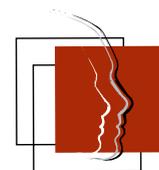




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Global Union Research Network

Circular Migration: A Triple Win or a Dead End

Piyasiri Wickramasekara



The Global Union Research Network (GURN) is a cooperating project of the International Trade Union Confederation (ITUC), the Trade Union Advisory Committee to the OECD (TUAC), the ILO's International Institute for Labour Studies (IILS) and the Bureau for Workers' Activities (ACTRAV) of the ILO. The aim of the research network is to give union organizations better access to research carried out within trade unions and allied institutions.



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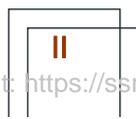
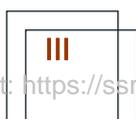


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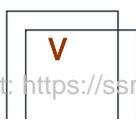
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EXECUTIVE SUMMARY

'Circular migration' has recently been promoted as a triple win solution, bringing benefits to destination countries, origin countries and migrant workers themselves – and a major mechanism to reap development benefits of labour migration.

However circular migration is nothing new, and has been a predominant feature of internal population movements, and formal and informal cross-border movements for a long time in different regions, and countries such as China, India, and Indonesia.

In recent discussions the definitions of circular migration have ranged from simple generic definitions to prescriptive ones. Simply defined, circular migration refers to temporary movements of a repetitive character either formally or informally across borders, usually for work, involving the same migrants. While it can be distinguished from permanent migration (for settlement), and return migration (one trip migration and return), there are nevertheless interfaces between them with circular migration in some cases leading to permanent migration or final return. By definition, all circular migration is temporary migration.

'Spontaneous circular migration' occurs when migrants from origin countries or the diaspora in destination countries, engage in back and forth movements. The other mode of circular migration relates to managed or regulated circular migration programmes (CMPs). Recent years have seen increasing interest in these managed programmes as a migration policy tool to address a number of sensitive and contentious issues of today's international migration. These relate to: meeting labour market needs in destination countries without permanent settlement; mitigating the "brain drain"; promoting development in home countries through a steady flow of remittances, return of skills and enterprise creation; and minimizing irregular migration. This is the basis of the triple win argument claimed for CMPs. In recent years both the European Commission and the Global Forum on Migration and Development have been promoting the idea of managed circular migration.

There are several reasons behind this upsurge of interest in circular migration. First, it seems an attempt to find an alternative to the less successful traditional guest worker programmes when a proportion of temporary migrants settled in destination countries, thus reflecting the desire on the part of destination countries to bring in 'labour' but not 'people'. Second, it reflects the trend towards flexible labour markets – the idea being that when there is a slackening of labour demand in the destination country, migration may be stopped and migrant workers already in the country could be encouraged to leave. Third, it represents security-oriented approaches to migration driven by the need to address irregular migration, and shifting part of the burden of responsibility to countries of origin. Fourth, the recent emphasis on promoting migration and

development linkages through win-win formulas has also found circular migration to be a convenient tool.

There are however, few real differences between temporary labour migration and circular migration movements/programmes to brand the latter as an innovative tool. Both can be managed. Both generate remittances, bring back skills, and potentially create employment in home countries. Both are consistent with diaspora contributions. Both programmes are affected by the operation of private employment agencies which often undermine the expected wins for migrant workers. Both lead to numerous protection problems and rights' issues that especially apply to low-skilled workers hired under both temporary and circular migration programmes.

A review of existing temporary labour migration programmes highlights that they also have some elements of circularity, as in seasonal workers programmes where the same workers return for several seasons. Some of the so-called 'best practice' programmes, such as the Canadian Seasonal Agricultural Workers Program (CSAWP), have major problems relating to workers' rights in the form of poor conditions of work, denial of freedom of association, and absence of pathways to residence rights, even after long years of work. The claimed success in the form of a high return rate of workers to home countries is because workers are virtually kept captive, as their continued employment the following season is crucially dependent on recommendations of employers.

The long-standing system of temporary migration of Asian workers to the Gulf countries is proverbial for abuse and exploitation of workers and denial of their basic rights, with obvious benefits for employers and destination countries. Temporary and seasonal worker programmes in the United States have mostly resulted in wins for employers: who keep workers captive, pay them lower wages than native workers, and deprive the latter of jobs by making some permanent jobs into temporary ones with poorer working conditions.

In regard to circular migration, the short duration of contracts, especially in non-seasonal work is a cause for concern which directly affects migrants' capacity to contribute back home. The re-migration process itself may involve high costs which cannot be fully recovered by migrants. Labour brokers and intermediaries can find many opportunities to defraud migrants. The undue power of employers in the selection of workers, and re-nominating them for subsequent visits has been noted in a number of seasonal work programmes. The unequal bargaining power of countries of destination in these agreements is well-known. While migrants are expected to bring back skills, it is highly unlikely that employers would invest in training circular migrants in lower skilled categories. The implication for rights of migrant workers under such programmes is a major concern – the short duration of contracts may mean that they may be denied most of the assistance needed in working and living in destination countries. One of the advantages claimed for CMPs is that there are no integration costs given the temporary stays of circular migrants. This itself implies tacit support for

xenophobic tendencies in destination countries. Frequent separations from the families at home also involve social costs.

The study finds that in recent discussions the benefits of circular migration have been highly exaggerated. There is little evidence to support that circular migration represents the natural preferences of most migrants. It is difficult to see migrant workers as winners in circular schemes since they have limited choice regarding the jobs, change of employers, timing of return, and family unification, among others. Countries of origin are hardly winners either, given the small quotas of legal migration opportunities provided, if any, and the large concessions they have to make to gain such quotas as under European Union mobility partnerships. The current model seems to make the destination countries winners in providing them 'labour without people', or circular migrants with ill-defined rights, making it easier for employers to exploit workers, and engage in flexible hiring and firing, in line with economic and business conditions, and short term savings in integration costs.

The real test of these programmes is the options which could be adopted when circular migrants do not voluntarily leave. While information is still scanty, it is to be expected that coercion may be used, and human rights violations may take place based on the tough stance usually taken by destination countries towards workers in irregular status.

A number of improvements have been proposed to the EU model, or other models of circular migration, to make them more acceptable in the light of flaws noted. These normally include varying combinations of measures: longer periods of stay, the possibility of changing employers, support in reintegrating at home, the issuing of multi-annual multi-entry visas, longer periods of absence and the right of return for long-term residents, the portability of social security benefits, provisions for skills training, and some provision for pathways to permanent residence for repeat migrants, among others. However, there are currently few concrete examples of such model programmes, which obviously undermine the wins of CMPs for both employers and destination country governments.

Overall there has been little progress in developing CMPs with the predicted triple wins. There are some managed circular migration programmes of a pilot nature, which are small in scale such as the Dutch pilot circular migration programme, and which are unlikely to make any significant development impact in source countries facing problems of high unemployment, poverty and lack of decent work.

The current tendency on the part of some researchers and organizations seems to promote the virtues of circular migration by focussing on circulation and contributions of long-term residents in destination countries – a re-branding of diaspora policies and initiatives for home country development as circular migration. This serves to detract attention from thorny issues of adequate channels for legal migration, and protection and rights of low skilled workers

migrating under temporary and circular migration schemes from countries of origin.

The main focus of the debate on circular migration should be on its role as a mechanism for expanding legal avenues for workers from developing countries to destination countries rather than on diaspora options. In this sense, managed CMPs are only one of the options – and hardly the best option – for achieving it. A comprehensive approach should look at permanent migration programmes to address permanent or long-term labour shortages induced by demographic and other factors, regular labour admission programmes with guaranteed rights for workers on a par with national workers, improved seasonal worker programmes, and other options in addition to circular migration. The foundation of any such programmes is respect, promotion and realization of human and labour rights of migrant workers in line with international instruments, which can deliver the promised wins. At the same time, the limited role that labour migration can play in economic and social transformation of countries of origin needs to be recognized.

There is thus a large unfinished agenda for further research and policy advice on elaboration of labour migration policies and programmes of all types – permanent, temporary or circular, using a rights-based approach – where the International Labour Organization, the trade union movement, and other concerned stakeholders have a crucial role to play.

1. INTRODUCTION¹

In recent years circular migration has been promoted in international circles as a solution to many intractable and persistent problems of international migration. This is especially so in the context of the migration and development discourse where it is claimed that circular migration is generating triple wins – to countries of origin, countries of destination, and to migrant workers themselves. The Global Forum on Migration and Development, and the European Commission have been popular platforms for disseminating the potential of circular migration. Circular migration currently seems to have replaced the issue of migrant remittances as a key element in the nexus between migration and development. It has been projected as being at “the cutting edge of migration and development”. Yet some have pointed out that the arguments put forward in favour of circular migration are the same as those previously highlighted in the context of temporary migration programmes. At the same time, an important missing link in these debates has been the implications of circular migration for rights of migrant workers. Workers’ organizations concerned with protecting migrant workers in line with international instruments have identified a number of problems with the concept of circular migration. Increasingly, trade unions have identified temporary and circular migration with precarious work.

This paper attempts to address issues relating to the conceptual basis of circular migration and its wider implications for migrant rights and protection, in particular those relating to low skilled workers. The paper first deals with issues of definitions, and reviews the ‘triple wins argument. This is followed by a review of some temporary and circular migration programmes and their features. Approaches of international agencies, including the International Labour Organization and the global trade union movement, to the issue of circular migration are discussed next. The final Section sums up the findings and highlights of the review.

The objectives of the study are several. First, it will review the conceptual underpinnings and definitions of circular migration in different contexts and look at consistency in usage, in particular its differences from other migration programmes. Second, the paper examines the evolving forms of circular migration and their implications for a rights-based approach to labour migration and protection of the rights of migrant workers. Third, it reviews the challenges posed by circular migration programmes and their variants, for the trade union movement and other stakeholders concerned with protecting the rights of migrant workers. This is expected to contribute to the ongoing debates within the trade union movement and civil society, the International Labour Organization and beyond.

¹ The author is grateful to Luc Demaret and Ryszard Cholewinski of the ILO, Ana Avendaño of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and Genevieve J. Gencianos of Public Services International (PSI), for valuable comments and suggestions (technical and editorial) for improving the paper.

The treatment of circular migration in the paper is selective given the above objectives.

2. METHODS AND DEFINITIONS

2.1 Brief review of literature on circular migration

This review is based on consultation of a wide range of recent material and documents on circular migration. Like migrant remittances, circular migration has caught the attention of researchers and policy makers with a growing body of literature in recent years. They can be categorized as follows:

- a. General discussions of circular migration. These are based largely on literature surveys and desk research. Most of the work carried out by researchers of the Washington-based Migration Policy Institute (MPI) falls into this category (Agunias 2006; Agunias and Newland 2007; Newland and Agunias 2007; Newland, Agunias et al. 2008b; Newland 2009a; Newland 2009b). In general, the MPI papers reiterate the same arguments, and try to project a positive view of circular migration. The MPI's definitions of circular migration also have changed slightly over time, but still reflect this optimistic view. Later MPI documents have adopted a more cautious approach adding some qualifications probably to accommodate other viewpoints, and highlighting conditions necessary for what is called 'positive circularity'. USAID has also carried out a literature review on the impact of circular migration focussing on practical examples (Ardovino and Brown 2008). A number of other studies contain more critical analysis of circular migration issues (Vertovec 2007; Pastore 2008; Skeldon 2009b; Vadean and Piracha 2009; Avendaño 2009).
- b. CARIM project studies (Consortium for Applied Research on International Migration, Robert Schuman Centre for Advanced Studies, European University Institute, Florence).

CARIM has carried out detailed studies of the phenomenon of circular migration in relation to the Euro-Mediterranean Area for the European Commission. The focus was on three different perspectives: demographic-economic, legal, and socio-political. The project has made pioneering contributions to the conceptualisation of emerging notions of circular migration, particularly in the European context. It has also generated empirical evidence through a number of country studies and thematic studies which are listed on their website (<http://www.carim.org/circularmigration>). Several papers synthesise the overall findings (CARIM 2008; Cassarino 2008a; Fargues 2008; Venturini 2008). The various studies have collected a wealth of important information on various aspects of circular migration.

- c. Reviews of the European Commission policies on legal migration and circular migration and mobility partnerships.

The EC/EU policies on circular migration and mobility partnerships have attracted wide attention. Some studies simply explain the policies while others take a more critical look at the implications for third countries (Castles 2006; Angenendt 2007; Carrera and Sagrera 2009; Chou and Gibert 2010; Maastricht Graduate School of Governance 2010; Reslow 2010b; Reslow 2010a; Caritas Europe undated).

- d. Studies of general and specific circular migration and temporary worker programmes.

Most of these studies deal with temporary worker programmes including those with elements of circularity such as the Canadian Seasonal Agricultural Worker Scheme, and the New Zealand RSE programme (Bedford, Bedford et al. 2009; Preibisch 2010). Some are more general discussions of temporary worker programmes (Abella 2006; Ruhs 2006; Martin 2007; 2010).

It is not possible to review all the different views within the confines of this paper. Important issues from the above sources will be highlighted as relevant in later sections.

2.2 Definitions and terminology

The first point to note is that circular migration is nothing new. It is an old phenomenon, most notably demonstrated in internal or rural urban migration (Bedford 2009; Skeldon 2009a). As Bedford (Bedford 2009: 6) points out:

From the 1960s circular migration has been at the centre of debates about urbanisation and development in Africa, Asia, the Pacific Islands, and parts of Latin America. What was recognized then, and must continue to be acknowledged in the contemporary European debate about circular migration and development, is that this is not a “new” form of mobility or even a new debate. The focus has shifted from mobility and urbanisation in developing countries to population movement, labour markets and social cohesion in developed countries.

Fargues (2008: 5) also calls it “a new interest in an old form of migration.” Some writers have missed this crucial link as seen in the literature survey by Agunias of the Migration Policy Institute (Agunias 2006), where not a single reference has been made to internal or rural-urban circular migration.

2.2.1 Spontaneous circular migration movements

The best example of circular migration is internal migration, where rural workers often come to urban locations in search of work and return to home areas. In China it involves the movement of about 125-150 million workers annually between the rural sector and major cities. They are not, however, international ‘migrant workers’ as defined in ILO instruments although they share some common issues. The long-standing contract migrant worker system between Asia

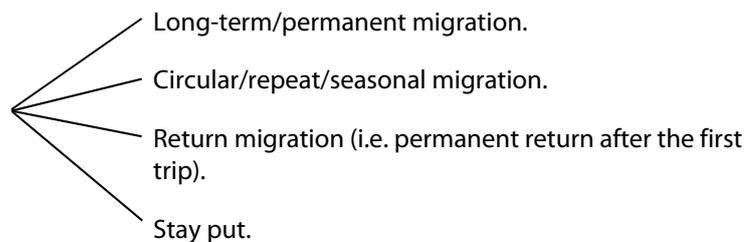
and the Gulf countries is another example, with some migrants repeating the movement more than once. Seasonal worker programmes are another example of circularity. As regards diasporas; scientific diaspora and transnational entrepreneurs have also been engaged in circular migration processes.

Even the previous European guest worker programmes contained elements of circular migration “insofar as migrant workers would stay in their host countries for the duration of their contract and then come back to their home countries until the next contract came along, if any did. It was a two-way circulation of mostly unaccompanied male workers, whose families stayed in the home countries” (Fargues 2008: 6).

There is no standard definition of circular migration. ILO or United Nations’ international migrant worker instruments have all used the term of ‘temporary migration’ without any reference to ‘circular migration’. In simple terms, the phenomenon of circular migration means repeated migration experiences involving more than one emigration and return. It should be distinguished from ‘one-shot’ migration involving one emigration and permanent return, which is better termed as ‘return migration’ (Vadean and Piracha 2009). This paper accordingly uses ‘return migration’ to refer to one migration cycle or one-shot migration.

Vadean and Piracha (2009) highlight the different options put before migrants in their chart reproduced below. Some may not opt to migrate at all. Others may migrate permanently. For some it may be one migration experience and permanent return. In-between are circular forms of migration.

Decision Tree: Return and re-migration integral to the initial migration decision



Frontier workers who undertake cross-border worker on a daily basis, but reside in the home country, are not generally counted as circular migrants. Can one define a maximum and minimum time for one circular migration episode? There is no hard and fast rule in regard to this. Pastore (2008) has provided the following scheme (Table 1).

Table 1: Length of stay and types of mobility

Length of stay	Type of mobility
Under three months	Short-term mobility
Under 6-9 months	Seasonal migration (circular migration)
Under five years	Temporary migration (circular migration)
Over five years	Long-term migration

Source: Pastore 2008

It is less confusing to describe the second category above as ‘more than three months but under nine months’. In Pastore’s view, circular migration episodes can accommodate periods of stay up to five years. Stays longer than five years, which is the minimum length necessary to apply for “long-term resident status” under European Union and some national laws should not be regarded as circular for managing movements although spontaneous movements may occur.

Cassarino (2008) makes three important observations on the dynamics of circular migration: they involve not only legally admitted migrants; not all migrants are circular migrants; and various patterns of cross-border circularity exist “... which are shaped not only by the mobility strategy of migrants, but also by state policies in the field of migration management and border controls” (Cassarino 2008a: 1). He also identifies three different types of circular migration:

- a. *Hindered circular migration*: Circular migration may be hindered when major obstacles (such as border conflicts, restrictive immigration controls and geographical distance) prevent people from circulating across the border.
- b. *Embedded circular migration*: occurs in borders where there are frequent interactions and frequent circular movements. Grassroots patterns of mobility across borders – often unmanaged – may characterize them. It applies more to countries with close ties such as Lebanon and Syria (recently), and India and Nepal (currently). Cassarino mentions regional economic communities (RECs) such as the European Union as examples. But RECs also involve some regulation through interstate treaties.
- c. *Regulated circular migration*: Cassarino (2008) defines regulated circular migration as a situation which “may be managed and regulated when institutional mechanisms are implemented to determine the number of admitted migrants (e.g., with quotas), to monitor their limited duration of stay abroad, and to select their profiles and skills.” These are now described as ‘managed circular migration programmes.’ The European Union circulation migration schemes and mobility partnerships are examples.

The first form identified by Cassarino is not so much a separate category as a recognition of barriers to circulation. Both regimes of free circulation of persons, and free mobility of labour within RECs, can also be addressed under categories b. and c. above.

2.2.2 Managed or regulated circular migration

Thus there are basically two types of circular migration:

- a. Spontaneous or voluntary circular migration;
- b. Managed circular migration programmes.

While circular migration is nothing new as argued above, what is different in the current context is that the discussion focuses on managed circular migration programmes. A managed migration programme is one that is governed either by the origin country or destination country or usually by both through bilateral agreements or Memoranda of Understanding (MOUs). Some of the confusion is caused by definitions which attempt to describe desirable or good practice circular migration programmes rather than those that exist today, as explained below.

How do we distinguish between circular migration programmes and temporary migration programmes?

The definitions above also fail to clarify how circular migration is different from temporary migration. In fact all circular migration (undertaken by persons with no citizenship or long-term residence in destination countries) relates to temporary migration.

Table 2 identifies some common features and differences between circular and temporary migration programmes based largely on Cassarino (2008).

Table 2: Commonalities and differences between circular and temporary migration programmes (TMPs)

Common	Different
Temporariness: both involve temporary stays with no pathway to permanency	Circular migration programmes allow for frequent temporary stays abroad whereas temporary migration programmes are based on a one-time-only temporary stay and return which usually closes the migration cycle – single migratory cycle
Both can be components of broader patterns of loose or formal (backed by bilateral agreements or MOUs) bilateral cooperation	Repetition of movements possible in spontaneous circular migration and regulated circular migration programmes
Often involve countries that are characterised by large differentials in terms of economic and social development	Circular migration programmes are more resource-intensive in terms of financial and logistical resources required for implementation than temporary migration schemes
Returns may be both voluntary and forced	Circular migration programmes usually involve the same groups of persons (migrants who are invited back) while TMPs often involve different groups
	Circular migration schemes are based on sophisticated mechanisms aimed at selectively organising the mobility of foreign workers and at securing the return of migrant workers (related to above point)

	One pillar of circular migration programmes is the outward circular migration to home countries for varying durations by diaspora settled in destination countries
Similar benefits claimed: remittances, bringing back skills and mitigating brain drain	Involves diaspora contributions more specifically

Based on (Cassarino 2008a) with some additions by author

On the one hand, all circular migration is in essence temporary migration because migrants have to eventually return to the home country in the absence of any right to permanency in the country of destination. On the other hand, all temporary migration forms do not lead to circular migration – most may involve a single migration cycle while some programmes may lead to permanent settlement in destination countries, as transpired under previous guest worker programmes in Europe.

It is useful to look at the differences between the guest worker programmes of the 1950s and 1960s and current programmes promoted in the European Union and by the Global Forum on Migration and Development (GFMD). As Fargues (2008) pointed out, those early programmes between France and Maghreb countries, and that between Germany and Turkey also provided for de facto circularity in the initial stages. The difference is that they were open-ended and migrants could opt to stay, as clearly seen in the case of Turkish migrants in Germany where about one third have settled. This also happened when Western European countries tightened their borders preventing circulatory movements.

The MPI states that: “Circular migration is distinct from temporary migration in that circular migration denotes a migrant’s continuous engagement in both home and adopted countries; it usually involves both return and repetition” (Newland et al 2008: 2). While the second point on return and repetition is obvious, it is more difficult to justify the first statement. It seems to refer to settled migrants in destination countries, which is only one aspect of circular migration. There is also no reason why temporary migrants cannot be engaged transnationally in both home and destination countries through numerous contacts, and periodic remittances.

It is not easy to find clear-cut examples of circular migration programmes. In response to an ad hoc query through a questionnaire survey of EU Member States by the European Migration Network in 2008, 15 Member States (out of 17 responding) reported that they do not implement any specific circular migration programme conforming to the EC Communication on circular migration and mobility partnerships (EMN 2008).² This included Spain and Germany. Spain mentioned that while they did not have specific schemes, some of their legislation provided incentives for circular migration. Italy mentioned some

² Out of the total responding (17 Member States), two (Austria and the Slovak Republic) did not authorize dissemination of their views, but it is unlikely these two countries have any operational circular migration schemes.

initiatives relating to promotion of entrepreneurship by migrants. Portugal added that their law was amended in 2007 to allow longer stay abroad by citizens with residence permits who could prove that they were in the home country engaged in some productive activity (EMN 2008).

Many seasonal worker programmes may qualify as circular migration programmes if they involve the return of the same workers each year such as the Canadian Seasonal Worker Programme (see Section 4.5.1). Migration to the Middle East, including the Gulf countries, mostly corresponds to temporary contract migration though some workers may return for subsequent contracts.

The difficulty in compartmentalizing temporary and circular migration programmes as completely different programmes is seen in successive GFMD discussions. The first meeting of the GFMD in Brussels in 2007 discussed temporary labour migration and circular migration as two sub-themes under Sessions 1.2 and 1.4 of the Roundtable of the government meeting. The session on “Temporary labour migration as a contribution to development: sharing responsibility” interestingly seems to repeat the same benefits claimed for circular migration (Box 1).

Box 1

Benefits of temporary labour migration programmes

- Meeting labour shortages in higher income countries while alleviating the demographic and unemployment pressures in developing countries;
- Temporary labour arrangements between countries can be development-supportive ;
- Temporary labour migration can work to everyone’s advantage if it is legal, protective and linked to real labour needs.

Source: GFMD 2007 – Brussels, Session 1.4 (GFMD 2008)

2.2.3 Other definitions of circular migration

Most of these relate to managed migration and try to expand the simple definition by building in policy objectives or desirable features.

i. Definition by the European Commission

The European Commission, in its 2007 Communication, defined circular migration “as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries” (European Commission 2007: 8).

This is a definition of managed migration, and only refers to managed ‘legal mobility’. The definition is vague and imprecise, when it refers to ‘some degree’ of mobility (implying obvious limits to mobility) and ‘managed in a way’.

The EC Communication identifies two types of circular migration in the European Union context.

- a) Circular migration of third country nationals settled in the EU (business persons and professionals) – outward migration to home countries.
- b) Circular migration of persons residing in a third country – inward migration to an EU country.

The EC also includes students in the definition whereas the primary focus should be on migration for employment. The second type is the more important one for the current debate on expanding legal avenues for labour migration.

Thus it is clear that this is a tailor-made definition for the European Commission whereas circular migration is a more general and generic term which can apply to migratory movements between any groups of countries.

The Mauritius workshop on circular migration supported by the EC provided a simpler and less confusing definition. It also refers to ‘people’ rather than ‘workers’.

Circular migration can be understood as the temporary, **recurrent movement of people**³ between two or more countries mainly for purposes of work or study (Government of Mauritius and the European Commission 2008).

ii. Definitions by the Migration Policy Institute (MPI)

From 2007 the Washington-based Migration Policy Institute has acted as a thinktank to the Global Forum on Migration and Development. It prepared the background paper for Session 1.4 on circular migration in Roundtable 1 of the first GFMD in Brussels, and proposed the following definition which is widely quoted.

“Circular migration is the fluid movement of people between countries, including temporary or more permanent movement which, when it occurs voluntarily and is linked to the labor needs of countries of origin and destination, can be beneficial to all involved” (Newland and Agunias 2007: 4).

This is, however, a confusing definition which attempts to combine diverse issues with the generic definition, probably with a view to highlighting the positive impacts of circular migration. What the authors mean by ‘fluid movement’ is ambiguous unless they clarify which migratory movements lack fluidity.⁴ The phrase ‘more permanent movement’ mentioned here is also confusing because circular migratory movements are not permanent by nature. Even if the conditions mentioned above are fulfilled, there is no guarantee that it will be beneficial to all involved as suggested because of many other factors affecting migration flows and benefits. It also defines something which cannot be easily measured or documented.

³ Bold in original.

⁴ It is indeed uncommon to use the term ‘fluid’ to describe migration flows.

In later papers, the MPI has modified the definition and claims it to be more dynamic than the above definition (Newland, Agunias et al. 2008b: 1)

“Circular migration is a continuing, long-term, and fluid pattern of international mobility of people among countries that occupy what is now increasingly recognized as a single economic space. At its best, circular migration increases the likelihood that both countries of origin and destination gain from international mobility. It also conforms to the natural preferences of many migrants, as illustrated by de facto circularity where national borders are open by agreement or are not heavily enforced.”

This definition is blurred, and seems to refer mostly to spontaneous circular migration, and not to managed circular migration. It also seems to be a loaded definition which attempts to accommodate a number of different issues (migrant transnationality, development benefits of migration, and migrant preferences). As Triandafyllidou (2010) rightly pointed out, the authors also do not clarify whether the common economic space referred to is a prerequisite for circular mobility or an outcome of circular mobility. The term ‘at its best’ probably refers to an ideal circular migration regime. It attempts to capture trans-national linkages in circular migration which is more appropriate to diaspora and skilled categories. One could argue that temporary and permanent migration movements also increase ‘the likelihood that both countries of origin and destination gain from international mobility’. In fact Roger Böhning argues that both temporary and permanent migration offer much a better situation of rights for migrants, and consequently development benefits, than short-term rotation schemes.

“The two criteria of short-term, meaning less than two years, and rotation, which rules out extensions and requires the migrant to leave, denote a cluster of rights that is more extensive than in the case of an irregular migrant; but it is nevertheless very limited in scope and excludes changing to better jobs or the better status of temporary or permanent migrant (Böhning 2009: 657).”

The view that circular migration represents the natural preferences of many migrants is an untested hypothesis as elaborated later, and the MPI does not provide much supporting evidence. Some of the cross-border de facto circularity does not result from natural preferences of migrants, but as a survival strategy or escape from conflict situations.

MPI writers have also put forward a framework combining two types of return (permanent and temporary) and two types of migrants (permanent and temporary) to indicate four types of circular migration. (Agunias and Newland 2007: 4)

As Fargues (2008) has pointed out, this framework has very limited operational value because a single migration in the course of a lifetime would be sufficient to make one a circular migrant. This is of course, a possibility but has little practical significance for the circular migration debate. “Obviously, this definition is too inclusive to offer any operational method for identifying circular migrants as envisaged by the European Commission” (Fargues 2008).

iii. CARIM project definition

Fargues, in an insightful analysis, has proposed six criteria to define circular migration: “being temporary, renewable, circulatory, legal, respectful of the migrant’s rights, and managed in such a way as to optimize labour markets at both ends, in sending and receiving countries.”(Fargues 2008: abstract).

This definition is much more concrete than the MPI definition. It clearly refers to ‘managed circular migration’, and seems to combine what is desirable with the characteristics of actual circular migration patterns. It is an important contribution to the debate on what is the most desirable form of circular migration, given the solid conceptual and empirical work on circular migration carried out by CARIM. The specific inclusion of migrant rights represents an improvement over MPI and EC definitions. Fargues (2008) found that southern and eastern Mediterranean countries have a long history of quasi circular movements satisfying some of the criteria, though not all.

A working definition of circular migration should allow for both spontaneous circulation and managed circulation. Opinions on what are the most desirable features or attributes of circular migration in relation to policies should be discussed separately from such a working definition. The main features of circular migration are:

- Temporariness;
- Repeat movements involving more than one migration cycle;
- Involvement of the same groups of migrants, or repeat migration by the same persons. If different groups are involved when the programme is repeated, then it should be defined as a temporary migration programme.

It is also important to distinguish between the patterns of circular migration.

- a. Spontaneous circular migration by source country workers either legally or in an irregular manner.
- b. Spontaneous circular movements by long-term residents or diaspora in destination countries to their home countries. These can be facilitated but not managed because they are mostly voluntary decisions by diaspora members.
- c. Managed circular migration programmes between developing countries and developed destination countries. These can involve both low-skilled or high-skilled workers. In general, it is easier for skilled workers to move back and forth under such programmes. The possibilities also depend on the sectors considered. For agricultural seasonal work, it is mostly low-skilled workers who are in demand. In the health sector, circular movements of skilled migrant workers are being discussed. But these may not involve the same persons going back and forth.

- d. Renewals of temporary contracts while abroad: if migrants extend their stay while still abroad, can this be considered as part of circular migration? Since circular migration means moving back to the home country after the first employment, and returning to a destination country, such renewals cannot be regarded as circular migration.

The major form of circular migration which is of interest to developing countries (or 'third countries' in EU terminology) is managed circular migration programmes involving low- and semi-skilled workers to developed destination countries. The terms and conditions of their admission and employment, their vulnerability in destination countries, protection of their rights, their contributions to home country development, and their re-insertion and re-integration in home countries are major issues. The modalities of such schemes are still debated in the European Union and the GFMD. The focus of this paper is therefore, on the same.

Combining diaspora movements for engagement in home country activities into the circular migration debate only serves to confuse issues because they face a different set of options. As highlighted above, such diaspora movements need facilitation mostly through right of return policies and circulation-friendly visa regimes. Their potential contributions to home country development have long been recognized and discussed under diaspora policies. There is little justification in re-classifying these issues under the circular migration debate.

2.3 Evidence on circular migration patterns: measurement and available information

2.3.1 Difficulties in measuring circular migration/ circular migrant numbers

Given the inherent difficulties in measuring normal migration flows, it should be naturally more difficult to estimate circular migration. In national and international data systems on international migration, the term circular migration hardly appears. For instance, there is not a single reference to either circular migration or circular migrant workers in both the ILO manual on migration statistics (Bilsborrow, Graeme Hugo et al. 1997) and the UN Recommendations on International Migration Statistics (United Nations 1998). These recognize the categories of seasonal workers and temporary migrant workers. The UN Recommendations (United Nations 1998) state:

Migrant workers. Persons admitted by a country other than their own for the explicit purpose of exercising an economic activity remunerated from within the receiving country. Some countries distinguish several categories of migrant workers, including:

- (i) seasonal migrant workers;
- (ii) contract workers;
- (iii) project-tied workers; and

(iv) temporary migrant workers.

All these subcategories or any others that may exist should be added up and reported under “migrant workers”, making the appropriate distinctions with regard to duration of stay;

Like return migration and transit migration, circular migration currently remains a problematic area in migration statistics. While the UN Recommendations define return migrants as those who return to their country of origin after having been international migrants (either short- or long-term) and who intend to stay in their own country for at least a year, this definition is not adopted by most countries. Many countries are much more interested in recent returnees (e.g. over the past year), as opposed to those who have been away for a long period of time. Circular migration flows are difficult to measure because they may not go through the registration systems later given their familiarity with the migration system. The lack of formal exit control measures in many countries also is another reason. When migrants are part of a specific circular migration programme based on an agreement between two countries, there may be better monitoring and records.

The EC also recognizes this issue: “The fact that circular/temporary migration is difficult to identify and to “quantify” with appropriate statistical indicators, presents a challenge for policymakers” (European Migration Network 2010: 4). It has commissioned a study on the programmes and legal frameworks for facilitating temporary and circular migration that already exist in this field and a better appreciation of the scale and scope of “spontaneously or naturally occurring” temporary/circular migration (European Migration Network 2010).

2.3.2 Evidence on circular migration patterns

I have compiled below some scattered information on repeat migration which shows differences among countries. For the Philippines, 60-65 per cent of annual outflows of migrants are re-hires or those going back for work – ‘re-emigration’. In Jordan only 10 per cent were found to be first time migrants, 46 per cent were there for the second time and the balance of 44 per cent more than twice. The data for the United Arab Emirates and Kuwait from a recent ILO survey reveal only 25 per cent to be repeat migrants.

Table 3: Evidence of circular migration patterns

Country	Evidence of circular migration	Source/year
Albania	Out of a sample of 2, 524 migrants, 56.7% permanent; 21.2% are return migrants (one trip); and 22.1% are circular migrants	2005 Albanian Living Standards measurement Survey (Vadean and Piracha 2009)
Germany	60% of foreign workers have returned once: Share of EU workers among these is 41%	(Heckmann et al 2009)
Jordan	10% of migrants to Jordan are first timers: 46% are second time migrants. Overall 90% of non-Jordanians living in Jordan are migrants with multiple entries (2006 survey)	(CARIM 2008: 15)
Kuwait	26% per cent of a sample of 1 ,000 workers have come to work in Kuwait more than once	ILO survey 20095
Morocco and Spain	Less than 10 % of all Moroccan migrants to Spain are circular migrants. Circular migration now limited to seasonal agricultural work	Metoikos project, European University Institute (Enriquez and Ramon 2010)
Philippines	Re-hires among migrant workers leaving Philippines: 2008 – 60.7% 2009 – 65.2%	Calculated from information in Philippines Overseas Employment Administration Statistics (POEA 2010)
Poland	Polish seasonal migrants to Germany: about 74% have worked in Germany at least twice and 43% at least four times	(OECD 2007a) p. 46
United Arab Emirates	25% of 1,300 sampled migrants have worked in the UAE more than once.	ILO survey of 20096

⁵ Estimated from field survey data which formed part of the ILO study on Migrant Workers' Living and Working Conditions in the GULF Cooperation Council (GCC) Countries: Case Studies of Kuwait and the United Arab Emirates, Regional office for Arab States (forthcoming).

⁶ Ibid.

The study by Vadean and Pichara (2009) highlighted the profile of circular migrants from Albania. They conclude that:

The amount of time spent abroad, legal residence, and accompanying family are positively related to permanent migration, while age, secondary education, failed migration or fulfilment of a savings target determine permanent return after the first trip. Being a male, having a lower education level, originating from a rural area and having a positive temporary migration experience in the past are factors affecting circular migration (Vadean and Piracha 2009: 17).

This profile suggests that circular migrants (at least in Albania) are not necessarily those who are likely to be development agents for the home country, nor beneficiaries from the system.

The CARIM studies have also reported different patterns of formal and informal circular movements in southern Mediterranean countries.

3. THE CASE FOR CIRCULAR MIGRATION

The European Migration Network proposal by the European Commission provides a clear expression of the triple win argument (European Migration Network 2010: 3).

Circular and temporary migration is reflecting globalization, demographic change, new patterns of mobility and the growing demand for flexible labour markets. It also reflects a preference of many of the migrants themselves.

Given this context, circular migration is a migratory phenomenon that is increasingly being discussed worldwide in terms of effective migration management, as well as a potential contribution to development. Covering migrants at all skills levels, it is viewed as a means to serve the labour market needs of countries of destination, promote development in countries of origin and benefit migrants themselves (the so-called “triple win” situation).

The interesting points in the above statement are that it refers to the growing demand for flexible labour markets (not necessarily a win for migrant workers) and effective migration management while mentioning the triple win argument. As highlighted earlier, this statement also repeats the unsubstantiated argument that this is the preference of many migrants.

A report for the Dutch Ministry of Foreign Affairs on circular migration (The Hague Process on Refugees and Migration Foundation 2007: 5) also echoes this positive view: “Circular migration can contribute to filling labour market gaps; make a positive contribution to development in origin countries; facilitate a quick response to changing economic conditions; and enhance the return of migrants.”

This also reiterates the belief that migrants can serve as flexible workers in quick responses by destination countries to changing economic situations. The Migration Policy Institute has reiterated similar arguments (Newland, Agunias et al. 2008b). The following is a typical exaggerated view of benefits of circular migration.

At their best, circular migration policies align the objectives of origin countries, destination countries, and the migrants who comprise these flows (Newland, Agunias et al. 2008b). P.2

The misleading phrase is ‘At their best’, which implies that there are other forms which do not lead to this triple win scenario, which are not elaborated by the writers. MPI views have slightly changed over the period probably with some qualifications being made to the original views to recognize that circular migration is not something new, and that pathways to permanency are needed. Yet the positive tone remains the same, and Newland’s contribution on “Circular migration and human development” (as part of the 2009 Human Development Report produced by the United Nations Development Programme) projects an exaggerated view of benefits of circular migration for ‘human development’ (the theme of the UNDP report) taking Sen’s views on development and freedom apparently out of context (Newland 2009a).

The key concepts of human development, drawn from the version of social-choice theory articulated by Amartya Sen, include capability, entitlement, and freedom. All three are highly relevant to assessment of the human development impact of circular migration ... Circular migration promotes capability, or the opportunity to choose a life that one values, when migrants have the highest degree of choice about when and where they move, how long they stay, and how they occupy themselves during their sojourn (Newland 2009a: 24).

It is indeed difficult to identify circular migration movements or programmes with these traits without a considerable stretch of the imagination. In which countries do migrants, especially low-skilled migrants, have the highest degree of choice (regarding jobs, family unification, choice of employers, secure residence status)? More positive statements could be made about permanent migration which gives migrants more choice including employment options, and the possibility for naturalization. As noted, Roger Böhning (2009) has made a strong case for temporary and permanent migration over short-term rotation schemes in terms of their impact on migrant rights and development. To be fair, it should be added that Newland (2009a) later mentions positive circularity features which may generate such outcomes.

The fallacy in such arguments lies in equating circular migration with 'migration by choice'. The basic issue is whether migrants have free choice in the migration decision as rightly pointed out by Vadean and Piracha (2009). Even spontaneous migrations are either not voluntary or respond to the only option available due to rigid immigration barriers. Managed programmes restrict choices in a major way, specifying numerous conditions to be met for eligibility.

A very clear expression of the triple win scenario can be found in the report of the Mauritius workshop on circular migration. (Government of Mauritius and the European Commission 2008). It is now claimed to contribute to Millennium Development Goals achievement as well. It needs to be added that the report acknowledged that these benefits would not automatically accrue.

Circular migration can be a useful tool for low-income or middle-income migrant source countries through generating remittances, investments, and trade and enterprise networks and by improving the human capital base. Circular migration may also contribute to the attainment of the Millennium Development Goals, but cannot realistically be regarded as a panacea for development or as a major means to satisfy more general development objectives (Government of Mauritius and the European Commission 2008: 4)

The next section examines the wins for each party involved in circular migration.

The argument here is not that circular migration has no benefits, but that they have been exaggerated, and that they are not very different from those of temporary labour migration programmes, which share a number of weaknesses. Thus the attempt to project a triple win scenario for circular migration alone rests on a weak foundation.

For example, the European Trade Union Confederation (ETUC) referred to the 'illusion' about the concept of circular migration in its comment on the EC Communication on circular migration and mobility partnerships.

The current optimism about circular migration as an alternative to other forms of migration is a bit too dependent on the illusion that all forms of migration somehow benefit the country of origin (because of remittances), that all migrants would fit into this rigid model and would be interested to go back to their country of origin without the situation there being very much improved, and that countries of origin would be able to control their emigratory flows in the way the EU would like them to ... (ETUC 2007: 9).

3.1 Is circular migration a win for migrant workers?

The main wins for migrant workers are expected to come from higher earnings abroad and related remittances, skills acquisition and improvement, and the possibility of good incomes on return through investments in business and enterprise development, among others. I shall first discuss whether circular migration represents the preference of migrant workers.

3.1.1 Is circular migration the natural preference for migrants?

It has been claimed that circular migration represents the natural preference of migrants (Newland, Agunias et al. 2008b; European Migration Network 2010). Yet these studies do not show any evidence in support of this hypothesis. Very few surveys are available which have found that migrants opt for short-term migration. Skilled workers, who often have the possibility of migrating with their families, may think of long-term migration. Similarly students seeking higher education may cherish the idea of staying on and obtaining skills and experience in countries of destination, or moving to a third country.

There is a major difference between a preferred option and a no-option situation. In most cases migrants from developing countries in the low-skilled category may have no other legal option other than migrating under circular or temporary migration programmes.

Hugo (Hugo 2009) has argued that cheaper and easier travel and the possibility of getting a developed country income and consumption at local prices have promoted circular migration. This may however work for cross-border or frontier migration, but not so much for international migration across regions.

Migration is always a difficult choice, and there is no reason to assume that migrants would like to go back and return several times rather than stay and settle, or stay on until they can earn and save what they believe to be an adequate sum for comfortable living back home before returning for good. Circulation therefore, is not necessarily an ideal to be pursued by migrants. Circular migration rarely allows for family unification because of immigration restrictions imposed by destination countries, and it is difficult to suggest that migrants naturally prefer to be without their families in host societies.

In regard to Asian migration to Gulf countries, circularity and temporary migration models persist not because migrants prefer that, but because of a coercive and exploitative system which does not allow migrants to stay for longer periods. This does not lead to sustainable return in the sense of allowing migrants to stay in the home country (without re-migrating) after having earned substantial rewards from working abroad. The UN Special Rapporteur on the Human Rights of Migrants, in a visit to the Philippines in 2002, found that upon their return, Overseas Filipino Workers (OFWs) often have no savings and few chances to find employment. The Philippine Overseas Employment Administration (POEA) informed the Rapporteur that 70-80 per cent of OFWs were unable to save enough money for their eventual return. She observed (cited in Agunias 2006):

The few OFWs who manage to save money and attempt to set up a business upon return often fail because of lack of planning, training, and information on business conditions in the Philippines. All these circumstances frequently leave returning OFWs with no choice other than to migrate again (United Nations 2002).

This indicates that re-migration (circular migration) is often forced rather than a voluntary decision on the part of migrants.

In Europe, the fact that 50 per cent of the Polish nationals have returned home from the United Kingdom again hardly applies to migrants from third countries because they do not have the same right of return as Polish nationals who are EU citizens. This is clear from a recent Institute of Public Policy Research (IPPR) study on UK re-migration (Tim Finch, Maria Latorre et al. 2009: 3).

EU migrants and migrants from more developed countries tend to stay for shorter periods and to be firmer in their intention to re-migrate. Migrants from poorer countries are more likely to stay for longer, or settle permanently – though as economies in developing countries do better this is starting to change.

Opinion surveys are somewhat misleading especially on sensitive questions such as emigration. The fact that migrants state that they plan to return within a short time should not be interpreted as strong evidence of a preference for circular migration. Most migrants initially do not want to sever ties with their home countries and may follow a wait-and-see policy. Their views may change once they gain more experience and settle.

The motives, goals, and orientations characteristic at the beginning of the labour migration – that is, the firm intention to return home – cannot be regarded as static or constant. They come under the influence of conditions in the new society and the perceptions of the country of origin from abroad (Heckmann, Honecopp et al. 2009).

Pastore (2008) correctly points out that it is the idea of mobility, and not the temporariness of stay which appeals to migrants: "... as far as migrants are concerned, circularity is often considered as a desirable situation, but only inasmuch as it means greater freedom of circulation between the host and origin countries, not when it means only temporariness of stay" (Pastore 2008: 4).

3.1.2 Other wins for migrant workers

A government official of the Philippines recently commented: “The concept of circular migration augurs well with the policy of our country to encourage OFWs to work for a definite period, save and invest earnings, and plan for a well-deserved reintegration in the future” (Imson 2009: 63). Rodriguez, author of the book “Migrants for Export: How the Philippine State Brokers Labor to the World” (Rodriguez 2010), explains: “In my research, I have found that TLMPs⁷ like the Philippines’ generally offer not a “win-win-win-win” situation, but indeed a “lose-lose” situation for migrants and their families while elites in labor-sending states, employers, and host countries benefit” (Rodriguez 2009: 3).

The nature of return also matters for the predicted wins – whether it is ‘forced, assisted or voluntary’. Research indicates that voluntary returns are the most conducive to realization of positive benefits from return migration (Wickramasekara 2003; Cassarino 2004). The MIREM⁸ studies distinguish between ‘decided *versus* compelled return’.⁹ (Cassarino 2008b). The MIREM project study sample covered 992 return migrants from Europe of whom 761 (77 per cent) reported returning voluntarily. It also noted that successful reintegration was more likely in the case of voluntary returnees. The MIREM survey found that more than 25 per cent of the interviewed migrants who were compelled to return were unemployed as opposed to only 6.2 per cent of the migrants who decided to return voluntarily (Cassarino 2008b).

Of equal concern are the measures to be adopted by countries of destination in the case of non-return. Judging by current practices and experiences against irregular migration, and in forced repatriation policies followed by European Union countries, among others, gross violations of human rights through coercive measures can only be expected.¹⁰

Regarding spontaneous circular migration, an Albanian study throws light on the issue of irregular migration. It showed that circular migrants were least likely to have legal residence during their first migration trip (only 23.8 per cent of them) but that increased considerably in time to 54.5 per cent for the last migration trip (Vadean and Piracha 2009: 9). The authors explain this in terms of large legalisation programmes in Greece and Italy after 1999. As for return migrants,

⁷ Temporary labour migration programmes.

⁸ MIREM is the acronym for the project, “Collective Action to Support the Reintegration of Return Migrants in their Country of Origin” of the Robert Schumann Centre for Advanced Studies of the Florence University Institute, Italy.

⁹ In MIREM terminology, ‘decided return’ “refers to a migrant who decides on his own initiative to go back to the country of origin, without any form of pressure or coercion whatsoever. Decided return is based on the free will of the migrant to return. Decided return is a synonym of chosen return.” MIREM distinguishes it from voluntary return as defined by the European Union as “the assisted or independent departure to the country of origin, transit or another third country based on the will of the returnee” (<http://www.mirem.eu/glossary>).

¹⁰ Italy’s new public security law passed on August 8, 2009; and the recent Swiss referendum on deportation are cases in point.

they are also quite likely to have migrated irregularly: only 36.4 per cent of them had legal residence abroad.

Discussions on current circular migration programmes do not consider the presence of migrant workers in irregular status within destination countries or their concerns. It may be better to induct them into circular migration programmes and give them the choice of dignified return rather than engage in forced repatriation. This will also contribute to expanding the coverage of circular migration programmes. The Roundtable 1 discussion of the 2010 GFMD addressed the root causes of irregular migration and recognized the need for more channels for regular migration, particularly for low-skilled migrants – the ones most affected by irregular migration. Relating to this, the suggestion was made that governments can consider circular or temporary migration schemes, provided that they are fair in granting access to human rights and that they provide a means toward permanent residence and citizenship (GFMD 2010: 2).

3.2 Is circular migration a win for employers?

As the concept of “circular migration” may still not be familiar to employers, there is very limited information on employers’ views. A review of recent literature on employers’ perceptions of labour migration did not show any reference to circular migration (BSR 2008; BSR 2010b; IBLF 2010). Employers rather use the terminology of ‘seasonal’, ‘temporary’ and ‘permanent’ migration.

For employers there are obvious benefits of circular migration from several angles. This may be why seasonal migration arrangements are popular among employers. Employers can enjoy lower hiring costs of foreign workers including integration costs. The tying of migrant workers to employers also facilitates the exploitation of workers, as seen in seasonal worker programmes when return in the next season is conditional on a favourable recommendation by the employer. Some would argue that training costs are also less when the same group of persons return for work under circular migration.

A study on the role of employers in migrant integration in the context of Europe makes the following pertinent observation:

“For those employed on short-term contracts, or who arrive on a one-year permit, the temporary nature of the job reduces the incentive for employers to devote time and resources to workplace integration beyond providing essential information such as health and safety and contract details. This is particularly true for seasonal workers, although it could be argued that the needs of migrants who will only stay for a few months do not go beyond the practical and immediate” (Collett and Sitek 2008: 32 33).

The global financial and economic crisis also has become a testing ground for employers in their attitude to temporary migration. The above study notes that from the employer’s perspective, “integration services are part of the company budget which gets cut first in an economic recession, along with non-essential training and other human resource programmes” (Collett and Sitek 2008: 34). The study adds:

Macroeconomists often describe migrant workers as the 'flexible valve' in the European labour market. While in principle the law protects migrants from discriminatory dismissal practices, the reality is that many arrive on temporary work permits and have temporary employment contracts, which may not be renewed if there is an economic downturn (Collett and Sitek 2008: 34).

The Collett and Sitek study highlighted two important points:

- Migrant workers and their families with temporary work and resident permits should not be excluded from local and national integration strategies.
- Integration efforts should be directed at both EU and third-country nationals. The right to free movement enjoyed by EU workers "often makes no difference to employers and to the integration needs of migrant workers who have recently arrived in a country".

There is however, no information on employer reactions to improved models of circular migration which argue for employer portability, multiple entry flexible visa systems, improved protection measures and portability of social security benefits.

The International Organisation of Employers' 2010 European conference discussed labour migration, but had no reference to circular migration, and laid emphasis on qualifications and skills recognition for enhancing the benefits of labour migration for employers and origin countries (IOE 2010; Pirlir 2010).

The comparability and recognition of skills and qualifications is important in facilitating the adaptation of migrant workers to maintain high levels of productivity. Labour migration is often the subject of highly polarised political debate, but skills enhancement for migrants can help make it a win/win/win situation where countries of origin do not lose out (Pirlir 2010).

The Business for Social Responsibility (BSR) toolkit and guidelines for employers on migrant workers highlight a number of good practices and procedures in the area of rights and responsibilities of temporary migrant workers (BSR 2010b; BSR 2010a) without any explicit reference to circular migration. The implication of these for circular migration is whether employers will be interested in training and imparting new skills to workers who are being rotated.

The Organisation for Economic Co-operation and Development (2008) observes:

From the viewpoint of employers, it is not clear that they will always favour greater turnover in the workforce, especially if their needs are not exclusively for temporary workers. The costs involved in selection, training and apprenticeship will rise with the turnover rate. The prospect of ready access to foreign manpower may help offset this cost, but perhaps not fully (OECD 2008: 196).

The OECD (OECD 2008) concluded that it was unrealistic to expect temporary schemes to be the "cornerstone of any future labour migration policy". The OECD Secretary-General Angel Gurría (Gurría 2008) stated: "Constructing a country's migration policy on the assumption that labour immigrants will only stay for a

short time is not the way to go. It is neither efficient nor workable.” Thus, temporary migration programmes cannot replace other migration systems and have to co-exist with them.

3.3 A win for countries of origin?

3.3.1 Positive impacts of circular migration

This Section first reviews the major arguments regarding the claimed benefits of circular migration to origin countries.

- **Privileged access to employment and labour markets in destination countries for nationals**

This benefit could apply to temporary migration programmes as well, but circular migration programmes may potentially provide additional quotas. Yet the numbers to be accommodated under managed circular migration programmes are often quite limited, going by recent experiences. Therefore, they are unlikely to have any impact on local employment problems. For instance, the pilot circular migration programme of the Government of the Netherlands plans to recruit only 80 migrants from both Indonesia and South Africa (Government of the Netherlands 2010). In 2008, total unemployment in Indonesia amounted to 9 million, representing 8.4 per cent of the labour force, and the beneficiary number under the Dutch pilot circular migration is simply a drop in the ocean. The Dutch programme is not strictly a circular migration programme since it does not provide for re-entry of these workers at a later stage. It is a pilot temporary programme in this sense. It is also the case in many other managed programmes. For instance, the total number of positions offered by France to Mauritius under all categories in the circular migration programme is only 850 (see Box 2), which may also be reduced by employers in the context of the current crisis. The Canadian Seasonal Agricultural Workers Programme, even with its long history caters to only about 20,000 annually from Mexico and the Caribbean countries. The new labour migration scheme introduced by Sweden admits about 10,000-12,000 migrants per year from all countries. The Republic of Korea also has offered limited quotas to a number of countries under its Employment Permit System, and the numbers are too small to make any dent on the unemployment problem in any of the participating countries.

Venturini (2008) analysed the role of circular migration as an employment strategy in the context of Mediterranean countries and came to a similar conclusion: “... circular migration must be pursued by sending countries together with destination countries, but only as one among the many employment strategies implemented to increase demand, namely domestic job creation. And traditional “permanent” migration policies would also have to be supported (Venturini 2008: 10).”

Based on a review of employment and labour market challenges in Algeria, Egypt, Morocco, Tunisia and Turkey, she reached the conclusion that the choice of circular migration cannot solve all the internal labour market imbalances and also that there will be an absolute excess supply of labour which cannot be met by short and repeated stay abroad. As an example, Morocco needs 128,000 new contracts annually for new migrants, plus 128,000 renewed contracts for previous 'circular migrants'. This is not sustainable given the current limited demand for foreign labour. She concludes:

This simple exercise allows us to conclude that circular migration must be pursued by sending countries together with destination countries, but only as **one among the many employment strategies** implemented to increase demand, namely domestic job creation. And traditional "permanent" migration policies would also have to be supported (Venturini 2008: 10).

Venturini (2008) argues that on the basis of the experience of southern European countries that "*circular migration or temporary migration* may be more appropriate for affluent countries, which are close to the migration turning point (which are about to become net immigration countries), and which "need only little income or training for their workers for a temporary period, because natives will very soon lose interest in moving to obtain more income" (Venturini 2008: 4). This especially applies to the case of Mauritius which is a middle income country, willing to enter into short-term partnerships with France for skills' gains. Similarly India, which is becoming an economic powerhouse, is interested in mobility with agreements with the EU and other regions.

- **Steady flow of remittances from repeated waves of migrants**

Another advantage claimed is the continuing flow of remittances from successive rounds of circular migration. However, there is no basis to assume that circular migrants will have higher capacity or propensities to remit, given that the bulk would be in seasonal and other low-paid wage occupations. Thus the total volume of remittances will not change much. At the same time, there has been a large volume of remittances from temporary migration programmes for a long time, as seen in the case of Gulf migration by Asian workers, and there is little to suggest that circular migration would generate higher remittances.

- **Mitigating the brain drain, and the return of skills**

This is a major benefit of circular migration claimed for countries of origin. In fact the ILO–DFID's (UK Government's Department for International Development) skilled migration project of 2001-02 made a case for skills' circulation, temporary stays by skilled migrants, and incentives for return coupled with the right of return to destination countries (Lowell and Findlay 2002; Wickramasekara 2003). Recently there have been many

initiatives for engaging the skilled diaspora for home country development. The circular migration argument may hold good for the intellectual diaspora and long-term residents in OECD countries that can transfer skills and knowledge through return visits and networking. Temporary and circular skilled migrants from developing countries may, however, have more options open to them; some skilled migration programmes often provide pathways to permanency for them. It is unlikely that they will engage in skills' circulation like long-term diaspora settled abroad unless they obtain more secure residence status.

In some cases, skills acquired abroad may not be relevant to local labour market conditions or the employment secured. At the same time, skilled migrants may not gain or even lose their skills due to lack of qualification recognition and "brain waste". This type of situation involves a triple loss – to countries of origin that lose valuable skills, to destination countries which cannot benefit from migrant skills and to migrant workers who cannot make full use of their potential and integrate (Wickramasekara 2008). The OECD (2007b: 25) highlights the magnitude of the problem in that in all of the OECD countries considered, almost 50 per cent on average (or at least 25 per cent) of skilled immigrants were 'inactive, unemployed or confined to jobs for which they are over-qualified'. This results in 'de-skilling' which minimizes skill gains to countries of origin when migrants return. EuropeAid (2010) has indeed recognized both these issues:

As to circular migration of workers, its potential benefits for countries of origin may be significantly reduced if skilled migrants are engaged in jobs below their skills level in the country of destination, provoking the so-called "brain waste" effect. In this case, migrants may return to their country of origin without valuable experience which could be otherwise beneficial. Yet another problem that can limit the potential benefits of circular migration is the fact that certain migrants with technical skills or other expertise may find themselves unable to make use of their acquired knowledge upon return to the country of origin, due to an inappropriate infrastructure or institutional framework (EuropeAid 2010: 4).

Moreover, circular migration programmes of short duration increase the likelihood of non-recognition of qualifications, and therefore, would contribute little to skills gains by home countries.

Regarding low-skilled workers who are mostly involved in seasonal work and temporary labour migration programmes; it is unrealistic to expect much skill gains. For instance, what skills can a domestic worker reasonably gain in the Gulf countries or in Malaysia working under duress? Migrant workers from Kerala to the Gulf are mostly in the low-skill category engaged in construction, small establishments, and manufacturing, and return with few skill gains. The German seasonal worker programme was not designed with development considerations

in mind, and improving migrants' skills (European Policy Centre (EPC) 2010a)).

The UK's House of Commons International Development Committee report on Migration and Development reviewed evidence on skills acquisition by migrants and concluded:

These examples do not bode well for the ability of temporary migration to improve the skills of migrants. But they begin to explain why it is that temporary migration tends not to lead to human capital development; it is in part because of the sorts of jobs which migrants find themselves doing. (cited in Agunias 2006).

Studies by the Institute for Public Policy Research (IPPR), London/Global Development Network (GDN) project on Development on the Move (DoTM) have collected primary data on this aspect as well. The Ghana study did not show a significant relationship between return migration and labour force participation. This is probably because return migrants have not made any significant gains in terms of education or skills while abroad, and thus remain unemployed when they return to Ghana, perhaps living off their savings, or because they have come for retirement (Yeboah, Francis Dodoo et al. 2009).

The DoTM project study on Vietnam reported on limited skill gains by migrants, based on a survey of migrants.

The brain gain and brain drain effects of migration in Vietnam are similarly unclear, with only around one in five returned migrants reporting having gained additional educational qualifications while abroad. This figure seems surprisingly low, given that more than a third of all surveyed households (both migrant and non-migrant) believe that migration allows individuals to bring back new skills that are useful for development in Vietnam (Nguyen, Dang et al. 2010).

The overall summary of the DoTM project studies mentions:

Turning to the effect that migration has on national skills stocks, it seems likely that in some of the DoTM countries (particularly Jamaica, but possibly also Ghana and Macedonia) migration's overall effect on a country's stock of skills may be negative. In other words, the positive effects that migration can have on skills' stocks (through immigration, return, remittances and incentive effects) are not able to compensate for the direct impact of skilled people emigrating (Chappell, Ramona et al. 2009: 9).

The study, however, speculated that for the other three study countries (Colombia, Georgia, and Vietnam) it may be positive. Yet the country studies do not highlight any skill gains by low-skilled persons.

- **Business and enterprise creation by circular migrants**

Again the experiences of successful business creation by return migrants are mixed. It is also not clear whether these circular migrants are better at business and enterprise creation than permanent return migrants. An International Institute for Labour Studies–International Labour Organization (IILS–ILO) study on North Africa advocates circular

migration on this ground, but the study fails to clarify whether these relate to circular migration or simple one shot return migration as defined above (IILS-ILO 2010). The general experience has been that much more than skills and entrepreneurship, it is the general economic and business environment at home that promotes successful business and employment generation by all migrants, as well as non-migrants.

- **Better cooperation with countries of destination for promoting migration–development linkages**

It is also claimed that circular migration programmes provide for better cooperation and coordination with destination countries in promoting development-migration linkages. The European Union experience however, casts considerable doubt on this, given the predominance of the security and readmission agenda in developing partnerships with countries of origin of migrant workers (Carrera and Sagrera 2009). For example, there are few tangible achievements under the African Union–EU partnership on migration, mobility and employment up to now, which also included working on enhanced mechanisms to facilitate circular migration between Africa and the EU (Tywuschik, V. and A. Sherriff 2009). The EC policies and activities on circular migration and mobility partnerships will be discussed further in Section 5.

3.3.2 Negative aspects of circular migration for countries of origin

- The unequal bargaining power of destination and origin countries can often lead to one-sided partnerships, especially where the poor countries of origin of migrant workers are concerned. A review of bilateral agreements and MOUs between source countries and destination countries (Gulf countries and Malaysia) has clearly brought this out (Wickramasekara 2006). As shown later, the major thrust of EC mobility partnerships lies in the commitments to be imposed on countries of origin for curbing irregular migration and accepting readmissions.
- Given the small numbers to be mobilized under managed circular migration programmes, development benefits of circular migration may be too thinly spread in origin countries.

Box 2:**Mauritius and circular migration**

The Circular Migration Model developed by Mauritius is described by Mauritian officials as a development programme that would help to:

- a) enhance skills and promote human resource development;
- b) promote the development of SMEs;
- c) attract remittance flows for development purposes; and
- d) reinforce the programmes for capacity building and labour market restructuring.

Agreements have been reached with France and also Canada.

Separate funding is made available by both France and Mauritius for the social and economic re-insertion of returning workers. With assistance from the International Organization for Migration (IOM), the Government has set up a circular migration database for facilitating selection and recruitment.

Mauritius and France: bilateral agreement

Category	Limit	Duration	Renewable
Students			
Internships for Mauritius students graduating in France		6 months	For 6 months
Trainees			
Internships for university students in Mauritius		12 months	Non-renewable
Professionals			
Migration and development for skilled workers (61 identified occupations)	500	15 months	For 15 months
Young professionals (18-25 years) - exchange	200	12 months	For 6 months only
Highly skilled	150	3 years	For 3 years

Source: based on information in Nayeck 2009

- A major issue is the implication of temporary and circular migration programmes for migrants' rights. There is no built in mechanism in circular migration programmes to protect migrant rights. EuropeAid (2010: 5) mentions: "When temporary migration implies a series of contracts, migrants' rights may become an important issue" in view of absence of family unification, social security entitlements, and being tied to one employer. Since employers may not be willing to invest in career development and training of temporary foreign workers, "... circularity can jeopardise migrants' upward social mobility" (EuropeAid 2010: 5).

Recent discussions of circular migration programmes, especially by the GFMD, have promoted the notion of 'shared responsibility' between source and destination countries, including on the protection of migrants' rights which may indicate an attempt to shift the bulk of migrant protection to countries of origin. This is clear in the Abu Dhabi Dialogue involving Asian source countries and Gulf destination countries where a large part of the blame is put on wrong selections and the role of recruitment agencies in origin countries (Abu Dhabi Dialogue 2008). However, under human rights' instruments, both countries of origin and destination have obligations in respect of the human rights of migrants, although the bulk of these obligations lie with destination countries. In the countries of origin, recruitment agencies still pose a major issue in the exploitation of migrants. Box 3 shows some recent instances of the role of brokers in blatant exploitation in managed temporary labour migration programmes which also have elements of circularity. It is a matter for concern that these recruiters and intermediaries can act with virtual impunity in destination countries with advanced labour administration and inspection services.

Box 3:**Malpractices of recruiters in temporary/circular migration programmes*****Swedish labour migration programme and recruiters for seasonal work:***

Poor weather has affected berry harvests in Sweden, drastically reducing the earnings of foreign pickers who cannot recover the debts incurred in arranging their migration. When the Swedish authorities required the berry companies to guarantee a minimum wage of about US \$2,320 for the season, the fruit companies in Sweden hired Asian pickers through recruiting companies in their home countries (who were not bound by Swedish law) to circumvent this law. Among others, 190 Bangladeshi pickers had paid about \$2,100 to middlemen in Bangladesh who told workers they could earn nearly \$10,000 in two months. In reality they could earn hardly anything given the poor harvest. According to the town's mayor, local companies that charge the workers for lodging, food and transportation are thriving, while "the pickers are the losers all the time."

(Tagliabue 2010).

The Filipino 11–Canada:

In November 2007, the Canadian Labour Congress (CLC) called for an immediate moratorium of the Canadian Government's Temporary Foreign Worker Program because of repeated abuse and exploitation. The Government also acknowledged that it could not "monitor the working conditions offered by the employer following entry into Canada". The Temporary Foreign Worker Program enabled a labour broker to lure 11 workers to Canada for non-existent jobs. Those workers – known as "The Filipino 11" – became indentured labour after having to pay over US\$10,000 to labour brokers; they were promised jobs at up to Canadian \$23 an hour. But once in Canada, they were "sold" to unscrupulous employers, kept in an isolated rural house, and forced to do menial jobs earning – if paid at all – a fraction of what they were promised.

From: ILO-ACTRAV (2008).

In search of decent work - Migrant workers' rights: a manual for trade unionists.

USA Signal company and Indian workers:

More than 500 Indian nationals paid recruiters US\$20,000 each after they were promised permanent US residency to work as welders and pipe fitters for Signal International, an oil rig construction and repair company. Instead, they reported receiving only 10-month guest-worker visas and being forced into inhumane living conditions at company facilities in Pascagoula, Mississippi, and Orange, Texas. The workers staged protests against various threats, and have now been officially recognized as trafficked victims.

[\(http://blog.aflcio.org/2008/03/22/indian-workers-say-they-are-treated-like-slaves-at-mississippi-shipyard/\)](http://blog.aflcio.org/2008/03/22/indian-workers-say-they-are-treated-like-slaves-at-mississippi-shipyard/)

UK gangmasters thriving five years after the Gangmasters' Act:

An Oxfam study (2009) shows that exploitation by gangmasters continues unabated in the UK five years after the Gangmasters' Licensing Act with a significant number of unlicensed gangmasters operating. It found that the Gangmaster Licensing Authority's efforts to reduce exploitation are seriously affected by the workers' fear of complaining, during a recession period. Gangmasters have also diversified into sectors beyond the remit of the GLA where there is less regulation of labour standards such as construction, hospitality, and care.

Oxfam (2009). How best to protect workers employed by gangmasters, five years after Morecambe Bay, Oxfam Briefing Paper – Summary, July 2009

Frequent temporary contracts under circular migration would lead to wider opportunities for private employment agencies to exploit workers.

3.4 A win for countries of destination?

The Mauritius workshop report on circular migration highlighted many of the benefits for destination countries including the complementary role for circular migration in seasonal work, compensating for ageing populations and meeting temporary labour market shortages. (Government of Mauritius and the European Commission 2008).

Table 4 shows a summary of benefits of circular migration usually claimed for destination countries, and related counter-arguments. It shows that some of the wins claimed may be at the expense of either migrant workers or countries of origin, and therefore hardly represent a 'triple win'. In some cases the losers from these programmes are native workers.

Table 4: A win for destination countries: Claimed benefits and counter-arguments

Advantages claimed for circular migration	Possible negative aspects
Address labour market needs and shortages, especially in sectors with seasonal needs, and shunned by national workers.	Too much bureaucratic effort may be needed to streamline flows to desired sectors, and monitoring and enforcing return.
	Circular migration programmes cannot address some shortages that are structural and long-term e.g. care workers in an ageing population.
Address labour market needs and shortages, especially in sectors with seasonal needs, and shunned by national workers.	Native workers may lose out when permanent jobs are changed into temporary ones to save costs e.g. US H-2B visa programme.
	In the Gulf countries, unemployed national youth are kept out of the private sector jobs that rely on low skilled Asian workers with low wages and benefits.
Employers can meet the demand for highly skilled workers through these schemes.	Temporary programmes may be used to displace native workers by driving down wages and benefits. Employers may keep skilled workers captive by promises of 'green cards', etc.
Governments and employers save on integration costs.	Even temporary workers have basic labour market and social integration needs defined by international standards, and national legislation.
Satisfies citizens/the electorate since there is no risk of permanent settlement.	This is a self-defeating policy which adds to social tension because it caters to xenophobia and anti-immigrant sentiments not keeping in with liberal traditions.
Meets challenges of population decline and population ageing.	Circular migration cannot address demographic challenges which need longer-term permanent migration flows.

Advantages claimed for circular migration	Possible negative aspects
Reduces incidence of irregular migration and may make it more manageable	Little empirical evidence that these limited programmes reduce irregular migration. It is possible that the programmes may even increase irregular migration, for example, if they do not permit migrants to stay a sufficient amount of time in the destination country and if their prospect for re-entry is not as good as publicized, or limited. ¹¹
Saves employer costs, and leads to more labour market flexibility and counter-cyclical adjustments in workforce.	The other side of the coin is that the main burden of adjustment is on foreign workers. May result in greater exploitation and denial of basic rights.
Provides opportunities to engage with diaspora communities for home country development.	Limited evidence of major role by destination countries in this area: Diversity of diaspora communities requires different approaches, and there are few mechanisms for interaction.
Enables greater cooperation for development of origin countries.	National priorities in destination countries are dictated by security and irregular migration issues. Origin countries have less bargaining power.

The OECD (2008: 196) points out that “when manpower needs relate to fixed-term employment, as is the case with seasonal work, circular migration would seem to be an optimal solution. Yet this approach is unlikely to meet every type of need, especially in the context of an ageing population where recruitment is bound to become increasingly difficult, regardless of the skills level sought.”

3.5 Summary

Projecting temporary migration as a development opportunity is primarily economic in focus, leaving aside broader issues of social and other dimensions of development aspects (Piper 2009; Oke 2010). The issue of circular migration illustrates the different agendas of so-called ‘sending’ countries in the south and ‘receiving’ countries in the north as highlighted by Bakewell and others (2009).

There is a sharp divide in the literature between the South as ‘sending’ countries and the North as ‘receiving’ countries. In the North, there is great interest in policies for the control (‘migration management’) of entry and issues of settlement – social, economic, political and cultural integration, multiculturalism, racism, community cohesion and xenophobia – and ways to facilitate circular migration. In contrast, debates about policies in the South are more concerned with issues of emigration (especially to the North), the emigration of skilled workers (the brain drain), the impacts of migration on development, remittances, and the role of migrants and their descendants in the development of the country of origin (Bakewell 2009: 23).

¹¹ The author is grateful to Ryszard Cholewinski for this observation.

4. TEMPORARY LABOUR MIGRATION PROGRAMMES AND CIRCULAR MIGRATION PROGRAMMES: SOME EXAMPLES

Temporary labour migration programmes have been in existence for a long time, and they flourished as guest worker programmes in the 1950s and 1960s. In the 1970s European countries discontinued such programmes, but the Gulf boom produced another wave of guest worker programmes to the Gulf and the Middle East from Asia and other Arab countries. While these were not described as circular migration programmes, there are a number of common features, as noted earlier.

More recently, the Global Commission on International Migration (GCIM) has been instrumental in promoting the concept of circular migration in international circles. While the GCIM report (GCIM 2005) has not defined circular migration, it has used it together with temporary, and in some instances, with return migration.

Yet the recent literature on temporary labour migration programmes hardly mentions circular migration. For example, Philip Martin's survey of temporary migration programmes make only two references to a Spanish programme on circular migration, but does not otherwise discuss the concept separately (Martin 2007). Similarly Martin Ruhs' papers on temporary migration programmes do not mention circular migration anywhere (Ruhs 2005; Ruhs 2006). The only mention of circular migration in Manolo Abella's extensive paper on management of temporary migration (Abella 2006) was simply a reference to the title of a paper by Graeme Hugo on the subject.

An important point to note is that there are hardly any 'pure' circular migration programmes as defined in the recent literature. Most of the programmes currently labelled as 'circular' are in fact temporary worker programmes with some features of circularity. The following section outlines the main features of selected popular temporary migration programmes. While Mode 4 (movement of natural persons) of the General Agreement on Trade in Services (GATS) also relates to temporary movements of service providers, this paper does not consider it as a form of circular migration since it does not involve re-migration options or right of return.

4.1 Germany–Turkey guest worker programme, 1960s and early 1970s

This guest worker programme is often cited as a first-generation temporary worker programme that did not achieve its objectives. It was initially conceived as a strictly temporary programme in which new workers would rotate between their country of origin and Germany – like a circular migration system. While all parties to the programme were convinced that it was indeed a temporary one, “... these parties have had different, sometimes opposed interests and perceptions of the program” (Heckmann, Honecopp et al. 2009: 6). The same authors add that: “A strict rotation principle, with ever repeating adaptation and socialization for the new workers, was costly and full of risks” (Heckmann, Honecopp et al. 2009).

When Germany applied a recruitment ban in the face of recession in the early 1970s, however, it contributed to reinforcing the settlement process with family unification. Heckmann et al (2009) rightly observe:

The main lesson to be learned from the German guest worker program is that it is very difficult to restrict such workers to an economic role. On the one hand, there are the interests of employers in keeping productive workers who have been socialized into the job and the firm. On the other hand, the longer workers stay, the less they can be denied basic human rights and integration into society. Western states cannot and do not want to rotate workers in the brutal way that is practiced by authoritarian regimes in the Middle East (Heckmann, Honecopp et al. 2009: 6).

Ricardo Faini also confirms that the mistake lay in trying to fill permanent jobs with temporary workers.

“The main shortcoming of Germany’s immigration policy, and an explanation for its failure to enforce a sufficiently high rate of returns, stems from the attempt to fill with temporary migrant workers what were in the end permanent jobs. This strategy was strongly resisted by German entrepreneurs, who complained about the need to retrain workers continuously” (Faini – cited in OECD, 2008: 214).

The same mistakes, however, seem to be repeated in current approaches to labour migration programmes in Europe (Castles 2006).

4.2 Temporary labour migration programmes in the United States

The United States has operated large scale temporary migration programmes for a long time, but they have not received much attention except for the early programmes (Bracero) and the H1-B visa programmes. The US programmes also cover admissions of both skilled and low-skilled workers. Both also clearly bring out the typical risks inherent in these programmes.

4.2.1 The Bracero program

The Bracero program – a major temporary worker programme – based on an agreement between the United States and Mexico, lasted from 1942 to 1964. It started as a war emergency measure but continued after the end of the Second World War, with increasing dependence of US employers in agriculture on migrant workers. Admissions under the Bracero program ranged from annual levels over 450,000 in the 1950s to less than 200,000 workers in the closing stages. During its 22 years of operation, it involved 4.5 million people (Meissner 2004).

Poor enforcement resulted in widespread abuse of workers by employers. A major issue was that the 10 per cent of wages withheld to ensure return was never paid back to the workers by the Mexican Government. The programme also adversely affected local workers by depressing farm wages, and US farm workers sought non-farm jobs to avoid competing with Bracero farm workers (Martin 2007). Yet the programme served to sustain networks that have continued to facilitate irregular flows over time from Mexico to the United States (Meissner 2004).

4.2.2 The H-1B visa for skilled migrant workers

There has been a steady increase in the use of temporary worker programmes by employers of high-skilled and non-agricultural seasonal workers. Among the current programmes are the H 1B, L 1, H 2A, and H 2B. H 1B is a temporary program that permits employment of high-skilled workers. The first two programmes relate to skilled workers while H 2A and H 2B apply to agricultural and non-agricultural seasonal work respectively.

H 1B visas are issued to foreigners who work temporarily in the United States in a specialty occupations including architecture, engineering, mathematics, education, medicine and other fields that require specialized knowledge. The visa is limited to three years initially, subject to a maximum period of six years, with extension.

For an H 1B visa, the minimum qualification is a bachelor's degree or higher in the specialty skill for which one would be coming to the US to work. Today the programme is most commonly used in the information technology and computer industries. Almost half of those admitted on H 1B visas in the last six to eight years have been from India. The next largest source country has been China.

It should be noted that there are three categories of H 1Bs: those with at least a bachelor's degree who face a 65,000 annual (Congressional-mandated) ceiling; those with advanced degrees from a US University who can be hired within the 65,000 allocation or can be hired within another 20,000 set aside exclusively for people with those qualifications; and finally a third group who can be hired for work at universities, with no numerical ceiling.

The programme also highlights the typical problems inherent in temporary worker programmes as summed up by Lowell (2005):

... the H-1B is fraught with problems for both employers and domestic labour markets. Effective policy should meet the demand of employers in a timely fashion, protect working conditions, and not foster over-dependence on foreign workers. The H-1B fails to meet these basic standards (Lowell 2005: 14).

The major protection issue is that H 1B workers are often at the mercy of employers. As Hira (2010a: 12 13) points out:

By design, current high-skill immigration policies in the United States place enormous power in the hands of employers. Employers hold the H 1B or L 1 visa for workers, and employers have complete discretion whether and when to apply for permanent residence for those workers. Given the backlogs for employment-based immigration, the employers are able to keep their H 1B and L 1 visa employees captive.

A study by the AFL CIO's Department for Professional Employees (2009) noted:

... [T]he uneven worker-employer or recruiter relationship is heightened by the threat of deportation if fired and the inability of guestworkers to readily change employers if mistreated ... These practices create a situation in which guestworkers are rendered de facto indentured servants, unable to change their employment situation without penalty and indebted to their recruiting agency. (DPE, AFL CIO 2009: 6).

It adds: "The guestworker visa system in the US, exemplified by the H-1B program, does not protect the rights of domestic or guestworkers" (Section 1).

The H 1B visa has also been described as the 'outsourcing visa' by the Indian Commerce Minister, Mr Kamal Nath in an interview with the New York Times (cited in Hira 2010a: 8). Some firms use both the L 1 and H 1B visas for knowledge transfer with the explicit purpose of laying off their higher-cost American workers. While it is obviously a win for employers, both foreign and native workers lose out in the process.

Ron Hira (2010b: 1 2) highlights four fundamental design flaws in H 1B and L 1 visa regimes:

- a) Neither visa requires a labour market test;
- b) Wage requirements are too low for H-1B and nonexistent for L 1;
- c) Visas are held by the employer rather than the worker; and
- d) Programme oversight and enforcement is deficient.

Costa (2010) also points out the problems with L 1 visa programme for intra-company transferees:

The L 1 visa can and has been used, legally, by employers to replace U.S. workers with lower paid temporary foreign workers, and to avoid basic requirements that are part of other work visa categories, such as paying the prevailing wage and requiring employers to attest that there are no U.S. workers available for the position (Costa 2010: (Costa 2010: 2)).

4.2.3 The H-2B program¹²

The H 2B visa program allows US employers to supplement their existing labour force with temporary foreign workers who are recruited and employed to engage in non-agricultural work. The H 2B visa was created in 1986, as part of the Immigration Reform and Control Act, which split the H guestworker program into an H 2A visa for agricultural guest workers, and an H 2B visa for non-agricultural guest workers. The latter will be discussed here because it has given rise to most abuses.

The popularity of the H 2B program for temporary, seasonal, non-agricultural guest workers is shown by the rapid increase in numbers admitted – from 15,706 visas issued in 1997, to 129,547 in 2007. US companies filed petitions to request nearly 300,000 H 2B workers in the fiscal year 2008 (Seminara 2010). There is some element of circularity in that some workers return for work the following year.

This temporary worker programme is one of the most controversial, significantly deviating from its original objectives.

Use of the H 2B program has morphed from its original intent to help employers that need seasonal and/or temporary workers. The majority of the program's current users are neither small nor seasonal employers, but rather mid- to large-sized companies and recruiters that petition for H 2Bs to work for 10 months out of the year, year after year (Seminara 2010: 1).

While the programme was meant to supplement existing labour force with temporary foreign workers, in practice, however, H 2B employers have been able to replace their domestic labour forces with foreign workers. One example is the Maryland crab companies which have changed from a workforce consisting of predominantly African-American women to a foreign workforce after the advent of the H 2 programme. (International Human Rights Law Clinic (IHRLC), and Centro de los Derechos del Migrants, Inc (CDM) 2009).

A number of other problems have been highlighted by various writers (Seminara (2010); Bauer (2007); New Orleans Centre for Racial Justice, 2009; IHRLC and CDM 2009).

- Many of the businesses filing H 2B petitions for foreign workers are “body shops” that have no actual “seasonal or temporary” need for labour.
- US employers, and the US recruiters they hire, often partner with foreign recruiters who resort to fraud and exploitation of guest workers. The workers are virtually held captive by employers or labour brokers who confiscate their passport and visa documents. Since the legal status of H 2B workers in the United States is tied to their employment, workers rarely show dissent due to fear of retaliation by employers.

¹² While the H-2B program is a seasonal worker programme, the paper has discussed it here together with the H-1B program because they share a number of common problems.

- Many workers start off deeply in debt as pointed out by Bauer (2007), who typically carry a fee-related debt ranging from US \$500 to well over \$10,000. Many pay exorbitant interest rates on that debt, and in some cases the recruiter himself is the lender, charging monthly interest rates of up to 15 per cent (IHRLC and CDM 2009). Thus there is hardly any prospect for workers to earn enough to pay off debts from the work offered during their employment.
- The common abuses in the system have been well-documented (Seminara 2010). Employers use overlapping visa petitions to secure a year-round workforce presence, often under different company names or subsidiaries. There is job description fraud where workers are hired to do jobs that have low prevailing wages, but are assigned to higher level jobs that should have earned higher wages. Employers or recruiters petition to bring in H 2Bs for an initial period of 10 months, even though they are not needed for full-time work for the whole 10 months.
- The H 2B program itself has faced significant criticism for compromising the ability of workers to enforce their fundamental workplace rights. One core concern is that regulations bind H 2B guestworkers to a single employer. Therefore, if H 2B workers are fired by their employers, or if they quit, they cannot simply seek out another employer; rather, they have a very limited amount of time to leave the country before they lose their legal status. These concerns relating to immigration status, and to the loss of future earnings, act to silence many workers (IHRLC and CDM (2009)). Box 4 highlights some considered observations on temporary worker programmes, particularly H 2B.
- H-2B employers are required to advertise job vacancies prior to opening them up to H 2B guest workers, but this is done routinely without serious attempts to recruit native workers.

Box 4:**Observations on US temporary worker programmes, especially H-2B****House Ways and Means Committee Chairman Charles Rangel on the H-2B program:**

“This guestworker program’s the closest thing I’ve ever seen to slavery.”

Cited in: Bauer 2007

The New York Times editorial, “Forced Labor” (September 7, 2010)

“In the abuse of legal foreign workers, the numbers vary but the methods are the same. It is slavery without shackles. Its perpetrators seldom have to resort to violence or even threats of violence. Since workers are buried in debt before they even leave their home countries, the threat of being fired and deported is enough.”

Mary Bauer

“The H-2 guestworker system also can be viewed as a modern-day system of indentured servitude. But unlike European indentured servants of old, today’s guestworkers have no prospect of becoming U.S. citizens. When their work visas expire, they must leave the United States. They are, in effect, the disposable workers of the U.S. economy.” (Bauer 2007: 1)

Saket Soni testimony (2009):

“The stories of our members reveal a pattern of abuse – and illuminate the structure of exploitation. Workers arrive in debt. They are tied to one employer. Their legal status is tied to their visa. And there is no government agency regulating employers or responsible for holding employers accountable. The result has been a human rights disaster.” (New Orleans Centre for Racial Justice 2009: 5).

Ray Marshall, a former DOL Secretary:

“America’s employment-based immigration system is broken. The programs for admitting foreign workers for temporary and permanent jobs are rigid, cumbersome, and inefficient; do too little to protect the wages and working conditions of workers (foreign or domestic); do not respond very well to employers’ needs; and give almost no attention to adapting the number and characteristics of foreign workers to domestic labor shortages” (Marshall 2009: 1).

- **Poor enforcement and oversight**

The studies referred to above have highlighted poor enforcement of regulations and lack of oversight by government agencies administering the programmes. Seminara (2010) points out that despite credible allegations and even convictions for fraud and abuse, neither the Department of Labor (DOL) nor the Department of Homeland Security (DHS) has ever barred a US company from filing H 2B petitions with some repeat offenders continuing to get approvals of their petitions (Seminara 2009: 2).

4.3 The Gulf System

Migration of workers to the Gulf countries was a major development sustaining temporary labour migration regimes with the virtual termination of European guestworker programmes. The oil bonanza of the early 1970s enabled Gulf countries to modernize their economies resulting in large demands mainly for low-skilled workers. Over time most of the expatriate work force has been drawn from south-east and south Asia. It is a classic temporary labour migration system based on fixed term contracts mostly ranging from one to three years. It is also a strictly rotational system with some circular migration occurring when migrant workers re-migrate with new contracts. Competition has driven down wages, and working conditions are proverbially poor. Intermediaries play a major role at both ends which further erodes the benefits of labour migration for workers and source countries. Abuse and exploitation of migrant workers and denial of their

basic human and labour rights are very common, with private sector employers acting with virtual impunity (Wickramasekara 2005; Verité 2005). Female domestic workers are among the most vulnerable groups in this system. While foreign workers account for about 50 per cent of the population in Gulf Cooperation Council (GCC) countries, they have been excluded by law from the public social security system except for employment injury protection, and therefore portability of social security rights does not even arise (ILO 2008).

While some migrants can stay for long periods through periodic renewal of their permits, there is no possibility of family unification for most workers, and there are no pathways to permanent residence or citizenship in any of the Gulf and other Middle East countries. The system also leads to some amount of irregular migration with migrants overstaying, as reflected in recent amnesty programmes. While this temporary labour migration system with elements of circularity has continued for about four decades, it cannot by any means serve as a model that can be repeated in liberal democratic societies.

4.4 Employment Permit System (EPS) of the Republic of Korea

Following years of denying the need for low-skilled workers, the Republic of Korea decided to launch a temporary labour migration programme known as the Employment Permit System in 2004. It had multiple objectives: phasing away the earlier trainee system, meeting the needs of industry with regularly admitted workers, reducing irregular migration, and also assisting friendly developing countries. The Republic of Korea signed bilateral MOUs with a number of Asian countries giving priority to countries with migrants in irregular status in the country. Direct negotiations and recruitment through the public employment services were meant to remove one of the major abuses of the system by private recruitment agencies. National labour law was to apply to all migrant workers. Workers who returned at the end of the contract (three years) could re-qualify after the lapse of six months or one month (at employers' request for re-employment), thereby introducing an element of circularity into the programme.

However, the system has not achieved any of its major objectives. Irregular migration is still of a high order, and there are major shortfalls in worker protection. Amnesty International's evaluation of the Korean EPS system shows how easily a temporary employment programme, established with good intentions, can result in the same abuses as previously.

With the implementation of the Employment Permit System (EPS) in August 2004, the Republic of Korea (South Korea) became one of the first Asian countries to legally recognise the rights of migrant workers. Under South Korean law, migrant workers became equal to national workers with equal labour rights, pay, and benefits. Now five years into the EPS work scheme, migrant workers in South Korea continue to be at risk of human rights abuses and many of the exploitative practices that existed under the previous Industrial Trainee System (ITS) still persist under the EPS (Amnesty International 2009: 2).

The use of temporary migrant labour represents the “government’s strategy to provide cheap, easily exploitable labor to small and medium-size companies” (Global Unions undated: 24). Workers in irregular status have been particularly targeted in these rights’ abuses with the denial of union rights as well. A report by the International Trade Union Confederation (ITUC) stated: “The current employment permit system puts foreign workers in a particularly vulnerable situation, rendering them easily abused and exploited” (ITUC 2008a: 10).

4.5 Seasonal workers’ programmes

4.5.1 Seasonal Agricultural Workers’ Program (SAWP), Canada

The Commonwealth Caribbean and Mexican Agricultural Seasonal Workers’ Program enables Canadian farmers to employ about 20,000 foreign workers for up to eight months a year. While it is also a temporary labour migration programme, it fits well into the circular migration model as mostly the same group of workers return year after year to work in Canada. It is often cited as a model programme that highlights best practices in seasonal migration (Newland, Agunias et al. 2008a). Workers receive much higher incomes than at home, and repeat migration allows the same workers to return each year subject to the approval of employers. The opportunity given to low skilled workers, a high rate of voluntary return to home countries, its sustainability over time, and a high rate of employer participation are regarded as success factors.

Yet there are major rights’ issues with the programme common to many such schemes. As Avendaño (2009: 4) points out: “In reality, those factors are the product of a structure that keeps workers silent and dependent on the program for their economic well-being”. Workers rarely protest because they like to return while Mexican officials also raise no questions to keep Mexico on the programme. Preibisch observed: “Overall, workers’ experience in Canada remains largely dependent on the subjective goodwill of the employer to whom they are assigned” (Preibisch undated: 3). The United Food and Commercial Workers Union calls the SAWP “Canada’s shameful dirty secret” (Martin 2007). It has filed suits against provincial authorities for excluding farm workers from the Occupational Health and Safety Act and for charging migrants Canadian \$11 million a year in unemployment insurance premiums which do not benefit them because they must leave Canada when unemployed. Unlike in Spain and Sweden (which consider transition to permanent status after participation in the labour migration programmes for four years), SAWP workers do not get any family unification or secure residence rights even if they circulate for years.

With the introduction of a new temporary worker programme in 2002 (open to agricultural producers as well) – the Low Skill Pilot Project (LSPP), Canada also moved away from the bilateral agreements model. This has already given rise to more recruitment abuses (Preibisch 2010).

4.5.2 Spain–Morocco programme in Cartaya, Spain

While Spain has a number of temporary labour migration programmes, the pilot project on circular migration in Cartaya, in the strawberry-growing province of Huelva, is illustrative of approaches to return. It developed a circular migration temporary worker programme with Morocco, but had recurrent problems of low returns at the end of the season as required. The authorities changed the rules so that only mothers under the age of 40 with dependent children may participate, with a guaranteed right of return in the next season to those who comply. They are not permitted to bring children with them. Voluntary returns were 85 per cent at the end of the 2007 season. Cartaya's mayor describes this programme as "ethical migration," to distinguish it from irregular migration common in the area (Cited in Martin 2007). Thus, from the destination country's point of view this may be termed 'good practice' in circular migration despite the discriminatory selection and deliberate focus on separating mothers from their children. Yet the comparison should be with the conditions of work of national workers, not workers in irregular status. As one commentator noted, the system allows the province "to export strawberries by importing a workforce which has no say, who cannot seek to remain¹³, or have rights, or a goal" (Arab 2010). The Spanish *El País* newspaper has highlighted poor working conditions and some cases of sexual abuses in the premises provided by the employer. But migrant women have been reluctant to denounce them, due to the fear of being excluded from future possibilities of migration (Andreu and Jiménez 2010).

"... it's better to lose 100 fathers than a single mother."

Anthony, 17 year old boy from Cavite, Philippines

SMC (2003), *Hearts apart: Migration in the eyes of Filipino children*,
Scalabrini Migration Centre, Manila, Philippines

4.5.3 The German seasonal workers' programme

The German seasonal workers' programme, which operates under Memoranda of Understanding signed by the Federal Employment Agency, and employment services in source countries in seven new accession countries and Croatia in Europe, admits migrants for up to six months if local workers are not available to fill vacant jobs in agriculture, forestry, and the hotel and catering sector. Most migrants admitted have been Polish nationals (Martin 2007).

The programme allows up to six months of employment per calendar year. The interesting feature of the programme is the large number admitted compared to seasonal worker programmes in other countries which have been in the range of 300,000 in recent years. Changing employers is allowed if the Federal

¹³ It is not clear whether the four-year rule for consideration for permanent residence applies to this category.

Employment Agency is kept informed. Most participating workers may already be employed in their own countries, implying that they migrate for higher earnings.

There is no built in circularity because there is no special consideration to previous work, but in practice employers will bring back the same workers. German authorities make it clear that the programme was motivated by economic needs of labour demand in industry, and not by development considerations (EPC 2010a).

4.5.4 Seasonal workers' programmes in Australia and New Zealand

In 2007 New Zealand launched the Recognized Seasonal Employer Policy (RSE), targeted at seasonal workers from the Pacific islands. Australia followed suit with the Pacific Seasonal Worker Pilot Scheme (PSWPS) in 2008. (New Zealand provides for the employment of up to 5,000 workers per year in agricultural and horticultural work for a period from seven to nine months in any 11-month period. Workers cannot switch to another type of work permit during their stay, and must leave at the end of the contract period).

The countries involved in the Australian pilot scheme are Papua New Guinea, Tonga, Vanuatu, and Kiribati, with the last three countries also in the RSE. The PSWPS scheme will initially open channels for employment in the horticultural industry. Workers will be employed for a period of up to seven months over a three-year period, and there are plans to employ up to 2,500 temporary workers by the third year of the pilot.

Protection of vulnerable workers is a particular concern, with recruitment malpractice, including deception and fraud, already observed in the hiring of foreign employment in several Pacific countries (Ball 2009). Oke (2010) observes that:

While unions are wary of temporary migrant work programs, they have shown some increased openness to such programs, at least in the form of the Pacific Seasonal Worker Pilot Scheme. Such openness is positive, but there is a need to be wary about downgrading of migrants' rights through temporary work programs (Oke 2010: 70).

The Australian trade union movement agreed to the PSWPS on the understanding that the employment conditions of Pacific seasonal migrant workers under the pilot scheme would be closely regulated. This requires oversight and supervision not only in Australia but also in the origin countries. While it is obviously too early to assess the impact of these schemes, a study of social impacts of short-term migration for employment makes the following observation:

On balance the evidence is that the New Zealand RSE scheme is providing positive benefits for employers, for the migrants and for the communities they come from. However, there are social impacts relating to the left-behind that need further examination (Bedford, Bedford et al. 2009: 65).

4.6 Summary

This review of selected programmes highlights the diversity of temporary and circular migration programmes developed in specific contexts. Most programmes are small in scale and unlikely to make a significant development impact in countries of origin facing problems of high unemployment, poverty and lack of decent work. As Castles stated:

Strategies of 'remittance-led development' seem simplistic and naïve. Migration alone cannot remove structural constraints to sustainable economic growth. There is a need for broadly-based long-term approaches that links the potential benefits of migration with more general strategies to reduce inequality and to improve economic infrastructure, social welfare and political governance (Castles 2006: 174).

Hein De Haas (2006) also points out the limitations of these policies:

Trade, aid, return migration and remittances are no short-cut 'solutions' to migration. There are serious doubts in the credibility of such policies. First, protectionist trade policies of wealthy countries are often inconsistent with their aims to promote development in poor countries. Second, receiving countries have not shown any serious commitment to a real migration and development policy beyond the narrow perspective of stimulating the return of unwanted migrants and fixating on temporary migration as the ideal solution to prevent permanent settlement. This ignores repeated past failure with "revolving door policies" and their perverse effects on circular mobility (Haas 2006: 31).

This equally applies to attempts to project limited temporary or circular migration initiatives as catalysts of development in source countries. It is worth quoting Bedford's recent observations on circular migration:

Managed migration programmes that seek to institutionalise circulation of population are not likely to provide sustained triple wins for migrants and for the source and destination countries on their own. They can be useful initiatives as part of larger packages of policies designed to facilitate mobility between countries, but effective wins over time for migrants and their source and destination communities can only be gained when there are opportunities for migrants to transition to other types of arrangements for work and residence, for employers to retain workers who have developed the skills they need for the ongoing development of their enterprises, and for the source communities to benefit from the regular income streams and other opportunities for their families that are associated with less regulated regimes for population circulation (Bedford 2009: 9.)

The next Section looks at the European Commission's policies and activities on circular migration and mobility partnerships.

5. THE EUROPEAN COMMISSION'S POLICIES AND ACTIVITIES RELATED TO CIRCULAR MIGRATION

It is important to note at the outset that in 2007 the European Commission (EC) proposed Mobility Partnerships (MPs), and circular migration programmes between the European Union (EU) and third countries (European Commission 2007). While both were proposed in the same Communication, Mobility Partnerships proposed by the European Commission are different from spontaneous circular migration and temporary or managed circular migrations discussed up to now, as the former are integral components of the Global Approach to Migration (GAM) – part of the externalization of EU policy towards third countries (Carrera and Sagrera 2009). The GAM moves beyond the previous EU policy of focussing on combating irregular migration, and has three pillars: combating illegal migration, promoting legal migration, and strengthening the positive contribution of migration to development. Mobility Partnerships also combine these three elements, and are thus broader than the model of circular migration proposed in the same Communication. The Maastricht Graduate School of Governance's policy brief (MGSG 2010) provides a clear explanation of these Mobility Partnerships. MPs can include some circular migration provisions as part of their legal migration options.

Regarding circular migration, Pastore (2008) points out two fundamental aspects of the Commission's approach to circularity as conveyed in its Communication (European Commission 2007): i) bi-directional nature, and ii) incentive-based approach.

First the proposed strategy covers both "circular migration of third-country nationals settled in the EU" and "circular migration of persons residing in a third country". The first category – described as outward circular migration in a recent EuropeAid document (EuropeAid 2010) thus refers to third country nationals (part of the diaspora) settled in the EU who may temporarily return to home countries for productive engagement. The more important category for developing countries is the second – described as 'inward circular migration' by EuropeAid – which the Commission explains as covering "a wide array of situations ... including: third-country nationals wishing to work temporarily in the EU, for example in seasonal employment; third-country nationals wishing to study or train in Europe before returning to their country" and several others listed in Section 2 of this paper. It thus lumps together temporary migrant workers (mentions only seasonal workers specifically), students, and trainees. It is important to note that the communication and subsequent documents include only seasonal workers from among low-skilled workers from third countries to be considered for these programmes.

Second, the Commission makes it clear that effective return is an essential component of circular migration, for which administrative and material incentives will be provided. Pastore (2008) rightly mentions that this aspect of the EU approach to circular migration is “less clear and surrounded by some undeniable ... *ambiguity*”. The incentives *relate to*: guarantees of future right of stay or future admission opportunities; better support for productive re-integration activities on return in source country; improved transferability of pension rights; and support for temporary return of high-skilled migrants, among others.

“Circular migration could create an opportunity for persons residing in a third country to come to the EU temporarily for work, study, training or a combination of these, on the condition that, at the end of the period for which they were granted entry, they must re-establish their main residence and their main activity in their country of origin. Circularity can be enhanced by giving migrants the possibility, once they have returned, to retain some form of privileged mobility to and from the Member States where they were formerly residing, for example in the form of simplified admission/re-entry procedures.”

(European Commission 2007: 9)

The Commission has proposed provisions to facilitate circular migration in several directives addressing regular migration and legal status of third-country nationals: the long-term residents’ directive which allows for periods of absence from the EU without losing long-term residence status, the Blue Card directive on the admission of highly qualified migrants, and the recently proposed Seasonal Workers’ directive. The Blue Card directive has already been adopted, although it is still being transposed by EU Member States, whereas the directive on admission of seasonal migrants is still in the proposal stage. If adopted, the Seasonal Workers’ directive would establish a fast-track procedure for the admission of third-country seasonal workers, based on a common definition and common criteria, in particular the existence of a work contract or a binding job offer that specifies a salary (European Commission 2010).

The Stockholm Programme of the European Union Council (European Union Council 2009) has asked the European Commission to submit proposals by 2012 on circular migration as part of its work on migration and development:

... ways to further explore the concept of circular migration and study ways to facilitate orderly circulation of migrants, either taking place within, or outside, the framework of specific projects or programmes including a wide-ranging study on how relevant policy areas may contribute to and affect the preconditions for increased temporary and circular mobility (European Union Council, 2009: 62).

Mobility Partnerships offer assistance to third countries in the fields of combating irregular (‘illegal’ in EC terminology), promoting legal migration and strengthening the positive contribution of migration to development to third countries willing to cooperate in the areas of readmission, controlling irregular migration and reintegration of returnees (European Commission 2007b). Out of eight listed commitments to be met by third countries to enter into Mobility

Partnerships, seven relate to effective border management, preventing irregular migration and accepting readmissions (Box 5). The eighth commitment refers to efforts to be made by these countries to reduce migration pressures through promoting decent work and local development. While these are mentioned as examples of commitments and are not exhaustive, they are highly stringent conditions given that source countries with limited resources do not have a high degree of control over migration or the capacity to manage borders effectively where even EU Member States with superior resources and tools have not had remarkable success.

Box 5:

Contents of Mobility Partnerships: Commitments expected from the third country concerned

- A commitment effectively to readmit its own nationals and to cooperate fully in identifying them;
- An additional commitment to readmitting, under clearly defined circumstances, third country nationals and stateless persons who arrived in the EU through the territory of the country concerned, where appropriate in the framework of an EC readmission agreement;
- Initiatives to discourage illegal migration through targeted information campaigns;
- Efforts to improve border control and/or management, supported as appropriate by operational cooperation with Member States and/or FRONTEX (European Agency for the Management of Operational Cooperation at the External Borders);
- Efforts to improve the security of travel documents against fraud or forgery;
- A commitment to cooperating and exchanging information with relevant authorities in EU Member States with a view to improving cooperation on border management issues and thereby helping reduce the security risks linked to international movements of people;
- Specific measures and initiatives seriously to combat migrant smuggling and human trafficking;
- Commitments to promote productive employment and decent work, and more generally to improve the economic and social framework conditions, ... as they may contribute to reducing the incentives for irregular migration.

Extract from European Commission (2007: 4)

Thus it is not surprising that there have been only three partnerships established up to now: Cape Verde, Georgia and Moldova. The negotiation of an MP with Senegal has been stalled. Some even doubt whether Moldova was enthusiastic about a mobility partnership, and allege that the non-paper expressing interest was not written by the Moldovan government, but by the International Organization for Migration (Reslow 2009a: 15).

Reslow (2010) explains limitations of the Mobility Partnerships' approach based on recent experiences.

In terms of the content of policy, the Mobility Partnerships display a restrictive tendency (despite their rhetoric on the promotion of legal migration opportunities); they are an instance of soft law and flexible integration; they reflect the general trend of externalisation in EU migration policy; and they are coercive towards partner countries (Reslow 2010a: 16).

Chou and Gibert (Chou and Gibert 2010: 8) indicate that the EU approach towards the Mobility Partnership with Senegal contributed to the stalling of negotiations. They quote a Senegalese official involved in the negotiations who stated that "as often with these issues, Europe came with a finished project' and did not consider it necessary to consult the Senegalese views." Chou and Gibert (2010: 9) gathered that the text of the proposed Mobility Partnership with Senegal was largely the same as the agreement with Cape Verde, with only minor changes.

Table 5 provides recent information on mobility partnerships for the three pilot countries. It clearly brings out the disparate nature of partnerships in Africa and Europe with only five countries supporting the Cape Verde partnership, while Moldova and Georgia are heavily subscribed.

Table 5: European Union Member States participating in Mobility Partnerships

	Cape Verde 2008	Moldova 2008	Georgia 2009
Lead EU Member State	Portugal	Sweden	Czech Republic
Number of projects proposed	31	64	17
Partner countries	France Luxembourg Netherlands Portugal Spain	Bulgaria Cyprus Czech Republic France Greece Germany Hungary Italy Lithuania Poland Portugal Romania Slovenia Slovakia Sweden	Belgium Bulgaria Czech Republic Denmark Germany Estonia Greece France Italy Lithuania Latvia Netherlands Poland Romania Sweden United Kingdom

Source: (Reslow 2010b)

This probably brings out that political motivation, rather than a commitment to development, is the driving force in circular migration programmes (Reslow 2010b).

Regarding activities under the MPs, it has been pointed out that there have been very little migration and mobility (legal labour migration) components up to now. (Reslow 2010b; Carrera and Sagrera 2009). There are big shopping lists with 64 projects proposed for Moldova, 17 for the more recent Georgia partnership, and 31 projects for Cape Verde. It is not clear whether the sum total of these poorly-funded diverse activities concerned with training in border control, staff capacity building and data improvements, etc, could have much developmental impact in the end. This is not to deny limited gains for partner countries in visa facilitation, rights of return, and better inter-country cooperation achieved through the partnerships.

An evaluation of mobility partnerships by the European Commission in December 2009 provided an optimistic assessment. It concludes:

This preliminary assessment confirms that mobility partnerships are promising, innovative and comprehensive tools and may represent a valuable framework for increasing transparency, enhancing synergies, triggering cooperation and ensuring more cost-efficient operations between partners, between the Commission and Member States, and inside them, between various ministries and departments involved. (European Commission 2009: 8).

There have been several critiques of the mobility partnership–circular migration model. Steffen Angenendt (Angenendt 2007) argues that it needs a number of conditions for sustainability. According to him, three points should be granted particular attention:

- First, it must be decided whether the concept intends primarily to achieve development policy or migration policy goals since the programme's concrete form will depend on this.
- Second, it must be determined whether the concept of circular migration actually means repeated or simply one-time migration. This is a significant difference. In order to avoid the pitfalls of past recruitment policies, provision of integration measures should be considered also for temporary migrants when staying for longer periods (temporary integration).
- Third, it should be taken into account that temporary migration programmes can only achieve sustainable outcomes when they are incorporated into comprehensive migration concepts. To this end, it should be clarified under what conditions a temporary stay can be converted into a permanent stay.

Carrera and Sagrera (2009) argue that the partnerships are more in the nature of 'security' partnerships for the EU countries.

... Given the actual origins, rationale, conditional nature and kinds of circular migration policies advocated by these partnerships, they should be considered 'security' partnerships for the participating EU member states and to a limited extent for the non-EU countries. At the same time, they could be regarded as 'insecurity' partnerships for the coherency and legitimacy of the EU's labour immigration policy, as well as the liberty and security of the third-country workers (Carrera and Sagrera 2009: abstract).

The European Social Watch Report 2009 has raised a number of relevant issues on circular migration. It points out:

The EU's recognition of the development potential of migration is certainly a good thing. However, until now, such recognition appears to be more rhetoric than reality. While European immigration policies are needed, these need be shaped in ways that help deliver development, and do not only address Europe's self-oriented security and economic interests (European Social Watch 2009: 4).

Another NGO – SOLIDAR – has also expressed its reservations on this approach. It pointed out that the circular migration programmes' Communication leaves out the larger group of low-skilled workers who could benefit from the measure, and seems to assume that the only categories for whom circular migration would be beneficial are researchers, entrepreneurs and highly skilled professionals, as in the Communication on migration and development. It adds:

The EU's current migration and integration policies lack coherence, as they promote, at the same time, 'brain-drain' from countries around the globe, by accepting high skilled migrants, and shutting its doors to the less qualified, unskilled and poor, or offering them double standards by denying them access to the whole range of welfare and employment rights. SOLIDAR therefore calls for a strong focus on issues linking migration and employment as we believe that having a clear and comprehensive political and legal framework concerning migrant workers rights is paramount amongst the challenges to be faced in order to enhance the integration of non-EU citizens (SOLIDAR 2010: 1).

Despite the rhetoric on mobility and migration and development linkages, the fact remains that there are very limited opportunities for third country nationals, especially low skilled workers, to migrate for employment to EU Member States. A study commissioned by the European Commission (BEPA 2010) looked at the entry and residence conditions for 'unskilled and low-skilled' (ULSW) third country nationals in the 27 EU Member States and came to the following conclusion:

This research concluded that, despite the existing need for an unskilled and low-skilled immigrant labour force, the immigration of unskilled and low-skilled workers is not addressed specifically at either EU level or at national levels in the 27 EU Member States. The research clearly indicates that actions need to be taken at national and EU levels in order to create effective and flexible mechanisms that would allow Member States to meet the existing need for third-country ULSWs (BEPA 2010: 9).

It found that only one country (Lithuania) had simplified rules for employing third-country workers. Whether the situation still holds true in the context of the crisis is not clear.

Another issue is that these programmes are completely silent on the presence of workers in irregular status in the European Union. As SOLIDAR (2010) pointed out: “Millions of undocumented migrants live in the EU. Their presence cannot simply be ignored, addressed in terms of border management and/or regularisation.” Their circularity has been constrained by the ongoing ‘cimmigration’ approaches,¹⁴ and bringing them into the open will permit their absorption into labour markets or dignified return.

¹⁴ Convergence of crime and immigration controls.

6 GLOBAL INITIATIVES AND APPROACHES TO CIRCULAR MIGRATION

6.1 The Global Commission on International Migration

The Global Commission on International Migration has been instrumental in promoting the concept of circular migration in international circles. While it has not defined circular migration, it has used it together with temporary, and in some instances with, return migration. It stated: "... countries in the developing world stand to make more gains from the temporary and circular migration of their citizens than from their permanent departure" (GCIM 2005: 31). It also advocates: "States and international organizations should formulate policies and programmes that maximize the developmental impact of return and circular migration" (GCIM 2005: 31).

The report however, provides no justification for these strong views except a couple of references to mitigating brain drain. There are altogether only six references to circular migration in the entire report. While concluding that the "old paradigm of permanent migrant settlement is progressively giving way to temporary and circular migration", the example given is that of migration of Asian workers to work under short-term employment contracts, both within and outside the region. This temporary migration pattern is by no means a recent development, as highlighted earlier. The Commission report rightly points out that "countries of destination can promote circular migration by providing mechanisms and channels that enable migrants to move relatively easily between their country of origin and destination" (GCIM 2005: 31).

6.2 The UN Secretary-General's Report to the United Nations' High-level Dialogue on International Migration and Development 2006

The above-mentioned report mostly deals with temporary migration programmes, and notes the potential for such programmes to result in "beneficial synergies for migrants, countries of origin and countries of destination" (United Nations 2006). Paragraph 84 of the report reiterates the usual arguments for a triple win situation through temporary programmes. However it also clearly recognizes the problems encountered with such programmes.

Temporary migration programmes do not, however, provide a full solution to the challenges of migration. In particular, their temporary status makes the adaptation of migrants more difficult, and may lead to their marginalization. Furthermore, given the structural needs for additional migrants in industrialized countries, which are associated to their economic, demographic and social trends, filling such needs exclusively with temporary migrants may turn out to be problematic (United Nations 2006: 36-37).

The report later deals with circular migration under the heading 'circulation' and also in connection with return migration. It points out that "... as with emigration, return need not be permanent. Migrants who return for a period and then leave again are said to be engaged in "circulation". Circulation, however, does not occur when migrants return only for short visits but essentially remain settled abroad (United Nations 2006: 68)." The last sentence seems to be a contradiction because it seems to rule out circulatory movements by the diaspora.

While noting the limited development and other benefits of short term employment of migrants abroad, the report makes a case for security of residence status abroad. This is consistent with the idea of sustainable return.

Beneficial circulation between the home and host countries seems more likely when migrants have security of status. Enforced circulation related to the renewal of temporary residence or work permits may lead to fewer benefits (United Nations 2006).

6.3 The United Nations Development Programme's Human Development Report 2009

The UNDP Human Development Report 2009 – Overcoming barriers: Human mobility and Development – has only a few references to circular migration. It includes circular migration in its core policy package in respect of two areas where migration policy reform is said to be both desirable and feasible: "seasonal or circular programmes, and entry for unskilled people, with conditional paths to extension" (UNDP 2009: 96).

Oddly, the first avenue concerned with circular migration mainly refers to "schemes for truly seasonal work in sectors such as agriculture and tourism". It includes the following key elements for planning and implementing reforms: consultation with source country governments, union and employer involvement, basic wage guarantees, health and safety protection, and provision for repeat visits. It refers to the Canadian and New Zealand seasonal workers' schemes as providing these elements, and concludes that workers in these schemes enjoy better protection than those with irregular status, and that this is major advantage from a human development point of view. However, the real comparison should be with migrant workers in regular status with longer term duration or with national workers doing similar jobs. In other parts of the report, the benefits of circulation of the diaspora are also mentioned.

The second avenue which the Report advocates is expanding the number of visas for low-skilled people – conditional on employer demand. It also adds that visas can initially be on temporary basis only for sectors with labour shortages, but with the right to apply for extensions and pathways to permanent status and the provision for changing employers. It also recommends provisions to encourage circularity such as portability of accumulated social security benefits. It does not explain the possible overlap or interrelations between the two areas – circular and temporary migration for low skilled people. These are hardly new conclusions.

6.4 The International Organization for Migration (IOM) and circular migration

The IOM has a considerable stake in circular migration programmes in its capacity as a service agency for member States. Facilitation of foreign recruitment and circular migration is one of the major work areas as explained by IOM.

Many industrialized countries require foreign workers on a temporary and longer term basis because the local labour force cannot meet local demands to remain competitive in the global market economy. Facilitating circular migration can respond to short-term requirements for labour, while at the same time maximizing the development impact of migration in countries and communities of origin (IOM 2008a: 3).

The IOM's 12-Point strategy also makes specific reference to short-term movements and other types of circular migration; Point 12 of the strategy reads as: "To support the efforts of States in the area of labour migration, in particular short-term movements, and other types of circular migration" (IOM 2007: 7).

A recent review of the IOM strategy provides more information on Point 12 of the Strategy (IOM 2010). It refers to support on labour migration to governments, civil society and private sector stakeholders in four areas: to foster synergies between labour migration and development; to facilitate formulation and implementation of labour migration policies and programmes to optimize their developmental benefits; to promote legal channels for labour mobility, including as an alternative to irregular migration; and, to promote effective protection of, and provision of support services to, migrant workers and their families. Under the third point specifically concerning circular migration programmes, it lists activities on information dissemination, database creation and the registration of potential migrant workers, and matching skills with demand. The IOM assisted several countries of origin such as Colombia, El Salvador, Guatemala, Honduras and Mauritius in pre-selecting, preparing and deploying 12,405 temporary foreign workers to Canada between 2007 and 2009 (IOM 2010: 19). It is important to note that the IOM does not refer to its diaspora activities, and the Migration for Development in Africa (MIDA) programme, as circular migration although the GFMD and MPI had described them as such.

The IOM's work in relation to circular migration thus covers several areas:

- a. Facilitation of actual circular migration programmes: it is already facilitating some circular migration programmes for European governments. These may not be described as circular migration programmes directly, but they contain certain elements of circularity. The IOM coordinates, with the support of the Government of the Republic of Colombia, the consolidation and expansion of the Temporary Circular Labour Migration (TCLM) model between Spain and Colombia that was established by the Farmers' Union of Catalonia. It has also provided support to Moldova and Georgia in their negotiations of the circular migration and mobility partnership with the European Commission. It is also involved in regular technical support for these mobility partnerships.

- b. The IOM's MIDA programme was recognized as an important initiative of skills' circulation at the 2007 GFMD in Brussels, and an evaluation of the programme was proposed as a follow-up to the GFMD, together with UNDP's TOKTEN (Transfer of Knowledge Through Expatriate Nationals).
- c. The IOM is building and maintaining a database to facilitate the Mauritius Government's circular migration arrangement with France.
- d. Research on circular migration. Hardly any research on this issue has been sponsored by the IOM. Its World Migration 2005 report made a clear reference to circular migration as a policy option.

Promotion of more circular migration, for example by opening up more avenues for regular, repeat temporary labour migration, to give the incentive of future return to the same job; making residence or dual citizenship available to certain migrants as an encouragement to productive, free exchange between the two countries ... and more flexible visa regimes (IOM 2005: 296).

In 2008 the IOM's Budapest Office issued a publication entitled 'Circular or Permanent Migration', consisting of a set of country studies for Europe (Honekopp and Mattila 2008). The title is quite misleading because the volume does not contain a comparative discussion of the two migration systems at either conceptual or empirical level. It contains only ad hoc references to circular migration practices in a few European countries.

The 2008 World Migration Report (IOM 2008b) provides some examples of circular migration, with boxes on Mauritius migration, seasonal schemes for Pacific islanders, and the Colombia-Spain circular migration model. But it does not seem to take a specific position on it. It proposes that both permanent and temporary forms of migration need to be discussed when formulating labour migration policies but without preferring one form over the other.¹⁵ The 2010 World Migration Report (IOM 2010) includes the promotion of circular migration among the 10 core areas where more effective capacities may be required to realize more fully the potential of migration to contribute to development. It pointed out that capacity-building would be required "throughout the cycle of circular migration, from pre-departure, through insertion in the labour market, to re-integration in the origin country and procedures to potentially permit periodic re-entry into the destination country to work" (IOM 2010: 53).

¹⁵ The author is grateful to Ryszard Cholewinski for clarifying this point.

6.5 The Global Forum on Migration and Development (GFMD) and circular migration

Circular migration was discussed as a major theme in the 2007 and 2009 Forums, while there were also a number of references to it in the 2008 Forum. The Panel Discussion on circular migration in the 2007 government meeting highlighted the usual benefits of circular migration and described it as a new theme central to the GFMD agenda:

Circular migration was described as a new theme that goes to the heart of the work of the GFMD, and is high on the agenda of the European Union. It provides the operational link between migration and development and allows a reconciliation of the agendas of migration policy and development policy. It is a form of migration that can a) contribute to development goals by making the most of the human capital represented by migrants and b) respond to the needs and constraints of social and economic equilibrium in countries of destination (GFMD 2008: 76).

The final report of the 2007 GFMD quoted from the MPI background paper that “Circular migration is at the cutting edge of the migration and development debate” (Newland and Agunias 2007) – a highly exaggerated view as pointed out earlier. As another positive point, it added that “Circular labour migration may guarantee greater temporariness and legality of migration”. It is not clear why greater temporariness is considered a virtue. It also labelled long-standing programmes such as the UNDP’s Transfer of Knowledge through Expatriate Nationals (TOKTEN) initiated in 1977, and the IOM’s Migration for Development in Africa (MIDA), as model examples of circular migration.

The two main recommendations relating to circular migration were to hold a workshop on circular migration in Mauritius before the 2008 Forum meeting, and to undertake an independent assessment of the development impacts of skills’ circulation models, such as MIDA and TOKTEN.

The Mauritius workshop identified five main elements for well-managed circular migration leading to mutual development benefits:

- Comprehensive policies and stakeholder cooperation;
- Improved data, research and evaluation;
- An enabling legislative framework;
- Pilot initiatives and projects; and
- Capacity building in partner countries.

The specific reference to rights in this Section is on residence rights of diasporas. At the end of the Workshop the following countries had announced their interest in potentially setting up new pilot projects: France, Mauritius, the Netherlands, Portugal and Cape Verde (Government of Mauritius and European Commission 2008). The report of the Workshop was circulated at the 2008 Manila GFMD.

The 2009 Athens GFMD meeting addressed the issue of “Reintegration and circular migration: effective for development?” (GFMD 2009). Thus most of the emphasis in the government meeting was on reintegration and the role of origin and destination countries in same. During the Civil Society Days there was a trade union presentation which was critical of the concept (Avendaño 2009). The NGO report also noted issues with the concept and made several recommendations (People’s Global Action on Migration, Development and Human Rights (PGA) et al. 2009)).

The final report of the meeting noted reintegration as a key element of a shift of thinking from return/reintegration *per se* to development. It explored the assumption that effective reintegration of returning migrants can support development efforts, particularly at community level, and specifically in the context of circular migration. The meeting encouraged countries of origin to factor circular migration into their broader development strategies, and host countries to integrate circular migration into their migration and development strategies with partner countries. Follow-up recommendations were mainly on improving information and data through the establishment of a database on circular migration, studies on the impact of reintegration and establishment of an observatory to collect data on experiences of reintegration (GFMD 2009).

The important issue is whether the GFMD process has been able to make any innovative proposals or propose concrete steps to operationalize or improve circular migration programmes through these discussions. A 2010 document on GFMD’s concrete achievements mentions only the proposal to build a circular migration database (Mexico GFMD Taskforce 2010), and omits to mention the independent evaluation of the MIDA and TOKTEN programmes which were reported to the 2008 Manila Forum. These are however, very modest achievements. The document mentioned EU mobility partnerships and pilot projects as positive measures.

The Global Unions statement to the 2010 GFMD in Mexico did not use the term circular migration but referred to temporary labour migration programmes.

In the year of the 20th anniversary of the UN Convention on Migration, Global Unions remain sceptical about the focus of the GFMD on temporary labour migration programmes rather than the rights-based approach promoted by the ILO.¹⁶ ... After 4 years of involvement in the GFMD, Global Unions consider that the Forum tends to turn a blind eye to the many pitfalls of temporary labour migration programmes and overestimates their advantages. Global Unions are further concerned by the aggressive promotion of these programmes by both countries of destination and origin at the GFMD as a measure for economic development (Global Unions 2010: 2).

The Civil Society Days’ statement at the GFMD 2010 echoed a similar view: “Civil society calls upon governments to organize evidence-based discussions of temporary and circular migration. Civil society considers that the GFMD tends to

¹⁶ Bold in original.

turn a blind eye to the many pitfalls of temporary labour migration programmes and over-estimates their advantages.” (CSD GFMD 2010: 2)

6.6 Summary

The above review highlights that global initiatives and institutions have accepted the concept of circular migration without looking in depth into its conceptual foundations and practical manifestations. This is especially the case of the GCIM which has made a strong plea for governments and international organizations to support temporary and circular migration programmes. The GFMD process also had not made any significant contribution in this area.

Boucher has concluded as follows in an analysis of global policy reports on migration in 2008:

Overall the policy proposal of temporary migration with better human rights is primarily designed to serve the interests of both developed states and the corporate sector, principally capitalist employers whether transnational, national or local in their operations. It is only secondarily about the interests of migrants, who may benefit from temporary labour migration, particularly if they are highly skilled and able to work in highly paid jobs in developed countries. It is lastly about the interests of developing world countries, particularly the least developed ones, since the global policy reports do not show how they are actually to benefit more than at present, for example beyond hypothesised increased levels of remittances, diaspora investment, and real brain gain (Boucher 2008: 1469).

7 THE ILO'S PERSPECTIVES ON CIRCULAR MIGRATION

It seems that the ILO did not make any reference to circular migration in the context of international labour migration until the 2000s. The two ILO Conventions on migrant workers (the Migration for Employment Convention (Revised), 1949 (No. 97), and (the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)), and the related Recommendations (Nos. 86 and 151) have not used the term 'circular migration' anywhere. The General Survey of migrant worker instruments in 1999 recognized the increase in temporary migration as one of the profound changes on the international migration scene since the migrant worker instruments were developed. It noted that while the 1949 and 1975 instruments were originally conceived with a view to covering migration for settlement (immediate or gradual), there had been a proliferation of temporary worker programmes recently (ILO 1999). While the Conventions did not make a distinction between permanent and temporary workers, the bottom-line is that "All international labour standards apply to migrant workers" (ILO 2006: 16), whether permanent, temporary, or circular – and irrespective of status.

The ILO produced two manuals on sending workers abroad and employment of foreign workers in the second half of the 1990s which largely dealt with temporary and permanent migration policies and measures, but they did not specifically refer to circular migration (ILO 1996; ILO 1997c). Neither the background report for the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration held in April 1997 which considered guidelines on the protection of workers engaged under temporary migration schemes (ILO 1997a) nor the final report of the meeting (ILO 1997b) made any reference to the term 'circular migration'. However, the background report detailed the types of different temporary work arrangements, and referred to renewable time bound contracts for migrant workers in seasonal and other work, which may partly reflect circular migration arrangements as currently promoted. What this makes clear is that there was no need to identify circular migration as a special category since the scope of temporary labour migration was comprehensive and broad enough to cover all such programmes.

The ILO–DFID project on skilled migration in 2001 considered the usefulness of temporary visa regimes for the circulation of skilled workers to mitigate brain drain (Lowell and Findlay 2002). A subsequent synthesis paper elaborated on this point, and highlighted the roles of policy options of retention, return and circulation in this context, and argued for circulation-friendly visa regimes with the right of return for skilled workers to destination countries (Wickramasekara 2003). The report of the World Commission on the Social Dimension of Globalization (WCSDG 2004) considered cross-border movement of people as a major issue, and referred mainly to temporary migration, and not to circular migration. It noted a major gap in the current institutional structure of the global economy in the absence of a multilateral framework for governing the cross-

border movement of people. It is interesting to note that the reference is to 'people' and not to 'labour'. It noted the three Conventions relating to migrant workers: the two ILO Conventions on migrant workers: Nos. 97 and 143, referred to above; and the International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN's General Assembly on 18 December 1990. Another issue highlighted by the Commission is that of brain drain. In this context it refers to skills' circulation as illustrated below:

The benefits to developing countries can be increased through the adoption of measures to facilitate the return of such workers to their home countries, including for temporary spells. The measures to stimulate such a process of "skills circulation" that could be considered include the acceptance of dual citizenship by both host and sending countries, the easing of re-entry conditions for non-permanent migrants, and tax and other incentives to stimulate the return of skilled migrants to their home countries. An increase in this type of "skills circulation" would benefit both industrialized and developing countries. The former could still continue to hire skilled labour from developing countries. At the same time it would reduce the current inequities arising from a permanent brain drain from poor to rich countries (WCSDG 2004: 73).

The above paragraph largely reflects the current arguments advanced in favour of skilled circular migration, and is consistent with the ILO–DFID project findings mentioned previously. The report also highlighted the need for dialogue between source and destination countries to "help build common approaches to major policy issues such as the rules for temporary migration, the brain drain and the contribution of migration to development, and the alignment of social security and labour market policies; and develop an information system on such matters".

Another landmark event was the General Discussion on migrant workers at the 92nd Session of the International Labour Conference in June 2004. The Resolution on a fair deal for migrant workers in a global economy adopted by the Conference contained a few references to circular migration (ILO 2004). Paragraph 8 referred to circular migration, again in the context of brain drain.

The complex relationship between migration and development is another issue that is attracting increasing attention. While the potential long-term benefits of circular migration, cross-fertilization of skills and technology exchange have been recognized, the permanent loss of critically skilled workers in many developing countries is nonetheless an increasing issue of concern.

Paragraph 6 of the Resolution noted that: "temporary workers and migrant domestic workers often have limited legal rights, may be excluded from social security benefits and may face multiple disadvantages".

The ILO's Multilateral Framework on Labour Migration (MFLM), adopted in 2006, provided clear guidelines on the need to mainstream worker protection into temporary labour migration schemes. The most relevant is Guideline 5.5, which reads as: *"ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment*

between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 of this Framework." The principles 8 and 9 mentioned here contain a clear statement on the human and labour rights of migrant workers. Guideline 9.7 attempts to ensure that *"restrictions on the rights of temporary migrant workers do not exceed relevant international standards"*. There was a clear concern in the negotiations of the Framework that temporary migration programmes could be used to fill permanent jobs and undermine workers' rights.

The explicit reference to circular migration under principle 15 of the Framework concerns migration and development (ILO 2006). Its Guideline 15.8 urges:

adopting policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies;

The issue is whether this should be construed as a strong endorsement of circular and temporary labour migration programmes. It should not be, because it is in fact directly related to principle 5 of the Framework which states: *Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends.* The MFLM recognizes the emerging reality where states are increasingly reluctant to admit workers on a permanent basis.

It is important to note that the ILO used the concept of circular migration in a more generic sense to mean spontaneous movements, particularly concerning long-term residents in developed countries. It was conceived as a means of facilitating visits by long-term migrant workers to their countries of origin, without jeopardizing their residence status in the destination countries.

Circular migration was still a vague and evolving concept at the time, and did not receive serious consideration in the deliberations of the tripartite experts debating the ILO multilateral framework on labour migration. It was not meant at the time to refer to the managed strategy or programmes for labour migration described in this research. Otherwise the Workers' group would have raised objections to any such mention.¹⁷

An ILO–International Institute of Labour Studies report on migration and development in North and West Africa (IILS–ILO 2010) has, however, more recently made a clear case for the promotion of circular migration programmes. The view seems to be based on return migration experiences showing successful business creation by returned migrants. It is however, not clear whether what they describe is one-shot return migration, or circular migration, in the sense of repeat movements. It also argues for programmes involving skilled migrants rather than low-skilled migrants.

¹⁷ Personal communication by Mr. Luc Demaret, Senior Specialist on Workers' Activities, Bureau for Workers' Activities, ILO.

However, more detailed studies of labour markets and employment in Arab Mediterranean countries coordinated by the European University Institute (EUI) and MIREM studies on return migration in Maghreb countries do not lend support to these optimistic views as reviewed in a recent ILO paper (Wickramasekara 2010b).

It is also important to examine the ILO's views on circular and temporary migration as synthesised in the recent volume on 'International labour migration: A rights-based approach' (ILO 2010b). This volume has a number of references to circular and temporary migration among discussion of different labour migration programmes. Most of the references to these two programmes are descriptive, simply enumerate the advantages claimed by other writers in support of circular migration, and do not take a position in their favour except in relation to circular migration of skilled migrants as one of the policy options to mitigate the impact of the brain drain. This is consistent with earlier ILO work on the subject, as pointed out above.

There is nevertheless some ambiguity on the approach to circular migration and lack of consistency between different chapters in reference to the issue.

The report has mainly discussed circular migration as a generic concept in the sense of spontaneous movements within a liberalized migration framework where migrant workers have the choice to move back and forth across borders. This is different from managed circular migration programmes now being promoted by the European Commission or the GFMD in recent times, which have a number of limitations, as previously noted. But the volume does not make this distinction clear which has led to confusion on its perceptions. At the same time the report takes a clear position in a number of places on the limitations of temporary and circular migration programmes in relation to migrant rights and their development impact.

Special efforts should be made to prevent temporary migration schemes from resulting in limitations on equal access to labour and human rights for migrant workers vis-à-vis native workers. This relates in particular to the principles of equality of opportunity and treatment and non-discrimination, including the right to equal pay for equal work, to decent and safe conditions of work, and to the right of association ... Some limitations on the enjoyment of rights may be reasonable, at least for a limited period of time, such as the right to family reunification and the immediate enjoyment of social security and social protection benefits. However, there are others that should never be compromised, such as the fundamental labour rights of freedom of association and collective bargaining (ILO 2010b: 169).

It also quoted relevant guidelines in the ILO's MFLM applying to temporary workers. The report also cites evidence to show that temporary migration programmes cannot replace other migration systems and must coexist with them.

Yet discussion in the volume also begs a number of questions. This is to be expected in a volume that basically updated the Office report prepared for the general discussion on migrant workers at the 92nd Session of the International Labour Conference in June 2004, when the concept was still vague, evolving, and

hardly popular. The discussion is mainly descriptive and scattered in different sections with limited consistency and coherence. Circular migration is lumped together with temporary migration programmes and return migration with no attempt at differentiation. Some arguments put forward by third parties in favour of circular migration are simply repeated without a critical examination of their validity. This applies to the view that circular migration allays fears of permanent settlement. As Avendaño (2009) has rightly pointed out, this could imply tacit support for xenophobic and racist sentiments on the part of destination country citizens. The report has also mainly talked about benefits of circular migration in relation to skilled workers, whereas the current debate more is broader: addressing issues of former rotation schemes, circular migration involving both low-skilled workers and skilled diasporas, and its role as a form of expanding legal avenues.

A recent conference presentation by an ILO migration specialist has reviewed circular migration and integration issues mainly in the context of Europe, but it does not spell out an ILO position on the issue (Kuptsch 2010).

The 2010 ILC report on employment policies also seems to advocate circular migration in the context of skilled migration in paragraph 369 although there was no supporting discussion of these issues elsewhere in the report.

Labour migration poses a variety of challenges and opens up opportunities for training and the deployment of skilled labour that include: compensating for skills shortages in destination countries; improving the recognition of skills across borders; and responding to development challenges in countries of origin when skilled workers find employment elsewhere. The potential for labour migration to contribute to development objectives in both countries of origin and of destination can be realized more fully by facilitating circular and return migration so that the skills acquired by migrant workers abroad benefit their countries of origin (ILO 2010a: 103).

Thus, there seem to be inconsistent positions across the ILO on circular migration and its links with temporary labour migration issues which need to be addressed as a matter of priority. These should take account of the ILO's international labour standards.

8 CIRCULAR MIGRATION AND INTERNATIONAL LABOUR STANDARDS¹⁸

There seems to be some tension between regimes of temporary and circular migration and workers' rights as reflected in international labour standards. Labour legislation in many countries of destination fails to provide adequate protection for migrant workers involved in temporary and circular migration programmes. The reluctance of governments to ratify (and apply) international treaties on the protection of migrant workers enables unscrupulous employers to use legal vacuums to minimize their obligations in terms of good working conditions, adequate social security, and fundamental workers' rights. As van Ginneken¹⁹ noted:

Most countries make significant distinctions, for example, between the rights of migrants with permanent residence status (who usually enjoy most of the rights of citizens except for the right to vote); temporary migrants (whose economic and social rights are often restricted); and illegally resident migrants (who typically enjoy few rights in most countries) van Ginneken (2010: 2).

Problems associated with temporary and circular migration programmes range from: denial of freedom of association and the right to organize; ill-treatment by unscrupulous recruitment agencies; exploitation; and poor and often dangerous working conditions, to discrimination in various forms including reduced access to social security. While the ILO's Multilateral Framework on Labour Migration reiterates that all ILO labour standards apply to all migrant workers, temporary migrant workers have particular difficulties in realizing their rights in many destination countries. The Gulf States are a particular example of this situation. While strict application of ratified ILO Conventions would help reduce instances of mistreatment, the ratification and implementation of the ILO's migrant worker Conventions would have the added benefit of providing the foundation for rights-based and sustainable migration regimes.

Interestingly, the relationship between circular or temporary migration programmes and international labour standards provides evidence of the fallacy of the win-win-win argument. International labour standards adopted by the ILO (and applicable to all workers) are *minimum* standards. Yet provisions in many of the existing temporary or circular migration programmes fail to meet even the minimum standards as expressed in ILO Conventions (therefore hardly a win for workers). In addition, adoption of temporary migration schemes may question the credibility of countries that have ratified the migrant worker Conventions in respecting their provisions (not a win for countries involved). Similarly, for countries that have not ratified the relevant Conventions, the conditions

¹⁸ This Section has been contributed by Mr Luc Demaret of the ILO's Bureau for Workers' Activities (ACTRAV).

¹⁹ Wouter van Ginneken. Making social security accessible to migrants. Presentation at the World Social Security Forum. Cape Town, December 2010.

associated with temporary or circular migration programmes may present obstacles to their possible ratification or to the adoption of minimum or higher standards for migrant workers, with potential impact for other workers as well. ILO–ACTRAV has found that while precariousness is increasingly threatening all types of workers, migrant workers in seasonal and domestic work, are among the categories of workers most frequently affected by precarious working conditions (ILO–ACTRAV 2011). New arrangements of unprotected work are often first imposed on such workers and may be extended to other groups later.

A short review of key provisions in selected ILO labour standards would confirm these points.

Freedom of Association

In June 2009, the International Trade Union Confederation’s Annual Survey on Violations of Trade Unions Rights singled out 22 countries for exploitation of migrant workers, “who are often denied even the most basic of rights, and whose situation frequently means that they are the most vulnerable of all workers to exploitation and abuse” (ITUC 2009). It noted that in countries relying on temporary migrant workers such as Singapore, Thailand, Malaysia, and Taiwan (China), migrants are barred from becoming trade union officials.

A resolution on migrant workers adopted by the 2nd World Congress of the International Trade Union Confederation reiterated: “Freedom of association and the right to organise is a fundamental right of migrant workers and their participation in trade unions is an important path to their integration at the workplace and in society” (ITUC 2010: 2).

Yet in many temporary worker/circular migration programmes, workers are denied this fundamental right relating to the right to organize and collective bargaining. This is an area which needs more research, and some observations follow.

Neha Misra, Senior Specialist, Migration and Human Trafficking, Solidarity Center (AFL CIO (2010) in her testimony to the US House of representatives on 30 September 2010, pointed out that the structural flaws of temporary worker programmes have resulted in a number of adverse impacts including restrictions on freedom of association and the right to organize. This is also a major limitation of the much-praised SAWP of Canada.

Human Rights Watch (Human Rights Watch 2000:) found evidence of a “campaign of intimidation” against workers in the US to discourage any exercise of freedom of association by the workers. The behaviour of the Signal Company in the case involving Indian workers trafficked for forced labour is a case in point, where the company threatened retaliation for voicing of grievances (New Orleans Centre for Racial Justice 2009).

Mary Bauer, Director, Immigrant Justice Project, Southern Poverty Law Center, highlighted this issue in regard to US temporary worker programmes in her testimony to the US House of Representatives on 16 April 2008:

Historically farm workers and other low-wage workers have benefited greatly by organizing unions to engage in collective bargaining, but guest workers' fears of retaliation present an overwhelming obstacle to organizing unions in occupations where guest workers are dominant (Bauer 2009: 6).

In some Gulf countries, even national workers cannot exercise this right. In these countries, migrant workers involved in temporary migration programmes continue to experience manifold problems, despite the fact that they often make up the majority of the workforce. According to ITUC (2009):

In 2008, there was an increase in the number of complaints by these workers about terrible working and living conditions. Unfortunately the protests often resulted in harsh police repression, threatened arrests, or deportation. This particularly applied in Bahrain, the United Arab Emirates (UAE) (where there are thousands of migrant construction workers), Jordan (in the free trade zones), Saudi Arabia and Kuwait, where 200 workers were expelled from the country. In the UAE, 45 Indian construction workers were sentenced to six months' imprisonment, followed by deportation, for going on strike; 1,000 other Indian workers and several thousand other Asian workers, were arrested after similar demonstrations that were deemed "subversive" by the authorities ITUC (2009).

In the UAE, migrant workers are banned from going on strike. Those who do, or who provoke one "without a valid reason" can be banned from working for a year, and if they are absent from work for more than seven days without a valid reason, can have their work permits cancelled and be deported.

While this core right is applicable to migrant workers in irregular status as well, the Republic of Korea has continued to violate it by refusing to register the Migrants' Trade Union (MTU) founded in April 2005 (a member of the Korean Confederation of Trade Unions – KCTU), and would not let it engage in trade union representation or bargaining (Amnesty International 2009). Although there is no legal prohibition of temporary migrant workers joining unions in Malaysia, the authorities and employers apply considerable pressure on workers not to do so. Notices placed on migrants' work permits state that these workers are prohibited to join unions. According to the Malaysian Trade Union Congress, companies intimidate migrant workers to prevent them from joining the union (ITUC 2008b).

Equal Treatment

The two ILO Conventions on migrant workers (the Migration for Employment Convention (Revised), 1949 (No. 97)) and (the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)), and the related Recommendations (Nos. 86 and 151) provide for minimum standards in relation to equal treatment for migrant workers. The principle of equal treatment (treatment not less favourable to that which applies to nationals) is the central element of Convention No. 97. It is contained in Article 6 which prohibits discrimination between regularly admitted migrant workers and national workers with regard to:

... remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons; membership of trade unions and enjoyment of the benefits of collective bargaining; accommodation; and social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme). This also applies to employment taxes, dues or contributions payable in respect of the person employed; and legal proceedings relating to the matters referred to in this Convention.

Most of the temporary or circular migration programmes would fail the test of meeting these minimum requirements. For instance, as noted by Cholewinski (2003)²⁰, "temporary migrants would also appear to be blessed with fewer employment and social rights under national legal systems ... In the studies that we have conducted, we found that migrants often pay social security contributions but obtain few or no benefits in return.

Article 8 of Convention No. 97 prohibits the expulsion of migrants admitted permanently, in the event of incapacity for work. This is an important provision. In many countries, there remain questionable linkages between health status and job security or security of residence.

For instance, some bilateral agreements signed between countries of origin and countries of destination contain language linking the termination of employment (and therefore expulsion) to a worker's contraction of "HIV/AIDS or any other contagious disease". Indeed a number of countries require migrant workers applying for jobs to undergo mandatory testing for HIV/AIDS, or condition the renewal of the work permit to such testing. And private employment agencies involved in temporary migration schemes routinely demand such tests from potential migrants. This is clearly a violation of human rights and also goes against the ILO's code of practice on HIV/AIDS and the world of work. Such a requirement could also be regarded as contrary to Convention No. 97.

Change of employers

Article 14 of the ILO's Migrant Workers (Supplementary Provisions Convention, 1975 (No. 143) stipulates that migrant workers should be allowed to change employers, at least after a maximum period of two years. This is an important means of avoiding abusive situations and the obligation to be attached to the same employer for longer periods may give the latter unwarranted powers of applying pressure on their employees by threatening to stop, or not renew the contract, in which case the workers may lose their residential authorization and be forced to leave the country, or face deportation. In South Korea, the Employment Permit System allows employers to violate migrant workers' trade

²⁰ R. Cholewinski. Temporary Migration in Europe in the Past and Present: General Feature and Protection Afforded. Presentation to the ILO Workshop on Temporary Migration – assessment and practical proposals for overcoming protection gaps (Geneva, September 2003).

union rights with impunity. Migrant workers are permitted only three years' work before they must return to their own country and are strictly forbidden from changing their employer during their stay in the host country.

In this respect, Cholewinski (2003) stressed that:

Temporary migrants have no or very limited access opportunities for gaining a more secure residence status in the country of employment. This position is reflected in the "rotation" schemes that operate throughout Europe, particularly in respect of seasonal labour in all the countries examined, but also in respect of arrangements with regard to other employment sectors (the sector based schemes, training and work experience permit employment and the working holidaymaker scheme in the UK; employment of nurses in the Netherlands; care workers in Germany; Russian nationals in the Barents region of northern Norway). Most of these schemes bind the migrant worker to the same employer and a number require migrants to leave the country for a certain period of time before they can return, which ranges between two months and two years depending on the scheme. Such arrangements are hardly surprising given that the principal rationale behind temporary migration schemes is temporariness. State officials often argue that it is impossible to grant temporary migrant workers a more secure residence status and the additional rights that would accompany such a status because this would fundamentally contradict the purpose of such arrangements and would encourage settlement in the country Cholewinski (2003: 5).

Cholewinski recognized this dilemma but argued "Nonetheless, there are economic and humanitarian reasons in liberal democracies for allowing at least a proportion of temporary migrant workers to gain access to a secure residence status in host countries" Cholewinski 2003: 5-6).

Family reunification

Under ILO Convention No. 143 (Article 13 (1)), there is a State obligation to facilitate the reunion of families of all legally resident migrant workers. While the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) does not expressly speak of a right to family reunification, States' parties are encouraged to facilitate family reunification and to protect the unit of the family (Article 44). However, most seasonal labour schemes and temporary migration schemes such as those in the Middle East, North America, and some European countries do not permit migrant workers to be accompanied by members of their families. In some countries there are also waiting periods before family reunion can take place, which effectively deny this right to temporary migrant workers.

Private employment or recruitment agencies and migrants' rights

The ILO's Private Employment Agencies Convention, 1997 (No. 181), offers improved protection for temporary migrant workers. In fact, one of the key provisions of Convention No. 181 applies to migrant workers. Article 8 of the Convention states that:

"A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses."

Principle 13 of the ILO's Multilateral Framework on Labour Migration has urged governments to respect the provisions of Convention No. 181:

"Governments in both origin and destination countries should give due consideration to licensing and supervising recruitment and placement services for migrant workers in accordance with the Private Employment Agencies Convention 1997 (No. 181), and its Recommendation (No. 188)."

The Preamble to the Convention makes specific reference to the provisions of a number of relevant and important ILO Conventions. Therefore, it can be assumed that "protection for and prevent abuses of migrant workers" would cover the human rights of all migrant workers and the principle of equality of opportunity and treatment (Convention No. 143), as well as the rights to form trade unions and bargain collectively.

However, trade unions have repeatedly expressed concern over the lack of regulation of employment agencies involved in temporary migration programmes. Facts have shown these concerns to be legitimate in many instances. Already in a report tabled to the 85th Session of the International Labour Conference in 1997, the ILO noted that "many of the private employment agencies do not overstep their legal boundaries and contribute to national development. However, a disturbing number of them, often not widely known, exploit both workers and the countries involved, including the host countries". In the same year, the International Confederation of Free Trade Unions (ICFTU) in a report on "Modern-Day Slavery for Temporary Migrants", stated that "accusations against (these recruitment) agencies are beginning to accumulate throughout the world" (ICFTU 1997). Despite these facts, a number of governments have been reluctant to regulate the activities of these agencies and the latter's influence means that in many places, control will remain loose, leading to continuous abuses of migrant workers' rights. None of the temporary or circular migration programmes provide for granting minimum standards for workers recruited through employment agencies.

In relation to its review of Convention No. 181 since 2002, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has highlighted that governments should indicate measures adopted to prevent fraudulent practices or abuses by private employment agencies in relation to migrant workers, and provide detailed information on any bilateral agreements concluded to prevent such practices in recruitment, placement, and employment covered by the Convention (ILO 2009).

Migrants' rights and safety and health in the workplace

The ILO's Occupational Safety and Health Convention, 1981 (No. 155) provides for the elaboration and implementation of a national policy that has as its aim the prevention of accidents, and injury to health arising out of, linked with, or occurring in the course of work, by minimizing the causes of hazards inherent in the working environment. This is particularly important, as migrant workers, especially temporary migrant workers, are among those vulnerable to work-related accidents. Indeed the most dangerous sectors in terms of working conditions are also those where the presence of temporary migrant workers is highest (agriculture with 170,000 worker casualties; construction with 55,000 fatal accidents a year according to the ILO (ILO 2002); or mining with 12,000 fatal accidents a year according to the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM 2011).

9 TRADE UNION VIEWS ON CIRCULAR MIGRATION

Temporary migration has generally been a major area of concern to the trade union movement given their challenges for the protection of migrant workers' rights. Circular migration has entered this debate only in recent years. The ILO–ACTRAV manual on migrant workers' rights does not refer to 'circular migration' at all while it has 17 references to temporary migration (ILO–ACTRAV 2008). In general trade unions may not find a major difference between these two programmes, and most concerns expressed by the trade union movement on temporary migration programmes may apply to both these programmes. According to the AFL-CIO: "To embrace the expansion of temporary guestworker programs, is to embrace the creation of an undemocratic, two-tiered society" (cited in ILO–ACTRAV 2008: 116). Unions have been sensitive to temporary migration under Mode IV (Movement of natural persons) of the General Agreement on Trade in Services (GATS), but it is not strictly a form of circular migration or mobility. Negotiation of movement of workers under the World Trade Organization (WTO) poses serious problems since it does not have a protection mandate. Peter Waldorff of Public Services International (PSI) points out:

These temporary workers must never be treated as commodities or mere – factors of production that can be traded for their services. They are human beings with inherent and non-divisible rights. The WTO has no legitimacy and mandate at all to be dealing with labour migration, which is effectively what Mode IV is about (Waldorff 2008: 4).

The European Trade Union Confederation (ETUC) referred to the 'illusion' about benefits of circular migration in its response to the European Commission Communication on circular migration and mobility partnerships, as noted in Section 3 of this paper.

The ETUC added in its conclusion that circular migration cannot replace more comprehensive policies including more permanent legal channels.

In ETUC's view, the idea of circular migration must be carefully explored, and should certainly not replace more comprehensive policies in which more permanent legal channels for economic migration are also made available. Tackling brain drain and promoting ethical recruitment and a constructive policy of 'brain-exchange' should be part of such approach.

It made the apt observation that policies which promote circulation can only make a modest contribution to brain drain.

The Global Unions "Primer on Global Unions and What They Can Do for Migrant Workers" commented that destination country governments "usually hold a narrow focus on temporary and circular migration meant to fill labor market shortages" (Global Unions undated). The Global Unions' statement to the Civil Society Days of the 2nd Global Forum on Migration and Development, held in Manila in October 2008 argued:

“ ... a narrow focus on temporary and circular migration to fill labour market shortages in receiving countries must be replaced by a comprehensive approach which places migrant workers and their well-being at the center of the policy paradigm, guarantees their fundamental human and trade union rights, and accords them voice and representation through trade unions” (Global Unions 2008: 1).

To achieve this, the Global Unions called for the “construction of architecture of protection of human and trade union rights, linked to development commitments, to underpin all migration policies.”

Ana Avendaño of the American Federation of Labor–Congress of Industrial Organizations (AFL–CIO) has made a critical analysis of implications of circular migration programmes for migrant rights from the perspective of trade unions at the Civil Society Days of the 2009 GFMD meeting in Athens (Avendaño 2009). According to her, there are several issues of concern.

- The approach treats migrants as “little more than commodities who are justifiably not accepted as full members of their host countries, and workers rights’ as fungible”.
- It also appears to accept that “xenophobia and racism are naturally occurring conditions – factors that pose a serious threat to successful integration of migrants” as implied in the alleged advantage of circular migration programmes not allowing for permanency.
- The programmes now promoted as examples of successful circular migration programmes are the very same programmes that were previously promoted as successful temporary worker programmes. The same applies to predicted benefits of “circular migration” which “are the same that were promoted in relation to temporary worker programs, which did not value workers’ rights, but rather treated them as bundles that may be traded away in exchange for access to labor markets where wages are higher than in home countries”.
- The circular migration model also suffers from the same structural flaw in temporary worker programmes – which “allow employers to bypass national human rights and employment laws by using employment practices that are clearly contrary to national law”.

Public Services International (PSI)

The PSI’s policy on Migration and Development, endorsed by the PSI Executive Board in April 2009, has considered circular migration issues.²¹ The salient points in this policy relating to circular migration issues are provided in Box 6. The policy makes it clear that temporary/circular migration is not the solution to sustainable and equitable development of countries in the world, particularly the developing and least developed countries. While mobility is important for some public sector services, the policy makes clear that a number of safeguards are needed to ensure

²¹ The author is grateful to Ms. Genevieve J. Gencianos of PSI for providing relevant information on the issue.

protection of migrant workers' rights which can be promoted by involvement of trade unions in all stages of policy development, implementation and monitoring.

Box 6:

**PSI Policy on labour migration, development and quality public services:
Extracts**

We are deeply alarmed and concerned at the increasing proliferation of temporary/circular labor migration programmes as they have already proven and continue to prove to be detrimental to the rights of workers, their families and communities.

Temporary/circular migration programmes, as they exist today, are designed to exacerbate the brain drain in developing countries and strips workers of their human and trade union rights. Temporary migrant workers are often excluded from the full protection of labour laws, access to social security, support services for integration in host societies and the right to family reunification and citizenship.

If the international community is truly committed to the sustainable and equitable development of all countries in the world, particularly the developing and least developed countries, then temporary/circular migration is not the solution.

Temporary/circular migration programmes in the public sector can only be sustainable and supported to the extent that they can genuinely promote the development of skills and human resources necessary to strengthen public service delivery in both origin and destination countries.

However, such programmes are prone to abuse by unscrupulous employers if they are undertaken in the absence of government regulation, application of human rights and labour standards, ethical recruitment guidelines, full transparency and involvement of trade unions in all stages of policy development, implementation and monitoring.

Synthesis Document:

PSI Policy on labour migration, development and quality public services

10th Inter-American Regional Conference (IAMRECON)

Cartagena Colombia 11-12 September 2010

(Public Services International 2010)

The International Trade Union Confederation (ITUC)

The ITUC's 2nd World Congress in Vancouver in June 2010 adopted a Resolution on Migrant Workers (ITUC 2010). It however, makes no specific reference to temporary or circular migration programmes, but deplores the "widespread abuse and exploitation of migrant workers by employers and by agents and intermediaries and the failure of governments to act adequately to protect them". The Resolution insisted that it was a fundamental responsibility of international policy-making to promote balanced development and decent work in order to eliminate involuntary migration. It also called on governments, in a concerted approach with employers' organizations and trade unions, to "formulate and implement policies which incorporate a rights-based and gender-sensitive approach that provides for legal migration channels within an appropriate multilateral framework".

The Resolution includes posted workers under GATS Mode 4 in its call for promotion of "the application of national labour law and international labour standards to all migrant workers, including refugees and asylum seekers, irregular migrants and those covered under Mode IV GATS provisions" (ITUC 2010: 3).

Box 7:**Good practice example: Model bilateral agreement between trade unions in origin and destination countries to protect migrant workers**

In view of the complexity of protecting the rights of migrant workers under temporary and circular migration programmes, trade unions have a crucial role to play. While unions attempt to organize them to join unions, this is often difficult for workers involved in temporary and circular migration programmes. A promising initiative is cooperation between unions in origin and destination countries to address protection gaps relating to migrant workers in such programmes. The ILO's Bureau for Workers' Activities (ACTRAV) has provided support for the establishment of such agreements between workers' organizations in countries of origin and destination. These agreements are based on the text of a model agreement elaborated and adopted in an ILO–ACTRAV sponsored meeting involving representatives from Asian countries of origin and those in destination Arab countries, as well as regional trade union organisations and the International Trade Union Confederation (ITUC).

Importantly, signatories to the ACTRAV model trade union agreement also commit themselves to promote the ratification and respect of ILO migrant workers Conventions (the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 43), and to actively campaign against racism and xenophobia in society, and combat discrimination and misleading propaganda in both the countries of origin and destination. The agreement stresses that the situation of migrant workers should be addressed through the principles of international trade union solidarity, social justice, equal treatment, equal opportunity, and gender equity.

The model agreement commits signatories:

To raise the specific concerns of migrant workers in their national tripartite labour committees and encourage affiliated unions to integrate them in collective bargaining with employers; and ensure that labour legislation and collective agreements fully protect all migrant workers, including those involved in temporary labour migration programmes.

To develop initiatives aimed at securing the involvement of trade unions in the development of bilateral agreements between governments of destination and origin countries, and the setting up of national tripartite consultation mechanisms and bilateral cooperation forums to discuss and formulate rights-based migration policies, taking into account labour market needs and the possible expansion and facilitation of legal channels as a means of eliminating the exploitation and abusive conditions of workers trapped in irregular situations.

To promote cooperation between the governments of the countries of origin of and destination to enhance governance of migration relating to the establishment of legal avenues for labour migration, strengthening of labour inspection, legal cooperation in the case of trafficking and abusive situations, and issues of maintenance of social security entitlements and the strict supervision and control of activities by recruitment and employment agencies (in conformity with the ILO's Private Employment Agencies Convention, 1997 (No. 181), and subcontractors, as well as the elimination of abuse in sponsorship schemes.

These commitments thus address the major issues and protection gaps faced by migrant workers in temporary and circular migration schemes.

In May 2009, the first three bilateral cooperation agreements for the protection of the rights of migrant workers were signed between trade unions in Sri Lanka and trade unions in Arab destination countries (Bahrain, Jordan and Kuwait).²² This is an important breakthrough given the rampant abuse and exploitation of temporary migrant workers in Arab countries. The model trade union agreement has since been adopted in bilateral and multilateral agreements in Africa and Latin America.

The International Trade Union Confederation, for the Americas (TUCA) pledged to promote the model agreement in their region in December 2009.

In 2010, trade unions from Burkina Faso, Guinea, Ivory Coast, Niger and Togo adopted the model agreement at an ILO-sponsored trade union training seminar in Nouakchott.

²² See the ILO good practice database entry on the Sri Lanka-Arab trade union agreements. http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=32

10. AN IMPROVED MODEL OF CIRCULAR MIGRATION?

There have been a number of contributions which propose some improvements to the EC model or other models of circular migration to make it more acceptable in the light of flaws noted by various groups (OECD 2007a; CARIM 2008; Fargues 2008; Newland, Agunias et al. 2008a; PGA et al. 2009, EuropeAid 2010). These normally include varying combinations of measures: longer time periods of stay, possibility of changing employers, support re-integration at home, issue of multi-annual multi-entry visas, longer periods of right of return for long-term residents, portability of social security benefits, provision for skills training, and some provision for pathways to permanent status for repeat migrants, among others.

The report on the Civil Society Days at the 2009 Athens Global Forum on Migration and Development mentions:

Development should be understood in broad terms as in the concept of human development and also take into consideration social costs and benefits, and not merely focus on economic growth. Similarly, for policy coherence to make sense, all forms of migration need to be considered. This includes temporary, permanent and irregular migration, as well as circular and return migration, but also the need for protection of refugees and displaced persons (PGA et al. 2009).

The report pointed out that “circular migration has to be approached as fundamentally different from temporary migration programs and the concept of circular migration needs to be clarified in policy terms”. However it did not elaborate what these differences were. It made the following suggestions to be adopted in all cases:

- Reform of visa regimes to allow for multi-entry visas, and ‘test’ programmes for those who are thinking of return.
- Employers should pay the costs of recruitment, but training and skills development or language training are public goods that governments should pay for. Developing countries may be unable to provide these in their totality.
- The duration of circular migration programmes have to be long enough for migrants to accumulate skills and savings.
- Circular migration programmes should not separate families for long periods of time and they should allow for benefits’ portability.

EuropeAid (2010) has suggested different measures for improving the effectiveness of circular migration for different categories: diaspora groups, temporary workers, students and researchers. Of more relevance in the present context are the measures proposed in respect of circular migration of workers temporarily (and repeatedly) moving to a country of destination (EuropeAid 2010: 7-8):

- Multiple-entry visas for temporary work purposes; e.g. multi-annual seasonal work permits.
- Preferential re-entry procedures for the upcoming season/work period for migrants who have already worked legally in the country and have complied with the terms of legal stay;
- Appropriate pre-departure training (language training, culture awareness courses, vocational training) and assistance (EC support possible through cooperation projects);
- Bilateral agreements for the protection of migrant workers' rights and working conditions (the conclusion of such agreements falls under the responsibility of both parties, possible EC support to third countries in the negotiation phase);
- Bilateral/multilateral social security agreements ensuring the portability of social security rights accrued in the country of destination.

In regard to last two items, EuropeAid notes that the conclusion of such agreements is the responsibility of both parties, and possible EC support should be provided to third countries in the negotiation phase.

The MPI has made similar proposals to improve the circular migration programmes (Newland et al 2008), and their focus on skills (selecting workers with the right skills for the available jobs, and skill upgrading for temporary workers) can be considered an addition.

Do these proposed revisions remove the negative elements of circular migration and make it a strong triple win formula? While it is not possible for one to quarrel with these ideas, there are two questions to be answered. First, are destination country programme administrators likely to accept them? Second, would employers accept them given the higher costs implied? Obviously some of these measures may weaken the attraction of circular migration programmes for both of these parties. This would also serve as a test of the willingness of proponents of circular migration to support programmes with real gains for workers. So far however, to our knowledge there are no operational circular migration models which accommodate these desirable features.

11 CONCLUDING OBSERVATIONS

11.1 Conclusions

The previous discussion looked at definitions of circular migration, evidence of its incidence, and some practical examples of different circular migration systems in operation. It then reviewed the European Commission policies and activities on circular migration. The paper looked at the approach of global agencies and the GFMD to the issue, followed by a review of the ILO's perceptions. Next it briefly reviewed trade union approaches. The purpose of this Section is to sum up the findings of the review and discuss the way forward.

'Circular migration' is nothing new, and has been a predominant feature of internal population movements and formal and informal cross-border movements for a long time in different regions. There are many informal processes of spontaneous circular migration existing in different regions. Some long-standing processes have been disrupted by security-oriented approaches backed by intensified border controls.

The definitions of circular migration have ranged from simple generic definitions to prescriptive ones in recent years, which have tended to confuse the issues involved. It is important to adopt a simple working definition of spontaneous circular migration. Simply defined, it is temporary migration of a repetitive character across borders involving both formal and informal movements. While it can be distinguished from permanent migration, and return migration (one-trip migration and return), there are nevertheless interfaces among them with circular migration sometimes leading to permanent migration or final return. By definition circular migration is part of temporary migration regimes. Migrants in source countries or from the diaspora in destination countries may engage in circular migration on a spontaneous basis where there are no immigration barriers.

The other mode of circular migration relates to managed, or regulated, circular migration programmes. Recent years have seen increasing interest in these managed programmes as a migration policy tool to address a number of sensitive and contentious issues of today's international migration. These range from: meeting labour market needs in destination countries without permanent settlement; mitigating the brain drain; promoting development in home countries through a steady flow of remittances, return of skills and enterprise creation, minimizing irregular migration and meeting the aspirations of migrants themselves to be away for short periods. This is the basis of the triple win argument claimed for circular migration programmes which was discussed in previous Sections.

There are several reasons behind this upsurge of interest. First, it seems an attempt to find an alternative to the less successful traditional guest worker programmes when a proportion of temporary migrants settled in destination countries. In this sense, it reflects the desire on the part of destination countries to

'bring in labour but not people'. Second, it reflects the trend towards flexible labour markets and flexicurity – the idea being that migrants have to leave or not arrive when there is slackening of labour demand in the destination country, and thus, countries of origin have to shoulder the reintegration burden. Third, it represents security-oriented approaches to migration driven by the need to combat irregular migration and shifting part of the burden responsibility to countries of origin. In the case of the European Union, circular migration approaches also form part of the externalization of its migration policy. Fourth, the recent emphasis on promoting migration and development linkages through win-win formulas has found circular migration to be a useful tool to supplement or replace the limited co-development approaches. This concept has captured the interest of successive meetings of the GFMD. It is also related to the increasing emphasis on a life-cycle approach to migration promoted particularly by the GFMD – consisting of the three stages of: pre-departure; stay and work in destination countries; and return – characteristic of temporary migration which ignores the fact that a sizeable number of migrants settle in destination countries and do not fit into this rigid pattern.

Are there real differences between temporary labour migration and circular migration movements/programmes to brand the latter as an innovative tool? In other words, what is the value added in elaborating 'circular migration' as a different model from temporary migration arrangements? Both generate remittances, both bring back skills, and both potentially create employment in home countries. Both are consistent with diaspora contributions. Given that circular migration programmes are closely supervised and monitored they may even cater to a smaller number than under temporary migration programmes. Both are affected by the operation of private employment agencies who contribute to the considerable erosion of the expected wins for migrant workers. A review of existing temporary labour migration programmes highlights that they also have considerable elements of circularity, especially in seasonal worker programmes. Yet they were not considered as circular migration programmes earlier. Some of the so-called best practice seasonal models have major issues relating to workers' rights, as highlighted earlier. There is also a tendency to promote the virtues of circular migration by focussing on circulation and contributions of long-term residents in destination countries – a repackaging of diaspora policies and initiatives for home country development – a soft option which has failed to deliver the promised wins up to now (Wickramasekara 2009). Migrant remittances are a much more tangible form of migrant contribution in relation to development benefits of migration. This serves to detract attention from thorny issues of protection and rights of low skilled workers migrating under temporary and circular migration schemes. Yet diaspora policies have long been a popular policy measure experimented by origin countries, and more recently as a major mechanism of maximizing development benefits of migration. Now they have been made an important component of current circular migration programmes.

Thus, the main focus of circular migration discussion should be on expanding legal avenues for workers from developing countries of origin to destination countries through managed migration schemes rather than on diaspora options. The position taken in this paper is that the opening of more legal channels or greater mobility for migrant workers is long overdue and desirable, but circular migration programmes are only one of the options for achieving it. A comprehensive approach should look at permanent migration programmes to address permanent or long-term labour shortages induced by demographic and other factors, regular labour admission programmes with guaranteed rights for workers on a par with national workers, improved seasonal worker programmes, and the exploration of other options in addition to circular migration. The foundation of any such programmes is respect, promotion and realization of human and labour rights of migrant workers in line with international instruments, which can deliver the promised wins. Mr Juan Somavia, the ILO's Director-General, has pointed this out succinctly:

“ ... gains from migration and protection of migrant rights are indeed inseparable. Migrant workers can make their best contribution to economic and social development in host and source countries when they enjoy decent working conditions, and when their fundamental human and labour rights are respected”.

Statement by the Director-General of the International Labour Office

Roundtable 3 on Globalization and labour migration, 2006 ECOSOC High-Level Segment, Geneva

5 July 2006

Cholewinski (2010: 5) also states: “Maximizing the human development and rights protection of migrant workers and their families is the best guarantee in the longer term for maximizing development gains in countries of origin as well as in the destination country”.

The European Economic and Social Committee (EESC 2007), a consultative body of the European Union, noted that the existing immigration legislation in EU Member States was very rigid and not satisfactory either for immigrants, the countries of origin, or the European host countries while endorsing the facilitating of circular migration. It stressed that: “The fundamental rights of immigrants must be fully protected, especially social and employment rights and a person's right to live with their family” (EESC 2007: 19). The EESC also proposed that the Commission, the Parliament and the EU Council promote, within the

framework of external policy, “an international legal framework for migration”,²³ on the basis of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. It also proposed that this international legal framework should include the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Rights of the Child (CRC); the ILO Conventions on migrant workers (Nos. 97 and 143); the ILO Declaration on Fundamental Principles and Rights at Work; the ILO Multilateral Framework on Labour Migration; and the Durban Declaration and Programme of Action of the 2001 United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (EESC 2007: 8).

There are currently two on-going processes which attempt to promote the concept of circular migration. First, the Global Forum on Migration and Development – a grouping of states – has made it a recurrent theme in its annual agenda. The second process is a regional one through the European Commission which promotes circular migration and mobility partnerships with some synergies between them. The GFMD is attempting to explore half-hearted and compromise solutions to meeting labour market needs in destination countries, and is looking to circular migration to deliver the goods. The shared responsibility paradigm provides part of the logic in this effort. Source countries have to take the responsibility to manage the process (select and dispatch migrants through legal channels, and accept and reintegrate returnees) for rewards of legal migration opportunities.

Second, the European Union is promoting its agenda on a Global Approach to Migration (GAM) – a misnomer since the thrust is largely regional – focussed on Africa and countries in the Commonwealth of Independent States (CIS) – which are considered strategic from EU interests. This paper argues that mobility partnerships promoted by the European Commission have to be differentiated from other circular migration programmes given that they represent the externalization of EU migration policy under the GAM, and offer restricted options to selected origin countries. Moreover the shopping list of activities for the mobility partner countries hardly contains any labour migration opportunities (circular migration programmes). At the same time, the European Union supports the development of separate circular migration programmes between Member States and third countries. Yet there are still few concrete examples of such schemes.

As in the case of all programmes, there are positive and negative elements in managed circular migration programmes. The idea of opening more doors to migrants, especially the low-skilled workers, is desirable as reiterated in Principle 5 of the ILO’s Multilateral Framework on Labour Migration. Privileged access to

²³ Bold in original.

the labour market in subsequent migrations also may benefit migrants and employers. Providing incentives and more circulation-friendly visa and right of return policies are also good elements although there are not many such initiatives. At the same time, there are a number of negative elements in circular migration programmes which may undermine the claimed win-win scenarios. The short duration of contracts, especially in seasonal and non-seasonal work, is a cause for concern which directly affects migrants' capacity to contribute back home. The re-migration process itself may involve high costs which cannot be fully recovered by migrants. Labour brokers and intermediaries can find many opportunities to defraud migrants. The undue power of employers in the selection of workers and re-nominating them for subsequent visits has been noted in a number of seasonal work programmes. The unequal bargaining power of countries of destination in these agreements is well-known. While migrants are expected to bring back skills, it is highly unlikely that employers would invest in training circular migrants in lower skilled categories.

The situation of the rights of migrant workers under such programmes is a major concern – the short duration of contracts may mean that they can be denied most of the assistance needed in working and living in destination countries. Fargues (2008) included respect for migrant rights as one of the key criteria for managed circular migration programmes. The protection gaps for temporary migrant workers in Europe highlighted by Cholewinski (2003) still persist. Consideration of the international legal framework on migration proposed by the EESC is conspicuously absent in these initiatives. The ILO MFLM is very clear that all labour standards apply to all migrant workers whether in circular, permanent, temporary or irregular status. One of the advantages claimed for circular migration programmes is that there are no integration costs given the absence of pathways to permanent status. This in itself implies tacit support for xenophobic tendencies in destination countries. Frequent separations from the families at home also involve social costs.

Overall there has been little progress in developing circular migration programmes with the predicted triple wins. The EU model is far removed from that, and the GFMD is debating soft options with few concrete results.

This is not to deny that some middle income countries, such as Mauritius, or large countries such as India, with good bargaining powers may be able to obtain good terms and conditions.

However, the role of circular migration programmes seems quite limited in overall labour migration policies and strategies. The challenge before the international community is to develop credible labour migration programmes to meet short-term and long-term labour market needs, fully consistent with migrant workers rights' in line with international norms, and genuine partnerships between countries of origin and destination. This has to be accompanied by a more realistic assessment of the limited role that labour migration can play in economic and social transformation of countries of origin.

11.2 The way forward

This paper has highlighted the need for more debate and discussion on appropriate models of labour migration to meet the emerging challenges among all stakeholders including governments, social partners, civil society and regional and international organizations. It has to go beyond the concept of managed circular migration which is hardly likely to lead to the promised win-win scenarios. The current debate on immigration reform in the US is a concrete manifestation of the challenges to be faced where continued reliance on a large immigrant workforce in irregular status has been found to be unsustainable. There are other credible alternatives to develop a labour migration regime apart from circular migration as highlighted in the shared prosperity model by Ray Marshall (Marshall 2009; Avendaño 2009).

It is important for workers' organizations and employers' organizations to consult each other on their respective perceptions of the current challenges and options, and to propose possible alternatives to the current labour migration regimes. It was pointed out earlier that there is hardly any information on employers' views on circular migration.

In the near future, it is difficult to expect major changes in states' approaches. Therefore, an important challenge for the trade union movement and others concerned with migrant workers' rights is to explore what mechanisms can be effective in this respect. It has been argued that transnational and trans-institutional networking and coalition building among trade unions, migrant associations and convened NGOs is the way forward to meet the emerging challenges for migrant workers' rights in a context of temporary migration (Piper 2010). There are already a number of good practice examples of inter-country networking and also collaborative efforts with like minded NGOs (Taran and Demaret 2006; Avendaño 2009).

Given that States may be reluctant to change current policies on managed circular and temporary migration programmes in the immediate and short-term, it is important for trade unions and civil society to engage governments in discussions on such programmes and monitor them as needed. There are examples of trade unions in destination countries, such as Spain, working in cooperation with origin country unions to improve the conditions of workers in temporary migration schemes.

The idea that destination country citizens do not want permanent settlers is a viewpoint that needs to be challenged. As noted previously, the OECD has clearly pointed out that temporary labour migration programmes alone cannot be the cornerstone of any credible migration policy. Already some temporary migration programmes in Spain and Sweden allow temporary workers (irrespective of skill level) to be considered for permanent visas after four years of residence. Similarly Sweden allows for family unification if temporary migrant contracts exceed six months.

There is a large unfinished agenda for further research and policy advice on elaboration of labour migration policies and programmes of all types – permanent, temporary or circular – to meet the above challenges using a rights-based approach – where the International Labour Organization, its constituents – in particular the trade union movement – and other stakeholders have a crucial role to play.

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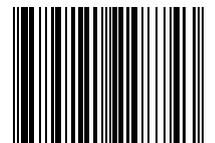
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