bank, the GFMD and the ILO (Berne Initiative: 2004: 36; ILO 2006: 29p; IOM 2005: 204). This makes the European Union a potentially strong partner in the implementation of development friendly temporary work programs. The Mauritian government, for example, presented in direct response to the EU

proposal a model circular migration program at the Global Forum on Migration and Development. Intended as a pilot it translates EU guidelines into a policy framework to jointly manage international labor migration. It accommodates the twin objective claimed by the EU to meet its labor market needs and contribute to the development of migrant source countries while ensuring that circular migration lead neither to illegal nor permanent settlement (GFMD 2007: 9; EU 2007).

Temporary work programs are not new. They were employed on several occasions to meet domestic labor shortages in migrant receiving countries while benefiting source countries through the transfer of remittances, skills and the overall relaxation of high unemployment rates (cf. Rist 1978: 37pp). The general objective of these programs is to add workers to the labor force without admitting permanent residents to the population, especially in the case of unskilled labor. Whether guest workers³⁴ fill year-round or seasonal jobs, they are expected to rotate in and out of the country in a revolving door fashion (Philip Martin 2005: 10). The time-scale of temporary worker schemes, that is, how long migrants should be permitted to stay, tends to vary according to employment sector and the corresponding admission categories. In some cases admission categories are related to the time-bound nature of the job as for instance in the case of seasonal, contract or construction workers. For other labor categories the policy of temporary admission is made to cover workers destined for employment in continuous jobs (Abella 2006: 5).³⁵ Most temporary worker schemes issue work permits valid for a period ranging between a minimum of three months and a maximum of five years. Work permits that are valid for less than a year are usually issued for seasonal programs to fill strictly temporary labor shortages (Ruhs 2005: 4).

If adequately implemented, temporary worker schemes are expected to ensure circularity and, in this way, maximize positive development outcomes for all constituents involved. From the perspective of migrant receiving countries they can plug labor shortages, thus decreasing the demand for undocumented migrant workers when combined with higher penalties for employers who hire people without valid work permits.³⁶

For migrant sending countries temporary work programs can encourage the circulation of human capital, ensure the flow of remittances, and alleviate unemployment pressures. Migrants themselves are thought to benefit from higher wages and the opportunity to migrate legally which in itself is thought to improve the protection of their human rights and personal security (Abella 2006). However, temporary worker schemes usually restrict migrants' freedom to choose and change employers at will by tying the work permit to a specific employer or job category. Other restrictions on migrants' rights, including the right to family reunion and access to public services, varies between countries and programs (Ruhs 2005: 5).

The controversy surrounding guest worker programs is usually not so much on the principle but whether actual outcomes bear out the expectations. Experiences are mixed. The German guest worker program implemented between 1955 and 1973, though praised for permitting a long period of sustained post-war recovery and growth, is frequently cited as a policy failure because the stated objective of return migration was not achieved once the economy went into recession (Castles 2007: 31; IOM 2005: 213; Abella 2006: 16).³⁷ Instead a large portion of the recruited guest workers reunited with their families and settled permanently in Germany.³⁸ Additionally, many workers were exposed to undue exploitation during recruitment and employment. It also led to labor market distortions and a structural dependency of certain industries on the continued employment of migrant workers (IOM 2005: 213).

This and similar experiences in other countries discredited guest worker programs altogether, tellingly expressed in the often cited platitude that there is nothing more permanent than temporary migration (cf. Ruhs 2005: 1). Not only did the guest worker program fail to meet the policy objectives Germany hoped for, in addition migrant sending countries weren't able to profit as expected from the export of their domestic labor force. Most of them became dependent on the economies of the recruiting countries having to re-absorb large waves of returning workers during periods of economic recession. At the same time high unemployment rates persisted and regional development disparities intensified. Migrant remittances only had a minor impact on economic development as did the desired effects of migration concerning technical and industrial skills. The transfer of currency was of some significance only in connection with the balancing of trade deficits in Yugoslavia, and especially Turkey (Herbert 1990: 237). This antecedent makes today's optimistic appraisal of temporary worker schemes all the more astounding.

This chapter examines contemporary proposals in the light of the German experience. As a historical point of reference it will help shed light on the dynamics that characterized this strategy in the past, the reasons put forth for its failure, and in what way current approaches expect to prevent them. I discuss how the German guest worker program affected workers' ability to develop and exercise their capabilities. Specifically, I focus on the employment conditions and opportunities for upward mobility at the workplace, housing conditions, their political and economic rights as well as their legal status in general. The analysis of the German experience will give important indications over the possible impact contemporary proposals may have on migrants' human development. On a secondary note, the situation of guest worker children in terms of schooling and vocational training is also taken into account. It

illustrates the long-term consequences that may follow once temporary admission becomes permanent. Specifically, it exemplifies how the singular disadvantages under which migrants and their families entered the country determined their future prospects for social, economic and personal advancement.

RECRUITMENT AND SETTLEMENT OF GERMANY'S GUEST WORKERS

Germany, along with other Western European countries, started to recruit guest workers from southern Europe in response to faster post-war recovery. Initiated in 1955 through an agreement with Italy, German farmers were granted permission to employ Italian workers to harvest their crops. The German-Italian agreement was the first of its kind and served as a template for similar agreements with other countries. The document stipulated that workers in Italy should be selected and hired by a recruitment commission of the Federal Institute of Labor in cooperation with the Italian Labor Administration. These administrative bodies received requests from German firms for needed manpower and directed suitable Italian workers to various enterprises (Herbert 1990: 205). A model employment contract guaranteed basic social and political equality of the foreign workers with their German counterparts. Wages had to comply with union agreements and the workers provided with suitable living quarters. The contracts further guaranteed them a definite employment period, usually over one year but tied them to a specific job and employer. It was generally understood that these measures were temporary in nature with the sole purpose of covering peak needs in the economy. The foreign workers were to rotate in and out of the German labor market as needed (ibid: 206; Constant/Massey 2002: 6).

In the 1960s labor shortages intensified in Germany leading to a substantial expansion of guest worker recruitment. A number of factors contributed to the lasting demand for foreign labor. One was the construction of the Berlin Wall in 1961 which caused an immediate near total cessation of refugees coming from East Germany thus drying up an important labor source. Additionally, the number of gainfully employed Germans began to decline in 1962 due to earlier average retirement age in combination with a numerically small generation of war babies that started to enter the labor force. The period for education and training of the young lengthened and the average number of working hours dropped from 44.4 to 41. Guest workers helped to fill the gap in available man power allowing Germany to maintain high economic growth levels. Additional labor recruitment agreements were signed with Spain and Greece in March 1960. More followed with Turkey in October 1961, Portugal in March 1964 and Yugoslavia in October 1968 (Herbert 1990: 210). In 1960 there were 329,000 foreign workers in Germany by 1964 their number topped 1 million. The arrival of the millionth guest worker, Armando Rodrigues Sá from Vale de Madeiros, Portugal, on September 10th, 1964 was celebrated with a brass band at the Cologne train station where he received a motorcycle as a gift from the German Employer Association. The ceremony was intended to symbolize the contribution of the guest workers to the German economic miracle of the 1960s (Martin et. al 2006: xii).

After a brief decline in the number of admitted workers due to the 1966/1967 recession recruitment resumed to peak at 2.6 million in 1973. At this point migrants accounted for approximately 12% of employed wage and salary workers in Germany (Martin et. al. 2006: 89).³⁹

The majority of the recruited workers were Mediterranean farmers and rural workers between the ages 18 and 45 but there was also a significant number of semi-skilled construction workers,

miners and school teachers (Martin 2004: 227). They were mainly employed as semiskilled and unskilled workers in construction, mining, the iron and metal industry to perform heavy or dirty work. Others were employed in factories with serial production methods requiring equally low qualification levels. Women worked mostly in clothing, textiles and food processing. Service occupations such as catering, refuse collection, office cleaning and unskilled jobs in utilities also became known as 'migrant work' (Castles 2003: 206). Most guest workers emigrated because of poverty, the disruption of social structures through war and the decline of local industries. They usually left with the intention to work temporarily in industrial economies, and use their earnings to improve their farms or set up small businesses upon return (Castles 2003: 206). In this regard, migrants' original motivation matched the theoretical propositions stipulated in the New Economics of Labor Migration to meet specific earning targets and then return to their places of origin.

For many years the German guest worker program received widespread, almost enthusiastic support. Before processes of family reunification took hold in the 1970s and 1980s the demands and needs of the unaccompanied foreign workers on Germany's social infrastructure was minimal. Guest workers paid into the system through their taxes without receiving much in return through social services and the use of public facilities. Instead they invested the best years of their labor power to the benefit of the German economy (Rist 1978: 112). Moreover, the availability of foreign workers to take jobs at the lower end of the labor market allowed for German workers to experience considerable upward mobility and improved working and living conditions (Herbert 1990: 217). Finally, the employment of guest workers curbed demand for consumer goods and stabilized prices due to the high savings rate among this segment of the working population (Rist 1978: 111).

The advantages guest worker recruitment had for the German economy was thought to be matched by corresponding positive outcomes for migrant source countries. Like contemporary advocates of temporary worker schemes, policy makers were convinced that these programs represented a convenient form of foreign aid. Recruited unemployed workers would reduce joblessness and underemployment in southern Europe. At the same time, remittances could provide for an important source of foreign exchange which may help equalize balance-of-trade deficits in addition to making much needed capital available for productive investment. The latter would eventually help stimulate development in migrant sending countries by making new employment opportunities available and, in the long run, eliminate the need to migrate in the first place (Rist 1978: 38). Finally, it was assumed that the workers would receive valuable industrial training abroad, thus raising their qualifications, expertise and working capacity. In this way skilled workers would be matched with the newly created employment opportunities generated through productive investment (ibid). Returned workers with training and experience gained in Germany may even favour the purchase of now familiar German equipment (Martin 2004: 226; Castles 2003: 201; Herbert 1990: 213). Viewed in this context, emigration was thought to be a transitional but necessary process for developing countries as they worked to modernize their economies until the conditions were in place to absorb the domestic labor force (Rist 1978: 38).

Germany officially ended labor recruitment in November 1973 as the oil crisis gave rise to predictions over an upcoming recession and increasing unemployment. Political pressure to curb the influx of migrant workers was also mounting as popular resentment started to grow over the presence of foreigners. Additionally, the costs in infrastructure and social services increased substantially as migrant workers started to bring their families.

Germany along with other Western European countries took steps to encourage guest workers to return home, and wherever possible prevent settlement and family reunification. Prior to instating the recruitment ban the German government created a number of disincentives for employers to hire foreign workers. The recruitment tax was raised from 300DM to 1000DM for each non-ECC worker. Stricter housing regulations were put in place to increase the costs for companies required to accommodate the workers. Criminal sanctions for the illegal recruitment or employment of foreign workers was strengthened and made more severe (Rist 1978: 113). The legal status of the guest workers and their families was equally sharpened. Family members that entered Germany after November 30, 1975 were not granted a work permit.⁴⁰ Cities were authorized to forbid further immigration of foreign workers or their families, once their number in the city's population exceeded 12%. Unemployed Germans were given the option to take over a position held by a foreign worker once her labor permit expired (ibid).⁴¹ Other, more positive, incentives included the provision of a departure bonus to foreigners who gave up their work and residence permit. Departing workers could also get their share of social security contributions refunded once they returned home (Martin 2004: 230).

Government authorities expected that these measures together with the temporary residence principle built into the labor recruitment system and the declining demand for foreign labor would suffice to ensure return migration. Additionally, heavy industry and manufacturing were the sectors hardest hit during the recession both of which were big users of cheap, unskilled foreign labor. Under the prevailing circumstances of recession and rising unemployment, it seemed logical that guest workers should behave like all commodities according to the laws of supply and demand (Hollifield 2007: 72; Herbert 1990).

However, the declining demand for foreign labor in the 1970s did not lead to the expected return migration. The number of employed foreigners did fall to between 1.8 and 1.9 million in

the late 1970s, but the foreign population held steadily as unemployed migrants remained out of fear that they would not be permitted to return to Germany once they went home (Martin 2004: 229; BMI 2001: 12). Instead many guest workers unified with their families, so the foreign population actually rose up to 4.5 million in 1980⁴² (Castles 2003: 201).⁴³

A series of factors contributed to the permanent settlement of Germany's guest workers. One was a change in migrants' motivations or expectations. Although intentions are usually there on part of the migrant to return home once certain saving targets are met, difficulties in accumulating enough savings often lead to prolonged stay and eventually encourage family reunion. Migrants' objectives are also linked to their life cycle: young single workers usually intend to stay for a few years, but as they grow older and establish families, their plans change. People start to see their life perspectives in the new country especially when children are involved who attend local schools, learn the language and form peer group relationships. Additionally, employers tend to encourage migrants to stay in order not to recruit and train new workers (Castles 2007: 36; Abella 2006: 17). With migrant labor readily available employers lack the right incentives to develop labor-saving technologies that could replace migrant labor (Martin 2004: 229). The desire of guest workers and their German employers meant that rotation rules were not enforced, encouraging family reunification and settlement instead. Moreover, the intensive recruitment of foreign labor in Western Europe created an international labor market with powerful supply-push forces and networks helping to sustain it at high levels, even after the official suspension of the recruitment programs. To the extent that the socio-economic dynamic helps accelerate migratory movements, destination countries often respond by redoubling border enforcement. But by turning labor mobility into a more risky and costly endeavour migrants are motivated to bring their families and settle in the host society rather

than moving back and forth between their host and home country. Instead of stopping migration, restrictive policies often end up consolidating migrants' permanent presence (Portes 2007: 7). Migrants' decision to stay was also influenced by the economic situation in migrant sending countries. The recession of the 1970s was more severe in Turkey and North Africa, thus increasing the economic incentives for migrant workers to remain in Germany despite a strained labor market. Since the workers were at least partially integrated into the welfare system they could still access unemployment benefits, education and other social services (Castles 2007).

Finally, constitutional adherence to democratic principles of due process and human rights standards prevented governments from freeing themselves summarily of unwelcome foreigners. In liberal democracies migrants can and do acquire rights, specifically the right to a secure residence status and to live with their families. In Europe, constitutional norms protecting the family and independence of the courts from the executive branch frustrated government attempts to send guest workers home, paving the way for long term settlement instead (Hollifield 2007: 73; Sassen 1996: 67). This was further supported by a coalition of pro-immigrant forces, ranging from trade unions and churches to civil rights organizations. These successfully influenced relevant migration policies by using their ties with social-democratic and liberal parties (Castles 2007).

In sum, the failure of the German guest worker program to meet its stated objective of return migration is commonly attributed to the inability of the responsible authorities to anticipate the internal dynamics of international labor migration. They didn't recognize the social quality of the migratory process shaped by the interplay of migrants' changing motivations or expectations, employer interests, official state policy and social networks (Castles 2007: 35; cf. Martin 2004: 223).

HUMAN DEVELOPMENT UNDER GERMANY'S GUEST WORKER PROGRAM

The German experience with guest worker programs exemplifies not only the difficulties in maintaining the temporary nature of these schemes, but gives further evidence of the shortfalls in terms of human development as defined in the capabilities approach. The upcoming discussion will show that the opportunity structures open to guest workers, and their families in particular, imposed fundamental restrictions on their ability to develop and exercise their capabilities. The disadvantages foreigners experienced in Germany also affected their motivational disposition to challenge discriminatory and abusive practices frequently leading to resignation and alienation from the host society. Once guest workers and their families started to settle permanently, the initial conditions of their entry into the host society unleashed a process of lasting social and economic marginalization. Western European societies did not integrate immigrants as equals, but as economically disadvantaged and racially discriminated minorities (Castles 2007: 743). The upcoming sections first gives an account of guest workers' employment and living conditions. I then proceed to describe some of the long-term consequences of a migration policy that failed to anticipate the eventual settlement of the migrant workers and their families. Special attention is paid to schooling and vocational training of immigrant children.

Employment and Living Conditions of Germany's Guest Workers

Generally, workers entering an unfamiliar labor market encounter considerable difficulties to take advantage of their accumulated social capital. They have to once again invest in building up such capital by learning a new language, new skills, and becoming familiar with the way things work in another society (Abella 2006: 40). It is not surprising then, that many workers experienced professional downgrading once recruited to work in Germany relative to the position they held in countries of origin. This applied in particular to migrant women. Their occupational status, wages and conditions were generally the worst of all groups in the labor market (Castles 2007: 207). Additionally, lower levels of qualification or job classification had the effect that foreigners received lower wages⁴⁴, had far more accidents on the job, and changed their employment more often than their German co-workers (Herbert 1990: 216). The willingness to accept inferior positions is attributed to the opportunity to earn higher wages in Germany, the general preference to work in places where they had friends and family to facilitate the transition, language barriers and differences in professional requirements which tended to be higher in Germany (McRae 1980: 46).

More importantly, German legislation imposed a wide range of restrictions on guest workers' rights and freedoms. A critical constraint to their economic freedom followed from tying the residence permit to the work contract which created a highly problematic dependency on the employer. The workers could not quit or change their work place prior to the expiration of their contract without the authorization of the German Employment Service. If they did otherwise they risked losing their work permit and with it their residency (ibid: 64). Technically both parties could appeal to the labor courts in the event of conflicts but foreigners made little use of this out of fear of losing their job. De facto guest workers lacked the fundamental freedom of choosing and changing their workplace at will.⁴⁵ Moreover, foreign workers had few

opportunities for professional advancement which left them trapped in low skilled employment relations (Vertovec 2007: 6). The most common improvement did not go beyond moving from unskilled to semiskilled worker. Becoming a skilled craftsman was only possible whenever there was no German available (McRae 1980: 56; Herbert 1990: 241).

An important though by far not the only factor that impeded professional advancement was lacking language skills. The courses Germany offered were not very successful exhibiting high dropout levels. This was attributed to their low quality and insufficient knowledge among the workers over the existing offer. Additionally, most of the language courses were given in the evening after work at a time when the workers were physically and psychologically not in conditions to follow course instructions. Nussbaum confirms how certain labor relations can have adverse effects on internal capabilities because monotonous and mindless labor, that also tends to be demanding in terms of its time requirements, can undermine a person's ability to develop initiative and active striving. In this way, labor relations may thwart good human functioning further negatively affecting other kinds of freedom (Nussbaum 2002: 77).

Finally, the general insecurity of the workers concerning their permanency in Germany had a negative impact on their motivation to learn the language. This disincentive was further supported by their social isolation which left them with few opportunities to apply and expand their language skills (McRae 1980: 52).

German language skills of foreign employers in percent

Nationality	Men				Women			
	Very good	Passably	badly	nothing	Very good	Passably	Badly	nothing
Italians	18	43	28	11	12	35	36	17
Greeks	14	41	36	9	6	34	40	20
Spaniards	11	32	39	18	10	34	40	16
Portuguese	6	26	41	27		26	47	23
Turks	7	35	43	15	7	30	43	20
Yugoslavs	17	45	30	8	24	43	26	7
Other Foreigners	70	20	10		67	25		
Total	22	36	31	11	21	34	31	14

Source: Bundesanstalt fuer Arbeit Repräsentativuntersuchung in McRae 1980: 50

A similar dynamic took hold concerning opportunities for vocational training. Language barriers, working in shifts, insufficient information over the available opportunities, family responsibilities and course offerings in the evenings made it unlikely for guest workers to undergo additional training (McRae 1980: 55). Also considerations came into play whether the sacrifice and costs of such a training was worth the effort considering the low chances for their professional advancement and the uncertainty of their permanency in Germany. When the duration of their stay is expected to be short, as in the case of temporary labor migration, the opportunity costs to learn a new language or sign up for additional training instead of working are correspondingly high (Abella 2006: 40).

Aside from employment conditions and opportunities, the housing conditions of the guest workers and their families had a critical impact on their well-being. It is considered one of the most visible manifestations of their social, political and economic marginalization in German society (Herbert 220; Rist 1978: 149). This situation is of special importance considering that

housing can affect one's health, mental balance, social integration, status and sometimes opportunities, especially for migrant children (Rist 1978: 151).

The bilateral agreements Germany signed with labor exporting countries commonly covered explicit requirements to supervise, regulate and mandate certain housing conditions on part of the German authorities. Beyond these stipulations a variety of measures and regulations were adopted by the German government on its own accord (ibid). An improved set of guidelines issued in 1971, which only became law in July 1973, demanded for example that a minimum of 8 sq of living space be available per person, 6 of which needed to correspond to sleeping space. Dorms could be inhabited by no more than four people.

Compliance with these minimal requirements, which were far below the norm to begin with, was often not ensured in practice and were difficult to control (McRae 1980: 36). The regulations never specified provisions to monitor their application or penalties in the event of violations (Rist 1978: 152). This was critical in view of the fact that the companies were frequently in charge of providing adequate accommodation for their foreign workers or prove that other housing facilities were secured that met government standards (MacRae 1980: 35; Rist 1978: 151)⁴⁶. The arrangement also increased worker's dependency and vulnerability towards their employers who wound up controlling not only their residency but also their living conditions. While there were fixed provisions that foreigners had to receive the same wages and social benefits as Germans, there were possibilities for substantial savings when it came to housing. This was reflected in the correspondingly deficient housing conditions in which many guest workers found themselves (Herbert 1990: 220)⁴⁷. The German newspaper *Handelsblatt* reported in February 1967 the following on guest workers' housing conditions:

There are six Turkish and Greek guest workers living in a space no larger than 15 sq. The beds are stacked one on top of the other and crowded together. All the men are already lying in the bed, though its only 8:30 in the evening. But what else should they do in this hole? There aren't even enough chairs. In the center of the room, under a naked light bulb dangling from a

crooked wire, there is a table covered by a “tablecloth” made of old newspaper. The floor is bare and filthy, the walls no different. You search in vain for a picture, some curtains ... (Herbert 1990: 218)

It was very difficult for the foreigners to defend themselves against the disadvantages and abusive practices they experienced in Germany. In part, this is due to the high level of insecurity and ambiguity of their legal status. Guest workers faced a constant threat to be deported, either through losing their job, their residency, illegal employment or change of employment. Other grounds for deportation could be found for violations of police reporting requirements or traffick regulations (McRae 1980: 66).⁴⁸ Moreover, legislation was incoherent, imprecise and plagued by a lack of transparency and accountability. There was a great deal of administrative discretion and latitude in how the laws were interpreted and administered. Lacking specificity concerning protections and rights accorded to foreigners allowed for abuses and questionable practices by public officials whose actions were often ridden by prejudice (Rist 1978: 134; Herbert 1990: 214).⁴⁹ Adding to this situation of administrative discretion, the legal rights of the guest workers residing in Germany were scattered through a maze of international agreements, state and federal laws, precedents established by court rulings and procedural details. Thus it was extremely difficult to know exactly what the legal rights of the guest workers were (Rist 1978: 134).

The disadvantages guest workers experienced in Germany was compounded by their inability to actively influence the living and employment conditions they were subject to. Their political and civil freedoms were fundamentally restricted. While the German constitution grants freedom of press and opinion as well as freedom of association to all people residing on German territory it reserves political rights to Germans only (Rist 1978: 143). In this regard, both freedom of assembly and association could be forbidden whenever such activities were deemed political in nature or a threat to the interests of the Federal Republic (Rist 1978: 146).

Corresponding legislation stipulated that political activities of foreigners could be limited or suspended *when such activity disturbs the public order and safety or interferes with the political will of the Federal Republic of Germany or other such important interests as may be apparant to the Federal Republic of Germany* (Article 6, Paragraph 6 Alien Act cited in Rist: 144).

Hence, the right to free speech was not linked to an unconditional right to political activity. Opportunities to participate in the political process and influence public opinion at will was reserved to German citizens (Rist 1978: 145). Additionally lacking voting rights guest workers had hardly any possibilities to participate in the decision making process pertaining to their situation in Germany. Some cities granted foreigners the right to create communal advisory boards or foreign councils in conjunction with German citizens.⁵⁰ These „foreign parliaments“ sought to gain information concerning the social and cultural problems of foreign workers and their families. Recommendations for their betterment were then send to the city agencies, city officials and, in some instances, to the city council for legislative action. However, such opportunities for foreigners were few being the exception rather than the rule (ibid: 142pp). The unions represented the major if not the sole institutional setting, other than the churches, where their concerns were formally acknowledged. Although even here foreign workers experienced minimal assistance and enforced marginality, it was one of the few places from which guest workers could speak out on the economic and social conditions that affected their lives (Rist 1978: 132).

The disadvantaged and largely disenfranchised situation of the guest workers in Germany was a logical consequence of a policy with the sole purpose of maximizing the economic benefits of a foreign labor force while keeping the social costs as low as possible. The limitations the workers experienced concerning their economic, political and social freedoms significantly

affected their ability to develop and exercise both external and internal capabilities, creating both structural and motivational obstacles to human development.

The practice of tying the residence permit to continuous legal employment proved a particularly effective instrument to discipline foreign workers. According to Ruhs this is one of the main sources of migrants' vulnerability under temporary worker schemes, especially when they are required to work exclusively for one employer, which tends to be the rule rather than the exception (cf. IOM 2005: 205). The situation may be exacerbated when employers are equally responsible for workers' accommodation. This leads inevitably to an excessive control of the employers over migrant workers and can create potentially exploitive situations (Ruhs 2005: 14). Their dependency on the employer made it very difficult for them to challenge discriminatory practices, abuse, exploitation or substandard living conditions. Protest especially from the ranks of the inexperienced and intimidated newcomers was unlikely. Additionally, the constant threat of possibly having their residence permit revoked acted as an intimidating deterrent on their willingness to speak out (Herbert 1990: 216). The situation was compounded by language barriers and lacking opportunities to engage in political activities where they could articulate their needs and interests. Without adequate opportunities to defend themselves many ended up resigning to their situation.

The notion of non-permanency was a critical aspect that helped maintain this state of affairs over a long period of time. Migrants' insecure status and the generalized expectation of return shaped their view for the future and personal aspirations which is oriented towards countries of origin. The expected temporariness of their stay in Germany influenced their ability and willingness to engage in public affairs and negotiate an improvement of their position in the host society. This situation is encouraged by the few opportunities Germany offered for them to actively pursue their interests including professional advancement. The latter often being

reserved to German citizens or other immigrants with a better, more permanent, status than the guest workers. With the firm intention to return home in the foreseeable future supported by commensurate German legislation the main goal of guest workers is to earn as much money as possible in the shortest amount of time (Herbert 1990: 215). Under these circumstances, they were more willing than Germans to take on dirty or heavy physical labor, work overtime hours, reduce their standard of living and consumption and spend as little as possible on rent. Separated from their families and often marginalized and isolated from the host society their participation in social life is minimal. The meagre opportunity structures accorded to migrants in combination with low personal motivations and incentives confirms the dialectical relationship between existing socioeconomic arrangements and agency established in the capabilities approach.

The Socioeconomic Marginalization of Germany's Immigrant Population

Once the guest workers started to settle permanently in Germany the disadvantageous position under which they entered the country created a marginalization that lasted for generations. For Castles the inherent contradictions of the guest worker system accounts for today's ethnically diverse but socially divided European societies. It triggered a litany of problems affecting ethnic minorities including social exclusions, labor market segmentation, residential segregation, and high unemployment. This, in turn, gave rise to social conflicts expressed in extreme right movements, institutional racism, and minority youth riots.

The structural factors and discriminatory rules which led to initial low occupational status caused enduring patterns of labor market segmentation (Castles 2007: 206). In particular, the conditions of their employment made them far more susceptible to unemployment in times of

recession. Economic restructuring in the 1970s and the concomitant decline of low skilled jobs in manufacturing affected migrant workers disproportionately. At the same time they had little chances of entering new labor niches because many immigrants lacked the language skills and basic education needed for retraining. OECD research found that once older unskilled foreign workers were laid off in recession, they had little chances of being re-employed. In Germany the unemployment rate for foreigners reached 18.4% in 1999 more than twice the 8.8% for Germans (Castles: 207).

Unemployment rate among guest workers according to nationalities in percent

	1980	1985	1990	1995	1998	2000
Greece	3.8	11.5	10.0	15.7	18.2	16.1
Italy	4.8	14.3	11.0	15.9	18.0	15.2
Portugal	2.0	7.4	5.8	11.9	13.0	11.5
Spain	3.0	8.8	7.2	10.7	12.6	11.7
Yugoslavia	2.6	10.0	6.3	9.2	11.6	11.2
Turkey	5.9	14.6	10.3	18.9	23.2	21.2

Source: Bundesministerium des Innern (Ministry of Internal Affairs) (2001)

Initial disadvantages during periods of recruitment also had long-term effects on the housing conditions. Communal housing was usually a transitory solution. The longer guest workers stayed in the country and as they started to bring their families demand for low rent apartments increased but foreigners encountered considerable difficulties to compete on the real estate market. There was a chronic housing scarcity compounded by prejudice, distrust and discrimination. Additionally, the government lagged behind the provision of housing facilities not only because of the associated costs but also in response to a deliberate reluctance to encourage family unification and long term settlement through improved housing conditions

(McRae 1980: 34). As a consequence guest worker families were often prey to unscrupulous land lords that took advantage of their situation by overcharging them and renting facilities in substandard conditions no German would accept (ibid: 40). Guest workers frequently lived in the oldest and least desired places, located in areas left by upwardly mobile segments of the German population (Rist 1978: 149).⁵¹ The concentration of guest worker families in certain neighborhoods created ghetto-like clusters (McRae 1980: 41). This increased their social isolation already apparent in employment conditions and linguistic barriers leaving few if any opportunities to interact with German society (Rist 1978: 116).⁵²

The situation of immigrant children in areas pertaining to schooling and vocational training was especially severe (McRae 1980: 119). While guest worker children were required to attend German schools it was considered a transitory arrangement. In response, the educational system tried to support the return of foreigners by attending to guest worker children separately. In some instances supplementary schools were installed with special bilingual classes, or even national classes and schools. The Bavarian model, for example, preferred classes with children of the same nationality with a curriculum that matched that of their homelands. German was taught as a foreign language. This approach was justified with the argument that foreign children were disadvantaged in German classes. The support of national classes and schools, however, encouraged the further social isolation of the foreign population. Deficient German skills and a completely different curriculum made a transition to a regular school practically impossible (ibid: 98). The result of these educational policies was the creation of a generation of bilingual illiterates, fluent in neither the language of their parents nor that of their German classmates. Moreover, the precarious and cramped living conditions significantly affected their school performance as did responsibilities to take care of younger siblings, and the little help they could expect from their parents in accomplishing their homework (Herbert 1990: 243). The

result was that many foreign children were failing in German schools. Their entry into higher education, including high school was nearly non-existent. Three fourths of all foreigners in the 15 to 24 age bracket didn't have a 10th grade diploma in 1980, although such a credential is the minimum requisite for any formation in skilled vocational training.

The discrimination foreign youth experienced in regular school continued in the area of vocational training. They had hardly any chances of getting a vocational apprenticeship even when they had grown up in Germany and gone to school. Only 25% of foreigners between the ages of 15 and 19 had full vocational training, 10% received partial training and two thirds didn't receive any type of formation.

Levels of educational attainment of German and foreign youth

Type of school	German school leavers			Foreign school leavers		
	1994	1997	1999	1994	1997	1999
Without lower secondary leaving certificate	7.8	7.7	5.7	20.4	19.4	15.1
With lower secondary leaving certificate	25.4	25.2	20.9	43.5	42.7	40.0
With intermediate school leaving certificate	41.0	40.9	43.3	28.5	28.1	32.7
With certificate of aptitude for specialised higher colleges	0.8	0.7	1.1	0.7	0.8	1.3
With certificate of aptitude for university/ higher colleges	25.0	25.5	29.0	8.9	9.0	10.9

Source: Bundesministerium des Innern (Ministry of Internal Affairs) (2001): 211

At the same time the vocational schools weren't prepared to deal with the specific formational needs of foreign youth. This situation accounted for low interest and motivation to attend vocational schools in the first place, which was further reinforced by negative experiences in regular schools. For many immigrant children considerations came into play, whether classes with no regard for their specific situation, knowledge gaps or language barriers may be just a waste of time (McRae 1980: 105). Changes in the political economy and structure of the labor market create additional vulnerabilities for the second generation. There is a widening gap between the minimally paid menial jobs that immigrants commonly accept and the high-tech and professional occupations requiring college degrees native elites tend to occupy (Portes and Zhou 2007: 76). Under these circumstances, the opportunities for intergenerational mobility through well-paid blue collar positions diminished considerably. For children of immigrants this means that they must cross a narrow bottleneck to occupations requiring advanced training if they want to reach beyond the occupational trajectory of their parents (ibid: 85). These conditions make the disadvantages immigrant youth encounter in terms of schooling and training are all the more severe, further fuelling processes of marginalization and social conflict. As a result the vast majority of migrant youth growing up under these conditions ends up accepting jobs as unskilled workers. As manual laborers foreign youth are chronically threatened by unemployment. Out of fear of losing their employment they face difficulties to defend themselves against discrimination and often wind up accepting substandard employment conditions (ibid: 107).⁵³ Finally, young foreigners view their unemployment often as a result of personal failure rather than a consequence of the societal conditions they are exposed to and react with resignation, disappointment and loss of self esteem (ibid: 108).

More recently school achievement rates among foreigners improved. However, a government commission found that there are still substantial deficits in both schooling and vocational training for children of immigrants (Castles 2007: 208).

Germany provides in many ways an illustrative example of a concept referred to as *downward assimilation*. It describes the negative outcome of segmented assimilation processes migrant families and their children experience once they begin to settle permanently in the host society. In general terms segmented assimilation refers to the different outcomes of migrants' adaptation process (Portes and Zhou 1993: 74). As a concept it challenges conventional assumptions that the successful integration of the immigrant population follows a singular path beginning with the acculturation of the foreigners and their eventual acceptance and entry into mainstream society (ibid: 82). Portes and Zhou argue that there are several distinct forms of adaptation rather than a uniform mainstream whose mores and prejudices dictate a common path of integration. These tend to be contingent on the available economic and social resources of the migrant population and the conditions under which they enter the destination country. One trajectory does replicate acculturation and parallel integration into the white middle class, assuming there is no racial divide.

A second path however leads into the opposite direction to permanent poverty and assimilation into the underclass. Poorly educated migrants, who come to fill menial positions at the bottom of the labor market and who have an insecure legal status or are entirely undocumented encounter great difficulties in supporting and protecting their youth. These migrants often move into central city areas where their children are served by poor schools exposing second generation children to deviant lifestyles and adverse subcultures developed by marginalized native youths. Dropping out of school, adolescent pregnancies, incidents of arrest and incarceration, and increasing conflict and estrangement from parents are all consequences and

indicators of downward assimilation. Under these circumstances, their assimilation doesn't necessarily correspond to mainstream culture but tends to emulate the values and norms of the inner city instead. In this regard, adopting the norms and values of the native born does not represent, as in the past, the first step toward social and economic mobility but may lead to the exact opposite (Portes and Zhou 2007: 89). This situation is likely to further consolidate their position at the bottom of society, reinforcing negative stereotypes about the migrant population. Such stereotypes, in turn, may increase hostility and opposition to subsequent waves of labor migrants and reduce the chances for their successful adaptation (Portes 2007: 90).

In this perspective Germany's misled immigration policies did not only produce severe disadvantages for migrant families in terms of housing, schooling and training but exposed immigrant children to a socioeconomic environment that made them susceptible to deviant lifestyles of other marginalized groups fuelling social tension and conflict with few exit options. Under these conditions, the co-ethnic community of the immigrant population is often the only available resource that could compensate for the singular disadvantages newcomers face in the destination country by providing assistance during the adaptation process. A strong co-ethnic community can offer a certain degree of protection through offering alternative niches for their advancement, including employment opportunities, often without need for an advanced education (Portes and Zhou 1993: 92). By contrast, immigrants who either lack a community already in place or whose co-ethnics are too poor to render assistance face considerable disadvantages. This in combination with official hostility and widespread social prejudice make a successful integration of the second-generation very difficult, increasing the prospects for processes of downward assimilation (ibid: 87).

A central problem in Germany was that the authorities denied the reality of settlement for decades. Mainstream politicians insisted throughout the 1980s and well into the 1990s that ‘Germany was not a country of immigration’ implying that the guest workers would leave. This position was reinforced by the migrants themselves who continued to express their intention to return to their communities of origin despite circumstances favouring settlement (Martin 2006: 90). Return myths together with rotation rules discouraged the German authorities from effectively regulating the volume of admitted migrants and plan for the settlement and integration of guest workers and their families. Viewed as a transient population, Germany refused to invest in the socioeconomic well-being of the migrant workers beyond the required minimum. It wasn’t until the late 1990s that German authorities recognized the permanent nature of immigration and ultimately acknowledged that Germany was, always has been and should be a country of immigration (Castles 2007: 30).⁵⁴

The German case illustrates a series of problems relative to temporary work programs, some of them are specific to this case, such as the lacking transparency over migrants’ entitlements, the discretionary powers accorded to public officials or the reluctance to acknowledge that guest worker recruitment was giving way to permanent settlement. Other aspects are of a more transcending character reflecting more innate features of these schemes. Typical for guest worker programs are motivational and institutional shortfalls arising out of the presumably non-permanent intend of migrants’ sojourn in the host country. The same is true for deprivations following from the practice of tying their residency to a particular job or employment sector. Also, many of the problems the second generation faced in terms of stagnating intergenerational mobility and socioeconomic marginalization are recurrent outcomes associated with the disadvantageous conditions of their initial reception into the host society. These outcomes are closely associated with the economic purpose of the guest worker program that per definition is

not intended to facilitate the social integration of the migrants but instead seeks to encourage their return to countries of origin. In liberal democracies the presence of a disenfranchised class of workers, no matter how temporary the labor arrangement is supposed to be, is bound to challenge the political system. It exposes the inherent contradiction between universal norms of equality and the exclusivity of political membership principles. Germany's guest worker program shows both the ethical and practical problems of recruiting foreign labor as factors of production destined to energize the domestic economy without any regard for the personal and professional advancement of the foreign workers. Migrants can and do acquire rights in democratically governed societies but the singular disadvantages under which guest workers enter the host country may lay the ground for a lasting marginalization of the immigrant population.

The immediate and long term consequences of guest worker programs led to a widespread belief that temporary labor recruitment should be avoided due to their unpredictable social impact (Castles 2007: 744). However, Alejandro Portes sees in temporary labor schemes also a chance to spare the second generation from processes of downward assimilation. He argues that temporary migrants don't compromise the future of the next generation. To the extent that sending country governments provide the necessary educational resources, these children would be able to grow up healthy in their own countries, benefitting from the experiences and the investments of their parents (Portes 2007: 95). This assessment, however, is somewhat at odds with the equally difficult task for liberal democracies to ensure the temporary nature of these schemes. The remaining part of this chapter examines the temporary worker schemes that are currently being proposed in the ongoing consultation process on migration and development, how they expect to avoid the permanent settlement of the recruited workers and, more importantly, in what way they are supposed to contribute to development. The latter will serve

to determine in Chapter IV whether or not contemporary guest worker programs can provide the conditions for human development as defined in the capabilities approach.

CONTEMPORARY APPROACHES TO TEMPORARY WORKER SCHEMES

Despite the German and other similar experiences with guest worker programs, many policy makers today are confident that new and improved temporary worker schemes can bring about the expected development gains without triggering the economic and social costs of the past. The design of temporary worker schemes can be divided into three distinct components. One refers to the measures intended to secure the rotational principle of these programs thus avoiding problems associated with the permanent settlement of migrant workers. A second set of policies aim at supporting the sustainability of return migration and reintegration. These two aspects respond to the stated conditions described in Chapter II according to which international labor migration is supposed to contribute to development. Essentially this entails establishing an adequate institutional framework and investment climate in countries of origin, in addition to promoting circular migration patterns. The third issue addresses migrants' rights. The upcoming sections examine the specific policies that are attached to these three components and to what extent they set themselves apart from traditional guest worker programs as exemplified with the German case.

Safeguarding Return or Circular Migration

The new found confidence in the viability of guest worker schemes as a strategy to better manage international labor migration is frequently attributed to a shift in the way policy makers and scholars alike understand migration. It is today viewed primarily as a transnational phenomenon that favours 'semi-settlement' instead of permanent immigration (cf. GICM 2005: 31; World Bank 2007; Berne Initiative 2004: 56). According to Newland, circumstances prevent circularity either due to high costs, risk of losing employment, eligibility of residency or lacking opportunities in home countries that make return a worthy option (Newland et. al. 2007: 2). In this view, migrants' tendency to circulate is only hampered by dysfunctional policies that raise costs and risks of (repeated) return migration, leading instead to more permanent migration patterns.⁵⁵ On a similar note, the GCIM concludes in its final report the following:

that the old paradigm of permanent migrant settlement is progressively giving way to temporary and circular migration (...). The Commission underlines the need to grasp the developmental opportunities that this important shift in migration patterns provides for countries of origin (GICM 2005: 31).

Also, modern technological advances and reduced costs surrounding transportation and communication allow for the intensification of transnational connections, practices and mobility. This, it is argued, makes it less likely that migrants will settle in the host country (Vertovec 2007: 1; Castles 2007: 40). Temporary worker schemes can therefore tap into an already existing circular dynamic of international migration. On this note Newland emphasizes that

the appeal of circular migration also stems from the fact that it reflects an impulse that is second nature to many if not most migrants. Studies have repeatedly pointed out that, contrary to popular conceptions, many migrants, including members of the Diaspora, do want and intend to return to their countries of origin, either on a temporary or permanent basis (Newland et. al 2007: 1).

It is further argued - in a strikingly familiar fashion to previous guest worker programs - that receiving country governments now dispose of improved mechanisms to control and manage the temporary nature of such worker schemes through more effective border control enforcements. These include e-borders, advanced passenger information systems, and large shared databases that would potentially enable them to keep track of numerous eligible migrants as they come and go between their homeland and foreign places of work (Vertovec 2007: 7).

To ensure the successful implementation of temporary work programs, today's proposals suggest a number of adjustments that could be made to the traditional schemes. However, the primary objective of enhancing the economic returns of international labor migration while guaranteeing return migration remains intact.

From a market-based perspective, it is stressed that past policies failed to induce circular migration flows because they focused too much on controlling the supply of migrant labor while neglecting the demand side of the equation (GFMD 2007: 3; World Bank 2007; ILO 2004: 12).

In a paper issued for the GCIM Martin Ruhs argues that managing the demand for labor is a critical first step in developing sound policies for temporary employment abroad. Decisions to hire migrants and to migrate are considered to be primarily economic decisions and as such employers' demand for labor is thought to depend on the cost at which workers can be recruited and employed. This is not only determined by recruitment and wage costs but also by the employment conditions. If employers are in a position to lower costs by offering wages and employment conditions that are below minimum standards, the demand for migrants is likely to be higher than it would be if employment laws were enforced (Ruhs 2005: 6). Accordingly the relative cost at which migrant workers are made available to local employers needs to be regulated.

Guest worker programs frequently failed to effectively protect and regulate employment conditions. This contributed to labor market distortions and the structural dependency of certain industries on the continued employment of migrant workers (Ruhs 2005: 7). Unregulated labor markets also serve as a strong incentive for unauthorized migration even after official recruitment since employers and migrants alike are subject to powerful supply-push and demand-pull forces.

A prominent measure that is frequently voiced in connection with raising the costs of foreign labor is to charge employers a monthly fee for each migrant worker employed under temporary work programs while ensuring that these costs are not passed on to the workers or deducted from their wages. On a similar note, it is suggested to penalize dependency on foreign labor by raising the levy according to the proportion of employed foreign workers. The fee would have to be set at a sufficiently high level to provide local employers with the necessary incentive to search for local workers and look for alternatives before considering the recruitment of migrant workers (IOM 2005: 214). Possible alternatives include mechanization that is increasing the capital or technology-intensity of the production process. Employers could also relocate their production to countries where labor costs are lower (off-shoring), increase working hours of already employed workers or try to recruit inactive and unemployed local workers. The latter may require raising wages and/or improving working conditions. Finally, employers may switch output to less labor intensive commodities or services. Although not all of these options are available at all times it is likely that there is at least one alternative to the recruitment of migrant workers (Ruhs 2005: 7; Abella 2006: 42). Adequate concern for demand would allow employers to hire the workers they need in a legal and economically sound way while facilitating the protection of migrants' rights by reducing incentives and channels to use illegal means of entry (World Bank 2007: 17; Berne Initiative 2004: 41).

Another important component of new and improved temporary worker schemes that is receiving widespread support is the introduction of flexible visa arrangements or multi-entry visas (Berne Initiative 2004: 56). This is considered a key tool that will help encourage both circularity and, more importantly, compliance of migrant workers with the rules by reducing the costs and risks of moving back and forth between host and home countries (World Bank 2007: 15). Martin et. al argue that one of the main problems of migration policies lies in the inappropriate expectation of states in insisting on maintaining stable populations without frequent movement over borders. This compels many migrants to choose permanent settlement or return over circulation in order not to lose the status they may have acquired in the host society (Martin et. al. 2006a: 231). Ensuring a meaningful right to re-circulate for various types of migrants is supposed to form a key component of cooperative migration management (ibid: 236). The promise of continued and facilitated mobility in exchange for abiding by the rules is expected to significantly reduce the temptation to overstay residency or work permits thus reducing incentives to migrate illegally and eventually return voluntarily to places of origin (Martin et. al. 2006a: 234; Berne Initiative 2004: 56; GFMD 2007: 8).

On a related issue Newland highlights that considerations over how long migrants should be permitted to remain in the country rarely consider the impact these decisions have on migrants' savings or skill acquisition although this combination can have considerable effects on migrants' disposition to comply with the terms of the program. The individual migrant may find that the duration of employment is not long enough to earn the return they expect on their investments relative to their migration and decide to overstay instead (Abella 2006: 40; Newland 2007: 16). On these grounds it is argued that migration policies need to be adjusted to the motivational background for temporary employment if the management of these programs should be successful. Specifically, work permits need to be issued for a time period that allows

migrant workers to generate the net financial gains necessary to make legal migration a financially worthwhile option (Ruhs 2005: 19). On the same token flexible contracts with options of re-entry would allow migrants to limit their expenses associated with migration and hence save the money and gain the skills needed for a successful return (GFMD 2007: 10). A third component that is thought to encourage migrant return or circularity is the portability of social security and pension benefits (Holzmann et. al. 2005: 1; cf. Berne Initiative 2004: 54; ILO 2006: 18; GFMD 2007: 8). Portability is understood as migrant workers' ability to preserve, maintain and transfer acquired social security rights independent of nationality and country of residence (Holzmann et. al. 2005: 2).⁵⁶ According to GCIM the majority of migrants are confronted with major obstacles to the portability of their pension and health care benefits. Less than 25% of international migrants work in countries with bilateral or multilateral social security agreements (GICM 2005: 18). This situation has a series of negative consequences. Temporary migrant workers who pay into pension and social security schemes, but who are unable to benefit from such schemes once they return to their country of origin, have a strong incentive to work in the informal economy where their wages are not subject to such deductions (GCIM 2005; Holzmann et. al. 2005: 2). Enhancing the portability of social security benefits is considered a useful tool for migrant receiving countries to encourage migrants to participate in the formal sector, discourage irregular migration, and raise incentives to return home where they can enjoy a decent standard of living and invest in their own society (GICM 2005: 18). Other financial return incentives include special savings accounts which offer migrant workers the opportunity to save part of their wages at especially high interest rates under the condition that the savings will only be released to migrant workers upon their return to their home countries (GFMD 2007: 6).⁵⁷

Finally, it is argued that receiving country governments need to recognize at the stage of policy design that some foreign workers will bring their families and remain in the host country on a permanent basis. For Philip Martin, one of the biggest policy mistakes of past guest worker programs, especially the German one, was that they assumed guest workers would be available on tap, i.e. that their numbers could be increased or decreased at will, depending on the needs of the economy. This assumption was based on the idea that guest workers were labor units without agency, meaning without the capacity to make independent decisions or revise them based on new information and circumstances. In practice, however, changing expectations on part of the foreign worker and pressure on democratic countries to grant those workers the right to family reunification who have resided in the country for a certain number of years frustrated attempts to reduce the number of admitted foreigners at will (IOM 2005: 215). At the same time, many countries were ill prepared to deal with the permanent settlement of the recruited workers which created lasting problems of social and political integration ultimately leading to their lasting marginalization. The German guest worker program is a case in point. As Philip Martin suggests, even with all the envisioned measures in place and effectively supporting return migration, it is very probable that labor shortages will persist, in part because there are many jobs domestic workers refuse to fill. It is therefore considered necessary that the responsible authorities acknowledge that many migrants fill jobs in the permanent labor force and may end up settling in the host country (Martin 2006a: 236; cf. Ruhs 2005: 19). On this account, temporary worker schemes would have to include transparent mechanisms and rules for a regulated and conditional transfer into different and better programs that grant some foreign workers permanent residence status and the right to family reunification. Nonetheless, the general expectation of temporary employment would have to remain intact for the majority of the migrant workers (IOM 2005: 216).

Sustainable Return Migration

Alongside policies encouraging circular migration patterns, temporary work programs put complementary policies in place to support the sustainable return and reintegration of the migrant workers in countries of origin. The measures are supposed to promote conditions under which the resources and skills that migrants take back home can be put to optimal use and, in this way, contribute to development. The Berne Initiative stresses for example that *effective reintegration of migrants back into their home communities is an essential element in their ability to lead productive lives upon return and to facilitate the sustainability of return* (Berne Initiative 2004: 56). One can distinguish between policies that pretend to improve the overall development performance of migrant sending countries and measures targeted directly towards returning migrants and their families. Many returnees face difficulties with employment, housing, accessing credit markets, starting up businesses or investing savings (GFMD 2007). In response, assistance programs seek to support the productive investment of remittances and skills together with the promotion of employment opportunities by setting up new businesses (Berne Initiative 2004: 42). Additional measures may include the recognition of informal skills acquired abroad, reintegration premiums, tax-preferred savings accounts in migrants' home countries and special housing programs.

The success of such initiatives, however, is viewed to be dependent on the general economic, political and social conditions in migrant sending countries. It is generally agreed that migration cannot and should not supplement national development efforts. The GFMD argues that when migrants seek to return, or need to return at the end of their labor contract, the conditions must be in place that can ensure the sustainability of return and the optimal use of their savings, skills and experience (GFMD 2007: 3). On a similar note, the World Bank contends that development is conditional on sound *domestic* economic policies (World Bank 2006: xi). The decision to

return will depend not only on the situation of the labor market in the host country, but also of those in countries of origin (Abella 2006: 40). In particular, it is considered critical that the business climate and governance is perceived to be improving. Otherwise, it would be difficult to encourage migrants to return. Instead they might opt to have their family join them even if this means moving into illegality (GFMD 2007: 3).

Countries like Turkey, it is argued, were not able to profit as expected from German and other Western European guest worker schemes through remittances and return migration due to dysfunctional economic policies (Martin et. al. 2006a: 80). Turkey in these years maintained high tariff walls, an overvalued exchange rate, and a preference for state run businesses. This made it very hard to create small businesses or establish enterprises that relied on foreign capital or foreign partners. Instead the economic setting together with unstable political conditions encouraged migrants to either stay in the host country or invest their savings in land, housing, vehicles or animals rather than setting up employment generating enterprises (ibid: 83). In line with the New Economics of Labor Migration source countries are viewed to be responsible for both emigration and return migration. Countries investing in the talents of their people with open economies, sound financial systems, a favourable investment climate and honest administrations are thought to be more capable of seizing the opportunities presented by globalization than those countries lacking such attributes (GICM 2005: 21). Thus improved quality of life in places of origin can generally slow out-migration despite income differentials between migrant source and destination countries (World Bank 2007: 13; GFMD 2007: 3).

People will be less inclined to leave and more likely to return to countries that can offer their citizens sustained economic growth, a favourable business climate and decent working conditions. In creating such conditions and becoming more competitive, countries of origin will not only ensure that migration becomes a choice rather than a necessity, but will also

encourage return and circular migration, maximize the impact of remittances and encourage Diaspora populations to invest in their homelands (GICM 2005: 31).

Protection of Migrants' Rights under Temporary Worker Schemes

Aside from concerns to secure the temporary nature of guest worker schemes and promote sustainable return migration, the proposals stress the need to provide adequate workers' protection. Stakeholders involved in the international consultation process on migration and development refer uniformly to international humanitarian law as the legal and normative framework to protect labor migrants, including temporary workers. Moreover, it is generally assumed that improved access to the formal labor market stands alone as the most effective way to protect migrants' human rights (GFMD 2007; World Bank 2007: 2). In this way they are able to appeal to receiving country authorities to adjudicate disputes and protect themselves from crime while obtaining social protection benefits that are often out of reach when working in an unauthorized manner. Nonetheless, temporary migrant workers face a series of difficulties due to their status as foreigners and the conditions of their employment. These make them susceptible to various forms of discrimination, abuse and exploitation. The causes are diverse and include everything from legal stipulations in migrant receiving countries, to language barriers over difficulties and unfamiliarity with conditions and regulations relative to their employment abroad.

The ILO and the GCIM among others stress that those migrants admitted to another state on a temporary basis, must be able to exercise their fundamental human rights and benefit from minimum labor standards as established under relevant UN and ILO Conventions (GICM 2005: 43; ILO 2006: 15). Migrant workers need to be guided through all stages of the process,

including planning and preparation, transit, arrival, reception, return and reintegration (ILO 2006: 23).

International Law covers a wide range of issues including the principle of equal treatment with national workers regarding remuneration, safety and health protection. However, the legal and normative framework affecting international migrants cannot be found in a single document. It is derived from accepted customary law and a variety of binding legal instruments as well as non-binding agreements and policy understandings reached among states at the global and regional level. Under the UN system the most important instrument is the Universal Declaration of Human Rights and seven UN human rights treaties that give legal effect to the rights pronounced in the Declaration.⁵⁸

Most of the treaties are signed and ratified by a significant number of states. The problem, however, is that many components of this framework are not migration specific. Instead, they address broader issues concerning individual rights, state responsibility and interstate relations (GICM 2005: 53). One exception is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It sets out most of the rights migrants are entitled to building upon relevant ILO and human rights conventions or treaties. The problem, however, is that so far only 37 states ratified the Convention. Because most of them are primarily countries of origin and destination, the treaty has only limited effect (GICM 2005: 54).

The ILO passed an additional set of conventions strengthening the international protection of workers' rights. Many of them cover specific risks in certain occupations and sectors, particularly agriculture, construction, mines, hotels, restaurants and domestic work (ILO 2006: 18). In principle all migrant and non-migrant workers are supposed to enjoy what the ILO describes as 'decent work'. This is thought to take place 'under conditions of freedom, equity,

security and dignity, in which rights are protected and adequate remuneration and social coverage provided (GICM 2005: 62; ILO 2006: 5). ILO's decent work agenda further establishes that all workers should be able to freely chose employment, enjoy recognition of their fundamental rights at work, dispose of an income that enables them to meet their basic economic, social and family needs or responsibilities as well as an adequate level of social protection for themselves and their families (ILO 2006: 5).⁵⁹

Although human rights treaties can and do represent a powerful resource in protection of migrants' rights, the international legal and normative framework suffers from a considerable amount of limitations and deficiencies both at an operational and conceptual level (cf. GICM 2005: 64).

On operational grounds difficulties arise because many states haven't ratified relevant conventions or fail to respect the conventions, agreements and declarations they accepted. Additionally, international bodies often lack adequate mechanisms of enforcement. The ILO for instance does not dispose of any direct sanctioning mechanisms other than dialogue with those states found to permit systematic violations of worker's rights. For migrant workers, the situation is further aggravated by the fragmented nature of the legal and normative provisions concerning their situation. This significantly hampers the accessibility of these entitlements, making a consistent and coherent implementation extremely difficult (GICM 2005: 55). Finally, the framework is less developed in certain areas and lags behind changing migration realities. A prominent example pertains to the activities of private recruitment agencies. The growing involvement of the private sector is a major change in the way international migration is managed today. Until the 1970s, guest worker programs relied heavily on state institutions to organize recruitment. In Germany, for example, employers would request the workers they

needed through the public Employment Service. It is estimated that Germany established between 500 and 600 employment offices abroad for the recruitment of foreign workers (Rist 1978: 111).

Today, migrant workers are increasingly incorporated into temporary worker schemes by private recruitment agents and brokers. Although a number of countries put regulations in place to control the activities of the private sector, they are not able to prevent them from illegal and exploitative practices. These agencies are frequently responsible for misleading and cheating the migrants they engage by providing them with false information, promises or expectations. This is particularly true for migrants working in domestic labor or other activities that keep them out of public view (Susan Martin 2005: 18). The ILO adopted a Convention concerning Private Employment Agencies but it has been ratified so far by only 20 states. De facto there is no comprehensive international framework concerning the regulation of private agencies that are involved in the recruitment and placement of migrant workers (GICM 2005: 56).

Inter-governmental bodies and commissions such as the ILO and the GCIM therefore urge states to license and regulate the activities of private recruitment agencies more closely and, when necessary, prosecute agencies involved in abusive and exploitative practices (cf. GICM 2005: 58; Susan Martin 2005: 18). More specifically, the ILO recommends introducing an insurance bond to be paid by recruitment agencies, to compensate migrant workers for monetary losses resulting from failure of a recruitment or contracting agency to meet its obligations (ILO 2006: 25). Additional principles include guaranteeing understandable and enforceable employment contracts and ensuring that recruitment and placement fees are not borne directly or indirectly by migrant workers (ibid).⁶⁰

The international human rights framework concerning migrant workers also exhibits a gender bias, especially with respect to domestic workers. Although the UN Convention on Migrants

Rights and their Families applies to both men and women it fails to address many needs that are particular to women. Most female migrants work in unregulated sectors of the economy, including domestic work, which leaves them particularly vulnerable to exploitation and abuse (Susan Martin 2005: 13).

Apart from operational shortcomings due to a lack of enforcement mechanisms, low ratification rates or outdated and biased regulations the international human rights regime suffers from more fundamental problems relative to principles of national sovereignty. International human rights conventions and treaties not only establish a specific set of universally claimed rights to all human beings in virtue of their shared humanity, they, too, uphold states' sovereign right to self-determination. This dual commitment exposes a fundamental dilemma of liberal states between the expansive and inclusive principles of moral and political universalism as anchored in universal human rights, on the one hand, and the particularistic and exclusionary conception of democratic closure, on the other (Benhabib 2004: 19). As a result many human rights treaties wind up incorporating escape clauses to re-conciliate divergent interests by allowing states some flexibility in the application of international human rights treaties. Such escape clauses and exceptions weaken the overall applicability of the established norms and rights. This becomes particularly apparent in the differential treatment of certain categories of migrants. Some rights, such as family reunification, are given only to regular migrants and the scope of trade union rights is dependent on the legal status of the migrant worker (GICM 2005: 56). The ILO, for example, establishes that temporary migrant workers are entitled to the rights and benefits emanating from the provisions laid out in Convention No. 97 regarding their equal treatment. But at the same time the ILO recognizes in Convention No.143 that coverage may be excluded for temporarily admitted employees that are required to leave the country upon the completion of their duties or assignments (Abella 2006: 17).⁶¹

A similar problem arises concerning the right to family reunification. The Universal Declaration of Human Rights states clearly that *the family is the natural and fundamental group unit of society and is entitled to protection by the society and the state*. Consequently splitting families apart deprives each member of the fundamental right to respect his or her family life. However, whether the principle of family unity requires a state to admit non-national family members of someone residing legally on its territory remains a point of contention (Susan Martin 2005: 28). Aside from a built in latitude in the application of international human rights standards individual nation-states dispose of additional manouvering space when it comes to the degree of their committment to human rights treaties. Germany, for example, is party to a number of international agreements and conventions including the two major UN treaties on civil and political rights and the treaty on economic, social and cultural rights. But it also makes ample use of its sovereign right to self-determination by abstaining from ratifying certain articles. This includes freedom of opinion, freedom of assembly, freedom of association and coalition together with the article forbidding discrimination. The German government justifies this with the argument that these provisions suggest that the signer extend at once all social, political, and economic rights granted to Germans to the entire population residing on its territory. This is rejected on the grounds that according certain rights to foreigners is a gradual and incremental process. Germany could therefore not adhere a priori to universal stipulations of this kind (Rist 1978: 142).

Though it is true that the international human rights regime represents an important resource in denouncing and fighting abusive practices, the sovereign nation state continues to be the supreme authority over its territory of jurisdiction (Shafir 2004: 22). States reserve to themselves broad authority to regulate the movement of foreign nationals across their borders, exercising their sovereign power to determine who will be admitted, for what period and under

what conditions although it may be expected that the responsible authorities act in accordance with international human rights standards (GCIM 2005; Martin 2005b: 6). In this vein the Berne Initiative posits the following:

The prime responsibility for the management of migration lies with States: each State has the right and duty to develop its own legal framework on migration and protect the security and well-being of its population, consistent with existing international principles and norms (Berne Initiative 2004: 23)

This state of affairs leads to the paradox that human rights accords rely on the very same states they call into question to enforce those arrangements and ensure that international human rights standards are respected and implemented (Brysk/Shafir 2004: 5).

Given the shortcomings of the international human rights regime to effectively protect migrant workers, bilateral agreements are commonly viewed to be the most convenient way to bring human rights to effect and manage temporary worker schemes together with other migration related issues (cf. ILO 2006: 7). In fact this is the modus operandi where states cooperated on international migration.⁶² In this way, it is expected that a series of provisions can be established in a clear and coherent manner meeting the specific needs, rights and responsibilities of both source and destination countries while providing for the necessary protection of migrant workers (Berne Initiative 2004: 41). Bilateral agreements help regulate voluntary or mandatory return of unauthorized migrants, admission procedures, possibilities for family reunification, working and living conditions in destination countries, designating priority sectors for recruitment in the interest of migrant sending countries, the support of reintegration policies, negotiation of favourable employment and social welfare terms, especially for low skilled workers including benefit portability (Berne Initiative 2004; GFMD 2007: 10; GCIM 2005: 59; ILO 2006: 7).⁶³

Complementary to the regulations stipulated in bilateral arrangements individual governments are called upon to provide additional assistance through orientation and training courses that inform prospective migrants about their rights, health and safety, remuneration, work conditions, or dismissal procedures and sources of support potentially available in the country of destination (Berne Initiative 2004: 42; GICM 2005: 58; Susan Martin 2005: 18). Moreover, governments should ensure that migrants have effective access to judicial institutions and remedies for violations of their human rights, including compensation for the victims and punishment of the perpetrators (Berne Initiative 2004: 46). Consular services in particular can serve important functions in monitoring the welfare of citizens working abroad, ensuring their access to legal representation and, when necessary, to intercede on their behalf with the authorities and employers, providing mediation in labor disputes, and promoting standard labor contracts (GICM 2005: 59; Maher 2004: 137; ILO 2004: 13; Susan Martin 2005: 2). In this way migrants would be better equipped to cope with the experience of working in a foreign country.

The review of contemporary proposals advocating the re-introduction of temporary worker schemes shows that they don't differ substantially from traditional programs as employed in post-war Germany. Today's schemes continue to focus predominantly on policy outcomes, specifically on their economic contribution to development, but show relatively little concern for the quality of the involved process aside from the need to comply with international human rights standards. Today's proposals vary insofar that they suggest a set of adjustments to minimize the risks and costs of (repeated) return migration. The recommended provisions seek to address the incentives that are thought to have encouraged the permanent settlement of temporarily admitted workers. The common understanding is that previous experiences were too rigid in their design and failed to consider the economic motivations and internal dynamics

of migratory movements. In this regard, most stakeholders make a case for increasing the flexibility of the programs with respect to the mobility of the foreign workers to move between home and destination countries. Policy recommendations include introducing multi-entry visas, portable pensions and health care benefits together with a stronger concern to balance the supply of foreign labor with the demand in receiving countries.

Labor exporting countries on the other hand are called upon to instate a propitious investment climate together with an adequate political and institutional setting to guarantee the economic sustainability of return migration. The inability of many migrant source countries to profit from guest worker recruitment in post-war Europe is in principle attributed to misled economic policies and state interventionism. Not only did this prevent them from capitalizing on migrants' resources but it further encouraged settlement in destination countries due to lacking opportunities in places of origin to make a decent livelihood. This proposition, however, is rather ambitious involving the entire political economy of the migrant sending country. As such it exceeds the programmatic range of the specific programs. Moreover, the suggested policies respond to the dictum of a liberalized economy in accordance with market led development strategies. But these are, at least in part, responsible for the rise in international labor migration because processes of deregulation and privatization forces many households to find ways to increase the household income and compensate for both diminishing levels of state support and insecure labor relations.

Concerning migrants' rights the approach continues to be ascriptive in nature, that is, migrants are at best passive recipients of a given set of rights or entitlements. This suggests a fundamental discordance with the human rights concept adopted in the capabilities approach that makes human development conditional on the ability to take part in the decision making process through public forms of deliberation and participation. In this perspective protection

from abuse and exploitation by means of an extended social and economic rights catalogue, while necessary, is insufficient if it is not accompanied by a meaningful political right to participate in the conditions that determine migrants' employment and living conditions. The German case provides an illustrative example of the limits ascriptive measures have in addressing migrants' needs and interests. Germany was party to all core human rights treaties and conventions; it granted its workers important social benefits and organized recruitment through well developed bilateral agreements. Nonetheless, guest workers experienced far reaching deprivations in terms of human development.

Finally, the similarities between traditional guest worker programs and the contemporary schemes, give little indication that permanent settlement of the recruited workers can be effectively prevented. What may facilitate the management of these programs, and with it return migration, is that they tend to be much smaller in scope and more closely adapted to specific employment sectors than the traditional schemes. Instead of one program and one set of rules admitting foreign workers, most countries have several programs, each with its own rules on entry and stay. On the downside this tends to give employers more power over the conditions of foreign worker employment (Philip Martin 2005: 11). At the same time, the reduced size of temporary worker schemes raises the question whether the large demand for low skilled workers can be covered. It may, on the contrary, increase the likelihood that temporary work programs coexist with a tacit toleration of undocumented migration unless receiving countries start to pursue an aggressive policy to control the demand for migrant labor. Cooperation to make migration serve development would mean reducing the profitability of migrant labor for receiving countries (at least in the short run), which in turn would mean taking on powerful interest groups. This would imply restricting the power of large companies and denying them cheap labor, especially in the agricultural sector. Under these conditions they would lose an

important competitive advantage and may even be forced out of business. While this would certainly be to the benefit of labor exporting countries and support the development of their national economies, it is unlikely that migrant receiving country governments will seriously compromise the interests of powerful domestic interests groups. A second requirement would be to introduce effective systems of labor market regulation and to find the fiscal resources to hire the necessary labor inspectors. This, on the other hand, would mean a fundamental departure from the neo-liberal deregulation agenda (Castles 2007: 762).

Finally, the recruitment and placement of the workers is now predominantly organized and mediated through private agencies. This renders the landscape of temporary work programs more complex by multiplying the number of actors involved.⁶⁴ These conditions may have in fact increased the vulnerability of the workers compared to traditional guest worker programs.

CHAPTER IV: FAIR ENOUGH?

The call for temporary worker schemes as a way to manage the cross-border movement of people cannot be viewed independently from the global political economy. The OECD noted, in an analysis on the way migration contributes to labor market flexibility, that migrant workers serve as „shock-absorbers“ since they tend to be concentrated in sectors experiencing greater volatility than the rest of the economy, frequently characterized as *the bargain-basement of globalization* such as low skill services, agriculture and labor-intensive manufacturing (Abella 2006: 13). From this perspective, the almost emphatic embracement of temporary worker schemes as a means to manage international labor migration maps neatly into the prevailing development model inspired by neoliberal economic growth theories.

This can be exemplified with the recent proposal put forth by the Mauritian government. In a background paper issued for one of the roundtables at the first meeting of the Global Forum on Migration and Development, Mauritius expressed its intention to employ a guest worker program as part of a strategy to deal with a predicted loss of approximately 12.000 jobs over the next three years, mostly of unskilled workers. It's a trade-off linked to a ten year economic reform program the country is embarking on to increase its global competitiveness as a duty free island. Labor retrenchment is expected to affect two key areas of the economy: sugar and textiles together with other formerly substituted sectors of the economy.⁶⁵ Temporary employment abroad is considered an opportunity for unskilled and semi-skilled workers who might lose their jobs and are unable to find another. Instead it is suggested that they spend a few years in Europe, the Middle East, Australia, Canada or elsewhere to improve their skills before returning home to find employment in newly created sectors of the economy or alternatively start their own business (GFMD 2007: 11). It is in this context that Mauritius is looking at

circular migration as a possible solution to address domestic unemployment. With assistance from the IOM the Mauritian government hopes to instate a comprehensive short-term temporary migration strategy to maximize the development potential of returning migrants, presumably bringing with them new skills, savings and ideas while encouraging the flow of remittances to the benefit of migrant families and the country's overall development process.

Experience with traditional guest workers schemes, however, calls for caution when assessing the potential contribution of temporary worker schemes to development. The German case shows that foreign labor recruitment may not only lead to permanent settlement, but is likely to obstruct human development of the migrant workers in fundamental ways. Problems arise out of the very rationale informing these schemes and their intention to maximize the economic benefits of international labor migration while keeping the social costs as low as possible for destination countries. The economic imperative suggests a fundamental discordance with the capabilities approach. This chapter discusses in what ways the development understanding of temporary worker schemes conflicts with principles of human development, as defined in the capabilities approach. Special attention is given to democratic forms of governance as a necessary requisite to develop and exercise individual capabilities.

The Development Understanding of Temporary Worker Schemes

So far, this study showed that international labor migration generates a complex set of costs and benefits for the receiving country, migrant workers and their country of origin. The interests of the different stakeholders involved in temporary workers schemes are therefore bound to conflict with each other accounting for a set of trade-offs usually between migrants' rights and the expected economic returns of temporary labor migration (IOM 2005: 203). For example, the intention to adjust migration to the economic needs of the destination country typically involves confining foreign worker employment to specific sectors of the economy for a definite period of time. The logical consequence is to impose restrictions on migrants' freedom to move within the labor market of the destination country and forbid family reunification. Insistence on the equal treatment would reduce the comparative advantage of low-wage countries and with it the attractiveness of foreign labor (Abella 2006: 18).

Workers in low income countries on the other hand – especially those with little or no opportunities to economically better themselves and their families – are likely to accept at least some restrictions of their rights in return for improved access to labor markets in high income countries (Ruhs 2005: 14; IOM 2005: 206). Under this premise host societies make ample use of their ability to restrict migrants' rights as a way of managing international labor migration to the benefit of the domestic economy (Philip Martin 2005: 7).

The normative justification of the trade-off in question is indicative of the overriding development paradigm governing the political economy of temporary worker schemes.

To date this is largely dominated by a utilitarian school of thought committed to orthodox economic growth theories.

The principle of maximizing total or average utility is a notable feature of the discussion surrounding migration and development, including temporary worker schemes. The Berne Initiative suggests, for example, that *the challenge for States is to maximize the positive effects while minimizing the negative implications of migration for States, societies and the migrants themselves* (Berne Initiative 2004: 15). Utility is primarily understood in materialistic terms as the expected economic benefit for migrant sending and receiving countries together with enhanced purchasing power and personal security of the involved workers.

Though the economic imperative of temporary worker schemes may come at the cost of restricting migrants' rights and freedoms it is thought to outweigh positive development gains. Migrants may not be entitled to bring their families while working abroad and their opportunities to engage in political, economic and social affairs within the host society are restricted, but in return they would receive a higher income and better protection of their human rights. It is considered a necessary trade-off given the sovereign prerogative of nation states to define who may be admitted and under what conditions. The alternative, it is argued, would be the current situation where migrants move illegally causing efficiency losses and security concerns for receiving countries while migrants expose themselves to highly vulnerable, exploitive and abusive employment and living conditions. On the other hand, if they stayed at home they would have little or no opportunities to economically better themselves and their families (cf. IOM 2005: 212).

It is this utilitarian rationale that accounts for the triple win situation frequently recited in connection with temporary worker schemes. Migrants are supposed to profit from the opportunity of earning higher wages without being exposed to the security risks associated with irregular forms of migration. An increased household income helps improve living conditions

and access to social security. Ideally the remittances can provide for the necessary start up capital to set up new businesses or make productive investments in countries of origin.

Migrant receiving countries, on the other hand, are able to control the cross-border movement of people more effectively while plugging labor shortages without having to deal with politically contentious and costly issues of social integration. Finally, countries of origin would profit from remittance and skill transfers in addition to reduced pressure on the domestic labor market.

In this view, the sum utility of adequately implemented temporary worker schemes is thought to exceed possible negative trade-off's bringing benefits to all the involved constituents relative to what could be achieved under the prevailing conditions. Edward Taylor expressed this consequentialist argument unequivocally in the analysis he makes on migration and development arguing from the perspective of the New Economics of Labor Migration: *The impacts of migration and remittances should be assessed relative to what migrant sending economies would have looked like without migration* (Taylor 1999: 65).

Commensurate with utilitarian preference based accounts temporary worker schemes are also justified with reference to migrants' stated desire to spend shorter periods abroad and eventually return to communities of origin. While this may be empirically accurate such utilitarian evaluations don't show much concern for the circumstances that shape migrants' preferences. This includes lacking opportunity structures in their home countries that compel them to seek new employment opportunities abroad to begin with as well as the conditions that motivate them to accept substandard conditions in the host society. Market failure, the explanation the NELM offers as the overriding motivation to migrate, appears somewhat unsatisfactory to account for and justify deprivations people experience in countries of origin and destination respectively.

At the same time, the consequences guest worker programs may have for human development receives relatively little attention, if any. Germany's guest worker program illustrates the deprivations migrants often experience due to their status as both foreigners and temporary workers. Their chances for upward mobility are minimal and they have few options to challenge exploitive situations without risking deportation. Even in the event that migrant workers are entitled to minimal labor standards the practise of tying their residency to a specific employer or sector, prevents many workers from claiming these rights. The social interaction of migrant workers with the native born population tends to be minor due to language barriers and their social isolation. This is reinforced by a rather low motivational disposition on part of the migrants themselves to engage with the host society given their presumably temporary sojourn in the country. Considering the circumstances that motivate people to participate in temporary work programs in addition to the low qualification levels required for these positions, which usually involve, heavy, repetitive and monotonous tasks, the prospects for self-development of the migrant workers appears to be minimal. Also, the transmission of democratic norms and values to developing countries is unlikely to be of significance in the case of temporary worker schemes destined for unskilled labor. In view of the employment and living conditions of temporary migrant workers, their social isolation, and the constant threat of being deported they experience the state rather as a repressive force than a place where universal principles of equality, rule of law and freedom prevail.

Finally, once the rotational principle of these schemes collapses and guest workers begin to settle permanently, the singular disadvantages under which they entered the country are likely to consolidate their lasting social and economic marginalization. This, in turn, may further compromise the future prospects of the second generation. On these grounds, the only return unskilled workers can realistically expect from temporary work programs is an increased

household income. Non-monetary returns, such as learning a new language, skills and the transmission of civic virtues back to countries of origin are unlikely to materialize for this category of labor migrants.

To the extent that enhanced purchasing power is the only positive return unskilled migrants can expect from circular migration freedom of choice is reduced to enhanced opportunities to consume. This may entail the purchase of a house, setting up a new business or afford improved health care and education. Under these conditions, achieving self-sufficiency independently from the state is the overriding policy objective of contemporary proposals when it comes to return and reintegration of migrant workers in their communities of origin. This is mainly interpreted in economic terms as the ability to make a decent living for themselves and their families by making productive use of the money and skills acquired abroad. The state is supposed to provide for the institutional and economic setting that will allow for productive investments and thus help maximize the economic gains of labor migration. In this way, ideals of economic growth and self-sufficiency translate into the way the linkage between migration and development is understood.

While failures to meet the objective of return migration motivated policy makers to experiment with some adjustments to guest worker programs the same can't be said about human development. It certainly didn't lead to a realignment of policy objectives to accommodate requirements that may allow migrants to better develop and exercise their capabilities beyond the opportunity of earning higher wages and send remittances to places of origin.

Suggestions to improve the conditions for human development are sparse. In IOMs World Migration Report Martin Ruhs proposes that governments should minimally prepare for and anticipate that some workers will remain in the country. This would help prevent some of the

long term consequences following eventual settlement as it occurred in Germany. Concerning the problems associated with workers' dependency on their employer Ruhs suggests that migrants should be granted at least some freedom to choose and change employers. This could be done by issuing work permits for a certain sector or occupation rather than tying it to a specific job or employer (IOM 2005: 213). Another policy alternative would be to offer migrant workers freedom of movement after working for a relatively short period of time with the employer that initially recruited them (IOM 2005: 214). Although such arrangements may mitigate potentially abusive situations it doesn't dismantle the disadvantageous situation of the guest workers concerning their freedom to choose and change employers at will. Chances for upward mobility are not likely to change significantly and the workers remain confined to highly precarious employment sectors. Allowing complete occupational mobility however is not considered a viable option since it would no longer permit for national authorities to align migration to the perceived requirements of the labor market (Ruhs 2005; Abella 2006: 19). Under present conditions, restrictions on migrants' rights and freedoms in exchange for higher income is considered a necessary and inevitable trade-off given the economic purpose of these programs and the sovereign prerogative to determine who may be admitted and under what conditions.

Although it can hardly be disputed that disposing over an improved household income plays a vital role for the development process as do sound economic and fiscal policies the capabilities approach considers it to be merely of instrumental value in achieving human well being and development. The core reproach directed towards economic growth theories is that economic indicators are exalted to form the sole purpose and objective of development. For Arendt the problem with utilitarian judgements of this kind is not so much instrumentality, in terms of the usage of means to achieve an end but rather its generalization in which usefulness and utility are

established as the ultimate standards for life. Once an end is attained it ceases to be an end and therefore loses its capacity to guide and justify the choice of means. Meaning must be permanent and lose nothing of its character (Arendt 1998: 155):

The perplexity of utilitarianism is that it gets caught in the unending chain of means and ends without ever arriving at some principle which could justify the category of means and end, that is, of utility itself. The 'in order to' has become the content of 'for the sake of'; in other words, utility established as meaning generates meaninglessness (Arendt 1998: 154).

Temporary worker schemes may be preferable to migrating in an unauthorized manner, and as such signify an improvement over the current situation but they are not necessarily conducive to human development, especially when this means renouncing to fundamental freedoms in addition to compensating for reduced state involvement in the provision of social services. In the capabilities approach even the temporary curtailment of fundamental freedoms is not an option. Development is defined as a process of enlarging people's choices by promoting the development and exercise of human capabilities and freedoms. Political participation, free speech, choosing and changing employment; to live with one's family and enter convivial relationships with other members of society are freedoms that enjoy intrinsic value. They all form part of the development goal and are therefore in principle not negotiable. Under these circumstances, people are supposed to have the opportunity to lead the kind lives they have reason to value. This includes exercising a profession of choice that can offer a certain degree of gratification and personal fulfilment.

The conditions under which temporary worker schemes operate and their alignment with neoliberal policies conflicts with the capabilities approach in terms of both the opportunity and process aspect of human development. The opportunity structures considered necessary to develop and exercise human capabilities are either not fully available in places of origin, due to

the retrenchment of the welfare state, or are largely inaccessible in destination countries because of migrants' temporary and foreign status. At the same time the transnational setting of temporary worker schemes involves a detachment of migrants' place of gainful employment from their social and political membership in countries of origin. This limits their ability to influence the employment and living conditions through the democratic process. Workers enter an arrangement that is negotiated between participating states and employers but where they lack opportunities to partake in the terms of their gainful employment abroad. The GCIM emphasizes how many migrant workers are at risk of exploitation and abuse not only because employers and governments fail to respect internationally agreed labor standards, but also because they have little power to negotiate the conditions of their employment (GICM 2005: 54).

In the capabilities approach, however, the democratic process is viewed to be indicative to human development at all levels. Not only is it of intrinsic worth endowing individuals with essential political and civil rights, but it is also considered instrumental to holding the responsible authorities accountable for their actions while rendering the socioeconomic arrangements more responsive to people's needs and interests. Democratic participation is considered to be one of the main and most effective ways through which people can protect their human rights, while conversely the protection of such rights is itself a condition for widespread democratic participation (Gould 2004: 4). To paraphrase Pogge people

have a right to an institutional order under which those significantly and legitimately affected by a political decision have a roughly equal opportunity to influence the making of this decision – directly or through elected delegates or representatives (Pogge in Gould: 172).

It may be argued that migrant source countries are in principle accountable to their citizens at least when dealing with democratic systems. However, there is evidently a conflict of interest. States that rely strongly on foreign aid and migrant remittances may be unwilling as well as unable to take a strong stance on migrants' behalf, if doing so would jeopardize economic gains (Maher 2004: 137).

Additionally, the dislocation temporary worker schemes produce between migrants' place of gainful employment and their social and political membership sets certain limits to the degree in which sending countries can monitor and control their situation abroad.

In this situation the common practice is to refer to international human right standards and bilateral agreements to ensure that migrant workers are protected from exploitation and abuse. But a central problem of the liberal human rights ideal is its dissociation from a collective body politic. By detaching rights from communal association, classic liberalism extracts the very foundation on which rights are conceived and defended upon in the capabilities approach.

For Sen and Nussbaum democratic forms of governance play an important constructive role in the genesis of values and priorities that give rise to the conceptualization of needs and interests. Individuals are understood to be social beings in the sense that self-development occurs in the context of social relations. The opportunity to come together and deliberate over the social, political and economic arrangements affecting your life is thought to provide for the material and social conditions for self-development and the collaborative comprehension of problems and remedies. The instrumental effectiveness of freedom is therefore not only dependent on the free agency of people but relies further on a social matrix that encourages the formation of a certain kind of self-understanding and agency. This makes the constructive role of agency and freedom contingent on the formative power of the socio-economic environment that informs individual character and choice. Under this premise the capabilities approach accords

fundamental importance to the quality of social interaction as a constitutive feature of well-being and self-development.

The importance ascribed to democratic forms of governance connects human rights, in terms of both their implementation and conceptual range, to the body politic. If human rights are dissociated from their contextual attachment to a specific body politic where democratic forms of deliberation and self-determination can take place they lose the societal basis they are based upon. Reference to human rights as a recourse against exclusionary practices of the nation-state without offering alternative associative forms in which people can interact and define the courses of their lives together with the entitlements and opportunities structures to do so is therefore highly problematic. The exclusion of guest workers from the democratic process and spaces where public forms of deliberation can take place therefore deprives them from an essential condition to bring human rights to effect.

From this perspective, reference to international human rights treaties and conventions together with bilateral agreements to protect migrant workers during their employment abroad will not suffice if it is not accompanied by the opportunity to partake in the decision making process where they can effectively exercise their agency in dialogue with society and its political institutions.

The way international human rights standards lag behind reality gives to a certain extent testimony of the difficulties in establishing a framework that seeks to provide protection without offering sufficient levels to negotiate their terms. In many ways it is the lacking opportunities to negotiate the conditions of their gainful employment that stand in the way of temporary worker schemes' contribution to human development.

The German guest worker program provides an illustrative example of the limitations inherent to an ascriptive rights approach to provide for the conditions to develop and exercise individual

capabilities. Germany fulfilled many of the requirements international stakeholders are currently suggesting in connection with the re-introduction of temporary worker schemes. It granted its guest workers access to social services such as health care, accident and unemployment insurance as well as pension benefits. The contracts guaranteed them minimal wage, employment for at least one year, protected them from dismissal and secured them accommodation. The transportation costs were covered and the workers were offered language courses together with possibilities for further vocational training. Germany was also party to core international human rights treaties. But it also made use of its sovereign right to determine the conditions of guest worker admission accounting for a series of restrictions to their freedoms. In particular, they were denied a voice in public affairs, delegating foreigners to passive recipients of a minimal set of rights and benefits with few options to challenge exploitive and abusive situations on their own behalf. The restrictions guest workers experienced concerning their social, economic and political freedoms accounted for their lasting social isolation and marginalization (Castles 2003: 206).

This is not to disregard the importance of international human rights treaties and conventions as a source of protection against discrimination, exploitation and abuse. By reaching beyond state boundaries and instating an individual claim over a core set of rights, regardless of one's legal status within the body politic, the international human rights regime can and does provide an important resource against exclusionary practices of nation-states. It can abrogate the legitimacy of state actions if they fail to respect international human rights standards, especially when the state in question is signatory to relevant treaties and conventions (Sassen 1996: 95).

However, positive understandings of freedom argue that human rights cannot be reduced to a set of entitlements but need to be embedded within a political structure that provides a space in which they can be developed, challenged and renegotiated. Rights or entitlements are not static

but develop within a specific historical and situational context that give rise to a shared conception over the kind of rights that need to be socially ensured. As such they are never conclusive but need to be constantly re-negotiated to enrich their original meaning and match the socioeconomic reality that presents itself. In this regard, human development not only calls for the protection of individuals against arbitrary interference by the state or other external actors. It also entails putting the conditions in place that will allow people to develop their very own capacities for autonomy and self-development through and with society. To date, the governing structure of temporary worker schemes shows little concern over the way the socioeconomic environment and lacking opportunities to engage in public affairs affect migrant workers' prospects for self-development and agency.

The loss or retrenchment of a meaningful public space of deliberation has arguably one of the most substantial impacts on the conditions for the development and exercise of capabilities. Migrant workers are at best passive recipients of a set of rights and benefits but have little stake in the process itself. For this reason, depriving migrants from having a voice in affairs relative to their employment and living conditions abroad affects not only the intrinsic value human development accords to democratic forms of governance but impinges negatively on the instrumental and constructive role the democratic process has in supporting human development.

Temporary Worker Schemes and Democratic Governance

The close connection between democracy and the opportunity to develop and exercise individual capabilities together with the associated rights catalogue raises questions about membership. If self-development is a process requiring a social matrix that opens spaces for democratic forms of deliberation, human rights are then intimately intertwined with membership in a democratically governed political community.

Modern democracy, however, developed historically within the nation-state. Linz and Stepan argue, for example, *that democracy is a form of government of a modern nation state. Thus without a state no modern democracy is possible* (Linz/Stepan 1996: 17). On the grounds of this premise political and social membership is mostly organized and experienced within the confines of the modern nation state. It is here where claims of citizenship, community and participation are made (Lister 1997: 51; Benhabib 2004: 1; Brysk/Shafir 2004: 3).

A prominent defender of this view is Hannah Arendt. In her seminal work *The Origins of Totalitarianism* she argues that people's access to human rights is exclusively mediated through membership or citizenship in a nation-state. Lack thereof leads to rightlessness and therefore the loss of legal personality:

The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice (...). This extremity, and nothing else, is the situation of people, deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion (Arendt 1979: 296).

Arendt insists that the only source of human personhood, meaning the ability to act and be recognized by fellow citizens as an agent, is membership in an organized political body and full

citizenship in the nation-state. A condition she dubs with the remarkable phrase *the right to have rights*. The loss of human rights entails for Arendt the loss of the relevance of speech and human relationships both of which are essential characteristics of human life and, more importantly, of the human condition as a whole (Arendt 1979: 297).

The importance of membership in a political community as a prerequisite to access fundamental rights is shared by Michael Walzer. He argues, that forming part of the body politic not only represents in and as of itself an important aspect of human flourishing but is furthermore the most fundamental good we distribute to one another (Walzer 1983: 29; see also Benhabib 2004: 22). What is done with regard to membership structures all other distributive choices: it determines with whom we make those choices, from whom we require obedience and, to whom we allocate goods and services (Walzer 1983: 31). In this view, citizenship understood as social and political membership in a nation-state appears to be a prime condition for the promotion and exercise of individual capabilities.

Once people's lives and capabilities are no longer determined within a congruent economic, social and political community fundamental problems arise about the ways in which rights and adequate political spaces for democratic deliberation and participation can be guaranteed since the affected populace no longer coincides with the governing body politic. International labor migration, especially temporary worker schemes, illustrates how the global economy creates contradictions between spaces of political membership and market participation or economic citizenship (Lipschutz 2004: 31; cf. Stone 2003).⁶⁶ New types of political subjects emerge while the spaces of governance become more disperse and at times evasive as they reach beyond national state boundaries. This dissonance creates a new set of problems for political action and accountability (Lipschutz 2004: 13). To the extent, that weakened state-led government is not replaced or compensated by new global or transnational institutions that respond to democratic

principles of participation and accountability, the resulting regulatory breach can be easily filled by undemocratic structures of private governance (Gould 2004: 180).

Temporary worker schemes exemplify this process very well. The programs create a functional dissociation of migrants' economic engagement in host societies from their political and social place of belonging in countries of origin. This makes it very difficult for the affected workers to make use of their political and civil liberties to influence the socioeconomic arrangements pertaining to their employment conditions and well being. As discussed in the previous section, temporary worker schemes offer little, if any, opportunities for democratic participation.

Overall, there is little concern for the nature of the political process that brings these arrangements about. There is no public space open to democratic forms of deliberation in which the workers can express and represent their interests and needs. At the same time, one can observe a proliferation of private actors in the management of temporary work programs and the corresponding retraction of public institutions. Under these conditions private recruitment agencies, in particular, are able to take advantage of the relatively weak legal structures and control mechanisms to place migrant workers at jobs with substandard living conditions under highly precarious and often dangerous employment conditions. In this way, current developments encourage the worldwide mobility of people, but it is happening without democratic attachments and civic commitments. The result is the formation of a world proletariat, participating in global markets but lacking a demos (Benhabib 2004: 23)

The challenge ahead is to reconstruct a public sphere within which meaningful participation can take place and membership established beyond the confines of the nation state. In this regard, managing migration is also about finding ways of just membership (Benhabib 2004: 3). Carol Gould suggests a system of *inter-sociative democracy*, meaning the introduction of democratic

principles of participation and accountability into cross-border decision making whether political, economic, or social. It implies the introduction of democratic forms of organization at transnational levels that go beyond the bare attention to a subset of human rights but focuses instead on the economic and social well-being of the affected populace (Gould 2004: 2-3). This principle is defended on the grounds that the fundamental right to self-government and democratic control need not be confined to the state but in principle extends to any kind of human association that establishes a common set of binding rules acting upon shared goals (ibid: 163; cf. Dahl 1985: 61). People, it is said, should be free to control the conditions of their own activity where it is social or common.

Seyla Benhabib endorses a similar approach and suggests forms of disaggregated citizenship. She argues, that unravelling citizenship into its different components, commensurate with people's political, social and economic engagement, allows for the development and maintenance of multiple allegiances and networks across nation-state boundaries in international as well as transnational contexts (Benhabib 2004: 174; cf. Cohen 1999: 266). Existing state jurisdictions would certainly retain control in many areas as the instances that implement the rights and norms articulated on different political and legal levels. But new identities and new forms of representation could follow from new institutional structures that reach beyond the boundaries of the nation state (Cohen 1999: 266).

The idea that democratic forms of governance not only pertains to the state but should extend to other fields of social interaction and cooperation is consistent with Sen's understanding of the capabilities approach. He equally argues that the commitment to individual freedom must include political and social organizations, community based arrangements, non-governmental agencies of various kinds as well as the institutions that allow the functioning of markets and contractual relations (Sen 1999: 284).

However, defining who has the right to participate in which decisions is a difficult endeavour when the populace can no longer be defined on territorial grounds (Gould 2004: 174).

Democracy entails a conception of the demos, or the collective that has the right to participate in the decision making process. Simply asserting that all affected by a given decision have a right to participate isn't a viable option. Not only can the number of those affected be potentially very broad, but it is close to impossible to specify all those who would be affected. Decisions have unintended consequences and their reach is potentially unending. Moreover, people are usually differentially affected by decisions, which would technically entitle them to participate to different degrees rather than equally (ibid: 176).

Gould proposes two basic criteria to define who should be entitled to participate in the decision making process. First of all those should be able to participate in decisions who take part in a common activity, defined by shared aims. In other words, the democratic right to participation pertains in the first instance to those who are engaged with others as members of these political, economic, or social institutions (ibid).⁶⁷ For Gould being a member of an organization with common goals and aims, gives ground to the right to codetermine its decisions. Where direct participation is not possible, representation comes into play, and stakeholders would presumably at least have the right to select representatives to make decisions about matters that affect them (ibid: 225). Gould's second criterion is to regard a person as importantly affected when her human rights are in jeopardy (ibid: 212). Since human rights are understood to specify the necessary conditions for people to develop and exercise their freedoms anything that impacts on their basic freedoms, interests, and needs should entitle them to have a voice in the decision making process.

According to Gould the two criteria can be applied to social and economic institutions at any level, whether local, intrastate, and regional or cross-border communities and organizations.

They may include functional and territorial associations of varying size depending on the aims and interests they serve. The underlying principle is that the public of the polity in question is no longer understood as an undivided sovereignty but rather made up of much smaller and shifting publics (ibid: 204). Temporary worker schemes certainly represent such an arrangement characterized by common goals, and strictly defined rules and mechanisms to comply with the stated objectives – especially in the case of unskilled workers. With the adequate institutional structures in place participants of these programs can very well meet the membership criteria Gould establishes.

Participation need not be all encompassing granting each member of a decision making body equal power to determine the outcome of the decisions. In practice, such a requirement, especially when involving employment relations, would be cumbersome if not unworkable.

Gould suggests in connection with corporate policies that significant involvement be allowed on part of the workers concerning major managerial decisions and working conditions (ibid: 230).

Specifically, it would entail shared control and participation taking place at three levels. The first would be employees sharing control with managers over work allocation and methods. The second would be that of management, shared by having worker representatives discuss with managers the terms and conditions of work, including environment and facilities. And the third would be at the level of corporate policy, where her proposal is to have a dialogue between shareholders and employees, with each holding equal votes and access to the board of directors (ibid: 231). With respect to temporary worker schemes such a dialogue could unfold among participating governments, migrants and employers. Additional conditions that need to be met refer to provisions guaranteeing adequate access to shared information as a prerequisite for effective participation together with clear and recognized procedures for democratic management. Also relevant sorts of accountability need to be clearly articulated and

benchmarks developed to assess the responsiveness and compliance of the involved actors with the established agreements (ibid: 233).

Once migrants have a voice in the process it is far more likely that temporary work programs can conform to the principles of human development, as defined by the capabilities approach. It would also provide more legitimate grounds for the trade-offs temporary work programs may involve by adhering to the democratic process. The benefits associated with democratic forms of governance in economic affairs are manifold. It is said to contribute to the consolidation of values of justice and democracy by facilitating greater political equality and producing changes in human personalities and behaviour. It may reduce alienation, create a solidary community based on work, strengthen attachments to the general good of the community, weaken the pull of self-interest, produce a body of active and concerned public spirited citizens and stimulate greater participation and better citizenship in the government of the state itself (Dahl 1985: 95).

Introducing principles of democratic governance to manage temporary worker schemes is not as big a stretch as it may seem at first sight. Many labor exporting countries are creating new institutional structures specifically to regulate and monitor labor migration but have so far failed to open channels for the direct involvement of migrant representatives in policy formulation and implementation that would go beyond punctual consultations. Mauritius, for example, created a multi-agency empowerment program to oversee the implementation of circular migration programs, facilitate training and re-skilling of the unemployed, provide matching services and support small and medium enterprise development. While the program includes private sector representatives as well as representatives of various Ministries and Departments there hasn't been an effort to include representative bodies of migrant workers (cf. GFMD 2007: 7).

The Philippine approach to migration management exposes similar deficiencies. It has one of the most sophisticated migration management systems with a well developed institutional structure to address policy issues relative to the emigration of their domestic labor force but with little room for migrant involvement. The Overseas Workers Welfare Administration (OWWA) is charged with protecting and assisting migrant workers abroad. Membership in OWWA is mandatory for migrants going abroad through official channels and valid until their employment contract expires. It operates as a trust fund pooled from the mandatory 25US\$ membership contributions of the employees. As a welfare fund it provides a wide range of services to its contributing members including critical on-site assistance, insurance and loans, training, repatriation, and legal support. Migrants' direct representation within the governing structure of the OWWA however remains minimal.

In order to increase the legitimacy of labor policies that export a domestic work force it is critical that members participate and have their interests represented directly. Not only would this guarantee that the services remain relevant to the needs of the emigrant population and ensure that the views of the due-paying members are represented, but it would also allow for more transparency and accountability in the allocation of the available resources (cf. Agunias/Ruiz 2007).

International stakeholders taking an interest in temporary worker schemes show so far little interest to involve migrant workers in the design and implementation of these schemes. At best there are cautious reminders over the need to include migrant workers in the process. The GCIM, for instance, posits that *every effort must be made to make sure that migrant women are actively involved in the formulation, implementation and evaluation of such policies and programmes* (GICM 2005: 49). However, there is no further reflection over what such an involvement may imply. The organization that comes closest to incorporating migrant workers

is the ILO. In its multilateral framework it recommends that a tripartite procedure be established to ensure that employers' and workers' organizations are consulted on labor migration issues and their views taken into account (ILO 2004: 12). Moreover, it calls for stronger cooperation between workers' organizations in origin and destination countries to exchange information and possibly allow that union membership be transferred (ibid: 8). Governments are further encouraged to consult with civil society and migrant associations on labor migration policy and generally encourage networking among social partners, civil society and migrant associations to promote the rights and welfare of migrant workers (ibid: 14). Overall, however, recommendations are mostly confined to stepping up consultative efforts with migrant organizations and other interest groups rather than creating structures that would induce significant degrees of power-sharing in the decision making process.

CONCLUSIONS

The objective of this study was to examine whether temporary work programs, as they are being discussed in the ongoing consultation process on migration and development, offer conditions that will not only maximize the economic benefit of temporary work programs but, more importantly, promote human development of the migrant workers.

The notion that guest worker programs represent a convenient form of foreign aid to migrant source countries via remittances and skill transfers is not new. Many traditional guest worker schemes, including the German one presented in Chapter III, praised themselves for contributing to the economic development of labor exporting countries.

However, the involvement of multilateral development agencies, and their interest in finding ways to maximize the development returns of international labor migration, while mitigating its negative effects, introduces a new set of actors to the debate. This diversification of the involved stakeholders carries two important implications. First, it helps place the subject matter more firmly on the global policy agenda. This alone is an important achievement. Although international labor migration is inextricably connected to globalization it doesn't receive the same level of attention as other defining features of globalization such as the free movement of goods and capital.

Second, the involvement of international agencies in the discussion over adequate migration policies and management systems can provide a platform for opening the debate to new perspectives. It can serve to challenge conventional approaches, support inter-disciplinary exchange and identify alternative policy options and choices. In principle, organizations such as the World Bank, the International Labor Organizations and the United Nations adopt very different approaches to development in terms of both its meaning and the corresponding

policies. In this regard, the involvement of these organizations in contemporary discussions over development friendly temporary work programs projects the possibility of providing new and promising input to the subject matter. The United Nations in particular endorses human development as its leading paradigm but other institutions, including the World Bank, equally claim a commitment to principles of human development.

Nonetheless, the results, to date, are rather disappointing. Overall the new proposals show little innovation in their design compared to traditional guest worker programs. Set against the German program implemented between 1955 and 1973, the objectives and expectations associated with temporary worker schemes remained largely consistent over time.

Contemporary proposals offer at best a set of adjustments to prevent permanent settlement of the recruited workers and to guarantee their effective return to communities of origin. In this regard, temporary work programs continue to be characterized by a state-centred, top-down approach. They focus primarily on policy outcomes with little concern for the quality of the process that brings these labor arrangements about and how this may affect the human development of the migrant workers.

As a result, the contribution that temporary worker schemes could make to the development process exhausts itself in their instrumental value to reap the economic benefits of international labor migration. Non-monetary benefits in the form of social remittances may be related to human development, but are, in principle, not consistent with the capabilities approach. Migrant families may profit from an improved access to health care and education. In some instances traditional gender roles could be disrupted because women gain increased access and control over monetary resources. Under these circumstances, social remittances certainly translate into important contributions to development and individual well-being, especially for migrant families. Nonetheless, they remain contingent on the monetary resources of the migrant

workers. Social remittances don't involve the kind of universally accessible opportunity structures envisioned by the capabilities approach. In particular, opportunities that are mediated through increased purchasing power tend to be politically dissociated from the state and the responsibility of society as a whole to provide its members with a social infrastructure that helps develop and exercise individual capabilities through the de-commodification of basic social services. In other words, social remittances, as a form of human development, are disjointed from the political process.

Moreover, the development gains are achieved at the cost of substantial sacrifices endured by the involved workers. From this perspective, the processes that bring these social remittances about conflict with the fundamental principle established by both Sen and Nussbaum that no person should be treated as a means to an end.

On this note, the economic imperative of temporary worker schemes remains paramount. At best they offer migrants an increased household income and improved personal security and protection relative to the situation they would face under illegal conditions. This comes at the expense of migrants' rights and freedoms. These include, among others, tying the residence permit to a specific employer or job category; low chances for personal advancement as a cause of language barriers and social isolation from the host society, separation from their families and the lack of opportunities to partake in the decision making processes affecting their employment and living conditions. The trade off is justified with the argument that the economic returns of temporary work programs outweighs their costs.

From this perspective, the "triple win" mantra, frequently recited in connection with temporary work programs, can only be sustained within a utilitarian framework that maximizes the economic potential of international labor migration. It's this utilitarian calculus that conflicts

with human development, as defined in the capabilities approach, because it fails to endow economic productivity gains with a more substantial purpose or meaning.

The adoption of a utilitarian frame of reference is remarkable, considering that organizations such as the World Bank, the International Labor Organization and the United Nations tend to display very different conceptions of development and the conditions for its achievement. Given the diversity of the involved stakeholders and contributors to the ongoing consultation process on migration and development, the relative uniformity of the prevailing discourse is astounding. Moreover, the similarity of these schemes with their predecessors raises questions about their viability in terms of assuring return and reintegration of the migrant workers. This is of special importance, considering the long term consequences that may follow from permanent settlement of temporarily admitted workers. As discussed in Chapter III, the singular disadvantages migrants face in the host society during the initial recruitment stage is likely to create the structural conditions for their lasting socioeconomic marginalization once they begin to settle. This may further compromise future prospects of human development for the second generation leading, in the worst case scenario, to processes of downward assimilation. What may work in favor of today's schemes is that they are a lot smaller in scope than the traditional guest worker programs, which facilitates their management. On the other hand, their limited coverage makes it unlikely that they can fully meet the demand for low skilled labor. This, in turn, may encourage undocumented migration for those that are not covered under regular programs. Stephen Castles (2007) argues that this may, in fact, lead to a situation in which temporary work programs co-exist with the systematic use of undocumented workers. Additionally, the success of these schemes appears to be contingent on a series of conditions that involve, not only high levels of managerial capacity, but that may also challenge established and powerful interest groups in destination countries, while setting high standards for migrant source countries in

terms of good governance and economic development. These factors reach far beyond the immediate scope of the programs and are difficult to control adding a certain degree of unpredictability to the policy outcomes of temporary worker schemes.

However, the aim of this study was less to determine the viability of contemporary proposals, than to examine the ways in which their design conflicts with principles of human development, as defined in the capabilities approach. From this perspective, it was emphasized that the migrant workers lack the necessary opportunity structures that will enable them to develop and exercise their capabilities. A central problem lies in the absence of institutional arrangements that comply with principles of democratic governance. Conceived of as bilateral agreements between migrant sending and receiving countries, migrants aren't given a stake in the decision making process. They lack opportunities to express and represent their interests collectively and negotiate their employment and living conditions on their own behalf. Neither are there reliable and effective mechanisms in place that would enable the workers to hold the responsible authorities accountable for their actions.

Without opportunities for meaningful political participation, adherence to international human rights standards amount at best to a welfarist approach that may accord a set of entitlements to migrant workers but, at the same time, denies them agency in the identification, formulation and exercise of human rights. The social-democratic form of governance, envisioned in the capabilities approach, goes far beyond endowing people with a set of social and economic rights. These entitlements are supposed to form part of a broader governing structure that encourages agency in reaching common understandings over their distribution and content. The capabilities approach makes processes of self-development contingent on processes of

Vergesellschaftung, that is community based processes of socialization - of coming together and developing a sense of self in and through others.

Opening new channels for temporary migration to high income countries may be an improvement over the current situation that tends to encourage undocumented migration due to insufficient opportunities to migrate legally, especially for unskilled workers. But it falls short of offering more substantive opportunities for human development. Not only are rights and freedoms curtailed that enjoy intrinsic value in the capabilities approach, but the arrangements further fail to gain legitimacy through the democratic process. Decisions may require trade-offs but they need to be brought about through the democratic process to acquire legitimacy (cf. Dahl 1985: 89; Benhabib 2004: 218).

Martin et.al. argue in a recently published work on Migration Management that *cooperation should be based on the recognition that the best migration policy is one that seeks not to block but to regulate smoothly international flows of people* (Martin et. al. 2006a: 231). This study argues that temporary worker schemes, more than regulation, require governance that adheres to principles of participation and accountability.

The transnational setting of temporary work programs may be a challenging quest for democratic governance. But if human development is to form part of arrangements that regulate international labor migration, policy makers need to address these issues in an innovative fashion if their efforts should not to be reduced to serving economically defined national interests. Temporary worker schemes need to open spaces where democratic forms of deliberation can take place, common interests and needs identified, and responsible authorities held accountable for their actions. The challenge ahead is to create new forms of human association that open channels for democratic deliberation and decision making. These must reinvigorate human agency in the formulation and generation of arrangements and entitlements

that reach beyond the nation-state as the sole locus for democratic governance. Considerations of this kind have not yet surfaced among national and international stakeholders interested in implementing temporary worker schemes as a development strategy.

Gould's concept of *inter-sociative* democracy gives some indication over ways to align intergovernmental co-operation and organization with the requirements of democratic governance. The approach is instructive in finding new ways to govern temporary worker schemes which are more commensurate with human development objectives. It also would open a broad field for further research.

The introduction of democratic governance principles in the management of temporary work programs calls for at least two distinct but related areas of inquiry. At an operational level, it raises questions over adequate institutional and procedural arrangements. This entails delimiting and testing adequate mechanisms of participation and representation of the migrant workers.

The same is true for the involvement of other stakeholders, specifically employers and state parties. It will also be necessary to specify how the different actors should relate to each other and the kind of accountability structures that would have to be instituted. Finally, one would have to assess what functions the established institutions in migrant source and destination countries could assume and where novel institutional arrangements could be placed in order to respond to the specific requirements of transnational labor arrangements.

At a more programmatic level, both the prospects and limitations of democratic governance principles in offsetting vulnerabilities that stem from temporary employment abroad need to be determined. Though democratic forms of governance may be an important precondition to instate temporary worker schemes that comply with principles of human development, it is unlikely that it can solve all issues and problems relative to temporary work programs. For example, difficulties arising out of language barriers and the very notion of non-permanency

associated with these labor arrangements are unlikely to be unravelled through democratic deliberation and participation alone. It is, therefore, important to clarify both the potential improvements that such an arrangement may bring for the workers as well as its limitations.

In conclusion, it is worth highlighting, that international labor migration is a permanent feature of the global economy and it is likely to intensify in the years to come. Policy makers and scholars alike agree that there is a structural demand for migrant labor. Firms and employers in a number of sectors rely heavily on the supply of foreign workers; regardless of whether the general population welcomes or opposes their presence (Portes 2007: 87). Under these conditions, temporary worker schemes are intended to fill a permanent need in the economy of destination countries. The curtailment of workers' rights and freedoms by institutionalizing a concept of non-permanency is therefore hard to justify on the grounds of fairness and social justice. Human development, as understood in the capabilities approach, doesn't allow for a migration policy to dissociate the economic value of labor as a production factor from the human condition. Over the long term, the presence of a disenfranchised class of foreign workers, whether they rotate or not, will undermine the normative foundation of democratically governed societies. For these reasons alone, it is necessary to find forms of governing international labor migration that will not compromise the human development of the workers.

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Introduction

¹The average rate for the United States is a lot higher with an annual increase of approximately 9 percent since 1997. This may have pulled up the overall average for OECD countries (Abella 2006: 8).

Chapter I: The Human Development Paradigm

²(UNDP: <http://hdr.undp.org/en/humandev/>; cf. UNDP 1990: 10).

³The ideal that all human activity should be concerned with facilitating people's ability to lead 'flourishing' lives is a classic philosophical principle. It reaches as far back as Aristotle and informed the work of philosophers and political economists as diverse as Immanuel Kant, Karl Marx, Adam Smith, Robert Malthus and John Stuart Mill. According to the UNDP this principle is being obscured in much of development thinking and practice by an excessive preoccupation with growth in GNP and income. As a result there is a tendency to focus erroneously on the material means of development instead of its end or purpose (UNDP 1990: 9).

⁴Also cited in Sen 1999: 14

⁵It is worth noting, that the UNDP refers explicitly to the work of Amartya Sen to provide for the conceptual foundation of its human development concept (<http://hdr.undp.org/en/humandev/origins/>). Sen and, in a slightly different variation, Martha Nussbaum can be considered the leading figures of the capabilities approach. Their concept is characterized by its extensive recourse on Aristotle's political philosophy and offers a neo-aristotelian perspective to human well-being and development. Though very similar, the capabilities approach was developed in somewhat different ways by Martha Nussbaum in philosophy and Amartya Sen in economics. Although Sen shows a strong interest in social justice, he tends to focus his application of the capabilities approach on the comparative measurement of quality of life. Nussbaum on the other hand uses the approach to provide a philosophical argument in favor of core human entitlements that need to be respected and implemented by all governments (Nussbaum 2006: 70). Additionally she develops a list of basic human capabilities that should be guaranteed, a specification Sen explicitly refrains from doing.

⁶Sen emphasizes five distinct types of instrumental freedoms. 1) Political freedoms (including civil rights). These entail the opportunity to determine who governs and on what principles, the possibility to scrutinize and criticize authorities, freedom of political expression and uncensored press. 2) Economic facilities that is the opportunity to utilize economic resources for the purpose of consumption, production or exchange. 3) Social opportunities. These refer to arrangements that society makes for education and health which influence the individual's ability to live better including effective participation in economic and political activities. 4) Transparency guarantees. These comprise the freedom to deal with one another under guarantees of disclosure and lucidity. Such freedoms, it is argued, help prevent corruption and financial irresponsibility. 5) Protective security, meaning the provision of a social safety net to protect the population from misery through unemployment benefits or statutory income supplements to the indigent (Sen 1999: 38pp).

⁷The idea that freedom requires the development of capabilities and that these in turn are mediated through society sets it apart from classic liberal interpretations of freedom. Also known as negative theories of freedom, liberalism views freedom essentially as the absence of external or legal obstacles. In other words it calls for the independence of the individual from interference by others, be these governments, corporations or private persons (Taylor 1985: 189). The individual is considered a self-sufficient rational actor whose dignity, rationality and self-understanding are given qualities humans are

naturally endowed with. Individualist perspectives of this kind tend to assume that individuals need society, democratic institutions or the rule of law only for the purpose of protection from arbitrary intrusion (ibid: 309). Moreover, the subject is considered the final judging authority as to what her freedom consists of (ibid: 222). From this follows a categorical rejection that an external actor may second-guess what a good human life consists in and evaluate the motivation of people's choices as being either good or bad. Aristoteleans on the other hand reject classical liberal ideas of freedom that abstract from the institutions and practices that shape character and choice. It holds against classic liberal accounts that by elevating the individual self it obscures the formative context of political life further ignoring how human nature is embedded in a particular and variable context (Tessitore 2002).

⁸Although aristotelean accounts insist that social interactions help shape individual character and identity questions about the nature and value of any particular form of communal life remain undefined (Yack 2002: 37). The understanding of human sociability does not seek to identify community with collective identity nor does it suggest a subordination of the individual to the collective.

⁹Aristotle's concept of good human functioning includes both good functioning of the body (like nutrition, good air) and good social partaking or interaction (Nussbaum 2002: 49).

¹⁰According to Nussbaum two of the human functionings organize and arrange all of the others. These two are practical reason and affiliation or human sociability. Practical reason requires for its development institutional and material conditions such as humanistic forms of education, and the protection of citizen choices. Affiliation demands the support for rich social relations with others, both in terms of close personal relationships with friends and family as well as political relationships as a citizen (Nussbaum 2002: 72pp).

¹¹UNDP's human development concept offers a similar informational baseline to evaluate development. It distinguishes between the formations of human capabilities as such, like improvement of health or knowledge, and the actual use that people can and do make of their acquired capabilities (UNDP 1990: 10).

¹²Social citizenship rights promote the de-commodification of labor by decoupling the living standards of individual citizens from their market value. By recognizing an obligation on society to ensure that individual members are able to meet their basic needs regardless of their relative acquisitive power, market forces are tempered (Lister 1997: 17).

¹³Based on an abstract idea of the State of Nature, classic liberalism defines individual rights in function of providing guarantees for non-interference. In this view the freedom to choose the life one has reason to value is contingent on the protection from external impediments (Taylor 1985: 196).

¹⁴The liberal political tradition emerged in the 17th century and contains a set of civil and political rights that are supposed to guarantee the formal equality of the individual who is sovereign and protected by the state. Amongst the most influential scholars within this liberal tradition is T.H. Marshall who included next to civil and political rights also social rights as constituent elements of citizenship. The civil element is composed of the rights necessary for individual freedom – liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice. Citizenship as obligation has its roots in the more ancient civic republican tradition of classical Greece. Here political participation is viewed as a civic duty and is manifestation of the citizen as a political being (Lister 1997: 13). Political activity is considered not a means but an end in itself, associated with the pursuit of the 'public' or 'common good', which stands apart from the interests of the individual citizen. The modern civic republicanism ideal of citizenship is therefore active ongoing engagement in the formal political process (ibid: 25).

Chapter II: Migration, Development, and the Merits of Circular Migration Patterns

¹⁵It is necessary to keep in mind that policy in the areas of trade, international cooperation and foreign affairs have a significant impact on the migratory flows. Oxfam estimates that trade restrictions by rich

countries cost developing countries around 100\$ billion a year – twice as much as they receive in aid (Castles 2007: 42)

¹⁶The growth of undocumented migration throughout Europe is partly a response to neoliberal trends pushing for labor market deregulation. This led to a weakening of inspection systems and the decline of trade unions. Growth in casual employment and subcontracting in turn expanded the informal sector, even in Northern European countries with a strong tradition of labor market regulation. For migrant workers these conditions are a major source of attraction (Castles 2007: 44).

¹⁷Barbara Ehrenreich and Arlie R. Hochschild coined the term global care chain to describe how the subcontracting of care work forms an important part of the global division of labor. A typical global care chain may be comprised of an older daughter from a poor family who cares for her siblings while her mother works as a nanny caring for the children of a migrating nanny who, in turn, cares for the child of a family in a rich country (Ehrenreich/Hochschild 2002).

¹⁸The motivations to emigrate are thought to equally determine return migration. Neoclassical economics (NE) views return migration as a cost-benefit decision. It is thought to be primarily driven by expected lifetime earnings. In the absence of reduced bi-national wage differentials, return migration would only occur if migrant's expectations of higher net earnings are not met as a consequence of un- or underemployment, when wages are lower than expected, or because the psychic costs of moving are higher than anticipated (Constant/Massey 2002: 10).

¹⁹Chain migration is a term used in older literature to describe the way initial migration – usually of young workers - would be followed by others from the same family or community, sometimes leading to a partial recreation of the home community in the new country (Castles 2007: 35).

²⁰Facilitating migration is a major and largely legal international business. Recently, governments started to address the illegal side of the migration industry, especially human smuggling and trafficking. They are stepping up their efforts to control it by developing more international legal and police instruments.

²¹The Berne Initiative sought to complement the work of the International Dialogue on Migration underway in IOM's governing Council. The IOM Council established in 2001 the International Dialogue on Migration (IDM). It's an annual forum that reaches out to governments, inter-governmental and non-governmental organizations to discuss migration policy issues of common interest and potential fields of cooperation. While the Berne Initiative and the International Dialogue on Migration represent state-owned initiatives the creation of the "Geneva Migration Group" in April 2003 responded to the need of enhancing cooperation among different international organizations working on migration related issues. This group was originally composed of the ILO, IOM, OHCHR, UNCTAD, UNHCR and UNODC. In early 2006 its membership was expanded to include DESA, UNDP, UNFPA and the World Bank. It was then renamed the "Global Migration Group" (GMG). In November 2007, the GMG was further expanded to include the Regional Commissions, UNESCO, UNICEF and UNITAR. The Global Migration Group (GMG) is an inter-agency group that meets at the level of heads of agencies. Its objective is to promote the wider application of all relevant international and regional instruments and norms relative to migration. It also seeks to provide a more coherent and stronger leadership that can help improve the international community's policy and operational response to the opportunities and challenges posed by international migration.

²²In its Balance of Payments Statistical Yearbook the International Monetary Fund separates remittances into three distinct categories 1) Worker remittances. This is the value of the monetary transfers the workers make for more than one year. 2) Compensation of employees. These describe the gross earnings of foreigners residing abroad for fewer than 12 months, including the value of in-kind benefits such as housing and payroll taxes. 3) Migrant transfers. This is the net worth of migrants moving from one country to another (for example, the value of IBM stock owned by a migrant who moves from France to Germany gets transferred in international accounting from France to Germany) (Taylor 1999: 67). Reporting systems tend to differ on a country by country basis, especially regarding workers' remittances and employee compensation. For this reason it is usually suggested to lump these two categories together as migrant remittances.

²³ According to UN estimates the leading recipients of remittances in 2004 were Mexico (\$16 billion a year), India (\$9.9 billion) and the Philippines (\$8.5 billion). Remittances as a share of GDP are much higher in smaller countries such as Jordan (23%), Lesotho (27%) and Tonga (37%) (GICM 2005: 26).

²⁴ According to Adams and Page a ten percent increase in the share of international migrants in a country's population will lead to a 1.9 percent decline in the share of people living on less than \$1 per person a day (World Bank 2007: 67).

²⁵ Neo-classic economic theory on the other hand tends to focus on the direct contributions of remittances to the household income together with the potential impact large-scale emigration can have on domestic labor markets. The understanding is that international labor migration represents in principle a loss of human resources for migrant sending areas. If there is surplus labor in the sending area, this labor loss has zero opportunity costs. That is, the migrant sending economy can sacrifice workers without suffering a loss in production. By contrast, if labor shortages exist in the migrant sending economy, including seasonal ones, those who migrate would have made a positive contribution to production in places of origin had they stayed. If migrate additionally take capital with them, be it human or financial, the capital stock in migrant sending areas declines, reducing the productivity of other, complementary inputs, including labor. In this view the loss of labor cum capital through migration may inhibit economic growth in migrant sending economies. Remittances may reduce or reverse the negative loss of labor and capital only when the size of remittances exceeds the value of production lost due to emigration (Taylor 1999: 66pp).

²⁶ The process in which migration drains migrant sending areas of their labor and capital, crowding out local production and tradeable goods is commonly referred to as the 'Dutch Disease Effect'. Because migration is a self-perpetuating process villages, regions and in a few cases even countries may specialize over time in the export of their domestic work force (Taylor 1999: 64).

²⁷ Since 2000 nearly 16,000 African nurses registered to work in the UK alone. Only 50 out of 600 doctors trained since Independence are still practising in Zambia. And it is estimated that there are currently more Malawian doctors practising in Manchester, England, than in the whole of Malawi (GICM 2005: 24).

²⁸ For Portes professional migration need not be formally cyclical to become so in practice. Migrant professionals commonly have the necessary motivation and resources to engage in transnational activities in favour of their home country institutions. These activities can often make major contributions to scientific and technological development in sending nations. However, the role of the state in this area, as in all others pertaining to national development, is decisive. The proactive intervention of the state to create productive infrastructure in rural areas and scientific/technological institutions capable of innovation are necessary conditions for the development potential of international migration to materialize (Portes 2006: 29)

Chapter III: The Re-Invigoration of Temporary Worker Schemes for Development

²⁹ Temporary work programs tend to cover employment sectors that are overwhelmingly male dominated such as construction and agriculture. Typically female occupations like domestic work are not considered in these arrangements. Under these circumstances women who migrate for these jobs often do so without documentation and rely on trafficking networks for passage (Maher 2004: 144). For this reason the ILO urges states to incorporate a gendered perspective in their labor market analysis (ILO 2006: 12).

³⁰ The growing protagonism of the European Union on migration related issues began with the Amsterdam Treaty. Signed in October 1997 and brought into effect on May 1st 1999, the treaty commits the EU to develop a common immigration and asylum policy (Martin et al 2006a: 74). The idea is to cover the overall management of migration flows, establish common rules and standards for asylum, enter partnerships with countries of origin and promote the integration of third-country nationals (Castles 2007: 52).

³¹ Next to unskilled workers, additional categories include students, researchers and young professionals.

³²The measures the EU is proposing are not new. Germany, for example, started to offer professional training to prospective guest workers together with German language courses in their countries of origin in 1970 (McRae 1980: 48). Third component is reduce the risk of brain drain. To a certain extent, circular migration may limit the long term risk of brain drain. Specific actions to address brain drain should be tailored to the situation in the country concerned. They could include: commitments by EU Member States not to recruit actively in sectors indicated as being under stress by that country; mechanisms to make it easier for returnees to the third country in question to divide their working life between two countries; or support from the Community and/or Member States to help the partner country create sufficiently attractive professional opportunities locally, especially for the highly skilled, as an alternative to emigration.

³³Reducing the risk of brain drain is a declared objective of these mobility partnerships. Circular migration is considered a viable option to serve this purpose. The specific actions addressing brain drain are supposed to be tailored to the situation of the country in question. Policies may include a commitment by EU Member States to refrain from recruiting actively in sectors that are under stress, introduce mechanisms that make it easier for returnees to divide their working life between two countries, support partner countries in creating sufficiently attractive professional opportunities locally, especially for the highly skilled, and thus create alternatives to emigration.

³⁴The term “guest workers” is the generic label for all migrant workers who have no right to permanent settlement (Abella 2006: 5)

³⁵The objective of ensuring non-settlement through rotation and artificially binding immigration policies are often in conflict with economic efficiency criteria. Both employers and workers invest in some job training but due to such policies are often unable to reap the resulting productivity gains (Abella 2006: 5).

³⁶Temporary work programs are also thought to gain wider public support in destination countries due to the expected return of the migrants while protecting the interests of local workers at the same time. These schemes are also considered a far more desirable option than a policy of benign neglect towards illegal immigration, which can trigger a race to the bottom in wage and employment conditions for certain jobs, hence adversely affecting local workers and potentially discouraging employers from modernizing the production processes (IOM 2005).

³⁷The same is true for the US Bracero Program. It was designed to supply agricultural workers to southwest agribusinesses. It started in 1942 with 4203 recruits, peaked in 1957 with 450 422 workers and formally ended in 1965. After this period the proportion of undocumented migration to the US increased accordingly (Cohen 2006: 138pp).

³⁸Many migrants did return home. Between 1960 and 1999 70% of the 30 million foreigners who stayed in Germany more than 90 days left, but few German were prepared for the settlement of the remaining 30% (Martin 2004: 228).

³⁹The distribution of nationalities shows clear trends: until 1969, the Italians constituted the largest group of foreign workers in the Federal Republic, having reached the level of 100.000 as early as 1960. Spaniards and Greeks ranked in second and third position (100.000 in 1963), followed by the Turks (1965) and the Yugoslavs, who topped the 100.000 mark in 1968. By 1980, the Turks surged into the lead and formed by far the largest group of foreigners, with respect to both total numbers of foreign residents and the amount of gainfully employed workers (Herbert 1990: 202).

⁴⁰Germany's lack of preparedness and willingness to deal with the permanent settlement of guest workers resulted in a set of highly ambiguous policies. On the one hand government officials tried to restrict the further influx of foreign workers, and if possible reduce the number of foreigners already residing in the country by encouraging their return. On the other hand efforts were undertaken to promote the integration of foreign nationals already living in Germany. This double strategy resulted in a series of contradictory policies. In 1973 for example the government increased child allowances which included foreign residents. This created a strong incentive among the foreign population to bring their children to Germany. At the same time the Ordinance on Work Permits stipulated that foreign nationals, including youth that entered the country after November 1974 were not to be issued a work permit. Estimations say that in the first 24 months after the recruitment ban went into effect 40.000 foreign juveniles immigrated

to Germany and were barred at the legal age of employment from receiving a work permit. Eventually legislation changed and foreign youth were permitted to enter the labor force at the age of 18 under the condition that no qualified German was available and the postulant had resided over two years in Germany. Newly arrived spouses were not allowed to work for one to four years (Rist 1978: 114pp).

⁴¹It should be noted that all three of these regulations were not applicable to workers from other ECC countries

⁴²In a striking resemblance with the situation we are facing today historical antecedents that suggested a similar dynamic inherent to guest worker programs, as for example in the case of Polish worker recruitment in the Ruhr industrial region before World War I, were cast aside with the argument that modern administrative systems were more effective than in the past.

⁴³Family reunion was not the only form of continued migration. Political unrest and ethnic conflict in Turkey generated waves of asylum seekers, who found shelter in Turkish and Kurdish communities abroad (Castles 2003: 202).

⁴⁴Wages for male foreign workers were more than 75%, in the case of women 60%, below the average wage for comparable jobs; for skilled workers that figure even reached 80% below the average pay for comparable jobs in the economy (Herbert 1990: 241).

⁴⁵Improvement came with the Ordinance on Work Permits that passed into law in 1971 which allowed foreigners that were employed over 5 years to obtain a special work permit limited to 5 years. This permit was not dependent on changes in the economy and the labor market. Under these conditions the workers could no longer be compelled to return home by denying them a valid work permit (Herbert 1990: 232).

⁴⁶This regulation was valid during the guest workers' first year in Germany and whenever the recruitment was organized through the public employment service

⁴⁷The company housing facilities were usually large barracks or boarding homes in close proximity to the work place.

⁴⁸Guest workers' insecure status did not end with the order to be deported. The Alien Act stipulated that if a foreigner whose residence and work permit was retrieved must be taken into custody until deportation was effected. This could last as long as one year (Rist 1978: 140).

⁴⁹The case of workers from Common Market nations was a little better since they were put on an equal footing with their German counterparts (Herbert 1990: 214).

⁵⁰German representatives were mostly from city agencies and officials having responsibility for foreign workers such as social welfare and housing departments, labor unions and charity organizations.

⁵¹Their status made them highly dependent on maintaining a permanent residency. The loss of it could lead to dismissal and deportation. Often enough children were not registered by their parents at local schools because their living conditions didn't comply with regulations which could lead to deportation. Their living situation equally affected their ability to bring their families because they were required to prove that they were able to provide for adequate living arrangements and a secure income. At the same time spouses were not given a work permit preventing that an additional income be earned. Low wages, discrimination and exploitation on the housing market together with legislation that made it impossible for guest worker families to earn a double income undermined in many cases a nominal right to family reunification.

⁵²Municipalities struggled with infrastructural problems because they were not prepared to receive foreigners permanently and their presence rose social and financial costs considerably (Herbert 1990: 238). To prevent an excessive concentration of foreign workers and their families in certain metropolitan areas the German government allowed for restrictions in the number that could be admitted. Cities with more than 6% foreign worker population could apply for a permission to limit further immigration. Once the concentration of workers reached 12% cities had the right to act on their own and refuse the admission of additional workers. This policy had a significant impact on the lives of foreign workers most notably it hindered family reunion, job mobility and in some instances pushed guest workers and their families into illegality. Although the claimed policy objective was to encourage distribution and in this way minimize the social costs, it tended to re-inforce isolation, illegality and further marginality (Rist 1978: 151pp).

⁵³One route out of factory work is self-employment: 'ethnic small businesses' become significant in virtually all industrial countries. However, many small businesses fail, and the rate of self-exploitation (long hours, poor conditions, use of family labour power, insecurity) is very high. Many ethnic entrepreneurs are concentrated in 'ethnic niches' such as retail trade, catering, construction and transport. By 1999 263.000 foreign residents of Germany were classified as self-employed, along with 23.000 family workers (Castles 2003: 208).

⁵⁴The definite policy shift was brought about in 2001 with a historic report from the Süßmuth Commission entitled *Organizing Immigration – Fostering Integration*. The commission, which was comprised of political party representatives, employers, unions and churches, declared that *Germany is and should be a country of immigration* (Martin 2004: 221).

⁵⁵The changing discourse reflects the differences between neo-classical approaches to migration and the new economics of labor migration presented in Chapter II. The latter emphasizing the temporary intend of abroad employment as a strategy to meet certain saving targets that can compensate for market failures in places of origin while the former emphasises permanent settlement to increase life-time earnings.

⁵⁶The administrative procedures associated with portability refer mainly to the totalization of periods of insurance in the host and the home country to determine the worker's pension benefits in both countries, the extraterritorial payment of pensions, and transfers between public health care authorities in both countries to guarantee continued health coverage (Holzmann 2005: 2).

⁵⁷Such financial return incentives were tried before with mixed success. The most notorious example is the Mexican Bracero program that required a portion of migrants' earnings to be deduced for retirement in Mexico but many workers never received their contributions (IOM 2005: 216).

⁵⁸One of the most relevant treaties is the International Covenant on Economic, Social and Cultural Rights (ICESCR) which guarantees the right to work, free choice of employment as well as just and favourable work conditions. Additionally, state parties are called upon to ensure that all workers have the right to form and join trade unions, access to social security, including social insurance, an adequate standard of living, the highest attainable standard of physical and mental health, education, and to take part in cultural life. However, the ICESCR is in many respects only aspirational. State parties commit to take steps to the maximum of their available resources in order to progressively achieve the full realization of the rights recognized in the Covenant including the adoption of legislative measures (Susan Martin 2005: 9).

⁵⁹The most important regulations dealing specifically with the rights of labor migrants are the ILO Conventions No 97 concerning Migration for Employment which obligates States to provide free and accurate information to migrants, to prevent misleading propaganda, to facilitate the departure, journey and reception of migrants, to prevent discrimination against migrants and to permit remittances. The second one is Convention No 143 which requires States to respect the human rights of migrants, to investigate, monitor and suppress trafficking, and to provide equality of opportunity and treatment in areas pertaining to employment, social security, unions, and cultural rights (Susan Martin 2005: 11). Other relevant ILO instruments are the equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention, the 1998 Declaration on Fundamental Principles and Rights at Work and ILO Convention No. 157 concerning the establishment of an International System for the Maintenance of Rights in Social Security. The latter establishes principles for bilateral instruments concerning the maintenance of social security for international migrants (Holzmann 2005: 24).

⁶⁰The GFMD came up with the proposition of introducing co-management systems between governments and the private sector to reduce migrants' reliance on costly middle-men and further help protect them from illicit practices.

⁶¹Convention No.97 refers to Migration and Employment. Convention No. 143 addresses Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

⁶²A survey conducted by the ILO found that out of 92 countries 20 reported having bilateral agreements on seasonal agricultural programs in the year 2000. Many of the agreements were entered into by western European countries with former communist countries after the collapse of communism, notably those of Germany (with Czech Republic, Poland, Slovakia and Romania), Greece (with Bulgaria and Albania), Spain (with Poland and Romania), France (with Poland), and Italy (with Albania). These may have been

prompted by concerns over clandestine movements. Many observers believe that the German seasonal foreign workers program succeeded in turning some otherwise unauthorized migrants into legal guest workers. About 90 percent of the 293,000 seasonal migrants admitted in 2002 came from neighboring Poland, and 90 percent of them worked in agriculture. The program was administered by the German Public Employment Service and its counterparts in origin countries. German employers and migrants are required to pay payroll taxes that are about 35 percent of wages. Overall Germany reported having a total of 26 agreements on guest workers and so-called “posted workers” and “contracts of manufacture” (in addition to about 20 additional agreements on social security) (Abella 2006: 31pp).

⁶³The main problem with pension portability in the absence of bilateral agreements is that the periods of contribution are not totalized that is contributions are not added together to determine migrant’s entitlements. This can bring significant disadvantages for international migrants with respect to benefit eligibility and replacement rate. Migrants may not be entitled to a pension because they didn’t contribute long enough to some or all pension systems although they may have worked a sufficient amount of time once the period of employment is totalized. Additionally, migrants who split their careers over various countries without totalization will have to accept low replacement rates. Not having entitlements to a public pension usually means that their access to public health services during retirement is also denied. The EU is comparably active in signing bilateral social security agreements with its neighbouring countries. However, attempts to incorporate the special needs of migrant workers, in particular from non-EU member states into the welfare systems remain scattered and uncoordinated. Most countries grant full equality of treatment to third country nationals only after awarding them long-term or permanent residence status. A conceptual alternative to exportable pensions (that is annuity as a stream of payment till death) are lump sum payments to returning migrant workers that reflect the contributions made to the pension system during employment in the host country (Holzmann 2005). Germany includes health care benefits in its bilateral agreements which guarantee that employees and pensioners who move between states are continuously covered. As a general rule, employers and pensioners are always insured with the health care system of the country of residence. In the absence of bilateral agreements German pensions can still be exported according to national law, but reductions in the determination of the replacement rate may apply. The reduction rate is approximately 30 percent (Holzmann 2005: 55).

⁶⁴In the early to mid 1990s Germany launched a new set of small-scale temporary worker schemes for people from Poland and other Central and Eastern European countries (Castles: 203). Unlike traditional guest worker programs these are a lot smaller and designed to fill vacancies in specific sectors rather than covering broad sectors of the domestic labor market. Each program has its own admission criteria, unique rules governing length of stay and adjustment options together with a wide range of provisions aimed at avoiding long term dependence on migrants and migrant settlement. In most small-scale programs, employers have more power over admission and employment than they did during the large-scale programs of the 1960s (Martin 2006: 95). Project tied programs allow German construction firms to subcontract foreign firms to supply the expertise and workers for a specific project phase (Martin 2004: 239). The employer-to-employer subcontracting agreement is checked by the German Employment Service. The foreign workers who are admitted for up to two years are considered to be workers of their home countries while they are in Germany. This means that they are not enrolled in the German social security system. Project workers peaked at 95,000 in 1992 and averaged 44,000 in 2000. A seasonal foreign work program admits workers for up to 90 days. In 1991 there were 129,000 seasonal workers, in 1997 it reached 226,000 and in 2000 a total of 264,000. Most seasonal foreign workers are requested by name by German farmers, restaurants, or construction contractors. Their pay, housing, and travel arrangements are spelled out in bilingual contracts approved by the German Employment Service, which is also responsible for ensuring that local workers are not available. Other guest worker programs include bilateral agreements with the Czech Republic and Poland allowing workers to commute to German jobs within 50km of Germany’s eastern border and stay overnight for up to two days a week. A work and learn program allowed 5,900 East Europeans aged 18 to 40 to live and work in Germany for up to 18 months in 2000. Finally, Germany launched a program to admit 1000 nurses from the former Yugoslavia (Martin 2004: 240).

Chapter IV: Fair Enough?

⁶⁵The country is already struggling with growing unemployment levels reaching approximately 9.1% in 2006. Female unemployment is particularly high at 15.5% most of them with relatively low levels of educational attainment This is mainly attributed to an increasing number of new entrants in the labor market, many of them young graduates, relatively unskilled labor and the inherent mismatch between available skills and labor market needs. This finds a somewhat ironic expression in the import of approximately 29.000 foreign workers for their textile sector (GFMD 2007).

⁶⁶The term globalization is used to characterize the rapidly developing interconnectedness and interdependence of national economies within the world economy, regarding production, trade, finance, and labor markets. According to Gould globalization can be understood in relation to a set of processes which shift the spatial form of human organization and activity from the state to transcontinental or interregional patterns of activity, interaction and the exercise of power (Gould 2004: 206).

⁶⁷At the same time such common activity is among the conditions that people need for their own freedom to self-development. It provides a social context for reciprocity and allows for the achievement of certain goals that cannot be reached individually.