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Remarks by Discussant: Situation Report on International Migration in South and South-West Asia 5 April 2012

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**Launch of the *Situation Report on International Migration in
South and South-West Asia***

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Session 1: Overview of the *Situation Report*

Remarks by Piyasiri Wickramasekara, Discussant

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1. Let me first of all thank the Asia-Pacific RCM Thematic Working Group and the organisers of the meeting for the invitation extended to me for this important event.
2. Donovan on behalf of the Co-Chairs has provided an excellent overview of the report summarizing the key findings and recommendations. I shall therefore, focus on the following.
 - a. Significance of the report
 - b. Importance of themes covered
 - c. Broader issues arising from the report and the way forward.
3. Let me start by highlighting that this is an excellent initiative in filling the knowledge gaps on international migration in this sub-region of South Asia and South-West Asia. I consider it important for several reasons.
 - a. It represents a very good practice of inter-agency collaboration: the Thematic Working Group of 16 member agencies have collaborated to produce this report with a number of agencies providing technical contributions. As I always maintain, international migration is a very complex issue, and no single agency can pretend to address all the issues involved or provide support to countries on its own. We have a vast unfinished agenda in this area. Therefore, cooperation and partnerships are essential. What brings all these agencies together is the common goal of helping countries to improve migration governance and providing a fair deal for migrant workers and their families.
 - b. The themes covered are highly relevant and make the analysis comprehensive: Protection of rights of migrant workers, gender, migration and health, refugees and asylum seekers, and environmental implications are particularly important.

I find that the issue of migration and development is discussed primarily in terms of remittances, with inadequate attention being paid to the two other major contributions - diaspora engagement and return migration. In fact return migration has only two references in the entire report. Of course, I understand that the TWG had to be very selective to produce a report of a reasonable length.

The centrality of rights as reflected in the situation report as well hardly needs any emphasis – let me quote from Juan Somavia, the ILO Director-General, in this respect:

*“... 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”.*¹

- c. The report also highlights cooperation at bilateral and regional levels. Kofi Annan, former UN Secretary-General remarked:

*“Only through cooperation – bilateral, regional, and global – can we build the partnerships between receiver and sender countries that are in the interests of both; explore innovations to make migration a driver of development; fight smugglers and traffickers effectively; and agree on common standards for the treatment of immigrants and the management of migration.”*²

In passing, I like to mention that I would have liked to see more contributions to the country profiles and thematic chapter by consultants in the South Asia and West Asia region itself.

The report is thus timely, and raises important issues as highlighted by the Co-Chairs. I like to present some of my own perspective based on my understanding of labour migration in the region through more than three decades of work

4. I must mention that I have no major issues with the country profiles and thematic issues contained in the report (although we had little time to digest the report). Therefore I would like to focus on some broader issues arising from the report in the remaining time.
5. Let me start by expressing my views on *good practices in international migration*. They are by no means a substitute for structural reforms and ratification and enforcement of international labour standards.

Good practices – I looked in the document – of course – the term appears only in five instances and two refer to book titles. There is only one reference to best practices except for references in the preface and one title. Of course, there are many good practices listed in most chapters though not classified as such.

- Where should we look for good practices – my position that we should first look in the international Conventions- instruments on international migration – the two ILO Conventions - the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – and the International Convention on the Protection of the Rights of all Migrant

¹ *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.*

http://www.ilo.org/public/english/protection/migrant/download/dg_ilo_rt3_2006.pdf

² *United Nations Secretary-General Kofi Annan’s Address to the European Parliament upon receipt of the Andrei Sakharov Prize for Freedom of Thought, Brussels, 29 January 2004.* http://www.europa-eu-un.org/articles/en/article_3178_en.htm

Workers and Their Families (ICRMW). The principles and practices contained in these represent the product of years of negotiations. The ICRMW took 10 years to negotiate and 13 years to come into force.

Thus ratification of Conventions is important. The report mentions only the need for ICRMW but it does not mention the two ILO Conventions which have been there for some time. The ILO Convention on Migration for Employment, 1949 (No.97) is the only instrument to be widely ratified by both destination and origin countries: 11 EU member States have ratified either one or both. The UN Migrant workers Committee - the supervisory treaty body for the ICRMW - in its review of member country reports advises them to consider ratification of ILO Conventions as well since the three are complementary.

In the Asian region, the Philippines stands out as the only country to ratify all three migrant worker instruments. Only five countries in the world have ratified these three, the others being Albania, Bosnia-Herzegovina, Burkina Faso, Tajikistan. But Philippines is the most important origin country to ratify the Conventions out of them. I think the most important one. It is noteworthy that Bangladesh has ratified the ICRMW recently.

We know that some countries (both origin and destination) are not ready to ratify migrant worker Conventions. Still they can draw upon the principles and guidelines in the international instruments. In this context I find that the report makes no mention of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration³ – another negotiated instrument - which is a valuable resource synthesising the principles and guidelines of all international instruments which both origin and destination countries can draw upon to deal with governance of migration, protection and development.

- *Knowledge sharing:* We talk a lot about this now. The World Bank has now launched a knowledge sharing platform on international migration and development in cooperation with other agencies. But let us be clear – who is the audience of such knowledge platforms – where does our target group of migrant workers fit in? We have to make sure that some of this information reaches them. The Ministry of Overseas Indian Affairs (MOIA) of India has prepared a number of pre-departure manuals for intending Indian migrants to different countries. While this is a good practice, I am not sure whether these available on the MOIA website in English can be accessed by the typical low skilled migrant worker, unless they have been translated into local languages in different states and widely disseminated.
- In this context I like to highlight another good practice of primary data generation – the Kerala Migration Surveys by the Centre for Development Studies, Trivandrum, India. It is common practice among international migration researchers to squeeze the same data without expanding the database. For instance, the data on skilled migration and brain drain is more than ten years old. Prof. Irudaya Rajan and his colleagues however, have made a unique contribution to generation and dissemination of new migration data through periodic large scale Migration Surveys in Kerala State of India

³ <http://www.ilo.org/public/english/protection/migrant/areas/multilateral.htm>

in 1998, 2003, 2007, 2008 and 2011.

- Let me also cite another good practice on transparency of information: Philippines is again the trend setter and has placed all the bilateral memoranda of Understanding and Social security Agreements on migration it has signed with different countries on the website of the Philippines Overseas Employment Administration. The Indian MOIA also has placed most of the MOUs and social security agreements on its website. But Bangladesh and Sri Lanka are yet to share them, and none of the destination countries which are parties to these have disseminated them either. In fact there is little confidential in these agreements since they contain very general provisions such as sharing information on migratory movements, applicability of labour laws to migrant workers, dispute resolution through the concerned ministry or recourse to courts, and establishment of joint commission for follow up. Migrant workers and all other stakeholders have a right to information concerning the text of these MOUs, and how they are implemented.
- The Association of Southeast Asian nations (ASEAN) has issued a landmark declaration in January 2007 – *the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers*.⁴ The Declaration recognized the contributions of migrant workers to both origin and destination countries, and the obligations of both groups of countries in protecting their rights. What is also important is the ASEAN commitment to “*Promote decent, humane, productive, dignified and remunerative employment for migrant workers*” through intensifying efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers. It also proposed the development of ASEAN instrument on the protection and promotion of the rights of migrant workers. This is a good practice which can serve as a model for South Asian Association for Regional Cooperation (SAARC) for a similar Declaration on migrant workers within the subregion.
- *Wage protection System* of the UAE is another important measure which needs to be promoted and replicated. Non-payment of wages, unlawful deductions from wages and deferred payments are perennial problems for migrant workers from South Asia and South-West Asia. We talk about remittances – the financial side - but rarely about the human side – the sacrifices made by remitters and their capacity to remit which depends on their working conditions and wages. Just to cite a recent example - A domestic worker from Sri Lanka who went to Saudi Arabia in 1994 to earn money to educate her children was kept as a virtual slave for 15 years by her employer, and he had fled without paying her any money. She was finally rescued by the Sri Lankan embassy after 17 years, and was paid \$19,000 by the Saudi government to compensate for unpaid wages. The chapter on remittances does not raise this issue of wage protection at all. Nor do any of the publications of the World Bank which I have gone through which focus on money transfers alone. In this sense the UAE wage protection System – requirement that wages of migrant workers be paid directly into their bank accounts – is a good practice which was also initiated by Mauritius a few years back. Despite the good intentions of the UAE, the coverage of the wage

⁴ <http://www.aseansec.org/19265.htm>

protection system is still very limited with low compliance by small and medium enterprises.

- *Partnerships between actors other than the State* are also important. The bilateral agreements between trade unions in Sri Lanka and trade unions of Bahrain, Jordan and Kuwait for the protection of Sri Lankan migrant workers is a good model in this respect. The agreements follow a rights based approach, and undertake to protect Sri Lankan migrant workers in the three countries through union action aimed at granting Sri Lanka migrant workers “the full panoply of labour rights included in internationally-recognized standards”.⁵ Given the significant gaps in protection of migrant workers in destination countries of Asian migrant workers, it is important to establish partnerships among trade unions, civil society and other non-state actors.
- *Formulation of explicit national labour migration policies.* Good examples are the Sri Lanka national labour migration policy (NLMP) and Pakistan Emigration Policy. The Sri Lanka NLMP was developed through tripartite plus consultation process and validated at national level.
- Let me also reiterate that migration is a two way street – countries should accord the same protection and treatment they expect their national workers to receive abroad to foreign workers in their own countries. We should strive for migration policies which are comprehensive in covering both national workers migrating or employment abroad, and foreign workers inside their own countries. Most policies in the Asian region only focus on emigration.

6. Way forward:

Last but not least, let me make a few remarks on the way forward.

I have no problem with any of the recommendations of the study. But the issue is that most of these have had little success up to now.

- For instance take the case of governance of recruitment agencies

There has been considerable work on recruitment agencies - legislation for their effective regulation, ethical recruitment, penalties and rewards –they are all there. <Under the 2011 GFMD process, there was a meeting convened by the UAE on fair recruitment, and the UAE is expected to present a model system at the Abu Dhabi Dialogue in Manila this month.

Yet daily we hear of stories of various malpractices of recruitment agencies causing tremendous harm to poor migrant workers in most countries of South and South-West Asia. Legislation is not often accompanied by effective enforcement.

⁵ See the entry in the ILO online Good Practice Database, *Bilateral trade union agreements on migrant workers' rights between Sri Lanka and Bahrain, Kuwait and Jordan*, http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=32

- The other example is the continuing vulnerability of female domestic workers. In my view it represents mostly a case of exploitation of women of origin countries by women in destination country households. They are mostly in situations of forced labour. Following so much research and advocacy, we now have a new ILO Convention on domestic Workers, 2011 (No.189) also. How do we make a breakthrough here? Can we get destination country employers to change their mindset that these persons are not slaves but human beings with dignity, and how do we convince destination countries to ratify this Convention and enforce its provisions, and bring them under the labour laws?
- Passport retention. Even laws in some Gulf countries prohibit it, but it happens all the time.
- How can we use regional and international forums to move forward in these areas: the Colombo Process, the Abu Dhabi Dialogue, GFMD, ASEAN, SAARC, employer and worker organizations and NGOs?

Thank you very much.