

Intra-Caribbean Migration and the Conflict Nexus

Migraciones Intra-Caribeñas
y Conflictos

Migrations Intra-Caribéennes
et Conflits

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Editor's Note and Acknowledgments

This collection represents a collaboration of diverse actors across the Greater Caribbean, beginning in November 2004 with the encouragement of Rubén Silié Valdez, Secretary General of the Association of Caribbean States (ACS), to further explore intra-regional migratory processes as potential sources of violent conflict. A subsequent partnership with the global *Initiative on Conflict Prevention through Quiet Diplomacy*, administered by Human Rights Internet (HRI) under the direction of John Packer and Juan Antonio Blanco, has enabled this vision to come to fruition.

The primary rationale for the publication was that while there is a myriad of diagnostic analyses on intra-Caribbean migration themes, there has been a dearth of material that both (1) makes the direct connection with conflict potential and (2) proposes solutions in the form of concrete recommendations. The goal, therefore, was to apply this approach to situations across the Greater Caribbean, offer recommendations to policymakers, and stimulate further analysis and interest in making such a conceptual connection and following the approach applied herein.

The process leading up to the publication was initially exploratory and involved communicating with a wide variety of specialists about current and pressing migration issues and trends, researching countries with significant migration populations, and identifying contributors who would bring their unique perspectives to bear on the selected situations and themes. Our approach has been multi-sectoral and fundamentally flexible according to the expertise of the contributors. Considering the disparate nature of the included topics, authors were free to choose their methodology as appropriate. The publication includes contributions in English and Spanish, with summary translations to make them more broadly accessible (the chapter concerning Haiti also includes a summary translation in French).

The guidelines for contributors were only that they address migration themes that have a conflict dimension and orient their work toward policy analysis, including recommendations. But, while many migration specialists noted the need for this approach, some were unable to dedicate time to re-conceptualize their research in order to embrace this perspective, and their work was therefore not included in the

publication; as such, this collection of articles is far from exhaustive, and there remain many additional situations and themes to be explored. It is our hope that this publication, and the process leading up to its completion, will serve as an initial stimulant for further policy analysis and debate.

The contributors to this volume are to be commended for their pioneering work and efforts to approach migration through a new lens. From the very early stages, Berta Fernández-Alfaro of the International Organization for Migration's (IOM) Regional Office for North America and the Caribbean, and Lancelot Cowie and Nina Bruni, both of the Center for Latin America and the Caribbean (CENLAC) at The University of the West Indies (UWI), took a personal interest in this project and dedicated their time and energy to its completion. Their support and expertise have been instrumental throughout the process and served to solidify the collaboration between the four principal organizations affiliated with the publication: Human Rights Internet, the Association of Caribbean States, the International Organization for Migration, and The University of the West Indies. This cooperation has been a testament to what the combination of inter-governmental, academic, and advocacy organizations can achieve.

The publication has been through a significant transformation and enhancement since its first inception, and there are several regional activities that were instrumental in this process. A discussion on issues related to preventing conflict took place during two meetings entitled "Building a Culture of Peace and Preventing Conflict in the Greater Caribbean"—the first on January 27-28, 2005, held in Port of Spain, Trinidad and Tobago, at the ACS, and the second, a regional seminar, on September 21-23, 2005, held in Santo Domingo, Dominican Republic, at the Ministry of Foreign Affairs. These meetings represent the collaboration between the *Initiative on Conflict Prevention through Quiet Diplomacy* of HRI; the ACS; La Facultad Latinoamericana de Ciencias Sociales (FLACSO); UWI; Coordinadora Regional de Investigaciones Económicas y Sociales (CRIES); UN Educational, Scientific and Cultural Organization (UNESCO); UN Development Program (UNDP); UN Economic Commission for Latin American and the Caribbean (ECLAC); and the Organization of American States (OAS). We are grateful to those who provided their expertise during these fora: Juan Antonio Blanco, Gabriel Aguilera Peralta, Guy Alexandre, Luis Carpio, Julio Carranza, Lancelot Cowie, Inyang Ebong-Harstrup, Eduardo Gamarra, Jasmin Garraway, Norman Girvan, Francine Jácome, Margarita Jiménez Zozaya, Erasmo Lara, Vaughan Lewis, Manuel Madriz, Luis Noriega, Claudia Ottolenghi, Emilio Pantojas García, John Packer, Esteban Pérez Caldentey, Claudio Providas, Francisco Rojas Aravena, Andrés Serbin, Albert Ramdin, Yadira Soto, Juan Fernando Valey, and Luisa Vicioso.

While issues were being explored for inclusion in this publication, several people, in addition to those just mentioned, were helpful in sharing their extensive knowledge of the region, recommending potential topics and contributors, and generally providing support for the endeavor, especially: Juan Artola, Clive Baldwin, Diego Beltrand, Dexter Bishop, Jacqueline Braveboy-Wagner, Carlos Briones, Chris Chapman, Dennis Gayle, Chanzo Greenidge, William Farrell, Armando Fernández, Nicolas Lagomarsino, Allan

Lavell, Abelardo Morales Gamboa, Anthony Maingot, Frank Mills, Heather Nicol, Keith Nurse, Manuel Orozco, Daniel Pimentá, Rhoda Reddock, Michele Reis, Karoline Schmid, Rubén Silié Valdez, Anthony Smallwood, Pedro Rivera, Elisa Ruffino, Leticia Tejada, Elizabeth Thomas-Hope, and Dana Van Alphen.

In preparing this publication, contributors were invited to participate in a colloquium, which included an informal presentation of research topics and an interactive dialogue on the themes addressed in this publication. The colloquium was hosted by the UN University for Peace, in San José, Costa Rica, on August 4-5, 2005. We would like to thank Julia Marton-Lefevre, Juan Amaya Castro, Victor Valle, and George Tsai for their support, as well as Eugenia Morales and Pablo Richard for their superb organization of the meeting. We would especially like to thank all of the participants of the colloquium: Juan Antonio Blanco, Nina Bruni, Fernando Calado, Rodolfo Casillas Ramírez, Lancelot Cowie, Luis Carlos Esquivel, Heather Fabrikant, Berta Fernández-Alfaro, Stephanie Gliège, Kamala Kempadoo, Diana Medrano, Federico Martínez, María José Morales, Juan Carlos Murillo, José Pires, Gabriela Richard Rodríguez, Fredy Rivera Vélez, Gabriela Rodríguez Pizarro, Wim Savenije, Eddy Tejada, and Su-Ping Walther.

Another event that was instrumental in the development of the publication was the Regional Migration Seminar on "Mixed Migratory Flows in the Caribbean: Promoting Orderly Migration and Protecting Vulnerable Populations," jointly hosted by IOM and the UN High Commissioner for Refugees on October 21-23, 2005 in Tobago. For their contributions to this seminar and related efforts in support of this publication, we would like to thank: Maureen Achieng, Ahmed Dizdarevic, Erin Foster, Ashley Garrett, Adriana Jiménez, Amy Mahoney, Janice Marshall, José-Angel Oropeza, Niurka Piñeiro, Richard Scott, Frances Sullivan, and Aida Zecevic.

This publication would not have been possible without the expert management and oversight by Human Rights Internet, especially John Packer, Jeanette Stovel and Juan Antonio Blanco. Other staff members have also been very helpful: Shayna Buehler, Gemma Richardson, and Teri Ann Bryans. Throughout the editing and proofreading process, several people have offered their critical editorial assistance and dedication, especially: Stephanie Schmidt and Lindy-Ann Edwards.

Funding and generous support for this publication and related activities have been provided by the Catholic Organization for Relief and Development (Cordaid) in The Hague, the Netherlands, and the Canadian International Development Agency (CIDA) in Ottawa, Canada. We would especially like to thank Lia van Broekhoven from Cordaid, whose early and constant support for our approach and work constituted important encouragement and practical assistance which sustained the endeavor.

Finally, the opinions expressed in each article are those of the authors alone, and may not represent the opinions of the institutions with which they are affiliated or the opinions of the publication's principal collaborators. Readers are welcome to refer to the

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contents herein; we would be grateful if due citations were provided and authorship respected and acknowledged. We hope this publication and its contents, in whole or in part, will be broadly circulated and enjoy consideration especially among both policymakers and lawmakers.

Taryn Lesser
Editor-in-Chief

Nota de la Editora y Agradecimientos

Esta serie de artículos es el aporte de diversos protagonistas de todo el Gran Caribe que a partir de noviembre de 2004 y con el estímulo de Rubén Silié Valdez, Secretario General de la Asociación de Estados del Caribe (AEC), permite seguir explorando los procesos migratorios intrarregionales como posibles fuentes de conflictos violentos. Una posterior colaboración con la organización mundial *Initiative on Conflict Prevention through Quiet Diplomacy*, administrada por Human Rights Internet (HRI), que dirigen John Packer y Juan Antonio Blanco, ha permitido concretar esta idea.

El fundamento principal de la publicación era que, aunque existe una serie considerable de análisis de diagnóstico de los temas de migración del Gran Caribe, se observa falta de material que 1) establezca la conexión directa con las posibilidades de conflicto y 2) proponga soluciones en forma de recomendaciones concretas. Por tanto, el objetivo era aplicar este enfoque a las situaciones del Gran Caribe, ofrecer recomendaciones a los encargados de formular las políticas y estimular un mayor análisis e interés en relación con esa conexión conceptual y con el criterio aplicado a este trabajo.

Al principio, el proceso que llevó a la publicación fue exploratorio y exigió comunicarse con una amplia variedad de especialistas en torno a los problemas y las tendencias actuales y acuciantes de la migración, investigar los países con poblaciones migrantes significativas e identificar a los colaboradores que aportaran sus singulares perspectivas respecto de las situaciones y los temas seleccionados. Nuestro enfoque ha sido multisectorial y fundamentalmente flexible, de acuerdo con la idoneidad de cada colaborador. Teniendo en cuenta el carácter dispar de los temas incluidos, los autores quedaron en libertad de elegir la metodología que consideraran adecuada. La publicación incluye trabajos en español y en inglés, con traducciones resumidas para facilitar un acceso más amplio (el capítulo sobre Haití también incluye una traducción resumida en francés).

Las pautas que se indicaron a los colaboradores fueron, únicamente, que abordaran los temas de la migración que tuvieran una dimensión de conflicto y orientaran su trabajo hacia análisis de políticas, incluyendo recomendaciones. Pese a que numerosos especialistas en migración tomaron nota de la necesidad de aplicar este criterio, algunos

no pudieron dedicar tiempo a reconceptualizar su investigación para incorporar esta perspectiva, por lo que su trabajo no fue incluido en la publicación; en tal sentido, esta serie de artículos está lejos de ser exhaustiva y quedan muchas otras situaciones y temas que explorar. Esperamos que esta publicación, así como el proceso que llevó a su concreción, sirvan de estímulo inicial para un mayor análisis y debate de las políticas sobre el tema.

Los colaboradores de este volumen merecen encomio por su labor pionera y su empeño en ver la migración a través de otro prisma. Desde las etapas más iniciales, Berta Fernández-Alfaro, de la Oficina Regional para Norteamérica y el Caribe de la Organización Internacional para las Migraciones (OIM), y Lancelot Cowie y Nina Bruni, ambas del Centro para América Latina y el Caribe (CENLAC) de la Universidad de las Indias Occidentales, tomaron un interés personal en este proyecto y dedicaron a él su tiempo y energía. Su apoyo y experiencia han sido fundamentales a lo largo del proceso y permitieron consolidar la cooperación entre las cuatro organizaciones principales afiliadas a la publicación: Human Rights Internet, la Organización Internacional para las Migraciones, la Asociación de Estados del Caribe y La Universidad de las Indias Occidentales. Esta colaboración ha sido un testimonio de lo que puede lograrse mediante la combinación de organizaciones intergubernamentales, universitarias y de promoción y defensa de causas.

Desde que se empezó a preparar, la publicación ha sufrido una transformación y un perfeccionamiento sustanciales y varias actividades regionales fueron vitales en este proceso. Se realizó un debate sobre las cuestiones relacionadas con la prevención de conflictos en el curso de dos reuniones tituladas “*Construir una Cultura de Paz y Prevenir Conflicts en el Gran Caribe*”—la primera, los días 27 y 28 de enero de 2005, en Puerto España, Trinidad y Tobago, en la Asociación de Estados del Caribe, y la segunda, un seminario regional, los días 21 a 23 de septiembre de 2005, en Santo Domingo, República Dominicana, en el Ministerio de Relaciones Exteriores. Estas reuniones representan la colaboración entre *Initiative on Conflict Prevention through Quiet Diplomacy* de HRI; la Asociación de Estados del Caribe; la Facultad Latinoamericana de Ciencias Sociales (FLACSO); la Universidad de las Indias Occidentales; la Coordinadora Regional de Investigaciones Económicas y Sociales (CRIES); la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO); el Programa de las Naciones Unidas para el Desarrollo (PNUD); la Comisión Económica de las Naciones Unidas para América Latina y el Caribe (CEPAL); y la Organización de los Estados Americanos (OEA). Deseamos expresar nuestro agradecimiento a quienes aportaron sus conocimientos en estos foros: Juan Antonio Blanco, Gabriel Aguilera Peralta, Guy Alexandre, Luis Carpio, Julio Carranza, Lancelot Cowie, Inyang Ebong-Harstrup, Eduardo Gamarra, Jasmin Garraway, Norman Girvan, Francine Jácome, Margarita Jiménez Zozaya, Erasmo Lara, Vaughan Lewis, Manuel Madriz, Luis Noriega, Claudia Ottolenghi, Emilio Pantojas García, John Packer, Esteban Pérez Caldentey, Claudio Providas, Francisco Rojas Aravena, Andrés Serbin, Albert Ramdin, Yadira Soto, Juan Fernando Valey y Luisa Vicioso.

Cuando se exploraban temas para esta publicación, varias personas, aparte de las mencionadas, contribuyeron con su amplio conocimiento de la región, recomendando posibles temas y colaboradores y, en general, brindando su apoyo al emprendimiento, en especial: Juan Artola, Clive Baldwin, Diego Beltrand, Dexter Bishop, Jacqueline Braveboy-Wagner, Carlos Briones, Chris Chapman, Dennis Gayle, Chanzo Greenidge, William Farrell, Armando Fernández, Nicolás Lagomarsino, Allan Lavell, Abelardo Morales Gamboa, Anthony Maingot, Frank Mills, Heather Nicol, Keith Nurse, Manuel Orozco, Daniel Pimienta, Rhoda Reddock, Michele Reis, Karoline Schmid, Rubén Silié Valdez, Anthony Smallwood, Pedro Rivera, Elisa Ruffino, Leticia Tejada, Elizabeth Thomas-Hope y Dana Van Alphen.

Durante la preparación de la publicación, se invitó a los colaboradores a participar en un coloquio, que incluía una exposición informal sobre temas de investigación y un diálogo interactivo sobre los temas que aquí se abordan. El coloquio fue patrocinado por la Universidad de las Naciones Unidas para la Paz, en San José, Costa Rica, los días 4 y 5 de agosto de 2005. Quisiéramos agradecer a Julia Marton-Lefevre, Juan Amaya Castro, Victor Valle y George Tsai por su apoyo, así como a Eugenia Morales y Pablo Richard por la excelente organización de la reunión. Desearíamos agradecer especialmente a todos los participantes en el coloquio: Juan Antonio Blanco, Nina Bruni, Fernando Calado, Rodolfo Casillas, Lancelot Cowie, Luis Carlos Esquivel, Heather Fabrikant, Berta Fernández-Alfaro, Stephanie Gliège, Kamala Kempadoo, Diana Medrano, Federico Martínez, María José Morales, Juan Carlos Murillo, José Pires, Gabriela Richard Rodríguez, Fredy Rivera Vélez, Gabriela Rodríguez Pizarro, Wim Savenije, Eddy Tejada y Su-Ping Walther.

Otro acontecimiento clave en la elaboración de la publicación fue el Seminario Regional sobre Migración en relación con el tema “*Mixed Migratory Flows in the Caribbean: Promoting Orderly Migration and Protecting Vulnerable Populations*,” patrocinado conjuntamente por la OIM y el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), los días 21 a 23 de octubre de 2005, en Tobago. Por sus aportes a este seminario y otras tareas en apoyo de esta publicación quisiéramos expresar nuestro reconocimiento a Maureen Achieng, Ahmed Dizdarevic, Berta Fernández-Alfaro, Erin Foster, Ashley Garrett, Adriana Jiménez, Amy Mahoney, Janice Marshall, José-Angel Oropeza, Niurka Piñeiro, Richard Scott, Frances Sullivan y Aida Zecevic.

Esta publicación no hubiera sido posible sin la gestión idónea y la supervisión de Human Rights Internet, en especial de John Packer, Jeanette Stovel y Juan Antonio Blanco. Otros funcionarios también han hecho valiosos aportes: Shayna Buehler, Gemma Richardson y Teri Ann Bryans. A lo largo del proceso de edición y corrección de pruebas, varias personas ofrecieron su hábil asistencia editorial y su dedicación, en especial Stephanie Schmidt y Lindy-Ann Edwards.

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Finalmente, aclaramos que las opiniones expresadas en cada artículo pertenecen exclusivamente a los autores y pueden no representar las opiniones de las instituciones a las que están afiliados, ni las opiniones de los principales colaboradores de la publicación. Los comentarios de los lectores serán bienvenidos; agradeceríamos que se dejara constancia de las citas y se respetara y reconociera la autoría. Esperamos que esta publicación y su contenido, en todo o en parte, circule ampliamente y merezca la consideración especial de los encargados de la formulación de políticas y de los legisladores.

Taryn Lesser
Jefa de Edición

Foreword

The processes of globalization and regional integration are transforming the nature and scope of international movement and migration within the Greater Caribbean, both in and of itself and as a pathway toward the North. Caused by various push and pull factors, this increasing movement and mixing of people have produced positive outcomes, including transfers of technology and skills. However, intra-regional migration has also created social and economic pressures, which have the potential to evolve into tensions within and between states, thereby affecting regional stability and development. Prevention of such tensions is vital to sustainable economic and social development; addressing the causes of conflict, both root and proximate, is imperative for effective policy-making.

Policy analysts and scholars therefore face new challenges in finding comprehensive solutions to increasingly complex migration trends. As such, the organizers of this collection have identified conflict-related intra-regional migration themes as a key focus for cooperation in the Greater Caribbean. So far, policy-oriented thinking has rarely focused specifically on intra-regional migration with a view to providing for comprehensive long-term decision making and collaboration, directed towards preventing violent conflict by better management of migration flows. In this regard, the focus of this publication is on managing intra-regional migration in a constructive manner under the auspices of international legal frameworks and through multilateral cooperative arrangements, involving both governmental authorities and civil society organizations.

Intra-regional migration is by its very nature trans-border and thus requires international and multidimensional cooperation if responses are to be effective. Therefore, these four organizations have collaborated on this compilation to benefit from varying perspectives and in order to emphasize the importance and potential effectiveness of a multi-sector partnership. It is our hope that this publication will be groundbreaking in its approach of offering analyses with recommendations for action and in creating decision-making mechanisms for multilateral cooperation in relation to intra-regional migration in the Greater Caribbean.

xvi Rubén Silié Valdez, Brunson McKinley, Eli Turk and Dennis Gayle



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Prólogo

Los procesos de globalización e integración regional están transformando la naturaleza y el alcance de la movilización y la migración internacional dentro del Gran Caribe, tanto hacia como desde aquel, y como una ruta hacia el norte. Causada por varios factores, esta creciente movilización y mezcla de personas ha producido resultados positivos, incluyendo transferencias de tecnología y habilidades. Sin embargo, la migración intra-regional también ha creado presiones económicas y sociales, que tienen el potencial de desarrollar tensiones dentro y entre estados, afectando de esta manera la estabilidad y el desarrollo regional. La prevención de esas tensiones es vital para el desarrollo económico y social sostenible; y resulta imperativo enfrentar las causas del conflicto, tanto directas como indirectas, para la eficaz formulación de políticas.

Los analistas de políticas y los eruditos enfrentan entonces nuevos retos para encontrar soluciones globales a las complejas tendencias de migración en aumento. Como tales, los organizadores de esta colección han identificado temas de migración intra-regional relacionados con conflictos como un enfoque clave para la cooperación en el Gran Caribe. Hasta ahora, el pensamiento orientado hacia las políticas rara vez se ha enfocado específicamente en la migración intra-regional con el objetivo de adoptar medidas relacionadas con la toma de decisiones y colaboración a largo plazo, orientadas a evitar un conflicto violento, por medio del mejor manejo de los flujos de migración. En este aspecto, el enfoque de la presente publicación trata el manejo de la migración intra-regional de una manera constructiva bajo los auspicios de estructuras legales internacionales y a través de acuerdos cooperativos multilaterales, que involucren tanto a las autoridades gubernamentales como a las organizaciones de la sociedad civil.

La migración intra-regional es de por sí fronteriza y, por lo tanto, requiere cooperación internacional y multidimensional si las respuestas han de ser eficaces. Consecuentemente, estas cuatro organizaciones han colaborado en esta recopilación para beneficiarse de perspectivas variadas y para enfatizar la importancia y eficacia potencial de una asociación multisectorial. Tenemos la esperanza de que la presente publicación sea pionera en su enfoque de ofrecer análisis junto con recomendaciones sobre medidas a tomar, y en crear mecanismos de toma de decisiones para la cooperación multilateral en relación con la migración intra-regional en el Gran Caribe.

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Introduction

John Packer and Richard Scott

Regional and sub-regional organizations are playing an increasing role in promoting peace and stability within and among their members and affiliates. Geographic proximity and close historical and cultural ties give regional and sub-regional organizations the advantage of better understanding the root and proximate causes of conflict, including tensions arising from transnational movement. They also share great interests in creating stable environments in which social and economic development may be pursued. Moreover, it is increasingly recognized that security and development are inextricably linked. For these reasons, regional and sub-regional arrangements, whether pursuant to express mandate or general development goals, are paying greater attention to issues of migration. However, much more needs to be done.

This is especially true in the Greater Caribbean—a region that is increasingly adopting measures to promote regional integration in an attempt to align disparate countries.¹ The very concept of the “Greater Caribbean” embodies this goal of integration. In the early 1990s, in an attempt to avoid economic marginalization caused by the globalization of the world economy and increased trade liberalization, the West Indian Commission decided to “widen and deepen” the Caribbean Community (CARICOM) in order to increase cooperation among all the English, Spanish, and French-speaking states, based on the unifying resource of the Caribbean Sea.² It is argued, however, that the “Caribbean Sea” is more of a political construct than a geographical reality, as it is disputed that El Salvador, The Bahamas, Suriname, and Guyana border the Sea. Moreover, there is continued debate about the difficulties of forming a common

¹ The “Greater Caribbean,” as defined most broadly by the 25 member states of the Association of Caribbean States (ACS), includes: Antigua and Barbuda, The Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Venezuela. There are three Associate Members: Aruba, France (on behalf of French Guiana, Guadeloupe and Martinique), and the Netherlands Antilles.

² The Caribbean Community (CARICOM) presently includes the following member states: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The Associate Members include: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands.

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Caribbean identity—whether one refers to the “Greater” or “Insular” Caribbean—due to the differences in, for example, history, ethnicity, economic strength, and language(s) of the various countries.³

Despite these incongruities, the Greater Caribbean is a useful concept through which to approach an analysis of the overall region, as its heterogeneous membership base promotes, even demands, a collaborative and cooperative approach to integration and migration management. Many contributors in this volume easily found similarities and useful modes for comparison among the countries included in this diverse group, drawing on the membership base of the Association of Caribbean States (ACS) as a guide. Other contributors focused their analyses around more narrow regional groupings that have been historically closely aligned, such as CARICOM, the Organization of Eastern Caribbean States (OECS), and the nascent Caribbean Single Market and Economy (CSME).⁴ Still other contributors drew their analyses around migration-specific processes of regional cooperation and human rights protection, such as the Berne Initiative and the Regional Conference on Migration (RCM), informally known as “the Puebla Process.” The remaining contributors focused their attentions on “hotbeds” of intra-regional migration—such as Central America, the island of Hispaniola (i.e. the Dominican Republic and Haiti), and Colombia and its neighbors in the Andean region—using the most expansive definition of the Greater Caribbean.

Although the perceptions of what constitutes the Caribbean may vary, the thread of this collection of articles remains consistent throughout: to help elucidate the elements of practically applying a cooperative, human rights-informed and problem-solving approach to addressing issues related to managing intra-regional migration and preventing violent conflict. The perspective is integral, multidimensional, and multidisciplinary, aiming to address challenges to regional stability. The ultimate objective is to stimulate policy development through informed debate about the relationship between intra-regional migration and potential conflict; as such, the compilation does not focus on the Caribbean diaspora, but current migration trends and themes *within* the Greater Caribbean that pose challenges to stability and may provoke violence. Each article includes a set of concrete recommendations to provide guidance to governmental and civil society actors that have potential to influence policy-making.

³ The “Insular Caribbean” is usually defined more narrowly as including only the islands of the Caribbean Sea: Anguilla, Antigua and Barbuda, Aruba, The Bahamas, Barbados, British Virgin Islands, Cayman Islands, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, Montserrat, Navassa Island, the Netherlands Antilles, Puerto Rico, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and the U.S. Virgin Islands.

⁴ The Organization of Eastern Caribbean States (OECS) presently includes the following member states: Anguilla, Antigua and Barbuda, British Virgin Islands, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. As of March 2006, 12 of the 15 CARICOM countries were part of the Caribbean Single Market and Economy (CSME), excluding The Bahamas, Haiti, and Montserrat.

The collection is separated into two Parts. Part I explores the international normative framework governing migration and elucidates especially the human rights of migrants in terms of sovereign authority and state responsibility, as well as examines common migration management themes and issues with a regional scope. Part II focuses on some specific cases from a sub-regional or country perspective.

The first Chapter establishes the basic international normative framework for the treatment of migrants and analyzes the human rights of the different types of migrants. As a basis for the entire publication, Ryszard Cholewinski, Jillyane Redpath, Sophie Nonnenmacher, and John Packer outline the elements of international law that pertain to migrants and analyze the responsibility of states in various migration settings. They then narrow their focus to labor mobility in the context of the CSME. Gabriela Rodríguez Pizarro comments on the gradual shift toward a regional and multilateral approach to the international management of migration, as seen through the lens of the United Nations Special Rapporteur on the Human Rights of Migrants, a post she held until 2005, and highlights some regional consultative processes that promote dialogue on migration among decision-makers, government agencies, and non-governmental organizations.

The following Chapter gives an overview of the challenges facing migration management for all transnational migratory flows in the Insular Caribbean—regular and irregular migrants and refugees—emphasizing that effective migration management, undertaken within the framework of a rigorously comprehensive policy, is an essential preventative measure in fostering and maintaining social stability and cohesion. Berta Fernández-Alfaro and Gerard Pascua systematize many of the most pressing issues for mixed migration flows that were expressed during consultations that the International Organization for Migration (IOM) held with representatives of Caribbean governments, and offer a set of recommendations on how to address them. Janice Marshall focuses on the particular difficulties that refugees encounter during the migration process, as well as the challenges that are met by states and international agencies like the United Nations High Commissioner for Refugees, in offering protection and sustainable solutions for refugees.

The third Chapter describes some of the effects of macroeconomic disequilibrium on migration among the CARICOM countries, describing how the specificities of the lack of sustainable economic and social development act as a push factor for both intra- and extra-regional migratory flows. Esteban Pérez Caldentey and Karoline Schmid share data from the UN Economic Commission on Latin America and the Caribbean and other agencies, tracing some of the short-sighted policies employed since the 1990s that have stymied growth in the region and stimulated flows of skilled and unskilled labor. The authors then comment on the processes and future prospects of the emerging CSME, used to regulate such flows.

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Chapter Four focuses on the phenomenon of trafficking in persons, analyzing the policy effects of sex work and its link with regular and irregular labor migration. Elizabeth Thomas-Hope presents the concept of trafficking, offers a brief typology, and discusses the phenomenon in the context of labor migration, providing an introduction from which the next two sections follow in juxtaposition. Ashley Garrett and Amy Mahoney share findings from a seven-country IOM trafficking report, offering detailed information on methods of recruitment and movement, forms of exploitation, and counter-trafficking actions taken by different countries in the region, as well as outlining measures to address current and prevent further incidents of trafficking. Kamala Kempadoo analyzes the link between prostitution and other arrangements that depend upon the trade and exploitation of sex labor, highlighting patterns common to the region and examining the significance of sex work to local and global economies. She then assesses the problems and shortcomings of anti-trafficking interventions, policies, and laws, offering alternatives for policymakers to the currently harmful and ineffective responses to vulnerable populations in this context.

Once the international normative framework and the intra-regional migratory trends have been broadly explained, Part II narrows the focus, providing some country and region-specific cases. Chapter Five gives an overview of the cross-border migratory challenges facing Central America, concentrating especially on the organized crime of transnational youth gang networks. Juan Artola describes the social, economic, and cultural characteristics of the border zone between Mexico and Guatemala from an historical perspective and with an emphasis on the Chiapas region, and examines some of the migration phenomena that have served to politicize the border. Wim Savenije explores the roots and manifestations of the Mara Salvatrucha and Barrio 18th Street transnational youth gangs in Mesoamerica (the region extending from central Mexico south to the northwestern border of Costa Rica) and the United States. He emphasizes social exclusion and disintegration as the underlying cause for the existence of the gangs, framing his assessment of response measures and recommendations for combating gangs around societal inclusion and poverty reduction.

There follows a two-chapter analysis of the internal conflict that has continually plagued Colombia and its borders, including an examination of the internal displacement in Colombia and the spill-over effects into Venezuela and Ecuador. Fernando Calado and Diana Medrano analyze the broad phenomenon of internal displacement in Colombia, including its historical underpinnings and manifestations, with a specific focus on its mostly rural to urban movement, population growth, and related demographic shifts. They then examine the strategies adopted for assistance and intervention by the state and other non-governmental and inter-governmental institutions such as IOM, offering corresponding policy recommendations. Arturo Silva focuses his analysis on the health issues facing the internally displaced, within Colombia and on the borders of Venezuela and Ecuador, offering a snapshot of the sanitary and living conditions, mortality and morbidity rates, reproductive health situation, and general access to health services of the displaced, commenting on what needs to be done to improve these sub-standard conditions.

Fredy Rivera Vélez examines the forced migration of Colombians to Ecuador within the context of the United States-led regional security strategy to combat terrorism and drugs. He focuses on the economic, security, and human rights concerns experienced by Colombian refugees seeking asylum in Ecuador, and the difficulties the Ecuadorian government has encountered in implementing adequate measures for civilian protection and management of the security situation. Lancelot Cowie addresses the phenomenon of kidnapping on the Colombian-Venezuelan border, briefly examining the history and nature as it pertains to drug trafficking and guerrilla warfare, which exacerbates already problematic relations of the two countries.

Chapter Eight looks at the issue of criminal deportation—a widespread yet understudied migration phenomenon that, through public opinion, has linked the Caribbean's soaring crime problem to waves of former emigrants being forcibly returned home from countries of the North (mainly Britain, Canada, and the United States). Bernard Headley looks critically at data related to criminal deportation from the United States to Jamaica, focusing specifically on the effects of a controversial immigration reform law and developments in U.S. criminal justice policy, tackling the myths associated with the stigmatization of such deportation once deportees return to Jamaica.

Finally, Chapter Nine takes an in-depth look at the historical and current challenges, as well as potential opportunities, of the migration of Haitians to the Dominican Republic. James Ferguson, through an adapted Minority Rights Group report, focuses on the historical and current trends of Haitian labor migration and how the supply of migrants of Haitian origin has factored into the Dominican economy, specifically pertaining to the sugar industry. He then explores some of the economic and social implications of the racism and xenophobia experienced by migrants of Haitian origin in the Dominican Republic, analyzing these tensions as they relate to Dominican domestic politics. Maureen Achieng examines the current situation faced by Haitians in the Dominican Republic, with a view to preventing violence among the populations and abuses of migrants of Haitian origin. She then analyzes the challenges related to the management of irregular labor migration in the two countries and makes cross-regional comparisons to other situations with high levels of mobility, offering recommendations for policymakers geared toward the mutually beneficial outcomes of such migratory trends.

This publication is an effort to contribute to practical policy development, including concrete recommendations, on the basis of reliable assessments of a number of contemporary challenges posed by intra-Caribbean migration that risk violent conflict. The collection does not pretend to be exhaustive, either of issues or situations. Nonetheless, it is hoped that the publication will be useful as the first volume devoted exclusively to assessing the linkage between intra-regional migration and potentially violent conflict in the region, however it may be defined. Importantly, the overall subject benefits from a carefully composed international legal framework within which particular challenges may be viewed and solutions developed, and that may be useful in future cross-regional analyses. It is hoped that such an approach may find its way into widening political space for cooperative, human rights-informed problem-solving. We

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believe the composite of work here enclosed merits considerable reflection and specific follow-up with a view to appropriate multilateral action, including institutional developments, to the benefit of all those affected and in the common interest.

Introducción

John Packer y Richard Scott

Las organizaciones regionales y subregionales inciden cada vez más en el fomento de la paz y la estabilidad de sus miembros y afiliados y entre éstos. La proximidad geográfica y los estrechos lazos históricos y culturales brindan a esas organizaciones la ventaja de comprender mejor la raíz y las causas inmediatas de los conflictos, incluidas las tensiones derivadas de los movimientos transnacionales. Además, estas organizaciones comparten un gran interés por crear un entorno estable que favorezca el desarrollo social y económico. Por otro lado, es cada vez mayor el reconocimiento de la relación indisoluble entre la seguridad y el desarrollo. Es por ello que en los acuerdos regionales y subregionales—sea conforme a mandatos expresos o fundados en objetivos generales de desarrollo—se presta creciente atención a las cuestiones de la migración. Pero mucho queda por hacer.

Ello es especialmente cierto en el caso del Gran Caribe—una región en la que son cada vez más frecuentes las medidas destinadas a fomentar la integración regional, en un intento por alinear a países diferentes.¹ El propio concepto del “Gran Caribe” entraña este objetivo de integración. A comienzos de los años de 1990, en un intento por evitar la marginación económica causada por la globalización de la economía mundial y la creciente liberalización del comercio, la Comisión de las Indias Occidentales decidió “ampliar y profundizar” la Comunidad del Caribe (CARICOM) a efectos de incrementar la cooperación entre los estados anglo, hispano y francoparlantes, en base al recurso unificador que constituye el Mar Caribe.² Pero se argumenta que el “Mar Caribe” es más una construcción política que una realidad geográfica, al cuestionarse que El Salvador,

¹ El “Gran Caribe,” en su más amplia definición, que abarca a los 25 estados miembros de la Asociación de Estados del Caribe (AEC) está formado por Antigua y Barbuda, las Bahamas, Barbados, Belice, Colombia, Costa Rica, Cuba, Dominica, El Salvador, Granada, Guatemala, Guyana, Haití, Honduras, Jamaica, México, Nicaragua, Panamá, la República Dominicana, Santa Kitts y Nevis, Santa Lucía, San Vicente y las Granadinas, Suriname, Trinidad y Tobago y Venezuela. Hay tres estados miembros asociados: Aruba, Antillas Neerlandesas y Francia (en nombre de la Guayana Francesa, Guadalupe y Martinica).

² La Comunidad del Caribe (CARICOM) está formada actualmente por los siguientes estados miembros: Antigua y Barbuda, las Bahamas, Barbados, Belice, Dominica, Granada, Guyana, Haití, Jamaica, Montserrat, Santa Kitts y Nevis, Santa Lucía, San Vicente y las Granadinas, Suriname y Trinidad y Tobago. Los estados miembros asociados son: Anguila, Bermuda, Islas Vírgenes Británicas, Islas Caimán e Islas Turcas y Caicos.

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Bahamas, Suriname y Guyana tengan costas sobre el mismo. Más aún, existe un constante debate acerca de las dificultades de formar una identidad común del Caribe—sea por referencia al “Gran” Caribe o al Caribe “Insular”—debido a las diferencias, por ejemplo, de historia, origen étnico, poderío económico e idiomas de los distintos países.³

Pese a estas incongruencias, el Gran Caribe resulta un concepto útil para enfocar un análisis de la región en general, ya que su heterogénea integración fomenta, e incluso exige, un criterio cooperativo de integración y de gestión de la migración. Muchos de los coautores del presente volumen hallan fácilmente similitudes y modalidades útiles de comparación entre los países que conforman este grupo diverso, recurriendo como guía a la base de integración de la Asociación de Estados del Caribe (AEC). Otros centran su análisis en agrupamientos regionales más reducidos, que han estado históricamente alineados, como la CARICOM, la Organización de Estados del Caribe Oriental (OECS) y el nuevo Mercado y Economía Únicos del Caribe (MEUC).⁴ Y hay quienes fundan su análisis en procesos de cooperación regional y de protección de los derechos humanos específicamente vinculados a la migración, como la Iniciativa de Berna y la Conferencia Regional sobre Migraciones (CRM), oficiosamente conocido como “Proceso de Puebla.” Los demás coautores centran su atención en “focos” de migración intrarregional—como Centroamérica, la Hispaniola (la isla que ocupan la República Dominicana y Haití) y Colombia y sus vecinos de la región andina—usando la definición más amplia del Gran Caribe.

Aunque pueden variar las percepciones acerca de lo que constituye el Caribe, en toda esta serie de artículos se mantiene un hilo conductor: ayudar a dilucidar los elementos para aplicar en la práctica un criterio cooperativo e informado por los derechos humanos, encaminado a la solución de problemas, para abordar las cuestiones vinculadas a la gestión de la migración intrarregional y la prevención de conflictos violentos. La perspectiva es integral, multidimensional y multidisciplinaria, apuntando a enfrentar los desafíos para la estabilidad regional. El objetivo final es estimular la formulación de políticas mediante un debate fundamentado sobre la relación entre la migración intrarregional y la posibilidad de conflictos y, en tal sentido, la compilación de trabajos no se centra en la diáspora caribeña, sino en las tendencias y los temas actuales de la migración *dentro* del Gran Caribe que plantean amenazas a la estabilidad y pueden

³ El “Caribe Insular” generalmente se define en forma más estrecha, incluyendo sólo las islas del Mar Caribe: Anguila, Antillas Neerlandesas, Antigua y Barbuda, Aruba, Bahamas, Barbados, Islas Vírgenes Británicas, Islas Caimán, Cuba, Dominica, Granada, Guadalupe, Haití, Jamaica, Martinica, Montserrat, Isla Navassa, Puerto Rico, República Dominicana, Santa Kitts y Nevis, Santa Lucía, San Vicente y las Granadinas, Trinidad y Tobago, Islas Turcas y Caicos e Islas Vírgenes de los Estados Unidos.

⁴ La Organización de Estados del Caribe Oriental (OECS) comprende actualmente a los siguientes estados: Anguila, Antigua y Barbuda, Dominica, Granada, Islas Vírgenes Británicas, Montserrat, Santa Kitts y Nevis, Santa Lucía y San Vicente y las Granadinas. En marzo de 2006, 12 de los 15 países de la CARICOM formaban parte del Mercado y la Economía Únicos del Caribe (MEUC). Los tres restantes eran las Bahamas, Haití y Montserrat.

provocar situaciones de violencia. Cada artículo incluye una serie de recomendaciones concretas para orientar a los actores gubernamentales y de la sociedad civil que pueden incidir en la formulación de políticas.

El conjunto de artículos se divide en dos partes. En la Parte I se explora el contexto normativo internacional que rige la migración y se analizan los derechos humanos de los emigrantes en términos de autoridad soberana y responsabilidad de los estados, a la vez que se examinan los temas y cuestiones comunes a la gestión de la migración con un alcance regional. La Parte II se centra en algunos casos específicos, desde una perspectiva subregional o nacional.

En el primer Capítulo se establece el marco normativo internacional básico para el tratamiento de los emigrantes y se analizan los derechos humanos de los distintos tipos de emigrantes. Como base para toda la publicación, Ryszard Cholewinski, Jillyane Redpath, Sophie Nonnenmacher y John Packer describen los elementos del derecho internacional vinculados a los emigrantes y analizan la responsabilidad de los estados en varios contextos de migración. Luego centran su enfoque en la movilidad laboral en el contexto del Mercado y Economía Únicos del Caribe. Gabriela Rodríguez Pizarro comenta el cambio gradual hacia un enfoque regional y multilateral en la gestión internacional de la migración, visto a través del prisma del Relator Especial de las Naciones Unidas sobre los Derechos Humanos de los Migrantes—cargo que ocupó hasta 2005—y pone de relieve algunos procesos consultivos regionales que fomentan el diálogo sobre migración entre los responsables de adoptar las decisiones, los organismos gubernamentales y las organizaciones no gubernamentales.

El Capítulo siguiente ofrece un panorama general de las dificultades que plantea la gestión de todas las corrientes migratorias transnacionales del Caribe Insular—emigrantes y refugiados legales e irregulares—subrayando que la gestión efectiva de la migración, dentro del marco de una política rigurosamente amplia, es una medida esencial de prevención para fomentar y mantener la estabilidad y la cohesión social. Berta Fernández-Alfaro y Gerard Pascua sistematizan muchos de los problemas más acuciantes de las corrientes migratorias compuestas que fueron planteados en las consultas mantenidas por la Organización Internacional para las Migraciones (OIM) con representantes de los gobiernos del Caribe y ofrecen una serie de recomendaciones para abordarlos. Janice Marshall hace especial referencia a las dificultades particulares que enfrentan los refugiados en el curso del proceso de migración, así como a los obstáculos que deben superar los estados y organismos internacionales, como el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), en su tarea de ofrecer protección y soluciones sostenibles a los refugiados.

En el tercer Capítulo se describen algunos de los efectos del desequilibrio macroeconómico en la migración entre los países de la CARICOM. Se explican las razones por las cuales algunos aspectos específicos de la ausencia de un desarrollo económico y social sostenible actúan como factor que incentiva las corrientes

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migratorias intrarregionales y extrarregionales. Esteban Pérez Caldentey y Karoline Schmid aportan datos de la Comisión Económica para América Latina y el Caribe (CEPAL) y de otros organismos, explorando algunas de las políticas miopes aplicadas desde los años de 1990, que han obstaculizado el crecimiento de la región y estimulado corrientes migratorias de trabajadores calificados y no calificados. Los autores comentan luego los procesos y las perspectivas futuras del nuevo Mercado y Economía Únicos del Caribe en lo que atañe a la regulación de tales corrientes migratorias.

El Capítulo Cuatro se centra en el fenómeno de la trata de personas, analizando los efectos del trabajo sexual en la política y su vínculo con la migración laboral legal e irregular. Elizabeth Thomas-Hope expone el concepto de trata de personas, ofrece una breve tipología y analiza el fenómeno en el contexto de la migración de trabajadores, en lo que oficia de introducción a las dos secciones subsiguientes. Ashley Garrett y Amy Mahoney ofrecen las conclusiones de un informe de la OIM sobre trata de personas en siete países, con información detallada sobre los métodos de captación y traslado, las formas de explotación y las medidas adoptadas por distintos países de la región para combatir el fenómeno, a la vez que describen las medidas encaminadas a enfrentar los casos actuales de trata de personas y evitar su reiteración. Kamala Kempadoo analiza el vínculo entre la prostitución y otros arreglos que dependen del comercio y la explotación del trabajo sexual, haciendo hincapié en las modalidades comunes en la región y examinando el significado del trabajo sexual para las economías locales y mundial. Luego, la autora evalúa los problemas y carencias de las intervenciones, las políticas y la legislación contra la trata de personas y ofrece a los encargados de formular las políticas alternativas a las respuestas perjudiciales e ineficaces actuales para las poblaciones vulnerables en este contexto.

Una vez expuestos en términos generales el marco normativo internacional y las tendencias migratorias intrarregionales, la Parte II concentra el enfoque en casos específicos de países y de la región. En el Capítulo Cinco se ofrece un panorama general de los problemas de la migración transfronteriza que afectan a Centroamérica, especialmente focalizado en las organizaciones delictivas conformadas por redes de pandillas juveniles transnacionales. Juan Artola describe las características sociales, económicas y culturales de la zona fronteriza entre México y Guatemala desde una perspectiva histórica y con énfasis en la región de Chiapas, y examina algunos de los fenómenos migratorios que han servido para politizar la frontera. Wim Savenije explora los orígenes y las manifestaciones de las pandillas juveniles transnacionales Mara Salvatrucha y Barrio Calle 18 en Mesoamérica (la región que se extiende del centro de México hacia el sur, hasta la frontera noroccidental de Costa Rica) y los Estados Unidos. Savenije subraya la exclusión y desintegración social como causa de fondo de la existencia de las pandillas, enmarcando su evaluación de las medidas de respuesta y sus recomendaciones para combatir las pandillas en la inclusión social y la lucha contra la pobreza.

Luego, sigue un análisis que abarca dos capítulos sobre el conflicto interno que asola a Colombia y sus fronteras, incluido un examen del desplazamiento interno en ese país y los efectos de contagio en Venezuela y Ecuador. Fernando Calado y Diana Medrano

analizan el vasto fenómeno del desplazamiento interno en Colombia, incluidos sus fundamentos históricos y sus manifestaciones, enfocando específicamente el predominio del movimiento del medio rural al urbano, el crecimiento demográfico y las variaciones demográficas conexas. Los autores analizan las estrategias de asistencia adoptadas y las intervenciones del estado y de otras instituciones no gubernamentales e intergubernamentales, como la OIM, para luego ofrecer las consiguientes recomendaciones de política. Arturo Silva centra su análisis en los problemas de salud que enfrentan los desplazados internos dentro de Colombia y en las fronteras con Venezuela y Ecuador, ofreciendo una instantánea de las condiciones sanitarias y de vida, las tasas de mortalidad y morbilidad, la situación de salud de la reproducción y el acceso general a los servicios de salud de los desplazados, con comentarios sobre lo que es preciso hacer para mejorar estas condiciones insuficientes.

Fredy Rivera Vélez analiza la migración forzada de colombianos a Ecuador en el contexto de la estrategia de seguridad regional encabezada por los Estados Unidos para la lucha contra el terrorismo y las drogas. Su enfoque apunta sobre todo a las preocupaciones económicas, de seguridad y de derechos humanos de los refugiados colombianos que procuran asilo en Ecuador, y a las dificultades del gobierno de este país para implementar medidas adecuadas de protección de los civiles y de manejo de la situación de seguridad. Lancelot Cowie aborda el fenómeno de los secuestros en la frontera entre Colombia y Venezuela, analizando brevemente los antecedentes y la naturaleza del problema en lo que tiene que ver con el narcotráfico y la guerra de guerrillas, que exacerban las ya difíciles relaciones entre los dos países.

En el Capítulo Ocho se aborda la cuestión de la deportación por razones penales, un fenómeno generalizado pero escasamente estudiado que, en la opinión pública, lleva a vincular el creciente problema delictivo del Caribe a oleadas de ex emigrantes repatriados forzosamente a sus países por los países del Norte (sobre todo Gran Bretaña, Canadá y Estados Unidos). Bernard Headley analiza críticamente los datos relacionados con las deportaciones penales de los Estados Unidos a Jamaica, haciendo hincapié, específicamente, en los efectos de una polémica ley de reforma de la inmigración y la evolución de la política de justicia penal de los Estados Unidos, planteando los mitos vinculados con la estigmatización de la deportación, una vez que los deportados regresan a Jamaica.

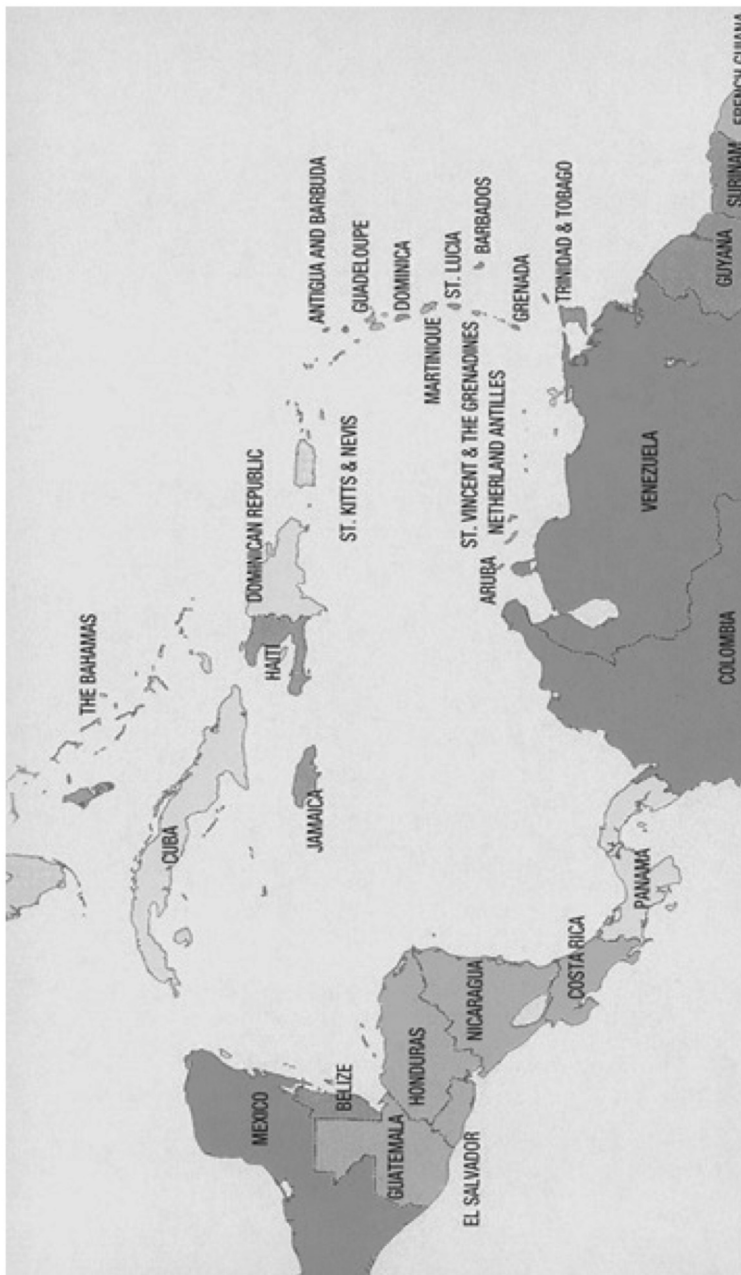
Por último, el Capítulo Nueve contiene una visión en profundidad de los problemas históricos y actuales—y de las posibles oportunidades—de la emigración de haitianos a la República Dominicana. James Ferguson, mediante la adaptación de un informe del Grupo sobre Derechos de las Minorías, centra su atención en las tendencias históricas actuales de la migración laboral haitiana y en el hecho de que la oferta de mano de obra haitiana ha influido en la economía dominicana, específicamente en el sector azucarero. Luego explora algunas de las repercusiones económicas y sociales del racismo y la xenofobia de que son víctimas los emigrantes de origen haitiano en la República Dominicana, analizando estas tensiones en relación con la política interna dominicana. Maureen Achiong examina la situación actual de los haitianos en la República

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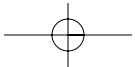
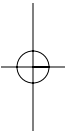
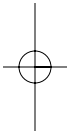
Dominicana, con miras a prevenir la violencia entre las poblaciones y los abusos de los emigrantes de origen haitiano. Luego analiza las dificultades vinculadas con la gestión de la migración laboral irregular en los dos países y realiza comparaciones con otras situaciones regionales que registran altos niveles de movilidad, para ofrecer a los encargados de formular las políticas recomendaciones que apuntan a los resultados mutuamente beneficiosos de esas tendencias migratorias.

La presente publicación procura contribuir a la formulación práctica de políticas, incluso aportando recomendaciones concretas, sobre la base de evaluaciones confiables de una serie de problemas que hoy plantea la migración dentro del Caribe, con riesgo de conflictos violentos. Esta serie de artículos no pretende ser exhaustiva en cuanto a los problemas o situaciones, pero esperamos que sea útil como primer trabajo dedicado exclusivamente a evaluar el vínculo entre la migración intrarregional y la posibilidad de conflictos violentos en la región, sea cual fuere su definición. Es importante destacar que el tema general está informado por un contexto jurídico internacional cuidadosamente configurado, dentro del cual es posible abordar cuestiones concretas y elaborar soluciones, y que a su vez podría ser de utilidad en futuros análisis comparativos entre regiones. Cabe esperar que este enfoque consiga abrir un mayor espacio político para la solución cooperativa de los problemas, sobre la base del respeto por los derechos humanos. Creemos que el conjunto de trabajos incluidos en el presente volumen merece una reflexión sustancial y un seguimiento específico, con miras a la adopción de las medidas multilaterales pertinentes, incluso a nivel institucional, en beneficio de todos los afectados y en aras del bien común.

Map of the Greater Caribbean



Source: ACS website <http://www.acs-aec.org/map2.htm>



List of Acronyms and Abbreviations

ACHR	American Convention on Human Rights (1969)
ACNUR	Alto Comisionado de Naciones Unidas para los Refugiados
ACP	Africa, Caribbean, and Pacific countries
ACS	Association of Caribbean States
ADD	Acute Diarrhoeal Diseases
AEC	Asociación de Estados del Caribe
AHE	Atención Humanitaria de Emergencia
ARI	Acute Respiratory Infections
ARS	Administradoras del Régimen Subsidiado de Colombia
ATPDA	Ley de Promoción Comercial Andina
C143	ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers
C97	International Labor Organization (ILO) Convention No. 97 (1949) concerning Migration for Employment (Revised)
CAN	Comunidad Andina de Naciones (Andean Community)
CARICOM	Caribbean Community
CARIFTA	Caribbean Free Trade Association
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
CAVIM	Compañía Venezolana de Industrias Militares
CDC	United States Center for Disease Control
CEA	Consejo Estatal de Azúcar de la República Dominicana (State Sugar Council)
CEDAIL	Centro Dominicano de Asesoría e Investigaciones Legales (Dominican Advisory and Legal Research Center)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (1979)
CENLAC	The University of the West Indies' Center for Latin America and the Caribbean
CEPAL	Comisión Económica para América Latina y el Caribe de las Naciones Unidas
CESCR	Committee on Economic, Social and Cultural Rights
CIDA	Canadian International Development Agency
CIDH	Comisión Interamericana de Derechos Humanos
CIRECA	International Conference on Central American Refugees

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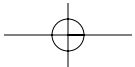
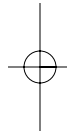
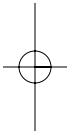
CIS	Comunidad de Estados Independientes
CISEN	Centro de Investigación y Seguridad Nacional de México
CMMI	Comisión Mundial sobre Migración Internacional
CMU	Jamaican Crime Management Unit
CODHES	Consultoría para los Derechos Humanos y el Desplazamiento de Colombia (Consultancy for Displacement and Human Rights)
COHA	Council on Hemispheric Affairs
COIN	Centro de Orientación e Investigación Integral en la República Dominicana
COMAR	Comisión Mexicana de Ayuda a Refugiados
Combifrom	Comisión Militar Fronteriza
Cordaid	Catholic Organization for Relief and Development
CRC	Convention on the Rights of the Child (1989)
CREP	Comisión de Reforma de la Empresa Pública de la República Dominicana (State Enterprise Commission)
CRIES	Coordinadora Regional de Investigaciones Economicas y Sociales
CRG	Control Risk Group
CRM	Conferencia Regional sobre Migración
CROSQ	CARICOM Regional Organization for Standards and Quality
CRS61	Convention on the Reduction of Statelessness (1961)
CSME	Caribbean Single Market and Economy
CSP54	Convention on the Status of Stateless Persons (1954)
CSR51	Convention relating to the Status of Refugees (1951)
CTO	Caribbean Tourism Organization
DEI	Personas Desplazadas en la Esfera Interna
DHS	United States Department of Homeland Security (Departamento de Seguridad del País)
ECAP	Equipo de Estudios Comunitarios y Acción Psicosocial de Guatemala
ECHR	European Convention on Human Rights
ECOSOC	United Nations Economic and Social Council
EDA	Enfermedades Diarreicas Agudas
EE.UU.	Estados Unidos
EHA	Emergency Humanitarian Attention
ELN	Ejército de Liberación Nacional de Colombia (National Liberation Army)
ERA	Infecciones Respiratorias Agudas
ESCOR	United Nations Economic and Social Council Official Record
EU	European Union
EUMC	European Monitoring Center on Racism and Xenophobia
EWS	Early Warning System
EZLN	Ejército Zapatista de Liberación Nacional de México
FARC	Fuerzas Armadas Revolucionarios de Colombia (Revolutionary Armed Forces of Colombia)
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo
FBI	United States Federal Bureau of Investigation (Oficina Federal de Investigaciones)
FDI	Foreign Direct Investment
FESPAD	Fundación de Estudios para la Aplicación del Derecho de El Salvador

FFAA.	Fuerzas Armadas de Ecuador
FISDL	Fondo de Inversion Social para el Desarrollo Local de El Salvador
FLACSO	Facultad Latinoamericana de Ciencias Sociales (Latin American Faculty of Social Sciences)
FMVA	Forma Migratoria Visitante Agrícola de México
FOL	Forward Operating Location
FTAA	Free Trade Area of the Americas
FTZ	Free Trade Zone
GANSEF	Acuerdo para la Creación del Grupo de Alto Nivel para la Seguridad Fronteriza entre México y Guatemala
GARR	Groupe d'Appui aux Rapatriés et Réfugiés
GATS	General Agreement on Trade in Services
GC IV	Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (1949)
GCIM	Global Commission on International Migration
GDP	Gross Domestic Product
GNI	Gross National Income
HCNM	High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe
HRI	Human Rights Internet
HRW	Human Rights Watch
HTA	Diaspora Hometown Associations
IACHR	Inter-American Commission on Human Rights
ICCPG	Instituto de Estudios Comparados en Ciencias Penales de Guatemala
ICCPR	International Covenant on Civil and Political Rights (1966)
ICE	United States Immigration and Customs Enforcement (Oficina de Inmigración y Aduanas)
ICERD	International Convention on the Elimination on All Forms of Racial Discrimination (1965)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
ICFTU	International Confederation of Free Trade Unions
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
ICRC	International Committee of the Red Cross
IDB	Inter-American Development Bank
IDP	Internally Displaced Person
IED	Inversiones Extranjeras Directas
IGO	Inter-governmental Organization
IGP	Internal Gross Product
IHL	International Humanitarian Law
ILEA	United States International Law Enforcement Academy
ILO	International Labor Organization
INAZUCAR	Instituto Nacional de Azúcar de la República Dominicana
INEC	Instituto Ecuatoriano de Estadísticas y Censos
INEGI	Instituto Nacional de Estadísticas, Geografía e Informática de México
INM	Instituto Nacional de Migración de México

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INS	United States Immigration and Naturalization Service
IOM	International Organization for Migration
IPU	United Nations High Commissioner for Refugees Inter-Parliamentary Union
ITS	Infecciones de Transmisión Sexual
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
JHA-JA	Jóvenes Hondureños Adelante, Juntos Avancemos
LDC	Less Developed Countries
MAGIC	Module to Analyze the Growth of International Commerce
MDC	More Developed Countries
MEUC	Mercado y la Economía Únicos del Caribe
MOSCTHA	Movimiento Socio Cultural de los Trabajadores Haitianos
MRG	Minority Rights Group International
MS/MS-13	Mara Salvatrucha
MUDHA	Movimiento de Mujeres Dominicano-Haitianas (Dominican-Haitian Women's Movement)
NACLA	North American Congress on Latin America
NAFTA	North American Free Trade Association
NAVAS	Netherlands Antilles Aliens Registration System
NBI	Necesidades Básicas Insatisfechas
NCHR	National Coalition for Haitian Rights
NGO	Non-governmental Organization
OAS	Organization of American States
ODEMOBA	Organización de la Defensa de los Moradores de los Bateyes de la República Dominicana
OEA	Organización de los Estados Americanos
OECS	Organization of Eastern Caribbean States
OHCHR	Office of the High Commissioner for Human Rights
OIM	Organización Internacional para las Migraciones
OIT	Organización Internacional del Trabajo
ONG	Organizaciones No Gubernamentales
OPS	Organización Panamericana de la Salud
OSCE	Organization for Security and Cooperation in Europe
OSJI	Open Society Justice Initiative
PA (I)	Geneva Protocol I Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflict (1977)
PA (II)	Geneva Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (1977)
PAHO	Pan-American Health Organization
PDI	Personas Desplazadas Internamente
PICUM	Platform for International Cooperation on Undocumented Migrants
PNUD	Programa de las Naciones Unidas de Desarrollo
PPP	Plan Puebla-Panamá de México
PRD	Partido Revolucionario Dominicano

PSR67	Protocol relating to the Status of Refugees (1967)
RCM	Regional Conference on Migration
RSS	Red de Solidaridad Social de Colombia (Social Solidarity Net)
RUT	Sistema de Información sobre la Población Desplazada por la Violencia en Colombia
SAT	Sistema de Alerta Temprana
SECOFI	Información Empresarial Mexicano Secretaría de Comercio y Fomento Industrial (Mexican Secretariat of Commerce and Industrial Development)
SEREX	La Secretaria de Estado de Relaciones Exteriores de la República Dominicana
SGSSS	Sistema General de Seguridad Social en Salud de Colombia (Social Security System for Health Care)
SIEMCA	Statistical Information System on Migration in Central America
SIMVA	System for the Identification and Monitoring of Food Vulnerability
SM	Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (2000)
SNAIPD	Sistema Nacional de Atención Integral a la Población Desplazada de Colombia (National System for Internally Displaced Population Assistance)
STI	Sexually Transmitted Infections
TCC	Technical Cooperation among Countries
TCI	Turks and Caicos Islands
TiHB	Trafficking in Human Beings
TIP	United States Trafficking in Persons Report
TP	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the UN Convention against Transnational Crime (2000)
U.S.	United States
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Program
UNECLAC	United Nations Economic Commission for Latin America and the Caribbean
UNFPA	United Nations Population Fund
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UWI	The University of the West Indies
WHO	World Health Organization
WITS	World Bank World Integrated Trade Solution
WOLA	Washington Office on Latin America
WTO	World Trade Organization
5+5	Conferencia de Cooperación del Mediterráneo Oeste
18	Barrio 18 th St.



Chapter 1

The International Normative Framework and the Human Rights of Migrants

Article 1.1 The International Normative Framework with
Reference to Migration in the Greater Caribbean
*Ryszard Cholewinski, Jilhyanne Redpath,
Sophie Nonnenmacher and John Packer*

Article 1.2 Relaciones Internacionales y Derechos
Humanos de los Migrantes
Gabriela Rodríguez Pizarro

The International Normative Framework with Reference to Migration in the Greater Caribbean

1.1

*Ryszard Cholewinski, Jillyanne Redpath,
Sophie Nonnenmacher and John Packer*

Introduction

The management of human migration implies some standards which may be applied consistently across situations and between countries. Such standards should reflect and give practical effect to declared fundamental values—to human dignity and to peace, stability, and development. These universal values generate norms of varying kinds: social, cultural, political, legal, and other. From the general to the specific, these prescriptions and proscriptions in turn generate standards and rules. The thicker the framework, and the more compelling its character, the easier it is to organize and manage—to plan and invest, and to hold one accountable against the established norms and standards.

It is difficult to argue that there is a sufficiently developed, shared, or precise normative framework in social, cultural, or political terms that addresses migration and cuts across the Greater Caribbean. Notwithstanding some common Caribbean ways and affinities, these are hardly compelling or reliable in predicting, much less prescribing, behavior. However, contemporary international relations and law provide especially legal norms and standards which apply to the varying kinds of situation, and so offer one framework within which to analyze migration in the Greater Caribbean and to organize around or in response to it. It also offers a framework within which specific international developments may take place. As such, it is vital to appreciate this framework fully and to make the most of it.

This article maps the international normative framework that governs international migration in the Greater Caribbean region.¹ While there is no comprehensive international normative framework governing the migration of persons, this does not mean that such movements are addressed solely at the national level of sovereign states.² In the migration context, the principle of state sovereignty is particularly relevant in determining the admission of aliens (i.e., non-nationals) into the territory, but states have also bound themselves under international law, whether through treaty or customary, to abide by certain principles restraining the scope of their activities and decision-making regarding the treatment of all human beings, including migrants and irrespective of their nationality or legal status.³ Consequently, the conduct of state authorities and officials in this field is by no means unlimited. Rather, it is subject to an array of universal and regional standards, such as those relating to the protection of human rights and the treatment of refugees. Moreover, the increasing economic interdependence of states in the globalizing world is giving rise to an ever more complex web of trade commitments at both the global and regional levels. Implementation of these commitments increasingly requires the transnational movement of persons, whether these are highly-skilled specialists and intra-company transferees, or lower-skilled persons moving in the context of the international provision of services.

This article begins with an overview of the international law principles of state sovereignty and state responsibility as these apply to the admission and treatment of non-nationals. The governing global and regional human rights frameworks are then discussed with a particular emphasis on its application to non-nationals, internally displaced persons (IDPs), and stateless persons. This discussion introduces the main modes of human rights protection and focuses on particular rights' challenges specific to the Greater Caribbean. The next section explores the normative framework relating to the protection of particularly vulnerable groups of migrants, such as refugees, internally displaced persons, stateless persons, non-nationals affected by armed conflict, victims of trafficking and smuggling, and migrant workers. The presence of all of these vulnerable groups in the Greater Caribbean is apparent and their situation is analyzed in greater detail in a number of chapters in this volume. Finally, the chapter analyzes the regional trade law framework pertinent to this region, namely the Caribbean Community

¹ This article refers to the Greater Caribbean, as defined by the 25 member states of the Association of Caribbean States (ACS), which include: Antigua and Barbuda, The Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Venezuela. Questions pertaining to the Associate Members and Observer states are not discussed. There are three Associate Members: Aruba, France (on behalf of French Guiana, Guadeloupe and Martinique), and Netherlands Antilles. Observer countries are: Argentina, Brazil, Canada, Chile, Ecuador, Egypt, Finland, India, Italy, Korea, Morocco, the Netherlands, Peru, Russia, Spain, Turkey, Ukraine, and the United Kingdom.

² It will be apparent that this article is essentially legal in nature. Other normative frameworks (such as good governance) are not here explored despite their utility. Due to the legal focus of this article, the references (footnotes and bibliography) follow a slightly modified format than that in the other articles of this volume.

³ In international law, the term "national" refers generally to citizenship. In this article, occasional references to "citizen" may be found in quotations, but the terms "national" and "non-national" will be generally used.

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(CARICOM) and the Caribbean Single Market and Economy (CSME), noting the challenges for implementation and offering some recommendations in this regard. This regime contains provisions relating to the movement of persons and, with time, is likely to have a greater impact on migration in the region. Moreover, its successful implementation is also likely to reduce economic inequality among participating states, and thus the potential for conflict.

State Sovereignty and Responsibility

The center piece of state sovereignty is that the state has the primary authority over its territory and population. In dealing with the management of migration, it is a given that:

One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace, order and good government, or to its social or material interests.⁴

Thus, the state has broad authority in determining admission, conditions of stay, and the removal of non-nationals. In addition, the state has the sovereign authority to take measures protecting its national security, and to determine the conditions upon which nationality is to be granted. This power to manage admission and expulsion (i.e., the swing gates of migration) has, however, to be exercised in full respect for the fundamental human rights and freedoms of non-nationals, which are granted under a wide range of international human rights instruments and customary international law.

The right to admit is relatively unfettered by international law. While a migrant has a right to leave his/her own country, there is no international obligation on a third state to permit entry to its territory.⁵ Thus, a state is entitled, and often does, regulate admission to its territory according to its domestic needs and interests, particularly in the context of the labor market and humanitarian admission. As recognized by the Human Rights Committee, which monitors the application by states of the International Covenant on Civil and Political Rights (ICCPR): “Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment... However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.”⁶ Thus, states have the obligation, and indeed the

⁴ *Attorney General for Canada v Cain* (1906) AC 542, p. 546.

⁵ Articles 12(2) and (4) of the International Covenant on Civil and Political Rights (ICCPR), *infra* note 19, stipulate that “Everyone shall be free to leave any country, including his own... [and that] [n]o one shall be arbitrarily deprived of the right to enter his own country.” There is an argument that the right to return (or a right to re-entry) under international law applies to nationals of a state and also to long-term residents. However, Article 20 of the American Convention on Human Rights (ACHR), *infra* note 29, explicitly ties a right to return to nationality. States parties to the ICCPR would be bound to the broader standard.

⁶ Human Rights Committee, *General Comment No. 15: The Position of Aliens under the Covenant*, para. 6 November 4, 1986.

responsibility, to respect and protect the human rights of *all* those within its territory, nationals and non-nationals alike.

As a corollary of the right to admit, a state also has the right to remove a non-national against his/her will from its territory. This applies to those lawfully present in the state as well as those in an irregular situation. Again, this is not an absolute right, but rather is tempered by a number of international human rights norms. Examples of such restrictions include:

1. The principle of *non-refoulement*, enshrined in Article 33(1) of the Geneva Convention relating to the Status of Refugees (Refugee Convention), and a rule of customary international law. A similar principle is found in the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).⁷
2. The “best interests of the child,” enshrined in the Convention on the Rights of the Child (CRC), may override the right of a state to remove a non-national from its territory.⁸ Similarly, in certain circumstances, the right of a family to stay together when balanced against the interests of the state in effecting expulsion may override the right of a state to remove a non-national from its territory.

In addition to the substantive restrictions on the right of a state to expel a non-national, procedural limitations apply under international law. Article 13 of the ICCPR provides that a non-national lawfully in the territory is, *inter alia*, entitled to have his/her case reviewed prior to expulsion. However, this entitlement is itself limited. First, this provision is only applicable to aliens who are *lawfully* residing within the territory of a state. Second, these obligations are subject to derogation where “compelling reasons of national security” otherwise require.

The power to take measures to protect state security is a fundamental aspect of state sovereignty. Its relevance to migration has been magnified since September 11th and subsequent terrorist attacks. The right of a state to take measures to protect its security is recognized in international human rights law and international humanitarian law. However, each of these branches of law establishes procedures under which such measures may take place. Each equally recognizes the power of the state to make distinctions between nationals and non-nationals in times of national emergency. But, such distinctions must be proportionate and necessary, and must not be discriminatory.

⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 3, *infra* note 22. Unlike the Geneva Convention relating to the Status of Refugees, *infra* note 61, there is no security limitation on this right.

⁸ Convention on the Rights of the Child (CRC), Article 3(1), *infra*, note 22.

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There is very little international law governing the granting of nationality. Indeed, it is within the power of each state to determine to whom it grants nationality and on what conditions. However, as noted below in the section on stateless persons, there is an obligation on states in international law to reduce statelessness by facilitating access to nationality. Moreover, denial of nationality, particularly to vulnerable groups of persons, such as children, may also constitute violations of other civil or political rights or economic and social rights. Such determinations are to be recognized by other states where they are consistent with international law and custom and generally accepted principles of nationality. Attribution or acquisition of nationality are generally obtained through the principles of *jus soli* and *jus sanguinis*—that is, through being born on the territory of a state, or acquiring nationality through one’s parents. Other common ways in which nationality is acquired are through long term residence, marriage, and adoption, although the criteria for its granting vary considerably between countries. Increasingly, countries are permitting dual nationality, which in some cases is argued to be a tool to promote the migrant’s integration into the host state, whilst allowing him/her to retain formal ties with her country of origin.

Finally, in the context of sovereignty, it is worth noting the obligation of states under international law to assist and protect their nationals abroad through the provision of consular services.⁹ A corollary of this is that a state is required to permit non-nationals in their territory access to consular officials from their country of nationality. Indeed, “Consular protection and assistance is...seen as a logical consequence of a State’s duty to safeguard the human rights of its nationals, wherever they may reside, and of the migrants on its territory irrespective of status.”¹⁰

International Human Rights

Sources of Law

The international protection of human rights is organized on three levels. First, there is the protection afforded under the United Nations Charter-based organs. Indeed, the protection of human rights in the Charter is inextricably bound up with the goals of international peace and security and friendly relations among nations, and thus the prevention of further conflict.¹¹ In particular, the Charter-based system of human rights protection includes three mechanisms:¹² possibilities for bringing complaints before the

⁹ The norms governing consular protection and assistance are established in the Vienna Convention on Consular Relations, April 24, 1963 (596 UN Treaty Series (UNTS) 261) and the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICMW), *infra* note 22.

¹⁰ Richard Perruchoud, “Consular Protection and Assistance” in Richard Perruchoud and Ryszard Cholewinski, eds., *International Migration Law: Developing Paradigms and Key Challenges* (The Hague: TMC Asser Press, forthcoming 2006).

¹¹ UN Charter, Articles 1(3) and 55(c).

¹² See Henry Steiner and Phillip Alston, *International Human Rights in Context: Law, Politics, Morals*, 2nd ed. (Oxford: Oxford University Press, 2000), 611.

Commission on Human Rights under the confidential 1503 procedure in “situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission;”¹³ the 1235 procedure by which the Commission can hold an annual public debate focusing on gross violations in a number of countries;¹⁴ and designating a thematic rapporteur or working group to consider violations of human rights relating to a specific theme.

In this regard, in 1999 at its 55th Session, the Commission appointed a Special Rapporteur for the Human Rights of Migrants. The Special Rapporteur was appointed for an initial three-year period with the mandate to examine “ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are nondocumented or in an irregular situation.”¹⁵ The post encompasses a number of functions that, bearing in mind that many migrants are women, include the need “to take into account a gender perspective when requesting and analyzing information, as well as to give special attention to the occurrence of multiple discrimination and violence against migrant women.”¹⁶ The mandate has now been extended on two occasions and both persons fulfilling this role have been from the Greater Caribbean region: Gabriela Rodríguez Pizarro (Costa Rica, 1999-2005) and Jorge Bustamante (Mexico), who is the current incumbent. To date, the Special Rapporteur has issued six general reports, which have addressed a number of issues of relevance to the region, such as the situation of Haitian labor migrants working in the sugar cane fields of the Dominican Republic,¹⁷ and conducted a number of country visits, including visits to Ecuador, Mexico, Peru, and the Mexico-United States border.¹⁸

¹³ ECOSOC Res. 1503 (XLVIII) (1970).

¹⁴ ECOSOC Res. 1235 (XLII) (1967).

¹⁵ CHR Res. 1999/44 of April 27, 1999 (adopted without a vote), para. 3. This development met one of the principal recommendations of the report of the Working Group of inter-governmental experts on the human rights of migrants (E/CN.4/1999/80), convened by the Commission on Human Rights in 1997.

¹⁶ CHR Res. 1999/44, *Ibid.*, para. 3. The other functions are: (a) To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families; (b) To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur; (c) To promote the effective application of relevant international norms and standards on the issue; and (d) To recommend actions and measures applicable at the national, regional, and international levels to eliminate violations of the human rights of migrants.

¹⁷ E/CN.4/2001/83 (January 9, 2001), paras. 85-87. See also the section on Migrant Workers below.

¹⁸ See, respectively, E/CN.4/2002/94/Add.1 (February 18, 2002), E/CN.4/2003/85/Add.2 (October 30, 2002), E/CN.4/2005/85/Add.4 (January 13, 2005) and E/CN.4/2003/85/Add.3 and Corr.1 (October 30, 2002). For more information, see the article by the former Special Rapporteur on the Human Rights of Migrants on “Relaciones Internacionales y Derechos Humanos de los Migrantes,” in this volume. For an introduction to the work and mandate of the Special Rapporteur, see also Office of the High Commissioner for Human Rights (OHCHR), Special Rapporteur of the Commission of Human Rights on the Human Rights of Migrants, 1996-2006, <<http://www.ohchr.org/english/issues/migration/rappporteur/index.htm>>.

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Second, there are now seven core international treaties addressing human rights concerns. Two of these treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966,¹⁹ together with the Universal Declaration of Human Rights (UDHR) of 1948,²⁰ comprise the so-called International Bill of Rights. While the UDHR is not a legally binding treaty, it is considered as the forerunner to the ICCPR and ICESCR and a number of its provisions are widely accepted today as constituting international customary law.²¹ The other five core human rights treaties concern specific thematic issues or the protection of vulnerable groups of persons: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1989 Convention on the Rights of the Child (CRC), and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).²² While the ICMW is the only core human rights treaty that focuses specifically on the protection of non-nationals, clearly the other human rights instruments, with the exception of a few provisions, are also applicable to migrants. Indeed, this position was underscored only recently by the Sub-Commission's Special Rapporteur on the human rights of non-nationals:²³

Based on a review of international human rights law, the Special Rapporteur has concluded that all persons should by virtue of their essential humanity enjoy all human rights unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective.²⁴

¹⁹ See, respectively, UN G.A. Res. 2200A (XXI) of December 16, 1966 and UN G.A. Res. 2200A (XXI) of December 16, 1966.

²⁰ UN G.A. Res. 217 A (III) of December 10, 1948.

²¹ With the exception, perhaps, of the right to seek asylum in Article 14 of the UDHR, which is not found subsequently in the ICCPR or ICESCR or in any other of the core human rights instruments, although it is arguable that this right is a *raison d'être* of the international protection of refugees (see the section on Refugees below).

²² See, respectively, UN G.A. Res. 2106 (XX) of December 21, 1965, UN G.A. Res. 39/46 of December 10, 1984, UN G.A. Res. 34/180 of December 18, 1979, UN G.A. Res. 44/25 of November 20, 1989, and UN G.A. Res. 45/158 of December 18, 1990. For the texts of all the core international human rights instruments, see OHCHR, International Law, 1996-2006, <<http://www.ohchr.org/english/law/index.htm>>.

²³ Sub-Commission on the Promotion and Protection of Human Rights, which is a subsidiary body of the Commission on Human Rights.

²⁴ UN, ECOSOC Official Record (ESCOR), Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 55th Session, Item 5 of the Provisional Agenda, *The Rights of Non-citizens*, Final report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decision 2000/103, Commission resolution 2000/104 and Economic and Social Council decision 2000/283, Doc. E/CN.4/Sub.2/2003/23 (May 26, 2003), p. 2 (Executive Summary). See also Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation No. 30: Discrimination Against Non-Citizens: 1/10/2004*, paras. 2-3, available from <[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/e3980a673769e229c1256f8d0057cd3d?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/e3980a673769e229c1256f8d0057cd3d?OpenDocument)>.

States parties' compliance with core international human rights instruments is monitored by bodies set up under the treaties concerned which consider periodic state reports²⁵ and issue concluding observations.²⁶ Five of the instruments also provide for individual and inter-state complaints mechanisms.²⁷ Notably, only two core international human rights instruments have been ratified by all countries in the Greater Caribbean: CEDAW and CRC. There are some prominent omissions from the ratifications of the ICCPR and the ICESCR, and CAT has only been accepted by 14 countries in the region.²⁸

Third, human rights are also protected on the regional level where political, social, and cultural similarities among the participating states facilitate consensus on the establishment of stronger enforcement mechanisms. There is no regional system of human rights protection applicable solely to the states in the Greater Caribbean. However, most of these states are also parties to the 1969 American Convention on Human Rights (ACHR)²⁹ and all are member states of the Organization of American States (OAS), which gave birth to the Inter-American Commission on Human Rights (IAHCR).³⁰ The Commission has a dual human rights protection mandate under both the ACHR and the OAS, under the auspices of which the forerunner to the ACHR, the

²⁵ With the exception of the Committee on Economic, Social and Cultural Rights, which was established by ECOSOC Res. 1985/17 of May 28, 1985.

²⁶ For a compilation of the Concluding Observations of the Human Rights Committee under the ICCPR, the ESC Committee under the ICESCR and the Committee on the Rights of the Child under the CRC, in the original languages (mainly Spanish) of the countries in the region, see, respectively, Human Rights Center, Faculty of Law University of Santiago, Chile and OHCHR, Regional Representation for Latin America and the Caribbean, *Compilación de Observaciones Finales del Comité de Derechos Humanos sobre Países de América Latina y el Caribe (1977-2004)*, 2004, available from [http://www.ohchr.org/english/bodies/hrc/docs/publications/HRC-Compilacion\(1977-2004\).pdf](http://www.ohchr.org/english/bodies/hrc/docs/publications/HRC-Compilacion(1977-2004).pdf); United Nations Development Program (UNDP), Regional Office for Latin America and the Caribbean, and OHCHR, Regional Representation for Latin America and the Caribbean, *Compilación de Observaciones Finales del Comité de Derechos Económicos, Sociales y Culturales sobre Países de América Latina y el Caribe (1989-2004)*, 2004, available from, [http://www.ohchr.org/english/bodies/cescr/docs/publications/CESCR-Compilacion\(1989-2004\).pdf](http://www.ohchr.org/english/bodies/cescr/docs/publications/CESCR-Compilacion(1989-2004).pdf); and UNICEF, Regional Office for Latin America and the Caribbean and OHCHR, Regional Representation for Latin America and the Caribbean, *Compilación de Observaciones Finales del Comité de Derechos del Niño sobre Países de América Latina y el Caribe (1993-2004)*, 2004, available from [http://www.ohchr.org/english/bodies/crc/docs/publications/CRC-Compilacion\(1993-2004\).pdf](http://www.ohchr.org/english/bodies/crc/docs/publications/CRC-Compilacion(1993-2004).pdf).

²⁷ ICCPR, ICERD, CAT, CEDAW and the ICMW. The individual complaints mechanism under CEDAW has only recently become operational, with the entry into force of the Optional Protocol (G.A. Res. A/54/4 of October 6, 1999; entry into force December 22, 2000), while no state parties to date have made a declaration under Article 77 of the ICMW recognizing the competence of the Migrant Workers Committee to receive and consider individual complaints.

²⁸ See the Table of Relevant International Human Rights Instruments Ratified by Countries in the Greater Caribbean in this volume.

²⁹ San José, Costa Rica, November 22, 1969; Organization of American States (OAS), *OAS Treaty Series* No. 36; entry into force July 18, 1978; ratified by 25 states. See *Ibid.* for a list of those countries from the Greater Caribbean, which have ratified the ACHR.

³⁰ However, the current government of Cuba is excluded from participation in the OAS. See OAS, Resolution of the Eighth Meeting of Consultation of Ministers of Foreign Affairs (1962), available from <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/documents/eng/memberstates.asp>.

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American Declaration of the Rights and Duties of Man, was adopted and remains applicable to all OAS member states.³¹

Key Human Rights Issues Pertaining to Migrants

As noted in the preceding section and also underlined by the Sub-Commission's Special Rapporteur on the human rights of non-nationals, human rights instruments, both at the global and regional levels, apply equally to nationals and non-nationals with few exceptions, such as the enjoyment of political rights defined usually in terms of the right to vote and stand for political office. Consequently, migrants are entitled to the full range of civil and political and economic, social, and cultural rights on equal terms with nationals. While the principle of equality and non-discrimination inherently allows for distinctions to be made between different groups of persons, its proper application means distinctions on the ground of a person's nationality or legal status are impermissible unless justified by a valid and legitimate state objective and applied proportionally to that objective.

Unfortunately, a considerable gulf exists between the rhetoric of the universal application of human rights, in terms of both their geographical and personal scope, and the enjoyment of these rights in practice. This gulf is accentuated in respect of migrants who are more vulnerable to human rights abuses because they are not nationals of the country in which they reside— particularly, if they are present in the territory on an irregular or undocumented basis. Also, being of a different color, ethnicity, or origin, or being a woman in exploitative or vulnerable employment (such as sex work or domestic work), often results in further serious abuses. Consequently, the effective application and implementation of the principle of non-discrimination on the grounds of race, ethnic origin, and sex is particularly important in respect of migrants. As recognized in the October 2005 report of the Global Commission on International Migration, there is a need to intensify efforts across the board to ensure that the human rights commitments that states have entered into at the global and regional levels are effectively put into practice on the basis of the non-discrimination principle.³²

The particular vulnerability of migrants places them at risk of a violation of a number of fundamental civil and political rights. The accentuated risks of suffering

³¹ OAS Res. XXX; adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

³² Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action* (Geneva: GCIM, October 2005), Chapter 5.

discrimination on the grounds of race, ethnicity, sex and nationality, both at the hands of officials and the general population in the destination or receiving country, and during the migration process generally, have already been referred to. The dangers migrants encounter in this process, particularly at the hands of traffickers and smugglers, as discussed below, can put their lives at risk³³ or lead them to experience conditions akin to slavery, debt-bondage or forced labor practices, which are outlawed in international human rights law and international labor law.³⁴ Such conditions may also amount to inhuman or degrading treatment.³⁵ It is important to underline the absoluteness of such guarantees, which international human rights law views as rights that cannot be derogated from under any circumstances, including during time of war or other public emergency situations that threaten the life of democratic nations.³⁶ While derogation from rights such as the right to security and liberty of the person is permissible, this can only occur under strict conditions that respect the principles of non-discrimination and proportionality and then only for the duration of the emergency. This was illustrated most vividly in a recent case of the United Kingdom's (UK) highest court, the House of Lords, which ruled that the UK government's potentially indefinite detention of foreign terrorist suspects was not an acceptable derogation from this right under the European Convention on Human Rights (ECHR).³⁷

The right to liberty and security of person in the ICCPR and ACHR may, however, be limited under certain conditions, particularly when the individual concerned is arrested, suspected, or convicted of a crime.³⁸ Detention of migrants apprehended for clandestine entry or for overstaying the period of validity of their visa or residence permit with a view to their eventual expulsion is practiced by many governments and is explicitly permitted in some human rights instruments.³⁹ However, arbitrary arrest and detention is expressly prohibited in international and regional human rights law⁴⁰ and migrants' nationality or lack of legal status in the destination country cannot excuse states from their obligations under international law to ensure due process guarantees and dignified and humane treatment while migrants are held in detention.⁴¹ In particular, the

³³ For the right to life, see Article 3 of the UDHR, Article 6(1) of the ICCPR and Article 4(1) of the ACHR.

³⁴ UDHR, Article 4: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." See also Article 8(1) and (2) of the ICCPR, the general principle enunciated in Article 8(3) of the ICCPR that "[n]o one shall be required to perform forced or compulsory labor," and Article 6 of the ACHR. For the ILO instruments abolishing forced labor, see the section on Victims of Trafficking and Smuggling below.

³⁵ UDHR, Article 5; ICCPR, Article 7; and ACHR, Article 5(2).

³⁶ ICCPR, Article 4 and ACHR, Article 27. See also Article 15 of the European Convention on Human Rights (ECHR) (Rome, November 4, 1959; *European Treaty Series No. 5*; entry into force September 3, 1953; ratified by 46 states).

³⁷ *A and Others v. Secretary of State for the Home Department* (2004) UKHL 56 (judgment of December 16, 2005).

³⁸ ICCPR, Article 9 and ACHR, Article 7.

³⁹ For example, ECHR, Article 5(1)(f).

⁴⁰ UDHR, Article 9; ICCPR, Article 9(1); and ACHR, Article 7(3).

⁴¹ ICCPR, Articles 9(4) and 10(1) and ACHR, Articles 7(5), 7(6), and 5(2).

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prohibition on the collective expulsion of non-nationals is arguably a recognized principle of international customary law, which also finds expression in the ICMW and the ACHR.⁴² Indeed, the ICMW is the most protective instrument of irregular migrants in international human rights law and explicitly guarantees them not only the basic human rights found in the other more general instruments, but also affords them additional rights, such as elaborate individualized protection against expulsion,⁴³ which is limited to lawfully resident migrants in other instruments, such as the ICCPR.⁴⁴

The equal importance attached to the protection of civil and political rights and economic, social, and cultural rights and the interdependence of both sets of rights was confirmed by the international community of states in the 1993 Vienna Declaration and Program of Action on human rights.⁴⁵ Generally speaking, international human rights law also guarantees the economic, social, and cultural rights of migrants on an equal footing with nationals. This basic principle constitutes an important starting-point given that in practice states consider that they are justified in restricting the access of migrants to these rights on the grounds that they need to protect their welfare systems from abusive claims and, increasingly, as a means of attempting to deter irregular migration. However, such actions must be justified within the narrow constraints of the non-discrimination principle that, as noted above, may permit distinctions between groups of persons, but only if they are carefully crafted to meet a legitimate aim and are proportionate to that aim.

The ICESCR is the widely accepted international human rights instrument specifically dedicated to the protection of economic, social, and cultural rights. While this treaty does not yet contain an individual or inter-state complaints mechanism, the body responsible for monitoring and supervising state party compliance with the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR), has played a pivotal role.⁴⁶ This is especially true of its General Comments, which explain the nature of state party obligations under the ICESCR and articulate the meaning of the specific rights protected.⁴⁷ The CESCR has underlined that the “progressive” nature of obligations in the ICESCR does not excuse states parties from a minimum core commitment to ensure

⁴² ICMW, Article 22(1) and ACHR, Article 22(9). See also Protocol No. 4 to the ECHR, Article 4.

⁴³ ICMW, Articles 22(2)-(9).

⁴⁴ ICCPR, Article 13. See also Protocol No. 7 to the ECHR, Article 1.

⁴⁵ OHCHR, Vienna Declaration and Program of Action, 1996-2006, available from <<http://www.ohchr.org/english/law/vienna.htm>>, para. 5: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”

⁴⁶ It may be noted that there is currently a process under way to create an individual complaints mechanism under the ICESCR.

⁴⁷ While not legally binding, General Comments or General Recommendations issued by the treaty bodies constitute authoritative interpretations of the provisions of international human rights treaties.

that the satisfaction of a minimum level of each of the rights in the ICESCR is guaranteed immediately to all persons within their jurisdiction, nationals and non-nationals alike.⁴⁸ Indeed, the principle of non-discrimination is an integral element of the minimum core content of all economic, social, and cultural rights.

The only permissible distinctions between nationals and migrants are recognized explicitly in Article 2(3) of the ICESCR, which permits developing countries to limit the economic rights of non-nationals within their territory; the distinction is also mentioned implicitly with reference to the right to work in Article 6.⁴⁹ However, in its most recent General Comment on the right to work, the Committee has underlined that “[t]he principle of non-discrimination as set out in article 2.2 of the Covenant, and in article 7 of the [ICMW], should apply in relation to employment opportunities for migrant workers and their families,” which means clearly that distinctions between nationals and non-nationals with regard to access to employment can only be justified with a view to meeting legitimate state objectives and in accordance with the proportionality principle.⁵⁰ All other rights, such as the right to just and favorable conditions of work, trade union rights, social security, the right to an adequate standard of living, including adequate food, clothing and housing, and the rights to health and education⁵¹ are applicable to non-nationals on an equal basis with nationals, a position also confirmed by the CESCR’s General Comments on the provisions in question.⁵²

Indeed, the CESCR has underlined on a number of occasions the interdependence of economic and social rights with one another as well as with civil and political rights. For example, satisfaction of the right to health, understood in a holistic sense to include preventive, curative, and palliative health care, and not merely access to medical treatment, cannot be fully realized if the person concerned is denied access to adequate food or housing or employment.⁵³ Health care is also intrinsically tied to the right to life, but the effective enjoyment of other civil and political rights, such as freedom of

⁴⁸ UN, ECOSOC, and CESCR, 5th Session, *General Comment 3 on the Nature of State Parties Obligations: Article 2(1) ICESCR* (adopted on December 14, 1999), para. 10, <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)>.

⁴⁹ ICESCR, Article 2(3): “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

⁵⁰ UN, ECOSOC, CESCR, 35th Session, *General Comment 18 on the Right to Work: Article 6 ICESCR* (adopted on November 24, 2005), UN Doc. E/C.12/2005/...[sic], para. 18, available from <<http://www.ohchr.org/english/bodies/cescr/docs/gc18.doc>>.

⁵¹ ICESCR, Articles 7, 8, 9, 11, 12, and 13, respectively.

⁵² See for example UN, ECOSOC, CESCR, 22nd Session, *General Comment 14 on the Right to the Highest Attainable Standard of Health: Article 12 ICESCR* (adopted on August 11, 2000), UN Doc. E/C.12/2004/5, para. 34, <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument)>.

⁵³ *Ibid.*, para. 3.

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assembly, association and expression, are also closely related with adequate health care provision, housing conditions, and educational guarantees. As far as cultural rights are concerned, the ICESCR provides for the right of everyone to take part in cultural life.⁵⁴ Moreover, the Human Rights Committee, responsible for monitoring the application of the ICCPR, has underlined that the specific guarantees concerned with the protection of persons belonging to ethnic, cultural, and linguistic minorities in Article 27 of the ICCPR also apply to non-nationals.⁵⁵

Unfortunately, the attempts to articulate the economic, social, and cultural rights of migrants in other universal and regional instruments have not necessarily followed the principled rubric enunciated in the ICESCR, and articulated further by the CESCR in its work. While the ICMW is commendable in terms of its attempt to articulate the universal personal scope of human rights by affording explicit guarantees to irregular migrants, shortcomings exist particularly regarding its approach to social rights. For example, irregular migrants are only guaranteed access to urgent medical care, which falls short of the more holistic understanding of the right to health in the ICESCR.⁵⁶ Also, there is no explicit right to shelter or more extensive housing guarantees, although in this regard Article 81 of the ICMW is particularly important because it conditions the standards in the ICMW to more favorable provisions found in other multilateral or bilateral instruments, as well as national legislation or practice. Despite these discrepancies, the challenge that remains for policymakers at all levels of government and other stakeholders, such as trade unions and non-governmental organizations (NGO), is how effectively to secure economic, social, and cultural rights in law and practice to various categories of migrants, including those with secure residence status or temporary status, as well as migrants in an irregular situation.⁵⁷

Vulnerable Migrant Groups

This section considers the specific norms applicable in international migration law to vulnerable groups of migrants, namely refugees, internally displaced persons, non-nationals in conflict situations, migrants who are victims of human traffickers and

⁵⁴ ICESCR, Article 15(1)(a).

⁵⁵ Human Rights Committee, 50th Session, *General Comment 23 on the Rights of Minorities: Article 27 ICCPR* (adopted on April 8, 1994), UN Doc. CCPR/C/21/Rev.1/Add.5, para. 5.2, <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df11?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df11?Opendocument)>.

⁵⁶ ICMW, Article 28.

⁵⁷ With regard to the difficult question of securing the rights of irregular migrants, an NGO called Platform for International Cooperation on Undocumented Migrants (PICUM) recently published an innovative report advancing ten recommendations on how civil society (NGOs, trade unions and other organizations) can take action to protect the rights of irregular migrant workers. See PICUM, *Ten Ways to Protect Undocumented Migrant Workers* (Brussels: PICUM, October 2005), available from <<http://www.picum.org/>>.

smugglers, migrant workers, and stateless persons. As discussed in preceding sections in the context of the non-discrimination principle, the vulnerability of migrants may be accentuated by other characteristics, such as their color, ethnic origin, or sex. This is certainly the case with migrant women, who are doubly vulnerable when they are also refugees, victims of trafficking (particularly when the purpose is sexual exploitation), and as domestic workers in the context of labor migration. Refugees, internally displaced persons and stateless persons are also of specific concern to the United Nations High Commissioner for Refugees (UNHCR). According to the UNCHR, by the end of 2004, there were almost three million persons of concern to the UNHCR in the Americas, including refugees, internally displaced persons, and stateless persons, as discussed below.⁵⁸ With regard to states in the Greater Caribbean listed in the statistics (not including the small Caribbean island states, the Dominican Republic and Guyana), the relevant numbers are provided in Table 1.

⁵⁸ United Nations High Commissioner for Refugees (UNHCR) defines the “Americas” as North America and the Caribbean, Central America and Mexico, and South America. See UNHCR, “Access Countries by Region: The Americas,” 2001-2006, <<http://www.unhcr.org/cgi-bin/texis/vtx/country?iso=all>>.

Table 1: Asylum-seekers, Refugees and Others of Concern to UNHCR in the Americas (2004)⁵⁹

Countries	Refugees	Asylum-seekers	Returned Refugees	Others of concern			Total
				IDPs	Returned IDPs	Various*	
Belize	732	31	-	-	-	-	736
Colombia	141	36	67	2,000,000	-	-	2,000,244
Costa Rica	10,413	223	-	-	-	-	10,636
Cuba	795	5	2	-	-	-	802
El Salvador	235	1	-	-	-	-	236
Guatemala	656	4	8	-	-	-	668
Haiti	-	-	-	-	-	-	-
Honduras	23	21	-	-	-	-	44
Mexico	4,343	161	-	-	-	-	4,504
Nicaragua	292	1	2	-	-	-	295
Panama	1,608	271	-	-	-	-	1,879
Suriname	-	-	-	-	-	-	-
Venezuela	244	2,904	-	-	-	26,350	30,498
Total	19,482	3,658	79	2,000,000	-	26,350	2,050,542

* Persons of concern to UNHCR not included in the previous columns (includes stateless persons)

⁵⁹ The data from Table 1 is from UNHCR, 2004 *Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-seekers, Stateless and Other Persons of Concern to UNHCR* (Geneva: UNHCR, Population and Geographical Data Section, Division of Operational Support, June 17, 2005), 9, available online at <<http://www.unhcr.org/cgi-bin/texis/vrx/events/opedoc.pdf?tbl=STATISTICS&id=42b283744>>.

Clearly, the figures for the overall number of persons of concern to the UNHCR in the region are distorted significantly by the two million internally displaced persons reported in Colombia. Otherwise the figures for the other reported countries are relatively small (just over 50,000).

Refugees

According to Table 1, at the end of 2004 there were nearly 20,000 refugees in the region and just over 3,500 asylum-seekers. The majority of refugees were in Costa Rica and Mexico, while Venezuela hosted the largest number of asylum-seekers.⁶⁰

The principal international instruments governing the protection of refugees are the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, which removed the geographical and temporal restrictions on the application of the 1951 Convention.⁶¹ The Refugee Convention defines a refugee as someone outside his or her country of nationality or habitual residence who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” and consequently cannot obtain protection in that country.⁶² The Refugee Convention also sets out a range of rights and entitlements applicable to both refugees and asylum-seekers. Assistance with interpretation of the refugee definition to government officials concerned with the determination of refugee status is provided by the UNHCR Handbook and accompanying guidelines.⁶³ They are based in part on judicial developments at the national level in a number of countries and cast some light on the meaning of the more difficult aspects of the definition, such as

⁶⁰ For a discussion on related issues concerning refugees in the Caribbean, see the article on “Effectively Identifying, Protecting and Finding Durable Solutions for Refugees” in Chapter Two of this volume.

⁶¹ Convention relating to the Status of Refugees, July 28, 1951; UNTS No. 2545, Vol. 189, p. 137; entry into force April 22, 1954 and Protocol relating to the Status of Refugees, January 31, 1967; UNTS No. 8791, Vol. 606, p. 267.

⁶² The full definition in Article 1A(2) of the Refugee Convention is “any person who...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

⁶³ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol*, Doc. HCR/IP/4/Eng/REV.1 (re-edited) (Geneva: UNHCR, January 1992/1979), <<http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3d58e13b4>>.

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“membership of a particular social group,”⁶⁴ and provide for a more gender-relevant application given that persecution on the grounds of sex is not expressly included.⁶⁵

Most importantly, the Refugee Convention contains the principle of *non-refoulement* in Article 33(1), which constitutes the cornerstone of international refugee law obliging states parties not to expel or return refugees in any manner whatsoever to countries where their lives or freedoms would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion. The principle of *non-refoulement* also exists outside of the confines of the treaty as a principle of international customary law and its precise scope is the subject of considerable controversy.⁶⁶ For example, in 1993, the United States Supreme Court ruled that the principle did not apply extra-territorially to the practice adopted by the U.S. Coast Guard to return Haitian migrants found on boats on the high seas without screening asylum claims.⁶⁷ The reasoning in this controversial judgment has been hotly disputed.⁶⁸

In Central America, which encompasses a number of the countries of the Greater Caribbean, an important regional document is the 1984 Cartagena Declaration on Refugees, adopted at a time of substantial refugee flows in the region generated by conflicts in El Salvador, Guatemala, and Nicaragua.⁶⁹ While not a legally binding document, the Declaration recommends that participating states commit themselves to the principles espoused therein. Given that the refugee movements in the region at the time were generated by internal conflicts rather than a result of individualized persecution, the Declaration recognizes a broader definition of refugee than that found in the Refugee Convention, and which resembles the expanded definition in the African instrument:⁷⁰

⁶⁴ UNHCR Guidelines on International Protection No. 2: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Doc. HCR/GIP/02/02 (May 7, 2002), available from <http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3d58de2da>.

⁶⁵ Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Doc. HCR/GIP/02/01 (May 7, 2002), <http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3d58ddef4>.

⁶⁶ For a recent comprehensive article assessing the scope of the principle of *non-refoulement*, see Eli Lauterpacht and Daniel Bethlehem, “The Scope and Content of the Principle of *Non-refoulement*: Opinion” in Erika Feller, Volker Türk and Frances Nicholson, eds. *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003), 89-177.

⁶⁷ *Sale v. Haitian Centers Council*, 113 Supreme Court 2549 (U.S. Supreme Court judgment of June 21, 1993).

⁶⁸ See the dissent by Justice Blackmun, *Ibid.*, and Lauterpacht and Bethlehem, “The Scope and Content of the Principle of *Non-refoulement*: Opinion,” 111, para. 67 (however, this article does not refer to the *Sale* judgment).

⁶⁹ The Declaration was adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia, November 19-22, 1984. The text of the Declaration is available on the UNHCR website at <http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.htm?tbl=RSDLEGAL&id=3ae6b36ec>.

⁷⁰ Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, September 10, 1969; UNTS No. 14, 691, Article I(2).

[I]n view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU [Organization of African Unity] Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled 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 which have seriously disturbed public order.⁷¹

With the exception of the developing law of the European Union and its policy on asylum, which has resulted arguably in the reduction of standards relating to the protection of asylum-seekers and refugees rather than the augmentation of these standards, the basic instruments of international refugee law have not changed significantly.⁷² The principal developments have taken place under the auspices of international human rights law.⁷³ For example, while the Refugee Convention contains provisions excluding persons from obtaining refugee status if they are suspected of war crimes or crimes against peace or humanity, and permits the *refoulement* of refugees if there are reasonable grounds for regarding them as a danger to the security of the country,⁷⁴ human rights law precludes the return of *any* person to a country where they face a real risk of torture or inhuman or degrading treatment or punishment.⁷⁵

⁷¹ Ibid., Conclusion 3. An important process addressing the refugee crises following the conflicts in the region was the International Conference on Central American Refugees (CIREFCA), which adopted the Declaration and Concerted Plan of Action in Favor of Central American Refugees, Returnees and Displaced Persons, Guatemala City, May 29-31, 1989.

⁷² For a comprehensive overview, see Sylvie Da Lomba, *The Right to Seek Refugee Status in the European Union* (Antwerp: Intersentia, 2004).

⁷³ Volker Türk, UNHCR, speaking at the International Symposium on Globalization, Migrations and Human Rights, organized by the Graduate Institute of International Studies and the University of Geneva, Geneva, January 16-17, 2006.

⁷⁴ See Refugee Convention, Articles 1(F) and 33(2), respectively.

⁷⁵ ICCPR, Article 7. In this regard, see the Human Rights Committee's *General Comment No. 20 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7)* (March 10, 1992), para. 9: "[i]n the view of the Committee, states parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement." See also Article 5(2) of the ACHR and Article 3 of the ECHR, as well as the pertinent case law under the ECHR, such as *Chahal v. United Kingdom* (1996) 23 EHRR 413 and *HLR v. France* (1997) 26 EHRR 29.

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Internally Displaced Persons

Over the last few decades, the Greater Caribbean region has experienced significant internal displacement due to armed conflict and to some extent natural disasters. While the internal displacement experienced by Haiti, Guatemala, and Mexico has largely now ended, Colombia, with approximately two million internally displaced persons, has the second highest number of internally displaced persons in the world.⁷⁶ As is often the case with internal conflict, this has implications for regional stability, as the conflict has spilled over Colombia's borders, straining relations with neighboring countries.⁷⁷

While the causes of displacement may be the same, IDPs are distinguished from refugees in that they do not cross an international border. Therefore, the government of the state in which the cause of movement originates remains responsible for the protection and assistance of those displaced. Due to the circumstances of displacement, however, the government is often unable to protect adequately the displaced, or is actually responsible, directly or indirectly, for their displacement.

IDPs are protected by applicable human rights law and, in times of armed conflict, are afforded the protection of "civilians" by international humanitarian law. However, the circumstances of their displacement in their own country often create particular vulnerabilities for these individuals. In recognition thereof, in the early 1990s the international community appointed a Special Representative to the Secretary-General of the UN on Internally Displaced Persons, tasked inter alia to prepare an appropriate framework of protection for the internally displaced. The work of the Special Representative culminated in 1998 with the development of the Guiding Principles on Internal Displacement. The Guiding Principles draw together relevant norms from a range of international instruments, and purport to address any gaps and grey areas in international law concerning the internally displaced. In addition, they provide an international definition of an internally displaced person.⁷⁸

The Guiding Principles consist of 30 principles divided into five sections: General Principles, Protection from Displacement, Protection During Displacement, Humanitarian Assistance, and Return, Resettlement and Reintegration. Thus, they seek

⁷⁶ Global IDP Project, *Internal Displacement Global Overview of Trends and Developments in 2004* (Norwegian Refugee Council, 2005), 45. For further discussion on the internal displacement situation in Colombia and the attendant challenges on the Ecuadorian and Venezuelan borders, please see Chapter Six and Seven in this volume.

⁷⁷ Ibid.

⁷⁸ For the purposes of the Guiding Principles, internally displaced persons are defined as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disaster, who have not crossed an internationally recognized state border." Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (February 11, 1998), Introduction, Scope and Purpose, para. 2.

to respond to the breadth of needs created and range of circumstances that arise throughout the displacement process. The Guiding Principles clearly identify two themes that constitute the cornerstone of protection for the internally displaced—(a) the obligation of national authorities adequately to protect and assist their displaced population and the concomitant right of the affected population to such protection and assistance and (b) the principle of non-discrimination.

The Guiding Principles restate accepted international norms, and develop them as relevant to the displaced. In addition, the Guiding Principles respond to certain gaps in international human rights and humanitarian law in relation to the internally displaced, through for example the articulation of a right not to be displaced, a right to restitution and compensation for property lost as a result of displacement, and the right to be protected against forcible returns or relocation to a place where their life, liberty, or health would be at risk.⁷⁹ Further, the Guiding Principles acknowledge the particular vulnerabilities of certain categories of IDPs, such as women and children.

The Guiding Principles themselves are not legally binding, but serve as a *guide* to states and other authorities and groups when dealing with the internally displaced, as well as inter-governmental organizations (IGO), and NGOs.⁸⁰ Since their completion, the Guiding Principles have been widely disseminated among UN bodies, international organizations, governments and civil society. In Colombia, for example, they are used by the government in their public awareness campaigns concerning the displaced, have been referred to by the Constitutional Court in judgments relating to displacement, and have been reflected in their national legislation.⁸¹ Such actions indicate that although the Guiding Principles are themselves not legally binding, they are nevertheless having a legal impact in the Greater Caribbean.

⁷⁹ It must be noted that many individuals who leave their home or place of habitual residence are compelled to do so due to violations or the denial of basic rights, whether they are civil, social, economic, or other rights. A state or its agents in compelling an individual to move from his/her home or place of residence violates the right of the individual to stay or, to put it another way, a right not to be displaced. In the majority of circumstances, such action also breaches a plethora of other human rights norms. While a “right to stay” is not expressly articulated in human rights instruments, it is a derivative of and implicit to the right to freedom of movement as well as other human rights norms. Of course, like most other rights and freedoms, it is not absolute or unlimited.

⁸⁰ However, many of the principles invoke human rights or humanitarian law norms, including principles from international customary law.

⁸¹ Simon Bagshaw, “Responding to the Challenge of Internal Forced Migration: The Guiding Principles on Internal Displacement” in Richard Perruchoud and Ryszard Cholewinski, eds., *International Migration Law: Developing Paradigms and Key Challenges*.

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Non-nationals Affected by Conflict

International Humanitarian Law (IHL), also known as the law in armed conflict (*jus in bello*), provides a framework in which the conduct of hostilities between the warring parties should take place, and outlines the rules to protect individuals in time of armed conflict who are not or are no longer participating in the hostilities. IHL is relevant to a discussion on migration to the extent that hostilities cause the displacement of “civilians.”⁸² It also deals with non-nationals in the territory of a party to the hostilities.

A fundamental objective of IHL is to protect or alleviate the suffering of civilians from the hostilities—individuals who are often the very subject of armed conflict. The main instruments applying to civilians are the 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (GC IV),⁸³ the 1977 Geneva Protocol I Additional to the Geneva Conventions of August 12, 1949 and Relating to the Protection of Victims of International Armed Conflict (Protocol I),⁸⁴ and the 1977 Geneva Protocol II Additional to the Geneva Conventions of August 12, 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).⁸⁵ Virtually all states in the Greater Caribbean are parties to these instruments.⁸⁶

The fundamental principles contained in IHL applying to civilians can be summarized as follows: those who do not take part in the hostilities are entitled to respect for their lives and physical and moral integrity, and shall in all circumstances be protected and treated humanely and subject to fundamental judicial guarantees, and that parties to a conflict shall at all times distinguish between the civilian population and combatants, with civilian populations never to be attacked.⁸⁷ Indeed, a review of the relevant instruments shows a large measure of convergence and parallelism between norms originating in human rights instruments and those originating in international humanitarian law.⁸⁸

IHL regulates both international and internal armed conflict. Given the internal strife experienced by a number of countries in the Greater Caribbean over the last decades, of most relevance to this region are the IHL rules governing non-international armed

⁸² Also referred to in the instruments as “civilians” and “protected persons.”

⁸³ 75 UNTS (1950), 287-417.

⁸⁴ 1125 UNTS (1979), 3-608.

⁸⁵ 1125 UNTS (1979), 609-99.

⁸⁶ See the Table of Relevant International Human Rights Instruments Ratified by Countries in the Greater Caribbean in this volume.

⁸⁷ International Committee of the Red Cross, “Fundamental Rules of International Humanitarian Law Applicable in Armed Conflict,” September-October 1978, 248-249.

⁸⁸ Theodor Meron, “Note and Comment: On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument,” *American Journal of International Law* 77 (589) (1983): 593.

conflict. The starting point is Article 3 of the GC IV, the cornerstone of protection of the civilian population, which provides that, in the case of non-international armed conflict, “persons taking no active part in the hostilities...shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other distinction.”⁸⁹ Acts prohibited in respect of such individuals are “violence to life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

Supplementing common Article 3 is Protocol II, developed specifically to protect the victims of internal conflict or civil war. Protocol II responds to arguments by countries at the time that a particular situation did not amount to an “armed conflict” within the meaning of Article 3.⁹⁰ Protocol II applies to conflict between armed forces of a state, as well as “dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a territory to enable them to carry out sustained military operations.” Like common Article 3, Protocol II does not, however, cover situations of internal disturbances and tensions, such as riots and sporadic acts of violence, which do not amount to armed conflict, which has been the cause of displacement and abuses of the rights of civilians in the Greater Caribbean.⁹¹ The Protocol reiterates the principle of humane treatment, and expands the prohibited acts outlined in common Article 3 to include acts of terrorism, rape, enforced prostitution, slavery, pillage, as well as “threats to commit” prohibited acts. It *inter alia* reaffirms and develops principles concerning protection of the civilian population⁹² and their property,⁹³ prohibits forced displacement of the civilian population unless their security or “military imperatives” so require,⁹⁴ and provides for humanitarian action by relief societies to the civilian population.⁹⁵

⁸⁹ This Article is found in each of the four Geneva Conventions and is often referred to as “common Article 3.”

⁹⁰ Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 3rd ed. (Oxford: Oxford University Press, 2000), 481.

⁹¹ Protocol II, Article 1(2).

⁹² See generally Protocol II, Part II (Humane Treatment) and Part IV (Civilian Population).

⁹³ For example, Article 16 of Protocol II provides for the protection of cultural objects and places of worship of the peoples.

⁹⁴ *Ibid.*, Article 17. However, in the event of displacement “all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.”

⁹⁵ *Ibid.*, Article 18.

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The legal framework governing international armed conflict is outlined in the GC IV and Protocol I. IHL in the context of international armed conflict is further developed than that applying to internal armed conflict, and many of the principles outlined above are covered, and indeed elaborated upon.⁹⁶ In brief, when read together, GC IV and Protocol I inter alia reinforce the principle of “distinction” in attacks between civilians and combatants, and the necessity for precautionary measures to protect the civilian population in conducting military attacks. They require the facilitation of reunion of families separated as a result of conflict, and provide special protection for women and children.⁹⁷ Worthy of particular note are the principles covering the treatment of aliens on the territory of a party to a conflict. For example, Part IV of the GC IV outlines the conditions that aliens on the territory should enjoy upon leaving the territory, should they wish to do so.⁹⁸ It provides for equal treatment of nationals and non-nationals in the context of medical attention and the practicing of their religion, and regarding movement to less dangerous areas.⁹⁹ In addition, non-national children less than fifteen years of age, pregnant women, and mothers of children less than seven years of age shall benefit from any preferential treatment to the same extent as the nationals of the state.¹⁰⁰ Although it allows for the internment of non-nationals if the security situation makes it “absolutely necessary,” it outlines procedural and other protections in the event of such internment.¹⁰¹ Finally, the Convention provides for the protection of refugees and prohibits returning an individual to a country where s/he has reason to fear persecution.¹⁰²

Victims of Trafficking

Countries of the Greater Caribbean region serve as origin, transit and destination countries for victims of trafficking.¹⁰³ Studies show that men, women and children are trafficked from and within the region for forced labor, domestic service, and prostitution.¹⁰⁴ As with many regions of the world, causes of trafficking include poverty, unemployment, and internal conflict.

⁹⁶ IHL in internal armed conflict is less developed due to the constraints on national sovereignty, and the resistance of nation states to interference by the international community in their internal affairs.

⁹⁷ See, for example, Part III GCIV, which deals with the Status and Treatment of Protected Persons in Territories of the Parties to the Conflict and Occupied Territories. Protocol I, Part IV, deals with the Civilian Population covering General Protection against Effects of Hostilities (Section I), Relief in Favour of the Civilian Population (Section II), and Treatment of Persons in the Power of a Party to the Conflict (Section III).

⁹⁸ GC IV, Articles 35 and 36.

⁹⁹ Ibid., Article 38.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., Article 42 and Section IV.

¹⁰² Ibid., Article 45.

¹⁰³ For a more in-depth discussion on trafficking in persons in the Caribbean, please refer to the articles in Chapter Four in this volume.

¹⁰⁴ International Organization for Migration (IOM), *Exploratory Assessment of Trafficking in Persons in the Caribbean Region* (Geneva: IOM, 2005); IOM and OAS, *Legal Review on Trafficking in Persons* (Geneva: OAS/IOM, 2005); and Congressional Research Service, *Trafficking in Persons in Latin America and the Caribbean*, Report for Congress, December 2005.

There have been a number of conventions over the last century dealing with slavery, forced labor, and other forms of exploitation associated with the phenomenon of human trafficking.¹⁰⁵ However, the key international instrument responding to the trafficking phenomenon is the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Crime (Trafficking Protocol).¹⁰⁶ The Trafficking Protocol was adopted by the General Assembly in November 2000, and entered into force on December 25, 2003. To date, however, the Trafficking Protocol has been ratified by less than half of the states in the Greater Caribbean.

The purposes of the Trafficking Protocol are: to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of trafficking with full respect for their human rights; and to promote cooperation among states parties in order to meet these objectives.¹⁰⁷ In giving effect to these purposes, the Trafficking Protocol outlines a number of measures to be taken by states both at a legislative and practical level, thereby seeking to promote a uniform approach, and indeed a legal regime, amongst states in combating this phenomenon.

An important contribution of the Trafficking Protocol is its enunciation of an international definition of trafficking in human beings (TiHB), which prior to this date was defined on an ad hoc basis with different definitions reflecting the interest of the group establishing the definition.¹⁰⁸ The Trafficking Protocol defines trafficking in persons as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Exploitation includes, at a minimum, “the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” The Trafficking Protocol provides that consent to exploitation is irrelevant where any of the “means” set out in the definition are used.¹⁰⁹

¹⁰⁵ For example, the 1910 International Convention for the Suppression of the White Slave Traffic, LNTS, Vol. VIII p. 278; the 1921 International Convention for the Suppression of the Traffic in Women and Children, LNTS, vol. IX, p. 415; the 1926 Slavery Convention, 212 UNTS No. 2861; ILO Convention No. 29 of 1930 concerning Forced or Compulsory Labor; the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, LNTS, vol. CL, p. 431; and the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS No. 1342.

¹⁰⁶ UN G.A. Res. 55/25 of November 15, 2000. The text of the Convention and Protocols and ratification information is available from the UN Office on Drugs and Crime website at <http://www.unodc.org/unodc/en/crime_cicp_convention.html#final>.

¹⁰⁷ Trafficking Protocol, Article 2.

¹⁰⁸ For example, if an NGO were to define “trafficking,” it would likely focus on the human rights abuses of the individual. In contrast, border authorities or police would likely approach the definition from a control perspective.

¹⁰⁹ Trafficking Protocol, Article 3(b). Similarly, where the method used in moving a child is for exploitative purposes, it is considered trafficking in persons even if this does not involve any of the means outlined in Article 3(a).

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The Trafficking Protocol calls upon states to establish the involvement of individuals in the process of TiHB as a criminal offense (Article 5) and mandates a number of measures to be taken to prevent and combat TiHB, unilaterally and in cooperation with other states. Such measures include information exchange and training of relevant officials, strengthening border controls, and the security of travel or identity documents. It is worth noting that while most of the Greater Caribbean countries have legislation touching in some way on trafficking and related offenses, there is generally a weakness in the legislative frameworks in the region on this issue. Indeed, in the 2005 United States Trafficking in Persons Report, most Greater Caribbean countries were placed in Tier 2 or on the Tier 2 Watch List—with Cuba, Jamaica, and Venezuela in Tier 3—suggesting that there is considerable scope for improvement in the legal frameworks responding to trafficking.¹¹⁰

In the context of victim protection, the Trafficking Protocol requires states, “to the extent possible under domestic law,” to protect the privacy and identity of the individual and, in “appropriate cases,” to provide assistance in court proceedings. In addition, the Trafficking Protocol requires states to “consider implementing” measures to provide for the physical, psychological and social recovery of victims through such measures as the provision of appropriate housing, counseling and medical, psychological and material assistance, employment, training and educational opportunities.¹¹¹ Finally, the Trafficking Protocol calls upon states to take measures to alleviate the factors that make individuals vulnerable to trafficking—such as poverty, underdevelopment, and a lack of equal opportunity—causes that are found in many Greater Caribbean countries.¹¹²

Given the non-prescriptive language of the Trafficking Protocol in the areas of victim assistance and protection, it is arguable that the greatest contribution it makes in protecting the rights of victims is indirectly through the development of state obligations of the criminalization of trafficking.¹¹³ However, the savings clause of Article 14 is worthy of note, providing that nothing in the Trafficking Protocol affects the rights, obligations, and responsibilities of states under international humanitarian law, human rights law, and, where applicable, refugee law. Each of these bodies of law has provisions relating to TiHB. Indeed, the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as the Convention on Elimination of Discrimination against Women, explicitly prohibit the trafficking of children and women, respectively. Moreover, each of the

¹¹⁰ The annual Trafficking in Persons (TIP) Report produced by the U.S. State Department contains an assessment of governments' compliance with the minimum standards for the elimination of trafficking as laid out in the Trafficking Victims Protection Act of 2000. Each country included in the report is rated (Tier 1, Tier 2, Tier 2 Watch List, or Tier 3) according to their compliance with these minimum standards. See U.S. Department of State, *Trafficking in Persons Report*, June 3, 2005, <<http://www.state.gov/g/tip/rls/tiprpt/2005/46606.htm>>.

¹¹¹ Trafficking Protocol, Article 6.

¹¹² *Ibid.*, Article 9(4).

¹¹³ Ryszard Piotrowicz, “Trafficking of Human Beings and their Human Rights in the Migration Context” in Richard Perruchoud and Ryszard Cholewinski, eds., *International Migration Law: Developing Paradigms and Key Challenges*.

seven core human rights treaties, including CEDAW, has provisions proscribing the abuses often associated with trafficking.¹¹⁴ Finally, the UN High Commissioner for Human Rights (UNHCHR) 2002 Recommended Principles and Guidelines for Human Rights and Human Trafficking and other soft law provide guidance for governments, IGOs, and NGOs on the treatment of victims.¹¹⁵ Thus, while the Trafficking Protocol itself does not mandate comprehensive victim protection, when read in the context of the broader framework of applicable international law, there is a clear body of law protecting the rights of victims. The challenge remains effective implementation.

Smuggling

A considerable amount of irregular migration takes place in the Greater Caribbean region. This is due, for example, to the search for employment and a better standard of living, the region's porous borders, and its proximity to the U.S. While studies of smuggling specifically in the Greater Caribbean are scarce, it is clear that smuggling of migrants does take place.¹¹⁶ The key international instrument dealing with smuggling of migrants is the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (Smuggling Protocol). The Smuggling Protocol was adopted by the UN General Assembly at the same time as the Trafficking Protocol, and entered into force on January 28, 2004. The Protocol has been ratified by 10 states in the Greater Caribbean.

The Smuggling Protocol provides an international definition of 'smuggling,' which states that "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."¹¹⁷ In contrast with the definition of trafficking, although smuggling can be abusive and dangerous, it does not *require* exploitation or a violation of human rights. In practice, however, the distinction between the two can be hard to draw.¹¹⁸

¹¹⁴ For example, the freedoms from torture and slavery, and the freedom of movement.

¹¹⁵ UN Doc. E/2002/68/Add.1

¹¹⁶ Melinda S. Oja, "Illegal Immigration and Human Smuggling: Central America and Mexico," International Policy Formulation, White Paper, May 9, 2002, <<http://www.martin.uidaho.edu/PDF/Immigration.pdf>> and Karoline Schmid, "Migration in the Caribbean—What do we know? An Overview of Data, Policies and Programs at the International and Regional Levels to Address Critical Issues," Caribbean Expert Group Meeting on Human Rights and Development in the Caribbean, September 14-15, 2005, Port of Spain, Trinidad and Tobago, Doc. LC/CAR/L.54 (October 17, 2005).

¹¹⁷ Article 3, Smuggling Protocol.

¹¹⁸ See the article on "Scope and Nature of the Trafficking Phenomenon: A Regional Perspective" in Chapter Four of this volume.

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The purpose of the Smuggling Protocol is to prevent and combat the smuggling of migrants, and promote cooperation among states parties to that end, while protecting the rights of migrants. In pursuit of these objectives, the Protocol requires states to adopt measures to establish as criminal offenses the smuggling of migrants, producing or procuring fraudulent travel or identity documents, and enabling a person to remain illegally in the state through such means.¹¹⁹ It mandates states, unilaterally and in cooperation with others, to combat smuggling of migrants at sea,¹²⁰ and calls for information exchange,¹²¹ the strengthening of borders,¹²² measures to ensure the security and control of travel and identity documents,¹²³ and training and technical cooperation to support these measures.¹²⁴

Some protection for migrants is outlined in Article 16 of the Smuggling Protocol, which calls upon states in implementing the protocol to take appropriate measures consistent with its obligations under international law to preserve and protect the rights of smuggled migrants. In particular, it calls for special protection of migrants in the context of the right to life, the right not to be subject to torture or other cruel, inhumane and degrading treatment, as well as draws attention to the special needs of women and children. However, it is clear that the protection afforded to smuggled migrants is considerably less than that provided for victims of trafficking under the Trafficking Protocol. It does, however, specify that migrants shall not become liable to criminal prosecution for being the object of smuggling, which, given that illegal entry is often criminalized, provides some safeguards to smuggled migrants.¹²⁵ As with the Trafficking Protocol, the Smuggling Protocol is not a human rights instrument, although it too contains a savings clause providing for the continued application of human rights, humanitarian law, and, where applicable, refugee law.¹²⁶ Thus, while these branches of law continue to apply to irregular migrants, in practice such migrants continue to be vulnerable to exploitation and abuse due to their lack of legal status in a country.

¹¹⁹ Further, states are required to establish as aggravating circumstances those which endanger the lives or safety of the migrant, or entail inhuman or degrading treatment, including exploitation (Art. 6(3)(b), Smuggling Protocol).

¹²⁰ *Ibid.*, Articles 7 and 8.

¹²¹ *Ibid.*, Article 10.

¹²² *Ibid.*, Article 11.

¹²³ *Ibid.*, Article 12.

¹²⁴ *Ibid.*, Article 14.

¹²⁵ *Ibid.*, Article 5.

¹²⁶ *Ibid.*, Article 19.

Migrant Workers

The international migration of persons for employment is not only characterized by out-migration from the Greater Caribbean, such as Mexican labor migration to the United States or the emigration of health workers from Jamaica to the United Kingdom, but also by labor migration within the region, such as the large movements of Haitian migrant workers to the Dominican Republic,¹²⁷ Guatemalans to southern Mexico, and Nicaraguans to Costa Rica. The normative framework applicable to migration for employment from and within the Greater Caribbean is generally regulated by international norms concerned with the protection of the human and labor rights of migrant workers, although there are also some notable bilateral labor migration arrangements between countries in the region and developed receiving countries.¹²⁸

Migrant workers constitute an especially vulnerable group in human rights terms, particularly when they find themselves in an irregular or undocumented situation in the country of employment, which is a significant feature of intra-Caribbean labor migration. Therefore, it is not surprising that their protection during the whole process of labor migration, particularly while in the country of employment, is considered a principal concern of the international normative framework that has been developed to date. As noted earlier, the international and regional human rights protection regimes are applicable, with few exceptions, to all persons regardless of their nationality and legal status, and thus encompass migrant workers and their families. The same is true of international labor law as found in the numerous conventions adopted by the International Labor Organization (ILO). Both of these positions have been confirmed in relation to specific situations affecting the protection of migrant workers from countries in the region.

In September 2003, the Inter-American Court of Human Rights, in response to a request by Mexico, issued a landmark Advisory Opinion on the juridical condition and rights of undocumented migrants. The Court ruled, *inter alia*, that the migratory status of persons can never constitute a justification in depriving them of the enjoyment and exercise of their human rights, including those related to work and that migrants, upon taking up a work-related role, acquire rights by virtue of being workers that should be recognized and guaranteed independently of their regular or irregular situation in the state of employment.¹²⁹ This Advisory Opinion is an important articulation of the universal application of human rights standards. Previously, in the early 1980s,

¹²⁷ For a more in-depth discussion on Haitian labor migration to the Dominican Republic, please refer to Chapter Nine in this volume.

¹²⁸ For example, concerning Mexico, the Commonwealth Caribbean States, and Guatemala with Canada in reference to agricultural workers, and Colombia and Ecuador with Spain. The bilateral arrangements for the labor migration of workers from Guatemala, Colombia and Ecuador are facilitated by IOM.

¹²⁹ Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, pp. 105-106, paras. 133-136, available from <http://www.corteidh.or.cr/serieapdf_ing/seriea_18_ing.pdf>.

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complaints were brought by trade unions under Article 26 of the ILO Constitution against the governments of the Dominican Republic and Haiti alleging violations of international labor law in respect of their treatment of Haitian migrant workers employed in the Dominican Republic. Even though neither country had ratified the specific ILO instruments protecting migrant workers, the Commission of Inquiry established to rule on the complaints found that both countries had violated other ILO Conventions which they had ratified and which apply to all workers regardless of their nationality or legal status.¹³⁰ Unfortunately, the plight of Haitian migrant workers in the Dominican Republic remains unresolved, as documented more recently by the Special Rapporteur on the human rights of migrants:

According to the information received, approximately 500,000 [migrant workers from Haiti] live and work in the Dominican Republic in particularly difficult living and working conditions. It is reported that the majority work and live in the sugar cane fields, where essential services to ensure minimum standards of hygiene and habitability are apparently nonexistent. The source reports that workers are exposed to excessively long working days for which they do not receive fair wages. The Special Rapporteur also received information that only five percent of immigrants from Haiti in the Dominican Republic have identity documents. The Special Rapporteur therefore drew the Government's attention to the vulnerability of the workers and their families.¹³¹

When considering the application of international labor law to all persons, including migrant workers and members of their families, it is important to note that non-ratification of the eight fundamental ILO conventions—which are concerned with the abolition of forced labor and child labor, trade union rights and non-discrimination—does not excuse member states from the general obligations found therein.¹³² In June 1998, the International Labor Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work,¹³³ which underscored the special importance of the eight core conventions by observing that ILO member states, including those that have not

¹³⁰ International Labor Office, *Report of the Commission of Inquiry appointed under Article 26 of the Constitution of the International Labor Organization to Examine the Observance of Certain International Labor Conventions by the Dominican Republic and Haiti with Respect to the Employment of Haitian Workers on the Sugar Plantations of the Dominican Republic*, Official Bulletin 66 (Series B) (1983).

¹³¹ UN, ECOSOC, Commission of Human Rights, 57th Session, Item 14(a) of the provisional agenda (Migrant Workers), *Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2000/48, E/CN.4/2001/83* (January 2001), pp. 20-21, para. 85.

¹³² Conventions No. 29 of 1930 concerning Forced or Compulsory Labor and No. 105 of 1957 concerning the Abolition of Forced Labor; No. 138 of 1973 concerning Minimum Age for Admission to Employment and No. 182 of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor; No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize and No. 98 of 1949 concerning the Application of the Principles of the Right to Organize and Bargain Collectively; No. 100 of 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; and No. 111 of 1958 concerning Discrimination in respect of Employment and Occupation.

¹³³ International Labor Conference, 86th Session, ILO Declaration on Fundamental Principles and Rights at Work, Geneva, June 1998, available from <http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE>.

ratified the instruments in question, by virtue of their membership in the Organization are required to respect, promote, and realize in good faith the principles concerning the fundamental rights which are the subject of these conventions.¹³⁴ The ILO instruments discussed below relating to migrant workers are not considered as core ILO conventions, although the Declaration underscores the need to devote “special attention to the problems of persons with special needs, particularly the unemployed and migrant workers.”¹³⁵

ILO Conventions No. 97 of 1949 (C97) and No. 143 of 1975 (C143) are the specific ILO instruments aimed at the protection of migrant workers and are both supported by non-binding Recommendations.¹³⁶ These conventions are concerned not only with the protection of migrant workers while in the country of employment but also apply to the labor migration continuum from entry to return. C97 covers the conditions governing the orderly recruitment of migrant workers and also enunciates the principle of their equal treatment with national workers in respect of working conditions, trade union membership, and enjoyment of the benefits of collective bargaining, accommodation, social security, employment, taxes, and legal proceedings relating to matters outlined in the Convention.¹³⁷ Its other objective is to ensure the orderly flow of migrants from countries with labor surpluses to countries with labor shortages, which is reflected in a number of its provisions as well as the Annexes.¹³⁸ C143 is broader in scope and devotes a whole part to the phenomenon of irregular migration and to inter-state collaborative measures considered necessary to prevent it.¹³⁹ In keeping with the ILO’s ethical prerogative of social justice and protecting all workers in their working environment, Article 1 of C143 imposes an obligation on states parties “to respect the basic human rights of *all* migrant workers,” which also confirms the applicability of this instrument to irregular migrant workers.¹⁴⁰ More specifically, Article 9(1) of Part I of C143 emphasizes that irregular migrant workers should be entitled to equal treatment in respect of “rights arising out of past employment as regards remuneration, social security and other benefits.” However, Part II of C143 concerned with equality of opportunity and treatment is limited in its application to lawfully resident migrants.

¹³⁴ *Ibid.*, para. 2. The Declaration contains a “promotional follow-up” enabling the ILO Governing Body to request, on an annual basis, reports from those ILO member states which have not ratified these conventions to supply information on the efforts undertaken to give effect to the fundamental rights and freedoms (*Ibid.*, Annex, Part I).

¹³⁵ *Ibid.*, Recital 4 of the Declaration.

¹³⁶ See, respectively, Conventions No. 97 of 1949 concerning Migration for Employment (Revised) and No. 143 of 1975 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, referred to simply as the Migrant Workers (Supplementary Provisions) Convention. See also Recommendation No. 86 of 1949 concerning Migration for Employment (Revised), which includes an Annex containing a model bilateral labor migration agreement, and Recommendation No. 151 of 1975 concerning Migrant Workers, which accompany the conventions.

¹³⁷ The equal treatment provision is Article 6 of C97.

¹³⁸ See in particular the informational provisions in Articles 2 and 3 and the state obligation in Article 4 to take measures “to facilitate the departure, journey and reception of migrants for employment.”

¹³⁹ See Part I of C143 on Migrations in Abusive Conditions.

¹⁴⁰ Emphasis added.

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Relatively-speaking, ratification of these two instruments has not been wide-ranging. While a few of the Greater Caribbean states are among the 43 countries that have ratified C97, Venezuela is the only country from this region among the 18 states that have accepted C143.¹⁴¹

As observed above, there is now one core UN human rights instrument devoted exclusively to the protection of migrant workers. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families came into force in July 2003 after having obtained its twentieth ratification.¹⁴² As with the specific ILO instruments protecting migrant workers, the ICMW covers the entire labor migration process, although its scope is considerably broader and the provisions are more detailed. The ICMW is by far the lengthiest core international human rights instrument, containing 93 articles. In Part III, the ICMW underlines in explicit terms that all human rights, both civil and political rights and economic, social, and cultural rights, which are found in other more general human rights instruments, apply to all persons, including migrant workers and members of their families irrespective of their legal status. Part IV of the ICMW, however, only applies to regular migrant workers and affords them more extensive rights. For example, it contains state obligations to facilitate family reunion for migrant workers and to ensure their equality of treatment with nationals in respect of access to housing, including social housing.¹⁴³ In Part V, the ICMW permits states parties to limit the rights of particular categories of migrant workers, including temporary migrants such as seasonal workers, project-tied workers, or specified-employment workers.

Part VI of the ICMW imposes obligations on all states parties to consult and cooperate with one another to ensure that international labor migration takes place in sound, equitable, humane, and lawful conditions. It includes state obligations to collaborate with a view to preventing and eliminating irregular migration, including the imposition of sanctions on those who exploit irregular migrants, such as traffickers, smugglers, and employers.¹⁴⁴ This Part, therefore, dispels the myth that the ICMW somehow promotes irregular migration. On the contrary, the ICMW sees the implementation of the provisions relating to the protection of all migrant workers, including irregular migrants, as a means to the elimination of this phenomenon.¹⁴⁵ However, the sovereignty of states

¹⁴¹ See the Table of Relevant International Human Rights Instruments Ratified by Countries in the Greater Caribbean in this volume.

¹⁴² For a detailed analysis of the ICMW, see Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Oxford: Clarendon Press, 1997), Chapter 4.

¹⁴³ ICMW, Articles 44(2) and 43(1)(d).

¹⁴⁴ *Ibid.*, Article 68(1).

¹⁴⁵ *Ibid.*, Recital 14: "Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned."

to decide on the admission of foreigners into their territory is not affected by the ICMW, which is only concerned with the treatment of migrant workers and their families during the migration process.¹⁴⁶ To date, 34 states parties have ratified the ICMW, although none of them are major receiving countries. While only seven countries have ratified the ICMW in the Greater Caribbean, five of these countries have not accepted the specific ILO instruments protecting migrant workers and therefore the ICMW has the potential to play a significant role as the norm-setting instrument regulating intra-Caribbean labor migration, particularly between Mexico and the Central American states, such as Guatemala and Nicaragua.¹⁴⁷

While there are no legally binding human rights standards pertaining specifically to migrant workers in the Greater Caribbean, in 1997 the Inter-American Commission on Human Rights established the Special Rapporteurship on Migrant Workers and Members of Their Families, with a view to promoting the human rights of this vulnerable group in the region. The appointee to the post is a member of the Commission and the current incumbent is Professor Freddy Gutiérrez Trejo from Venezuela, who was appointed for a four-year term in February 2004.¹⁴⁸ The Special Rapporteurship is charged with the specific functions of: generating awareness of states' obligation to respect the human rights of migrant workers and their families; to make recommendations to OAS member states in areas relating to the protection and promotion of their rights; to prepare reports and special studies on the situation of migrant workers; and to act promptly on petitions or communications where it is observed that the human rights of this group are violated in any OAS member state.¹⁴⁹ To date, the Special Rapporteur has visited and reported on the situation of migrant workers in the United States as well as three countries in the Greater Caribbean, namely Costa Rica, Guatemala, and Mexico. These country reports contain a wealth of important factual information on labor migration in the region, the conditions of migrant workers and their families residing and working there, the national regulatory framework pertaining to labor migration, as well as the pertinent universal and regional instruments accepted by the countries in question.¹⁵⁰

¹⁴⁶ ICMW, Article 79.

¹⁴⁷ See the Table of Relevant International Human Rights Instruments Ratified by Countries in the Greater Caribbean in this volume.

¹⁴⁸ The Special Rapporteurship was established on the basis of resolutions of the OAS General Assembly, which underlined the need to intensify efforts to protect this particularly vulnerable group of persons. See AG/RES. 1404 (XXVI-O/96) of June 7, 1996 on the Annual Report of the Inter-American Commission on Human Rights and AG/RES. 1480 (XXVII-O/97) of June 5, 1997 on the Human Rights of All Migrant Workers and their Families. For background information and the text of these resolutions, see the website of the Special Rapporteurship at <<http://www.cidh.org/Migrantes/defaultmigrants.htm>>. See also Joan Fitzpatrick, "The Human Rights of Migrants" in T. Alexander Aleinikoff and Vincent Chetail, eds., *Migration and International Legal Norms* (The Hague: TMC Asser Press, 2003), 170, para. 169.

¹⁴⁹ See the website of the Special Rapporteurship at <<http://www.cidh.org/Migrantes/migrants.functions.htm>>.

¹⁵⁰ Inter-American Commission on Human Rights, "Special Rapporteurship on Migrant Workers and their Families: Country Visit Reports," <<http://www.cidh.org/Migrantes/migrants.countryreports.htm>>.

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Stateless Persons

The 1954 Convention relating to the Status of Stateless Persons (CSP)¹⁵¹ and the 1961 Convention on the Reduction of Statelessness (CRS)¹⁵² are the two specific international instruments governing statelessness. They set out a legal framework for the treatment of stateless persons with a view to explicitly affording them a range of rights and avoiding and reducing the condition of statelessness by facilitating the acquisition of a nationality. Provision of information on the scale of the statelessness problem and the application and promotion of the normative framework is the responsibility of the UNHCR.¹⁵³ However, neither the CSP nor the CRS have been widely accepted by the states in the Greater Caribbean: seven countries have ratified the CSP and only two have ratified the CRS.¹⁵⁴ Nonetheless, it is important to recall that the international human rights treaty framework also contains important provisions of relevance to the protection of stateless persons, such as the right to recognition everywhere as a person before the law,¹⁵⁵ the general right of everyone to a nationality, which, however, is only found in the UDHR and not the international human rights treaties,¹⁵⁶ and, more specifically, the rights of children to “a name, to registration of birth and to a nationality.”¹⁵⁷ The ACHR contains some strong provisions in this respect, proclaiming in Article 20(1) that “[e]very person has a right to a nationality” and in Article 21(2) that “[e]very person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.” The value of these rights and their particular importance for the participation of migrants as members of the political and social community of their country of residence and employment was confirmed in September 2005 by the Inter-American Court of Human Rights, which ruled that the discriminatory application of nationality and birth registration laws in the Dominican Republic in respect of children born in that country, but whose parents possessed irregular immigration status, contravened the ACHR by rendering such children stateless and thus unable to access these rights as well as other important rights, such as the right to education and equal protection of the law.¹⁵⁸

¹⁵¹ September 28, 1954; 360 UNTS 117; entry into force June 6, 1960; ratified by 58 states parties.

¹⁵² August 30, 1961; 989 UNTS 175; entry into force December 13, 1975; ratified by 30 states parties.

¹⁵³ See, respectively, UN G.A. Resolution 50/152 of February 9, 1996 and UNHCR Executive Committee Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons, No. 78 (XLVI), October 20, 1995. For a brief summary of recent UNHCR activities concerning stateless persons, see UNHCR, *2004 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-Seekers, Stateless and Other Persons of Concern to UNHCR*, Population and Geographical Data Section, Division of Operational Support (Geneva: UNHCR Support, June 17, 2005), available from <<http://www.unhcr.org/cgi-bin/texis/vtx/events/opendoc.pdf?tbl=STATISTICS&id=42b283744>>. For an overview and analysis of the international principles regulating nationality and statelessness, see UNHCR, Inter-Parliamentary Union (IPU), *Nationality and Statelessness: A Handbook for Parliamentarians* (Geneva: IPU, UNHCR, 2005).

¹⁵⁴ See the Table of Relevant International Human Rights Instruments Ratified by Countries in the Greater Caribbean in this volume.

¹⁵⁵ UDHR, Article 6; ICCPR, Article 16; and ICMW, Article 24.

¹⁵⁶ UDHR, Article 15(1).

¹⁵⁷ ICMW, Article 29; ICCPR, Articles 24(2) and (3); and CRC, Article 7(1).

¹⁵⁸ *Yean and Bosico v. Dominican Republic*, Inter-American Court of Human Rights, judgment of September 8, 2005, Series C No. 130, <http://www.corteidh.or.cr/seriec/pdf/seriec_130_esp.pdf> (available in Spanish only).

Regional Trade Law Context

Free Movement of Persons in the Caribbean Community

The Caribbean Community was established in 1973 with the signing of the Treaty of Chaguaramas, bringing together all the Commonwealth Caribbean countries (Antigua and Barbuda, The Bahamas, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Montserrat), which were subsequently joined by Suriname (in 1995) and Haiti (in 1997).¹⁵⁹ The primary focus of CARICOM was to liberalize trade in goods through the elimination of tariffs and non-tariff barriers to merchandise trade within the region.¹⁶⁰

In 1989, the CARICOM heads of government announced in the Grand Anse Declaration¹⁶¹ their intention to deepen and strengthen the integration process by transforming the community into a Caribbean Single Market and Economy.¹⁶² To complete the free movement of goods, the CSME establishes a framework for the liberalization of services, the free movement of capital, skilled labor, and the freedom to establish business enterprises anywhere in the community. It is only with the CSME that the issue of *freedom of movement* was introduced in the Caribbean integration agenda, which was considered an important missing element of the earlier integration initiatives of the Caribbean Free Trade Association (CARIFTA) and CARICOM.¹⁶³

¹⁵⁹ In 1981 the seven Eastern Caribbean countries that are part of CARICOM (Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Vincent and Grenadines, St. Lucia, and Montserrat) formed the Organization of Eastern Caribbean States (OECS), and are more advanced in the integration process than the other CARICOM states.

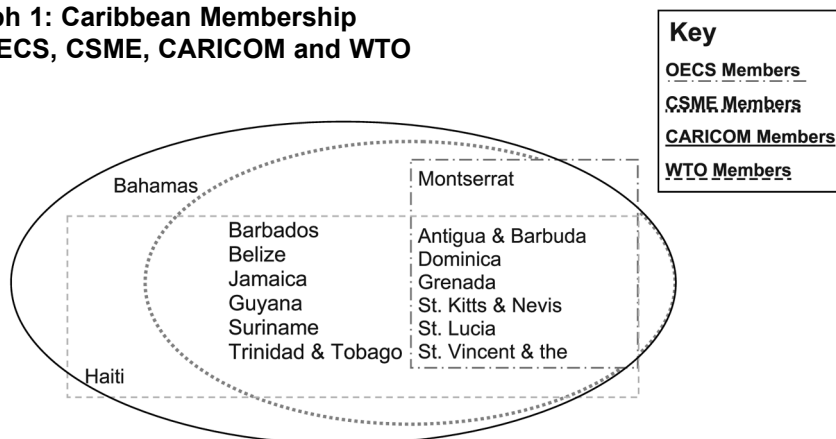
¹⁶⁰ For a discussion on the macroeconomic performance of the CARICOM countries and its connection to regional migratory flows, please refer to the article on “The Performance of CARICOM countries in the 1990s: The Current Effect on Migration and Conflict Potential” in Chapter Three of this volume.

¹⁶¹ Available on the CARICOM website, which contains the legal instruments relevant to the establishment of the CARICOM Single Market and Economy, <<http://www.caricom.org>>.

¹⁶² The deadline for the establishment of the single market covering the movement of goods, capital, skills and services, and the right of establishment was January 1, 2006 or shortly thereafter, while the single economy containing measures related to production integration, harmonization of fiscal and investment policies, monetary integration, capital market integration, and development should be completed by December 31, 2008. The CSME does not include political integration.

¹⁶³ CARIFTA is a free trade agreement that came into force in 1968 and gathered newly independent Caribbean countries (Antigua and Barbuda, Barbados, Guyana, Trinidad and Tobago, Dominica, Grenada, St. Kitts and Nevis, Anguilla, St. Lucia, St. Vincent and the Grenadines, Montserrat, Jamaica, and Belize) to unite their economies and to give them a joint presence on the international scene. In Graph I, OECS refers to the Organization of Eastern Caribbean States and WTO refers to the World Trade Organization.

**Graph 1: Caribbean Membership
in OECS, CSME, CARICOM and WTO**



The Treaty of Chaguaramas was revised by way of nine protocols, which were subsequently incorporated in the Treaty.¹⁶⁴ The revised Treaty is being applied provisionally, pending ratification by all member states in order not to hamper the implementation of the CSME.¹⁶⁵ However, only 13 states will participate in the CSME, as The Bahamas (which belongs to the Community) and Haiti (not a full member state) have not joined.¹⁶⁶

CARICOM member states, with a total population of 14 million (six million excluding Haiti), share several common features. All of them except Haiti and Suriname were former British colonies, and are English-speaking. They are small countries; most are islands (except Guyana, Suriname, and Belize). They are all developing countries, with economies relying mainly on extra-regional export of a limited number of goods, and the importance of services in their Gross Domestic Products (GDP). The region is also characterized by strong economic disparity and divergence—the difference in annual per capita income is 35:1, with The Bahamas at the top end (US\$17,432) and Haiti at the bottom (US\$557).¹⁶⁷

¹⁶⁴ Protocol II on Establishment, Services and Capital, which provides for the free movement of non-wage earners, either as service providers and/or to establish a business, entered into force in 1998, and was included in Chapter 3 of the revised Treaty of Chaguaramas. In addition, this chapter includes provisions related to the mobility of Caribbean skills nationals for employment. The initiative for “Free Movement of Skilled Community Nationals” originated in the 1989 Grand Anse Declaration, but the original concept has been modified over the years in order to facilitate the implementation of this mandate, which now follows a phased approach.

¹⁶⁵ In order to enter into force the Treaty of Chaguaramas would have to be modified, as Article 234 prescribes that the Treaty will enter into force only when *all* CARICOM members ratify the agreement, which will not be the case as not all of them have decided to be part of the CSME.

¹⁶⁶ Haiti is in fact suspended from CARICOM deliberations since the political turmoil leading to the removal of President Jean Bertrand Aristide from office in February 2004. Furthermore, Haiti’s final accession depends on the ratification by its parliament of the already agreed terms and conditions of its accession.

¹⁶⁷ Inter-American Development Bank, *CARICOM Report*, Annual Publication, No. 2, August 2005, 8.

There is no recent complete data on intra-regional migration flows available. The latest data provided from the CARICOM Census are from 1991 and indicate a stock of intra-CARICOM migrants at 105,000, equivalent to two percent of the total CARICOM population (excluding Haiti). Over a third of the intra-Caribbean migrant population resides in Trinidad and Tobago and 12 percent in Barbados, with the main source countries being Grenada (18 percent), St. Vincent and the Grenadines (17 percent), and Guyana (13 percent).¹⁶⁸ With regard to recent trends, partial evidence suggests that intra-regional migration mainly occurs towards neighboring and mostly prosperous economies, especially to those countries that have developed tourism (e.g., Antigua and Barbuda). While in The Bahamas most of the non-national workers are unskilled, in Jamaica professionals account for 46 percent of the flows.¹⁶⁹ However, countries like the U.S., Canada, and the UK exercise an even stronger attraction.¹⁷⁰ It is likely that an important share of extra-regional flows comprises low-skilled workers (e.g., agriculture workers), but professionals attracted by higher earnings have also benefited from an increased demand in certain professions, and countries like Jamaica and Trinidad and Tobago are experiencing an important out-migration of their qualified labor, particularly teachers, nurses, and other health professionals.¹⁷¹ As an indication of the importance of migration for the region, remittances accounted for six percent of regional GDP during the period from 1998 to 2003.¹⁷²

While some argue that liberalization of movement will not generate strong intra-regional flows (in line with current mobility patterns), it is nonetheless considered that the free movement of persons is a critical factor in the integration process of the CSME, especially as an important share of Caribbean economies rely on services (in particular, tourism and the off-shore financial sector).¹⁷³ It will allow, through better skill matching, for a more efficient distribution of human resources and wage arbitration. However, despite the adoption of the revised Treaty, several obstacles to free movement remain. Hence, while the Treaty calls upon member states to commit themselves to the goal of free movement of Community nationals (Article 45), it foresees a phased approach, first

¹⁶⁸ World Bank, *A Time to Choose: Caribbean Development in the 21st Century*, Caribbean Country Management Unit, Poverty Reduction and Economic Management Unit, Latin America and the Caribbean Region, April 26, 2005, 138.

¹⁶⁹ *Ibid.*, 139.

¹⁷⁰ According to the 2000 U.S. Census, the stock of migrants from the Caribbean countries was three million, mainly from Cuba, Dominican Republic, Jamaica, and Haiti. See U.S. Census Bureau, *U.S. Census 2000*, January 25, 2002, <<http://www.census.gov/main/www/cen2000.html>>.

¹⁷¹ About 460 nurses per annum are migrating from the Caribbean to Canada, the U.S. and UK. See Commonwealth Secretariat, *A Managed Temporary Movement Program for Teachers and Nurses, Preliminary Assessment of Policy for the Managed Temporary Movement of Caribbean Teachers and Nurses to Canada, the United Kingdom and the United States*, February 2005, available from <<http://www.caribank-cfd.org/docs/cfddocs/healthed%20migration%20report.pdf>>.

¹⁷² World Bank, *A Time to Choose: Caribbean Development in the 21st Century*, 212.

¹⁷³ P.W. Wickham, C.L.A. Wharton, D.A. Marshall and H.A. Darlington-Weekes, "Freedom of Movement: the Cornerstone of the Caribbean Single Market and Economy," paper prepared for the Caribbean Policy Development Center, January 2004. See also the articles on "The Performance of CARICOM Economies in the 1990s: The Current Effect on Migration and Conflict Potential" in Chapter Three and "Human Trafficking in the Context of Caribbean Labor Migration" in Chapter Four of this volume.

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allowing certain categories of skilled persons to move to another member state to perform economic activities in addition to service providers, de facto excluding most of CARICOM nationals from the benefits of free movement.¹⁷⁴ The realization of the single economy, planned for 2008, encompasses the goal of complete dismantling of restrictions on free movement within the region.

Freedom of Movement under CSME: Several Regimes

The provisions relating to the free movement of persons are found in various articles of Chapter Three of the Revised Treaty on Establishment, Services, Capital and Movement of Community Nationals (Revised Treaty).¹⁷⁵ Free movement can be exercised under three different elements of the single market: the movement of skills, the movement of services, and the right of establishment. In addition, a certain number of supportive measures to labor mobility were introduced covering social security, “hassle free travel,” and the free movement of spouses and immediate family members of Protocol II categories.¹⁷⁶ The deadline for lifting all the restrictions under Chapter III of the Treaty (and thus the restriction on free movement of persons) was January 1, 2006. Six states—Jamaica, Barbados, Belize, Guyana, Suriname, and Trinidad and Tobago are included in this group—must have completed the legal steps to participate in the trade agreement as they became the first full members of the Caribbean Single Market and Economy on this date. Another six states of the 13 planned CSME members estimated that they will be ready to join the single economy by the end of March 2006. The British territory of Montserrat, which is also a member of CARICOM, is seeking permission from the United Kingdom to become a part of the single market.¹⁷⁷

Free Movement of Skilled Community Nationals

Free movement of skills entails the right to seek employment in any of the member states and the elimination of the need for work permits. It was decided that the liberalization of the movement of skills would be done with a phased approach. The categories covered so far are university graduates, media persons, artists, musicians, and sportspersons (athletes); these persons can only exercise their right to free movement in pursuit of economic activities, not for residential purposes.¹⁷⁸ Discussions are currently

¹⁷⁴ It is estimated that a maximum of 10 percent of the CARICOM population could benefit from the Revised Treaty freedom of movement provisions, as they would be categorized as “skilled nationals.” See *Ibid.*, 9.

¹⁷⁵ Articles 32, 33, 34, 37, 45, and 46.

¹⁷⁶ This is the common reference for measures related to the freedom of CARICOM nationals to travel “into and within the jurisdiction of any Member State without harassment or the imposition of impediment” (Article 46(2)).

¹⁷⁷ Montserrat is a UK Overseas Territory.

¹⁷⁸ While the free movement initiative harks back to the Grand Anse Declaration of 1989, the Heads of State only agreed, in their 1995 Conference, on the free movement of university graduates throughout the region, which was to take effect from January 1996 (the deadline was conditional on the adoption by each member state of the proper legislation and administrative framework for processing the applications, and was not met). In 1996, the Heads of State decided to expand the categories of persons to the other four categories.

under way for the expansion of the categories of skilled persons to those possessing qualifications in the technical and vocational fields, as well as those acquiring associate degrees.

In order to demonstrate that they belong to the eligible category, CARICOM nationals should obtain a “Certificate of Recognitions of CARICOM Skills Qualifications,” which will facilitate their entry in another member state.¹⁷⁹ To facilitate the process, the establishment of an accreditation council at the national and regional level, which would establish a quality assurance framework for the registration and accreditation of tertiary level institutions, was planned. At the regional level, member states have just begun this process with the conclusion in 2005 of the Agreement on Accreditation for Education in Medical and other Health Professions.¹⁸⁰ This Agreement establishes an Authority, which will be responsible for accrediting doctors and other health care personnel across the region. The Agreement is in force among six states, including Jamaica, which will host the headquarters of the Authority. Legislation is to be drafted to enact this Agreement into domestic law. An inter-governmental agreement has still to be finalized for the creation of a regional accreditation body to oversee all accreditation and equivalency. This role could be taken up by the CARICOM Regional Organization for Standards and Quality (CROSQ).¹⁸¹

In addition to the mobility of skilled persons, Chapter III of the Revised Treaty provides for the movement of non-wage earners, either as service providers, and/or to establish a business, including managerial, supervisory, and technical staff, as well as their spouses and immediate family members (previously Protocol II categories).

¹⁷⁹ The holder of the certificate will be granted a definite entry of six months by the receiving country, which will assess their qualification during this time, and, if satisfied, will then grant indefinite entry.

¹⁸⁰ This sector was chosen because of its importance in the region, and the existence of national councils in many member states.

¹⁸¹ Article 4 of the Treaty establishing the CARICOM Regional Organization for Standards and Quality (CROSQ) stipulates that “The primary objectives of CROSQ shall be the establishment and harmonization of standards for the enhanced efficiency and improved quality in the production of goods and services in the Community, thereby facilitating consumer and environmental protection and improved trade within the Community and with third states.” At the national level, Jamaica and Trinidad and Tobago have a fully functioning accreditation body. The process of establishing Councils to regulate the licensing and professional activities of the various professions is unevenly advanced in the other member states.

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Movement of Service Providers

The Revised Treaty follows the General Agreement on Trade in Services (GATS) model and provides in Article 36 for the removal of restrictions on the provision of services according to the four modes of services delivery specified under Article 1(2) of the GATS. "Services" is further defined according to remuneration, which should be other than wages (Article 36(4)). This definition is very broad and permits movement of service providers at all skills levels as long as they are not employees.¹⁸² In this sense it is not different from the GATS, which does not include a skill threshold.¹⁸³

One main difference between the GATS and the Revised Treaty is their approach towards liberalization. CARICOM nationals should enjoy the same treatment as nationals when engaging in "approved activities" in another member state (Article 36(2)). The CARICOM member states have adopted a negative list approach, whereby all sectors and measures are to be liberalized unless otherwise specified.¹⁸⁴ In contrast, GATS pursues a positive list approach, which is less liberalizing, where countries limit their liberalization to sectors and measures included in their national schedule.

While the Revised Treaty specifies that it applies to temporary movement, as in the GATS, it does not define the period of time which is covered (e.g., one day, several months, or years). It is implied that service providers should deliver the services and leave, and they cannot take up residence (or enter the labor market) in the country in which they offer and procure the services (unless there is commercial presence). Free movement of service providers will be effective only with the removal of restrictions on certification, accreditation, and licensing, which implies establishing common standards and equivalency (Article 35). As observed above, while a regional body has been created for establishing standards and harmonizing quality of services (i.e., the CROSQ), which should ensure that a high quality of output is associated with the free movement regime, a regional body to oversee accreditation and equivalence has not yet been put in place.¹⁸⁵

¹⁸² Under the CARICOM mobility framework, two persons exercising the same profession may be subject to different rules. Their status will depend if they are wage earners or self-employed. For example, construction workers are not entitled to free movement under the "skills" element as they are not included in the eligible categories, but they are able to move as a (non-wage earner) service provider.

¹⁸³ Nonetheless, in practice, most WTO member states decided in their GATS commitments to provide access to their labor market only to highly skilled persons.

¹⁸⁴ Article 47 of the Treaty includes a safeguard clause, where restrictions on the rights provided under Chapter 3 can be applied to resolve difficulties in a sector of the economy or alleviate hardships in one region created by their application. In addition, Article 49 allows the least developed countries (LDCs) within CARICOM to seek exemption from the Chapter 3 obligations in view of their special needs and circumstances. CARICOM considers the following countries as LDCs: Antigua and Barbuda, Belize, Dominica, Grenada, Haiti, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. As a corrective mechanism, the CSME has made provision for the establishment of a Development Fund to provide relief to member states, regions or sectors disadvantaged by economic dislocations arising from the CSME, but the modalities for its functioning remain to be defined.

¹⁸⁵ National bodies exist in all countries, except Montserrat and Suriname. See Wickham, et al., 27.

Right of Establishment

CARICOM nationals can move on a more permanent basis to another member state as self-employed or independent contractors by exercising their right of establishment (also referred to as commercial presence under the services regime).¹⁸⁶ It confers the right to engage in any non-wage earning activities of a commercial, industrial, agricultural, professional, or artisan nature; as well as to create and manage economic enterprises for the production or trade in goods or the provision of services (Article 32). In addition, the right of establishment requires the removal of restrictions on the movement of managerial, technical, and supervisory staff of economic enterprises and on establishing agencies, branches and subsidiaries of companies (Article 34).

All CARICOM countries, except The Bahamas and Montserrat, are members of the World Trade Organization (WTO).¹⁸⁷ Protocol II was submitted to the WTO Council for Trade in Services for a legal opinion whether it was consistent with Article V of the GATS. This opinion is still pending. Article V allows parties to a regional agreement to maintain more favorable treatment to the parties of that agreement subject to the conditions that it has substantial sectoral coverage and that national treatment is extended to each others' services and service suppliers. A positive legal opinion will ensure that the level of treatment afforded to CARICOM nationals under the CSME will not need to be extended to other WTO members.

Side Measures to Facilitate the Movement of Persons

Some additional measures have been envisaged to ensure the smooth implementation of policies on free movement of persons. They cover the following areas: family reunion, "hassle-free travel," social security, and taxation.

The Revised Treaty provides rights to family members of the Protocol II categories (related to the provision of services) to join the principal migrant, and to leave and re-enter the state in which the right of free movement is exercised without further formalities.¹⁸⁸ However, the issue of who constitutes a dependent in the context of the Revised Treaty is defined in accordance with the income tax legislation and the social security schemes of the respective member states.¹⁸⁹ In the absence of a generalized and agreed definition of spouses and immediate dependent family members at the regional level, differences can occur within each member state as to the categories of persons covered by this mobility right and by the agreement on the transferability of social security benefits.

¹⁸⁶ With the right of indefinite stay.

¹⁸⁷ On May 10, 2001, a request for accession under Article XII was sent to the Director-General of the WTO by the government of The Bahamas. The Bahamas has not yet submitted a Memorandum on the Foreign Trade Regime.

¹⁸⁸ Article 37, 3(c).

¹⁸⁹ See "The Role of Labor in Promoting the Caribbean Single Market and Economy," lecture by Rt. Hon. Owen Arthur, Prime Minister of Barbados, to the 15th Triennial Delegates' Congress, Caribbean Congress of Labor, Paramaribo, Suriname, October 19, 2004, 41.

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Other measures supportive to the movement of skills were foreseen, although they also benefit other CARICOM nationals, namely “hassle free travel,” transfer of social security benefits, and avoidance of double taxation. With regard to “hassle free travel,” the Revised Treaty envisaged the facilitation of intra-regional mobility, recognizing for CARICOM nationals the rights to travel “into and within the jurisdiction of any member state without harassment or the imposition of impediment” (Article 46(2)(b)). In the Grand Anse Declaration, it was agreed that all CARICOM nationals should be free to travel within the community without the need for passports, with a view to enhancing a sense of community and encouraging intra-Caribbean tourism. However, difficulties in implementation were encountered, as member states could not agree on the forms of acceptable identity documents and for which nationals. The idea of the introduction of a Caribbean passport encountered a similar fate, with only Suriname and St. Vincent and the Grenadines issuing it to date; the other countries are expected to introduce the passport by 2007. Two accompanying elements were put in place more successfully: the establishment of lines for CARICOM nationals at all ports of entry, and the development and use of common embarkation/disembarkation forms.

The CARICOM Agreement on social security came into effect on April 1, 1997. It protects all entitlements to long-term benefits by providing for the “totalization” of all contributions’ periods paid to social security organizations in member states, and is operational in all member states except for Suriname (which does not have a similar social security system and is working on a system of transfer of benefits). Nonetheless, social security systems are not harmonized and related benefits are unequal among member states. Furthermore, only five countries are currently processing social security claims under the agreement (Barbados, Dominica, Guyana, St. Kitts and Nevis, and Trinidad and Tobago).¹⁹⁰ The Intra-Regional Double Taxation Agreement, which came into force in 1994, is currently enacted in all member states, except for The Bahamas, Grenada, Haiti, St. Kitts and Nevis, Suriname, and Montserrat, and precludes self-employed CARICOM nationals from paying taxes twice on the same earnings.

These positive outcomes do not eliminate the broader issue of the need for member states to put in place a satisfactory regime in respect of contingent rights, as the labor market is liberalized. Contingent rights are those rights to which member nationals and their dependents should be entitled when they exercise their option to work in another member state, for example, non-discriminatory access to educational scholarships. Thus far, the Revised Treaty has spoken only to the provision of contingent rights with respect to establishment and provision of services, via a separate protocol yet to be elaborated (Article 239).

¹⁹⁰ Inter-American Development Bank, *CARICOM Report*, 29.

Implementation of the CSME Freedom of Movement Provisions

Most of the migratory flows occurring today in the CARICOM region fall within the scope of national immigration frameworks established on a unilateral/discretionary basis. Persons willing to work must obtain a work permit and a resident permit from the receiving member state. Although the skills legislation has been adopted in most member states for more than five years, relatively few skilled persons have actually moved to other Community states.¹⁹¹ The bulk of skills movements were composed of graduates, and occurred in Barbados, Trinidad and Tobago, and Jamaica. For instance, Barbados granted free movement to 998 persons between 1996 and April 2005 (one third of these comprised Guyanese nationals and another third were nationals of Trinidad and Tobago).¹⁹² In contrast, there seems to have been more movements among unskilled persons, most of these occurring illegally, although such categories are not covered by the current regional liberalization agenda.

The implementation of the freedom of movement provisions encountered several delays with deadlines being passed and rescheduled. Problems relate not only to a lack of financial and human resources and institutional capacities, but also to a divergence of interests among countries on this issue, resulting in the lack of political will to move forward. On the one hand, there is the fear from the strongest economies that the new policy will attract workers from other states and negatively affect the unemployment rate; this is also used as a justification for maintaining restrictions on unskilled labor. This is particularly true for The Bahamas, which has lower unemployment rates and a higher per capita GDP than the Caribbean average, and which decided not to be part of the CSME process. On the other hand, less developed countries that have a small professional labor force and lack a university campus find limited advantages in a regional open market for the highly skilled, and argue that one way to level the playing field is to immediately introduce the free movement of unskilled labor. Apparently, this was one of the reasons why the OECS were not ready to join the Single Market on January 1, 2006.¹⁹³ The CSME might also suffer from a general image deficit in civil society, and as a result limited popular support, with a perceived inequitable distribution of the costs and benefits of economic integration, as well as a lack of knowledge on the exact content of free movement rights.

¹⁹¹ Havelock R. Brewster, "The Caribbean Single Market and Economy: Is It Realistic Without Commitment to Political Unity?" CARICOM, Speech delivered in Washington, DC, March 14, 2003, <<http://www.caricom.org/jsp/speeches/csme-politicalunity-brewster.htm>>.

¹⁹² Stephen McAndrew, "Migration in the CARICOM Single Market and Economy," in *Regional and International Migration in the Caribbean and its Impact on Sustainable Development: Compendium on Recent Research on Migration in the Caribbean*. Report presented at the Caribbean Expert Group Meeting on Migration, Human Rights and Development in the Caribbean, September 14-15, 2005, Port of Spain, Trinidad and Tobago, <<http://www.eclac.org/publicaciones/PortOfSpain/1/LCCARL61/L.61.pdf>> 72.

¹⁹³ Miranda La Rose, "Trinidad Proposes Registration of Service Providers under CSME," January 8, 2006, *Stabroek News*, <<http://www.stabroeknews.com>>.

Future Challenges and Recommendations for Freedom of Movement

Statistical Analysis and Monitoring

1. There is a broad consensus that better information on the effects of free movement is needed for CARICOM nationals and policy makers. This is currently impeded by the lack of statistical data on migration. As a remedy, it was decided that the CARICOM Secretariat develop a movement of skills database,¹⁹⁴ and Trinidad and Tobago also submitted a proposal to the CARICOM working group on services negotiation for a register of service providers.¹⁹⁵
 - However, to understand the impact of regional integration arrangements, it is necessary to develop the capacity to capture a broader picture, including the recording of movements taking place under national immigration frameworks, better estimates of irregular migrants, and an improved mapping of extra-regional mobility.
2. The case of service providers, such as in the tourism industry, is one example of why there is a need for better information on the linkages between intra- and extra-regional migration flows. The lack of data on service providers impedes the assessment of the potential of services' exports by Caribbean countries under the GATS Mode 4.
 - Such monitoring is critical in certain sectors, such as health and education, where negotiating market access should be based on a clear understanding of the effect of better access to developed countries' labor markets that could lead to the brain drain, while a more open Caribbean market access for these services could counteract that loss.¹⁹⁶
 - In addition to statistics and labor market analyses, evaluation of the actual implementation and operation of the regime on free movement proposals are much needed—including an assessment of the positive and negative impacts on each member state and the presentation of corrective measures—and should be developed by the Secretariat.¹⁹⁷

¹⁹⁴ McAndrew, 73.

¹⁹⁵ The aim is to facilitate their movement by making it easier for immigration officials to recognize service providers and facilitate their entry.

¹⁹⁶ UN Economic Commission for Latin America and the Caribbean (ECLAC), Sub-Regional Headquarters for the Caribbean, "The Development of Services in the Caribbean," January 17, 2003, <<http://www.cepal.org/publicaciones/PortOfSpain/7/LCCARG717/lcarg717.pdf>>, 25.

¹⁹⁷ Hon. Clement J. Rohee, Minister of Foreign Trade and International Cooperation, Guyana, "CARICOM Single Market and Economy," Address to the Georgetown Chamber of Commerce and Industry, August 23, 2005, Georgetown, Guyana, <http://www.CARICOM.org/jsp/speeches/gcci_csme_rohee.jsp>.

Decision-making Framework

1. The current state of play in the elaboration of a regional freedom of movement regime derives also from constraints emerging from the CARICOM institutional framework, which is that of a community of sovereign states operating on the basis of the unanimity rule. With the exception of the Caribbean Court of Justice, none of the institutions created to support the integration process has been given supranational decision-making powers.¹⁹⁸ In addition, the majority of the institutions lack sufficient funding. As a result, regional policy is moving at the pace of the least common denominator to forge consensus. Even when ambitious goals emerge from governmental consultations, the implementation of the decisions taken requires a separate legislative or administrative decision by every member state, which opens the way for significant delays, especially in view of the lack of effective enforcement mechanisms.
 - In order to achieve the goals of the CSME, many believe that it will be necessary to transfer some decision-making powers to a regional entity, which could speak with a common voice and act out of common interest vis-à-vis the most important areas of the process, develop new policies, and monitor progress in their implementation.¹⁹⁹
2. All member states were required to remove existing restrictions on the rights of establishment, provision of services, movement of capital and movement of skills for the full implementation of the Single Market on January 1, 2006, or shortly thereafter. Even though the legal actions should have been taken for the implementation of free movement of skills, provision of services and the right of establishment by this date, mobility will still be impeded by cumbersome administrative processes, significant variations in transposition of treaty requirements into domestic legislation (e.g., family reunion), and the absence of supportive regional instruments (e.g., accreditation body). As a result, progress on free movement has been slow. Therefore, the realization of free movement will not be achieved by 2006, and will require from member states more actions at the national and regional level.

¹⁹⁸ The Caribbean Court of Justice, in its “original jurisdiction,” is responsible for the interpretation and application of the Revised Treaty, and will have to ensure that the benefits of free movement are realized.

¹⁹⁹ The need to reform the regional governance system is acknowledged by CARICOM members themselves. In February 2003, the CARICOM Heads of State appointed a Prime-ministerial expert group on governance that, with the assistance of a technical group, provided recommendations on: (a) enhancing the functioning of the Assembly of Caribbean Community Parliamentarians; (b) the establishment of a CARICOM Commission or other Executive Mechanism; and (c) automatic financing of regional institutions. However, no actions have been taken to date.

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- CARICOM will need to continue to build its regional institutional frameworks. The establishment of a comprehensive accreditation system and an effective regional framework for the collection of statistics on migration flows, including service providers, will be key.
 - Furthermore, the free movement of persons as envisioned in the CSME to date is specifically linked to economic activities, and concerns limited categories of persons. The question of its expansion to other categories of the labor force, especially unskilled labor as well as to mobility unrelated to economic activities (e.g., for residential purposes) still has to be addressed.
3. In view of the pace of the progress on free movement, the deadline of 2008 for enabling all CARICOM nationals to access this right seems rather short. Even the realization of the more limited goal of full labor mobility, given the reluctance among member states to liberalize the movement of unskilled labor region-wide, seems improbable by that time. Therefore, free movement of persons in the Caribbean, like in other regions including the European Union, will prove to be a continuous and evolving process and require revision over a long period of time.

Economic Integration

1. Due to the small size of the region, CARICOM's integration strategy has focused on fostering intra-regional trade as a tool to improve the region's international competitiveness. The CSME was launched especially with a view to responding to the new challenges posed by a more globalized economy. It should allow, through free movement of goods, services, capital, and skilled persons, the emergence of a more efficient and dynamic regional market in a better position to take part in the integration of the global market. With regard to service providers, the creation of a regional market is expected to improve their quality and competitiveness and allow them to increasingly tap into the extra-regional market, while the CSME is expanding CARICOM's capacity to negotiate service agreements with extra-regional partners, or at the multilateral level under GATS Mode 4.

- However, if CARICOM has been successful in the past to negotiate collective trade and aid agreements, the increasing bargaining position and raised profile of individual members—as well as regional integration and world liberalization processes leading to an erosion of trade preferences in the context of declining external aid—might encourage countries to pursue their own economic interests in bilateral deals or wider regional settings²⁰⁰ (e.g., the participation of Guyana and Suriname in the Initiative for the Integration of Regional Infrastructure in the Americas).²⁰¹ The full realization of the CSME, if implemented with a more strategic decision-making framework and accompanied by targeted statistical analysis and monitoring, could serve to preserve the identity and economic space of Caribbean states in the context of a general trade liberalization trend in the Western Hemisphere and at the global level.²⁰²

²⁰⁰ Anthony Gonzales, “Searching for the Optimal Response: CARICOM and NAFTA,” in *CARICOM Perspective*, No. 65, Guyana, June 1995.

²⁰¹ However, CARICOM member states cannot offer a more favorable treatment to non-CARICOM countries. Indeed, Article 8 of the Revised Treaty reads: “Subject to the provisions of this Treaty, each Member State shall, with respect to any rights covered by this Treaty, accord to another Member State treatment no less favorable than that accorded to: (a) a third Member State; or (b) third States.”

²⁰² Inter-American Development Bank, *CARICOM Report*, 6. Despite the general trend toward trade liberalization, the achievement of a Free Trade Area of the Americas encompassing 34 countries of the hemisphere is a rather gloomy prospect.

General Conclusions and Recommendations

This article has traced the international normative (essentially legal) framework pertaining to migration in the Greater Caribbean. While only a broad overview of this framework can be provided, it is clear that there is a detailed web of measures adopted at the global and regional levels, either of relevance to migrants generally or specifically designed to protect particularly vulnerable groups of migrants, namely refugees, IDPs, non-nationals affected by conflict, victims of trafficking and smuggling, migrant workers, and stateless persons. Although many of these norms have been accepted by countries in the Greater Caribbean, the crucial question of course concerns the degree to which they have been implemented, and such an investigation is beyond the scope of this article. However, if these standards are implemented successfully, it is asserted that the potential for future conflict in the region would be greatly reduced. In this regard, the evolving international trade context and, particularly, the further development of the Caribbean Community, is an essential step in furthering this agenda as often improvements in economic development and prosperity contribute significantly to reducing the negative kinds of migration movements that may create political and economic tensions within and among states.

With a view to improving the effectiveness of the existing normative framework, the following steps are recommended for various actors alone or together:

1. The existing relevant international conventions should be ratified by all countries in the Greater Caribbean, as defined by the member states of the Association of Caribbean States (ACS). While it seems incumbent upon each state actively to consider such ratification, the relevant inter-governmental organizations should proactively promote such ratifications, including through the offer and provision of advice and technical assistance with a view to overcoming practical obstacles or concerns. Overall, some independent body of regional nature (perhaps academic or anyhow non-governmental) should compile and publish an annual report on the status of ratifications and their domestic application—notably in terms of addressing challenges and opportunities to enhance regional management from the perspective of common interests. In this connection, ACS member states should commit to bring up to date all their reports due under international conventions. On these bases, ACS member states could then cooperate issue-by-issue (with the same standards) on how best to apply standards and achieve common aims. The ACS, together with other inter-governmental organizations, could perform a facilitating role.
2. With regard to specific issues and instruments, appropriate dedicated bodies should be established or strengthened with a view to the maximization of their capacities and effectiveness. Notably, bodies such as the CROSQ should be enhanced or supplemented with responsibility and capacity to oversee accreditation and effectiveness.

3. In support of individual domestic policy, law, and practice, and of effective regional cooperation, a regional observatory should be established to compile accurate statistical and related data and to provide independent, impartial, and expert analyses of key aspects of migration within the Greater Caribbean. This could be performed by an academic center or institute. Alternatively, it could be performed by the ACS, in cooperation with other inter-governmental organizations (notably CARICOM and IOM), in service of ACS member states and in fulfillment of its general and specific mandates.
4. In connection with the above, or separately, a region-specific mechanism should be established to study issues, facilitate exchanges, provide technical assistance and promote best practices. This could include a new region-specific framework tailored to address any peculiar need and/or to fill gaps in norms, standards and institutions.
5. Through these and other progressive steps of a cooperative and problem-solving nature, migration within the Greater Caribbean may be better managed. In this respect, the existing international normative framework offers an excellent starting point. Its strengthening and effective implementation is one important element in preventing related conflict from occurring, spreading, or recurring across the region.

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Relaciones Internacionales y Derechos Humanos de los Migrantes

1.2

Gabriela Rodríguez Pizarro

Introducción

Este artículo intenta desarrollar el fenómeno migratorio desde la perspectiva de los derechos humanos de los migrantes, los cuales serán analizados a través de una mirada transversal que busca vincular el fenómeno migratorio en el Gran Caribe con la prevención de conflictos y la resolución positiva de los mismos. El principal insumo a partir del cual se hará esta contribución es la experiencia de seis años de trabajo en la Relatoría Especial para los Derechos Humanos de los Migrantes, un mecanismo especial de las Naciones Unidas.¹ El proceso de la globalización ha venido aumentando gradualmente las perspectivas migratorias, que han pasado de una gama nacional a ámbitos regionales e internacionales. Según datos del *Informe Mundial de Migración* de la Organización Internacional para las Migraciones (OIM) del año 2003:

El tema migratorio ha venido jugando un papel predominante en las relaciones internacionales y la diplomacia en los niveles bilaterales y multilaterales. Muchos gobiernos no desarrollarían hoy en día una política en el tema migratorio sin considerar el impacto de ésta en otras políticas nacionales, y sin considerar los patrones internacionales de la migración, así como las implicaciones generales en la política internacional.²

El cambio progresivo hacia un acercamiento regional y multilateral en la gestión internacional de las migraciones contribuye a que la comunidad global avance hacia un mejor manejo de la migración. La aparición de procesos consultivos regionales como el Proceso Puebla, o la Conferencia Regional sobre Migración (CRM), en América del Norte, Centroamérica y el Caribe está proporcionando, desde 1996 y de manera creciente, espacios importantes de intercambio de información, políticas e ideas relacionadas con un mejor manejo de la gestión migratoria internacional para responsables de la toma de decisiones, incluidas entidades gubernamentales y

¹ Ver Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Relatoría Especial para los Derechos Humanos de los Migrantes—Informes Anuales, 2000-2006*, <<http://www.ohchr.org/english/issues/migration/rapporteur/annual.htm>>.

² International Organization for Migration (IOM), “Managing Migration at the Regional Level: Strategies for Regional Consultation,” *World Migration 2003: Managing Migration—Challenges and Responses for People on the Move* (Geneva: IOM, 2003).

organizaciones intergubernamentales. En este artículo se consideran los aspectos más delicados del fenómeno migratorio—tomando en cuenta temas y prioridades concretas y esenciales para disminuir las violaciones a los derechos humanos de las poblaciones migrantes, y teniendo como prioridad el vínculo entre migración y la prevención y resolución de conflictos—y se ofrecen recomendaciones desde este punto de vista.

Marco Jurídico para los Derechos Humanos de los Migrantes

El marco jurídico de los derechos humanos de los migrantes es muy amplio, en el sentido de que numerosos tratados internacionales contienen disposiciones que protegen los derechos humanos de todos los seres humanos, independientemente de su nacionalidad.³ Sin embargo, el marco jurídico que específicamente trata el tema de los derechos humanos de los migrantes se ha ido perfeccionando con el paso de los años. Un hecho importante para el desarrollo de este marco jurídico, es la entrada en vigor de la Convención Internacional sobre la Protección de los Derechos Humanos de los Trabajadores Migratorios y de sus Familias, el 1 de julio de 2003, con la ratificación de la misma por parte de 20 estados miembros. Treinta y cuatro países han ratificado dicha convención y se puede prever un proceso acelerado de ratificaciones. Es interesante observar que los países de origen de los migrantes han ratificado la Convención; al otro lado, notoriamente ningún país de destino con grandes cantidades de migrantes en su territorio, con excepción de México y Chile, ha ratificado la Convención.

Se ha dicho que la Convención Internacional sobre la Protección de los Derechos de todos los Trabajadores Migratorios y de sus Familias supone una reiteración de los derechos ya recogidos en otros textos internacionales. Efectivamente, el texto de la Convención es a veces idéntico al otros instrumentos, exceptuando la sustitución del término “personas” o “individuos” por “trabajadores migratorios y de sus familias.” No obstante, la Convención aporta mejoras y garantías suplementarias en materia de derechos individuales. Al ser de carácter general, la mayoría de los instrumentos mencionados no abordan ciertas situaciones concretas en las que los derechos humanos de los migrantes quedan desprotegidos. Uno de los objetivos de la Convención es incorporar un estándar mínimo de derechos que serán respetados y garantizados por los estados partes a todos los trabajadores migrantes y sus familias bajo su jurisdicción, aun en el supuesto de que éstos residan y trabajen en el estado de acogida de forma irregular. Asimismo, se establece un mecanismo de supervisión llamado “Comité para la

³ Entre ellos se destacan la Declaración Universal de Derechos Humanos, el Pacto Internacional sobre Derechos Civiles y Políticos, el Pacto Internacional de Derechos Económicos, Sociales y Culturales, la Convención sobre la Eliminación de todas las Formas de Discriminación Racial, la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, la Convención sobre la Eliminación de todas las Formas de Discriminación Contra la Mujer, la Convención sobre los Derechos del Niño, los Convenios de la Organización Internacional del Trabajo (OIT) N° 97 y 143, relativos a los trabajadores migrantes, así como a la Recomendación de la OIT N° 86; también la Convención de Naciones Unidas contra el Crimen Organizado Transnacional y sus protocolos Contra el Tráfico Ilícito de Migrantes por Tierra, Mar y Aire y contra la Trata de Personas.

Protección de Todos los Trabajadores Migratorios y de sus Familias,” encargado de monitorear que los estados parte cumplan la Convención. Como en el caso del resto de los órganos de vigilancia de tratados, el examen de los informes periódicos presentados por los estados parte de la Convención se configura como la tarea principal de este Comité. El mandato de la Relatoría Especial para los Derechos Humanos de los Migrantes se inscribe dentro del sistema de las Naciones Unidas de protección y promoción de los derechos humanos. En concreto, es uno de los llamados mecanismos especiales de la Comisión de Derechos Humanos.

El aumento de las manifestaciones de racismo, xenofobia y otras formas de discriminación, junto con el trato inhumano y degradante contra los migrantes en diferentes partes del mundo, fueron unos de los factores que indujeron a la Comisión de Derechos Humanos a crear el Grupo Inter-gubernamental del Expertos en los Derechos Humanos de los Migrantes.⁴ Posteriormente, nombró una Relatoría Especial para los derechos humanos de los migrantes en 1999 con el mandato de “examinar los medios necesarios para superar los obstáculos a la protección plena y efectiva de los derechos humanos de este grupo vulnerable, incluso los obstáculos y las dificultades para el regreso de los migrantes que no poseen documentos o se encuentran en una situación irregular.”⁵ Dentro de las funciones que corresponden al mandato, se solicita y recibe información de todas las fuentes pertinentes (de los estados, la sociedad civil, las organizaciones sociales e internacionales, e incluso de los propios migrantes y de sus familias) sobre violaciones de los derechos humanos de los migrantes; sobre esta base se formulan recomendaciones apropiadas para impedir y remediar las violaciones de estos derechos donde quiera que ocurran. A la vez, se tiene en consideración una perspectiva de género al solicitar y analizar la información y se presta una atención especial a la situación de los niños, niñas y adolescentes no acompañados. Asimismo, el mandato promueve la aplicación efectiva de la normativa internacional pertinente sobre la materia y recomienda actividades y medidas aplicables a escala nacional, regional e internacional para eliminar las violaciones de los derechos humanos de los migrantes.⁶ Mediante otras resoluciones, la Comisión también ha pedido que se preste atención particular a ciertos aspectos, como por ejemplo el seguimiento de la Declaración y el Programa de Acción de la Conferencia Mundial contra el Racismo (Resolución 2002/62), la protección de los migrantes y de sus familias (Resolución 2002/59), la violencia contra las trabajadoras migrantes (Resolución 2002/58) y la trata de mujeres y niñas (Resolución 2002/51).

⁴ Res. 1997/15 de Comisión de Derechos Humanos, Naciones Unidas. Ver también United Nations, Commission on Human Rights, “Specific Groups and Individual Migrant Workers,” *Report of the Special Rapporteur on the Human Rights of Migrants*, E/CN.4/2000/82, para. 24, January 6, 2000.

⁵ Res. 1999/44 de Comisión de Derechos Humanos, Naciones Unidas.

⁶ Res. 1999/44 de Comisión de Derechos Humanos, Naciones Unidas.

Vulnerabilidad de la Población Migrante a las Violaciones de sus Derechos Humanos

Contrariamente a muchas creencias comunes, las violaciones a los derechos humanos de los migrantes no ocurren sólo en los estados de destino. Las violaciones empiezan en el país de origen, en que la corrupción, la desigualdad social y económica, la desigualdad de género, la violencia intrafamiliar y la discriminación crean condiciones que no permiten el arraigo de los nacionales en su propio país. Durante los dos mandatos consecutivos en la Relatoría para los Derechos Humanos de los Migrantes se identificaron algunos factores que inciden en la migración desde los países de origen; entre otros, la exclusión social y económica, los efectos de la guerra y de los desastres naturales, la oferta laboral en los países receptores y la atracción que ejercen esos países. La falta, para una gran proporción de la población, de posibilidades de disfrutar de una vida digna y brindarla a sus familias, produce una salida masiva de migrantes hacia el exterior. A menudo los migrantes dejan sus países sin tener información apropiada sobre el país de destino ni sobre el tipo de trabajo para el que serán empleados.

La trata de personas conlleva la servidumbre por deudas, el trabajo forzoso, a menudo en condiciones de esclavitud, así como la prostitución forzada y otras formas de explotación sexual. Todas estas prácticas constituyen violaciones a derechos humanos fundamentales, como la dignidad y a la seguridad de las personas, las condiciones justas y favorables de trabajo, la salud, la igualdad y no ser sometido ni a la esclavitud ni a la servidumbre. Existen formas violatorias de los derechos humanos de los migrantes que afectan a su salud física y mental. Las conductas discriminatorias perpetuadas contra la primera y la segunda generación de migrantes deben ser analizadas desde una perspectiva de prevención de conflictos, porque se observan no sólo en diferentes regiones del mundo, sino también en el Gran Caribe. La tendencia a relacionar a los migrantes con colapsos en la seguridad social o la educación de los países receptores los obliga a enfrentar cargas psicoafectivas de rechazo que sufren continuamente; las consecuencias para las nuevas generaciones de hijos e hijas de discriminados pueden llevarlas a profundas acciones violentas. Este aspecto pasa desapercibido en las diferentes investigaciones que analizan el fenómeno migratorio.

Es importante señalar que la protección consular de los nacionales que se encuentran en situación de migración irregular es uno de los ejes fundamentales en la prevención de violaciones a los derechos humanos de los migrantes, especialmente para las mujeres y los niños, niñas y adolescentes no acompañados. En materia de detención administrativa de inmigrantes indocumentados, se observa la violación del principio de no discriminación cuando esas personas son internadas en centros de detención sin posibilidad de apelar a un tribunal de justicia para esclarecer si su detención es legal. En estos casos, las personas son discriminadas en el ejercicio de su derecho básico a la libertad y seguridad jurídicas y se les niega un recurso efectivo contra la medida policial arbitraria. Esta situación tendería a generalizarse en el marco de la aplicación de medidas nacionales en la lucha contra el terrorismo, cuando se restringen o se suspenden las

garantías procesales que deben acompañar a toda persona detenida. Estas medidas plantean con frecuencia problemas de discriminación contra los migrantes y, por ello, se subraya la necesidad de su compatibilidad con las obligaciones internacionales de derechos humanos. Asimismo, contribuyen a que la consideración de la inmigración como una cuestión de seguridad siga avanzando y primando sobre todos los demás aspectos del fenómeno, incluidos los derechos humanos.⁷ Por otro lado, el terrorismo internacional está creando en determinados países un clima de desconfianza social y sospecha contra el extranjero que afecta especialmente a los inmigrantes y, pese a los esfuerzos de muchos gobiernos, los ataques contra las minorías van en aumento.⁸

Durante los seis años de trabajo de la Relatoría Especial se insistió sobre el importante rol que debe ejercer la responsabilidad compartida de los estados en todo el proceso migratorio; en otros términos, el fenómeno migratorio es dinámico y no se puede aislar a un solo país. Los ciudadanos de un país de origen de la migración regular o irregular tienen derecho a que su país se responsabilice de sus ciudadanos y colabore con los países de tránsito y de destino de los migrantes para hacer de la migración un fenómeno seguro y ordenado. La protección consular, la documentación adecuada y el acompañamiento cercano de sus propios nacionales en condiciones difíciles o de detención administrativa, deben ser asumidos por los estados de origen de los migrantes, no sólo para colaborar con el estado de acogida, sino como una respuesta a los migrantes mismos, que colaboran positivamente a través de remesas que pueden y deben ser fuentes de desarrollo humano sostenible.

Interpretación del Proceso Migratorio en el Gran Caribe, Cooperación Multilateral e Iniciativas Regionales

Compuesta de 25 países independientes, varias dependencias y territorios extranjeros, la región del Gran Caribe registra altas tasas de emigración.⁹ El 80 por ciento de los 37 millones de habitantes de la región es nacional de las tres islas más grandes (Cuba,

⁷ United Nations, Commission on Human Rights, "Specific Groups and Individual: Migrant Workers," Report of the Special Rapporteur on the Human Rights of Migrants, E/CN.4/2003/85, para. 25-38, December 30, 2002; United Nations, General Assembly, 58th Session, *Human Rights Questions: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, A/58/275, párr.6, August 12, 2003; y United Nations, General Assembly, 59th Session, *Human Rights Questions: Human Rights questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, A/59/377, párr. 55, September 22, 2004.

⁸ En su informe anual sobre racismo y xenofobia, el Observatorio Europeo sobre el Racismo y la Xenofobia cifra en miles los casos de agresiones y de violencia por motivos racistas ocurridos en los Estados Miembros de la Unión Europea durante el año 2003. Ver European Monitoring Center on Racism and Xenophobia (EUMC), *Racism and Xenophobia in the EU Member States: Trends, Developments and Good Practice, EUMC—Annual Report 2003/2004*, Part 2, 48-67, <<http://eumc.eu.int/eumc/material/pub/ar03/AR0304p2-EN.pdf>>.

⁹ El "Gran Caribe," en su más amplia definición, que abarca a los 25 estados miembros de la Asociación de Estados del Caribe (AEC), está formado por Antigua y Barbuda, las Bahamas, Barbados, Belice, Colombia, Costa Rica, Cuba, Dominica, El Salvador, Granada, Guatemala, Guyana, Haití, Honduras, Jamaica, México, Nicaragua, Panamá, la República Dominicana, Santa Kitts y Nevis, Santa Lucía, San Vicente y las Granadinas, Suriname, Trinidad y Tobago y Venezuela.

Jamaica y Hispaniola) y siempre han tenido una fuerte tendencia migratoria, tanto intra-regional como extra-regional. En los Estados Unidos y Puerto Rico, por ejemplo, los inmigrantes provenientes de Haití y de la República Dominicana representan casi tres millones de habitantes.

Actualmente, cada vez más personas salen de sus países de origen en busca de un mejor nivel de vida. Estos flujos se originan principalmente en el contexto de desastres naturales, conflictos internos, inestabilidad económica, pobreza, desempleo y reunificación familiar. Las causas de la salida masiva de migrantes hacia otros países son múltiples, de manera que no se trata de un fenómeno unicausal. La salida constante de dominicanos y haitianos de su país hacia Puerto Rico, los Estados Unidos y países del Gran Caribe es un fenómeno que forma parte de esta realidad. El Caribe centroamericano se ha ido transformando en el último quinquenio en una zona de países receptores de cantidades importantes de inmigrantes en tránsito hacia México y los Estados Unidos. Esta dinámica ha hecho de esta región una zona en movimiento constante. Es importante señalar que en toda esa región también se localizan migrantes en detención administrativa, ya que la gran mayoría de ellos se encuentra en condiciones de migración irregular.

La crisis política y socioeconómica de Haití actualmente es una de las mayores causas de la emigración de sus ciudadanos hacia la República Dominicana, los Estados Unidos y la región del Gran Caribe. Sin embargo, la tendencia emigratoria de Haití precede a la crisis actual; más de la mitad de los haitianos que viven en los EE.UU. emigró durante la década de los noventa, en un intento de escapar de difíciles condiciones persistentes.¹⁰ La razón de estos movimientos se debe a una combinación de factores coyunturales: la dificultad para encontrar trabajo y recursos en Haití, la aspiración de las personas de vivir el “sueño americano” incrementado por la diáspora y la dificultad de acceso a servicios básicos.

En el informe del 2003 a la Comisión de Derechos Humanos de las Naciones Unidas, la Relatoría Especial para los Derechos Humanos de los Migrantes describe numerosas situaciones en que haitianos han sufrido presuntas violaciones a sus derechos humanos en la República Dominicana. Casos de deportación, expulsión o discriminación son comunes en la vida cotidiana de los migrantes haitianos, tal como se documentó en esa ocasión. La denegación de la nacionalidad dominicana a descendientes de haitianos nacidos en la República Dominicana es otra de las formas de violación a sus derechos humanos. Sin embargo, el caso República Dominicana-Haití no es el único en la región. Con características similares, Costa Rica tradicionalmente se ha perfilado como un país de destino de migrantes intra-regionales y principalmente migrantes provenientes de Nicaragua, donde es importante la cantidad de migrantes en condiciones administrativas irregulares. Durante el período 2004-2005, la Relatoría dio a conocer al gobierno de

¹⁰ *Le Monde Diplomatique*, “Manipulations À L’heure Des Élections: Derrière la Violence des Gangs du Salvador,” mars 2004, <<http://www.monde-diplomatique.fr/2004/03/REVELLI/11063>>.

Costa Rica casos de menores ecuatorianos y guatemaltecos no acompañados que viajaban clandestinamente con el apoyo de redes de tráfico ilícito de migrantes, para reunirse con sus padres.¹¹

De la misma forma se reportaron casos de violaciones de los derechos humanos de los migrantes en la región, que ilustran la posición de extrema vulnerabilidad en la que se encuentran. Los migrantes son víctimas de redes criminales de trata y tráfico ilícito de personas, de ataques xenófobos por parte de grupos extremistas, de explotación laboral y malos tratos perpetrados por sus empleadores; también de abusos de autoridad de funcionarios públicos. Las mujeres migrantes y los menores no acompañados son, por su condición, aún más vulnerables a los abusos; situación que no sólo se da en los países de destino, sino que también se ha denunciado en los países de tránsito y de origen. Los migrantes temen denunciar estos abusos debido a su condición jurídica irregular y por miedo a ser descubiertos, detenidos y deportados.

Asimismo, las actuales tendencias migratorias señalan claramente un movimiento de poblaciones indocumentadas de la región del Gran Caribe, especialmente Centroamérica, hacia los Estados Unidos, México y Canadá. Debido a presiones socioeconómicas y políticas, el proceso migratorio muchas veces se considera como una amenaza para la población y los gobiernos locales. La discriminación y la xenofobia que sufren los migrantes durante el proceso migratorio se inician en el país de origen. Desgraciadamente, la violencia contra los migrantes en forma de sentimientos xenófobos y racistas ha ido en aumento en los últimos años, teniendo como consecuencia en muchos casos su tortura y su muerte.

Los actos de discriminación en el trabajo se producen con mayor intensidad contra la población migrante y los abusos por el sexo o por grupo étnico quedan impunes en la mayoría de los casos, debido a la situación de indocumentados de muchos migrantes. El término “migrante ilegal,” que se está utilizando de manera extendida, hace que se asocien erróneamente los migrantes indocumentados con la categoría de criminales. Sin embargo, es bastante claro que una migración ordenada apropiadamente en el Gran Caribe puede ser beneficiosa, tanto a nivel nacional como binacional, regional e internacional.

Conferencia Regional de Migración

A diferencia de lo ocurrido en la región del Caribe, Centroamérica y Norteamérica han generado procesos consultivos regionales sobre las últimas décadas como resultado de cambios en la visión de la gestión migratoria. En 1996, los gobiernos de los Estados Unidos, Canadá, México, Centroamérica, la República Dominicana y Panamá formalizaron el Proceso Puebla o Conferencia Regional de Migración, integrada por los

¹¹ United Nations, Commission on Human Rights, “Specific Groups and Individual: Migrant Workers,” *Report of the Special Rapporteur on the Human Rights of Migrants*, E/CN.4/2005/85/Add.1, December 27, 2004.

Viceministros de Relaciones Exteriores y los Directores de Migración, para asumir los nuevos retos del fenómeno migratorio y como un esfuerzo tendiente a crear un mecanismo multilateral para discutir las políticas y prácticas relacionadas con los flujos migratorios.¹² Los países miembros de la CRM se encuentran comprometidos con el movimiento ordenado de personas, el respeto a los derechos humanos de los migrantes y el intercambio de información sobre políticas o prácticas relacionadas con la migración internacional.

Desde sus inicios, la CRM incluye en su agenda el desarrollo, la equidad de género, la gestión de las migraciones y los derechos humanos de los migrantes. Asimismo, la CRM incorporó a las organizaciones no gubernamentales (ONG) nacionales y regionales como interlocutores del proceso, además de contar con la colaboración activa de la OIM.¹³ Se otorgó, también, el estatus de observador al Alto Comisionado de Naciones Unidas para los Refugiados (ACNUR), a la Comisión Económica para América Latina y el Caribe (CEPAL), a la Comisión Interamericana de Derechos Humanos (CIDH) y a la Relatoría Especial para los Derechos Humanos de los Migrantes de la Comisión de Derechos Humanos de las Naciones Unidas. Los gobiernos de Argentina, Colombia, Ecuador, Jamaica y Perú han participado también en calidad de observadores.

En el marco de la CRM, existe una Red de Funcionarios de Enlace para el combate de la Trata de Personas y el Tráfico Ilícito de Migrantes en los niveles gubernamentales además de una Red de Protección Consular donde también participan ONG. Cabe destacar que la Convención Internacional sobre la Protección de los Derechos Humanos de los Trabajadores Migratorios y de sus Familias no ha sido ratificada por ninguno de los países de la región del Caribe aunque sí por Belice, Colombia, Ecuador, El Salvador, Guatemala y México—países que, sin duda, tienen una relación estrecha con la región a través del fenómeno migratorio que se ha desarrollado entre regiones.

Contexto General:

Las Migraciones en el Contexto Global y las Iniciativas Globales

Durante dos períodos consecutivos de tres años cada uno, desde el trabajo de la Relatoría Especial de los Derechos Humanos de los Migrantes, se ha podido observar *in situ* cómo la dinámica del fenómeno migratorio se incrementa; la región del Caribe no es ajena a este incremento. Desde hace 10 años se comprueba la tendencia de los estados a desarrollar procesos regionales sobre migración: la Conferencia Regional sobre Migración o Proceso Puebla, la Conferencia Suramericana de Migración, el Grupo de Budapest, la Comunidad de Estados Independientes (CIS) y la Conferencia de Cooperación del Mediterráneo Oeste (5+5). En estas iniciativas, participan estados, organismos intergubernamentales y organizaciones sociales cuya agenda incluye el

¹² Ver el sitio web de la Conferencia Regional Sobre Migración, <<http://www.crmsv.org>>.

¹³ La secretaría técnica de la Conferencia funciona en las oficinas de la OIM en San José, Costa Rica.

control de fronteras, situaciones vinculadas a la seguridad humana, manejo de centros de detención de migrantes y convenios bilaterales, fundamentalmente relacionados con la gestión de la migración, sin olvidar toda la complejidad que significa. Cabe recordar que lo acordado en los procesos consultivos de carácter regional no es vinculante: se privilegian los espacios informales de discusión franca, dirigidos al intercambio de experiencias, informaciones y opiniones, pero los estados parte de estos procesos no están obligados a cumplir lo que ahí se recomiende.

Es interesante observar cómo el proceso migratorio en la región del Caribe se ha desarrollado dentro de un marco más bien bilateral, a pesar de que muchos de los países en la región son estados partes de la Conferencia Regional de Migración. Según el informe de la Organización Internacional para las Migraciones para el año 2003, la respuesta de los gobiernos a los cambios en los patrones migratorios ha sido primordialmente ad hoc y mediante acuerdos bilaterales en temas como la migración laboral, empleo, readmisión, manejo de remesas y control de fronteras. Sin embargo, es una tendencia global que tales acuerdos se complementen con procesos multilaterales.

La Iniciativa de Berna

Al nivel global, la Iniciativa de Berna ha sido un espacio importante: “un proceso consultivo que involucra a estados y que ha sido impulsado por el gobierno suizo en el verano del año 2001, con el propósito de fortalecer la gestión migratoria de los gobiernos.”¹⁴ Se han llevado a cabo consultas regionales en Addis Ababa, Etiopía, para África; en Budapest, Hungría, para Europa y Asia Central; en Guilin, China, para Asia y el Pacífico; y en Santiago de Chile para las Américas. Las consultas regionales de la Iniciativa de Berna tomaron en cuenta los Acuerdos de Cotonú de junio del año 2000, referidos a la cooperación para el desarrollo, cooperación técnica y de gestión de los flujos migratorios, incluyendo el retorno de migrantes irregulares a sus países de origen y respetando los derechos de los migrantes desde la Unión Europea hacia los países de África, Caribe y el Asia del Pacífico.

En la reunión mundial de la Iniciativa de Berna, posterior a todas las consultas regionales, se presentó la “Agenda Internacional para la Gestión Migratoria.”¹⁵ Este documento contiene los insumos de todas las consultas de diferentes regiones del mundo. Es un gran avance contar con este excelente documento de trabajo sobre la migración al nivel global, que si bien versa sobre la administración de las migraciones al nivel mundial, se constituye en un instrumento del proceso de administración de la migración; incluye los derechos humanos y la corresponsabilidad de los estados en toda la dinámica migratoria; apartados especiales sobre control de fronteras, derechos

¹⁴ Berne Initiative Consultations, *Managing International Migration through Cooperation: The International Agenda for Migration Management*. Berne, Conference II, December 16-17, 2004.

¹⁵ Ibid. La “Agenda Internacional sobre la Gestión Migratoria” fue presentada en la reunión final de la Iniciativa de Berna en diciembre del año 2004.

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humanos, la migración laboral, migración y refugio, migración irregular, migración regular, integración de migrantes, naturalización y ciudadanía, retorno de migrantes, migración y desarrollo, migración y salud, migración y medio ambiente, entre otros.¹⁶ Esta agenda debe estar disponible para colaborar con los estados en la gestión de la migración, servir de insumo para la Comisión Mundial e implementarse nacional, regional y globalmente con la asistencia de la OIM como asistente de los gobiernos en esta tarea.¹⁷

La Comisión Mundial sobre Migración Internacional (GCIM)

El Secretario General de las Naciones Unidas, Kofi Annan, en su informe a la Asamblea General de las Naciones Unidas del año 2002 señaló el fenómeno de las migraciones como una prioridad para la comunidad internacional.¹⁸ A partir de esa declaración el Secretario General estableció un Grupo de Trabajo en Migraciones para presentar un informe confidencial a la Secretaría General y a un Grupo de Alto Nivel en la Administración de la Migración. El informe hizo énfasis en varios aspectos clave del fenómeno migratorio: seguridad humana y migración, migración laboral y sus consecuencias, migración y desarrollo, asilo, integración de los migrantes y cooperación inter-estatal. A su vez desarrolló una serie de recomendaciones, entre las que se destacan las de cerrar las brechas en la normativa y las políticas sobre migraciones, llenar los vacíos institucionales en el sistema internacional y crear una Comisión Mundial para las Migraciones Internacionales.

En julio del 2003, el Secretario General se reunió con representantes de los estados de Brasil, Marruecos, Filipinas, Suecia y Suiza, a fin de discutir el establecimiento de la Comisión. Los representantes de los estados mencionados definieron el mandato de la Comisión Mundial e invitaron a representantes de otros gobiernos a participar en un grupo abierto, para conformar la Comisión y revisar el mandato.¹⁹ Fue así como en diciembre del 2003 este grupo de representantes llevó a cabo el primer panel global en migraciones internacionales en Ginebra, con el apoyo oficial de la Secretaría General de las Naciones Unidas y los gobiernos participantes.

¹⁶ Ibid.

¹⁷ En todo el proceso desde julio de 2001 hasta diciembre de 2005 durante la Iniciativa de Berna, la Organización Internacional para las Migraciones fungió como secretariado a través de "IOM's Migrations Policy and Research Department."

¹⁸ Naciones Unidas, Asamblea General, *Fortaleciendo las Naciones Unidas: Una Agenda para Promover el Cambio*, A/57/387, 11 de junio de 2004.

¹⁹ Australia, Bangladesh, Bélgica, Brasil, Canadá, Egipto, Francia, Alemania, Hungría, India, Indonesia, Irán, Japón, México, Marruecos, Holanda, Nigeria, Noruega, Pakistán, Filipinas, Sudáfrica, Sri Lanka, Suecia, Suiza, Turquía, Reino Unido, la Santa Sede y la Unión Europea.

El mandato oficial de la Comisión Mundial se expresa en los siguientes lineamientos: a) incluir en la agenda global el tema de las migraciones internacionales para promover un diálogo comprensivo entre gobiernos, organismos internacionales, entidades académicas, la sociedad civil, el sector privado, los medios de comunicación y otros actores de aspectos migratorios y otros temas relacionados con la migración; b) analizar los vacíos en las tendencias actuales sobre política migratoria y examinar los puntos de encuentro con otras áreas temáticas para enfocar los diversos acercamientos y perspectivas de los interlocutores en diferentes regiones, así como las relaciones entre la migración y otros temas globales que impactan y dan lugar a las migraciones; y c) presentar recomendaciones a la Secretaría General de las Naciones Unidas y otros interlocutores, para fortalecer la gobernabilidad migratoria en los ámbitos nacional, regional y global.

La Comisión Mundial inició sus actividades en enero de 2004. A partir de esa fecha se acordó un período de 14 meses, dentro de los cuales se llevarían a cabo cinco audiencias o consultas regionales, en las que participarían representantes de los gobiernos, ONG, organizaciones regionales, expertos, medios de comunicación, corporaciones, sindicatos de trabajadores y otros interlocutores.²⁰ Además se desarrollarían seminarios temáticos con ONG, asociaciones de migrantes, sector privado, sindicatos de trabajadores, medios de comunicación y otros interlocutores.

Cada consulta o audiencia regional comprendió cuatro temas principales: dimensiones económicas de la migración internacional; migraciones irregulares; migrantes en las sociedades y derechos humanos de los migrantes; y gobernabilidad de la migración internacional. El resultado final del trabajo de la Comisión Mundial fue un informe final hasta el año 2005, dirigido a la Secretaría General y otros interlocutores. Este informe orienta opciones estratégicas en conjunto con la definición de acciones o pasos concretos a tomar en cuenta. La Comisión también producirá informes intermedios, acuerdos, actividades específicas de investigación, publicaciones y otros materiales relevantes; además de desarrollar actividades extensivas de intercambio de información, así como un sitio web.

La Relatoría Especial para los Derechos Humanos de los Migrantes ha participado activamente en este proceso; fue invitada a las diferentes reuniones y se entregaron aportes, documentos y recomendaciones para esta importante Comisión. Dentro de las labores de la Comisión Mundial, se creó un grupo de trabajo sobre género y migración, el cual ya entró en funciones. Esta iniciativa contó particularmente con el apoyo de la Relatoría así como los aportes y colaboración de la OIM y otras organizaciones afines.

²⁰ Asia y el Pacífico, Mediterráneo y Medio Oriente, Europa, África Subsahariana y las Américas.

Conclusiones

La complejidad del mundo globalizado actual, el manejo de políticas restrictivas desde los países de destino de migrantes y la indiferencia de los países de origen de la migración (generalmente países pobres o países en conflicto interno), han cambiado la interpretación de la migración, pasándose de una perspectiva solamente laboral a una vinculación del tema con la prevención de conflictos que generan violaciones de los derechos humanos de los migrantes.

Durante las visitas que se llevaron a cabo desde la Relatoría Especial para los Derechos Humanos de los Migrantes, se ha reafirmado que la protección de los derechos humanos de los migrantes se vincula directamente con la gestión de los flujos migratorios y no debe quedar como un tema aislado de su contexto, siendo esta correlación una de las primeras variables a tener en cuenta en la prevención de conflictos. Así también, el establecimiento, por parte de los estados, de políticas migratorias acordes al derecho internacional no es incompatible con la soberanía que ejercen los estados para controlar sus fronteras y la entrada de personas en su territorio. Es importante señalar que entre el establecimiento de las políticas migratorias estatales y regionales y su puesta en práctica existen ciertas contradicciones para su ejecución, relacionadas fundamentalmente con el tema humanitario y las políticas de refugio. Todo el proceso migratorio debe desarrollarse en un contexto de dignidad para los migrantes, reflejando las obligaciones de los estados en materia de derechos humanos.

Recomendaciones

1. Es necesario desarrollar un marco general de gestión y prevención de la migración irregular, empezando desde los estados de origen. Esto podría dar pie a la definición de metodologías para la resolución de los conflictos que, en materia migratoria, se gestan desde los propios lugares de origen.
2. Se debe reconocer que en este fenómeno dinámico en el que intervienen diversos actores, los estados de origen, tránsito y destino comparten la responsabilidad de dar una respuesta articulada y digna a los problemas enfrentados por los migrantes y a los desafíos sociales que la migración implica. La responsabilidad compartida de los estados es el eje fundamental alrededor del cual debe girar una política migratoria respetuosa de los derechos humanos y de los compromisos jurídicos internacionales, la cooperación para asumir adecuadamente sus obligaciones respecto de los migrantes y en la que cada estado debe desempeñar un rol distinto en función de su condición de país de origen, tránsito o destino.
3. En virtud del principio universalmente reconocido de la no discriminación, los estados tienen la obligación de proteger los derechos humanos de todas las personas que se encuentran en su jurisdicción, independientemente de su nacionalidad y condición migratoria.

4. Los migrantes potenciales desde sus países de origen, deben estar informados sobre los riesgos de utilizar las vías de los agentes del crimen organizado transnacional, (coyotes, polleros, pasantes) a su vez, el estado de origen debe asumir y agudizar las medidas de prevención de la salida irregular de sus ciudadanos.
5. Se debe incorporar al tratamiento del fenómeno migratorio en prevención de conflictos, los aspectos de salud (incluida la salud mental), particularmente en el estudio, prevención y atención de las consecuencias para la segunda generación de migrantes, hijos cuyos padres han sufrido xenofobia, exclusión y discriminación en el país receptor.
6. Los migrantes víctimas de la trata de personas en situación de migración internacional deben recibir atención especializada en su integridad psicoafectiva, en su condición de sujetos dañados, no sólo en lo que atañe a su vida personal, sino que el traumatismo sufrido en manos de tratantes debe constituir una parte crucial de su rehabilitación integral y su nuevo proyecto de vida.
7. Las iniciativas bilaterales, regionales y globales esbozadas en este artículo propician la aplicabilidad a la resolución de conflictos, ya que a partir del intercambio entre los actores clave se muestra cómo la comunidad internacional ha asumido el fenómeno migratorio con una perspectiva dinámica, respetando los derechos humanos de los migrantes e incluyendo su impacto en el desarrollo humano sostenible. El futuro de la migración empieza a ser visto como una fuente de dignificación del trabajo de millones de hombres y mujeres que contribuyen al desarrollo y que comienza a vislumbrarse desde una perspectiva internacional responsable.
8. En relación con la prevención del tráfico ilícito de migrantes, no se puede evadir una discusión profunda sobre el ordenamiento de los flujos migratorios en los lugares en que existe una demanda real de inmigración. A su vez es necesario desarrollar políticas eficaces de prevención de la migración irregular, empezando en los países de origen a través de la adecuada documentación de los nacionales, campañas informativas y la generación de condiciones de arraigo a estos países.

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Chapter 2

Mixed Migratory Flows in the Caribbean

Article 2.1 Migration Management Challenges
in the Caribbean
Berta Fernández-Aldaro and Gerard Pascua

Article 2.2 Effectively Identifying, Protecting and Finding
Durable Solutions for Refugees
Janice Marshall

Migration Management Challenges in the Caribbean

2.1

Berta Fernández-Alfaro and Gerard Pascua

Introduction

The Caribbean forms a diverse region, which in its most encompassing definition includes 16 independent nations and 12 dependencies, territories, or possessions.¹ These governments and societies, multi-ethnic and multi-cultural in nature, individually and collectively face numerous challenges, with the management of migration flows among the most daunting and pressing. The presence of even a relatively small numbers of migrants, especially those with distinct linguistic and cultural traditions, can have a disproportionate impact on host countries, which often already operate with limited resources and capacities. As a result, inter-ethnic tensions and resentments can—and do with some regularity—cause outbreaks of violence. Moreover, latent conflicts of interest based on historical differences among stakeholders can emerge due to competing political, economic, and social demands. Effective migration management, undertaken within the framework of a rigorously comprehensive policy, is therefore an essential preventative measure in fostering and, equally important, maintaining social stability and cohesion.

The region is characterized by a very fluid internal movement of persons, as well as by a significant flow-through of non-Caribbean migrants in transit. Lack of economic opportunity coupled with historic patterns of movement in addition to, in some cases, devalued human rights observance and unstable governance serve as powerful stimuli influencing the migration of Caribbean peoples, both within and outside the region. Moreover, geographic proximity to the U.S. and oftentimes weak institutional capacity on the part of host governments to reduce irregular migration contribute to the use of the Caribbean as a transit area for north-bound migrants from outside the region. Irregular migration, migrant smuggling, human trafficking, the spread of HIV/AIDS, brain-drain, mass outflows of migrants, and the return and deportation of aliens have all come to form parts of the current migration dynamics in the Caribbean.²

¹ For the purposes of this article, the geographical definition of the Caribbean will be limited to the Insular Caribbean, which is a less expansive group than the Greater Caribbean.

² According to the International Organization for Migration, a deportee is a person “who has refused a lawful order to depart, committed criminal offenses, or cases where the removal of a person from the host State would be conducive to the public good.” See, IOM, *Glossary on Migration-International Migration Law* (Geneva: IOM, 2004), available online at <http://iom.int/iml/migration_law_publications.htm#glossary>. For a discussion on current migration issues facing the Caribbean, see IOM, *World Migration Report* (Geneva: IOM, 2005).

This article provides an overview of current migration-related challenges in the region. First, it will examine current migratory flows and tendencies, including brain-drain and diaspora networks; integration and labor-related aspects of migrant populations including deportees; irregular and regular migrants; and the spread of the HIV/AIDS pandemic. Second, this article will analyze the present complexities of managing migration flows in the region, whether as part of regular, normal migration processes or as mass outflows as a result of natural disasters or violence and political unrest. In doing so, the article will systematize the most pressing migration-related concerns expressed during consultations held with representatives of Caribbean governments, while offering recommendations as to how to address them.³

Regional Context: A Brief Portrait

A Common Identity and Heritage

The Caribbean region encompasses a mixture of cultures, ethnicities, languages, cuisines, and idiosyncrasies. That uniqueness translates, nevertheless, into a common identity that transcends the traditional geographic limits. In the same way the Mediterranean Sea acts as a unifying factor, the countries that touch the Caribbean Sea—whether insular or continental—share a sense of cultural affinity. In that context, population flows have played a key role in Caribbean life and in the creation of Caribbean nations. Major migration flows occurred during periods of colonization by France, Spain, England, and the Netherlands and the subsequent rise of the sugar and oil industries, as well as following the abolition of slavery in the nineteenth century and during the period of post-independence of the twentieth century.

Migration in the Caribbean takes various forms: intra-regional, extra-regional and inter-regional.⁴ Intra-regional is the least prevalent, estimated at 500,000 people or 10 percent of overall migration in the Caribbean.⁵ Haiti, the Dominican Republic, Guyana, and Jamaica are the main sending countries to other Caribbean destinations, while The Bahamas, the British and U.S. Virgin Islands, and the Turks and Caicos Islands (TCI) are the main receiving countries and territories. Jamaica, Cuba, and Trinidad and Tobago are strong exporters of qualified labor, particularly teachers, nurses, and other health professionals. Family ties, geographic proximity, and the English language make the U.S., Canada, and the United Kingdom preferred destinations for Caribbean migrants.⁶

³ Consultations took place during the Annual Joint IOM/United Nations High Commissioner for Refugees (UNHCR) Caribbean Seminar on Mixed Migratory Flows, as well as during the course of a number of assessment missions to 13 Caribbean countries to gather information on migration management.

⁴ Elizabeth Thomas-Hope, "Migration in the Caribbean," International Migration Policy Seminar, Dominican Republic, 2002.

⁵ James Ferguson, *Migration in the Caribbean: Haiti, the Dominican Republic and Beyond* (London: Minority Rights Group International, July 2003).

⁶ UN Economic Commission for Latin America and the Caribbean (ECLAC), "Regional and International Migration in the Caribbean and its Impact on Sustainable Development," Expert Group Meeting on Migration, Human Rights, and Development in the Caribbean, Port of Spain, September 14-15, 2005.

Phenomenon of the Migrant Diaspora

The existence of a large diaspora of Caribbean nationals abroad contributes valuable resources in terms of monetary remittances and acquired knowledge and skills for the region. Indeed, diaspora communities can promote social exchange, exercise political influence, and pursue low-scale development goals in their country of origin.⁷ The reverse side of the situation is the so-called “brain-drain,” which is seen by some as a “devastating loss to the country’s political economy of those with the cultural capital needed for development transformation.”⁸ This term is becoming increasingly controversial and challenged by academics that see remittances as a natural balance to the brain-drain.⁹ Even though there is evidence for this, Caribbean societies still have a negative perception of the consequences of the loss of skilled and educated nationals, such as those in the medical or education professions, as it may be an indicator of instability in the home country or dissatisfaction due to wages, working conditions, or hours. The loss of skilled workers is increasingly a concern and, although migrants are perceived as mostly male, unskilled, and often “threatening” to social order, most Caribbean migrants are in fact women, and as a group their educational and skill levels are well above average.¹⁰

According to the United States Census Bureau, approximately 10 percent of all foreign nationals are of Caribbean origin; the majority come from Cuba (34 percent) and the Dominican Republic (25 percent), and more than 10 percent are from Haiti and Jamaica combined.¹¹

Social Marginalization and the Rise of Crime

Over the years, the steady decline in traditional sources of employment in agriculture and mining and the concentration of new investment in tourism have produced, as byproducts, a considerable growth in the informal sector and a visible increase in social marginalization. Deportation of aliens, mainly from the U.S., have expanded this pool of

⁷ Manuel Orozco, “Latino Hometown Associations as Agents of Development in Latin America,” *The Inter-American Dialogue*, June 2000, <http://www.thedialogue.org/publications/country_studies/remittances/OrozcoHTAs.pdf>.

⁸ “Brain-drain” refers to the transfer of trained and skilled individuals between countries. See Michelle Lapointe, “Diasporas in Caribbean Development,” Report of the Inter-American Dialogue and the World Bank, 2004.

⁹ Remittances are the portion of an international migrant’s earnings that is sent back from the host country to his or her country of origin, which can be done via official or unofficial channels.

¹⁰ See above, reference 3.

¹¹ U.S. Census Department, *The Foreign-Born Population in the United States: 2003*, August 2004, <<http://www.census.gov/prod/2004pubs/p20-551.pdf>>.

people in marginal conditions, generally introducing new types of crime or extending the criminal repertoire of local criminals.¹² They are viewed as presenting a new and special danger to Caribbean societies, and for this reason have attracted much attention. While not all deportees are criminals, the numbers that are criminals have been increasing, creating social tensions as a result of the use of violent means for resolving conflicts. Against this backdrop, a stigmatization of deportees has arisen, rendering their reintegration into society all the more problematic and tenuous. Some countries, such as Haiti, have put in place cooperation mechanisms with the main sending country of deportees to avoid further social instability.

Concomitantly, the region is experiencing a growth in the activities of transnational organized crime networks.¹³ Since these networks have reportedly penetrated some governments of the region and their financial systems, the Caribbean Community (CARICOM) has paid close attention, for example by creating a regional task force on crime and security that promotes community involvement as a sustainable and necessary component of crime prevention.¹⁴

Potential for Mass Migration Outflows and Internal Displacement

Within the Caribbean, mass outflows or internal displacements of persons unfortunately are not uncommon and occur for various reasons. Recurrent natural disasters caused by hurricanes, floods, and volcanic eruptions pose significant challenges for governments already operating with limited resources. Regional support and assistance are often crucial for recovery. In 2005 alone, three hurricanes struck the Caribbean, causing hundreds of deaths, significant displacements of people, and billions of dollars in damage, particularly in Grenada, Haiti, Cuba, Jamaica, and the Cayman Islands.

Such natural tragedies are further exacerbated by the convergence of economic and political crises. When thinking about potential sources of mass outflows of persons in these latter instances, Cuba and Haiti stand in the forefront. In both countries, poverty and political disaffection with existing governments have triggered several waves of “boat people” over the past ten years.¹⁵ In 1994, the flow of Cubans was magnified by

¹² Deportation should be understood as “the act of a State in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination or permission to remain.” See IOM, *Glossary on Migration-International Migration Law*.

¹³ Please refer to Chapter Three on “Trafficking in Persons in the Caribbean” in this volume.

¹⁴ Francine Jácome, Paz Milet, and Andrés Serbin, “Conflict Prevention, Civil Society and International Organizations: the Difficult Path for Peace Building in Latin America and the Caribbean,” FOCAL Policy Paper, May 2005

¹⁵ In this context, “boat people” is a term referring to impoverished illegal immigrants or asylum seekers who arrive en masse in old or crudely made boats. The term came into common use in the 1970s with the mass exodus of Vietnamese refugees following the Vietnam War.

the political crisis in Haiti, which consequently affected U.S. policy towards Caribbean migration.¹⁶ Migration in effect has served as a release valve of sorts for these two countries, while causing a significant and long-standing burden on neighboring Caribbean islands.

Health Issues

Mobile populations are prone to a number of mental and physical health problems, and elements such as poverty, exploitation, discrimination, gender inequality, and separation from families and communities exacerbate these problems.¹⁷ Mobile populations are especially vulnerable to HIV infection when the migration process takes place in an irregular fashion; indeed, HIV/AIDS is a serious concern in the Caribbean, which ranks second only to sub-Saharan Africa as the most HIV-affected region in the world. Though national rates vary dramatically, at least one percent of the region is infected as a whole.¹⁸ As is the case globally, Caribbean young women and girls are increasingly at higher risk of HIV exposure. According to the World Bank, 35 percent of adults living with HIV/AIDS in the region are women, and the Caribbean has one of the highest rates of new cases among women in the Americas.¹⁹

Globalization and the Caribbean Response

Human mobility patterns have changed due to the effects of globalization, and governments face a huge challenge to manage that mobility. Migration, regular or irregular, occurs because the world has become globalized in its operation, and it would be impossible to conceive of a situation where the movement of goods, capital, and services is facilitated without attendant population movement.²⁰

¹⁶ In July 1994, as repression mounted in Haiti and a civilian human rights monitoring mission was expelled from the country, the UN Security Council adopted Resolution 940, which authorized member states to use all necessary means to facilitate the departure of Haiti's military leadership and to restore Haiti's constitutionally-elected government to power. In the case of Cuba, Cubans saw the transitory elimination of their special preference treatment as political refugees.

¹⁷ Recognizing the need for a better understanding of the links between population mobility and HIV/AIDS in the region, IOM carried out research in 2003 and found that migration was not sufficiently addressed in the Caribbean response to HIV/AIDS, and that mobile populations must be targeted in order to improve their access to HIV/AIDS prevention, care, and treatment. See IOM, *HIV/AIDS and Mobile Populations in the Caribbean: A Baseline Assessment* (Washington, DC: IOM, 2003).

¹⁸ UNAIDS, *2004 Report on the Global AIDS Epidemic*, <<http://www.unaids.org/bangkok2004/report.html>>.

¹⁹ World Bank, *HIV/AIDS in the Caribbean: Issues and Options*, Report No. 20491-LAC, 2000.

²⁰ Gervais Appave, *Managing Migrant Communities from a Comprehensive Perspective*, IOM workshop, The Bahamas, July 2005.

On several occasions the region has collectively voiced its concern that the originally envisaged benefits of globalization—wealth creation, improved living conditions, reduced trade barriers, and enhanced flows of capital, among others—have not come to fruition. Many islands suffer limited access to international markets and have endowed disadvantages that increase transaction costs and adversely affect competitiveness. For example, during the Third Summit of Heads of States and Governments in July 2002, leaders of the Africa, Caribbean, and Pacific (ACP) countries articulated their grievances, noting that the intended benefits have not fully materialized and, even when they have, sharing has not been equitable.²¹ The heads of state went further by pointing out that, in order to take advantage of the opportunities offered by a globalized economy, they would need to have a meaningful participatory role in the global trading system. In addition, they asked the countries of the European Union to enter into negotiations for the responsible management of migration flows through programs and procedures that would help guarantee the human rights of migrants.²²

These ideas are under continual discussion and were included in the framework of the Fourth Summit of the Americas, which carried the motto: “Creating jobs to confront poverty and strengthen democratic governance.” Since poverty and economic disparities have a direct effect on the increase of migration, as well as political and social unrest, the focus of this summit was extremely pertinent in terms of addressing the causes of a latent social conflict.²³

For its part, the Caribbean Single Market and Economy (CSME) recognized the need to standardize labor practices and the free movement of skills in the region, given the high degree of mobility that takes place on a regular basis.²⁴ As established in the Treaty of Chaguaramas, the free movement of persons includes two regimes to enable liberalization: 1) facilitation of travel (including common travel and landing documents) and national treatment of ports of entry, and 2) the movement of skills (companies, non-wage earners, wage earners, and other special categories).²⁵

²¹ Nadi Declaration, “ACP Solidarity in a Globalized World,” Denarau Island, Nadi, Fiji Islands, July 19, 2002.

²² *Ibid.*

²³ Declaration of Mar del Plata, Fourth Summit of the Americas, Buenos Aires, November 5, 2005.

²⁴ Free movement of skills entails the right to seek employment in any member state and the elimination of the need for work permits and permits of stay.

²⁵ Treaty of Chaguaramas, Articles 46, 32, 34(d), 36 and 37. The Treaty established the Caribbean Community (CARICOM), and it was signed at Chaguaramas, Trinidad and Tobago on July 4, 1973.

The first regime will enable a generally more agile movement of persons within CARICOM. It resembles the “Schengen” agreement in Europe.²⁶ The second regime focuses on the movement of highly qualified human resources as a strategy to boost academic exchange, cultural ties, and business relations. But despite these goals, the question arises as to how countries can efficiently manage all the different migration flows given limited resources and weak or otherwise resource-poor state structures. Perhaps as a direct reflection of this skepticism, some of the wealthier countries within CARICOM, such as The Bahamas, which might fear receiving lesser-skilled migrants due to this agreement, have shown reluctance in fully supporting the CSME.

Migration Management Initiatives and Experiences in the Region

Multilateral Approaches

The complexities posed by the flows themselves and the lack of sufficient preparation to manage them have pointed to the necessity of a truly coordinated approach among the interlocutors who try to manage the impact of such flows and assist the individuals involved. CARICOM, the Association of Caribbean States (ACS), and the Organization of Eastern Caribbean States (OECS) are some of the organizations that seek to provide such a forum from a trade and economic angle.²⁷ Additionally, there is an on-going dialogue specifically targeting migration issues—the Regional Conference on Migration (RCM), informally known as “the Puebla Process,” features migration management as a key element of its action plan. Some Caribbean countries actively participate in the RCM as members or observers.²⁸

IOM and UNHCR Collaboration

For the past three years, the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) have partnered to provide a solid and comprehensive technical support umbrella to deal with the increasingly complex diversity of persons crossing borders daily or arriving to shores under difficult

²⁶ The 1985 Schengen Agreement is an agreement between European states, which allows for common immigration policies and a border system. A total of 26 countries—including all European Union (EU) states except the Republic of Ireland and the United Kingdom, but including non-EU members Iceland, Norway, and Switzerland—have signed the agreement, and 15 have implemented it so far. Border posts and checks have been removed between Schengen countries and a common “Schengen visa” allows access to the area. However, the agreement does not cover residency or work permits for non-EU nationals.

²⁷ See Association of Caribbean States, Fourth Summit of Head of States, Panama 26-28 July 2005, <<http://www.acs-aec.org>> and Organization of Eastern Caribbean States, <<http://www.oecs.org>>.

²⁸ Member states of the Regional Conference on Migration are: Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States; Argentina, Colombia, Ecuador, Jamaica, and Peru are observer states. See Regional Conference on Migration, available at <<http://www.rcmvs.org>>.

physical and psychological circumstances.²⁹ Under the title “Mixed Migratory Flows in the Caribbean: Migration Management, Contingency Planning and Refugee Protection,” governments presented cases and other specific examples of some of their migration challenges for discussion in an informal setting.³⁰ Several governments expressed a need to receive technical support to assess their border-management policy and regulatory systems, and eventually to address any gaps that were indicated. During this interactive forum of discussion, the general consensus was on the need to overcome a compartmentalized, government agency approach where the relevant ministries or agencies were working on parallel tracks, yet were not collaborating.

As effectively articulated during the IOM-UNHCR exercises, the most essential component in managing migration is managing population movements, particularly the movement of persons into and through a country’s own territory. But managing migration is more than managing population movements, it also concerns establishing and encouraging legal means of migration, particularly labor migration. There are important movement management issues in regular labor programs, although these are primarily matters of policy, administration, and relationship-building among states.³¹

The stages of the migration process are interlinked and involve different policy and legal considerations, as well as the inclusion of stakeholders.³² As such, development of a comprehensive policy framework can serve as an effective point of departure. If agreed upon by consensus (i.e., on the basis of consultations involving both the host society and migrant communities), and conscientiously implemented, such a policy framework can provide preventative mechanisms for dealing with inter-societal strains and conflict, thereby promoting social stability and cohesion. Though it involves a laborious and painstaking process, having a comprehensive policy in place provides a fixed compass point lacking in piecemeal or ad hoc approaches.

²⁹ Examples of joint IOM and UNHCR activities in this regard include: strengthening regular migration management systems and structures to meet both emergency and routine challenges; reviewing current contingency plans and the institutional expertise in place for natural disaster situations and linking these to scenarios surrounding emergencies engendering mass outflows of persons; addressing the specific needs presented by vulnerable groups, such as refugees, asylum seekers, including their protection assistance needs; and delving deeper into the case of particular categories of migrants, for example, victims of trafficking and smuggled migrants, and strengthening response mechanisms for their particular needs.

³⁰ During three consecutive years, the annual seminar “Mixed Migratory Flows in the Caribbean: Migration Management, Contingency Planning and Refugee Protection” was held in Barbados (2003), The Bahamas (2004), and Trinidad and Tobago (2005).

³¹ Charles Harns, *Elements of Effective Migration Management Systems*, IOM, “Mixed Migratory Flows in the Caribbean,” Barbados, 2003.

³² These include: economic, social, trade, labor, health, cultural, and security policy areas. See IOM, *Essentials of Migration Management* (Geneva: IOM, 2004).

The purpose of developing a migration management system that reflects this policy and takes into account the national and international set of rights and obligations of migrants and states is perforce multi-faceted and includes the following elements: the establishment and encouragement of legal means of migration; addressing root causes and linking migration management with development; the support of national security efforts while protecting migrants' rights; and the establishment of an effective and sustainable policy and the coordination of a strategy among all elements. As a result, international cooperation would be naturally reinforced.

As a starting point, it is necessary to analyze the main questions to be raised when developing such a system. First of all, it is paramount to determine the rationale behind the system. What are the specific objectives that the country needs to achieve in relation to other national policies (labor, foreign, demographic, trade, etc.)? Often, governments have to distinguish between persons having legitimate or non-legitimate reasons for entry or stay and must therefore prioritize responses and resource allocations while balancing the enforcement and protection aspects of vulnerable populations.

Since September 11th, measures are being adopted widely to enhance the integrity of security features and develop new ways of recording and verifying traveler and migrant identities.³³ However, even though technology can improve effective border management processes, it is not a substitute for appropriate legislation, well designed procedures, and trained and experienced staff that can perform key functions.³⁴

A Model Framework

As a resource guide, IOM has developed a comprehensive model framework for migration management with a carefully structured set of distinct conceptual areas and components that reflect its interdependent nature and relevance for governmental agencies.³⁵ Rather than being prescriptive, as there is no one-size-fits-all approach when it comes to migration management, the framework envisions policy and operational approaches adapted to fit a country's particular circumstances.

³³ IOM, *International Terrorism and Migration* (Geneva: IOM, 2002).

³⁴ IOM, *Essentials of Migration Management*, Volume One.

³⁵ Other organizations understand migration management from different points of view and according to their specific mandate. Hence, in relation to the labor migration of Caribbean nurses, the Pan American Health Organization defined managed migration as an action that: has a comprehensive approach; addresses recruitment, retention, and deployment of the nursing working force; embraces an active partnership with stakeholders, such as Ministries of Health, teaching institutions, professional associations, civil service, labor organizations, and regional and international agencies; respects the rights of individuals to choose where they want to work and live; supports the CARICOM Single Market and Economy initiative for the free movement of professionals and skills; enhances Technical Cooperation among Countries (TCC), or south-south collaboration; and optimizes the returns of investment of small countries through shared service and economy of scale.

Migration policy, legislation, and administrative organization constitute the three foundational pillars required to manage migration at the governmental level. Within these, there are principles and directions that will be articulated in the legislation. Migration policy determines the approach of the state at the highest level. It is based on national objectives and, most of the time, conditioned by budgetary constraints. Usually, it derives from and relates to other elements of public policy, for example, labor market policy, foreign policy, and demographic policy. Legislation gives legitimacy and concrete expression to migration policy and provides the authority for the measures required to manage migration, including recruitment and selection; entry authorization; the granting of residency; border inspection; response to unlawful entry and stay; and removal of persons from the territory of the state.

Policy components include entry control, interception measures, return arrangements, residence regime, and employment regulations, as well as access to services, such as health and education, and community relations. These components establish rights and obligations for migrants. The issue of partnership with the country of origin is also of considerable importance, as is that of regional cooperation if the migratory flow or flows affect several neighboring countries.

Some Cases in Point: The Dominican Republic, The Bahamas and the TCI

Economic disparities in the region act as “push” and “pull” factors for large numbers of labor migrants who seek greater opportunities in other parts of the region. When combined with dated or inadequate legislation and border management, they also lead to irregular migration in the form of smuggling and trafficking in persons. These phenomena are also an indicator of unresolved social and political conflicts of interest among different stakeholders. That is the case, for example, of Haiti, as large-scale emigration of Haitians—principally to the U.S., but also to Canada, France, the Dominican Republic, The Bahamas, and other Caribbean neighbors—has created what Haitians refer to as the “Tenth Department.”³⁶

Countries in the Caribbean region are aware of the seriousness of the migration management challenges and the urgency of proactively taking action. However, in many cases, domestic immigration laws are too obsolete to reflect the countries’ reality. Some countries, such as the Dominican Republic, have recently passed new immigration laws. The new Dominican Law (285-04), which substitutes the former law that was over 40 years old, aspires to: regulate the entry, exit, and stay of foreign nationals; manage the immigration, emigration, and return of Dominican nationals; ensure that immigration is planned to consider the human resource needs of the country; and promote strong links

³⁶ About one of every eight Haitians lives abroad. See U.S. Department of State, Bureau of Western Hemisphere Affairs, *Background Note: Haiti*, March 2006, <<http://www.state.gov/r/pa/ei/bgn/1982.htm>>.

between the state and its nationals residing abroad. The new law clearly states the country's priorities and goals from the particular prism of regulating Haitian regular and irregular labor migration, but it also goes beyond that by directly referring to the specific needs of the Dominican diaspora.

The particular examples of The Bahamas and the TCI are also useful cases when analyzing challenges presented by migration in-flows. The challenges are exacerbated as the former, an independent country, and the latter, an overseas British territory, are both island archipelagos, which renders migration monitoring and control all the more difficult. There are, roughly estimated, around 40,000-50,000 Haitians or Haitian-descendants in The Bahamas and approximately 10,000 in the TCI, although current, hard data in both cases is lacking.³⁷ In The Bahamas, most Haitian migrants are concentrated in low-paid, lower-skilled employment in agriculture/landscaping, construction, domestic service, and informal sector trading. As in other countries, work permits are tied to employers that—considering the socio-economic background and language limitations of many of these labor migrants—can lead to situations of worker vulnerability. Some authors point out the ambivalent sentiments that Bahamian authorities have towards Haitian labor, especially when it is irregular.³⁸ Generalized anti-Haitian feelings, discrimination, and nationality questions concerning Bahamian-born children of migrants are part of the national migration-related panorama.³⁹

Bahamian geography is also exploited as a stepping-stone to the U.S., and there have been numerous reported cases of smugglers bringing regional and extra-regional migrants into Florida.⁴⁰ In that context, the Bahamian government has a cooperation agreement with the U.S. Coast Guard to intercept small boats at sea, with a view to prevent their unlawful entry and to save lives.⁴¹ Consequently, deportations take place on a regular basis.

Haitian nationals in the TCI, which constitute by far the largest grouping in the migrant community and are estimated to outnumber the host population (or, “belongers”), are concentrated mainly on the island of Providenciales, with its booming tourism and construction sectors and high demand for domestic workers. As in The Bahamas, there is resentment on the part of “belongers” toward the Haitians’ use of Creole, their

³⁷ Abaco, Eleuthera, Grand Bahama, and New Providence are the places in which the main Haitian communities are found.

³⁸ Ferguson.

³⁹ Many children born to Haitian parents are effectively stateless until they are 18, since they have to wait until adulthood to apply for citizenship.

⁴⁰ The *Miami Herald Tribune* has reported various instances of irregular migrants, often from Haiti and Jamaica, interdicted at sea, or reports arrests of those involved in people-smuggling operations, especially originating from such islands as The Bahamas.

⁴¹ IOM/UNHCR Joint Seminar, *Mixed Migratory Flows in the Caribbean*, The Bahamas, 2004.

perceived unwillingness to assimilate, and the perceived burden imposed on the territory's health and educational facilities. As in other islands, the work-permit system is designed to discourage permanent settlement.⁴²

Indeed, in The Bahamas, the TCI, and the Dominican Republic, the issue of the Haitian migrant presence is emotive as well as politically charged, at times giving rise to assertions that the national or territorial character and identity are at stake. This is further complicated by the prevailing sense that current circumstances in Haiti render the possibility of achieving effectively implemented migration cooperation and control arrangements with Haitian government authorities unlikely. Nevertheless, political change in Haiti brought on by the 2006 elections will hopefully provide new opportunities for opening dialogue and improving bilateral negotiations on migration management.

Conclusions and Practical Recommendations for Migration Managers and Policymakers

“Recognizing existing contradictions between the institutionalization of human rights discourse and the daily political, administrative and social practices is a basic condition for consolidating the exercise of the human rights of migrants.”⁴³

Lelio Marmora

Management of the economic, social, cultural and political impacts of migratory flows is now a major challenge for all countries. This challenge is all the more complicated when the flows are mixed. It is then essential to develop responses that do not rely on isolated ad hoc measures, but instead rest on a balanced, coherent, and comprehensive policy framework.⁴⁴

While there has been considerable research and policy experimentation in this field, there is no ready-made formula available. Migrant communities do not all behave in the same way, evolve socially or economically at the same pace, or develop the same relationship patterns with the host society. Some migrant communities gradually develop strong and positive links to their host societies, while others become isolated or marginalized.⁴⁵

⁴² Ferguson.

⁴³ Lelio Marmora, *International Migration Policies* (Buenos Aires: IOM, 1997).

⁴⁴ Appave.

⁴⁵ Ibid.

When dealing with migration phenomena, policymakers are often confronted with a wide array of issues that do not escape controversy, since they may arouse national economic and social concerns and, eventually, prejudices against migrants. Indeed, migration (immigration and emigration) in both receiving and sending countries may bring existing, underlying conflict to the surface. policymakers do not have an easy task in terms of addressing both the ramifications and multidisciplinary nature of the matter, as well as the political, social, and economic implications of their actions or inactions. Therefore, it is imperative for policymakers to take into consideration the consequences of adjusting—or not adjusting—migration management policy and legislation to their country's reality, objectives, and needs in the long term. The following are some recommendations for confronting challenges migration management for the Caribbean:

1. *Engage in a national exercise to articulate a common vision and goal.* Defining and identifying shared or common values between the host society and the migrant community is very important because it can reflect the future make-up of the society. Hence, consultative mechanisms with migrant communities should be strengthened and systematized.⁴⁶ Also, there is a need for effective policies for socio-economic inclusion of migrants into host communities, even on a temporary basis, in order to maximize productivity. These measures have a financial cost, but they contribute to social cohesion in the face of cultural diversity and enable a productive role for migrants (in terms of empowerment and the potential positive effect on host and home communities). In addition, when migrants are legally in the country, their income can generate tax revenue.
2. *Improve and systemize data gathering.* Data collection should be done in a way that allows for the sharing of information with other governments and serves as a valuable input for adapting policies and laws.⁴⁷ Censuses, household surveys, or entry/exit records should always be used for a positive purpose, such as strategic planning and information campaigns or programs, and not as a tool for the victimization of migrants.
3. *Promote regular, collective research to determine possible changes in demographic and migration patterns.* Cultural shifts due to migration and demographic changes of established patterns have to be kept in mind when designing policies. That some islands are becoming bilingual, such as Antigua and Barbuda (English and Spanish), or trilingual, such as the Netherlands Antilles (Dutch, English, and Spanish), could be exploited to the advantage of the economy, if addressed in a positive way.

⁴⁶ Ibid.

⁴⁷ The experience of the Statistical Information System on Migration in Central America (SIEMCA, in Spanish) is worth noting in this respect. See IOM, Proyecto Sistema de Información Estadística sobre las Migraciones en Centroamérica, available from <<http://www.siemca.iom.int>>.

4. *Regularly analyze labor needs and capacity of absorption in order to negotiate and design bilateral labor agreements.* High and sustained levels of unemployment, along with changes in the structure of jobs available to a primarily young labor force, serve as powerful incentives to migrate. Welfare is another important pull factor for migrants. Yet, it must be remembered that migrants occupy jobs at all skill levels, with particular concentration at the higher and lower ends of the market, and often in work that nationals are either unable or unwilling to do. In addition, governments should consider the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families if they have not done so.
5. *Assess and, where necessary, revise the existing legal, regulatory and operational migration framework.* The overall aim is to increase inter-institutional coordination while avoiding incoherencies, gaps, and, most importantly, reducing or preventing corruption. This exercise will be key for devising the abovementioned comprehensive framework, after having identified short-term and long-term needs.
6. *Strive for a balance between a strong enforcement approach and measures to facilitate movement of persons.*⁴⁸ Countries that have large-scale passenger movements through their airports, and which rely on tourist and business visitors as wealth creators, must balance the need for security against the need to make the entry of bona fide persons as effortless as possible. Caribbean passports will have to meet International Civil Aviation Organization standards. Nonetheless, governments should thoroughly examine their needs before adopting a passport or border management system that may be ineffective in managing migration.
7. *Recognize the impact of the Caribbean diaspora and ensure its implications are fully integrated into national and regional public policies.* Migration, remittances, and the range of economic and social relationships that migrants maintain with their countries of origin have a substantial and growing importance in the Caribbean. In this sense, it is important to strengthen relationships with diaspora hometown associations (HTAs), as they have a role to play in the development of their country of origin. Removing barriers to competition in the remittances market already seems to be one of the commitments agreed upon in hemispheric fora like the Summit of the Americas.⁴⁹ However, governments with a considerable diaspora—within or outside the region—could look into creating a more targeted and supportive structure, such as the one existing in El Salvador, or into giving authority to an already existing institution that would assume this function of giving guidance and technical support to HTAs.⁵⁰

⁴⁸ Appave.

⁴⁹ Josefina Stubbs and Hiska Reyes, "Migration in the Caribbean: a Path to Development?" *En Breve* 48 (2004), World Bank.

⁵⁰ For example, Fondo de Inversion Social para el Desarrollo Local (FISDL), which provides guidance to hometown associations in El Salvador in the implementation of their local development projects.

7. *Ensure that gender considerations are fully incorporated into migration and development processes.* Such steps are necessary to make women and children more visible and to produce inclusive and targeted policies and legislation that are in accord with international instruments. Gender inequalities share common characteristics in all societies, but acquire particularities depending on the specific political, social, and economic context. For example, any measure or policy aiming to harness the potential development of remittances has to be based on a rigorous analysis of the relationships and gender dynamics operating within set circumstances.⁵¹
8. *Amplify existing contingency plans to better accommodate potential mass migration outflows.* The geography of the region makes it vulnerable to a variety of natural disasters, including hurricanes and volcanic eruptions, and the consequent mass outflows of people that occur in the aftermath of such disasters. Among the weaknesses and threats that were highlighted in the 2004 IOM-UNHCR seminar in The Bahamas were: a lack of enabling legislation; a scarcity of human, technical, and financial resources to meet the needs of mass outflows (shelter, food, etc.); the lack of convergence between technical experts and politicians; and the lack of data and an information-sharing resource database. A contributing factor to this situation is the general sense that contingency planning is not a priority, matched by a lack of political will. Therefore, authority and capacity, both human and technical, to deal with complex migration issues need to be expanded and augmented at both national and regional levels in order for effective migration management to continue to improve. In the long term, it is more cost-effective to plan ahead in order to anticipate needs and address emergencies caused by sudden events. Moreover, effective planning can help to mitigate pressures that a particular event might bring to bear.
10. *Give due recognition to the relationship between migration and health.* Migrant health has become a critical element of migration policy and needs to be integrated into migration management strategies, for the benefit of individuals and societies alike. The physical, mental, and social well-being of the migrant is vital at each stage of the migration process, from the decision to move, the journey itself, reception in the new community, and possibly the eventual return.⁵² Migration brings both costs and benefits for sending and receiving countries, even if they are not always shared equally. Regular migrants are not likely to put a greater burden on health and welfare services than the host population, as they also pay taxes. And, irregular migrants, who run the highest health risks, are less likely to seek medical attention out of fear of deportation. This not only poses risks for the health of the migrant, but is also a public health concern and can

⁵¹ UN-INSTRAW, International Forum on Remittances, Inter-American Development Bank, Washington, DC, June 2005.

⁵² International Dialogue on Migration, *Health and Migration: Bridging the Gap*, No. 6, IOM, World Health Organization (WHO) and Center for Disease Control (CDC), 2004, <http://www.iom.int/DOCUMENTS/PUBLICATION/RedBook6_ebook.pdf>.

contribute to fuelling sentiments of xenophobia and discrimination against all migrants. Therefore, the need for governments to invest in health is paramount.

11. *Design and implement ongoing programs to inform migrants about their rights and responsibilities.*⁵³ The former would include familiarization with available services and how to have access to them. According to international law, migrants are required to comply with the national legislation of the host country. Migrants have an obligation to respect state authority and to comply with the legislation and operational procedures that legitimately flow from this authority. Dealing with the irregular migrant community will both send a strong signal about the determination to tackle unlawful entry and prevent the formation of a disaffected, marginalized, delinquency-prone community.⁵⁴ Equally, the host society should be informed about the positive contributions that migrants (regular and irregular) make, and not just let the press and other interest groups foster a negative image of migrants. An effort to build a receptive public opinion will have additional positive consequences for diffusing tensions, especially if the concerned government decides to take a further step through an amnesty or other regularization program at some point.
12. *Strive to provide arriving deportees with realistic and sustainable options for maintaining a livelihood.* Deportations of aliens from industrialized countries have also caused wide concern in Caribbean policy-making circles, especially regarding the lack of advance notice from sending countries and reintegrating deportees who often have not spent much time in their home country. The high levels of unemployment in many of the countries of return, the limited opportunities for acquiring new skills, and the stigma attached to criminal alien deportation all add up to making the reintegration of a deportee into society a difficult prospect. Special programs geared to targeting the particular needs and constraints of this segment of the population are necessary to tackle the problem.
13. *Expand regional cooperation.* Efforts to achieve workable and fluid regional cooperation could, in the long term, contribute to the management of migratory flows in the region. Standardization and systematization of data collection, a regional database with information on trafficking and smuggling routes as well as convicted traffickers and smugglers, and harmonization of migration legislation and policy are some of the issues suggested in past seminars. Although the practical implementation of some of these measures is still to be determined in the Caribbean context, these ideas, which promote a homogeneous and cooperative approach, have been or are being successfully implemented in other regions of the world, primarily in the framework of regional processes of dialogue.

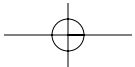
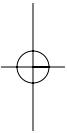
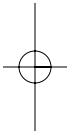
⁵³ Organization of American States, Inter-American Program for the Promotion and Protection of Human Rights of Migrants, International Convention on the Protection of Migrant Workers and their Families, 2005.

⁵⁴ Appave.

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Effectively Identifying, Protecting, and Finding Durable Solutions for Refugees

2.2

Janice Marshall

Introduction

Recent years have seen a global rise in public awareness of and concern about migratory flows. These flows are perceived to be escalating exponentially and are increasingly assumed to pose a threat to receiving countries, particularly in a jittery post-September 11th world. Flows from the developing to the developed world are especially prone to be considered in this light. This heightened consciousness of migration has led to a concomitant rise in intolerance, and the putting in place by governments of more and more stringent controls on the crossing of international borders, in an attempt to stem the tide and safeguard national security. These controls pose significant challenges for all migrants, but are particularly difficult for refugees, who need to cross international borders to seek safety, but may lack the means to obtain proper documentation. They are also challenges for the United Nations High Commissioner for Refugees (UNHCR), which is the one international agency uniquely charged with ensuring the protection of and finding durable solutions for refugees, and for supervising the application of the international refugee law instruments.¹ On the other hand, states that may have the will to provide protection to those in need face the difficult challenge of distinguishing between those who are in need of protection and those moving for other reasons. Coupled with this difficulty is the challenge states face in overcoming adverse public opinion about migration and persuading the public that the state is acting in concert with its international obligations in receiving refugees, yet nevertheless remains in control of its borders.

Recognizing these challenges and the deleterious effect they were having on refugee protection worldwide, including limiting refugees' access to asylum determination systems and narrowing the interpretation of the criteria for refugee status, UNHCR launched a series of Global Consultations on the International Protection of Refugees (Consultations) in 2000.² The Consultations engaged states, refugees, relevant international and regional

¹ See the Statute of the UNHCR, annexed to United Nations General Assembly Resolution No. 428(V) of December, 14, 1950, particularly Articles 1 and 8.

² For a complete collection of the papers and reports emanating from the Global Consultations on the International Protection of Refugees, see Erika Feller, Volker Turk, and Frances Nicholson, eds., *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003).

organizations and institutions, the academic community, and various non-governmental organizations (NGOs) to tackle these difficult issues in a series of meetings and discussions canvassing questions of legal interpretation, issues of procedure and fairness, and practical, pragmatic challenges to implementing refugee protection. The Consultations process, stretching over some 18 months, resulted in the adoption of the *Agenda for Protection* (Agenda), which essentially serves as a blueprint for UNHCR and states to address refugee protection challenges of the future.³ The Agenda's second goal, "Protecting Refugees Within Broader Migration Movements," identifies seven objectives related to the broader goal, and suggests a number of activities that UNHCR, states and others could undertake to: better identify and respond to asylum-seekers and refugees; understand the nexus between migration and asylum; combat smuggling and trafficking of people; reduce irregular and secondary movement; and enhance cooperation between UNHCR and the International Organization for Migration (IOM).

The Caribbean Context and the Potential for Conflict

This global phenomenon is mirrored in the Caribbean. The mixed migratory flows normally encountered in the Caribbean region are, in the author's experience, primarily composed of people who are migrating for reasons related to economic needs and opportunities and for family reunification. These flows do, however, from time to time, also contain people who are moving for refugee-related reasons, sometimes to escape conflict and unrest at home and other times to avoid being persecuted for reasons set out in the 1951 Convention relating to the Status of Refugees (1951 Convention), as amended by its 1967 Protocol.⁴ The challenge for UNHCR and states alike is to adequately identify and protect those who are in need, in accordance with international standards, and to do so without undermining the ability of states to meet their other obligations, such as safeguarding national security and adequately managing their borders. While much of the Caribbean migratory flow has traditionally been intra-regional, whether economic or refugee-related, there are increasing numbers of extra-regional migrants using the Caribbean as a route to reach North America. Increasingly, asylum-seekers from Africa, Asia, Eastern Europe, and South America are being identified in the Caribbean.

³ Adopted by the Executive Committee of the High Commissioner's Program in October 2002, the *Agenda for Protection* and related documents are available on the Global Consultations page of UNHCR's public website at <www.unhcr.org>.

⁴ For the 1951 Convention relating to the Status of Refugees (1951 Convention), see United Nations Treaty Series 2545 (189): 137. The five reasons for fearing persecution elaborated in Article 1(A2) of the 1951 Convention are race, religion, nationality, membership of a particular social group, and political opinion. For the 1967 Protocol, see the United Nations Treaty Series 8791 (606): 267.

There are at least two scenarios in which the issues of refugee arrivals and conflict intersect. In the most obvious instance, refugees are forced to flee their homes as a result of the effects of armed conflict or breakdown of law and order. Thus, individuals and sometimes groups become refugees on account of conflict.⁵ After arrival in a country of asylum, particularly where this occurs in large numbers over a short period, the newcomers may come into conflict with the receiving society. While in the Caribbean, the flows have never been, with few exceptions, massive in global terms; the relatively small populations, in some cases the very small land mass of the islands receiving migrants, mean that even numbers of arrivals that would be negligible in other contexts are difficult for island governments to manage.⁶ A lack of developed infrastructure for dealing with arrivals, economies dependent on tourism—which therefore require orderly, non-crowded, and peaceful environments—and a lack of readily available resources to meet the needs of arrivals, all conspire to make it difficult for receiving states to care for significant numbers of arrivals. While receiving populations are normally welcoming to arrivals in the first instance, particularly those perceived to be fleeing political or other strife, the domestic population may eventually come to believe that too many resources (health care, shelter, food, and clothing, for example) are being provided to the newly arrived, when they themselves are often without basic necessities. This can lead to friction and conflict between the two populations. Likewise, if the basic necessities are not provided to arrivals, they may be forced to steal and find other means of sustaining themselves, which in turn may well result in conflict with the domestic population and the government.

This potential for conflict makes it doubly important that the international community, most often in the form of UNHCR in the refugee context, be present to assist states to plan for such arrivals; seek funds from international donors to meet the basic needs of those arriving, if necessary; and monitor the treatment of the arrivals to ensure that basic international standards are met. One of the primary aims of UNHCR's program in the Caribbean is to

⁵ There is potential for confusion here as the criteria for refugee status in the 1951 Convention, as modified by its 1967 Protocol, identifies “a well-founded fear of being persecuted” as the key requirement in refugee recognition. While someone may have such a fear within a situation of armed conflict, it may also occur outside such a context. Likewise, not every person threatened on account of armed conflict has a well-founded fear of being persecuted within the meaning of the 1951 Convention. For the UNHCR, however, and for states which accept the so-called “broader definition” of the 1969 Organization of African Unity Convention governing the specific aspects of refugee problems in Africa and the 1984 Cartagena Declaration on Refugees, anyone fleeing situations of conflict, massive violations of human rights, and/or events seriously disturbing public order—in short, situations of armed conflict or serious breakdown of law and order—is also a refugee in need of international protection. Thus UNHCR's protection mandate would be engaged in such situations, even though a receiving state might not be obliged to recognize the arrivals as “refugees” under the 1951 Convention and its 1967 Protocol. Nevertheless, it is often argued in such circumstances that the arrivals should not be returned until such time as the situation in the country of origin has stabilized.

⁶ In 1994 there were significant exoduses of both Haitians and Cubans. The numbers of Haitians and Cubans who have been interdicted in the years since 1982 are available on the following website: U.S. Coast Guard, Department of Homeland Security, “Alien Migration Interdiction, Statistics,” last updated October 2005, <<http://www.uscg.mil/hq/g-o/g-opl/AMIO/AMIO.htm>>. As can be seen from those reports, between 1991 and 1994, when the elected Haitian President was forced to flee the country by a military coup, almost 69,000 Haitians, over 25,000 of those in 1994 alone, took to the sea and were intercepted. Cubans left in even larger numbers in 1994; over 37,000 of them were interdicted by the U.S. Coast Guard in that year alone.

provide states with the necessary tools to be able to plan for the appropriate treatment of arrivals in any mass migratory movement where refugee or asylum issues are present. Contingency planning for such arrivals has been considered in successive annual conferences with Caribbean counterparts since 2002.⁷ Efforts to assist states in the region to plan for such contingencies are continuing, and were furthered in 2005 by a mission to the Caribbean by a UNHCR Emergency Preparedness expert to study the situation and propose a plan.

Fortunately, in the Caribbean context, though preparedness is always necessary, movements of migrants historically have rarely been in such large numbers that they cannot be accommodated for at least a short period. However, the lack of any dedicated infrastructure for refugee status determination in most Caribbean states means that even small numbers of people in need of protection can “fall through the cracks” and never be identified or, if identified, can overwhelm the capacity of the receiving state to adequately respond to their protection needs.⁸

⁷ In December 2002 in Miami, UNHCR held a Caribbean conference at which contingency planning for mass migratory flows was a central theme, with exercises on the process and partners involved in contingency planning for some 12 Caribbean states. In December 2003 in Barbados, the first IOM/UNHCR Joint Regional Seminar for some 19 Caribbean governments again had contingency planning as a key element, with case studies and exercises using various mass influx scenarios to illustrate the need for planning. In November 2004 in The Bahamas, 20 Caribbean states attended the second IOM/UNHCR Joint Regional Seminar, which used the example of the limited outflow from Haiti at the time of the Haiti's February 2004 political crisis as a case study to examine what sorts of preparations need to be made for such arrivals that served as a lessons-learned exercise for affected states and other states in the region. During these conferences, participating states were provided with a number of tools to help them to plan for such emergencies, including UNHCR's *Handbook for Emergencies*, IOM's *Emergency Handbook* and other such tools.

⁸ The following addresses only those Caribbean states with which the author is very familiar by virtue of her work in the Caribbean. Other states in the greater Caribbean may have laws and procedures with which the author is not acquainted. The Dominican Republic has a refugee law on the books and a National Office for Refugees which registers and interviews asylum-seekers; however, its committee for recommending status determinations has not been active in recent years. Belize, likewise, has a refugee law on the books that is not currently being implemented. In The Bahamas, though there is no refugee law, there are trained immigration officers who interview asylum-seekers and analyze their cases, vetting them through UNHCR and passing on recommendations to the Cabinet. In Jamaica, where likewise no refugee legislation exists, there is an ad hoc procedure for refugee status determination that appears to change from time to time and has not been codified, though authorities have indicated repeatedly that a policy paper is in the works. The Cayman Islands has a determination procedure set out in its Immigration Act. Trinidad and Tobago is in the first stages of development of an ad hoc procedure and plans to draft a law soon. Antigua and Barbuda, though it does not have a law in place, has an existing ad hoc Eligibility Committee that has received and decided applications. Most other states in the region, though the majority are signatories to the 1951 Convention and its 1967 Protocol, have not yet adopted either ad hoc procedures or refugee legislation.

Identifying Asylum-seekers and Refugees in the Caribbean Context

The lack of dedicated resources and infrastructure in the region focusing on asylum and refugees, coupled with the tendency to adopt more and more stringent controls on immigration, particularly since the inception of the so-called global war on terrorism, combine to make the identification of individuals who may be in need of international protection difficult in the Caribbean context. Migration management and control models which adopt a “one size fits all” approach may fail to adequately identify different types of migrants, with the result that arriving asylum-seekers are grouped together with other irregular migrants, and detained or returned, without being able to access a meaningful opportunity to claim asylum. Where there is no central identified authority to receive and determine applications, migration officials who do recognize that there may be a need to consider individual cases more thoroughly, whether because the individual needs to claim asylum or may be otherwise in need of protection, such as a survivor of trafficking or other abuse, are often at a loss as to how to proceed.⁹

The prevalence of the practice of interdiction and return of persons migrating by sea poses additional challenges to identifying asylum-seekers in the Caribbean. At a port of entry or in an in-land court proceeding to determine a person’s right to enter or remain in a territory, there is the potential for a private interview, the availability of interpretation and legal services, if needed, and few time constraints; however, the same is not true of boat processing. In the case of interdicted persons, there is usually little opportunity for a confidential interview to take place, no interpreter services, and no time or space to accommodate asylum-seekers for the length of time necessary to determine whether there is a need to undertake a full refugee status determination. In such cases, there needs to be an opportunity to disembark the asylum-seekers in order to properly, and confidentially, screen their cases.

The primary challenge to improving identification of asylum-seekers is raising awareness among responsible officials of the possibility that those they may be treating as irregular migrants may have a valid protection claim. Putting in place screening procedures that ask the right questions of potential asylum-seekers—Why did you depart your home country? What do you think might happen to you if you return?—would go some way toward ensuring that all arrivals with protection concerns about return would have an opportunity to claim asylum. Training migration officials in these screening procedures is a necessity.

But even where such screening procedures are in place, their proper use requires a certain sensitivity on the part of the officials utilizing them. Refugees and others in need of protection have often undergone traumatic experiences at the hands of their persecutors,

⁹ Such a dedicated authority is considered essential by UNHCR to any procedure for refugee status determination. See Conclusion No. 8 of the Executive Committee of the High Commissioner’s “Program’s Conclusions on the International Protection of Refugees,” where basic minimum standards for a refugee status determination procedure are set out (available at <<http://www.unhcr.org>> in the section on “Executive Committee”).

who sometimes have been uniformed officials of the home country, and training officials not just to ask the questions, but to ask them in such a way that a fearful or traumatized asylum-seeker feels confident enough to answer truthfully requires particular cross-cultural and cross-linguistic understanding. Where there are women asylum-seekers involved who may have suffered gender-related violence or persecution, it may be necessary to offer a specially trained interviewer of the same sex in order to have the story emerge.

At the same time, asylum-seekers must be aware that they have a responsibility to speak the truth and make their claims at the first reasonable opportunity. Developing a level of trust and confidence with the potential asylum-seekers is not an easy task either.

Finally, overcoming ingrained attitudes regarding certain nationalities is a continuing challenge, both worldwide and in the Caribbean context, even after a screening procedure has been adopted. Discrepancies in treatment of arrivals of different nationalities based on attitudes about the various countries of origin are all too common. Officials must be aware that although, of course, the human rights situation in some countries is much more prone to produce refugees than that in other countries where human rights are more broadly respected, any person from any country may be able to establish a well-founded fear of persecution, depending on the individual circumstances of the case. Those who express a fear of return must be screened, and knowledge of or access to information about conditions in the country of origin is an absolute necessity for the identification of asylum-seekers. This is one area where UNHCR can be particularly helpful to states by providing generic information in the form of its REFworld, a database available on UNHCR's website or on compact disc.¹⁰

Protecting Refugees in the Caribbean Context

The bulk of the content of the 1951 Convention, as amended by its 1967 Protocol, is dedicated to setting out the rights to which recognized refugees are entitled.¹¹ In addition to these rights, which are spelled out with some specificity in the Convention's text, there are additional human rights instruments which have been adopted by the international community since 1951 and 1967 to which refugees are also entitled.¹² The International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights are chief among these, as are the other UN human rights treaties, including the Convention on the Rights of the Child, which specifically mentions refugee children, the Convention on the Elimination of all forms of Discrimination against Women, and the Convention on the

¹⁰ See the UNHCR website at <<http://www.unhcr.org>> and click on the REFworld icon, or access country of origin information through the "Research/Evaluation" link.

¹¹ See articles 2 through 34, most of which set out specific standards of treatment that contracting states should ensure for recognized refugees in their territories.

¹² See also Chapter One on "The International Normative Framework and the Human Rights of Migrants" in this volume.

Elimination of Racial Discrimination. There are also regional instruments to which some Caribbean states are party that may be relevant. It is beyond the scope of this article to go into any detail on the rights set down in the various instruments, but suffice it to say that as international human rights law develops, so does international refugee law and refugee entitlements.

However, as noted above, there are virtually no operative legal frameworks in place in the Caribbean region for the recognition and treatment of refugees despite the fact that most Caribbean states are signatories to the international refugee protection instruments and some of the other relevant human rights instruments.¹³ So long as there are few asylum-seekers identified, inadequate resources allocated to the issue, and enhanced concern for national security and fear related to the “war on terrorism,” there is little incentive for states to develop such legislation, which is often seen as putting a significant burden on states. In the Caribbean context, where, with a few exceptions, human rights awareness among the general public is relatively low and few mechanisms exist to safeguard the human rights of citizens, there is scant interest in ensuring the rights of non-citizens. This coupled with the fact that absorption capacity of some of the islands is exceedingly limited while the rate of unemployment is high and opportunities for accessing jobs are few, the impetus to put in place guarantees for refugees is likewise restricted.

While mindful of the potential for conflict to arise between domestic communities and refugees in circumstances where refugees are forced to remain in an uncertain “limbo” for lengthy periods, Caribbean states should at a minimum consider providing basic rights guarantees to those they recognize as refugees. Arguably, the most important rights of refugees would be safeguarded if the following minimum standards were met: issuance of recognizable identity documentation certifying the refugee character of the individual; provision of a legal residence status in the asylum country guaranteeing that the individual will not be *refouled*, or returned, in any manner to the country where persecution is feared; provision of work authorization; issuance of a Convention Travel Document valid for return; and the implementation of mechanisms to ensure that close family members can join the refugee in the asylum country. While additional rights are guaranteed in the Convention, the above standards could represent an important first step in Caribbean states to ensure meaningful protection of those recognized by the state.

Finding Durable Solutions for Refugees in the Caribbean Context

The three durable solutions available for refugees are: (1) voluntary repatriation to the country of origin when it is safe to go home, (2) local integration in the society of the country of asylum, and where neither of these is available or feasible (3) resettlement to a third country.

¹³ See reference 10, above.

While the short- and long-term prospects for voluntary repatriation are in many instances excellent in the context of African and Asian refugee populations, this can be more problematic in the Caribbean context. Although extra-regional refugees may want to return, the problem of transiting legally through another region—and the attendant problem of the high cost of lengthy travel to another part of the world—limit repatriation possibilities. For claimants from the Caribbean region, there are other difficulties. For example, Cuban law, in some circumstances, proscribes or makes the return of those who have left illegally or who have overstayed their exit visas very difficult. Likewise, the situation in Haiti has been notoriously difficult to predict with any certainty, and has remained highly volatile over a significant number of years, thereby limiting the prospects for return at least for some refugees.

Local integration can be a viable alternative for small numbers of recognized refugees in the Caribbean. Depending on language and employment skills, adaptability and cultural background, it may well be possible for recognized refugees, whether from within the region or from outside of it, to fit into a new Caribbean society. However, the small size of many of the island states and the difficulty of finding jobs for significant numbers of refugees mean that the absorption of significant numbers of recognized refugees is simply not possible.

Resettlement to countries outside the region can be time-consuming and difficult, not least because no resettlement country has an existing procedure in place to resettle refugees outside of the Caribbean. The small numbers of refugees recognized to date in the region has meant it is simply not worthwhile to put in place a specific program. Moreover, many resettlement countries consider the Caribbean to be an area where small numbers of refugees should be able to integrate. Nevertheless, there has been success in resettling individual cases outside of the Caribbean and the option should remain open for those for whom it is the best solution, whether from the point of view of their protection needs, or from the point of view of the durability of the situation.

As can be seen from the foregoing, there are difficulties with all three traditional durable solutions for recognized refugees in the Caribbean. Lack of an appropriate durable solution prevents many refugees from moving ahead with their lives and becoming self-sufficient. In such circumstances, refugees experience a worrying uncertainty about the future and are often forced into a situation of dependency on UNHCR or a charity. These situations create serious frustration for refugees experiencing them. This in turn can lead to conflict with the local community and with the government, which could be best avoided by ensuring that recognized refugees are able to end the refugee cycle by getting their lives back to normal, whether that be back in their country of origin, by integrating in the country of first asylum, or by moving to a third resettlement country.

Conclusion

The current global challenges to identifying, protecting, and finding durable solutions to the problems of refugees, as seen in the foregoing, have manifested and, in some instances, been magnified in the Caribbean context. While there are particularly serious issues related to identifying and providing meaningful opportunities to claim asylum to those seeking it in the Caribbean, especially when asylum-seekers are caught up in interdiction and while return practices are common in the region, there are also equally challenging problems in protecting refugees and finding durable solutions for them in the absence of legislative frameworks and policy development on these and related issues. Unless real progress can be made by Caribbean states in all three areas—identifying, protecting, and providing meaningful durable solutions for refugees—the potential for intra-regional conflict related to refugee flows threatens to grow. The following policy recommendations are aimed at states in the Caribbean and are suggested as ways to address the difficulties and problems identified in the body of this article. While some states may have implemented some of these suggestions already, and some states may not need to implement all of them, they are offered as concrete and effective ways to diminish at least some of the potential for conflict.

Policy Recommendations

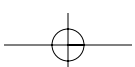
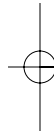
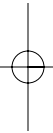
1. All states should accede to the international refugee protection instruments—all five non-signatories in the Western Hemisphere are Caribbean states, and all are members of the Association of Caribbean States.¹⁴
2. All states should put in place at least ad hoc eligibility procedures for the identification of asylum-seekers and the determination of their status, and should ensure the training of migration officials, police, border guards, and others likely to encounter asylum-seekers on recognizing and properly treating asylum-seekers.
3. All states should draft and adopt domestic legislation, implementing in national law, the obligations and provisions of the international refugee protection instruments, including, at a bare minimum, the following essential rights of recognized refugees:
 - Protection from *refoulement*;
 - Issuance of recognizable identity documentation certifying the refugee character of the holder;
 - Provision of a legal residence status in the country of asylum;
 - Work authorization;
 - Issuance of a Convention Travel Document valid for return to the country of asylum; and
 - Mechanisms for family reunification where needed.

¹⁴ See Table of Relevant International Human Rights Instruments Ratified by Countries in the Greater Caribbean (under CSR51) in this volume.



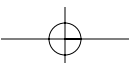
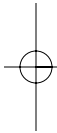
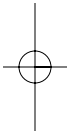
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4. All states with refugee legislation should take practical steps to ensure the effective implementation of their legislation.
5. All states should liaise with UNHCR, IOM, and other states in the region for the purposes of cooperating on the protection of refugees and others in need of international protection, including on procedures and mechanisms for identifying such persons.
6. All states should adopt an annex to their existing disaster preparedness and emergency response plans to address the contingency of mass migratory flows into the state for refugee-like reasons, and should liaise with emergency preparedness entities in other states and regional organizations to ensure adequate coordination.



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Chapter 3

Macroeconomic Disequilibrium and Migration

Article 3.1 The Performance of CARICOM Economies
in the 1990s: The Current Effect on Migration
and Conflict Potential

Esteban Pérez Caldentey and Karoline Schmid

3.1

The Performance of CARICOM Economies in the 1990s: The Current Effect on Migration and Conflict Potential

Esteban Pérez Caldentey and Karoline Schmid

Introduction

This article analyzes the performance of the Caribbean Community (CARICOM) economies in the 1990s and draws implications for current migration flows and conflict potential in the region.¹ It shows that overall growth has declined, and disparities among CARICOM countries have simultaneously widened over time. The main determinants of the pattern of growth are external factors, in particular the loss in export competitiveness. Although CARICOM countries have tried to overcome the limits imposed on their growth potential by focusing on policies that encourage capital inflows, especially foreign direct investment (FDI), the consequences of these policies have not been successful in fostering sustainable regional development, and economic policies have instead encouraged a process of development characterized by duality and polarization.²

Consequently, the present deteriorating socio-economic situation and the perceived future opportunities in more prosperous CARICOM economies nearby or in countries in the North have determined and shaped migration flows and patterns. Perceived economic and social opportunities at the migration destination for oneself and one's

¹ The treaty establishing the Caribbean Community (CARICOM) in 1973 provided for the creation of two distinct entities: the Caribbean Community and the Common Market. CARICOM has 15 member states: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The Bahamas is not a member state of the Common Market. CARICOM has five associate members: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands. Aruba, Mexico, Venezuela, Colombia, the Netherlands Antilles, the Dominican Republic, and Puerto Rico are observers. This article focuses on the independent countries of CARICOM.

² Within a regional integration agreement such as CARICOM, polarization means that the productivity of an exporting country within the regional agreement is growing more rapidly than the productivity in the importing country. See Larry Neal and Daniel Barbezat, *The Economics of the European Union and the Economics of Europe* (New York: Oxford University Press, 1998).

family are of critical importance when the decision to migrate is taken. Compounding the problem of declining economic development, out-migration flows and the associated brain drain may curtail the growth of CARICOM economies by constraining their growth potential.

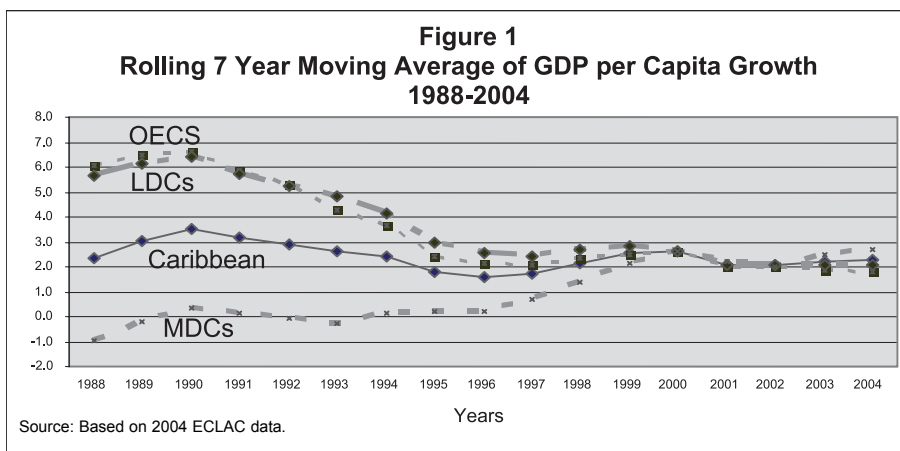
Socio-economically driven migration also has an important dimension related to conflict potential, especially intra-Caribbean migration. Prone to cause conflict are uncontrolled migratory flows of less qualified labor within the region, particularly from the less dynamic to the more dynamic economies within CARICOM, such as from Guyana to Barbados, and from Haiti to its neighboring countries. By contrast, extra-regional migration flows, particularly of the un- and semi-skilled, for the most part have played the role of escape valve rather than aggravating conflict. Instead, these flows have had the effect of attenuating the social consequences of the economic policies described here by reducing the supply of labor (and thus the potential for unemployment) and increasing the flow of remittances.

In drawing a relationship between the development of CARICOM economies and migration trends in the region, this article comprises four parts. The first part analyzes the economic performance of CARICOM countries, linking it to external conditions, and the second part focuses on the economic policies undertaken to overcome the external constraint and then analyzes their consequences. The third part focuses on migration flows and patterns that are linked to the economic performance described in the first two parts, with a specific focus on the free movement of labor, and then comments on related conflict potential. The final part summarizes this relationship and offers some points of reflection.

The Growth Trajectory of Caribbean Economies

Since the mid-1980s, Caribbean macroeconomic performance has been characterized by a declining growth trend and an increased disparity around that trend. Although CARICOM countries witnessed an increase in their average per capita Gross Domestic Product (GDP) in the periods from 1980 to 1985 and 1985 to 1990 (of 0.8 percent and 3.6 percent, respectively), the growth performance thereafter has followed a downward trend and has stagnated since the middle of the 1990s.³

³ Figure 1 is based on data provided the Division of Economic Projections and Statistics of the UN Economic Commission for Latin America and the Caribbean (ECLAC), Santiago, Chile (2004).



A closer inspection illustrates that the downward trend is due mainly to the influence of the countries of the Organization of Eastern Caribbean States (OECS) and those in the category of less developed countries (LDCs); by contrast, the more developed countries (MDCs) actually improved their performance over time.⁴ Between 1988 and 2004, the rolling average GDP per capita of the OECS countries and LDCs declined from six percent to two percent, whereas in the case of the MDCs it increased from negative one percent to two percent over the same period. As a result, CARICOM economies have converged with a similar and unchanging rate of growth of roughly two percent.⁵

At the same time that countries have converged in their growth rates (Figure 1), they have deviated in terms of GDP levels over time (Table 1). As demonstrated, the cross-sectional variance for all CARICOM groupings without exception shows an increase from 1980 to 1985 and from 2000 to 2004.

⁴The members and associate members of the Organization of Eastern Caribbean States (OECS) are Anguilla, Antigua and Barbuda, British Virgin Islands, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines. Six member states of CARICOM are considered more developed countries (MDCs): The Bahamas, Barbados, Guyana, Jamaica, Suriname and Trinidad and Tobago. Eight countries are considered less developed countries (LDCs): Antigua and Barbuda, Belize, Dominica, Grenada, Haiti, St. Lucia, St. Kitts and Nevis, and St. Vincent and the Grenadines.

⁵This trend is shown by Figure 1, which plots a 7 moving average from 1980 to 2004 for the OECS, LDCs, and MDCs.

Table 1: GDP/Capita Trends in the Caribbean, 1980 - 2004					
	1980-1985	1985-1990	1990-1995	1995-2000	2000-2004
Averages					
OECS	4.6	6.6	1.9	2.6	1.2
LDCs	4.0	6.5	2.5	2.6	1.6
MDCs	-2.0	0.4	-0.2	2.6	2.7
CARICOM	0.8	3.6	1.4	2.6	2.0
CARICOM CV	2.3	0.4	0.9	0.4	1.0
Dispersion of GDP per capita in levels across the Caribbean					
CARICOM	6.67	6.73	6.73	6.82	6.92
OECS	6.06	6.43	6.61	6.71	6.84
LDCs	6.07	6.46	6.60	6.68	6.78
MDCs	6.98	7.01	6.94	7.03	7.13

Source: Based on 2005 ECLAC data.

The Performance of CARICOM Economies and its Relation to the External Sector

CARICOM's growth performance is shaped by the evolution of its external sector. CARICOM has witnessed an overall loss in market share of its major export markets, both in goods and tourist services.⁶ Between 1985 and 2002, the export market share of Caribbean countries within regional trading blocs, such as the North American Free Trade Agreement (NAFTA) and the European Union (EU), decreased from 0.71 percent to 0.27 percent and from 0.15 percent to 0.10 percent, respectively (Table 3).⁷

In the same vein, intra-regional trade has also declined for the majority of CARICOM member states (Table 2). The OECS countries, the LDCs, and the MDCs (excluding Trinidad and Tobago) have lost intra-regional market share. The OECS countries' intra-regional share fell from 2.4 percent to 1.4 percent of the total between 1980 and 2003. For the same period, the LDC's share declined from 2.5 percent to 1.8 percent of the total. Finally, the MDC's share (excluding Trinidad and Tobago) decreased from four percent to two percent in the same period.

In spite of a moderate growth in import demand, the deteriorating performance of exports has widened the imbalance in the current account. The average current account deficit for CARICOM, which stood at -4 percent of GDP in 1996, widened to -11 percent in 2003 (Figure 2).

⁶ Market share generally refers to the percentage or proportion of the total available market or market segment that is being serviced by an economy. It can be expressed as an economy's revenue (from that market) divided by the total revenue available in that market. It can also be expressed as an economy's unit sales volume (in a market) divided by the total volume of units sold in that market.

⁷ It is noteworthy that the Caribbean market share has decreased in those markets that grant preferential treatment, but has increased in those markets that do not grant special and differential treatment (for example, the Andean Community).

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As noted, a loss in market share leading to the stagnation or deterioration of export performance is not limited to goods, but also affects services, which is important. Services play an important social role and have a major impact on a country's financial stability, growth, and balance of payments. The service sector has traditionally been identified as the sector that will provide the impetus for growth in the future and thus should continue to contribute to output, growth, employment, and the provision of basic needs.

Services make up a major portion of CARICOM economies and of the OECS domestic economies in particular. Services also represent the bulk of CARICOM and OECS' foreign exchange earnings. In the case of the OECS countries, services represent between 65 percent and 90 percent of the total exports of goods and services. For example, in terms of tourist services, the Spanish-speaking Caribbean has the greatest share of tourist arrivals (70 percent in 2003). CARICOM's market share of Caribbean tourist arrivals increased slightly from 28 percent to 30 percent, while that of the OECS has declined, falling from seven percent in 1996 to five percent in 2003 (Table 4).

Table 2: Intra-Regional Trade Shares of Export and Imports, 1980 – 2003						
	1980	1985	1990	1995	2000	2003
Intra-regional trade share (exports)						
Antigua and Barbuda	0.27	0.26	0.27	0.00	0.13	0.00
Barbados	0.92	2.30	1.66	1.79	1.59	1.70
Belize	0.10	0.10	0.21	0.11	0.12	0.30
Dominica	0.10	0.31	0.34	0.38	0.42	0.43
Grenada	0.04	0.23	0.17	0.12	0.16	0.18
Guyana	0.91	0.53	0.33	0.00	0.90	n/a
Jamaica	0.99	1.38	1.76	1.19	0.66	n/a
Montserrat	0.00	0.01	0.01	0.01	0.00	0.02
St. Kitts and Nevis	0.07	0.17	0.09	0.04	0.04	0.01
St. Lucia	0.25	0.29	0.53	0.34	0.17	0.46
St. Vincent and the Grenadines	0.11	1.09	0.69	0.54	0.31	0.34
Suriname	0.00	0.00	0.00	0.23	n/a	n/a
Trinidad and Tobago	5.88	6.88	6.60	11.94	13.19	17.22
CARICOM	9.66	13.36	12.39	16.70	17.17	20.65
OECS	0.85	2.35	2.11	1.45	1.24	1.44
LDC's	0.95	2.45	2.32	1.56	1.36	1.75
MDC's	8.70	11.09	10.34	15.15	16.35	18.91
MDCs without Trinidad a/	2.82	4.21	3.75	3.21	3.98	1.68
MDCs without Trinidad b/	9.06	10.56	7.52	6.39	7.59	n/a
Intra-regional trade share (imports)						
Antigua and Barbuda	0.73	0.77	0.68	n/a	n/a	n/a
Barbados	1.69	2.22	2.16	1.71	2.14	4.24
Belize	0.04	0.06	0.26	0.18	0.13	0.22
Dominica	0.22	0.34	0.50	0.44	0.37	0.57
Grenada	0.28	0.39	0.51	0.49	0.54	0.9
Guyana	1.54	1.98	0.49	0.00	0.91	n/a
Jamaica	1.45	1.07	1.74	3.52	3.72	n/a
Montserrat	0.07	0.10	0.16	0.00	0.04	0.04
St. Kitts and Nevis	0.16	0.25	0.32	0.32	0.34	0.56
St. Lucia	0.45	0.60	0.96	0.94	0.74	1.16
St. Vincent and the Grenadines	0.28	0.36	0.56	0.50	0.46	0.67
Suriname	0.00	0.00	0.00	0.70	n/a	n/a
Trinidad and Tobago	1.92	2.45	1.57	1.08	1.17	1.21
CARICOM	8.81	9.72	9.21	9.86	10.96	9.58
LDCs	1.62	2.03	2.65	1.60	1.54	2.40
MDCs	6.60	7.72	5.95	6.99	7.94	5.45
MDCs without Trinidad a/	4.68	5.27	4.39	5.92	6.77	4.24
MDCs without Trinidad b/	10.13	7.96	5.55	8.16	6.78	n/a
Note: 'n/a' denotes not available. 'a/' adjusts for intraregional trade. 'b/' accounts for intra and extra regional trade. Source: Based on 2002 data provided by CARICOM Secretariat and Andean Community (CAN).						

Table 3: Caricom's Import Market Share In Goods in Regional Trading Blocks, 1985-2002 *(In percentages)*

Regional block	1985	1990	1995	2000	2002
NAFTA	0.71	0.43	0.32	0.24	0.27
Western Europe	0.15	0.13	0.12	0.10	n/a
Andean Community	0.40	0.96	0.41	0.24	0.56
Mercosur	0.30	0.34	0.19	0.11	0.14
CACM	0.20	0.18	0.38	0.74	1.34

Note: 'n/a' denotes not available.
 Source: Competitive Analysis of Nations (2002) and World Integrated Trade System (WITS), The World Bank (2005).

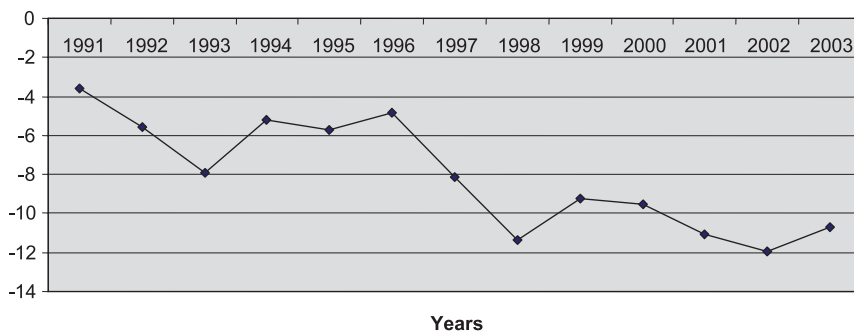
Table 4: Market Share of Tourist Arrivals in the English and Spanish Speaking Caribbean, 1996-2003

Sub-region	1996	2000	2003
OECS	6.51	5.34	5.38
CARICOM	27.54	28.66	29.65
Hispanic Caribbean	72.46	71.34	70.35

Note: The Spanish-speaking Caribbean includes Mexico (Cancún and Cozumel), Cuba, the Dominican Republic, and Puerto Rico.
 Source: Caribbean Tourism Organization (2004)

Figure 2: CARICOM Current account as percentage of GDP 1991-2003

Percentage of GDP



CARICOM's Policy Response

CARICOM economies have tried to overcome their external constraints by focusing their efforts and policies on attracting foreign exchange flows. However, foreign direct investment flows have evolved at an uneven pace and have only slightly increased in the past decade. For the CARICOM region, foreign direct investment as a percentage of GDP moved from eight percent to 10 percent between 1990 and 2001. For the OECS countries, foreign direct investment expanded from one percent to 13 percent (Table 5). In the past year, CARICOM countries, in particular those of the OECS, have noted a surge in foreign investment, but it remains to be seen whether the increase in investment can be sustained over time.

In the case of the smaller economies that make up the OECS, foreign direct investment is targeted mainly at the tourism industry, which attracts generally low-skilled labor, quite often on a seasonal basis.⁸ As shown in Table 6, between 1997 and 2004, tourism received 60 percent of total foreign direct investment in the OECS countries, outstripping by far any other sector. Also, tourism and manufacturing are the only two sectors that receive foreign direct investment on a yearly basis—but the inflows to the manufacturing sector are negligible, comprising less than one percent of the total—while the other sectors' investment is less consistent (Table 6).

⁸ Caribbean Tourism Organization, *Caribbean Tourism Statistical Report 2001-2002* (St. Michael: Caribbean Tourism Organization, 2002).

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Table 5: Foreign Direct Investment
(As a percentage of GDP)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Anguilla	19.7	11.3	25.6	10.1	15.0	23.7	42.1	23.8	29.8	36.3	36.4	24.9	13.7
Antigua and Barbuda	15.5	13.3	4.6	3.3	5.0	6.4	3.6	4.0	4.4	5.6	5.0	7.8	n/a
Barbados	1.2	2.0	1.7	0.1	2.3	-0.3	1.2	1.4	0.7	2.2	6.0	3.6	6.8
Belize					3.3	3.1	1.8	1.3	7.5	7.2	2.5	5.0	2.7
Dominica	7.7	8.4	10.7	6.6	10.5	24.7	7.6	10.3	3.0	8.0	4.7	6.4	4.3
Grenada	5.8	6.3	9.0	8.1	7.3	7.2	6.6	10.6	13.9	11.0	8.8	8.6	19.8
Guyana	4.1	8.0	36.9	13.6	8.8	8.6	8.4	7.0	6.7	6.7	9.5	7.9	n/a
Jamaica		1.4	9.8	7.3	10.2	5.5	8.1	-0.1	2.0	-0.1	6.0	12.1	5.4
Montserrat	14.3	14.4	7.9	7.8	11.3	5.0	-0.7	6.3	6.8	23.4	9.9	10.2	0.6
St. Kitts and Nevis	6.0	4.9	2.5	6.9	6.9	8.9	14.3	7.2	11.1	19.0	29.2	24.1	22.8
St. Lucia	10.8	1.8	0.9	6.9	6.3	5.9	3.2	8.3	13.3	12.4	7.1	7.7	7.2
St. Vincent and the Grenadines	3.9	4.2	6.4	13.2	19.4	11.6	15.3	31.5	28.0	16.9	8.4	10.2	9.2
Trinidad and Tobago	2.2	2.5	3.1	8.8	10.5	5.5	6.2	17.2	11.6	5.5	8.1	6.2	7.1
Average	8.3	6.5	9.9	7.7	9.0	8.9	9.1	9.9	10.7	11.9	10.9	10.4	12.5
Standard deviation	6.0	4.6	10.7	3.7	4.7	7.4	11.0	9.2	9.1	9.9	10.0	6.7	13.1
Average OECS	10.5	8.1	8.5	7.9	10.2	11.7	11.5	12.7	13.8	16.6	13.7	12.5	16.0
Average MDCs	1.9	3.5	3.6	7.4	8.0	4.8	6.0	6.4	5.2	3.6	7.4	7.5	14.5

Note: 'n/a' denotes not available.
Source: Based on ECLAC official data.

Table 6: Share of Foreign Direct Investment Per Economic Sector for OECS, 1997 - 2004 <i>(As a percentage of the total)</i>										
Sector	1997	1998	1999	2000	2001	2002	2003	2004	Average	
Tourism	60.12	74.83	81.56	63.86	47.04	56.67	35.43	60.99	60.06	
Manufacturing	1.53	0.16	0.40	1.20	1.90	0.24	0.52	0.74	0.84	
Transportation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Construction	2.89	0.92	0.00	0.00	0.00	0.00	5.56	11.48	2.61	
Sporting	2.06	6.24	1.14	0.00	0.00	0.00	0.00	0.00	1.18	
Medical	0.00	0.00	0.00	0.00	0.24	0.34	0.00	0.00	0.07	
Financial	0.00	0.00	0.00	0.00	0.24	1.20	0.00	0.00	0.18	
Banking and Insurance	1.42	0.00	0.74	0.30	0.00	0.00	0.00	0.00	0.31	
Commercial	2.11	0.08	0.00	4.84	0.84	0.00	0.00	0.00	0.98	
Petroleum	1.50	0.72	0.25	0.00	0.00	0.00	0.00	0.00	0.31	
Education	0.00	3.12	1.88	0.00	0.00	0.00	1.47	0.00	0.81	
Agriculture	0.00	0.00	2.04	0.62	0.25	0.67	0.28	0.01	0.48	
Other	28.36	13.94	11.99	29.18	49.48	40.87	56.73	26.79	32.17	
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	

Source: Based on OECS official data (2004).

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The effect of orienting domestic economic policy to increased foreign direct investment has had four major consequences. First, it has not been accompanied by a rise in domestic investment. Foreign direct investment inflows have increased, but domestic investment as a percentage of GDP has remained unchanged at the regional level for the past twenty years, and in many country cases it has decreased. The decomposition of domestic investment into its private and public components shows that, at least in the case of the OECS countries, private domestic investment has experienced a marked decline in the past 12 years (25 percent and 15 percent of GDP between 1990 and 2003).

Second, it has reinforced a pattern of productive specialization characterized by the stagnation of the manufacturing sector and the rise of service and mining activities. The contribution of the manufacturing sector remained stagnant during the 1990s at 12 percent, while tourism rose from 39 percent to 47 percent throughout the decade. For its part, the contribution of agriculture has clearly declined.

Third, governments have actively promoted those activities that are foreign exchange intensive through a gamut of fiscal incentives. This has impaired the use of taxation as a tool to achieve a more equitable distribution of income or to equilibrate the budget.⁹ Fiscal policy is mainly a microeconomic tool providing incentives to develop activities in selected economic sectors. The instruments include profit tax holidays, tariff exemptions, export allowances for extra-regional exports following the expiration of the tax holidays, dividend payments, loss-carry forward, and depreciation allowances.

The cost of fiscal incentives has been exceptionally high, as illustrated by some of the smaller economies of the Caribbean. Estimates based on customs data indicate that during the first part of the past decade import related tax concessions averaged between four percent and six percent of GDP for Antigua and Barbuda, Dominica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines, and were above 10 percent of GDP for Grenada. In the first part of the present decade import related tax concessions decreased for Dominica, Grenada, St. Lucia, St. Vincent and the Grenadines. However, a substantial increase was noted for Antigua and Barbuda and St. Kitts and Nevis (nine percent and 13 percent of GDP, respectively).

Fourth, and most importantly, the deterioration of the current account, especially export performance, coupled with the stagnation of domestic investment, have prevented these two key variables from playing a fundamental role in stimulating aggregate demand and economic growth. As a result, for most Caribbean countries the fiscal stance has been expansionary in order to sustain demand, as expected.

⁹ Sebastian Sosa, *Tax Concessions and FDI in the Eastern Caribbean Currency Union*, International Monetary Fund Working Paper, Western Hemisphere Department, January 2006, available from <http://ssosar.bol.ucla.edu/wp0623_Sosa.pdf>.

Combined with the objectives of tax policy that are guided by microeconomic goals, the imbalance in the government and external accounts have set the stage for a process of debt accumulation over time. The increase in the debt stock has in turn forced some countries to continue to raise foreign exchange for the sole purpose of fulfilling debt obligations. On average, the public debt to GDP ratio has increased from 65 percent to 87 percent of GDP from 1997 to 2003. When decomposed in terms of its internal and external component, the former represents 35 percent of the total GDP, while the latter has reached 56 percent of GDP. In the cases of The Bahamas, Barbados, and Jamaica, the internal debt ratio is greater than the external debt ratio (Table 7).

Table 7: Public Debt in the Caribbean				
Country	Total public debt as % of GDP (2003)		Internal Debt as a % of GDP (2003)	External debt as a % of GDP (2003)
	1997	2003		
Anguilla	10.7	17.2	3.8	13.2
Antigua and Barbuda	107.0	151.7	68.9	83.1
The Bahamas	46.0	45.0	31.5	5.6
Barbados	62.0	71.1	54.9	25.9
Belize	41.0	88.9	13.0	75.8
Dominica	61.0	127.0	39.4	87.6
Grenada	42.0	110.1	30.1	79.9
Guyana	211.0	172.0	n/a	172.0
Jamaica	103.0	142.0	85.4	56.5
Montserrat	26.0	16.4	2.8	13.2
St. Kitts and Nevis	86.0	162.0	75.4	86.6
St. Lucia	36.0	66.1	19.1	46.9
St. Vincent and the Grenadines	48.0	76.7	25.6	51.4
Suriname	24.0	37.0	9.8	27.2
Trinidad and Tobago	52.0	28.0	n/a	13.8
Average	64.0	87.0	35.0	56.0

Source: ECLAC, *Economic Survey of the Caribbean (2003-2004)*.

Current Account Balances and Shifting Labor Market Demands

Currently, 12 of the Caribbean economies (Guyana, St. Kitts and Nevis, Jamaica, Antigua and Barbuda, Dominica, Grenada, Belize, St. Vincent and the Grenadines, Barbados, St. Lucia, Suriname and The Bahamas) are among the 30 most indebted emerging market countries worldwide. More specifically, Guyana, St. Kitts and Nevis, Jamaica, Antigua and Barbuda, Dominica, and Belize rank as the first 10 most indebted. Consequently, these developments have had major consequences for the development of Caribbean economies. In particular, they have contributed to an on-going process of economic duality and polarization.

The stagnation of domestic investment and the formation of a dual economic structure, with a decline in agriculture and an increasing dynamism in services, have severely hampered the potential for the expansion of trade in manufacturing and agricultural goods. The stagnation of the manufacturing sector has led to very high levels of indebtedness for the industry and to the consequent substitution of commercial activities. A major concern for some economies is even the possible extinction of the manufacturing sector. In addition, the substitution of commercial for manufacturing activities has had a bearing on the composition of GDP, its growth potential, and the direction of economic policy in general.

By contrast, these current developments have set the stage for an expansion in services, which are a major source of foreign exchange earnings. However, part of the expansion in services is due to the growth of the financial sector, whose dynamism at the intra-regional level is driven by government debt. Government debt represents a significant share of the loan portfolio of commercial banks trading in the region. Anchoring the tax structure to an incentive strategy aimed at developing activities that attract foreign exchange flows and tuning government spending to maintain a given level of aggregate demand has reduced governments' scope, and thus ability to undertake development policies.

The existing current account imbalances, the stagnation of domestic investment, and the high levels of indebtedness have definite implications for countries' ability to take advantage of potential production possibilities and capabilities. More to the point, they undermine countries' readiness to fully participate and partake in the benefits of the Caribbean Single Market and Economy (CSME).¹⁰ These imbalances have significant implications for convergence requirements and for the economic and social cost of convergence. The continued decline in the agricultural and manufacturing sectors and the expanding services sector have shifted labor market demands, with rising

¹⁰ Economic Commission for Latin America and the Caribbean, *Effects and Implications of the Common Market and Single Economy (CSME) on the Member States of the Organization of Eastern Caribbean States (OECS) and the Utilization of Chapter 7 of the Treaty of Chaguaramas* (Port of Spain: ECLAC, 2005).

unemployment in the former and growing labor needs in the latter. Rising tensions over scarce jobs in agriculture and manufacturing between nationals and foreigners are the result, while quite often the domestic labor market cannot meet the demands for service workers in the tourist industry, who then need to be imported. Such shifting labor demands may create an environment with enhanced conflict potential.

Migration Flows in CARICOM and the Wider Region

There is indication that economic performance has helped to shape the pattern of extra- and intra-regional migration flows; besides a continued trend of migration toward the North, the absolute number of foreign born nationals originating in the Caribbean present in other countries in the sub-region has steadily increased over the last two decades. Migrant stock data published by the UN confirm these trends and, on average, about three percent of the Caribbean population can be considered migrants (Table 8).¹¹ However, it is important to bear in mind that data oftentimes is incomplete or imprecise, as much of this migration is undocumented and statistical analysis unavailable.

While the absolute migrant stock may seem comparatively small in the Caribbean, the migrant stock as a percentage of the population is considerable high. This, however, varies from country to country, with the lowest percentages of migrants found in Jamaica, Guyana, Cuba, and the Dominican Republic, and the highest proportions reported in the British Virgin Islands, the Cayman Islands, Anguilla, the Netherlands Antilles, Aruba, and the U.S. Virgin Islands.¹² The majority of migrants originate in just a few countries, mainly in the smaller members of the OECS (with the exception of Anguilla), and also in Jamaica, Guyana, Suriname, and Haiti. Deteriorating economic and social conditions, high unemployment (particularly for youth), and little hope for economic improvement constitute the main push factors encouraging migration.

As discussed above, the continued decline in agricultural and manufacturing sectors of CARICOM economies, along with the expansion of the service sector, especially in tourism, have caused a considerable shift in labor market demands at both the national and regional levels. While it is becoming increasingly difficult to find work in the former sectors, the domestic labor market often cannot meet the demand for labor in the service sector. Of particular importance is the shift in the gender balance of the labor market; while the agriculture and manufacturing sectors were traditionally dominated by men, the service sector tends to attract more female labor. One finds exceptions to this phenomenon in Guyana and Trinidad and Tobago, where the bulk of labor demand is still dominated by the need for male workers due to the resource and energy-focused sectors of the economy.

¹¹ United Nations Population Division, *International Migration, Wallchart* (New York: UN, 2002).

¹² A look at the distribution of migrants in absolute terms shows that a third of the intra-Caribbean migrant population resides in Trinidad, 22 percent in the U.S. Virgin Islands, and 12 percent in Barbados. The main supplier countries include Grenada, St. Vincent and the Grenadines, and Guyana.

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Table 8: Data on Population and Migration, 1990-2000

Country or area	Population (thousands)		Migrant stock (thousands)		As percentage of population	
	1990	2000	1990	2000	1990	2000
World	5,254,820	6,056,715	153,956	174,664	2.93	2.88
More developed regions	1,148,365	1,191,429	81,424	104,119	7.09	8.74
Less developed regions	4,106,455	4,865,286	72,531	70,545	1.77	1.45
Least developed countries	514,605	667,613	10,992	10,458		
Latin America and the Caribbean	440,354	518,809	6,994	5,914	1.59	1.14
Caribbean	33,907	37,941	909	1,071	2.68	2.82
Anguilla	8	11	2	4	27.97	35.61
Antigua and Barbuda	63	65	12	16	19.18	24.47
Aruba	66	101	14	31	21.91	30.83
The Bahamas	255	304	27	30	10.52	9.85
Barbados	257	267	21	25	8.32	9.16
British Virgin Islands	17	24	8	8	44.03	35.49
Cayman Islands	26	38	13	15	48.89	39.12
Cuba	10,629	11,199	100	82	0.94	0.73
Dominica	71	71	3	4	3.53	5.28
Dominican Republic	7,061	8,373	103	136	1.46	1.63
Grenada	91	94	4	8	4.70	8.50
Guadeloupe	391	428	66	83	16.88	19.44
Haiti	6,907	8,142	19	26	0.28	0.32
Jamaica	2,369	2,576	17	13	0.73	0.49
Martinique	360	383	39	54	10.74	14.21
Montserrat	11	4	2	0	18.76	4.86
Netherlands Antilles	188	215	38	55	20.48	25.35
Puerto Rico	3,528	3,915	322	383	9.14	9.79
Saint Kitts and Nevis	42	38	4	4	9.64	11.19
Saint Lucia	131	148	5	8	4.06	5.45
Saint Vincent and the Grenadines	106	113	4	8	3.79	6.66
Trinidad and Tobago	1,215	1,294	51	41	4.16	3.20
Turks and Caicos Islands	12	17	2	3	18.33	16.23
United States Virgin Islands	104	121	31	35	30.22	28.79
Central America	111,409	135,129	1,836	1,040	1.65	0.77
Belize	186	226	45	17	24.40	7.51
South America	295,037	345,738	4,250	3,803	1.44	1.10
Guyana	731	761	3	2	0.43	0.21
Suriname	402	417	9	6	2.13	1.49

Source: *The Revision Of World Population Prospects (2000)*/UNHCR (Revised September 10, 2002 by the United Nations Population Division).

Skilled and Unskilled Labor Mobility

Although intra-Caribbean labor mobility data is limited and incomplete, a picture can be gained by analyzing the data on work permits. The available data is for Barbados, Jamaica, St. Lucia, and Trinidad and Tobago and shows both the percentage of work permits issued as a percentage of the total annual flow of intra-CARICOM immigrants and as a percentage of the total population. This is shown in Table 9 (below) for the period from 1994 to 2004.

The share of work permits granted to CARICOM nationals is high, reaching more than 60 percent of the total in the case of Barbados, and 30 percent in the case of St. Lucia. The share of work permits granted to OECS nationals is comparatively less for the last available comparable year (2003), exemplified by only seven percent for Barbados, three percent for Jamaica, eight percent for St. Lucia, and one percent of the total for Trinidad and Tobago. But, the annual flow of documented or formal CARICOM immigration as a percentage of the total stock of population, as measured by work permits issued (including dependents), is by all standards very low, never exceeding one percent.

The phenomenon has gained in complexity and the categories of migrants as well as their impact have become more difficult to identify and assess. But, intra-regional migration is expected to be enhanced and become a source of welfare gains through the gradual completion and implementation of the CSME provisions.¹³ As these provisions currently stand, however, they encompass only the free movement of certain categories of skilled labor; CARICOM nationals with certain skills have the right to live and work in any member state without work permits, while all other orderly movement of labor is dependent on work permits granted by the receiving country. These categories of skilled labor include university graduates, artists, sportspersons (athletes), musicians, and media personnel.¹⁴

¹³ The deadline for the establishment of the single market covering the movement of goods, capital, skills and services, and the right of establishment was January 1, 2006 or shortly thereafter, while the single economy containing measures related to the production integration, harmonization of fiscal and investment policies, monetary integration, capital market integration and development should be completed by December 31, 2008. For further discussion on the CSME see the article on "International Normative Framework with Reference to Migration in the Greater Caribbean" in Chapter One of this volume.

¹⁴ Karoline Schmid, *Migration in the Caribbean: What do We Know? An Overview of Data, Policies and Programs at the International and Regional Levels to Address Critical Issues* (Port of Spain: ECLAC Subregional Headquarters for the Caribbean, September 2005), Available from <[http://www.un.org/esa/population/publications/IttMigLAC/P09_ECLAC\(Port%20of%20Spain\).pdf](http://www.un.org/esa/population/publications/IttMigLAC/P09_ECLAC(Port%20of%20Spain).pdf)>. The implementation of the first phase of the CSME provisions for the free cross-border movements of highly skilled labor shows that nations very much differ in their perception and acceptance of various migrant groups, depending on the specific needs of the country.

Skilled labor is in demand throughout CARICOM, but available data show that more qualified laborers are increasingly looking for “greener pastures” outside the region altogether.¹⁵ Consequently, CARICOM countries, particularly the smaller members that comprise the OECS, suffer the consequences of the lack of access to skilled labor and perceive it as a major constraint on their development. The larger economies in the region also seem to increasingly experience the negative consequences of the “brain drain” and indicate that they would be willing to hire skilled labor from the OECS countries, even on a long-term basis.¹⁶

Along these lines, granting the right of free movement to certain categories of skilled labor should be seen in a positive light, and limiting movement to skilled labor as a whole is, to a certain extent, justifiable. Labor migration flows within the Caribbean have been historically unskilled, moving in one direction from poorer (origin) to richer (destination) countries. With the growing demand for highly skilled labor, more and more educated human resources have moved within the region, increasing the transfer of technology and skills, but even more so to destinations outside the region.¹⁷ It is therefore in the interest of the CARICOM countries to maintain a steady or increasing amount of skilled labor in the region.

However, the current CSME provisions are incomplete and fail to address the issue in all of its dimensions. As can be understood from an analysis of the European case, the work permit is not the only factor imposing a cost or causing an impediment to labor mobility.¹⁸ Labor is not like other commodities insofar as the degree of labor mobility depends not only on barriers to cross-border transactions, but also on differences in social protection systems, institutions, lifestyles, and even cultural patterns. This is one fundamental reason why Europe decided to establish a common social policy, which is absent in the CSME provisions and may prove problematic. It should be noted, however, that the CARICOM agreement on social security (in operation since 1997), which allows the transfer of social security benefits among member states, is a positive step in that direction.¹⁹

¹⁵ Prachi Mishra, “Emigration and the Brain Drain: Evidence from the Caribbean,” in *International Migration, Remittances & the Brain Drain* (Washington, DC: World Bank, 2005), 18. Also available online, <<http://econ.worldbank.org/external/default/main?theSitePK=1572893&contentMDK=20693491&pagePK=64168182&piPK=64168060>>.

¹⁶ Karoline Schmid. See also the article on “Migration Management Challenges in the Caribbean” in Chapter Two of this volume.

¹⁷ For an example of this in the health sector (specifically, the emigration of nurses), see Economic Commission for Latin America and the Caribbean and Caribbean Development and Cooperation Committee, *Emigration of Nurses from the Caribbean: Causes and Consequences for the Socio-Economic Welfare of the Country: Trinidad and Tobago—A Case Study* (Port of Spain: 2003).

¹⁸ Neal and Barbezat.

¹⁹ CARICOM, *The Free Movement of Skills and Social Security: Free Movement in our CARICOM Single Market and Economy*, 2002, <http://www.caricom.org/jsp/single_market/freemovementskills_socialsecurity.pdf>.

Economic, Social, and Political Challenges Facing Migration Management

The challenge in regulating labor will be creating policies to address the economic, social, and political cost of both the skilled and unskilled flows for the sending and the receiving countries.²⁰ Economic costs of out-migration often include a delay in the adoption of advanced technologies and the possibility that the contribution of migrants to production and revenue falls below the social services and transfer payments they receive. Simultaneously, the social and economic costs of immigration, and particularly of undesired and irregular migrants, include, among other factors, the infringement of a country's sovereignty and the influence of migration on the racial composition of a society and on its politics.

In addition, it also should be taken into account that countries tend to oppose the unrestricted migration of labor because they want to regulate foreign labor flows to suit their economic needs. For example, countries may be willing to accept unskilled labor in times of economic growth, but tend to reject it during periods of economic stagnation or recession, or when incoming labor is perceived by nationals as a competitive threat for jobs and other scarce resources at the destination. This is demonstrated by the more developed CARICOM countries, such as The Bahamas and Barbados, which receive migrants from poorer countries in the region.

The failure to address the rights of unskilled labor has its costs. Placing the focus on skilled labor and giving it the facilities of free movement within the region may widen the existing disparity between skilled and unskilled labor and their remuneration levels. Migrants with labor skills can acquire and enhance their existing level of skills by virtue of free movement; unskilled labor migrants are denied that right. Besides the negative effects that this can have on equality and income distribution, and thus economic growth, the current provisions on labor mobility place at a disadvantage those economies that have a relatively high percentage of the labor force that is unskilled. Barring the right of unskilled labor to move can further widen the existing economic and social asymmetries within the CARICOM region, which is contrary to the spirit of the CSME and to the basic principles of regional integration. Strengthened legal provisions to control or even prevent migration will not stop people from moving across national boundaries. Taking this into account, the region is likely to see an increase of undocumented and irregular migrants seeking better livelihoods in the more developed economies of CARICOM and elsewhere.

²⁰ This and the following paragraphs are based on E. Meyers, *Multilateral Cooperation, Integration and Regimes: The Case of International Labor Mobility*, Working Paper No.61 (La Jolla: University of California-San Diego, 2002).

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While acknowledging the costs and benefits in economic terms of the in- and out-flow of skilled and unskilled migrants, differences in culture, language, religion, and social habits between migrants and nationals can cause major tensions at the destination. A recent study has critically analyzed possible social and cultural consequences of the free movement of labor within the CSME and raises questions concerning its impact on the value of citizenship, sovereignty, and nationality of independent Caribbean states.²¹ The study points to potential risks insofar as lower skilled labor migrants might compete with nationals for the same jobs, and would even accept work under less favourable conditions with the implication of decreasing wage and benefit levels for all. Another concern is the different languages spoken by immigrants and nationals. For example, this seems to have been affecting the British Virgin Islands, with a considerable number of Spanish-speaking migrants from the Dominican Republic, and The Bahamas, with Patois-speakers from Haiti.

With a mixture of socio-economic gaps and ethnic, linguistic, and religious distinctions between migrant and host populations—and with no appropriate mechanisms in place to prevent social disruptions—the risk of eruption of social conflicts is certainly realistic. Two particularly vulnerable groups are migrants from Guyana and Haiti, the two poorest countries in the Caribbean. In the case of Haiti, the outflow of migrants has a long history and has been met quite often with generalized xenophobia, racism, and in many instances various forms of violence and aggression against migrant minorities of Haitian origin.²² Another example are the current tensions between Guyana and Barbados, the latter being the preferred destination for immigrants from Guyana. Guyanese migrants are perceived as smugglers and traffickers of guns, illicit drugs, and persons, and thus have been made quite often responsible for the rising crime rate in Barbados, which provides ground for further discrimination and resentment.²³

²¹ Frank Mills, "Implications of the Free Movement of Labor under CARICOM'S Single Market and Economy," *Presidential Address 29th Annual Conference of the Caribbean Studies Association*, St. Kitts and Nevis, 2002.

²² James Ferguson, *Report: Migration in the Caribbean: Haiti, the Dominican Republic and Beyond* (London: Minority Rights Group International, 2003). See also Chapter Nine on the Haitian migrant minority in the Dominican Republic in this volume.

²³ While poverty and the negative reputation of Haiti and Guyana already provide the basis of discrimination, the high HIV/AIDS infection rate in these two countries further contributes to the hatred expressed at the destinations. In general, people of Haitian and Guyanese origin are perceived as a health risk and as migrants who either come in search of expensive treatment or with bad intentions to further spread their disease.

Caribbean governments have generally expressed reservation in supporting the formal integration of foreign migrants. The findings of the most recent UN Inquiry on Governments on Population and Development in 2003 show that in general Caribbean countries seem to be reluctant to integrate foreign migrants into their societies.²⁴ Only three (Dominica, Jamaica and Trinidad and Tobago) out of 10 countries have reported efforts to promote the integration of non-nationals, and similar levels of resistance were expressed towards permanent settlements of non-nationals. With regard to the readiness to allow family members of migrants to join, most countries in the region seem to want to restrict the further inflow of dependants of existing migrants. These general sentiments, when translated into policies to control migration and when influence the host population, create problematic tendencies toward social exclusion and potential violence.

²⁴ United Nations, *World Population Policies* (New York: United Nations, 2004).

Table 9: Annual Flow of CARICOM Nationals in Selected CARICOM Countries Based on Issued Work Permits, 1994-2004 (In percentages of total population)											
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Barbados											
Annual flow of legal immigration	0.30	0.34	0.37	0.22	0.25	0.40	0.97	1.39	1.30	1.06	n/a
Annual flow of legal CARICOM immigration	0.06	0.09	0.09	0.04	0.06	0.21	0.56	0.92	0.86	0.69	n/a
Work permits granted to CARICOM nationals	20.20	25.45	24.82	19.51	24.27	52.52	57.72	65.97	66.15	64.44	n/a
Work permits granted to OECS nationals	4.48	6.14	3.93	2.28	6.87	7.96	10.08	6.41	7.26	6.79	n/a
Jamaica											
Annual flow of legal immigration	0.11	0.10	0.11	0.12	0.10	0.10	0.10	0.08	0.09	0.10	0.10
Annual flow of legal CARICOM immigration	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Work permits granted to CARICOM nationals	7.73	8.80	5.97	6.45	7.78	7.36	7.61	6.29	5.45	7.52	7.10
Work permits granted to OECS nationals	1.12	2.48	1.16	0.94	1.20	1.16	0.64	0.83	0.96	3.41	3.19
St. Lucia											
Annual flow of legal immigration	n/a	n/a	n/a	n/a	n/a	n/a	0.17	0.27	0.33	0.56	0.54
Annual flow of legal CARICOM immigration	n/a	n/a	n/a	n/a	n/a	n/a	0.08	0.10	0.11	0.18	0.18
Work permits granted to CARICOM nationals	n/a	n/a	n/a	n/a	n/a	n/a	43.33	38.24	31.17	31.00	30.38
Work permits granted to OECS nationals	n/a	n/a	n/a	n/a	n/a	n/a	9.33	5.46	5.25	8.24	5.77
Trinidad and Tobago											
Annual flow of legal immigration	n/a	n/a	n/a	n/a	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Annual flow of legal CARICOM immigration	n/a	n/a	n/a	n/a	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Work permits granted to CARICOM nationals	n/a	n/a	n/a	n/a	0.03	0.04	0.05	0.05	0.03	0.02	0.03
Work permits granted to OECS national	n/a	n/a	n/a	n/a	1.60	2.40	3.09	2.34	1.65	1.30	1.94

Note: 'n/a' denotes not available.

Source: Based on official information from the ministries of labor provided by the respective countries (April 2005).

Conclusions and Recommendations

While emigration can function as a safety valve in the case of some particularly poor communities, cross-border movements of people can become a serious potential for social crises and civil unrest in the destination countries. This is particularly the case where socio-economic discrepancies between source and destination countries are high. In addition to socio-economic differences as a cause for tensions, obvious dissimilarities in culture, language, and lifestyle between migrants and nationals can also contribute to tensions between the two groups. While the case of the orderly movement of skilled migrants seems to be less a matter of concern, the inflow of documented and undocumented poorer migrants causes resentment and finds its expression in various forms of xenophobia and racism. Thus, long-term solutions to integrate those migrants with limited skills, including educational measures, need to be examined further.

Also, a reevaluation of development policies in order to attain a general reduction in poverty throughout the region, often the driver of migration flows and the cause of a perpetuated disparity among CARICOM economies, is essential. Economic performance in the CARICOM countries during the 1990s has been shaped mainly by the external sector, and policies undertaken to overcome these limitations have fostered a pattern of economic development that is biased towards sectors that are highly intensive in foreign capital to the detriment of other more traditional sectors, such as agriculture and manufacturing. Although foreign capital-based sectors are the most dynamic, they concentrate the foreign capital flows and drive a process of limited-scope economic growth because they have weak linkages to the rest of the economy. The more traditional laggard sectors depend on internal demand, which has, with a few exceptions, a narrow base for expansion. This pattern of dependent-duality is reinforced by fiscal policy, which has not been used in a counter-cyclical manner or to promote development through social expenditure programs. Rather, it has served the purpose of encouraging, in artificial ways, foreign exchange-earning activities through a gamut of tax exemptions, which have not proved effective.

Overall, the deterioration of the current account, especially export performance, coupled with the stagnation of domestic investment, have prevented these two key variables from playing a fundamental role in stimulating aggregate demand and economic growth. Poor economic performance has, therefore, shaped out-migratory flows of both skilled and unskilled labor to a great extent. Notwithstanding the anxiety raised by many policymakers and academics regarding a further move towards regional integration and the increased free movements of people within these countries, it is expected that the absolute number of foreign born nationals living in the Caribbean countries will continue to grow in the foreseeable future. It is important to note that, as shown by the available empirical evidence, the success of labor mobility agreements depends on the extent of the economic gap and asymmetry in the economic development of the signatory countries. The greater the economic gap and asymmetry in economic development between countries, the less likely the chances are for its

success.²⁵ Thus, policymakers must note that economic convergence and labor mobility are really two sides on the same coin, and we offer the following recommendations accordingly:

1. Given the present socio-economic disequilibria, governments and societies need to take into account the proclivity of migration for economic opportunity, and more needs to be done when formulating policies to address the root causes of emigration in the source countries. This may include a reformulation of economic policy away from a dependence on foreign direct investment and its related pattern of productive specialization and emphasis on fiscal incentives.
2. Governments and civil society need to be aware of economically-driven tendencies toward racism and xenophobia, expressed in various forms, including discrimination and violence against women and children of migrants, which can ultimately inhibit sustainable development in the region. Public education campaigns, along with efforts to integrate those migrants already in the country, need to be put in place.
3. Cross-country, sub-regional, and regional agreements to arrange for the orderly movement of people in the region should be reached, including repatriation programs for migrants to return home.
4. More also needs to be done at the destination countries to protect the interests of nationals in order to avoid competition over scarce resources, such as jobs and public goods. Apart from the need to regulate the orderly movement of labor, more attention should be given to the irregular inflow of low-skilled inexpensive labor that might benefit certain sectors in the economy, particularly under present conditions of economic strife, but will certainly add to the tensions between nationals and migrants in the countries affected.
5. Further, with declining opportunities within the region for certain types of labor, particularly those emanating from the declining agriculture and manufacturing sectors, some countries in the Caribbean have already begun to negotiate agreements for regulated and temporary cross-border movements of their surplus labor, particularly in agriculture and manufacturing, to the U.S. and Canada. It might be advisable for those governments that have not yet engaged in such efforts to seek similar avenues for their surplus labor. Such movements will continue to meet the growing need for unskilled labor in agriculture and manufacturing at the destination countries, and additional arrangements could be put in place to manage the movement of the skilled workforce in health and education.

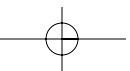
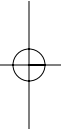
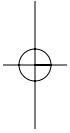
²⁵ The argument is based on E. Meyers, *Multilateral Cooperation, Integration and Regimes*. See also, Esteban Pérez and A. Ali, "Growth and Convergence in Regional Integration Agreements," Paper presented at the XXVII Annual Monetary Studies Conference, Nassau, The Bahamas, November 1-4, 2005.

6. National policies to improve economic performance need to take into consideration the need for jobs along with a more equitable distribution of income and wealth. This is of crucial importance if CARICOM countries are to expand the CSME labor mobility provisions in response to the concerns of the smaller economies. Such policies are also key to ensuring the full articulation and integration of the market for goods and services, which is a principal goal of the CSME.

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Chapter 4

Trafficking in Persons in the Caribbean

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- Article 4.2 Scope and Nature of the Trafficking Phenomenon: A Regional Perspective
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Human Trafficking in the Context of Caribbean Labor Migration

4.1

Elizabeth Thomas-Hope

Introduction

Trafficking is essentially the recruitment, movement and employment of persons conducted outside of the formal system and, at one or more stages in the process, involves practices that are illegal. People are moved in varying numbers from one location to another, nationally or internationally, in a process that is not subject to official monitoring or regulation. Therein lies the major potential of trafficking for conflict in the society.

This chapter, composed of three sections, raises fundamental issues pertaining to human trafficking by offering different perspectives on the movement. As Garrett and Mahoney show, trafficked persons include those who are unsuspecting victims of recruiters and, as Kempadoo demonstrates, those who may be willing participants in the work in which they engage. In both cases, movement takes place from one location to another, either within or across national boundaries; thus, trafficked persons are inherently part of a migration stream, and trafficking essentially an aspect of labor migration, as this section explains. What these different and apparently opposing perspectives demonstrate is the complexity of trafficking and the fact that it includes a variety of situations in terms of both the purpose and extent of exploitation of persons. A simple classification of trafficking (see below) highlights some of the variability in the forms it takes. The remainder of this section focuses on trafficking as it specifically relates to labor migration in the Caribbean and offers some corresponding recommendations and conclusions.

A Typology of Trafficking

Trafficking within the Caribbean context includes the movement of persons, mostly women and children: a) within the Caribbean region; b) from the Caribbean to countries outside the region, for example, to North America and Western Europe; and c) into the Caribbean from countries outside, for example, from China.¹ The paucity of data does not permit any quantification of these movements. Trafficking may be described in terms of two broad categories: 1) involving persons' voluntary movement, and 2) involving their forced removal.

Voluntarily Trafficked Persons

Persons who are voluntarily trafficked include those motivated by a desire to migrate at almost any cost, as well as those motivated by a desire to engage in a particular type of activity or employment for which recruitment by traffickers provides such an opportunity.

Migration-motivated Participation

There are many persons who desperately want to migrate because they feel that it will be the means to improve their economic base and ultimately their life chances. In their obsession with migration, they become inadvertently caught up in being trafficked. Once at the migration destination, the full picture regarding the terms and conditions of employment and the extent of their debt bondage becomes evident. Those trafficked then feel severely cheated, and some even lose more money than they earn through their migration.

The culture of migration evolved during the century following the emancipation of slaves in the Caribbean, when generations of people came to rely on migration as the means of circumventing the constraints of a deeply stratified societal system and the limitations of small size and poor economies. Migration became part of the life cycle of events for those who were ambitious and had access to the relevant networks of information and support. Migration became acknowledged as the principal means of achieving educational, occupational, and economic goals as well as of enhancing social status and personal living standards that could be recognized by the society at large.²

¹ Allison Phinney, "The Trafficking of Women and Children for Sexual Exploitation in the Americas," written for The Inter-American Commission of Women and the Inter-American Children's Institute of the Organization of American States, and in partnership with the International Human Rights Law Institute, DePaul University, <<http://www.oas.org/cim/English/Prof.Traf.ExSum%20.htm>>.

² Elizabeth Thomas-Hope, *Explanation in Caribbean Migration* (London: Macmillan, 1992), reprinted in *Caribbean Migration* (Kingston: University of the West Indies Press, 2002).

Caribbean populations had thus become highly mobile by the middle of the twentieth century, and a culture had evolved in which migration had become the means used to achieve virtually any objective in terms of career advancement or improved livelihood and status within the local community. Such high stakes have been put on migration within Caribbean societies that the propensity for movement remains great, and there have always been people prepared to move whenever and wherever the opportunities have arisen. The lack of a relevant network for sponsorship and support, together with the lack of an educational and occupational background and the great financial resources necessary for migration through formal channels, excludes large sectors of the population. Such groups become eager clients or vulnerable targets of recruiters, whether such agents are acting in a principled or unprincipled, legal or illegal manner. Their eagerness to migrate under almost any circumstances as the means of achieving their ends renders such persons seriously “at risk” of being misled by false information.

Activity-motivated Participation

As Kempadoo explains, this refers to those persons who choose (or are covertly pressed by family) to engage in sex work. While much trafficking in the Caribbean is for the purpose of exotic dancing and/or prostitution, Kempadoo points out that sex work is not necessarily linked to trafficking, but occurs as part of the Caribbean woman’s historically conditioned livelihood strategy.

It is true also that child begging and other forms of menial work in which children engage is commonplace without the occurrence of trafficking. But it is within these activities in the grey area of social acceptability, as in the case of prostitution, that traffickers can most easily prey upon those who were exposed to or are currently engaging in such work as being their best livelihood option. Transactional sex is an activity in which some girls are involved at an early age, usually with the tacit complicity of a parent or guardian.³ This conditions their vulnerability later when they are faced with the exaggerated rewards of sex work of one kind or another. Besides, the traffickers can offer them the added attraction of working with the anonymity of being in a location away from home.

³ Leith Dunn, *Child Prostitution in Jamaica: Rapid Assessment* (Geneva: International Labor Organization, 2001); and Kamala Kempadoo and Leith Dunn, “Factors that Shape the Initiation of Early Sexual Activity among Adolescent Boys and Girls,” in *Meeting Adolescent Development and Participation Rights: The Findings for Five Research Studies on Adolescents* (Jamaica: UNICEF & UNFPA, 2001).

Forcibly Trafficked Persons

This involves those persons who are abducted, sold by family, or recruited either by force or deception. This type of trafficking is presented by Garrett and Mahoney with emphasis placed on physical and emotional violence that are used as mechanisms of coercion and control by employers over victims of trafficking.

Comparative Aspects of Trafficking

Although the specific situations leading to persons becoming part of trafficking streams differ, there are essential commonalities. First, they are all *migrants*—whether internal (national) or external (international)—because they are all involved in movement from the place of usual residence to a location elsewhere. Further, in all three types of trafficking situations mentioned above, the agents executing the trafficking transfer persons to employers on the basis of financial transactions informally negotiated between themselves, and with the exclusion of national authorities or the workers.

Whether the individuals consciously select the work for which they move, or whether they move on the basis of false information, or even by force, they are still ultimately subject to the terms and informally negotiated conditions determined by their agents and employers outside of labor regulations. Furthermore, the reasoning behind their involvement with recruiters (traffickers) differs. There are those seeking to engage in sex work and take the option of doing so abroad, and those who are motivated to migrate at almost any cost in the belief that it would be the panacea for their economic, social, and domestic problems.

Whatever the differences in motivation, in both types of situation the individuals knowingly become participants in their move, exercising choice within the framework of their socio-economic constraints, cultural conditioning, and real or perceived livelihood options. Thus, where choice is exercised, the individuals engage in the particular migration, and work as part of a livelihood strategy to achieve their goals, not usually as an end in itself, but in the belief that it will be *the means to an end*. Nevertheless, even though the voluntary involvement of persons in trafficking occurs, many of them become the *victims* of coercion, exploitation, deception, and diminished freedom.

Additionally, trafficking and the transactions relating to the work of those trafficked are based on *positions of relative powerlessness* of those involved. Whether or not persons are trafficked as a consequence of the exercise of their choice, all are subject to the power of the agents who organize the transfers, and of the employers at the destination. In order to circumvent the constraints of the regular migration channels, individuals enter into negotiations with agents who arrange any one or more services relating to travel, the acquisition of documents for entry at the destination, employment, and accommodation.

These arrangements also involve various combinations of legal and illegal procedures. The prospective migrants in these situations, acting outside of the protection of the formal regulations, are therefore at the mercy of the agents, some of whom are engaged in wider criminal activities and many of whom are dishonest, callous, and, to varying extents, exploitative in their dealings. The trafficked persons have no easy recourse to the protection of the law because of threats or blackmail issued by agents or employers. Those who employ or otherwise engage trafficked persons are bent solely on obtaining a labor force, which must operate within a space that is constrained by its very vulnerability.

Migration and Trafficking in the Caribbean Context

The evaluation of human trafficking will be reviewed in this chapter within the context of migration. This necessarily places the emphasis of this particular section on the characteristics of the movement that constitutes trafficking. Within the overall global context of current migration trends, the Caribbean demonstrates the particular ways in which globalization and international capital impacts human movement. International capital has always played an important role in the movement of Caribbean people, but there are also historically derived factors that have contributed to the high propensity for migration that currently exists. Social institutions, in particular those relating to family and gender roles, have evolved to accommodate temporary and even long-term migration of male and female members. Other institutional structures, such as those associated with land tenure, have also facilitated and encouraged migration. A culture of migration based on reciprocity between migrants, their families, and other supporters thus developed in the Caribbean, embedding an image that migration leads to success in the psyche of Caribbean populations.⁴

Those who migrate are influenced in a direct way by the experience, its challenges, and its rewards. But the household, family, and community are to greater or lesser extent directly or indirectly affected by the process. They are the recipients of various benefits, the providers of migrant support by caring for the children and ageing family members of migrants, or the custodians of investments of various kinds. Even if they are simply bystanders of migration, they observe the benefits that accrue and believe in the perceived benefits. In this way, the migrants become the reference against which they measure their own livelihoods and success.⁵ So great can be the impact of migration on the wider family and community that a sense of deprivation develops where there are no migration opportunities, and expectations of a better life become linked to the hope of migration at some time in the future.

⁴ Karen Fog Olwig, "The Migration Experience: Nevisian Women at Home and Abroad," in Janet Momsen, ed., *Women and Change in the Caribbean* (London: James Curry, 1993), 159-166; Verene Shepherd, "Indians in Jamaica and the Emergence of a Modern Migration Culture," in Mary Chamberlain, ed., *Caribbean Migration: Globalized Identities* (London: Routledge, 1985); and Thomas-Hope, *Explanation in Caribbean Migration*.

⁵ Gene Tidrick, "Need for Achievement, Social Class and Intention to Emigrate in Jamaican Students," *Social and Economic Studies* 20 (1) (1971): 52-60; and Thomas-Hope, *Explanation in Caribbean Migration*.

Against the high value placed upon migration as the means to success in the end is the fact that the selectivity of regular migration regulations excludes many who wish to participate. The propensity for migration in the Caribbean has never been matched by the available opportunities to move within the regular migration framework. Many persons do not qualify under the terms of immigration regulations, usually due to a combination of country of citizenship, economic, educational, or occupational factors. Many others do not have access to the information, financial means, contacts, or personal skills necessary to negotiate their trans-border movement and their establishment, in terms of housing and employment, in another country. Some ambitions for migration are met by government-arranged guest-worker programs from the Caribbean to North America. But many other persons either become vulnerable targets or eager clients of the recruiters, whether such agents are acting in a principled or unprincipled, legal or illegal manner. Because of the selectivity of migration, migrating is not specifically associated with poverty, although for the poor, as for all other socio-economic sectors in the Caribbean, it is an acknowledged means of achieving one's livelihood goals.

Characteristics of Trafficking in Relation to Other Forms of Migration

The comparability of trafficking with other forms of migration is significant, as a range of migration types exist in the Caribbean. These can be characterized in terms of the purpose of movement and activities in which the migrants are engaged at the destination, as well as the length of stay with varying cycles of return to the source location and various levels of interaction maintained transnationally between source and destination.⁶ These range from long-term or indefinite stays at the migration destination, short-term stays for periods usually of less than six months at any one time, to even a period of a few days.

There are movements for which persons are recruited in the Caribbean for specific jobs at predetermined locations. These include schemes for initial short-term contract labor for farm work, which began in the 1980s, and more recently for hotel work in the U.S. and Canada. Bilateral negotiations are made between the countries involved and the recruitment process is strictly regulated by the respective governments. The farm work program also included mandatory saving of a percentage of the workers' earnings abroad, to the benefit of both workers and governments.

⁶ Elizabeth Thomas-Hope, "Return Migration and its Implications for Caribbean Development," in Robert A. Pastor, ed., *Migration and Development in the Caribbean: The Unexplored Connection* (Boulder, Colorado: Westview Press, 1985), 157-77; Elizabeth Thomas-Hope, "Transients and Settlers: Varieties of Caribbean Migrants and the Socio-economic Implications of their Return," *International Migration* 24 (3) (1986): 559-72.

The recruitment of nurses, teachers, and tertiary education students, which has increased significantly since the late 1990s, has not been regulated.⁷ Nor are the operations of the wide range of agents that advertise their migration services found in the local press. Whether the preponderance of these activities is desirable and while it is questionable that they are always in the best interest of the individuals who use such services, it is, nevertheless, legal.

Purpose of the Movement and Activities at the Destination

A striking point is that trafficking does not differ in many respects from that of many other forms of migration, as reflected in the purpose of movement, conditions at the destination, and the duration, periodicity, and direction of movement. The purpose of both regular and irregular labor migration is to engage in work at the destination, and persons who are trafficked are no different in their objectives from those of other migrants. However, the conditions of the work in which they engage at the destination usually differ, especially in terms of the nature and extent of exploitation. But, exploitation of labor is by no means confined to that of trafficked persons; exploitation of migrant labor, especially when that migration is irregular, is commonplace even without the occurrence of trafficking. In all forms of irregular labor migration, the undocumented nature of the migrants renders them unable to protest about their conditions. Regular migrant workers are supposedly free to change their employment or return home, but even though this may be true in theory, it is not always a real option. Essentially, the fact that persons trafficked may be unable to leave the place in which they work and negotiate other employment is not solely a characteristic of trafficking.

The exploitation of immigrant labor is a common occurrence in many countries, and the most easily victimized are those who are the most vulnerable in terms of their need for work and the nature of their legal status in the destination country. Their vulnerability ensures that they cannot challenge the abuse suffered or the exploitative conditions of their employment. But, undocumented migrants and documented migrants who have been trafficked, and thus under the financial or other control of agents or employers are, therefore, undoubtedly among the most vulnerable in this regard.

Trafficking as a form of transnational circulation also occurs, for example, for the purpose of transporting illegal narcotics. Payment is negotiated by the agents and those who receive the drugs. The trafficking of these persons—the “drug mules” as they are commonly termed—is a highly organized movement, and those persons trafficked are kept under strict control for the relatively short periods they spend at their destination points before being returned to the Caribbean.

⁷ Thomas-Hope, *Explanation in Caribbean Migration*.

Duration of Stay and Periodicity of Movement

Duration of stay that is long-term or indefinite, as well as that which is short-term or circulatory (as in the case of persons transporting narcotics), occurs in relation to both regular and irregular labor migration. Likewise, some other types of trafficking, like forced labor, domestic servitude, and street peddling, involves indefinite periods away from the individual's home. This is similar to some types of migration, regular or irregular, where persons either legally or illegally extend their period of stay over the initially intended time-frame.⁸ There is no real difference between trafficking and other forms of migration with regard to length of stay at the destination, except that the evidence suggests that debt bondage reduces the freedom to circulate or return home after a brief period of stay.

Direction and Methods of Movement

The role of international capital in influencing the direction of labor movement is well documented.⁹ In the Caribbean, this has occurred in relation to: the construction of railways and the Panama Canal in the early twentieth century; agricultural expansion, as in the fruit company operations of Central America and the twentieth-century expansion of sugar production in Cuba and the Dominican Republic; and industrial projects, as in the development of the oil industries of Venezuela, the Netherlands Antilles, and Trinidad.¹⁰ Since the 1970s, tourism has provided the major capital investment influencing the direction of labor movement within the region. Associated directly and indirectly with centers of tourism, much of the trans-border and internal country trafficking of women and children takes place for entertainment and sex work.¹¹ The countries that are the principal sources, destinations, and transit points are the same as those for regular formal movements and irregular movements. This too is the case for the routes used for human trafficking.

The direction of all labor movements from the region also are chiefly toward the stronger economies of the North, namely to North America and Western Europe. These countries are the prime destinations of migration—whether it is regular, undocumented, or trafficked. Whereas regular immigration adheres to the regulations of entry managed through a system of visas and work permits, undocumented or trafficked movements respond to the demand for labor in the informal market. Indeed, the movement of vendors carrying out legal

⁸ Elizabeth Thomas-Hope, "The Nature and Pattern of Irregular Migration in the Caribbean," in George Borjas and Jeff Crisp, eds., *Poverty, International Migration and Asylum* (London: Palgrave Macmillan, 2005), 296-316.

⁹ Timothy Hatton and Jeffrey G. Williamson, "What Fundamentals Drive World Migration," in George Borjas and Jeff Crisp, eds., *Poverty, International Migration and Asylum*, 15-38.

¹⁰ Anthony P. Maingot, "Emigration Dynamics in the Caribbean: the Case of Haiti and the Dominican Republic," in Reginald Appleyard, ed., *Emigration Dynamics in Developing Countries: Mexico, Central America and the Caribbean* (Aldershot: Ashgate, 1999), 178-231; Elizabeth Thomas-Hope, "Emigration Dynamics in the Anglophone Caribbean," in Reginald Appleyard, ed., *Emigration Dynamics in Developing Countries: Mexico, Central America and the Caribbean*, 232-284.

¹¹ Kamala Kempadoo, *Sexing the Caribbean* (London: Routledge, 2004).

activities has been infiltrated by those engaged in trafficking. Likewise, the intra-Caribbean movement of persons within the legal framework has been infiltrated by those engaged in the trafficking of women and girls.

The fact that transport and transfer to another location are arranged by agents is not a critical difference between movements constituting trafficking and other forms of movement. There are numerous agents, none of which are formally licensed to recruit migrants, but who do so openly. As already indicated, this takes place in the recruitment of nurses, teachers, college students, and others. Agency fees are not fundamentally different from the financial transactions akin to “payments” that are made for the transfer of persons under the conditions regarded as trafficking.

The Legal Framework for Movement

Trafficking, like other forms of migration, to countries of North America and Western Europe may take place even when individuals fulfill the immigration requirements as visitors or residents. Both of these opportunities for entry are used either with genuine or false documents, in addition to entry by smuggling. There is a significant movement of persons from Caribbean countries who enter or remain in North America and Europe as irregular migrants, most of whom would not be strictly defined as trafficked persons because the movement is not linked to any specific negotiations with prospective employers at the destination.

Within the Caribbean region, much of the intra-regional movement that constitutes human trafficking occurs within the context of the legally permitted entry of specific categories of persons between member states of the Caribbean Community (CARICOM) and the Caribbean Single Market and Economy (CSME). The problem is that trafficking between CARICOM member states can take place under, or be masked by, the provisions for the free movement of labor within the region.

Movement within CARICOM and CSME

Because trafficked persons tend to move with regular documentation for entry into the country of destination, they are not readily distinguishable from other labor migrants. As in the case of regular labor migrants, trafficked persons may not only enter with proper documentation, but they can generally fulfill the requirements for obtaining a work permit at the destination. The CARICOM Free Movement of Skilled Nationals Act (enacted by CARICOM states at various times between 1992 and 2003) permits entry, with indefinite stay, of university graduates, artists, musicians, media workers, and sportspersons (athletes). Thirteen of the CARICOM states have committed to deepening and strengthening the

integration process by establishing CSME. This group has moved further in terms of agreements on labor movements and, in addition to the categories initially agreed upon, permits entry into a member state of entrepreneurs and non-wage earners who have the right to bring in other staff (managerial, supervisory, and technical). Additionally, the revised CSME treaty permits the movement of persons providing services for remuneration through means other than wages by a CSME national in another CSME state.

Documentation or legality with regard to movement is a complex issue, even with respect to intra-Caribbean migration. On the one hand, the movement between non-CSME territories and/or the work site may be irregular, while similar types of movements between CSME countries are regular. This legislation providing for the free movement of persons does not apply to migrants from those islands/countries that are not part of the CSME, such as The Bahamas, the Turks and Caicos Islands, the French and the Dutch Antilles and Aruba, the Dominican Republic, and Haiti. Persons from these countries and territories would enter other countries within the region, whether illegally or legally, with visitor status and potentially later apply for a work permit. With respect to movement from the Caribbean to North America and Europe, entry from some parts of the Caribbean is restricted but not from others, depending on their constitutional status. Where visas are required for entry to a particular country from other places in the Caribbean, in the case of trafficking, like irregular migration, there would be a greater incidence of the use of fraudulent documents.

Where individuals choose to engage in sex work, providing that such activity is legal within their particular jurisdiction (which is the case everywhere within the CSME group of countries with the exception of Jamaica), the illegality of the activity relates specifically to the *procurement* of persons for the intention of prostitution (which is illegal in all Caribbean jurisdictions) as well as the *age* of the person elicited (which varies with jurisdiction).¹² Thus, if children are trafficked for any form of work, especially for sex work, then the illegality is based on the fact that the person is a minor and officially protected under provisions of the International Convention on the Rights of the Child.

So closely linked is trafficking with regular migration, in terms of its characteristics of actual movement, that trafficking is not easily detected. In both regular labor migration and trafficking, some persons obtain landed or permanent immigrant status at their migration destination and others enter as short-stay visitors. People change their status from temporary to permanent and alter their occupation while at the destination and obtain work permits. In that trafficking is largely masked by its use of regular migration routes and entry regulations, detection of trafficking must depend most of all on intelligence rather than through migration surveillance.

¹² The Protection Project, "Trafficking in Persons, Especially Women and Children in the Countries of the Americas: a Regional Report on the Scope of the Problem and Governmental and Non-governmental Responses," Johns Hopkins University School of Advanced International Studies, <<http://209.190.246.239/iomz.pdf>>.

Conditions at the Destination

Problems associated with migration, especially the potential for conflict, are usually related to situations at the migration destinations. In this regard, trafficking is no exception. The conditions into which persons migrate generally are often not what they had previously expected or were led to believe by information received or perceived. In this respect, therefore, trafficked persons are not alone. Furthermore, many regular migrants, whether recruited at the source or elsewhere, fall into exploitative situations. Some of these persons cannot return to their homelands within the foreseeable future due to lack of funds or indebtedness from the cost of the international move undertaken. Undoubtedly, in trafficking, the extent to which freedom is systematically denied is critical. In many situations, not only is freedom to move denied, but refusal to work invariably elicits threats or violence of various types (physical or psychological) and with varying levels of severity from the employer or other agent. The difference between trafficked persons and other migrant workers on contract is related to the degree of freedom and the mechanisms utilized by employers to enforce control. All migrants on work contracts (farm workers, hotel workers, teachers, nurses, and others) have limited freedom to move from the jobs for which they were recruited.

The Potential for Conflict

The entry of persons into any society from another brings about the potential for conflict. This is particularly the case where the numbers of immigrants are large enough to be noticed by the local population, and especially where they are observably different, either in phenotype or culture, including language, religion, and musical traditions. These characteristics form the basis for their becoming distinguishable minority groups, identified by the rest of society in terms reflecting either their source country or some aspect of their race or culture. There are a number of cases where regular immigrants from one Caribbean country into another have become the cause of social resistance, bordering on xenophobia, on the part of the local population. There is always an implicit fear that jobs are being taken away from locals by foreigners, even when those jobs are on the whole rejected by the local labor force.

Conflict between incoming regular migrants, as well as between trafficked persons and local residents, is more often covert than overt. However, tensions can build up to a point that a minor dispute brings the underlying tensions to the surface. As a consequence, policies are needed that help reduce the factors that reinforce stress in the areas of likely conflict. While this can be openly discussed and policies formulated with regard to the entry and settlement of regular migrants, it is virtually impossible in the case of persons trafficked into a country.

Conflict is also known to occur between members of different minority groups at a migration destination as they compete for the much sought-after resources. This also occurs among

trafficked persons, at times with arguments and fights occurring between individuals working in the same place. Trafficked persons are invariably obliged to live in accommodation provided by the employer. In the case where women of different nationalities have to share rooms, and therefore where personal space is limited, jealousies, competitiveness, and other stress factors give rise to disputes of varying severity. In any event, the trafficking experience is undoubtedly a source of stress to many; the extent of stress depends on how trapped, isolated, deceived, and exploited they feel and the extent of physical and/or emotional abuse to which they are subjected.

Policy Recommendations

The recommendations made below specifically refer to trafficking as it relates to migration. Policy must first recognize the links of trafficking to other forms of regular and irregular migration. Where trafficking occurs as irregular migration, thus without proper documents for entry into a country, then surveillance or intelligence received by the authorities can be used to detect the movement. However, the fact that much trafficking occurs within the context of regular migration means that it can be relatively easily disguised, and thus can proceed with impunity. In that any increased policing efforts are likely to push activities further underground and probably serve to increase the victimization of the persons trafficked, it is the recommendation of this paper that policies should aim at: 1) being proactive in an effort to reduce the numbers of persons who are “at risk” of voluntarily and involuntarily becoming trafficked; and 2) identifying, bringing charges against, and punishing those engaged in the process of trafficking.

Proactive Intervention to Reduce Vulnerability to Being Trafficked

This should take the form both of public education about the extent of the practice and the violations of human rights associated with trafficking, as well as increasing the alternative livelihood strategies of the populations most “at risk” of choosing or otherwise voluntarily being coerced into trafficking.

1. *Public Education:* Public awareness must be raised, especially targeting “at risk” populations and the institutions of government and civil society that influence them, with the goal of reducing the numbers of persons who would voluntarily participate. This is particularly needed given the voluntary nature of much of the movement that is part of the trafficking networks. This is necessary to bring to the attention of the wider public the violations of personal freedom with which trafficking is associated. Society also needs to be more effectively alerted to the extent of forced entry of persons into trafficking, especially of children, so that vigilance and social support can be increased. The objective of such sensitization of the public would be designed to help reduce the levels of ignorance, apathy, and tolerance that currently exist both relating to internal and trans-border trafficking.

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2. *Alternative Livelihood Strategies*: There is a need for greatly increasing the existing number and scope of programs that provide alternative opportunities, as well as those that assist young persons in their personal development so that they are better able to pursue livelihood strategies which are central to, and not at the margins of, society and the economy.

Punitive Approach to the Perpetrators of Trafficking

1. *Intelligence*: Every effort must be made to improve on the intelligence that could lead to the identification and punishment of the agents of trafficking and the employers of trafficked persons. It is essential that this does not bring about the victimization of those persons who are themselves trafficked. This could have dangerous repercussions for persons who are already being exploited and abused.

Conclusion

Within the context of migration, persons trafficked in the Caribbean are, in most cases, like any other regular labor migrant. Most of the movements take place using legal migration channels for transit, for entry to other countries, and in many cases for the acquisition of work permits. Trafficking, like many other types of migration, occurs through intermediaries or agents engaged in recruitment, making arrangements for documentation, and job procurement. Where contracts are binding, whether formally recruited or informally trafficked, the migrants are effectively “hired” for the duration of the work and, to varying extents, obligated to remain in the job for which they were transferred in the first place. Furthermore, trafficking follows the usual paths of regular (legal) migration and sometimes the mechanisms of irregular (undocumented or illegal) entry, or by entering (legally) as visitors and working (illegally) without work permits. Like other forms of migration, trafficking is associated with a number of tensions based on adaptation to prevailing conditions as well as to the incidents or ongoing exploitation encountered at the destinations.

Among the factors that distinguish trafficking from other forms of migration is that trafficking involves the movement of substantial numbers (in groups or singly in succession) of people based on various levels of deception. The informal character of the employment arrangements leaves the employees outside of the national regulations governing the conditions of their labor, access to social services, and in many cases without access to the protection of the law. Further, because of the unregulated and undocumented nature of trafficking, the authorities in the destination countries have no knowledge of how many persons are entering in this way.

The unregulated and unmonitored entry of groups of persons from one country to another presents the potential for conflict between the incomers and local populations. Additionally, any system based on deception and the denial of human rights—whether of adults or the child—is rife with possibilities for tension and ultimately the potential for conflict within the

immigrant population itself. In that trafficking involves both of these characteristics to various extents, the potential for conflict is ever present.

There exists a wide range in levels of awareness or knowledge of the nature of the work and conditions to which persons agree to be recruited. But even where knowledge exists of the work in which persons will be engaged, deception about the conditions pertaining to their lack of freedom raises important questions about them as victims. The fact that they were willing participants in the movement does not, therefore, necessarily mean that they have any power to defend their human rights, especially where such movements involve children.

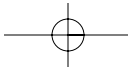
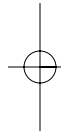
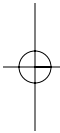
One may argue that most migration reflects global disparities in economic power and in the attendant international division of labor. Inequities are inherent in disparities of wealth and opportunity at both international and national levels. Such disparities are linked to the economic power of the perpetrators on the demand side and the weakness of those who become participants in human trafficking. Furthermore, the predominance of women and girls among those who are trafficked is evidence of the additional inequity in the prevailing social constructions of gender relations.

Trafficking in persons reflects wider societal practices and vulnerabilities that have to be taken into account to better understand and address the issue. This includes the existing image of migration as a panacea for personal social and economic problems and, thus, the high level of demand for migration opportunities at almost any cost. These vulnerabilities are at the supply side of a vast and growing demand for sex work of various kinds as well as a continued demand for other forms of exploitable labor, together with the preponderance of agents that procure such labor worldwide. Although none of the causes or consequences of trafficking can be easily rectified, they must be identified so that they may be addressed, and the information effectively used to provide a basis for the formulation of relevant policies that can assist international agencies and national governments to break the existing cycle. This cycle is generated in a potentially endless progression of exploitative practices that feed on the inequities within and between societies and the vulnerabilities of large numbers of persons.

Trafficking is thus a reflection of the demands for vulnerable migrant workers in the informal sector, especially for sex work. At the same time, the demand for migration cannot be met through regular labor migration opportunities. This is currently producing an apparently unending supply and demand for trafficked persons. Policies must therefore be developed that approach the system from both sides. The vulnerability and numbers of persons "at risk" of choosing, or being forced, to migrate for unsubstantiated offers of jobs, must be reduced. At the same time, there must be a brake on those networks that are able to bring about the transfer of persons and exploitation of their labor outside of the regulations of states.

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The position of human trafficking within the context of migration is an organized and orchestrated movement of persons determined by the demand for labor that is controlled and manipulated by employers. It is therefore an informal sector of migration, similar in many respects to other forms of regular migration in terms of the actual trans-border movement, but linked to other informal and illegal activities. This unregulated form of migration gives rise to the many reported cases of procurement of persons for prostitution, abuse, and infringement of human rights at the individual level, and the potential for conflict at both the national and international levels.



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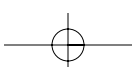
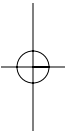
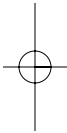


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Scope and Nature of the Trafficking Phenomenon: A Regional Perspective

4.2

Ashley Garrett and Amy Mahoney

Introduction

This chapter provides basic information on trafficking in persons and synthesizes the extensive information obtained in seven country research reports—conducted in The Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St. Lucia, and Suriname—into the broader regional context.¹ The focus is on regional migration trends, methods of recruitment and movement, forms of exploitation, and counter-trafficking actions taken by different countries in the region. While distinct differences are shown to exist between countries, there are a number of similarities in the ways exploitation and human trafficking affect countries throughout the Caribbean. As such, this section summarizes several recommendations put forward by the International Organization for Migration (IOM) to address these common challenges.

What is Trafficking in Persons?

A definition of trafficking in persons is provided in the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Protocol):

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.²

¹This information was adapted from a previous publication by the International Organization for Migration (IOM) entitled *Exploratory Assessment of Trafficking in Persons in the Caribbean Region: The Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St. Lucia, and Suriname* (Washington, DC: IOM, 2005).

²This definition was used to set forth the general framework of this research and is found in Article 3. See United Nations Office on Drugs and Crime (UNODC), *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* (herein after referred to as the Protocol) (UNODC, 2000), <http://www.unodc.org/unodc/en/trafficking_protocol.html>.

General Characteristics³

Though trafficking in persons occurs in a variety of ways, depending on the level of organized crime, the legal structure, and the local context, trafficking involves four interrelated parts:

- *Recruitment*: by force or deception;
- *Transportation*: across borders, legally or illegally, or within a country;
- *Exploitation*: through the use or sale of the victim to benefit the trafficker; and
- *Coercion and Control*: debt bondage, threats, physical, verbal, or sexual abuse.

Recruitment

Trafficking in persons often begins with a false promise of an opportunity. In some cases, victims are aware that they are to be employed in a given occupation, but unaware of the conditions under which they will work (partially deceptive). In other situations, victims expect to be employed in some form of legitimate activity, but are forced into another type of work at the destination point (fully deceptive). Some victims are abducted by force (forcible recruitment). It should be noted that not all recruitment takes place in the country or community of origin. In some situations, migrants are approached by traffickers with offers of opportunities in communities or countries of transit or destination.

Transportation

Typically, trafficking in persons includes the movement of a victim from one place to another, although not necessarily across a national border. Victims are often physically and sexually abused and exploited en route to the final destination and sold or re-sold at each stage of movement. The method of transportation also varies greatly. Victims may be internally transported, received and harbored in safe-houses before being trafficked to the place of exploitation. They may undergo this process through a number of transit locations before reaching the final destination point.

Some victims travel legally, using their own genuine identification and travel documents. Others are covertly smuggled from one country to another, often without any identification documents. Travel can take place by air, land, and/or sea, using public or private carriers. At times, they may travel together with other victims or in combination with irregular migrants that are being smuggled into another country. Victims might be

³ Some of the material included in this section has been adapted from IOM, *Counter-Trafficking*, Training Modules Series (Washington, DC: IOM, 2005).

accompanied by members of a trafficking network who have experience passing through border checkpoints and/or airports. Identity documents are often retained by the traffickers, except when they are required at each border checkpoint. These victims may also travel in a seemingly legal route, but with stolen or false documents supplied to them by the traffickers.

One of the challenges in identifying victims of human trafficking during the transportation element is that they may not yet realize that they are victims of trafficking, but believe that they are migrating out of their own free will, using regular or irregular means, to access an opportunity in a new place. Victims may appear to comply and cooperate with their traffickers, not yet aware of what awaits them upon arrival.

Exploitation

Traffickers recruit and transport their victims for the sole purpose of financial gain, either to make money from their exploitation or to obtain free services or labor. Exploitation can begin very soon after arrival at the final point of destination. Since human trafficking occurs in a variety of ways, the local context and specific situation will determine which migrants are most at risk, how traffickers work, and what forms of exploitation are most common. While the nature of exploitation may differ in communities around the world, some common forms include:

- *Sexual Exploitation*: streets, bars, brothels, massage parlours, saunas, escort services;
- *Forced Labor*: agriculture, fishery, sweatshops, manufacturing, catering, construction, mines;
- *Domestic Servitude*: child care, housekeeping, cooking, gardening;
- *Street Begging or Peddling*;
- *Forced Military Service*; and
- *Organ Removals*.

Human trafficking will always reflect a consistent factor: victims will be routed to where the demand exists for their services and where the potential profit of their exploitation is the highest.

Coercion and Control Mechanisms

Traffickers control their victims using a variety of methods. Given that the fundamental aim of traffickers is to profit from the exploitation of victims, it is essential that they protect their investment by making sure that victims will work as instructed and not try to escape. Some victims are physically imprisoned by locks, bars, or guards. More often, victims may seem to have freedom of movement, but are controlled by other means, including physical, sexual, and psychological violence and threats.

Traffickers often exploit the fact that the majority of trafficked victims do not have enough money to purchase travel documents and tickets by agreeing to loan them the funds in advance. It is usually understood that victims will repay the debt from the money that will be earned in the place of destination. This is the creation of debt bondage, which traffickers use as a coercive means to control and exploit victims. The debt often grows each day and is, in many cases, not related to the actual expenses incurred in relation to the victims' daily needs. Even in cases where victims have been forcibly abducted and transported, they may also find themselves coerced into exploitative activities against their will in order to repay the money spent by one trafficker in purchasing them from the original abductor.

Victims can also be isolated linguistically, socially, or by the confiscation of travel and identification documents. Often, traffickers prevent victims from interacting with persons from similar backgrounds and from communicating with persons in their mother tongue, and/or confiscate the travel and identification documents from victims immediately after arrival at the final destination. This exacerbates their vulnerability as they are deprived of an official identity, and this action confirms their illegal immigrant status in many cases. This makes it difficult for victims to seek help, lodge official complaints, or escape.

Another control mechanism is the use of violence and fear. Former victims have reported being beaten and raped, confined, kept in isolation for long periods, deprived of food and water, drugged, forced to consume alcohol or drugs (some becoming addicted), and/or tortured. These abuses may be inflicted as punishment or may be designed to serve as a warning to victims to ensure that they are fully aware of the consequences of any transgression. Sometimes traffickers will abuse or even take the life of one victim in front of others. In cases of sexual exploitation, shame is another powerful mechanism of control. Traffickers may threaten to reveal to victims' families that they are working in the sex industry.

One of the most effective means of control is the threat of violent reprisals against the victim's family and loved ones (often still in the country or region of origin). In some instances, victims have been recruited by a member of their own community or even by their own family members. Traffickers will often ensure that they know details about a victim's family circumstances or a close family member. Regardless of the actual amount of information possessed by a trafficker the threat is very effective, as victims are often unwilling to put their loved ones at risk by misbehaving or trying to escape.

How Does Trafficking in Persons Differ from Smuggling?

Trafficking in persons and the smuggling of migrants are often confused as being the same. Although trafficking in persons and migrant smuggling are both profitable businesses involving the movement of individuals and are associated with criminal networks, the two crimes are actually quite different. Smuggling of migrants is the facilitated, illegal entry from one country into another. Trafficking in persons requires the movement of migrants (often through an illegal border crossing, but not always) to force them into an exploitative situation.

In distinguishing between the two crimes, it can be helpful to understand the motive and perspective of the criminal. A migrant smuggler intends to facilitate an illegal border crossing in order to be paid for providing this service. A trafficker intends, through deception or force, to place an individual into an exploitative situation where the trafficker receives financial gain, profiting from the exploitation. But, human smuggling, and irregular migration in general, are relevant to trafficking because of the vulnerability of migrants who are smuggled.

Many irregular migrants willingly seek out smugglers to help them relocate to another country and can end up as victims of trafficking in the process; traffickers often prey on newly arrived immigrants, including those who entered irregularly.⁴ However, this vulnerability can also apply to those who migrate through regular means. Though a person may enter the country legally, they can still find themselves being taken advantage of by those wishing to exploit. Thus, human trafficking, migration, and migrant smuggling are distinct but interconnected.

Cross-Country Analysis: Regional Trends in the Caribbean⁵

Caribbean migration is both internal and external, involving men, women, and children. Among the researched countries are those that are source, transit, and destination points, or some combination thereof, for regular and irregular migrants. The following chart provides a brief overview of migration and mobility among the countries in the regional research.

⁴ IOM, *Trafficking in Persons Media Briefing Kit for Journalists* (Washington DC: IOM, September 2004), 4.

⁵ This research was exploratory and primarily qualitative, with secondary sources and anecdotal information from key informants providing the base of the research findings. Key informant groups were small and purposefully selected, therefore limiting the amount of received information. This means that results were less specific than they may have been if more first-hand information had been available from victims themselves. Also, as in the rest of the world, it is very difficult to assess the number of irregular migrants coming into or going through countries within the Caribbean region. However, within the Caribbean region, the existence of human trafficking and exploitation practices have been clearly established, both within regular and irregular migration patterns, through the various sources used in this research.

Table 1: Trends in Migration Mobility

	The Bahamas	Barbados	Guyana	Jamaica	Netherlands Antilles	St. Lucia	Suriname
Regional Source Countries	Cuba Dominican Republic Guyana Haiti Jamaica	Guyana St. Lucia St. Vincent and the Grenadines	Brazil Internal: (esp. Amerindians) Venezuela	Caribbean region Dominican Republic Internal	Colombia Cuba Dominican Republic Guyana Haiti Internal Jamaica Suriname Venezuela	Cuba Dominican Republic Internal St. Vincent and the Grenadines Trinidad and Tobago	Brazil Colombia Dominican Republic Guyana Venezuela
Extra-regional Source Countries	China India Philippines UK US	India UK US		Canada China India Pakistan Russia Sri Lanka UK US	Canada China India Lebanon Peru Portugal South Africa The Netherlands US		China
Destination Countries	Canada UK US	Canada UK US	Barbados Brazil Suriname	Canada UK US	Aruba Coast Rica Internal the Netherlands US Venezuela	The Bahamas Barbados Canada Martinique UK US	The Netherlands
Transiting Countries	Cuba Haiti Jamaica				China Colombia Cuba Dominica Dominican Republic Haiti India Jamaica Lebanon Nigeria Pakistan Suriname Syria Venezuela		

The absence of sustainable livelihood creates strong push factors for persons to seek new opportunities that enable them to provide for themselves and their families. This is coupled with the increasing need among countries, including those within the Caribbean region, for low-skilled, inexpensive, and temporary labor where employees are seen as expendable. Migration flows and patterns are influenced by this push-pull dynamic.

The Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St. Lucia, and Suriname, for example, are all destination countries for migrants seeking to improve their socioeconomic status, and in turn create potential victims of human trafficking. Many of these countries are seen as attractive destination points because of higher levels of social and economic development. Others bring in migrants because opportunities are believed to exist in specific industries such as tourism, agriculture, or mining.

Recruitment

Poverty, lack of opportunity, or simply the desire for a better way of life all influence migration trends in the Caribbean, and the need for inexpensive and/or low skilled labor in some countries has led to advertisement for and recruitment of workers. While this can be an effective mechanism for facilitating migration, it can also be used to exploit

vulnerabilities of migrant populations. Agencies throughout the Caribbean advertise and promote opportunities for work. Advertisements promise jobs as cashiers, bartenders, waitresses, domestic workers, sales clerks, babysitters, manual laborers, dancers, and massage therapists. The advertisements offer incentives, such as arranged transportation, accommodation, training, and enticing salaries. These recruitment methods apply to both internal and international opportunities, and this type of recruitment is known to take place in Caribbean newspapers and through Internet sites, as well as through radio ads.⁶

All countries researched in this study had cases of persons (who become internal and external migrants) that were promised jobs and certain working conditions, with the conditions and terms of “employment” subsequently changed upon arrival; many migrants were subsequently lured into multiple forms of exploitation, including forced labor, domestic servitude, and sexual exploitation. While these recruitment mechanisms are not used purely for human trafficking, they are methods that traffickers use to recruit those searching for employment and opportunity. Attempting to delineate legitimate opportunities from those that are not is an extremely daunting task.⁷

The recruitment process in the Caribbean context is not limited to the use of ads and agencies. Informal channels, such as word of mouth, are commonly used, and intermediaries in the recruitment process can be agents sent to lure people into exploitation. Recruiters were often found to be familiar persons, such as family members, neighbors, and friends. In fact, some that migrate based on promises of employment might be given a good experience so that he/she will then return to their area of origin and persuade others. Recruitment does not necessarily entail a person physically escorting someone into an exploitative situation. Recruiters can support unscrupulous “employers” by simply spreading false or exaggerated information about opportunities among vulnerable communities.

Agents or recruiters typically receive financial compensation for each person they recruit into “employment.”⁸ Some prostitutes help recruit other girls or women by telling them that they will earn a lot of money. The recruiter or assisting prostitute receives a payment per person they recruit. As reported in Guyana, Jamaica, and Suriname, intermediaries will often offer opportunities to children, obtaining parental approval and even providing the parents with a cash advance.

⁶ Haitian migration to The Bahamas and Guyanese migration to Barbados are believed to be perpetuated by advertisements from agencies promising opportunities for employment. Some Jamaican newspapers carry telephone numbers that a person can call to arrange a trip out of country.

⁷ For example, in the case of Jamaica, there were “warning signs” pointing to illegitimate “job opportunities,” such as unwillingness to divulge details over the phone.

⁸ For example, in Suriname, an agent may work in collaboration with a club owner to bring females in to work. Someone from Suriname then goes to Brazil, Colombia, or the Dominican Republic to recruit girls and women. Once recruited, their ticket is paid for in Suriname and the club owner in Suriname arranges the visa.

As previously stated, trafficking in persons often takes place within migration flows. This adds to the difficulty in identifying which individuals among regular and irregular migrant groups are victims of human trafficking. As is typical in trafficking in persons, most of those answering advertisements and those migrating for employment promised through informal channels will have little awareness of their potential to become subject to exploitation, which makes identification of victims at the recruitment stage incredibly challenging.

Movement/Transportation

Migration and mobility can be positive processes that lead to better living conditions or opportunities; however, in a climate of increasingly restrictive immigration policies, access to these opportunities may require the use of irregular methods of migration. Migrant smugglers are employed in facilitating this process and, as previously mentioned, in many situations the person being smuggled may be a willing participant in the process, not realizing the exploitation that may ensue. Boats, planes, cars, and pedestrian methods are all used in the movement stage of human trafficking within the Caribbean.

Organization of the movement process takes varying forms from country to country and can change at any particular point in time. As these are criminal operations, traffickers and smugglers will often adopt new routes, names, contact information, and means of transport to evade authorities. Those who have means of transportation (e.g. captains of boats and planes) can often be involved in recruiting.⁹

In some Caribbean countries, such as Barbados, St. Lucia, and the Netherlands Antilles, the entry of migrants and possible victims of trafficking also takes place within legal migration channels. In the case of air transport, tickets may be organized by an agency, recruiter, or “helper.” As seen in St. Lucia and the Netherlands Antilles, persons are alleged to wait for “new recruits” in the airport or point of entry to help facilitate passage into the country. It has been alleged that these facilitators are sometimes law enforcement or immigration officials.

Other countries, such as Guyana and Jamaica, have high levels of internal movement, much of which is rural to urban. For example, in Guyana there is movement from the hinterlands to the coastal areas, and in Jamaica there are flows into the tourist areas. In the case of Guyana, there is also urban to rural movement with some migrating from coastal areas to the hinterland to work in the mining industry. Because internal movement is common, it is extremely difficult to identify potential situations of exploitation and victims of human trafficking.

⁹ In The Bahamas, captains of boats and planes have allegedly gone to countries (e.g., Haiti and the Dominican Republic) claiming that there are jobs available in Nassau on large farms, for example, boasting free health care as an incentive. Transport is offered to The Bahamas for a fee. The boats are often filled beyond capacity; at times, they sink.

The Bahamas, Jamaica, the Netherlands Antilles, and Suriname are also used as transit points for regular and irregular migration. Persons are often delayed in a country until they can earn money or find a means of passage to a third or destination country. During this time, people are very vulnerable because they are open to any opportunities to earn money to complete their journey. Recruitment for and movement to an exploitative situation, human trafficking, can therefore take place within a transit country.

Exploitation

Forced Labor: In all countries examined in this research, exploitative labor conditions of migrants (both internal migrants and victims of trafficking) were found to exist. Those in forced labor were typically deceived about the conditions and type of employment in which they would be involved. Persons were forced to work in dangerous or poor conditions, with extremely long work hours, no time off (working seven days a week), having to perform duties that were not part of the original agreement, receiving very little or no pay, and being sustained through minimum accommodations of food and shelter.

Forced labor situations exist for both sexes, of varying ages, and for children throughout the Caribbean region. However, sectors of labor within the study were sex-specific and those found in exploitative or possible trafficking situations fit into the general categories. For example, men and boys were found more often in agriculture, construction, sawmills, and mining; women were employed more often in domestic and garment work and prostitution. But, it must be noted there were crossovers and correlation between the sectors; for example, in Guyana, some women worked in agriculture, and in the Netherlands Antilles, Indian men were found in domestic work. The case of children will be discussed in a later section.

It is purported that many laborers, for example in Suriname and Guyana, were not paid, but were given credit often resulting in debt bondage, and only received enough food rations for survival. Within the confines of debt bondage, the debt incurred is often difficult to pay as the “bosses” regularly add other costs to the original debt. This means that laborers may have no means to return home, and those that do may not go because they would be returning empty handed or have no opportunities within their home region or country upon return.

In The Bahamas, Barbados, Suriname, and the Netherlands Antilles, it was difficult to access populations believed to be in forced or exploitative labor conditions. This seemed to be especially true for Chinese populations in Suriname, who are believed to be one of the migrant populations that suffer labor exploitation and are potential victims of human trafficking. Cultural and language barriers, combined with isolation of certain immigrant communities from the general population, create further challenges in assessing the situations of many vulnerable migrant groups.

Furthermore, it is difficult to discern how many of the cases described within each country extended into human trafficking. When conditions of labor exploitation exist, it is possible for trafficking in persons to occur, and even thrive. If an industry or employer is allowed to treat workers in any way they wish, the move from exploitation into forced labor is not a drastic one to envision. Victims of human trafficking may well exist, undetected, among those in exploitative conditions.

Sexual Exploitation: The study shows a common scenario in all countries that trafficked women and girls, as well as cases of men and boys, were deceived, offered work as waitresses, cashiers, bartenders, dancers, sales clerks, or massage therapists, only to be told soon after arrival that they would have to engage in prostitution.¹⁰ Women in Jamaica, St. Lucia, Suriname, The Bahamas, and the Netherlands Antilles were often brought in with a permit to dance (strip) and then were often forced by their employer or by the circumstances these employers created, to prostitute themselves.

Others were aware that they would be employed in the entertainment industry or even as prostitutes, but were not fully aware of the working conditions in which they later found themselves. While knowledge about persons forced into prostitution varied between the different countries in this research, all countries attested to having some cases. This included some knowledge of people trafficked internally and externally for the purposes of sexual exploitation. Sexual exploitation was especially found among those involved in prostitution, exotic dancing, massages, and other related activities.

Although assumptions about prostitution could not be well substantiated within the framework of this research process, as access to prostitutes and victims of human trafficking was very limited, a common perception throughout the country reports was that those involved in the sex industry came from dire socioeconomic backgrounds, were seeking to improve their living conditions and those of their families, and though they may not have wanted to be working in the sex industry, they felt that they had no other choice. In this sense, negative attitudes about prostitution could serve as a disincentive for victims forced into prostitution and sexual exploitation to seek help. However, others believed that prostitutes had a choice and remained in the industry because they earned high incomes from this type of work. But even those who voluntarily worked as prostitutes were often confronted with working conditions they did not expect. Employers used various forms of control, forcing them to perform certain actions against their will and preventing “employees” from leaving, thus making them victims of human trafficking.

¹⁰ Vulnerability to trafficking in this context is not limited to females. There were also reports of boys and young men trafficked for sexual exploitation. This was often said to be associated with the drug trade. See the sections on children and links to drug trafficking below for more information.

Entertainment Work Permits: Concerns have been raised over the misuse of “entertainment” work permits. Many women enter Caribbean countries under the category of entertainer, which encompasses work such as dancing, singing, or playing music. Employers apply for these permits to allow women to enter their country to work as strippers or exotic dancers in their clubs. These permits do not allow for women to be involved in prostitution, only in “adult entertainment.” However, many informants noted that this system is being manipulated to circumvent regulations related to prostitution in varying Caribbean countries. With this process being abused and unmonitored, often with the support of law enforcement officials, it is feasible that it could be used as a means to move victims of trafficking within the Caribbean for the purpose of sexual exploitation.

Non-regulated prostitution is believed to take place in Curaçao, St. Maarten, and Bonaire in restaurants, bars and dance clubs, strip clubs, brothels, rented rooms or apartments, and private residences.¹¹ Women employed in these places typically come into the Netherlands Antilles as “dancers” on entertainment visas and are not registered in the Netherlands Antilles Aliens Registration System (NAVAS). The government does not currently keep track of the number of women in Curaçao who are employed as “dancers” annually. Thus, the number of entertainment visas issued and the non-regulated prostitution industry work in tandem to enable a steady supply of women for sexual exploitation.¹²

In St. Lucia, informants reported that those granted entertainment work permits often overstay, and that this movement is not tracked. It is believed that some women are forced to remain in sexually exploitative conditions by club owners, who are protected from retribution by local officials. In Suriname, club owners applying for work visas for their new recruits are almost always granted such documentation even though it is believed that these women will be involved in prostitution. This is believed by informants to take place with official support, as flexible implementation of the legal provisions ruling prostitution activities leave most of the visa issuance, sanitation controls, and penal code enforcement to the discretion of high-ranking officials. Without any monitoring or regulation of the work-permit process, it is possible to continue bringing in women without any way of knowing their numbers or the circumstances in which they end up. However it must be noted that even when such mechanisms exist, they can be abused by authorities and exploited by human traffickers.

¹¹ Key informant interviews, the Netherlands Antilles.

¹² In Curaçao, government-sanctioned and regulated prostitution is permitted in a specified zone, known as Campo Alegre, where only non-Antillean women are employed. Under the conditions of the three-month work permits, registered prostitutes are not allowed to travel, and those that leave the island forfeit the right to return under the same permit. It is believed that non-regulated prostitution takes place in clubs outside of this zone. Approximately one-third of Campo Alegre’s prostitutes leave before their work permit expires, and an estimated 12 percent of those that leave Campo Alegre begin working in illegal prostitution. See United Nations, *Consejo Económico y Social, Comisión de Derechos Humanos. Informe de la Relatora Especial, Sra. Radica Coomaraswamy Sobre la Violencia Contra la Mujer, con Inclusión de sus Causas y Consecuencias*, February 12, 1997 (Geneva: United Nations, 1997), 30.

Sex Tourism: Tourism is a major industry for most Caribbean countries and sex tourism specifically—tourism sought partially or fully for the purpose of having sex—is one category in the region that involves male and female clients seeking services of both sexes. Informants in Jamaica, Barbados, St. Lucia, the Netherlands Antilles, and The Bahamas believed that there are links between human trafficking and sex tourism in many Caribbean countries. Barbados and Jamaica are well known as having sex tourism, with the research even finding Internet listings advertising Barbados as a sex tourism destination.

Informants believed that tourists' demands have been increasing in many of these countries, in addition to an escalating local demand in Barbados, Jamaica, and St. Lucia, as mentioned. This is perpetuated with the growth of the traditional tourism industry, the entertainment industry, and the personal services industry, with all three being interconnected. In no way is every case of sex tourism associated with human trafficking, but it is known that human trafficking exists within this industry. The private and anonymous nature of these activities provides room for sexual exploitation to exist.

Domestic Work: The trade in human beings is often linked to the demand for cheap domestic labor; domestic workers are considered some of the most underpaid and overworked of those employed. Since domestic work typically exists within private households, the extent of abuse and exploitation of domestics is very difficult to discern. And, domestic workers are often not included as a recognized labor force, falling outside the scope of labor exploitation laws and protection. Differences in race, class, age, sex, and legal status can intensify the potential for exploitation. Informants in countries such as The Bahamas and Barbados explained that local people would not work as a domestic worker because of the low pay, long hours, poor conditions, and the "social status" associated with such work.¹³ While domestic workers are typically migrant females, in The Bahamas and the Netherlands Antilles some cases of male domestic servitude were known.

Domestic servitude was reported as existing in most of the countries included in this report, and in addition to internal movements of domestic workers, there was some mention of people from the Caribbean being trafficked abroad as well.¹⁴ Methods of exploitation and control for domestic workers are similar to other labor sectors, as workers may be promised salaries, but receive little or no money for their efforts.

¹³ This situation described for Barbados is representative of the other countries in this report: "The cases were primarily of young migrant household helpers made to work long hours, threatened with violence and reports to the Immigration Department, only able to have a limited social life, being locked in, and either paid low or 'starvation' wages or through a barter system that is the provision of housing and food." Key Informant interviews, Barbados.

¹⁴ As mentioned by a key informant in Jamaica, some domestic servitude cases are internal, as "some instances involve young girls and women who are recruited from rural areas to work as domestic helpers or to 'live in' as part of a family. In the latter case, promises were made about being sent to school, and being provided with clothes and money. They ended up existing under slave-like conditions." Informants in Barbados and Guyana also believed there to be some crossover between domestic servitude and sexual exploitation, as some domestic servants are forced to perform sexual favours and others are sexually abused by employers.

Passports and identity documents are confiscated; threats of violence, deportation, or imprisonment are used to frighten the workers.

Trafficked domestics may find themselves in debt bondage, a situation that has been likened to slavery or indentured servitude, having borrowed money to pay fees to agencies or to cover travel expenses. Others are told that their transportation costs will be covered by their employer, only to have the costs held against them as a debt once arriving at their new job. In cases where domestic workers are held in slavery, they receive no payment, and therefore their debts cannot be paid off. There are also those who are tricked into domestic slavery, thinking that they are going to be employed in some other capacity, for example in a factory or restaurant.

Trafficking in Children

Though Caribbean states have varying definitions of “child,” this research used the international definition as its basis (anyone under the age of 18). According to the Protocol referenced above, in the case of human trafficking, “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons.’” For children it is not necessary that there be “threat or use of force or other forms of coercion, of abduction, of fraud, of deception...” for trafficking to occur.

But while the international standard was used as the basis of this report, it is important to note that national laws on child labor in the Caribbean vary greatly, and may not agree with the standards established in the Protocol. For example, if a parent arranges to have their child transported into a situation where they are forced to work (e.g., begging on the streets), this can be considered trafficking by the international standard, even if the child is a willing participant and is returned after a period of time; nationally, however, this may not be illegal.

Within the region, key informants and national survey respondents pointed to common factors, including poverty and lack of educational or employment opportunities, that contribute to trafficking in children. This included families needing to sell or send children away for their own survival and for the possibility that their child would attain a better life with someone else. The low social and cultural status of females was also cited. This included the disproportionate number of females in poverty, women as single heads of households, early exposure to sex, and using sex as a means of survival. In some situations, circumstances of poverty led mothers to send their daughters out to find a man to take care of them. Lack of education and awareness of risks, a history of sexual abuse of children, and parental migration resulting in abandonment were also believed to be contributing factors.

The research conducted for this assessment identified The Bahamas, St. Lucia, Jamaica, Guyana, and Suriname as having links to trafficking in children, and in the literature reviews from this research, cases of children used for exploitative practices were found in most countries.¹⁵ As was noted in one International Labor Organization report from The Bahamas, an environment of exploitative child labor practices could foster trafficking in children, at least on a small scale.¹⁶ In The Bahamas, sexual exploitation was seen in cases of “sweet-hearting” between girls and older men, in some cases tourists.¹⁷ Reports consisted of girls under 16, some as young as 12, being involved in various forms of commercial sexual activity. A publication focusing on Guyana also described cases of the sexual exploitation of Amerindian girls.¹⁸ Previous IOM research on the Netherlands Antilles indicates that one can approach certain brothel owners to “order a child.”¹⁹

Research in St. Lucia carried out by the Poverty Reduction Fund in 2000 described, “There are young 12-13 years old, even nine, involved in street prostitution. Young boys are being abused in tourist areas (such as in Marina in the North). Many children are sent to Castries and are begging for food.”²⁰ Multiple St. Lucian informants and survey respondents cited information on child prostitution and pornography.²¹ In Jamaica, boys

¹⁵ In Guyana, there was discussion of young Amerindian boys being forced to work for a businessman under slave like conditions. Informants also described girls from rural communities who are recruited with promises of jobs as salesclerks or domestic workers in Georgetown. “Parents are given advances and are told girls would be well taken care of. Girls are taken to Corentyne and are handed over to business people who then tell them the kind of work they have to do...Movements are restricted, no interaction with others but clients; no pay...” In St. Lucia, there was also one mention of trafficking for purposes of adoption, where parents received money in exchange for their children who were sent to Canada and the U.S.

¹⁶ Leith Dunn, The Bahamas, *The Situation of Children in the Worst Forms of Child Labor in a Tourism Economy: A Rapid Assessment*, International Labor Organization (Port of Spain: ILO, December 2002).

¹⁷ International Labor Organization, *Child Labor in The Bahamas: Summary of Research Findings based on a Rapid Assessment Study by the International Labor Organization* (2002): 2. Also available online at <http://www.ilocarib.org.tt/infosources/child_labour/fact_sheets/BahmsFS.pdf>.

¹⁸ Christie Cabral and V. Speek-Varnery, eds. *Voices of Children: Experiences with Violence* (Georgetown: Guyana, Ministry of Labor, Human Services and Social Security, Red Thread Women’s Development Project, and UNICEF-Guyana, June 2004), 28-29, <<http://www.sdn.org.gy/csoc/childviolreport.pdf>>.

¹⁹ This child, usually an eight to 12 year-old girl from the Dominican Republic, is then flown to Curaçao, where she is handed over to the client for his exclusive use. See IOM, *HIV/AIDS and Mobile Populations in the Caribbean: A Baseline Assessment* (Santo Domingo: IOM, June 2004). Also available from <http://www.iom.int/DOCUMENTS/PUBLICATION/EN/Final_Report_HIVAIDS_and_Mobile_Populations_in_the_Caribbean.pdf>.

²⁰ Poverty Reduction Fund of St. Lucia, *Social Assessment Study of 2000* (St. Lucia: Poverty Reduction Fund of St. Lucia, 2000), 81.

²¹ This included the involvement of “local school girls” in the “entertainment business,” and the recording of pornographic videos. “Young girls are tricked into getting involved for money. [They] may be told that they have to dance or pose, then they have to do very explicit sexual acts or other things.” Key informant interviews, St. Lucia.

and young men, especially those on the streets, were said to be used as “watchdogs” and couriers for drugs, and often are sexually exploited. Girls were said to be sold for sexual exploitation or forced labor purposes.²² Informants in Suriname also believed that children are being exploited in their country as domestic or street workers, and sexually exploited.²³

Other Contributing Factors

Corruption and Complacency: Though the extent and level of organization was not known, corruption was highlighted in the course of interviews throughout the region. Police were said to be linked to proprietors of clubs, bars, for example, resulting in fear and a lack of reporting about exploitative practices and possible trafficking cases. One commonality within the region is the belief that the smuggling process functions with the assistance of immigration officers and border officials.

In The Bahamas, Jamaica, the Netherlands Antilles, and Suriname, immigration officials were suspected of being involved in either facilitating or ignoring possible cases of human trafficking. In the Netherlands Antilles, informants “had many questions regarding admittance of certain women and the conditions under which they are admitted.” Other officials are accused of corruption in the visa issuance process, as in the case of Suriname. In Barbados, law enforcement officials were accused of being involved in a passport scam that allegedly facilitated the passage of Guyanese into the country. In St. Lucia, some informants perceived there to be complacency between law enforcement officials and perpetrators of human trafficking, and an informant noted that it is “difficult to tackle the issue because persons involved are connected to top officials in government who are then able to silence those who speak out or act against trafficking in persons.”²⁴

²² Girls are said to be given to men or sold at the Culloden Sex Trade by their families. There were also reports of girls being bought at Falmouth market for forced labor purposes. As well, girls were thought to be recruited from rural areas as domestic helpers, “When the girl child gets to the town expecting to be treated as a family member, they find that they have to start doing chores, washing clothes, looking after baby, etc. Eventually, the male head begins to sexually abuse her and threaten her not to tell anyone. These girls are in the age group 13 to 25 years.”

²³ Two cases of forced prostitution were described as involving Guyanese girls in Suriname. It was also mentioned that there is sexual exploitation of girls happening in the gold mines, though no cases were described. In a recent publication by Schmeitz, there were documented cases of forced, arranged marriages involving young Surinamese girls who were living in a children’s shelter. See M. Schmeitz, *Wie staat op voor mijn recht* (Paramaribo: January 2002).

²⁴ Key informant interviews, St. Lucia.

Links with Drug Trafficking: The full extent to which links exist with drug trafficking was not known, and informants' answers varied from hypothesizing to naming multiple cases linking the two. Many believed that the progression from drug to human trafficking was a natural one. Thus, criminals will expand into lucrative operations based on demand, especially when the mechanisms, in terms of movement and transportation, are already in place. As islands, archipelagos, and countries with porous or un-patrolled borders, surveillance is difficult; this makes all facets of trafficking a significant challenge to detect.

Males and females may willingly transport drugs across borders, but end up in unexpected circumstances. For example, after someone hired as a drug courier carries out their responsibilities, they may have been held in bondage and exploited, forced into selling drugs and/or prostitution. Criminals use threats of violence against the person and their loved ones as a means of control. Key informants in The Bahamas, Guyana, Jamaica, and Suriname believed that human trafficking and drug trafficking are linked, and of the cases cited linking drug and human trafficking, most involved people who turned to drug trafficking as an opportunity and means to escape poverty—a population potentially vulnerable to human trafficking.²⁵

Regional Recommendations

Based on the findings of the report, IOM would like to recommend the following measures to address the current situation of trafficking in persons in the Caribbean region, as well as support preventative efforts to limit its growth. The recommendations outlined below are drawn from international standards outlined in the UN Protocol and other international documents, and include regional and country-level recommendations.²⁶

²⁵ A few cases of people being forced to swallow drugs for transport were also mentioned, but these were not thought to be very widespread. Informants in Suriname mentioned the unique situation of Surinamese living in the Netherlands, who were offered airfare to Suriname to visit family. Once they arrived they were controlled and forced to transport drugs back to the Netherlands.

²⁶ It is important to note that while each country in the Caribbean has a unique context that must be reflected in national strategies, there are several areas in which countries throughout the region can support each other in being able to respond to this serious crime. These recommendations are intended as a starting point and do not provide detailed recommendations for each individual country. IOM also recognizes the different actions that governments across the region have already taken to raise awareness and combat trafficking in persons, these recommendations are intended to support and reinforce those important actions already going on in communities throughout the Caribbean.

Policy Framework

1. Establish and maintain regular contact with national focal points in the region on all issues pertaining to trafficking operations and victim assistance. Consider establishing a National Task Force or Working Group on Trafficking in Persons that brings together relevant ministries, agencies, inter-governmental organizations, non-governmental organizations, and representatives of civil society to monitor trafficking in persons as well as develop and implement policy to combat trafficking.
2. For countries without a National Plan of Action and a recognized concern about trafficking in persons, establish a sustainable National Plan of Action that identifies the key actions of the government in the area of prevention, protection, and prosecution. Within the Plan, identify the government ministry or agency responsible, necessary financial resources, a timeline for implementing the different actions included in the Plan, and a monitoring and evaluation process.

Legal Framework

1. Sign and ratify the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
2. Working with the Legislative Drafting Facility within the Caribbean Community (CARICOM) Secretariat, draft a regional model law on trafficking in persons that can be used as a guide by states to implement the Protocol and assist the region in harmonizing their counter trafficking legal response. This legislation should, at a minimum:
 - Define precisely the crime of trafficking in accordance with international standards, and expressly include all exploitative practices covered by the international definition of trafficking such as debt bondage, forced labor, and sexual exploitation as well as any particular forms of exploitation that are relevant to the Caribbean region.
 - Ensure that definitions of trafficking reflect the need for special safeguards and care for children, including appropriate legal protection.
 - Ensure that trafficked persons are not punished for any offences or activities related to their having been trafficked, such as prostitution and immigration violations.
 - Ensure that victims of trafficking are protected from summary deportation or return where there are reasonable grounds to suspect that such return would represent a significant security risk to the trafficked person or to his/her family.
 - Consider temporary or permanent residency in countries of transit or destination for trafficking victims in exchange for testimony against alleged traffickers, or on humanitarian and compassionate grounds.

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- Ensure that victims of trafficking are offered the possibility of obtaining compensation for damages suffered.
- Provide for proportional criminal penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by state officials.
- Provide for the confiscation of the instruments and proceeds of trafficking, and related offences, to be used for the benefit of trafficked persons.
- Using the *Legal Review on Trafficking in Women and Children in the Caribbean* as a basis, identify current national legal codes that are applicable to prosecuting trafficking in persons and train law enforcement officials and the judiciary on their application.

Investigation and Prosecution of Traffickers

1. Strengthen training for law enforcement personnel, immigration and customs officials, prosecutors and judges, and other relevant officials in the prevention of trafficking, prosecuting the traffickers, and protecting the rights of victims, including child victims as well as the critical role that victims have in providing evidence and serving as witnesses in criminal investigations.
2. Establish direct channels of communication within and between Caribbean countries as well as extra-regional countries like Brazil, Canada, Columbia, the Netherlands, Spain, the United Kingdom, the U.S., and Venezuela, which link investigators, law enforcement agencies, regional and inter-governmental agencies. This could be modeled on the experience of Interpol, the Caribbean Financial Task Force, or the Mutual Legal Assistance Treaties.
3. Take necessary measures to identify and trace financial proceeds from trafficking in persons. These proceeds should be confiscated and or seized if it is proven that they are a result of the trafficking crime. Money confiscated could be used to fund victim assistance programs and provide individualized victim compensation.

Prevention, Awareness Raising and Information Sharing

1. Use information materials provided through IOM and other organizations to support the development and dissemination of regional and national awareness on trafficking in persons that focus on raising public awareness among particular target groups, including victims, policymakers, law enforcement officials, medical and social service providers, diplomatic and consular staff, and the media on human trafficking, the differences between human trafficking and smuggling, and the response of each country in prosecuting traffickers and protecting victims.

- Special attention should be given to educating families about the recruitment of under-aged children and risk of the exploitation of children.
- Outreach and awareness raising efforts in communities of origin should be linked with community development programs offering other options for income generation and/or education.

Data collection

1. Across the region, standardize the collection of information and field data on trafficking, and related movements, such as irregular migration and migrant smuggling, which may include a trafficking element. Ensure the disaggregation of migration data on the basis of age, gender, nationality, date and place of entry and departure, place of visa renewal, overstay, and deportation. Share this data with counterparts across the region.

Identification, Assistance and Support to Victims

1. Establish regional screening and victim identification guidelines to support the rapid and accurate identification of trafficked persons, and ensure that special procedures are in place for the rapid identification of trafficked children consistently across the region.
2. Introduce standard procedures within the region for the voluntary return and reintegration of victims of trafficking in their countries of origin, and the extradition of traffickers for prosecution. Use the IOM Global Emergency Fund to provide assistance in the interim and consider establishing a regional voluntary return and reintegration fund.
3. Identify existing government and non-governmental resources that could be used to assist trafficking victims. Establish a strategy to provide assistance to victims of trafficking, to ensure the proper identification and referral of trafficked persons, including trafficked children, and to ensure that they receive adequate assistance while protecting their human rights. Victim assistance services should include: safe and appropriate accommodation, counseling, health care, free legal assistance, education, and vocational and employment opportunities.
4. Identify a national hotline that can serve as the information point for the community, government and non-governmental representative, media, migrant groups, potential victims of trafficking, and victims of trafficking.
5. Target training to governmental and non-governmental organizations to develop the capacity of reception centers or other shelters to receive trafficked persons by providing physical security, basic material assistance, medical care, psychological counseling, and legal assistance to victims.

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<<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/050029d64a9be597802566b2004dc48d?Opendocument>>

Sex Work Migration and Human Trafficking: Problems and Possibilities

4.3

Kamala Kempadoo

Introduction

Prostitution and other arrangements that depend upon the trade and exploitation of sex labor are commonly linked to the trafficking of persons; the aim of this article is to discuss this link in the Caribbean context. First, drawing from studies on sex work since the mid-1990s, this paper describes the main characteristics of migrant sex work in the Caribbean, highlighting patterns common to the region and the significance of sex work to local and global economies. The central argument advanced is that, contrary to common perceptions of the sex trade as violence to womanhood, migration into and work within the sex trade in the region is part of Caribbean women's livelihood strategies, which are informed by historical patterns of work and survival in the region.

Second, this article discusses the problems and shortcomings of anti-trafficking interventions. Drawing from experiences and evaluations in Asia, Europe, and the Americas, this article points out that without attention to differences between prostitution and "trafficking," to the structural causes of migration and sex work, and to the needs of migrant (sex) workers, anti-trafficking efforts will continue to have little impact on the problem or may become counter-productive. Third, in the context of conflict prevention as addressed in this collection, this article notes that various government responses to survival strategies, which include cross-border undocumented migration or employment in informal sectors such as the sex trade, are repressive and can be harmful to vulnerable populations. Anti-trafficking policies and laws that rely upon increased surveillance, monitoring, and policing of migrant (sex) workers exacerbate conflict and violence as they unilaterally impose restrictions and standards that deepen economic and social divides between the wealthy and the poor, citizens and migrants, legal and undocumented workers, "decent" women and prostitutes, etc. Hostilities against, lack of respect for, and severe mistreatment of the less powerful groups and nations are the result. This article therefore concludes with a number of recommendations that would allow Caribbean governments and non-governmental organizations to draw carefully from existing global experience and knowledge on anti-trafficking, and to design policies and interventions that would promote Caribbean sustainability and contribute to peaceful conditions in the region.

The International Context of Trafficking and Sex Work

From the mid-nineteenth century to the start of the twenty-first, the traffic of humans was firmly linked, in international and local state policies and laws, to the movement of women around the globe for sex work. Indeed, starting with international campaigns and policies to protect women from the “white slave trade” through the 1949 United Nations Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others, laws, debates, and abolition efforts regarding trafficking targeted the sex trade exclusively.¹ Ideas about trafficking were engendered by anxieties about the migration of single women abroad and the capture and enslavement of women in prostitution in foreign lands. Christianity underlay the vision of a moral society that informed the definition. Thus, while influenced by the politics of the anti-black slavery, abolitionism, and the woman’s suffrage movements in both Europe and the U.S. in the early twentieth century, the “traffic of persons” paradigm was dominated by ideologies about women’s “proper” domestic role in which the nuclear, heterosexual family was held as the norm, and sexual relations for women were defined as a biological duty for reproductive purposes. Sex for any other purpose, particularly prostitution, was viewed as an evil and thought to be forced upon women, corrupting and debasing their characters and thereby violating the norm of womanhood. Women’s migration abroad, and their subsequent involvement in the sex trade, was to be prevented, and women were to be rescued from “sexual slavery.”

Since the late twentieth century, an international awareness has arisen about the complexities of trafficking and prostitution, through which notions about trafficking of persons and prostitution have been redefined.² Prostitution has now come to be widely accepted as a form of work within culturally-specific, patriarchal constraints. Moreover, under the 2000 UN Convention on Transnational Crime and in a number of regional and local government policies and laws, trafficking of persons is defined as the force and violence involved in cross-border (national and international) recruitment, transport, and employment of women, men, boys and girls (with or without their consent) in semi-legal or illegal conditions.³ In the UN definition, this differs substantially from smuggling in

¹ Jo Doezema, “Loose Woman or Lost Women? The Re-Emergence of the Myth of White Slavery in Contemporary Discourse of Trafficking in Women,” *Gender Issues* Winter (2000); Frederick K. Grittner, *White Slavery: Myth, Ideology and American Law* (New York: Garland Press, 1990); Donna J. Guy, *Sex and Danger in Buenos Aires: Prostitution, Family, and Nation in Argentina* (Lincoln: University of Nebraska Press, 1991); and Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980).

² See Marjan Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labor and Slavery-Like Practices in Marriage, Domestic Labor and Prostitution* (Utrecht: STV, 1997); Jo Bindman, “Redefining Prostitution as Sex Work on the International Agenda,” (London: Anti Slavery International, 1997); Kamala Kempadoo and Jo Doezema, eds., *Global Sex Workers: Rights, Resistance, and Redefinition* (New York: Routledge, 1998); Kamala Kempadoo, “Prostitution and Sex Work Studies,” in Philomena Essed, Audrey Kobayashi, and David Theo Goldberg, eds., *A Companion to Gender Studies* (London: Blackwell, 2005).

³ United Nations, *The International Convention against Transnational Organized Crime*, 2000, <http://undcp.org/crime_cicp_convention.html>.

that the end purpose—labor exploitation—is viewed as a critical component of trafficking. Without a clear and acknowledged link between persons and networks that recruit and transport people to organizations and industries that demand (undocumented) labor in the agricultural, manufacturing, entertainment, and food-processing sectors, trafficking, it is claimed, cannot exist.⁴

Main Characteristics of Caribbean Migrant Sex Work

In the Caribbean, prostitution has received attention through research on trafficking.⁵ Nevertheless, research on sex work in the region reveals that very little of what takes place in the Caribbean sex trade can be classified as such. Migration for sex work in the region has been recorded in countries such as the Netherlands Antilles since the 1930s and is not a new phenomenon to the region.⁶ Recent research reveals that the majority of women who are engaged in sex work in the Caribbean as migrants—internal, regional, and international—are aware of their recruitment into the trade or personally opt to enter into sex work in another place or country. For example, among the approximately 22,500 women who worked in the Curaçaoan brothel “Campo Alegre” from 1949 to 1993, at least 50 percent were returnees, and thus were fully aware they would be migrating to the island for a three-month period to work in prostitution.⁷ Moreover, all aspiring brothel workers, even those who had never before visited, submitted a letter of application to the Curaçaoan government authorities to apply for work at “Campo” and most appeared to be well-aware of the nature of the work prior

⁴ See also the article on “Scope and Nature of the Trafficking Phenomenon” in Chapter Four of this volume.

⁵ Yamila Azize Vargas, “Tráfico De Mujeres Para Prostitución, Trabajo Doméstico Y Matrimonio (Trafficking in Women for Prostitution, Domestic Work and Marriage)” (San Juan: STV and GAATW, 1996); Chris de Stoop, *Ze Zijn Zo Lief, Meneer: Over De Vrouwenhandelaars, Meisjesbaletten En De Bende Van De Miljardair* (Leuven: Kritak, 1992); IHRLI, “In Modern Bondage: Sex Trafficking in the Americas,” (Chicago: International Human Rights Law Institute, DePaul University College of Law, 2002); Carmen Imbert Brugal, *Tráfico De Mujeres: Visión De Una Nación Explotadora* (Santo Domingo: CE-Mujer, 1991); IOM, “Trafficking in Women from the Dominican Republic for Sexual Exploitation” (Geneva: International Organization on Migration, 1996); Anneke van Ammelrooy, *Vrouwenhandel: De Internationale Seks-slavinmarkt* (The Hague: BZZToH, 1989); IOM, *Exploratory Assessment of Trafficking in Persons in the Caribbean Region* (Washington, DC: International Organization for Migration, 2005); and Patricia Robin Klausner, “The Politics of Massage Parlor Prostitution: The International Traffic in Women for Prostitution in New York City, 1970-Present” (Ph.D. dissertation, University of Delaware, 1987).

⁶ See, for example, Florence Kalm, “The Two ‘Faces’ of Antillean Prostitution,” Paper Presented at the American Anthropological Association meeting (1975); and U.C.H. Martins, “Hoe Campo Alegre Ontstond,” in *Koperen Polyfonie* (Universiteit van Nederlandse Antilles, 1984).

⁷ From government records, documented in Kamala Kempadoo, “Exotic Colonies: Caribbean Women in the Dutch Sex Trade” (Ph.D. dissertation, University of Colorado, 1994).

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to arrival.⁸ This research delivered little evidence that the women were deceived about the work they would be doing or were captured, enslaved, or physically held against their wills. The majority of the women interviewed stated that it was not the work, but rather the working conditions in the brothel, that were objectionable. They were required to be in the brothel between 6 pm and 6 am and to obtain special permission from the management if they wished to go out at night. They paid high prices for airfares, health certificates, documents, and other assistance to reach the island, as well for lodging, food, mandatory medical examinations, security services, and transportation once on the island. The expenses the women incurred meant that they were bound to servicing at least two clients a night. The financial obligations and pressures ensured that even though the majority of sex workers in Curaçao were technically self-employed and independent workers, they were often indebted to a middleman or the brothel owner and therefore worked primarily to pay off their debts.

The situation in Curaçao for migrant women in the sex trade is mirrored throughout the region, although it is far more difficult to document than in Curaçao.⁹ Nevertheless, in research conducted in eight Caribbean territories from 1997 to 1998 involving 191 sex workers, it was found that people who engaged in sex work defined it as a gainful activity and a very real alternative to other income-generating activities, such as domestic work, street or beach vending, fishing, work in manufacturing factories in Free Trade Zones, security guard work, formal service in the tourist sector, bartending, and go-go dancing.¹⁰

⁸ See also by this author, "Prostitution, Marginality and Empowerment: Caribbean Women in the Sex Trade," *Beyond Law* 5 (14) (1996); "Dominicanas En Curazao: Mitos Y Realidades (Dominican Women in Curaçao: Myths and Realities)," *Género y Sociedad* 4 (1) (1996); and "The Migrant Tightrope: Experiences from the Caribbean," in Kamala Kempadoo and Jo Doezema, eds., *Global Sex Workers: Rights, Resistance and Redefinition* (New York: Routledge, 1998).

⁹ On this island, the state legalized and regulates the main brothel, and the police department has filed information about all the brothel workers since the 1940s.

¹⁰ See results from the research project that took place in eight Caribbean territories during 1997-98, in Kamala Kempadoo, ed., *Sun, Sex, and Gold: Tourism and Sex Work in the Caribbean* (Lanham: Rowman and Littlefield, 1999).

In the majority of the cases, men and women described sex work as more lucrative than these other jobs and, in some cases, less demanding or less hazardous to their well-being. These insights into prostitution and other forms of sex labor in the region are confirmed in a number of other research reports and publications.¹¹

The research on sex work in the Caribbean is striking as it indicates that the majority of sex workers—migrant or not—are self-employed or independent operators, often combining sex work with other income-generating activities during the year. Few work full-time or are professionals engaging in sex work for the long term. For most, sex work represents a temporary strategy to counter the existing social orders and hierarchies of gender, race/ethnicity, and class that keep them disadvantaged. The research generally concludes that sex work is a livelihood strategy and a means for “advancement” or “betterment” that allows Caribbean women and men a form of freedom from oppressive and exploitative national and global socio-economic relations that maintain poverty for the majority and wealth for a few. Sex work thus positions working women and some men, in the absence of any other real economic alternatives, to provide for their families, gain access to a life that takes them out of poor social and economic conditions, and obtain the power and freedom symbolized by “development.”

The places and sites where migrants are engaged in the Caribbean sex trade received little attention prior to the mid-1990s, thus few conclusions can be drawn about whether they have changed substantially over the years, whether numbers have increased or declined, or whether the countries of origin or destination of sex workers at these sites have

¹¹ There is a substantial body of research and literature about sex work in various Caribbean countries, including: Denise E. Brennan, *What's Love Got to Do with It? Transnational Desires and Sex Tourism in the Dominican Republic* (Durham: Duke University Press, 2004); Amalia Lucía Cabezas, “Pleasure and Its Pain: Sex Tourism in Sosúa, the Dominican Republic” (Ph.D. dissertation, University of California, 1998); Amalia Lucía Cabezas, “Between Love and Money: Sex, Tourism, and Citizenship in Cuba and the Dominican Republic,” *Signs: Journal of Women in Culture and Society* 29 (4) (2004); Klaus de Albuquerque, “Male Sex Workers and Female Tourists in the Caribbean,” *Journal of Sexuality and Culture* 2 (1999); Antonio E. de Moya and Rafael Garcia, “Three Decades of Male Sex Work in Santo Domingo,” in Peter Aggleton, ed., *Men Who Sell Sex: International Perspectives on Male Prostitution and HIV/AIDS* (Philadelphia: Temple University Press, 1999); Leith L. Dunn, “Jamaica: Situation of Children in Prostitution: A Rapid Assessment” (Geneva: International Labor Organization/International Program on the Elimination of Child Labor, 2001); Stephanie C. Kane, “Prostitution and the Military: Planning AIDS Intervention in Belize,” *Social Science and Medicine* 36 (1993); Amy Raquel Paul, “‘It Isn’t Love, It’s Business’: Prostitution as Entrepreneurship and the Implications for Barbados” (Ph.D. dissertation, University of California-Los Angeles, 1997); Joan L. Phillips, “The Beach Boys of Barbados: Post-Colonial Entrepreneurs,” in Susanne Thorbek and Bandana Pattanaik, eds., *Transnational Prostitution: Changing Global Patterns* (London: Zed Books, 2002); Deborah Pruitt and Suzanne LaFont, “For Love and Money: Romance Tourism in Jamaica,” *Annals of Tourism Research* 22 (2) (1995); E. Santo Rosario, et al., “La Industria Del Sexo Por Dentro (The Sex Industry From Within),” (Santo Domingo: COIN, 1994); Jacqueline Sanchez Taylor, “Dollars Are a Girl’s Best Friend? Female Tourists’ Sexual Behavior in the Caribbean,” *Sociology* 35 (1) (2001); Jacqueline Sanchez Taylor, “Tourism and ‘Embodied’ Commodities: Sex Tourism in the Caribbean,” in Simon Carter and Stephen Clift, eds., *Tourism and Sex: Culture, Commerce and Coercion* (London: Pinter, 2002); and Centro de Orientación e Investigación Integral (COIN), *Juntarnos: Memorias Primer Congreso Dominicano De Trabajadoras Sexuales* (Santo Domingo: COIN, 1996.)

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changed. There are presently several known sites where sex work takes place throughout the region with each representing a specific type of arrangement: hotels and guesthouses; entertainment establishments, such as bars, nightclubs, and go-go dance clubs; tourist resorts; gold mining camps; and docks. Special red-light districts are unknown in the region, and very few places are exclusively designated for commercial sex work.¹² In the 1990s, the most prominent “sending” country appeared to be the Dominican Republic, with women temporarily taking up work in brothels, hotels, and bars in Haiti, Curaçao, Antigua, Panama, St. Marten, and Suriname. Guyanese women were found to be heavily involved in sex work in Suriname, Trinidad, and Barbados. Trinidadian women were known to travel for sex work to Columbia and Barbados, and Haitian women were signaled in sex industries in the Dominican Republic, Curaçao, and Barbados.

Conversely, several countries hosted foreign sex workers from South and Central America. Brazilian women crossed borders into Suriname and Guyana. Colombians were engaged in sex work in Curaçao, Aruba, Trinidad, and Suriname. Women from Honduras, Guatemala and El Salvador were located in the Belizean sex industry. In larger countries, where trafficking across internal borders is possible, young women sex workers from hinterland areas have been identified in other regions of the country.¹³ Research conducted for the International Organization for Migration (IOM) in 2004 confirms much of this picture, adding that in The Bahamas, Haitians and Jamaicans are involved in sex work, while Guyanese women work in Venezuela, Suriname, and French Guiana, and the migrant sex workers in St. Lucia originate mainly from Cuba, Trinidad, and the Dominican Republic.¹⁴ Migration flows for sex work in the region, and changes in these flows, are still largely undocumented, yet several sending and destination countries have been identified.

Migration, Debt-bondage and Vulnerability

Within the context of “voluntary” involvement and “irregular” migration, a common pattern emerges involving indebtedness to family or friends, a brothel-owner, a recruiter or an employer, such as a mining operator or hotel proprietor, or a middleman that

¹² For an elaboration of these trends, see Kamala Kempadoo, “Continuities and Change: Five Centuries of Prostitution in the Caribbean,” in Kamala Kempadoo, ed. *Sun, Sex and Gold: Tourism and Sex Work in the Caribbean* (Boulder: Rowman and Littlefield, 1999).

¹³ For further detail, see Christel C.F. Antonius-Smits, et al., “Gold and Commercial Sex: Exploring the Link between Small-Scale Gold Mining and Commercial Sex in the Rainforest of Suriname,” in Kamala Kempadoo, ed. *Sun, Sex, and Gold: Tourism and Sex Work in the Caribbean*; Azize Vargas, “Tráfico De Mujeres Para Prostitución, Trabajo Doméstico Y Matrimonio (Trafficking in Women for Prostitution, Domestic Work and Marriage);” Stephanie C. Kane, “Prostitution and the Military: Planning Aids Intervention in Belize;” and Red Thread Women’s Development Program, “Report of a Study on Female Commercial Sex Workers in Guyana, and Project Proposal Arising from the Study.” (Georgetown: Red Thread Women’s Development Program, 2002).

¹⁴ IOM, “Exploratory Assessment of Trafficking in Persons in the Caribbean Region.”

provides travel assistance, including transportation, a passport, a visa or other staying permit, or a health certificate. Deception at the start of and during the recruitment process also plays a role, although deception is often difficult to assess accurately given that people are reluctant to disclose any information about their “voluntary” participation in prostitution due to taboos, stigmas, and repressive laws that surround the issue.¹⁵ Police violence and harassment of sex workers—including bribery, forced sex, and physical violence against women on the street or while in detention—are also common issues. Other cases of violence that have come to light involve situations where young women are recruited into brothels under false pretenses, held against their will, and/or forced to perform sex work, although conclusions about the commonness or pervasiveness of such situations are difficult to make due to scant evidence.¹⁶ In short, while outright kidnapping and enslavement are not recorded in any substantive way in the region, debt-bondage, forced labor, and assisted undocumented migration (smuggling), as well as forms of physical and sexual violence, are integral to the Caribbean sex trade.

Another striking tendency emerging from research on Caribbean migrant sex workers, particularly among those who cross national borders, is that the majority is not from the region’s least educated, unskilled, peasant, or rural communities, and they are not the region’s poorest people. This is an issue that has been noted in broader migration patterns. For example, industrialization and its link to an increase in personal and family wealth have been correlated to large-scale migration flows during the twentieth century.¹⁷ Those who struggle at the very margins of the economy to cover subsistence needs, although perhaps desirous to migrate, have been found not to have ready access to money or collateral to help pay for travel to another country and are generally seen to stay close to home. Data on inter-regional Caribbean migration indicates two trends: 1) regional and international migration usually follows a stage of internal rural to urban migration and, most commonly, international migrants are urban-based prior to migration; and 2) young, well-educated, and middle and upper occupational groups are over-represented in the migrant population.¹⁸ According to the police administrator who registered prostitutes in Curaçao for over thirty years, “the very poor don’t come here because they don’t have money for a passport, for a ticket, and they stay in their own country—they can’t afford to leave.”¹⁹ The majority of the migrant women interviewed at the brothel in Curaçao confirmed this image: most had obtained a secondary level of education, were engaged in semi-skilled occupations or small businesses when not in sex work, and came from urban centers in the Dominican Republic and Colombia.²⁰

¹⁵ Few people ever easily or openly identify with being a “whore” or sex worker, and socially acceptable responses in prostitution research are very common.

¹⁶ IOM, “Exploratory Assessment of Trafficking in Persons in the Caribbean Region.”

¹⁷ Peter Stalker, *Workers Without Frontiers: The Impact of Globalization on International Migration* (Boulder CO: Lynne Rienner, 2000).

¹⁸ Elizabeth Thomas-Hope, “Skilled Labor Migration from Developing Countries: Study on the Caribbean Region” (Geneva: International Migration Program, International Labor Office, 2002).

¹⁹ Kempadoo, “Exotic Colonies: Caribbean Women in the Dutch Sex Trade,” 271.

²⁰ *Ibid.*

In countries such as Guyana and Haiti, where educational opportunities are severely limited and where much of the population is impoverished and rural, the profile of migrants will necessarily reveal them to be poorer and less educated than the average Caribbean migrant. However, irrespective of whether classified as “not so poor” or “poor” (but not “very poor”), migration invariably places Caribbean women and men into occupations where they perform tasks and jobs shunned by local populations due to the poor or hazardous labor conditions and pay, thus concentrating them in the lowest echelons of seasonal agricultural, construction, entertainment, or domestic work, oftentimes in the informal or shadow sectors of the economy. Sex work fits into the general pattern of migrant work in the shadow economy, placing the migrant in a vulnerable social and economic position within the host country.

The Economics of Migrant Sex Labor

Migrant sex work enables Caribbean women not only to remit money home to their families, but also to participate in the trade, circulation, and consumption of luxury goods and items.²¹ Income derived from migrant women’s sexual labor is sometimes used as seed capital to purchase goods that are then traded in informal markets once at home or in another country, or is used for the purchase of supplies for a small store or business that a woman may own or run in her home community. In both instances, sex work constitutes an important resource for local communities to gain access to material goods that may not be available through formal trade relations or are simply too expensive if bought through regular channels. It thus supports the heavily feminized sector of informal commercial trading that traverses the region and which draws from the plantation tradition of the “higgler,” or Madam Sara, within the region. Such informal commercial trading has further integrated the global economy and local cultural contexts in new ways due to new transnational linkages and flows since the latter part of the twentieth century.²²

Alternatively, migrant sex work exposes women and some men to new countries, lifestyles or fashions, and allows them to participate in new consumption and acquisition patterns. They can acquire for themselves goods deemed to be “modern,” gain access to property, or can help to keep their families at home supplied with the latest in luxury goods and items. The status that goes together with travel abroad and the latest in electronic goods or fashionable clothes cannot be underestimated for people living in a region that is bombarded with ideas about the importance of material wealth through global media, yet which only the tiny national elite can legally access or afford. In this respect, migrant sex work can be viewed as a continuation of the “creative ingenuity” that Caribbean women are known for in finding sources of livelihood and represents a

²¹ To date, there has been little research evidence indicating that men migrate in the region in any significant numbers for sex work.

²² Kempadoo, “Continuities and Change: Five Centuries of Prostitution in the Caribbean.”

part of that “tenacious independent spirit” that shapes Caribbean women’s resistances to oppressive or discriminatory circumstances over a long history.²³ Migrant sex work thus also firmly contributes to the region’s large informal economy that has long existed around the trading of food, goods, services, money, and illegal substances.

Caribbean migrant sex labor is also acutely important for entertainment industries, hotel and restaurant businesses, and mining operations, which are locally or transnationally owned, as well as for keeping government officials, police, and hustlers in pocket. It is used by the tourism industry to attract tourists to the region as well as to entertain the guests, and thus indirectly to fill airplanes, hotel rooms, and restaurant and bar seats.²⁴ The exploitation of migrant sex labor moreover serves to keep mine workers and businessmen invested in the job at hand. The high incidence of reports by sex workers of corrupt practices among immigration and customs officials and members of the police indicates on-going underground economic transactions and informal benefits to the state. The reliance of migrant sex workers on other informal sector operators to assist them to move from one place to another, to obtain documents to cross borders, or to protect them from police interference or client harassment usually also involves some form of payment. While in some instances this may be in the form of sex, most commonly cash is demanded or offered. Despite these practices, migrant sex work—regionally and internationally—enables Caribbean women to participate in the global economy, and simultaneously contribute to Caribbean development, by helping to sustain their households, families, and communities.

Root Causes and Problems

Recent research on sex work in the Caribbean indicates that it is not the activity per se that is the problem, but rather national laws against prostitution, the unregulated conditions where sex work takes place, the clandestine routes women must use to migrate and enter the underground sector, and state harassment of sex workers that are the main problems. In addition, due to the illegalization of prostitution, physical violence against sex workers goes unreported; they fear detection as illegal immigrants and thus make little use of public or state services (particularly health services, which has broader public health implications), are vulnerable to extortion, and are unprotected in their places of operation (on the street, in the brothel, in clubs and bars, etc). Moreover, stigmas and ideologies about “loose” and “bad” women operate to silence sex workers and push them even further into the shadows. The pervasive lack of alternative opportunities for economic advancement for large portions of the Caribbean population under contemporary, globalized capitalism; the persistent underdevelopment

²³ Carla Freeman, “Reinventing Higglering across Transnational Zones: Barbadian Women Juggle the Triple Shift,” in Consuelo Lopez Springfield, ed., *Daughters of Caliban: Caribbean Women in the Twentieth Century*, (Bloomington: Indiana University Press, 1997).

²⁴ The research available on sex tourism (see earlier references) reveals that the industry does not depend much on migrant sex labor.

of parts of the Caribbean; the incursions of, and deep reliance upon, the shadow economy in many sectors of society; and the racialized, patriarchal classed distributions of wealth and power in the region not only maintain sex work as an activity, but serve to draw many young women and men into the sex trade.

The Problem of Anti-trafficking

Many of the problems encountered by women in the global sex trade, such as described above for the Caribbean, are identified as “a problem of trafficking.” However a focus on trafficking leads to poorly constructed and ill-informed policies and interventions. In regions of the world where anti-trafficking interventions have been taking place for over a decade, particularly in Asia and Europe, conclusions are being drawn that there are many contradictions and problems with activities that are meant to combat trafficking.²⁵ Several trends have been identified:

1. *Trafficking is taken up by governments for political rather than humanitarian reasons.* This is particularly evident around U.S.-led anti-trafficking policies. Annually, the U.S. State Department ranks countries around the world according to efforts made by other governments to combat trafficking.²⁶ Countries that are found to be out of line with U.S. standards are subject to close scrutiny and/or economic sanctions.²⁷ However, the ranking of the rest of the world by the U.S. government on anti-trafficking efforts is based on considerations other than facts about trafficking.²⁸ So, for example, in 2002, soon after the September 11th attacks and in light of the ensuing U.S. government distrust of the Arab

²⁵ See, for example, Barbara Limanowska, “Trafficking in Human Beings in South Eastern Europe: 2004 Focus on Prevention,” (UNICEF, UNOHCHR, OSCE/ODIHR, 2004); Kamala Kempadoo, ed., *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Human Rights* (Boulder: Paradigm, 2005).

²⁶ Starting in 2001, the U.S. State Department produces an annual Trafficking in Persons (TIP) report, based on the standards it has set under the “Victims of Trafficking and Violence Protection Act of 2000.” Countries are ranked into a tier system, according to how well they meet these standards: Tier 1 countries are considered to be most in compliance with the U.S. standards, Tier 2 are seen to be making good efforts to reach those standards, and Tier 3 consists of those that do not comply with U.S. standards and hence are to be sanctioned. In 2004, a “special watch list” was created for countries that appear to be making some progress, but still fall below the standards for Tier 2. See U.S. Department of State, “Trafficking in Persons Report,” 2001-2005, <<http://www.state.gov/g/tip/rls/tiprpt/>>

²⁷ See the TIP reports from 2002 to 2005 and the Memorandum for the Secretary of State: Presidential Determination, No. 2004-06, September 10, 2004, <<http://www.state.gov/g/tip/rls/prsl/36127.htm>>.

²⁸ See Janie Chuang, “Trafficking in Women: The United States as Global Sheriff?,” in *University of Toronto Feminism and Law Workshop Series*, Toronto, 2004; Anne Gallagher, “Trafficking in Persons Report” (U.S. Department of State, July 2000); *Human Rights Quarterly* 23 (4) (2001); Anne Gallagher, “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis,” *Human Rights Quarterly* 23, (4) (2001); Ratna Kapur, “The ‘Other’ Side of Globalization: The Legal Regulation of Cross-Border Movements,” *Canadian Woman Studies* 22 (3-4) (2003); Phil Marshall, “The Trojan Horse and Other Worries,” *Stop by Stop: Newsletter of the UN Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region*, Third Quarter (2001); Human Rights Watch, *U.S. State Department Trafficking Report Undercut by Lack of Analysis*, 2003, <<http://www.hrw.org/press/2003/06/traffickingreport.htm>> (accessed June 22, 2003); and Kamala Kempadoo, “Victims and Agents: The New Crusade against Trafficking,” in Julia Sudbury, ed. *Global Lockdown: Race, Gender and the Prison Industrial Complex* (New York: Routledge, 2004).

world, Islam, Arab and/or Muslim countries—such as Iran, Indonesia, the United Arab Emirates, Afghanistan, Bahrain, Lebanon, Sudan, Qatar, Turkey, and Saudi Arabia—were defined as not in compliance with U.S. standards and were threatened with sanctions. In 2003, the U.S. government reclassified efforts by Israel, Russia, South Korea and Greece out of the lowest rank in order to avoid imposing sanctions on these countries and risk antagonizing governments with which it wishes to maintain good diplomatic relations.²⁹ Moreover, in 2004, Burma, Cuba, and North Korea were classified as non-compliant countries, and the list was soon expanded to include other “terrorist,” or “rogue,” states such as Sudan and Venezuela.³⁰ In other words, the ranking of the world into “good” and “evil” nations around the issue of trafficking closely mirrors U.S. foreign relations, with the annual Trafficking in Persons report serving “as a major diplomatic tool for the U.S. government.”³¹

The ranking and economic pressures placed by the U.S. State Department on the rest of the world forces a disingenuous response from governments who cannot afford to diverge from or oppose U.S. policies. For example, in Guyana, a flurry of activity took place by the government to address the issue of trafficking in 2004, under the pressure of the U.S. State Department to deliver information about its efforts to combat trafficking. Within a few months, and after much publicity and fanfare about the governments’ anti-trafficking plan and its concern about “the problem of trafficked Amerindian women,” the country was re-classified from “non-compliant” to “special watch” status. The Guyanese government’s efforts to address trafficking, however, were viewed by some with scepticism and mistrust. It was seen as an attempt to simply jump on the U.S. State Department’s “war on trafficking” bandwagon that flows from American concerns about homeland security and control of undocumented flows of persons, and to adopt U.S. standards in order to avoid economic sanctions or from being designated an “evil” or undeserving nation. It was furthermore pointed out that the problem of debt-bondage for young Amerindian women in the country had existed long before the government discovered the “problem of trafficking” and, therefore, the problem could not be resolved through an anti-trafficking policy.³²

²⁹ Victor Malarek, *The Natasbas: The New Global Sex Trade* (Toronto: Viking Canada, 2003).

³⁰ See Memorandum for the Secretary of State: Presidential Determination No 2004-06, September 10, 2004, <www.stabroeknews.com/index.pl/article_editorial?id=8657783> and U.S., Secretary of State, “Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report,” (Washington DC: U.S. Department of State, 2001).

³¹ U.S., Secretary of State, “Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report.”

³² See Stabroek News, “Trafficking in Amerindian girls is not new,” June 15, 2004 <http://www.stabroeknews.com/index.pl/article_editorial?id=8657783>.

2. *Anti-trafficking interventions rest upon repressive measures, such as stricter border controls and arrest, detention, and deportation.* These do little to address structural causes of trafficking, which include relative poverty, discrimination (gender/race/religious), civil unrest and wars, the “sexualization” of women’s bodies within patriarchal culture, the “racialization” of sexuality, anti-prostitution laws, stigmas around prostitution, the displacement of poor people from their land due to natural disasters, environmental degradation, or expropriation from the land by the state or (multinational) corporations. Rather, a “Push Down Pop Up” effect occurs whereby, although repressed in one location or channel, the same phenomena spring up elsewhere or among other communities. To avoid detection, a greater sophistication in methods of recruitment, smuggling, border-crossing, exploitation, and retention develops.³³

3. *Prostitution and trafficking are equated and treated as the same.* Brothels and known sex work areas are most commonly the targets of police raids in their search for traffickers and trafficked women and children, and migrant sex workers are commonly arrested, detained, and deported on the basis of being undocumented and for transgressing national anti-prostitution laws. The voluntary dimension of sex work is easily overlooked, and sex workers—a particularly vulnerable group in society—bear the brunt of repressive measures.³⁴ Women are, under such approaches, punished simply for working in the sex trade.

This problem also resurfaces in the context of U.S. HIV/AIDS funding policies. Due to the conflation of trafficking with prostitution by the U.S. government and the dominant Christian, “no-abortion, pro-abstinence, anti-prostitution” ideology that pervades American discourse, antitrafficking funds may not be allocated for HIV/AIDS prevention activities funded by the U.S., unless prostitution is explicitly condemned. A consequence is that funding for sexual health education and interventions among some of the world’s poorest and most vulnerable populations is threatened, and women, particularly younger women in poor communities, are faced with less, rather than more, protection against life threatening diseases.³⁵ Due to the seriousness of the

³³ See Marc Cooper, “On the Border of Hypocrisy: The Unintended Consequences of Getting Tough in Illegal Immigration,” *LA Weekly*, December 5-11, 2003; Phil Marshall and Susu Thatun, “Miles Away: The Trouble with Prevention in the Greater Mekong Sub-Region,” in *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Human Rights*, Kamala Kempadoo, ed.; Jyoti Sanghera, “Unpacking the Trafficking Discourse,” in Kamala Kempadoo, ed., *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Human Rights*.

³⁴ See Josephine Ho, “From Anti-Trafficking to Social Discipline: Or, the Changing Role of ‘Women’s’ NGOs in Taiwan,” in Kamala Kempadoo, ed., *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Rights*; Ditmore, “Trafficking in Lives: How Ideology Shapes Policy”; Zi Teng, “Redefining Trafficking in NGO Practice,” in Kamala Kempadoo, ed., *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Rights*.

³⁵ For a recent report on the harm U.S. policies cause in Africa, see Jeevan Vasagar and Julian Borger, “President ‘Damaging Aids Efforts in Africa,’” *Guardian Weekly*, September 2-8, 2005.

problem caused by the U.S. HIV/AIDS policy, the Brazilian government refused US\$40 million in U.S. aid in 2005.³⁶ The conflation of prostitution with trafficking in U.S. policies poses risks for the health of the Brazilian people and contradicts Brazilian laws, ethics, and values on prostitution, sexuality, and human rights.

4. *Anti-trafficking interventions rely on identifying and rescuing “victims.”* This leads to strategies and methods that are ill-suited to migrants’ needs, with a consequence that paternalistic ideologies about migrants’ innocence, passivity, ignorance, and helplessness are reproduced. Moreover, the identification of “victim” works to obscure the problem. For example, in southeastern Europe, migrant women in the sex trade, who are often judged to be “victims,” have been found to be increasingly refusing assistance offered to them through anti-trafficking interventions, as they do not wish not to return home.³⁷ A return to the conditions that the migrants originally left is neither attractive nor desirable (most labor migrants leave home not simply to improve their circumstances, but to escape oppressive or unsustainable conditions at home), and many migrants avoid being identified as trafficked victims to avoid being deported.³⁸ Ignoring the underlying reasons for migration and peoples’ needs and desires to move away from home to improve their lives, even when it involves being smuggled and working in deplorable conditions in the sex trade, has also meant that “victims” are often rescued against their will. Consequently, they may become uncooperative, or may simply be “re-trafficked.”

This paternalism, evident in anti-trafficking activities, has been commented on for over a century. In the early twentieth century, Emma Goldman wrote about the ways elite and privileged women set the terms in the women’s movement and sought to rescue working-class women (particularly their “fallen sisters”) from “white slavery” and difficult circumstances. The struggle was to re-make working-class women into “good” women that would share bourgeois norms and values (of pre-marital chastity, love, marriage, heterosexuality, monogamy, and domesticity within the patriarchal family).³⁹ Similarly, in most current anti-

³⁶ The Brazilian government claimed that “the Bush administration requirement...would hinder the country’s efforts to fight the disease” and that the policy was an “interference that harms the Brazilian policy regarding diversity, ethical principles and human rights.” See Kaisernetwork.org, “Brazil Refuses \$40m in U.S. Aids Grants to Protest Policy Requiring Groups to Condemn Commercial Sex Work” May 2, 2005, <http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID>. See also Sarah Bosely and Suzanne Goldenburg, “Brazil Spurns U.S. Aids Help,” *Guardian Weekly*, May 13-19, 2005.

³⁷ Limanowska, “Trafficking in Human Beings in South Eastern Europe: 2004 Focus on Prevention.”

³⁸ Elaine Pearson, “Human Traffic, Human Rights: Redefining Victim Protection,” (London: Anti-Slavery International, 2002).

³⁹ See essays on the traffic of women and the women’s movement by Emma Goldman, originally published in 1910 and 1913 and reproduced in Alix Kates Schulman, ed., *Red Emma Speaks: An Emma Goldman Reader* (New Jersey: Humanities Press, 1996); See also, Philippa Levine, “Venereal Disease, Prostitution, and the Politics of Empire: The Case of British India,” *Journal of the History of Sexuality* 4 (4) (1994); and Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State*.

trafficking interventions, it is still considered the task of those who “know better” to rescue poor, helpless women and girls from their “sordid” or “pitiful” existences in the sex trade.⁴⁰

5. *Attention to trafficking has created a large international “anti-trafficking industry.”* This includes an increasing number of social workers, policymakers, researchers, anti-trafficking “czars,” and immigration officials, as well as new laws and policies, specially designated funds and resources for anti-trafficking work, and an array of new measures and methods to arrest traffickers and assist “victims.” However, the numbers of individuals who are affected by trafficking cannot be estimated, as the number of people said to be trafficked ranges too widely for any careful assessment (from 500,000 to four million worldwide), and the absolute numbers that have been improved by anti-trafficking policies are small.⁴¹ The facts and results do not appear to justify the large amount of funds and effort diverted by governments to address the issue.

Conclusions and Recommendations

The Caribbean is one of the last areas in the world where trafficking has become an issue, and stands in a fortunate position of being able to learn from experiences in other parts of the world, and thus to construct well-informed strategies and interventions that are appropriate to its own realities, cultures, and laws. Research on trafficking (much of which centers on the sex trade) and on sex work more broadly, indicates that “the problem of trafficking” is related to labor migrations in the region, discrimination, poverty, and gender and ethnic inequalities.⁴² The criminalization of prostitution under national laws and the stigmatization of sex workers are also main factors behind the force and violence in the Caribbean sex trade. Anti-trafficking policies that do not take into account local histories of work and migration, economics and sexual relations, and which rest upon repressive measures stand to exacerbate this violence. From this perspective, a number of recommendations flow that would assist with addressing the problems specific to the Caribbean and, in the longer term, could reduce the level of violence many migrant women in the sex trade face today:

⁴⁰ Siriporn Skrobanek, Nattaya Boonpakdi, and Chutima Janthakeero, *The Traffic in Women: Human Realities of the International Sex Trade* (London: Zed Press, 1997).

⁴¹ Limanowska, “Trafficking in Human Beings in South Eastern Europe: 2004 Focus on Prevention;” see also U.S. Secretary of State, “Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report,” (Washington, DC: U.S. Department of State, 2005), and more generally, the UNESCO Trafficking Statistics Project, Bangkok, <<http://www.unescobkk.org/index.php?id=1022>>.

⁴² IOM, “Exploratory Assessment of Trafficking in Persons in the Caribbean Region.”

1. Develop interventions that address incidences of force, debt-bondage, corruption, and the exploitation of undocumented workers in the sex trade. This would mean addressing causes rather than the effects of “trafficking.” It could include the decriminalization of prostitution and would allow sex workers to operate under existing laws that regulate the formal sector (e.g., for labor and employment, health and safety, and immigration), as well as campaigns to de-stigmatize sex work in the public mind;
2. Address the reasons people seek to migrate and the needs of migrant sex workers;
3. Address gender specificities in migration patterns, and support women’s empowerment programs and initiatives through government policies that deal with migration;
4. Pay attention to the demand side of the sex trade (i.e., owners and employers in the sex and entertainment industries, and consumers of sex labor, such as the clients who pay for sex) and less to the “supply side” in the sex trade (i.e., sex workers and middlemen who recruit and trade them); and
5. Develop a response to trafficking that does not simply flow from U.S. government values, standards, and interests, but is grounded in and informed by Caribbean cultures, laws, and practices around sex work, prostitution, and migration, and which would promote a healthy and sustainable future for all Caribbean peoples.

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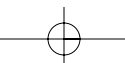
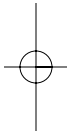
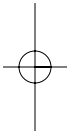
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Chapter 5

Desafíos Transnacionales en Centroamérica

Article 5.1 La Frontera Sur de México
Juan Artola

Article 5.2 Las Pandillas Transnacionales Mara Salvatrucha y
Barrio 18th Street - *Wim Savenije*

La Frontera Sur de México

Juan Artola

5.1

Introducción

Desde hace algún tiempo se sabe que la frontera ya no es meramente el límite geográfico y político del territorio y la soberanía de un estado, sino también un área de movimientos de mercancías y personas con complejos intercambios económicos y sociales. La noción de frontera ha sido desplazada por la conceptualización de una región fronteriza con una especificidad propia marcada por sus orígenes históricos y su presente de identidades diversas, redes sociales activas y procesos transculturales. Más que una separación, la frontera es una zona permeable y activa de encuentro, con tensiones y conflictos, pero también con oportunidades y dinámicas propias.

En este marco, nos referiremos a la frontera sur de México y, en especial, a la frontera de México con Guatemala, analizando tres aspectos esenciales: los flujos migratorios, el escenario geopolítico y económico y el fenómeno de las “maras.” El enfoque es realizado desde México y con énfasis en la zona de Chiapas, donde el “encuentro” con Guatemala y Centroamérica es particularmente más tangible.¹

El Trasfondo Histórico y Social

La frontera sur es una región marcada por el área geográfica y cultural del conjunto de pueblos indígenas, en su mayoría mayas, que existieron en la época prehispánica y cuyos descendientes viven hoy en Belice, Guatemala y los cinco estados del sureste de México (los ya citados más Yucatán). Se trata de una región marcada por la presencia indígena y el plurilingüismo. Además del castellano, en la región se habla maya, chuj, kanjo, bal, jacalteco, cachikel, mam, tzotil, tzeltal y tojolabal. En la frontera con Belice se habla inglés e incluso una vertiente del chino y del flamenco.

¹ La frontera sur de México cubre 1.139 kilómetros de los cuales comparte 963 con Guatemala y 176 con Belice. Del lado mexicano, existen cuatro estados (Chiapas, Campeche, Tabasco y Quintana Roo) y 23 municipios fronterizos. De ellos, 18 están en Chiapas (y en ellos los dos tercios de los residentes fronterizos), dos en Campeche, dos en Tabasco y uno en Quintana Roo. Chiapas posee 658 kilómetros de frontera con Guatemala, siendo el Soconusco la zona de interacción más activa. Datos del Instituto Nacional de Estadísticas, Geografía e Informática (INEGI), México, <<http://www.inegi.gob.mx/inegi/default.asp>>.

El régimen colonial español, que se inicia en la región hacia 1520, estableció villas en medio de poblaciones autóctonas y fincas en vastas áreas despobladas. Ochenta años más tarde la población indígena había disminuido en un 75 por ciento, diezmada por guerras, hambrunas y epidemias. Desde las villas, luego convertidas en ciudades ligadas a los tres centros pioneros de Mérida, Ciudad Real (hoy San Cristóbal) y Guatemala, la conquista se impuso mediante el trabajo forzado, la encomienda, el tributo, la cofradía y la religión cristiana. Las fincas desarrollaron una población mestiza y mulata, formada por dueños y capataces criollos, esclavos negros y peones indígenas. La región se caracterizó por una situación periférica con respecto a los centros de poder de México, capital del Virreinato de Nueva España, y Guatemala, sede de la Capitanía General de las provincias centroamericanas.

La independencia no significó grandes cambios en cuanto al desinterés de las dos capitales y la población continuó concentrada en una pequeña porción del territorio. Los pueblos indígenas fueron invadidos por colonos que ocuparon la mayoría de las tierras comunales. La explotación de los indígenas alcanzó tal nivel que en Chiapas y Yucatán se dieron sangrientas rebeliones.² A finales del siglo diecinueve la finca tradicional se abrió al mercado internacional y comenzó a incorporar en gran escala las tierras baldías creando potreros para ganado y plantaciones de hule, plátano, henequén, caña de azúcar y café. Propietarios nacionales y extranjeros se lanzaron al asalto de la selva virgen para explotar la madera y el chicle.

Las provincias centroamericanas estuvieron brevemente anexadas al México imperial de Iturbide entre 1821 y 1824 pero luego buscaron rumbos propios. Con la derrota de los autonomistas guatemaltecos, Chiapas se incorporó a México en 1824, pero durante mucho tiempo los territorios limítrofes fueron disputados por México y Guatemala.³ Tras muchas tensiones Guatemala abandonó sus pretensiones sobre Chiapas y el Soconusco, y el Tratado de Límites de 1882 dio a México la propiedad de casi 30.000 kilómetros cuadrados ricos en minerales, café, cacao y plátano.

Sin embargo, la disputa entre México y Guatemala por la posesión efectiva de la frontera se mantuvo latente por largo tiempo. Las campañas de castellanización impulsadas por México en la zona, además de sus contenidos impositivos sobre las culturas locales, tuvieron fuertes connotaciones antiguatemaltecas y numerosas comunidades fueron separadas artificialmente por la línea fronteriza. Las campañas de asimilación, de particular dureza en la década de los 30, buscaron consolidar la “identidad mexicana” en la región.

² En Yucatán la guerra de las castas duró intermitentemente más de 50 años y despobló la costa caribeña.

³ Hasta finales del siglo veinteuno las fronteras entre Tabasco y Guatemala también permanecían poco claras, indefinición que favoreció a quienes se dedicaban al muy lucrativo negocio de la madera.

Por otra parte, el sureste mexicano, particularmente Campeche, Tabasco y Chiapas, era percibido, desde los años 40, como una válvula de escape para las presiones por la tierra y los problemas agrarios de los estados del centro.⁴ El mito de la productividad del trópico húmedo alentó un sinnúmero de proyectos en Tabasco y Chiapas. Todavía en la década de los 70, se dieron en Quintana Roo planes de poblamiento organizado hacia los municipios fronterizos con Belice, con promoción de cultivos y construcción de infraestructura.

En la frontera sur se concentra una situación caracterizada por la pobreza de campesinos y trabajadores rurales, la exclusión de las comunidades indígenas y la subordinación de las mujeres. En este contexto, el campesinado maya es el único actor que subsistió—no sin profundos cambios—desde la época prehispánica hasta la actualidad. Esa sociedad campesina estuvo dividida en múltiples comunidades (a veces antagónicas), clanes y cacicazgos, divisiones de las que se aprovecharon sucesivos gobiernos y líderes políticos en los siglos diecinueve y veinte para mantenerla bajo control. Logró sobrevivir las guerras, la discriminación, la explotación y el desplazamiento, aun las terribles matanzas en Guatemala en la década del 80, a través de retiradas a refugios—en la selva, en la emigración a México—territoriales y sobre todo culturales.⁵ Pero la presencia indígena en la región mantiene una coherencia marcada por la visión del mundo, la tradición, la religión y el parentesco que los límites fronterizos no logran disolver.

Movimientos Migratorios

Los flujos migratorios en la frontera sur se agrupan en cuatro grandes categorías: trabajadores temporales, refugiados, migrantes irregulares y finalmente visitantes locales y comerciantes que se desplazan diaria y constantemente de uno a otro lado de la frontera. Existen trece puntos de entrada oficial, 32 cruces informales para vehículos y una gran cantidad indefinida de puntos de cruce peatonal no controlados e incontrolables, además de los grandes movimientos diarios que se dan por los ríos Suchiate y Usumacinta.

Los Trabajadores Temporales

Desde 1870 finqueros alemanes se desplazaron de Guatemala a Chiapas para la siembra de café, captando a trabajadores indígenas guatemaltecos. El gran desarrollo del café en la zona del Soconusco y la Sierra originó los primeros movimientos migratorios masivos

⁴ Chiapas fue el único estado en que la revolución mexicana tuvo poco impacto en términos de reformas a la tenencia de la tierra y vivió un tardío reparto de tierras.

⁵ Se estima que en esa década la población indígena de Guatemala sufrió más de 50.000 muertos y un millón de desplazados, tragedia que permanece en la memoria colectiva y herida que la democratización en Guatemala aún no ha logrado cerrar.

de trabajadores guatemaltecos en los albores del siglo veinte.⁶ Entre los 40 y los 60, la creación de los primeros sindicatos agrícolas mexicanos, los constantes conflictos agrarios en México y la emigración directa de grupos indígenas chiapanecos de los Altos hacia otras zonas del país contribuyeron a reforzar la demanda de trabajadores guatemaltecos. A partir de la década del 70, el desarrollo de cultivos perennes y otros de ciclo corto también amplió enormemente el mercado laboral de la región.

Desde finales de 1997, el Instituto Nacional de Migración de México (INM) inició un programa de documentación de trabajadores agrícolas temporales, con la implementación de la Forma Migratoria de Visitante Agrícola (FMVA), destinada fundamentalmente al sector agrícola en Chiapas. Según los registros del INM, los trabajadores documentados con la FMVA pasaron de 60.763 en 1997 a 46.318 en el 2003. Según datos del gobierno del estado de Chiapas, en 1991 y 1993 se dieron picos de trabajadores agrícolas temporales guatemaltecos (92.000 y 78.000, respectivamente). Un estudio de 2002 constató que un 25 por ciento de los trabajadores temporales carecía de FMVA. La declinación del número documentado de trabajadores temporales extranjeros se debe sin duda a la baja de precios del café y la crisis del cultivo desde 1999. Pero los trabajadores temporales continúan llegando de Guatemala, y en mucho menor medida de otros países centroamericanos, para cubrir puestos de trabajo en el sector agrícola.

Por otra parte, en los últimos quince años se ha dado, junto con una diversificación de cultivos agrícolas que demandan trabajo temporal, un notable aumento en las actividades de construcción y un incremento de migrantes en el servicio doméstico. Los cambios más relevantes en cuanto a la composición de esta migración se refieren al aumento de las migrantes (estimadas en más del 30 por ciento del total) y la reducción de la edad promedio (24 años ahora). El desarrollo del turismo en Quintana Roo ha incrementado la migración temporal para construcción y servicios, que tiende a expandirse. Los migrantes temporales siguen, sin embargo, concentrados en el estado de Chiapas; incrementos menores de trabajadores temporales centroamericanos se dan en los estados vecinos de Tabasco, Campeche y, en menor medida, Veracruz y Yucatán, pero se trata generalmente de migrantes que buscan continuar posteriormente su viaje hacia la frontera norte y los EE.UU.

Los Refugiados

Desde inicios de los 80 comenzaron a llegar a Chiapas oleadas de refugiados guatemaltecos huyendo de la violencia y la brutal represión en su país. Unas 40.000 personas provenientes de zonas cercanas a México (El Quiché, El Petén y Huehuetenango) se ubicaron a lo largo de la frontera, pero el número aumentó con llegadas de muchas otras partes de Guatemala. Preocupaciones de seguridad, especialmente debido a las incursiones militares guatemaltecas en suelo mexicano, movieron al gobierno mexicano a reubicarlos en los estados de Campeche y Quintana Roo entre 1984 y 1986, a lo que accedió poco más de la mitad de los refugiados.

⁶ Hubo también otros inmigrantes centroamericanos, así como trabajadores y comerciantes chinos y hasta de algunos países europeos.

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Los asentamientos de Chiapas se construyeron en la emergencia, en acuerdo con las comunidades mexicanas y los refugiados negociaron acceso a tierras no utilizadas por los campesinos del lugar. En cambio, los asentamientos en Campeche y Quintana Roo surgieron de una decisión gubernamental y fueron exclusivos para refugiados. Por lo mismo, los primeros aumentaron y se extendieron en tanto que en los segundos la población y el número de campamentos no aumentó fuera de lo planificado institucionalmente. Esto determinó grandes diferencias en el acceso a la tierra, tema clave para las comunidades indígenas.

En Campeche y Quintana Roo, en zonas poco pobladas y con escasos conflictos, las familias refugiadas tuvieron acceso a parcelas facilitadas por los gobiernos estatales y las áreas de cultivo crecieron desde 1989 con un plan de autosuficiencia con financiamiento europeo, que posibilitó más tierra productiva y mejores condiciones generales. En los 90 las instituciones públicas y el apoyo externo facilitaron el desarrollo de servicios e infraestructura. En Chiapas, la escasez de tierra y la presión ya existente por su uso limitó la asistencia efectiva a los refugiados y demandó mas apoyo del estado y de las organizaciones no gubernamentales (ONG) en materia de alimentos y de servicios de salud.

Los refugiados en Campeche y Quintana Roo tuvieron un contacto reducido con sus comunidades de origen, se integraron más al medio y pasaron por un avanzado proceso de deculturación-aculturación, particularmente visible en los jóvenes y los nacidos en México. En cambio, los refugiados que permanecieron en Chiapas, en general de mayor extracción indígena, mantuvieron un contacto vivo con su país, tuvieron menos posibilidades productivas y mantuvieron un deseo persistente de regresar. Algunas de estas comunidades favorecieron el avance de la frontera agrícola en municipios fronterizos y en cierta medida propiciaron tanto el poblamiento de zonas alejadas como la deforestación.

A finales de los 90 las autoridades junto con el Alto Comisionado de Naciones Unidas para los Refugiados (ACNUR) promovieron el retorno voluntario de los refugiados a su país y se estima que 75 por ciento de ellos lo puso en práctica. En 1998, el gobierno mexicano otorgó la residencia definitiva o la nacionalidad mexicana a aquellos que decidieron quedarse, principalmente en el estado de Campeche. En 1999, se estimaba que unos 12.500 refugiados permanecían en 106 campamentos en tres municipios fronterizos de Chiapas.

En fechas recientes se ha constatado que contingentes no cuantificados de guatemaltecos han buscado regresar a las comunidades guatemaltecas establecidas en Campeche y Veracruz. Ante la inestabilidad política, la discriminación racial, las escasas perspectivas económicas y la violencia en el agro guatemalteco, el retorno a un entorno estable y con adecuados servicios volvió a atraer a muchos guatemaltecos que habían vivido o nacido en México.

La Migración Irregular

Históricamente la región se ha caracterizado por ser una frontera permeable, en particular en la zona del Soconusco, Chiapas, por la cual transitan miles de migrantes. Como vimos, muchos desarrollan actividades en la región o se desplazan hacia otros puntos del país, para asentarse de manera temporal o permanente. Pero la mayor parte de los migrantes que ingresan por la frontera sur lo hace con la intención de continuar hacia Estados Unidos. La frontera sur de México constituyen el principal punto de enlace con América Central y del Sur, desempeñando una posición estratégica que rebasa con mucho el ámbito nacional al fungir como una arteria que comunica al resto del continente con su parte norte. Tapachula y su entorno inmediato son el centro de la vida social y económica de la frontera. Estos flujos ingresan y transitan por el país de forma irregular y en muchos casos lo hacen con la ayuda de traficantes. Por la misma razón, la frontera sur se constituye en un eje de la trata de personas, en especial de mujeres y niños.

La persistente crisis económica y los desastres naturales en Centroamérica han promovido un éxodo que se ha acrecentado desde el huracán Mitch en 1998, provocando un crecimiento espectacular de los flujos irregulares por esta frontera. En los últimos años se ha incrementado también el ingreso de sudamericanos, particularmente ecuatorianos, pero también migrantes provenientes de África, Asia, el Caribe, Europa Oriental y Medio Oriente.

Los extranjeros interceptados por ingreso irregular por las autoridades migratorias en Chiapas fueron 66.041 en 1994 y pasaron a 95.034 en el 2000.⁷ En el 2003 el INM regresó a sus países de origen a unos 175.000 centroamericanos y en 2004 unos 205.000. Un 56 por ciento son guatemaltecos, más del 30 por ciento hondureños y un 16 por ciento salvadoreños. Las cifras sin embargo sólo captan una parte del fenómeno, pues muchos migrantes logran llegar a la frontera norte y posteriormente a los EE.UU. En el 2004 la Patrulla Fronteriza de ese país reportó haber interceptado en los estados fronterizos con México más de 55.000 guatemaltecos y hondureños.

Un problema en aumento es el creciente ingreso de menores que buscan llegar a EE.UU. solos o acompañados por adultos que no son sus familiares. En el 2004, el INM detuvo a 3.395 niños, provenientes, en su mayoría, de Guatemala, Honduras y El Salvador. Además, se ha incrementado de forma alarmante el número de niños y mujeres centroamericanos que se establecen en situación irregular en la zona fronteriza de Chiapas, particularmente en el área de Tapachula, Ciudad Hidalgo y Puerto Madero. Los primeros se dedican a la venta callejera, servicios menores, la mendicidad y la prostitución. Las mujeres, además del servicio doméstico, se desempeñan en expendios de comida, bares y lugares nocturnos y, generalmente, también en el comercio sexual. Niñas entre 10 y 17 años son las principales víctimas de explotación sexual en cinco municipios fronterizos de Chiapas, muchas veces sometidas bajo engaño, coacción o violencia física.

⁷ Instituto Nacional de Migración. *Diagnóstico General de los Flujos de Trabajadores Temporales en la Frontera Sur de México*. México D.F.: Instituto Nacional de Migración, Secretaría de Gobernación, abril de 2005, datos estadísticos, <<http://www.inm.gob.mx>>.

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Los migrantes irregulares centroamericanos que ingresan por la frontera sur buscan llegar al norte por su cuenta porque carecen de recursos para pagar los servicios de traficantes; deben atravesar un largo camino plagado de peligros y obstáculos—costa, altiplanicie, selva, montaña, veredas, caminos vecinales, carreteras, rutas ferroviarias, poblados y ciudades, decenas de puestos de control y puntos de intercepción. Su ruta está doblemente signada por el riesgo y la vulnerabilidad. Olivia Ruiz destaca cuatro riesgos fundamentales: las detenciones-expulsiones, las muertes-lesiones, las violaciones de derechos humanos y las desapariciones de migrantes.⁸

La ruta de los migrantes irregulares los lleva desde Chiapas hacia Oaxaca o Veracruz, de donde deben continuar hacia el norte, bien pasando por la capital o buscando vías alternativas. Entre Tapachula y el Distrito Federal existen 25 retenes de carretera además de 21 controles del INM, en cualquiera de los cuales el migrante puede ser detenido. El uso de rutas alternativas menos frecuentadas conlleva el riesgo de asaltos por parte de infinidad de bandas o individuos aislados. El tren de carga que une la frontera sur con Veracruz y que llega hasta las cercanías de la capital para entroncar con otras rutas al norte ha representado en los últimos años un riesgo serio. Centenas de migrantes han sido asaltados, agredidos y hasta violados o echados a empujones del tren, por ladrones y grupos de “maras.”⁹ Peor aún, muchos migrantes se accidentan al caer del tren o al intentar subirse cuando está en movimiento.¹⁰ Además, los casos de violación de mujeres migrantes se han incrementado enormemente en los últimos dos años, en particular en la frontera sur.

Las violaciones de derechos humanos por parte de agentes privados o públicos son también numerosas. Un problema creciente está dado por la participación de efectivos militares y policías locales en la detección de migrantes irregulares, pues los abusos de estos agentes, que van desde maltrato a chantaje y robo, son frecuentes. Las autoridades mexicanas han hecho grandes esfuerzos por prevenirlos y sancionarlos pero si bien los casos han disminuido, no han sido erradicados. La obvia falta de denuncia de los migrantes y las dificultades para identificar infractores dificultan el control.

⁸ Olivia Ruiz, “Los Riesgos de Mígrar: La Migración Centroamericana en la Frontera México-Guatemala” en *Nuevas Tendencias y Nuevos Desafíos de la Migración Internacional*, Jorge Santibáñez y Manuel A. Castillo, eds. (México: El Colegio de la Frontera Norte, El Colegio de México y Sociedad Mexicana de Demografía, 2004).

⁹ El tren a veces se detiene inexplicablemente en parajes desiertos, circunstancia aprovechada por asaltantes para subir y cometer sus fechorías. En Lechería, estado de México, son comunes los informes sobre este tipo de incidentes. Los asaltos y agresiones son también frecuentes en las vías donde los migrantes esperan el paso del tren o se bajan para evitar controles.

¹⁰ Los informes sobre mutilados y muertes son muy frecuentes, pudiendo alcanzar un promedio de 15 por mes en 2004-2005.

En la frontera sur, actúan redes de tráfico internacionales, regionales y locales que trasladan a miles de migrantes a través del territorio nacional; son extensas, bien organizadas y generan beneficios millonarios. Las rutas hacia la frontera norte parten de Tuxtla Gutiérrez, Tapachula y Ciudad Hidalgo, en Chiapas. De allí continúan por la costa hasta Nogales, Agua Prieta, Sásave y San Luis Río Colorado (Sonora), debiendo después enfrentar el peligro del desierto, donde muchos perecen, a veces, abandonados por los traficantes.¹¹ También viajan hacia Mexicali, Tecate o Tijuana, zonas en los últimos años mucho más controladas. Rutas más organizadas y, por ende más costosas trasladan a migrantes de Tapachula a Oaxaca y desde ahí hacen escalas en Puebla, Guerrero o el Distrito Federal, antes de proseguir al norte. Otras rutas trasladan migrantes hacia casas de seguridad en el estado de México para continuar a Zacatecas, San Luis Potosí o Tamaulipas hasta llegar a puntos fronterizos en Chihuahua. Las rutas marítimas de tráfico son las más utilizadas por personas procedentes de Asia y América del Sur. Los grupos de migrantes llegan a playas deshabitadas en el Pacífico, en las áreas de Puerto Madero y Mazatán, Chiapas, y continúan hacia el norte por Puerto Escondido, Oaxaca, Mazatlán, Sinaloa y la zona de Baja California. Otra ruta marítima es la del Golfo de México, que parte desde Mérida hacia Matamoros.

El Escenario Geopolítico y Económico

Mientras la frontera norte estuvo siempre presente en la atención gubernamental, las políticas públicas y los intereses empresariales, la frontera sur fue por mucho tiempo una región olvidada e “invisibilizada.” Diversos factores provocaron que a partir de los 80 la región fronteriza del sur ocupara un lugar relevante en las preocupaciones de seguridad nacional y política exterior del estado mexicano.

El triunfo sandinista en Nicaragua seguido por las luchas internas en ese país, la guerra civil en El Salvador, la violencia militar de décadas en Guatemala y la acción armada antisandinista promovida por EE.UU. en Honduras, provocaron intensos desplazamientos forzados en la región, que superaron el medio millón de personas en los inicios de los años 80. El ingreso masivo de refugiados guatemaltecos en México provocó el despliegue de fuerzas militares en la frontera para contener las incursiones de persecución de efectivos guatemaltecos. A finales de los 80, un informe de COMAR (Comisión Mexicana de Ayuda a Refugiados) hablaba de 400.000 personas “ilegales” en México.

¹¹ El incremento y tecnificación del control de la frontera en las proximidades de Tijuana-Mexicali han empujado a los migrantes en los últimos años a intentar ingresar a EE.UU. por Sonora y las zonas desérticas de Arizona, cruce sumamente peligroso aun para quienes disponen de guías. Las muertes constatadas han ido en aumento (más de 400 en 2004) pero, sin duda, las cifras reales son mayores.

A lo largo de la década marcada por la crisis centroamericana, el estado mexicano se vio obligado a enfrentar riesgos de seguridad en la frontera sur, proteger legal y materialmente a los refugiados y posteriormente asegurar las condiciones de su retorno o buscar como integrarlos a la sociedad de recepción.¹² El conflicto centroamericano ingresó en la agenda de seguridad nacional del país. En lo internacional, México se involucró de forma decisiva en el proceso de pacificación de la región, generando un rol activo que dejó su marca en la política exterior propia y la hemisférica.

En enero de 1994, el estallido zapatista llevó a la atención pública nacional e internacional un conflicto social y étnico de profundas raíces históricas, cuyas manifestaciones fueron desatendidas por los gobiernos modernizadores del momento. Luego de un tratamiento puramente militar de la rebelión, se optó por la vía de la negociación política. Sin valorar aquí el desarrollo de ese arduo proceso, para muchos inconcluso, las acciones del *Ejército Zapatista de Liberación Nacional* (EZLN) tuvieron un impacto decisivo en la percepción de la frontera sur en términos de defensa y seguridad. Junto con cambios doctrinarios y organizativos de las fuerzas armadas mexicanas, a partir de 1995 la frontera sur vivió un proceso de militarización plasmado en el establecimiento de nuevas zonas militares, ocupación de zonas estratégicas y despliegue de gran cantidad de efectivos, junto con la implantación de formas de control paramilitar. En el marco de una concepción de contrainsurgencia, se buscó aislar una zona de conflicto tanto hacia el exterior de la frontera sur como hacia el resto del territorio nacional. A diez años de aquellos hechos, las medidas y acciones desarrolladas aún inciden en el panorama social de la región.

Hacia el final de los 90 y casi coincidiendo con la respuesta al levantamiento del EZLN, la lucha contra el narcotráfico y los planes del gobierno de EE.UU. para su combate reforzaron la atención sobre la frontera sur, bajo la óptica de seguridad. La formulación estadounidense de frenar el flujo de drogas en su ruta hacia el Norte y su consideración de que las rutas aéreas, marítimas y terrestres de buena parte de ese flujo pasaban por el sureste mexicano, condujo a un sellamiento policíaco-militar de la frontera sur que tuvo un impacto en la región fronteriza en términos de despliegue y control prácticamente permanente.

Los ataques del once de septiembre de 2001 en EE.UU., y la lucha anti-terrorista al nivel mundial que desencadenaron, provocaron también impactos en la frontera sur. México y EE.UU. firmaron en marzo de 2002 los Acuerdos sobre Fronteras Inteligentes que establecieron veintidós compromisos de acciones específicas en materia de infraestructura, flujo de personas y flujo de bienes, basadas en una cooperación estrecha entre organismos de defensa, seguridad, inteligencia, migración y administración de justicia. Esto implica que, de hecho, el “perímetro de seguridad” se extendió hasta la frontera sur. En junio 2002 se firmó entre México y Guatemala el Acuerdo para la

¹² México debió resolver vacíos institucionales y legales, por ejemplo relativos al estatus de refugiado, que no estaba contemplado en su ordenamiento jurídico.

Creación del Grupo de Alto Nivel para la Seguridad Fronteriza (GANSEF), cuya agenda incluye intercambio de información e implementación de acciones bilaterales para la prevención del terrorismo.¹³ El mejoramiento del control fronterizo y la contención de migrantes irregulares en la frontera sur son parte de dichas acciones. En la tercera reunión del GANSEF, en diciembre 2004, se acordaron acciones para reforzar la seguridad fronteriza con planes contra organizaciones criminales. Todo parece apuntar a la asociación entre riesgos terroristas y flujos de “migrantes indocumentados” en la frontera sur, así como el combate a “fenómenos delictivos nuevos” a los que nos referiremos más adelante.

La Alianza para la Seguridad y Prosperidad de América del Norte, firmada por los tres países en marzo 2005, retoma la importancia del perímetro común de seguridad continental contra amenazas externas mientras se facilita el flujo legal de mercancías y personas y se incrementa la cooperación en energía y medio ambiente. Los intereses mexicanos en materia migratoria quedaron de lado en el documento frente a los aspectos de seguridad y comercio.

Si la frontera sur ocupa un nuevo lugar en las preocupaciones de México y EE.UU. desde el punto de vista de seguridad, el potencial de recursos naturales de la región también la lleva a una consideración nueva. En los estados fronterizos del sur se encuentra un gran porcentaje de la riqueza energética del país: petróleo, gas natural, azufre y energía eléctrica. Campeche, Chiapas y Tabasco aportan alrededor del 76 por ciento del PIB del sector extractivo (petróleo y gas) y Chiapas y Tabasco contribuyen con el 33 por ciento del PIB del sector eléctrico. Chiapas se ha consolidado como el primer productor de azufre y gas natural de México. Campeche y Tabasco cuentan con los principales puertos petroleros de altura (Cayo Áreas y Dos Bocas). Adicionalmente, la región sur-sureste de México (desde el Istmo de Tehuantepec hacia el sur) posee la mayor riqueza biológica y natural del país, que según el Banco Mundial podría representar hasta un seis por ciento de la biodiversidad conocida del planeta. Y por último, los recursos acuíferos de la región son también de una enorme magnitud.

En ese contexto se inserta el Plan Puebla-Panamá (PPP), lanzado en México en marzo de 2001, que incluye junto con los estados mexicanos de Puebla, Veracruz, Tabasco, Campeche, Yucatán, Quintana Roo, Guerrero, Oaxaca y Chiapas a Belice, Guatemala, Honduras, Nicaragua, El Salvador, Costa Rica y Panamá. El PPP prevé la interconexión energética, la integración de servicios de telecomunicaciones y el desarrollo de infraestructura vial, ferroviaria y portuaria para promover el desarrollo sustentable de la región a través de la promoción del intercambio comercial y las inversiones y la disminución de los flujos migratorios.

¹³ El GANSEF, cuya Secretaría Técnica está en manos del Centro de Investigación y Seguridad Nacional (CISEN), tiene como finalidad diagnosticar el comportamiento de flujos irregulares de bienes y personas por la frontera común y ejecutar acciones de prevención y contención.

El Plan Puebla-Panamá se complementa con el interés en establecer el Corredor Biológico Mesoamericano, que cuenta con apoyo inicial del Banco Mundial desde 2003, y el desarrollo del Proyecto Mundo Maya, comenzado a inicios de los 90, que busca desarrollar el turismo cultural coordinadamente entre el sur de México, Guatemala, Belice, Honduras y El Salvador.

Las vicisitudes y logros efectivos de estos proyectos a la fecha escapan a las posibilidades de este documento, pero describen el interés económico y geopolítico de utilizar un amplio potencial de recursos naturales, energéticos, culturales y de mano de obra para integrar el sur-sureste mexicano al desarrollo nacional y al mismo tiempo enganchar la frontera sur y el istmo centroamericano en el tren de la globalización.¹⁴

Las “Maras”

En los últimos años, el fenómeno de las “maras” se ha vuelto motivo de creciente atención no sólo por parte de los medios de comunicación de México, Centroamérica y, crecientemente, EE.UU., sino además por los gobiernos y los actores políticos de los países de la región.¹⁵

La agrupación conocida como Barrio 18 nació en Los Ángeles, EE.UU., agrupando a jóvenes mexicanos migrantes o hijos de migrantes que consideraban el barrio como el eje central de convivencia y de resistencia frente a un entorno hostil. Sus miembros son jóvenes en general de 16 a 35 años, originalmente mexicanos o México-americanos. El Barrio 18 tiene como antecedentes directos a los fenómenos de los “pachuchos” y los cholos en décadas anteriores, al punto que algunos estudiosos optan por referirse a “pachomas” (“pachuchos,” cholos, “maras”).

Los “pachuchos” fueron grupos de jóvenes mexicanos que se organizaron en ambos lados de la zona fronteriza en la posguerra y fundamentalmente en la década del 50. El cholismo se desarrolló al amparo del movimiento chicano de los 60. Ambos movimientos comparten características similares, como la gestualidad propia, el “slang” fronterizo, los tatuajes, la organización territorializada y los ritos iniciáticos. La adscripción al barrio era un elemento de identidad básica, al igual que en muchos casos el culto a la Virgen de Guadalupe. Eran los años de la irrupción de la droga en el mundo juvenil, fundamentalmente entre pobres y excluidos, así como de la disputa con grupos afro-norteamericanos por el control de los barrios y las cárceles. Entre estos jóvenes impera la consigna de “la vida loca,” signada por la violencia, la droga, la cárcel y la muerte.

¹⁴ El desarrollo del Proyecto Mundo Maya fue afectado por los sucesos en Chiapas en 1994 y actualmente sólo se ha concretado un enlace turístico ferroviario en la zona de Quintana Roo, Yucatán y Campeche.

¹⁵ Ver también el artículo sobre “Las Pandillas Transnacionales Mara Salvatrucha y Barrio 18th Street” en este capítulo.

La Mara Salvatrucha en cambio está asociada directamente a los jóvenes migrantes salvadoreños que huyeron de la guerra civil de su país en la década de los 80.¹⁶ Se forma en la prisión en contacto con los mexicanos del Barrio 18. Uno de los mitos fundadores indica que muchos de sus iniciadores, reclusos en una cárcel de EE.UU., recibieron instrucción de un ex guerrillero salvadoreño (“el flaco Stoner”). Jóvenes de otros países centroamericanos, fundamentalmente hondureños y guatemaltecos, también emigrantes forzados por el conflicto centroamericano, se fueron sumando. A la salida de la cárcel, la Mara Salvatrucha tiene su propia organización y se enfrenta con el Barrio 18 por el control del territorio.¹⁷

Muchos de estos jóvenes fueron deportados a El Salvador tras los Acuerdos de Paz en 1992. En 1996 el Congreso estadounidense endureció las penas a la ley de inmigración y, como consecuencia, entre 1998-2002 más de 20.000 jóvenes centroamericanos fueron deportados, lo que significó una reintroducción traumática en sus sociedades de origen, incapaces de ofrecerles mayores posibilidades de reinserción efectiva.

Así, pandillas en conflicto en Los Ángeles se extienden por México y América Central por efecto de las deportaciones desde EE.UU. Las “maras” crecieron como pandillas juveniles en El Salvador, Honduras y Guatemala, con una estructura de células y una experiencia facilitada por el contacto con el mundo delictivo y el comercio de drogas y armas en Los Ángeles. Aunque no existen datos fidedignos, se habla de 30.000 “mareros” en Honduras, 20.000 en El Salvador y 10.000 en Guatemala.¹⁸

Chiapas fue el punto inicial de la manifestación de actividades de “maras” en México, ligadas a asaltos, violencia, violaciones y homicidios contra migrantes, paralelos a sus vínculos con el tráfico de drogas y armas. Según la Secretaría de Seguridad Pública de Chiapas, en febrero de 2005 las “maras” estaban presentes en la quinta parte de los municipios del estado y principalmente en 17 colonias de Tuxtla, 34 de Tapachula y 11 del Suchiate. En esa fecha el Procurador de Justicia del estado declaró que en los últimos años pudieron haber ingresado unos 10.000 “maras” al país, pero que de los 350 detenidos en Chiapas como integrantes de esas pandillas, el 70 por ciento eran mexicanos. Según el CISEN, grupos de “maras” han sido detectados en 21 estados.

Desde el 2003 muchos miembros de estos grupos han regresado a los EE.UU. y se dedican a diversas actividades delictivas (robo de autos, narcomenudeo, tráfico de documentos robados y de migrantes). Se han detectado en muchas ciudades y existe una alarma creciente, aunque no siempre se distingue a las “maras” de la infinidad de pandillas juveniles similares que pululan en el país.¹⁹ En enero de 2005 el Departamento

¹⁶ El término “mara” alude a “amigos revoltosos” en Centroamérica. También se asocia con “marabunta,” las miles de hormigas que arrasaban con todo.

¹⁷ También llamada MS-13 por la calle donde se ubicaba la principal pandilla en el este de Los Ángeles.

¹⁸ The Maldon Institute, “MS13: The Continuing Saga” (Washington DC, June 2005).

¹⁹ El Departamento de Justicia estima en el 2005 que en EE.UU. hay unas 30.000 pandillas con 800.000 miembros.

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de Justicia creó un grupo de trabajo interinstitucional para combatir a las “maras” y en marzo inició la Operación Escudo Comunal, que busca, entre otras cosas, deportar a cientos de jóvenes pandilleros a América Central.

Las “maras” se han convertido en grupos transnacionales o más precisamente translocales. Por su estructura organizativa flexible de grupos autónomos se desplazan con facilidad de un lado a otro; sus miembros migran, se dispersan y se reagrupan en distintos lugares con apoyo de redes locales. Representan un problema de orden interno y seguridad pública que no necesariamente está en sí ligado al crimen organizado pero que es crecientemente utilizado e instrumentalizado por bandas criminales, traficantes de armas y carteles del narcotráfico.

Las “maras” son el producto de crisis socioeconómicas profundas en que las familias están desarticuladas por la migración o las exigencias de la sobrevivencia económica y los jóvenes, que no ven mayores oportunidades de empleo y de vida digna, sienten muy duramente la ausencia de un proyecto social y un espacio que les sean propios. Esta falta de pertenencia y carencia de proyectos colectivos dejan pocas alternativas a los jóvenes: el individualismo y consumismo hedonista, la conversión religiosa o afiliación a sectas, el escapismo por el alcohol o las drogas y la integración a pandillas. No es casual que además de las “maras” callejeras existan las “maras” estudiantiles, no vinculadas a actividades delictivas, donde muchos jóvenes de escuela secundaria y preparatoria encuentran un sentido de pertenencia e inclusión, con gestualidades y ritos propios, que les son negados en otros ámbitos.

La respuesta de las autoridades ha sido optar por la represión policial y el endurecimiento de leyes y códigos.²⁰ Las “maras” han sido también objeto de una “demonización” mediática, que muchas veces preconiza una verdadera política de guerra social contra las pandillas y, por extensión, contra los jóvenes. En la manipulación política del tema y el manejo distorsionado de muchos medios de comunicación está ausente un análisis claro del fenómeno, se basa en estereotipos y tiende a sobredimensionar la actividad criminal de estos grupos.²¹

La reacción punitiva de las autoridades no ha resuelto el problema de seguridad pública, sino que ha sido contraproducente.²² Las “maras” se clandestinizan o reaccionan con mayor virulencia. La cárcel contribuye a crear delincuentes de mayor peligrosidad; la

²⁰ Ejemplos son las leyes de Tolerancia Cero en Honduras en 2002 y Mano Dura (2003) y Super Mano Dura (2004) en El Salvador.

²¹ Funcionarios de la Procuraduría General de la República de México admitieron oficiosamente en marzo de 2005 que probablemente menos del 10 por ciento de los delitos de seguridad pública en el país puedan ser imputables a las “maras.”

²² La Procuraduría de Justicia de Chiapas reconoció en febrero de 2005 que tuvo elementos para retener en prisión a menos de la cuarta parte de los detenidos.

represión empuja a muchos jóvenes, rehenes del discurso mediático, precisamente a las terribles conductas que se les atribuyen. Al fin y al cabo, esos jóvenes sólo pueden perder la vida, un bien tan devaluado. El discurso oficial y de los medios ha hecho de las “maras” el chivo expiatorio de males sociales y carencias estructurales, fomentando mensajes de inseguridad, de miedo y de discriminación hacia los jóvenes. De ahí a la asociación de joven y de migrante o, peor aún, de migrante joven con criminal y peligroso hay muy poca distancia.²³

Más preocupante aún es la asociación de las “maras” con temas de seguridad nacional y terrorismo. No existen hasta el momento evidencias de la vinculación de las “maras” con actividades terroristas. Cabe preguntarse si la afirmación de esos nexos no enmascara intereses geopolíticos que persiguen un mayor control social y migratorio en Centroamérica y en la frontera sur.

Conclusiones y Recomendaciones

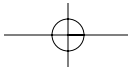
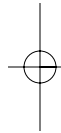
La frontera sur de México es una región marcada por el agudo deterioro económico y social y un marcado aislamiento del resto del país, pese a su potencial en recursos minerales, energéticos, culturales y de biodiversidad. Con una fuerte presencia indígena desde tiempos prehispánicos, ha tenido lazos históricos y sociales estrechos con Guatemala y el resto de Mesoamérica. La permeabilidad de la frontera, la intensidad incontrolable de la migración, la existencia del tráfico de armas, drogas y personas, la multiplicación de grupos delictivos, el incremento de la prostitución de mujeres y niños centroamericanos y una militarización poco visible pero presente se conjugan para configurar en la zona una situación política y socialmente grave, escenario de preocupantes riesgos y conflictos.

1. Las condiciones de pobreza, atraso económico y marginación del campesinado que están en el origen de los movimientos migratorios en la frontera sur requieren con urgencia el diseño e implementación de programas de desarrollo local productivo, con sus componentes de inversiones y crédito. Sin esos programas, en los que deberá integrarse el componente de la cultura indígena y la reversión del deterioro del medio ambiente, no parece probable ningún manejo sostenible de los flujos migratorios.
2. Esos programas deberán incluir tanto a la frontera sur mexicana como a las zonas expulsoras de migrantes en los países de Centroamérica, lo que probablemente requerirá un diálogo más fluido y activo entre México y sus vecinos inmediatos del sur centrado en esas preocupaciones.

²³ Este discurso guarda estrecha relación con la creciente discriminación y criminalización del migrante en EE.UU. y las vertientes xenófobas y racistas en ese país.

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3. El respeto a los derechos de los migrantes que ingresan por la frontera sur también requerirá programas específicos para su protección efectiva, incluyendo una mayor capacitación y sensibilización destinada a los agentes públicos. Con relación a los migrantes trabajadores temporales, parece conveniente analizar la ampliación de las reglamentaciones vigentes a otros sectores de actividad no agrícola y otras áreas geográficas en la región fronteriza de México.
4. El problema de las “maras” deberá poner énfasis en los aspectos sociales y culturales y en programas de rehabilitación para jóvenes, buscando abrir espacios de encuentro y reintegración social.



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Las Pandillas Transnacionales Mara Salvatrucha y Barrio 18th Street: Una Tensa Combinación de Exclusión Social, Delincuencia y Respuestas Represivas

5.2

Wim Savenije

Introducción

Las pandillas juveniles, o “maras,” representan un fenómeno temido por mucha gente en Centroamérica, especialmente por los residentes de las colonias marginadas en las ciudades y los pueblos. Aunque los enemigos y las víctimas principales de las pandillas son otros jóvenes de las pandillas rivales, es cada vez más frecuente que sean las personas comunes y los empresarios que trabajan en dichas zonas, los que sufren las acciones de los pandilleros. Últimamente, las maras han movido su actuar hacia la zona fronteriza sur de México, asediando a los emigrantes indocumentados en su camino a los Estados Unidos. Para las autoridades nacionales constituyen un problema molesto, que intentan enfrentar con leyes represivas, realizando redadas y enviando a los jóvenes pandilleros así atrapados a la cárcel. Sin embargo, los efectos de esas acciones no son muy sostenibles ni exitosos a largo plazo, porque no abarcan los aspectos que se sitúan al fondo de la problemática: la exclusión social y la falta de un futuro atrayente que sufren muchos jóvenes en la región.

En el presente artículo se intenta elucidar la problemática de las maras, que actualmente tanto preocupa a Mesoamérica (la región que se extiende del centro de México hacia el sur, hasta la frontera noroccidental de Costa Rica) y EE.UU., centrando la atención en las dimensiones sociales de la misma, sus repercusiones transnacionales y la presión policiaca a la que principalmente recurren las autoridades. El objetivo es cuestionar la tensa combinación de los aspectos sociales de la problemática y las respuestas represivas gubernamentales. Aunque las pandillas transnacionales se mueven en un espacio que abarca diferentes naciones, no necesariamente aumentan la posibilidad de que surjan conflictos entre los estados—al contrario, están fomentando la coordinación de esfuerzos represivos frente a ella—pero efectivamente constituyen un conflicto

transnacional violento entre grandes grupos de jóvenes. Ese conflicto no se ciñe a fronteras nacionales, sino a definiciones identitarias de “nosotros” y “ellos” en términos de pertenencia a las grandes pandillas Mara Salvatrucha (la MS) y Barrio 18 St. (la 18).¹

En el siguiente apartado se esboza cómo la exclusión social al nivel local da paso a procesos que llevan a que muchos jóvenes se integren a pandillas juveniles o “maras.” Después se describe brevemente el fenómeno de las pandillas transnacionales, su origen en los EE.UU., y su difusión por la región centroamericana y México. Las siguientes secciones elaboran algunos factores que empujan a jóvenes hacia la pandilla: la socialización de la calle, el reconocimiento y la amistad encontrada allí. A continuación, se traza brevemente la reacción política dominante, que consiste en tratar a las pandillas transnacionales como problema de seguridad nacional de los países individuales, y se señala su poca eficacia, por la insuficiente atención a los factores sociales que están detrás del fenómeno. Después de algunas conclusiones generales, se elabora una serie de recomendaciones para políticas públicas con el objetivo de disminuir la problemática de las pandillas transnacionales, centrando la atención en los aspectos sociales olvidados.

Pobreza y Exclusión Social en Centroamérica

A pesar de que a inicios de los 90, después de las guerras civiles, Centroamérica experimentó un crecimiento económico e impulsó programas de inversión social, la pobreza de la región sigue manteniendo altos niveles.² En el área urbana los problemas cotidianos relacionados con la pobreza se agudizan aún más por el hacinamiento y la falta de servicios básicos en los lugares en que vive la gente: las orillas físicas donde mucha gente encuentra sus nichos para subsistir; es decir, las orillas de barrancos, ríos, carreteras y colonias de residentes con mayores recursos. Pero también se convierten en orillas sociales donde se acumulan las privaciones y necesidades básicas insatisfechas, donde se vive cotidianamente la exclusión social. Es el abandono por las autoridades, consistente no sólo en su omisión de instalar los servicios básicos, sino también de imponer la ley, que conlleva a que la violencia se vuelva un fenómeno recurrente.³ “Al tratar el tema de la pobreza urbana no puede olvidarse que ésta suele ir vinculada a espacios hacinados; y con el hacinamiento a que da lugar la pobreza también aparecen todos los problemas que conlleva el vivir cotidianamente en el límite de la subsistencia; en el filo de la navaja.”⁴ Suelen ser más y más las personas que llegan a vivir a esas zonas por falta de alternativas, aunque cada vez quede menos espacio para cada uno.

¹ En vez de la MS también se habla de la “13” o la “MS-13.”

² Programa de las Naciones Unidas de Desarrollo (PNUD), *Segundo Informe sobre Desarrollo Humano en Centroamérica y Panamá 2003* (San José, Costa Rica: Proyecto Estado de la Nación, 2003).

³ Wim Savenije y Katherine Andrade-Eekhoff, *Conviviendo en la Orilla. Violencia y Exclusión Social en el Área Metropolitana de San Salvador*, Facultad Latinoamericana de Ciencias Sociales (FLACSO) (San Salvador: FLACSO Programa El Salvador, 2003).

⁴ Juan C. Martínez Aniorte y Francisco R. Lemus, “Violencia y Pobreza en la Periferia Social Urbana,” en *Psicología Social y Violencia Política*, comp. Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP) 278 (Ciudad de Guatemala, Guatemala: Universidad de San Carlos de Guatemala, 2003).

Aunque generalmente está aceptado que existe una conexión entre falta de equidad y exclusión social, por un lado, y los hechos de violencia, por otro, también se enfatiza la complejidad de esta relación.⁵ “There is no simple causal relationship linking poverty and inequality with violence. [...] broad generalizations fail to convey the wide variations and more nuanced realities on the ground.”⁶ El estudio “Conviviendo en la Orilla” indica algunos mecanismos concretos que ayudan a entender la emergencia de la violencia.⁷ Por una parte, la frustración cotidiana causada por las vulnerabilidades e inseguridades experimentadas por tener que vivir en situaciones precarias, junto con la decepción de no lograr superarse, llevan a que algunos residentes recurran a la violencia para desquitarse.⁸ En segundo término, la normalización de la violencia como la manera de resolver o manejar conflictos entre adultos (vecinos o miembros del mismo hogar) o para educar a los niños y jóvenes, conduce a una aplicación frecuente de castigos o represalias violentas. Por último, la presencia de organizaciones sociales perversas—como vendedores de drogas, pandillas juveniles, o bandas organizadas criminales—que buscan promover y proteger sus propios intereses, perjudicando al mismo tiempo a los otros residentes, y que utilizan (la amenaza de usar la) violencia para mantener el control sobre lo que pasa en su territorio y para evitar que se rebelen contra ellas.

Para los jóvenes, crecer en una situación de exclusión social no es fácil. No solamente por vivir las frustraciones o por sentirse marginados al compararse con otros que sí adquieren comodidades cotidianas, ropa a la última moda y pertenencias codiciadas, sino además por enfrentar un futuro marcado de inseguridad. No saben si serán capaces de escapar de la marginalidad, de superarse y de alcanzar un nivel de vida mejor para ellos mismos y sus familias. Sin embargo, están conscientes de que sus papás o adultos responsables, con todos los esfuerzos que hicieron, no lo lograron. “Faced with social exclusion, many young people conclude that there is no way for them to influence or change their own situations or society as a whole. Without any real prospects for decent and productive employment, young people may turn to violence. This decision typically has dire consequences for the young people themselves, but also has far-reaching implications for society that should not be underestimated.”⁹ Así, una de las secuelas que hoy en día asedian a las sociedades centroamericanas, y especialmente a los residentes de muchas colonias y barrios marginados, son las pandillas juveniles.¹⁰

⁵ Dirk Kruijt y Kees Konings, “Introduction Violence and Fear in Latin America” en *Societies of Fear. The Legacy of Civil War, Violence and Terror in Latin America*, ed. Kees Koonings y Dirk Kruijt (Londres: Zed Books, 1999); Dirk Kruijt, “Exclusión Social y Violencia Urbana en América Latina” *Foro Internacional* 44 (4) (2004).

⁶ United Nations, *The Inequality Predicament. Report on the World Social Situation 2005* (New York, Author, 2005), 90.

⁷ Savenije y Andrade-Eekhoff.

⁸ Leonard Berkowitz, *Aggression: Its Causes, Consequences and Control* (Boston: McGraw Hill, 1993).

⁹ Programa de las Naciones Unidas de Desarrollo, 95.

¹⁰ Caroline O. N. Moser C. y Cathy McIlwaine, *Encounters with Violence in Latin America. Urban Poor Perceptions from Colombia and Guatemala* (New York: Routledge, 2004).

Las Pandillas Transnacionales

Los conceptos pandilla o “mara” se refieren al mismo fenómeno: se trata de agrupaciones formadas mayoritariamente por jóvenes, que comparten una identidad social que se refleja principalmente en su nombre. Tradicionalmente, eran jóvenes que vivían en la misma comunidad, en que crecieron juntos, que se unieron y establecieron una cuadrilla para defenderse contra los jóvenes de otras comunidades. Por ende, la pandilla inicialmente consistía en una sola agrupación juvenil al nivel de colonia o barrio. Sin embargo, recientemente algunas se han convertido en conjuntos que trascienden los límites entre lo local, lo nacional y lo internacional. Esas pandillas forman redes transnacionales de grupos que se establecen como “clikas” (subgrupos o facciones dentro de una pandilla al nivel local), unidas bajo un mismo nombre y que comparten ciertas normas, reglas y relaciones más o menos jerárquicas y se encuentran dispersas en un espacio transnacional. Las pandillas locales tradicionales y las clikas de transnacionales están integradas por jóvenes que comparten una identidad grupal, interactúan a menudo entre ellos y se ven implicados con cierta frecuencia en actividades ilegales. Su identidad social compartida se expresa mediante símbolos y/o gestos (tatuajes, graffiti, señas manuales, etc.), además de reclamar control sobre ciertos asuntos, a menudo, territorios o mercados económicos.¹¹

Proteger sus comunidades contra maleantes y las pandillas rivales es la justificación corriente dada por los miembros para la existencia de su pandilla. Sin embargo, las transnacionales van más allá de una sencilla rivalidad y mantienen una relación de aniquilación. Encontrar a un miembro de la pandilla contraria es suficiente razón para atacarlo e, incluso, matarlo. Generalmente, la amenaza y ofensa más grande que una pandilla puede hacer a la otra es entrar a su territorio, borrar sus símbolos y graffiti, y herir o asesinar a uno de sus miembros.¹² En consecuencia, confrontaciones violentas se dan cuando las pandillas rivales se encuentran accidentalmente o cuando se planea con anticipación una incursión hacia el territorio de los rivales.

Debido al peligro de ser atacado violentamente por los contrarios, los pandilleros no pueden salir fácilmente de la colonia donde viven, por lo que se quedan confinados en su territorio mucho tiempo. El ocio se convierte entonces en un parte integral de la vida pandilleril. Los pandilleros pasan mucho tiempo juntos en los pocos espacios públicos existentes, divirtiéndose lo más posible o sencillamente, en palabras de uno de ellos:

¹¹ Wim Savenije, “La Mara Salvatrucha y el Barrio 18 St. Fenómenos Sociales Transnacionales, Respuestas Represivas Nacionales” *Foreign Affairs en Español* 4 (2) (2004). Ver también: A.R. Goldstein y C.R. Huff, *The Gang Intervention Handbook* (Champaign, Illinois: Research Press, 1993).

¹² Wim Savenije y Chris van den Borgh, “Youth Gangs, Social Exclusion and the Transformation of Violence in El Salvador” en *Armed Actors. Organized Violence and State Failure in Latin America*, ed. Kees Koonings y Dirk Kruijt (Londres: Zed Books, 2004); María Santacruz Giral y Alberto Concha Eastman, *Barrio Adentro: La Solidaridad Violenta de las Pandillas* (San Salvador, El Salvador: IUDOP, 2001); Marcela Smutt y Lissette Miranda, *El Fenómeno de las Pandillas en El Salvador* (San Salvador: FLACSO, Programa El Salvador, 1998); Asociación Cristiana de Jóvenes de Honduras y Save the Children United Kingdom, *Las Maras en Honduras* (Tegucigalpa: Autores, 2002).

“matando el tiempo: a veces uno juega pelota, jugamos naipes, vemos gente..., o sea hacemos cualquier cosa para matar el tiempo.”¹³ Además, el miedo y el rechazo fuerte que generan las pandillas en Centroamérica hacen que a los pandilleros se les cierre el acceso al trabajo formal y decentemente remunerado. Los tatuajes les identifican inmediatamente como pandilleros. Por tal motivo, los potenciales contratantes suelen pedir a los jóvenes solicitantes que se levanten la camisa para estar seguros de que su futuro empleado no es miembro de una pandilla. Las dificultades de encontrar un trabajo remunerado los deja sin mayores ingresos y en una situación precaria, por ende buscan contrarrestar la carencia de medios económicos por medios menos lícitos e, incluso, ilícitos. Suelen utilizar (las amenazas de usar la) violencia como instrumento para obtener los recursos necesitados, generando a la vez más temor, rechazo y resentimiento hacia ellos mismos y reforzando los procesos sociales que les excluyen aún más de una participación constructiva en la sociedad.

En El Salvador, Honduras y cada vez más en Guatemala, muchas pandillas locales se han transformado en clikas de las pandillas transnacionales. Ellas forman puntos en las redes organizadas bajo los nombres del Barrio 18 St. y la Mara Salvatrucha. Por esa razón, no se las puede aislar ni entender solamente en el contexto local (colonias donde están arraigadas) o nacional (de un solo país). Las actividades de las pandillas se inician y son sostenidas por esas redes y sus miembros, y no cesan en las fronteras nacionales. Al nivel local, las clikas son semiautónomas pero mantienen vínculos y comunicaciones entre sí. Sin embargo, a nivel internacional forman parte de una jerarquía cuyos líderes más importantes residen en los EE.UU. y pueden girar órdenes a las agrupaciones locales. No obstante, el funcionamiento puntual de cada red es algo que las pandillas mantienen en secreto.

Últimamente, las transnacionales han mantenido una presencia fuerte en la zona fronteriza entre Guatemala y México, en que una de sus actividades más temidas es la de asaltar y extorsionar a los migrantes en camino a Estados Unidos. Los indocumentados que cruzan la frontera usando cualquier método—escondidos en los trenes, caminando grandes distancias—constituyen un grupo extremadamente vulnerable. Como *El Diario de Hoy* de San Salvador informa en su artículo “Dos salvadoreños mueren en ataque de maras a tren” del 11 de diciembre de 2003 en la sección *Internacionales*: “En menos de un mes, la Mara Salvatrucha ha matado a tres indocumentados en dos asaltos a trenes, y ha dejado decenas de heridos en su intento por despojarlos de sus escasas pertenencias.” Los pandilleros que operan en la zona fronteriza provienen mayoritariamente de diferentes países centroamericanos. Aunque no son los únicos que se aprovechan de los emigrantes indocumentados, las pandillas intentan controlar parte de los flujos de indocumentados a los EE.UU. exigiendo dinero de “protección” o asaltando a los emigrantes para quitarles sus pocas pertenencias. Un inmigrante salvadoreño, con la experiencia de varios viajes a los EE.UU., lo cuenta así: “La mara controla el viaje al

¹³ Las citas en cursiva sin referencias a sus fuentes han sido tomadas de entrevistas del autor con diferentes pandilleros en los países en la región.

norte, y los 20 dólares te dan derecho a que no te tiren del tren o no te roben. Ellos te cuidan para que nadie (otros pandilleros) te moleste.”¹⁴

En Nicaragua, en cambio, la situación pandilleril cambia. Las pandillas en Nicaragua mantienen en gran medida su carácter local, los miembros mantienen su identificación con la colonia donde viven y crecieron: “Ellos se ven a sí mismos como los defensores de su barrio, y ese deber les da derecho a atacar a los de afuera que se atreven a penetrar en su barrio.”¹⁵ Las pandillas trasnacionales no han logrado arraigarse en el país y sembrar la idea de una unión trasnacional y una lógica de enemistad mortal con la contraria. Los niveles de violencia y criminalidad alcanzados por las pandillas en Nicaragua son menores que los de los otros países mencionados. De hecho, la Policía Nacional de Nicaragua considera que “los delitos cometidos por las agrupaciones juveniles son mínimos en comparación con los de otros países de la región, como El Salvador y Honduras.”¹⁶

Origen de la Mara Salvatrucha y el Barrio 18 St.: La Transnacionalización de las Pandillas Juveniles

El fenómeno de las pandillas trasnacionales que ahora asedia muchos países de Mesoamérica tiene su origen en las calles de las grandes ciudades de los EE.UU., especialmente en Los Ángeles. Durante los años setenta, muchos salvadoreños, hondureños y ciudadanos de otras naciones centroamericanas emigraron a los Estados Unidos para escapar de la creciente pobreza, represión política y conflictos militares en sus países de origen. Aún así, en los lugares de destino, muchos de ellos llegaron a vivir en barrios marginados con pobreza y hacinamiento, a sufrir discriminación por sus orígenes, y a encontrar situaciones de trabajo difíciles, con relativamente pocos ingresos. Por ende, en una familia de inmigrantes muchas veces ambos padres o adultos responsables tenían que trabajar largas horas al día para obtener suficientes ingresos para la familia, dejando a los jóvenes sin mayor supervisión en las calles del barrio.¹⁷ Otros jóvenes llegaron solos a probar suerte para superar la pobreza y marginación que vivían sus familias en los países de origen.

¹⁴ Gonzalo Egremy y Kent López “Delincuencia Mina Camino hacia EUA,” *La Prensa Gráfica*, San Salvador, 27 de mayo de 2005, <<http://www.laprensagrafica.com/dpt15/noticias/27052005/195650.asp>>

¹⁵ Dennis Rodgers, “Un antropólogo-pandillero en un barrio de Managua” *Revista Envío* 184 (1997), *Revista Envío*, <<http://www.envio.org.ni/articulo.php?id=305>> (leído el 17 de noviembre de 2004). Ver también: DIRINPRO, NITLAPAN e IDESO, *Muerte Arriba. Las Pandillas en Nicaragua 1999-2004* (Managua: UCA publicaciones, 2004).

¹⁶ Entrevista con el Subcomisionado de Asuntos Juveniles de la Policía Nacional (Managua, abril 2005).

¹⁷ James D. Vigil, *A Rainbow of Gang: Street Cultures in the Mega-City* (Austin: University of Texas Press, 2002) y James D. Vigil *Barrios Gangs Street life and Identity in Southern California* (Austin: University of Texas Press, 1988).

En las calles de sus nuevos paraderos, los jóvenes encontraban a las pandillas juveniles que mantenían una presencia fuerte en los barrios de inmigrantes. Algunos de ellos se integraron a esas pandillas, entre otras a la 18, la más grande de Los Ángeles, formada principalmente por chicanos (residentes de los EE.UU. de origen mexicano) que vivían cerca de la calle 18.¹⁸ En la misma ciudad, a principios de los ochenta, otros formaron la Mara Salvatrucha. Su nombre hace referencia a un grupo de amigos (Mara) de El Salvador (Salva-) que son astutos (-trucha). Aunque al principio se llevaban bien, a partir de los inicios de los 90 la Mara Salvatrucha y la del Barrio 18 St. se enfrentaron en una guerra sangrienta. En 1992, para disminuir los problemas que causaban las pandillas, el Servicio de Inmigración y Naturalización estadounidense, por medio de su “Violent Gang Task Force,” se concentró en buscar inmigrantes con antecedentes criminales y deportarlos a sus países de origen.¹⁹ Desde entonces, varios países centroamericanos reciben mayores cantidades de deportados, muchos de ellos jóvenes con experiencia en la vida y la cultura de las pandillas callejeras del norte.

Hacerse pandillero no era el objetivo de muchos jóvenes, ni tampoco lo que esperaban cuando emigraron. Pero en vez de disfrutar de una formación adecuada, encontrar un trabajo decente y alcanzar una vida mejor, encontraron a las pandillas. Al regresar a su país de origen, esta nueva clase de pandilleros formados en las calles estadounidenses creó, transformó y difundió un modelo distinto de pandillas. Sin embargo, eso no quiere decir que los deportados sean los únicos que estén involucrados o los que dirijan las pandillas. Como lo indica un pandillero: “Han venido deportados, pero a algunos ya los mataron, otros se murieron de cualquier otra cosa, y quienes hemos sobrevivido somos nosotros, los jóvenes de aquí, y somos los que hemos seguido siempre.” Lo cierto es que, sea como fuere, tras recibir el influjo de los deportados, los jóvenes locales han absorbido la cultura pandilleril estadounidense y ahora se sienten parte de un conjunto más grande e importante. Un pandillero lo explica así: “No importa de dónde vengamos. Puede ser de aquí [Honduras], de cualquier departamento, o puede ser de El Salvador, de Guatemala, o de Estados Unidos. Siempre y cuando sea un Salvatrucha, aquí es un miembro más de la familia.”

La Socialización de la Calle y Pandillas Juveniles

Como señalado anteriormente, las situaciones de marginación y exclusión social generan espacios físicos, sociales y psicológicos en que las pandillas transnacionales encuentran el lugar ideal para asentarse y desarrollarse. La incapacidad de mantener niveles elementales de gobernabilidad por parte de las autoridades formales genera lo que Koonings y Kruijt llaman “‘governments voids,’ which are inevitably occupied by actors who obey the law

¹⁸ Donna DeCesare, “The Children of War Street Gangs in El Salvador,” *NACLA Report on the Americas* 32 (1) (1998). North American Congress on Latin America (NACLA), <http://www.nacla.org/art_display.php?art=1902> (leído el 8 de febrero de 2004).

¹⁹ DeCesare.

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of the jungle.”²⁰ Un control social débil entre los vecinos que no se sienten protegidos por las autoridades—muchas veces reforzado por un ambiente en que la violencia es algo común— abre el espacio a que las pandillas entren o surjan y peleen por el poder en la comunidad.²¹ Así, la arena que consideran su territorio y donde los demás jóvenes se ven confrontados con ellas, es la calle. Por falta de supervisión por parte de los adultos y autoridades, la calle se ha vuelto un espacio de socialización alternativo y un puente al mundo de las pandillas.

Desde la óptica de los adultos, las personas que pasan su tiempo allí no siempre son los mejores ejemplos para los jóvenes; entre ellos hay vagos, alcohólicos, consumidores y vendedores de drogas, y pandilleros. Además, los pocos espacios de recreo existentes no permiten mucha competencia deportiva e, incluso, a veces están ocupados exactamente por dichas personas. No obstante, a los jóvenes les gusta pasar el rato fuera de casa con sus amigos, quienes les otorgaron un lugar entre ellos y un ambiente afectivo. En este contexto no resulta muy raro que muchos padres tengan miedo de dejar a sus hijos salir de casa y andar en las calles y los callejones sin mucha supervisión.²² Sin embargo, otras familias no ejercen una supervisión estricta y dejan a sus hijos más libertad de escoger a sus compañeros y pasar más tiempo con ellos fuera de casa.

Estar con sus amigos es un anhelo de muchos adolescentes y jóvenes, sobre todo si no encuentran en su hogar un ambiente que los apoye y proteja, ni el afecto adecuado para su desarrollo. La violencia intrafamiliar, el desinterés o indiferencia de los adultos, la soledad de la casa, entre otras cosas, pueden empujarlos hacia fuera, donde encuentran a otros jóvenes en la misma situación y buscando refugio entre ellos mismos. En la calle hallan calor afectivo con sus amigos, cuidado, incluso a veces apoyo económico, hasta poder y respeto. Sin embargo, la socialización de la calle es diferente a la que corresponde al modelo de la “buena familia,” pues las actividades que allí aprenden y realizan varían de inofensivas (conversar, escuchar música y divertirse) a perjudiciales y delictivas (amenazar, robar o lesionar a alguien).²³ En ese proceso la pandilla puede volverse el lugar donde encuentran esa hermandad y se convierten en la segunda familia para muchos jóvenes, quienes a menudo la quieren como a la biológica.

En los espacios públicos como las calles, los pasajes o callejones, parques etc., pueden desarrollarse—entre los jóvenes que los comparten sin mucha supervisión adulta— reglas y normas que van en contra de las normas aceptadas en la sociedad más amplia, pero que guían la obtención de estatus y las deferencias correspondientes entre los que frecuentan la calle. Ese “código de la calle”²⁴ regula la conducta interpersonal—

²⁰ Kruijt y Koonings, 12.

²¹ Savenije y Andrade-Eekhoff; Savenije y Van der Borgh.

²² Savenije y Andrade-Eekhoff.

²³ Vigil, *A Rainbow of Gangs*.

²⁴ Elijah Anderson, *Code of the Street. Decency, Violence, and the Moral Life of the Inner City* (New York: W. W. Norton and Company, 1999).

especialmente el uso de violencia—y su núcleo consiste en “tener respeto.” Al ser violentos e imponerse a otros, los jóvenes rápidamente ganan respeto y prestigio frente a sus pares. El respeto, concebido generalmente como una forma de reconocimiento y deferencia por los demás, se consigue en la calle por el uso intrépido e indomable de violencia. La admiración y el temor que ese comportamiento genera en otros se reflejan en una conducta en que se otorga deferencia al agresor y, en general, a las personas más violentas. En esta dinámica, no conceder respeto, es decir, no mostrar deferencia, aumenta la probabilidad de volverse víctima de una retribución violenta o constituye una oportunidad de demostrar que uno es más violento aún y de exigir el respeto del otro.

Así, en la calle y dentro de la pandilla, los jóvenes se ven confrontados con una jerarquía local basada en ferocidad y dureza. Al mismo tiempo, se encuentran con pares con quienes comparten mucho tiempo y forman grupos que realizan actividades agradables, tales como conversar, escuchar música y divertirse. Hallan amistad, cuidado, apoyo emocional y protección pero, a la vez, enemistades feroces con rivales. Además, en las pandillas transnacionales se solidarizan entre ellos mismos justamente por vivir las rivalidades y amenazas violentas por parte de los enemigos. En la calle, hermandad y solidaridad van de la mano con enemistad y victimización.²⁵ De esa manera, los jóvenes hallan nuevos caminos para conseguir reconocimiento y admiración y para dar forma a las exigencias y normas de sus pares al mismo tiempo que encuentran problemas con los adultos y las autoridades. Por ejemplo, figurar en una dura pelea con un grupo de rivales o ser detenido por la policía aumenta el estatus y la reputación del joven y le gana el respeto de sus compañeros, pero deteriora los vínculos sociales con los adultos y autoridades.²⁶

Para los jóvenes que viven en los barrios marginados, la pandilla puede ser una fuente importante de pertenencia y reconocimiento, que difícilmente encontrarían de otra manera. Además de llenar esas necesidades sociales y psicológicas de sus miembros, las pandillas también les ayudan a sobrevivir en situaciones de pocos recursos, pobreza y estigmatización. La pandilla desarrolla sus maneras de obtener recursos económicos, por ejemplo, pedir dinero a los residentes al entrar o salir de la colonia, exigir “impuestos de guerra” a las tiendas y empresas en su territorio o a las rutas de autobuses que lo cruzan, cometer asaltos y robos de menor escala, etc.²⁷ El dinero ganado por esos medios no es solamente para el uso individual de los pandilleros, ellos deben dar sus aportes económicos a la pandilla misma. Con esos recursos la pandilla puede apoyar a los “homeboys” (compañeros pandilleros) encarcelados. “Hacemos visitas a los hermanos que están presos, les ayudamos con dinero, comida, cualquier pantalón también, camisas, zapatos...” De esas maneras la pandilla procura instaurar una base económica a la solidaridad, pertenencia y reconocimiento de sus miembros.

²⁵ Ibid, *A Rainbow of Gangs*.

²⁶ Ibid. y James Diego Vigil y Steve C. Yun, "Southern, California Gangs: Comparative Ethnicity and Social Control" en *Gangs in America*, ed. C.R. Huff (Thousand Oaks, CA: Sage Publications, 1996).

²⁷ Savenije y Van der Borgh.

Las autoridades en la región suelen acusar a las pandillas transnacionales de estar involucradas en delitos y crímenes que van más allá del ambiente de la calle, como tráfico de drogas, asaltos de bancos y secuestros; no obstante hay que tratar esas acusaciones con mucho cuidado. Es muy probable que las necesidades organizativas de esas actividades excedan las capacidades de muchos integrantes de pandillas. Aún así, las pandillas pueden volverse seriamente delictivas cuando sus miembros, al pasar de los años desarrollan las referidas capacidades y obtienen el capital económico y social necesario para involucrarse en actividades criminales más profesionales.²⁸ De esta manera, se vuelve posible que un líder lleve a su pandilla a inmiscuirse en negocios delictivos más serios, creando un puente hacia el crimen organizado. Otro grave camino que ciertos pandilleros toman para ganarse la vida, es prestar sus servicios a la delincuencia organizada o traficantes de drogas, por ejemplo como sicarios. Por ejemplo, Dennis Rodgers describe como una pandilla local en Nicaragua se transformó en una banda de vendedores de drogas bajo dominio de un “narco,” que en vez de “proteger” su colonia, aplicaba la violencia para garantizar la circulación y el intercambio libre de drogas y clientes.²⁹

Las Pandillas Transnacionales: Unidas unas Contra Otras

Las pandillas transnacionales, aparte de su difusión geográfica, se distinguen en dos aspectos importantes de las locales: una solidaridad extrema al interior de las mismas y una enemistad extrema con la contraria. Ambos aspectos no están desvinculados. La extrema enemistad con un grupo externo, agranda la solidaridad interna.³⁰ Para los jóvenes pandilleros que anhelan una pertenencia profunda, mantener una enemistad intensa les garantiza un grupo con los linderos seguramente cerrados y miembros altamente articulados. Al nivel grupal, cada una de las dos pandillas construye su identidad social haciendo referencia a la otra, la enemiga. La razón de ser de cada una se busca en la existencia y el odio hacia la otra. La amenaza que esa constituye no se da solamente por sus agresiones, sino sobre todo por la identidad precaria de ambos grupos.

Los jóvenes pandilleros no han logrado un sentido de pertenencia, unidad e identidad sobre una base sólida, sino por el hecho de negar, humillar o destruir físicamente y simbólicamente a la otra pandilla. Concebir a la otra pandilla como el enemigo mortal y la amenaza más grande hace que intrínsecamente las identidades se contrapongan, diferencien y alejen. Así, el propio grupo emerge como especial, unido y naturalmente mejor que el otro. Esa definición de enemistad permite que el ser parte de “nosotros” se valore, aprecie y respete de una manera especial, mientras que todo lo que tiene que ver

²⁸ Savenije y Van der Borgh; Savenije y Andrade-Eekhoff.

²⁹ Dennis Rodgers, “Dying for it: Gangs, Violence and Social Change in Urban Nicaragua,” *Crisis States Programme Working Paper 35*. (Londres: London School of Economics, 2003).

³⁰ Lewis Coser, *The Functions of Social Conflict* (New York: The Free Press, 1956).

con los “otros” se desvalora, desprecia y rechaza con igual rigor. En palabras de William Sumner, “loyalty to the group, sacrifice for it, hatred and contempt for outsiders, brotherhood within, war likeness without, —all grow together, common products of the same situation.”³¹ Una vez instalada esa dinámica entre los dos grupos, la inercia propia del conflicto hace que la violencia siempre sea una opción sencilla y valorada porque, como comenta un pandillero: “siempre hay algo que vengar.”

En esa dinámica de conflicto, la hermandad, solidaridad y lealtad a sus homeboys aparecen como valores imperiosos. El amparo, apoyo y cariño se brindan grandemente hacia los compañeros de la misma facción o pandilla. “Cuando un pandillero come, comen todos” es una expresión, tal vez idealizada, que ayuda a esclarecer los vínculos íntimos entre ellos. Los pandilleros se protegen y se defienden entre ellos, incluso al punto de arriesgar la vida por sus compañeros. De hecho, formar parte de la hermandad transnacional sólo termina cuando expira la vida del integrante. Aún así, cuando un pandillero cae en la “batalla” muchas veces su persona sigue siendo conmemorada por medio de graffiti en la comunidad o en los tatuajes de quienes fueron sus homeboys más cercanos.

Demostrar valentía frente a la violencia es primordial para un pandillero. La enemistad con la pandilla contraria pone la vida del pandillero siempre en riesgo. Además, el aislamiento y rechazo de la sociedad, en general, hacen que solamente puedan contar con el apoyo de los propios homeboys. La importancia de la valentía se muestra en el ritual de iniciación: para volverse “pandilleros de verdad” los aspirantes deben tener el valor de soportar durante un lapso de tiempo una serie de golpes y patadas, sin tener la opción de defenderse activamente. También al recibir el permiso de calmarse, deben pasar por un rito parecido de porrazos. Además, una regla importante en la pandilla es no abandonar a los compañeros en peleas y amenazas. Según confirma un pandillero: “Después que hicimos una mara quisimos decir que cuando nos íbamos a meter en pleito, nadie se iba a quedar atrás.” No cumplirla repercute en sanciones por parte de los demás.

La identidad personal de un pandillero y su estatus dentro la facción o pandilla depende principalmente del valor mostrado frente a la pandilla contraria, la disposición de usar la violencia, y la habilidad de utilizarla, pero otras cualidades también juegan un papel importante. Por ejemplo, la confianza que les tienen los demás, la capacidad de velar por los miembros, de cuidar los intereses de la pandilla y de liderarla en momentos difíciles. Dentro del grupo existe una competencia por ganar estatus y respeto entre los integrantes. Mostrar la habilidad, disposición y el éxito mediante comportamientos violentos es una manera sencilla y clara para impresionar a los compañeros. “Ya [en el grupo de] abajo hay una rivalidad que decíamos quién es el que es, como digamos, el más valiente de nosotros de abajo. Todos nos poníamos esta rivalidad aunque si les preguntamos a todos nadie te va a decir eso.”³²

³¹ William G. Sumner, *Folkways and Mores* (New York: Schocken Books, 1979), 13.

³² Wim Savenije y Hein F. M. Lodewijckx, “Aspectos Expresivos e Instrumentales de la Violencia entre las Pandillas Juveniles Salvadoreñas: Una Investigación de Campo” en *América Central en los Noventa: Problemas de Juventud*, ed. Carlos G. Ramos (San Salvador: FLACSO, Programa El Salvador, 1998), 132.

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La importancia del carácter identitario del conflicto entre las pandillas transnacionales—en vez de un conflicto sobre escasos recursos—se manifiesta cuando se considera el objetivo de la violencia entre pandillas. Si bien asaltan, dañan e incluso matan a un rival, el reto principal de esos actos es dañar la reputación, estatus y honor de la facción o incluso de toda la pandilla enemiga. Enfocándose en esos aspectos simbólicos, resalta el hecho que emplear violencia es también un acto de comunicación; es decir, sirve para enviar un mensaje a una audiencia más amplia que la víctima inmediata.³³ En primera instancia, la violencia es dirigida a toda la pandilla contraria, mostrándoles que son débiles, vulnerables, poco hombres, etc., y que los agresores son superiores.³⁴ También se les comunica, por supuesto, que los agresores son todo lo contrario y por tanto superiores. “Porque él es uno menos de la otra pandilla. Ganamos puntos para nosotros...o sea, por cada persona del otro barrio, porque así ganan ellos puntos cuando matan a un homeboy de nosotros...”³⁵ En segundo término, el mismo mensaje comunica dentro la propia pandilla que el miembro que logró humillar a la contraria merece el reconocimiento como uno de los más valientes del grupo. Esos aspectos simbólicos de la violencia son esenciales para entender mejor la naturaleza y la utilidad de tanta violencia pandilleril.³⁶

La unión creada por las pandillas transnacionales frente a la enemistad mortal con la contraria hace que querer salir del compromiso de la hermandad por intereses personales sea visto como traición y normalmente es severamente castigado. “Groups engaged in continued struggle with the outside tend to be intolerant within. They are unlikely to tolerate more than limited departures from the group unity. [...] They lay claim to the total personality involvement of their members.”³⁷ Para un miembro, salir sin permiso de la pandilla, significa que sus propios compañeros lo consideren como renegado y lo busquen para matarlo. Sin embargo, la opción de “calmarse,” retirarse después de años de una vida pandilleril activa sin dejar de ser parte de la pandilla, es uno de los pocos caminos para separarse y dedicarse a una propia familia y/o trabajo.³⁸ Otra opción es salir de la pandilla para dedicar la vida a Dios e ingresar plenamente a una iglesia (evangélica).

³³ M. Juergensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence* (Berkeley: University of California Press, 2000). Ver también Wim Savenije y María A. Beltrán, *Compiteando en Bravuras. Violencia Estudiantil en el Área Metropolitana de San Salvador* (San Salvador: FLACSO Programa El Salvador, 2005).

³⁴ Savenije y Van der Borgh.

³⁵ María L. Santacruz Giralt y José M. Cruz Alas, “Las Maras en El Salvador” en *Maras y Pandillas en Centroamérica: Volumen 1*, ed. ERIC, IDESO, IDIES e IUDOP 65 (Managua, Nicaragua: UCA Publicaciones, 2001).

³⁶ Savenije y Van der Borgh.

³⁷ Coser, 103.

³⁸ José M. Cruz y Nelson Portillo, *Solidaridad y Violencia en las Pandillas del Gran San Salvador: Más allá de la Vida Loca* (San Salvador, El Salvador: UCA Editores, 1998); Santacruz Giralt y Concha-Eastman; Smutt y Miranda.

Pandillas Transnacionales como Problema de Seguridad Nacional

En los apartados anteriores se argumentó que el fenómeno de las pandillas transnacionales, si bien forma un problema serio de violencia y delincuencia en los países donde se han arraigado, se da en medio de problemáticas de exclusión social compartidas regionalmente. Esas problemáticas urgen la dedicación de energía y recursos por parte de las autoridades nacionales, pero suelen desaparecer tras las imágenes de violencia y delincuencia pandilleril. La atención se ha centrado predominantemente en los excesos de violencia y delincuencia adscritos a los miembros de las pandillas, tanto por parte de los medios de comunicación y las autoridades, como por parte de la población en general. Por ende, el fenómeno de las pandillas transnacionales en toda la región es visto principalmente como un problema de seguridad nacional, olvidándose su contexto social.³⁹

Según fuentes policiales, a finales de 2003 había en Guatemala 14.000 integrantes de pandillas; en El Salvador 10.500; en Honduras 36.000, y en Nicaragua 4.500.⁴⁰ La MS y 18 tienen mayor número de miembros en El Salvador, Honduras y Guatemala, países en que la policía y el ejército realizan operaciones conjuntas para combatir tanto la delincuencia en general como a las maras en particular.

En el ámbito nacional, el Congreso Nacional de Honduras y la Asamblea Legislativa de El Salvador aprobaron “leyes antimaras,” que penalizaban con varios años de reclusión la sola pertenencia a las pandillas. El Congreso en Honduras endureció en los últimos años varias veces el artículo 332 del Código Penal, al punto que en la actualidad se sancionará con la pena de veinte a treinta años de reclusión a los jefes o cabecillas de maras y pandillas. Los demás miembros podrán ser penados con una sanción de una tercera parte menos. La Asamblea de El Salvador aprobó en octubre 2003 una “Ley Antimaras,” según la cual pertenecer a una mara o pandilla sería sancionado con dos a cinco años de prisión. En abril del año 2004, una nueva versión de esta ley entró en vigencia, aumentando las penas de tres hasta seis años de prisión. Además, los líderes o cabecillas podían recibir un aumento hasta de un cincuenta por ciento más de las mencionadas penas.

³⁹ Para ilustrar los grados de preocupación que provocan en los diferentes países, basten algunos ejemplos de titulares de periódicos como los publicados por *La Prensa Gráfica* de San Salvador el 20 de enero de 2003 en la sección “Tema del Día:” “Recrudece guerra entre las maras. Rencillas de pandillas causan 10 muertes en los primeros días del año;” o por *El Heraldo* de Tegucigalpa en la sección “Sucesos” del 18 de septiembre de 2003: “Descuartizamientos: cacería sangrienta entre pandillas;” y también por *La Prensa Libre* de Guatemala en su sección “De Primera Plana” del 8 de octubre de 2003: “Pandillas, marcas de terror y muerte. Violencia de maras mantiene en vilo a los guatemaltecos ante impotencia de autoridades.”

⁴⁰ Comisión de Jefes y Jefas de Policía de Centroamérica y El Caribe, *Informe del Equipo Técnico para el Estudio y Evaluación de la Actividad Delictiva de las Pandillas y/o Maras* (Ciudad de Panamá, 4 de diciembre de 2003).

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Sin embargo, muchos jueces en El Salvador consideraban inaplicables esas nuevas leyes, y las veían como una violación a la Constitución. Frente a la resistencia de la sociedad civil y una confrontación fuerte con los órganos judiciales, el gobierno de El Salvador abandonó las iniciativas de leyes antimaras, favoreciendo en julio 2004 reformas al Código Penal y a la Ley de Menor Infractor, consensuadas en mesas consultivas con la sociedad civil. No obstante, la situación legal no parece haber cambiado tanto. A partir de tales reformas, el Código Penal define que ser miembro de una agrupación constituye un delito “cuando realicen actos o utilicen medios violentos para el ingreso de sus miembros, permanencia o salida de los mismos” y se castiga con tres a cinco años la pertenencia a ella, en tanto que los organizadores o jefes serán sancionados con prisión de seis a nueve años.⁴¹ Como detallado anteriormente, las pandillas trasnacionales caen sin ninguna duda bajo esta definición.

Honduras y El Salvador acompañaron los cambios de sus códigos penales con operaciones policíacas (“Operación Libertad” y “Plan Mano Dura,” respectivamente) que buscaban intensamente y detenían a los jóvenes pandilleros por delitos cometidos por ellos o solamente por sospecha de ser pandilleros. Guatemala los siguió con un operativo policial (“Plan Escoba”) ejecutado para “controlar los sectores donde frecuenten los integrantes de las pandillas, a fin de lograr su desintegración organizacional, el cese de actividades delictivas, incautar droga y armas ilegales que se encuentren en su poder.”⁴² Las únicas indicaciones que tenían los policías para reconocer a los pandilleros eran sus tatuajes y su manera de vestir. En consecuencia, en las redadas muchos jóvenes tenían que subirse la camisa para mostrar a la policía tatuajes que los delataran como pandilleros.

Viendo lo que está pasando en la zona fronteriza con Guatemala, no es sorprendente que México empiece a preocuparse. “El tráfico ilegal de personas, armas y drogas, de suyo crítico en la frontera sur, toma un matiz grave con la presencia de pandillas juveniles con carácter transnacional, como la Mara Salvatrucha.”⁴³ Las autoridades reaccionaron con una serie de acciones policíacas contra las pandillas trasnacionales en la zona fronteriza sur. El Instituto Nacional de Migración reportó en septiembre 2005 que “en lo que va del año las acciones del gobierno mexicano en la frontera sur permitieron la aprehensión de 451 personas vinculadas a la banda Mara Salvatrucha, así como a 759 que se dedicaban al tráfico de centroamericanos.”⁴⁴

⁴¹ *Diario Oficial de El Salvador* 364 (143) (30 de julio de 2005): 5, art. 345.

⁴² Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), *Transparentando El Plan Escoba. Estudio de la Estrategia Policial con Relación a las Pandillas Juveniles en Guatemala*, Borrador Resumen Ejecutivo, Documento no editado. (Ciudad de Guatemala, 2005): 7.

⁴³ Emilio Zebadúa y Erubiel Tirado, “La Gobernabilidad de la Frontera Sur,” *Foreign Affairs en Español*, 5 (4) (2005), <<http://www.foreignaffairs-esp.org/20051001faenespessay050408/emilio-zebadua-erubiel-tirado/la-gobernabilidad-de-la-frontera-sur.html>>.

⁴⁴ Alonso Urrutia, “Detienen en la Frontera Sur a 451 Maras y 759 Traficantes de Indocumentados,” *La Jornada*, 12 de septiembre, 2005, <<http://www.jornada.unam.mx/2005/09/12/023n1pol.php>>.

Sin embargo, más que un fenómeno constituido sólo por extranjeros que permanecen en la frontera sur, las trasnacionales han influido también a los jóvenes mexicanos. Algunos ven a las maras como un modelo cultural nuevo e interesante para apropiarlo o copiarlo. Sin volverse necesariamente klikas, algunas bandas juveniles “se mararizaron;” es decir, copiaron la conducta violenta, señas manuales, manera de vestir, etc., de las trasnacionales.⁴⁵ Con todo, grupos de jóvenes que crecen en situaciones de exclusión social, tal como pasó en los países centroamericanos y los EE.UU., pueden llegar a considerar la membresía de una pandilla grande trasnacional como una aventura interesante y atractiva. Eso podría arraigar a las pandillas trasnacionales aún más en el territorio mexicano a través de klikas formadas por jóvenes mexicanos.

Por su parte, los Estados Unidos se centra cada vez más en la amenaza que presentan las pandillas juveniles de origen centroamericano para su seguridad interna (“homeland security”). Aunque tienen una larga tradición de diferentes pandillas que operan en sus ciudades y aunque la MS o 18 representan solamente una pequeña parte de una amplia gama, esas pandillas centroamericanas ponen en alerta especial a las autoridades. El Comando Sur exterioriza su preocupación por los vínculos que muchas de las pandillas mantienen con los EE.UU. mediante los movimientos de inmigración y de deportación a los países de origen de sus miembros, o por medio de redes de distribución de drogas.⁴⁶ Además, la policía y los oficiales del servicio de inmigración consideran a los miembros de las pandillas como objetos legítimos de sus preocupaciones y acciones. La oficina de Inmigración y Aduanas (ICE) lanzó en febrero de 2005 la “Operation Community Shield,” una iniciativa policíaca nacional contra pandillas callejeras violentas; en primera instancia se operó específicamente contra la Mara Salvatrucha. Esa pandilla es considerada como “one of the most violent and rapidly growing” en los EE.UU. En su primera campaña, en marzo 2005, arrestaron a 103 miembros de la MS, entre otros en Nueva York, Washington, DC, Los Ángeles, y Miami. Al final de la primera fase de esta operación habían arrestado a 359 miembros de dicha pandilla y ampliaron la operación para también incluir otras pandillas con miembros de origen latinoamericano, como la del Barrio de la 18 St., Latin Kings y Vatos Locos.⁴⁷

⁴⁵ Entrevista con Gerardo Gonzáles, investigador del Colegio de la Frontera Sur, San Cristóbal (Chiapas), México, noviembre 2004.

⁴⁶ General Bantz J. Craddock, Posture Statement of General Bantz J. Craddock, United States Army Commander, United States Southern Command before the 109th Congress House Armed Services Committee, 9 march 2005, Comando Sur de los EE.UU., 9 de marzo de 2005.

⁴⁷ Servicio de Seguridad de Inmigración y Aduanas de los EE.UU., “ICE Launches Operation Community Shield with the Arrest of 103 MS-13 Gang Members in Six U.S. Cities,” Servicio de Seguridad de Inmigración y Aduanas de los EE.UU., 14 de marzo de 2005, <<http://www.ice.gov/graphics/news/newsreleases/articles/msgang031405.htm>> (leído 18 de septiembre de 2005); Servicio de Seguridad de Inmigración y Aduanas de los EE.UU., “Fact Sheet Operation Community Shield,” Servicio de Seguridad de Inmigración y Aduanas de los EE.UU., 1 de agosto de 2005. <<http://www.ice.gov/graphics/news/factsheets/opshield031405.htm>> (leído el 18 de septiembre de 2005).

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Las autoridades estadounidenses ven a las pandillas como amenazas para la seguridad de sus ciudadanos, y las latinas no son una excepción. Por esa razón, los EE.UU. mantiene su política de expulsar a todos los pandilleros extranjeros indocumentados o los que resulten condenados por cualquier delito, sin preocuparse de los problemas que esa medida pueda desencadenar en los países centroamericanos. Así, en una entrevista para el periódico *El Diario de Hoy*, el 13 de agosto de 2003, Daniel Kane, portavoz de la Oficina de Inmigración y Aduanas, no quiso hacer comentarios sobre cómo la posición estadounidense puede afectar al gobierno salvadoreño. Preocupado por las detenciones en el marco de la “Operation Community Shield,” el ministro de Gobernación de El Salvador reiteró la solicitud de no deportar a todos los pandilleros detenidos sin más, “porque no tenemos un asidero legal para enjuiciarlos.”⁴⁸ Hasta ahora, en los países centroamericanos los pandilleros deportados son dejados en libertad por no haber cometido ningún delito en sus territorios.

Los Límites de las Respuestas Represivas

La MS y 18 constituyen un problema que excede los límites territoriales de la región centroamericana. México y Estados Unidos también son parte del problema. Sin embargo, las políticas represivas contra las pandillas se formulan en cada país según su propia experiencia, y sólo se han registrado algunos intentos incipientes de coordinación con otros países. Por su parte, las pandillas transnacionales MS y 18 amplían su influencia sin preocuparse mucho de fronteras: sus cliks y miembros mantienen relaciones que traspasan los territorios nacionales. Sin embargo, no sólo la migración juvenil y deportación de pandilleros difunden los símbolos de la vida pandilleril. Una fuerte influencia mundial se transmite a través de Internet, películas y videoclips musicales que aparecen en la televisión. Los receptores de ese flujo de imágenes, símbolos, música, estilos de vestirse, conductas, etcétera, no son principalmente los pandilleros, sino jóvenes de diferentes partes de la región e incluso del mundo.

Todavía no existe un enfoque que ubique el fenómeno de las pandillas en el panorama más grande de las subculturas juveniles modernas y como parte de una creciente ola de procesos globalizadores. Hace falta políticas internacionales dirigidas a los jóvenes en las que participen todos los países involucrados; su carácter debe ser social, preventivo y con mecanismos restrictivos, pero sobre todo deben ser concebidas y puestas en práctica con una visión del fenómeno que supere las fronteras nacionales y regionales.

La región está dando los primeros pasos para elaborar una política de seguridad propia contra las maras; sin embargo la cooperación regional para contrarrestar el fenómeno de las pandillas posee un enfoque más que nada orientado a los problemas de seguridad en cada país. Los presidentes de El Salvador, Honduras, Guatemala y Nicaragua, en su

⁴⁸ La Prensa Gráfica, “293 Capturados en el Escudo de la Comunidad,” sec. Departamento 15, 3 de agosto de 2005.

reunión en la ciudad de Guatemala el 15 de enero de 2004, declararon su intención de suprimir en cada uno de sus países a las “organizaciones ilícitas conocidas como Mara Salvatrucha y Barrio 18 St.”⁴⁹ Además, las pandillas han sido tema en reuniones regionales de los presidentes de los países centroamericanos, y también los funcionarios de policía de Centroamérica, México y los EE.UU. se han congregado para tratar el tema. La Organización de los Estados Americanos (OEA) ha declarado las pandillas como un problema urgente y busca mejorar su sistema de intercambio hemisférico de información sobre ellas. Policías de la Oficina Federal de Investigaciones (FBI) de los EE.UU. han visitado la región para compartir experiencias con sus homólogos y abrir oficinas regionales para intercambiar más eficazmente información con los cuerpos policíacos de la región, entre otras cosas, sobre las pandillas. En este marco, los EE.UU. abrirán también una dependencia de su academia internacional de policía (ILEA) en El Salvador, para capacitar y entrenar policías y otros funcionarios de la región en el área de aplicación de las leyes (“law enforcement”).⁵⁰ Además, las fuerzas policíacas empiezan a trabajar más coordinadamente en el tema de las pandillas. Ejemplo de ello es un reciente operativo multinacional antipandillas, que se realizó el miércoles 7 y jueves 8 de septiembre 2005, simultáneamente en los EE.UU., México, Guatemala, Honduras y El Salvador, en que en total se arrestó a 685 supuestos pandilleros.⁵¹

Sin ninguna duda, el objetivo de garantizar la seguridad pública es de gran importancia, ya que ningún estado democrático puede tolerar los actos de violencia y delincuencia que producen las pandillas transnacionales. De allí que las autoridades nacionales pretendan imponer una fuerte represión policíaca y política. Sin embargo, dejar de lado las causas sociales de un fenómeno como las pandillas transnacionales puede reforzar, sin querer, el círculo vicioso entre exclusión social y violencia. Estigmatizar aún más a los jóvenes por medio de una represión policíaca en las colonias marginadas, sin ofrecerles alternativas en forma de formación y trabajo—es decir, de inclusión—puede cerrar las salidas a un futuro diferente para ellos y sus familias; dejando al mismo tiempo abierta la puerta a las pandillas.

Al mismo tiempo, no es cierto que los esfuerzos represivos logran lo que pretenden. Las operaciones policíacas en El Salvador y en Honduras resultan muchas veces cacerías de jóvenes tatuados, sin importar lo que están haciendo o lo que han hecho. La Fundación de Estudios para la Aplicación del Derecho (FESPAD), al revisar las capturas en El Salvador en el marco de Plan Mano Dura señala que “en más del 90% de los casos las personas fueron detenidas por su apariencia, por su forma de vestir, por portar tatuajes o por usar señales, razones insuficientes para establecer judicialmente una responsabilidad penal.”⁵² Aunque en Guatemala no existe una ley que prohíba la

⁴⁹ “Declaración Conjunta de los Presidentes de El Salvador, Honduras, Guatemala y Nicaragua sobre las Pandillas ‘Mara Salvatrucha’ y ‘Barrio 18,’” Firmada en la ciudad de Guatemala, 15 de enero de 2004.

⁵⁰ International Law Enforcement Academy.

⁵¹ David Marroquín, José Zometa y Milton Grimaldi, “Caen 685 Pandilleros en Operativo Regional” *La Prensa Gráfica*, 9 de septiembre de 2005, 10-11.

⁵² Fundación de Estudios para la Aplicación del Derecho (FESPAD), *Informe Anual sobre Justicia Penal Juvenil El Salvador 2004* (El Salvador: FESPAD Ediciones, 2004), 26.

pertenencia a una mara, la policía parece actuar de manera parecida a los países vecinos. El Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), al analizar los expedientes de los detenidos, señaló que “un importante número de prevenciones policíacas describen que la detención se produjo con base en aspectos eminentemente subjetivos y discriminatorios, como es, la forma en que el sujeto se conducía, o fue registrado con el propósito de identificación o por caminar sospechosamente.”⁵³ Las dificultades que sufría el Plan Mano Dura en El Salvador para lograr ser eficiente, se ejemplifican a través de las cifras mostradas por FESPAD.⁵⁴ Sin embargo, por falta de alternativas, la policía salvadoreña sigue enfrentando a las pandillas de la misma manera; a partir del 30 de agosto bajo el nuevo nombre operación “Super Mano Dura.”

Aunque esas acciones policíacas han proveído alivios temporales a los residentes de las colonias afectadas por la presencia y las acciones violentas de los pandilleros, en El Salvador esas no han logrado tener un efecto sustancial duradero en la problemática de las pandillas. Dos años después de que el presidente Francisco Flores hubiera anunciado el primer operativo Mano Dura desde la colonia la “Dina” en San Salvador, *La Prensa Gráfica* reportó que “la colonia símbolo, la Dina, sigue en control de las maras” y que “los pandilleros continúan ahí, acechando, observando a los que llegan, enfrentándose entre sí, como sucedió el domingo pasado cuando tras una pelea una persona resultó muerta y dos mujeres quedaron lesionadas.”⁵⁵

Enfocándose casi exclusivamente en el aspecto de seguridad, los gobiernos no solamente pasan por alto los aspectos sociales que generan los espacios para las maras y crean la atracción de la vida pandilleril, sino que confían en medidas represivas que no logran lo que prometen, poniendo, además, en peligro la reintegración de los (ex) pandilleros a la sociedad. Las actuales medidas represivas obstaculizan políticas sociales de integración, al aislar aún más a estos jóvenes de la vida social tradicional, y al obligarlos a vivir escondidos en lugares en que las autoridades ejercen menos control. En El Salvador y Honduras, los pandilleros y los que han dejado de serlo no pueden asistir a los sitios donde se desarrollan los proyectos de integración social por miedo a que la policía los capture. Por esa razón, se canceló un proyecto de reinserción y capacitación laboral de 80 pandilleros en el Instituto Santa Lucía en el Área Metropolitana de San Salvador.⁵⁶ Los dirigentes de la organización Jóvenes Hondureños Adelante, Juntos Avancemos (JHA-JA) se dedicaron con empeño a sacar de las cárceles a pandilleros con el fin de que puedan asistir a su programa de reintegración.⁵⁷

⁵³ ICCPG, 16.

⁵⁴ Así, en el periodo del 23 de julio 2003 al 30 de agosto 2004, la Policía Nacional Civil de El Salvador capturó a 19,275 personas acusadas de pertenecer a las pandillas; de ellos el 91 por ciento fueron liberadas casi inmediatamente. “Entre ellas 16.191, que representan el 84%, fueron sobreseídas (absueltas) de forma definitiva por no existir motivo alguno para su detención; 1.349 [el 7%], fueron sobreseídas provisionalmente ya que, pese a que les atribuyeron algunos delitos, no existían pruebas suficientes.” FESPAD, 25.

⁵⁵ Milton Grimaldi, “Igual, la Dina Sigue Igual” *La Prensa Gráfica*, 23 de julio de 2005, 10-11.

⁵⁶ Entrevista director del Instituto Santa Lucía, febrero 2004.

⁵⁷ Entrevista director de la Asociación Jha Jha, diciembre de 2003.

Conclusión

Aparte de las respuestas represivas y de una estricta aplicación de las leyes existentes, ambas necesarias para enfrentar los actos de violencia y delincuencia cometidos por cualquier ciudadano—no solamente por pandilleros—los gobiernos y las autoridades de la región tienen que prestar urgente atención a los problemas sociales que viven los marginados de sus sociedades. En el fondo, las pandillas juveniles son un problema de exclusión social y una solución sostenible va por el camino de inclusión: el ofrecimiento de una perspectiva realista de un futuro atrayente para esos los jóvenes y sus familias, oportunidades de educación adecuada y un trabajo decente; también espacios sociales—entre otros en la familia y en la calle—donde sean reconocidos y respetados como personas sin tener que pelear por ellos. “It is a reasonably safe assertion that violence is most often a symptom of social disintegration. Whether this violence takes the form of individual assaults, armed conflict, or expressions of self-determination, it is an indicator that societies have not successfully fostered the full integration of all their members.”⁵⁸ Con toda la buena voluntad y fuerza que tiene, la policía sola nunca estará en la capacidad de anular los efectos negativos de vivir en exclusión social y pobreza, además reforzados por una subcultura de la calle en la que la violencia es glorificada como el instrumento idóneo para obtener estatus y respeto.

Sin embargo, cada uno de los países afectados por el fenómeno de las pandillas transnacionales intenta borrar sus huellas con medidas represivas, sin preocuparse por las raíces sociales. Aunque cada vez son más los que reconocen que las transnacionales constituyen un problema compartido por Mesoamérica y los Estados Unidos, las autoridades siguen considerándolas un asunto de seguridad nacional. Se trata de una miopía que no logra ver que las dimensiones sociales compartidas tienen repercusiones transnacionales. Tal visión quizá pueda lograr que este problema disminuya temporalmente, mientras las medidas represivas estén vigentes y mientras operen las fuerzas represivas en las calles. Sin embargo, cuando la represión disminuya por razones políticas, o por el común agotamiento presupuestario, el problema reaparecerá con gran intensidad.

En los períodos de alivio y de recuperación de espacios físicos logrados temporalmente mediante una intensa represión policiaca, ciertas políticas sociales inclusivas pueden empezar a funcionar, atrayendo a los jóvenes hacia actividades productivas y a un futuro constructivo para ellos mismos. Ofrecerles oportunidades de educación, trabajo decentemente remunerado y espacios de recreación interesantes, disminuye la atracción de la calle, más aún si la policía y los residentes de las colonias afectadas logran deshacer la funcionalidad y persuasión del código de la calle.

⁵⁸ Programa de las Naciones Unidas de Desarrollo, 89.

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Así, la lucha contra la inseguridad regional causada por las pandillas debe basarse en políticas sociales dirigidas a los sectores marginados en la región que comprende a Centroamérica, México y los Estados Unidos; políticas especialmente dirigidas a los jóvenes, que les ofrezcan oportunidades reales para lograr un futuro interesante y atrayente, eliminando las situaciones de exclusión social que muchos sufren. En palabras de una pandillera veterana: “Es mentira que van a acabar con todos los pandilleros; ellos no acaban con las pandillas. Porque de un momento a otro, uno sale de prisión, y uno viene más loco [...] mejor deberían de ponernos un trabajo y preguntarnos por qué somos pandilleros.”

Recomendaciones

Nivel local

1. *Satisfacer el anhelo de pertenencia:* Fomentar organizaciones sociales juveniles en los barrios (espacios comunitarios, actividades recreativas, artísticas y deportivas, etc.), así como fomentar el liderazgo juvenil y la responsabilidad social.
2. *Contrarrestar la socialización de la calle:* Crear e imponer liderazgo y supervisión adulta; organizar apoyo desde la comunidad a las familias; y fomentar control y responsabilidad social.
3. *Reestablecer el orden legal:* Crear policía comunitaria que trabaje en conjunto con la comunidad y la apoye en sus esfuerzos de crear un ambiente sano.

Nivel nacional

1. *Invertir en lo social:* Planificación urbana para evitar niveles intolerables de hacinamiento, construir servicios básicos y crear espacios recreativos; promover organizaciones juveniles nacionales; elaborar y implementar una política juvenil; y crear una policía comunitaria (con presencia permanente en las colonias afectadas) que construya relaciones y confianza con los residentes.
2. *Crear y fomentar mercado laboral juvenil:* Introducir un sistema de educación que prepare a los jóvenes adecuadamente para las exigencias del mercado laboral; crear oportunidades de trabajo para los jóvenes; apoyar iniciativas locales de trabajo; y generar acceso a las oportunidades de trabajo nacionales y regionales.
3. *Reforzar el sistema judicial y eliminar la impunidad:* Implementar con seriedad las leyes existentes, fortalecer el sistema en su implementación (fiscalía, aparato judicial, policía), porque nuevas leyes duras no serán eficaces si el estado no es capaz de imponer la aplicación de las existentes.

Regional (Mesoamérica y EE.UU.)

1. *Coordinación regional:* Desarrollar y apoyar las áreas geográficas empobrecidas y decaídas; vincularlas con áreas más desarrolladas y con oportunidades; y diseñar políticas juveniles regionales.
2. *Coordinación policial:* Proteger a los migrantes en toda la región en colaboración con las comunidades y fomentar la integración juvenil en los sistemas de seguridad.
3. *Políticas sociales:* Integración de políticas sociales y económicas dirigidas a los sectores vulnerables; fomentar el mercado laboral juvenil regional.
4. *Estudios:* Investigar más a fondo el fenómeno y desarrollo de las pandillas locales y transnacionales en los diferentes países y localidades para una mejor comprensión de las semejanzas y diferencias que existen entre ellas. Mayor conocimiento para apoyar el diseño de políticas sociales públicas que refuercen las comunidades y eviten el recrudecimiento de las dinámicas pandilleriles de violencia y delincuencia.

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Chapter 6

Internal Displacement in Colombia

Article 6.1 Prolonged Internal Displacement: Solutions amidst Violence in Colombia

Fernando Calado and Diana Medrano

Article 6.2 Health, Internally Displaced Persons and Violence in Colombia - *Arturo Silva*

Prolonged Internal Displacement: Durable Solutions amidst Violence in Colombia

6.1

Fernando Calado and Diana Medrano

Introduction

Colombia has experienced tremendous internal displacement and demographic change during the last several decades. It has been argued that the main causes of this movement have been economic factors, rural poverty, and the consequent attraction to urban areas, as increased speed of economic and social transformations, market growth and financial investments have caused an expansion of wealth, but consequent internal migration flows and demographic change have not always been accompanied by institutional presence, contractual accomplishments, and legal rights preservation.¹ Another key factor for the widespread displacement is political violence, which has often been the cause of the rural poverty and demographic change, putting a strain on social services and the ability of the displaced to develop sustainable livelihoods.

In order to prevent the increase of future social problems, public policy will have to be reformulated to provide for durable solutions. For this to occur, the following considerations need to be taken into account: improvement of mechanisms to allow for access of internally displaced persons (IDPs) to health services, including social, private, and international participation; improvement of educational facilities through coordination among schools, public institutions, and international donors; increased opportunities for income generation alternatives and vocational training; and development of more social infrastructure and housing projects to upgrade community living conditions that include community participation and municipal efforts. In general, the strengthening of national, regional, and local governmental institutions is required to enforce justice, social equity, and legal regulations; in this regard, technical assistance, training, and sensitization of civil servants in charge of assisting displaced populations have proven beneficial. From a humanitarian perspective, it is important to support the state's duties and responsibilities with a view to strengthening the protection of internally displaced communities.

¹ Jesús Antonio Bejarano Avila, Camilo Echandía, Rodolfo Escobedo, Enrique León Queruz, *Colombia: Inseguridad, Violencia y Desempeño Económico en las Áreas Rurales* (Bogotá: Universidad Externado de Colombia, FONADE, 1997), 20-21.

This article broadly analyzes the phenomenon of displacement in Colombia, including not only its historical underpinnings and manifestations, but also the strategies adopted for IDP attention and assistance by the state and other institutions (non-governmental and inter-governmental). Then it describes the models of intervention, strategies, and actions implemented by the state and other actors for the integral attention of IDPs. Finally, it provides lessons learned and best practices in the implementation of programs and the development of strategies and models of intervention for IDPs, and then proposes several approaches to improve intervention policies for IDP attention.

Historical Roots of Inequality and Violence

Colombia suffers from historical roots of inequality similarly found in most of Latin America.² Colonial Spanish institutions enforced property rights regulations, legal frameworks, and social arrangements that allowed land and the workforce to remain under the control of a very small number of Europeans who lived among larger populations of indigenous people and slaves. The World Bank recently emphasized that these institutions must be considered in order to gain an understanding of why this inequality persisted for nearly 500 years and generated patterns that can still be seen today, as land concentration and the displacement of indigenous people persist.³ Colombia's political situation has been embedded with historical inequalities that have not been eradicated, but rather have been substantially reinforced in recent decades through limited institutional capacity and a lack of state responsibility.⁴ Certainly, it has been in the interest of those in power to maintain the status quo.

A lack of transformation has incited rebellion and, consequently, violence. From 1946 to 1958, a period aptly referred to as "The Violence," the nation was submerged in a civil war between the conservative and liberal parties.⁵ The violence was restrained, however, by the National Front, an arrangement by which both parties shared access to the republic's presidency and governmental staff. During the 1960s and 1970s, the country's unrest continued, but to a lesser degree, limited to marginal confrontations between the army, the newborn guerrilla movements, and among peasants, workers, and student social movements. The social unrest caused the imposition of a state of emergency under which the state employed special measures featuring martial law that restrained collective and individual rights.

² World Bank, *Inequality in Latin America, Breaking With History?* (Washington, DC: World Bank Group, 2005), 109.

³ Ibid.

⁴ Ibid.

⁵ Marc Chermick, *Colombia: ¿La Injusticia Causa Violencia? Las Políticas de la Democracia, la Guerra y el Desplazamiento Forzado* (Bogotá: CODHES/OIM, 2003), 123.

During the 1980s and 1990s, the internal violence increased, turning into a multiple-actor war involving leftist guerrilla groups, rightist paramilitary armies, and a weak and fragmented state.⁶ The expansion of the unrest during the 1990s was related to the growing participation of Colombia in the world's illegal narcotics commerce, giving a new impulse to guerrillas and paramilitary groups through the provision of financial resources. The investment in rural property has been an important economic strategy used by drug producers, which has led to counter-agrarian reform in the country. As a consequence of this situation, and in order to preserve their possession of land, drug producers strengthened their private armies, coinciding with a counter-guerrilla strategy backed by paramilitary forces.

Recent Displacement: Figures and Registration

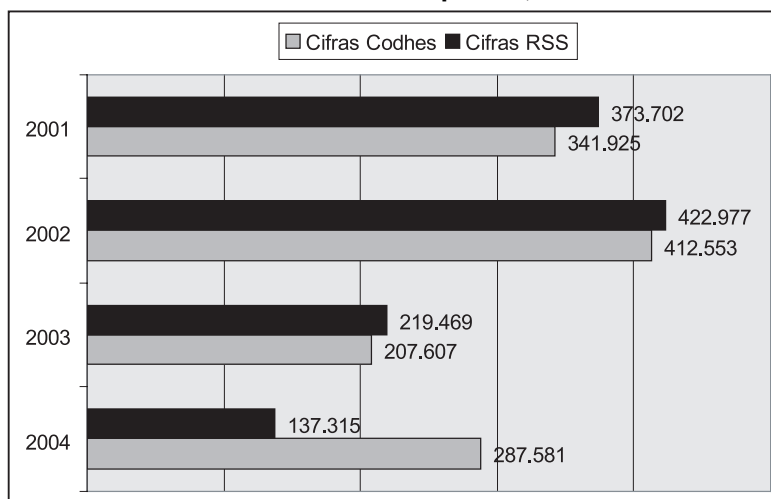
Although information on the displacement of peasants during the 1980s was registered, it was not until the mid 1990s that the phenomenon was widely recognized due to the massive displacement of thousand of peasants from their places of origin. The government slowly began to acknowledge the impact of the displaced, legally recognizing them in 1997 by enacting Law 387, which states: "Displaced persons are those that have been forced to migrate within their national territory, abandoning their local residency or regular economic activities, because their life, physical integrity, security or personal freedom, and have been at risk or are directly threatened, due to any of the following situations: internal armed conflict, disturbances and internal tensions, generalized violence, massive violations of human rights, transgression of international humanitarian rights laws, or other circumstances related to the above-mentioned situations that could alter or drastically modify public order."⁷

But, there are still substantial challenges for registering IDPs. The following graph illustrates a 2001-2004 comparison between the number of displaced persons registered by the government's official registration system, the Social Solidarity Net (Red de Solidaridad Social, RSS), and the number registered by the Consultancy for Displacement and Human Rights (CODHES), the main non-governmental organization working on the issue.

⁶ Ibid.

⁷ Senado de la República de Colombia, Ley 387 de 1997, July 24, 1997, available from <http://www.secretariassenado.gov.co/leyes/L0387_97.HTM>.

Graph 1
Number of Persons Displaced, 2001–2004



Source: El Tiempo Newspaper (Bogotá, 2005)

CODHES has described the difficulties that displaced persons face in registering as linked to the inadequacies of the government registration system, which does not recognize as displaced those who migrate as a result of fumigations of cocaine and poppy plantations. Also, the government was slow to systematize the registration process; CODHES has almost three million displaced persons on record, mainly because it has a registration system that began in 1985, while the official registration system only started in 1999. Thus, the governmental authorities do not acknowledge the existence of all displaced persons.

Demographics and Social Implications of Displacement

Recent displacement is a significant factor contributing to impoverishment rates in Colombia, directly affecting approximately three million people—equivalent to 7.14 percent of the total population—and indirectly affecting thousands of other Colombians. The indigenous and Afro-Colombian populations have been particularly affected by the violence. Indigenous people constitute two percent of the national population, but 11 percent of the displaced population. Afro-Colombians constitute eight percent of the Colombian population, but 11 percent of the displaced population.⁸ Also significant is that almost half of the displaced persons are under 18 years of age, and 80 to 90 percent originate in rural areas. Women are also disproportionately affected and, according to the Social Solidarity Net, 40 percent of the displaced are female heads of households with the majority coming from rural backgrounds. Figures are larger for indigenous and Afro-Colombian females.

⁸ Social Solidarity Net, *Project for the Protection of Patrimonial Assets: Second Phase* (Bogotá: SSN, 2005), 4.

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Colombia's population has increased dramatically over the past 200 years, presently reaching 45 million.⁹ At present, 80 percent of the population inhabits urban municipal capitals, whereas in 1938 only 30 percent of the population lived in urban settings. During the "Violence" period, the rate of urbanization increased significantly, from 35 percent to almost 50 percent of the entire Colombian population living in cities. It has been noted that, "although urbanization is a global phenomenon, it has been accelerated in Colombian society for multiple decades due to the effects of the violence."¹⁰

Forced displacement has caused the Colombian population to redistribute around a network of urban settings (large and intermediate cities), as well as in a vast group of small towns through which a resettlement movement of the rural population flows.¹¹ Although demographers have analyzed the characteristics of internal migration in Colombia and attributed them to the search for prosperity and urban life styles, political violence offers another explanation for the same population trends. According to the UN Development Program, "War in Colombia started by the fight for land tenure and ended in the fight for wealth."¹²

In addition to economic motivations for internal displacement, violence, drug trafficking, and the cultivation of coca and poppy crops have been major causes of this phenomenon since the 1980s. Data from the UN Office on Drugs and Crime indicates that the production of cocaine in 1990 was 92 tons and that it rose to 695 tons in 2000 and then fell to 440 tons in 2003, most likely due to crop eradication.¹³ A study released in 2001 by the International Organization for Migration (IOM) revealed: prior to 1994, half of the families that participated in the survey migrated due to social-economic causes; from 1994 to 1998, half of the movements were motivated by coca crop fumigation; and from 1999 to February 2001, more than three quarters of the movements were motivated by the increase in violence.¹⁴ Furthermore, fear of violence and actions of illegal armed groups were the factors

⁹ After Brazil and Mexico, Colombia is the third largest country in Latin America, comprising almost five percent of the whole population of the Americas. See Armando Montenegro and Rafael Rivas, *Las Piezas del Rompecabezas: Desigualdad, Pobreza y Crecimiento* (Bogotá: Editorial Taurus, 2005), 120-121.

¹⁰ *Ibid.*, 121.

¹¹ Darío Fajardo, "Los Circuitos de los Desplazamientos Forzados en Colombia," in *Éxodo, Patrimonio e Identidad* (Bogotá: V Cátedra Anual Ernesto Restrepo Tirado, Ministerio de Cultura de Colombia, 2001), 7.

¹² United Nations Development Program, "El Conflicto, Callejón con Salida," in *Informe Nacional de Desarrollo Humano 2003* (Bogotá: UNDP, 2003), 72, <http://indh.pnud.org.co/informe2003_plx?pga=CO3tablaContenido&f=1147380961>.

¹³ United Nations Office for Drugs and Crime, Illicit Crop Monitoring Program, *Colombia Coca Cultivation Surveys 2001-2004*, <http://www.unodc.org/unodc/en/crop_monitoring.html#surveys>.

¹⁴ International Organization for Migration (IOM), *Diagnosis of Internally Displaced Population in Six Departments in Colombia: 2001* (Bogotá: IOM, 2002). In conjunction with the report, in 2001 IOM developed a survey that revealed that in six Colombian regions—Norte de Santander, Santander, Valle del Cauca, Nariño, Caquetá, and Putumayo—the displaced population showed the following profiles: 24.4 percent were children under seven years old, 30.9 percent were young people from seven to 17 years old, and 35.4 percent were adults from 18 to 45 years old. Seventy percent of this population was living in the region's main cities, whereas the remaining 30 percent were living in medium-sized cities.

for migration most often cited by the participants in the study. When the heads of families were asked the reasons that forced them to leave the places where they were employed, 37 percent indicated fear of violence and 29 percent indicated fear of armed combat.

The IOM study revealed that IDPs face additional obstacles in gaining access to social services, especially public health services. Forty-seven percent of the surveyed population did not seek public health services for medical emergencies, 61 percent experienced financial problems as a result of receiving these services, and seven percent did not seek these services because of the long distances they would have been required to travel. The study also showed that 41 percent of children experienced weight loss related to displacement. In relation to education, access to educational facilities among displaced children was found to be less than among non-displaced families due to high costs, the need to use children for labor to contribute to their families' economy, lack of interest or motivation, and limited enrollment opportunities.

As for housing upgrades and social infrastructure issues, evidence has demonstrated the alarming conditions under which displaced communities live. Generally, the houses are built with low quality materials in high risk locations, and many of the dwellers do not have access to basic services. For example, only 25 percent of the families surveyed had access to sewage facilities.

Consequently, income generation opportunities are unsustainable; IOM's study demonstrated that 31 percent of male and 48 percent of female members of the displaced communities were unemployed, with many living under the poverty line. This has caused a general public health concern, as the displaced were neither receiving health education nor had access to health services.¹⁵ Compounding poverty and health concerns were increases in prostitution and the incidences of sexually transmitted infections.

Characteristics of Rural Expelling Zones and Effects on the Rural Productive System

Contemporary displacement in Colombia is associated with land tenure concentration and strategic control of territories for valuable resources, the future installment of large development projects, or for a land or its inhabitants' military or political implication in the armed conflict.¹⁶ Colombia is the country with the highest land property concentration in Latin America. Farms larger than 200 hectares constitute 2.8 percent of the farms, but occupy 40 percent of the land area. By contrast, land parcels of less than five hectares constitute 46.8 percent of the farms, but only occupy 3.2 percent of the land area.

¹⁵ For more information on the health concerns facing Colombian IDPs and refugees see the article on "Health, Internally Displaced Persons and Violence in Colombia" in Chapter Six of this volume.

¹⁶ Darío Fajardo, internal document of the Social Solidarity Net, Bogotá, 2001, 69.

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Another characteristic of land distribution is the informal property tenure, where 64 percent of the total rural area is not legally registered and lacks a title-holder. This situation is due to a weak or partial state presence and the underdevelopment of the institutions in charge of providing legal entitlement or tenure to the owners, settlers, and other types of landholders.¹⁷ Given the expansion of the illegal drug business in the country and territorial control by the drug dealers and paramilitaries, four million hectares were unofficially owned by drug dealers by the end of the 1990s.

The rural areas from which poor peasant and indigenous populations were expelled by force include territorial zones traditionally used by small peasants and settlement areas; territories in demand for large scale investments; areas for large infrastructure development projects, such as roads and hydroelectric projects; territories required for large agro-industrial plantations, such as African palm; cocaine plantations; indigenous people's traditional preserved territories, or *resguardos*; and strategic corridors for arms and drug trafficking. Many of these territories are characterized by vast biodiversity and the presence of natural resources, such as petroleum, mineral resources, and wood forests, yet lack the institutional presence of the state to administer these resources.

Therefore, through the picture of expelling zones, one can conclude that displacement in Colombia is related to land property control, strategic resource allocation, political relations, and the interests of armed groups. Among the main consequences of the violence faced by rural communities in Colombia is the loss of their source of employment and assets, and therefore a rupture in their production systems, working sources, and economic livelihoods. Displaced persons also lose access to social services and the stability of their households is disrupted; forced displacement implies a loss of social capital and the break-down of community networks. Ruptures among the leadership systems and social and familial structures mean degradation in their quality of life and social, emotional, cultural, political, and economic support.

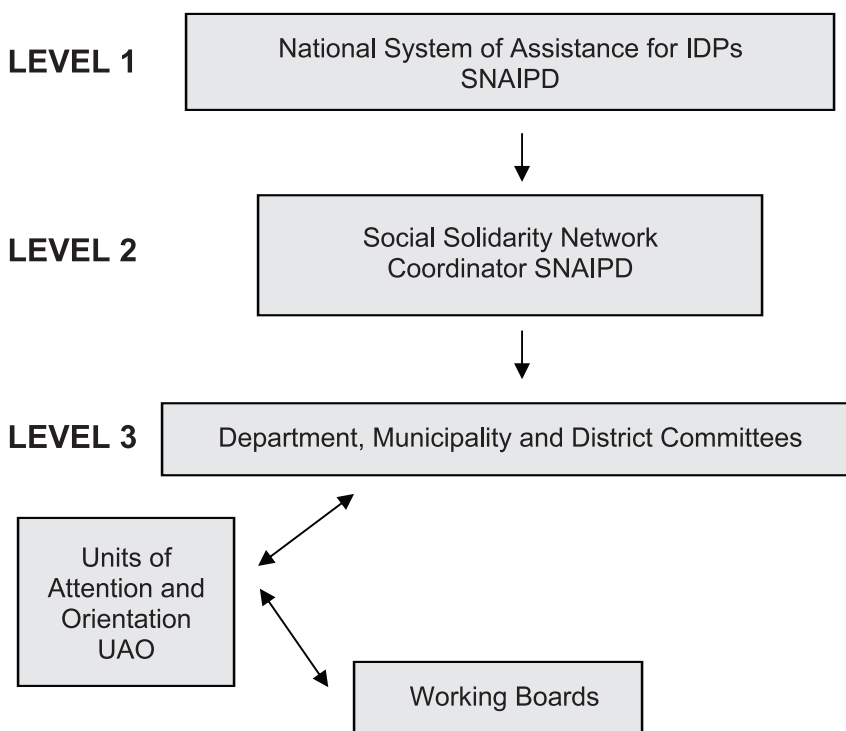
Moreover, the loss of rural social capital degrades the rural productive system and causes a decrease in the supply of food and raw materials provided by small producers. Of the 15.5 million peasants that inhabited rural areas in 1990, at least five million have abandoned the countryside and agricultural activities in the past ten years. Large livestock farms are now predominant to the detriment of small-scale agricultural production. According to a recent study by the World Bank, the agricultural Internal Gross Product (IGP) in Colombia has decreased from 16.4 to 14 percent. Colombia has the highest decrease in the agricultural IGP among Latin American countries due to the rural violence and internal forced displacement. Consequently, over the last ten years there has been an increase in impoverishment among the rural population. By 2000, poverty affected 61.5 percent of the total Colombian population, 49.5 percent of the urban population, and 84.9 percent of the rural population.

¹⁷ For example, in the Putumayo department (see note 19), a settled area, 80 to 85 percent of the land has no property titles.

Institutional Response: The National System for IDP Assistance

The internal displacement situation was legally recognized by Colombia's Law 387 in 1997, as described above. Law 387 prompted the creation of the National System for Internally Displaced Population Assistance (SNAIPD) in order to assist the internally displaced population (Graph 2). It is important to note that from the beginning the legal scope of SNAIPD went beyond humanitarian assistance, and focused on the need to stabilize and reincorporate the displaced population back "into Colombian society." The SNAIPD objectives involve the need to "neutralize and alleviate the effects of the process and dynamics of violence that cause displacement, through the strengthening of integral and sustainable development in expelling and receiving zones, and through the promotion and protection of human rights and international humanitarian rights."¹⁸

Graph 2
National System for IDP Assistance (SNAIPD)



¹⁸ Senado de la República de Colombia, Ley 387 de 1997.

As can be seen in the graph, the SNAIPD functions at three levels: national, regional, and local (municipalities). At the national level, the SNAIPD is coordinated by the Social Solidarity Net, commissioned by law to promote the assistance to and protection of IDPs in an inter-institutional scheme in which the sector ministries and national institutions must participate. At the regional level, Law 387 states that the departments or regional governments, as well as the municipal governments, must assist IDPs.¹⁹ The mandate should be enforced through the Territorial Committees for the Assistance of IDPs, through which the plans, projects, and policies related to this population are defined.

Since the adoption of the revised Constitution in 1991, the government has decentralized administration of the municipalities, as well as popular elections of governors and mayors. Health, education, and the main budget are also decentralized and each municipality is expected to give services to their local communities. This system, conceived when the displacement phenomenon was less significant, constitutes a problem at present because displaced persons move from one municipality to another. Since the SNAIPD relies mainly on already organized sectors and institutions, the policy has had to be continuously adjusted in order to respond appropriately to the new scenario.

Violence and Displacement: Models of Intervention and Assistance

Following the implementation of the SNAIPD, the development of an institutional response to the IDP situation can be divided into three stages.²⁰ First, from 1998 to 2002, given the increase of the forced displacement, the RSS was reinforced by increased government funding in order to assume the main assistance role for IDPs. Initially, the RSS developed weak ties with the rest of the ministries and national institutions, but by 2000 the rest of the SNAIPD entities had a clear mandate from the National Council on Social and Economic Policy. The demands of the IDPs were not necessarily met, but an operational scheme was developed, giving responsibilities and defining procedures for sectoral institutions. Despite the SNAIPD level of responsibilities, the RSS centralized and operated a wide scope of functions.

During the second stage, from 2002 to 2004, the displacement phenomenon diminished and national policy measures, along with the allocated budget, were reduced. During the final stage, from 2004 to 2005, a new budget was allocated and the RSS reinforced its functions among the SNAIPD, mainly due to the increase of the number of IDPs and the acknowledgment of the Colombian Constitutional Court of the “unconstitutional state of IDPs.”

¹⁹ Colombia is a unitary republic comprised of 32 departments, or provinces. Departments are further divided into municipalities.

²⁰ The implementation of the National System for Internally Displaced Population Assistance (SNAIPD) took place between 1998 and 2005.

In order to confront the displacement phenomenon, three types of interventions have been used. First, prevention and protection actions have been implemented through a series of measures, such as the preparation of the Territorial Committee's contingency plans and the development of an Early Warning System (SAT). Second, where displacement takes place, the Emergency Humanitarian Attention (AHE) provides food, shelter, and a kit with basic utensils to IDPs. Finally, interventions are aimed at the reestablishment and social reincorporation of the displaced population, or their return to their places of origin. These interventions encompass a range of needs to be addressed, including access to health services, education and income generation strategies, social infrastructure and housing, and institutional community strengthening strategies, which will be discussed in turn.²¹

Health: The IDP emergency has been addressed through the regular social security network, and the Ministry of Social Protection has organized a special emergency financial account in order to repay the services given by the health institutions to this population. Nevertheless, the health network in the country does not have full coverage for the poorest people, nor does it give sufficient attention to the IDPs.

Education: The government's strategy in this area is oriented toward increasing educational resources to allow the enrollment of displaced children into mainstream educational facilities. This includes formal and non-formal types of educational programs.

Income Generation: The social and economic reinstatement of the displaced population demands the reestablishment of their participation in employment and economic networks. This can be achieved through their establishment in new living places, their return to their former households—the government's preferred solution—or their permanent settlement in the areas to which they had migrated. The situation of the Colombian economy, growing recently at an annual rate of four percent but with 58 percent of the 44 million inhabitants living under the poverty line, makes participation in narrow formal labor markets difficult. Former institutional strategies have therefore included projects, such as the provision of seed-capital, in order to develop micro-enterprises, as well as vocational training, rural development projects, and a few experiments in transitional access to state-owned land.

Social Infrastructure: and Housing: Improvement of living conditions through the development of housing facilities has also been an institutional strategy. Although the social housing policy is extremely restricted due to the scarcity of financial resources, the government has developed a joint financial arrangement, including municipal participation, national government input, and a family savings contribution. A share of this social housing policy has impacted the IDP population; nevertheless, it is very difficult for displaced families to participate given the absence of savings.

²¹ For more information on these programs, see the website of IOM-Colombia at <<http://www.oim.org.co>>.

Institutional and Community Strengthening Strategy: Law 387 enforces the state responsibly to restore the rights of displaced persons and contributes to an institutional scheme in order to assist them. The program strategy has been oriented toward the strengthening of the institutions articulated by the SNAIPD, giving special attention to the enhancement of institutional capabilities and strategic support of those that contribute to the acknowledgement of IDPs as Colombian citizens. Given its position as the coordinator of the SNAIPD, the Social Solidarity Net has been supported through technical and financial assistance to reinforce its planning capacity and its efficiency to assist the population by improving the services provided.

Conclusions and Policy Recommendations for IDP Assistance

Previous experiences have led to a series of conclusions and lessons learned related to the models of intervention, specific projects, and levels of impact that assistance programs have had on IDPs. This last section aims to address public policy recommendations for durable solutions from this perspective. In general, using a humanitarian approach to tackle the political unrest is of central importance due to the need for strengthening the state's responsibilities in response to the violation of human rights caused by the internal violence. This humanitarian approach has given the country new institutional response capabilities, opportunities for coordination with international humanitarian agencies, and the ability to develop models of intervention to protect the internally displaced. Furthermore, it is important to emphasize that the Colombian institutional structure has mitigated the emergency by a division of duties utilizing strategic sector-based interventions, rather than through the creation of a concentrated and centralized model. This is consistent with the country's general decentralized and sector-based public policies, as one finds similar challenges for effective assistance to IDPs as are found in the structural limitations in the rest of the country with regard to primary social services, employment, and access to infrastructure.

Health:

1. The coordination of health projects provided by inter-governmental organizations and non-governmental organizations with those provided by private and public institutions, such as municipal health institutions, generates greater benefits to the community.
2. Also, it is recommended that a health program include education and information on the rights and responsibilities related to access to public services and the training of health promoters in prevention and self-care programs.
3. Acknowledgement and respect for cultural diversity is made more likely by the incorporation of local personnel as part of health services. Community participation and learning through culturally appropriate communication strategies increase educational results and understanding of health promotion strategies.

Education:

1. Coordination among schools, public institutions, international cooperation agencies, and an experienced project operator enhances institutional synergy-building, which enriches the design and execution of education projects. This type of intervention multiplies financial, technical, and human resources and increases cooperation among public and private sectors.
2. From the community perspective, it is important to promote local participation in the design, execution, and evaluation of innovative educational models.

Income Generation:

1. The coordination of programs at the regional and institutional levels enhances the effectiveness and sustainability of projects. In at-risk zones, it is necessary to involve experienced and recognized institutions because they generate trust and acceptance within the communities. Associative projects and training as well as community strengthening promote vocational development and social cohesion. The follow-up of persons involved in micro-credit projects helps ensure adequate repayment.
2. Training methodologies that use simple and clear language, as well as include concrete and practical instructions, are essential for the education of productive project beneficiaries.
3. Also, income-generating projects that involve psychological counseling as well as technical and administrative training have more opportunities for success because they address the social vulnerability of displaced persons.

Social Infrastructure and Housing:

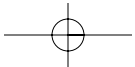
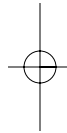
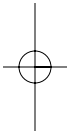
1. The joint efforts between international cooperation agencies, community organizations, and municipal authorities make probable the success of housing upgrade actions.
2. Also, communities must be educated and empowered to observe and employ payment for service policies so as to promote the sustainability of the housing projects. It is also of great importance to include the beneficiaries within a community in the planning and execution of housing projects.

Institutional and Community Strengthening:

1. Projects developed to strengthen institutions and communities show the importance of technical assistance, training, and sensitization of civil servants in charge of assisting displaced populations. Projects that offer such training allow civil servants to gain awareness of the problem, understand the needs of displaced persons, and therefore develop more effective solutions. Experience has demonstrated that the most successful projects are those in which participatory methodologies are incorporated through regional committees for IDPs and include direct consultation with IDPs and local and regional institutions.
2. Regarding the design of plans and programs that develop IDP-related policy measures, coordination among public institutions is necessary to generate participatory agreements and increase the levels of information-sharing. For this purpose, the development of training programs for planning, project design, and monitoring mechanisms should be considered a part of the technical assistance offered to public institutions at the national, regional, and local levels.
3. Decentralized public management allows for more efficient and regionally adjusted public policies. If national and regional institutions precisely understand their duties, functions, and responsibilities to assist IDPs, more efficient procedures can be developed to their benefit.

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Health, Internally Displaced Persons & Violence in Colombia

6.2

Arturo Silva

Introduction

The internal violence in Colombia is characterized by tremendous complexity with many players and interests—such as territorial occupation, political power, and narcotics trafficking—from which various parties have financially benefited and that have led to the perpetuation of violence and a lack of durable solutions. The health conditions of the Colombian population, mainly the most vulnerable populations—internally displaced persons (IDPs), refugees, and the marginal receptor or host populations—are directly affected by the armed conflict.¹ This article examines these health conditions, beginning with an overview of displacement and the health issues affecting IDPs—such as their sanitary and living conditions, mortality and morbidity rates, reproductive health situation, and general access to health services—and concludes by offering several policy recommendations to address these problems. The main focus of the article is the health issues of IDPs in Colombia, but there is also a brief discussion on issues particular to the Venezuelan and Ecuadorian border areas.

The main findings can be summarized as follows: mental health has declined due to a failure of IDPs to adapt following their displacement and also due to the psychosocial problems produced by domestic violence; access to quality health services, including reproductive health services, has been limited, especially as inequality and low access to coverage plague the national Social Security System for Health Care;² rates of malnutrition are high; morbidity and mortality rates from preventable infectious diseases, mainly acute respiratory infections (ARI) and acute diarrhoeal diseases (ADD), are high;³ living conditions are poor due to a lack of potable water, sub-standard sanitation services, and critical population density; a strong link exists between population mobility, HIV/AIDS, and sexually transmitted infections (STI); and vaccination rates are very low. Overall, displacement in Colombia affects mainly the poor rural population and ethnic minorities, particularly Afro-Colombians, and indigenous populations, and has led to a large number of female-headed households with a high rate of illiteracy and vulnerability to unemployment.

¹ Marginal receptor populations generally refer to the communities on the outskirts of main urban centers where displaced populations are often found.

² The Social Security System for Health Care refers to the reformed Sistema General de Seguridad Social en Salud (SGSSS) in Colombia.

³ Mortality refers to the number of deaths in a given time or place or the proportion of deaths to population. Morbidity refers to the relative incidence of disease.

An Overview of Displacement

Colombia accounts for almost 90 percent of Latin America's IDP population.⁴ According to Colombia's Social Solidarity Network (Red de Solidaridad Social, RSS), from 1995 to the end of 2004, more than 1.5 million IDPs were registered in Colombia, many of them repeatedly displaced.⁵ There were an estimated 140,000 new displaced persons registered in 2005.⁶ Some have been displaced en masse, but the majority flee individually or as a family; many are hesitant to acknowledge their displaced status for fear of retribution, and therefore do not register.⁷ In 2004, the International Committee of the Red Cross reported that the main expulsion of IDPs was from the following departments: Antioquia, Caquetá, Putumayo, Norte de Santander, and Cesar. In the same year, the main reception of IDPs was in Antioquia, Caquetá, Bogotá, Cundinamarca, Valle, and Santander.⁸ Ecuador receives the largest number of Colombian refugees; according to a 2004 report, a total of 18,856 Colombian people have sought asylum in Ecuador.⁹

According to the household survey system of the Colombian Catholic Church (Pastoral Social), from 1997 to 2004, the main reasons for displacement were: threat specifically attributed to illegal armed groups (45 percent), fear (22 percent), violence specifically attributed to physical aggression of illegal armed groups (14 percent), murder (seven percent), combat (six percent), and some displacement was due to unknown causes (six percent). According to the same source, the main actors causing displacement were the paramilitary (34 percent), guerrillas (37 percent), and other unknown armed actors (12 percent).¹⁰ This is consistent with the data of the Episcopal Conference of Colombia, which maintains that 85 percent of displacement is related to conflict and/or violence; and the remainder is related to poverty and unemployment.¹¹

⁴ Moreover, Colombia currently hosts the third largest internally displaced population in the world (2.9 million) just after Sudan (4 million) and the Democratic Republic of the Congo (3 million). See The Global IDP Project, *Internal Displacement: A Global Overview of Trends and Developments in 2003* (Geneva: The Global IDP project, 2004), 16.

⁵ Colombia, Ministerio de Relaciones Exteriores, *Sistema Único de Registro de la Red de Solidaridad Social*, February 4, 2005, <[http://www.presidencia.gov.co/colpositiva/feb_05/col_positiva04defebrero\(espanol\).htm](http://www.presidencia.gov.co/colpositiva/feb_05/col_positiva04defebrero(espanol).htm)>

⁶ Colombia, Agencia Presidencial para la Accion Social y la Cooperacion Internacional, "Derechos de los Desplazados," October 28, 2005, <http://www.red.gov.co/Noticias/Derechos/primer_derecho.htm>.

⁷ Marie Stopes International, Women's Commission for Refugee Women and Children, *Displaced and Desperate: Assessment of Reproductive Health for Colombia's Internally Displaced* (New York: Reproductive Health for Refugees Consortium, February 2003), <http://www.womenscommission.org/pdf/co_rh.pdf>.

⁸ Colombia is a unitary republic conformed by 32 departments, or provinces. Departments are further divided into municipalities. In 2004, the International Committee of the Red Cross attended to 66,474 new internally displaced persons (IDPs) in the above-mentioned departments. See International Committee of the Red Cross (ICRC)-Statistics, *Emergency Humanitarian Assistance*, January to December 2004.

⁹ Ministry of Foreign Affairs, Ecuador, *Annual Report of the INEC* (Instituto Ecuatoriano de Estadísticas y Censos), 2004.

¹⁰ Pastoral Social Colombian Catholic Church, "Results Report on Household Survey: Reasons for Displacement in Colombia," Bogotá, 2004. The website, Sistema de Información sobre la Población Desplazada por la Violencia en Colombia (RUT) del Secretariado Nacional de Pastoral Social, can be accessed at <<http://www.pastoralsocialcolombia.org/rut.html>>.

¹¹ Ibid.

Displacement in Colombia affects mainly the poor rural population, indigenous populations, and ethnic minorities, such as Afro-Colombians.¹² Overall, IDPs are more vulnerable to unemployment than their non-displaced counterparts, and the illiteracy rate of IDPs is triple that of the national average.¹³ The displaced population is younger than the resident one, and is therefore more economically dependant. More than a half of IDP households are female-headed.¹⁴ Pre- and post-displacement employment status has affected the health status of IDPs, as the reduction in income brought on by displacement has meant that IDPs cannot afford to address basic needs such as health.¹⁵ The insurance coverage of IDPs is below the country average and does not guarantee access to health services.¹⁶

The changing dynamic and restructuring of the violence in Columbia has created a new phenomenon: the confinement of the civilian population with a total restriction of movement and liberties and the closing of humanitarian corridors. Confined communities are generally located in rural areas far from urban centers. To date, the magnitude of the population affected by confinement is unknown, but it is estimated to have occurred in some 131 municipalities of the country.¹⁷ The government recognizes that violence and displacement are serious problems, and it proposes to address the issues by promoting and facilitating the return of IDPs. However, so far, the government has not always been able to guarantee the conditions for a successful return, including minimum safety, health, and education services, and a sustainable institutional presence.

The Sanitary and Living Conditions of IDPs

The basic sanitary conditions in which IDPs live are a critical issue as they are the main cause of most common diseases, such as ADD and ARI. Specifically, housing conditions and overcrowding pose major health concerns for IDPs, and the situation of critical overcrowding (three or more persons per room) is worse among IDPs (24 percent) than in the receptor population (14 percent).¹⁸ A major factor for the spread of disease is the poor quality of the materials with which their homes are built. IDPs live in houses with

¹² According to official information from the Colombian government, it is estimated that of the total IDPs in Colombia, 10.78 percent are Afro-Colombian and 7.85 percent are indigenous populations. See Ministry of Defense, Columbia, *Forced Displacement and Violence Report*, 2002.

¹³ Ibid.

¹⁴ Pan-American Health Organization (PAHO) and Colombian National Institute of Health (Instituto Nacional de Salud), "Estudio de Perfil Epidemiológico de Población Desplazada y Población Estrato uno no Desplazada en Cuatro Ciudades de Colombia: Montería, Soacha, Cali y Cartagena," 2002, <<http://www.disaster-info.net/desplazados/informes/ops/epepv2002/>>. The resident population refers generally to Colombians who have not been displaced due to the conflict.

¹⁵ World Health Organization (WHO), *Vulnerabilidad a la Inseguridad Alimentaria de la Población Desplazada por la Violencia en Colombia*, June 2003.

¹⁶ Ministry of Foreign Affairs, Ecuador, "Annual 2004 Report of the INEC."

¹⁷ Project Counseling Service, Colombia, *Comunidades Confinadas*, November 29, 2004.

¹⁸ Ibid.

predominantly earth floors, and the walls are installed with disposable materials, facilitating the transmission of contagious agents of infectious diseases.

The majority of IDPs live with relatives, generally at the margins of cities or in communities with a large displaced population. Commonly, when IDPs move into an area they form shantytowns, often in zones at high risk of natural disasters. For example, Florencia (Caquetá), Bucaramanga (Santander), Cartagena (Bolívar), and Chocó are examples of areas where floods occurred in 2004 and 2005 that affected mainly the most vulnerable displaced, receptor, and host populations.

In rural areas of Colombia, access to public services is minimal, and sewage systems and aqueducts are in very poor condition. In small towns near urban centers, only 30 percent of municipalities provide potable water, but the coverage is deficient and the quality of water is uncertain even in these municipalities. This situation is even more critical in areas with a high reception of IDPs. These are areas of high risk where less than half of IDPs' houses are connected to sewage systems, creating severe and numerous health problems caused by fecal contamination. As mentioned, the main cause of acute diarrhoeal diseases and parasitic infections is the lack of basic sanitary conditions.

Chocó is the department with the lowest quality of basic sanitary conditions and has the worst provision of potable water. In urban areas, only 37 percent of the population receive water by aqueducts, 58 percent consume rainwater, and five percent receive water from a river or stream. In the rural areas, only 29 percent of the population consume water from aqueducts and the quality of it is doubtful, while 57 percent consume rainwater, and 19 percent consume water from a river or stream. Both rainwater and water from a river and/or stream are frequently contaminated, and a sewer system does not exist in either rural or urban areas. In the main towns of the municipalities, especially in the capital city, Quibdó, there is an enormous deficit of rubbish collection. This situation is deteriorating continuously with the continued influx of IDPs to the urban areas as a consequence of the violence.

The Morbidity and Mortality of IDPs

The main causes of morbidity and mortality among IDPs are exacerbated by their displacement, and are related to poor living conditions—lack of basic water and sanitation, and high population density, as described above—as well as malnutrition, domestic violence, poor mental health, and a lack of access to adequate primary healthcare services. Diseases and symptoms found with the highest frequency have infectious origins, especially ARI and ADD (Table 1). For displaced children under one

¹⁹ Colombia, Gobernación de Caquetá, "Informe del Instituto Departamental de Salud," Instituto Departamental de Salud de la Provincia de Caquetá, November 2004.

year old, ARI, ADD, fever, dermatological symptoms, pneumonia, and intestinal parasitic and non-specific viral infections are the main causes of morbidity.¹⁹

The massive displacement of people in different regions of the country has increased the transmission of infectious diseases and has produced different stages of these diseases, including endemic and epidemic, in reception zones.²⁰ Throughout the country,

**Table1: Morbidity in IDPs and Host Population: 10 First Causes²¹
(Proportion per 1,000 inhabitants)**

Causes	Displacement Population	Host Population
Acute respiratory infection (ARI)	220.7	215.8
Acute diarrhoeal diseases (ADD)	81.1	64.1
Dermatological symptoms	26.2	26.9
Headache	19.9	19.2
Anaemia	12.9	12.7
Bone and muscle pain	12.6	13.9
Fever	9.7	9.6
Tooth pain	6.6	9.0
Urinary symptoms	5.0	8.6
Abdominal pain	5.5	4.1

in addition to ARI and ADD, the main infectious diseases among IDPs specifically are malaria, dengue, leishmaniasis, Chagas disease, leprosy, tuberculosis, yellow fever (along the Caribbean coast of Colombia), and sexually transmitted infections, including HIV.

The mortality rate of IDPs is six times higher than that of the general population, although many of the causes are similar.²² The first cause of mortality in the general population in Colombia, including IDPs, is homicide by firearm, a rate of 62.8 deaths per 100,000 inhabitants.²³ The second cause for the total population including IDPs is

²⁰ The massive exodus of displaced populations from regions with high malaria transmission has produced different forms of the disease, including endemic, stable and epidemic malaria in receptive zones. See PAHO, *Status Report on Malaria Programs in the Americas*, 26th Pan American Sanitary Conference, Washington, DC, September 23-27, 2003, <<http://www.paho.org/french/gov/esp/csp26-inf3-e.pdf>>.

²¹ PAHO and Universidad de Antioquia Facultad de Salud Pública, *Serie Salud y Desplazamiento en Colombia: Comparación de la Situación de Salud entre Población en Situación de Desplazamiento y Receptora en 6 ciudades. 2002-2003*, March 2005, <<http://www.disasterinfo.net/desplazados/informes/ops/seriesaldes/serieSaludYDesplazamiento01.pdf>>. The main causes of chronic morbidity in the general population are high blood pressure, diabetes mellitus and cancer, without significant differences between IDPs and host populations.

²² WHO, *Vulnerabilidad a la Inseguridad Alimentaria*.

²³ Colombia, Gobernación de Caquetá, "Informe del Instituto Departamental de Salud."

²⁴ *Ibid.*

pathologies of the circulatory system, mainly acute heart attacks and congestive heart failure, followed by pathologies of the respiratory system.²⁴

The main causes of mortality in children under one year old (including IDPs) are ARI, severe malnutrition (protein-caloric), ADD, newborn bacterial sepsis, neonatal aspiration, congenital heart malformation, newborn asphyxia, respiratory obstruction, pneumonia, and severe non-specific malnutrition.²⁵

The prevalence of chronic malnutrition is 33 percent in IDP children under five, higher than the national average of 13.5 percent for the same group.²⁶ ADD and ARI are the main causes of morbidity and mortality in children under five among displaced and marginal receptor populations because of the high prevalence of risk factors, such as a lack or short duration of breast feeding, lack of immunization, high population density, poor housing conditions, lack of basic sanitary conditions, and low access to public health services.

IDPs' Access to Health Services

The health insurance coverage of IDPs is less than that of the host or receptor populations (Table 2), which is on average less than the coverage for the general population, according to the information supplied by the Colombian Social Protection Ministry.²⁷ Approximately two out of 10 IDPs do not have any type of documentation that would allow them access to health services; affiliation with the Social Security System for Health Care is not enough to guarantee real access to health services. In addition, IDPs face institutional discrimination in accessing health services.²⁸

The vaccination rate among IDPs is very low. Vaccination coverage is lower than that of the resident marginal population, and both groups have coverage that is less than the recommended minimum coverage for the general population.²⁹ Only two out of 100 displaced children under five years old have the complete recommended vaccination scheme (Table 3).³⁰

²⁵ Ibid.

²⁶ System for the Identification and Monitoring of Food Vulnerability (SIMVA), Baseline Study: Sincelejo (Plan International, 2004).

²⁷ Colombia, Dirección General de Seguridad Económica, March 2005.

²⁸ PAHO and Universidad de Antioquia Facultad de Salud Pública, *Serie Salud y Desplazamiento en Colombia*.

²⁹ Ibid.

³⁰ ICRC, *Emergency Humanitarian Assistance*.

Variable	Displacement Population	Host Population
% under 5 years old benefiting from paid health insurance	7.7	37.2
% under 5 years old benefiting from subsidized health insurance	18.8	59.2
% under 5 years old benefiting from special IDP health care program	72.1	1.2
% of pregnant adolescents	16.3	11.9
% of adolescents with children	13.7	7.6
% of adults with paid health insurance	6.2	35.2
% of adults with subsidized health insurance	20.3	59.3
% of adults with special IDP health care program	69.2	1.6

Variable	Displacement Population	Host Population
% children with vaccination card	69.5	72.0
% children with BCG (1 doses)	84.8	95.1
% children with Polio (3 doses)	79.6	88.1
% children with HIB (3 doses)	47.6	62.4
% children with DPT (3 doses)	76.2	84.5
% children with Hepatitis B (3 doses)	76.2	84.5

The Sexual and Reproductive Health of IDPs

Forty-seven percent of displaced women are of fertile age (15 to 49 years old), a number greater than the national average of 45 percent in urban zones, as reported in 2000.³³ The rate of displaced pregnant women is almost twice that of the national rate; 30 percent of displaced teenagers have been pregnant at least once, and more than 50 percent of these pregnancies are unplanned. Fifty-two percent of these women have suffered domestic violence.³⁴

³¹ PAHO Colombia, "Health Status Survey in Cartagena, Cali, Soacha and Montería," 2003.

³² PAHO and Universidad de Antioquia Facultad de Salud Pública, *Serie Salud y Desplazamiento en Colombia*.

³³ Gabriel Ojeda, et al., *Salud Sexual y Reproductiva en Colombia: Resultados Encuesta Nacional de Demografía y Salud* (Santafé de Bogotá: PROFAMILIA, 2000), <<http://www.encolombia.com/salud/saludsex-portada.htm>>

³⁴ IOM, "Construcción de una respuesta intersectorial en salud sexual y reproductiva," HIV/AIDS Program, Global Fund to Fight AIDS, Tuberculosis and Malaria in Colombia, May 2004, <<http://www.iom.org.co/modulos/contenido/default.asp?idmodulo=67>>.

Out of every 100 displaced women of fertile age, 14 have no formal education. This is six times above the national average, and a lack of education increases the vulnerability of this group.³⁵ The proportion of displaced pregnant women who adequately practice and receive prenatal care is very low (six of 10). There is a rate of maternal mortality of 104.9 per 100,000 live births due to maternal complications, and approximately 15,000 newborns die annually during the first month.³⁶ Furthermore, the link between mobility and HIV/AIDS is related to conditions of the displacement process, such as poverty, discrimination, exploitation, separation from the family, and limited access to health care, education and social services.³⁷

The Health Situation of IDPs on the Colombian Borders

The Colombian armed conflict is characterized by an increasing number of combatants from the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the paramilitary. Consequently, one sees new scenarios of combat and occupation emerging in additional territories, mainly in zones bordering Venezuela, Ecuador, and Panama. There are specific interests in strategic geographical areas, such as the corridor between Panama and Venezuela and the corridor of the Oriental mountain range of the Andes for access to the Pacific Ocean.³⁸ In the border regions of Colombia one finds continuing human rights violations, including massacres, selective homicides, disappearances, and kidnapping.³⁹

The Colombian-Venezuelan border region is of particular concern. On the Colombian side of this border, in the region of Cúcuta, it is estimated that there are approximately 70,000 IDPs, and more than 20 percent of them are living in extreme poverty. But, due to poor inter-institutional coordination and an inadequate registration process, only 30,000 IDPs are registered in the Social Solidarity Network and only 2,000 have access to health services through Colombia's subsidized health insurance (Administradoras del Régimen Subsidiado, or ARS). The main health problems in this area are malnutrition, parasites, anaemia, lack of basic sanitation, psychological trauma, intra-familial violence, un-wanted pregnancy in adolescents, rape, abortion, child prostitution, ARI, ADD, dermatological diseases, sexually transmitted infections, and a lack of HIV/AIDS prevention education. The quality of health services is very poor; IDPs may have access

³⁵ PAHO and Universidad de Antioquia Facultad de Salud Pública, *Serie Salud y Desplazamiento en Colombia*.

³⁶ Government of Colombia, Ministry of Social Protection, "Informe de la Dirección General de Seguridad Económica," February, 2005.

³⁷ IOM, "Position Paper on HIV/AIDS and Migration," July 2004, available from <<http://www.oim.org/co/>>.

³⁸ Sergio Arboleda, "La Situación de Derechos Humanos en las Zonas de Frontera Colombiana," Seminario-Taller Internacional de Contextualización sobre Desplazamiento Forzado y Refugio en Zonas de Fronteras, Defensoría del Pueblo, ACNUR and EUROAID, Colombia, 2005, <<http://www.acnur.org/biblioteca/pdf/3823.pdf>>.

³⁹ See the article on "El Secuestro en la Frontera Colombo-Venezolana" in Chapter Seven of this volume.

to initial emergency health care, but lack access to medication, surgical procedures, and related tests for diagnosis.⁴⁰

Children under five years old make up 16.4 percent of the total IDP population in this region, and comprise the sector with the largest proportion without health insurance. Prenatal care is very low, and 26.6 percent of the children under five lack the complete vaccination scheme. The most common diseases among this group are ARI (56 percent) and ADD (35 percent). Only nine percent of female IDPs between 10 and 20 years old practice family planning, and only three of 10 women (between 36 and 49 years old) participated in cytology testing in 2004.

On the Venezuelan side, the situation is also critical, and IDPs face major security risks. Venezuelan municipalities in the border areas lack proper infrastructure and human resources in the health sector to attend to the Colombian refugee population. Colombian IDPs live in overcrowded conditions and without access to basic sanitation. The most common health problems are malnutrition, ARI, ADD, dengue fever, yellow fever, poor mental health, lack of HIV/AIDS prevention, and an increase in sexually transmitted infections. The percent of unemployment and illiteracy is very high and many children fall outside of the formal school system. Due to displacement and attendant domestic violence, the youth in this region have a tendency to become involved in drugs, alcohol, teen sex, and theft, and the number of adolescent deaths by homicide is increasing.

According to the National Secretariat of the Social Pastoral Church (Colombia) and the Cúcuta Dioceses Catholic Church (Norte de Santander, Colombia), the humanitarian crisis in the areas bordering Venezuela has become worse because the local and national government institutions cannot guarantee justice and social security.⁴¹ Part of the political sector acts with impunity, and is involved in corruption and the murder of community leaders, and is known to be linked to non-state armed actors. In the economic sector, there is a pervasive illicit trade in gasoline, food, and alcohol, as well as many incidences of trafficking in arms and persons. A lack of legitimate industry in the region ensures high unemployment. Simultaneously, there are insufficient high-quality educational opportunities, alcoholism, drug addiction, murders, hunger, domestic violence, and family disintegration.

⁴⁰ This is compounded by the concern that the most severe and dramatic problem in the city of Cúcuta is the violent death by selective homicide.

⁴¹ Regional Forum of the Social Pastoral Catholic Church, Cúcuta, Norte de Santander, Colombia, November 1, 2004.

Conclusions and Recommendations

The improvement of health conditions for IDPs requires a broad inter-sectoral approach, including both national and international cooperation, to assign adequate resources to the health sector so that it may provide sufficient protection and education for the most vulnerable populations. In accordance with the delicate and urgent health situation, mainly within the most vulnerable displaced, marginal receptor, and host populations in Colombia, as well as refugees (especially along the Venezuelan border), it is necessary to prioritize interventions to promote the following: nutrition plans focused on food security; plans to reduce infant and maternal morbidity and mortality; technical support for local health institutions to design, implement, monitor, and evaluate the development of health plans; and psychological counselling to reduce the impact of violence on mental health.

This cannot be achieved without strengthening the rule of law through sustainable health programs and prevention-related projects (in conjunction with plans to stabilize displacement). Key strategies include coordinating the implementation of the different health programs and projects with national and international actors involved in the health sector, and acting in strategic alliance with the Ministry of Social Protection (General Direction of Social Promotion) through cooperation, compromise, and technical assistance. As such, the International Organization for Migration's health strategy is being developed—within the framework of international human rights standards and public health policies—in close cooperation with the Colombian government, humanitarian actors, and development organizations. The common goal ultimately is to guarantee the right to health, and includes development in four areas: health of the family, strengthening of the health care sector, sexual and reproductive health, and psychological counselling.⁴² In accordance with this strategy, I offer the following recommendations:

1. Increase the allotment of financial and human resources to the Social Security System for Health Care to improve health insurance coverage (currently at only 46 percent) and the quality of health services for displaced families. This includes improving infrastructure, facilitating the opportunity for medical procedures, and reducing the time required to access the health care system at the local and municipal levels.

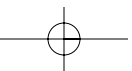
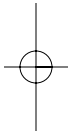
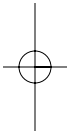
⁴² In addition, IOM Colombia is developing its HIV and AIDS strategy within the framework of the National Strategic Plan, where mobile populations are identified as especially vulnerable to the epidemic in the national context. Prevention and attention strategies are also mainstreamed into other IOM projects in Colombia, such as the ex-combatant children program, the IDP program, and the trafficking and reintegration programs. See IOM, Health Department, Health Strategy of IDPs, Bogotá, 2005-2006, <<http://www.oim.org.co>>.

2. Implement health programs and/or projects with the following priorities: mental health and psychosocial stability; malnutrition and food security; water and sanitation; reproductive health; preventable infectious diseases (especially ARI and ADD) and immunization; health education promotion and preventative programs; and HIV/AIDS and STI diagnosis, prevention, and treatment.
3. Promote community participation in the design, implementation, and evaluation of the health projects with knowledge of and respect for the cultural diversity of the involved beneficiaries; involve community leaders in the development of different health projects and programs and build capacity among community members to act as health promoters.
4. Strengthen the alliances between academia and the public health sector through the development of participative methodologies and communication strategies appropriate to the socio-cultural characteristics of the intended beneficiaries of health care.
5. Promote a holistic (mind and body) approach to health care to improve the well-being of the IDPs; psychological counselling and technical and administrative assistance must be considered in health projects to diminish the vulnerability of the displaced populations.
6. Promote the integration of the different groups of migrants (IDPs, refugees, and marginal receptor populations) affected by the displacement.
7. Overall, inter-institutional coordination has to be considered in the design and execution of all health projects and oriented to the welfare of the community.

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Chapter 7

La Frontera Colombiana: Oeste y Este

Article 7.1 Migración Forzada y Fronteras Calientes:
El Caso Colombo-Ecuatoriano
Fredy Rivera Vélez

Article 7.2 El Secuestro en la Frontera
Colombo-Venezolana - *Lancelot Cowie*

Migración Forzada y Fronteras Calientes: El Caso Colombo-Ecuatoriano

7.1

Fredy Rivera Vélez

Introducción

La diversidad de situaciones económicas, políticas y humanitarias relacionadas con los temas migratorios constituye actualmente una parte importante de las agendas de trabajo de entidades internacionales, estados y organizaciones no gubernamentales. En América Latina y el Caribe se ha prestado atención a los flujos financieros e impactos productivos que representa el envío de remesas hacia las economías de los países receptores de esos recursos, así como a las consecuencias psicológicas, familiares, generacionales y educativas experimentadas por la población local en virtud de los fenómenos migratorios; no obstante, en los últimos años ha aparecido una marcada preocupación internacional por la relación entre los temas migratorios y las cuestiones de seguridad nacional en distintas zonas del hemisferio.

En el nuevo diseño de la política de defensa y estrategia de seguridad nacional de los Estados Unidos, dado a conocer en septiembre de 2002, el unilateralismo constituye la figura prioritaria de la política exterior, al definir el terrorismo, el narcotráfico y las acciones militares preventivas como mecanismo de liderazgo continental. En ese contexto, los países latinoamericanos, especialmente los andinos, han pasado a ser objeto de presiones políticas y económicas para establecer lógicas comunes de cooperación en materia de seguridad regional, que incluyen controles severos sobre los flujos migratorios por tierra y por las distintas rutas marítimas. Si bien hasta ahora no existen medidas militares específicas en torno a los temas migratorios, ellas están diluidas en las acciones y discursos de la guerra antidrogas que el gobierno estadounidense implementa en relación con la región andina.

Además, los impactos, en términos de migración forzada, de la estrategia de seguridad regional se perciben como efectos colaterales de esa perspectiva unilateral referente al tráfico de drogas, problema que comparten los países productores y consumidores. Así, las migraciones forzadas de la población colombiana a Ecuador deben ser concebidas como resultado de una estrategia de seguridad regional aplicada en ambos países que está violentando los derechos humanos de las personas y que debe ser tratada urgentemente, en varias dimensiones, desde la perspectiva de políticas preventivas de conflictos.

En el marco de recurrentes crisis políticas e ingobernabilidad que han truncado el mandato de recientes presidentes constitucionales del Ecuador, de una paulatina desinstitucionalización del estado y de una creciente conflictividad sociopolítica, el tema del combate al narcotráfico y los asuntos de seguridad nacional asociados al manejo de la frontera norte, constituyen, actualmente, uno de los principales temas de agenda que deben afrontar las autoridades y la sociedad ecuatoriana en conjunto. Si se suma a esta situación la injerencia indirecta del país en el Plan Colombia y las características que ha adquirido la fluctuante relación bilateral con los Estados Unidos y Colombia se obtendrá un panorama bastante denso, incierto y de resultados impredecibles para el futuro de la región andina.

En efecto, si en un primer momento el problema del narcotráfico estaba referido exclusivamente a las acciones netamente policiales y judiciales enmarcadas en la Iniciativa Andina, en los últimos años el asunto ha cobrado mayor significación, por la complejidad de su tratamiento y por la cantidad de instituciones afectadas y de percepciones sobre su presencia, ya que a raíz de la participación indirecta del Ecuador en el Plan Colombia, la política exterior del país ha tenido que hacer frente a una serie de retos y contingencias planteados por los intereses de seguridad nacional de los Estados Unidos en la región.

En el caso ecuatoriano, el tratamiento del problema del narcotráfico y el manejo de la frontera norte están relacionados con varios factores:

- Presencia de redes de comercio clandestino de precursores químicos, armas, municiones y explosivos destinados a los distintos actores armados en Colombia;
- Actividades de lavado de dinero que no han podido ser cuantificadas con certeza, especialmente por tener el Ecuador una economía dolarizada y un sistema financiero con poco control estatal que ha estado marcado por actos de corrupción, informalidad e impunidad;
- Modificaciones y vacíos interpretativos en el sistema de administración de justicia relacionados con el narcotráfico, que han promovido tensiones y distorsiones en la esfera legislativa;
- Fortalecimiento de los organismos policiales y sus capacidades de interdicción en distintas esferas de la sociedad, con una perceptible tendencia a la militarización de tales organismos;
- Intervención de las Fuerzas Armadas (FF.AA.), con acciones que sobrepasan el asunto del narcotráfico para canalizarse hacia la prevención de la violencia proveniente de Colombia y sus distintos actores armados;
- Retos a la plena exigibilidad e implementación del sistema de derechos humanos en las regiones fronterizas afectadas por el Plan Colombia;

- Escasa rendición de cuentas y transparencia de gestión con que operan varias instituciones ecuatorianas relacionadas con el tema del narcotráfico y la seguridad, asunto que vulnera las reglas de gestión democrática, afectando a los distintos sectores sociales; y
- Creciente presencia de personas de origen colombiano que huyen de su país para solicitar refugio y protección en el Ecuador, factor que ha suscitado una serie de impactos en la institucionalidad y en la vida cotidiana de la sociedad ecuatoriana.

En estos campos conflictivos se están procesando las dimensiones e interpretaciones sobre la seguridad nacional, la migración forzada de población colombiana, el manejo de los derechos humanos y las modalidades de gestión de los valores democráticos y las instituciones en el Ecuador.

Iniciativa Regional Andina, Plan Colombia y Efectos para Ecuador

Los EE.UU. incorporaron el tema del combate al narcotráfico a sus estrategias de seguridad nacional hace más de dos décadas, para dar respuestas a problemas asociados con el incremento del consumo interno norteamericano. En 1986 se adopta una Directiva de Seguridad Nacional que declara al tráfico de drogas como amenaza “letal” para los Estados Unidos, y en 1989 el ex-Presidente George Bush lanza la “Iniciativa Andina.” Posteriormente, en 1992, el mismo presidente, en la cumbre de San Antonio, se asegura la cooperación de los otros países de la región para el control de espacio aéreo y marítimo, fiscalización de productos químicos, y programas de fortalecimiento de la administración de justicia, el lavado de dinero y el desarrollo alternativo.¹

La “Iniciativa Andina,” al estar sujeta a directrices de seguridad nacional, justifica el uso del poder militar para defender los intereses estadounidenses contra estados que sean percibidos como hostiles y no cooperativos. Esta visión del fenómeno del narcotráfico condujo inevitablemente a gestar una política exterior unilateral que privilegia la interdicción y las acciones destinadas a combatir la oferta de los países productores, desconociendo el carácter interdependiente, multicausal y plural del narcotráfico y ejerciendo presiones mediante la “certificación” como el sistema de preferencias arancelarias y las potenciales sanciones económicas.²

En este escenario, los gobiernos ecuatorianos de los últimos años han acogido los temas relacionados con el narcotráfico y la seguridad regional como condicionamientos, antes que como un interés prioritario nacional. Este factor ha llevado a que el país someta su

¹ César Montúfar, “El Ecuador entre el Plan Colombia y la Iniciativa Andina: Del Enfoque de los Efectos a una Perspectiva de Regionalización” en *Turbulencia en los Andes y Plan Colombia*, eds.: César Montúfar y Teresa Whitfield (Quito: Universidad Andina Simon Bolivar, CEN, 2003).

² Juan Gabriel Tokatlán, “Colombia, el Plan Colombia y la Región Andina. ¿Imposición o Concertación?” *Nueva Sociedad* 173 (Caracas, 2001).

relación bilateral a una lógica que incluye su participación en las estrategias norteamericanas de combate contra el narcotráfico y el terrorismo, porque independientemente de la imposición de escenarios de negociación y las reglas de juego imperantes entre los estados del hemisferio, la discusión sobre la lucha contra las drogas se realiza bajo el signo de una retórica común derivada del “consenso restringido” sobre el tema.³

En efecto, Ecuador ha incrementado su participación en la estrategia de seguridad regional diseñada por los EE.UU. a través de varios convenios y acciones, como el acuerdo firmado en 1999 para la utilización de la base militar aérea de Manta—FOL (Forward Operating Location, según la nomenclatura norteamericana).⁴ En esa base militares estadounidenses realizan tareas de monitoreo, información para la interdicción y control que prácticamente militarizan el tema del combate a las drogas y sus ámbitos colaterales, tales como los flujos migratorios por mar.

Los factores que promovieron la internacionalización del conflicto interno colombiano son la implementación de la Iniciativa Andina en la región y el financiamiento del Plan Colombia; la estrategia de Bogotá, con la mirada aprobatoria de los EE.UU., radica en convocar a la sociedad civil internacional y a los gobiernos aliados—asumiendo el principio de corresponsabilidad— porque percibe sus propios límites institucionales y de capacidad de respuesta ante el conflicto interno.⁵

Si bien el Presidente Pastrana ya había diseñado el “Plan Colombia,” con el nombre de “Plan de Desarrollo: Cambio para Construir la Paz 1998-2002,” dicho plan consiste actualmente en un conjunto de acciones y estrategias basadas en su mayor parte en una concepción militarista para enfrentar la violencia interna en Colombia, ya que el 80 por ciento del presupuesto del Plan aprobado por el Congreso de los EE.UU. está centrado en el componente militar. En este contexto, el Plan Colombia debe verse no

³ Adrián Bonilla utiliza la noción de “consenso restringido” para referirse al conjunto de valores e imágenes que las élites de los países dependientes comparten con los valores dominantes del país central.

⁴ Hay una serie de convenios y acuerdos firmados en estos últimos años sobre el tema. Recientemente, en octubre de 2004, se firmó el *Convenio de Cooperación entre la República del Ecuador y los Estados Unidos de América Relacionado con el Fortalecimiento de la Capacidad Institucional de la República del Ecuador para Controlar la Producción y Tráfico de Drogas Ilícitas* con un monto de más de 19 millones de dólares; este convenio está destinado, básicamente, a construir nuevas bases para la Policía, a incrementar en un 10 por ciento la cantidad de decomisos respecto al año anterior, dotar de equipos y vehículos para las FF.AA. y la Policía, aumentar en un 12 por ciento el número de personas detenidas acusadas de narcotráfico y conexos, entre los objetivos más importantes. Cabe mencionar que el convenio destina seis millones de dólares a “Proyectos militares” sin especificar su contenido. El Ecuador también tiene firmado el ATPDA (“Ley de promoción comercial andina”), que entró en vigencia en el año 2002 y que culminará en diciembre de 2006. Este convenio busca incentivar las exportaciones de los países andinos, entre ellos Ecuador. Los Estados Unidos otorga unilateralmente esa asistencia y puede suprimirla ad libitum.

⁵ Colombia recibió entre 1989 y 1999 US\$1,388 millones en asistencia antidrogas y de seguridad proveniente de los EE.UU. Para 2003 recibió US\$860,3 millones, de los cuales US\$519,2 millones corresponden a asistencia militar y US\$123,1 millones a ayuda policial. El presupuesto solicitado para 2005 es de US\$574,15 millones y está sujeto a la aprobación del Senado de los Estados Unidos. Ver Juan Gabriel Tokatlián, 60.

sólo como una continuación de la política antinarcóticos propuesta por EE.UU. dentro de la Iniciativa Andina, sino como una estrategia de política exterior del estado colombiano para pedir a sus vecinos que declaren a los grupos armados como terroristas; las respuestas contrarias sobre este tema obedecen a sus posibles consecuencias negativas, incluso dentro de la misma Colombia, por el peligro que representa el incremento de los niveles de violencia.⁶

Desde esta perspectiva, el Ecuador se enfrenta con un panorama bilateral y regional complejo, sujeto a las dinámicas y modalidades de procesamiento del conflicto interno en Colombia, situación que afecta a todo el Ecuador, y en particular a las zonas fronterizas. Varios aspectos merecen mencionarse.

La finalización del conflicto limítrofe con el Perú en 1998, hizo pensar en la reducción del presupuesto militar y en la asignación de nuevas tareas a las FF.AA. Sin embargo, el calentamiento de las fronteras norteñas generó movilización de recursos y personal castrense para dotar de seguridad a la población ecuatoriana, hecho que ha vulnerado los derechos humanos de las personas asentadas en esos espacios limítrofes.⁷ De hecho, los temas de seguridad nacional y seguridad ciudadana se han mezclado al punto de que surgió la necesidad de establecer dentro del territorio nacional “zonas de reserva de seguridad” en que las autoridades militares realizan controles demográficos y jurídicos especiales que prevalecen sobre las potestades de las autoridades civiles.

La firma del acuerdo para la utilización de la Base de Manta en 1999, entre Ecuador y los EE.UU., involucró directamente al país en la estrategia regional de seguridad. La ejecución del Plan Colombia, sobre todo en el rubro fumigaciones, trajo considerables daños ecológicos para la Amazonía ecuatoriana, junto con el consiguiente deterioro de las condiciones de vida de las poblaciones fronterizas.⁸

Las relaciones bilaterales entre Ecuador y Colombia han pasado por momentos de tensión en varios aspectos relacionados con la aplicación del Plan Colombia. Uno de ellos fue el pedido formal del gobierno ecuatoriano de no fumigar a menos de 10 kilómetros de la frontera con Ecuador; esta solicitud fue presentada y rechazada en julio de 2001. Además, el país tuvo que imponer medidas unilaterales migratorias, tales como la presentación obligatoria de certificados de antecedentes penales (“pasado judicial”) a las personas colombianas que deseen ingresar al país, reglamentación que vulnera los acuerdos de libre tránsito establecidos por los miembros de la Comunidad Andina de Naciones y que disgustó al gobierno de Bogotá.⁹

⁶ El Defensor del Pueblo de Colombia advirtió que de concretarse dicha estrategia, la posibilidad de una solución pacífica que no contemple una confrontación armada sería nula. *El Comercio*, Quito, Sec. A, 16 de febrero de 2003.

⁷ Los gastos de defensa del Ecuador pasaron de 490 millones de dólares en 2002 a 690 millones en 2003. *El Comercio*, Quito, 14 de febrero de 2003, 6-A.

⁸ Hay varios informes elaborados por organizaciones no gubernamentales (ONG) nacionales e internacionales sobre el tema. Ver Elsa Nivia, “Las Fumigaciones Aéreas sobre los Cultivos Ilícitos Sí Son Peligrosas,” *Rapalmira*, Colombia, 17 de mayo de 2001.

Las contingencias del proceso de guerra o construcción de la paz en Colombia, que supone avances y retrocesos, pero también puntos “muertos” o ruptura de las negociaciones entre el gobierno y los grupos armados, no han eliminado la lógica militar que el gobierno de Bogotá aplica para enfrentar el conflicto; factor que ha contribuido a desencadenar el fenómeno de las inmigraciones forzosas de ciudadanos colombianos hacia el Ecuador. Este último aspecto reviste una importancia enorme, porque si bien la violencia colombiana y los efectos sobre la población son de carácter multicausal, en los últimos seis años se han sucedido hechos clave que modificaron el escenario de conflicto en Colombia y sus correlatos en la dinámica social y política de la franja de frontera. Estos hechos relevantes están representados cronológicamente por: a) el paro armado que declararon las Fuerzas Armadas Revolucionarias de Colombia (FARC) en septiembre de 2000 tras varios intentos y conversaciones de paz entre las Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo (FARC-EP) con el pasado gobierno del Presidente Pastrana desde 1998; b) la entrega de la zona de distensión de San Vicente del Caguán al mencionado grupo armado—enero de 1999—paralela a la implementación del Plan Colombia en su línea netamente militar que ha tenido varias fases, incluida la reciente versión denominada “Plan Patriota” que intensifica las acciones militares mediante el uso de la Fuerza de Tarea del Sur entre los departamentos del sur en la frontera con el Ecuador; y c) el fracaso de las conversaciones de paz en febrero de 2002, hecho de suma importancia para los flujos de inmigrantes forzosos en el país y la calificación de terroristas a las FARC-EP por parte del gobierno de Uribe.

Los temores suscitados por la ejecución del Plan Colombia y el acuerdo de la Base de Manta hicieron que muchas organizaciones de la sociedad civil se pronunciaran en contra de la participación activa del Ecuador en operaciones militares; sin embargo, nunca se cuestionó si realmente la droga es un problema real para el Estado y la sociedad ecuatoriana, por el contrario, se da por supuesto que representa una amenaza a la seguridad y a la moral colectivas.

En este sentido, los cuerpos sociales, las organizaciones de derechos humanos y movimientos ecologistas se oponen a cualquier tipo de inserción del Ecuador en acciones derivadas del Plan Colombia por los efectos negativos que produciría en el país. Las intervenciones de estos actores se orientan, dependiendo de la naturaleza de la organización, hacia cuatro temas específicos. El primero se refiere a las repercusiones que el Plan Colombia genera en términos de seguridad ciudadana; el segundo se enmarca en acciones destinadas a denunciar violaciones de derechos humanos por parte de

⁹ Tal medida se adoptó durante el período del ex-Presidente Gustavo Noboa, que acogió las presiones y demandas de autoridades y distintos sectores de la sociedad asentados en las zonas fronterizas con Colombia. Este tipo de percepciones y criterios que están circulando frente al problema migratorio, rebasan a las personas comunes; se vuelven más graves cuando se los plantea como un asunto normal y natural, en clara violación de los derechos humanos de la población inmigrante y refugiada y que además vulneran los tratados internacionales que el Ecuador ha firmado y ratificado en el ámbito del derecho internacional.

organismos policiales y militares ecuatorianos; el tercero, se centra en los efectos nocivos que producen las fumigaciones en el Putumayo en el ecosistema fronterizo del Ecuador; por último, los problemas institucionales y de relación bilateral con el país vecino que genera el incremento de personas de nacionalidad colombiana que solicitan el estatus de refugiado.

Frontera Norte: El Problema del Refugio y las Migraciones Forzadas en Ecuador

Históricamente los flujos migratorios de las poblaciones colombianas a Ecuador forman parte de un proceso del período republicano que comienza en 1824 con la adscripción de parte de la Real Audiencia de Quito al departamento de Cauca, del entonces conocido como departamento de Ecuador. Si bien la conformación de los estados nacionales implicó la delimitación territorial de acuerdo a sus intereses y a sus procesos políticos internos, existían desde tiempo atrás una serie de continuidades culturales y étnicas que establecieron dinámicas propias en las poblaciones asentadas en las zonas de frontera sur colombiano y norte ecuatoriano. Esas continuidades se las pueden observar hasta la actualidad a través de una serie de redes de parentesco, intercambios comerciales y culturales y flujos migratorios temporales que se han acoplado a las lógicas productivas de los sectores económicos a ambos lados de las fronteras.

La presencia de la población inmigrante de origen colombiano se relacionó de varias maneras con factores económicos que han afectado al país. En las primeras décadas del siglo veinte la explotación del caucho y la madera en los bosques tropicales representó una actividad atractiva para las familias colombianas cercanas a las provincias de Esmeraldas y Napo. Posteriormente, en las décadas de los 60 y 70, el desarrollismo, ligado a las leyes de reforma agraria y colonización, impulsó el poblamiento de las franjas limítrofes bajo la categoría de fronteras vivas, aspecto que no estuvo distante de la concepción de seguridad nacional. A la par, la producción petrolera, localizada en las provincias amazónicas, constituyó un factor de atracción adicional para ciudadanos colombianos que buscaban una fuente de sustento para sus familias.

En los últimos veinte años, además de las inmigraciones forzosas producidas por la violencia en territorio colombiano, se pueden observar las siguientes formas de flujos migratorios hacia Ecuador, ya que muchas de ellas, como mencionamos, se producen en el marco de las vinculaciones históricas, sociales y culturales a ambos lados de las fronteras.

Existen migraciones producidas por las semejanzas étnicas y culturales de las poblaciones asentadas en ambos lados de las demarcaciones fronterizas. Este es el caso de las comunidades indígenas de la amazonía ecuatoriana y colombiana, como las de los Cofanes, Secoyas y Sionas y los pueblos afrodescendientes localizados en el suroeste del departamento de Nariño y en la provincia de Esmeraldas, unidad geográfica que integra

una forma de identidad y unidad cultural vinculada a través de las cuencas hidrográficas.¹⁰ A estas comunidades étnicas hay que agregar el grupo Awa, establecido a ambos lados de la frontera, junto al río San Juan.

Otro tipo de inmigración tradicional interandina y mestiza se ubica entre el serrano departamento de Nariño y las provincias de Carchi e Imbabura. Estas vinculaciones son muy viejas y se han producido por fuertes nexos económicos entre poblaciones fronterizas. De hecho, hay dificultad de categorizar a estas dinámicas migratorias por su carácter temporal, ya que están ligadas a los procesos de comercio informal y ciclos de oportunidades que brinda el comportamiento de las economías fronterizas. A raíz de que Ecuador adoptó el dólar como moneda nacional, se han intensificado los flujos migratorios temporales, situación que ha impedido la elaboración de estadísticas confiables para las autoridades gubernamentales y ha contribuido a retrasar el otorgamiento de la categoría de refugiado a las personas colombianas que lo solicitan.¹¹

Existe también un tipo de inmigrante que han optado por radicarse en Ecuador hace muchos años y que tienen todos los requisitos legales para ser considerados residentes y establecerse en el país. Es una inmigración de mediana escala proveniente de grandes y medianas ciudades del interior de Colombia que han formado redes de solidaridad y parentesco, y que es un factor de atracción de familiares y amigos. Estas personas se ubican actualmente en varias ciudades del Ecuador.

Finalmente existiría un número no determinado de ciudadanos colombianos en calidad de ilegales, entre los que se encontrarían refugiados potenciales que por miedo a las autoridades ecuatorianas o a las posibles venganzas de los grupos armados en territorio ecuatoriano no son visibilizados en términos estadísticos. Estas personas, por otra parte, no acuden a ninguna forma de registro o de protección jurídica e institucional, por desconocimiento de sus derechos, de la legislación nacional e internacional, o simplemente porque consideran la violencia como una forma natural de las relaciones sociales.

El desplazamiento y el refugio de población colombiana que escapa de la violencia política y social es un indicador muy sugerente y revelador de la intensidad que está

¹⁰ Es difícil designar como inmigración al proceso de intercambio ritual y familiar—incluso temporal—de poblaciones indígenas que se relacionan hace siglos en espacios físicos que fueron incorporados a los espacios nacionales en cada país; no obstante, la obligación de ser ciudadanos y la pertenencia a un estado determinado obligan a una diferenciación y ubicación espacial. Ver FLACSO Ecuador, *Informe Ubicación Geográfica, Perfiles y Percepciones del Refugio Colombiano en el Ecuador* (Quito: FLACSO, Octubre 2002).

¹¹ Este es el caso de las estadísticas de la Policía Nacional de migración. Por lo general, cuando se revisa la cantidad de personas de origen colombiano que han entrado y salido del país legalmente por los distintos puntos en que existe registro, se presenta una diferencia grande entre ingresos y salidas. Cabe la posibilidad de que los datos de registro mencionen entradas y salidas sin especificar si es la misma persona; en otros términos, una persona puede entrar al país pero si sale por un paso ilegal—no oficial—queda sin registro ese dato.

tomando el conflicto en ese país, conflicto que dejó de ser una cuestión privativa de Colombia para constituirse en un problema regional complejo.

En los últimos años mucho se ha especulado sobre las cifras de personas refugiadas en territorio ecuatoriano. Al margen de la desproporción en los números y el desconocimiento de las posibilidades estructurales del país para recibir inmigrantes, es sintomático y preocupante que una ponderación alegre pueda servir para diseñar planes de contingencia, proyectos de intervención y hasta políticas públicas en nuestro territorio.

La vinculación entre conflicto colombiano y presencia de refugiados en Ecuador es inequívoca. Según el análisis de los datos del Censo efectuado en el 2001, los picos estadísticos más altos de ingreso de colombianos al país se registran a partir de 1999, año en que se inicia la ejecución del Plan Colombia, pues de las 51.556 personas declaradas, 10.052 lo hicieron en el período 1998-2001.¹² De igual forma, al revisar las estadísticas proporcionadas por la Oficina de Refugiados del Ministerio de Relaciones Exteriores, las solicitudes de refugio se encuentran asociadas a la misma dinámica y temporalidad de los recientes procesos armados y políticos colombianos: ejecución del Plan Colombia y finalización de las conversaciones de paz en febrero de 2002.

De acuerdo con las últimas informaciones proporcionadas por dicha entidad, se presentan en el siguiente cuadro las cifras sobre refugio en Ecuador pertinentes a mayo de 2005:

Solicitudes de Refugio, 2000-2005							
Ministerio de Relaciones Exteriores de Ecuador, Oficina de Refugiados							
Gran Total							
Año	Solic.	Acep.	Nega.	Cadu.	Canc.	Rea.	Repa.
2000	475	390	60				36
2001	3017	1406	394	999			87
2002	6766	1578	1199	1586		4	7
2003	11463	3270	4392	3606		157	4
2004	7935	2420	4200	1930		379	4
2005	2819	1188	1419	1240	3		0
2000-2005	32475	10252	11664	9361	8	540	138
Porcentaje	100	31.57	35.92	28.83	0.02	1.66	0.42
Elaboración Hernando Ortega							

¹² Instituto Ecuatoriano de Estadísticas y Censos (INEC), *VI Censo de Población y V de Vivienda*, Quito, 2001.

Convenciones:

TMP	Protección temporal
CAD	Declarados en abandono (no pueden ser reabiertos)
REU	Reunificación familiar
REA	Reasentamiento (un tercer país recibe a los refugiados)
REP	Repatriación
CAN	Cancelados (falsedad comprobada o viajes constantes al país donde sufrió persecución)
CES	Cesados (estipulado en Convención de Ginebra de 1951).

No es posible ofrecer información exhaustiva y detallada sobre las causas por las cuales las personas de origen colombiano solicitan refugio en el país. Entre los factores principales que limitan este acceso se encuentran la confidencialidad de los datos y el temor a las represalias de que pueden ser objeto los solicitantes, especialmente en las zonas de frontera; no obstante, un estudio elaborado en diciembre de 2003 por Carmen Pérez da cuenta de las siguientes causas:¹³

- Violencia generalizada, amenazas y reclutamiento forzoso de menores de edad para los distintos grupos armados;
- Amenazas personales a titulares de cargos públicos;
- Enfrentamientos de grupos armados y efectos de las fumigaciones en la salud y los recursos naturales;
- Masacres, secuestros, violaciones y torturas;
- Pobreza generalizada, abandono total, por parte de los gobiernos, de las comunidades de frontera;
- Políticas de seguridad del gobierno de Uribe, que llegó a declarar a las organizaciones de derechos humanos como “traficantes de derechos humanos;”
- Los efectos de las decisiones de la Cámara de Representantes de Colombia que aprobó la reforma de la Constitución para otorgar poderes de policía judicial a las Fuerzas Armadas. Esto tendría un impacto catastrófico sobre los derechos humanos, ya que permitirá al Ejército realizar allanamientos, escuchas telefónicas y detenciones sin orden judicial. El nuevo régimen se conoce como “Estatuto Antiterrorista;” y
- Estrategia paramilitar y militar coordinada para silenciar organizaciones civiles y de derechos humanos que estén en contra de estas políticas.

¹³ Carmen Pérez, “La Situación de Refugio y Desplazamiento Forzado en Ecuador,” *Aportes Andinos* (Quito: Universidad Andina Simon Bolivar, octubre de 2003).

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La misma fuente menciona los departamentos y ciudades que en el período 2002-2003 expulsaron inmigrantes forzados: Putumayo: Villa Garzón, San Miguel, La Honda, El Empalme, Puerto Leguizamo, Puerto Asís, Piñuña Negra, El Placer, La Hormiga, Puerto Caicedo, El Tigre, Mocoa y Valle del Guamaes; Caquetá: Belén de los Andaquíes, El Doncello, Florencia, Puerto Pico y San Vicente del Caguán; Antioquia: Cañón de Alicaute, Pto. Berrio y San Carlos; Cauca: Buenaventura y Valle; Cundinamarca: Zazaima; Meta: Uribe; Casanare: Casanare; y Nariño: Pasto.

En términos porcentuales, para el 2002 las personas colombianas que llegaron a Ecuador procedían de Nariño en un 24 por ciento; Cauca, 23 por ciento; Putumayo, 12 por ciento, y Cauca, 12 por ciento. Las principales rutas de entrada están localizadas en las provincias ecuatorianas de Esmeraldas, Carchi y Sucumbíos. Sin embargo, hay que considerar que las cifras relacionadas con los lugares de origen pueden haber cambiado desde el 2003 cuando se acrecentaron los combates en los departamentos de Nariño y Putumayo por efectos del Plan Patriota entre los distintos actores armados; de hecho, parece existir actualmente un giro en los escenarios de conflicto armado desde zonas del Putumayo hacia los corredores al Pacífico que incluiría las selvas de Nariño y su intrincada red fluvial que limita con Ecuador, aspecto que pondría en mayor vulnerabilidad al norte de la provincia de Esmeraldas.¹⁴

Al considerar esas perspectivas, el incremento de solicitudes de refugio no puede disociarse de los problemas conexos a la presencia de población colombiana. En el Ecuador, la tradicional convivencia fronteriza con personas de origen colombiano no se había constituido en factor de tensión y conflicto, pero recientemente es frecuente observar percepciones ancladas en la xenofobia, el racismo y la exclusión. De hecho, recientes investigaciones demuestran que la actual ola de inmigrantes colombianos está asociada al uso de figuras discriminadoras “las mujeres colombianas se dedican a la prostitución...ellos (los colombianos) nos quitan las fuentes de trabajo...la presencia colombiana sólo trae violencia y delincuencia...deberían ponerlos en un campo de vigilancia...se deben cerrar las fronteras y pedirles visa de ingreso..., etc.”¹⁵

Este tipo de percepciones y criterios que están circulando frente al problema migratorio rebasan a las personas comunes y se vuelven más graves cuando los representantes institucionales de las cámaras de la producción, la Policía, los organismos de control migratorio y los gobiernos locales lo plantean como un asunto normal y natural, en clara violación de los derechos humanos de la población inmigrante y refugiada, que además vulnera los tratados internacionales que el Ecuador ha firmado y ratificado en el ámbito del derecho internacional.

¹⁴ La fuerza naval ecuatoriana creó en el 2004 un nuevo comando y batallón de infantería de marina, con sede en San Lorenzo.

¹⁵ FLACSO, *Informe Ubicación Geográfica, Perfiles y Percepciones del Refugio Colombiano en Ecuador*.

En términos generales, los problemas más urgentes que enfrentan los inmigrantes colombianos en Ecuador se derivan de la fragilidad de las economías locales del país, las reducidas oportunidades que brinda un sistema monetario dolarizado que genera precios incompatibles con el poder adquisitivo de la población, y un mercado laboral prácticamente en crisis desde la perspectiva del empleo. En este contexto, la pobreza, medida por las Necesidades Básicas Insatisfechas (NBIs) es del 49.5 por ciento para la población colombiana que habita en el país, y en las zonas de frontera ese coeficiente fluctúa entre el 60 por ciento y el 92 por ciento, lo que muestra que la situación se vuelve más difícil para las personas que han llegado al Ecuador en busca de protección y refugio.¹⁶

Seguridad y Derechos Humanos

Se propone la noción de “segurización” para revelar un proceso en que las fronteras semánticas del concepto de seguridad se tornan ambiguas y su intención primera, es decir la protección del individuo y la trama social, es colonizada y atrapada por las lógicas de la defensa militar y el control policial. En estos términos, la “segurización” denota una situación en que con el pretexto de la seguridad se justifica una serie de prácticas que erosionan la democracia, sus valores y la propia condición de protección que le da sentido.

En este mismo campo de análisis existe un problema adicional, relativo al campo de la administración estatal sobre el refugio y la migración forzada, ya que el embrollo institucional es tan grande que la solución se traduce en más “segurización” y desconfianza sobre la actuación de las instituciones y los valores democráticos. En este contexto surge la interrogante de si el sistema democrático en Ecuador, y en especial la clase política, poseen la capacidad necesaria para establecer mecanismos adecuados de gestión, rendición de cuentas y transparencia sobre sus entidades, mucho más sobre las que tienen la responsabilidad constitucional de generar y promover el orden y la paz pública.

Estos tipos de situaciones confirman la debilidad institucional que el país presenta sobre el control de las políticas externas en materia de seguridad relacionadas con el combate al narcotráfico. Es por ello que la continuidad de estos tipos de situaciones vulnera no sólo el reconocimiento y la legitimidad de las instituciones encargadas de las acciones sobre este problema, sino que vuelve inoperantes al conjunto de valores que teóricamente constituyen el “deber ser” de todo régimen democrático.

¹⁶ Ibid.

Conclusiones

En los últimos años el Ecuador ha incrementado su participación en la estrategia de seguridad regional impulsada por el gobierno de los EE.UU. La presencia de elementos estadounidenses en la base militar de Manta; las acciones encaminadas a reforzar las acciones policiales y castrenses en las zonas de frontera norte; las medidas de control aplicadas a la población que han repercutido en la esfera económica y política; los efectos ecológicos y de salubridad originados por las fumigaciones, destinadas a reducir los cultivos de hoja de coca en territorio colombiano; y las repercusiones del proceso de “segurización” en el sistema de derechos humanos, constituyen una parte importante de las implicaciones que ha debido afrontar el país por su incursión en el Plan Colombia.

Esta intervención debe ser vista en un contexto marcado por la debilidad y fragilidad del estado y de varias de las instituciones relacionadas con el combate al narcotráfico y con la atención a la población colombiana migrante. El tema del narcotráfico, vinculado con la interpretación dada a la seguridad nacional, está promoviendo una serie de carencias/debilidades democráticas e ingobernabilidad expresadas en la falta de control de las entidades gubernamentales y la escasa rendición de cuentas que debe hacerse ante la ciudadanía.

La falta de transparencia, la existencia de corrupción en el sistema judicial y policial y lo intrincado de los procedimientos de las entidades encargadas del control del fenómeno del narcotráfico, constituyen factores que contribuyen a crear una imagen de ilegitimidad e impunidad que vulnera el sistema de derechos humanos de la población ecuatoriana. En consecuencia, los efectos más perversos de la lucha antinarcóticos y del Plan Colombia no se expresan exclusivamente en los registros cuantitativos de los instrumentos de análisis social, sino en las modificaciones que estas estrategias producen en la estructura de relaciones del tejido social en Ecuador, puesto que los “daños colaterales” se manifiestan después, cuando no hay nada con que hacer frente a los efectos del proceso de “segurización.”

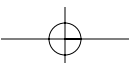
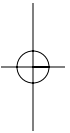
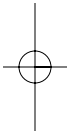
Recomendaciones

1. Es necesario crear mecanismos de observación internacional a través de la Organización de Estados Americanos (OEA) para que alerten sobre la conflictividad que se vincula con los efectos migratorios de las estrategias de seguridad regionales y andinas. Estos observatorios de conflictividad sobre seguridad y migración pueden estar compuestos por representantes estatales, organizaciones no gubernamentales (ONG) internacionales de derechos humanos y entidades del sistema de las Naciones Unidas.
2. Es necesario que el estado ecuatoriano establezca instituciones de gestión capaces de coordinar las distintas actividades que realizan los organismos de seguridad. En este plano se advierte la necesidad de crear comisiones parlamentarias que supervisen las acciones de los organismos encargados de procesar los problemas migratorios y fronterizos. Esas comisiones pueden ser respaldadas por la OEA y el Parlamento Andino.
3. Una medida adicional se refiere al trabajo con los medios de comunicación. Procesos de capacitación con formadores de opinión se tornan necesarios para sensibilizar a la ciudadanía de los riesgos que implica tratar los temas migratorios como de seguridad nacional porque viola muchos derechos de las personas.
4. En el plano internacional, la política ecuatoriana con relación al narcotráfico está permeada actualmente por dos componentes específicos provenientes de lo que ahora se denomina el eje Washington-Bogotá. El primero se refiere a la presión existente para aumentar los niveles de interdicción marítima y lograr la aplicación extraterritorial de la legislación estadounidense. En este nivel se recomienda la creación de mecanismos de protección y vigilancia del derecho internacional, lo que se vuelve un asunto prioritario para las relaciones bilaterales y multilaterales en el hemisferio.
5. Se recomienda también implementar una política de protección a la población colombiana refugiada que incrementa su número con el pasar del tiempo. El respeto a los derechos humanos, promover la transparencia de la gestión pública, profundizar el combate a la corrupción y establecer una redistribución equitativa de la riqueza aparecen como tareas prioritarias en contextos regionales que tienden a una mayor “segurización” de problemas humanitarios.

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El Secuestro en la Frontera Colombo-Venezolana

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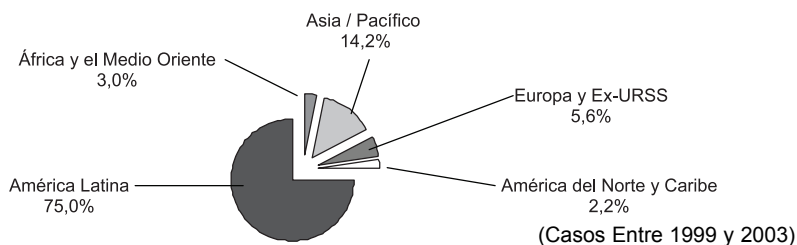
Lancelot Conive

Introducción

Según la estadística del gráfico adjunto, América Latina se destaca como la región donde se efectúa casi entre el 75 por ciento y el 80 por ciento de los secuestros en el mundo. Carlos Marighella, el teórico más famoso de la guerrilla urbana, define el proceso como hacer prisionero a un agente de policía, a un espía estadounidense, a una personalidad política o a un peligroso enemigo del movimiento revolucionario y mantenerlo en un lugar secreto; esta operación tiene que ser bien ejecutada para evitar la condena pública.¹

Este fenómeno ha persistido hasta el presente, enfatizado hoy en día por el auge del narcotráfico en Colombia y en México sobre todo.² Los estudiosos del plagio atribuyen el crecimiento del problema en Colombia a la profundización de la violencia guerrillera, el aumento del desempleo y el tráfico ilegal de los estupefacientes. En la guerra irregular moderna, el secuestro juega un papel especial: la toma de rehenes, el rapto de figuras prominentes para incrementar las arcas de los guerrilleros con las cuantiosas sumas pedidas como rescate.³ La frontera entre Colombia y Venezuela se ha convertido en el espacio donde se encuentra más y más este fenómeno; el estudio del secuestro fronterizo binacional y de algunas posibles soluciones constituye el tema central de este trabajo.

Secuestros en el Mundo, Por Regiones⁴



¹ Friedrich August von der Heydte, *La Guerra Irregular Moderna* (Bogotá: Eir de Colombia, 1987), 193-194.

² Ver Carlos Alberto Pulido Barrantes, *El Secuestro* (Colombia: Plaza y Janés, 1988), 28-35, para recorrer los antecedentes del secuestro mundial. Cf. Jesús Emilio García Acosta, *El Virus del Secuestro* (Manual Antisecuestro) (Colombia, P y G Editores, 2003), 31-35.

³ von der Heydte, 193-195.

⁴ Elaboración de Eduardo Ovalles sobre la base de Control Risk Group (CRG). Ver Eduardo Ovalles, *¿Crisis de la Seguridad?* (Buenos Aires: Centro de Estudios Unión para la Nueva Mayoría, 1ª ed., 2005), 31.

La Historia y Manifestación del Secuestro

Este fenómeno que flagela a los países latinoamericanos no es nuevo: data de la Conquista de México, cuando los españoles invasores raptaron y detuvieron por la fuerza a Moctezuma (1520); además, la historia corrobora el pago del rescate más cuantioso de toda la humanidad con las 24 toneladas de oro y plata que los Incas tuvieron que entregar al conquistador Francisco de Pizarro en 1533 para liberar a su jefe Atahualpa, asesinado posteriormente. En Colombia, la historia nacional documenta que en 1537, el conquistador Gonzalo Jiménez de Quesada, “no sólo secuestró al zaque Quemunchatocha, en la localidad de Hunza, hoy Tunja, sino que habiendo recibido grandes cantidades de oro y esmeraldas de parte de sus súbditos por el rescate, hizo torturar cruelmente a la víctima hasta darle muerte.”⁵ Incluso, los orígenes del secuestro se remontan al Antiguo Testamento, cuando los hermanos de José lo privaron de la libertad para obtener una mayor parte de la herencia y ganar el favor del padre.

El secuestro adquiere múltiples matices según el motivo de los autores. Los grupos subversivos han pretendido dar al secuestro una explicación política. En el caso de Colombia, siembran una psicosis de inseguridad en las zonas rurales: Magdalena Media, Departamento de la Costa Atlántica, los Llanos Orientales, Huila, Tolima, Cauca, Caquetá, entre otros, provocando una fuga de capitales con la captura y matanza de finqueros que no quieren sucumbir al chantaje y el “boleteo.” La unificación de datos tomados de varias fuentes se presenta en el siguiente cuadro sobre el secuestro en Colombia.

El Secuestro en Colombia, 1980-2003 ⁶									
Año	Total	Año	Total	Año	Total	Año	Total	Año	Total
1980	44	1985	286	1990	1,282	1995	1,068	2000	3,706
1981	99	1986	180	1991	1,550	1996	1,039	2001	3,041
1982	136	1987	259	1992	1,320	1997	1,675	2002	2,986
1983	167	1988	718	1993	1,014	1998	3,014	2003	1,800
1984	299	1989	781	1994	1,378	1999	3,334	—	—

⁵ Ver Camilo Romero, *Del Secuestro y Otras Muertes* (Colombia: Intermedio, 2004), 74.

⁶ Los datos se toman de Camilo Romero, “Red de Víctimas—El secuestro,” en *Del Secuestro y Otras Muertes*, 69. En este capítulo V el estudioso afirma que “De estos secuestros, el 88% duró de 0 hasta 100 días, un 5% hasta 200 y un 2% hasta 300, lo que quiere decir que, afortunadamente, el 95% de los secuestrados duraron menos de un año. Las cifras de 2 mil o 3 mil personas secuestradas son el acumulado anual de secuestros que han durado desde una hora hasta varios años. Las personas privadas de la libertad por más tiempo son las que la guerrilla califica como prisioneros de guerra y retenidos políticos. No se puede por lo tanto reclamar a ninguno de los actores violentos, ni a todos juntos, la devolución de tres mil secuestrados porque no existen, la mayoría de las víctimas o ya fueron rescatadas por la fuerza pública, o ya pagaron el rescate, o lograron fugarse, o desgraciadamente—se han dado varios casos—fallecieron en cautiverio.”

La sevicia y la crueldad que caracterizan al secuestro no tienen justificación alguna. Este acto nefasto ha sido condenado reiteradamente por muchos analistas, quienes detallan cómo operan los victimarios:

Fríamente se escoge a la víctima, se analizan su patrimonio, su indefensión, sus movimientos y cobardemente, se cae sobre ella y se le apresaa. La víctima pasa a dormir a la intemperie o en una cueva, si es el campo; vendada y encadenada, si es en la ciudad; bajo constante amenaza de sus vidas.⁷

El secuestro aéreo constituyó un paso sensacionalista a partir de 1956 cuando un gobierno logró el rapto de Ben Bella y otros compañeros suyos, desviando un avión que cubría la ruta Marruecos-Túnez hacia Argelia.⁸ En la década de los 60 los terroristas lo perpetraron con objetivos políticos y marcada regularidad, generalmente con destino a Cuba. Uno de estos episodios se convirtió en historia novelada en la pluma de Carlos Alberto Ruiz Jeréz, *Infierno Caribeño*, obra publicada en Caracas en 1998. Relata la historia del secuestro de un avión militar cuyo piloto, en un vuelo rutinario de entrenamiento, aprovecha la ocasión para llevarse el Reactor a Cuba, logrando penetrar el espacio aéreo y peligrosamente aterriza en el aeropuerto de Camagüey.⁹ El Ejército de Liberación Nacional (ELN) también secuestró en Bucaramanga, Colombia, un avión Fokker 50 de Avianca con 45 pasajeros durante 373 días, el 12 de abril de 1999.¹⁰ El trauma del secuestro lo registra Leszli Kalli en su diario de cautiverio *Secuestrada*.

También existen referencias de secuestros de barcos, como el caso del Anzoátegui, barco venezolano de carga que navegaba desde La Guaira hasta el puerto norteamericano de Nueva Orleans en 1963, durante la presidencia de Rómulo Bentancourt.¹¹ Otros tipos de secuestros abarcan la toma de embajadas como el caso famoso del asalto de la residencia del Embajador de Japón en Lima por el grupo comando Túpac Amaru, el 17 de diciembre de 1996.¹²

⁷ *Libro Negro sobre Colombia* (Caracas, Bogotá, Buenos Aires: Editorial Andina, 1985), 66.

⁸ Cf. Enrique Alberto Martín Cuervo, "El Secuestro Aéreo" en *El Secuestro y la Toma de Rehenes, ¿Una Nueva Realidad?*, AA.VV, 129-139 (Caracas: Fondo Editorial CEVI- Cámara de Economía Venezolana Israelí, 2001).

⁹ Ver el testimonio de "Armando," un dirigente medio del Ejército de Liberación Nacional que desvió un avión colombiano a Santiago de Cuba, en Olga Behar, *Las Guerras de la Paz* (Bogotá: Editorial Planeta, 8ª ed., 1986), 111-116.

¹⁰ El Ejército de Liberación Nacional fue fundado por Fabio Vázquez en 1957. Para detalles de su formación y operación consultar Elizabeth Zamora Cardozo, *Tramas de Vida. La Frontera Colombo-Venezolana (San Antonio-Ureña-Norte de Santander)* (Caracas: Facultad de Ciencias Económicas y Sociales, Universidad Central de Venezuela/ Fondo Editorial Tropykos, 2001), 102-105; Andrés Peñate, "El Sendero Estratégico del ELN: Del Idealismo Guevarista al Clientelismo Armado" en *Reconocer la Guerra para Construir la Paz*, comp. Malcom Deas y María Victoria Llorente, 55-98 (Bogotá: Cerec, Ediciones Uniandes/ Grupo Editorial Norma, 1999). Ver también Cristina Barrera (Comp.), *Crisis y Fronteras. Relaciones Fronterizas Binacionales de Colombia con Venezuela y Ecuador* (Bogotá: Fondo Editorial CEREC, 1989). Cf. Eduardo Pizarro Leongómez, *Una Democracia Asediada. Balance y Perspectivas del Conflicto Armado en Colombia* (Colombia: Grupo Editorial Norma, 2004), 100-112.

¹¹ Ver Humberto Silva Cubillán, *El Delito de Secuestro en el Teatro de Conflicto* (Caracas: Fondo Editorial Agenda XXI, 1997), 160-162.

¹² Ver Yusuke Murakami, *El Espejo del Otro. El Japón Ante la Crisis de los Rehenes en el Perú* (Lima: Instituto de Estudios Peruanos/ The Japan Center for Area Studies, 1999).

René Buroz Arismendi precisa tres modalidades de secuestros:¹³

1. Para lograr la libertad de reos políticos, como en el caso de la embajada mencionado arriba.
2. Secuestro a personas con intención de causar alarma y beneficios en materia de publicidad; la década de los años 60 ofrece varios ejemplos, como el secuestro de un avión de línea nacional en Venezuela desde el cual arrojaron volantes propagandísticos sobre la ciudad de Caracas.¹⁴
3. Secuestro de personas con fines de lucro.

Sin embargo, se debe incluir una cuarta categoría: el secuestro *express*, originado, según Manuel de Jesús Azuaje Requena, en la ciudad de México. Este tipo de raptó se caracteriza por la captura de una persona, retenida durante seis horas, para permitir que los familiares retiren del banco o telecajero el dinero, joyas u otros valores a ser entregadas a los plagiarios.¹⁵ El perfil de los secuestradores también ha cambiado. A diferencia del pasado, cuando los perpetradores tenían formación académica, motivados por una ideología de izquierda, ahora se identifican ex guerrilleros anclados en la utopía de los 60 y una delincuencia cuyo objetivo es económico.

La Frontera Colombo-Venezolana

La incursión de fuerzas subversivas colombianas en la zona limítrofe de Venezuela y el cautiverio ilegal de sus habitantes han suscitado conflictos socioeconómicos entre Colombia y Venezuela con las consecuentes tensiones en las relaciones bilaterales. El reclutamiento de jóvenes campesinos locales y el secuestro extorsivo son una práctica frecuente de los movimientos guerrilleros contemporáneos en la zona para recaudar fondos que sustenten su lucha.

La frontera entre Colombia y Venezuela, en particular los estados de Apure, Barinas y Táchira (ver mapas adjuntos), se ha convertido en el espacio más idóneo para que el ELN y las Fuerzas Armadas Revolucionarias de Colombia (FARC) operen impunemente.

¹³ Ver René Buroz Arismendi, "El Combate al Secuestro y a la Toma de Rehenes" en *El Secuestro y la Toma de Rehenes: ¿Una Nueva Realidad?*, AA.VV., 168.

¹⁴ Ver Lancelot Cowie, *Fuegos de Resistencia. Insurrección y Narrativa en Venezuela 1960-1970* (Mérida, Venezuela: Ediciones ACTUAL, Colección "Va de Ensayo," Dirección General de Cultura y Extensión Universidad de los Andes, 2000), 56.

¹⁵ Manuel de Jesús Azuaje Requena, *El Secuestro Rapid Express* (Caracas, s/f), 36-37.



Fuente: El Universal (2006)



Fuente: Venezuela Tuya (2006)

Un abordaje ecléctico de la investigación revela la necesidad de comparar tres tipos de materiales: estudios sociológicos, testimonios de cautiverio de las víctimas, y novelas de base sociológica.¹⁶ Sin embargo, se debe mencionar que el corpus literario sobre el tema de la guerrilla sobrepasa las cincuenta obras, que exceden este artículo. La investigación delineará una perspectiva más profunda de la compleja operación y de la estructura de estas organizaciones subversivas, analizando, al mismo tiempo, los desafíos que los gobiernos de Colombia y Venezuela se ven obligados a enfrentar en la búsqueda de salidas viables a este conflicto violento.

¹⁶ Más específicamente: a) estudios sociológicos: *Tramas de Vida. La Frontera Colombo-Venezolana*, Elizabeth Zamora Cardozo; “Colombia-Venezuela: Entre Episodios de Cooperación y Predominio del Conflicto,” Socorro Ramírez; “El Zulia: Violencia y Frontera,” María Alejandra Fernández G., Jorge N. Morales Manssur y Jesús Enrique Párraga M.; *El Secuestro y la Toma de Rehenes: ¿Una Nueva Realidad?*, AA.VV.; *La Delimitación con Colombia, Líneas y Conflictos*, Rafael Sureda Delgado; “Colombia y Venezuela: Vecinos Cercanos y Distantes,” Socorro Ramírez y Miguel Ángel Hernández; “La Frontera Caliente con Venezuela,” Luis Alberto Villamarín Pulido; “Flujos Decisionales en Escenarios de Tensión Especial,” Cristina Barrera; *El Secuestro. Aspectos Históricos, Jurídicos, Criminológicos, Estadísticos y de Policía Judicial*, Coronel Carlos Alberto Pulido Barrantes; *El Espejo del Otro. El Japón Ante la Crisis de los Rehenes en el Perú*, Yusuke Murakami; *El Virus del Secuestro (Manual Antisecuestro)*, Jesús Emilio García Acosta; *Secuestro*, Humberto Vélez Ramírez; *El Delito del Secuestro en el Teatro de Conflicto*, Humberto Silva Cubillán; *Fuegos de Resistencia, Insurrección y Narrativa en Venezuela 1960-1970*, Lancelot Cowie; *Cómo Sobrevivir al Secuestro*, Martha Lucía Aristizábal; *Historia de Una Traición*, Laura Restrepo y Camilo González; *¿Crisis de Seguridad?*, Eduardo Ovalles; *El Secuestro de Grandá*, Misael Salazar Flórez; *Infierno Caribeño*, Carlos Alberto Ruiz Jerez; b) testimonios de cautiverio de las víctimas: *Aquí la Vida Se la Da Uno Mismo*, Dr. Jesús Rojas, médico rural de frontera en el Amparo, alcalde de Guasualito (Apure, Venezuela) secuestrado durante 121 días por el ELN en 1995; *Cómo Secuestramos a Niebous*, Gaspar Castro Rojas; *Las Mujeres en la Guerra*, Patricia Lara Salive; *Secuestrada*, Leszli Kalli; y c) novelas de base sociológica, escritas a partir de investigaciones de campo, entrevistas con autoridades de los Servicios de Inteligencia, Fuerzas Armadas, policías que manejan y conocen la realidad cotidiana de la frontera colombo-venezolana, y periodistas que han recorrido la zona del Arauca. Se elige para esta investigación *Bala Morena* de Marcos Tarre Briceno, donde se narra la captura de un matón venezolano que cae en manos de la guerrilla en la zona de Guasualdito.

La frontera de más de 2.200 kilómetros que comparten Colombia y Venezuela se debe estudiar como una zona de alta complejidad, en que la extrema pobreza se transforma en la constante que condiciona a sus habitantes:

La región apureña está marcada por las diferencias sociales. Grandes terratenientes y ganaderos, y una mayoría en pobreza extrema, a la que se une el descontento con sus empleadores. Muchos hacendados contratan campesinos colombianos, que debido a su situación irregular en el país, deben aceptar salarios muy por debajo de lo que vale su trabajo.¹⁷

Al mismo tiempo, los estudiosos coinciden en la desigualdad que caracteriza a la zona fronteriza en cuanto a los niveles y expectativas de desarrollo, sumado a esto, la insuficiencia de las condiciones sanitarias y educativas.¹⁸ Las tensiones políticas y culturales potencian aún más la situación de conflicto que la zona fronteriza conlleva de por sí.¹⁹ En el primer caso no sólo por problemas limítrofes pendientes sino, sobre todo, por el narcotráfico y la guerrilla que todavía agobian al gobierno colombiano; en el segundo, las poblaciones propensas a la integración total por su vecindad en la frontera, fundan costumbres y estilos de vida que las constituye en poblaciones únicas que no se identifican con uno u otro lado de la frontera. De todo esto surge la necesidad urgente para Colombia y Venezuela de diseñar una política de fronteras que atienda a todos estos asuntos, política que ha sido históricamente postergada por los gobiernos de turno.²⁰

En estas zonas, las FARC y el ELN no sólo ocupan el área, sino que llevan a cabo muchos actos delictivos: el secuestro, el bombardeo de oleoductos de Colombia y Venezuela, obtención de dinero por chantaje a los ganaderos (“vacunas”). Tales delitos debilitan las relaciones entre ambos países, incrementan el costo de la militarización de la zona y profundizan las tensiones entre la población con el reclutamiento de jóvenes para sumarlos a su causa, con el debilitamiento de la economía agropecuaria y con la agudización de una psicosis colectiva que hace estallar la red social de la zona. La guerrilla reemplaza a las autoridades legales que se ausentan de la zona por completo.²¹

¹⁷ Zamora Cardozo, 40.

¹⁸ María Alejandra Fernández G., Jorge N. Morales Manzur, y Jesús Enrique Párraga M., “El Zulia: Violencia y Frontera” en *Violencia, Criminalidad y Terrorismo*, AA.VV., 274 (Caracas: Fundación Venezuela Positiva, 2005).

¹⁹ Marcos Tarre Briceño denuncia el grado de subdesarrollo y atraso de la frontera y describe detalladamente cómo los guerrilleros pueden traspasar la frontera porosa, burlando a los militares. Ver Marcos Tarre Briceño, *Bala Morena* (Caracas: Alfadil Ediciones, 2004), 227-228.

²⁰ Fernández G., Morales Manzur y Párraga M., 274; Para una detallada investigación de los pormenores de la evolución del proceso fronterizo en cuestiones de delimitación desde 1830 hasta 1998, consultar el estudio de Socorro Ramírez y Miguel Ángel Hernández, “Colombia y Venezuela: Vecinos Cercanos y Distantes” en *La Vecindad Colombo-Venezolana: Imágenes y Realidades*, coords. y eds. Socorro Ramírez y José María Cadenas, 159-241 (Bogotá: IEPRI-Universidad Nacional de Colombia/ Universidad Central de Venezuela, 2003).

²¹ Tarre Briceño, 228-229.

El secuestro de ganaderos es una práctica muy común en la frontera desde 1976, cuando plagieron a Alfredo Pardi, en caño Motilón, distrito Colón del estado Zulia.²² Las compañías petroleras también están acechadas con el bombardeo de oleoductos, según se mencionó anteriormente, el contrabando de combustible, el rapto de empleados; la actividad se agudiza cuando las petroleras se niegan a pagar el “boleteo” o “vacuna.”²³ El Dr. Jesús Rojas, alcalde de Guasualtito, fue aleccionado por el ELN durante su cautiverio en torno a la justificación de sus operaciones revolucionarias.²⁴

Un aspecto conflictivo en las relaciones entre Colombia y Venezuela es el tráfico de drogas en la frontera, involucrando a la guerrilla. A lo largo del mismo testimonio del Dr. Rojas, el interlocutor guerrillero repite insistentemente su absoluto desacuerdo en cuanto al narcotráfico, hecho que los diferencia de otras organizaciones guerrilleras.²⁵

El presunto tráfico de armas a las fuerzas irregulares colombianas constituye uno de los problemas preocupantes entre ambos países. Las zonas fronterizas proporcionan modos fáciles para el traslado ilegal de municiones desde Venezuela hacia Colombia junto con armas de guerra. La siguiente cita explica el aspecto político del conflicto:

1. Se estableció la existencia de un tráfico de armas de guerra dentro del país, la emisión ilegal de permisos para el porte de armas y la venta irregular de municiones. La presencia de armas no sólo de nacionalidad venezolana puso de manifiesto que no se trataba únicamente de la venta irregular de armas y municiones fabricadas por la Compañía Venezolana de Industrias Militares (CAVIM) sino del ingreso ilegal de armas del exterior;
2. La admisión de un posible vínculo entre subversión, narcotráfico y tráfico de armas debido al gran valor de la negociación (30 millones de bolívares equivalentes a 1.4 millones de dólares); y
3. La implicación en su tráfico de organismos de seguridad del vecino país.²⁶

²² Javier Gorriño, “La Historia Contemporánea del Secuestro” en *El Secuestro y la Toma de Rehenes, ¿Una Nueva Realidad?*, AA.VV, 93. Se indica, además, que la suma del rescate alcanzó US\$1.200.000, y que de ahí en más se multiplicaron los secuestros.

²³ Cf. Tarre Briceño, 149, donde el comandante de la guerrilla hace explícito a un colaborador los trámites con las petroleras: “Imagínese, concluimos hace poco un muy importante acuerdo con las petroleras...Anteayer tenían que hacer los depósitos en las cuentas bancarias. [...] Creí que esos carajos se burlaban de nosotros. Ya iba a ordenar mandarles a la mierda su bendito oleoducto [...] cuando hablamos con los intermediarios, nos aseguraron que los depósitos se efectuaron, incluso nos mandaron faxes de las planillas de depósito.”

²⁴ Jesús Rojas, *Aquí la Vida Se la Da Uno Mismo* (San Cristóbal, Venezuela, 2001), 156-157.

²⁵ Rojas, 154; 323-324. Cf. Ramírez y Hernández, 201-202.

²⁶ Barrera, “Flujos Decisionales en Escenarios de Tensión Especial,” 159.

Conclusiones

Ambos gobiernos han podido establecer acuerdos para subsanar este aspecto espinoso de sus relaciones. Se estableció una Comisión Militar Fronteriza (Combifron) y analizaron en concreto la situación.²⁷ Sin embargo, la situación es fluctuante y los acuerdos no son permanentes. Sólo el robo de autos a través de la frontera, que hasta 1997 constituyó un problema grave, se resolvió con mejores aproximaciones al problema.²⁸ Los restantes aspectos del conflicto siguen como asuntos espinosos en las relaciones entre Venezuela y Colombia.

Los desplazados colombianos que huyen de la violencia en sus territorios se insertan precariamente en Venezuela y caen víctimas de industriales y hacendados desaprensivos que los explotan, además de sufrir el abuso de los políticos, que les ofrecen cédulas de identidad venezolanas sólo para comprar sus votos; otros, a pesar de años de vivir en Venezuela, no logran su documentación legal, dificultándoles esto su libre circulación por el país.

Los distintos gobiernos de ambos países han tratado de resolver las crisis en torno a la frontera, pero las soluciones siempre fueron retrasadas por distintos obstáculos o por interpretaciones opuestas no sólo sobre la problemática limítrofe, sino también sobre la presencia de la guerrilla en la frontera.²⁹

²⁷ Socorro Ramírez y Miguel Ángel Hernández, 202-203

²⁸ *Ibid.*, 202.

²⁹ Para una lectura detallada de las distintas instancias al respecto, ver Socorro Ramírez, "Colombia-Venezuela: entre episodios de cooperación y predominio del conflicto" en *Conflictos Territoriales y Democracia en América Latina*, ed., Jorge I. Domínguez (Buenos Aires: Siglo XXI Editores Argentina/Universidad de Belgrano/FLACSO, 2003), 203-272.

Recomendaciones

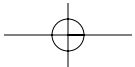
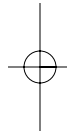
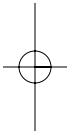
En vistas al logro de la paz y la convivencia armoniosa en la frontera colombo-venezolana se sugiere:

1. El papel aunado de autoridades civiles y militares de ambas zonas fronterizas para desarrollar instrumentos de control que subsanen y disminuyan las actividades delictivas.
2. Fortalecer el sistema legal para abordar el problema según las necesidades del siglo veintiuno: narcotráfico, trata de personas, secuestro, violación de los derechos humanos, núcleos guerrilleros, y comercio ilegal.
3. Invertir en tecnología de punta para combatir las fuerzas irregulares.
4. Capacitar a la policía para detectar y prevenir con mayor pericia las actividades delictivas propias de la frontera.
5. Fortalecer cumbres regulares entre los mandatarios de ambos países y sus representantes para analizar con seriedad la prevención del conflicto y reducir el alto índice de tensiones que caracterizan esta problemática.
6. La participación efectiva del sistema educativo y de otros organismos no gubernamentales para promover el mutuo conocimiento entre las comunidades que habitan las zonas de conflicto y prevenir la violencia que surja del mismo.

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Chapter 8

The Deportation Phenomenon

Article 8.1 The U.S. to Jamaica Deportee Problem:
Dispelling a Key Myth - *Bernard Headley*

The U.S.-to-Jamaica Deportee Problem: Dispelling a Key Myth

8.1

Bernard Headley

Introduction

Public opinion in the Caribbean over the last few years has linked the region's soaring crime problem to waves of former emigrants being forcibly returned home from countries of the North—mainly Britain, Canada, and the U.S. This article reports selected findings from a study of deportations to Jamaica from the U.S.—based on data from the U.S. Department of Homeland Security (DHS)—that counters the widespread belief that deportees returned to Jamaica and other Caribbean nations are hardened violent criminals who then, because of this background, contribute disproportionately to their receiving countries' high levels of crime.¹ But neither the study, nor this article, “absolves” the U.S. from responsibility for what has developed into a large scale regional problem. Rather, both the study and the article point to, first, the need for precise understanding of the effects of a controversial immigration reform law and developments in U.S. criminal justice policy on the deportation—from—America problem, and, second, suggest recommendations for rectifying the situation.

Characterization of Deportees

Homicide rates in Jamaica, a nation of just over 2.5 million people, have hovered in the vicinity of 40 to 45 per 100,000 inhabitants since the 1990s. The figure climbed to an alarming 66 per 100,000 (more than 1,650 murders) in 2005.² Beset by this seemingly unrelenting destructive development, public discourse on crime on the island is driven by outbursts of terrified outrage.

One feature of this outrage has been the tendency to blame the country's crime troubles on groups and individuals within society that are least capable of offering any credible resistance. Thus, one notion steadfastly propagated in the media, and given official

¹ See Bernard Headley, Michael D. Gordon and Andrew Mac Intosh, *Deported Volume I: Entry and Exit Findings Jamaicans Returned Home from the U. S. Between 1997 and 2003* (Kingston: Stephenson's, 2005).

² This pattern places Jamaica among the top three countries in the world that alternate for the highest homicide rate—the others being Columbia and South Africa.

support, is that the key reason for the island's uncontrollable crime is the large number of "criminal deportees" being returned to the island from Great Britain, Canada, and especially the U.S. In a lead editorial, the island's dominant newspaper, *The Gleaner*, flatly stated: "Between the system, the police and the courts, deportees are being allowed to wreak havoc on the society and it is high time that citizens demand immediate implementation of whatever changes are necessary to get the situation under control."⁵

The deportees are portrayed in these and other media as an indistinguishable group of "rejects" who were sent back home to recreate for themselves disquieting, violent existences in a land they departed years ago. Former Jamaican Prime Minister P. J. Patterson has spoken of the deportees as a criminal type; in September 2000, he established a "proactive" crime control task force, the Crime Management Unit (CMU) and explained in a nationally televised broadcast that the main targets of the CMU would be "dons, the deportees and other criminals."⁶ The CMU would be able, Patterson said, "to move anywhere and anytime" in the greater Kingston area against all three. Four years following the formation of the ill-fated CMU, Patterson warned in a speech to a group of overseas Jamaicans gathered in Kingston for a major homecoming event, the first National Diaspora Conference, of the "mushrooming threats of narco-trafficking and violent crime to national growth and stability."⁷ At the core of the twin "evils," the Prime Minister said, are deportees who have become drug kingpins. Putting his own slant on the matter, newly installed Commissioner of Police, Lucius Thomas, opined to a group of business leaders in June 2005: "We have seen them [deportees] in the St. Andrew South Division [a metropolitan Kingston police area], and it is no wonder that we see the increase in crime [there]."⁸ The Commissioner had not bothered to ponder: If two phenomena occur simultaneously, does it follow that one necessarily caused the other?

More significant is that the negative characterization (if not always misrepresentation) of deportees, which typically comes from the highest levels of the state, has ramifications for social planning; it frustrates community based strategies aimed at reintegrating deportees back into mainstream Jamaican society. Instead, what has developed is a situation of misdirected conflict between a populace justifiably fearful of high levels of

⁵ *The Gleaner*, "Wanted: Deportee Restrictions," October 22, 2003.

⁴ "Dons" are essentially high-profile criminal operators who, because of their circle of corrupt political and business associations, have been (until quite recently) regarded as largely untouchable by Jamaican law enforcement. Opposition Jamaica Labor Party Leader, Bruce Golding, in a speech to the overseas National Association of Jamaican Supportive Organizations on June 23, 2005, described an aspect of this relationship as one in which dons are "embedded" within the two main political parties, "giving a certain kind of legitimacy to their criminal operations."

⁵ For a perspective on the formation of the Crime Management Unit (CMU), and on its notorious head, Senior Police Superintendent Reneto Adams, see Bernard Headley, "Man on a Mission: Deconstructing Jamaica's Controversial Crime Management Head," *Social and Economic Studies* 51 (March 2002): 179-191.

⁶ *The Gleaner*, quoted in "Criminal Networks School Recruits," June 25, 2005, 2A.

⁷ In a Letter to the Editor, "Welcome Home Deportees," *The Gleaner*, January 22, 2004, one critic asked readers to recall that the nation's first national hero, The Rt. Honourable Marcus Garvey, was a deportee. Garvey was deported from the United States in 1927 after serving a portion of a five-year sentence in a federal prison in Atlanta, Georgia.

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crime and violence, and individuals tagged by a hurtful label.⁷ Deportees, as a class, are disgracefully stigmatized and openly discriminated against in this setting, particularly in areas of housing and employment, thus precluding possibilities for their full integration into the society.⁸

The matter becomes more troubling after noting that many deportees are returned for offenses no more serious than nominal infractions of a U.S. 1996 Illegal Immigration Reform and Immigrant Responsibility Act (1996 Act), a piece of legislation that several U.S. based observers have described as “harsh” and “severe.”⁹ Passage of the 1996 Act, according to sociologist Michael Welch, grew out of “moral panic” in the American polity on the matter of immigration, both illegal and legal. Still, as far as policy and leading opinion makers in Jamaica are concerned, the deportees being sent back to the country, notably from the U.S., are all generically “criminals.”

But the deportee phenomenon now also figures prominently in theoretical formulations of “threats” to regional security. Referring specifically to the Caribbean, Ivelaw Griffith, for example, sees the deportee phenomenon as one aspect of a “local-global nexus” within a larger system of non-traditional threats to the security of small English-speaking Caribbean countries.¹⁰ “It is not merely the fact of deportation and the numbers that are troubling,” he cautions.¹¹ “Part of the challenge is the fact that deportees generally have a troubling criminal profile, with the capabilities and disposition to perpetrate crime in the new jurisdiction.”¹² The “troubling criminal profile” Griffith refers to was likely developed in the home country well before migration and eventual deportation, as demonstrated in a more recent work on the subject.¹³

The degree to which deportees’ figure into either the local or international crime scene is nevertheless, as Griffith eventually admits, a “contested issue.” He cites a July 2002 report of the Regional Caribbean Community (CARICOM) Task Force on Crime and Security, which “quite rightly calls for more empirical study of the relationship between criminal deportation and domestic criminal behaviour.”¹⁴

⁸ These and other findings are reported in Bernard Headley, *Deported Volume II* (forthcoming).

⁹ See, for example, Mark Dow, *American Gulag* (Berkeley: University of California Press, 2004); Michael Welch, *Detained* (Philadelphia: Temple University, 2002); Marlyn Jones, “A Perspective on the Consequences of Deportation for Receiving Countries,” John Jay College of Criminal Justice, paper presented “Criminal Justice and Deportation: The Invisible Crisis,” New York, October 2004.

¹⁰ Ivelaw L. Griffith, ed., *Caribbean Security in the Age of Terror* (Kingston, Jamaica: Ian Randle, 2004).

¹¹ *Ibid.*, 36.

¹² *Ibid.*, 36.

¹³ See Headley, et al., *Deported Volume I*.

¹⁴ Quoted in Griffith, 36.

Previous Counterintuitive Findings

One study, by sociologist Clifford Griffin, on deportees returned to the Caribbean specifically examined their impact on crime in Barbados. The Barbadian data, Griffin contends, “do not show any direct link between criminal deportees and ‘sophisticated’ crimes [or] with crime in general in Barbados.”¹⁵ Rather, he points to a pattern of globalization of criminal activity that “has increased the opportunities for trans-national licit and illicit activities.” Any positive relationship between deportees and an increase in crime in the countries of the Caribbean more likely results from “interchange” among regionally connected criminals, than solely to the presence per se of criminal deportees in one or the other country, Griffin concludes.

Also, based on data he extracted from the University of the West Indies’ Centre for Criminology and Criminal Justice located in Trinidad and Tobago, U.S. Ambassador to the twin island republic, Roy Austin, presents a similar case.¹⁶ Convicts released from prisons in the U.S. and subsequently deported to Trinidad and Tobago showed significantly lower rates of recidivism than inmates released locally (i.e., those who had committed their crimes and served prison sentences at home): 9.5 percent for the deportees versus 67 percent for the locals. Austin goes on to emphasise: “Official [Trinidad and Tobago] data show that deportees’ contribution to crime in Trinidad and Tobago is miniscule. In 2000, deportees were charged with 0.84 percent of murders reported to the police, 0.15 percent of the robberies, none of the rapes, and 1.71 percent of the drug offenses. Similarly, in 2001, deportees were charged with none of the murders reported to the police, 0.15 percent of the robberies, none of the rapes, and 0.84 percent of the drug offenses. These data further show only one kidnapping [a crime then on the increase notably in the capital city of Port of Spain] attributed to deportees between 1999 and 2002.”¹⁷

Limited research on Jamaica reveals similar findings. Although a 2001 Ministry of National Security study expressed that there was too much “difficulty” in monitoring the criminal activity of a sufficiently broad sample of deportees to be able to report with confidence their impact on local crime. The study nonetheless concludes: “If past offenses are any indicator of future recidivism, the low percentage of deportees being convicted for Murder, Attempted Murder and Manslaughter indicates that this group may not be a major contributor to the disproportionately high homicide rate in Jamaica.”¹⁸

¹⁵ Clifford E. Griffin, “Deportees and Crime in Barbados,” *Caribbean Dialogue* 6 (1& 2) (2000): 89.

¹⁶ Roy L. Austin, “Much Ado about Deportees’ Crime Contribution,” *Linkage* 4 (December 2003): 13-14.

¹⁷ *Ibid.*, 13.

¹⁸ Government of Jamaica, Ministry of National Security and Justice, “Deportee Report,” February 2001: 13. The study was directed toward developing a “Risk/Needs Assessment” of the criminal deportees based on their length of time away, reasons for deportation, and years of institutionalization. Data were collected through interviews of 410 deportees who had developed criminal records while in the U.S. or Great Britain. The findings of the report never made it into media conversations nor into the furor over deportees.

Economists Madjd-Sadjadi and Alleyne, at the University of the West Indies, Mona, Jamaica, used advanced statistical formulas (mainly logistic regression) to estimate the impact of deportees from the U.S. on crime in Jamaica.¹⁹ Regarding crime, murder in particular, the authors conclude (erring on the side of “more murders”) that criminal deportation is likely responsible for at most, four percent of the total number of murders committed in Jamaica each year. That means, “for every 1,000 criminal aliens deported, we can expect to see 28 murders [total].” Thus, for example, “if there are 10,000 people deported over a 10-year period, we would expect to see,” over the entire period, “a TOTAL of 280 extra murders”—a not so high contribution to yearly totals in excess of 1,400 murders.

In light of the foregoing, it seems reasonable to conclude, as explained in a 2002 CARICOM Task Force Report, that, “Although imperfect, the existing information suggests that there is nothing particularly dramatic about the quantitative impact of deportee crimes.” Although, the report holds that the largely immeasurable—and perhaps indefinable—“qualitative impact” of deportee crimes is “of great concern.”²⁰ Evidence of the qualitative impact, argue Jamaican law enforcement and national security officials can be found in a few select cases of deportees who acquire vices and ill-gotten gains from the North and bring them back home. In doing so, they become conspicuous role models for un-travelled, at-risk local youths. But, this kind of impact is essentially unrecognizable. Deportees returned to Jamaica have said in interviews that they have experienced scorn and rejection at all levels of society—including from others in similar, pitiable circumstance who never had the chance to go to the U.S. The latter see the deportees as having gone to the U.S. and “screwed up,” to quote several deportee respondents.²¹

Background Forces in the U.S. Polity

Two commingling forces in American society lie at the root of Jamaica and the region’s deportees-from-the-U.S. problem.²² The first is the 1996 congressional passage of a series of immigration reform statutes, the most well known of which is the Illegal Immigration Reform and Immigrant Responsibility Act, mentioned above, which President Bill Clinton signed into law. The second is that the vigorous enforcement of the 1996 Act has been coupled with a national “rethink” of the costly approaches to addressing crime in the U.S., which began in earnest in the 1970s.

¹⁹ Z. Madjd-Sadjadi and Dillon Alleyene, “The Potential Impact of Criminal Deportees from the U.S.” paper presented at Caribbean Criminology Conference, University of the West Indies, Mona, Jamaica, February 2004, 6.

²⁰ Griffith, 37.

²¹ Bernard Headley, *Deported Volume II*.

²² The two forces—passage of the 1996 Immigration Reform Act and prison overcrowding—are dissected in Headley et al., *Deported Volume I*.

The framers of the 1996 Act aimed to establish measures to control the borders of the U.S., protect legal workers through worksite enforcement, and remove criminal and other deportable aliens. Credible U.S. watchdog agencies, like the American Civil Liberties Union, as well as other critical observers that have examined both the origins and implementation of the 1996 Act have not, however, presented quite as sanguine a picture. Watchdogs and critics point out that taking action through the court system to expel visitors and foreign nationals who violate the terms of their visas has been a longstanding feature of U. S. immigration law, dating back to the 1950s. However, by enacting the 1996 Act, lawmakers put in force measures designed to punitively exclude, by expulsion, newer and more recent immigrants—the already disenfranchised—from seeking the “American dream.” Welch, for instance, maintains that, whereas all other previous immigration reform laws “were formulated according to such concerns as skilled labor and family reunification, [the] legislation passed in 1996 was shaped by a tendency to criminalize” groups of newer arriving immigrants.²³

The 1996 Act expanded the list of violations for which “aliens” could be speedily deported, especially “criminal” offenses. Crimes previously regarded as petty, for which conviction was never before considered grounds for deportation, have been reclassified as deportable offenses. Shoplifting and other minor crimes, such as petty theft, drunk driving, and low level drug violations, are now designated aggravated felonies (a category that includes murder, rape, terrorism, and kidnapping) under the 1996 Act and constitute grounds for “immediate removal” from the U.S. Under the 1996 Act, even unpaid traffic fines are grounds for expulsion.

The statutes apply retroactively to all non-citizens (inclusive of permanent green card-holding residents) who ever committed a crime, including those that occurred in the distant past. They also apply to crimes for which a court had not imposed a prison sentence. In many cases, people who pled guilty to minor offenses years earlier in exchange for probation are now, according to Amnesty International, “finding that the rules have been switched on them and they are facing a new sentence:” detention in jail cells under terrifying conditions and deportation.²⁴

Rigorous enforcement of the 1996 Act has, however, been taking place alongside a national rethinking of how the U.S. has been dealing with its crime problem since the 1970s (i.e., building greater numbers of prisons and filling them up with all manner and type of convicts, from mass murderers to drug abusers). In 2002, 25 states passed laws eliminating some of their lengthy mandatory minimum sentences, “restoring early release for parole and offering treatment instead of incarceration for some drug offenders.”²⁵ Michigan dropped its lengthy mandatory sentences for drug offenders, and Iowa, Missouri, and Wisconsin took steps to ease their “truth in sentencing” laws.

²³ Welch, 64.

²⁴ Amnesty International, “U.S. Government May Be Considering Use of Torture for Detainees,” Press Release, October 26, 2002.

²⁵ The New York Times, “Ballot Plan to Ease ‘3 Strikes’ Law Divides Californians and a Victim’s Family,” October 24, 2004.

In other words, at the end of the 1990s, with the United States having attained the dubious distinction of the nation with the highest rate of incarceration in the modern world (with more than two million people behind bars), public opinion in the country had shifted; it had moved away from the idea of filling up jail cells as the solution to crime. “The politics of crime and punishment has calmed down” from previous decades, Franklin Zimring, a law professor at the University of California, Berkeley, told a reporter with *The New York Times*.²⁶ Treatment alternatives to prison had simply become the more accepted way of dealing with especially non-violent offenders. Applying tailored early release measures to these offenders would free up space inside the prisons for the society’s more hardened and violent criminals. The premium would henceforth be on conserving existing prison space for the “hardened.” How then to make available more of this space? Early release of the less dangerous would be the operating principle.

But early release generally requires extensive monitoring and various intervention protocols, the costs of which could mount, potentially nullifying some of the gains made from “building down” prisons. The policy of early release would become, in effect, two-tiered. One group of those released early would be non-violent offenders to whom the U.S. taxpayer still shared obligations to try, for instance, to rehabilitate fellow citizens that have taken a wrong turn, or perhaps several wrong turns. The other group would be those who violated stipulations (notably terms and conditions of the 1996 Act) that came with the privilege of living in the U.S. This latter group (i.e., aliens) is in no position to make deals, bargain, or pursue more than marginal claims in the U.S. political and judicial systems.

Maximizing the punitive provisions of the 1996 Act would thus become a tool for managing, through expulsion, valuable prison space. Moreover, the 1996 Act calls for the alien’s permanent banishment from the U.S., at least in theory. Importantly, however, in policy and practice, both early release and expulsion have been directed toward inmate populations deemed non-violent. All things having been considered (nature of offense, number of prior convictions in the U.S., institutional behaviour, etc.), the released inmates were determined “low risk” for future offenses.

Selected Results from a Sponsored Study

Data supplied by the U.S. Department of Homeland Security to a University of the West Indies (Mona, Jamaica) study team showed that between 1997 and the first three months of fiscal year 2003-2004, 12,036 Jamaicans in the U.S. came under pressure from the 1996 Illegal Immigration Reform and Immigration Illegality Act and were shipped back to their native land.²⁷ Numbers like these, according to an Associated Press report, made

²⁶ Ibid.

²⁷ The data became the foundation for a study on the entry and exit statuses of Jamaicans deported from the U.S. between 1997 and 2003. See Headley et al., *Deported Volume I*.

Jamaica the country with the highest ratio of deportees to overall population, as listed by the United Nations.²⁸

Nine key data entries were provided for each deportee: date of birth, gender, date of entry into the U.S., port of entry, visa status (or method of entry), date of “removal” from the U.S., “crime status” (i.e., if convicted of a crime in the U.S. resulting in the deportation), type of crime, and number of prior convictions for each “criminal” deportee. After substantial cleaning of the data, primarily checking for missing or incomplete information, study authors were able to do some preliminary analyses of a representative 8,228 select or “clean” cases. Sixty-three percent of deportees in the pool had been removed because they were convicted of a felony under terms designated in the 1996 Act (Table 1). The remaining 37 percent were returned because they had violated one, or several, of the 1996 Act’s many immigration related sanctions.

Males vastly outnumbered females in the pool of 5,174 deportees—98 percent to two percent. The Jamaican male, it seems, appeared several times more likely to run up against the “expedited removal” provisions of the 1996 Act than did his female counterpart. Then again, as the international literature on gender and crime has shown, males are much more likely than females to engage in the kind of activity that will bring them to the attention of law enforcement agencies, including U. S. immigration authorities.²⁹

Table 1: Numbers of Convicted vs. Non-Convicted Deportees

	Number	Valid Percent
Convicted	5174	62.9
Non-Convicted	3051	37.1
Total	8228	100.0

Source: U.S. Department of Homeland Security

Type of Crime

The top 10 major crime categories for which deportees in the pool were convicted appear in Table 2. Persons convicted on a cocaine charge constituted, by far, the largest grouping—33.4 percent of the total—followed by others on marijuana charges (approximately 17 percent). In total, persons convicted for drug crimes (possession, sale/distribution, or use) constituted more than half the number of criminal deportees. Murderers and other serious offenders, including rapists and other sex offenders, were not heavily represented. And, closer scrutiny of the vague “weapons (general)” convictions shows that, as discussed below, the seven percent figure reported in Table 2 was overstated. The murder convictions were mostly for domestic dispute type killings; they were not for gang, contract, drive-by, hold-up, serial, mass, or other “heinous” killings.

²⁸ *Associated Press*, “Deported Felons Take U. S. Style Crime Home,” October 22, 2003.

²⁹ See for example, Meda Chesney-Lind and Randall G. Shelden, *Girls: Delinquency and Juvenile Justice* (Pacific Grove: Cole, 1992) and Errol Miller, *Marginalization of the Black Male* (Kingston: Canoe, 1994).

These findings are consistent with the Jamaican Ministry of National Security's 2001 report.³⁰ "The top five crimes" for which deportees were convicted prior to deportation were, according to the report, drug related, at 42.9 percent; property related, at 9.3 percent; and assault, at 8.6 percent.³¹ Table 2 also shows that 283 persons—a not insignificant 5.5 percent—had been convicted of immigration related crimes, which the 1996 Illegal Immigration Reform and Immigration Responsibility Act classified as "aggravated felonies." These likely included falsification of immigration documents and misrepresentation made "for the purpose of procuring the alien's admission as an immigrant," as the Act categorizes it.

Further mining of the conviction data revealed more details about actual or specific types of convictions. Among other things, Table 3 gives the four different types of drug crimes for which the deportees had been convicted—sales, possession, smuggling, and

Table 2: Most Frequent Deportee Convictions Grouped

Crime	Frequency	Valid Percentage
Cocaine Charge	1724	33.4
Marijuana Charge	873	16.9
Sex Crimes	147	2.8
Weapons (general)	362	7.0
Immigration related	283	5.5
Theft	473	9.2
Assault	353	6.8
Other Drugs	491	9.5
Homicide	106	2.0
Fraud	119	2.3
Other Crimes	237	4.6
Total Valid Cases	5168	100.0
Missing Cases	6	
Total	5174	

Source: U. S. Department of Homeland Security

³⁰ Government of Jamaica, Ministry, "Deportee Report."

³¹ Ibid., 7.

what the Department of Homeland Security coders determined were “unclear drug involvement.” The table also tells precisely that 204 deportees (3.9 percent of the total) had been convicted on actual possession of weapons charges—not the larger seven percent as initially appeared in Table 2. Also thrown into the mix were others that were deported because they had been convicted for a variety of petty and ambiguous crimes (e.g., shoplifting, obstruction of justice, and receipt of stolen goods).

Table 3: Breakout of Categories for Deportee Crimes

Crime	Number	Percent
Drug Sales	1052	20.3
Possession of Drugs	968	18.7
Unclear Drug Involvement	596	11.5
Larceny Theft	473	9.1
Drug Smuggling	472	9.1
Robbery	207	4.0
Possession of Weapons	204	3.9
Sex Crimes	148	2.9
Homicide	106	2.0
Burglary	90	1.7
Shoplifting	50	0.9
Rape	24	0.5
Obstruction of Justice	15	0.3
Receipt of Stolen Goods	14	0.3
All Other (grouped & unspecified)	755	14.6
Total	5174	100

Source: U. S. Department of Homeland Security

Prior Convictions

For nearly half of the “criminal deportees” (48.8 percent), the conviction for which they were deported was their first known or recorded conviction in the United States (Table 4). This particular group, in other words, had no known prior U. S. conviction. The finding is significant. Number of prior convictions is usually taken as an indication of amount of time spent in and out of prison by a presumed “seasoned offender.” Part of the mythology and the rap against deportees returned because of a criminal conviction is that they had become hardened, habitual criminals in their country of last residence. But, based on the data presented in Table 4, that seems not to be the case—at least not for the deportees returned to Jamaica from the U.S. during the period under study.

Table 4: Number of Convictions		
Convictions	Number	Valid Percent
0-1	2525	48.8
2	1298	25.1
3	596	11.5
4	315	6.1
5	440	8.5
Total	5174	100
Source: U. S. Department of Homeland Security		

Seventy-eight percent of these first-timers were convicted in the U.S. for possession and/or sale of either cocaine or marijuana, or both. Four percent were for sexual assault; six percent were for weapons charges; seven percent were for theft; and four percent were for immigration related “crimes.” Less than 15 percent of persons in the convicted pool had records of four or more prior convictions before being sent back to Jamaica.

Preliminary Follow-up Findings

Jamaican police data are unable to shed reliable light on the actual involvement in local crime of the 5,174 convicted deportees reported there as having been returned to Jamaica between 1997 and 2003. An ongoing exploratory study of a sample of this cohort of deportees is, however, revealing several preliminary bits of counter confirmatory information.³²

The study has three main objectives. The first is ascertaining, from the deportees themselves, whether they have been involved in any criminal activity since their forced return to Jamaica. The second is finding out how the deportees view their reception and treatment by agencies (state and civic) in the larger society and in the communities in which they currently reside. Of critical importance is how these different levels of treatment have either assisted or retarded the deportees’ reintegration into the society. And the third goal is learning what coping strategies the deportees have adopted in response to whatever unwelcoming situations they may have perceived.

Joyce Harris reports, from data gathered from 60 deportee respondents, that none had been involved in a crime for which they could realistically have been arrested, charged, and convicted after two or more years since their deportation to Jamaica.³³ More than half said, however, that they had been stopped, questioned, or even “hauled in” by the

³² Headley et al., *Deported Volume II*.

³³ Joyce Harris, “Coping Strategies in Jamaica among Deportees from the United States,” Master’s in Social Work Thesis (University of the West Indies, Mona: Department of Sociology, Psychology, and Social Work, 2005).

police, mostly because they were either known beforehand to law enforcement authorities or because someone in the community had “informed” on them. A third admitted to having committed non-serious “common” offenses, like selling, purchasing, or using small quantities of marijuana, illegal driving of taxis, unauthorised vending, or unlawful gaming.

All of the 60 interviewed deportees indicated varying levels of discomfort with how they are being perceived in Jamaican society. That perception is one of “negativity,” which, in their thinking, is translated into negative attitudes toward them—from name-calling and stigmatization to acts of outright discrimination. They thus see themselves (with notable exceptions, of course) as existing on the periphery of the society, and as outsiders who are in no way being re-assimilated or reintegrated into their homelands, nor are they being assisted in doing so. They endure in isolation from the law-abiding and conventional sectors of the society, as well as from major criminal networks. The coping strategies that most say they have developed (how to find work and otherwise maintain a life) were derived from contact with family, a church pastor, or close association with fellow deportees.

Conclusion and Recommendations

The two sets of findings put forth herein seem to indicate that deportations from the U.S. to Jamaica and other Caribbean countries is more about enforcing the sanctions of the U.S. Congress’ 1996 Illegal Immigration Reform and Immigration Responsibility Act and freeing up prison space than about the serious criminality of those forcibly returned. That conclusion seems particularly apt, as others in the class of ne’er-do-well Jamaicans in the U.S., including multiple convicted leaders of major 1980s’ Jamaican-American criminal gangs (“posses”), are not among the recently deported.³⁴

The entire deportees-from-U.S. discourse, then, may have been framed too narrowly. The sudden presence of vast numbers of uprooted adult men and women, who are indeed thrust upon “poor and defenceless” countries, is a problem of grave human proportions. What small nations like Jamaica face in the forcible return of large numbers of its people, its former castaways, is not so much their impact on local crime, but the challenge they pose for re-absorption. The preliminary research evidence pointed to here suggest that the majority of deportees in Jamaica are thrust into environments—often totally new environments, despite having been born in the country—without resources to successfully negotiate, settle, or be reintegrated into normal Jamaican life. Shunned and stigmatized, they are left adrift in the society.

³⁴ For a thorough discussion of the operation of Jamaican gangs in America in the 1980s, see Bernard Headley, *The Jamaican Crime Scene: A Perspective* (Washington, D.C.: Howard University Press, 1996).

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St. Kitts and Nevis' National Security Minister, Dwyer Astaphan, has perhaps demonstrated the clearest understanding of the problem when, during a June 2005 visit to New York, he called for "a paradigm shift" in Washington's relations with the Caribbean on the matter of deportations.³⁵ Out of this kind of concern come several recommendations that might move the discourse—and the dialogue between deporting and receiving countries—in a new, transformative direction:

1. Small countries of the South should seek to secure avenues for shaping, with the deporting countries of the North, consensus around a set of basic principles for determining categories of deportable persons. The process would not be substantially different from the one proposed by regional planning agencies with respect to crime; relevant respective countries should arrive at clear definitional understandings "for treating with" the cross-border movement of criminalized commodities and persons, with understandings "of the duties and responsibilities of exporting and receiving countries." Linked to this would be "just procedures and mechanisms" for evaluating nations and censuring them for failure to comply.³⁶
2. Of critical importance with regard to the above would also be dialogue on a) the moral implications of deporting long term lawful permanent residents (typically breaking up families formed in the U.S.) because of a first-time, one-off minor offense; and b) the collateral impact on poor receiving states of large numbers of displaced persons.
3. Caribbean transnational citizen communities in the United States should lobby sympathetic legislators on Washington's Capitol Hill (notably the Congressional Black Caucus) to throw out or significantly alter the onerous 1996 Immigration Reform and Immigration Responsibility Act.
4. Moreover, the U. S. Caribbean transnational community should work with human rights organizations (e.g., Lawyers Committee for Human Rights) to force the U. S. Department of Homeland Security, the Bush administration, and Congress to create a high level internal oversight mechanism within DHS to ensure adherence to agreed on deportation guidelines and criteria.
5. Countries like Jamaica, which receives large numbers of deportees from the United States, England, and Canada, must develop within their borders structured social support systems and re-educational program (the latter for deportees as well as receiving communities) to facilitate the reintegration of persons into their country of origin. One version of this approach has already been proposed by The Caribbean Association for the Resettlement of Returning Residents in Jamaica. The Association proposes "establishment of a Centre for Behaviour Modification to benefit Caribbean nationals who are

³⁵ Quoted in *The Gleaner*, "U.S. Deportation Drive Targets Carib Nationals," June 21, 2005.

³⁶ Government of Jamaica, "National Human Development Report," Planning Institute of Jamaica, 2005

involuntarily returned to their respective countries...The facility would, among other things, provide for the smooth re-integration of deportees and would facilitate a public education programme to improve the negative perception toward that group.”³⁷

³⁷ *The Gleaner*, “Welfare Centre for Deportees?” August 26, 2003, <<http://www.jamaica-gleaner.com/gleaner/20030826/lead/lead5.html>>.

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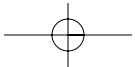
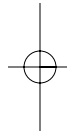
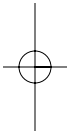
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Chapter 9

Haitian Migration to the Dominican Republic

Article 9.1 The Haitian Minority in the
Dominican Republic - *James Ferguson*

Article 9.2 Managing Haitian Migratory Flows to the
Dominican Republic: The Challenges
and Opportunities - *Maureen Achieng*

The Haitian Migrant Minority in the Dominican Republic

9.1

James Ferguson

Introduction

Haitians and Dominico-Haitians (those born in the Dominican Republic) form a large minority in the Dominican Republic.¹ For decades they have been crossing the border, either by invitation or illegally, to work on sugar plantations or in other agricultural or manual employment, doing the work that Dominicans have traditionally refused to do. But today, as the Dominican government is attempting to abandon its age-old dependence on sugar and develop manufacturing, tourism and other sectors, Haitian labor is again filling the gaps left by Dominican workers.

Haitians are both needed and widely disparaged as a migrant minority. For Dominican employers they offer a reservoir of cheap labor, which is non-unionized and easy to exploit. Meanwhile, Dominican politicians and the media often depict them as a problem, as a drain on a poor country's limited resources. Racist attitudes also condemn Haitians and their children as blacker than Dominicans, "uncivilized" and "inferior."

The plight of the Haitian cane-cutters in the Dominican Republic has been recognized since the 1970s, but much less is known about more recent forms of migrant labor largely because such labor is often illicit and undocumented. Neither the workers who live outside the economic mainstream nor the employers who benefit from their illegal status are keen to draw attention to the thriving informal-sector economy that exists alongside and supports the formal economy.

This article, adapted from a 2003 Minority Rights Group (MRG) report, aims to cast light on the conditions experienced by this particular group of migrants and offers some recommendations for policymakers.² Its focus is on the historical and current trends of labor migration and how the supply of migrants of Haitian origin has factored into the

¹ The term used to describe individuals born of Haitian parents in the Dominican Republic is problematic, with "Dominico-Haitian" being widely used in the Dominican Republic. Other terms, which imply more than an incidental Dominican connection, are Haitian Dominicans or Dominicans of Haitian descent.

² James Ferguson, *Migration in the Caribbean: Haiti, the Dominican Republic and Beyond* (London: Minority Rights Group International, July 2003).

Dominican economy, specifically pertaining to the sugar industry. The first part describes the numbers of Haitian migrants, their motivating forces, and some of the challenges they face. The second part examines some of the ethnic tensions and racism experienced among the migrants of Haitian origin, and analyzes these perspectives as they relate to Dominican politics.

Haitians in the Dominican Republic

Nobody knows how many Haitians and Haitian-descended Dominicans are living and working in the Dominican Republic. Estimates vary from the Inter-American Commission on Human Rights (IACHR) figure of 500,000-700,000 in 1999, while, according to Human Rights Watch (HRW), the head of the Dominican army referred in 2001 to “a million or so.” The Haitian Embassy in the Dominican capital Santo Domingo proposed a similar figure in 2001, and some Dominican media reports have guessed 1.5 million. There is no reliable census material, and estimates are generally ideologically motivated, especially from Dominican nationalists opposed to Haitian migration. Not only is it unclear how many Haitians are resident in the Dominican Republic, but also how many people of Haitian descent were born in the Dominican Republic. The Haitian Embassy in the Dominican Republic estimated in 2001 that there were 280,000 Dominico-Haitians, born to Haitian parents within the country.³

What is known is that only a tiny fraction of Haitian-born migrants in the Dominican Republic have a valid visa or work permit. The Dominican authorities claimed in 1999 that only 4,000 Haitians possessed legal documentation, and it is frequently alleged that large numbers of Haitians buy false identity papers, thereby further confusing statistical estimates.

Escaping Poverty

The driving force behind Haitian movement across the border is poverty. This is as much the case today as it has been since the first large-scale migratory movements in the 1920s. Haiti has an average annual income per head of US\$500. Many Haitians subsist on incomes below that, and an estimated 80 percent live in “abject poverty” according to the World Bank.⁴ If several thousand millionaire families reputedly live in the capital’s prosperous mountainside suburbs, the vast majority of Haiti’s seven million people live either in urban shanty towns or poverty-stricken rural communities. Haiti’s capital, Port-au-Prince, is largely devoid of any government services and employment prospects, but

³ See Phillip Martin, Elizabeth Midgeley, and Michael Teitelbaum, “Migration and Development: Whither the Dominican Republic and Haiti?” University of California, Davis, seminar report, March 15, 2002, Santo Domingo, <http://migration.ucdavis.edu/rs/more.php?id=97_0_2_0>.

⁴ See World Bank, “Haiti: Current Highlights,” updated regularly, <www.worldbank.org/ht>.

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the worst poverty is to be found in the countryside, where some 66 percent of Haitians settle for a precarious living from smallholdings and informal agricultural work. With an average life expectancy of only 49.5 years and infant mortality recorded at 93.5 per 1,000 live births, Haiti's social statistics point to almost universal hardship and exclusion.

Haiti is a country of social extremes. Some five percent of the population is designated as white or *mulatto*, with the rest defined as black. The small mixed-race minority and some elite black families hold a near monopoly of economic power and have strong links with the U.S. and France, the former colonial power. French- and English-speaking, often with assets in Miami and elsewhere, the Haitian elite inhabits a different world than that of the Creole-speaking black majority.

The ecological disaster that has ravaged the Haitian countryside since the 1970s fuels the rise of poverty and resulting migration. Vast tracts of once fertile land have been reduced to desert by tree-felling for charcoal and by the farming of marginal land. Soil erosion has rendered many small farms unviable and vulnerable to drought and flash floods. Some World Bank consultants doubt that Haiti can ever return to being a viable agricultural economy. At the same time, the manufacturing sector that employed 100,000 workers at the beginning of the 1990s in low-wage *maquiladora*-type assembly plants had all but collapsed in 2000 due to political instability, the demise of the U.S.-sponsored Caribbean Basin Initiative (a program designed to encourage manufacturing aimed at the U.S. market) and competition elsewhere in the region.⁵

Unemployment and a stagnant economy—Haitian Gross Domestic Product (GDP) contracted by 1.2 percent in 2001—are linked to chronic political instability and Haiti's troubled relations with the international financial institutions.⁶ After the collapse of the Jean-Claude "Baby Doc" Duvalier dictatorship in 1986 and an extended period of coups and ephemeral unelected governments, Haiti witnessed the overthrow of the democratically elected Jean-Bertrand Aristide in 1991, a brutal military regime, and then the return of Aristide in 1995. Re-elected in 2000, Aristide's government has been paralyzed by constitutional obstructions from opposition groups in Haiti and allegations of electoral malpractice. It has also presided over a worsening economic situation, exacerbated by the reluctance of international donors to supply aid. Human rights abuses and political violence grew in 2000 and 2001. According to HRW, "Given Haiti's abysmal economic conditions and political turmoil, it is no surprise that many Haitians now flock to the Dominican Republic in hopes of a better life."⁷ Further, Haitians

⁵ The term *maquiladora* refers to a Mexican Corporation which operates under a *maquila* program approved for it by the Mexican Secretariat of Commerce and Industrial Development (SECOFI); they are often owned or run wholly or in part by a foreign company. Maquiladoras are most notorious for their oftentimes sub-standard work conditions and poor compensation for employees, and have been referred to as "sweatshops."

⁶ For updated figures, see U.S. Central Intelligence Agency, *The World Factbook: Haiti*, May 2, 2006, <<http://www.cia.gov/cia/publications/factbook/geos/ha.html>>.

⁷ Human Rights Watch (HRW), *"Illegal People:" Haitians and Dominico-Haitians in the Dominican Republic* (New York: Human Rights Watch, 2002).

crossing the border know that there will be work for them. Sectors of the Dominican economy are as dependent on cheap Haitian labor as poor Haitians are on working in the Dominican Republic.

Periods of intense political upheaval in Haiti produce larger than normal outflows of migrants into the Dominican Republic. According to the National Coalition for Haitian Rights (NCHR), some 25,000-30,000 Haitians crossed the border in the immediate aftermath of the 1991 anti-Aristide coup; there are cases of Haitians fleeing their homes as a result of violence or threats from local political bosses.⁸ Yet the real link between political instability and migration lies in the deteriorating Haitian economy, where foreign investors, international donors, and Haitian entrepreneurs are unwilling or unable to reverse the inexorable growth of poverty and unemployment while political chaos persists.

Haitians have been migrating to escape poverty and persecution since the beginning of the twentieth century. Today the Haitian diaspora extends to the U.S., where the International Organization for Migration (IOM) estimates there to be some 800,000 Haitian migrants, and to France (60,000) and Canada (40,000). There are also significant Haitian communities across the Caribbean. Traditionally, the Haitian elite, professionals and intellectuals, have sought refuge in France or Canada. However, the largest movement of Haitian migrants takes place across the Haiti–Dominican Republic border. This movement is a two-way process, involving voluntary and involuntary migration, long- and short-term residence in the Dominican Republic, legal and illegal entry, smuggling, expulsions, and a long history of human rights abuses. The central paradox of this cross-border traffic is that Haitian labor is essential to the Dominican economy, while Haitians are viewed as a threat, both demographic and cultural, to the Dominican Republic. The other great irony is that although Haitians move to the Dominican Republic to escape the worst forms of poverty and deprivation, they are almost certain to encounter similar conditions—as well as prejudice and ill-treatment—across the border.

Haitians living in the Dominican Republic are not a homogeneous community. It is important to distinguish between the very small, documented Haitian population, mostly based in Santo Domingo, and the great majority of undocumented migrants. It is even more important, moreover, to recognize the difference between permanent or semi-permanent communities and temporary and seasonal workers.

The Haitian presence in the Dominican Republic is thus comprised of three groups: a small group of documented and legal migrants; a large community of long-term residents who were born in Haiti; and a floating, transient population of temporary,

⁸ National Coalition for Haitian Rights (NCHR), *Beyond the Bateyes* (New York: NCHR, 1996).

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Haitian migrant workers. Together they form a distinct minority within Dominican society, but each, with the exception of the documented group, faces its own particular problems.

A significant and separate community is comprised of Dominico-Haitians, people of Haitian origin born in the Dominican Republic. This category includes differing generations, as well as individuals born to one or more Haitian parent. What they have in common is that they were born in the Dominican Republic, yet face problems in “proving” their Dominican citizenship and accessing fundamental rights.

It is difficult to generalize about the characteristics of those “new” Haitian migrants who currently move across the border, but those who choose to move to the Dominican Republic are generally from the poorest sectors of Haitian society. While those who attempt to reach the U.S. tend to sell whatever assets they have to fund the journey, migrants to the Dominican Republic merely have to reach the border or other places where they can make contact with those who facilitate their entry. According to the International Human Rights Law Clinic at the University of California:

Males, largely illiterate and in their late twenties, employed in agricultural work are typical migrants. This picture is consistent with the type of Haitian laborer the Dominican and Haitian governments actively recruited for decades to harvest sugar cane in the Dominican Republic. Despite significant changes in the agricultural sector in the last fifteen years, notably the end in the mid-1980s of the bilateral labor contract between Haiti and the Dominican Republic and the more recent privatization of the sugar cane industry, the continued pattern of Haitian male employment in this area indicates the durability of this employment pattern.⁹

Other sources point to a more complex mix of occupation and gender, suggesting that large numbers of migrants are women working in the agricultural sector, domestic service, and particularly in informal-sector trading.¹⁰

Sugar and Migration

Sugar had been an important commodity in the Dominican Republic since the 1870s, but it was during the 1916-1924 U.S. occupation that the Dominican sugar industry really expanded. By 1925, 11 of the country's 21 sugar mills belonged to U.S. corporations, with 98 percent of exports going to the U.S. Haitian labor was actively encouraged by the U.S. military, particularly in the face of mounting economic and demographic pressures across the border. After the U.S. left the Dominican Republic and Haiti (in 1934), the migratory movement continued. The official census of 1935 recorded 50,000 Haitians residing in the Dominican Republic.

⁹ International Human Rights Law Clinic, *Unwelcome Guests: A Study of Expulsions of Haitians and Dominicans of Haitian Descent from the Dominican Republic to Haiti* (Berkeley: University of California, 2002), 34.

¹⁰ *Ibid.*

In the sugar industry, Dominicans were employed from the outset in higher-skilled and better-paid jobs, but most refused to cut cane—the work was too arduous and demeaning, and too badly paid. Unlike Haiti, which until independence in 1804 had been the plantation-based French colony of Saint Domingue, the Dominican Republic had little tradition of large-scale plantation agriculture and had not experienced the same history of slavery. Slavery during the Dominican Republic's colonial period had been much less widespread than in Saint Domingue and arguably more benign. As a result, Dominican antipathy toward cane-cutting was, to a large extent, determined by associations with slavery and by the assumption, encouraged by Dominican governments and plantation owners, that Haitians—and not Dominicans—were suited to the work. Some Dominicans, normally from the poorest sectors of rural society and darker-skinned, were forced by poverty to cut cane, but by the 1970s they were outnumbered by Haitians.¹¹

Haitians also replaced the so-called *cocolos*, migrant cane-cutters from the English-speaking Caribbean, as early as the 1920s when the depression slashed world sugar prices and wages. Nonetheless, considerable numbers of Dominicans have always been, and remain, employed in the sugar industry, mostly in technical, managerial, and skilled roles, enjoying much higher status than Haitians. Of the 30,000 official employees recorded in the state-controlled sugar sector in 2000, most were Dominicans.

Trujillo's dictatorship was both brutally anti-Haitian and dependent upon continuing supplies of Haitian labor. The 1937 massacre took place at a time when Trujillo did not control large sugar-producing interests and was more interested in issuing a political warning to Haiti. Yet later, as Trujillo's state took over much of the industry from U.S. and domestic owners, he saw Haitian labor as a necessity rather than a threat. So began a series of bilateral agreements, or *convenios*, between the rulers of the two countries, under which Haitian laborers, or *braceros*, were brought across the border for specified periods of work on sugar plantations. After Trujillo's 1952 *convenio* brought in 16,500 workers, more *convenios* were signed between Trujillo and his Haitian counterpart "Papa Doc" Duvalier. After Trujillo's assassination in 1961, his personal sugar interests were reorganized into the state-owned State Sugar Council (CEA), and this entity dealt with Papa Doc and then his son Baby Doc Duvalier. The benefits received by the Haitian dictatorship for supplying cheap labor to the Dominican authorities were considerable. According to Ramón Antonio Veras, Baby Doc received US\$2.9 million from 1980 to 1981 for facilitating the transportation of 16,000 workers to CEA plantations.¹²

Despite the agreements, there were never enough Haitian workers to cut the cane during the *zafra*, or harvesting season. Nor were the non-CEA plantations, principally the U.S. Gulf & Western-owned La Romana, the local Vicini group and some 5,000 smaller private farms, able to recruit sufficient labor.

¹¹ See Silvio Torres-Saillant, "The Dominican Republic," in *No Longer Invisible: Afro-Latin Americans Today* (London: Minority Rights Group, 1995).

¹² R.A. Veras, "Inmigración, Haitianos, Esclavitud," Santo Domingo, Taller, 1983.

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The labor shortage was eased by the gradual establishment of a permanent, resident, Haitian-born population in and around the sugar plantations. These people remained in the Dominican Republic either because they had not earned enough money to return home or because they saw no advantage in doing so. While some cane-cutters returned to Haiti at the end of the harvest, many remained behind. They settled in the squalid work camps that had been constructed in the early twentieth century to house temporary contract workers. Known as *bateyes*, these rudimentary settlements were never intended to house workers, let alone families, all year round. Yet as increasing numbers of *braceros* opted to stay in the vicinity of the plantations, even during the workless *tiempo muerto* season between July and October, the *bateyes* became permanent communities. Some men were joined by female family members from Haiti, others married Dominican women; children were born.

The inhabitants of the *bateyes*, or those who could work, provided a stable source of labor from the 1960s onwards and were joined by an annual influx of contracted workers, known as *kongos*, as well as an unknown number of illegal and undocumented workers, who were known by the Haitian Creole term of *ambafiles* (literally “below the wire”). Many of these remained behind each year, swelling the populations of the *bateyes*.

The *convenios* supposedly guaranteed basic levels of pay and minimum working conditions to workers recruited by the CEA: acceptable accommodation, safe transport, medical insurance, and a basic payment for each ton of cane cut. The CEA was also supposed to provide basic pensions and access to schools for the cane-cutters’ children. Those *braceros* that arrived illegally were denied even these guarantees. A network of recruiting agents, known as *buscones*, were allegedly employed by the sugar plantations, both CEA and privately owned, to persuade Haitians to cross the border with promises of good pay. Some workers were recruited in Haiti, others on the border, while still more were picked up once inside the Dominican Republic. While the recruiting involved massive deception, the rounding-up of Haitian workers inside the Dominican Republic was often tantamount to kidnapping.¹³ With the overthrow of Baby Doc’s dictatorship in 1986, the last *convenio* came to an end. Abruptly, the CEA and private sugar companies found their annual supply of cheap labor cut off. As a result, illegal recruiting increased dramatically.

The plight of Haitians in the *bateyes* began to attract international attention in the 1980s. Maurice Lemoine’s *Bitter Sugar* (1981) and Roger Plant’s *Sugar and Modern Slavery* (1987) graphically revealed the squalor and exploitation prevalent in the settlements. They, together with reports from non-governmental organizations (NGOs), exposed the systematic abuse of Haitian workers’ rights, ranging from underpayment and denial of medical attention, to physical abuse and conditions resembling imprisonment. A fact-finding mission sent by the International Labor Organization (ILO) in 1983 condemned

¹³ Maurice Lemoine, *Bitter Sugar* (London: Zed Books, 1985); and Roger Plant, *Sugar and Modern Slavery: A Tale of Two Countries* (London: Zed Books, 1987).

what it described as “near-slavery” on the plantations.¹⁴ In particular, it was reported that *braceros* were physically prevented by armed overseers or Dominican military personnel from leaving their CEA *bateyes*, as many believed that conditions were better in the plantations owned by the private companies. The publications also outlined the disgraceful conditions endured by *batey* residents. Many, it was reported, were never paid what was owed to them, especially those returning to Haiti at the end of the cutting season. Within the *bateyes*, a hierarchy existed: at the top were the Dominican residents (mostly overseers), followed by long-stay Haitian-born workers (*viejos*). At the bottom of the pile were the *kongos* and *ambafiles*.

As the illegal trade in *braceros* gathered pace after 1986, attention turned also to the forcible recruitment of workers. Americas Watch reported in 1989 that *buscones*, often Haitian themselves, were operating in Haiti, promising high wages and good conditions. Often they pretended to be recruiting for different work altogether. The recruits were then taken to border towns such as Jimaní, where they were arrested by the Dominican military and forcibly transported to a CEA plantation. The *buscón* reportedly received US\$10 per head, rising to US\$25 during the 1990-1991 harvest when the labor shortage had worsened. The report also detailed how Haitians were regularly picked up in roadblock searches or in raids on Haitian communities by the military.¹⁵

The Americas Watch report caused considerable controversy in the Dominican Republic and also put pressure on the U.S. to review the Dominican Republic’s eligibility for preferential access to U.S. markets. If the Dominican government indignantly denied the report’s allegations, it also ordered several reforms, notably the issuing of official contracts to Haitian cane-cutters and improvements in the state-owned *bateyes*. But, a subsequent 1991 Americas Watch report noted only limited reform and maintained that widespread abuses in recruitment and deplorable conditions persisted.¹⁶ Another report, published in the same year, reinforced these allegations, specifying that children as young as six were being recruited or taken from *bateyes* to work on Dominican plantations.¹⁷

The persistent foreign criticism of Dominican labor practices led the autocratic government of Joaquín Balaguer, an erstwhile political ally of Trujillo, to order a massive expulsion of Haitians from the Dominican Republic. Significantly, those targeted were individuals under age 16 or over 60, and not those required by the sugar industry. This was one of many such expulsions, motivated by political or economic pressures.

¹⁴ International Labor Organization, *Official Bulletin*, LXVI (1983).

¹⁵ Americas Watch, *Haitian Sugar Cane Cutters in the Dominican Republic* (New York: Americas Watch, 1989).

¹⁶ Americas Watch, *Half Measures: Reform, Forced Labor and the Dominican Sugar Industry* (New York: Americas Watch, 1991).

¹⁷ Lawyers Committee for Human Rights, *A Childhood Abducted: Children Cutting Sugar Cane in the Dominican* (New York: Lawyers Committee for Human Rights, 1991).

The Decline of Sugar

The controversy surrounding Haitian labor in the 1980s coincided with a crisis within the Dominican sugar industry. Trujillo had seized foreign-owned assets in the profitable post-World War II era, when prices were high, and the CEA had inherited his 12 mills and surrounding plantations. But the CEA, writes Roger Plant, was “a massive and notoriously inefficient organization, operating virtually as a state within a state.” In the early 1970s, it exported over a million tons annually, and during the “miracle years” of 1974-1978 received 76 cents per pound on the U.S. market. By 1982, however, the CEA was receiving only five cents per pound. By 1977 it was estimated that production costs were higher than the price received per pound and gradually the CEA became indebted, its shortfalls covered by the government.¹⁸ For years it was rumored that corruption and mismanagement, as well as a bloated payroll of government appointees, made the company commercially unviable. By contrast, the La Romana complex, sold by Gulf & Western in 1985, and the smaller holdings of the Vicini group, were profitable and maintained consistent levels of production.

From the 1980s, successive Dominican governments reduced the dependency on sugar and the notoriously volatile international market, and aimed to diversify into low-wage export-oriented manufacturing, non-traditional agriculture, and tourism. The economic drain exerted on the state by the CEA made this policy more urgent as the privatization administration of Leonel Fernández replaced Balaguer’s more traditionally statist government in 1996. Pledging to divest itself of large state-owned sectors of the economy, the Fernández administration prioritized the privatization of the CEA. CEA production tumbled to a record low of 50,000 tons in 1999 (compared to 242,000 from La Romana and 78,000 from the Vicini group); the CEA had reached the end of the road.¹⁹ Tendering for management of its mills and plantations began in June 1999.

Privatization led to key CEA assets being leased to various companies and consortia. Almost immediately, however, the divestment hit problems, as one consortium, the Mexican-owned Conazucar, sold its five mills to a Dominican capital company, Pringamosa. There are currently five private companies: the established Central Romana and Vicini concerns, as well as Pringamosa, Cañabrava, and the Franco-American consortium, which runs the plantation and mill in Barahona.

A condition of the privatization was that the Dominican government cleared the CEA’s existing debts and, in September 1999, agreed to pay off liabilities amounting to US\$125 million. Nearly 30,000 CEA workers, mostly Dominican, were to be made redundant ahead of the new companies taking over, but according to the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’

Republic (New York: Lawyers Committee for Human Rights, 1991).

¹⁸ Ian Bell, *The Dominican Republic* (Boulder, CO: Westview, 1981), 311.

¹⁹ HRW, “*Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*.”

Associations (IUF), promises of redundancy and severance payments were slow to materialize or were not paid at all.²⁰

If the fate of Dominican CEA employees was precarious, that of undocumented and casual Haitian workers was worse. The 1999-2000 harvest did not take place on certain plantations because of the transition to private management. In June 2000, Faustino Jiménez, the director of the National Institute of Sugar (INAZUCAR), the state body intended to regulate the privatized industry, claimed that the new firms were failing to provide any social services to the thousands of cane-cutters living in what he estimated to be 222 ex-CEA *bateyes* around the country.²¹ In April 2001, a delegation from the New York-based Haiti Support Network reported that conditions in *bateyes* such as Barahona were worse than before privatization:

Previously, many *bateyes* were owned and run by the state through the...[CEA]. As a state-run enterprise, the CEA was forced to commit itself to certain responsibilities and minimum conditions for the *braceros* in housing, education, health, and other services. Although these commitments were rarely met, some were and they provided a handle for advocacy groups to exert leverage for the betterment of conditions in the *bateyes*. With the wholesale privatization of the sugar industry and its continuing decline (today the Dominican Republic even imports sugar), the Dominican state has washed its hands of any commitment to maintaining conditions in the *bateyes*.²²

This assessment is supported by a report from the U.S.-based Economic Research Institute, which noted the Dominican Human Rights Committee's view that conditions of work for cane workers have deteriorated since the industry was privatized in 1999.²³ Sonia Pierre of the Dominican-Haitian Women's Movement (MUDHA) claims, "Since privatization, the situation in the 375 *bateyes* has worsened. Schools have been closed and the new owners have expelled workers' widows, the elderly and the injured. These are people who were able to claim pensions from the State Sugar Company, and the new owners don't want them on the plantations."²⁴

²⁰ See the specific website of the IUF pertaining to the sugar sector at <http://www.iuf.org/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=2277&view_records=1&en=1>.

²¹ Dominican Republic News and Travel Information Service, June 8, 2000, <<http://www.dr1.com>>.

²² "Report of the Haiti Support Network's delegation to the Dominican Republic for the Second Assembly of Caribbean People" (Cap Haitien, Haiti: August 20-24, 2003), <www.windowsonhaiti.com>.

²³ The website of the Economic Research Institute can be accessed at <<http://www.eri.com/>>.

²⁴ Charles Arthur, "A Different Kind of Migration," *Latinamerica Press*, October 12, 2002, <<http://www.latinamericapress.org/article.asp?IssCode=&lanCode=1&artCode=3045>>.

Smuggled Labor

Whether the Dominican sugar industry is continuing to decline is a matter of debate, for the private companies managing CEA assets claim that production rose in 2000 and 2001 and that investment has created 7,000 permanent new jobs in the east of the country alone. What is certain is that the industry is facing the age-old problem of recruiting labor for work that most Dominicans refuse to do.

According to the IUF, the Dominican government assured the companies taking over management of CEA plantations that there would be adequate labor available from the permanent or semi-permanent inhabitants of the *bateyes*. The secretary of labor reportedly stated that improved conditions would attract cane-cutters from within the Dominican Republic. However, the newly privatized operations immediately faced labor shortages.

More or less at the same time, in February 2000, the governments of the Dominican Republic and Haiti signed a declaration with a view “to suppressing clandestine recruitment and illegal migration,” according to the ILO. The declaration called for proper contracts of employment, a system of work permits and measures to “protect migrant workers on an equal footing with nationals.”²⁵ In theory, the Haitian authorities were to provide their nationals with passports or other identity papers, while the Dominican authorities were to provide workers with temporary work permits.

The objectives outlined in the declaration seem to be at odds with reports that clandestine smuggling of Haitian laborers is actually on the increase—and that many of these laborers are destined for sugar plantations. In May 2000, Father Pedro Ruquoy, a Belgian human rights activist, claimed that 32,000 Haitian *braceros* had crossed the border in recent months with the connivance of Dominican military personnel and *buscones*. Arriving either by boat or in trucks, the workers, alleged Ruquoy, were sent to various sugar plantations. In September 2002, Ruquoy repeated the allegation, claiming that “members of the military department are in complicity with the privatized sugar mills to smuggle in field hands from Haiti.”²⁶ At the border point of Escondido he claimed to have seen temporary lodging facilities for Haitians, and said that 30,000 *braceros* had been smuggled into the Dominican Republic, earning the *buscones* RD\$150 (then US\$10) per head.²⁷ These claims were supported by the director of the Dominican Department of Migration, Danilo Díaz, who said in March 2000 that the border security forces had “turned the trafficking of illegal Haitians into a lucrative business.”²⁸

²⁵ Information on the ILO Declaration on Fundamental Principles and Rights at Work may be found at <<http://www.ilo.org/public/english/standards/decl/publ/reports>>.

²⁶ Dominican Republic News and Travel Information Service, September 11, 2002.

²⁷ The peso has fluctuated significantly since the initial report was written for the Minority Rights Group in 2003. The numbers in this article do not represent the 2006 exchange rate, which reflects a devalued Dominican peso in comparison to the U.S. dollar. For an updated exchange rate, consult <<http://www.oanda.com>>.

²⁸ Dominican Republic News and Travel Information Service, March 31, 2000.

The extent of illegally trafficked migration is naturally difficult to determine. Yet there seems little reason to disbelieve such reports, nor any reason to assume that changes in the Dominican sugar industry have stemmed the flow of Haitian migrant labor.

Haitian Labor and the Dominican Economy

“If we ask ourselves what best symbolizes extremes of poverty in the country, I think that all of us would mention conditions in the *bateyes*.”²⁹ These words are those of Hipólito Mejía, elected president of the Dominican Republic in 2000. They suggest that the poverty and hardship experienced by most of those living in the Dominican Republic’s *bateyes* are a matter of common knowledge. They also suggest a desire on the part of the government to change such conditions. Yet there is little evidence of any such change, nor is there a sense that improving the lot of the Dominican Republic’s permanent Haitian or Haitian-descended population, or that of those Dominicans who live in the *bateyes*, is a priority.

The Bateyes

There are approximately 500 established *bateyes* in the Dominican Republic.³⁰ Of these, around 220 belong to the CEA, but are, for the most part, managed by private companies. According to a 2002 report, there are some 250,000 residents of *bateyes*, of whom 65-75 percent are Haitians (the report does not specify whether these are Haitian-born or Haitian-descended).³¹ The State Enterprise Commission (CREP), which oversaw the privatization of the sugar industry, reported in 2001 that 32 percent of the CEA’s *bateyes* had no drinking water supply, 66 percent had no proper sanitation facilities, 16 percent had no access to medical services, and 30 percent no access to schools.³² Visitors to *bateyes* report open sewers, ramshackle housing, and very few facilities:

The *batey* visited [in March 2002]...had about 450 residents, half of whom were Dominicans. There was barrack-style housing for solo men who cut cane—five to a room. In addition, there was family housing that consisted of tin-covered shacks. Water was obtained from several fountains, some of the shacks received electricity by tapping into the main lines, and sewage flowed openly between the shacks. There was a small school built several years ago with USAID [U.S. Agency for International Development] funds, but it has never opened. UNICEF [UN Children’s Fund] had a small operation dispensing medicines.³³

²⁹ Quoted in Movimiento de Mujeres Dominico-Haitianas (MUDHA), “Solidaridad con la Lucha de la Minoría Dominicana de Ascendencia Haitiana por la Ciudadanía y la Justicia”(Santo Domingo, MUDHA, 2001), 21.

³⁰ International Human Rights Law Clinic, 19.

³¹ Martin, et al.

³² MUDHA.

³³ Martin, et al., 15.

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Fundamentally, little has changed since the first reports on conditions in the *bateyes* in the 1980s. In 1995 the NCHR published *Beyond the Bateyes*, which found “no evidence that conditions in the *bateyes* have improved since our last report in 1992.”³⁴ Subsequently, the International Confederation of Free Trade Unions (ICFTU) reported in October 2002 that “Haitians generally live in slums where sanitation and services are essentially non-existent and basic social indicators are very low.”³⁵

Contemporary descriptions of the *bateyes* also stress the abuses inflicted on cane-cutters and their families by plantation personnel, or by the Dominican military or police.³⁶ Most cane-cutting continues to be done by hand, with the current rate of pay standing at RD\$45 (about US\$2.60) a ton cut. It is estimated that cane-cutters average 2-3 tons a day.³⁷ Cane-cutting is dangerous work; according to Michele Wucker, the Dominican government admits that 85 percent of all workplace injuries take place in the cane fields. In addition, cutters are obliged to load the cane into carts that are pulled by tractors to a transfer station, where it is weighed and taken by trucks to the mill. As cut cane dries (and loses weight) quickly, cutters need the cane to be taken quickly to the weighing station, and Dominican drivers allegedly demand bribes from the cane-cutters in return for a quick delivery. It has also been alleged that scales are deliberately weighted against the cane-cutters by the *pesadores* (weighers).³⁸ Inspectors, who are supposed to check the weighing process, had disappeared by 1999. Payment continued to be made in vouchers or tokens rather than money, according to a 1999 IACHR report. These vouchers could be used at a company store, where prices were inflated, or cashed in at the stores at a 10 percent discount.

Perhaps most serious are allegations that *braceros* are still the victims of forced labor.³⁹ The 2002 ICFTU report detailed various types of coercion, concluding, “Haitian workers on sugar plantations often work under conditions tantamount to slavery, as they have no legal protection in the country, and are completely at the mercy of their employer. There are numerous reports of clothes and other belongings being locked away, or wages withheld, in order that workers cannot leave.”⁴⁰ Women face particular hardships, as “their presence in the *bateyes* is not acknowledged, nor their presence in the cane fields...Consequently, Haitian women do not have, on their own account, the right to housing, nor to health services, however limited they may be.”⁴¹

³⁴ NCHR, 34.

³⁵ International Confederation of Free Trade Unions (ICFTU), *Internationally-Recognized Core Labor Standards in the Dominican Republic: Report for the WTO General Council Review of Trade Policies of the Dominican Republic* (Geneva: ICFTU, 2002).

³⁶ See Michele Wucker, *Why the Cocks Fight: Dominicans, Haitians, and the Struggle for Hispaniola* (New York: Hill and Wang, 2000).

³⁷ Wucker claims that cane-cutters in Florida can reach eight tons a day, and asks whether it is the cane-cutters' weakness, the cheating of the *pesadores* or drying out of the cane that accounts for low yields in the Dominican Republic. *Ibid.*, 97.

³⁸ NCHR, 33.

³⁹ UN Economic and Social Council, Working Group on Contemporary Forms of Slavery, “Forced Labor on Sugar Cane Plantations in the Dominican Republic,” Geneva, 1998, summary available from <<http://www.antislavery.org/archive/submission/submission1998-05Dominican.htm>>.

⁴⁰ ICFTU.

⁴¹ Martin, et al.

According to the IACHR, some five percent of cane-cutters are women, but they are paid half of what male cutters receive. The NCHR claimed in 1995 that, although women were legally prohibited from cutting cane, some still did by relying on a male co-worker to process the cut cane for payment. The report also pointed out that women in the *bateyes* were tolerated only if married to or living with a male cane-cutter and faced particular problems:

...aside from earning wages cutting cane, few avenues to earn money are available. Many sell coal or sweets or do laundry for pay. Others abandoned by a male must turn to prostitution to feed themselves and their children. They are also subject to sexual violence from Dominican army, police and camp guards and Haitian workers, with little legal recourse.⁴²

MUDHA points out that 80 percent of women working in or from *bateyes* do so in the informal sector: 45 percent in domestic service, 23 percent in small-scale trading, and five percent as market vendors. None of these jobs offers security, social benefits, or anything above poverty pay.

According to MUDHA's research, over 20 percent of children living in or around *bateyes* live with a single mother, while 61.5 percent of households calculated to live in extreme poverty are those of single women. Children are extremely vulnerable to exploitation, are often denied access to education, and have been used as a particularly cheap source of labor. The ICFTU's 2002 report noted that "there are increasing numbers of Haitian children working on sugar plantations alongside their parents."⁴³ This was echoed by the Economic Research Institute who state that despite government attempts to ban children from cutting cane, children were working, with the tacit acceptance of sugar companies.⁴⁴ The IACHR's research concludes that most children in *bateyes* do not go to school, but helped their parents. "This created a tragic cycle in which a future of poverty is practically inescapable."⁴⁵

Trade union organization in most *bateyes* is almost non-existent. The Dominican union movement is, in any case, weak, and even those Dominicans employed in the sugar industry are generally reluctant to join unions. The ICFTU report recorded that union representatives cannot move freely around *bateyes*, workers taking part in union activities had been threatened, and three unions (Sinatraplasi, Sipicaiba, and Sitraplasib) had been repeatedly refused negotiation rights by the CEA. Privatization of the state sugar sector has done nothing to improve this situation, with 150 workers at the mill at Consuelo reportedly laid off in early 2000 for forming a trade union.

⁴² NCHR, 35.

⁴³ ICFTU.

⁴⁴ Economic Research Institute.

⁴⁵ IACHR, 6.

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Yet not all *bateyes* present the same grim picture of deprivation and abuse. The Sugar Worker of April 2001, for instance, reported that the Central Romana Corporation had just signed a three-year collective bargaining agreement with the union Sindicato Unido, offering a 50 percent pay raise to sugar workers over that period as well as improvements in educational facilities and pension provision.⁴⁶

Considerable improvements in living conditions and economic opportunities have also materialized as a result of the work of national and international NGOs. Organizations such as MUDHA, the Movimiento Socio Cultural de los Trabajadores Haitianos (MOSCTHA), and the Organización de la Defensa de los Moradores de los Bateyes (ODEMOBA) have combined with international donors to implement practical projects in advocacy, health care, and credit for small businesses; other human rights groups such as the Centro Puente, the Jeannot Succès network, and the Pastoral Haitiana have brought abuses to international attention. Overseas fundraising groups such as the Batey Relief Alliance make an impact on health and education facilities, while many church and human rights activists make a contribution. All of this NGO work, while improving life for the most deprived inhabitants of the *bateyes*, also relieves the Dominican state of some of its responsibility.

Beyond the Bateyes

The image of the Haitian migrant worker in the Dominican Republic as an oppressed cane-cutter is only part of the story. For several decades, Haitian labor has fuelled other sectors of the Dominican economy, including coffee and rice, commerce, construction, manufacturing, and tourism. As the Dominican economy has broadened from its historic dependence on sugar, so too has demand for cheap labor in other areas. Partly, this is because Dominican agricultural workers have abandoned their traditional roles and started looking for work in the new manufacturing and service sectors, and Dominican migration, especially from the poorest rural areas, has reinforced this trend. It is also partly because Haitians are now the first choice for a growing range of Dominican employers in search of cheap and pliable labor. This diversification of labor demand, combined with the deterioration of the sugar industry, has meant that Haitians are required outside the plantations, even if the hardships and discrimination they face are reminiscent of their traditional economic role.

The diversification of Haitian labor is not new. During the *tiempo muerto*, male cane-cutters often became an integral part of the coffee-picking workforce. It is estimated that Dominican coffee-growers employ about 35,000 Haitians and 15,000 Dominicans to harvest coffee worth US\$160 million annually to the Dominican economy in the mid-1990s, but now worth only approximately US\$11 million.⁴⁷ Conditions and pay, although poor, are marginally better than in the sugar plantations; a worker can expect to be paid

⁴⁶ IUF.

⁴⁷ Economist Intelligence Unit, *Dominican Republic: Country Report* (London: EIU, 2003).

around US\$5 per 70-pound box of beans picked. The Dominican Federation of Coffee Growers has vociferously opposed expulsions of Haitians from coffee-growing areas, arguing that the disappearance of cheap labor will mean the end of their business.

Haitian laborers are also active in rice, tobacco, and vegetable harvesting. The Dominican newspaper *Listín Diario* reported in February 2002 how 200 or 300 workers assemble each morning near Constanza to be bussed to farms where they harvest garlic, onions, and other vegetables. The paper pointed out that larger Dominican farms prefer Haitians since they can pay them only RD\$80 (approximately US\$4) a day as opposed to the national minimum of RD\$150 (US\$7.50).⁴⁸

The biggest source of work for men, however, is construction, which has been booming in the Dominican Republic since the country's economy began to grow quickly in the early 1990s. Haitians are favored by building contractors as, according to the IOM they can be paid between US\$5 and US\$8, without any added social security payments, for a 10-hour day. Initially, Haitians tended to do only the most onerous building work, but nowadays they work in all aspects of construction, including skilled tasks. The Dominican Secretariat of Labor estimated in 2000 that 27 percent of construction workers were Haitian, but this is probably a significant underestimate. It also points out that 88 percent of these workers came into the Dominican Republic during the course of the 1990s and that 66 percent of them found their first job in the construction sector.⁴⁹

Construction is dangerous and poorly paid but preferred by most Haitian migrants to agricultural work. It also underlines how widely spread, geographically and in terms of economic sectors, Haitian labor is across the Dominican Republic. As MUDHA points out, the idea that Haitian workers come first to plantations and then move on to other, better paid, work is no longer the case. Instead, there is a large permanent or semi-permanent Haitian population that has no connection with the traditional *bateyes*. In Santo Domingo, for instance, the area around the Mercado Modelo is a centre for Haitian migrants, living for the most part in tenements or shacks and engaged in informal-sector trading work. The country's second city, Santiago, also has a distinct Haitian district, while most towns contain a *barrio*, or neighborhood, with strong Haitian associations. There are, of course, sugar-based districts with strong connections with Haitian labor and where the *bateyes* contain those who have worked for years in plantations: Barahona, La Romana, and San Pedro de Macorís are the best-known. The west of the country, particularly areas close to the border, has a high concentration of Haitian migrants—and the lowest social indicators in the country. But Haitians are to be found throughout the Dominican Republic, even in areas to the east where there is no tradition of *braceros*.

⁴⁸ *Listín Diario*, Santo Domingo, February 2002 archives, <http://www.dr1.com/news/2002/feb_02.shtml>.

⁴⁹ MUDHA, 6.

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It is also the case that the traditional *bateyes* remain home to Haitian and Haitian-descended workers, even though they are no longer employed in the sugar industry. Some Haitians involved in other agricultural sectors are still based at the *bateyes*, while others, particularly women, may work in the domestic sector, either traveling from the *batey* to their place of work or returning there occasionally.

On top of these permanent or semi-permanent communities are growing numbers of short-stay migrants. According to Sonia Pierre of MUDHA, “the new migrants are more transient, staying for 15 days or so before returning home. These people are usually more educated and skilled than the cane-cutters.”⁵⁰

Women are increasingly prominent in the diversified Haitian presence. *Listín Diario* claimed in August 2002 that 50 percent of all domestic workers in the Dominican Republic were Haitian or Haitian-descended women. Again, they are preferred by employers because they accept lower wages and enjoy little or no job security.⁵¹ Women are also highly visible in informal-sector trading, both in towns and rural markets, as well as in some agricultural sectors. The busy cross-border traffic in goods, some smuggled and counterfeit, is largely female-dominated. Tourism offers some opportunities, mostly through selling articles to tourists.

Perhaps the most significant recent development in terms of Haitian labor lies in proposals to develop new Free Trade Zones (FTZs) in areas close to the Haitian-Dominican border. Low-wage, export-oriented manufacturing plants have been a key feature of the Dominican economy since the mid-1980s, offering foreign companies cheap labor, tax incentives, and easy access to the North American market. In return, the 50-plus FTZs have brought some 200,000 jobs to the Dominican Republic, many in economically depressed areas. But Dominican FTZs must compete with similar installations elsewhere in the Caribbean and Central America in terms of cost-effectiveness. Even though FTZ wages are often below the national minimum wage (as companies are exempted from wage legislation), companies are always looking for cheaper sources of labor.

The suggested solution lies in new FTZs to be built on the Haitian border, in which a percentage of workers would come from Haiti and be paid even less than those in the Dominican Republic. Environmental groups have opposed the plan, stressing that industrial development on a proposed border site will ruin scarce agricultural land in the region, and commentators have warned that such a move might persuade companies to relocate from existing FTZs to border plants, thus worsening unemployment among Dominican workers.⁵² The lure for investors is that trans-border FTZs would lower wage bills (labor costs) and give Haiti’s unused textile quota access to the U.S. market—if some work in the plants could be proven to be “Haitian.”

⁵⁰ Arthur.

⁵¹ *Listín Diario*, Santo Domingo, August 6, 2002.

⁵² “Haitianos y Zonas Francas,” *El Caribe*, Santo Domingo, October 18, 2001.

Necessary but Abused

Whether the FTZ plan materializes or not, it is indicative of the way in which Haitian labor now forms an intrinsic part of the Dominican economy. Indeed, some economists have argued that the success of the country's economy in the 1990s, with its high growth rates and increased foreign investment, was largely due to a reservoir of cheap labor.

Yet dependence on Haitian labor has not resulted in any reduction of abuses committed by employers and others. Undocumented migrant workers have no rights whatsoever and are vulnerable to many forms of mistreatment. The NCHR reported that Haitian coffee pickers were routinely cheated of their proper wages, and that construction workers were not paid or are robbed of their wages when a job is finished. Informal-sector traders were particularly liable to be robbed or have their goods confiscated by military personnel, especially at border markets where bribe-paying is endemic.⁵³

A particular form of abuse concerns child labor. In August 2002, the UN Children's Fund (UNICEF) reported that between 2,000 and 3,000 Haitian children were trafficked annually to the Dominican Republic and set to work in agriculture, construction, street peddling, or begging. Some are sent by their parents, others against their parents' will, but traffickers allegedly received around US\$80 for each child who enters the country. Dominican border guards received between RD\$20 and RD\$50 (US\$1.25-3.50) per child they let through. The report concluded that neither the children nor their parents received any payment for what amounted to a form of slavery.

One of the many ironies surrounding Haitian migrant workers is that they are accused of taking jobs away from Dominicans. Yet most Dominicans admit that Haitians do the work that they choose not to do, and indeed much anti-Haitian feeling derives from the perception that Haitians are fit only for the lowliest forms of employment. Haitians are therefore accused of stealing jobs from Dominicans, yet vilified for doing the country's "dirty work."

It is arguable that a large pool of cheap Haitian labor depresses wage rates in certain economic sectors that are, in any case, notorious for poor pay. Yet the impetus comes less from the Haitian workers than from employers in these sectors who actively seek the cheapest and most vulnerable forms of labor. As the newspaper *El Caribe* argued in a January 2002 editorial, "Those who employ Haitians, primarily sugar cane mills, rice plantations, coffee plantations, construction engineers, and the military, would make less profit if they had to hire Dominican workers, invest in automation or modernize their harvests."

⁵³ NCHR, 36.

As world commodity prices, most recently coffee, stagnate or fall, a vicious cycle develops in which employers look to cut costs by cutting wages, thus favoring migrant workers on near-starvation wages over locally born workers on merely poverty wages. As *El Caribe* sees it, the exploitation of Haitian labor works to the advantage of those who are wealthy and powerful, but to the detriment of the Dominican Republic's poor. And this, it adds, is a political decision. "The fact that our governments have favored landowners, engineers and the military over unskilled laborers explains why our politicians talk so much of the presence of Haitians, but do little to confront the situation."⁵⁴

Expulsions

Contrary to *El Caribe's* assertion, successive Dominican governments have "confronted" the situation, often by the most brutal means. The 1937 massacre is probably the most notorious instance of this, but violent and abusive treatment of Haitians and Haitian-descended Dominicans has been a consistent feature of government policy since mass migration and settlement began.

Expulsion is the most common Dominican response to unwanted Haitian migrants. This takes two forms: large-scale and widely reported mass expulsions, and the lesser-known daily expulsions of individuals and groups. Mass expulsions are normally military-led and centrally planned. They also tend to contain an explicitly political message, occurring around election times or in response to international criticism of Dominican labor practices. The last mass expulsions took place in 1991, 1996, 1997, and 1999. The 1991 campaign was ordered by President Balaguer in the wake of international criticism and under threat of U.S. trade sanctions; they involved an estimated 35,000 deportations. The 1996 campaign, which resulted in 5,000 expulsions, coincided with the presidential elections, when it was claimed that 100,000 Haitians were illegally added to the electoral rolls (voter lists).⁵⁵ In 1997, some 25,000 people were deported within two months of a controversial debate over recruiting additional cane-cutters, while the 1999 expulsion of up to 20,000 individuals followed the publication of the critical IACHR report on the treatment of Haitians.

Smaller expulsions happen more regularly. The April 2002 HRW report talked of a "daily flow of deportations," and investigated small-scale expulsion exercises, involving 50-100 people. It found that Haitian or "Haitian-looking" people were most likely to be summarily deported when found outside *bateyes*. Yet raids on the *bateyes* themselves appeared rare or non-existent. Suspected illegal migrants were most likely to be apprehended in urban areas. In June 2002 alone, 1,410 Haitians were apprehended, of

⁵⁴ Cited in Martin, et al., 8.

⁵⁵ HRW, 7

whom 570 were picked up in Santo Domingo and 400 in Santiago. The HRW report concluded that 10,000-30,000 people were deported each year.⁵⁶

Whether deported in mass expulsions or smaller raids, all are denied legal rights, whether under Dominican law, under a protocol of understanding signed between the Dominican and Haitian governments in 1999, or under international law.⁵⁷ No opportunity is given to prove legal status, and it is allegedly common practice for the Dominican military to operate independently of the official Migration Department.⁵⁸ Typically, a deportee is picked up, held for a few hours or days, and then bussed to the border.

In the process of deportation, multiple human rights abuses take place. Families are often separated, and children are left alone if parents are picked up. Verbal abuse and physical violence are frequently documented. According to HRW, deportees “have no chance to contact their families, to collect their belongings, or to prepare for their departure in any way. They are frequently dropped off at the Haitian border within a matter of hours after their initial detention, sometimes with nothing more than the clothes on their back.” These abuses form part of a wider picture of violence, extrajudicial killings, and illegality perpetrated by the Dominican armed forces, documented by Amnesty International, HRW, and the U.S. State Department, among others.⁵⁹

Migration officials claim that they are only interested in deporting those Haitians engaged in “anti-social activity.” Yet HRW reports criteria used for deportation that is explicitly racist: a suspected undocumented migrant must appear to be Haitian, in other words black. HRW quotes a Migration Department official who admits that Haitian “suspects” are identifiable because “they’re much blacker than we are. They’re easy to recognize.”⁶⁰

⁵⁶ HRW. Also, according to the International Human Rights Law Clinic, neither the Haitian and Dominican governments nor NGOs keep accurate records of the numbers of deportees. See International Human Rights Law Clinic, 11.

⁵⁷ See Ibid, 13-14, for a full discussion of the legal dimensions of deportation.

⁵⁸ HRW, 10.

⁵⁹ See U.S. State Department, *Country Reports on Human Rights Practices 2001: Dominican Republic*, March 4, 2002, <<http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8345.htm>>; and Amnesty International, Report 2002: Americas, December 2001, <http://web.amnesty.org/web/ar2002.nsf/regAMR/regAMR?OpenDocument>>.

⁶⁰ HRW, 9.

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The correlation of blackness with Haitian identity is a long-standing theme within Dominican national ideology. Yet it also means that significant numbers of black Dominicans run the risk of being stigmatized as Haitian and expelled from their own country. This is particularly the case with those people born in the Dominican Republic of Haitian descent.⁶¹ According to the International Human Rights Law Clinic, between five and eight percent of people expelled between 1999 and 2000 were born in the Dominican Republic; a further 20 percent had lived in the country for over 15 years.⁶²

Expulsions take place while Haitian labor is recruited by Dominican employers. In what appears a paradoxical two-way process, migrants are actively sought by sugar companies, coffee farmers, and construction companies, while their compatriots are being dumped at the border. MUDHA claims that, “the government that oversees the expulsion campaigns against undocumented immigrants is the same government that facilitates their entry into the country and exploits them in public works construction. Similarly, the employer who claims to be threatened by an “invasion” of these workers is the same employer who pays the *buscón* to recruit them and bring them as undocumented workers.”⁶³ It might be added that the Dominican military both carries out expulsions and facilitates the entry of illegal migrants.

Paradox or logical strategy? Evidence suggests that expulsions take place at times when Haitian labor is deemed less essential, especially at the end of the cane-cutting season. It also suggests that the economically active are not the main targets, for as the Director of Haitian Affairs in Santiago told *Listín Diario*, “Our work is basically directed against women, children and the old of the neighboring nation who beg or wander the streets.”⁶⁴ Above all, the history of deportations shows that the economic interests of employers frequently conflict with political imperatives; and Haitian migrants are not only exploited economically but also ideologically, as Dominican politicians and parties use the “Haitian problem” for their own ends.

Dominican and Haitian Identity

Haitian migrants in the Dominican Republic enter a country whose culture, history, and identity is intertwined with that of their own homeland. Yet they also cross the border into a territory where many people disparage them and their country. According to HRW, a public opinion poll in the Dominican Republic found that 75 percent of

⁶¹ See Corte Interamericana de Derechos Humanos, *Caso de las Niñas Yean y Bosico v. República Dominicana*, Sentencia de 8 de septiembre de 2005. See also the brief description of this seminal IAHCR case in the first chapter on normative frameworks in this volume.

⁶² International Human Rights Law Clinic, 2.

⁶³ Cited in Martin, et al., 8.

⁶⁴ Quoted by Jesuit Refugee Service, “Increase in the Number of Haitians Repatriated from the Dominican Republic,” Dispatches No. 115, July 15, 2002, <<http://www.jesref.org/dispatch/dispatch.php?lang=es&dispId=dp0207115en>>.

respondents favored repatriating the Haitian population, while only five percent believed that Haitians were “of use” to the Dominican Republic.⁶⁵

Antihaitianismo has a long pedigree in the Dominican Republic and has been extensively analyzed.⁶⁶ The roots of anti-Haitian feeling can be traced back to the island of Hispaniola’s colonial history, when the western third of the island was French-controlled Saint Domingue and the eastern two-thirds Spanish-ruled Santo Domingo. A highly profitable plantation- and slave-based economy in Saint Domingue contrasted with the neglected ranching economy across the border, where slavery was less prevalent. When the French were thrown out of Saint Domingue after a complex 13-year struggle, the independent state of Haiti was born in 1804. The territory across the border had been involved in the revolutionary turmoil and occupied by various armed forces, but remained nominally Spanish. More significantly, its population was predominantly *mulatto* (mixed race) and Spanish-speaking, while Haiti’s people were overwhelmingly African-descended and Creole-speaking.

Following its independence, Haiti’s leaders feared that a French counter-invasion would be staged from the Spanish colony, and that only possession of the whole of Hispaniola would guarantee some measure of protection. In 1822, the Haitians occupied Santo Domingo, staying there until 1844. Resentment grew against the Haitians among the Spanish-descended elite, and they led an uprising in 1844 that led to the independent Dominican Republic. Further invasion attempts by Haiti were rebuffed, but Dominican fears of their neighbor were such that the country invited Spain to re-colonize it in 1861—a disastrous step that lasted only four years.

Hostility has marked relations between Haiti and the Dominican Republic ever since. The precise delineation of the border was not agreed upon until the 1940s, while it was not until 1999 that an agreement regarding mail delivery was reached.

Color, Culture and Racism

Nineteenth-century events live on in the Dominican national consciousness. Fear of invasion remains a potent myth in the dominant collective psyche, as does the belief that Dominican culture is intrinsically different from and better than Haitian culture. Defenders of Dominican nationhood have always stressed that the nation is essentially Hispanic, Roman Catholic, and Spanish-speaking, its traditions drawn from those of

⁶⁵ HRW, 1.

⁶⁶ See David Howard, *Coloring the Nation: Race and Ethnicity in the Dominican Republic* (Oxford: Signal, 2001), and Wucker.

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Spain. Haiti, on the other hand, has frequently been depicted as African-influenced, dominated by *vodou*, and Creole-speaking. Dominicans, it follows, are racially superior.⁶⁷

This racist view was enthusiastically developed by Trujillo during his long dictatorship. Not only did he seek to “whiten” Dominican society by encouraging migration from Europe, but he systematically denigrated and abused Haiti and Haitians, culminating in the 1937 massacre. According to HRW, “Throughout the mid-twentieth century, Trujillo fed the Dominican population a steady diet of anti-Haitian propaganda, relying on the schools and the media to disseminate these ideas.”⁶⁸ Some subsequent politicians, most notably Balaguer, who dominated Dominican politics from the 1960s until his death in 2002, have reiterated racist stereotypes about Haitians. Balaguer’s 1984 book *La Isla al Revés* (The Upside Down Island) invoked the specter of racial contamination:

The erosion of Dominican national identity, steadily under way for more than a century through dealings with the worst of the Haitian population, has made worrying advances. Our racial origins and our tradition as a Spanish people must not stop us from recognizing that our nationality is in danger of disintegration if we do not take drastic measures against the threat to it from the proximity of the Haitian population.⁶⁹

Such drastic measures have included mass deportations, carried out under the aegis of Balaguer’s various governments and those that have succeeded him.

Race and antihaitianismo are thus potent factors in Dominican politics. Many Dominican politicians, not least Balaguer, have used anti-Haitian feeling as a means of distracting attention from other domestic issues or as a way of explaining away problems. The concept of invasion recurs frequently in Dominican political discourse, allowing political leaders and parties to play the role of defending “true” national identity against alien influences. Racism was a particular feature in the career of José Francisco Peña Gómez, the black leader of one of the country’s main political parties who died in 1998. Born of Haitian parents who were killed in the 1937 massacre and adopted by Dominicans, Peña Gómez rose to control the Partido Revolucionario Dominicano (PRD) and stood several times for the presidency. But a mixture of electoral fraud and racism defeated him, especially in 1994 when his opponents accused him of plotting to join the country with Haiti, of practicing *vodou* and of being racially unsuitable to lead the country.⁷⁰

⁶⁷ HRW and International Human Rights Law Clinic, 11. According to the International Human Rights Law Clinic, neither the Haitian and Dominican governments nor NGOs keep accurate records of the numbers of deportees.

⁶⁸ HRW, 8.

⁶⁹ Quoted in James Ferguson, *Dominican Republic: Beyond the Lighthouse* (London: Latin America Bureau, 1992).

⁷⁰ See Howard. *Vodou*, also spelled voodoo, voodoo, vodun, and vaudau, is a creolized religion forged by descendents of Dahomean, Kongo, Yoruba, and other African ethnic groups who had been enslaved and brought to colonial Saint-Domingue (as Haiti was known then) and Christianized by Roman Catholic missionaries in the 16th and 17th centuries.

The Dominican media and political class also view Haiti's perennial political turmoil and intractable economic problems with distaste. Balaguer's antipathy towards the radical former priest, Aristide, was well known, and the Dominican media tends to portray Haitian political and social life as anarchic and violent. It is frequently alleged that Haiti is a "failed," "dysfunctional," or "narco-state."

In essence, dominant Dominican identity is the negation of all that is Haitian. If to be Haitian is to be black, then many Dominicans wish to deny their own blackness. In a country where most people are, to some extent, African-descended (a recent demographic analysis states 16 percent white, 11 percent black, 73 percent mixed), blackness is widely viewed as a negative attribute.⁷¹ Color consciousness, at the same time, is acute, and Dominicans employ a plethora of terms to describe subtle differences in pigmentation, such as *mulato oscuro* (dark mulatto), *trigueño* (wheat-colored) or *indio oscuro* (dark Indian). Of these, the last is perhaps the most characteristically Dominican, explaining an individual's dark skin not in terms of African antecedents, but as a consequence of ancestors from the island's pre-Columbian indigenous population. For anyone in today's Dominican Republic to claim discernible Taino-Arawak genetic features is, to say the least, implausible, but it reveals the extent to which many dark-skinned Dominicans are keen to deny an African heritage that is too closely associated with Haiti and Haitians.

If, officially, racism is not meant to exist, it is revealing that a disproportionate percentage of Dominicans in the higher echelons of politics, industry, and the media are light-skinned.⁷² Conversely, black-skinned Dominicans, with the exception of sportsmen, women, and musicians, tend to occupy the lowest social strata and do the lowest-paid menial jobs.

Dominican antihaitianismo reflects a racist worldview at odds with the ethnic reality of Dominican society. It perpetuates the idea that the Dominican Republic's cultural roots are predominantly European, whereas its people are the product of a centuries-old mixing of European and African ancestry. However, not all Dominicans subscribe to the sort of racism expounded by Balaguer and others. Many Dominicans have tastes and beliefs that have more in common with their Haitian neighbors than with some distant model of Hispanic culture. Art, food, music, and religion all testify more to a shared cultural background than to any intrinsic difference.

⁷¹ U.S. Central Intelligence Agency, *The World Factbook 2002*, January 1, 2002, <<http://www.fqs.org/docs/factbook/geos/ha.html>>.

⁷² According to the Dominican government's report to the United Nations Committee on the Elimination of Racial Discrimination in 1999 "it is worth emphasizing that there is no racial prejudice [in the Dominican Republic]... there is absolutely no foundation for the belief that there is discrimination against Haitians living in the country."

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The case of Peña Gómez also points to a central paradox within Dominican society, for although he was vilified by political opponents as “Haitian,” he was also extremely popular among large numbers of voters, especially from lower-income groups, and would have won the 1994 election but for what deserves to be described as electoral fraud.⁷³

The Dominican Perspective

Despite such cultural affinities, the Dominican Republic often views itself as a country under siege. The Dominican government argues that the country is not rich and that it cannot afford to offer a disproportionate level of economic and social support to its poorer neighbor. Dominican politicians have long called on the U.S., the European Union, and other multilateral organizations to provide aid not only to Haiti, but to the Dominican Republic, so that it can provide aid to Haitian migrants. One suggestion has been that the Dominican Republic be “forgiven” some of its multilateral debt so that resources can instead be directed to development in the most deprived border area.

Many allegations are made in the media and by political figures against Haitian migrants. They are alleged to have a higher incidence of HIV/AIDS, malaria, polio, and other diseases than Dominicans, and are supposed to pose a health risk to the wider population. Dominican government agencies have also accused Haitians of inflicting damage on the environment by cutting down trees for charcoal, stealing crops and cattle in border districts, and organizing begging by women and children in Dominican towns and tourist resorts.

In the period following the September 11th terrorist attacks on the U.S., the “security” implications of the Haitian-Dominican border came under scrutiny, and in November 2002, it was announced that the Dominican military would receive weapons and training from the U.S. in a bid to stem “the flow of drugs and illegal migration.”⁷⁴ Initial reports that thousands of U.S. troops would patrol the border were later amended.

Most persistent is the charge that illegal Haitian migrants impose an intolerable burden on already overstretched health and education services. In April 2002, for instance, the director of the largest public hospital in Santiago complained to *Listín Diario* that growing numbers of Haitian women were giving birth “at the expense of Dominican taxpayers.” Public hospitals in areas with large Haitian populations, the article reported, are said to use 30 percent of their budget to treat immigrants.⁷⁵ This issue became more

⁷³ M.J. Castro, *Beyond Balaguer: The Dominican Republic in 2002* (Miami: University of Miami, Dante B. Fascell North-South Center, 2002).

⁷⁴ “U.S. to Conduct Joint Exercises in Dominican Republic but not on Haitian Border,” *News Haiti*, December 2, 2002, <<http://www.newshaiti.com/index.php?mode=single&n=74>>

⁷⁵ Dominican Republic News and Travel Information Service, April 8, 2002.

serious as the Dominican government began a new social security program in 2002, based on workplace contributions. Haitians' access to free health care will become more problematic, as the new legislation explicitly bars non-legal foreign residents from any benefits other than emergency care.

Above all, the Dominican authorities resent criticism from abroad that Haitians are badly treated. In June 2000, Danilo Díaz, head of the Department of Migration, claimed that, rather than condemning alleged labor abuses, NGOs should commend the Dominican Republic for allowing large numbers of Haitians to work there, for offering free health services to Haitian migrants, and for allowing informal commerce, such as markets, along the border.⁷⁶ Dominicans like to point out that they are a sovereign nation and are thus entitled to repatriate illegal migrants in much the same way as the U.S. repatriates Mexicans and others. Indeed, it might be argued that Dominican attitudes toward accepting undocumented migrants are more lenient.

The Dominican Republic's pragmatic response was exemplified in November 2002 when President Mejía publicly offered to receive and legalize residency for up to 250,000 Haitian migrant workers, claiming that jobs could be found in agriculture and construction. Stressing also that there were over a million Haitians in the country, the Dominican Ambassador to Canada, Eduardo Fernández, warned that "the other 600,000 to 700,000 Haitians were a heavy social burden for the Dominican Republic."⁷⁷ In other words, the Dominican government would welcome a significant low-wage labor presence in certain economic sectors, but would not welcome the social cost of a permanent community.

Dominico-Haitians

Nowhere is the argument over nationality, identity, and the social cost of migration more acute than in the case of the estimated 280,000 people born in the Dominican Republic of Haitian parents. The great majority of these people, according to the IACHR, live in a state of "permanent illegality."⁷⁸ Unlike other countries, the Dominican Republic grants neither citizenship nor even permanent resident status to people who have lived in the country for many years. Not only are they permanently illegal, but their children also face a situation of non-citizenship. Without proof of identity, they face reduced access to education and health facilities, they can take no part in political or other organized activity, they have no civil rights and, most significantly, can be repatriated arbitrarily and without appeal to a country they have never seen.

⁷⁶ Ibid., June 8, 2000.

⁷⁷ Ibid., November 6, 2002.

⁷⁸ IACHR, para. 363.

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The Dominican Constitution recognizes, in principle, that in keeping with the legal principle of *jus soli* “all persons born in the territory of the Dominican Republic” are Dominican citizens.⁷⁹ But a loophole allows the authorities to deny the children of undocumented Haitians such citizenship, since they are judged to be “in transit.”⁸⁰ This exclusion, normally applicable only to diplomats or tourists, is cynically extended to undocumented Haitians despite the fact that many parents may have been in the country for years rather than the 10 days specified elsewhere in the Constitution as a reasonable period to be in transit. If Haitians are considered to be in transit, it follows, that their Dominican-born children are not entitled to Dominican citizenship.

Ethnic Haitian children born in the Dominican Republic are routinely denied Dominican birth certificates in hospitals, especially if their parents are undocumented.⁸¹ Other ways of acquiring relevant documents are mired in bureaucracy and involve expense beyond the means of most migrants. Above all, in order for a child to be granted citizenship, both parents must normally prove their own citizenship by showing *cédulas* (identity cards) to the authorities, normally the Central Electoral Board (JCE), the body that supervises electoral lists. Late birth registration becomes even more complex and costly, and most attempts to obtain registration end in failure, according to MUDHA.⁸² Further, the HRW report *Illegal People* concludes that “given the difficulty of obtaining Dominican identity papers, it is not surprising that many Dominicans of Haitian descent remain undocumented.”

Some Dominicans point out that children born of Haitian parents in the Dominican Republic are not stateless, as their parents’ Haitian nationality gives them automatic Haitian citizenship under the Haitian Constitution. Yet such citizenship is of little use to children entering schools in the Dominican Republic, where they are still judged to be illegal migrants. Even undocumented children can, in principle, gain access to free education at Dominican primary schools. But until 2001 they were unable to enroll in secondary schools, lacking the necessary certificate for which a *cédula* is required.

According to MUDHA, being an undocumented Dominico-Haitian carries distinct risks and prevents the most ordinary of transactions. People without documents are more likely to be arrested and held for often trivial offenses, while the judicial system discriminates against undocumented individuals. According to the Dominican Vice President and Education Minister Milagros Ortíz Bosch, “Dominican laws already guarantee the right to an education to all children. But if you want to get a job, open a

⁷⁹ A legal guide to the Constitution of the Dominican Republic can be found at the Global Legal Information Network, Law Library of Congress, *Dominican Republic*, June 7, 2006, <<http://www.loc.gov/law/guide/dominican.html>>.

⁸⁰ See NCHR, “Haitian Expulsion Case Background,” January 8, 2005, <http://www.nchr.org/hrp/dr/iachr_background.htm>.

⁸¹ Open Society Justice Initiative, “Written Comments on the Case of Dilcia Yean and Violeta Bosico v. Dominican Republic,” a submission from the Open Society Justice Initiative to the Inter-American Court of Human Rights, April 2005, <http://dev.justiceinitiative.org:8080/osji/silva_01/db/resource2/fs/?file_id=15874>.

⁸² HRW.

bank account, travel, vote, simply be a citizen, you need a birth certificate.⁸³ Yet the greatest threat for an undocumented Dominico-Haitian is summary deportation, without the right of appeal, to a country that the deportee has never seen before and where economic opportunities are virtually non-existent.

The Dominican government's view is that children born to Haitian parents, who are technically "in transit," are Haitians and have no automatic right to Dominican citizenship. It also fears that a relaxing of the existing constitutional procedure would result in a huge increase in Haitian migration. The granting of citizenship to large numbers of Dominico-Haitians, it is said, would also create an unpredictable change in the electorate and voting patterns. The official response is therefore that those who are undocumented should seek appropriate documentation from their own government. This means that even those with proof of Haitian citizenship would still remain "illegal" with regard to long-term residency in the Dominican Republic. Under the terms of the December 1999 protocol of understanding with the Dominican government, the Haitian government agreed to provide its citizens with Haitian identity documents, but progress in supplying such documents has been slow.⁸⁴ Indeed, it has been suggested that the Haitian government is unwilling to supply proof of Haitian citizenship to those born in the Dominican Republic as it would increase the burden on the Haitian state if these people were then deported. To a large degree, then, the issue of nationality marks a conflict of interest between the Haitian and Dominican governments over which country bears the social cost of a large number of effectively stateless people.

Grounds for Hope?

Despite the precarious existence endured by Haitian migrants and Dominico-Haitians, recent reforms and concessions from the Dominican government may indicate a movement toward resolving issues of nationality and legal status. In July 2001, the Ministry of Education announced that schools would no longer require children to show birth certificates to enroll in secondary schools. This ruling followed the well-publicized case of Claubian Jean Jacques, a son of undocumented Haitian parents, who scored the best results nationally in 1998 in eighth-grade examinations. He was able to go to secondary school, but was warned that he might be unable to collect his secondary school diploma for want of a Dominican birth certificate. After considerable controversy, President Mejía ordered the JCE to grant Claubian Dominican citizenship in April 2002. While nationalist political commentators warned that this set a dangerous precedent, Sonia Pierre of MUDHA pointed out that there are many other such cases that do not reach the headlines.

⁸³ "Latin America: DR-Haiti," *Migration News*, July 2001, <http://migration.ucdavis.edu/MN/more.php?id=2427_0_2_0>.

⁸⁴ HRW.

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Significant, too, was the August 2000 provisional ruling of the Inter-American Court on Human Rights that determined that the Dominican authorities had acted illegally in expelling one Haitian and six Dominico-Haitians during the mass expulsions of 1999. Although the ruling was only provisional and did not cover all such cases, the decision was greeted as a victory by MUDHA and other human rights organizations, and as an infringement of national sovereignty by the Dominican government. Although the authorities at first refused to abide with the ruling and allow those deported back into the country, the government agreed to form a Comité de Impulso (supervisory committee) to resolve outstanding issues relating to the 2000 court ruling and to monitor future government practice on migration matters. The announcement that the committee would include representatives of NGOs and human rights groups caused considerable controversy, and revealed the extent to which Dominican concessions to international opinion, however small, can stir up nationalist sentiment.⁸⁵ MUDHA's achievements were underlined in February 2003 by the news that Sonia Pierre had been awarded an Amnesty International human rights prize.

These (small) successes must be measured against the ongoing deportation of "illegal" migrants, including Dominico-Haitians, as well as the marginalization faced by those of Haitian descent, irrespective of their place of birth. The logic of the Dominican position seems to be that while a temporary, unsettled inflow of Haitian labor is economically desirable, the presence of a permanent and settled population of Haitian descent is socially undesirable. Deportations directed against long-stay Haitian communities and individuals do little to disprove the theory voiced by a Haitian official that Dominican migration policy "aimed to prevent Haitians from becoming 'too permanent' and that those who had lived in the country for more than five years were more likely to be targeted for expulsion."⁸⁶ In this regard, Minority Rights Group International offers several concrete recommendations for governments and aid agencies:

Recommendations

To Governments:

1. Authorities must refrain from mass expulsions of suspected illegal migrants. Assessments of the legality of migrants' status must be made on an individual basis and in full compliance with the law and human rights standards. Deportations should not lead to the separation of families, the loss of property, money or documents, physical or verbal abuse, or violence. The military and other paramilitary forces should not be deployed in deportations. Under no circumstances may the identification and deportation of suspected illegal migrants be made on the basis of skin color, which is a violation of

⁸⁵ See *El Nacional*, March 20, 2002, whose editorial laments a "risky weakness that will affect national sovereignty."

⁸⁶ Quoted in International Human Rights Law Clinic, 25.

customary international law. Authorities should publish statistics of deportations, and full details of the conditions under which they were carried out. The Dominican government should honor its commitments under the December 1999 protocol of understanding with the Haitian government regarding repatriations.

2. Measures should be implemented to prevent illegal trafficking in migrants, in particular over the activities of recruitment agents such as the *buscones* in Haiti, and the falsification of documents. A campaign of public education in Haiti should educate potential migrants as to the realities that they will face.
3. Censuses carried out by the authorities should allow for respondents to indicate freely their own definition of their ethnic, racial, and/or national origin. The findings should not be used to further victimize migrant communities or as a basis for deportations. They should be used to design development programs, with the full participation of representatives of the Haitian community and other migrant communities in the respective countries, to enable them to achieve full and effective equality with the general population. These programs should pay particular attention to the predicament of women in migrant communities, who are disproportionately vulnerable to economic and sexual exploitation. In the Dominican Republic, the private owners of former State Sugar Council (CEA) *bateyes* should be prohibited from removing accommodation and other rights from long-stay residents, irrespective of nationality.
4. Transparent and non-discriminatory procedures should be put in place to ensure that migrants employed in a country can obtain temporary work and residency permits, and, within reasonable time, citizenship, and be guaranteed protection under relevant labor codes. The Dominican Republic should refrain from using the “in transit” clause in its constitution to prevent children of migrant workers from gaining citizenship. Governments should ensure that laws regarding the citizenship of children born in their territories do not result in them being rendered stateless. The Haitian government should honor its commitment, under the December 1999 protocol of understanding, to provide its citizens with Haitian identity documents.
5. Governments should actively seek to counter prejudices held against migrant communities, for example the phenomenon of antihaitianismo in the Dominican Republic, by including a human rights curriculum in state schools.
6. Governments should ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Covenant on Civil and Political Rights, and other relevant instruments.⁸⁷ They should invite the UN Special Rapporteur on the

⁸⁷ For a list of ratifications, see the Table of Relevant International Human Rights Instruments Ratified by Countries in the Greater Caribbean in this volume.

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Human Rights of Migrants to visit their countries to ensure full cooperation and implementation of her recommendations. The Dominican government should ensure that the Comité de Impulso set up subsequent to the ruling of the Inter-American Court on Human Rights is able to operate independently and without fear of intimidation from any sector, and is provided with sufficient resources. It should also fully implement the recommendations addressed to it by the UN Human Rights Committee. Governments should ensure the freedom of human rights defenders, including those working to promote and defend the rights of migrant workers, to work without fear of intimidation from any sector.

To Governmental and Non-governmental Aid Agencies:

1. Aid programs in receiver countries should pay particular attention to the situation of migrant worker communities and strive towards implementation of the Millennium Development Goals with respect to all sectors of the population. Specific programs may be necessary to ensure that migrant communities enjoy economic, social and cultural rights to the fullest possible extent, and the design, implementation and evaluation of such programs should be carried out with full participation of representatives of those communities.

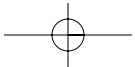
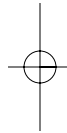
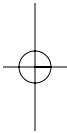
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Managing Haitian Migratory Flows to the Dominican Republic: The Challenges and Opportunities

9.2

Maureen Achieng

Introduction

The island of Hispaniola experiences high levels of mobility, similar to those that characterize the rest of the Caribbean. Like other populations in the region, and indeed the world over, Haitians and Dominicans are continuously looking to improve their economic conditions by migrating to relatively more affluent countries in the region. So, while Haitians with modest means migrate to the Dominican Republic in search of short-term wage labor opportunities, increasing numbers of Dominicans migrate to Puerto Rico or to the U.S., depending on their means.¹

A relevant question for policymakers, therefore, is whether the view that migration is ultimately a benevolent force is demonstrated by the realities of migration within Hispaniola. This article examines the migratory flows between the Dominican Republic and Haiti and reflects on the problematic aspects and associated risks of such flows. This article proposes several recommendations for action that could help the Dominican Republic and Haiti to eventually make irregular migration movements the exception rather than the rule, as is currently the case. If accepted and implemented, these recommendations would have the effect of reducing, if not eliminating, the inter-state tensions that presently exist, and thereby enhance the possibilities for more peaceful co-existence between the two peoples that share the island of Hispaniola.

The first section will provide a brief historical background on the phenomenon of Haitian-Dominican Republic migration dating back to the first migration wave that occurred following Haiti's independence. The second section will provide an analysis of the current situation faced by Haitian immigrants in the Dominican Republic and, to a lesser extent, by Dominicans in Haiti. The analysis will also include the challenges faced by the Haitian and Dominican governments in managing the migratory flows between the two countries in such a way that the migration may mutually benefit of their citizens and their countries. The primary focus of the second section will be the irregular Haitian migration to the Dominican Republic that lies at the heart of the migration-related tensions between the two countries.

¹ In the case of both countries, the U.S. is often the preferred destination in the quest for long-term resettlement possibilities.

The potential for inter-state conflict as a result of this issue will be addressed in the context of recent anti-Haitian immigration tendencies. Section three of the paper will briefly describe other countries' and regions' successful experiences managing labor migration flows to the mutual benefit of their countries and societies. This final section will summarize the Dominican Republic-Haiti migration dynamics discussed earlier in this article and propose recommendations on how the Haitian labor migration flows—accounting for most of the irregular migration into the Dominican Republic—could be better managed so that both the sending and receiving communities may benefit, and the looming threat of ever more violent conflict between the two peoples and countries may be mitigated.

Haiti-Dominican Republic Migration Movements: A Brief Historical Overview

There has been much inter-island migration within the Caribbean following the onset of forced migration with the slave trade and continuing up to the nineteenth century. The end of slavery brought an increase in the numbers of people migrating within the Caribbean in search of work, a better life, and to “escape from small and constricting island societies.”² The migration flows between the two countries that make up Hispaniola—the Dominican Republic and Haiti—as well as from Hispaniola, primarily Haiti, to other countries in the region and beyond seem significant compared to those of other islands.

The post-colonial history of Hispaniola has been characterized by continuous short- and long-term movement between its two states across what remains a very fluid 388-kilometer border. Despite close historical ties, or, perhaps more accurately, because of them, the animosity between the two countries runs deep.

Haiti's independence from French colonial rule in 1804 also brought an end to slavery on the island, the eastern two-thirds of Hispaniola having had little incidence of it. However, the euphoria generated by independence among the citizens of the new nation of Haiti gave way to apprehension with time: because Haitians did not control the eastern two-thirds of the island, they feared the possibility of re-enslavement. Such fear led to Haiti's occupation of Santo Domingo in 1822, an occupation that lasted 22 years. In 1844, an uprising led by the Spanish-descended elite resulted in the establishment of the independent Dominican Republic. The hostility provoked by the Haitian occupation persists to this day despite the eventual demarcation of the current border in the 1940s.

² James Ferguson, *Migration in the Caribbean: Haiti, the Dominican Republic and Beyond* (London: Minority Rights Group International, July 2003).

Yet, the historical underpinnings of anti-Haitian sentiment in the Dominican Republic are thought not to tell the whole story. The Council on Hemispheric Affairs (COHA) claims that much of the prejudice against Haitians living in the Dominican Republic is owed to “widespread Dominican beliefs about skin color and its correlation to social class... Dominicans often downplay their African ethnicity, belying a deep ambivalence in regard to their true heritage.”³ COHA’s argument resonates with that of many other commentators on this subject. The same report partially attributes the widespread anti-Haitian sentiment in the Dominican Republic to this cultural attitude.

The Dominican Sugar Industry and Haitian Migrant Workers

The establishment of sugar plantations in the Dominican Republic in the early twentieth century, which were further strengthened during the U.S. occupation of the Dominican Republic from 1916 to 1924, resulted in an even larger demand for inexpensive labor. A shortage of Dominican laborers led the primarily U.S.-owned plantations to encourage the recruitment of Haitian labor, which rose from 28,528 in 1920 to 52,567 in 1935.⁴ The accelerated fall in sugar prices in 1920 coupled with the Great Depression led plantation owners to rely increasingly on the cheapest possible labor.

With Cuba losing its favored status with the United States starting in 1959, the Dominican Republic began to receive a higher proportion of the U.S. sugar quota, thereby ensuring sustained demand for cheap Haitian labor. Meanwhile, political repression and economic hardship in Haiti ensured a continuing supply of Haitian migrant labor in response to this demand.

Under the Trujillo administration (1930-1961), the Dominican government began to regulate Haitian workers. These Haitians, like other migrant labor populations in the Caribbean, faced risks, the opportunity for wage labor notwithstanding; not only were conditions appalling, but job security remained closely tied to the dictates of the world sugar market. The drop in sugar prices during the depression years led to the mass deportation of Haitians from Cuba (still a major sugar producer at the time) in 1937. In the same year, the Trujillo administration is reported to have ordered a campaign against Haitian migrant workers that resulted in the massacre of some 15,000 Haitians.⁵ Other observers remarking on the lack of authoritative statistics on the number of deaths note that the estimates vary from 1,000 to 30,000.⁶

³ Council on Hemispheric Affairs (COHA), *Neighborly Quarrels: The Dominican Republic and the Perennial Haitian Immigrant Issue*, Memorandum to the Press, Washington DC, June 30, 2005.

⁴ Cited in Gina Marie Eide, “Haitian Identity: The Effects of Race through Haitian History and Transnational Migration. Focus on the Dominican Republic and the United States,” *International Studies* 595 (December 1999), 9.

⁵ Ferguson, 10.

⁶ Bridget Wooding and Richard Moseley-Williams, *Needed but Unwanted: Haitian Immigrants and their Descendants in the Dominican Republic* (London: Catholic Institute for International Relations, 2004).

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Following the assassination of Trujillo in 1961, the new President Joaquin Balaguer and François Duvalier agreed on a financial compensation package that enabled the government of Haiti to receive US\$1.38 million for contracts engaging 20,000 workers; little of this money is thought to have made it into the Haitian treasury.⁷ But this does not appear to have been an isolated case; in 1980, Jean Claude Duvalier is reported to have received equally large sums in “recruitment costs” plus extras for, among other tasks, defusing worker protests. These bilateral agreements continued until the Duvalier regime fell in 1986. For a brief period, the political unrest that followed the fall of the Duvalier regime blocked the usual migration of Haitian *braceros* (migrant sugar cane plantation workers) to the Dominican Republic.⁸

It was under these guest worker programs that the number of Haitian migrant laborers contracted for work on Dominican sugar plantations grew to some 200,000, according to conservative estimates, in 1980. As noted above, the Haitian government received compensation for exporting labor, a fact that discredited the guest worker programs as they were considered to have resulted in the enslavement of Haitians.

Despite the setbacks suffered by the Dominican sugar industry since the 1980s—occasioned by a reduction in quotas for export to the U.S. and rising oil prices—work in this sector of the economy has continued to play an important role as the primary pull factor for Haitian migrant workers.

It is important to point out, as noted by McKenzie, that at first the labor demands of sugar plantations were predominantly met by Dominican peasants who could expect fair wages given the availability of alternatives.⁹ The slump in sugar prices starting in 1884 led to an exit of Dominican workers and to a critical labor shortage. McKenzie further notes that as a result of these events, two trends persist today: 1) Haitian immigrants have replaced Dominican workers as the primary workforce on sugar plantations; and 2) the economic exploitation of the migrant labor force has become essential for the success of the industry.

The diversification of the Dominican economy since the late 1980s has spread the Haitian migrant workforce across more sectors than ever before. Haitian migrant workers are thus increasingly visible in other agricultural sectors, most notably tobacco, coffee, rice, as well as in the construction and tourism sectors.

⁷ Cited in Gina Marie Eide, 45.

⁸ Roger Plant, *Sugar and Modern Slavery* (London: Zed Books, 1987).

⁹ Ryan McKenzie, “The Plight of Haitian Workers in the Dominican Sugar Industry,” *Windows on Haiti*, Spring 1999.

Present Day Migration Realities within Hispaniola

One may expect continuing Haitian emigration flows given the significant contextual push factors, including the catastrophic environmental degradation in Haiti over the past several decades and the associated decline of the peasant agricultural system; the population explosion that was scarcely recognized in the past; and the seemingly relentless political upheaval and resulting hardship. For many of the above reasons, sustainable economic development continues to elude Haiti, earning it the ranking of the poorest country in the hemisphere. Recent World Bank statistics reflect a Gross National Income (GNI) per capita of US\$480 for Haiti, in contrast to US\$2,230 for the Dominican Republic during the same period.¹⁰ Real per capita income is reported to have fallen annually since the mid-1990s.¹¹

With rural standards of living largely depressed by bleak and unremitting poverty, a significant proportion of the population is pushed to the urban areas and quite often beyond, with the bulk of the poorer migrants moving mostly to the Dominican Republic. The economy remains vulnerable, and Haitians stay very poor. A low literacy level, characterized by low school enrolment and a major public health crisis makes it difficult for a large proportion of the population to improve its situation. Further, most of Haiti's infrastructure is in shambles due to years of little, if any, new investment. The economy remains largely dependent on foreign aid, remittances, and increasingly from illegitimate sources such as drug trafficking.¹²

In contrast, since the early 1990s, the Dominican Republic has experienced economic growth rates that are among the highest in Latin America.¹³ Further, the fall of sugar prices since the 1980s, and the resulting demand for ever cheaper labor to maintain competitiveness have seen fewer and fewer Dominicans working in this sector, with most seeking more lucrative opportunities abroad.¹⁴ The 2005 Human Development Report continues to record the same remarkable performance in the Dominican Republic's annual economic growth rate as has been witnessed in previous years: two percent between 1975 and 2003, while the period 1990 to 2003 saw an annual economic growth rate of four percent.¹⁵

¹⁰ World Bank, 2002b and 2002c, Dominican Census of 2002, cited in Wooding and Moseley-Williams.

¹¹ International Peace Academy, *Lessons Learned: Peacebuilding in Haiti*, IPA Seminar Report, New York, January 2002.

¹² Peter Dailey, "Haiti's Predatory Republic: The Fall of the House of Aristide," *The New York Review of Books* 50 (4) (March 13, 2003).

¹³ Third World Traveller, "The Dominican Republic: Latin America's Latest Economic Miracle," *Dollars and Sense*, March/April 2001.

¹⁴ In 1950, three quarters of Dominicans worked in agriculture and four fifths of the country's export income came from sugar. Ibid.

¹⁵ United Nations Development Program, *International Cooperation at a Crossroads: Aid, Trade and Security in a Globalized World* Human Development Report 2005 (New York: UNDP, 2005).

On the island of Hispaniola, as in much of the rest of the Caribbean region, there are myriad push and pull factors at work that influence migration dynamics, most of which have been touched upon earlier in this article. What stands out as markedly different is the *level* of hostility that surrounds the process of supply meeting demand. Rather than result in bilateral agreements regulating the migrant flow, the seemingly unquestionable demand for labor and the evident ready supply from Haiti has instead pushed the issue of labor migration into the realm of illegality. The lack of regulation and the apparent inability of the two states to reach an accord on this issue up to this point have meant that most movements from Haiti to the Dominican Republic assume an irregular form. Reliable statistics on irregular migrant flows will always be difficult to obtain; but, by contrast, the evidence suggests that irregularity would seem to be the exception rather than the rule in the case of movements from the Dominican Republic to Haiti.

Irregular Migration within and from Hispaniola

On both sides of the island, migration is idealized as the route to a better life. This view is further reinforced by remittances, which in both countries are an increasingly important source of revenue. The resulting irregular migration takes three distinctive forms: smuggling, trafficking, and entrepreneurial irregular migration.¹⁶

With the current economic and political situation in Haiti, many Haitians are leaving for the Dominican Republic and beyond mostly for economic reasons, but also occasionally for political reasons during periods of protracted strife in Haiti. The push factors at play in Haiti make the Haitian workforce a poor, desperate, and compliant labor force. The absence of any official accord between the two countries means that for the most part Haitians enter the Dominican Republic irregularly, and, once there, they are condemned to an irregular, undocumented status that makes them highly susceptible to exploitation and abuse.

¹⁶ For purposes of discussion in this paper, the classifications and definitions are stated below. See International Organization for Migration (IOM), *Glossary on Migration- International Migration Law* (Geneva: IOM, 2004). Also available at <http://iom.int/iml/migration_law_publications.htm#glossary>.

Smuggling: Facilitated with the agreement of the migrant and usually with payment from the migrant for the smuggling services; can be exploitative and dangerous, including fatal, but is not coercive in the sense of trafficking. For the purpose of application of the Palermo Protocol smuggling requires an organized criminal group in the lead role. At the national level smuggling can and often includes any act of facilitation of another person's *malafide* migration, including actions by friends, family, employers, or opportunistic small time operators. Smugglers should face specific criminal charges and the main intent of the Palermo Protocol is to ensure that smuggling by organized criminal groups is appropriately criminalised in as many countries as possible.

Trafficking: Facilitative, coercive and exploitative, often for the commercial sex industry, and viewed as a violation of human rights. In this case the migrant/victim should not be seen as the target of punitive action, but should be provided protection and assistance. The organizers/traffickers should face specific and severe criminal charges.

Entrepreneurial Irregular Migration: Individual migrants acting on their own behalf to enter or remain in a country without proper permission. The migrants may or may not be subject to legal sanction.

Haiti's political instability over the past two decades or so has resulted in increased poverty, which in turn has spurred ever larger migratory flows to neighboring countries. Those with either the means to cover the associated costs or family links in North America and Europe have tended to make their way in that direction. For poorer Haitians who can no longer live off the land, which is increasingly degraded and unproductive owing to massive deforestation, the Dominican Republic represents an attainable target.

The demand for Haitian migrant labor in the Dominican Republic—primarily for work on sugarcane plantations, but increasingly for work in the construction sector and, to a lesser extent, in the service sectors such as tourism—would seem incontestable when considering the evidence. Haitians migrating to the Dominican Republic take up jobs that most Dominicans have been unwilling to perform for decades primarily in backbone industries like construction and agriculture. In a recent COHA report, the construction and agriculture sectors are estimated to represent 24 and 17 percent of the Gross National Product, respectively.¹⁷ The same report goes on to state that “Haitians have stepped in to fill these needed roles, and as a direct result the Dominican economy has benefited.”¹⁸

Globally, there is a clear trend of labor migrating from poor to less-poor countries. This migratory flow is increasingly stratified according to demand in the receiving countries and to the migrants' income levels.¹⁹ This trend is clearly demonstrated by the migration realities in both the Dominican Republic and Haiti, where the middle classes generally tend to migrate to Canada and the U.S., while the less well-off migrate to Puerto Rico and other Caribbean islands.

James Ferguson explains that “many Haitians are desperate to reach the Dominican Republic” in much the same way as “significant numbers of Dominicans are desperate to leave their own country.”²⁰ Although the Dominican Republic is richer than Haiti, it is still a poor country in which, according to the World Bank, 26 percent of the population in 1998 lived on less than US\$2 per day.²¹ With increasingly smaller numbers of Dominicans prepared to do the jobs generally perceived as reserved for poor Haitian migrants, increasing numbers of Dominicans are seeking opportunities abroad.²² Spain

¹⁷ Council on Hemispheric Affairs (COHA), “*Neighborhoodly Quarrels: The Dominican Republic and the Perennial Haitian Immigrant Issue*,” Memorandum to the Press, Washington D.C., June 30, 2005.

¹⁸ Ibid.

¹⁹ IOM, *World Migration Report: Costs and Benefits of International Migration* (Geneva: IOM, 2005), 221-237.

²⁰ Ferguson.

²¹ For more recent information, see World Bank Group, *Country Brief: Haiti*, <<http://www.worldbank.org>>

²² As legal avenues are necessarily limited, the smuggling of Dominicans into Puerto Rico is a growing problem, although enhanced coordination between the Dominican Navy and the U.S. Coast Guard is reported to have increased the number of interceptions. See IOM, *World Migration Report*, (Geneva: IOM, 2003), specifically Chapter 10, “Mutually Agreed Migration Policies in Latin America.”

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is a favored destination for historical and linguistic reasons; though, as Puerto Rico and the U.S. are more easily attainable, they tend to be the more common destination for many Dominicans.²³

In the case of Haitians, improved policing of the high seas by the U.S. Coast Guard over the past decade has led to a significant drop in the number of attempts to reach the shores of Florida by boat. Therefore, the more easily attainable targets of would-be irregular immigrants are mostly other Caribbean islands, most notably The Bahamas and the Dominican Republic.

Another form of irregular migration within and from Hispaniola worth noting is trafficking.²⁴ Dominican women are trafficked to various destinations, key among which is Argentina. Numerous other Dominican victims of trafficking are found in Costa Rica and Haiti. At the same time, Haitian children are trafficked into the Dominican Republic for bonded work on plantations or panhandling in urban areas. Many unverified reports exist of Haitian women being trafficked to the Dominican Republic for sexual exploitation, and of young Haitian men being deceived into lives of forced labor for debt bondage in various sectors.

Although not possible to measure given its irregular nature, it would seem evident that Haitian labor migration to the Dominican Republic constitutes the most significant irregular migration flow within Hispaniola. As earlier stated in this paper, Haitian labor migrants to the Dominican Republic were formerly contracted under agreements between the two countries. After the last such labor migration accord was rescinded in 1986, the system that has arisen in its place is completely uncontrolled from the point of exiting Haiti to crossing the border, and, finally, to the process of getting hired by Dominican employers. Resulting labor shortages that immediately followed the rescinding of previous accords gave rise to the current phenomenon of informal recruitment agents known as *buscones*.²⁵ The importance of the *buscones* has since increased dramatically as, in the absence of any other formal recruitment method, they remain key to the procurement of Haitian labor migrants.

²³ A 2000 census in the U.S. indicates that some 874,000 Dominicans live in the U.S., including 407,000 in the state of New York and 109,000 in Puerto Rico. Some scholars have indicated that up to 250,000 additional Dominicans might live in the U.S. or its territories in an irregular situation, particularly in Puerto Rico. See Ferguson.

²⁴ For more information, see Chapter Four on “Trafficking in Persons in the Caribbean” in this volume.

²⁵ *Buscones* is the Spanish term used to refer to contractors hired by sugar corporations in the Dominican Republic. *Buscones*, usually Haitian, generally tend to earn between US\$10 to \$25 per each worker they hire for a sugar cane plantation.

Absent a formal system of contracting migrant labor, this unregulated flow to and settlement in the Dominican Republic has caused the numbers of irregular Haitian immigrants in the Dominican Republic to swell. And, increasingly, Dominico-Haitians have been afforded, at least de jure, the constitutional right to nationality given to foreigners born in the country.²⁶

According to a 2001 study, the most reliable estimate suggests there are some 500,000 first and second generation Haitians living in the Dominican Republic, thus constituting about six percent of the Dominican population of 8.6 million.²⁷ Many of these are thought to work on sugar plantations, in the construction sector, and increasingly in the service industry. Other estimates put the numbers of Haitians living in the Dominican Republic in 1999 at between 500,000 and 700,000; according to Human Rights Watch, the head of the Dominican army referred to about a million or so in 2001, while some Dominican media reports put this at about 1.5 million.²⁸ In the absence of updated official census figures, such estimates are all there is to go on. What is clear, however, is that only a small fraction of Haitians or Haitian-born migrants in the Dominican Republic has valid visas or work permits.

Complicating the issue is the fact that many of the above Haitians or Haitian-born migrants are Dominicans of Haitian descent who are not recognized de facto as possessing this status, and are therefore considered illegal immigrants potentially subject to deportation. Due to this situation, many Haitians that have lived in the Dominican Republic all their lives cannot assume Dominican identity or citizenship even though the Dominican constitution assures citizenship to anyone born on Dominican soil, excluding offspring of diplomatic service personnel and migrants in transit.

Very few of these Haitian migrant workers, even those recruited by the government, ever obtain legal status in the Dominican Republic. Of the reported 500,000 to 700,000 Haitian workers in the Dominican Republic, only some five percent are said to have identification. The case continues to be made by some that many *braveros* are actually Dominicans, as they were born on Dominican soil. However, as their births were never documented, they never received citizenship. The limited freedom of movement and poor conditions associated with life on the *batey* (migrant settlements) prevent them from attempting to claim Dominican nationality even though they might legally merit it.²⁹

²⁶ It is important to point out that this remains a hotly contested issue in the Dominican Republic. Deliberations on this issue continue with a view to determining the eligibility of offspring of Haitian labor migrants to Dominican nationality given their illegal status, and a clause in this law excluding migrants “in transit.” In the opinion of some Dominican legal experts, Haitian labor migrants fall into this migrant category. See the article on “The International Normative Framework with Reference to Migration in the Greater Caribbean” in this volume.

²⁷ Guy Alexandre, *La Question Migratoire entre La République Dominicaine et Haïti* (Port-au-prince: IOM, May 2001).

²⁸ Data from the Inter-American Commission on Human Rights (IACHR) in Ferguson.

²⁹ *Batey* is the term used to refer to the settlements occupied by sugar cane plantation workers. Reports reveal poor conditions of life on the *batey*, with limited freedom of movement given the presence of armed guards, reportedly to prevent the spread of disease to Dominicans.

Unwanted and Unwelcome

Dominican society has never welcomed these immigrants, although their presence has been widely accepted as an economic necessity borne of the reluctance of Dominicans to perform the menial task of cane cutting. Various commentators on the subject of Haiti-Dominican Republic migration conclude that the effect of the continued, unregulated flow of cheap Haitian labor into the Dominican Republic has been the growth of powerful Dominican lobby groups that depend heavily on this immigrant labor.

Often smuggled into the country, Haitians increasingly form the backbone of important, if largely illegal, labor networks in the Dominican Republic. They occupy jobs in a wide range of sectors, including agriculture (mainly sugar cane, coffee, rice, and tobacco plantations), construction, or services. They are also present in the informal sector working as small traders, street vendors, domestic workers, gardeners, and prostitutes.

In a recent work on this subject, Wooding and Moseley-Williams assert that “an abrupt halt to the availability of laborers from Haiti would bankrupt part of the agricultural sector and create a crisis in the booming construction industry, leading to knock-on effects on national economic growth.”³⁰ They go on to argue that this is the reason successive governments have been ambiguous about introducing effective mechanisms to regulate migration until recently, and add that the continued shelving of the issue will create an ever more difficult problem to solve.

At the same time, the continued illegal recruitment that funnels Haitian labor migration to the Dominican Republic, far from increasing their acceptance, has exacerbated xenophobic tendencies toward Haitian immigrants. It is equally important to point out a political dimension, which makes a constructive solution to be problem of irregular Haitian migration to the Dominican Republic undesirable, for fear of the electoral consequences of being perceived as betraying Dominican interests. One commentator claims that this is owed to a “steady diet of anti-Haitian propaganda, relying on the schools and the media to disseminate these ideas,” fed to the Dominican public by Trujillo.³¹

³⁰ Wooding and Moseley-Williams.

³¹ General Rafael Trujillo was the Dominican Republic President from 1930 to 1961. As previously noted in this article, he was behind the first ever agreement signed between Haiti and the Dominican Republic to govern the contracting of Haitian migrant labor. See Ferguson.

Since the 1960s, influential politicians such as Balaguer have echoed many of the same fears of erosion of the Dominican national identity by claiming that as a result of “dealings with the worst of the Haitian population...our tradition as a Spanish people must not stop us from recognizing that our nationality is in danger of disintegration if we do not take drastic measures against the threat to it from the proximity of the Haitian people.”³² Other commentators recall that there were “occasions during Balaguer’s terms as president when the government whipped up anti-Haitian feeling and ordered mass deportations of Haitians, as notoriously occurred in 1991. At other times, Balaguer and his political party...distributed birth certificates to Haitians in the *bateys* in order to win their votes.”³³

The stance and public utterances of influential political figures like these would seem to justify assertions by Dominican civil society groups that prejudice against Haitians and Dominicans of Haitian descent is official government policy. Meanwhile, the continued influx of irregular Haitian migrant workers is resulting in growing human rights abuses and discrimination by labor contractors, employers, agents of the state (the police, the military, and migration authorities), the judiciary, as well as in public education and health services. This in turn results in much criticism of the Dominican government by those that perceive its policies as inherently anti-Haitian and/or racist.

Untapped Potential

One of the major problems with irregular migration is that it often has the effect of undermining the integrity of migration as a natural social phenomenon that should be encouraged to the benefit of both the sending and receiving countries and societies. In particular, given the increased appreciation of the advantages to promoting development in the countries of origin and of the important role that remittances can play in this regard, there is much work to be done.

In a 2003 report by the Inter-American Dialogue and the World Bank, remittances to Haiti were estimated at some US\$977 million.³⁴ When one considers that remittances reach low-income rural households more directly than any other financial flow, 40 percent in the case of the Caribbean, the potential of remittances to promote development—presuming the existence of the right conditions—seems clear.³⁵ For obvious reasons, these statistics cannot account for monies remitted through informal channels. But, given the numbers of Haitian migrants in irregular situations, which makes accessing banking services challenging, these numbers are potentially significant despite modest wages.

³² Joaquín Balaguer was Dominican Republic President (1966 to 1978, 1986 to 1996); he remained active in Dominican politics until his death in 2002. Joaquín Balaguer, *La Isla al Revés: Haití y el Destino Dominicano*, 1983, quoted in Ferguson.

³³ Wooding and Moseley-Williams.

³⁴ Inter-American Development Bank, in Michelle Lapointe, *Diasporas in Caribbean Development*, Report of the Inter-American Dialogue and the World Bank, August 2004.

³⁵ *Ibid.*

The United Nations Development Program, in its 2005 Human Development Report, argues that the development of countries neighboring those in protracted crisis situations will invariably be affected and may experience a reduction in GNI by as much as 0.5 percent. This finding would seem to make a powerful case for neighboring countries, the Dominican Republic most importantly in this instance, to enact policies that encourage development in Haiti through, among other means, remittances from the sizable Haitian diaspora. For such transfers to take place efficiently and for their developmental impact to be enhanced, the uncontrolled, irregular flow of Haitian migrants to the Dominican Republic and other countries in the region would need to begin to take a regular form. This calls for concerted action by both countries, as this article will discuss further on.

Finally, for a country that is an important and growing tourist destination like the Dominican Republic, reports of human rights abuses of Haitian immigrants at the hands of Dominican employers, the army, and, in recent times, of the general public, also risk tarnishing its image abroad.

A Potential Source of Violent Conflict?

Apart from the aforementioned problems generated by the continued irregular Haitian immigration into the Dominican Republic, it is critical to highlight that not only are the positive effects of migration not fully realized, but also that these problems, if left unattended for much longer, have the potential to push the two countries toward the brink of violent conflict.

The economic boom witnessed by the Dominican Republic over the past decade or so, resulting largely from its successful economic diversification efforts, is acclaimed as an economic miracle in the Latin American region.³⁶ Nevertheless, poverty and inequality persist. A combination of the unequal effects of the boom and the resulting disaffection among those “left out,” in addition to the increased substitution of cane sugar with corn syrup and artificial sweeteners in the United States, the main consumer of Dominican sugar, risks leading to hostility, not only between the Dominican “haves” and the “have-nots,” but also between the “have nots” and the equally poor or poorer Haitian migrant workers or Dominicans of Haitian descent.³⁷

While many Dominican employers benefit directly from the supply of low-wage Haitian labor, the receiving country's economy and society pay a price for the steady inflow of Haitian workers, as this has the effect of lowering the wages of unskilled Dominican laborers and reduces incentives for improving productivity. The increased emigration of Dominicans, principally to Puerto Rico and the U.S., is reported as due partly to the lowering of wages in various economically important sectors owing to the influx of abundant and cheap Haitian labor, albeit unregulated and therefore irregular.

³⁶ Third World Traveller.

³⁷ Ibid.

Unabated high demand for cheap Haitian migrant labor, particularly during the sugar cane harvesting season, and the absence of accords that govern the contracting of this labor result in the flow of Haitian migrant workers to the Dominican Republic during seasons of high demands, sometimes with the knowledge and facilitation of Dominican authorities and the expulsion of Haitian migrant workers during periods of low demand. A look at government statistics from both countries of Haitian migrants deported from the Dominican Republic reveals glaring discrepancies.³⁸

These discrepancies can be explained in part by the weak capacity of the Haitian National Office of Migration that hinders systematic collection of reliable statistics on deportations and severely limits its presence at border crossing points. In addition, the spontaneous nature of these deportations renders data collection a rather daunting exercise. Previous agreements between the two governments that sought, among other aims, to ensure orderliness in the repatriation process to avoid family separation and unnecessary abuse have never really taken effect due to unmet obligations on both sides.³⁹

Consequently, a pattern would seem to have emerged that is characterized by calm during the high labor demand season and upheaval during the low demand season. Over the years, deportations of Haitians from the Dominican Republic have been carried out by the Dominican army, in coordination with its National Migration Directorate. In comparison with earlier times, the general Dominican public appears to be increasingly and actively agitating for the deportation of Haitians. In May 2005, following the killing of a Dominican woman in Hatillo Palma allegedly by a Haitian immigrant, there was a wave of killings targeting Haitian immigrants in this and other areas, which led to the mass deportation of Haitians, estimated at over 2,000. In a communiqué of the government of the Dominican Republic, the deportations were explained as having been carried out in order to spare immigrant Haitians from anticipated retaliation attacks by angered Dominicans.

According to its October 2005 briefing in Port-au-Prince, Groupe d'Appui aux Rapatriés et Réfugiés (GARR) has detailed both the May 6, 2005 Hatillo Palma killing and the several suspected revenge attacks against Haitian immigrants in the Dominican Republic between May and September 2005.⁴⁰ Reports cover incidents including the burning alive of three Haitians sleeping in a carpentry workshop in Haina in August 2005, the discovery of four Haitian corpses in Higüey in September, the discovery of the corpse of a seven year old Haitian girl after she was raped in Esperanza, the electrocuting of

³⁸ The Haitian National Office for Migration puts the total number of Haitians repatriated from the Dominican Republic in 2003 at 20,445; while those of the Dominican Directorate General for Migration based on figures supplied by the Dominican military for the same year stand at over double this figure.

³⁹ There are various bilateral accords signed by the two countries in recent times, including the December 1999 Protocol Agreement on Repatriation Mechanisms, June 1998 Memorandum of Understanding, June 1998 Cooperation Agreement, and June 1998 Cooperation Agreement on Customs, among others.

⁴⁰ Briefing note issued in Port-au-Prince, Haiti, by Groupe d'Appui aux Rapatriés et Réfugiés, a Haiti-based NGO, October 19, 2005.

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two Haitians in Los Minas, and the discovery of two Haitian corpses in Mao Valverde. The GARR report goes on to describe several other non-fatal attacks, including one on a group of some 100 Haitians in Eriquillo with machetes and batons under the watch of the police.

In a September 2005 statement, Movimiento de Mujeres Dominico-Haitianos (MUDHA) reported that in the Dominican localities of Los Platanitos, Cueva, Vario Nuevo, and other communities close to Higüey, many Haitians had been forced to flee, leaving their possessions behind, in order to escape the violence of Dominican attackers.⁴¹ Women and teenage girls of Haitian origin have been reportedly beaten and raped during these violent incidents.

Various Dominican civic organizations, under the umbrella of the Mesa Nacional de Migraciones, have labelled these other incidents as acts of xenophobia targeting Haitians. They have further claimed that the Hatillo Palma incident was used as a pretext to conduct brutal and massive expulsions of Haitians, Dominicans of Haitian descent, and black Dominicans. The Council on Hemispheric Affairs has also recently suggested that “even darker skinned Dominicans face daily discrimination as a result of such prejudice. As history has shown, such animosity toward dark skinned people in the [Dominican Republic] has often manifested itself in summary deportations and even ethnic violence.”⁴²

Evidence of the increased tension is manifest in the pronouncements of various groups. In October 2005, the Dominican Freemasonic Lodge made a recommendation to President Leonel Fernandez to erect a wall along the Haiti-Dominican Republic as a way of curbing irregular migration between the two countries.⁴³ The same report went on to call for an urgent census on foreigners in the Dominican Republic.

Like the Mesa des Migraciones, the Dominican Advisory and Legal Research Center (CEDAIL), an organization set up by the Dominican Catholic Church that directs its efforts to protecting the rights of the residents of the *bateyes*, has also criticized influential individuals for taking advantage of a regrettable incident—the Hatillo Palma killing of May 2005—to feed xenophobia and anti-Haitianism. While acknowledging the Dominican government’s sovereign right to protect its borders and guard against mass immigration, CEDAIL has also underlined the need to acknowledge “a great social debt to the Haitian migrant population, which makes important contributions to the Dominican economy...working under conditions that citizens reject.”⁴⁴

⁴¹ Movimiento de Mujeres Dominico-Haitianos (MUDHA), Statement, September 23, 2005. ⁴² COHA. Report posted on Radio Kiskeya news page, October 2005.

⁴² COHA.

⁴³ Report posted on Radio Kiskeya news page, October 2005.

⁴⁴ Dominican Rights Group, “Adjust Haitians’ Migrant Status,” Communiqué to the Government of the Dominican Republic, May 2005.

A Dominican government quarterly foreign policy journal also acknowledges that the recent incidents of violence between groups of Haitians and Dominicans in the northeast and east of the country are worrying signs of “ethnic confrontation.”⁴⁵ The author goes on to deliberate on the likely causes of such confrontations, including the increased visibility of Haitian immigrants in the cities, their use of public education and health services, their informal status, and the history of conflict between the two peoples, which is accentuated by Haiti’s status as a virtually collapsed state. The article also argues that the recent ranking of the Dominican Republic as nineteenth out of twenty states that are likely to become failed states, which includes Haiti and others, has only served to further fears of getting “contaminated by Haiti.”⁴⁶

It must also be noted that there would also appear to be a nascent anti-Dominican sentiment in Haiti following the events in the aftermath of the Hatillo Palma incident. Several Dominicans living in Haiti have been reported in both Haitian and Dominican dailies as feeling increasingly insecure in Haiti following the events of the past several months in the Dominican Republic that have aroused strong anti-Dominican sentiments in Haiti.

Against the series of events that have taken place since May 2005 as a result of the Hatillo Palma killing, the view that a new trend in how the Haitian migrant worker in the Dominican Republic is perceived does not seem far-fetched. Given how easy it is to stoke tensions within a population that is, understandably, displeased with the large irregular Haitian presence, urgent action is required on both sides to prevent the already fragile situation from further degenerating. In light of recent events, it is chilling to note the continued reference in recent commentaries to the possibility of a repeat of the notorious 1937 massacre, when the Dominican dictator, General Rafael Trujillo, ordered his troops to drive out Haitians living on the Dominican side of the border.

Other Regions’ Experiences

Asia is a region experiencing varied and dynamic forms of international migration flows with labor migration playing an increasingly important role in both sending and receiving countries in the region. The current contract labor migration systems began to evolve in the 1960s around the oil-producing countries of West Asia. Rapid economic growth and declining fertility rates since the mid-1980s have led to a considerable demand for migrant labor in countries like Japan, the Republic of Korea (Province of China), Hong Kong, Malaysia, Thailand, Taiwan, Singapore, and oil-rich Brunei.⁴⁷ Asia today is an

⁴⁵ José del Castillo, “Haitian Migration to the Dominican Republic: New Dimensions to an Old Problem,” Government of the Dominican Republic, La Secretaría de Estado de Relaciones Exteriores (SEREX), *Revista Dominicana de Política Exterior*, Número 1, Publicación Trimestrial, Noviembre 2005–Enero 2006.

⁴⁶ Attributed in the same article to the Washington-based *Foreign Policy Journal* and Fund for Peace.

⁴⁷ IOM, *Labor Migration in Asia: Trends, Challenges and Policy Responses in Countries of Origin* (Geneva: IOM, 2003).

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increasingly important source of highly skilled migrants as well as unskilled migrants, both as temporary and permanent migrants. Unskilled migrants originate mainly from the key labor-surplus source countries and travel to the more developed countries in the region, as well as beyond, to Organization for Economic Cooperation and Development countries that are striving to remain internationally competitive as their own populations age.⁴⁸

In recognition of the important role that labor migration plays in the region, many of these Asian countries have come up with programs that seek to regulate the contracting of workers, as well as to maximize the potential economic benefits of labor exportation for the countries of origin. As a result, extremely well-regulated labor migration programs exist across the region. The Philippines has the most elaborate policies and practices covering contract labor migrants, a fact that is not surprising given its ranking as the most important labor exporter in Asia, and the second largest in the world after Mexico. Furthermore, these policies are constantly being monitored and adjusted to seal all loopholes so as to avoid the abuse of migrant workers.

Workers from Asian countries continue to make significant contributions to the development and the reduction of poverty in the countries of origin, while at the same time contributing to economic prosperity and efficiency in the countries of destination. Existing regional consultation processes provides forums at which to discuss mechanisms for more effective labor migration that are proving useful in addressing weaknesses, including the lack of sufficient collaboration among sending countries, and between sending and receiving countries.

These Asian labor-sending countries maintain a strong focus on exit controls, curbing recruitment abuses, setting standards for employment contracts, welfare services for migrants, posting labor attachés abroad, and cooperation with countries of destination. Increasingly though, they are also committing additional technical and financial resources to the formulation and implementation of labor migration policies.

Another example closer to the Caribbean also involving an important labor-sending country is that of Mexico and the U.S. At least some eight million people are thought to live in the U.S. without legal documents, and each year the number grows by an estimated 250,000 as more immigrants enter illegally or overstay their visas.⁴⁹ More than half of those entering or already present come from Mexico.⁵⁰

⁴⁸ The key labor-surplus source countries include: Bangladesh, Cambodia, China, Indonesia, Pakistan, the Philippines, Taiwan, and Vietnam. Some key host countries include: Japan, Korea, Taiwan, Malaysia, and Thailand.

⁴⁹ Daniel T. Griswold, *Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States* (Center for Trade Policy Studies, October 2002).

⁵⁰ *Ibid.*

The September 11th attacks led to the creation of the Department of Homeland Security (DHS) in October 2001, representing the largest U.S. government reorganization undertaken since 1947, with significant additional resources directed to securing the nation's borders and transportation systems, and improving immigration services in general.⁵¹ Despite this focus on improved migration control measures, there is recognition of the need to concomitantly look at other areas given the acknowledged aim of seeing Mexico emerge as “a prosperous and lawful buffer against unregulated migration.”⁵² To this end, as the same commentator has remarked that the migration issues needs to be approached “in concert, and not at cross purposes, with the Mexican government...All immigrants need to be brought into the system...for that system to work, Mexico must supervise its borders.” He further adds that Mexican development is in the U.S. interest because economic stagnation in Mexico will produce more illegal migration, instability, and the temptation to blame the U.S., hence increasing tension between the two countries.

Several commentators continue to articulate the need for a coherent immigration policy. Griswold asserts that “the presence of such a large undocumented workforce creates political and economic problems on both sides of the border...the presence of so many undocumented workers represents a black market in labor, with all the pathologies of smuggling, fraudulent documents, wage distortions, inefficiencies, and abuses that attend it. It also affronts common sensibilities about obeying the law and controlling our borders.”⁵³ He makes the statement that U.S. immigration laws are colliding with reality, and that reality is winning, as demonstrated by the high number of illegal Mexican workers in the U.S.

This thinking seems to be increasingly influencing U.S. immigration policy, as reflected in the enhanced cooperation between the two governments on the question of Mexican immigration to the U.S. The result has been serious deliberation on the need for new guest worker programs or for the expansion of existing ones, with a view to attaining a reformed immigration system that creates legal channels through which Mexican nationals can enter and remain in the U.S. for a definite period to work. Notwithstanding the political difficulties in eventually reaching agreement on this challenging issue, the discussion would seem to be progressing in the right direction.

⁵¹ IOM, *World Migration Report 2005*.

⁵² Robert S. Leiken, *Enchilada Lite: A Post-9/11 Mexican Migration Agreement* (Center for Immigration Studies, March 2002).

⁵³ Griswold.

Which Way Forward?

Of the estimated 150 million migrants worldwide, 120 million are thought to be labor migrants.⁵⁴ Given the important and growing magnitude of labor migration, a comprehensive approach is undoubtedly vital. The actions and policy directions being developed and pursued by many sending and receiving governments clearly reflect the importance of this phenomenon. In the case of several leading sending countries, labor migration is increasingly viewed as a national development issue given the volume of hard currency generated by migrant workers in the form of remittances, and the need therefore to increase foreign employment opportunities for their nationals while also ensuring the protection of their rights. Receiving countries also have a strong interest in seeing that these migratory flows are properly managed so as to enjoy the economic benefits that they induce, while minimizing the risks, including those related to security, by ensuring that national laws are not compromised in the process.

The extent of irregular migration from Haiti to the Dominican Republic is hardly surprising when one considers the inter-state economic disparities. Indeed, the same phenomenon is to be seen all over the world where neighboring countries experience significantly different economic prospects. The examples of Mexico and the United States, Albania and Italy, Mozambique and South Africa, are enlightening in this regard. With the world becoming increasingly mobile, labor migration flows seem set to increase in response to opportunities that exist beyond a country's borders.

Irregular migration is a challenge increasingly faced by states the world over and which, as a result, continues to dominate policy discussion at national and international levels. Of most concern to governments is that the phenomenon of irregular migration promotes the co-existence of two modes of migration—one that is managed by governments and another managed by smugglers and traffickers. Irregular migration is a parallel approach that feeds on policy inconsistencies, such as those existing between migration and employment. Therefore, one of the critical challenges for governments in this area is to establish credibility.

Available evidence would seem to suggest that increased controls are not in and of themselves sufficient to reduce the incidence of irregular migration, confirming a now common view that it would be virtually impossible for policy makers to completely regulate migration.⁵⁵ It is equally unrealistic to expect that governments could control immigration by modifying the major variable known to affect irregular migration—the economy.

⁵⁴ IOM, *Labor Migration in Asia*.

⁵⁵ Half of the budget of the former US Immigration and Naturalization Service (INS)—the precursor to the Department of Homeland Security (DHS)—has been devoted to preventing illegal immigration in recent years. It rose 20-fold in two decades, from US\$250 million in 1980 to US\$5 billion in 2000. Yet, during this same period, the estimated number of irregular foreigners is reported to have risen from three million to nine million, despite several regularization programs. Other western democracies have experienced similar sharp rises in their expenditures on migration control, and ever-widening goal-outcome gaps. See IOM, *World Migration Report*, 2005.

Policy Recommendations

A substantial reduction in irregular migration between Haiti and the Dominican Republic will require a more comprehensive response. In the context of the preceding discussion, there are various areas in which action by both the Dominican and Haitian governments could contribute toward significantly reducing the incidence of irregular migration from Haiti to the Dominican Republic. As this article has argued, the irregular presence of Haitian labor immigrants lies at the root of the inter-state migration-related tensions that increasingly risk spiraling out of control.

A good start would be to look at two key allies of irregular migration: failed social and economic policies combined with political instability—factors that continue to push and pull people to greener pastures—and the absence of legal migration channels, at times coupled with inflexible policies.

A comprehensive response would require, first and foremost, (1) more effective internal migration controls, without which all other measures taken will not have the desired effect. Also critical would be (2) the establishment of legal migration opportunities through the formulation of a bilateral labor migration accord to regulate the contracting of migrant workers and related procedures in both Haiti, as the sending country, and the Dominican Republic, as the receiving country. Equally critical is the need for (3) enhanced dialogue between the two states, with a view to clearly signposting and providing legitimate channels of entry, while doing more to deter irregular entry and stay as mentioned above. Lastly, as legal labor migration channels will always be limited, it is critical to (4) promote economic growth and political stability in Haiti. These four key areas are examined below in further detail, with no priority order implied, and with actions recommended for application on either or both sides.

Improved Domestic Controls

As smuggling of persons is largely a market-driven enterprise, a sensible course of action for the Dominican Republic, as the receiving state in this instance, would be to reduce its marketability as a destination. This could be achieved by making irregular entry and stay more difficult for the smugglers and traffickers to arrange, and more costly in terms of criminal liability for smugglers and traffickers as well as for the irregular migrants and their employers. Below are detailed some of the specific measures that could be undertaken toward this objective:

1. *Reducing possibilities for illicit employment* is an important area. By instituting punitive actions for employers that hire irregular migrants, and stronger actions to make it more difficult for non-authorized migrants to work, significant deterrents would be created. It is worth noting that this is often the point in the migration policy and practice chain at which reform proves resistant to change.

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2. *Legislative and policy reform in the migration sector* would help to ensure an adequate legal response to criminal activities, including those undertaken by smuggling and trafficking networks. To this end, the Palermo Protocols on Trafficking and Smuggling, whose main purpose is the criminalization of the acts of smuggling and trafficking rather than of the victims, and the establishment of stronger and more consistent penalties across nations, are helpful guides.⁵⁶ Both the Dominican Republic and Haiti could derive inspiration from these protocols, to which both are signatory, to strengthen their legal codes so as to facilitate the prosecution of people smugglers and traffickers in migrants that operate in their respective territories. Related to this is the need to update and adapt existing migration legislation to current realities in both countries.
3. Another critical area is the *improvement of border systems* to ensure appropriate enforcement alongside the efficient facilitation of regular movement. Not only would it be essential that both countries have well-trained border personnel at appropriately equipped and manned border checkpoints, but also that formal opportunities for exchange and collaboration be established.
4. Many migrants resort to irregular migration because of difficulties involved in obtaining travel documents, including passports, and visas. This is an area that warrants examination and improvement, particularly with regards to border populations that have a long-standing tradition of trading with each other on a daily basis. Here, actions should be taken to update travel documents to ensure compliance with the minimum international standards. Also, if necessary, but equally important, the *security of related issuance systems* should be improved to minimize the potential for their fraudulent procurement. Constituting a related challenge, many would-be irregular Haitian migrants are likely to be the very category of persons for whom passports are out of easy reach. Creative solutions to ensure *easier access to travel documents* for this category would seem necessary.
5. Given that Haitians have long crossed the border into the Dominican Republic with relative ease, as entrepreneurial migrants who smuggle themselves into the Dominican Republic or, more commonly, with the facilitation by people smugglers, there is an urgent need to better inform prospective irregular migrants of the hazards of this form of migration. Recognizing the need for information as fundamental to all migration decisions, *information campaigns* have an important role to play. The lack of awareness continues to put migrants at risk, while also undermining orderly migration. Information campaigns take on added importance when one considers that most of the irregular Haitian migrants to the Dominican Republic are unskilled or semi-skilled and, therefore, are by definition of lower education and are more susceptible to misinformation.

⁵⁶ The Palermo Protocols were signed in December 2000 in Palermo, Sicily as a supplement to the UN Convention against Transnational Organized Crime.

6. Concurrently, efforts would be needed to *promote migrants' rights* in both the Dominican Republic and Haiti, with emphasis in the Dominican Republic as it hosts a significant immigrant population, most of it irregular. Such efforts would raise awareness of the value of labor migrants, irrespective of their legal status. This point should reach home when one considers that nationals of the Dominican Republic are also to be found in other countries, in the region and beyond, in an irregular status. Such campaigns could also extend into sensitization efforts targeting policy makers and the general public of both countries to the fact of migration being a natural social phenomenon, which, if managed properly, could yield benefits to both governments and societies, inclusive of migrants.
7. States across the world increasingly recognize the need for *regularization*, its downsides notwithstanding. This is the process by which a country allows migrants in an irregular situation to obtain legal status in the country, and will typically entail granting amnesty to migrants who have resided in the country in an irregular situation for a given length of time and are not otherwise found inadmissible.⁵⁷ However, regularization has many opponents, for understandable reasons. For one, it can be perceived as rewarding those who have engaged in illegal actions, thereby failing to encourage potential migrants to opt for legal migration options. Also, if not accompanied by measures to counter the employment of irregular migrants, a regularization program risks acting as a pull factor. That said, there will be certain situations, such as that currently prevailing in the Dominican Republic, that warrant serious consideration of the potential benefits in undertaking a regularization exercise. Benefits would include a potential reduction in the number of migrants living in a country without the protection, rights, and responsibilities that would be conferred by legal status. Such migrants would also enjoy, and help pay taxes toward, public services.

Bilateral Labor Migration Accords

1. A legal framework to govern the contracting of Haitian migrant workers, and which conforms to current realities and draws upon lessons gained from experience with previous bilateral labor migration accords, is desperately required if the substantial volume of irregular migration taking place from Haiti to the Dominican Republic is to assume a more regular form than has been the case up until now.
2. Such a bilateral accord should strive to ensure that the recruitment agreement, or the employment contract, will specify wage levels, duration of employment, working conditions, and the labor market rights of the workers. It could also lay out the obligation of the employer or public authorities to provide other benefits. In combination with the laws and regulations of the receiving country, the recruitment agreement would contribute to defining the legal status of the

⁵⁷ IOM, *Glossary on Migration- International Migration Law*.

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labor migrant with regard to residence, social and civil rights. An accord of this nature would need to recognize that the situation of many migrant workers, particularly those in the unskilled category, is often of a temporary nature, so that the granting of the same rights as citizens would not necessarily be possible.

Instituting/Expanding Bilateral Dialogue

1. More and more, states are coming to the realization that however well-articulated and supported their national systems for migration management may be, they can be severely affected by weaknesses owing to varying capacities in other states' systems. For this reason, successful migration management is increasingly a matter of effective joint management among states, including in the identification, shaping, and working toward the achievement of shared goals.
2. This is particularly imperative in the context of countries that share a border, like the Dominican Republic and Haiti. It is thus critical that the two countries work toward the creation of a bilateral dialogue process that would provide a forum from which to build common agendas and enhance networking on migration management issues of common concern, whose resolution demand a collaborative approach.

Political Stability and Economic Development in Haiti

1. As labor migration opportunities will necessarily be limited, in the Dominican Republic as anywhere else, it is critical that a sending country like Haiti be able to generate sustainable livelihood possibilities on a massive scale for its population. If Haiti, through its own efforts and with the assistance of the international community, could achieve political stability, it could finally begin to witness some economic growth that could also benefit the Dominican business community. If not, Haiti's problems risk continuing to spill across the border as experience has shown, given the inter-dependence of the two countries.
2. Unless political stability and economic growth come to Haiti, the Dominican Republic, and to a lesser extent other countries in the Caribbean region, even with establishment of legal migration opportunities in response to demand and a fully functional regulatory framework, Hispaniola will continue to suffer the irregular Haitian migration problem and the challenges that this occasions.

Conclusion

It seems beyond dispute that Haitian migrants entering the Dominican Republic irregularly for employment serve an important and even essential role in sustaining the country's economic vitality. As historically demonstrated, in the absence of legal means of entry and employment, illegal means, including the use of smugglers, many of whom turn out to be traffickers, become the default option. Efforts to discourage and limit this irregular migratory flow through the various actions noted above are essential and cannot be replaced by simply expanding labor migration opportunities.

In a context such as this one, where there is a recognized need and demand for labor in the Dominican Republic, and a clear supply of Haitian wage laborers, it is inevitable that the supply will continuously seek to respond to the demand. The missing element is clearly the institutional framework through which this flow can be regulated.

For such a framework to be institutionalized, there is an urgent need for strong commitment on the part of both governments to the need to avoid irregular migration from constituting the main form of movement from Haiti to the Dominican Republic, managed by smugglers and traffickers. This is a parallel, irregular approach that feeds on policy inconsistencies that exist in both countries. The need for both countries to establish credibility vis-à-vis their respective populations and with the international community could be best addressed by clearly marking and providing legitimate channels of entry while deterring irregular movement, as outlined in the above policy recommendations. The implementation of these recommendations would go a long way toward creating a win-win situation for the Dominican Republic, Haiti, and for the migrants themselves.

Despite the problems posed by migration for both the Dominican Republic and Haiti, the potential benefits of a well-managed migration regime for both countries cannot be overstated. It is understandable that the phenomenon of migration, especially on the scale at which this is taking place between Haiti and the Dominican Republic, will raise important and sensitive issues of national security and identity, social change, cultural adaptation, and resource allocation. As the world's population in this as in other regions is increasingly mobile, these are important challenges to migration policy makers of both countries.

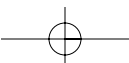
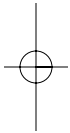
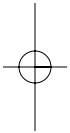
The choices made today by Haitian and Dominican policy makers will help to determine whether migration is managed to maximize its benefits, or whether it will continue to be a source of concern, potential social disruption, and friction between the two states. Preventing this mobility is hardly an option, leaving only the alternative which is to better manage it.

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Summary Translations in Spanish

Marco Normativo Internacional Referente a la Migración en el Gran Caribe

1.1

*Ryszard Cholewinski, Jillyanne Redpath,
Sophie Nonnenmacher y John Packer*

Introducción

La gestión de las migraciones humanas supone algunas pautas que pueden aplicarse uniformemente en distintas situaciones y países, y que deben reflejar y llevar a la práctica valores fundamentales declarados, referentes a la dignidad humana y a la paz, la estabilidad y el desarrollo. Esos valores universales generan normas de diversos tipos: sociales, culturales, políticos, jurídicos, etc. Esas prescripciones y prohibiciones van de lo general a lo específico y a su vez generan pautas y reglas. Cuanto más denso es el marco y más imperativo su carácter, tanto más fácil es organizarlo para planificar e invertir y para hacer responsable a una persona frente a las normas y pautas.

Es difícil sostener que exista un marco social, cultural o político suficientemente desarrollado, común o preciso referente a la migración, que abarque toda la región del Gran Caribe. En el Caribe existen algunos modos de ser y afinidades comunes, pero muy poco imperativos o confiables como para prever, y mucho menos preceptuar, modalidades de comportamiento. No obstante, las relaciones y el derecho internacionales contemporáneos proporcionan, en especial, normas y pautas que se aplican a los diversos tipos de situaciones y por lo tanto ofrecen un marco en que puede analizarse la migración en la región del Gran Caribe y organizarse en torno o en respuesta a él. Además ofrecen un marco dentro del cual pueden darse acontecimientos internacionales específicos. Por esos motivos es esencial examinar ese marco en todos sus aspectos y aprovecharlo en la mayor medida posible.

En el presente artículo se presenta el marco normativo internacional que rigen la migración internacional en la región del Gran Caribe. Aunque no existe un marco normativo internacional que rija la migración de personas, ello no implica que esos movimientos se consideren exclusivamente en el nivel nacional de estados soberanos. En el contexto de la migración, el principio de la soberanía del estado es especialmente pertinente para determinar la admisión de extranjeros (es decir de no nacionales) en el territorio del estado, pero además los estados se han comprometido en la esfera del derecho internacional, a través de tratados o normas consuetudinarias, a observar ciertos

principios que restringen el alcance de sus actividades y mecanismos de adopción de decisiones con respecto al tratamiento de todos los seres humanos, incluidos los migrantes, sean cuales fueren su nacionalidad o condición jurídica. En consecuencia, la conducta de las autoridades y los funcionarios del estado en este ámbito no es, en modo alguno, ilimitada: está sujeta a una gama de pautas universales y regionales, como las relacionadas con la protección de los derechos humanos y el tratamiento de los refugiados. Además, la creciente interdependencia de los estados en el mundo en proceso de globalización está haciendo surgir una malla cada vez más densa de compromisos comerciales a nivel mundial y regional. El cumplimiento de esos compromisos exige, cada vez en mayor medida, el movimiento transnacional de personas, trátense de especialistas altamente calificados y empleados trasladados dentro de una misma compañía o de personas menos calificadas que se desplacen en el contexto de la prestación internacional de servicios.

El presente artículo comienza con una reseña general de los principios de derecho internacional de la soberanía y la responsabilidad del estado en cuanto se aplican a la admisión y al tratamiento de no nacionales. Luego se analizan los marcos mundiales y regionales de derechos humanos, haciéndose especial hincapié en su aplicación a no nacionales, personas desplazadas en la esfera interna (DEI) y personas sin estado. Ese análisis sirve de introducción a las principales modalidades de protección de los derechos humanos y centra la atención en problemas especiales en materia de derechos que son específicos de la región del Gran Caribe. En la sección siguiente se examina el marco normativo relativo a la protección de grupos de migrantes especialmente vulnerables, como los refugiados, las personas desplazadas en la esfera interna, las personas sin estado, los no nacionales afectados por conflictos armados, las víctimas del tráfico y el contrabando de personas y los trabajadores migrantes. Es evidente la presencia de todos esos grupos vulnerables en la región del Gran Caribe, y su situación se analiza en mayor detalle en algunos capítulos de este volumen. Finalmente, en el capítulo se analiza el marco de derecho comercial internacional pertinente a esta región, es decir la Comunidad del Caribe (CARICOM) y el Mercado y la Economía Únicos del Caribe (MEUC), teniendo presentes las dificultades que supone su aplicación y ofreciendo algunas recomendaciones a ese respecto. Ese régimen contiene disposiciones relativas al movimiento de personas, y es probable que con el tiempo su impacto en la migración se intensifique en la región. Es también probable que su exitosa aplicación reduzca la desigualdad económica entre los estados participantes y por lo tanto el potencial de conflictos.

Conclusiones Generales y Recomendaciones

En el presente artículo se ha delineado el marco normativo (esencialmente jurídico) internacional referente a la migración en la región del Gran Caribe. Aunque sólo es posible presentar una reseña amplia de ese marco, es evidente que a nivel mundial y regional se ha establecido una malla pormenorizada de medidas que revisten importancia para los migrantes en general o están destinadas, específicamente, a proteger a sectores

de migrantes especialmente vulnerables: los refugiados, los desplazados internos, los no nacionales afectados por conflictos, las víctimas del tráfico o el contrabando de personas, los trabajadores migrantes y las personas sin estado. Aunque muchas de esas normas han sido aceptadas por países de la región del Gran Caribe, la cuestión crucial se refiere, como es natural, al grado en que han sido aplicadas, investigación que escapa a los límites del presente artículo. No obstante, se sostiene que si esos estándares se aplicaran con éxito se reduciría en gran medida el potencial de futuros conflictos en la región. A este respecto el contexto en evolución del comercio internacional y, en especial, el ulterior desarrollo de la Comunidad del Caribe constituyen un paso esencial para llevar adelante ese programa, pues es frecuente las mejoras en materia de desarrollo y prosperidad económicos contribuyan significativamente a reducir los tipos negativos de movimientos migratorios que pueden suscitar tensiones políticas y económicas dentro de un estado y entre distintos estados.

A fin de dar mayor eficacia al marco normativo existente se recomienda a los diferentes actores, la adopción, en forma individual o conjunta, de las medidas siguientes:

1. Es preciso que las convenciones internacionales existentes sean ratificadas por todos los países de la región del Gran Caribe, definidos por los estados miembros de la Asociación de Estados del Caribe (AEC). Aunque es evidente que compete a cada estado considerar activamente esa ratificación, los organismos inter-gubernamentales pertinentes deberían promover en forma preactiva esas ratificaciones, entre otras cosas ofreciendo y proporcionando asesoramiento y asistencia técnica para superar obstáculos o preocupaciones prácticas. En conjunto, algún órgano independiente de naturaleza regional (quizá una organización académica o en algún modo no gubernamental) debería compilar y publicar un informe anual sobre el estado de las ratificaciones y su aplicación en la esfera interna; notablemente en cuanto a las medidas tendientes a abordar dificultades y oportunidades de mejorar la gestión regional desde la perspectiva de los intereses comunes. A este respecto los estados miembros de la AEC deberían comprometerse a poner al día todos los informes que deban presentar en cumplimiento de convenciones internacionales. Sobre esa base los estados de la AEC podrían entonces colaborar mutuamente en cada tema (aplicando idénticos estándares) sobre la mejor manera de aplicar estándares y alcanzar fines comunes. La AEC, junto con otros organismos inter-gubernamentales, podría cumplir un papel de facilitación.
2. Con respecto a cuestiones e instrumentos específicos, deberían establecerse o reforzarse apropiados órganos dedicados especialmente al cumplimiento de cometidos específicos, para potenciar al máximo sus capacidades y su eficacia. Notablemente, deberían reforzarse o complementarse entidades tales como la Organización Regional de la CARICOM sobre Normas y Calidad (CROSQ), confiriéndoles cometidos y capacidad de supervisión en materia de acreditación y eficacia.

3. Para respaldar las políticas, leyes y prácticas de cada país, y de una eficaz cooperación regional debería establecerse un observatorio regional encargado de compilar estadísticas precisas y datos conexos y proporcionar análisis independientes, imparciales y especializados sobre aspectos clave de la migración dentro de la región del Gran Caribe. Esa labor podría estar a cargo de un centro o instituto académico, o bien de la AEC, en colaboración con otros organismos inter-gubernamentales (notablemente la CARICOM y la Organización Internacional para las Migraciones), al servicio de los estados miembros de la AEC y en cumplimiento de sus mandatos generales y específicos.
4. En relación con lo que antecede, o separadamente, debería dotarse a la región de un mecanismo específico encargado de estudiar temas, facilitar intercambios, proporcionar asistencia técnica y promover prácticas óptimas. Esto podría incluir un nuevo marco específico para la región, diseñado en forma apropiada para atender cualquier necesidad especial y/o llenar vacíos de normas, estándares e instituciones.

A través de esos y otros pasos progresivos de carácter cooperativo y de solución de problemas podría realizarse una mejor gestión de la migración en la región del Gran Caribe. A este respecto, el marco normativo internacional existente ofrece un excelente punto de partida. Su fortalecimiento y eficaz aplicación constituyen un importante elemento para impedir que se produzcan, propaguen o reiteren en la región conflictos conexos con dicho fenómeno.

Desafíos para la Gestión de la Migración en el Caribe

2.1

Berta Fernández-Alfaro y Gerard Pascua

Introducción

La región del Caribe presenta una gran diversidad. En su más amplia definición, el Caribe comprende a 16 naciones independientes y 12 dependencias, territorios o posesiones. Dichos gobiernos y sociedades, de carácter pluriétnico y pluricultural, se ven enfrentados, individual y colectivamente, a numerosos desafíos, siendo el de la gestión de las corrientes migratorias uno de los más inquietantes y apremiantes. Incluso la presencia de un número relativamente pequeño de migrantes—en especial, cuando se trata de personas con tradiciones lingüísticas y culturales claramente diferenciadas—puede repercutir con desproporcionada intensidad sobre los países que los reciben, muchos de los cuales ya experimentan problemas de escasez de recursos y capacidad de absorción. Esto provoca que las tensiones y rencores interétnicos puedan causar, o causen, estallidos de violencia. Además, necesidades políticas, económicas y sociales contrapuestas pueden hacer aflorar conflictos de intereses latentes basados en diferencias históricas entre distintos actores. Por lo tanto, una gestión de la migración eficaz, realizada en el marco de una política integral, constituye un mecanismo preventivo esencial para promover y—lo que es igualmente importante—mantener, la estabilidad y la cohesión sociales.

La región se caracteriza por una movilización interna de personas muy fluida y por un tránsito de de migrantes no caribeños de significativas proporciones. La falta de oportunidades económicas, aunada a tendencias históricas de desplazamiento intra-regional, así como en algunos casos un nivel insatisfactorio de observancia de los derechos humanos e inestabilidad en materia de gobernabilidad, constituyen poderosos estímulos que influyen la migración de los pueblos del Caribe, dentro y fuera de la región. Por otra parte, la proximidad geográfica de los Estados Unidos y, en muchos casos, el hecho de que los gobiernos de los países de destino carecen de suficiente capacidad institucional para reducir la migración irregular, se aúnan para hacer de la región del Caribe una zona de tránsito para los emigrantes extrarregionales en su viaje hacia el Norte. La migración irregular, el tráfico y la trata de personas, la propagación del VIH/SIDA, la fuga de cerebros, las migraciones masivas, y la devolución y deportación de extranjeros son todos factores que han llegado a formar parte de la actual dinámica de la migración en el Caribe.

En este artículo se presenta una reseña de cuáles son los desafíos actuales para la región relacionados con la migración. Primeramente, se examinarán las actuales corrientes y tendencias migratorias, incluyendo el análisis de los temas de la fuga de cerebros y las redes de la diáspora; aquellos aspectos de las poblaciones migrantes, incluidos los deportados, que guardan relación con la integración y el trabajo; migrantes irregulares y regulares; y propagación de la pandemia del VIH/SIDA. En segundo lugar, en el presente artículo se analizarán los problemas que deben superarse para gestionar las corrientes migratorias en la región en el contexto de procesos migratorios regulares, normales, o de emigraciones a gran escala provocadas por desastres naturales o situaciones de violencia y conflictos políticos. A esos efectos, se sistematizarán aquí las preocupaciones más apremiantes relacionadas con la migración, dadas a conocer en consultas llevadas a cabo con representantes de gobiernos del Caribe, y se ofrecerán recomendaciones sobre la manera de atenderlas.

Recomendaciones Prácticas para Administradores de la Migración y Responsables de la Política Migratoria

“Reconocer las contradicciones existentes entre la institucionalización de los enunciados sobre derechos humanos y las prácticas políticas, administrativas y sociales cotidianas constituye una condición básica para consolidar el ejercicio de los derechos humanos de los migrantes.”

Lelio Marmora

La gestión de los aspectos económicos, sociales, culturales y políticos de las corrientes migratorias representa actualmente un importante desafío para todos los países. Ese reto resulta aún más arduo cuando las corrientes son heterogéneas. Por lo tanto, es esencial elaborar respuestas que no se basen en medidas ad hoc aisladas, sino en un marco político equilibrado, coherente y general.

Aunque se han realizado considerables investigaciones y ensayos de políticas en este ámbito, no se dispone de una fórmula prefabricada. No todas las comunidades de migrantes se conducen del mismo modo, no evolucionan social y económicamente al mismo ritmo, ni establecen las mismas estructuras de relaciones con la sociedad en la que ingresan. Algunas comunidades de migrantes establecen paulatinamente vínculos fuertes y positivos con las sociedades en las que han ingresado, en tanto que otras se aíslan o marginan.

Al ocuparse de los fenómenos de la migración, los responsables de políticas suelen verse confrontados con una amplia gama de cuestiones que no dejan de ser polémicas, ya que plantean preocupaciones económicas y sociales nacionales y, eventualmente, generan prejuicios contra los migrantes. De hecho, la migración (inmigración y emigración) en los países de destino y de origen puede hacer aflorar conflictos subyacentes preexistentes. Para los responsables de políticas no es tarea fácil hacer frente al problema, dadas sus ramificaciones y su carácter multidisciplinario, teniendo en cuenta también las

consecuencias políticas, sociales y económicas de sus actos u omisiones. Por lo tanto, es imperioso que los responsables de políticas tengan en cuenta las consecuencias que implica adaptar, o no, la política y la legislación migratorias a la realidad, y a los objetivos y necesidades a largo plazo de su país. Las siguientes son algunas recomendaciones tendientes a enfrentar los problemas que plantea para la región del Caribe la gestión de la migración:

1. *Realizar una labor nacional de articulación de una visión y un objetivo común.* Reviste mucha importancia que la sociedad receptora de migrantes y la comunidad de los migrantes definan e identifiquen valores compartidos o comunes, porque de los resultados de ese esfuerzo pueden depender la futura composición de la sociedad. Por lo tanto, deberían fortalecerse y sistematizarse los mecanismos de consulta con las comunidades de migrantes. Además, es necesario establecer políticas eficaces de integración socioeconómica de los migrantes en las comunidades receptoras, aunque sea de carácter temporal, para lograr la máxima productividad posible. Esas medidas tienen un costo financiero, pero contribuyen a la cohesión social en un contexto de diversidad cultural, y permiten a los migrantes cumplir un papel productivo (en cuanto a empoderamiento y al efecto positivo que puedan suscitar en los países de destino y de origen). Además, cuando los migrantes están legalmente en el país, su renta puede generar ingresos tributarios.
2. *Mejorar y sistematizar la recopilación de datos.* La recopilación de datos debe realizarse de forma tal que sea posible el intercambio de información con otros gobiernos, y constituya un aporte valioso para adaptar las políticas y las leyes a la realidad. Los censos, las encuestas de hogares y los registros de entrada y salida siempre deben usarse con fines constructivos, es decir, para realizar una planificación estratégica, campañas o programas de información, no como instrumento para perjudicar a los migrantes.
3. *Promover estudios regularmente para detectar posibles variaciones demográficas y migratorias.* Al diseñar políticas deben tenerse en cuenta los cambios culturales provocados por la modificación de las modalidades migratorias y demográficas existentes. El hecho de que algunos países o territorios insulares se estén haciendo bilingües, como Antigua y Barbuda (inglés y español), o trilingües, como las Antillas Holandesas (holandés, inglés y español), podría aprovecharse, si se aborda en forma positiva, en beneficio de la economía.
4. *Analizar regularmente las necesidades y la capacidad de absorción de trabajadores, para negociar y diseñar acuerdos bilaterales en materia laboral.* La existencia de altos y sostenidos niveles de desempleo, junto con la variación de la estructura de los puestos de trabajo disponibles para una fuerza de trabajo constituida principalmente por jóvenes, constituyen incentivos poderosos a la migración. El bienestar es otro importante factor de atracción de migrantes. No obstante, debe recordarse que los migrantes ocupan puestos de trabajo en todos los niveles de aptitudes, concentrándose especialmente en los extremos más altos y más bajos del mercado, y que frecuentemente cumplen tareas que los

nacionales no pueden o no quieren realizar. Además, los gobiernos deberían considerar la posibilidad de ratificar, si es que aún no lo han hecho, la Convención Internacional sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familias.

5. *Evaluar y, si es necesario revisar, el marco legal, reglamentario y operativo existente en materia de migración.* El objetivo global consiste en incrementar la coordinación interinstitucional y al mismo tiempo evitar incoherencias, vacíos y, lo que es más importante, reducir o prevenir la corrupción. Esa labor será esencial para diseñar el marco general arriba mencionado, tras haber identificado necesidades de corto y de largo plazo.
6. *Esforzarse por lograr un equilibrio entre un enfoque estricto en materia de aplicación de normas, y medidas que faciliten la movilización de personas.* Los países en que existe un tránsito en gran escala de pasajeros a través de sus aeropuertos, y en que las visitas de turistas y representantes de empresas son un factor de creación de riqueza, deben establecer un equilibrio entre la necesidad de seguridad y la necesidad de agilizar lo más posible el ingreso de personas que vienen de buena fe. Los pasaportes del Caribe deben cumplir las normas de la Organización de Aviación Civil Internacional. No obstante, los gobiernos deberían analizar detenidamente sus necesidades antes de adoptar un sistema de pasaportes o de gestión de fronteras que pueda ser ineficaz a los efectos de gestionar la migración.
7. *Reconocer el impacto de la diáspora del Caribe y disponer lo necesario para que sus consecuencias se tengan plenamente en cuenta en las políticas públicas nacionales y regionales.* En el Caribe, la migración, las remesas y la gama de relaciones económicas y sociales que mantienen los migrantes con sus países de origen revisten considerable y creciente importancia. En este sentido, es importante reforzar las relaciones con las asociaciones de oriundos, que pueden contribuir al desarrollo de sus países de origen. La eliminación de las barreras a la competencia en el mercado de remesas parece ser uno de los compromisos ya acordados en foros hemisféricos como la Cumbre de las Américas. No obstante, los gobiernos de los países cuya diáspora es considerable, podrían estudiar la posibilidad de crear una estructura orientada hacia objetivos más definidos, y de mayor respaldo, como la existente en El Salvador, o conferir facultades a una institución ya existente que asuma la función de dar orientación y respaldo técnico a las referidas asociaciones.
8. *Procurar que los factores de género se tengan plenamente en cuenta en los procesos de migración y desarrollo.* Ello resulta necesario para hacer más visibles los problemas de las mujeres y los niños, y elaborar políticas y leyes inclusivas y compensatorias, que estén en consonancia con instrumentos internacionales. En todas las sociedades, las desigualdades de género poseen características comunes que dependen del contexto político, social y económico específico. Por ejemplo, toda medida encaminada a poner límites al desarrollo potencial de las remesas

debe basarse en un análisis riguroso de las relaciones y la dinámica de género en una determinada circunstancia.

9. *Ampliar los planes existentes para emergencias, a fin de adaptarlos mejor a potenciales migraciones a gran escala.* Las características geográficas de la región la hacen vulnerable a diversos desastres naturales, tales como huracanes y erupciones volcánicas, así como a las consiguientes salidas en gran escala de personas tras dichos desastres. Entre las fallas y los peligros destacados en un seminario regional organizado por la Organización Internacional para las Migraciones (OIM) y el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR) en las Bahamas en 2004, se mencionó la falta de una legislación especializada; la escasez de recursos humanos, técnicos y financieros que permitan hacer frente a las necesidades planteadas por las salidas en masa de personas (refugio, alimentos, etc.); la falta de convergencia entre expertos técnicos y políticos; y la falta de datos y de recursos para el intercambio de información. Uno de los factores que contribuyen a esta situación es la sensación general de que la planificación para emergencias no es un objetivo prioritario, a lo que se agrega la falta de determinación en la esfera política. Por lo tanto, es necesario ampliar y aumentar a nivel nacional y regional las facultades y las capacidades, humanas y técnicas, de hacer frente a los complejos problemas migratorios, a fin de que la gestión de la migración sea cada vez más eficaz. Desde el punto de vista financiero, a largo plazo es más eficiente realizar una planificación anticipada en previsión de necesidades, así como para hacer frente a emergencias causadas por siniestros que se produzcan súbitamente. Además, una planificación efectiva puede contribuir a mitigar las presiones a que dé lugar un determinado desastre.
10. *Reconocer debidamente la relación entre migración y salud.* La salud de los migrantes se ha convertido en un elemento esencial de la política migratoria, lo que hace necesario integrarla en las estrategias de gestión de la migración, en beneficio tanto de las personas como de las sociedades. Velar por el bienestar físico, mental y social del migrante resulta esencial en cada una de las etapas del proceso migratorio: aquella en que se decide partir, el viaje mismo, la de llegada a la nueva comunidad y posiblemente la de eventual retorno. La migración implica costos y beneficios para los países de origen y destino de los migrantes, aunque esos factores no siempre se distribuyen por partes iguales. No es probable que los migrantes regulares planteen una carga mayor, en materia de servicios de salud y de bienestar social, que la generada por la población del país que los recibe, ya que también pagan impuestos. Por otra parte, los migrantes irregulares, que son los que corren los mayores riesgos en materia de salud, como temen la deportación, no suelen acudir a hospitales para obtener asistencia médica. Esta situación no sólo plantea riesgos para la salud del migrante, sino también un problema de salud pública, y puede contribuir a avivar sentimientos de xenofobia y discriminación contra todos los migrantes. En consecuencia, reviste fundamental importancia el que los gobiernos realicen inversiones en salud para atención de migrantes.

11. *Diseñar y aplicar programas continuos de información a los migrantes con respecto a sus derechos y responsabilidades.* La labor de diseño consistiría en incluir actividades de familiarización de los migrantes con los servicios disponibles y la manera de obtener acceso a los mismos. Conforme al derecho internacional, los migrantes tienen la obligación de cumplir la legislación nacional del país al que llegan. Están obligados a respetar la autoridad del estado y a cumplir la legislación y los procedimientos operativos que emanan legítimamente de esa autoridad. Al atender el problema de la comunidad de migrantes irregulares se pone claramente de manifiesto la determinación de frenar el ingreso ilegal e impedir la formación de una comunidad de personas insatisfechas, marginadas y propensas al delito. Del mismo modo, la sociedad del país de destino de los migrantes debería recibir información sobre las contribuciones positivas que efectúan los migrantes (regulares e irregulares), en lugar de dejar que la prensa y otros grupos de intereses promuevan una imagen negativa de los migrantes. Un esfuerzo tendiente a crear una opinión pública receptiva contribuirá positivamente a disipar tensiones, en especial si el gobierno del país de que se trate decide dar un paso adicional a través de una amnistía u otro programa de regularización.
12. *Tratar de brindar a los deportados que lleguen al país opciones realistas y sostenibles para sobrevivir.* Las deportaciones de extranjeros provenientes de países industrializados también han causado viva preocupación en los círculos de elaboración de políticas del Caribe, en especial en cuanto al hecho de que los países que realizan deportaciones no notifican por anticipado la deportación, pero también en lo relativo a la reintegración de deportados, ya que en muchos casos no conocen bien sus países de origen. Los altos niveles de desempleo existentes en la mayoría de los países de retorno, las escasas posibilidades que se ofrecen para adquirir nuevas destrezas y el estigma vinculado con la deportación de extranjeros que han delinquido son todos factores que conspiran para reducir las perspectivas de reintegración de un deportado en la sociedad. Se requieren programas especiales orientados a atender las necesidades y las dificultades especiales de este segmento de la población.
13. *Incrementar la cooperación regional.* A largo plazo, los esfuerzos tendientes a lograr una cooperación regional viable y fluida podrían contribuir a la gestión de las corrientes migratorias en la región. La estandarización y sistematización de la labor de recopilación de datos, la creación de una base de datos regional con información sobre las rutas de tráfico y trata, y sobre los traficantes y tratantes condenados judicialmente, y la armonización de la legislación y la política sobre migración son algunos de los temas sugeridos en seminarios realizados. Aunque en el contexto del Caribe aún no se ha dispuesto la aplicación práctica de algunas de esas medidas, las ideas mencionadas, que promueven un enfoque homogéneo y basado en la mutua colaboración, han sido o están siendo aplicadas con éxito en otras regiones del mundo, principalmente en el marco de procesos regionales de diálogo.

Identificación, Protección y Búsqueda de Soluciones Duraderas para los Refugiados

2.2

Janice Marshall

Introducción

En los últimos años, se ha observado un aumento de la conciencia pública y el interés por las corrientes migratorias en todo el mundo. Aparentemente, estas corrientes se están intensificando de manera exponencial y cada vez presentan una mayor amenaza para los países de acogida, especialmente en el inestable mundo posterior al 11 de septiembre. Las corrientes migratorias de los países en desarrollo a los países desarrollados son especialmente propensas a ser consideradas como tal. Esta mayor conciencia acerca de la migración ha conducido a un aumento simultáneo de la intolerancia y al establecimiento de controles gubernamentales cada vez más estrictos en los cruces fronterizos, en un intento por detener la avalancha y salvaguardar la seguridad nacional. Estos controles representan un gran desafío para todos los inmigrantes, pero especialmente para los refugiados, que necesitan cruzar las fronteras de sus países en busca de seguridad, a pesar de que muchos carecen de los medios para obtener los documentos necesarios. También representan un desafío para el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), el único organismo internacional encargado de garantizar la protección de los refugiados y de encontrar soluciones duraderas para los mismos, así como de supervisar la aplicación de los instrumentos internacionales de derecho internacional de los refugiados. Por otro lado, los estados pueden tener la voluntad de proporcionar protección a los que la necesitan, pero deben enfrentarse a la difícil tarea de distinguir entre los que necesitan protección y los que abandonan su país por otras razones. Además de las dificultades que esto plantea, los estados también deben combatir la opinión pública negativa sobre la migración y persuadir al público de que el estado está actuando de conformidad con sus obligaciones internacionales de acogida a los refugiados y aún así sigue manteniendo el control de sus fronteras.

En respuesta a estos retos y al efecto nocivo que éstos estaban teniendo en la protección de los refugiados en todo el mundo, incluyendo la limitación del acceso de los refugiados a los sistemas de asilo y el establecimiento de restricciones en la interpretación de los criterios para determinar la condición de refugiado, el ACNUR inició en 2000 las Consultas Mundiales sobre la Protección Internacional (Consultas). Estas Consultas contaron con la participación de representantes de los estados, refugiados,

organizaciones e instituciones internacionales y regionales pertinentes y la comunidad académica, así como de varias organizaciones no gubernamentales, quienes durante una serie de reuniones y debates abordaron temas difíciles sobre cuestiones de interpretación jurídica, cuestiones de procedimiento e imparcialidad, y cuestiones prácticas y pragmáticas que guardan relación con la protección de los refugiados. Este proceso de Consultas se alargó durante más de 18 meses y tuvo como resultado la adopción de la *Agenda para la Protección* (Agenda), un plan de trabajo para el ACNUR y los estados que busca hacer frente a los futuros retos de protección de los refugiados. En la segunda meta de la Agenda, “Protección de los Refugiados en los Grandes Movimientos Migratorios” se identifican siete objetivos relacionados con la meta más amplia del programa y se sugieren varias actividades que el ACNUR, los estados y otras partes interesadas podrían emprender para: mejorar la identificación de las necesidades de los solicitantes de asilo y de los refugiados y respuesta adecuada; comprender el nexo entre asilo y migración; combatir el tráfico y la trata transfronteriza; reducir los movimientos irregulares o secundarios; y fomentar el diálogo y la cooperación entre el ACNUR y la Organización Internacional para las Migraciones (OIM).

Comentarios Finales

Los retos que plantean actualmente en todo el mundo la identificación y protección de los refugiados, así como la búsqueda de soluciones duraderas a sus problemas, tal como se indica con anterioridad, no sólo se han hecho evidentes en el Caribe sino que, en algunos casos, se han magnificado. Mientras que se plantean cuestiones especialmente graves relacionadas con la identificación y la provisión de oportunidades para solicitar asilo a las personas que lo procuran en el Caribe, especialmente cuando los solicitantes de asilo son detenidos durante las actividades de interdicción, y mientras las prácticas de devolución son comunes en la región, también existen graves problemas con respecto a la protección de los refugiados y la búsqueda de soluciones duraderas para los mismos, ya que no existen marcos legislativos ni se han formulado políticas sobre este tema. A no ser que los estados del Caribe puedan verdaderamente progresar en estas tres áreas—la identificación, la protección y la provisión de soluciones duraderas para los refugiados—nos encontramos ante la amenaza de que aumenten las posibilidades de un conflicto intrarregional relacionado con las corrientes de refugiados. Las siguientes recomendaciones de política se dirigen a los estados del Caribe y sugieren distintas maneras para abordar las dificultades y los problemas identificados en este artículo. Mientras que algunos estados ya pueden haber implementado algunas de estas recomendaciones y otros pueden no necesitar implementar todas ellas, se ofrecen como maneras concretas y eficaces para disminuir por lo menos algunas de las posibilidades de conflicto.

Recomendaciones de Política

1. Todos los estados deberían adherirse a los instrumentos internacionales para la protección de los refugiados—los cinco países que aún no los han suscrito en el Hemisferio Occidental son países del Caribe y todos son miembros de la Asociación de Estados del Caribe.
2. Todos los estados deberían establecer, con este propósito, procedimientos de admisibilidad para la identificación de solicitantes de asilo y la determinación de su estado, y deberían garantizar la capacitación de los funcionarios de migración, la policía, guardafronteras y otros oficiales que probablemente se encuentran con solicitantes de asilo, en la identificación y el trato adecuado de los mismos.
3. Todos los estados deberían formular y aprobar leyes internas para que la legislación nacional contemple las obligaciones y disposiciones de los instrumentos internacionales de protección de los refugiados, incluyendo, por lo menos, los siguientes derechos básicos de los refugiados, una vez se les ha reconocido dicha condición:
 - Protección contra el refoulement (el retorno a la fuerza o devolución de los refugiados);
 - Emisión de documentos de identidad reconocibles que certifican la condición de refugiado del titular;
 - Provisión de residencia legal en el país de asilo;
 - Permiso de trabajo;
 - Emisión del documento de viaje previsto en la Convención válido para regresar al país de asilo; y
 - Mecanismos para la reunificación de la familia cuando fuere necesaria. Todos los estados con legislación sobre refugiados deberían tomar medidas prácticas que garanticen la aplicación eficaz de su legislación.
4. Todos los estados deberían establecer contactos con el ACNUR, la OIM y otros estados de la región con el fin de cooperar en la protección de los refugiados y de otras personas que necesitan protección internacional, así como en los procedimientos y mecanismos para la identificación de dichas personas.
5. Todos los estados deberían adoptar un anexo a sus planes actuales de preparación para casos de desastre y de respuesta a situaciones de emergencia para abordar la eventualidad de corrientes migratorias masivas hacia un estado por razones similares a las de los refugiados, y deberían establecer contactos con las entidades de preparación para situaciones de emergencia en otros estados y organizaciones regionales para garantizar la coordinación adecuada.

Desempeño de las Economías de la CARICOM en los Años 90: Efectos Actuales en Cuanto a Migración y Potencial de Conflictos

3.1

Esteban Pérez Caldentey y Karoline Schmid

Introducción

En el presente artículo se analiza el desempeño de las economías de la Comunidad del Caribe (CARICOM) en los años 90, y se extraen consecuencias con respecto a las actuales corrientes migratorias y al potencial de conflictos en la región. Se demuestra que el crecimiento global se ha desacelerado y, simultáneamente, que las disparidades entre los países de la CARICOM han ido en aumento a lo largo del tiempo. Los principales determinantes de la modalidad de crecimiento de la región son factores externos; en especial el deterioro de la competitividad de las exportaciones. Aunque los países de la CARICOM han tratado de superar los límites que afectan a su potencial de crecimiento centrando la atención en políticas de promoción de la afluencia de capital, en especial de inversiones extranjeras directas (IED), esas políticas no sólo no han logrado promover un desarrollo regional sostenible, sino que han estimulado un proceso de desarrollo caracterizado por la dualidad y la polarización.

En consecuencia, las corrientes y modalidades migratorias han sido determinadas y moldeadas en gran medida por el actual proceso de deterioro de la situación socioeconómica y por la percepción de que las futuras oportunidades se encuentran en las economías más prósperas de los países cercanos de la CARICOM o en los países del Norte. Las percepciones sobre las oportunidades económicas y sociales que se ofrecen al migrante y a su familia en el país de destino de la migración revisten vital importancia para quien resuelve migrar. Las corrientes emigratorias y la fuga de cerebros conexas agravan el problema del continuo deterioro del desarrollo económico y pueden inhibir el crecimiento de las economías de la CARICOM, al reducir su potencial de crecimiento.

Una migración determinada por factores socioeconómicos, especialmente la que tiene lugar dentro de la región del Caribe, posee también una importante dimensión relacionada con potenciales conflictos. Son propensas a causar conflictos las corrientes migratorias de trabajadores menos calificados dentro de la región—especialmente los que se desplazan de las economías menos dinámicas a las más dinámicas dentro de la CARICOM, por ejemplo de Guyana a Barbados y de Haití a los países vecinos. Por el

contrario, la mayor parte de las corrientes migratorias extrarregionales—especialmente las protagonizadas por personas no calificadas o semicalificadas—no solo no han agravado los conflictos, sino que han constituido una válvula de escape, pues han atenuado las consecuencias sociales de las políticas económicas que aquí se describen, al reducir la oferta de mano de obra (y por lo tanto el potencial de desempleo) y dar lugar a una corriente de remesas más caudalosa.

El presente artículo está estructurado en cuatro partes, que en conjunto establecen una relación entre el desarrollo de las economías de la CARICOM y las tendencias migratorias. En la primera parte se analiza el desempeño económico de los países de la CARICOM, vinculándolo con las condiciones externas; en la segunda parte se centra la atención en las políticas económicas adoptadas por esos países para superar las restricciones externas, y se analizan sus consecuencias. En la tercera parte se examinan las corrientes y modalidades migratorias que están vinculadas con el desempeño económico descrito en las dos primeras partes, considerándose específicamente el tema del libre desplazamiento de trabajadores, y a continuación se formulan comentarios sobre el consiguiente potencial de conflictos. En la parte final se presenta un resumen de esa relación y se formulan reflexiones sobre algunos puntos.

Conclusión y Recomendaciones

La emigración puede servir de válvula de escape para algunas comunidades especialmente pobres, los movimientos transfronterizos de personas, pero puede generar un grave potencial de crisis sociales y perturbaciones civiles en los países de destino. Es lo que sucede, en especial, cuando existen fuertes discrepancias entre los países de origen y los de destino. Las tensiones provocadas por diferencias socioeconómicas pueden verse exacerbadas también por obvias desemejanzas entre migrantes y nacionales del país de destino en materia de cultura, idioma y estilo de vida. Aunque el desplazamiento ordenado de migrantes calificados parece plantear menos problemas, la afluencia de migrantes pobres, documentados e indocumentados, genera resquemores y se manifiesta en diversas modalidades de xenofobia y racismo. En consecuencia es necesario examinar con mayor detenimiento posibles soluciones que conduzcan a la integración de los migrantes poseedores de escasas calificaciones, en cuyo contexto puede ser necesario aplicar medidas educativas.

Es esencial, por otra parte, llevar a cabo una revisión de las políticas de desarrollo tendiente a suscitar una reducción general de la pobreza en toda la región, puesto que la pobreza suele ser el motor de las corrientes migratorias y perpetuar las disparidades entre las economías de la CARICOM. En los años 90, el principal de los factores que dio forma al desempeño económico de los países de la CARICOM fue el sector externo, y las medidas adoptadas para superar esas limitaciones han promovido una modalidad de desarrollo económico que presenta un sesgo favorable a sectores que operan con gran intensidad de capital extranjero, en detrimento de otros sectores más tradicionales, como

el agrario y el manufacturero. Los sectores basados en el capital extranjero son los más dinámicos, pero acaparan las corrientes de capital externo y orientan un proceso de crecimiento económico de espectro reducido, dada la debilidad de sus nexos con el resto de la economía. Los sectores más tradicionales, menos dinámicos, dependen de la demanda interna, que, con pocas excepciones, constituye una base de expansión estrecha. Esta modalidad de dependencia dual se ve reforzada por la política fiscal, que no se ha usado como instrumento contracíclico ni para promover el desarrollo a través de programas de gasto social, sino para fomentar de manera artificial actividades encaminadas a generar ingresos de divisas a través de una gama de exenciones tributarias que no han resultado eficaces.

En conjunto, el deterioro de la balanza en cuenta corriente, en especial de los resultados de la exportación, aunado al estancamiento de la inversión interna, han impedido que las dos variables esenciales mencionadas cumplan un papel fundamental estimulando la demanda agregada y el crecimiento económico. En gran medida, un crecimiento económico insatisfactorio ha dado forma, por lo tanto, a corrientes migratorias de trabajadores calificados y no calificados. Aunque muchos de los responsables de la elaboración de la política económica y numerosos académicos promueven vigorosamente la integración regional y una mayor movilización de personas entre esos países, cabe prever que la cifra absoluta de personas nacidas en el exterior que habitan en los países del Caribe siga aumentando en el futuro previsible. Es importante señalar que tal como lo demuestran las pruebas empíricas disponibles, el éxito de los acuerdos sobre movilidad del trabajo depende de la amplitud de la brecha económica y de la asimetría del desarrollo económico de los países signatarios. Cuanto mayores sean esa brecha y esa asimetría, tanto menores serán las probabilidades de éxito de los referidos acuerdos. Por lo tanto es preciso que los responsables de la elaboración de políticas tengan presente que la convergencia económica y la movilidad del trabajo son, en realidad, dos caras de la misma moneda, lo que nos lleva a formular las siguientes recomendaciones:

1. Dados los actuales desequilibrios socioeconómicos, es preciso que los gobiernos y las sociedades tengan en cuenta que la migración tiende a suscitar oportunidades económicas, y que es más lo que debe hacerse, al formular políticas, para hacer frente a las causas raíz de la emigración en los países-fuente de esta última. En ese contexto cabe reformular la política económica, procurando superar la dependencia de las inversiones extranjeras directas y su modalidad conexas de especialización en materia de producción y uso intensivo de incentivos fiscales.
2. Los gobiernos y la sociedad civil deben tener presente el origen económico de las tendencias generadoras de racismo y xenofobia, expresados en diversas formas, tales como discriminación y violencia contra mujeres e hijos de migrantes, y que en última instancia pueden inhibir un desarrollo sostenible en la región. Es necesario emprender campañas de educación pública aunadas a programas de integración de los migrantes que ya se encuentren en el país.

3. Deberían celebrarse acuerdos bilaterales, subregionales y regionales para hacer posible un desplazamiento ordenado de personas en la región. En ese contexto deberían establecerse programas de repatriación de migrantes a sus países de origen.
4. Sería preciso, asimismo, que los países de destino de los migrantes redoblaran sus esfuerzos para proteger los intereses de sus nacionales, a fin de evitar la competencia por recursos escasos tales como puestos de trabajo y bienes públicos. Aparte de la necesidad de reglamentar el movimiento ordenado de trabajadores, debería prestarse más atención al problema de la afluencia irregular de trabajadores escasamente calificados, que perciben bajas remuneraciones, fenómeno que quizá beneficie a determinados sectores de la economía, en especial en las actuales condiciones de dificultades económicas, pero que sin lugar a dudas agravará las tensiones entre nacionales y migrantes de los países afectados.
5. Por otra parte, ante la disminución de las oportunidades existentes en la región para determinados tipos de trabajadores, en especial a causa del deterioro de los sectores agrario y manufacturero, algunos países de la región del Caribe ya han comenzado a negociar acuerdos de movilización transfronteriza reglamentada y temporal de trabajadores que no encuentran ocupación en sus países, a los Estados Unidos y Canadá. Podría ser conveniente que los gobiernos que aún no hayan emprendido esfuerzos de ese género busquen posibilidades similares para sus trabajadores desocupados. Esos desplazamientos seguirán aliviando la creciente necesidad de trabajadores no calificados en los sectores agrario y manufacturero de los países de destino, por lo cual podrían establecerse acuerdos adicionales para manejar la movilización de trabajadores calificados en las esferas de la salud y la educación.
6. Es preciso que en las políticas nacionales tendientes a mejorar el desempeño económico se tenga en cuenta la necesidad de puestos de trabajo, así como una distribución más equitativa del ingreso y la riqueza, lo que reviste decisiva importancia para que los países de la CARICOM amplíen el régimen de movilización de trabajadores del Mercado y la Economía Únicos (MEUC), como respuesta a las preocupaciones de las economías más pequeñas. Esas políticas son asimismo esenciales como garantía de la plena articulación e integración del mercado de bienes y servicios, que es uno de los principales objetivos del MEUC.

La Trata de Personas en el Contexto de la Migración Laboral en el Caribe

4.1

Elizabeth Thomas-Hope

Introducción

La trata es esencialmente la captación, el desplazamiento y el empleo de personas que se llevan a cabo fuera del sistema formal y, en una o más etapas del proceso, involucra prácticas ilegales. Distintas cantidades de personas son trasladadas de un lugar a otro, dentro de un mismo país o a otro país, en un proceso que no está sujeto al control o reglamentación oficial. En eso reside el gran potencial que tiene la trata de crear situaciones de conflicto en la sociedad.

Este capítulo, integrado por tres secciones, plantea cuestiones fundamentales relacionadas con la trata de personas, ofreciendo diferentes perspectivas sobre su desplazamiento. Como muestran Garrett y Mahoney, las personas sujetas a la trata incluyen aquellas que son víctimas incautas de quienes las reclutan y, como demuestra Kempadoo, quienes participan de forma voluntaria en los trabajos en los que se involucran. En ambos casos, el desplazamiento se produce de un lugar a otro, ya sea dentro o a través de las fronteras nacionales; por lo tanto, inherentemente, las personas sujetas a la trata forman parte de una corriente migratoria y, esencialmente, la trata constituye un aspecto de las migraciones laborales, como se explica en esta sección. Lo que estas distintas perspectivas aparentemente opuestas demuestran es la complejidad de la trata y el hecho de que incluye diferentes situaciones en cuanto al propósito y el alcance de la explotación de personas. Una clasificación simple de la trata (véase a continuación) pone de relieve las diferentes formas que ésta puede adoptar. El resto de esta sección se centra en la trata y su relación específica con las migraciones laborales en el Caribe y presenta algunas recomendaciones y conclusiones.

Recomendaciones de Política

Las recomendaciones que se presentan a continuación se refieren específicamente a la trata en cuanto a su relación con la migración. La política debe primero reconocer los vínculos entre la trata y otras formas de migración regular e irregular. Cuando la trata se produce como migración irregular, es decir, sin los documentos apropiados para ingresar a un país, el desplazamiento puede detectarse mediante la vigilancia o la inteligencia que se obtiene de las autoridades. Sin embargo, el hecho de que gran parte de la trata ocurre

en el contexto de la migración regular significa que puede ser relativamente fácil de ocultar y, por lo tanto, llevarse a cabo con impunidad. En vista de que un mayor esfuerzo de control probablemente haga que estas actividades pasen aún más a la clandestinidad y quizás resulten en una mayor victimización de las personas sujetas a la trata, este documento recomienda que las políticas deberán procurar: 1) ser activas en un esfuerzo por reducir el número de personas que se encuentran “en riesgo” de ser sujeto de la trata en forma voluntaria o involuntaria, y 2) identificar, enjuiciar y sancionar a las personas involucradas en el proceso de la trata.

Intervenciones Proactivas para Reducir la Vulnerabilidad de Ser Sujeto de la Trata

Estas intervenciones deberían basarse tanto en la educación pública sobre la difusión de la práctica y las violaciones de los derechos humanos relacionadas con la trata, así como en el incremento de las estrategias alternativas de vida de las poblaciones que corren un mayor “riesgo” de elegir o de ser voluntariamente coaccionadas a ser sujeto de la trata.

1. *Educación pública:* Es preciso promover una mayor conciencia pública, focalizándose especialmente en las poblaciones “en riesgo” y en las instituciones públicas y de la sociedad civil que tienen influencia sobre ellas, con el objetivo de reducir el número de personas que participarían voluntariamente. Esto es especialmente necesario dado el carácter voluntario de gran parte de los desplazamientos que forman parte de las redes de la trata. Esto es necesario para llamar la atención de un público más amplio sobre las violaciones de las libertades personales con la que se asocia la trata de personas. También es preciso alertar en forma más eficaz a la sociedad sobre el alcance de la participación forzada de personas en la trata, especialmente los niños, a fin de poder incrementar la vigilancia y el apoyo social. El objetivo de esta sensibilización pública sería reducir los niveles de ignorancia, apatía y tolerancia que existen actualmente con respecto a la trata interna y transfronteriza.
2. *Estrategias alternativas de vida:* Es necesario incrementar en gran medida el número y alcance actual de los programas que brindan oportunidades alternativas, así como de los programas que contribuyen al desarrollo personal de los jóvenes, para que puedan adoptar estrategias de vida que formen parte y no estén al margen de la sociedad y la economía.

Sanciones para los Perpetradores de la Trata

1. *Inteligencia:* Deben realizarse todos los esfuerzos posibles para mejorar la inteligencia, lo cual podría conducir a la identificación y sanción de los agentes de la trata y los empleadores de las personas sujetas de la trata. Es esencial que esto no conlleve la victimización de las personas sujetas a la trata. Esto podría tener repercusiones peligrosas para las personas que ya están siendo explotadas y abusadas.

Conclusión

En el contexto de la migración, las personas sujetas de la trata en el Caribe son, en la mayoría de los casos, igual que cualquier otro migrante laboral regular. La mayoría de los desplazamientos se produce utilizando los canales migratorios legales para el tránsito, ingreso y, en muchos casos, la adquisición de permisos de trabajo en otros países. La trata, igual que muchos otros tipos de migración, ocurre a través de intermediarios o agentes que se dedican a reclutar, obtener documentación y buscar empleos. En los casos en que los contratos son vinculantes, tanto si la persona ha sido reclutada formalmente o ha estado sujeta a la trata de manera informal, los migrantes son efectivamente “contratados” para el período de trabajo y, en cierta medida, obligados a permanecer en el trabajo para el cual fueron transferidos en primer lugar. Además, la trata sigue los caminos normales de la migración (legal) regular y algunas veces los mecanismos de ingreso irregular (indocumentado o ilegal), o ingresando (legalmente) como visitantes y trabajando (ilegalmente) sin permisos de trabajo. Al igual que otras formas de migración, la trata se relaciona con diferentes tensiones basadas en la adaptación a las condiciones reinantes, así como a incidentes o la explotación permanente con la que se encuentran en los lugares de destino.

Uno de los factores que distinguen la trata de las otras formas de migración es que involucra el desplazamiento de un número sustancial de personas (en grupos o en forma individual) basado en distintos niveles de engaño. El carácter informal de los empleos deja a los empleados fuera de la reglamentación nacional que rige sus condiciones laborales, sin acceso a los servicios sociales y, en muchos casos, sin la protección de la ley. Además, debido al carácter no reglamentado y no documentado de la trata, las autoridades en los países de destino no tienen conocimiento sobre cuántas personas están ingresando de esta manera.

El ingreso no reglamentado y no controlado de grupos de personas de un país a otro tiene el potencial de crear situaciones de conflicto entre los recién llegados y las poblaciones locales. Además, cualquier sistema basado en el engaño y la negación de los derechos humanos—tanto de los adultos como de los niños—está plagado de posibilidades de crear tensión y, en última instancia, tiene el potencial de crear conflicto entre la propia población migrante. En cuanto la trata involucra en cierta medida estas características, siempre se presenta la posibilidad de conflictos.

Existen niveles de conciencia o conocimiento muy diversos sobre la naturaleza de los trabajos y las condiciones en las que las personas permiten ser reclutadas. Pero incluso en aquellos casos en que se tiene conocimiento del trabajo que se va a realizar, el engaño sobre su falta de libertad plantea importantes dudas sobre su condición de víctimas. Por lo tanto, el hecho de que participen voluntariamente en el desplazamiento, no significa necesariamente que puedan defender sus derechos humanos, especialmente cuando dichos desplazamientos involucran niños.

Puede argumentarse que la mayoría de las migraciones reflejan disparidades mundiales en cuanto al poder económico y la consiguiente división internacional del trabajo. Las diferencias de riqueza y de oportunidades producen desigualdades, tanto a nivel nacional como internacional. Dichas desigualdades guardan relación con el poder económico de los perpetradores desde el punto de vista de la demanda y con la debilidad de quienes participan en la trata de personas. Además, el predominio de mujeres y niñas entre las personas sujetas a la trata demuestra la desigualdad que también se observa en la estructura social prevaleciente en las relaciones de género.

La trata de personas refleja prácticas y vulnerabilidades sociales más amplias que no se han tomado en cuenta para comprender mejor y abordar este problema. Ello incluye la imagen actual de la migración como una panacea para resolver los problemas personales, sociales y económicos y, de ahí, el alto nivel de la demanda de oportunidades de migración prácticamente a cualquier costo. Estas vulnerabilidades se presentan tanto desde el punto de vista de la oferta de una vasta y creciente demanda de trabajos sexuales de diverso tipo, como desde el punto de vista de la constante demanda de otras formas de explotación, junto con la preponderancia de agentes que intermedian este tipo de trabajo en todo el mundo. Aunque ninguna de las causas o consecuencias de la trata pueden rectificarse fácilmente, es preciso identificarlas para poder abordarlas, y utilizar con eficacia la información como base para la formulación de las políticas pertinentes que puedan ayudar a los organismos internacionales y a los gobiernos nacionales a romper el ciclo actual. Este ciclo se genera en un aumento potencialmente infinito de prácticas de explotación que se alimentan con las desigualdades que existen dentro y entre las sociedades y la vulnerabilidad de un gran número de personas.

Por lo tanto, la trata refleja la demanda de trabajadores migrantes vulnerables en el sector informal, especialmente para trabajos sexuales. Al mismo tiempo, la demanda de migración no puede satisfacerse a través de las oportunidades regulares de la migración laboral en la actualidad. En la actualidad, ello está produciendo una oferta y demanda aparentemente inacabables de personas sujetas a la trata. Por consiguiente, deben formularse políticas que aborden el sistema desde ambas perspectivas. Es preciso reducir la vulnerabilidad y el número de personas “en riesgo” de elegir o de verse forzadas a emigrar para ofertas de trabajo ficticias. Al mismo tiempo, debe ponerse freno a las redes destinadas a generar la transferencia de personas y a la explotación de su trabajo evadiendo las reglamentaciones de los estados.

En el contexto de la migración, la posición de la trata de personas es un desplazamiento organizado y orquestado de personas determinado por una demanda de trabajo que está controlada y manipulada por los empleadores. Se trata, por lo tanto, de un sector de migración informal, que se asemeja en muchos sentidos a otras formas de migración regular en términos del verdadero desplazamiento transfronterizo, pero que está vinculado a otras actividades informales e ilícitas. Esta forma no reglamentada de migración origina los numerosos casos denunciados de compra de personas con fines de prostitución, abuso y violación de los derechos humanos a nivel individual, y la posibilidad de conflictos a nivel nacional e internacional.

Alcance y Naturaleza del Fenómeno de la Trata: Una Perspectiva Regional

4.2

Ashley Garrett y Amy Mahoney

Introducción

Este capítulo proporciona información básica sobre la trata de personas y esboza la información contenida en los informes de las investigaciones realizadas en siete países—las Bahamas, Barbados, Guyana, Jamaica, las Antillas Holandesas, Santa Lucía y Suriname—en un contexto regional más amplio. El capítulo se centra en las tendencias migratorias regionales, los métodos de captación y transporte, las formas de explotación y las medidas contra la trata que han tomado distintos países en la región. Si bien se observan diferencias entre países, hay varias similitudes en la forma en que la explotación y la trata de personas afectan a los países del Caribe. Como tal, esta sección resume algunas de las recomendaciones formuladas por la Organización Internacional para las Migraciones (OIM) para hacer frente a estos desafíos comunes.

¿Qué es la Trata de Personas?

El Protocolo de las Naciones Unidas para Prevenir, Reprimir y Sancionar la Trata de Personas, especialmente Mujeres y Niños, define la trata de personas de la siguiente manera:

Por “trata de personas” se entenderá la captación, el transporte, el traslado, la acogida o la recepción de personas, recurriendo a la amenaza o al uso de la fuerza u otras formas de coacción, al rapto, al fraude, al engaño, al abuso de poder o de una situación de vulnerabilidad o a la concesión o recepción de pagos o beneficios para obtener el consentimiento de una persona que tenga autoridad sobre otra, con fines de explotación. Esa explotación incluirá, como mínimo, la explotación de la prostitución ajena u otras formas de explotación sexual, los trabajos o servicios forzados, la esclavitud o las prácticas análogas a la esclavitud, la servidumbre o la extracción de órganos.

Características Generales

Si bien la trata de personas ocurre de distintas formas, dependiendo del nivel de delincuencia organizada, la estructura jurídica y el contexto local, la trata consta de cuatro partes interrelacionadas:

- *Captación*: mediante el uso de la fuerza o el engaño;
- *Transporte*: a través de las fronteras, legal o ilegalmente, o dentro de un país;
- *Explotación*: a través del uso o venta de la víctima en beneficio del traficante; y
- *Coacción y control*: servidumbre por deudas, amenazas, abuso físico, verbal o sexual.

Recomendaciones Regionales

Sobre la base de las conclusiones del informe, la OIM recomienda las siguientes medidas para abordar la situación actual de la trata de personas en la región del Caribe, así como para apoyar los esfuerzos de prevención tendientes a limitar su crecimiento. Las recomendaciones que se esbozan a continuación se basan en las normas internacionales contenidas en el Protocolo de las Naciones Unidas y otros instrumentos internacionales, e incluyen recomendaciones a nivel regional y de país.

Marco de Política

1. Establecer y mantener contactos regulares con los puntos focales nacionales en la región sobre todos los temas relacionados con las operaciones de trata y asistencia a las víctimas. Considerar el establecimiento de un Grupo de Tareas o Grupo de Trabajo Nacional sobre la Trata de Personas que reúna a los ministerios, organismos, organizaciones inter-gubernamentales, organizaciones no gubernamentales y representantes de la sociedad civil pertinentes para controlar la trata de personas, así como para formular y ejecutar políticas de lucha contra la trata.
2. Para los países que no cuentan con un Plan Nacional de Acción y en los que se haya reconocido el problema de la trata de personas, establecer un Plan Nacional de Acción sostenible que identifique las principales acciones de gobierno en el área de prevención, protección y enjuiciamiento. En el marco de ese Plan, identificar el ministerio u organismo gubernamental responsable y los recursos financieros necesarios, establecer un cronograma para la ejecución de las distintas acciones incluidas en el Plan y un proceso de seguimiento y evaluación.

Marco Jurídico

1. Firmar y ratificar la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional y su Protocolo para Prevenir, Reprimir y Sancionar la Trata de Personas, especialmente Mujeres y Niños.
2. Trabajar con el mecanismo de redacción legislativa de la Secretaría de la Comunidad del Caribe (CARICOM) para redactar un proyecto de ley modelo regional sobre la trata de personas que los estados puedan utilizar como guía para la implementación del Protocolo y que asista a los países de la región en la armonización de su respuesta jurídica contra la trata de personas. Esta legislación debería, por lo menos:
 - Definir claramente el delito de la trata, de conformidad con las normas internacionales, e incluir expresamente todas las prácticas de explotación cubiertas por la definición de trata, tales como la servidumbre por deuda, trabajo forzado y explotación sexual, así como toda forma particular de explotación que sea pertinente para la región del Caribe.
 - Asegurar que las definiciones de la trata reflejan la necesidad de salvaguarda y cuidados especiales para los niños, incluyendo la protección legal adecuada.
 - Asegurar que las personas que son sujeto de la trata no son sancionadas por ningún delito o actividad que guarde relación con el hecho de que hayan sido víctimas de la trata, tales como la prostitución y las violaciones de las leyes de inmigración.
 - Asegurar que las víctimas de la trata están protegidas frente a la deportación sumaria o repatriación cuando hay motivos razonables para sospechar que dicha repatriación representa un riesgo importante para su seguridad o para la seguridad de su familia.
 - Considerar la residencia temporal o permanente en los países de tránsito o destino para las víctimas de la trata a cambio de sus testimonios contra los supuestos responsables de la trata, o por motivos humanitarios o compasivos.
 - Asegurar que las víctimas de la trata tienen la posibilidad de obtener indemnización por los daños sufridos.
 - Establecer sanciones penales proporcionales que puedan aplicarse a las personas que son declaradas culpables por trata en circunstancias agravantes, incluyendo los delitos relacionados con la trata de niños o los delitos cometidos por funcionarios públicos o en los que éstos han actuado como cómplices.
 - Disponer la confiscación de los instrumentos y bienes o activos derivados de la trata y delitos conexos para que puedan ser utilizados en beneficio de las personas sujeto de la trata.

- Utilizando como base el Examen Jurídico sobre la Trata de Mujeres y Niños en el Caribe, identificar los códigos jurídicos nacionales actuales que pueden aplicarse para el enjuiciamiento de los delitos de trata de personas y capacitar a las autoridades encargadas de hacer cumplir la ley, así como a los funcionarios del poder judicial, sobre su aplicación.

Investigación y Enjuiciamiento de los Autores de la Trata

1. Fortalecer la capacitación dirigida a las autoridades encargadas de hacer cumplir la ley, funcionarios de inmigración y aduanas, fiscales y jueces, así como a otros funcionarios relevantes en la prevención de la trata, el enjuiciamiento de los autores de la trata y la protección de los derechos de las víctimas, incluyendo los niños víctimas de la trata, así como el papel fundamental que las víctimas desempeñan en la provisión de evidencias y su actuación como testigos en las investigaciones penales.
2. Establecer canales directos de comunicación dentro y entre los países del Caribe, así como con países de fuera de la región, tales como Brasil, Canadá, Colombia, Holanda, España, Reino Unido, Estados Unidos y Venezuela, que ayuden a establecer vínculos entre investigadores, organismos encargados de hacer cumplir la ley, entidades regionales e inter-gubernamentales. Esto podría basarse en la experiencia de la INTERPOL, el Grupo de Acción Financiera del Caribe o en los Tratados de Asistencia Judicial Mutua.
3. Tomar las medidas necesarias tendientes a identificar y localizar los bienes o fondos derivados de la trata de personas. Tales bienes o fondos deberán ser confiscados o decomisados de demostrarse que se han obtenido como resultado del delito de la trata. Los activos decomisados podrían utilizarse para financiar los programas de asistencia a las víctimas y proporcionar indemnizaciones individualizadas a las víctimas.

Prevención, Concienciación e Intercambio de Información

1. Utilizar el material informativo obtenido a través de la OIM y otras organizaciones para respaldar su divulgación y la concienciación de la población acerca de la trata de personas, en los ámbitos regional y nacional, especialmente entre grupos meta específicos, incluyendo las víctimas, las personas encargadas de formular políticas, las autoridades encargadas de hacer cumplir la ley, los proveedores de servicios médicos y sociales, el cuerpo diplomático y consular, así como los medios de comunicación, sobre la trata de personas, las diferencias entre la trata y el tráfico ilícito de personas, y la respuesta de cada país con respecto al enjuiciamiento de los autores de la trata y la protección de las víctimas.
 - Deberá prestarse especial atención a la educación de las familias sobre la captación de niños menores de edad y el riesgo que éstos corren a ser explotados.

- Las actividades de extensión y sensibilización en las comunidades de origen deberán vincularse con los programas de desarrollo comunitario que ofrecen opciones para la generación de ingresos y/o educación.

Recopilación de Datos

1. En toda la región, estandarizar el proceso de recopilación de datos sobre la trata de personas y los movimientos relacionados, tales como la migración irregular y el tráfico ilícito de migrantes, que pueden incluir un elemento de la trata. Asegurar el desglose de los datos sobre migración según la edad, género, nacionalidad, fecha y lugar de entrada y salida, lugar de renovación de visa, violación de los términos de admisión y deportación. Compartir estos datos con organismos de contrapartida en toda la región.

Identificación, Asistencia y Apoyo a las Víctimas

1. Establecer directrices regionales que permitan la rápida y correcta identificación de las víctimas de la trata, y asegurar que se establecen procedimientos especiales para la rápida identificación de los niños sujeto de la trata en toda la región.
2. Introducir procedimientos comunes en la región para el regreso voluntario y reintegración de las víctimas de la trata a sus países de origen, así como para la extradición de los autores de la trata para su enjuiciamiento. Utilizar el Fondo Global de la OIM para Situaciones de Emergencia para prestar asistencia provisional y considerar el establecimiento de un fondo regional para el regreso voluntario y la reintegración de las víctimas.
3. Identificar los recursos gubernamentales y no gubernamentales existentes que podrían utilizarse para asistir a las víctimas de la trata. Establecer una estrategia para brindar asistencia a las víctimas de la trata, garantizar la identificación y remisión adecuadas de las personas sujeto de la trata, incluyendo los niños víctima de la trata, y garantizar que reciben la asistencia adecuada, protegiendo al mismo tiempo sus derechos humanos. Los servicios de asistencia a las víctimas deberían incluir el alojamiento seguro y apropiado, terapia, atención de salud, asistencia jurídica gratuita, educación y oportunidades profesionales y de empleo.
4. Identificar una línea directa nacional que sirva de punto de información y contacto para los representantes de las comunidades, los gobiernos y las organizaciones no gubernamentales, los medios de comunicación, los grupos migrantes, las víctimas potenciales de la trata y las víctimas de la trata.
5. Focalizar la capacitación en las organizaciones gubernamentales y no gubernamentales a fin de incrementar la capacidad de los centros de acogida u otros refugios que reciben a las personas sujeto de la trata, de proporcionar seguridad física, asistencia material, atención médica, psicoterapia y asistencia jurídica a las víctimas.

La Migración, el Trabajo Sexual y la Trata de Personas: Problemas y Posibilidades

4.3

Kamala Kempadoo

Introducción

La prostitución y otros arreglos que dependen del comercio y la explotación sexual están normalmente vinculados con la trata de personas; el objetivo de este artículo es examinar este vínculo en el ámbito del Caribe. En primer lugar, con base en los estudios sobre trabajo sexual realizados desde mediados de los años 90, este artículo describe las principales características del trabajo sexual de los migrantes en el Caribe, destacando las prácticas comunes en la región y la importancia que tiene el trabajo sexual para las economías locales y la economía mundial. El principal argumento es que, contrario a la opinión general de que el comercio sexual constituye un acto de violencia contra la condición femenina, en la región del Caribe, la migración y el comercio sexual forman parte de las estrategias de sustento de las mujeres, las cuales se basan en los patrones históricos de trabajo y supervivencia en la región.

En segundo lugar, este artículo analiza los problemas y las deficiencias que se han identificado en las intervenciones contra la trata. A partir de las experiencias y las evaluaciones realizadas en Asia, Europa y las Américas, este artículo subraya que, de no prestarse atención a las diferencias entre la prostitución y la “trata,” a las causas estructurales de la migración y el trabajo sexual, y a las necesidades de los trabajadores (sexuales) migrantes, los esfuerzos contra la trata seguirán teniendo poca incidencia en el problema y hasta pueden llegar a ser contraproducentes. En tercer lugar, en el área de la prevención de conflictos, este artículo advierte que algunas de las respuestas gubernamentales a las estrategias de supervivencia, incluidas la migración indocumentada a través de las fronteras o el empleo en sectores informales tales como el comercio sexual, son represivas y pueden ser dañinas para las poblaciones vulnerables. Las políticas y leyes contra la trata de personas que se basan en una vigilancia, supervisión y control cada vez mayores de los trabajadores (sexuales) migrantes exacerbaban el conflicto y la violencia, ya que imponen unilateralmente restricciones y normas que hacen más profundas las diferencias económicas y sociales entre ricos y pobres, ciudadanos y migrantes, trabajadores legales e indocumentados, mujeres “decentes” y prostitutas, etc. Como resultado, aumentan las hostilidades contra las naciones y grupos menos poderosos, así como la falta de respeto hacia ellos y el abuso contra los mismos. Este artículo concluye, por lo tanto, con varias recomendaciones para

que los gobiernos y las organizaciones no gubernamentales del Caribe procedan con cautela, de acuerdo con la experiencia y los conocimientos existentes a escala mundial sobre la lucha contra la trata de personas, así como para formular políticas e intervenciones que promuevan la sostenibilidad en el Caribe y contribuyan a la paz en la región.

Conclusiones y Recomendaciones

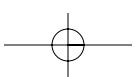
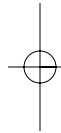
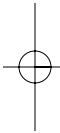
El Caribe es una de las últimas áreas en el mundo en las que la trata se ha convertido en un problema y se encuentra en una posición afortunada para poder aprender de las experiencias en otras partes del mundo y, de ese modo, desarrollar estrategias e intervenciones bien informadas que sean apropiadas para sus propias realidades, culturas y leyes. Las investigaciones sobre la trata de personas (la mayoría de las cuales se centran en el comercio sexual) y sobre el trabajo sexual en un sentido más amplio, indican que “el problema de la trata” guarda relación con las migraciones laborales en la región, la discriminación, la pobreza, la inequidad y desigualdad de género, y las diferencias raciales. La penalización de la prostitución de acuerdo con las leyes internas y la estigmatización de los trabajadores sexuales también son factores importantes que contribuyen al uso de la fuerza y la violencia en el comercio sexual del Caribe. Las políticas contra la trata que no toman en cuenta los antecedentes locales en términos de trabajo y migración, economía y relaciones sexuales, y que además se basan en medidas represivas no harán más que exacerbar esta violencia. Desde esta perspectiva, se sugieren varias recomendaciones que podrían ayudar a abordar los problemas específicos del Caribe y, a largo plazo, a reducir el nivel de violencia al que actualmente se enfrentan muchas mujeres migrantes que trabajan en el comercio sexual:

1. Desarrollar intervenciones que aborden casos de uso de la fuerza, servidumbre por deudas y corrupción, así como la explotación de los trabajadores indocumentados en el comercio sexual. Esto significaría abordar las causas de la “trata,” en vez de sus efectos. Podría incluir la despenalización de la prostitución, lo cual permitiría a los trabajadores del sexo operar de acuerdo con las leyes existentes que regulan el sector formal (por ejemplo, el trabajo y empleo, la salud y la seguridad, y la inmigración), así como campañas para desestigmatizar el trabajo sexual en la mente de la opinión pública;
2. Abordar las razones por las cuales las personas procuran emigrar y las necesidades de los trabajadores sexuales migrantes;
3. Abordar las características de género en los patrones migratorios y respaldar los programas e iniciativas de potenciación del papel de la mujer a través de políticas gubernamentales sobre migración;



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4. Prestar mayor atención al lado de la demanda del comercio sexual (por ejemplo, los propietarios y empleadores en la industria del sexo y el entretenimiento, así como los consumidores de servicios sexuales, tales como los clientes que pagan por ellos) y menor atención al “lado de la oferta” del comercio sexual (por ejemplo, los trabajadores sexuales y los intermediarios que los reclutan y comercian con ellos);
5. Responder al problema de la trata de una manera que no se base simplemente en los valores, normas e intereses del gobierno de los Estados Unidos, sino que se fundamente en las culturas, leyes y prácticas caribeñas con respecto al trabajo sexual, la prostitución y la migración, y que además promueva un futuro sano y sostenible para todos los pueblos del Caribe.



El Desplazamiento Interno Prolongado: Soluciones Duraderas en Medio de la Violencia de Colombia

6.1

Fernando Calado y Diana Medrano

Introducción

Colombia ha experimentado tremendos desplazamientos internos y cambios demográficos en estas últimas décadas. Se ha aducido que las causas principales de tales movimientos han sido los factores económicos, la pobreza rural, y la atracción consiguiente que ejercen las zonas urbanas. La rapidez creciente de las transformaciones económicas y sociales, el crecimiento de los mercados y las inversiones financieras han causado una expansión de la riqueza, pero los flujos de migración y los cambios demográficos internos consiguientes no siempre han sido acompañados por una presencia institucional, por logros contractuales ni por la preservación de los derechos jurídicos. Otro factor importante para estos desplazamientos tan extendidos es la violencia política, que con frecuencia ha sido la causa de la pobreza rural y los cambios demográficos, presentando dificultades para los servicios sociales y para la capacidad de los desplazados para poder ganarse la vida de forma estable.

Para evitar que en el futuro aumenten los problemas sociales, será necesaria una nueva formulación de políticas públicas a fin de lograr soluciones duraderas. Con ese fin, es necesario tener en cuenta las siguientes consideraciones: mejoras en los mecanismos para permitir que las personas desplazadas internamente (PDI) tengan acceso a los servicios de sanidad, incluida la participación social, privada e internacional; mejoras en los medios educativos mediante la coordinación entre escuelas, instituciones públicas y donantes internacionales; más oportunidades para la generación de ingresos y la capacitación vocacional; y creación de una mayor infraestructura social y de proyectos de viviendas para mejorar las condiciones de vida de los núcleos de población, incluyendo esto la participación de tales núcleos y actividades municipales. En general, el fortalecimiento de las instituciones nacionales, regionales y locales es necesario para el cumplimiento de la justicia, la equidad social y las regulaciones jurídicas; en dicho sentido, la asistencia técnica, la capacitación y la sensibilización de los empleados públicos a cargo de proporcionar ayuda a las poblaciones desplazadas han probado su utilidad. Desde un punto de vista humanitario, es importante respaldar los deberes y responsabilidades del estado, con miras a fortalecer la protección de poblaciones desplazadas internamente.

En este artículo se analiza globalmente el fenómeno del desplazamiento en Colombia, no sólo sus orígenes y manifestaciones históricas, sino también las estrategias adoptadas para que el estado y otras instituciones (no gubernamentales e inter-gubernamentales) atiendan y asistan a las PDI. A continuación, se describen los modelos de intervención, estrategias y acciones puestas en práctica por el estado y otros participantes para la atención integral de las PDI. Por último, se presentan las lecciones aprendidas y las mejores prácticas en la implementación de programas y formulación de estrategias y modelos de intervención para las PDI, proponiéndose seguidamente varios métodos para mejorar las normas de atención e intervención para tales poblaciones.

Conclusiones y Recomendaciones Normativas para la Asistencia a las PDI

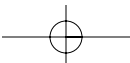
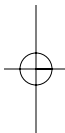
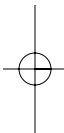
Experiencias anteriores han producido una serie de conclusiones y de lecciones aprendidas con respecto a los modelos de intervención, proyectos específicos y niveles de efectividad que los programas de asistencia han tenido en las PDI. En esta última sección se trata sobre recomendaciones normativas públicas para soluciones duraderas. En general, la aplicación de un enfoque humanitario para encarar el conflicto político es de importancia primordial debido a la necesidad de fortalecer los deberes y responsabilidades del estado con respecto a la violación de derechos humanos causada por la violencia interna. Dicho enfoque humanitario le ha dado al país nuevas posibilidades de respuesta institucional, oportunidades para la coordinación con organismos humanitarios internacionales, y la capacidad para formular modelos de intervención para proteger a los desplazados internos. Además, es importante destacar que la estructura institucional colombiana ha mitigado la emergencia mediante una división de tareas por intervenciones de estrategia sectoriales, en lugar de la creación de un modelo concentrado y centralizado. Esto coincide con las políticas públicas generales descentralizadas y sectoriales del país, ya que la asistencia a las PDI enfrenta las mismas limitaciones estructurales que el resto del país en cuanto a los servicios sociales primarios, el empleo y el acceso a la infraestructura.

1. *Salud:* La coordinación de proyectos de sanidad provistos por organizaciones internacionales y no gubernamentales con los proporcionados por instituciones privadas y públicas, tales como las instituciones sanitarias municipales, produce mayores beneficios para la población. Además, se recomienda que un programa de salud incluya educación e información sobre los derechos y responsabilidades relativos al acceso a los servicios públicos, y la capacitación de promotores de la salud en materia de programas de prevención y autoasistencia. Hay más probabilidades de que se reconozca y se respete la diversidad cultural si se incorpora personal local como parte de los servicios de atención de la salud. La participación y aprendizaje de grupos de población mediante estrategias de comunicación culturalmente apropiadas incrementan los resultados educacionales y la comprensión de las estrategias de promoción de la salud.

2. *Educación:* La coordinación entre escuelas, instituciones públicas, organismos de cooperación internacionales y un operador experimentado de proyectos contribuye a crear un sinergismo institucional que enriquece el diseño y ejecución de proyectos educativos. Ese tipo de intervención multiplica los recursos financieros, técnicos y humanos, y aumenta la cooperación entre sectores públicos y privados. Desde el punto de vista de las poblaciones, es importante promover la participación local en el diseño, ejecución y evaluación de modelos educacionales innovadores.
3. *Generación de ingresos:* La coordinación regional e institucional de programas contribuye a la eficacia y sostenibilidad de los proyectos. En zonas que están en peligro, es necesaria la participación de instituciones experimentadas y reconocidas, porque inspiran confianza y aceptación en los núcleos de población. Los proyectos y capacitación asociativos, así como el fortalecimiento de los núcleos de población, promueven el desarrollo vocacional y la cohesión social. La comprobación subsiguiente de personas que participen en proyectos de microcrédito contribuye a que se efectúen debidamente los reembolsos. Las metodologías de capacitación que empleen un lenguaje simple y claro, y que contengan instrucciones concretas y prácticas, son esenciales para la educación de los posibles beneficiarios de proyectos productivos. Asimismo, los proyectos generadores de ingresos que supongan una atención psicosocial así como una capacitación técnica y administrativa tienen más posibilidades de éxito porque tienen en cuenta la vulnerabilidad de las personas desplazadas.
4. *Infraestructura social y viviendas:* Los esfuerzos conjuntos de los organismos de cooperación internacional, las organizaciones locales y las autoridades municipales posibilitan el éxito de las acciones de mejoramiento de las viviendas. Los núcleos de población locales deben además ser educados y facultados para cumplir y utilizar pagos por servicios, como modo de promover la sostenibilidad de los proyectos de viviendas. También es muy importante que los beneficiarios dentro de un núcleo de población participen en la planificación y ejecución de proyectos de viviendas.
5. *Fortalecimiento de las instituciones y grupos de población:* Los proyectos realizados para fortalecer las instituciones y los grupos de población demuestran la importancia de la asistencia técnica, la capacitación y la sensibilización de los empleados públicos encargados de asistir a las poblaciones desplazadas. Los proyectos que ofrecen tal capacitación permiten que los empleados públicos adquieran conciencia del problema, entiendan las necesidades de las personas desplazadas, y produzcan por lo tanto soluciones más eficaces. La experiencia ha demostrado que los proyectos que más éxito tienen son aquellos que incorporan metodologías de participación a través de comités regionales para las PDI y que incluyen consultas directas con las personas desplazadas y con instituciones locales y regionales. Con respecto a la formulación de planes y programas por los que se crean medidas normativas relativas a las PDI, es necesaria la coordinación entre instituciones públicas para producir convenios

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de participación y compartir en mayor grado la información. Con ese objeto, la creación de programas de capacitación para la planificación, el diseño de proyectos y mecanismos de supervisión debería considerarse como parte de la asistencia técnica ofrecida nacional, regional y localmente a instituciones públicas. La gestión pública descentralizada permite políticas públicas más eficientes y ajustadas regionalmente. Si las instituciones nacionales y regionales entienden exactamente sus deberes, funciones y responsabilidades para asistir a las PDI, se podrán elaborar procedimientos más eficientes que redunden en su beneficio.



La Salud, los Desplazados Internos y la Violencia en Colombia

6.2

Arturo Silva

Introducción

La violencia interna en Colombia se caracteriza por su notable complejidad, en la que entran en juego muchos actores e intereses—tales como la ocupación territorial, el poder político y el narcotráfico—de los cuales se han beneficiado financieramente diversas partes, y que han contribuido a que se perpetúe la violencia y a la falta de soluciones duraderas. Las condiciones sanitarias de la población colombiana, principalmente la de los grupos de población más vulnerables, las personas desplazadas internamente (PDI), los refugiados y las poblaciones marginales receptoras o anfitrionas, se ven afectadas directamente por el conflicto armado. En este artículo se analizan dichas condiciones de salud, empezando con una exposición general del desplazamiento y de los problemas de salud que afectan a las PDI, tales como sus condiciones sanitarias y de vida, sus tasas de mortalidad y morbilidad, la situación de su salud reproductiva, y su acceso general a los servicios de atención médica, y concluyendo con varias recomendaciones en cuanto a la forma de encarar estos problemas. Si bien el tema principal del artículo son los problemas de salud de las PDI en Colombia, también se hace un breve examen de algunos problemas que conciernen particularmente a las regiones fronterizas con Venezuela y Ecuador.

Las principales conclusiones pueden resumirse de la siguiente manera: la salud mental se ha deteriorado debido a los problemas de adaptación después del desplazamiento, así como a los problemas psicosociales causados por la violencia doméstica. El acceso a servicios de atención médica de buena calidad, entre ellos los de salud reproductiva, es bastante limitado. Por otra parte, hay que destacar a desigualdad y el bajo nivel de cobertura que afectan al Sistema General de Seguridad Social en Salud del país; las tasas de desnutrición son muy elevadas; también lo son las tasas de mortalidad debidas a enfermedades infecciosas evitables, principalmente las infecciones respiratorias agudas (ERA) y enfermedades diarreicas agudas (EDA). Las condiciones de vida son malas debido a la falta de agua potable, la deficiencia de los servicios sanitarios, y la densidad demográfica crítica. Existe una clara relación entre la movilidad de la población, el VIH/SIDA y las infecciones de transmisión sexual (ITS); y las tasas de inmunización son muy bajas. En general, el desplazamiento en Colombia afecta principalmente a la población rural pobre y a las minorías étnicas, particularmente los afrocolombianos y los

indígenas, y ha tenido como consecuencia un gran número de familias que han quedado a cargo de mujeres, con una alta tasa de analfabetismo y vulnerables al desempleo.

Conclusiones y Recomendaciones

Para mejorar las condiciones de salud de las PDI se requiere un método intersectorial amplio, que abarque la cooperación tanto nacional como internacional, a fin de asignar recursos adecuados al sector salud de modo que éste pueda proveer suficiente protección y educación en materia de salud a las poblaciones más vulnerables. En vista de la naturaleza delicada y urgente de las condiciones de salud, principalmente entre las poblaciones más vulnerables de las PDI, las poblaciones receptoras marginales y anfitrionas, y los refugiados (especialmente a lo largo de la frontera con Venezuela), es necesario establecer un orden de prioridad de las intervenciones a fin de promover lo siguiente: planes de nutrición centrados en la seguridad de los alimentos; planes para reducir la morbilidad y mortalidad materno-infantil; asistencia técnica para ayudar a las instituciones sanitarias locales a diseñar, llevar a la práctica, supervisar y evaluar el progreso de los planes de salud; y asesoramiento psicológico para reducir los efectos de la violencia en la salud mental.

Ello no puede lograrse sin fortalecer el imperio de la ley mediante programas de salud sostenibles y proyectos que guarden relación con la prevención (conjuntamente con planes para estabilizar el desplazamiento). Entre las principales estrategias figuran coordinar la ejecución de distintos programas y proyectos de salud con los participantes nacionales e internacionales en el sector sanitario, y actuando en alianza estratégica con el Ministerio de Protección Social (Dirección General de Fomento Social) mediante la cooperación, concesiones mutuas y la asistencia técnica. En este sentido, se está formulando la estrategia de salud de la Organización Internacional para las Migraciones dentro del marco de una política de protección de los derechos humanos y de salud pública para las PDI y los refugiados, en estrecha cooperación con el gobierno colombiano, las instituciones humanitarias y las organizaciones para el desarrollo. La meta común consiste por último en garantizar el derecho a la salud, e incluye la promoción de cuatro aspectos: la salud familiar, el fortalecimiento del sector de atención de la salud, la salud reproductiva y sexual, y la atención psicológica. De acuerdo con esta estrategia, mis recomendaciones son las siguientes:

1. Aumentar la asignación de recursos financieros y humanos al Sistema de Seguridad Social en Salud, a fin de mejorar la cobertura del seguro de salud (que actualmente sólo es del 46 por ciento) y la calidad de los servicios de salud para las familias desplazadas. Ello comprende mejorar la infraestructura, facilitar las oportunidades para los procedimientos médicos, y reducir el tiempo que toma el acceso al sistema de salud a los niveles local y municipal.
2. Poner en práctica programas y proyectos de salud con las siguientes prioridades: la salud mental y la estabilidad psicosocial; la desnutrición y la

seguridad de los alimentos; el suministro de agua y saneamiento; la salud reproductiva, las enfermedades infecciosas evitables (especialmente las IRA y las EDA) y la inmunización; programas de educación y de promoción de la salud, y de prevención de enfermedades; y el diagnóstico, prevención y tratamiento del VIH/SIDA y de las ITS.

3. Promover la participación de la población en la formulación, implantación y evaluación de proyectos de salud, conociendo y respetando la diversidad cultural de los beneficiarios; hacer que los líderes comunitarios participen en la formulación de los distintos proyectos y programas, y fomentar la capacidad entre los miembros de estos núcleos de población para que actúen como promotores de salud.
4. Fortalecer los vínculos entre los sectores académicos y el sector de la salud pública mediante la formulación de metodologías participatorias y estrategias de comunicación que se ajusten a las características socioculturales de la población que se beneficiaría de la atención médica.
5. Promover un enfoque integral (mente y cuerpo) en cuanto a la atención de la salud, a fin de contribuir al bienestar de las PDI; en los proyectos de salud se deben tener en cuenta la atención psicológica y la asistencia técnica y administrativa, con el objeto de disminuir la vulnerabilidad de las poblaciones desplazadas.
6. Promover la integración de los diferentes grupos de migrantes (las PDI, refugiados, y poblaciones marginales receptoras) afectados por el desplazamiento.
7. Debe considerarse la coordinación general interinstitucional en la formulación y ejecución de los proyectos de salud, orientándolos al bienestar de la población.

El Problema de los Deportados de EE.UU. a Jamaica: Refutación de un Mito

8.1

Bernard Headley

Introducción

En estos últimos años, la opinión pública en el Caribe ha vinculado el enorme crecimiento de la delincuencia en la región con las oleadas de ex emigrantes devueltos forzadamente a sus países de origen desde países del norte—principalmente Gran Bretaña, Canadá y EE.UU. En el presente artículo se describen ciertas conclusiones de un estudio de las deportaciones de los EE.UU. a Jamaica, que contradicen, entre otras cosas y basándose en datos del Departamento de Seguridad del País (Department of Homeland Security: DHS) de EE.UU., la creencia muy difundida de que los deportados devueltos a Jamaica y a otros países del Caribe son criminales violentos y endurecidos, que, dados sus antecedentes, contribuyen desproporcionadamente a los altos niveles de delincuencia de los países que los reciben. Pero ni dicho estudio ni este artículo “absuelven” a EE.UU. de la responsabilidad por lo que se ha convertido en un grave problema regional. En cambio, ambos demuestran la necesidad de comprender exactamente los efectos de una ley controvertida de reforma de la inmigración y de la evolución de la justicia penal de EE.UU. en cuanto al problema de las deportaciones desde dicho país, y, segundo, en ambos se sugieren recomendaciones para rectificar la situación.

Conclusión y Recomendaciones

Los dos grupos de conclusiones que aquí figuran parecen indicar que las deportaciones de EE.UU. a Jamaica y otros países caribeños están más relacionadas con el cumplimiento de las sanciones impuestas por la ley aprobada por el Congreso en 1996 sobre la reforma de la inmigración ilegal y responsabilidades en materia de inmigración, y para dejar espacio libre en las cárceles, que con la criminalidad grave de los deportados. Esa conclusión parece ser particularmente apropiada, ya que otros jamaquinos pertenecientes al grupo de los que malviven en los EE.UU., entre ellos jefes de importantes pandillas de delincuentes (“posses”) de la década del 80 con condenas múltiples, no se cuentan entre los recientemente deportados.

Por lo tanto, todo el discurso sobre los deportados de Norteamérica puede tener una perspectiva demasiado estrecha. La presencia repentina de hombres y mujeres adultos desarraigados, enviados abruptamente a países “pobres e indefensos,” es un problema de proporciones humanas graves. Lo que países pequeños como Jamaica enfrentan con el retorno forzoso de grandes números de sus gentes, de sus antiguos proscritos, no son tanto las posibles repercusiones en la delincuencia local, sino las dificultades que presenta su reabsorción. Las pruebas preliminares de la investigación aquí mencionadas sugieren que la mayoría de los deportados a Jamaica se encuentran repentinamente en un ambiente distinto—un ambiente que con frecuencia es totalmente nuevo, pese a haber nacido en el país—sin recursos para sobrevivir, establecerse o reintegrarse a la vida normal de Jamaica. Evitados y estigmatizados, se los deja a la deriva en la sociedad.

El Ministro de Seguridad Nacional de St. Kitts y Nevis, Dwyer Astaphan, ha demostrado la comprensión más clara del problema cuando, durante una visita a Nueva York en junio de 2005, pidió “un cambio de paradigma” en las relaciones de Washington con el Caribe con respecto a las deportaciones. De esta clase de inquietudes surgen varias recomendaciones que podrían impulsar el discurso—y el diálogo entre los países que deportan y los que reciben a los deportados—en una dirección nueva y transformante:

1. Los países pequeños del sur deberían tratar de encontrar maneras de lograr, con los países deportadores del norte, un consenso en torno a un conjunto de principios básicos para determinar categorías de personas deportables. El proceso no diferiría mucho del propuesto por organismos planificadores regionales con respecto a la delincuencia; los países en cuestión deberían llegar a entendimientos definitorios claros para encarar el movimiento transfronterizo de productos y personas relacionados con la delincuencia, comprendiéndose “los deberes y responsabilidades de los países exportadores y receptores.” Conjuntamente habría “procedimientos y mecanismos justos” para evaluar los países y censurarlos en el caso de incumplimiento.
2. De importancia crítica respecto de lo que antecede sería también un diálogo sobre a) las implicaciones morales de deportar residentes permanente legales de larga data (típicamente dividiendo familias formadas en EE.UU.), sin antecedentes, a causa de un solo delito menor; y b) las repercusiones colaterales en los estados receptores pobres de recibir grandes números de personas desplazadas.
3. Las colectividades transnacionales caribeñas en Estados Unidos deberían tratar de convencer a los legisladores simpatizantes en Washington (en especial el “Black Caucus del Congreso”) para que deroguen o modifiquen a fondo la onerosa ley de 1996 sobre la inmigración mencionada más arriba.

4. Además, dicha colectividad transnacional debería trabajar con organizaciones de derechos humanos (por ejemplo, el Comité de Abogados para los Derechos Humanos) para forzar al Departamento de Seguridad del País, al gobierno de Bush y al Congreso a que crearan un mecanismo de supervisión interno de alto nivel en el Departamento para garantizar que se observen estrictamente las pautas y criterios convenidos de la deportación.
5. Países como Jamaica, que reciben un gran número de deportados de Estados Unidos, Inglaterra y Canadá, deben crear dentro de sus fronteras sistemas estructurados de apoyo social y programas de reeducación (estos últimos para deportados tanto como para los núcleos de población receptores) a fin de facilitar la reintegración de las personas a su país de origen. Una versión de este método ya ha sido propuesto por la Asociación Caribeña para el Restablecimiento de Residentes que Regresan (The Caribbean Association for the Resettlement of Returning Residents), en Jamaica. Dicha Asociación propone el “establecimiento de un centro para la modificación del comportamiento, a fin de beneficiar a los ciudadanos de países del Caribe que son devueltos involuntariamente a sus respectivos países...Entre otras cosas, ese centro facilitaría la reintegración de los deportados y ofrecería un programa de educación pública para contrarrestar las impresiones negativas que se tienen de ese grupo de personas.”

La Minoría Inmigrante Haitiana en la República Dominicana

9.1

James Ferguson

Introducción

Los haitianos y los dominico-haitianos (nacidos en la República Dominicana) forman una gran minoría en dicho país. Desde hace décadas cruzan la frontera, ya sea por invitación o ilegalmente, para trabajar en plantaciones de azúcar o en otros trabajos agrícolas o manuales, haciendo las labores que tradicionalmente se niegan a hacer los dominicanos. Pero hoy día, cuando el gobierno dominicano está tratando de liberarse de su antigua dependencia del azúcar, y de fomentar las manufacturas, el turismo y otros sectores, la mano de obra haitiana está nuevamente llenando las lagunas que dejan los trabajadores dominicanos.

Al mismo tiempo que se los necesita, los haitianos son menospreciados como minoría inmigrante. Para los empleadores dominicanos, son una fuente de mano de obra barata, que no pertenece a sindicatos y que es fácil de explotar. Mientras tanto, los políticos y los medios de difusión dominicanos frecuentemente se refieren a ellos como un problema, una carga para los recursos limitados de un país pobre. Debido a las actitudes racistas, a los haitianos y a sus niños también se les tacha de más negros que los dominicanos, de “incivilizados” e “inferiores.”

La difícil situación de los cortadores de caña haitianos en la República Dominicana es bien conocida desde la década del 70, pero no se sabe tanto sobre las formas más recientes de la mano de obra inmigrante, en gran parte porque esa mano de obra frecuentemente es ilícita e indocumentada. Ni los trabajadores que viven al margen de la actividad económica ni los empleadores que se aprovechan de su situación de ilegales tienen ningún interés en llamar la atención a la pujante economía del sector informal que convive con la economía formal y la sustenta.

El presente artículo, adaptado de un informe de 2003 del Grupo de Derechos de las Minorías (Minority Rights Group: MRG), tiene por objeto poner de relieve las condiciones en que vive este grupo determinado de inmigrantes, ofreciéndose algunas recomendaciones para las autoridades. Se presta particular atención a las tendencias históricas y actuales de la emigración de trabajadores, y a la forma en que el suministro de inmigrantes de origen haitiano influye en la economía dominicana, en especial en lo

que respecta a la industria azucarera. En la primera parte se describen los números de emigrantes haitianos, sus motivaciones, y algunos de los problemas que enfrentan. En la segunda parte se examinan algunas de las tensiones étnicas y el racismo experimentado entre los inmigrantes de origen haitiano, y se analizan dichas perspectivas en relación con la política dominicana.

¿Hay Razones para Tener Esperanzas?

Pese a la existencia precaria que sobrellevan los inmigrantes haitianos y los dominico-haitianos, hay ciertas señales de que las reformas y concesiones recientes del gobierno dominicano indicarían una tendencia a resolver cuestiones de nacionalidad y situación jurídica. En julio de 2001, el Ministerio de Educación anunció que las escuelas ya no requerirían que los niños presentaran certificados de nacimiento para inscribirse en los colegios secundarios. Esa decisión fue subsiguiente al caso muy divulgado de Claubian Jean Jacques, hijo de padres haitianos indocumentados, que obtuvo la más alta puntuación del país en 1998 en los exámenes del octavo grado. Pudo ingresar en el colegio secundario, pero se le advirtió que era posible que no llegara a su diploma secundario por carecer de un certificado de nacimiento dominicano. Después de una gran controversia, el presidente Mejía ordenó a la Junta Central Electoral (JCE) que le concediera a Claubian la ciudadanía dominicana en abril de 2002. Si bien los comentaristas políticos nacionalistas advirtieron que esto sentaría un precedente peligroso, Sonia Pierre del Movimiento de Mujeres Dominico-Haitianas (MUDHA) señaló que hay muchos casos similares que no aparecen en los titulares de los periódicos.

También fue muy significativo el fallo provisional en agosto de 2000 de la Corte Interamericana de Derechos Humanos, determinando que las autoridades dominicanas habían actuado ilegalmente al expulsar a un haitiano y a seis dominico-haitianos durante las expulsiones en masa de 1999. Aunque sólo se trataba de un fallo provisional que no abarcaba todos los casos de ese tipo, fue considerado una victoria por el MUDHA y otras organizaciones de derechos humanos, y como una violación de la soberanía nacional por el gobierno dominicano. Si bien las autoridades se negaron inicialmente a acatar el veredicto, y a permitir que los deportados volvieran al país, el gobierno convino en formar un Comité de Impulso para resolver cuestiones pendientes relacionadas con el fallo de la Corte en 2000, y en supervisar las prácticas futuras del estado en lo tocante a cuestiones de inmigración. El anuncio de que el comité incluiría representantes de las organizaciones no gubernamentales y de grupos de derechos humanos causó una controversia considerable, y reveló la medida en que las concesiones dominicanas a la opinión internacional, por pequeñas que sean, pueden agitar los sentimientos nacionalistas. En 2003, la noticia de que Amnesty International había premiado a Sonia Pierre por sus actividades en pro de los derechos humanos puso de relieve los logros del MUDHA.

Esos (pequeños) éxitos deben medirse teniendo en cuenta la deportación en curso de inmigrantes “ilegales,” incluso de dominico-haitianos, así como la marginación que enfrentan las personas de ascendencia haitiana, dondequiera que hayan nacido. La lógica

de la posición dominicana parece ser que, si bien una entrada temporal, sin asentamiento, de mano de obra haitiana, la presencia de una población permanente y asentada de origen haitiano es socialmente indeseable. Las deportaciones dirigidas contra núcleos de población e individuos haitianos establecidos desde hace tiempo tienden a corroborar la teoría expuesta por un funcionario haitiano, de que la política de inmigración dominicana “tiene el objeto de impedir que los haitianos se vuelvan ‘demasiado permanentes,’ y que los que han vivido en el país durante más de cinco años tienen más probabilidades de ser expulsados.” En ese sentido, MRG ofrece varias recomendaciones concretas para los gobiernos y los organismos de ayuda:

Recomendaciones

A los Gobiernos:

1. Las autoridades deben abstenerse de efectuar expulsiones en masa de emigrantes supuestamente ilegales. La legalidad de la situación de los emigrantes debe hacerse individualmente, y cumpliendo con la ley y las normas de derechos humanos. Las deportaciones no deben causar la separación de familias, la pérdida de propiedad, dinero o documentos, ni implicar abusos físicos u orales, o violencia. No deben destacarse fuerzas militares ni paramilitares para las deportaciones. En ningún caso podrá efectuarse la identificación y deportación de supuestos emigrantes ilegales basándose en el color de la piel, lo cual es una violación del derecho internacional público consuetudinario. Las autoridades deben publicar estadísticas de las deportaciones, y detalles completos de las condiciones en las que se llevaron a cabo. El gobierno dominicano debe cumplir sus compromisos conforme al protocolo de entendimiento de diciembre de 1999 con el gobierno haitiano respecto de las repatriaciones.
2. Deberán llevarse a la práctica medidas para impedir el tráfico ilegal de migrantes, en particular en cuanto a las actividades de agentes reclutadores tales como los buscones en Haití, y la falsificación de documentos. Una campaña de educación pública serviría para informar a los posibles emigrantes sobre las realidades que enfrentarán.
3. Los censos que efectúen las autoridades deberían permitir a los censados que indiquen libremente su propia definición de su origen étnico, racial y/o nacional. Las conclusiones que se extraigan no deberán usarse para victimizar aún más a las colectividades de emigrantes ni como motivo para las deportaciones. Deberán en cambio usarse para formular programas de desarrollo, con la plena participación de representantes de la colectividad haitiana y de otros grupos de emigrantes en sus respectivos países, para que puedan alcanzar una igualdad total y efectiva con la población en general. En dichos programas se deberá prestar particular atención a la difícil situación de las mujeres de las colectividades de emigrantes, que son particularmente vulnerables a la explotación económica y sexual. En la República Dominicana, se debería prohibir a los propietarios privados de antiguos bateyes del Consejo

Estatad del Azúcar (CEA) que les retiren el alojamiento y otros derechos a los residentes de larga duración, de cualquier nacionalidad que sean.

4. Deberán establecerse procedimientos transparentes y no discriminatorios para que los inmigrantes empleados en un país puedan obtener permisos temporales de trabajo y residencia, y, dentro de un lapso razonable, la ciudadanía, garantizándoseles la protección de los códigos laborales pertinentes. La República Dominicana debe abstenerse de aplicar la cláusula de “en tránsito” de su Constitución para impedir que los hijos de inmigrantes obtengan la ciudadanía. Los gobiernos deben asegurarse de que las leyes relativas a la ciudadanía de los niños nacidos en sus respectivos territorios no los convierta en apátridas. El gobierno de Haití debe cumplir con su compromiso, bajo el protocolo de entendimiento de diciembre de 1999, de proporcionar a sus ciudadanos documentos de identidad haitianos.
5. Los gobiernos deben tratar de contrarrestar los prejuicios contra las colectividades de inmigrantes, particularmente el fenómeno del antihaitianismo en la República Dominicana, incorporando un programa de estudio de derechos humanos en las escuelas del estado.
6. Los gobiernos deben ratificar e implementar la Convención Internacional sobre la Protección de los Derechos de los Trabajadores Migratorios y sus Familiares, el Convenio Internacional sobre Derechos Políticos y Civiles, y otros instrumentos pertinentes. Deben invitar al Relator Especial de las Naciones Unidas sobre los Derechos Humanos de los Migrantes a que visite sus respectivos países, y garantizar la cooperación e implementación totales de sus recomendaciones. El gobierno dominicano debe garantizar que el Comité de Impulso establecido subsiguientemente al fallo de la Corte Interamericana de Derechos Humanos pueda actuar independientemente y sin ser intimidado por ningún sector, y de que reciba recursos suficientes. También deberá implementar totalmente las recomendaciones que le dirija el Comité de Derechos Humanos de las Naciones Unidas. Los gobiernos deben garantizar la libertad de los defensores de los derechos humanos, incluidos aquellos que trabajen para promover y defender los derechos de los trabajadores migrantes, para trabajar sin ser intimidados por ningún sector.

A los Organismos de Ayuda Gubernamentales y No Gubernamentales:

1. En los programas de ayuda en los países beneficiarios se debe prestar especial atención a la situación de las colectividades de trabajadores migrantes, esforzándose para lograr la implementación de los Objetivos de Desarrollo del Milenio con respecto a todos los sectores de la población. Es posible que se necesiten programas concretos para que los migrantes disfruten al máximo posible de los derechos económicos, sociales y culturales, y la formulación, implementación y evaluación de tales programas deben llevarse a cabo con la plena participación de representantes de tales grupos.

Gestión de las Corrientes Migratorias de Haitianos a la República Dominicana: Desafíos y Oportunidades

9.2

Maureen Achieng

Introducción

La isla Hispaniola registra altos niveles de movilidad demográfica, similares a las que caracterizan al resto de la región del Caribe. Al igual que otras poblaciones de la región, y a decir verdad de todo el mundo, los haitianos y los dominicanos procuran continuamente mejorar su situación económica migrando a países relativamente más ricos de la región. Así, al mismo tiempo que los haitianos dotados de modestos medios económicos migran a la República Dominicana en busca de oportunidades de trabajo asalariado a corto plazo, un creciente número de dominicanos migran a Puerto Rico o a los Estados Unidos, según las posibilidades económicas con que cuentan.

Por lo tanto, una cuestión pertinente para los responsables de la política migratoria consiste en establecer si las realidades de la migración existente en la Hispaniola refrendan o no la tesis de que la migración constituye, en última instancia, un factor provechoso. En el presente artículo se examinan las corrientes migratorias entre la República Dominicana y Haití y se reflexiona sobre aquellos aspectos de esas corrientes que plantean problemas y sobre los riesgos consiguientes. Además se formulan varias recomendaciones para la acción que pueden ayudar a la República Dominicana y a Haití a hacer de la migración irregular la excepción, y no la regla, como sucede en la actualidad. Si se aceptan y llevan a la práctica, esas recomendaciones suscitarían el efecto de reducir, si es que no eliminar, las actuales tensiones entre ambos estados, lo que incrementaría las posibilidades de una coexistencia más pacífica entre los dos pueblos que comparten la isla Hispaniola.

En la primera sección se presenta una breve reseña histórica del fenómeno de la migración entre Haití y la República Dominicana, que se inicia con la primera ola migratoria, que tuvo lugar tras la independencia de Haití. En la segunda sección se encontrará un análisis de la situación que enfrentan actualmente los inmigrantes haitianos en la República Dominicana y, en menor medida, los dominicanos en Haití. El análisis abarcará asimismo los desafíos que tienen que enfrentar los gobiernos haitiano y dominicano para realizar la gestión de las corrientes migratorias entre los dos países en forma tal que la migración pueda llegar a ser beneficiosa para sus ciudadanos y para sus países. En la segunda sección se considerará especialmente el tema de la migración

irregular de haitianos a la República Dominicana, que constituye un aspecto medular de las tensiones relacionadas con la migración entre ambos países.

La posibilidad de que se produzca un conflicto entre esos dos estados como consecuencia de este problema se abordará en el contexto de recientes tendencias contrarias a la inmigración de haitianos. En la tercera sección del presente estudio se describirán en forma sucinta las experiencias exitosas de otros países y regiones en materia de gestión de corrientes migratorias en beneficio mutuo de los respectivos países y sociedades. En esa sección, la última del estudio, se resumirá la dinámica de la migración entre la República Dominicana y Haití previamente analizada en el artículo y se formularán recomendaciones sobre la manera en que podría realizarse una mejor gestión de las corrientes migratorias de trabajadores haitianos, que constituyen el grueso de la migración irregular a la República Dominicana, en forma de beneficiar tanto a la comunidad de origen de los migrantes como a la comunidad que los recibe, y de atenuar la incipiente amenaza de un conflicto aún más violento entre esos dos pueblos y países.

Recomendaciones de Política Migratoria

Para lograr una reducción sustancial de la migración irregular entre Haití y la República Dominicana será preciso adoptar un programa de respuesta más general frente a ese problema. En el contexto del análisis que antecede, los gobiernos dominicano y haitiano podrían contribuir en varias esferas a reducir en forma significativa la incidencia de la migración irregular de Haití a la República Dominicana. Tal como se ha sostenido en el presente artículo, la presencia irregular de inmigrantes haitianos que han ingresado en la República Dominicana por motivos laborales es un factor central de las tensiones relacionadas con la migración que se han suscitado entre ambos estados, tensiones que han dado lugar a un riesgo creciente de convertirse en una espiral que escape a todo control.

Sería acertado comenzar por examinar dos factores coadyuvantes esenciales de la migración irregular: una política social y económica desacertada, que combinada con inestabilidad política sigue impeliendo y atrayendo a las personas hacia sitios que les ofrecen condiciones de vida más favorables, y, por otra parte, la inexistencia de canales de migración legal, factor al que en algunos casos se agrega una política migratoria inflexible.

Un programa de respuesta integral requeriría, en primer término y como factor más importante, (1) controles migratorios internos más eficaces, sin los cuales ninguna de las restantes medidas que se adopten surtiría el efecto deseado. También sería decisivo (2) crear oportunidades de migración legal a través de la formulación de un acuerdo bilateral de migración de trabajadores que regule la contratación de trabajadores migrantes y los procedimientos conexos, tanto en Haití, como país de partida de migrantes, como en la República Dominicana, en su carácter de país receptor de los mismos. No menos esencial es la necesidad de (3) un diálogo más intenso entre ambos estados, encaminado

a señalar en forma clara vías de ingreso legítimas, y a dar acceso a ellas, a la vez que se redoblan los esfuerzos tendientes, tal como se ha señalado más arriba, a crear disuasivos al ingreso y la estadía irregulares. Por último, como los canales de migración legal de trabajadores siempre serán limitados, es esencial (4) promover el crecimiento económico y la estabilidad política en Haití. Esos cuatro ámbitos esenciales se examinan más abajo en forma más pormenorizada, sin que la reseña implique un cierto orden de prelación de temas, y se recomiendan medidas que pueden adoptarse en uno de esos países, o en ambos.

Mejores Controles Internos

Como el tráfico de personas es, en gran medida, una actividad orientada por el mercado, un proceder razonable de parte de la República Dominicana, como estado receptor en este caso, consistiría en reducir los atractivos que ofrece como mercado de destino. Puede lograrlo haciendo que a los contrabandistas y traficantes les resulte más difícil organizar el ingreso y la estadía irregulares de migrantes, y les imponga mayores costos desde el punto de vista de la responsabilidad penal de los contrabandistas y los traficantes, así como de los migrantes irregulares y de quienes les dan empleo. A continuación se detallan algunas de las medidas específicas que podrían adoptarse para alcanzar ese objetivo:

1. Reducir las posibilidades de obtener empleo ilícito constituye un ámbito importante. Imponer medidas punitivas a los empleadores que contratan a migrantes irregulares, y mecanismos más severos para que a los migrantes no autorizados les resulte más difícil obtener empleo, equivaldría a crear importantes elementos disuasorios. Vale la pena señalar que éste suele ser el eslabón de la cadena de la política y la práctica migratorias en que la reforma resulta resistente al cambio.
2. La reforma legislativa y de políticas en el sector de la migración contribuiría a garantizar una adecuada respuesta jurídica frente a las actividades delictivas, incluidas las realizadas por redes de tráfico y trata de personas. Son guías útiles, a esos efectos, los Protocolos de la Convención de Palermo para combatir el tráfico y la trata de personas, cuya finalidad principal consiste en penalizar los actos de contrabando y tráfico, en lugar de sancionar a las víctimas, y aplicar penas más severas y mutuamente compatibles en los distintos países. Tanto la República Dominicana como Haití podrían inspirarse en esos protocolos, de los que son signatarios, para reforzar su legislación penal y así facilitar el procesamiento de los traficantes de seres humanos y tratantes de migrantes que operen en sus respectivos territorios. Esto está relacionado con la necesidad de actualizar y adaptar la legislación vigente sobre migración a las realidades actualmente imperantes en ambos países.
3. Otro ámbito de decisiva importancia es el del mejoramiento de los sistemas de fronteras, como garantía de una apropiada aplicación coercitiva de normas y a la vez para facilitar una eficiente movilización regular de personas. No sólo sería esencial que ambos países dispusieran de personal de fronteras adecuadamente

capacitado y en número suficiente en los puntos de control de fronteras, sino también que se establecieran oportunidades formales de intercambio y colaboración.

4. Muchos migrantes recurren a la migración irregular en virtud de las dificultades que entraña la obtención de documentos de viaje, incluidos pasaportes y visas. Se trata de un ámbito que debe ser objeto de examen y en que se requieren mejoras, en especial en relación con las poblaciones de fronteras que poseen una larga tradición de intercambios mutuos cotidianos. En ese contexto deberían adoptarse mecanismos de actualización de documentos de viaje para garantizar el cumplimiento de las normas internacionales mínimas. Además, si fuese necesario, se debería mejorar la seguridad de los sistemas de expedición de documentos conexos, para reducir al mínimo la posibilidad de que se obtengan en forma fraudulenta. A este respecto cabe mencionar un factor que constituye un desafío directamente relacionado: es probable que muchos potenciales migrantes irregulares haitianos entren en la categoría de personas que no tienen fácil acceso a pasaportes. Parecería necesario hallar soluciones innovadoras que garanticen un más fácil acceso a documentos de viaje para ese grupo de personas.
5. Como los haitianos penetran desde hace tiempo con relativa facilidad en la República Dominicana a través de la frontera con su país, presentándose como migrantes por razones de negocios o, lo que es más común, con ayuda de traficantes de personas, es urgente informar mejor a los potenciales migrantes irregulares sobre los peligros que entraña esa modalidad de migración. Reconociendo el carácter fundamental que tiene la necesidad de información para todas las decisiones sobre migración, se llega a la conclusión de que las campañas de información deben cumplir un papel importante. El desconocimiento de la situación sigue planteando riesgos a los migrantes, y a la vez va en detrimento de una migración ordenada. Se comprende que las campañas de información revisten una importancia aún mayor si se tiene en cuenta que la mayor parte de los migrantes haitianos que ingresan en la República Dominicana carecen, total o parcialmente, de aptitudes especializadas, lo que por definición implica que su nivel de educación es bajo y están más expuestos a recibir información engañosa.
6. En la actualidad se requerirían esfuerzos tendientes a promover los derechos de los migrantes tanto en la República Dominicana como en Haití. Debería hacerse hincapié en la labor referente a la República Dominicana, puesto que en su territorio vive una considerable población inmigrante, en su mayor parte irregular. Esos esfuerzos crearían conciencia sobre el valor de los trabajadores migrantes, sea cual fuere su situación jurídica. El argumento debería ser persuasivo si se tiene en cuenta que también nacionales de la República Dominicana viven en situación irregular en países de la región y de otras regiones. Esas campañas podrían ampliarse en forma de programas de sensibilización orientados hacia los responsables de la política migratoria y la población en general de Haití y la República Dominicana, procurando que

comprendan que la migración es un fenómeno social natural, que si es objeto de una adecuada gestión puede generar beneficios tanto para los gobiernos como para las sociedades, incluido el sector de los migrantes.

7. Los estados de todo el mundo reconocen cada vez con mayor claridad la necesidad de programas de regularización, pese a los aspectos negativos que entrañan. Por regularización se entiende el proceso a través del cual un país permite a los migrantes que han venido residiendo en situación irregular en su territorio alcanzar una situación legal en el país. Los programas de regularización por lo general implican una amnistía para los migrantes que hayan vivido en el país en situación irregular durante cierto tiempo y no hayan sido considerados inadmisibles por otro motivo. Son muchos, no obstante, quienes se oponen a la regularización. Es fácil comprender las razones de esa actitud. En primer lugar, la medida puede considerarse como un premio para quienes hayan cometido actos ilícitos, lo que equivaldría a privar de alicientes a los potenciales migrantes para que opten por la migración legal. Además, si el programa de regularización no es acompañado por medidas tendientes a contrarrestar el empleo de migrantes irregulares, se corre el riesgo de engendrar un factor de atracción de estos últimos. Sin perjuicio de esas consideraciones, existirán situaciones, como la que se da actualmente en la República Dominicana, en que se justifique considerar seriamente los beneficios potenciales que implica emprender un plan de regularización. Esos beneficios serían, entre otros, la potencial reducción del número de migrantes que vivan en un país sin la protección, los derechos y las responsabilidades que les conferiría una situación legal. Esos migrantes gozarían de los servicios públicos y pagarían tributos que contribuirían a financiarlos.

Acuerdos Bilaterales sobre Migración de Trabajadores

1. Para que la migración irregular que afluye de Haití a la República Dominicana en un volumen considerable adquiera un carácter más regular del que ha tenido hasta ahora, es absolutamente imprescindible establecer un marco jurídico que rija la contratación de trabajadores migrantes haitianos y sea congruente con las realidades actuales y aproveche las enseñanzas extraídas de la experiencia en la aplicación de anteriores acuerdos bilaterales de migración de trabajadores.
2. A través de un acuerdo bilateral de ese género debería procurarse que en el convenio de contratación o en el contrato de empleo se especifiquen los niveles salariales, la duración de la relación de empleo, las condiciones de trabajo y los derechos de los trabajadores en el mercado de trabajo. También podría estipularse la obligación del empleador o de las autoridades públicas de proporcionar otros beneficios. En combinación con las leyes y reglamentos del país que recibe los trabajadores, el acuerdo de contratación contribuiría a definir la situación jurídica del trabajador migrante en cuanto a derechos de residencia y derechos sociales y civiles. En un acuerdo de ese tipo tendría que reconocerse el hecho de que la situación de muchos trabajadores migrantes, especialmente los de la categoría no especializada, suele ser de carácter temporal, por lo cual no necesariamente sería posible concederles los mismos derechos que a los ciudadanos.

Establecimiento y Ampliación de un Diálogo Bilateral

1. Los estados están comprendiendo, cada vez con mayor claridad, que por adecuada que sea la estructura, y por sólido que sea el respaldo de que dispongan sus sistemas nacionales de gestión de la migración, pueden verse gravemente afectados por fallas atribuibles a la diversidad de capacidades de los sistemas imperantes en otros estados. Por ese motivo, una gestión exitosa de la migración depende, en creciente medida, de una eficaz actividad conjunta de varios estados, encaminada, entre otras cosas, a identificar objetivos comunes, delinearlos y llevar a cabo una labor tendiente a alcanzarlos.
2. Ello resulta especialmente imperioso en el contexto de los países con fronteras comunes, como la República Dominicana y Haití. Por lo tanto es esencial que ambos países procuren crear un proceso de diálogo bilateral que brinde un foro a partir del cual puedan establecerse objetivos comunes y un mejor proceso de formación de redes sobre temas de gestión de la migración que revistan interés para ambas partes y cuya resolución requiera un enfoque basado en la mutua colaboración.

Estabilidad Política y Desarrollo Económico en Haití

1. Como las oportunidades para la migración de trabajadores necesariamente serán escasas tanto en la República Dominicana como en cualquier otro país, es esencial que un país de partida de trabajadores, como Haití, esté en condiciones de generar posibilidades sostenibles de subsistencia en gran escala para su población. Si Haití, a través de sus propios esfuerzos y con la asistencia de la comunidad internacional, pudiera lograr estabilidad política, podría finalmente comenzar a alcanzar cierto crecimiento económico que también podría beneficiar a la comunidad empresarial. En caso contrario, se corre el riesgo de que los problemas sigan propagándose más allá de la frontera, como la experiencia lo ha demostrado, dada la interdependencia de ambos países.
2. A menos que la estabilidad política y el crecimiento económico se hagan presentes en Haití, la República Dominicana y, en menor medida, en otros países de la región del Caribe, ni la creación de oportunidades de migración legal como respuesta a la demanda, ni un marco regulatorio que funcione cabalmente podrán impedir que la Hispaniola siga padeciendo las secuelas del problema de la migración irregular de haitianos y los desafíos que ello entraña.

Consideraciones Finales

Parece incuestionable que los migrantes haitianos que ingresan en forma irregular en la República Dominicana en busca de empleo cumplen un papel importante, y hasta esencial, como sustento de la vitalidad económica del país. Como se ha demostrado históricamente, a falta de mecanismos legales de obtención de ingresos y empleo, la alternativa por falta está dada por los medios ilegales, incluidos los servicios de los

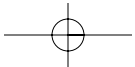
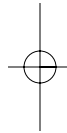
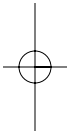
traficantes de personas, muchos de los cuales resultan ser tratantes de seres humanos. Los esfuerzos encaminados a desalentar y limitar esa corriente migratoria irregular mediante la aplicación de las diversas medidas arriba mencionadas son esenciales y no pueden ser sustituidos por la mera ampliación de las oportunidades para la migración de trabajadores.

En un contexto como el referido, en que se reconoce la necesidad y la demanda de trabajadores en la República Dominicana y se admite la existencia de oferta de trabajadores manuales asalariados haitianos, es inevitable que la oferta trate siempre de responder a la demanda. Resulta claro que el elemento faltante es un marco institucional a través del cual puede regularse esa corriente.

Para institucionalizar un marco de ese tipo es urgente que los gobiernos de ambas naciones se comprometan con firmeza a evitar que la migración irregular, manejada por traficantes y tratantes de seres humanos, constituya la principal forma de movilización de personas de Haití a la República Dominicana, puesto que se trata de un método paralelo, irregular, alimentado por incongruencias de políticas que afectan a ambos países. La mejor manera de atender la necesidad de que los dos gobiernos logren credibilidad frente a sus respectivas poblaciones y frente a la comunidad internacional podría consistir en indicar en forma clara cuáles son las vías de ingreso legítimas al territorio del otro estado, y dar acceso a ellas, y a la vez establecer mecanismos disuasorios a la movilización irregular de personas, tal como se indica en las recomendaciones de políticas arriba enunciadas. A través de la aplicación de esas recomendaciones mucho se avanzaría hacia la creación de una situación que favorezca por igual a la República Dominicana, a Haití y a los propios migrantes.

Pese a los problemas que plantea la migración a la República Dominicana y a Haití, sería imposible sobreestimar los potenciales beneficios que brindaría a ambos países un régimen migratorio adecuadamente administrado. Es comprensible que el fenómeno de la migración—especialmente cuando adquiere la escala del que está teniendo lugar entre Haití y la República Dominicana—plantee importantes y delicadas cuestiones de seguridad y de identidad nacionales, cambio social, adaptación cultural y asignación de recursos, cuestiones todas que representan importantes desafíos para los responsables de la política de migración de ambos países, ya que la movilidad de la población de esta y otras regiones del mundo es cada vez más intensa.

Las alternativas que escojan hoy los responsables de la política de migración de Haití y de la República Dominicana contribuirán a dar respuesta a la cuestión de si la migración se administra en forma de extraer de ella los mayores beneficios posibles, o si seguirá siendo una fuente de preocupación, potenciales perturbaciones sociales y fricciones entre los dos estados. Inhibir esa movilidad difícilmente puede considerarse como una alternativa aceptable, por lo que sólo subsiste una alternativa: realizar una mejor gestión de la movilidad.



Summary Translations in French

La Minorité des Immigrés Haïtiens en République Dominicaine

9.1

James Ferguson

Résumé

Les Haïtiens et les Dominicaino-haïtiens (nés en République Dominicaine) représentent une grande minorité en République Dominicaine. Depuis des décennies, ils passent la frontière, soit invités soit illégalement, pour travailler sur les plantations de canne à sucre ou dans d'autres domaines du secteur agricole ou encore pour faire un travail manuel, tâches que les Dominicains refusaient en général d'effectuer. Mais aujourd'hui, alors que le gouvernement dominicain essaie de s'écarter de cette dépendance séculaire vis-à-vis du sucre, et de développer les secteurs de la fabrication, du tourisme et autres, la main-d'œuvre haïtienne est encore une fois en train de supplanter la main-d'œuvre locale.

Les Haïtiens sont nécessaires mais également fortement dénigrés en tant que minorité de travailleurs immigrés. Pour les employeurs dominicains, ils représentent un réservoir de main d'œuvre bon marché, non syndiquée et donc facile à exploiter. Entre-temps, les politiciens dominicains et les médias les présentent comme étant un problème, voire un fardeau pour les ressources limitées d'un pays pauvre. Les Haïtiens et leurs enfants sont également victimes de comportements racistes, car ils sont plus fonceés que les Dominicains qui les décrivent comme étant "arriérés" et "inférieurs."

Le sort des coupeurs de canne haïtiens en République Dominicaine a été identifié depuis les années 70, mais on sait peu de choses sur les formes plus récentes d'immigration liée au travail principalement car ce travail est souvent illégal et non documenté. Ni les travailleurs qui vivent en dehors de la chaîne économique ni les employeurs qui profitent de ce statut illégal ne veulent attirer l'attention sur ce secteur économique informel en pleine évolution qui existe en parallèle et soutient l'économie officielle.

Cet article, adapté du rapport de 2003 du Groupement pour les Droits des Minorités (MRG), vise à faire la lumière sur les conditions connues par ce groupe spécifique d'immigrés et présente quelques recommandations pour les décideurs. Il a pour élément principal les tendances historiques et actuelles de l'immigration de travailleurs et démontre comment l'offre d'immigrés d'origine haïtienne a joué un rôle primordial dans l'économie dominicaine, particulièrement dans le cadre de l'industrie sucrière. La première partie présente les immigrés haïtiens en termes quantitatifs, leurs motivations

et certains des défis qu'ils doivent relever. La deuxième partie examine les tensions ethniques et le racisme dont sont victimes les immigrants d'origine haïtienne et analyse ces perspectives dans le contexte de la politique dominicaine.

Y a-t-il un Espoir de Changement?

Malgré les conditions de vie précaires connues par les immigrants haïtiens et les Dominicaino-haïtiens, il semblerait que de récentes réformes et concessions du gouvernement dominicain indiquent une volonté de résoudre ces problèmes de nationalité et de statut juridique. En juillet 2001, le Ministère de l'Éducation a annoncé que les écoles n'exigeraient plus que soit fourni un extrait de naissance pour l'inscription des enfants à l'école secondaire. Ce décret a fait suite au cas très médiatisé de Claubian Jean Jacques, enfant de parents haïtiens en situation irrégulière, qui a obtenu les meilleurs résultats dans le pays en 1998 aux examens de fin d'études primaires. Il a pu aller à l'école secondaire, mais a été prévenu qu'il ne pourrait vraisemblablement pas obtenir le diplôme de fin d'études secondaires en l'absence d'un extrait de naissance dominicain. Après de longs débats controversés, le Président Mejía a ordonné au Bureau électoral central (JCE) d'accorder la citoyenneté dominicaine à Claubian en avril 2002. Alors que les analystes politiques nationalistes arguaient du fait que ceci risquait de créer un dangereux précédent, Sonia Pierre du Mouvement des Femmes Dominicaino-Haïtiennes (MUDHA) a signalé qu'il existait beaucoup d'autres cas qui ne faisaient pas la une des journaux.

Il convient également de mentionner l'ordonnance provisoire d'août 2000 de la Cour interaméricaine des Droits de l'Homme selon lequel les autorités dominicaines avaient agi de manière illégale en expulsant un Haïtien et six Dominicaino-haïtiens au cours des expulsions massives de 1999. Même si l'ordonnance n'était que provisoire et ne couvrait pas tous les cas similaires, la décision a été accueillie comme une victoire par le MUDHA et d'autres organisations luttant pour les Droits de la personne, et comme une violation de la souveraineté nationale par le gouvernement dominicain. Même si les autorités ont d'abord refusé de se soumettre à l'ordonnance et d'accorder aux déportés l'autorisation de revenir dans le pays, le gouvernement a décidé de créer un Comité de Impulso (Comité de surveillance) pour résoudre les problèmes liés à la décision de la cour de 2000 et pour contrôler les pratiques futures du gouvernement en matière d'immigration. L'annonce selon laquelle le comité comprendrait des représentants d'ONG et de groupes pour la défense des droits de la personne a entraîné une grande polémique et a révélé que les concessions, minimales ou non, faites par les Dominicains face à l'opinion internationale, réveillaient vite le sentiment nationaliste. Les succès du MUDHA ont été mis en évidence en février 2003 avec la nouvelle selon laquelle Sonia Pierre avait reçu un prix pour la défense des droits de la personne de la part d'Amnesty International.

Ces (petits) succès doivent être mis en perspective par rapport à la déportation permanente d'immigrants "clandestins," y compris de Dominicaino-haïtiens, et à la

marginalisation vécue par les descendants d'Haïtiens, indépendamment de leur lieu de naissance. La logique de la position dominicaine semble indiquer que même si un flux instable de travailleurs immigrés haïtiens, quoique temporaire, est souhaitable du point de vue économique, la présence d'une population d'origine haïtienne permanente et stable est cependant considérée socialement indésirable. Les déportations visant les individus et communautés haïtiennes installés depuis longtemps ne font rien pour réfuter la théorie émise par un responsable haïtien selon laquelle la politique du gouvernement dominicain relative à l'immigration "visait à empêcher les Haïtiens de devenir "trop permanents" et les personnes ayant vécu dans le pays pendant plus de cinq ans étaient plus susceptibles d'être expulsées." A cet égard, le Groupement pour les Droits des Minorités présente plusieurs recommandations concrètes pour les gouvernements et les agences d'aide:

Recommandations

Pour les Gouvernements:

1. Les autorités doivent s'abstenir d'expulser en masse les immigrés soupçonnés d'être en situation irrégulière. Des évaluations du caractère légal du statut des immigrés doivent être faites au cas par cas conformément à la loi et aux normes relatives aux droits de la personne. Les déportations ne devraient pas entraîner de séparation des familles, de perte de biens, d'argent ou de documents ou de violences physiques ou verbales. L'armée et les autres forces paramilitaires ne devraient pas être utilisées dans les cas de déportations. L'identification et la déportation d'immigrés soupçonnés d'être en situation irrégulière ne devraient en aucun cas être faites sur la base de la couleur de la peau, ce qui représente une violation du droit coutumier international. Les autorités devraient publier des statistiques sur les déportations ainsi que des détails relatifs aux conditions de leur exécution. Le gouvernement dominicain devrait respecter ses engagements dans le cadre du Protocole d'accord de décembre 1999 signé avec le gouvernement haïtien en matière de rapatriements.
2. Des mesures devraient être mises en œuvre pour empêcher le trafic illicite d'immigrants, en particulier les activités des agents de recrutement tels que les buscones en Haïti, et la falsification de documents. Une campagne d'information du public haïtien devrait informer les candidats à l'immigration des circonstances auxquelles ils feront face.
3. Des recensements réalisés par les autorités devraient permettre aux personnes interrogées d'indiquer librement la définition de leur origine ethnique, raciale ou nationale. Ces informations ne devraient pas être utilisées pour persécuter les communautés immigrées ou constituer un justificatif pour leur déportation. Elles devraient, au contraire, être utilisées pour élaborer des programmes de développement, avec la pleine participation de représentants de la communauté haïtienne et d'autres communautés immigrées dans les pays respectifs, afin de

leur permettre d'être entièrement et réellement égales à l'ensemble de la population. Ces programmes devraient se concentrer en particulier sur le sort des femmes dans les communautés immigrées, ces femmes étant beaucoup plus touchées par l'exploitation économique et sexuelle. En République Dominicaine, les propriétaires privés des anciennes bateyes du Conseil National du Sucre (CEA) ne devraient plus avoir le droit de priver de logement ainsi que d'autres droits les résidents de longue durée, indépendamment de leur nationalité.

4. Des procédures transparentes et non discriminatoires devraient être mises en place pour garantir aux immigrés employés dans un pays l'obtention de permis de travail et de séjour temporaires, et, dans un délai raisonnable, de la citoyenneté, ainsi qu'une protection conforme aux codes du travail. La République Dominicaine devrait s'abstenir d'utiliser la clause de "transit" dans sa Constitution pour empêcher les enfants des travailleurs immigrés d'obtenir la citoyenneté. Les gouvernements devraient s'assurer que les lois relatives à la citoyenneté des enfants nés sur leur territoire ne font pas d'eux des enfants apatrides. Le gouvernement haïtien devrait respecter ses engagements dans le cadre du Protocole d'accord de décembre 1999, pour fournir à ses citoyens des pièces d'identité haïtiennes.
5. Les gouvernements devraient activement chercher à combattre les préjugés dont souffrent les communautés immigrées, par exemple, le phénomène anti-haïtien (antihaitianismo) en République Dominicaine, en instaurant des programmes relatifs aux droits de la personne dans les écoles publiques.
6. Les gouvernements devraient ratifier et appliquer la Convention internationale sur la Protection des droits des travailleurs immigrés et des membres de leurs familles, la Convention internationale sur les Droits civiques et politiques, ainsi que d'autres instruments pertinents. Ils devraient inviter dans leur pays le Rapporteur spécial de l'ONU sur les Droits des immigrés et l'assurer de leur pleine coopération et de la mise en œuvre de ses recommandations. Le gouvernement dominicain devrait s'assurer que le Comité de Impulso créé conformément à la décision de la Cour interaméricaine des Droits de l'Homme est apte à fonctionner indépendamment et sans crainte d'être intimidé par quelque secteur que ce soit, et dispose des ressources appropriées. Il devrait également mettre en oeuvre les recommandations faites par le Comité des Nations Unies sur les Droits de l'Homme. Les gouvernements devraient garantir la liberté des défenseurs des droits de l'homme, y compris ceux qui luttent pour promouvoir et défendre les droits des travailleurs immigrés à travailler sans peur de représailles.

Pour les Agences d'Aides Gouvernementales et Non Gouvernementales:

1. Les programmes d'assistance dans les pays d'accueil devraient accorder une attention particulière à la situation des communautés immigrées et lutter pour la mise en œuvre des Objectifs du Millénaire pour le Développement à tous les niveaux de la population. Des programmes particuliers pourraient être conçus pour s'assurer que les communautés immigrées jouissent aussi pleinement que possible de leurs droits économiques, sociaux et culturels et il conviendrait de garantir que la création et la mise en œuvre de tels programmes soient réalisées avec la pleine participation des représentants des communautés en question.

La Gestion des Flux d'immigrants Haïtiens vers la République Dominicaine: Enjeux et Opportunités

9.2

Maureen Achieng

Résumé

L'île d'Hispaniola connaît une grande mobilité, similaire à celle caractérisant le reste de la Caraïbe. Tout comme d'autres populations dans la région, voire dans le monde, les Haïtiens et les Dominicains cherchent sans cesse à améliorer leurs conditions de vie en émigrant vers des pays plus riches de la région. Ainsi, tandis que les Haïtiens les plus pauvres partent vers la République Dominicaine à la recherche d'emplois rémunérés à court terme, ils contribuent à l'augmentation du nombre de Dominicains émigrant vers Porto Rico ou vers les Etats-Unis, selon leurs moyens.

Il convient donc de poser une question tout à fait pertinente aux décideurs pour savoir si le point de vue selon lequel l'émigration est tout compte fait un atout est prouvé par les réalités du processus migratoire au sein d'Hispaniola. Cet article examine les flux migratoires entre la République Dominicaine et Haïti et considère les aspects problématiques ainsi que les risques liés à de tels flux. Cet article présente des recommandations pouvant aider la République Dominicaine et Haïti à rendre les mouvements migratoires clandestins l'exception plutôt que la règle, contrairement à la situation actuelle. Si ces recommandations sont acceptées et mises en oeuvre, elles permettront de réduire, voire d'éliminer les tensions existant à l'heure actuelle entre ces deux pays, et par là même d'améliorer les possibilités de coexistence pacifique entre les deux peuples partageant l'île d'Hispaniola.

La première partie présente un bref aperçu historique sur le phénomène de l'immigration Haïti-République Dominicaine depuis la première vague migratoire ayant eu lieu après l'indépendance d'Haïti. La deuxième partie présente une analyse de la situation actuelle vécue par les immigrants haïtiens en République Dominicaine et, dans une moindre mesure, par les Dominicains en Haïti. Cette analyse présente également les défis auxquels font face les gouvernements haïtien et dominicain en matière de gestion des flux migratoires entre les deux pays, de manière à ce que ces migrations puissent être bénéfiques à la fois pour leurs citoyens et leurs pays. La deuxième partie a pour principale approche l'immigration haïtienne clandestine vers la République Dominicaine, élément central des tensions liées aux migrations entre ces deux pays.

L'éventualité de conflits interétatiques causés par cette question sera traitée dans le contexte des mouvements récents contre l'immigration haïtienne. La troisième partie de cette communication décrit de manière succincte les expériences fructueuses d'autres pays et régions en matière de gestion des flux migratoires liés au travail pour le bénéfice mutuel des pays et sociétés respectifs. Cette dernière partie présente un résumé des dynamiques migratoires République Dominicaine-Haïti examinées préalablement dans cet article et propose des recommandations pour une possible meilleure gestion des flux migratoires des Haïtiens à la recherche d'un emploi (représentant la majeure partie de l'immigration illégale vers la République Dominicaine), afin que les communautés de départ et d'accueil puissent toutes les deux en retirer un bénéfice, et afin de réduire la menace imminente de conflits toujours plus violents entre les deux peuples et pays.

Mesures Recommandées

Une réduction importante de l'immigration clandestine entre Haïti et la République Dominicaine exigera une réponse plus complète. Sur la base de la discussion précédente, il existe plusieurs domaines au niveau desquels les gouvernements dominicain et haïtien pourraient agir pour réduire de manière significative l'immigration illégale qui a lieu d'Haïti vers la République Dominicaine. Tout comme cet article l'a démontré, la présence illégale d'immigrants haïtiens à la recherche d'emplois est à la base des tensions liées à l'immigration entre les états qui risquent d'augmenter de manière vertigineuse sans que l'on soit en mesure de contrôler la situation.

Un bon point de départ serait de considérer les deux éléments clés de l'immigration clandestine: des politiques sociales et économiques défailtantes accompagnées d'une instabilité politique, facteurs continuant à chasser et attirer les gens vers des cieux plus cléments. Il convient d'ajouter à ceci l'absence de possibilités de migration légale, avec de surcroît, dans certains cas, des politiques intransigeantes.

Une réponse globale exigerait, en tout premier lieu, (1) un contrôle plus efficace des migrations à l'intérieur de l'Etat, sans lequel toute autre mesure ne pourra avoir l'effet souhaité. Un autre élément critique serait (2) la création d'opportunités migratoires légales par le biais de l'élaboration d'un accord bilatéral sur l'immigration liée au travail afin de réglementer le recrutement des travailleurs immigrés ainsi que les procédures connexes, à la fois en Haïti, pays de départ, et en République Dominicaine, pays d'accueil. Un autre élément également crucial est le besoin (3) d'un meilleur dialogue entre les deux états visant à définir clairement et à fournir des canaux d'entrée légaux, tout en multipliant les efforts pour décourager l'entrée et le séjour clandestins, comme mentionné ci-dessus. Enfin, étant donné que les canaux de migration légale liée au travail seront toujours limités, il s'avère indispensable de (4) promouvoir la croissance économique et la stabilité politique en Haïti. Ces quatre domaines clés sont examinés en détails ci-dessous, sans ordre de priorité. Ils sont accompagnés d'un certain nombre d'actions à mettre en oeuvre dans l'un ou dans les deux pays.

Un Meilleur Contrôle Interne

Alors que le trafic d'êtres humains est une entreprise obéissant en grande partie aux lois du marché, une mesure simple pour la République Dominicaine, en tant que pays d'accueil, serait de se présenter comme une destination moins rentable. Pour ce faire, il faudrait rendre les entrées et les séjours clandestins plus difficiles à réaliser pour les trafiquants et faire qu'ils soient punissables d'une amende élevée pour les trafiquants, les passeurs ainsi que pour les immigrants clandestins et leurs employeurs. Les points figurant ci-dessous sont des mesures spécifiques qui pourraient être mises en œuvre à cette fin:

1. La réduction des possibilités d'emploi clandestin constitue un important élément. Appliquer des mesures punitives pour les employeurs qui recrutent des immigrants clandestins et disposer de moyens plus stricts visant à rendre la tâche plus difficile aux immigrants clandestins voulant travailler, constituerait de sérieuses mesures préventives. Il convient de remarquer qu'il s'agit souvent là du maillon de la chaîne des politiques et pratiques migratoires où la réforme rencontre des résistances au changement.
2. Une réforme législative et politique du secteur de l'immigration aiderait à garantir une action juridique face aux activités illégales, y compris celles entreprises par les réseaux de trafiquants et de passeurs. A cette fin, les Protocoles de Palerme sur le trafic et la traite, dont le principal objectif est la criminalisation des actes de trafic et de traite au lieu de punir les victimes et d'établir des amendes plus conséquentes dans l'ensemble du pays, représentent des initiatives utiles. La République Dominicaine et Haïti pourraient s'inspirer de ces protocoles, dont ils sont signataires, pour renforcer leurs systèmes juridiques en vue de faciliter la poursuite en justice des trafiquants et passeurs qui oeuvrent dans leurs territoires respectifs. Il convient également de mettre à jour la législation en matière d'immigration actuelle face à la réalité des deux pays.
3. Un autre facteur crucial est l'amélioration des systèmes frontaliers en vue de garantir un respect des lois ainsi qu'une facilitation efficace des mouvements légaux. Il sera non seulement primordial pour les deux pays d'avoir un personnel qualifié aux frontières, dans des postes équipés de manière adéquate et bien surveillés, mais de mettre en place à ce même titre des possibilités d'échange et de collaboration.
4. Beaucoup d'immigrés ont recours à l'immigration clandestine à cause des difficultés rencontrées pour obtenir des titres de voyage, dont les passeports et les visas. C'est là un domaine qui mérite d'être étudié et amélioré, particulièrement en ce qui concerne les populations frontalières qui ont une longue histoire de commerce quotidien entre les deux pays. Dans ce cas, il conviendrait de mettre à jour les titres de voyage afin de s'assurer que les normes minimales internationales soient respectées. Dans le cas échéant, mais d'une égale importance, il faut signaler la sécurité liée aux systèmes de

délivrance des passeports qui devrait être améliorée pour minimiser leur éventuelle acquisition par voie frauduleuse. Un défi se présente dans la mesure où beaucoup d'immigrés haïtiens soi-disant clandestins pourraient bien rentrer dans la catégorie de personnes pour lesquelles le passeport n'est pas financièrement accessible. Des solutions ingénieuses semblent nécessaires pour garantir un accès plus facile aux titres de voyage à cette catégorie de personnes.

6. Etant donné que les Haïtiens ont depuis longtemps traversé la frontière vers la République Dominicaine avec une relative aisance et qu'il s'agit d'immigrés très entreprenants participant pleinement à ce trafic, ou qui sont le plus souvent aidés par des trafiquants, il s'avère impératif de mieux informer les éventuels immigrés en situation irrégulière des dangers que représentent ce type d'immigration. Il faut reconnaître le besoin d'information comme un facteur crucial pour toute décision liée à l'immigration; à cet effet, des campagnes d'information sont indispensables. Cette ignorance de la réalité met les immigrants en danger, tout en portant préjudice à une immigration bien gérée. Les campagnes d'information se révèlent encore plus importantes si l'on considère que la plus grande partie des immigrants haïtiens en République Dominicaine ne sont pas qualifiés ou partiellement qualifiés, et sont donc par définition, d'un niveau d'éducation peu avancé et sont par conséquent susceptibles d'être mal informés.
7. Des efforts seront parallèlement faits pour faire prévaloir les droits des immigrants dans les deux états, la République Dominicaine et Haïti, avec un accent particulier mis sur la République Dominicaine puisqu'elle accueille un grand nombre d'immigrants, pour la plus majeure partie clandestins. De tels efforts permettraient de faire connaître la valeur des immigrants à la recherche d'un emploi, peu importe leur statut juridique. Ce point devrait acquérir toute sa pertinence surtout que des ressortissants de la République Dominicaine se trouvent à l'étranger, dans la région et ailleurs, de manière illégale. De telles campagnes pourraient également comprendre des efforts de sensibilisation au profit des décideurs et du public au sens large dans les deux pays, pour attirer l'attention sur le fait que la migration, phénomène social naturel, s'il était géré convenablement, pourrait générer des bénéfices pour les deux gouvernements et sociétés, ainsi que pour les immigrants.
8. Les états du monde entier reconnaissent de plus en plus le besoin de régulariser les problèmes relatifs à cette situation. Pour ce faire, il convient d'avoir recours à un processus par lequel un pays permet aux immigrants clandestins d'obtenir un statut légal dans le pays, avec dans beaucoup de cas l'octroi d'une amnistie aux immigrés ayant résidé dans le pays de manière clandestine pendant une période donnée et qui ne sont pas autrement admissibles. Cependant, pour des raisons évidentes, la régularisation a beaucoup d'opposants. En premier lieu, une telle pratique donne l'impression que l'on récompense ceux qui se sont lancés dans ces actes illicites, et ne pousse aucunement les éventuels immigrants à opter pour l'immigration légale. Par ailleurs, si ceci n'est pas accompagné de mesures permettant de contrecarrer le recrutement d'immigrés clandestins, un

programme de régularisation risque d'attirer plutôt que de repousser. Ceci dit, certaines conditions requises, telles que celles qui existent en République Dominicaine, exigeront que soient considérés les éventuels bénéfices liés à la mise en œuvre d'un exercice de régularisation. Ces bénéfices incluront une possible réduction du nombre d'immigrants vivant dans un pays sans protection, ni droits ou responsabilités qui seraient conférés par un statut légal. De tels immigrants retireront des bénéfices et contribueront au paiement des impôts liés aux services publics.

Accords Bilatéraux sur l'Immigration Liée à l'Emploi

1. Un cadre juridique pour gérer le recrutement de travailleurs immigrés haïtiens, conforme aux réalités actuelles et s'inspirant des leçons tirées de précédents accords relatifs à l'immigration clandestine est indispensable si la proportion d'immigration clandestine qui a lieu d'Haïti vers la République Dominicaine doit être plus régularisée que ce que l'on connaît de nos jours.
2. Un tel accord bilatéral devrait tenter de garantir que l'accord de recrutement, ou le contrat de travail, comporte les taux de rémunération, les conditions de travail ainsi que les droits des travailleurs du secteur donné. Le document pourrait également stipuler les obligations de l'employeur ou des autorités publiques afin d'offrir d'autres bénéfices. Outre les lois et les règlements du pays d'accueil, l'accord de recrutement contribuerait à définir le statut juridique du travailleur immigré en terme de résidence, statut social et droits civiques. Un accord de cette nature devrait reconnaître que la situation de plusieurs travailleurs immigrés, plus particulièrement ceux appartenant à la catégorie des non qualifiés, est souvent temporaire, et que, par conséquent, l'octroi des droits dont jouissent les citoyens ne sera pas nécessairement possible.

Créer/Elargir un Dialogue Bilatéral

1. Les états se rendent de plus en plus compte que quel que soit le niveau de bon fonctionnement et le soutien reçu par les systèmes de gestion de l'immigration, ils peuvent être sévèrement affaiblis par les variations de capacités propres aux systèmes d'autres états. Pour cette raison, la gestion efficace de l'immigration devient de plus en plus une question de gestion commune aux deux états, avec une identification, une formulation et un besoin de réaliser des objectifs communs.
2. De telles mesures sont particulièrement impératives dans le cas de pays qui partagent des frontières, tel que la République Dominicaine et Haïti. Il est donc primordial pour les deux pays de travailler à la création d'un processus de dialogue bilatéral qui offrirait une possibilité permettant de définir des ordres du jour communs et d'améliorer la communication en matière de gestion de l'immigration. A ce titre, une approche commune est nécessaire.

Stabilité Politique et Développement Économique en Haïti

1. Alors que les possibilités d'immigration seront limitées, en République Dominicaine, comme partout ailleurs, il est impératif pour un pays de départ comme Haïti d'être en mesure de générer des possibilités durables de subsistance pour sa population, à une grande échelle. Si Haïti, à travers ses propres efforts et avec le soutien de la communauté internationale, pouvait obtenir une stabilité politique, elle pourrait alors commencer à connaître une croissance économique qui pourrait éventuellement être bénéfique pour la communauté d'affaires de la République Dominicaine. Dans le cas contraire, les problèmes d'Haïti risquent de continuer à affecter l'autre côté de la frontière, tout comme le passé l'a démontré, étant donné l'interdépendance des deux pays.
2. A moins qu'Haïti, la République Dominicaine, et dans une moindre mesure, d'autres pays de la région Caraïbe, ne connaissent une stabilité politique et une croissance économique, même avec la création de possibilités légales d'immigration répondant à la demande et avec un cadre de réglementation vraiment fonctionnel, Hispaniola continuera à connaître le problème de l'immigration clandestine haïtienne et les défis créés par une telle situation.

Conclusions

Il semble évident que les immigrants haïtiens qui entrent illégalement en République Dominicaine jouent un rôle important et essentiel dans le maintien de la viabilité économique du pays. Tout comme le démontre l'histoire, en l'absence de paramètres juridiques en matière d'entrée et d'emploi, les immigrants ont recours à des passeurs, qui s'avèrent pour beaucoup, être des trafiquants, et ceci devient pour certains le seul choix possible. Des efforts visant à décourager et limiter ces flux migratoires clandestins à travers les diverses actions mentionnées ci-dessus sont primordiales et ne peuvent être remplacés par une simple multiplication des possibilités d'immigration liée au travail.

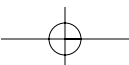
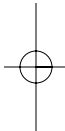
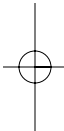
Dans un tel contexte, avec un besoin et une demande de main-d'oeuvre évidents en République Dominicaine, ainsi qu'une offre certaine de main-d'œuvre haïtienne rémunérée, il semble inévitable que l'offre cherche constamment à satisfaire la demande. L'élément manquant est très clairement le cadre institutionnel à travers lequel ce flux peut être réglementé.

Afin qu'un tel cadre puisse être institutionnalisé, il faut d'urgence obtenir un engagement ferme de la part des gouvernements quant au besoin d'éviter que l'immigration clandestine constitue la forme principale de mouvements d'Haïti vers la République Dominicaine gérée par les passeurs et trafiquants. Cette approche clandestine parallèle s'appuie sur les défaillances politiques existant dans les deux pays. Le besoin pour les deux pays de préserver leur crédibilité vis-à-vis de leurs populations respectives et auprès

de la communauté internationale, pourrait être plus bénéfique si des possibilités d'entrées légales étaient clairement définies, tout en décourageant l'immigration clandestine, comme nous l'avons mentionné dans les mesures recommandées ci-dessus. La mise en œuvre de ces recommandations permettrait ainsi de créer une situation profitable à la fois pour la République Dominicaine et pour Haïti, ainsi que pour les immigrants eux-mêmes.

Malgré les problèmes posés par les migrations en République Dominicaine et en Haïti, les éventuels bénéfices d'un régime de migration convenablement géré pour les deux pays ne peuvent être surestimés. Il est tout à fait compréhensible que le phénomène d'immigration, particulièrement à l'échelle à laquelle il a lieu entre Haïti et la République Dominicaine, soulève d'importantes questions épineuses en matière de sécurité nationale et d'allocation de ressources. Alors que la population devient de plus en plus mobile ici et dans d'autres régions du monde, ce sont là des défis que les décideurs des deux états doivent relever.

Les choix faits aujourd'hui par les décideurs d'Haïti et de la République Dominicaine aideront à savoir si l'immigration est gérée pour maximiser les bénéfices ou si elle continue à être une source de préoccupation, d'éventuels troubles sociaux et de tensions entre les deux états. Mettre fin à cette mobilité n'est pas vraiment une option, il s'agit plutôt de mieux la gérer.



Summary Translations in English

International Relations and the Human Rights of Migrants

1.2

Gabriela Rodríguez Pizarro

Introduction

This chapter considers migration from the standpoint of migrants' human rights, which will be analyzed with a cross-cutting approach that endeavors to link the migration phenomenon in the Greater Caribbean with the prevention and peaceful settlement of conflicts. The main source for this contribution is six years' experience as Special Rapporteur on the Human Rights of Migrants, a special mechanism of the United Nations. The globalization process has been gradually broadening approaches to migration from a purely national focus to encompassing regional and international perspectives. According to 2003 data in the *World Migration Report* of the International Organization for Migration:

The migration question has come to play a dominant role in international relations and diplomacy at the bilateral and multilateral levels. Many governments would never venture to fashion a migration policy without considering its impact on other national policies, and without taking into account international standards for migration, and the general implications for international policy.

The gradual shift toward a regional and multilateral approach for migration management is helping the global community move toward an improved understanding of migration processes. The emergence of regional consultation processes, such as the 1996 Puebla Process (Regional Conference on Migration: RCM) for North America, Central America, and the Caribbean, has increasingly promoted dialogue among decision-makers, government agencies, and non-governmental organizations for the exchange of information, policies, and ideas on how best to manage international migration. This article will examine the most sensitive aspects of migration—taking into account specific and essential issues and priorities for reducing violations of migrants' human rights, and giving priority to the relationship between migration and conflict prevention and resolution—and will offer recommendations from this point of view.

Conclusions

The complexity of today's globalized world, restrictive policies in migrants' destination countries, and indifference in the migrants' countries of origin (generally poor nations or those experiencing internal conflicts) have contributed to moving beyond a purely labor-oriented approach to migration and toward making the link between migration and the prevention of conflicts, which generates a greater understanding of the violations of migrants' human rights.

During visits conducted as Special Rapporteur on the Human Rights of Migrants, it has been made clear that the protection of migrants' human rights is intimately linked to the management of migratory flows and cannot be considered out of context, since this correlation is one of the primary variables to be considered for conflict prevention. Furthermore, states' establishment of migration policies consistent with international law is not incompatible with the maintenance of their sovereignty and ability to control their borders and the entry of persons in their territory. But, it is important to note that there are some contradictions between the establishment of state and regional migration policies dealing with human rights and refugee policies, and their implementation. The whole migration process must be carried out in a context that respects migrants' dignity, in keeping with the states' obligations to fulfill human rights.

Recommendations

1. It is necessary to develop a general framework for management and prevention of irregular migration, starting with the countries of origin. This would be the basis for determining methodologies for resolution of the conflicts in the area of migration that arise in the places of origin.
2. In this dynamic phenomenon involving various actors, the states of origin, transit, and destination share the responsibility to develop a coherent and fair response to the problems migrants face and the social challenges implicit in migration. The states' collective responsibility is the fundamental axis for a migration policy respectful of human rights and international legal commitments, for cooperation to properly honor obligations to the migrants, and for each state to share a different role depending on its status as a country of origin, transit, or destination.
3. Given the universally accepted principle of non-discrimination, states have the duty to protect the human rights of all persons under their jurisdiction, regardless of their nationality or migration status.
4. Potential migrants must be warned in their countries of origin about the risks of using channels or agents of transnational organized crime (*coyotes*, *polleros*, and *pasantes*), while the state of origin must be responsible for intensified measures to prevent illegal exit of its citizens.

5. In dealing with the study of the migration phenomenon and conflict resolution it is necessary to take into account health factors (including mental health), with specific attention to the consequences on the next generation of migrants (children of migrants), whose relatives have been victims of xenophobia, exclusion, and discrimination in the receiving country.
6. Victims of trafficking in persons within the context of international migration must receive specialized psychological care because of the trauma suffered at the hands of traffickers. This must be a key element in their comprehensive rehabilitation and reintegration into society.
7. Bilateral, regional, and global initiatives put forth in this article encourage the applicability of migration management in resolving conflicts; the exchange among the principal actors demonstrates how the international community has adopted a dynamic approach to the migration phenomenon, respecting migrants' human rights and incorporating a discussion on the impact on sustainable human development. The future of migration is increasingly seen as a means of dignifying the work of millions of men and women who contribute to development, and are increasingly addressed from a responsible international approach.
8. As regards the prevention of illegal smuggling of migrants, it is impossible to avoid a serious debate on the need for orderly migration flows where there is a great demand for immigration. It is also necessary to develop effective policies to prevent illegal migration, starting in the countries of origin with the proper documentation of citizens, educational campaigns, and creation of conditions allowing for permanence in those countries.

Mexico's Southern Border

5.1

Juan Artola

Introduction

It has been known for some time that the border is no longer merely the geographical and political limit of a state's territory and sovereignty, but also an area for movement of goods and people with complex economic and social interaction. The definition of a border has been superseded by the concept of a border region with unique characteristics resulting from its historic origins and its current makeup of various identities, active social networks, and transcultural processes. More than a divider, the border is a porous and active meeting place, with tensions and conflicts, but also with its own characteristics and potential.

In this context, we shall consider Mexico's southern border—specifically the Mexico-Guatemala border—and analyze three essential elements: the migratory flows, the geopolitical and economic setting, and the phenomenon of the gangs (*maras*). The perspective is from Mexico, with emphasis on the Chiapas area, where the “encounter” with Guatemala and Central America is more pronounced.

Conclusions and Recommendations

Mexico's southern border is experiencing sharp economic and social decline and pronounced isolation from the rest of the country, despite its potential from mining, oil, cultural resources, and biodiversity. With a strong indigenous presence since pre-Hispanic times, it has had close historical and social links with Guatemala and the rest of Mesoamerica. The porosity of the border, the uncontrollable thrust of migration, the existence of trafficking in arms, drugs, and persons, the proliferation of criminal groups, the growth in prostitution of Central American women and children, and a barely perceptible yet real militarization have conspired to create a grave political and social situation in the area, which is fraught with worrisome risks and conflicts.

1. The conditions of poverty, economic backwardness, and alienation of the peasants, which explain the migratory movements on the southern border, necessitate the design and implementation of local economic development programs with investment and loan components. Without these programs, which must include the indigenous culture component and reversal of environmental destruction, no sustainable management of the migratory flows appears likely.
2. The programs must include both the southern border of Mexico and the areas expelling migrants in the Central American countries, which will probably require a more open and active dialogue on these concerns between Mexico and its neighbors to the immediate south.
3. Respect for the rights of migrants crossing the southern border will also demand specific programs for their effective protection, including better training and awareness-building for the government agents. As regards the seasonal migrant workers, it would appear desirable to analyze the extension of current regulations to cover other non-farm sectors of activity, and other geographical areas along Mexico's borders.
4. In dealing with the problem of the gangs (*maras*), the emphasis must be on social and cultural aspects and programs for rehabilitation of youth to afford them an opportunity for dialogue and social reentry.

The Mara Salvatrucha and Barrio 18th Street Transnational Gangs: Social Exclusion, Crime, and Repressive Reactions

5.2

Wim Savenije

Introduction

Juvenile gangs, or *maras*, are a daunting phenomenon for many people in Central America, especially slum residents in the cities and towns. Although the gangs' enemies and primary victims are other youth in rival gangs, more and more often they are attacking ordinary people and the business executives who work in those areas. The *maras* have recently shifted their operations toward Mexico's southern border, assaulting undocumented immigrants headed for the United States. They are a real menace for the national authorities, who are trying to combat them with repressive legislation, conducting roundups, and sending captured young gang members to jail. However, the effects of these actions are not very sustainable nor successful in the long term because they overlook the problem's roots: social exclusion and a dismal future for many youth in the region.

This article will address the problem of the *maras*, which is currently of major concern to Mesoamerica (the region extending from central Mexico south to the northwestern border of Costa Rica and the United States), looking at its social dimensions, its transnational repercussions, and the police repression to which the authorities generally resort. The intent is to question the problem's combined social aspects and the government's repressive responses. Although the transnational gangs are active in an area covering several countries, they do not necessarily heighten the risk of interstate conflict—on the contrary, they are prompting coordination of repressive actions against them—they actually do comprise a violent transnational conflict between large groups of youth. That conflict is not based on national boundaries but identifications of “us” and “them” in terms of the huge gangs known as the Mara Salvatrucha (the MS), and Barrio 18th Street (Barrio 18).

The next section examines how social exclusion at the local level gives rise to processes that cause many young people to join juvenile gangs or *maras*. This will be followed by a brief description of the phenomenon of transnational gangs, their origin in the United States, and their spread throughout the Central American region and Mexico. The

following sections explore some factors that push youth toward joining the gangs: socialization in the street and the acceptance and friendship found there. Subsequently, there will be a brief description of the dominant political response of treating the transnational gangs as a national security issue for the individual countries, noting the response's limited effectiveness because of its failure to pay proper attention to the underlying social causes of the problem. After some general considerations, there will be a series of recommendations for public policy with a view to reducing the problem of transnational gangs, concentrating on the neglected social aspects.

Conclusion

In addition to the repressive responses and strict enforcement of existing legislation, both of which are needed to halt the acts of violence and crime committed by all citizens, the gangs, governments, and authorities in the region must pay urgent attention to the social problems of the poor in their societies. The juvenile gangs are essentially a problem of social exclusion, and thus a sustainable solution to them lies along the path of inclusion. This entails offering the youth and their families realistic hope for a brighter future, including opportunities for adequate education and decent work, and opportunities for dialogue—in the family and on the street—where they are recognized as individuals without having to fight for it. As the United Nations Development Program asserts, “It is a reasonably safe assertion that violence is most often a symptom of social disintegration. Whether this violence takes the form of individual assaults, armed conflict, or expressions of self-determination, it is an indicator that societies have not successfully fostered the full integration of all their members.” Despite all the good intentions and force the police may muster, they will never be able to overcome the negative effects of living in social exclusion and poverty, exacerbated by a street subculture that glorifies violence as the best way to win status and respect.

However, each of the countries affected by the transnational gang phenomenon attempts to eradicate their effects with repressive measures, ignoring the social roots. Although the authorities recognize that transnational gangs are a problem shared by Mesoamerica and the United States, they consider them a national security matter. There is a myopia that precludes them from seeing that the shared social dimensions have transnational repercussions. Such a vision may perhaps attenuate the problem for a time, while the repressive measures are in force and while repressive forces are in the streets; however, when repression wanes for political reasons or because the collective budget for it is depleted, the problem will resurface with a vengeance.

In periods of respite and recovery of physical space, achieved temporarily by intensive police repression, some inclusive social policies can start to work, drawing youth to productive activities and toward building a constructive future for themselves. Offering them educational opportunities, decently paid work, and interesting recreation facilities reduces the appeal of the street, especially if the police and the residents of the affected communities can disable the operation and persuasion of the code of the street.

In summary, the fight against regional insecurity caused by gangs must be based on social policies aimed at the marginal sectors in the region of Central America, Mexico, and the United States, policies aimed especially at youth, to afford them genuine opportunities to achieve an interesting and appealing future, eliminating the situations of social exclusion that most of them experience. In the words of one veteran gang member: "It's not true that they're going to do away with all the gang members; they don't end with the gangs. Sooner or later one gets out of prison, and one comes crazier...They would do better to give us a job and ask us why we are gang members."

Recommendations

Local Level

1. *Meet the need to belong:* Encourage youth social organizations in the neighborhoods (community centers, recreation activities, art, sports, etc.) and develop youth leadership and social responsibility.
2. *Counteract the socialization of the street:* Establish and use adult leadership and supervision; organize community support for families; and encourage control and social responsibility.
3. *Restore legal order:* Establish community police who work directly with the community and support it in its efforts to create a healthy environment.

National level

1. *Invest in social structure:* Implement urban planning to prevent intolerable levels of overcrowding, construct basic services and playing fields; promote national youth organizations; develop and implement a youth policy; and establish community police (stationed permanently in the affected slums) to build rapport and trust with the residents.
2. *Establish and encourage a youth labor market:* Introduce an educational system to prepare youth to meet the challenges of the labor market; create jobs for young people; support local labor initiatives; and generate access to national and regional work opportunities.
3. *Strengthen the judicial system and eliminate impunity:* Enforce existing laws strictly and strengthen the system in its application (prosecutors, legal system, police), because tough new laws will not work if the state cannot enforce the existing ones.

Regional (Mesoamerica and the United States)

1. *Regional coordination:* Develop and support geographical areas that are impoverished and decaying and link them with more developed areas and with new opportunities; design regional youth policies.
2. *Police coordination:* Protect migrants throughout the region in cooperation with the communities; encourage youth participation in the security systems.
3. *Social policies:* Integrate social and economic policies to serve the at-risk sectors; encourage the regional youth labor market.
4. *Research:* Conduct more in-depth studies of the phenomenon and development of local and transnational gangs in various countries and localities in order to better understand their similarities and differences (better understanding in order to support the design of public social policies that strengthen the communities and prevent the resurgence of gang violence and crime).

Forced Migration and Hot Borders: The Colombia-Ecuador Case

7.1

Fredy Rivera Vélez

Introduction

The various economic, political, and humanitarian facets of migration issues now figure prominently on the agendas of international organizations, governments, and non-governmental organizations. Attention in Latin America and the Caribbean has centered on the financial flows and economic impact of remittances in the receiving countries and on how the local population involved with migration is affected psychologically, at the family level, and in terms of the next generation and educational opportunities. In recent years, however, there has been growing international concern over the linkage between migration and national security in various parts of the hemisphere.

When the United States announced its new defense policy and national security strategy in September 2002, it adopted a unilateral approach to foreign policy, which sees terrorism, drug trafficking, and preventive military action as a means of exerting hemispheric leadership. In this context the Latin American countries, especially those in the Andean region, have become the target of political and economic pressure to establish common national security cooperation strategies that include drastic control of migratory flows overland and through the various sea routes. Although there have been no specific military actions to deal with migration issues, they are implicit in the actions and speeches on the drug war that the U.S. government is waging in the Andean region.

Furthermore, the impact of regional security strategy on forced migration is seen as a collateral effect of this unilateral perspective on drug trafficking, which is a problem shared by producer and consumer countries. Forced migration of Colombians to Ecuador is thus presumed to result from a regional security strategy applied in both countries that violates the individuals' human rights and must be urgently addressed with conflict prevention policies on various fronts.

Ecuador has experienced recurring political crises and a lack of governability that have cut short the terms of recent constitutional presidents, as well as caused a gradual weakening of government institutions and increasing socio-political strife. In this context, the fight against drug trafficking and national security issues involved in management of the northern border are presently on the front burner for officials and

Ecuadorian society in general. Considering as well the indirect intervention of Plan Colombia in the country, and the nature of the changing bilateral relations between the United States and Colombia, the situation is complicated, uncertain, and with unpredictable results for the Andean region's future.

Although the drug trafficking problem was initially limited to law enforcement and legal actions of the Andean Initiative, in recent years it has assumed greater importance because of the complexity of approaches and the myriad of agencies involved, as well as the perceptions regarding the presence of these agencies. In effect, Ecuador's indirect participation in Plan Colombia has made it necessary for foreign policy to address several challenges and demands posed by the U.S. national security interests in the region.

In the case of Ecuador, the approach to the drug trafficking problem and control of the northern border is linked to several factors:

- The presence of clandestine networks for trade in precursor chemicals, weapons, ammunition, and explosives destined for the various armed actors in Colombia;
- Money laundering activities that have not been accurately quantified, especially since Ecuador's economy uses the dollar, and its financial system, with scant state control, has been rife with acts of corruption, tax evasion, and impunity;
- Changes and loopholes in the justice system regarding drug trafficking, which have caused tension and distortion in the legislative area;
- Strengthening of police agencies and their enforcement capacity in various areas of society, with a trend toward militarization of these police agencies;
- Intervention of the armed forces in actions that go beyond drug trafficking to prevent violence coming in from Colombia and its various armed actors;
- Challenges to effective implementation of the human rights system in border areas affected by Plan Colombia;
- Limited accountability and transparency of the operations of various Ecuadorian agencies involved in drug trafficking and security, which violates the rules of democratic governance and affects the various social sectors; and
- The growing presence of Colombians who have fled their country to seek refuge and protection in Ecuador, a factor that has had negative impacts on the institutions and the daily life of Ecuadorian society.

Ecuador is thus trying to sort out and deal with the various interpretations concerning national security, forced migration of the Colombian population, the protection of human rights, and the best way to strengthen the country's democratic values and institutions.

Conclusions

In recent years Ecuador has become increasingly involved in the regional security strategy promoted by the U.S. government. Some of the main burdens Ecuador has had to bear because of its involvement in the Plan Colombia include: the presence of U.S. military personnel at the Manta army base; actions to strengthen police and army operations in the northern border areas; control measures imposed on the population that have had economic and political impacts; ecological and health effects from spraying to reduce coca cultivation in Colombian territory; and repercussions of "securitization" on the human rights system.

This intervention must be seen in the context of the weakness and fragility of the state and several of its institutions engaged in the fight against drug trafficking and in serving the Colombian migrant population. Drug trafficking, together with the new interpretation given to national security, is causing a series of weaknesses and problems in democracy and governance that are reflected in the government agencies' lack of control and their meager accountability to the public.

The lack of transparency, the existence of corruption in the judicial and police system, and the red tape of the agencies tasked with controlling drug trafficking are contributing factors to the emergence of illegitimacy and impunity that undermines the human rights system of the Ecuadorian people. As a result, the most pernicious effects of the anti-drug struggle and the Plan Colombia are reflected not only in the social statistics, but also in the changes that these strategies produce in the structure of Ecuador's social fabric, since the "collateral damage" appears later, when nothing can block the effects of the "securitization" process.

Recommendations

1. It is necessary to establish international observatory mechanisms through the Organization of American States (OAS) to monitor the conflicts inherent in the migratory effects of regional and Andean drug strategies. These observatories on the conflict between security and migration can be made up of government representatives, international human rights organizations and other non-governmental organizations, and UN agencies.

2. The government of Ecuador needs to create management institutions capable of coordinating the various activities carried out by security agencies. In this vein, it is essential to establish congressional committees with oversight over the actions of agencies responsible for migration and border issues. The OAS and the Andean Parliament could support these committees.
3. Another step involves media relations. It is necessary to train those that have influence over the formation of public opinion to increase public awareness of the risks inherent in directly associating migration issues with national security because it violates many human rights.
4. In the international sphere, Ecuador's drug trafficking policy is dominated by two specific components from what is now being called the Washington-Bogotá axis. The first is the current pressure to increase the number of maritime seizures and achieve extra-territorial application of U.S. law. On this point it would be desirable to establish mechanisms for protection and application of international law because it is a vital issue for bilateral and multilateral relations in the hemisphere.
5. Also needed is a policy for protection of the ever-growing Colombian refugee population. Respect for human rights, promotion of transparency in public administration, intensification of the fight against corruption, and achieving a fair redistribution of wealth are all priority missions in regional contexts characterized by the increasing "securitization" of humanitarian issues.

Kidnapping on the Colombia-Venezuela Border

7.2

Lancelot Cowie

Introduction

As the graph below shows, between 75 percent and 80 percent of the world's kidnappings occur in the Latin American region. Carlos Marighella, the eminent expert on urban guerrillas, defines the process as seizing a police officer, a U.S. spy, a political figure, or a dangerous enemy of the revolutionary movement, and detaining the person in a clandestine location. The operation has to be well executed to avoid public condemnation.

This phenomenon continues to the present time, fanned now by the increase in drug trafficking, especially in Colombia and Mexico. Scholars who are analyzing the scourge attribute the growth of the problem in Colombia to the intensification of guerrilla violence, increased unemployment, and illegal drug trafficking. In modern non-conventional combat, kidnapping plays a special role: the taking of hostages and kidnapping of prominent figures to fill the guerrillas' coffers with huge sums demanded as ransom. The border between Colombia and Venezuela has become a venue where this phenomenon occurs with increasing frequency. The study of binational border kidnapping and some possible solutions are the core themes of this article.

Conclusions

The two governments have signed agreements in an effort to eliminate this problematic element in their relations. They established a Military Border Commission (Comisión Militar Fronteriza: Combifron), and analyzed this matter specifically. However, the situation is constantly changing and the agreements are not permanent. Only vehicle theft across the border, which was a serious problem until 1997, has been resolved with a meeting of minds on the issue. The other aspects of the conflict continue to cloud relations between Venezuela and Colombia.

Displaced Colombians fleeing violence in their country come illegally to Venezuela and are at the mercy of heartless factory and farm owners who exploit them, and are abused by politicians who offer them Venezuelan identity cards in exchange for their votes;

others are unable to obtain legal documents although they may have been living in Venezuela for years, which restricts their free movement around the country. Both countries' governments have tried to resolve the border crises, but solutions have always proved elusive because of various obstacles or contrary interpretations of both the border problem and the presence of guerrillas on the border.

Recommendations

The following suggestions are put forth with a view to achieving peace and harmonious coexistence on the Colombia-Venezuela border:

1. Increase teamwork of officials and military officers in both border zones to develop control instruments to clean up and curtail criminal activity.
2. Strengthen the legal system to approach the problem in the light of the challenges of the 21st century: drug trafficking, trafficking in persons, kidnapping, violation of human rights, guerrilla nuclei, and illegal trade.
3. Invest in state-of-the-art technology to combat the guerrillas.
4. Train the police to do a better job of detecting and preventing border crime.
5. Strengthen regular summits of the presidents of both countries and their representatives in order to seriously analyze conflict prevention and reduce the high level of tension associated with this problem.
6. Institute the effective participation of the educational system and other non-governmental organizations to promote mutual understanding among the communities that reside in the conflict areas and prevent the violence that the conflict engenders.

About the Editors and Contributors

About the Editors and Contributors

(in alphabetical order)

Maureen Achieng is Chief of Mission in Haiti for the International Organization for Migration (IOM). She started her international career with IOM in the mid 1990s in Haiti, and has since worked with IOM in various other countries in a variety of focus areas, including, most recently, at the IOM Technical Cooperation on Migration unit in Geneva; she returned to Haiti in November 2004. Ms. Achieng holds a Master of Social Science degree in Development Studies from the School of Social Studies, Birmingham University, United Kingdom.

Juan Artola is IOM's Chief of Mission in Mexico. Previously, he worked as a consultant for the UN Development Program (UNDP) and the UN High Commissioner for Refugees (UNHCR), and since 1988, has held positions with IOM in Nicaragua, Peru, Haiti, and the Dominican Republic. He has published several articles and papers on migration trends in Central America and the Caribbean and the role of migration in regional integration processes. Originally from Uruguay, Mr. Artola studied Sociology in Montevideo and has a Master's degree in International Relations from the Universidad Centroamericana in Managua, Nicaragua.

Juan Antonio Blanco is the Director of the Latin America and the Caribbean component of the *Initiative on Conflict Prevention through Quiet Diplomacy* at Human Rights Internet. In the 1980s he was head of the Non-Aligned Countries Political Department at the Cuban Ministry of Foreign Affairs and a diplomat posted at the United Nations in New York. In 1998 he was the Chair of the "Vienna Plus Five" global civil society follow-up to the 1993 World Conference on Human Rights and since has lectured internationally, authored various articles, and worked with NGOs to promote civil society dialogue processes on human rights, peace, and conflict issues in Latin America and the Caribbean. Dr. Blanco holds a Ph.D. in Historical Sciences from the National Council of Sciences of Cuba, and is a former Professor of Philosophy at the University of Havana, Cuba.

Nina Bruni is a doctoral candidate in Spanish and a lecturer in Spanish Language and Spanish American Literature at The University of the West Indies, Department of Liberal Arts in St. Augustine, Trinidad and Tobago. She is also a Research Fellow at The University of the West Indies' Center for Latin America and the Caribbean (CENLAC). Born in Buenos Aires, Ms. Bruni pursued studies in Humanities at the Universidad Católica Argentina, Santa María de los Buenos Aires and obtained a Master's degree in Sociology of Culture at the Universidad Nacional de San Martín, Buenos Aires, Argentina.

Shayna Buhler is a Program Officer at the Interagency Coalition on AIDS and Development in Ottawa, Canada. Immediately prior she worked as a Program Assistant for Human Rights Internet and took part in their internship program with NetCorps, a human rights NGO in Sri Lanka. At Human Rights Internet Ms. Buhler gave programmatic support to the *Initiative on Conflict Prevention through Quiet Diplomacy*. She holds a Bachelor's in Social Work from McGill University in Montreal, Quebec.

Fernando Calado is Director of Programs for IOM in Colombia. Previously, he worked in the Peace Process unit at Fondo Nacional por la Paz (FONAPAZ) in Guatemala and was Project Coordinator for IOM in Guatemala, Field Office Director for IOM in Timor L'este, Consultant on the Program of Peace, and Program Officer of the Program of Post Emergency Assistance to IDPs, receiving communities and other populations for IOM in Colombia. Mr. Calado received training in Psychology from Valle de Guatemala University, and holds a Master's degree in Public Policy from Georgetown University, Washington, DC.

Ryszard Cholewinski works for the Migration Policy Research and Communications Department for IOM in Geneva. He specializes in international migration law with a particular focus on the human rights of migrants, international labor migration, and the European Union's developing migration law and policy, and he has published widely on all of these topics. Prior to joining IOM, Mr. Cholewinski was Reader in Law in the Faculty of Law at the University of Leicester in the United Kingdom. He holds degrees from the Universities of Ottawa (LL.D.) and Saskatchewan (LL.M.) in Canada and the University of Leicester (LL.B.), United Kingdom.

Lancelot Cowie is the Founder and Director of CENLAC at The University of the West Indies, St. Augustine, Trinidad and Tobago. He has published various articles in refereed journals and books on social and cultural issues on Latin America, and his latest book is *Fuegos de Resistencia: Insurrección y Narrativa en Venezuela 1960-1970* (2000), Universidad de los Andes, Mérida, Venezuela. Dr. Cowie received a Ph.D in Latin American Studies from The University of the West Indies, Mona, Jamaica in 1976.

Lindy-Ann Edwards is a Research Assistant in the Office of the Secretary General, Association of Caribbean States in Port of Spain, Trinidad and Tobago. Her focal areas of research include cooperation within the Greater Caribbean region as well as the international relations of Latin America and the English-speaking Caribbean. The latter formed the basis of her undergraduate thesis "Socialist Experiments under Siege: Nicaragua and Grenada." She graduated with a B.A. in Latin American Studies from The University of the West Indies, St. Augustine and will be pursuing a Master's degree in Social Science from the Latin American Faculty of Social Science (Facultad Latinoamericana de Ciencias Sociales, FLACSO) in Mexico in fall 2006.

James Ferguson is a freelance researcher/writer and has worked with the Minority Rights Group, London and the Latin America Bureau, London, among other organizations. He is the author of books on Haiti, the Dominican Republic, Grenada and Venezuela, including: *The Travelers Literary Companion to the Caribbean* (1997), *Venezuela in Focus* (1995), *Dominican Republic: Beyond the Lighthouse* (1992), *Far From Paradise: An Introduction to Caribbean Development* (1990), *Grenada: Revolution in Reverse* (1990), *Papa Doc, Baby Doc: Haiti and the Duvaliers* (1986). He was previously a research fellow at St. Edmund Hall, University of Oxford, United Kingdom.

Berta Fernández-Alfaro is Project Officer for the Caribbean and Central America at IOM's Regional Office in Washington, DC, where she is in charge of the design, development and monitoring of programs on migration management, trafficking in persons, HIV/AIDS, and mobile populations. Previously, she worked for IOM's Regional Office for Central America and Mexico in Costa Rica, and various development organizations in Spain. Ms. Fernández-Alfaro pursued graduate studies at the Central American Institute of Public Administration (ICAP), and obtained a Master's degree in European Community Law from the Universidad Autónoma of Madrid, Spain in 1998 and a Law Degree from the Universidad of Valencia, Spain and Johannes Gutenberg University, Germany in 1994.

Ashley Garrett is the Project Manager for Trafficking in Persons for IOM's Regional Office for North America and the Caribbean. As such, she is implementing several research, training and capacity building programs on trafficking in persons within the region. Previously, she evaluated legal reform and domestic violence programs in the Caribbean for UN Children's Fund (UNICEF) and has worked for many years as a victim advocate. Ms. Garrett received a Bachelor of Arts from the University of Colorado and a Master of Public Administration in International Public Administration from the Monterey Institute of International Studies in California.

Bernard Headley is Professor of Criminology in the Department of Sociology, Psychology, and Social Work, The University of the West Indies, Mona, Jamaica, and Professor Emeritus of Criminal Justice, Northeastern Illinois University outside of Chicago. He is a twice-awarded Senior Fulbright Scholar who has written and published extensively on crime and criminal justice policy; his most recent book is *Deported: Entry and Exit Findings of Jamaicans Returned from the United States between 1997 and 2003* (2005). Dr. Headley holds a Ph.D in Sociology from Howard University, Washington, DC.

Kamala Kempadoo is Associate Professor in the Department of Social Science at York University, Toronto, where she teaches Caribbean Studies. Since the late 1980s her research has examined racial, gender, and economic relations in the global sex trade. Her main publications are: *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work and Human Rights* (2005); *Sexing the Caribbean: Gender, Race and Sexual Labor* (2004), *Sun, Sex and Gold: Tourism and Sex Work in the Caribbean* (1999), and *Global Sex Workers: Rights, Resistance and Redefinition* (1998). Dr. Kempadoo holds a Ph.D in Sociology from the University of Colorado.

Taryn Lesser coordinates the Latin America and the Caribbean component of *Human Rights Internet's Initiative on Conflict Prevention through Quiet Diplomacy*. In 2005, she was a Visiting Research Fellow, Office of the Secretary General, Association of Caribbean States in Port of Spain, Trinidad and Tobago, where she focused on exploring issues of conflict in the Greater Caribbean. Previously, Ms. Lesser worked in immigration law and human rights advocacy with various NGOs in the United States and Argentina. She received a Bachelor of Arts degree in International Development and Spanish Language/Literature from the University of California, Berkeley and a Master's degree in International Law and Human Rights from The Fletcher School of Law and Diplomacy, Tufts University near Boston, Massachusetts.

Amy Mahoney is a Project Coordinator for Trafficking in Persons within IOM's Regional Office for North America and the Caribbean in Washington, DC. As such, she is involved in the development of IOM Counter-Trafficking Training Modules based on IOM best practices worldwide. She has also served as editor and research coordinator for the publication *Exploratory Assessment of Trafficking in Persons in the Caribbean Region*, and as a case manager for an IOM program that assists victims of human trafficking found in the United States. Ms. Mahoney received a Bachelor of Arts at the Croft Institute for International Studies, Mississippi, and a Master of Arts in International Development at American University's School of International Service, Washington, DC.

Janice Marshall has worked for UNHCR since 1991 and recently completed her post as Senior Regional Protection Officer for the Caribbean at UNHCR's Regional Office in Washington, DC. Ms. Marshall has previously served the office as a protection officer in Central America, as a legal officer in the Department of International Protection at Headquarters in Geneva, and on emergency missions in Africa, Europe, and the Caribbean. She worked on refugee status determination and refugee policy for the government of Canada for several years before joining UNHCR. A Canadian national, Ms. Marshall holds a Juris Doctor from the Faculty of Law at the University of Toronto, Canada.

Diana Medrano is a Specialist in Institutional and Community Strengthening for the Program on Post Emergency Assistance to internally displaced persons, receiving communities, and other populations for IOM in Colombia. Previously, she was a Lecturer/Researcher for Los Andes and Javeriana Universities in Colombia and a Researcher/Consultant for various organizations, such as UNICEF, UNFPA, UNIFEM, ILO, FAO, IICA, and UNHCR. She has also worked for the Ministry of Agriculture's Office of Rural Woman and National Department of Planning, and was the Assistant Director of the Colombian Institute of Family Welfare. Ms. Medrano received a Diploma in Anthropology, and holds a Master of Arts in Rural Development from Los Andes University, Colombia.

Sophie Nonnenmacher is a Migration Policy Specialist in the Migration Policy Research and Communications Department at IOM's headquarters in Geneva. She specializes in all aspects of international labor migration and also workers' mobility as manifested in the General Agreement on Trade in Services (GATS) Mode 4 and other regional free trade arrangements. Sophie holds Master's degrees in International Cooperation and Development from the Department of Political Science, University of Paris (Sorbonne) and in Social Anthropology from the School of Higher Studies in Social Sciences, Paris, France.

John Packer is Principal Investigator and Project Coordinator of the *Initiative on Conflict Prevention through Quiet Diplomacy* at Human Rights Internet. He also advises on conflict prevention and transformation in a number of situations on a consultative basis. Until February 2004, Mr. Packer was first Senior Legal Advisor (1996-2000) then Director (2000-2004) in the Office of the High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE) in The Hague. He previously worked for the United Nations, investigating serious human rights violations in Iraq, Myanmar/Burma and Afghanistan, and for UNHCR and ILO. Mr. Packer holds a LL.M. in International Human Rights Law from the University of Essex, United Kingdom.

Gerard Pascua has been an official of IOM since 2001, first as Coordinator of the Regional Conference on Migration (RCM) Technical Secretariat based in San José, Costa Rica, subsequently as Officer in Charge of technical cooperation programs in The Bahamas, and most currently as Senior Migration Expert initiating IOM's technical assistance program in Port of Spain, Trinidad and Tobago. A U.S. citizen, Mr. Pascua served abroad for a number of years as a career diplomat, principally in Latin America, the Pacific, and East Asia (China). He graduated with a Bachelor of Arts from Cornell University in Ithaca, New York.

Esteban Pérez Caldentey is Coordinator of the Economics Unit at the UN Economic Commission for Latin America and the Caribbean (ECLAC), Sub-regional Headquarters for the Caribbean in Trinidad and Tobago, and has worked for the United Nations since 1995. His work is included in such recent publications as: *Means to Prosperity: Fiscal Policy Reconsidered* (2005) and *Globalization and Development: Challenges of Puerto Rico for the 21st Century* (2005), as well as a working paper on *Export Promotion Policies in the Caribbean* (November 2005). Dr. Caldentey holds a Master's degree and Ph.D from the New School for Social Research, New York.

Jillyanne Redpath is a Senior Legal Officer in the Department of International Migration Law and Legal Affairs for IOM's headquarters in Geneva. During her time at IOM, she has worked on issues such as migrants' rights, comparative immigration law and policies, migration and security, and trafficking in human beings. Prior to joining IOM, Ms. Redpath worked in Australia as a University Lecturer and as an attorney. She completed an LL.M. at the University of Cambridge, United Kingdom, and received a B.A./LL.B. from Monash University, Australia.

Gabriela Rodríguez Pizarro is Chief of Mission for IOM in Chile and was the UN Special Rapporteur on the Human Rights of Migrants from 1999 to 2005. She has carried out official visits and worked on continuous projects with inter-governmental organizations, migration NGOs, and member states of the UN worldwide, focusing on the rights of refugees, the internally displaced, and victims of torture. Previously, she was founder/director of two NGOs: Servicios Profesionales El Productor and Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM), both in San José, Costa Rica. Dr. Rodríguez Pizarro studied Psychology at the Universidad Católica de Chile and received a Ph.D. in Psychology from the Universidad de Caen, France.

Fredy Rivera Vélez is Research Professor in International Relations, Political Science, and Anthropology and is the Academic Coordinator of Post-Graduate Programs in Politics, Security, and Democracy at FLACSO in Ecuador. His most recent publications include contributions in *Drugs and Democracy in Latin America: The Impact of U.S. Policy* (2005) and *The Andes in Focus: Security, Democracy and Economic Reform* (2005). He received a Master of Arts in Social Sciences from FLACSO in Mexico, and is concluding his Ph.D in Sociology at the National University of Cuyo, Argentina.

Wim Savenije is Researcher and Lecturer at FLACSO in El Salvador. His areas of interest are social exclusion, youth groups, and violence. His most recent publications on these topics include contributions in *Foreign Affairs en Español* (2004), *Armed Actors: Organized Violence and State Failure in Latin America* (2004), and *Conviviendo en la orilla: Violencia y exclusión social en el Área Metropolitana de San Salvador* (2003). He graduated in Philosophy and Social Psychology from Utrecht University, the Netherlands.

Karoline Schmid is Population Affairs Officer for the ECLAC Sub-regional Headquarters in the Caribbean, Port of Spain, Trinidad and Tobago, where she has spent three of her ten years working in the UN system. Her areas of work focus on population and sustainable development, with a particular focus on population ageing and migration in the Caribbean. Dr. Schmid's educational background is in Sociology and Demography, and she has received a Diploma from the University of Bamberg, Germany and a Ph.D. from the University of Marburg, Germany.

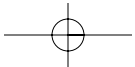
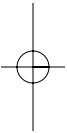
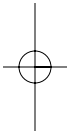
Stephanie Schmidt is Program Officer for Turkey and Georgia at the National Democratic Institute for International Affairs (NDI). She has also worked in the fields of human and minority rights, civil society development, democratization, and international development with the U.S. Department of Defense, American Bar Association/Central and East European Law Initiative (ABA/CEELI), U.S. Peace Corps, Kesaj Foundation, and the Center for Strategic and International Studies (CSIS). In 2001, she co-authored, edited and translated a book with the Kesaj Foundation on the situation of the Romani minority in Slovakia. She received a Bachelor's degree in International Studies from American University and a Master's degree in International Law and Human Rights from The Fletcher School of Law and Diplomacy, Tufts University near Boston, Massachusetts.

Richard E. Scott is the Regional Representative for IOM in Washington, DC, covering North America and the Caribbean. He joined IOM in 1977 and has previously represented IOM in Afghanistan, Iraq, and Russia, as well as serving as IOM's Permanent Observer to the UN in New York and as Chief of Program Evaluation at IOM Headquarters in Geneva. Mr. Scott received a Bachelor of Science degree from Iowa State University.

Arturo Silva was IOM's Regional Health Advisor on Migrating Populations for Latin American and the Caribbean, based in Colombia. He specializes in the health status of mobile populations and was involved in IOM's programs on the internally displaced. He has also collaborated with UNICEF and the Pan-American Health Organization on issues related to reducing migrants' vulnerability to HIV/AIDS and natural disasters. Dr. Silva is a medical doctor and received a *Master of Science in Public Health in Developing Countries from the London School of Hygiene and Tropical Medicine, London University, United Kingdom, in 2000.*

Jeanette Stovel is the Project Manager for the *Initiative on Conflict Prevention through Quiet Diplomacy* at Human Rights Internet. She joined HRI in July 2005 with responsibility for both the general operations of Human Rights Internet and the project management of the *Initiative*. Previously, she was the Program Analyst for the OSCE Office for Democratic Institutions and Human Rights, responsible for program development, management, and administration, and has worked for over fifteen years in various capacities in Canada, Poland, China, Russia and the former Yugoslavia. Ms. Stovel holds a Master's of Business Administration from the Warsaw School of Economics, Poland, a Master's diploma in Japanese from the University of Hiroshima, Japan, a Bachelor's degree in East Asian Studies from McGill University, Canada, and has studied at East China University in Shanghai, China.

Elizabeth Thomas-Hope is the James Seivright Moss-Solomon Professor of Environmental Management at The University of the West Indies at the Mona Campus, Kingston, Jamaica. She has researched many aspects of Caribbean migration, and her published work on this topic is *Explanation in Caribbean Migration: Perception and the Image: Jamaica, Barbados, St. Vincent* (reprinted 2002), as well as other contributions in *International Migration, Work and Migration: Life and Livelihoods in a Globalizing World* (2002) and *Emigration Dynamics in Developing Countries: Volume III: Mexico, Central America and the Caribbean* (1999), among others. She received her Doctorate from the University of Oxford, United Kingdom.



About the Organizations Involved

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Principal Collaborators

Human Rights Internet (HRI)

Human Rights Internet is a non-governmental consulting and capacity-building organization, committed to the promotion of human rights in the areas of social justice, good governance, and conflict prevention. HRI seeks to accomplish its goals through policy formation, knowledge transfer, the promotion of dialogue, training and information distribution; HRI works with governmental, inter-governmental and non-governmental actors to initiate policy change, disseminate information, and empower marginalized groups. Founded in 1976, HRI was originally launched in the United States at Harvard University and currently has its headquarters in Ottawa, Canada, where it communicates with thousands of organizations and individuals worldwide for the advancement of human rights.

Among HRI's principal programs is the *Initiative on Conflict Prevention through Quiet Diplomacy*, an undertaking by a consortium of organizations aimed at preventing violent conflict through cooperative, problem-solving and quiet diplomatic arrangements within existing regional and sub-regional inter-governmental organizations. The Initiative seeks to stimulate institution-building to this effect, facilitated by a systematic cross-regional sharing of experiences, with a view to creating space and means for management of differences including inclusive processes and a human rights-informed approach. Activities developed by regional partners are being implemented to enhance institutionalized conflict prevention in the following regions: Africa, East and Southeast Asia, Latin America and the Caribbean, the Middle East, the Pacific Islands, and South Asia. Specifically in Latin America and the Caribbean, HRI has formed partnerships with the Association of Caribbean States and the Organization of American States. For more information, please refer to the HRI website: <http://www.hri.ca>.

International Organization for Migration (IOM)

Established in 1951 as an inter-governmental organization to resettle European displaced persons, refugees and migrants, the International Organization for Migration has now grown to encompass a variety of migration management activities throughout the world. Today, as the leading international organization for migration, IOM remains committed to the principle that humane and orderly migration benefits migrants and society. IOM works with its partners in the international community to assist in meeting the operational challenges of migration management, advance understanding of migration issues, encourage social and economic development through migration, and uphold the dignity and well-being of migrants.

IOM's regional office in Washington, DC coordinates with offices in North America and the Caribbean and serves as a liaison with United States government counterparts, government of Canada counterparts, IOM offices around the world, along with other international and non-governmental organizations. The office also works in close cooperation with the IOM United States Refugee Resettlement Program Office and the IOM Office of the Permanent Observer to the United Nations, both located in New York. The office's other activities include: counter-trafficking programming for the United States and the Caribbean, support and liaison work on the IOM community stabilization programs worldwide, project development and implementation, technical cooperation and capacity building, and media and external relations outreach for the Western Hemisphere. For more information, please refer to the IOM website: <http://www.iom.int>.

The Association of Caribbean States (ACS)

The Convention establishing the Association of Caribbean States was signed in 1994 with the aim of promoting consultation, cooperation, and concerted action among all the countries of the Caribbean in the priority areas of Trade, Sustainable Tourism, Transport and Natural Disasters. The ACS comprises 25 Member States and three Associate Members and its objectives include: the strengthening of regional cooperation and integration processes, with a view to creating an enhanced economic space in the region; preserving the environmental integrity of the Caribbean Sea, which is regarded as the common patrimony of the peoples of the region; and promoting the sustainable development of the Greater Caribbean.

Member States include: Antigua and Barbuda, The Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Venezuela. Associate Members include: Aruba, France (on behalf of French Guiana, Guadeloupe and Martinique), the Netherlands Antilles and the Turks and Caicos Islands. In addition, the organization has partnered with the following Founding Observers: the Caribbean Community (CARICOM), the Latin American Economic System (SELA), the

Central American Integration System (SICA), and the Permanent Secretariat of the General Agreement on Central American Economic Integration (SIECA), the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), and the Caribbean Tourism Organization (CTO). For more information, please refer to the ACS website: <http://www.acs-aec.org>.

The University of the West Indies (UWI)

The University of the West Indies is an autonomous regional institution supported by and serving 15 different countries in the West Indies—Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, British Virgin Islands, Cayman Islands, Dominica, Grenada, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. The University was founded in 1948 at the Mona campus in Jamaica, as a University College in a special relationship with the University of London. The University achieved independent status in 1962. The University has three main campuses: Mona, Jamaica; Cave Hill, Barbados; and St. Augustine, Trinidad and Tobago. The St. Augustine, Trinidad campus, which was formerly the Imperial College of Tropical Agriculture, was started in 1960. The Cave Hill, Barbados campus was established in 1963. In addition to the three main campuses, The University has centers in all of its non-campus Caribbean countries.

The Center for Latin America and the Caribbean (CENLAC) was launched at the St. Augustine, Trinidad campus in January 2003 as a joint effort between the Faculty of Humanities and Education and the Institute of International Relations. CENLAC's philosophy is the promotion of networking systems with other Latin American study centers as well as non-governmental and inter-governmental organizations. CENLAC promotes efforts in Latin American and Caribbean Studies and fosters linkages with other Latin American study centers in South America, Europe and Asia; it also aims to provide high quality research services, which encompass several major academic disciplines, such as social sciences, literary studies, economics, politics, history, natural sciences, and international relations. For more information, please refer to the UWI website: <http://www.uwi.edu/> and the website of the UWI, Institute for International Relations, St. Augustine: <http://sta.uwi.edu/iir/default.html>.

Contributing Partners

La Facultad Latinoamericana de Ciencias Sociales (FLACSO)

La Facultad Latinoamericana de Ciencias Sociales (Latin American Faculty of Social Sciences) is an international organization that was established through the initiative of the UN Scientific, Educational, and Cultural Organization (UNESCO) in 1957, and currently maintains operations in 14 Latin American countries. FLACSO's objectives are to promote teaching, research, and scientific cooperation in the social sciences throughout Latin American and the Caribbean. The regional nature of the institution

gives it strong linkages with universities, government agencies, and non-governmental organizations. FLACSO's faculty members are influential researchers and authors in all fields of the social sciences, especially political science, and are frequently consulted by governments and international organizations throughout Latin America.

FLACSO has academic centers in Argentina, Brazil, Chile, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Mexico, and the Dominican Republic, with additional activities in Bolivia, Honduras, Nicaragua, Panama, and Suriname. The various centers, programs, and related activities are coordinated through FLACSO's Secretariat, which has been in San José, Costa Rica since 1979. For more information on FLACSO and to access information for the country-specific academic centers, please see: <http://www.flacso.org>.

*United Nations Economic Commission
for Latin America and the Caribbean (ECLAC)*

The Economic Commission for Latin America and the Caribbean is one of five commissions of the United Nations Economic and Social Council (ECOSOC) that report to the United Nations on the economic and social development activities of their respective regions. ECLAC's office in Port of Spain, Trinidad is the Sub-regional Headquarters for the Caribbean and is part of a network of offices of the Commission which, apart from its Headquarters in Santiago, Chile, has Sub-regional Headquarters for Mexico, Central America and Panama in Mexico City, and offices in Bogota, Buenos Aires, Brasilia, Montevideo and Washington, DC. The main functions of ECLAC are: to undertake studies, research and other supporting activities and to provide substantive servicing and documentation to the Commission; to promote economic and social development through regional and sub-regional cooperation and integration; and to enhance cooperation and collaboration with other United Nations organs, regional inter-governmental bodies, and civil society commensurate with the needs and priorities of the region.

The Caribbean Development and Cooperation Committee (CDCC) is a permanent subsidiary body of ECLAC at the governmental level. As such, the CDCC reports to ECLAC, acting through its sub-regional office in Port of Spain, which in turn reports to the Economic and Social Council. The work program of the CDCC is also part of the United Nations-approved regular ECLAC work program, which relates to the promotion of cooperation for economic and social development among CDCC member countries and other parts of Latin America. For more information on ECLAC's Sub-regional Office for the Caribbean please see: <http://www.eclac.cl/portofspain/>.

United Nations High Commissioner for Refugees (UNHCR)

The Office of the United Nations High Commissioner for Refugees, established in 1950 by the United Nations General Assembly, is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees, though in recent years it has increasingly become involved in additional humanitarian endeavors, including protection and assistance for stateless people, internally displaced people, and other similar populations. UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, with the option to return home voluntarily, integrate locally, or resettle in a third country. The Office relies heavily on partnerships with governments, non-governmental organizations, other UN offices, and international agencies to achieve its goals. In its more than five decades of existence, the agency, which has twice won the Nobel Peace Prize, has helped an estimated 50 million people to restart their lives. Today, a staff of over 6,500 people in 116 countries continues to help 19.2 million persons of concern to the Office.

UNHCR's Regional Office for the United States and the Caribbean is located in Washington, DC and works to promote assistance, protection, and durable solutions for refugees and to sustain and enhance political and financial support for UNHCR. The office is continuously reaching out to key government interlocutors and interacting with civil society and the media both in the U.S. and Caribbean. UNHCR promotes universal accession to both international refugee instruments, appropriate treatment of arriving asylum-seekers, and adequate contingency planning; it also carries out advocacy for the adoption of refugee legislation in accordance with international standards and/or the adoption of workable ad hoc procedures/policies to benefit asylum-seekers and refugees. Information about UNHCR's mandate, goals, objectives and activities can be found on its website: <http://www.unhcr.org>

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	ICCP	ICESCR	ICERD	CEDAW	CAT	CRC	ICMW	CSR51	PSR67	CSP54	CRS61	C97	C143	ATP	ASP	ACHR	GCIV	PA(I)	PA(II)
Antigua and Barbuda			X	X	X	X		X	X	X							X	X	X
Bahamas			X	X		X		X	X	X		X					X	X	X
Barbados	X	X	X	X		X				X						X	X	X	X
Belize	X		X	X	X	X	X	X	X					X			X	X	X
Colombia	X	X	X	X	X	X	X	X	X					X		X	X	X	X
Costa Rica	X	X	X	X	X	X		X	X	X	X			X	X	X	X	X	X
Cuba			X	X	X	X						X					X	X	X
Dominica	X	X		X		X		X	X			X				X	X	X	X
Dominican Republic	X	X	X	X		X		X	X							X	X	X	X
El Salvador	X	X	X	X	X	X	X	X	X					X	X	X	X	X	X
Grenada	X	X		X		X								X	X	X	X	X	X
Guatemala	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Guyana	X	X	X	X	X	X						X		X			X	X	X
Haiti	X		X	X	X	X		X	X							X	X		
Honduras	X	X	X	X	X	X	X	X	X							X	X	X	X
Jamaica	X	X	X	X	X	X		X	X			X		X	X	X	X	X	X
Mexico	X	X	X	X	X	X	X	X	X	X				X	X	X	X	X	X
Nicaragua	X	X	X	X	X	X	X	X	X					X	X	X	X	X	X
Panama	X	X	X	X	X	X		X	X					X	X	X	X	X	X
St. Kitts & Nevis				X		X		X				X		X	X		X	X	X
St. Lucia			X	X		X											X	X	X
St. Vincent & the Grenadines	X	X	X	X	X	X		X	X	X							X	X	X
Suriname	X	X	X	X		X		X	X							X	X	X	X
Trinidad & Tobago	X	X	X	X		X		X	X							X	X	X	X
Venezuela	X	X	X	X	X	X		X	X						X	X	X	X	X
TOTAL	20	18	22	25	14	25	7	19	19	7	2	11	1	13	10	17	25	24	23

Abbreviations:

- ICCPR: International Covenant on Civil and Political Rights (1966)
- ICESCR: International Covenant on Economic, Social and Cultural Rights (1966)
- ICERD: International Convention on the Elimination on All Forms of Racial Discrimination (1965)
- CEDAW: Convention on the Elimination of All Forms of Discrimination against Women (1979)
- CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- CRC: Convention on the Rights of the Child (1989)
- ICMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- CSR51: Convention relating to the Status of Refugees (1951)
- PSR67: Protocol relating to the Status of Refugees (1967)
- CSP54: Convention on the Status of Stateless Persons (1954)
- CRS61: Convention on the Reduction of Statelessness (1961)
- C97: International Labor Organization (ILO) Convention No. 97 (1949) concerning Migration for Employment (Revised)
- C143: ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers
- TP: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the UN Convention against Transnational Crime (2000)
- SM: Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (2000)
- ACHR: American Convention on Human Rights (1969)
- GC IV: Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (1949)
- PA (I): Geneva Protocol I Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflict (1977)
- PA (II): Geneva Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (1977)

¹ Data for this table compiled by Ryszard Cholewinski, Jilianne Redpath and Sophie Nonnenmacher (Geneva: International Organization Migration, March 2006).

Glossary of Selected Terms¹

A

abduction The act of leading someone away by force or fraudulent persuasion.

accord *See treaty.*

adjudication In the migration context, a decision as to whether an applicant is qualified for the visa, refugee status, or other immigration status s/he seeks.

admission The granting of entry into a State. An alien has been “admitted” if s/he passed through a checkpoint (air, land or sea) and is permitted to enter by border officials. An alien who has entered clandestinely is not considered to have been admitted.

adoption In international law, the term is used to denote the agreement of the parties as to what the text of a proposed treaty shall be.

agreement A mutual understanding (written or unwritten) between two or more parties intended to have a legally binding character.

alien A person who is not a national of a given State.

amnesty A general pardon that is used in tandem with “legalization” and deals with people who can show residence in a country for which the amnesty is granted, despite the fact that such residence was illegal.

armed conflict All cases of declared war or of any other armed conflict which may arise between two or more States, even if the state of war is not recognized by one of them. An armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.

assimilation Adaptation of one ethnic or social group—usually a minority—to another. Assimilation means the subsuming of language, traditions, values and behavior or even fundamental vital interests and an alteration in the feeling of belonging. Assimilation goes further than acculturation.

¹ This glossary has been adapted from International Organization for Migration, *Glossary on Migration-International Migration Law* (Geneva: IOM, 2004) and reproduced in part with the permission of the International Organization for Migration. Full version and related publications available in multiple languages from <<http://www.iom.int/>>.

assisted migration The movement of migrants accomplished with the assistance of a government, governments or an international organization, as opposed to spontaneous, unaided migration.

assisted voluntary return Logistical and financial support to rejected asylum seekers, trafficked migrants, stranded students, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin.

asylum (diplomatic) The refuge which States may grant beyond the boundaries of their territory in places which are granted immunity from jurisdiction, to an individual seeking protection from the authority who persecutes or claims him or her. Diplomatic asylum may be granted at diplomatic missions and the private residences of the heads of mission, warships or aircrafts, but not in the premises of international organizations, nor consulates. There is no right of an individual to obtain diplomatic asylum, nor an obligation of a State to grant it.

asylum (territorial) Protection granted by a State to an alien on its own territory against the exercise of jurisdiction by the state of origin, based on the principle of *non-refoulement*, leading to the enjoyment of certain internationally recognized rights.

asylum seekers Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.

B

best practices Means to further the application of existing norms and principles, both at the international and the national levels. Best practices may be translated into operational directives, codes of conduct or other manifestations of soft law, but should not lead to a weakening or erosion of positive law. They are characterized by: being innovative, developing creative solutions; showing a positive impact on the level of implementation of migrants' rights; having a sustainable effect, especially by involving migrants themselves; and having the potential for replication.

bilateral Involving two parties or two States.

bona fide (latin) "In good faith;" made without fraud or deceit; sincere, genuine.

bondage The state of being under the control of another person.

bonded labor Service rendered by a worker under condition of bondage arising from economic considerations, notably indebtedness through a loan or an advance. Where debt is the root cause of bondage, the implication is that the worker (or dependents or heirs) is tied to a particular creditor for a specified or unspecified period until the loan is repaid.

border Line separating the land territory or maritime zones of one State from another.

border control A State's regulation of the entry of persons to its territory, in exercise of its sovereignty.

border management Facilitation of authorized flows of business people, tourists, migrants and refugees and the detection and prevention of illegal entry of aliens into a given country. Measures to manage borders include the imposition by States of visa requirements, carrier sanctions against transportation companies bringing irregular aliens to the territory, and interdiction at sea. International standards require a balancing between facilitating the entry of legitimate travelers and preventing that of travelers entering for inappropriate reasons or with invalid documentation.

border officials A generic term describing those officials whose primary task is to guard the border and enforce the immigration (and possibly customs) laws of the State. Also termed “border guards,” “border police” or “aliens police.”

brain drain Emigration of trained and talented individuals from the country of origin to a third country, due to causes such as conflict or lack of opportunities.

brain gain Immigration of trained and talented individuals from a third country into the receiving country. Also called reverse brain drain.

C

capacity building Building capacity of governments and civil society through strengthening their knowledge, skills and attitudes. Capacity building can take the form of substantive direct project design and implementation with a partner government, or in other circumstances can take the form of facilitating a bilateral or multilateral agenda for dialogue development put in place by concerned authorities. In all cases, capacity building aims to build towards generally acceptable benchmarks of management practices.

certificate of identity A document (other than a passport) issued by a government to an individual in order to facilitate his/her entry into or exit from the country.

change of status Procedure whereby an alien lawfully present in a State may seek a different immigration status. For example, provision may be made by law by which a non-national on a student visa, on completion of studies, is able to seek a change of status so that his/her student visa is replaced by a work visa.

checkpoint A location (on the land border or at an airport or seaport) where persons are stopped by border officials for inspection and clearance, in order to enter the State.

child An individual being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

child exploitation According to the Convention on the Rights of the Child, 1989 and the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 1999, child exploitation includes: economic exploitation (any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development), sexual exploitation (sexual abuse, prostitution, child’s pornography) and abduction of, sale of or trafficking in children, or any other forms of child exploitation.

child labor Any work performed by a child which is detrimental to his/her health, education, physical, mental, spiritual, moral or social development.

citizen *See national.*

citizenship *See nationality.*

civil and political rights Commonly used to describe the various rights contained in the International Covenant on Civil and Political Rights, 1966 (e.g. right of self-determination; of free disposition of natural wealth and resources; of non-discrimination; of equal rights of men and women; right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment; of freedom from slavery and servitude; of freedom from arbitrary arrest or detention; of freedom of movement within a State; right to liberty and security of the person; equality before the courts; right to a fair and public hearing by an impartial tribunal in respect of criminal charges; prohibition of retroactive criminal liability; right of privacy of the family, the home or correspondence; freedom of thought, conscience and religion; freedom of expression; right to peaceful assembly; freedom of association and of participation in public affairs).

claim An assertion made to a government agency or court seeking an action or determination of a right or benefit, such as refugee status or the right to compensation or legal redress in civil proceedings.

clandestine migration Secret or concealed migration in breach of immigration requirements. It can occur when a non-national breaches the entry regulations of a country; or having entered a country legally overstays in breach of immigration regulations.

coercion Compulsion by physical force or threat of physical force.

constitution The fundamental and organic law of a State, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise. Treaty establishing an international organization and defining its mandate and functioning.

consular functions Consist of the protection of the interests of the sending State and of its nationals in the receiving State; furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State.

consular officers Government officials representing the State abroad in visa and residency issues. Art. 1(d), Vienna Convention on Consular Relations, 1963 provides that a consular officer is “any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions.”

consular protection Consular functions aiming at helping nationals abroad, assisting in the protection of their rights and interests before local courts. In particular, protection extended to migrants arrested or committed to prison or custody pending trial or detained in any other manner; such migrants must be informed without delay of the right to communicate with consular authorities.

convention *See treaty.*

country of destination The country that is a destination for migratory flows (legal or illegal).

country of habitual/ usual residence The country in which a person lives, that is to say, the country in which s/he has a place to live where s/he normally spends the daily

period of rest. Temporary travel abroad for purposes of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimage does not change a person's country of usual residence.

country of origin The country that is a source of migratory flows (legal or illegal).

country of transit The country through which migratory flows (legal or illegal) move.

covenant *See treaty.*

crime, international Under international law, crimes against peace, war crimes, crimes against humanity, piracy, genocide, apartheid and terrorism are considered as international crimes. Every State has a duty to prosecute or extradite individuals responsible for the commission of those crimes; individual responsibility for those crimes is also enforceable at the international level (International Criminal Tribunals for Former Yugoslavia and Rwanda, International Criminal Court).

custody Responsibility for the care and control of an individual. A court might assign custody of a minor to a relative or other guardian. A person who is detained by authorities is "in custody."

customary law, international A source of international law. The two criteria for a norm to be recognized as "customary law" are state practice and *opinio juris* (a conception that the practice is required by or consistent with the prevailing law).

D

de facto (latin) Existing as a matter of fact.

de facto refugees Persons not recognized as refugees within the meaning of the UN Convention Relating to the Status of Refugees, 1951 and Protocol relating to the Status of Refugees, 1967, and who are unable or, for reasons recognized as valid, unwilling to return to the country of their nationality or, if they have no nationality, to the country of their habitual residence.

de facto statelessness Situation of individuals who possess the nationality of a State but, having left the State, enjoy no protection by it, either because they decline to claim such protection or because the State refuses to protect them. *De facto* statelessness is a term often connected with refugees.

de jure (latin) Existing by right or as a matter of law.

debt bondage The status or condition arising from a pledge by a debtor of his/her personal service or those of a person under his/her control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

demography The study of human populations, especially with reference to size and density, distribution and vital statistics.

denationalization *See loss of nationality.*

dependants In general use, one who relies on another for support. In the migration context, a spouse and minor children are generally considered "dependants," even if the spouse is not financially dependent.

deportation The act of a State in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain.

derogation Restriction or suspension of rights in certain defined situations. (For example International Covenant on Civil and Political Rights, 1966 permits a State to derogate from its obligations under the Covenant “in time of public emergency which threatens the life of the nation.”) The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force.

detention Restriction on freedom of movement, usually through enforced confinement, of an individual by government authorities. There are two types of detention. Criminal detention, having as a purpose punishment for the committed crime; and administrative detention, guaranteeing that another administrative measure (such as deportation or expulsion) can be implemented. In the majority of the countries, irregular migrants are subject to administrative detention, as they have violated immigration laws and regulations, which is not considered to be a crime. In many States, an alien may also be detained pending a decision on refugee status or on admission to or removal from the State.

determination *See adjudication.*

diaspora Refers to any people or ethnic population that leave their traditional ethnic homelands, being dispersed throughout other parts of the world.

diplomatic protection An elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law.

discrimination A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored. Discrimination is prohibited in respect of “race, sex, language or religion” (Art. 1(3), UN Charter, 1945) or “of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 2, Universal Declaration of Human Rights, 1948).

displacement A forced removal of a person from his/her home or country, often due to of armed conflict or natural disasters.

displaced person A person who flees his/her State or community due to fear or dangers other than those which would make him/her a refugee. A displaced person is often forced to flee because of internal conflict or natural or manmade disasters.

documented migrant A migrant who entered a country legally and remains in the country in accordance with his/her admission criteria.

documented migrant worker A migrant worker or members of his/her family authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party.

domicile The place at which a person is physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

due process The conduct of legal proceedings according to generally accepted rules and principles providing for the protection and enforcement of private rights, including notice and the right to a fair hearing before the court or administrative agency with the power to decide the case.

E

economic migrant A person leaving his/her habitual place of residence to settle outside his/her country of origin in order to improve his/her quality of life. This term may be used to distinguish from refugees fleeing persecution, and is also used to refer to persons attempting to enter a country without legal permission and/or by using asylum procedures without *bona fide* cause. It also applies to persons settling outside their country of origin for the duration of an agricultural season, appropriately called seasonal workers.

emigration The act of departing or exiting from one State with a view to settle in another. International human rights norms provide that all persons should be free to leave any country, including their own, and that only in very limited circumstances may States impose restrictions on the individual's right to leave its territory.

entry Any entrance of an alien into a foreign country, whether voluntary or involuntary, legally or illegally.

entry into force The moment at which all provisions of a treaty are legally binding on its parties. According to Art. 24, Vienna Convention on the Law of Treaties, 1969, the entry into force of a treaty takes place in such a manner and on such date as the treaty may provide or the negotiating States agree, or, failing any such provision or agreement, as soon as all the negotiating States have consented to be bound. Where a State joins the circle of parties after a treaty has already come into force, unless the treaty otherwise provides, it enters into force for that State on that date.

exclusion The formal denial of an alien's admission into a State. In some States, border officials or other authorities have the power to exclude aliens; in other States, exclusion is ordered by an immigration judge after a hearing.

exodus Movements in groups (isolated and sporadic) out of country of origin. Mass exodus is a movement in large numbers or of a section of the community at a given time.

exploitation The act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit (e.g. sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs).

expulsion An act by an authority of the State with the intention and with the effect of securing the removal of a person or persons (aliens or stateless persons) against their will from the territory of that State.

expulsion en masse Massive, collective expulsion. Collective expulsion of aliens is prohibited by several instruments of international law (Art. 4, Protocol 4 of the European Convention on Human Rights, 1950; Art. 12-5, African Charter on Human and People's Rights, 1981; Art. 22-9, American Convention on Human Rights, 1969). According to the European Court of Human Rights, collective expulsion is any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.

externally displaced persons Persons who have fled their country due to persecution, generalized violence, armed conflict situations or other man-made disasters. These individuals often flee en masse. Sometimes they are also referred to as "*de facto* refugees."

extradition The formal surrender, generally based on treaty or other reciprocal arrangements, by one State to another of an individual accused or convicted of an offense outside its territory and within the jurisdiction of the other, for the purpose of trial and punishment.

F

family unity, right to A family's right to live together and, as a fundamental unit of a society, to receive respect, protection, assistance and support. This right is not limited to nationals living in their own State and is protected by international law.

feminization of migration The growing participation of women in migration. Women now move around more independently and no longer in relation to their family position or under a man's authority (roughly 48 percent of all migrants are women).

first asylum principle Principle according to which an asylum seeker should request asylum in the first country where s/he is not at risk.

forced/compulsory labor All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily.

forced migration General term used to describe a migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects).

forced repatriation *See involuntary repatriation.*

forced resettlement/relocation Involuntary transfer of individuals or groups within the jurisdiction of a State away from their normal residence as part of a government policy.

forced return The compulsory return of an individual to the country of origin, transit or third country, on the basis of an administrative or judicial act.

foreigner A person belonging to, or owing an allegiance to, another State.

fraud A misrepresentation of the truth or concealment of a material fact in order to obtain some benefit.

fraudulent document Any travel or identity document that has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or that has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or that is being used by a person other than the rightful holder.

freedom of movement This right is made up of three basic elements: freedom of movement within the territory of a country (Art. 13(1), Universal Declaration of Human Rights, 1948: "Everyone has the right to freedom of movement and residence within the borders of each state."), right to leave any country, and the right to return to his or her own country (Art. 13 (2), Universal Declaration of Human Rights, 1948: "Everyone has the right to leave any country, including his own, and to return to his country.")

frontier *See border.*

frontier worker A migrant worker who retains his or her habitual residence in a neighboring State to which he or she normally returns every day or at least once a week.

fundamental human rights Within the large scope of human rights, some human rights are claimed to be of particular significance. Support for this view comes from the non-derogability of some rights. Thus, Art. 4(1), International Covenant on Civil and Political Rights, 1966, permits derogation "in time of public emergency threatening the life of the nation" but prohibits any derogation from Arts. 6 (right to life), 7 (torture), 8(1) and (2) (slavery and servitude), 11 (imprisonment for breach of contractual obligation), 15 (retroactive criminal liability), 16 (recognition as a person in law) and 18 (freedom of thought, conscience and religion). This notwithstanding, the trend is to regard all human rights as universal, indivisible, interdependent and interrelated, to be treated in fair and equal manner, on the same footing and with the same emphasis.

G

gender based violence *See violence against women.*

genocide Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

good faith A state of mind denoting honesty in belief or purpose, freedom from intention to defraud or to seek unconscionable advantage.

grounds of inadmissibility Definitions set forth in migration law or regulations, of reasons for which non-nationals may be prohibited from entering the State. Even where a person is otherwise eligible for a visa or other immigration status, if s/he falls within a ground of inadmissibility, the visa or other status will be denied. Grounds of inadmissibility are typically designed to preclude entry of undesirable non-nationals, such as persons without valid travel documents, persons with criminal convictions, persons who are believed to be a danger to public health or public safety, persons who have been previously deported.

H

habeas corpus An action before a court to test the legality of detention or imprisonment.

habitual/usual residence A place within a country, where a person lives and where he or she normally spends the daily period of rest.

health A state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.

health assessment In the migration context, the function of reducing and better managing the public health impact of population mobility on receiving countries as well as to facilitating the integration of migrants through the detection and cost-effective management of health conditions and medical documentation. Pre-departure health assessments offer an opportunity to promote the health of assisted migrants in providing an occasion to initiate preventive and curative interventions for conditions that, if left untreated, could have a negative impact on the migrants' health status and/or public health of the host communities.

hearing The opportunity to be heard or to present one's side of a case before a tribunal.

holding centre A facility lodging asylum seekers or migrants in an irregular situation as soon as they arrive in a receiving country; their status is determined before they are sent to refugee camps or back to their country of origin.

host country *See receiving country.*

human rights Those liberties and benefits which, by accepted contemporary values, all human beings should be able to claim "as of right" in the society in which they live. These rights are contained in the International Bill of Rights, comprising the Universal Declaration of Human Rights, 1948 and the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, 1966 and have been developed by other treaties from this core (e.g. The Convention on the Elimination of All Forms of Discrimination against Women, 1979; International Convention on the Elimination of All Forms of Racial Discrimination, 1965).

human trafficker *See trafficker.*

humanitarian law Rules of international law especially designed for the protection of the individual in time of war or armed conflict.

humanitarian principles Ethical standards applicable to all humanitarian actors, which have their underpinnings in international human rights and humanitarian law, and seek to protect the integrity of humanitarian action. The first explicit statement of humanitarian principles is found in the "Fundamental Principles of the Red Cross and Red Crescent" adopted in 1965.

I

identity document A piece of documentation designed to prove the identity of the person carrying it.

illegal alien *See undocumented alien, migrant in an irregular situation.*

illegal entry Act of crossing borders without complying with the necessary requirements for legal entry into the receiving State.

illegal migrant *See irregular migrant.*

illegal migration *See irregular migration.*

immigration A process by which non-nationals move into a country for the purpose of settlement.

immigration status Status which a migrant is accorded under the immigration law of the host country.

immigration zone The zone of the high seas and land territory of a State, in which the State's immigration laws are applicable (also called "migration zone").

inalienable Not transferable or assignable; often used in the context of human rights.

individual migration Cases where persons migrate individually or as a family. Such movements generally are self-financed or have individual, organizational or Government sponsorship, as opposed to mass scheme programs.

influx A continuous arrival of non-nationals in a country, in large numbers.

inhumane treatment Physical or mental cruelty so severe that it endangers life or health.

instrument A formal or legal document in writing such as a contract or treaty. In the case of ratification, acceptance, approval or accession to a treaty, it is the document which establishes the consent of the State to be bound by the treaty.

integration The process by which immigrants become accepted into society, both as individuals and as groups. The particular requirements for acceptance by a receiving society vary greatly from country to country; and the responsibility for integration rests not with one particular group, but rather with many actors: immigrants themselves, the host government, institutions, and communities.

interception Any measure applied by a State outside its national territory to prevent, interrupt, or stop the movement of persons without required documentation from crossing borders by land, air or sea, and making their way to the country of prospective destination.

internal migration A movement of people from one area of a country to another for the purpose or with the effect of establishing a new residence. This migration may be temporary or permanent. Internal migrants move but remain within their country of origin (e.g. rural to urban migration).

internally displaced persons/ IDPs Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

international assistance Support provided by the international community such as assistance in kind, financial contributions and services of trained personnel.

international law The legal principles governing the relationships between States. More modernly, the law of international relations, embracing not only States but also such participants as international organizations, and even individuals (such as those who invoke their human rights or commit war crimes). Also termed law of nations, public international law, *jus gentium*.

international migration Movement of persons who leave their country of origin, or the country of habitual residence, to establish themselves either permanently or temporarily in another country. An international frontier is therefore crossed.

international migration law Instruments of international law applicable to migration.

international minimum standard A State is required to observe minimum standards set by international law with respect to treatment of aliens present on its territory (or the property of such persons), (e.g., denial of justice, unwarranted delay or obstruction of access to courts are in breach of international minimum standards required by international law).

international protection Legal protection, based on a mandate conferred by treaty to an organization, to ensure respect by States of rights identified in such instrument as: 1951 Refugee Convention, 1949 Geneva Conventions, and 1977 Protocols, right of initiative of International Committee of the Red Cross, International Labor Organization Conventions, human rights instruments.

involuntary repatriation Repatriation of refugees to the country of origin induced by the receiving country by creating circumstances which do not leave any other alternative. As repatriation is a personal right (unlike expulsion and deportation which are primarily within the domain of State sovereignty), as such, neither the State of nationality nor the State of temporary residence or detaining power is justified in enforcing repatriation against the will of an eligible person, whether refugee or prisoner of war. According to contemporary international law, prisoners of war or refugees refusing repatriation, particularly if motivated by fears of political persecution in their own country, should be protected from *refoulement* and given, if possible, temporary or permanent asylum.

irregular migrant Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country (also called clandestine/illegal/undocumented migrant or migrant in an irregular situation).

irregular migration Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfill the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term "illegal migration" to cases of smuggling of migrants and trafficking in persons.

itinerant worker A migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation.

J

judgement A court's final determination of the rights and obligations of the parties in a case.

jus cogens Rule of law which is peremptory in the sense that it is binding irrespective of the will of individual parties. A peremptory norm of general international law (*jus cogens*) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character (Art. 53, Vienna Convention on the Law of Treaties, 1969), for example the prohibition of torture.

jus sanguinis (latin) The rule that a child's nationality is determined by its parents' nationality, irrespective of the place of its birth.

jus soli (latin) The rule that a child's nationality is determined by its place of birth (although nationality can also be conveyed by the parents).

K

kidnapping Unlawful forcible abduction or detention of an individual or group of individuals, usually accomplished for the purpose of extorting economic or political benefit from the victim of the kidnapping or from a third party. Kidnapping is normally subject to the national criminal legislation of individual States; there are, however, certain kidnappings that fall under international law (e.g. piracy).

L

labor migration Movement of persons from their home State to another State for the purpose of employment. Labor migration is addressed by most States in their migration laws. In addition, some States take an active role in regulating outward labor migration and seeking opportunities for their nationals abroad.

lawful Not contrary to law; permitted by law.

lawful admission Legal entry of an alien into the country, including under a valid immigrant visa.

legalization The act of making lawful; authorization or justification by legal sanction.

legitimate Something that is genuine, valid, or lawful. For example, a legal migrant enters with a legitimate intent to comply with the migration laws, and present legitimate travel documents.

local remedies, exhaustion of The rule that local remedies must be exhausted before international proceedings may be instituted is a well established rule of customary

international law; the rule has been generally observed in cases in which a State has adopted the cause of its national whose rights are claimed to have been disregarded in another State in violation of international law. Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurs should have an opportunity to redress it by its own means, within the framework of its own domestic legal system.

long-term migrant A person who moves to a country other than that of his or her usual residence for a period of at least a year, so that the country of destination effectively becomes his or her new country of usual residence. From the perspective of the country of departure, the person will be a long-term emigrant and from that of the country of arrival, the person will be a long-term immigrant.

lookout system A State's official list, usually (but not necessarily) automated, of persons who should be prevented from entering the country or who should be arrested upon arrival. A lookout system (also called a "watch list" system) is typically an inter-agency project, which receives input from all law enforcement, intelligence, and migration agencies. Whether on computer or in book form, the lookout list is routinely checked by consular and border control officials when making decisions about granting a visa or allowing someone to enter the State.

loss of nationality Loss of nationality may follow an act of the individual (expatriation, deliberate renunciation of nationality by an individual, or automatic loss of nationality upon acquisition of another nationality) or of the State (denationalization). Denationalization is a unilateral act of a State, whether by decision of administrative authorities or by the operation of law, which deprives an individual of his/her nationality. Although there are no uniform provisions for denationalization, some States have developed a number of statutory grounds for it, including: entry into foreign civil or military service, acceptance of foreign distinctions, conviction for certain crimes. Although acquisition and loss of nationality are in principal considered as falling within the domain of domestic jurisdiction, the States must, however, comply with norms of international law when regulating questions of nationality, such as Art. 15(2), Universal Declaration of Human Rights: "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

M

mala fide (latin) In bad faith; with intent to deceive or defraud.

mandate refugee *See refugee (mandate).*

mass/collective migration The sudden movement of large number of persons.

mediation A non-binding method of dispute resolution involving a neutral third party who tries to help the disputing parties to reach a mutually agreeable solution.

member of minority A person who, while having his or her origin in another country, has become a national of the host country, either by birth or by naturalization.

migrant At the international level, no universally accepted definition of migrant exists. The term migrant is usually understood to cover all cases where the decision to migrate is taken freely by the individual concerned for reasons of "personal convenience" and

without intervention of an external compelling factor. This term therefore applies to persons, and family members, moving to another country or region to better their material or social conditions and improve the prospect for themselves or their family.

migrant flow The number of migrants counted as moving or being authorized to move, to or from a country to access employment or to establish themselves over a defined period of time.

migrant stock The number of migrants residing in a country at a particular point in time.

migrant worker 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.

migrants for settlement Foreigners granted permission to stay for a lengthy or unlimited period and subject to virtually no limitation regarding the exercise of an economic, social and political rights (e.g. employment-based migrants, family-based migrants, ancestry-based migrants, migrants with the right to free establishment, or foreign retirees).

migration A process of moving, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, uprooted people, and economic migrants.

migration management A term used to encompass numerous governmental functions and a national system of orderly and humane management for cross-border migration, particularly managing the entry and presence of foreigners within the borders of the State and the protection of refugees and others in need of protection.

minor A person who, according to the law of the relevant country, is under the age of majority, i.e. is not yet entitled to exercise specific civil and political rights.

minority Although there is no universally accepted definition of minority in international law, a minority may be considered to be a group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity directed towards preserving their culture, traditions, religion or language.

mixed flows Complex population movements including refugees, asylum seekers, economic migrants and other migrants.

multilateral In relation to treaties and negotiations, multilateral (or multipartite) connotes the involvement of more than two States in the process.

N

national A person, who, either by birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil and political rights and protection; a member of the State, entitled to all its privileges. A person enjoying a nationality of a given State.

national territory The geographical areas belonging to or under the jurisdiction of a State.

national treatment According to this standard, the alien can expect no better legal protection than that accorded by a host State to its own nationals. However, the national standard cannot be used as a means of evading international obligations under the minimum standard of international law.

nationality Legal bond between an individual and a State. The International Court of Justice defined nationality in the *Nottebohm* case, 1955, as "...a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties...the individual upon whom it is conferred, either directly by law or as a result of the act of the authorities, is in fact more closely connected with the population of the State conferring the nationality than with any other State." According to Art. 1, Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930, "it is for each State to determine under its own laws who are its nationals. This law shall be recognized by other States insofar as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality." naturalization Granting by a State of its nationality to an alien through a formal act on the application of the individual concerned. International law does not provide detailed rules for naturalization, but it recognizes the competence of every State to naturalize those who are not its nationals and who apply to become its nationals.

net migration *See total migration.*

neutrality The condition of a State that in times of armed conflict takes no part in the dispute but continues peaceful dealings with the parties to the conflict.

non-admission Refusal to permit entry to the territory of a State.

non-discrimination The refusal to apply distinctions of an adverse nature to human beings simply because they belong to a specific category. Discrimination is prohibited by international law, for example in Art. 26, International Covenant on Civil and Political Rights, 1966, which states: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

non-documented migrant workers *See undocumented migrant workers.*

non-national *See alien, foreigner, third country national.*

non-refoulement A principle laid down in the Geneva Convention Relating to the Status of Refugees, 1951 according to which "no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." This principle cannot be "claimed by a refugee, whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

O

orderly migration The movement of a person from his/her usual place of residence to a new place of residence, in keeping with the laws and regulations governing exit of the country of origin and travel, transit and entry into the host country.

organized crime Widespread criminal activities that are coordinated and controlled through a central syndicate.

overstay To remain in a country beyond the period for which entry was granted. Also sometimes used as a noun, e.g. "the undocumented alien population is evenly divided between overstays and those who entered illegally."

P

Palermo Protocols Supplementary protocols to the Convention against Transnational Organized Crime (2000): Protocol Against the Smuggling of Migrants by Land, Sea and Air; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and Protocol against the Manufacturing of and Trafficking in Illicit Firearms, Ammunition and Related Materials.

permanent residence The right, granted by a host State to a non-national, to live and work therein on a permanent (unlimited) basis.

permanent settlers Legally admitted immigrants who are accepted to settle in the receiving country, including persons admitted for the purpose of family reunion.

permit Documentation, usually issued by a governmental authority, which allows something to exist or someone to perform certain acts or services. In the migration context, reference to residence permits or work permits is common.

persecution In refugee context, a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group.

persona non grata (latin) "Person not wanted." An unwanted or undesirable person. In the diplomatic context, a person rejected by the host government.

policy General principles by which a government is guided in its management of public affairs.

poverty migrant An individual who is forced to migrate due to economic necessity.

prohibition of torture Torture is prohibited by numerous international documents, such as the Universal Declaration of Human Rights, 1948 (art. 5), American Declaration of Rights and Duties of Man, 1948 (art. 26), UN International Covenant on Civil and Political Rights, 1966 (art. 7), European Convention on Human Rights, 1950 (art. 3), various UN resolutions. Torture is an international crime; the protection against torture is an obligation of States and is seen as a fundamental human right. The prohibition of torture is generally viewed as having reached the level of *jus cogens*, a preemptory norm of international law.

project-tied worker A migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer.

prosecution A criminal proceeding in which an accused person is tried.

protection All activities aimed at obtaining respect for individual rights in accordance with the letter and spirit of the relevant bodies of law (namely, Human Rights Law, International Humanitarian Law, Migration Law and Refugee Law).

push-pull factors Migration is often analyzed in terms of the “push-pull model,” which looks at the push factors, which drive people to leave their country and the pull factors, which attract them to new country.

Q

qualified national Expatriate national with specific professional skills in demand in the country or region of origin.

R

racial discrimination Discriminatory or abusive behavior towards members of another race. Racial discrimination is any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

racism An ideological construct that assigns a certain race and/or ethnic groups to a position of power over others on the basis of physical and cultural attributes, as well as economic domination and control over others. Racism can be defined as a doctrine of or belief in racial superiority. This includes the belief that race determines intelligence, cultural characteristics and moral attitudes. Racism includes both racial prejudice and racial discrimination.

ratification Ratification refers to the “acceptance” or “approval” of a treaty. In an international context, ratification “is the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty” (Art. 2 (1)(b), Vienna Convention on the Law of Treaties, 1969). Instruments of ratification establishing the consent of a State take effect when exchanged between the contracting States, deposited with a depositary or notified to the contracting States or to the depositary, if so agreed (Art.16). In a domestic context, it denotes the process whereby a State puts itself in a position to indicate its acceptance of the obligations contained in a treaty. A number of States have in their Constitutions procedures which have to be followed before the government can accept a treaty as binding.

readmission Act by a State accepting the re-entry of an individual (own national, third-country national or stateless person), who has been found illegally entering or being present in another State.

receiving country Country of destination or a third country. In the case of return or repatriation, also the country of origin. Country that has accepted to receive a certain number of refugees and migrants on a yearly basis by presidential, ministerial or parliamentary decision.

refoulement The return by a State, in any manner whatsoever, of an individual to the territory of another State in which his/her life or liberty would be threatened, or s/he may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or would run the risk of torture. *Refoulement* includes any action having the effect of returning the individual to a State, including expulsion, deportation, extradition, rejection at the frontier (border), extraterritorial interception and physical return.

refugee (mandate) A person who meets the criteria of the UNHCR Statute and qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not s/he is in a country that is a party to the Convention relating to the Status of Refugees, 1951 or the 1967 Protocol relating to the Status of Refugees, or whether or not s/he has been recognized by the host country as a refugee under either of these instruments.

refugee (recognized) A person, who “owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol).

refugee status determination A process (conducted by UNHCR and/or States) to determine whether an individual should be recognized as a refugee in accordance with national and international law.

refugees in transit Refugees who are temporarily admitted in the territory of a State under the condition that they are resettled elsewhere.

refugees sur place Persons who are not refugees when they leave their country of origin, but who become refugees (that is, acquire a well-founded fear of persecution) at a later date. Refugees *sur place* may owe their fear of persecution to a coup d'état in their home country, or to the introduction or intensification of repression or persecutory policies after their departure. A claim in this category may also be based on *bona fide* political activities, undertaken in the country of residence or refuge.

regional consultative processes Non-binding consultative fora, bringing representatives of States, civil society (non-governmental organizations) and international organizations together at the regional level to discuss migration issues in a cooperative manner (e.g. Budapest process, Puebla process, Manila process, Migration Dialogue for Southern Africa (MIDSA)).

regular migration Migration that occurs through recognized, legal channels.

regularization Any process by which a country allows aliens in an irregular situation to obtain legal status in the country. Typical practices include the granting of an amnesty (also known as “legalization”) to aliens who have resided in the country in an irregular situation for a given length of time and are not otherwise found inadmissible.

reintegration Re-inclusion or re-incorporation of a person into a group or a process, e.g. of a migrant into the society of his country of origin.

reintegration (cultural) Re-adoption on the part of the returning migrant of the values, way of living, language, moral principles, ideology, and traditions of the country of origin's society.

reintegration (economic) Reinsertion of a migrant into the economic system of his/her country of origin. The migrant shall be enabled to earn his/her own living. In developmental terms, economic reintegration also aims at using the know-how which was acquired in the foreign country to promote the economic and social development of the country of origin.

reintegration (social) Reinsertion of a migrant into the social structures of his/her country of origin. This includes on the one hand the creation of a personal network (friends, relatives, neighbors) and on the other hand the development of civil society structures (associations, self-help groups and other organizations).

remittances Monies earned or acquired by non-nationals that are transferred back to their country of origin.

removal *See deportation.*

repatriation The personal right of a refugee or a prisoner of war to return to his/her country of nationality under specific conditions laid down in various international instruments (Geneva Conventions, 1949 and Protocols, 1977, the Regulations Respecting the Laws and Customs of War on Land, Annexed to the Fourth Hague Convention, 1907, the human rights instruments as well as in customary international law). The option of repatriation is bestowed upon the individual personally and not upon the detaining power. Repatriation also entails the obligation of the detaining power to release eligible persons (soldiers and civilians) and the duty of the country of origin to receive its own nationals. Repatriation as a term also applies to diplomatic envoys and international officials in time of international crisis.

rescue at sea The duty to rescue those in distress at seas is firmly established by both treaty and customary international law. A State where those rescued arrive may refuse disembarkation and require the ship master to remove them from the jurisdiction; or it may make disembarkation conditional upon satisfactory guarantees as to resettlement, care and maintenance, to be provided by flag or other States, or by international organizations.

reservation to a treaty A unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.

resettlement The relocation and integration of people (refugees, internally displaced persons, etc.) into another geographical area and environment, usually in a third country. The durable settlement of refugees in a country other than the country of refuge. This term generally covers that part of the process which starts with the selection of the refugees for resettlement and which ends with the placement of refugees in a community in the resettlement country.

residence The act or fact of living in a given place for some time; the place where one actually lives as distinguished from a domicile. Residence usually just means bodily presence as an inhabitant in a given place, while domicile usually requires bodily presence and an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile.

residence permit A document issued by a state to an alien, confirming that the alien has the right to live in the State.

return Refers broadly to the act or process of going back. This could be within the territorial boundaries of a country, as in the case of returning IDPs and demobilized combatants; or from a host country (either transit or destination) to the country of origin, as in the case of refugees, asylum seekers, and qualified nationals. There are subcategories of return which can describe the way the return is implemented, e.g. voluntary, forced, assisted and spontaneous return; as well as subcategories which describe who is participating in the return, e.g. repatriation (for refugees).

return migration The movement of a person returning to his/her country of origin or habitual residence usually after spending at least one year in another country. This return may or may not be voluntary. Return migration includes voluntary repatriation.

right of asylum A generic term, used in two senses: the right to grant asylum (a State may grant asylum in its territory to any person at its own discretion) and the right to be granted asylum either vis-à-vis the State in whose territory asylum is requested, or vis-à-vis the pursuing State.

right to leave Everyone has the right to leave any country, including his own...(Art. 13 (2), Universal Declaration of Human Rights, 1948). This right was set down in other international law instruments, for example in Art.12(2), International Covenant on Civil and Political Rights, 1966 which states: "Everyone shall be free to leave any country, including his own." It is an aspect of the right to freedom of movement, and it applies to all persons without distinction. There is, however, no corollary right to enter the territory of a country under international law.

right to return Another aspect of the right to freedom of movement. According to Art. 13 (2) of the Universal Declaration of Human Rights, 1948: "Everyone has the right to...return to his country." Article 12(2), International Covenant on Civil and Political Rights, 1966 states that: "No one shall be arbitrarily deprived of the right to enter his own country." Nevertheless, paragraph 3 of the Covenant provides for certain restrictions: "The above-mentioned rights [in Article 12(2)] shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the right and freedoms of others, and are consistent with the other rights recognized in the present Covenant."

rural-rural migrants Internal migrants who move from one rural area to another.

rural-urban migrants Internal migrants who move from rural to urban areas.

S

safe country of origin A country or origin of asylum seekers is considered safe if it does not, or not generally, produce refugees. Receiving countries may use the concept of safe country of origin as a basis for rejecting summarily (without examination of the merits) particular groups or categories of asylum.

safe haven Neutralized zones intended to shelter from the effects of war "the wounded and sick combatants or noncombatants" and "civilian persons who take no part in hostilities." (Art. 15, Geneva Convention concerning the Protection of Civilian Persons in Time of War, 1949).

safe third country A safe third country is considered by a receiving country to be any other country, not being the country of origin, in which an asylum seeker has found or might have found protection. The notion of safe third country (protection elsewhere/first asylum principle) is often used as a criterion of admissibility to the refugee determination procedure.

Schengen Agreement Intergovernmental agreement signed in 1985 to create a European free-movement zone without controls at internal land, water and airport frontiers. In order to maintain internal security, a variety of measures have been taken, such as the coordination of visa controls as external borders of Member States. Although the Schengen Agreement was concluded outside the context of the European Union (EU), it has been brought into the realm of the European Communities/European Union under the Amsterdam Treaty, 1997.

seasonal worker A migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year.

self-employed worker A migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

sending country A country from which people leave to settle abroad permanently or temporarily.

servitude *See debt bondage, slavery.*

short-term migrant A person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year) except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business or medical treatment. For purposes of international migration statistics, the country of usual residence of short-term migrants is considered to be the country of destination during the period they spend in it.

skilled migrant Migrant worker who, because of his/her skills, is usually granted preferential treatment regarding admission to a host country (and is therefore subject to fewer restrictions regarding length of stay, change of employment and family reunification).

slavery The status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised. Slavery is identified by an element of ownership or control over another's life, coercion and the restriction of movement and by the fact that someone is not free to leave or to change employer (e.g. traditional chattel slavery, bonded labor, serfdom, forced labor and slavery for ritual or or religious purposes).

smuggler (of people) An intermediary who is moving people in furtherance of a contract with them, in order to illegally transport them across an internationally recognized State border.

smuggling The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights.

sovereignty Sovereignty as a concept of international law has three major aspects: external, internal and territorial. The external aspect of sovereignty is the right of the State freely to determine its relations with other States or other entities without the restraint or control of another State. This aspect of sovereignty is also known as independence. The internal aspect of sovereignty is the State's exclusive right or competence to determine the character of its own institutions, to enact laws of its own choice and ensure their respect. The territorial aspect of sovereignty is the exclusive authority which a State exercises over all persons and things found on, under or above its territory.

specified-employment worker A migrant worker: (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work.

spontaneous migration An individual or group who initiate and proceed with their migration plans without any outside assistance. Spontaneous migration is usually caused by push-pull factors and is characterized by the lack of State assistance or any other type of international or national assistance.

State A political entity that has legal jurisdiction and effective control over a defined territory, and the authority to make collective decisions for a permanent population, a monopoly on the legitimate use of force, and an internationally recognized government that interacts, or has the capacity to interact, in formal relations with other entities. The criteria of statehood for purposes of international law are commonly held to be possession of a permanent population, a defined territory, government and capacity to enter into international relations with other States.

State of origin The State of which the person concerned is a national.

State of transit Any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

stateless person A person who is not considered as a national by any State under the operation of its law. As such, a stateless person lacks those rights attributable to nationality: the diplomatic protection of a State, no inherent right of sojourn in the State of residence and no right of return in case s/he travels.

T

technical cooperation The sharing of information and expertise on a given subject usually focused on public sector functions (e.g. development of legislation and procedures, assistance with the design and implementation of infrastructure, or technological enhancement).

temporary migrant workers Skilled, semi-skilled or untrained workers who remain in the receiving country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise. Also called contract migrant workers.

terrorism Any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature and context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing an act.

third country A country other than the country of origin of a person.

third country national See *alien, foreigner, national, non-national*.

torture Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act s/he or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

total migration/net migration The sum of the entries or arrivals of immigrants, and of exits, or departures of emigrants, yields the total volume of migration, and is termed *total migration*, as distinct from *net migration*, or the migration balance, resulting from the difference between arrivals and departures. This balance is called net immigration when arrivals exceed departures, and net emigration when departures exceed arrivals.

trafficker, human An intermediary who is moving people in order to obtain an economic or other profit by means of deception, coercion and/or other forms of exploitation. The intent *ab initio* on the part of the trafficker is to exploit the person and gain profit or advantage from the exploitation.

trafficking in persons The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

transients Professional or skilled workers who move from one country to another, often as employees of international and/or joint venture companies.

transit A stopover of passage, of varying length, while traveling between two or more countries, either incidental to continuous transportation, or for the purposes of changing planes or joining an ongoing flight or other mode of transport.

transit passengers Persons who arrive in a State from another country while in transit to another (third) country destination; and throughout the whole period (up to a maximum of 24 hours from the time of arrival) during which they are in the State, remain on board the craft they arrived on, or in a port or airport secure area, or in the custody of the police.

transit visa A visa, usually valid for three days or less, for passing through the country issuing the visa to a third destination.

travel documents Generic term used to encompass all documents which are acceptable proof of identity for the purpose of entering another country. Passports and visas are the most widely used forms of travel documents. Some States also accept certain identity cards or other documents.

treaty An international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

U

unaccompanied minors Persons under the age of majority who are not accompanied by a parent, guardian, or other adult who by law or custom is responsible for them. Unaccompanied minors present special challenges for border control officials, because detention and other practices used with undocumented adult aliens may not be appropriate for minors.

undocumented alien An alien who enters or stays in a country without the appropriate documentation. This includes, among others: one (a) who has no legal documentation to enter a country but manages to enter clandestinely, (b) who enters using fraudulent documentation, (c) who, after entering using legal documentation, has stayed beyond the time authorized or otherwise violated the terms of entry and remained without authorization.

undocumented migrant workers Migrant workers or members of their families, who are not authorized to enter, to stay or to engage in employment in a State.

unlawful entry *See illegal entry.*

uprooted people Those, who are forced to leave their communities: those who flee because of persecution and war, those who are forcibly displaced because of environmental devastation, and those who are compelled to seek sustenance in a city or abroad because they cannot survive at home.

urban-rural migrants Internal migrants who move from urban to rural areas either for "new settlement" purposes or as return migration for those who have been rural-urban migrants.

urban-urban migrants Internal migrants who move from one urban area to another, generally for employment.

V

victim of human trafficking An individual who is a victim of the crime of trafficking in persons.

violence against women Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including

threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

visa An endorsement by a consular officer in a passport or a certificate of identity that indicates that the officer, at the time of issuance, believes the holder to fall within a category of non-nationals who can be admitted under the State's laws. A visa establishes the criteria of admission into a State. International practice is moving towards issuance of machine-readable visas which comply with ICAO (International Civil Aviation Organization) standards, printed on labels with security features.

visitor In the migration context, a person who seeks to enter for a temporary period.

voluntary repatriation Return of eligible persons to the country of origin on the basis of freely expressed willingness to so return.

voluntary return The assisted or independent return to the country of origin, transit or another third country based on the free will of the returnee.

vulnerable groups Any group or sector of society that is at higher risk of being subjected to discriminatory practices, violence, natural or environmental disasters, or economic hardship, than other groups within the State; any group or sector of society (such as women, children or the elderly) that is at higher risk in periods of conflict and crisis.

W

working permit A legal document giving authorization required for employment of migrant workers in the host country.

worst forms of child labor All forms of slavery or practices similar to slavery (such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict); the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; or any other work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

X

xenophobia At the international level, no universally accepted definition of xenophobia exists, though it can be described as attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity. There is a close link between racism and xenophobia, two terms that are hard to differentiate from each other.

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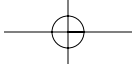
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