



# Best Practices Concerning Migrant Workers and their Families

## *International Workshop*

Under the auspices of the Government of the United States,  
in compliance with the Plan of Action of the Summit of the Americas



IOM International Organization for Migration  
OIM Organisation Internationale pour les Migrations  
OIM Organización Internacional para las Migraciones

Organized by IOM  
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This report identifies suggested best practices to protect the human rights of migrant workers and their families in the 34 Western Hemisphere countries whose leaders approved the Summit of the Americas (SOA) Plan of Action in 1998 in Santiago. The migrant workers section was one of 27 initiatives in the SOA Plan of Action; it committed governments to “make a special effort to guarantee the human rights of all migrants, including migrant workers and their families.” The United States was designated as “Responsible Coordinator” for implementation of the migrant worker initiative, with El Salvador and Mexico serving as Co-Coordinators.

On 19-20 June 2000, a seminar was held in Santiago de Chile to identify best practices originating in various Western Hemisphere countries to protect the rights of migrant workers and their families. In this instance, best practices were defined as activities that are innovative, can be shown positively to affect migrant rights, are sustainable, and are replicable. The International Organization for Migration (IOM) organized this seminar at the request and with the support of the United States, in its role as Responsible Coordinator for the SOA Migrant Worker Initiative. The Latin American Demographic Center (CELADE) also provided invaluable logistical and administrative assistance.

The purpose of the seminar was to look at ways and means better to protect migrant workers' rights in the face of a growing contradiction and dilemma. On the one hand, the international community has at its disposal an impressive and sophisticated machinery of treaties, conventions and recommendations defining and protecting the human rights of migrant workers. On the other hand, migrant workers are often considered as different, exploitable and outcast: being of a different culture, they can be exposed to racism and racist violence and treated as scapegoats for the domestic ills of society. To reduce this gap, best practices can play a useful role. In that sense, many participating experts characterized the seminar itself as also a best practice for originating and sharing information on this subject.

This report, prepared principally by Dr. Philip Martin, is based on background research as well as the papers prepared and discussed by 40 experts who participated in the Santiago seminar. It should not be construed as a document that was approved in detail by the participants.

## **EXECUTIVE SUMMARY**

The 1998 SOA Plan of Action committed Western Hemisphere governments to promote and protect the human rights of migrant workers and their families, to ensure equal labour market treatment for migrant workers, to recognize and respect the rights of migrant children, and to protect migrant workers and their families from becoming victims of exploitation and abuse at the hands of alien smugglers and traffickers.

Migrant workers are defined as non-nationals whose purpose in being outside their country of citizenship is employment. The Inter-American Commission on Human Rights, which surveyed Western Hemisphere governments in 1997 to ask them about the status of migrants, defined a "migrant worker" as "any person who is going to be engaged, is engaged or has been engaged in a remunerated activity in a country of which he is not a national." This definition excludes foreign-born persons who have been naturalized, government officials posted abroad, refugees, students, and seafarers. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) similarly in Article 2 emphasizes employment: it 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 he or she is not a national."

This summary can most usefully be read in conjunction with the attached spreadsheet, which lays out suggested best practices identified in eight selected categories. While these categories do not cover the entire spectrum of migration, they do address those issues specified in the Migrant Worker Initiative of the Santiago SOA Plan of Action.

## **Managing Migration Best Practices**

Migration is a result of differences—in demographic growth, in resources and jobs, and in security and human rights—and the best practice ideal is to create conditions so that migrants do not feel compelled to migrate. But once migration occurs, best practices can help to improve conditions for migrants and their families in their new locations. After a lost decade in the 1980s, economic and job growth resumed in the 1990s, and the Inter-American Development Bank reported that 20 agreements were signed in the Western Hemisphere in the 1990s that aim to speed up economic and job growth. Several of these agreements, including NAFTA, CARICOM, and Mercosur, contain provisions that permit at least some freedom of movement for professionals within member countries.

Canada has guest worker programmes with Mexico and several Caribbean countries that permit about 15,000 seasonal farm workers a year to be employed in Canada under employer-worker contracts that satisfy the provisions of government-to-government MOUs. The governments involved are very satisfied with these programmes, which ensure that workers are legally hired and return at the end of the season. The US has a larger temporary foreign worker programme called the H-2A programme—the US Department of Labour certified the need for 42,000 foreign farm workers in FY99, most of whom came from Mexico.

Guatemalans have been migrating to work in southern Mexican agriculture for decades. In the 1990s, Mexico sought to protect them by providing documents to Guatemalans age 14 and older under the *Formas Migratorias para Visitante Agricola*; these documents can help to prevent abuses of migrants at the hands of employers and authorities.

Managing migration successfully requires countries to determine what type of migration is in the national interest, and then plan an immigration and integration policy that achieves national interest goals. Canada has declared itself to be an immigration country committed to multiculturalism, and has immigration and integration laws that anticipate the arrival of newcomers, promote their integration, and aggressively seek to discourage and remedy racism and xenophobia.

## **Consular Notification and Access - Best Practices**

The 1963 Vienna Convention on Consular Relations obliges States Parties to inform foreigners arrested or detained that they have the right to notify their consular representatives; these representatives may be able to provide the foreigner with assistance in judicial process. The United States has prepared and distributed information on the Vienna Convention to the State and local law enforcement agencies that make most arrests and account for most detentions in the US, and many States have included information about the Vienna Convention in their training for enforcement and judicial staff. The State of Washington developed a model programme to educate local police and prosecutors about the Vienna Convention, so that foreigners arrested or detained know they have the opportunity to contact their consulate.

## **Return and Reintegration - Best Practices**

Migrants not permitted to remain outside their country of citizenship are returned to their countries of origin, where they may need to be reintegrated after an extensive period abroad. Some 45,000 Guatemalans fled civil war in the 1980s to southern Mexico, and they organized themselves and developed nontraditional economic activities while in exile for a decade or more. In 1998-99, many returned under a voluntary programme that provided returnees with land and assistance in restarting their lives. Keys to the success of this programmes included its voluntary nature (some Guatemalans were given Mexican citizenship and

remained in Mexico), the presence of mediators to resolve land disputes, and Mexico-Guatemalan government cooperation.

There are about eight million Mexican-born persons living in the US, and the Mexican Government in 1990 launched the Paisano programme to reduce abuses of returning Mexicans at the hands of Mexican authorities, especially in December, when an estimated one million Mexicans return to Mexico temporarily each year. In El Salvador, the "Bienvenido a Casa" or Welcome Home reintegration programme provides immediate assistance at the airport to returning Salvadorans, including temporary lodging and bus tickets to their areas of origin in El Salvador.

### **Migrant Protection - Best Practices**

Migrants who cross international borders often find themselves in unfamiliar situations, especially if they are trying to cross a border in an irregular way. On the Mexico-US border, Mexican and US authorities separately have worked to protect migrants—regardless of their legal status—from being the victims of crime, and they cooperated to warn migrants of the dangers of attempting entry into the US through deserts and mountains. This Mexico-US cooperation has extended to other areas as well, including the development of dedicated commuter lanes so that pre-approved individuals can use special traffic lanes to reach the border and enter the US without further formalities.

Central Americans as well as other foreigners are often apprehended on the Mexico-Guatemala border and returned to Guatemala. NGOs in Guatemalan border cities provide services to migrants returned from Mexico, and publicize abuses committed against migrants in southern Mexico.

Costa Rica has one of the highest percentages of foreign residents in the Western Hemisphere; about one-sixth of all residents are foreigners, and in some rural areas there are more Nicaraguans than Costa Ricans. Policies and private efforts at the national and local levels aim to reduce discrimination against Nicaraguans living in Costa Rica, using education and mediation to highlight the importance of Nicaraguan workers to the economy. Costa Rica reviewed its laws to revise those that may have unintentionally discriminated against foreigners.

Migrants can be made scapegoats for economic or other problems because they differ from the local population in race, language, or culture. The World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance scheduled to be held in South Africa in 2001 will emphasize that racism and xenophobia can impede migrant integration; some organizers want migrant workers to address the conference to explain the importance of active anti-discrimination policies.

Women have often been neglected in discussions of migration because they are assumed to follow pioneer male migrants abroad. But over half of all migrants are women, and increasingly they are pioneer migrants who go abroad to work as maids or, in some cases, are trafficked to work in the sex business. Many countries are developing policies and programmes to protect female migrants, e.g. allowing women who join husbands abroad and find themselves trapped in abusive relationships to obtain an independent immigration status and providing immigrant status to those who testify against traffickers.

### **Temporary Protection and Legalization - Best Practices**

In some cases, migrant workers are persons fleeing across borders to escape fighting or natural disasters. When migrants arrive from natural disasters such as Hurricane Mitch, which killed 10,000 people in

Honduras and Nicaragua in late October 1998, left three million people homeless, and severely damaged both countries' economies, the countries to which they migrate may offer them temporary protection. Temporary protection may be considered as a flexible supplement to the 1951 Refugee Convention, which commits signatory governments not to return to their country of citizenship an individual who has fled his or her country and is unable or unwilling to return because of a "well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion."

The best practices for providing temporary protection involve anticipating and planning for both the entry of those who need temporary protection and their eventual return to their countries of origin and resettlement. In most cases, temporary protection should be provided near the migrants countries' of origin, so that migrants can more easily return and to strengthen the resolve of host nations to remedy the conditions that led to emigration in the first place.

However, if conditions in the migrants' countries of origin do not change, migrants should be allowed to settle abroad. Costa Rica permitted 152,000 Nicaraguans to obtain one-year renewable residence and work permits between February and July 1999, and then sought to integrate the Nicaraguans in Costa Rica by building and refurbishing schools to benefit both migrant and local children.

In some cases, migrants abroad in an irregular status settle in the host country and develop roots there. In such cases, legalization may be an option. Argentina had four legalization programmes--in 1958, 1964, 1986, and 1994—for migrants from nearby countries who typically entered on 90-day tourist visas and then went to work in the informal sector of the economy. Since they could not legalize their status unless they found formal sector jobs, legalization acknowledged their sometimes years of work in Argentina and made them less vulnerable to abuse and exploitation.

### **Counter-Smuggling and Trafficking - Best Practices**

Smuggling is the movement of persons or goods across borders in violation of national laws for profit, while trafficking is smuggling plus exploitation. Smuggling and trafficking, often described as the "dark side" of globalization, are believed to be a \$5 to \$7 billion annual business that is growing, with more tragic cases of migrants dying in their attempts to slip into another country.

Best practices to extirpate smuggling and trafficking include the 3 P's:

- Prevention—educate migrants to avoid using smugglers and traffickers via information campaigns and other means, provide opportunities for economic opportunity and means of legal entry so that migrants do not seek out or respond to the lure of smugglers and traffickers
- Prosecution—disrupt and deter smuggling rings by making human smuggling a serious crime with severe penalties, cooperation within and across countries between intelligence and enforcement activities, and aggressively prosecute those who assist or employ smuggled migrants. This means that smuggling and trafficking must be made crimes with severe penalties, and that enforcement be a high priority.
- Protection-- protect migrant workers from criminals in border areas, at the work place, and protect those who testify against smugglers from retaliation. For migrant victims of smugglers and traffickers, provide assistance for their return and reintegration.

In some cases, migrant workers can be deterred from using the services of smugglers by modifying immigration policies that, e.g. lead to long queues for migrants attempting to unify families. In other cases,

IOs and NGOs can work with potential migrants to warn them of the dangers of utilizing smugglers, and provide services to migrants who have been the victims of smugglers, especially children sent abroad in the hopes of earning money for their families but who wind up as pickpockets or prostitutes.

### **Integration and Culture - Best Practices**

Once migrants settle abroad, governments and NGOs can help them to integrate in their new societies. Best practices for integration include involving migrants in the design and operation of integration programmes, and making integration programmes as flexible as possible, i.e., flexible in everything from hours of operation to language. Providing multiple integration services to migrants in one location can help migrants who may have limited access to transportation.

In the past, migrant workers were sometimes expected to assimilate, to quickly accept the language and culture of the host country. Today, integration is the more commonly used term to describe the two-way street between newcomers and established residents. Migrants celebrating their national holidays can help to inform established residents about their countries of origin, and help migrants to maintain ties to home countries. Hometown Clubs or Hometown Associations (HTAs) are a more formal mechanism for celebrating the culture of the country of origin and pooling savings to promote development at home. The 1,500 Mexican hometown clubs in the United States have become stopping points for Mexican leaders in the US as well as important sources of capital for development in rural Mexico.

In some cases, migrants maintain ties to two or more countries, and more Western Hemisphere countries are recognizing this reality by explicitly permitting or tolerating dual nationality.

The Catholic church has long been concerned with migrants, and supported the legalization of unauthorized Colombians in Ecuador; the church worked with NGOs in support of legalization. The Catholic church operates a network of centers that assist migrants in Latin America, and participates actively in the Migrant Days held in many countries to celebrate the contributions of migrants.

NGOs can play important roles protecting and integrating migrants by forming alliances that help educate the public and government about migrants. In Argentina, for example, a network of NGOs countered government efforts to blame migrants for high unemployment and crime.

### **Regional Cooperation - Best Practices**

There are a number of regional migration processes that involve annual discussions of migration issues, and several of the trade agreements in the Western Hemisphere include migration provisions. Perhaps the best known regional process devoted to improving conditions for migrants and cooperatively managing migration is the Regional Conference on Migration (better known as the "Puebla Process" for the Mexican city in which the first meeting was held in 1996). There is also an incipient migration coordination process underway in South America, where countries meeting in July 1999 in Lima and again in May 2000 pledged "respect for the human rights of migrants constitutes a basic concern of the countries of the region."

## **INTRODUCTION**

The migrant workers' section of the 1998 Santiago Summit of the Americas Plan of Action included a promise by Western Hemisphere governments to: "make a special effort to guarantee the human rights of

all migrants, including migrant workers and their families.” The seven action items on migrant workers are in the Appendix of this report.

The Population Reference Bureau divides the Western Hemisphere into four sub-regions:

- North America (US and Canada, with a population of 303 million in 1999 and a per capita GDP of \$28,130),
- Mexico and Central America (8 countries with a population of 135 million in 1999 and a per capita GDP of \$3,130),
- Caribbean (16 countries or territories and Puerto Rico, with a population of 37 million in 1999),
- South America (13 countries, with a population of 339 million in 1999 and a per capita GDP of \$4,430).

Migration is a result of differences -- in demographic growth, in resources and jobs, and in security and human rights. These differences are large and widening, thus increasing potential migration in the Western Hemisphere, and giving urgency to the search for best practices to manage migration. For example, the rate of natural increase in the population of Western Hemisphere countries ranges from a low of 0.4 percent a year in Canada to a high of over 3 percent in Nicaragua and Guatemala. Per capita incomes range from under \$400 per person per year in Haiti to \$29,000 in the US. Armed conflicts and natural disasters have put millions of persons in motion in the Western Hemisphere, with most following developing networks to join their countrymen abroad.

The seminar opened with a summary of the basic rights of migrant workers and an outline of the migrant workers' rights that are most frequently violated. The two most important conventions of the International Labour Organization dealing with migrant workers are the Migration for Employment Convention (No. 97), adopted in 1949, and the Migrant Workers Convention (No. 143), adopted in 1975 ([www.ilo.org/public/english/protection/migrant/about/index.htm](http://www.ilo.org/public/english/protection/migrant/about/index.htm)). Convention 97 commits States Parties to treat migrant workers the same as national workers in wages and working conditions, while Convention 143 aims to reduce illegal migration and employment. The ILO has also developed Conventions on social security for workers employed in several countries and for particular types of migrants, such as seafarers.

The major instrument protecting the human rights of migrant workers was identified as the 93-article International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was approved by the UN General Assembly on 18 December 1990. The UN International Convention aims to establish basic human rights for authorized and unauthorized migrant workers and their families. As of Spring 2000, 13 States (Azerbaijan, Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Malawi, Mexico, Morocco, the Philippines, Senegal, Seychelles, Sri Lanka and Uganda) have ratified or acceded to the 1990 Convention; 20 States must ratify it before it can enter into force. Bangladesh, Chile, Monaco and Turkey have signed the Convention without ratifying it.

Part III of the International Convention lists a comprehensive set of civil, political, economic, social and cultural rights applicable to all migrant workers and members of their families, regardless of their legal status. Most of these rights are basic human rights, including the:

- right to leave any State, including the person's State of origin, and the right to enter and remain in their country of origin (Article 8);
- right to life (Article 9);

- prohibition of torture or other cruel, inhuman or degrading treatment (Article 10);
- prohibition of slavery, servitude, forced or compulsory labour (Article 11);
- right to freedom of thought, conscience and religion (Article 12);
- prohibition of arbitrary or unlawful interference with the privacy of family, home, and correspondence (Article 14);
- prohibition of arbitrary deprivation of property (Article 15);
- right to liberty and security of person and prohibition of arbitrary arrest or detention; in case of arrest, right to be informed in a language they understand of the reasons for their arrest (Article 16);
- prohibition against the collective expulsion of migrants (Article 22).

Part III of the 1990 Convention reaffirms the principle of equality of treatment between migrant workers and nationals, regardless of their legal status, before the courts and tribunals (Article 18) and in wages and working conditions while at work (Article 25). Migrants are to be treated equally when seeking emergency assistance (Article 28) and in access to education (Article 30). Upon termination of their stay in another country, migrant workers have the right to transfer their earnings and savings, as well as their personal effects and belongings out of the country (Article 32).

Part IV of the Convention grants additional rights to those migrants who are legally authorized to be in the host country. For example, Article 39 grants documented migrant workers and members of their families the right of freedom of movement in the host State, while the right of legal migrants to form associations and trade unions is upheld in Article 40. Legal migrant workers and their families are to be treated equally in access to education, housing, vocational and social services.

Part VI of the Convention calls on signatory countries to prevent and reduce illegal entry and employment by, e.g., imposing sanctions against smugglers, traffickers and employers who hire unauthorized migrants.

## **MANAGING MIGRATION**

The Plan of Action commits Western Hemisphere governments to:

- provide, with respect to working conditions, the same legal protection as for national workers;
- encourage the negotiation of bilateral or multilateral agreements, regarding the remission of social security benefits accrued by migrant workers;

It is easiest for governments to provide jobs, equal wages and working conditions, and benefits when their economies are growing: migrant workers are most likely to move from stagnant or slow-growing to faster-growing economies. Economic growth in Latin America has been uneven: it averaged 3.3 percent a year in 26 Latin American economies in the 1970s, shrank by -0.4 percent a year in the 1980s, the "lost decade," and resumed growth at 1.6 percent a year between 1990 and 1997. For the two largest Latin American economies, Brazil and Mexico, the percentages for these decades were: 6.1 and 3.5, 0.3 and 0.1, and 0.5 and 1 percent a year.

The ILO held its regional meeting in Lima in August 1999 under the motto, Decent Work for All, highlighting the fact that during the 1990s there was very little job creation in the formal sector in Latin America as

economies struggled to regain their footing after the 1980s and then restructured as a result of globalization (<http://www.oitamericas99.org.pe/english/agenda/textadop/report/index.shtml>). As a result, urban open unemployment increased in the region and the share of total non-farm employment in the informal sector rose, according to ILO estimates, from about 50 percent in 1990 to 60 percent in 1998. The ILO noted that women seemed to suffer most from this process: in many countries, the unemployment rate for women was twice the rate for men, and an estimated 15 to 19 percent of children 10 to 14 were working.

A major reason why Latin American workers are willing to migrate abroad is that wages in many countries fell in the 1980s and 1990s. Although they began rebounding in the mid-1990s, in many Latin American countries wages in 1998 remain below 1980 levels, in constant terms. The real value of the minimum wage, for example, is significantly lower in 1998 than it was in 1980 in most countries. The ILO highlighted increasing labour migration in the region, and called on Latin American countries to adapt their "Social Security schemes, so that workers are not penalized by a loss in protection" when employed in two or more countries.

### **Best Practice: Canadian Guest Workers**

Canada, Mexico, and the US have programmes under which foreign workers can enter to fill vacant jobs. In one potential best practice programme, Canada admits about 15,000 foreign farm workers each year for seasonal employment on Canadian farms. In 1999, some 7,640 seasonal foreign farm workers in Canada were from Mexico, and 7,539 were from Caribbean countries, primarily Jamaica. The number of Mexican workers has been rising: 4,908 Mexican workers were admitted in 1994; 4,886 in 1995; and 5,215 in 1996. About 80 percent of the migrants are employed on fruit, vegetable and tobacco farms in Ontario.

The Canadian Seasonal Agricultural Worker Programme, begun in 1966 with the Caribbean and extended to Mexico in 1974, is based on a government-to-government memorandum of understanding. For the first two decades, there was an annual quota on the number of foreign farm workers who could be admitted, and the programme was administered by government agencies in Canada as well as in the emigration areas. In 1987, the programme was redesigned to give the private sector a greater role in programme administration and the quota on annual admissions was lifted.

Canadian farm employers initiate the process of importing foreign workers under these MOUs by placing an order which specifies their labour needs, wages paid, etc. with Human Resources and Development Canada (HRDC) at least eight weeks before the workers are needed. These job orders must offer foreign workers a minimum of 240 hours of work in a period of 6 weeks (usually 40 hours of work per six-day week for at least six weeks), free housing and meals or cooking facilities, and the minimum (C\$6.90 an hour in Ontario), prevailing wage, or piece rate wage paid to Canadians doing the same job, whichever is higher.

Canadian workers are sought to fill these job orders. If none are found, then three to four weeks before the employer's specified need date, the employer's request for foreign workers is approved by HRDC, and the farm employer sends the order to a private organization, called Farms in Ontario and Ferme in Quebec. The farm employer can specify by name the workers he would like to hire, or have workers recruited to fill his job order. About 83 percent of farmers name the workers they want, so Mexicans arriving in Canada to do seasonal farm work already have 5 to 10 years experience working on Canadian farms. These private organizations charge the farm employer a fee for ensuring that the foreign workers named or recruited reach the Canadian farmer who requested them.

If the employer did not name a worker, Mexican Ministry of Labour recruits workers to fill job orders. About 75 percent of the workers headed for Canada are from four Mexican states: Tlaxcala, Guanajuato, Mexico, and Hidalgo. According to the Canada-Mexico MOU, the Mexican migrant workers sent to Canada must be at least 18, and have experience doing farm work. Mexico implements this provision by requiring first time migrants to submit official letters certifying that they are farmers, to undergo a medical exam, and to be at least 25. Since workers go to Canada without their families, some say that married workers with children are preferred because they are more likely to return to Mexico at the end of the season. The workers who are recruited are processed at the Canadian embassy in Mexico, receiving a letter of introduction that enables them to enter Canada.

Employers advance the cost of round-trip transportation between Mexico City and Canada, and most employers recoup about a third of the transportation cost in deductions from worker wages. Employers may also deduct from wages the cost of health insurance payments made to the Mexican insurance company that provides coverage, as well as up to C\$6.50 a day for meals. Migrants are eligible for health insurance coverage upon arrival—the usual three month wait for coverage under provincial health care programmes is waived. Four percent of worker pay, up to C\$425 a worker, is deducted to cover the costs of administering the programme. The Caribbean workers have 25 percent of their pay deducted in a forced savings programme. Migrants receive tax-reporting numbers and contribute to the Canadian pension system as well as have Canadian income taxes withheld from their earnings. At the end of each season, farm employers evaluate each worker.

The major benefit to the migrants are higher earnings than they would have at home. A study of the remittances sent home by Mexican migrants in Canada concluded that most did not have substantial savings until their second year in the programme, primarily because they had to pay off loans taken out for required medical exams, visa fees, etc. With accumulated savings, migrants tend to buy land and build or improve housing, or invest in education for their children. There was remarkably little investment by returned migrants in improving farm land or equipment, with only 60 of 255 migrants reporting investments in farms in Mexico.

Both the Canadian and Mexican governments seem well satisfied with this seasonal worker programme, and Mexico has proposed that the US adopt a similar programme to manage Mexican migrants in the US. The US currently admits 15,000 to 20,000 Mexican farm workers a year, under a similar programme, the H-2A programme. However, the ready availability of unauthorized workers and the opportunity for Mexican migrants to switch from farm to non-farm jobs makes it difficult to ensure that farmers would prefer legal workers and that any admitted would remain farm workers in a larger programme.

### **Best Practice: Caribbean Guest Workers**

Dominica, an island of 75,000 with a per capita GDP of \$1800, recruits workers in Haiti to work on banana plantations. A Haitian agent recruits the workers in rural Haiti, and they are flown to Dominica and sent to farmers; the farmers are responsible for providing the Haitian migrants with housing. Dominica notes that inter-island migration has a long history in the Caribbean, and that Dominica supports efforts of the Caribbean Community (CARICOM) to develop a freedom of movement regime.

At the end of the discussion on this theme, the experts concluded that:

- orderly management of migration can be achieved through bilateral or sub-regional arrangements, provided there is a clear political commitment to achieve it;

- managed migration facilitates public acceptance and respect of migrants' rights;
- the private sector and the employers have to be part of such schemes and take more initiatives;
- managed migration contributes to economic growth and reduces risks taken by migrant workers;
- managed migration helps control irregular migration and serves national interest; in a bilateral or sub-regional context, it constitutes a best practice which helps solve the problem of illegal entry and stay.

## CONSULAR NOTIFICATION AND ACCESS - BEST PRACTICES

The migrant section of the Santiago SOA Plan of Action commits governments to "seek full respect for, and compliance with, the 1963 Vienna Convention on Consular Relations, especially as it relates to the right of nationals, regardless of their immigration status, to communicate with a consular officer of their own State in case of detention." The Inter-American Court of Human Rights issued an advisory opinion in October 1999 that concluded that the 1963 Vienna Convention gives individuals detained outside their country of citizenship the right to information on consular services, and that the failure to provide this information infringes on due process. (<http://corteidh-oea.nu.or.cr/ci/Prensa/Doc24.HTM#CDH/CP14/99>). While the United States believes that the Vienna Convention imposes duties on signatory governments to inform detained foreigners about consular access, but does not give rights to individuals, the US Department of State (DOS) has worked to inform State and local governments, responsible for most of the arrests and detentions of persons in the US, about the 1963 Vienna Convention and the rights of arrested foreigners.

DOS has taken three steps to increase awareness of the 1963 Vienna Convention:

- prepared a brochure that is widely distributed to law enforcement agencies: "Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist." ([http://www.state.gov/www/global/legal\\_affairs/ca\\_notification/ca\\_prelim.html](http://www.state.gov/www/global/legal_affairs/ca_notification/ca_prelim.html)),
- appointed a Senior Coordinator for Consular Notification, and
- held conferences for State and local law enforcement agencies to inform them about the 1963 Vienna Convention.

Some US States and cities are changing their practices to increase adherence to the 1963 Convention. Effective 1 January 2000, California law requires state and local law enforcement officials to inform persons arrested and detained who appear to be foreign born that they have the right to contact a consular representative from their country. Many US law enforcement agencies post in detention facilities the DOS Consular Notification notice as well as flyers provided by the Mexican government that inform foreigners of their consular rights, and provide contact information. The 42 Mexican consulates in the US distribute cards to Mexicans notifying them of their rights, including the right to contact a Mexican consulate in the US if arrested. The cards warn Mexicans, in Spanish, "Do not sign any document, ESPECIALLY IF IT IS IN ENGLISH, without the advice of an attorney or your consul."

Washington State has 39 counties, each with a district or prosecuting attorney. In 1999, these prosecuting attorneys launched a concerted effort to develop a model programme that informs police, sheriff, and other law enforcement agencies in Washington State about the 1963 Vienna Convention and the rights of foreign nationals arrested and detained. If a person arrested in the State of Washington indicates that he is not a

US citizen, then the booking officer determines if he is from a country with which the US has a bilateral agreement requiring consular notification. The arresting agency notifies consular officials when the foreigner is from a country to which notification is mandatory (e.g. China), and informs the person arrested about the right to notify a consulate if notification is not mandatory—the suspect is informed of the right of consular access in an appropriate language if necessary.

There has been little attention paid to consular notification outside the US, although it is believed that police and prosecutors do not systematically inform individuals of their rights to consular access. Best practices for foreigners detained abroad include training and encouraging the local enforcement agencies responsible for most arrests and detentions to respect the consular rights of detained foreigners as well as providing information and basic services to detained persons, including information in their own language.

In summary, the experts emphasized that the right of migrant workers to be informed of the right to consular assistance was not linked to their regular or irregular situation; they noted that the duty to notify consular officers may vary depending on treaty obligations, but the duty to inform detained migrant workers remains; they stressed the need for more and better information at all levels of government, as well as the need for more training.

## **RETURN AND REINTEGRATION - BEST PRACTICES**

The SOA Plan of Action acknowledges that each government has a “sovereign right... to formulate and apply its own legal framework and policies for migration, including the granting of permission to migrants to enter, stay, or exercise economic activity, in full conformity with applicable international instruments relating to human rights and in a spirit of cooperation.” However, signatory governments also pledged to:

- prevent abuse and mistreatment of all migrant workers by employers or any authorities entrusted with the enforcement of migration policies and border control;
- facilitate, as appropriate, the payment of full wages owed when the worker has returned to his/her country, and allow them to arrange the transfer of their personal effects.

Several specific cases were discussed:

- A return and reintegration programme implemented by IOM resettled about 45,000 Guatemalans in 1998-1999 who had fled to southern Mexico in the 1980s. Returning Guatemalans were provided with land in their villages of origin, and the return programme helped to resolve some lingering land conflicts. The returning Guatemalans were well organized in Mexico, which facilitated their return. The Guatemalans had formed cooperatives to earn money, and they were able to continue their non-traditional activities and roles after their return to Guatemala. This return programme was carried out with the cooperation of Mexico and Guatemala.
- The Paisano programme in Mexico is a ten-year old programme that aims to reduce abuses of returning Mexicans by Mexican authorities. According to some estimates, one million Mexicans return to Mexico from the US each December, and the Paisano programme provides these mostly tourist Mexicans with effective means of reporting abuses at the hands of government officials. The programme is changing to reflect the fact that most of those returning are Mexicans who have settled in the US, not migrants who are returning from seasonal US jobs.
- The US is funding an IOM-implemented “Bienvenido a Casa/Welcome Home” programme in El Salvador that provides reception services to Salvadorans returning or removed from the US. From offices at the San Salvador airport, the programme provided services to 5000 returned Salvadorans between

February 1998 and May 2000, including up to three days lodging, the ability to call home, and tickets to the areas of Salvador where their relatives lived. About 65 percent of those who received welcome home services were simply unauthorized in the US; 35 percent were removed for other reasons, including about 15 percent because of criminal convictions in the US. This pilot programme has helped El Salvador to learn about who is being returned from the US, and increased the acceptance of returned Salvadorans in El Salvador. A similar reintegration programme, also funded by the US and implemented by IOM, has begun in Honduras.

It was noted that assistance for returning Guatemalans and Salvadorans should be extended to local residents in the migrants' areas of origin to prevent local resentment and to facilitate their acceptance and reintegration. These services, such as mental health services for those who fled military massacres in Guatemala, should be provided by NGOs so that migrants take advantage of them.

## **MIGRANT PROTECTION**

The SOA Plan of Action calls on signatory governments to:

- Reaffirm that the promotion and protection of human rights and the fundamental freedoms for all, without distinction by reasons of race, gender, language, nationality, or religion, is a priority for the international community and is the responsibility of every State.
- Recognize the rights of citizenship and nationality of the children of all migrant workers who may be entitled to such rights, and any other rights they may have in each country, and
- Support the activities of the Inter-American Commission on Human Rights with regard to the protection of the rights of migrant workers and their families, particularly through the Special Rapporteur for Migrant Workers.

### **Best Practices: US-Mexican Border**

The Mexican-US migration system is one of the largest in the world, involving significant flows of legal immigrants, non-immigrants, and unauthorized workers. Mexico-US migration has often been the source of conflict, but there has been increased cooperation in the past decade. Since 1987 the US and Mexico have met annually in the Working Group on Migration and Consular Affairs of the U.S.-Mexico Binational Commission to discuss migration issues.

A major issue in 2000 is the safety of migrants attempting irregular entry into the US. Since 1994, the US has altered its southern border control strategy, seeking to discourage migrants from entering unlawfully rather than permitting them to enter and then apprehending them. Migrants are discouraged from entering near population centers by fences, lights, and far more Border Patrol agents, so they have increasingly sought entry, often with the help of smugglers, in more remote desert and mountain border regions. One result has been an increase in deaths and injuries to migrants.

Mexican government data indicate that 160 Mexicans died attempting to enter the US in the first five months of 2000; there were 356 deaths in 1999, and 324 in 1998. After two migrants drowned in the Rio Grande near Matamoros in June 2000, the US and Mexico pledged to train their agents to avoid such tragedies in the future. The Mexican Embassy in June 2000 issued a press release that said "we placed special emphasis [during a meeting with US immigration authorities] on evaluating the prevention campaigns of both countries aimed at apprising undocumented migrants of the dangers of illegal crossing of the US/Mexico border. As an example, we have conducted a major information campaign to alert

migrants of the dangers of attempting to wade the Rio Grande and various irrigation canals, along with the dangers of attempting to cross through isolated desert regions."

The US Border Patrol in June 2000 announced that agents will get improved safety training jointly with Mexican border police to rescue and assist migrants. The US also plans to broadcast a new round of TV ads warning of the dangers of crossing the border in desert areas. The INS acknowledges that 700 migrants have died in the border area since 1997, but notes that 2,000 were rescued by Border Patrol agents.

Mexico and the US share one of the busiest borders in the world: the busiest land port in the world is said to be that between San Diego and Tijuana, with 40,000 cars crossing daily. Mexico and the US have cooperated in many ways to speed the flow of legitimate border traffic while deterring unauthorized traffic. For example, both countries cooperated to redesign border area traffic lanes to develop a Dedicated Commuter Lane that permits 4,000 persons who have provided background information to the INS to outfit their cars with transmitters that send personal information and photos to an INS inspector as they approach the US border from Mexico. If the information matches, the car simply slows, and the driver uses a magnetic card to open the border gate and enter the US.

Mexico and the US share a concern with border area crime, as criminals on both sides of the border prey on migrants attempting irregular entry in an unfamiliar place. The San Diego police formed a border area task force, and the INS has stepped up efforts to prevent border area crime and reduce the possibility that INS agents abuse migrants. The INS's 5,800 Border Patrol agents made 1.5 million apprehensions in 1996, and the INS Office of Independent Audit opened 331 investigations into complaints of abusive behaviour. In 1990 Mexico developed a new police unit— Grupo Beta—in Tijuana to protect northbound migrants from criminals. Grupo Beta, which has since been expanded to eight other border areas as part of the Interior Ministry, has developed a reputation for honesty and efficiency. The Tijuana unit in 1998 was composed of 45 men and women selected from local, state and federal law enforcement agencies who were selected after psychological testing and then given extensive training. After being sworn in, Grupo Beta members receive a substantial salary increase and a life insurance policy, as well as 15 days off each six months. Some say that one key to the success of Grupo Beta is its zero tolerance for breaches of discipline, which limits temptations for corruption. Grupo Beta has been praised widely. For example, one US paper headlined: "Grupo Beta seen as law enforcement's shining light." ( San Diego Union Tribune, February 10, 1997).

### **Best Practices: Costa Rica-Nicaragua**

Costa Rica is a magnet for migrants in Central America: there are an estimated 500,000 Nicaraguans living in Costa Rica, which has about three million residents, making about one-sixth of Costa Rican residents Nicaraguans. Costa Rica and Nicaragua signed an agreement regulating seasonal migration in 1998; it allows Nicaraguans with work permits to enter Costa Rica at the well-regulated western border at Penas Blancas on the Pan-American Highway. Nicaraguans without work permits try to slip down the Rio San Juan to Costa Rica from the Nicaraguan city of San Carlos to earn wages that in 1998 were six times higher than in Nicaragua. Most of the *coyotes* in San Carlos charge migrants \$3 to be dropped off on the Costa Rican side of the border before the boat reaches the city of El Castillo. Smuggling peaks in August, before the coffee harvest begins in Costa Rica.

In the northern part of Costa Rica there are 200,000 Nicaraguans and the Catholic Church in this area has an active programme to protect the rights of migrant workers, i.e., ensuring that they earn at least minimum wages and adequate working conditions, and providing services to migrants, including training so that they can improve their skills.

### **Best Practices: Anti-Discrimination**

Most countries include provisions in their constitutions and legal systems promising policies of non-discrimination and efforts to end racism and xenophobia. Some countries have fairly elaborate regulatory systems to detect and remedy discrimination and xenophobia. In most cases, these systems were established to protect domestic minorities who had been the victims of discrimination, but in some countries, anti-discrimination protections were extended to migrants.

For example, the US has an extensive set of federal, state and local laws and regulations that aim to prevent and remedy discrimination, including one federal office, the Office of the Special Counsel for Immigration Related Unfair Employment Practices (OSE) in the Department of Justice, devoted to the enforcement of laws that prohibit discrimination in hiring and employment based on immigration status or national origin (<http://www.usdoj.gov/crt/osc/>). The US Equal Employment Opportunity Commission (EEOC) was created to enforce federal laws that prohibit discrimination in employment, housing, and other areas. The EEOC investigates complaints of discrimination and, if warranted, can order remedies that include fines on violators. Both the OSC and the EEOC work actively with community groups and employers to inform them of their rights and responsibilities.

Female migrants are sometimes described as being doubly disadvantaged. Many studies of migrant workers assume that most are young men, especially in the early stages of a migration flow, and that women and children later follow men abroad. Today, women sometimes pioneer migration flows, so that data on women migrants should be collected and reported regularly, including the amount and use of remittances sent home by female migrants. Some women are particularly vulnerable to exploitation, whether employed as maids or as sexual entertainers, and governments need to develop programmes to detect such abuses, and protect the women who testify against smugglers and traffickers and other abusers. Women who join spouses abroad need an opportunity to obtain an independent immigration status so that they are not trapped in abusive relationships.

There are also international efforts to reduce racism and discrimination, and to acknowledge that many migrants are subject to racism and discrimination. Many Western Hemisphere countries are preparing for the third UN World Conference on Racism, Discrimination and Xenophobia, scheduled for August 2001 in South Africa. They share the belief that, to reduce racism and discrimination against migrants, it must be acknowledged that:

- racism and xenophobia are common problems that can impede the acceptance and integration of migrants, especially of female migrants;
- migrant victims should participate in the conference via NGOs to inform governments about the realities of discrimination;
- the outcome of the 2001 Conference is expected to be a plan of action that includes concrete measures to reduce xenophobia discrimination against migrants, with plans for assessment of what is accomplished.

The experts concluded this item with the following considerations: state sovereignty is not absolute and human rights protection is no longer a matter belonging exclusively to internal affairs; empowerment of migrant workers is a best practice in order to reduce their vulnerability; governments have to take the initiative to fight structural and cultural vulnerability (racism, discrimination, xenophobia), especially if vulnerability is due to, or aggravated by acts of government officials; the institutions of civil society have an important role to play in education, training and information; there is a need for more information and statistics on migrant women, so as to identify and take into account their specific problems and strengths; analysis of national legislations to detect discriminatory norms in order to adopt appropriate changes also constitutes a best practice.

## **TEMPORARY PROTECTION AND LEGALIZATION - BEST PRACTICES**

Three potential temporary protection best practices were identified:

- Develop national laws that permit countries to offer temporary protection when needed.
- Plan for return or settlement as an option when first granting TPS.
- Make contingency plans for regional safe haven, so that those needing protection can remain close to their homes and strengthen the resolve of neighboring countries to change the conditions in a country that require the offer of protection.

Some countries in the Americas have offered safe haven to nationals of neighbouring countries fleeing armed conflicts or natural disasters, as exemplified by Mexico, Costa Rica and the US providing temporary protection to Central Americans fleeing civil war and natural disaster and Argentina providing temporary protection to Chileans. Temporary protection offers protection during mass and sudden population movements caused by conflict, political instability, natural disasters and other life-threatening situations. Temporary protection complements asylum and refugee systems, rather than substitutes for them. The US offered temporary protection to Central Americans who could not return because of the damage caused by Hurricane Mitch, which killed over 9,000 people, left 600,000 homeless and destroyed the transportation infrastructure in Honduras and Nicaragua in Fall 1998.

Most Western Hemisphere governments have signed the 1951 Refugee Convention, which commits them not to return to their country of citizenship an individual who has fled his or her country and is unable or unwilling to return because of a "well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." In 1984, ten Latin American countries signed the Cartagena Declaration, which expanded the refugee definition to include those who flee their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances that have seriously disturbed public order. The General Assembly of the Organization of American States [OAS] endorsed this expanded refugee definition in 1985.

A best practice is to provide temporary protection as close to the homes of individuals needing protection as possible, i.e., in regional safe havens. Regional safe havens can wind up putting much of the cost of providing protection on one country; a best practice is to work out burden-sharing arrangements, preferably in advance of the crisis, that permit other countries to share the cost of providing temporary protection or, if necessary, in resettlement. Both regional and national temporary protection policies should plan for the end of temporary protection. If conditions change in the country of origin, repatriation is generally the best

practice. Migrants receiving temporary protection may need assistance to return, rehabilitate their homes and communities, and find longer term employment.

In some cases the conditions that led to emigration may not change in a timely manner to permit returns. Countries granting temporary protection should also consider alternatives, including granting legal immigrant status to persons who are unable to return. Mexico's grant of citizenship to Guatemalans who had taken refuge from the conflict in their home country is a best practice for such situations.

Costa Rica provides another example. Costa Rica has provided prima facie refugee status to persons needing it, primarily Nicaraguans; about one-sixth of Costa Rica's residents are immigrants. Costa Rica had a six-month programme to regularize undocumented Central Americans in the country between 1 February and 31 July 1999; about 152,000 persons, 96 percent Nicaraguans, were regularized. Those regularized received one-year work and residence permits, which can be renewed. Newly documented foreigners had to begin paying into the public health and social security systems and paying taxes on 31 July 1999.

The Costa Rican government with partial international assistance is supporting integration programmes in 21 Costa Rican communities, providing supplemental education, employment, health, and housing assistance to both migrants and other local residents with the help of IOM. Migrants and local residents are involved in e.g. programmes to build or refurbish schooling facilities in areas with many migrants, and in designing curricula that preserve cultural identity.

There is no explicit call in the plan of action for the legalization of unauthorized aliens, although one SOA provision calls for each State "to formulate and apply its own legal framework and policies for migration, including the granting of permission to migrants to enter, stay, or exercise economic activity, in full conformity with applicable international instruments relating to human rights and in a spirit of cooperation." Legalizing unauthorized foreigners or offering temporary protection to those in need fulfills this part of the plan of action.

Argentina, a country of 36 million, is the second largest country in South America, with a per capita GDP of \$9,100 in 1997; it does not require visas of nationals of nearby countries, and they can use national identification cards rather than passports for entry. Argentina has a fairly regulated labour market, and many migrants are employed in the black or informal economy by employers who do pay required taxes for labour-related benefits—it is estimated that 40 percent of the workers in Argentina are in the informal or off-the-books economy.

Most of the migrants, from Bolivia, Paraguay and Peru, enter Argentina with 90-day tourist visas and go to work in small shops for \$3 to \$5 a day. They can obtain work visas if they find formal sector jobs, with employers willing to pay social security and other taxes on their earnings, which requires the employee to have a resident identification number or at least a preliminary registration certificate for foreigners. However, most migrant workers find jobs with the help of labour contractors, and their employers do not usually pay taxes on their wages.

The President of Argentina in January 1999 blamed immigrants for rising unemployment and crime. Laws were proposed that would, inter alia, impose fines up to \$500,000 on individuals or companies that employ aliens in an irregular situation and give the Interior Minister the power to deport any alien sentenced to more than two years in prison. The Catholic Church and a network of human rights groups combined to

protest that migrant workers were being made scapegoats for other problems. They pointed out that the 70,000 migrants in the Buenos Aires area were only two percent of the area's workers, and that fewer than five percent of the persons convicted of crimes were foreigners.

Argentina has had four legalization programmes: in 1958, 1964, 1986, and 1994, when 230,000 foreigners received legal status. In addition, Argentina has regularized migrants who found formal sector jobs; some 10,000 to 20,000 a year. Argentina has been generous with legalization despite public opinion: a 1994 survey by sociologist Heriberto Muraro found 81 percent of Argentines in favour of limiting the influx of foreign workers, and 91 percent who said they were "adversely affected" by the presence of Bolivians, Brazilians, Chileans, Paraguayans and Uruguayans.

In conclusion, the experts considered that amnesties or regularizations are purely discretionary; information on regularization schemes or temporary protection is necessary to promote acceptance and endorsement by the local population and migration officials; objective information to migrant workers by governments and organizations, governmental or non-governmental, is needed to ensure the success of such schemes which may reduce xenophobia because of their positive contribution; there is a responsibility of consular officers to provide documents and relevant information.

## **COUNTER-SMUGGLING AND TRAFFICKING - BEST PRACTICES**

In the 1998 SOA Declaration, Western Hemisphere governments committed themselves to:

- "protect all migrant workers and their families, through law enforcement and information campaigns, from becoming victims of exploitation and abuse from alien smuggling"
- "prevent abuse and mistreatment of all migrant workers by employers or any authorities entrusted with the enforcement of migration policies and border control"

Smuggling is the movement of persons or goods across borders in violation of national laws. Smuggling is an old business, created by the formation of States and the enactment of laws that prohibit or tax the movement of people or goods over borders. The business of smuggling people over borders is based on the fact that the number of persons seeking entry to many countries exceeds the willingness of countries to admit them, so migrants seek out smugglers to help them cross borders in defiance of these laws. Smugglers range from family members engaged in one-time smuggling efforts to sophisticated businesses with safe houses and links to employers for migrants seeking jobs. The fact that smuggling involves law breaking makes migrants who utilize the services of smugglers vulnerable to abuse at the hands of smugglers.

The United Nations is developing a draft Convention on Transnational Organized Crime, and its definitions read: "Smuggling of migrants shall mean the intentional procurement for profit for illegal entry of a person into and/or illegal residence in a State of which the person is not a national or a permanent resident... Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of abduction, force, fraud, deception or coercion, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having the control over another person."

Smuggling and trafficking people from one country to another is often described as a \$5 to \$7 billion annual business, the "dark side" of a trend toward globalization that has eased the flow of goods, capital, and people. Two terms are often used to describe the process of moving migrants unlawfully across borders.

Smuggling is the term usually reserved for individuals and organizations who, for a fee, move individuals unlawfully over borders. Trafficking is normally defined as smuggling plus coercion or exploitation, as when women agree to be smuggled across borders to be hostesses and wind up as prostitutes, or migrant workers smuggled across borders wind up in slave or indentured conditions to repay smuggling fees.

The US has increased penalties for human smuggling. The 1994 Violent Crime Control and Law Enforcement Act provides that persons who knowingly bring illegal aliens into the US are subject to possible imprisonment of 10 years (and/or fines) per alien smuggled, with the penalty increasing to 20 years per alien when bodily injury occurs or life is placed in jeopardy in connection with the smuggling offense. Should death result from the smuggling offense, life imprisonment or the death penalty may be imposed. The INS has deployed agents overseas in Operation Global Reach to facilitate coordination with local authorities.

In many cases, smugglers and traffickers cannot be prosecuted successfully without testimony from migrants. Migrants who cooperate with enforcement agencies need to be protected from retaliation from smugglers. The US currently has an S-visa that grants eventual immigrant status to foreigners who cooperate in the prosecution of smugglers, and is considering a new T-visa that would formalize this protection process.

Migrant protection can operate at several levels, from the efforts of US and Mexican enforcement agencies along the border to prevent local criminals from targeting migrants attempting illegal entry to protecting migrants in exploitative situations inside the destination country. For example, the US follows the recommendations of the ILO and the SOA Plan of Action and provides the same wage and hour labour market protections to all workers, regardless of their legal status. To encourage migrants whose labour market rights are violated to report violations, the US Department of Labor does not report even suspected unauthorized workers to the INS if the workers initiate a complaint. Finally, the US Equal Employment Opportunity Commission will investigate and, if appropriate, apply penalties on US employers who discriminate against workers on the basis of their race, nationality, or gender, even if the workers are unauthorized.

Carecen Internacional in El Salvador provides food, shelter and information especially to Central Americans who are attempting to migrate through Mexico to the US, as well as assisting migrants who are being returned from Mexico. Best practices include involving local governments in information campaigns that warn migrants of the dangers of using the services of smugglers and traffickers, such as warning them of the dangers of boarding small boats that can capsize or entering containers that will be sealed. By emphasizing the dangers of using smugglers, migrants may rethink the decision to emigrate, so information campaigns should be linked to programmes that assist local governments attempting to develop alternatives to emigration.

Central Americans believe that detention facilities in southern Mexico often fail to meet minimum standards, with many migrant workers not informed of their rights, and many detention facilities do not have telephones for migrants to call friends, relatives, and consulates. The Central American countries need to develop consulates staffed with persons who can advise migrants in detention of their rights in southern Mexico, where the migrants are, rather than in Mexico City.

Many children—persons under 18—are migrating without their families. When these children do not reach their migration goals, they often become street children, both in capitals and smaller cities, who are

vulnerable to criminals as well as law enforcement agencies—the criminals use them to sell drugs or commit crimes, while law enforcement agencies sometimes arrest them as vagrants for not having any money. Casa Alianza reports that more of the 50,000 street children in Central America are being moved from one country to another—most do not make it to the US, their goal. There are also an estimated 50,000 street children in Mexico City.

The best practice is to return migrant street children to their families, who are often in rural areas. Re-integrating children with their families works best when both the child and the family are counselled separately, and the family receives economic support from e.g. Casa Alianza so that the child is more likely to stay at home. It is more difficult to re-integrate girls who have been sexually exploited.

In a nutshell, the best practice recommendations for governments urge them to develop policies that follow the 3 P's to mitigate the abuses experienced by migrants at the hands of smugglers and traffickers:

- Prevention—educate migrants to avoid using smugglers and traffickers via information campaigns and other means, provide opportunities for economic opportunity and means of legal entry so that migrants do not seek out or respond to the lure of smugglers and traffickers. One best practice to protect migrant workers and their families from smugglers and to minimize abuse includes information campaigns to warn potential migrants about the dangers of being smuggled and the possibilities of being abused. The US and Mexico operate joint campaigns in Mexico that warn potential clients of smugglers about the dangers involved in hiring a smuggler to attempt illegal entry into the US.
- Prosecution—disrupt and deter smuggling rings by making human smuggling a serious crime with severe penalties, cooperation within and across countries between intelligence and enforcement activities, and aggressively prosecute those who assist or employ smuggled migrants. This means that smuggling and trafficking must be made crimes with severe penalties, and that enforcement be a high priority.
- Protection-- protect migrants from criminals in border areas, at the work place, and protect those who testify against smugglers from retaliation. For migrant victims of smugglers and exploitation, provide assistance for their return and reintegration.

## **INTEGRATION AND CULTURE - BEST PRACTICES**

The Canadian NGO sector identified three international agreements that have provided background for the development of best, promising, or good practice immigrant integration programmes:

- the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (not yet in force)
- the 1994 Programme of Action of the International Conference on Population and Development, Chapter XV (endorsed by 179 countries, and reaffirmed at its five year review in 1999)
- the 1998 Plan of Action of the Summit of the Americas

Programmes identified as best, promising, or good practices value immigrants as contributors to the host country, including offering integration services and facilitating naturalization, in Canada after three years of legal immigrant status. Canada officially became a multicultural country in 1971, and the Multiculturalism Act of 1988 committed Canada to promoting ethnic and racial diversity.

Within this framework, best practices included:

- having integration programmes developed and operated by those the programmes are intended to serve, i.e., have governments provide funds to NGOs that have mostly immigrant members and staffs
- make programmes that serve migrants fully accessible, including developing web sites in various languages and offering flexible hours and services, especially for vulnerable populations
- favour agencies that provide more than one service to migrants, since they can serve multiple migrant needs with one stop
- provide assured funding so that agencies can develop long-term perspectives and infrastructure

Brazil includes migrants from most of its neighbours, led by Bolivians, Chileans and Paraguayans in the mid-1990s. Brazil is a country of 165 million with a per capita GDP of \$4,800. Incomes are highest in the south central parts of the country, where most migrants are found, and lowest in the northeast; about 50 million Brazilians are considered poor.

Brazil in 1998 had an estimated one million legal immigrants, and hundreds of thousands of unauthorized migrants. Most foreign and many domestic migrant workers are in the 17 million resident Sao Paulo area, the biggest metropolis in South America. There have been three legalization programmes in Brazil: 27,000 persons were legalized in 1981, 30,000 in 1988, and 39,131 in 1998. The Catholic Church plays a major role as an advocate for migrants, urging legalization and helping them to celebrate their national holidays in Brazil.

## REGIONAL COOPERATION - BEST PRACTICES

There are a number of regional migration processes that involve annual discussions of migration issues, and several of the trade agreements in Latin America include migration provisions. Perhaps the best known regional process devoted to improving conditions for migrants and cooperatively managing migration is the Regional Conference on Migration (RCM or better known as the "Puebla Process" for the Mexican city in which the first meeting was held in 1996). The Puebla Process, which aims to coordinate migration policies and minimize migration problems in 11 countries in the region, began with Belize, Canada, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States; Dominican Republic has since become a full member, bringing the number of participating countries to 11. The Puebla Process (<http://www.rcmvs.org/>) has goals and action items in six areas, including:

- to review and develop immigration policies in each country based on national interests and to develop minimum standards for travel documents to limit fraud
- to examine the long-term links between migration and development to determine optimal policies to reduce the need to emigrate
- to fight trafficking by making smuggling people a criminal offence in each country, with annual reports on prosecutions of traffickers and the creation of a liaison mechanism to exchange information and to publicize the dangers of trafficking to migrants
- to promote full respect for the human rights of migrants, "regardless of their immigration status, as defined in the Universal Declaration of Human Rights of 1948 and other relevant international instruments" through training of enforcement personnel and information campaigns
- to expedite the return of irregular migrants from outside the region by anticipating the arrival of e.g. Chinese migrants and making plans to cover the cost and accomplish their return
- to enhance technical cooperation between Puebla member countries by re-training immigration staff and providing them with modern technologies

Emulating the Puebla Process, an incipient migration coordination process is underway in South America. In July 1999, a South American Encounter on Migration, Integration and Development brought together government representatives from Argentina, Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela in Lima, and the report of that meeting emphasized that migration in the region is increasing, and that "respect for the human rights of migrants constitutes a basic concern of the countries of the region." Participating governments promised to modernize and strengthen their migration agencies, and cooperate technically and financially to better manage migration. A follow-up meeting was held in Buenos Aires in May 2000 ([www.iom.int/migrationweb/reg\\_approaches/lima/default.html](http://www.iom.int/migrationweb/reg_approaches/lima/default.html))

The Inter-American Development Bank reported that 20 new trade agreements were signed in Latin America and the Caribbean in the 1990s, and that Panama in 2000 was the only country in the region that was not a member of a trade block ([www.iadb.org/exr/speeches/s141100e.htm](http://www.iadb.org/exr/speeches/s141100e.htm)). These trade agreements include the North American Free Trade Agreement (NAFTA), the Caribbean Community (CARICOM), the Central American Common Market (CACM), the Andean Community, and the Southern Common Market (Mercosur). An umbrella Free Trade Area of the Americas (FTAA) is scheduled for completion in 2005. The IADB does not list migration as one of the subject areas it covers ([www.iadb.org/EXR/prensa/subject.htm](http://www.iadb.org/EXR/prensa/subject.htm)), and many of these agreements have no or only limited migration provisions.

The North American Free Trade Agreement (NAFTA) aims to promote free trade and capital flows; it does not have extensive migration provisions or include plans for currency union or political integration. The migration provisions of NAFTA's Chapter 16 permit nationals of Canada, Mexico, and the US with a BA or more to accept jobs in other member countries in specified professions. NAFTA-TN visas are issued for one year, but are renewable indefinitely; there is no limit on the number of Canadians who can receive TN visas, but the number of Mexicans who can receive TN visas is limited to 5,500 a year until 2003. There were 27,000 TN admissions according to INS in FY96, the most recent data available, plus another 7,700 TD visas issued to the families of TN-visa holders. The TN programme has become one of the most common methods for Canadian professionals to enter the United States to work.

The Caribbean Community (CARICOM) seeks to free trade between 15 Caribbean countries with 6.5 million people and a per capita GDP that ranged from \$14,500 in the Bahamas to \$930 in Jamaica and averaged \$3,700 in 1998, versus \$3,900 in Latin America. The two largest CARICOM members are Jamaica, with 2.6 million residents, and Trinidad and Tobago, with 1.3 million. Freer trade has reduced the size of the agricultural sector in CARICOM countries, and increased the importance of tourism and services employment, including banking. In June 2000, several CARICOM countries were accused of being money-laundering centres and tax havens.

Since 1998, CARICOM has had a trade in services agreement that requires member countries to begin removing barriers to service providers who migrate from one country to another to establish a business or provide management and technical services. Since January 1996, there has been freedom of movement for graduates of accredited universities in some professions, which required mutual recognition of credentials, and most CARICOM countries have extended freedom of movement to artists and musicians, sports persons, and the press. CARICOM is working on permitting passport-free travel by nationals within the region, and harmonizing social security benefits.

Five Central American countries—Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua—have been attempting to negotiate a Central American Common Market (CACM) since 1960, but the Guatemala

Protocol of 1993 removes dates for achieving free trade in the region. Four of these countries-- El Salvador, Guatemala, Honduras, and Nicaragua—in 1996 agreed to eliminate visa requirements for citizens of any of these countries who can stay up to 90 days in another of the four countries. However, progress in implementing free movement has been slow.

The Andean Community was established by the Cartagena Agreement of 1969 to promote free trade between Bolivia, Colombia, Ecuador, Peru, and Venezuela. A free trade area was declared in 1993, with the goal of having truly free trade by 2005. The 1969 declaration envisioned eventual political integration, and labour migration is covered by Declaration 116, Andean Document on Labour Migration as well as Declarations that deal with social security.

The Southern Common Market – Mercosur - formed in 1991 and in operation since 1995, includes Argentina, Paraguay, Uruguay and Brazil as members, and Chile and Bolivia as associate members ([www.americasnet.com/mauritz/mercosur/english/](http://www.americasnet.com/mauritz/mercosur/english/)). Mercosur primarily aims to reduce barriers to trade and investment , but in 1997, Mercosur announced its intention to develop a Mercosur passport. In 1998, an MOU was signed that called for the mutual recognition of university degrees to facilitate the free movement of professionals between the six countries; Mercosur plans to develop quality evaluations of degree-granting institutions in the region.

In December 1998, Mercosur's Common Market Council signed a Declaration of Workers' Rights that calls for the protection of workers' rights throughout Mercosur but makes no reference to freedom of movement within Mercosur. However, some observers believe that the Council will eventually develop an agreement to formalize the current informal flow of migrant workers in the region.

### **APPENDIX: 1998 SOA PLAN OF ACTION ON MIGRANTS**

The migrant section of the 1998 Santiago Summit of the Americas Plan of Action included a promise by Western Hemisphere governments to: "make a special effort to guarantee the human rights of all migrants, including migrant workers and their families." The seven-item Plan of Action that committed governments to:

- Reaffirm that the promotion and protection of human rights and the fundamental freedoms for all, without distinction by reasons of race, gender, language, nationality, or religion, is a priority for the international community and is the responsibility of every State.
- Comply with the applicable international human rights instruments and, consistent with the legal framework of each country, guarantee the human rights of all migrants, including migrant workers and their families.
- Seek full compliance with, and protection of, the human rights of all migrants, including migrant workers, and their families, and adopt effective measures, including the strengthening of public awareness, to prevent and eradicate violations of human rights and eliminate all forms of discrimination against them, particularly racial discrimination, xenophobia, and related intolerance.
- Reaffirm the sovereign right of each State to formulate and apply its own legal framework and policies for migration, including the granting of permission to migrants to enter, stay, or exercise economic activity, in full conformity with applicable international instruments relating to human rights and in a spirit of cooperation.
- Seek full respect for, and compliance with, the 1963 Vienna Convention on Consular Relations, especially as it relates to the right of nationals, regardless of their immigration status, to communicate with a consular officer of their own State in case of detention.
- Protect the rights of all migrant workers and their families, consistent with each country's internal legal framework, by taking steps, in case they do not exist, to:
  - provide, with respect to working conditions, the same legal protection as for national workers;
  - facilitate, as appropriate, the payment of full wages owed when the worker has returned to his/her country, and allow them to arrange the transfer of their personal effects;
  - recognize the rights of citizenship and nationality of the children of all migrant workers who may be entitled to such rights, and any other rights they may have in each country;
  - encourage the negotiation of bilateral or multilateral agreements, regarding the remission of social security benefits accrued by migrant workers;
  - protect all migrant workers and their families, through law enforcement and information campaigns, from becoming victims of exploitation and abuse from alien smuggling;
  - prevent abuse and mistreatment of all migrant workers by employers or any authorities entrusted with the enforcement of migration policies and border control; and
  - encourage and promote respect for the cultural identity of all migrants.
- Support the activities of the Inter-American Commission on Human Rights with regard to the protection of the rights of migrant workers and their families, particularly through the Special Rapporteur for Migrant Workers.

The US Government is responsible for coordinating implementation of the Migrant Worker Initiative in the Santiago SOA Plan of Action; El Salvador and Mexico are designated as co-coordinators in this effort.