

GATS Mode 4: Critical Observations from the Gender and Rights-based Perspective¹

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Introduction

- **GATS Mode 4 is only part of the larger struggle**
 - WTO is just one arena in the larger struggle
 - WTO is not the organization that should be dealing with labor migration, which essentially is Mode 4 of the GATS

Why are we critical of the GATS Mode 4 and the WTO?

1. Questioning the neo-liberal paradigm

- the neo-liberal paradigm that governs the very structure and dynamics of trade and investment liberalization that have eroded peoples' basic human rights. These include the right to quality public services (such as health and education), jobs at home, sustainable agriculture, indigenous knowledge, self-determination, and human security for all. These violations of peoples' economic and social rights have directly and indirectly driven people out of their home countries to become migrant workers abroad.
- In the health sector for example: failed structural reforms involving deregulation, privatization and reduced public sector spending have led to staff shortages, deteriorating working conditions, and very low wages, pushing health care workers and professionals to leave the health sector to find other jobs, or as is often the case, to migrate for work.
- the numbers are staggering: Sub-Saharan Africa which faces the HIV/AIDS epidemic are in need of 620,000 more nurses to at least meet the MDG target.² Meanwhile, 23,000 African health professionals emigrate to developed countries every year.

2. Clarifying GATS Mode 4

- The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention) defines a "migrant worker" as a person "who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which

¹ Presentation made at the Forum on "Human Rights and the WTO: Examining the Impacts," sponsored by FIDH, 3D and IATP; and at the Public Panel Discussion on GATS-Mode 4 sponsored by Friedrich Ebert Stiftung (FES). These forums were part of the parallel NGO activities during the 6th WTO Ministerial Conference in Hong Kong, SAR, 13-18 December 2005.

² Buchan and Galman 2005 The Global Shortage of Registered Nurses, IUCN 2005.

he or she is not a national.”³ The GATS defines Mode 4 as “the temporary movement of natural persons across borders as service providers” The WTO calls them TMNP. We call them migrant workers. From the fundamental definition alone, the migrant worker has been dehumanized and commodified.

In unpacking Mode 4, we therefore look at the questions of *definition*, *legitimacy*, and *governance*. The GATS creates a new definition of a migrant worker by calling him or her a TMNP. There are 3 elements contained in this TMNP, namely: the “temporariness,” the “crossing of border,” and “service provision”. By this definition alone, the WTO is effectively stripping the worker of his or her basic human rights. Let me explain through the following points:

3. Denial of basic human rights and worker protections

- By re-defining the migrant worker – away from universally accepted definition of the UN, there automatically is the denial of rights that are already enshrined in this international legal definition.
- We must not forget that human rights are indivisible, non-derogable, and inherent in every human being. A worker is a worker and has rights. As non-nationals they experience some form of vulnerability as they are not automatically entitled to the rights enjoyed by nationals. Protection of basic human rights comes with the principle of non-discrimination with respect to the application of basic rights.

4. Gender perspective and GATS Mode 4

- International migration today is increasingly characterized by the “*feminization of migration*,” i.e. increasing participation of women in the international labor economy. Women comprise about half of the world’s 200 million international migrants today.
- Unfortunately, the dominant characteristic of women’s participation in international labor migration lies in their ‘*competitive advantage*’ as workers with lower pay and poorer working conditions. E.g. in the sectors of domestic services, catering and hospitality services, factories and even informal work.

³ Art. 2, UN Migrant Workers Convention, entry into force 1 July 2003 (currently 34 State Parties and 27 Signatories).

- It is argued that this “*feminization of labor*” is also the transformation of male jobs associated with “*flexible*” and “*cheap labor*” into *women’s work*.⁴
- In an intensified global competition, employers prefer to employ women as they are seen to be “submissive and less likely to join unions.”
- This perceived “*infinite elasticity*” of *female labor* makes them easily exploitable, particularly that their work is couched in contract work schemes, from which “mode 4” is being modeled.

(Optional):

- E.g. are found in Hong Kong where only strict temporary contracts are available in domestic work and the demand is high (around 242,000 FDWs in 2002)⁵. There are similar temporary work contracts in South Korea, which has estimated 674,000 migrant workers in 2002 working as factory workers, cleaners, and laborers and of this number, about 43% are undocumented.⁶ In Taiwan, more than 300,000 are migrant workers with temporary contracts are working in factories, construction sites, fishing, caregiving, and domestic services. Of these migrant workers in Taiwan in 2002, around 120,000 are domestic workers and care givers.⁷
- In the OECD countries, the demand for migrant workers is also present in the household, care giving, and social services sectors associated with women’s work.
- However, supplying this labor shortage continues to be a debate as rich countries identify ways to receive this form of migrant labor and the GATS Mode 4 can potentially be one of them.
- If Mode 4 would indeed open in the less skilled or unskilled category, the female migrant labor becomes the most attractive source of “service supply”. We could just imagine how the proliferation of this scheme can result to the systematic violation of women’s basic human rights, including the irreversible negative social impacts to families left back home. This is already happening today even without Mode 4.

⁴ Standing, 1998, 1999.

⁵ Asian Migrant Centre and Migrant Forum in Asia, 2003.

⁶ Ibid, 2003.

⁷ Ibid, 2003.

5. The case against temporary work

- The *vulnerability of migrant workers in a temporary contract* – i.e. short term, lack of incentives to or absence of integration support, project/employer-tied, and clearly time bound.
- In TMNP, *integration in the labor market* of host country is *discouraged*, and so is access to training and promotion as the temporary workers are strictly kept outside the labor market.
- The ILO wrote in its report to the ILC in 2004: “Temporary workers are rarely accorded the same treatment given to permanent workers as a matter of a policy aimed at discouraging settlement.”⁸
- *Keeping temporary workers excluded from the society makes a dangerous prescription for xenophobia, racism and discrimination.*

6. TMNP, Irregular Migration, and Trafficking

- Furthermore, because of the nature of their time-bound employment, unequal treatment, and vulnerabilities, yet the workers’ dire economic need (poverty & root causes of migration), TMNPs are at risk of falling into the cracks of irregular migration channels, e.g. see cases of crackdown of irregular migrant workers who desperately need jobs in Korea, Malaysia, Japan, the irregular migrant workers in Europe, etc.
- With poverty and underdevelopment remaining unaddressed, the TMNP can actually create a consequential link to irregular migration and trafficking. We see this in cases of women domestic workers fleeing abusive employers in the gulf countries, only to end up in brothels. They are eventually rescued and repatriated yet after a year or two they would come back to the same gulf countries so that they (testimonies are available) could feed their families, send their children to school, pay medical bills for their families needing urgent care, including elderly care and to pay for many other basic services.

⁸ ILO, Report VI to the International Labour Conference, 2004.

7. Brain drain

- A glaring example is in the international migration in the health sector whereby developed countries actively recruit health care workers and professionals from the developing countries. This results to the massive movement of workers from poor and/or developing countries where the health systems are already weak and the workers are most needed (statistics are available).
- The *global transfer of skills and labor* from poor and developing countries in the South to the rich industrialized countries in the North follows the “trade and development paradigm” that we fundamentally challenge.
- Brain drain is the depletion of social capital, which is essential to spur economic growth and achieve sustainable development for developing countries.
- Ironically, to address brain drain, GATS Mode 4 promoters say: “keep them temporary to ensure workers’ return.”
- Yet again, keeping them temporary makes them vulnerable to exploitation, abuse and exclusion. Also the denial of acquired rights, e.g. immigrant rights.
- Moreover, as in the case of the public health sector, health care workers who have migrated don’t have access to the proper return and reintegration mechanisms. When they eventually return to their home countries, they are not able to reintegrate properly. They cannot return to their jobs in the public health sector – thereby contributing to the increasing shortage of health care workers worldwide. (case studies available).

8. The unsustainability and injustices of a labor exportation regime

- Promoting migration as a strategy for development is risking the countries’ most basic asset – its people.
- Migration for development – “remittances” – i.e. promote migration so that the country could develop through increments in GDP from migrants’ remittances – is inherently flawed and problematic. The negative impacts are huge and may be irreversible and long-term.
- Exploitative, unfair to the citizens (migrant workers).

- A violation of peoples economic and social rights – thus they resort to self-help, and are forced to migrate.
- At the same time, labor exportation (which likewise perpetuates labor exploitation) supports the dominant imbalance in world welfare. Labor exportation fully satisfies the economic and corporate interests in the rich developed countries at the expense of poor developing countries and migrant workers.
- Instead: Work for sustainable development, equitable growth, good governance, and create the right economic and political climate at home.

NOW LINK THESE ISSUES:

To receiving countries:

- Brain Drain – aggressive recruitment in the North (and the richer countries) and drain of social capital and essential human resources in the South
- “Unfair trade rules and structural inequalities existing within and between countries” (as alluded to in the UNDP Report 2005).
- Creating the political pressure by trade unions and civil society organizations within sending and receiving countries (particularly receiving/recruiting countries) to say NO to unethical recruitment in the health sector (PSI December 10–18, 2005 Campaign).
- Campaign to raise awareness against the common belief: that there is an unlimited supply of healthcare workers (such as nurses, doctors, medical staff) from the South.
- Myself as a Filipino, I would say: “They are not getting our surplus workers. They (and I refer to both our government and the receiving country governments) are not getting our surplus workers. They are digging into our human capital!”
- (In relation to this, we therefore oppose these benchmarking proposals!)

To sending countries:

- Questioning & opposing the kind of labour exportation policy that responds to or fits into this unequal trading structure & one-way flow of capital and resources – that grossly violates peoples’ economic rights to sustainable and decent employment at home.

FINALLY:

9. Questioning the legitimacy of the WTO in dealing with movement of workers

Addressing the legitimacy and mandate of the WTO:

1. GATS Mode 4 inherently deals with the movement and trade in services of real human beings who have human rights. Mandate, compliance, and competence in the area of human rights and labor standards are absent in the WTO.
2. The WTO's ideological foundations, the strong corporate driven agenda, the lack of accountability and transparency, and imbalance trading relationships between the rich countries in the North and the poor countries in the South are burning issues that question the legitimacy of the WTO.
3. These temporary workers must never be treated as commodities or mere "factors of production," they are human beings with inherent and non-derogable rights. The WTO has no legitimacy and mandate at all to be dealing with labor migration.

- **Other Alternatives for Opening Legal Channels for Migration?**

4. At the same time, we do recognize that labor migration will continue as the migrants' positive contribution to both sending and host countries are already beyond question.
5. Increasing legal channels for the mobility of workers will become an inevitable part of globalization. Meanwhile economic push-and-pull factors will continue to drive migration flows, adding to the fact that there are demographic challenges (ageing populations) currently faced by industrialized countries.
6. In one way or the other, the pressure to establish migration channels will increase. The imperative, therefore, is to set these channels within a rights-based, sustainable, international migration policy landscape.
7. The current international migration policy debate, where there is at best the participation of a variety of stakeholders, e.g. governments, international agencies, private sectors, trade unions and NGOs, including the migrants themselves, offers the best venue for the creation of such multilateral cooperation on international migration. This international migration policy landscape has already achieved reliable multilateral frameworks and institutional arrangements in human rights and labor standards-setting, which are the two most essential components of an international migration policy. The multilateral rules-based global trading system of the WTO cannot be allowed to undermine these landmark achievements in the struggle for human and labor rights.

Other recommended parallel actions:

8. We need to enhance the multilateral governance and implementation structures of the UN and the ILO. For example:
 - Push for universal ratification and effective implementation of the UN Migrant Workers Convention—as this is the best available human rights law instrument that can respond to labor migration.
 - Strengthen existing UN human rights mechanisms for migrants, e.g. reporting and monitoring of human rights compliance via the UN Treaty bodies, and strengthening the Commission on Human Rights.
 - Push for ratification of key ILO instruments, the ILO Migrant Worker Conventions 97 & 143, and uphold the Fundamental Principles and Rights at Work.

- Support the ILO Action Plan on Migrant Workers, ie. the establishment of a non-binding multilateral rights-based framework on labor migration.
9. We need to strengthen this multilateral cooperation to protect human rights and labor standards, and not to let this be undermined by trade liberalization schemes.
 10. We need to have an informed debate on Mode 4 where all players and stakeholders are involved. Mode 4 is unique as it deals with real human beings, the workers, who become the subject of trading. As such, the discussion must not be left alone to trade negotiators.
 11. If any governments nonetheless make Mode IV offers that would include the temporary movement of workers, these must be agreed with the trade unions and migrant civil society organizations concerned on a prior basis, and ensure: observance of core labour standards, international human rights law, ethical guidelines or code of practice in the international recruitment of workers (e.g. the upcoming WHO Code of Practice in the recruitment of health personnel); application of host country's labour laws; full involvement of the ILO, the UN, and regional human rights mechanisms; protection against all forms of discrimination and exploitation; access to social security and other benefits, including the sending of remittances; and that all other migrant support services are in place. In the absence of such conditions, strongly set in the framework of human rights and labor standards, Mode IV must be taken out of the WTO.

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