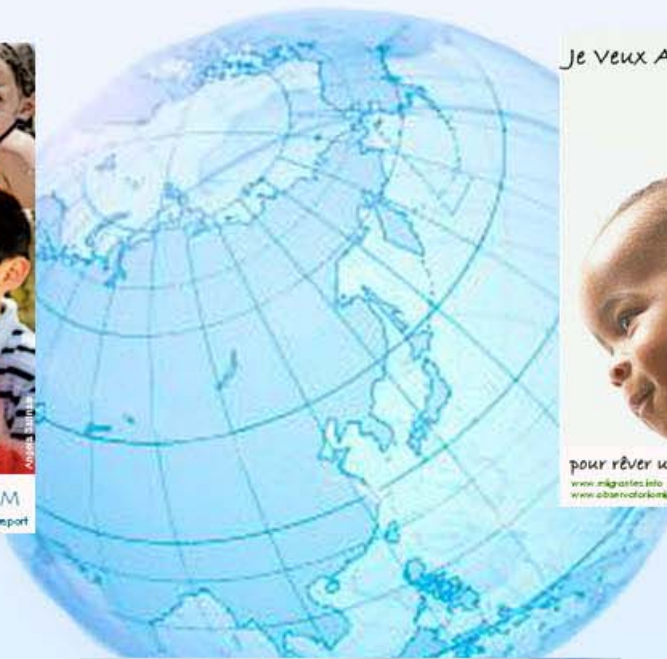
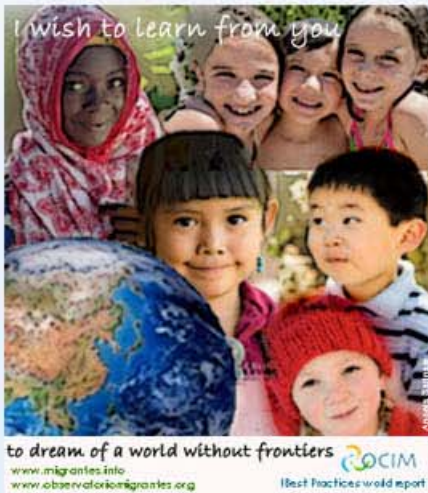




# I WISH TO LEARN FROM YOU



**Global Report on Best Practices  
in Migration and National  
Human Rights Institutions  
Diego Carrasco C.**

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## 1. Summary

The Bolivian Ombudsman's Office, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the National Institutions International Coordination Committee (ICC) organized the VIII International Conference of National Human Rights Institutions (NHRIs) in Santa Cruz de la Sierra, Bolivia, between the 23<sup>rd</sup> and the 27<sup>th</sup> of October 2006. The Conference's central theme was "Migration: The Role of NHRIs".

The Conference's objective was to develop and strengthen cooperation among NHRIs, promote the adoption of common strategies, exchange experiences, establish guidelines, methodologies, and intervention strategies, and to adopt a Declaration on the role of NHRIs with regards to human rights and migration.

In the Conference's final declaration, the NHRIs agreed to petition the Office of the United Nations High Commissioner for Human rights to prepare a Global Report on migration, in which NHRI best practices with regards to migration were to be included<sup>2</sup>. The study was entrusted to Diego Carrasco<sup>3</sup>, professor and expert on migration, refuge, and displacement, currently acting as Executive Director for the Inter-American Migration Observatory, and a guest in the Networks and NGO panel during the Eighth Conference.

The objectives of the commissioned report are: the analysis of the migration phenomenon, the role of NHRIs in this matter, the incorporation, outline, and projective evaluation of NHRI best practices within the migratory axis, for the development of NHRI work promotion strategies in the protection of migrants' human rights, such as the formulation of cooperation proposals among NHRIs in migratory matters, among other related aspects.

Among other topics, this report analyzes NHRIs' potential within the context of migration policy in the following areas: human rights and development, the integration of migrants in societies of destination, prevention and prohibition of racism, xenophobia, and other related forms of intolerance, irregular migration, trade and trafficking in persons, along with the situation of certain groups that require actions of positive affirmation (women, children, minorities, afro-descendants, and indigenous peoples), and who present migration that must be addressed in a specific way, due to the very nature of the situation.

This report contains a reasoned and systematic analysis of NHRI best practices available, and that deal with migration. These best practices have been analyzed in order to provide the studious reader or NHRI member with models, guides, guidelines or adequate strategies that NHRIs may adopt in the promotion and protection of migrants' human rights, analyzing their functions, mandates, powers, studies, mediation, interpellation, litigation, capacities within the context of formation, training, and education, promotion of rights and obligations, harmonization of norms, at a national, bilateral, sub-regional, or international level.

In the various chapters of this report, intervention guidelines are put forth, based on the experience of specialized organisms, as well as NHRIs, civil society organizations dedicated to the matter at hand, that allow for their consideration in analogous or similar situations, that NHRIs may use for the protection and promotion of migrants' human rights.

The methodology is that of investigation and analysis, based on research of information found in NHRI official websites, reports on various thematic conferences and specific meetings related to migration, development, and human rights; as well as reports from States, International Organisms, and NGO networks dedicated to the matter at hand, with an analysis of doctrine, academic opinion and jurisprudence, both regional and universal, from human rights organisms. At the same time, consultations were carried out, based on a form and questionnaire, made available by OCIM on its website, as well as the formulation of interactive dialogue on various topics. In this endeavour, the active participation of the ICC professional staff has been of up most importance.



One hundred and twenty three best practices were identified for this report, from 53 nations worldwide; said figure allowed us to obtain a general panorama of the performance of best practices with regards to migration, and the performance of NHRIs in this field.

This report has been made possible due to the invaluable collaboration of ICC, under the professional counsel of the expert Mr. Santiago Martínez de Orense, and first class professionals of the OCIM<sup>4</sup> Executive Staff: Barbara Romero, Magaly Arteaga, Rodrigo Duran, and Angela Salinas; as well as the cooperation of the OCIM Board of Directors: Carlos Tamup, Jorge Muñoz, Ivonne Lugo, Agustín Lao-Montes, and Luiz Bassegio. We also thank the Ford Foundation for allowing us to utilize the global information system, without which this report would not have been possible.

## 2. Migration

Migration is a characteristic phenomenon of the process of globalization, and is the cause, means, and effect of the same. The process of world economic expansion benefits certain sectors of the population, while at the same time broadens the gap between other sectors of the human population, in an important part of the globe.

From the origin of humanity, persons displace in order to find a space that will allow them to develop both individually and collectively. However, in this day and age, migration reflects certain special characteristics due to its volume, intensity, and effects on the national structures of sovereign States. The movement of persons is and will continue to be a characteristic of the current world. Migrants have and will continue to make dynamic, valuable, and human contributions to the XXI century society, in a tendency which will not vary. Migration is a natural social state of human beings, and is an ineludible reality towards the future.

International migrant is defined as all persons change their habitual residence. The country of habitual residence of person is that where the person resides, in other words, the place where the person has a place to live and where he or she spends the daily period of rest. Temporary trips abroad for the purposes of recreation, vacation, business, medical treatment, or religious pilgrimage do not consist of changes in the place of habitual residence.

See UN Statistics Division

Migration has various causes, which are complex and interdependent, the most accepted of which is poverty and inequality among persons and countries. The systematic development of information technology has contributed to migration, and generates expectations and aspirations on behalf of migrants; so have the situation of poverty that afflicts great part of the world's population, inequality in the distribution of power, wealth, and culture, the development of new forms of inexpensive, faster, safer, and more trustworthy means of transport, the rise of global communication networks that allow for electronic tourism to places thousands of kilometres away, at real time, and at considerably low rates.

The Global Migration Commission stated in 2005<sup>5</sup>, that the main reasons for migration lie within the three “ds”, which is to say differences in development, demography, and democracy. We may also add the lack of citizenship or the existence of an “incomplete citizenship”: the absence of the condition of benefit, exercise, and/or guarantee of human rights, as well as other reasons of emotional, religious, spiritual, or esoteric nature, that generate the migratory act<sup>6</sup>, and which have provoked important demographic changes, and which have long existed in the culture of humanity

The United Nations Population Division has stated that the international migrant population reaches approximately 200 million people, with a tendency of exponential increase towards the future. Civil society organizations present higher figures, due to the fact that they consider the amount of irregular migrants in the world; an estimated 10 to 15% of the migrant population falls within this category. Close to half of the migrant population are women, and a relevant portion of them are children, who, in many cases, migrate for reasons of family reunification<sup>78</sup>. The amount of migrants, with respect to the total world population, is close to 3% on an average<sup>9</sup>.



Currently, the world consensus grows in that migration generates positive effects for countries of origin, transit, and destination, and constitutes an element which has contributed to the evolution of societies and cultures, notwithstanding the fact that it is possible to observe negative attitudes towards migratory flows, such as the existence of fences, barriers, and structural, legal, cultural limits, thus hindering integration or intercultural dialogue among those that seem different, though they share the same humanity. This situation calls for a double need: to identify, study, and share the numerous best practices of positive action that promote the integration of migrants, as well as the need to know those successful experiences in the prohibition of discriminatory, racial, or xenophobic attitudes, or the prevention of trade and trafficking in persons.

It becomes necessary to know, assume dialogue, and reflect upon the lessons learned as well as the difficulties of the same, in order to “take advantage of the experience and knowledge acquired by other countries” in this matter<sup>10</sup>. For an NHRI or a human rights ombudsman, to act in the migratory field with precedent acquired through previous lessons, is an adequate form of walking on a well-marked path.

One of the lessons learned in the analysis of gathered best practices at a global level is that the migratory condition generates a specific sort of vulnerability, one that requires affirmative measures of protection. This must be carried out as integrally as possible, thus taking NHRIs to develop their own specific actions, in order to better approach said vulnerability. These measures, which take the form of plans, programs, and public policy actions, allow NHRIs to take full advantage of the capacities with which migrants may contribute to the development of communities, incorporating diversity, work capacity, intercultural dialogue giving heed to positive effects in policy and economy, as well as the arts, culture, and social relationships. Taking full advantage of the considerable benefits of migration will not be possible without concrete actions that guarantee the human rights of all migrants, from the most individual to the most collective level, from the very first to the fifth generation of rights, from those that consider that State, to those that affect the concrete daily lives of migrants<sup>11</sup>. One of the central roles of NHRIs is to establish the following principles of action: (1) one has human rights without regard to legal documentary condition, and (2) the principle that migration is a free and voluntary act, generating human rights and obligations, must be protected.

Human mobility is a central element in the world economic development, and part of the prosperity that first world nations enjoy is due to the work of migrants. Thousands of migrants contribute their know-how, are a part of work segments, contribute to the overcoming of poverty<sup>12</sup>, reduce unemployment, and increase economic opportunities for the younger sectors. An important part of the growth, prosperity, and development of industrialized countries depend on the contribution of international migration.

The migrant work force coming from developing countries is steadily increasing. If we take into consideration the steady population decrease in first world countries, the work force of the future will gradually become migratory in nature<sup>13</sup>.

The resources that migrants remit to countries of origin constitute one of the principle means of income for third world nations. This brings about the challenge to develop mechanisms that tie remittances to the development of countries of origin. Beyond financial resources, migration is a vehicle for the transference of know-how, culture, experiences, contacts, and technology to countries of destination.

It is possible to observe a clear relationship between poverty, institutional crisis, lack of expectations, and the violation of human rights (in all of its generations), with migration flows in the world. In light of this, an adequate consideration of any policy on migration ought to consider the harmonic confluence of democracy, human rights, and development.

In this framework, it becomes necessary to consider the transnational characteristic of migration. The development of new and innovative policies, measures, and actions on migration, must consider the international dimension of the same, thus strengthening relationships, agreements, and commitments, basing itself on International Cooperation and interinstitutional collaboration, as well as the flow and exchange of information



between various state institutions, international and sub-regional organisms, civil society organizations, churches, and migrant associations. Migrations cannot be approached in an isolated manner; States will not be able to respond to the reality of irregular migration (which constitutes over half of the regional migration in some continents of the world) without an integrating and global perspective, nor will they be able to adequately protect migrants' rights.

This global reality presents political and operative challenges in the world, and in light of said challenges States have privileged casual strategies in order to confront the migratory problem, and which respond to the particular interests of their countries, rather than deliberate, uniform, multilateral, and global migration strategies.

To approach the migration situation is to consider one of a series of recent phenomena: the growth of south-south migration, feminization of migration, the role of information and communication technology in the migratory condition, the development of international transport and transit networks, and the rise of "ecological migrants" – displaced persons due to environmental disasters or climatic changes, among others. International concern generates the relationship between migration and security, due to the existence of doctrines regarding security which consider migration, particularly irregular migration, as a threat to the national integrity of States, or as an instrument for drug trafficking, terrorism, or international prostitution, mainly when the migratory flow comes from countries that are amidst political or economic crisis. Many of these visions have given a base for the construction of social prejudices which hinder the adequate integration of migrants or generate conditions for the development of a culture of xenophobia and/or discrimination.

Migratory figures reflect the urgency of the matter. The detention of several hundred thousand people at the five most risk-prone borders of America, for example, presents the challenge to raise awareness with regards to the priority of the migratory axis, conceive country borders as spaces of integration, and develop actions of observation as to what occurs at said borders with regards to migratory flows.

We believe that the spaces of action between civil society and national human rights institutions are politically and technically complementary, and they call us to innovative, creative, and sustainable answers in time, in order to approach the matter multilaterally, integrating all of the sectors involved in the migratory condition, developing model parameters for the implementation of concrete public policy, promoting best practices, and generating effective spaces of observation of the migratory reality. All of this, within a program of definition in an ethical/legal/deontological framework of the migratory condition in the world, its base being the subscription and internal application of a "block" of international treaties linked to the migratory condition.

International organisms, NHRIs, and civil society organizations must work towards joint actions that aim towards the subscription and application of the principles found in the essential nucleus of human rights treaties on behalf of states, and particularly, the International Convention on the Protection of Migrant Workers and Their Families<sup>14</sup>.

### 3. General Role of NHRIs

The Paris Principles outline a series of functions of NHRIs, that allow them to adequately approach migration: counsel on any matter related to the protection of human rights; examination, report, and proposal of legal norms; investigation of the violation of human rights, as well as public reports; promotion of initiatives and recommendations to Governments and other State organs; realization of proposals of normative consistency between administrative legislation and human rights treaties, or the harmonization of norms, collaboration with other NHRIs and the United Nations ICC for the implementation and formulation of measures aimed towards the promotion and diffusion of a human rights culture in the world, one that protects migrants' rights.

The NHRIs that gathered in the VIII Conference, expressly recognized the "unique role that NHRIs carry out in the application of human rights international norms at a national level, thus assuring the sustainable protection of human rights<sup>15</sup>", and urged them to promote a focus on human rights with regards to migration and the



management of migration, as well as the need for every State to guarantee said rights, regardless of the migratory legal situation.

In this manner, NHRIs are in a priority and preferential situation as far as facing the situation of migrants is concerned, which allows them to effectively incise in the observance of the obligations that States have in light of the norms found in the Human Rights International treaties, in the effective application of the principles of international jurisprudence, or in the affirmative practices of International Human Rights Law, in collaboration with the United Nations ICC.

Nationally, NHRIs have the important mission of ensuring information, orientation, and diffusion of rights, with efficient legal protection actions for migrants, particularly with regards to the access to justice, non-discrimination, and equal treatment, with the inclusion of full and effective protection in all spheres of society, regardless of the documentary condition. The function of NHRIs is key in accompanying and assisting throughout the migratory process; however it is crucial at international borders as well as distension or conflict zones, where a great amount of migrant human rights violations occur<sup>16</sup>. It was satisfactory to observe that the total amount of NHRIs that reported information, carry out at least information actions with regards to the rights of migrants.

The need to approach the migratory phenomenon from a logical standpoint of universality, integrity, and international collaboration, makes the commitment of NHRIs to inform on migratory matters in countries of origin, transit, and destination, that much more necessary, establishing information networks and strategic associations in order to carry out activities of promotion, investigation, public education, circulation of campaigns in the media, as well as supervision and investigation, among various NHRIs, mainly to approach the situation of international borders as “pendular” or “circular” migration, and which occurs among neighbouring borderline populations.

In the same token, NHRIs carry out a vital function with regards to the promotion of a society committed to diversity, as a positive potential element in order to guarantee a united and peaceful society<sup>17</sup>, carrying out public awareness campaigns for the integration of migrants.

The action of NHRIs in this respect is protected by virtue of an International System of Protection of Human Rights, which is composed of basic International Treaties on said rights, and with international action mechanisms through the presentation of reports, answers to precise inquiries, complaints and individual cases presented before the Organ Treaty Committees. It is in this regards desirable to expect a greater and more effective utilization of the mechanisms created by International Human Rights Law for the effective protection and enforceability of migrants rights, in accordance with the guidelines established by the OHR and the ICC. There is a series of innovative practices and mechanisms for action that exist as well: networks and civil society organizations, together with NHRIs, have developed treaty committees and public interest ombudsmen, for the defence of the interests of minorities before arbitral panels, among others. On many occasions the actions of NHRIs is not only direct, but it also constitutes an effective base for the coordination, coalition, or association of other public institutions, churches, or NGOs, for the defence of migrants’ human rights.

The role of NHRIs in the incidence for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (CPMWF) has been key, though an insufficient amount of countries of destination have ratified it to date<sup>18</sup>. NHRIs carried out a very active part in petitioning for the ratification of said Convention in their international conferences, including the Rabat Conference in 2000, the Copenhagen Conference in 2003, and the Seoul Conference in 2004. This commitment was renewed in the Declaration of the VIII International Conference of NHRIs<sup>19</sup>.

The Convention has been ratified mainly by countries of origin<sup>20</sup>; as a matter of fact, various NHRIs have made public calls for the ratification of the Convention at a both national and international level. The involvement of NHRIs in countries subscribing to the Convention will be key with regards to: (1) the elaboration of official





and/or alternative reports regarding the Convention, such as a follow-up of their recommendations, (2) the adequation of internal Law in order to achieve full application of the Convention, as well as the detection of “anti-treaty” norms for their subsequent derogation or reform, establishing studies of normative consistency between treaties and internal norms, or formulating proposals of normative homologation and harmonization. The role of NHRIs in overseeing the effective observance of the Convention is of particular import, through visits to international borders, prisons, migratory stay centres, public services required by the families of migrants, and developing all other direct actions that work towards the development of a culture of observance and effective realization of migrants’ human rights.

NHRIs are in a relevant position for providing information to the special procedures mechanisms belonging to the Human Rights Council or to the Special Rapporteurs, even for the technical assistance to missions or in loco visits of said organisms. The majority of the mandate title holders in the United Nations System also have authority to receive information with regards to specific accusations due to human rights violations, and to send appeals or denouncement letters to governments, asking them for corresponding explanations. The fact that meetings and interviews with NHRIs are frequent during Rapporteurs’ in loco visits is particularly noteworthy.

It is interesting to observe best practices in the celebration of collaboration agreements among various NHRIs, such as the Migratory Bilateral Board Agreement between the Mexican National Human Rights Council and the Guatemalan Procuraduría de Derechos Humanos in 2005, in order to carry out a joint approach on various topics with regards to migration, and particularly with regards to the protection of Guatemalan migrants in Mexico; or the conclusions regarding migration of the VIII Congress and Annual Assembly of the Ibero-American Ombudsmen Federation, held in November 2003, and which established certain guidelines on the matter; or the various agreements celebrated by NHRIs in the Asia Pacific Forum on trade and trafficking in persons, and which is mentioned in a special chart in the chapter regarding trade and trafficking.

There is also the joint action of Central American NHRIs soliciting Temporary Protected Status (TPS)<sup>21</sup>, or the concession of temporal protection for Guatemalans in the United States of America in 2005, as mentioned in the conclusions of the Central American Conference on Migration organized by the Guatemalan Procuraduría de Derechos Humanos in 2006, with the purpose of approaching an agenda regarding migratory points for Central America, with Central American parliament members and academic experts.

The capability of NHRIs to celebrate agreements within the framework of international gatherings has been reinforced, with the active organization on behalf of the Bolivian Defensoría del Pueblo of the VIII Conference on NHRIs.

Agreements were reached between the NHRIs of Panama and Ecuador in order to properly handle the arrival of African children in 2003. An investigation was carried out by the NHRIs of Panama and Colombia with regards to the repatriation process of 109 displaced persons in 2003, given the fact that Panamanian authorities violated their rights, and they petitioned the relocation of the displaced persons in safe places to the Colombian government.

We must also mention the Covenant of Collaboration and Assistance of the Mexican National Human Rights Commission. By virtue of said agreement, both institutions work towards a program that will allow institutional strengthening, as well as improvement of capacities to safeguard and diffuse human rights, particularly in the area of migrants’ rights. The respect and guarantee of said rights constitute one of the main concerns of those involved, due to the increase of the migratory phenomenon over the past years, and the implication that this tendency has in the area of human rights.

Article 5 of the International Convention on the Protection of the Rights of all Migrant Workers and their Families states the following: For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are 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;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

See United Nations. 1990. International Convention on the Protection of the Rights of All Migrant Workers and Their Families



The Asia Pacific Forum for National Human Rights Institutions held a regional workshop on “Trafficking in Persons and National Human Rights Institutions”, between the 20<sup>th</sup> and the 23<sup>rd</sup> of November 2005, in Sydney, Australia. In the resolution adopted on that occasion, bilateral and sub regional agreements to combat trafficking were commended, including the ASEAN Declaration on Trafficking in Persons (2004), the SAARC Convention for the prevention of trade and trafficking in women and children (2002), the Mekong Ministerial Coordinated Initiative against processes of trafficking and its corresponding memorandum of understanding, the Sub-Regional Plan of Action (2004), and bilateral agreements such as those concluded between Thailand and Cambodia, and Thailand and Laos.

As far as Civil Society is concerned, the World Forum on Migration I<sup>22</sup> and II are noteworthy, as well as the European Forum on Migration and various Hemispheric Forums on Migration Public Policy held in the various regions of the world. Said spaces are nuclei with interests in the development of actions for the promotion of migrants’ human rights, and are therefore of interest for actions taken by NHRIs.

#### 4. Human Rights

The guiding principle of migrants’ human rights is that they are rights that all people have as individuals, regardless of whether or not they have a regular or irregular documentary condition, and it is the duty of the State to promote respect, protection, and guarantee of said rights, making certain that migration is maintained as a free, voluntary, unforced choice.

##### 4.1. Migrants’ Labour Rights

The International Labour Organization (ILO) estimates that there are approximately 200 million unemployed persons in the world. It is not possible to obtain an exact figure, given the factors of sub employment, labour margination, and irregular migration. The guiding principle with regards to this matter is that migrant workers ought to be treated with the same dignity and rights as national workers, and that they have rights to form unions, decent labour conditions, and decent schedules and wages. NHRIs must control the effective enforceability of the rights of migrant workers, given the special vulnerability that is derived from their condition as migrants, refugees, or displaced persons.

The right to form unions and to be affiliated to them, has been recognized in the Universal Declaration of Human Rights (Article 23), as well as the International Pact of Civil and Political Rights (Article 22), and the Pact on Economic, Social, and Cultural Rights (Article 8). The principle of equal treatment in work conditions is found in the Convention on Migrant Workers (Article 25), which also calls for “weekly rest”. The right to rest is found in the Universal Declaration of Human Rights (Article 24), as well as the International Pact on Civil and Political Rights (Article 7).

These norms are complementary to the OIT Covenants on Migrant Workers, No. 97 of 1949, and the Convention on Migrant Workers (Complementary dispositions), No. 143 of 1975. Also noteworthy is the Declaration of Fundamental Principles and Rights Related to Work, of 1998.

It is frequent to find discourse of fear with regards to labour migration in societies of destination. There is no basis for sustaining said discourse. Migration strengthens economic stability, and allows for conditions that aid in defeating poverty. Migrants frequently work in occupations related with agriculture, domestic help, construction, hotel and lodging; in labour areas that are generally not covered by the national work force. ILO has indicated in various reports that there has been no proof in any nation that shows that migrants alter the labour market in countries of destination. Due to this, to label migrants with unloyal competence is lacking in fundament, and constitutes xenophobic behaviour<sup>23</sup>.

NHRIs in the world, both in countries of origin and of destination, have worked swiftly and efficiently in this area, providing migrant workers and employers information, carrying out public, cultural, and social awareness campaigns. They have also promoted agreements with the media with the purpose of eradicating xenophobic ideas. However, more actions towards the sharing of information and security of migratory flow are needed in transit nations.



NHRI actions have been developed in all aspects of labour migration, though they are generally circumscribed to the national reality. For example, the Guatemalan Procuraduria de Derechos Humanos (mostly a country of origin) has inquired regarding the condition of Guatemalan migrant workers in the United States and Mexico. In the same token, the Australian Human Rights and Equal Opportunity Commission (mostly a country of destination) has controlled the observance of labour legislation with respect to migrant workers.

Also noteworthy is a Strategic Plan prepared by the Egyptian National Human Rights Commission, created with the purpose of protecting migrant workers and their families. This strategic plan consists of the creation of a data base on migrant workers and their families, through the following practical and legal activities: (a) the organization and classification of Egyptian citizens that work abroad, as well as a data base with information of Egyptian migrants; the detection of information regarding Egyptians that work abroad and who do not satisfy the conditions of the CPMWF; (b) provide legal assistance for Egyptian expatriates, and (c) adopt a series of actions with the purpose of stopping illegal hiring of Egyptian irregular migrant workers.

In general, irregular migration favours sub employment, as well as the non-compliance with current labour norms. Some unscrupulous employers use migrants in inhuman conditions, completely bypassing proper health, hygiene, and safety conditions. The Argentinean Defensoria del Pueblo has taken initiatives in this regard, permanently visiting clandestine textile workshops where Bolivian nationals worked, during January 2007, in order to demand full respect of migrant workers' rights. The Ombudsman himself has made criminal denouncements and has begun actions in order to sanction those responsible. NGOs have played an active role in providing Ombudsmen with lists and records of places and employers that violate human rights.

NHRIs are in a privileged position to exchange information between countries, or also at a regional level, on policies, norms, and procedures with regards to labour protection, seeking to compare national standards between countries or origin, transit, and destination. In this manner they may collaborate in the characterization and identification of labour migration flows, and make all pertinent information available for the public, as in the case of the Mexican Consejo Nacional de Derechos Humanos, with regards to Mexican migration to the United States. The Spanish Defensoria has, on various occasions, petitioned information from the Ministry of Labour, with regards to migrant workers.

NHRI also carry out actions of migratory information in countries of origin, as well as training for migrants in order to improve their technical or professional qualifications, and orientation regarding their rights and ways to claim said rights in countries of transit and destination. Manuals have also been provided on what actions to take with regards to health, education, work, residence and social security; on the regularization of titles and degrees as well as the homologation of professional competences through double nationality treaties; and on which institutions to turn to in countries of destination for the defence of their rights. The Peruvian Defensoria, in collaboration with professionals from OCIM, through the Peruvian Consulate in Chile, circulated a Guide on information regarding health, education, work, and other rights, for Peruvian migrants living abroad, ombudsmen offices, and foreign Peruvian consular services.

In transit states, NHRIs carry out actions of control of police or court activities, in order to identify migrant conditions, such as the possible violation of rights in the cases of trade and trafficking in children. The actions of the Spanish Ombudsman are particularly noteworthy in this regard, who recommended the modification of certain practices in order to guarantee the legality of the repatriation of migrant minors, together with the Spanish Consejo General de Abogacia. Said Council stated that the current situation is that there is a lack of essential guarantees. The Ombudsman also believes that relevant guarantees may be overlooked in these procedures, and has remitted an analysis to the Direccion General de Inmigracion and the Labour Ministry. He recommends that these minors must be heard by the authorities that make the decisions regarding their repatriation, and that a detailed analysis of every case must be made, taking into consideration the age, level of maturity, and conditions in their respective countries of origin.



We believe that greater intervention on behalf of NHRIs is needed in transit situations, and that said intervention is possible through greater coordination and collaboration among NHRIs.

Greater NHRI intervention is found in countries of destination, such as actions taken through posters and websites providing information on the conditions and rights of migrants. In this regard, there are fewer examples of NHRIs making information readily available in consulates and diplomatic representations. NHRIs take effective measures with regards to migrants' labour qualifications, in order to make the adequate integration of migrants in societies of destination possible. In 2005 Australia saw the opening of the "Smith Family Community Technology Learning Center", thus allowing permanent labour improvement. Over 10,000 migrants from China, India, and Sri Lanka have benefited from the initiative.

One of the most innovative lines of action taken by NHRIs has been to adequate the organic structure, in order to more adequately protect migrants' rights. The Thai National Human Rights Commission has a Subcommittee on Ethnic Rights, on Children's Rights, and on Labour Rights in order to protect migrant workers, refugees, and displaced persons, particularly irregular migrants. The Guatemalan Procuraduria de Derechos Humanos has implemented a joint-Procuraduria for the protection of migrants' human rights and the Ecuadorian Defensoria del Pueblo maintains a Migrants' Board.

Another modality has been to create national boards on migration, integrated by all those who participate in the migratory process. One example is the Mesa Nacional de Migraciones de Guatemala (MENAMIG), which aims towards creating a space for reflection, analysis, and proposals of agendas on migration for Guatemala, and integrated by the Guatemalan Procuraduria de Derechos Humanos, NGOs, and migrant associations. MENAMIG participates in international networks on migratory debate<sup>24</sup>, as well as gatherings on migration public policy. They distribute a monthly bulletin on migratory activity within the region. It is a space for dialogue, agenda, and public incidence.

The Salvadoran Defensoria del Pueblo has presented as a best practice the Permanent Board of the Procuraduria Para la Defensa de Derechos Humanos For Migrants, whose purpose it is to create an opportunity for the monitoring, analysis, and discussion of public policy, regarding the protection of the migrant population, as well as to formulate pronouncements on concrete cases of human rights violations. The Board is integrated by 15 organizations that carry out actions in migration<sup>25</sup>. Its objectives are as follows: (1) to analyze the situation of migrant populations through the exchange and systematization of information, the creation of diagnoses, the organization of workshops and all other activities agreed to; (2) to monitor the implementation of migration policy on behalf of the Salvadoran State as well as states of transit and destination for the Salvadoran migrant population; (3) to promote the analysis of the migrant population problem, with the purpose of generating proposals for internal as well as international norms regarding the rights of the migrant population in general; (4) to promote the inclusion of proposals generated by the Table in the creation of migration policy at a State level; and (5) to envision the political needs of the Salvadoran population abroad, recognizing that they have the political right to be represented by deputies in the Legislative Assembly, considering the fact that they make up a large percentage of the general Salvadoran population<sup>26</sup>.

Another best practice is the Technical Board on Migration, with the Bolivian Defensor del Pueblo and other NGOs as members, where various topics on migration are debated; information is diffused, and the protection of migrants and their rights is demanded before the State. Migrants benefit from said actions given the fact that the Mesa produces qualified information on migration and development, information which is not always made readily available by the State.

We must also mention the summary of contributions entitled "Protecting the rights of all migrant workers as a tool for

In England, a non-profit organization was created in the North West part of the country in order to benefit migrant workers in said region. The purpose of the organization is to promote best practices with regards to the hiring of migrant workers; to be a point of reference, support, and service, and to offer training for migrants. Those involved in this initiative were: the North West Development Agency, Northwest TUC, MPs and members of the European Parliament, NW Regional Assembly (Economic/Social Partners), ACAS, City College Manchester, First Bus, Arriva, Manchester Refugee Support Network, Cooperative Group, Logistics College North West, Sustainability North West, Manufacturing Institute, Learning and Skills Council, North West Employment Relations Forum, Job Centre Plus (December 16th 2006).



development”, presented in the UN High Level Dialogue on Migration and Development by the committee on the protection of the rights of migrant workers and their family, and which was presented in the General Assembly on July 3<sup>rd</sup> 2006.

## 4.2. Migratory Labour Programs

Countries of destination often times use the modality of migratory labour programs in order to access migrant work. Said programs are common in countries such as Canada, Australia, and New Zealand. Said programs have been the object of debate with regards to migration<sup>27</sup>, given the tendency that countries of destination have to decide everything regarding the labour program, without necessarily considering countries of origin or transit in said decision-making process. We believe that policies are quite interesting when within the framework of international cooperation between States and NHRIs involved.

The examination by NHRIs of these programs has been aimed towards the respect of the basic principles of non-

### Guidelines for Migratory Labour Programs

1. Investigate, know, and diffuse existing information regarding programs, agencies and officials involved.
2. Attend to the observance of norms on equal opportunities and non-discrimination in the labour qualification process.
3. Yield the transparent delivery of information, with effective consulting and claiming mechanisms in countries of origin and destination.
4. Make comparative investigations available on the work conditions in countries of origin and destination.
5. Oversee the observance of the role of adequate delivery of information on behalf of consular services in diplomatic divisions abroad.
6. Bear in mind the conditions of infrastructure, services, and social integration needs of migrant workers, thus facilitating insertion.
7. Adopt measures to mitigate or limit the impact of possible xenophobic attitudes to a minimum.
8. Inspect the effectiveness of the existence and maintenance of program material conditions.
9. Furnish information, professional counselling, and intercession for the processes of naturalization and residency.
10. Inspect labour norms regarding hiring, unions, and social security.
11. Prevent the dictation of legislation that hinders the observance of program obligations, and work towards its modification.
12. Achieve information exchange agreements with NHRIs belonging to countries of origin and transit, regarding working conditions and rights, remittances, and reinsertion upon ending the period of employment.
13. Guarantee that migrant workers receive the same treatment as nationals with regards to salary, working conditions, or social security, taking special consideration regarding the rights of women workers.
14. Achieve the normative flexibility necessary in order to recognize the adaptation process of the worker.
15. Observe and oversee the action of agencies that hire migrants.

Bases on systematized practices of NHRIs, using reports, answers to questionnaires, and press, as a base.

discrimination and equal opportunity, as well as human rights in transit situations, and kept commitments in societies of destination, as consecrated in International Law. Globally, it is possible to observe improvement with regards to these programs, thus it is necessary to examine some of their essential characteristics.

NHRIs have played an important part in this area, making information available for migrants with regards to the conditions of bestowal of rights to stay, residence, and citizenship, respecting due process; family regrouping; the bestowal of permits for humanitarian reasons or reasons of need; the homologation of titles and degrees; the conditions and costs of the remission of remittances; the remission of flow and provisional funds; and social security, among other measures, in such a way that the States involved in migratory labour programs integrally approach the process of labour migration.

Once in the country of destination, the role of oversight and supervision of labour norms, transparency of administrative processes, and the observance of commitments assumed by the State of destination, that some NHRIs assume, is fundamental, given the risk that exists that migrants may fall as second category workers, with salaries and conditions that are oftentimes inferior to those of nationals.

For this purpose, one of the modalities of action adopted by NHRIs is the implementation of public campaigns regarding non-discrimination and equal job opportunities, such as those implemented by the Australian Human Rights and Equal Opportunity Commission<sup>28</sup>. This experience has been commended at a regional level, due to the success and coverage of the campaign on non-discrimination in the treatment of migrant workers. Those participating in the campaign, particularly employers, demonstrated a 90% level of approval of the quality of information, the celerity of procedures, and the willingness on behalf of the Commission to collaborate<sup>29</sup>.



In general, the situation regarding migrants' labour rights must be approached in a shared and cooperative manner, in such a way that it aids in satisfying the labour demand in the countries of destination, but also in the development of sustenance conditions in the countries of origin, tending towards the respect of the fact that migration is a right of choice, and not a forced condition, often times provoked by poverty, marginalization, and denial of citizenship. The frequent demand of countries of origin for better working conditions and fair treatment for its migrants commits the acts of said countries, both ethically and legally (particularly in development), in the treatment of migrants in their respective territories. In general, all countries have the triple condition, being countries of origin, transit, and destination, throughout time<sup>30</sup>. We have designed a guideline regarding Migratory Labour Programs, based on the experiences of NHRIs.

### 4.3. Relationship between private companies and NHRIs

One of the key players in the state of the migratory problem is the private company and its associations. Migration growth has only been possible within the framework of companies that demand increasing amounts of qualified manpower. National and transnational companies require greater flexibility within the international field for the flow of their executives, professionals, and workers. The subscription of free trade agreements (in which employer organizations play a part), is generating the bases for the establishment of strong manpower flows at an international level. It is possible to observe a growing interest regarding migratory matters on behalf of large companies, more than medium and small companies. Due to this tendency, we feel that it is important to address the role of NHRIs with regards to private businesses in this field.

One of the traditional modalities of action on behalf of NHRIs in the world, has been intervention via information, training, recording, follow up of accusations, interposition of legal action, public representation, and union counselling, for the protection of the observance of labour and social security norms in the country. In our observations we have seen that this type of action is basically national, and NHRI intervention in this regard is recent at a sub-regional or international level, in various countries.

In this regard, it is important to emphasize the innovation of some NHRIs in the demand of new standards of equal treatment and opportunity for workers and suppliers. In this manner, from the starting point of NHRI actions, public agreements have been reached in order to establish standards of non-discrimination, equal treatment for both nationals and migrants, with effective procedures to oversee said agreements. The importance of these pacts has permitted the development of a culture of promotion of both diversity and labour complementarity, in the very place in which services are given, and constitute the rise of a new paradigm, with the employer as a subject of migratory integration.

In January 2005, the Canadian Human Rights Commission established memorandums of understanding with employers under federal jurisdiction. Said MOUs were focused on large businesses that were willing to work with the Commission, in order to prevent discrimination and solve any claims or denouncements regarding discrimination in a fast and efficient way. Businesses have shown their willingness to work progressively towards a Human Rights oriented culture. What is interesting about this initiative is that parties come together periodically in order to pose new actions promoting diversity, such as the adoption of new policy, or the review of existing policy, and to share best practices through training and orientation for employees of companies involved.

Yet another aspect is the strengthening of the role of dialogue, proposition, and promotion of standards between NHRIs and productive segments of the economic activity. The Belgian Center for Equal Opportunity and Prohibition of Racism, has promoted seminars and gatherings with the purposes of sharing information, training, and development of equal opportunity policies en Belgian companies for their executives, union leaders, and workers, such as the promotion of agreement construction models for the operationalization of non-discrimination policy.



At an international level, it is important to highlight the mode 4 negotiation of the General Agreement on Commerce Services (GACS), which allows the circulation of service providers that migrate for labour reasons. Mode 4 of the GACS is an agreement regarding migration and the provision of services by means of private trans-border movements of physical persons<sup>31</sup>. The agreements that are made within the framework of this forum has incidence in the establishment of standards for migratory flow in various investment protection or free trade agreements.

World economic forums undoubtedly adopt agreements and measures that affect human rights directly, whether it is in the short, medium, or long term; particularly economic, social, and cultural rights of people and workers in the world, and which specifically imply the migratory condition.

It is for this reason that we believe that the active participation of NHRIs at a regional level is necessary, or a regional representation of NHRIs in economic implementation forums that deal with migration, as well as environmental and labour rights.

Regarding this matter, various Migration Forums<sup>32</sup> have stated the need for NHRIs to consider participating more actively in the consideration of migratory labour law, and the guarantee of migratory rights within negotiations of agreements of integration and of free trade, thus guaranteeing the principles of primacy, and not regression, as well as the right to effective reparations, the right to an adequate forum, and rights of participation.

#### Decision 545 of the Andean Community of Nations

In June 2003, the Andean Council of Ministers of Foreign Relations, in their 11th meeting, approved the reformulation of an Instrument known as decision 545, which proposed as an objective the establishment of norms that would allow free circulation and residency of Andean nationals in the sub-region, for work reasons and under dependency, and moreover, in a progressive and gradual manner. An interesting element of this norm is the consideration of the category known as "seasonal worker" within the classification of migrant workers, which had already been incorporated in Decision 116, and which is now redefined as being "the Andean national that moves from one member country to another in order to carry out seasonal or cyclical work."

All Andean migrant workers have the right to equal treatment and opportunities with the communal space. As was the case before, protection is given against discrimination for reasons of nationality, race, creed, social condition, or sexual orientation. The right to form unions is also given as well as the right to collective negotiation, as well as the adoption of measures for the protection of migrant workers' families. The freedom to transfer funds from their work is also guaranteed; the access to social security systems; payment of social obligations and the free access to administrative and competent judicial instances in order to exercise and defend their rights.

#### Free Residence Agreement in MERCOSUR

On December 6th 2002 the presidents of Argentina, Bolivia, Brazil, Paraguay, Uruguay, and Chile signed a free residence agreement for their inhabitants. In the agreement the following was established: "Reaffirming the political will to strengthen the fraternal bonds that unite these nations as well as amplify and deepen existing cooperation, we express our satisfaction for the historic process that lead to the adoption of the "Agreement on Residence for MERCOSUR, Bolivian, and Chilean Nationals", and whose coming into force constitutes a significant step towards the common objective of establishing free transit of people within the block, as well as the "Agreement on Internal Migratory Regularization", which will facilitate migratory procedures for nationals belonging to MERCOSUR, Bolivia, and Chile."

Other initiatives developed by the private sector with incidence in migration policy, and that are necessary to bear in mind in strategies for promotion and enforceability of the rights of migrant populations, are the directives regarding environmental evaluation, international fluvial ways, areas under dispute, gender dimension, indigenous populations, and mainly policies regarding involuntary resettlement of the World Bank, which deal with avoiding and reducing improper damages to those that are in the process of development, mitigating the effects of involuntary displacement that cause economic investments, and which require land for their implementation. The main objective is to collaborate with the efforts of displaced persons in order to improve their quality of life, or to at least restore them to the level which they had prior to displacement<sup>33</sup>.

Not only in the fields of legal or economic agreements, but also in the field of codes of conduct; some International Forums have indicated diverse practices of deontological (ethical) regulation, for the establishment of norms of adequate treatment and non-discrimination, such as the Ethical Trading Initiative<sup>34</sup> (ETI). It is an initiative of the British Government through which a Code of Conduct is established, which states that forced labour is not to be used; unions and collective negotiations are not to be impeded; minors are not to be exploited, and discriminatory practices are to be avoided. There are also the Guidelines of the Association of Auto-



regulation of Publicity Ethics of Europe (EASA-Alliance)<sup>35</sup>, with norms established in order to avoid discriminatory publicity due to race or national origin, through a Model Code of Self Regulation.

An interesting best practice has been the agreements of non-discrimination in the media with journalistic businesses. Such is the case of the pact between Herald Media Inc. and the National Center for Migrant Workers Rights in the Republic of Korea.

In the groups of integration or regional blocks, we highlight the progress in Andean Labour Law within the framework of decision 545 of the Andean Community of Nations, and the application of the resolution promoting free residence within the member nations of MERCOSUR. In these blocks, NHRIs could have the characteristic of expert institutions on Human Rights.

#### **4.4. Campaigns regarding the promotion of labour rights and equal treatment and opportunities.**

One of the most effective mechanisms developed by NHRIs has been the implementation of campaigns for the promotion of migrant workers' labour rights, along with mechanisms to oversee, denounce, control, or public denouncement.

Even in nations where there are no NHRIs such as China, there are campaigns worth noting, such as the campaign of the Shenzhen Inspection of Discipline Commission of the Department of Labour and Social Security. Said campaign was launched to raise awareness, receive accusations, and control companies that had amassed debts due to unpaid wages of migrant workers. The Commission designated 500 people in order to serve as labour advisors through a telephone hotline in order to receive denouncements against employers that had not paid their wages. Through this initiative, wages were paid in various companies over a period of two months.

In the United States, the Human Rights Commission and the Migration Coalition (both in New York)<sup>36</sup>, launched an initiative called the "Immigrant Employment Rights Program" in 2003, in order to educate migrants regarding their labour rights, guarantees, and legal protections that they have under the Human Rights Law of the city of New York, educating, training, giving workshops, and presentations in several languages for various communities.

NHRIs also carry out investigations and publish orientation documents for the actuation of State agents and civil society organizations that protect migrant workers' rights. In Ireland, the Human Rights Commission and the National Consultative Committee on Racism and Multiculturalism, investigated and published a manual called "Safeguarding the Rights of Migrant Workers", in which certain parameters are established that allow for greater migratory and labour policy control, and report actions and future measures of citizen control regarding migrant workers' rights.

In New Zealand, the report called "Settling in Marlborough", presented an evaluation of the social services for migrants, presenting the results of 10 workshops with migrant communities. Migrants indicated the need to improve the access to information and public services, as well as greater flexibility in provisions for teaching English, prevent racial discrimination, adopt necessary measures in order to obtain recognition of qualifications obtained abroad, and the need to count on greater academic and labour appraisalment on behalf of temporal migrant workers<sup>37</sup>.

#### **4.5. Regional Initiatives.**

The Irish Human Rights Commission, together with the Irish Law Society, organized a Conference on the rights of migrant workers. Said conference's objectives were to analyze and review migratory legislation, such as programs for migrant workers, family reunification, freedom of displacement, racism, discrimination in the workplace, and integration of migrant workers in societies of destination. Said conference expounded on the





situation of residence and migration norms with delegates from the European Union and the experiences of the United Nations on the subject.

## 5. Civil, Cultural, Economic, Social, and Political Rights.

### 5.1. Migrants' right to social security

#### Social Security

Concept: Public system of assistance and benefits that acts before situations of determined needs, in which people may be in its field of application, through the redistribution of national wealth.

#### International Instruments:

Convention No. 117 concerning Basic Aims and Standards of Social Policy

Convention No. 157 concerning the Establishment of an International System for the Maintenance of Rights in Social Security

International Covenant on Economic, Social and Cultural Rights

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Protocol relating to the Status of Refugees

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Convention No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security

Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries

Convention relating to the Status of Refugees

Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries

Convention on the Rights of the Child

Convention relating to the Status of Stateless Persons

One of the relevant topics in migration is the coverage of social security for migrants and their families, both in countries of destination and countries of origin, when the need comes about to remit pensions in the case of returning to the country of origin, among other possible situations. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families guarantee, in articles 25 and 27, the rights to health and social security, in accordance with national legislation and practice, so long as the requirements established by law are met. In the case that legislation does not allow migrant workers or their families to receive benefits, the State will, on the basis of reciprocity, consider the possibility of reimbursing the amount of contributions that the worker would have given, related with said benefits.

States must make certain that workers linked to a migratory work program are duly protected by their respective social security systems, or of residence, pursuant to article 61 of the CPMWF. Article 70 of the Convention obligates the states to guarantee working and life conditions for migrant workers and their families in consonance with the norms of social security and health, and in no case in less favourable conditions than those established for nationals. With regards to this, we must recall United Nations Resolution 58/208, dated December 23<sup>rd</sup> 2003, on migration and development (approved by the General Assembly).

Notwithstanding that which has been established by the Convention, States may celebrate multilateral or bilateral agreements that allow them to operationalize social security obligations that they have to migrant workers and their families. In this way the bestowal of pensions for migrants in the place where they choose to reside freely, may be regulated, without there being high administrative commissions and that will allow health benefits in countries of origin or transit. The absence of regulation in this regard favours the non-compliance of labour and sub employment norms, and limits the process of migratory integration.

"Having the desire to regulate, in an orderly and coordinated manner, the existing migratory flows between Ecuador and Spain... animated by the objective that Ecuadorian workers that arrive in Spain may benefit from the rights recognized by international instruments, and which are a part of both states... Convinced that migration is a social phenomenon that enriches their peoples"

"Wages received by migrant workers, as well as other work conditions, including the affiliation to a social security system, will be included in their contracts, always pursuant to Collective Conventions, or to the legislation in force for Spanish workers of the same profession and qualification."

Preamble and Article 7 of the Agreement between the Republic of Ecuador and the Kingdom of Spain, regarding the regulation of migratory flows, January 2001



By applying article 3 letter a) of the Paris Principles, NHRIs may make recommendations, proposals, and reports to Parliament, in order to subscribe bilateral agreements and norms of social security protection for migrants and their families, mainly taking into account the fact that labour migration continues to grow. Particularly noteworthy are the recommendations to subscribe to agreements of non-double taxation and social security. In this regard, we must highlight the work of the Ecuadorian Defensoria, having taken an active role in the dialogue between Ecuador and Spain regarding the regulation of migratory flows, in January 2001, as well as its diffusion and implementation, proposing the intervention of the respective Commissioners in every province of the country, in order to take charge of the operative procedures, and to explain the characteristics of employment offered by Spanish companies to those seeking employment and that are protected by said Agreement.

In Ecuador, the Ministry of Foreign Relations, the Defensoria del Pueblo, and the Latin American Human Rights Association, signed a covenant of cooperation, thus supporting Ecuadorians living abroad, in 2001. Said covenant had the purpose of protection and defense from human rights violations suffered by Ecuadorians living abroad, through (1) the establishment of an entity of coordination between responsible organisms in order to promote the defense of human rights of Ecuadorians living abroad; (2) Establishment of assistance offices in those countries that have high number of Ecuadorians; (3) Realization of information projects regarding countries of destination; (4) Integration of actions within the framework of the National Human Rights Plan; with the purpose of giving access to spaces of information, denouncement, and protection of fundamental rights, to those within their country, as well as those in countries of transit, or those living abroad.

In 2001, Spain and Ecuador signed a treaty that regulates the migration of Ecuadorian migrant workers in Spain. This is an agreement between states, actions with embassies in charge of regulating the supply and demand of work, regulation of work permits and selection of personnel; thus benefiting Ecuadorians that seek work in Spain, as well as Spaniards that need manpower, and above all, to both countries that regulate the flow of migration.

A second aspect to consider is the role of NHRIs in the effective coverage of rights to social security that migrants and refugees have in countries of destination, training migrants by giving them information, as well as diffusion and enforceability of their social rights. The effectiveness of this information will depend on whether or not it is delivered as soon as possible in the migration process; this opens up excellent work perspectives with NHRIs in countries of transit, as with the consular and diplomatic body. Particularly noteworthy in this regard, is the diffusion of the “Mexican Migrants’ Guide”, provided by the Mexican Ministry of Foreign Relations, as well as the information campaigns through posters, of the Bolivian Defensoria.

In Australia, centers have been created for training in labour rights and social security, such as the Migrant Resource Center in Coburg, Melbourne. Said center not only has the purpose of giving training with regards to the rights within the social security system, but it also teaches migrants the way of life, culture, and language in Australia, and helps migrants become familiar with the government system.

In Northern Ireland the Human Rights Commission, together with the Northern Ireland Justice Center, and the Dungannon Project<sup>38</sup>, presented a series of information guides regarding the claim of the right to social security, oriented towards migrant workers. In China, the insurance coverage for migrant workers that suffer injury in the workplace has been amplified, regardless of the fact complaints continue on behalf of internal migrant workers, through the hukou system, or mandatory residence registry<sup>39</sup>. In Mexico there is health insurance for the families of Mexican workers living abroad, with specific health benefits given by the Clinics of the Mexican Social Security Institute. Spain has special regulation that establishes a special covenant in the Social Security System for Spanish emigrants and their children that work abroad<sup>40</sup>.

## 5.2. Migrants’ Right to Health

The CPRMWF guarantees in articles 43 and 70, health coverage and services for migrant workers and their families. Both the Covenant on Organizations of Rural Workers (1975) and the CPRMWF (1990) recognize the



right that irregular migrants have to health. OG 14 on the right to the highest level of health possible, stipulates that States are obligated to respect the right to health, abstaining from denying or limiting equal access of all persons, including asylum seekers and irregular migrants, to the various health services.

Migrants normally are in a better state of health than nationals, therefore health is an advantage that allows them to migrate, and is a condition that countries of destination control<sup>41</sup>. Irregular migrants are more prone to disease, since they do not know how to access healthcare systems, or because they cannot pay for healthcare, or for fear of being deported. Many migrants are exposed to labour or housing insalubrities. The Argentinean Defensoria del Pueblo carries out actions of control with regard to health and public health conditions of migrant workers, mainly Bolivians and Asians in irregular enterprises.

Article 12 No. 1 of the International Covenant on Economic, Social, and Cultural Rights states that Party States recognize the rights that all have to benefit from the highest possible level of physical and mental health.

See: United Nations, 1966. International Covenant on Economic, Social, and Cultural Rights, approved and opened for ratification in accordance with Resolution 2200A (XXI) of the General Assembly, December 16th 1966. New York.

Poverty is determinant in having worse access to health, and migrants typically have higher probabilities of poverty. Moreover, national health plans do not recognize the right to health for migrants, or only allow access in the cases of diseases that are of vital risk, or emergency situations, particularly in the cases of irregular migrants. One of the most critical situations is the demand of a document of identification when being tended to in the public health care system. In this topic, it is fundamental to consider the contributions of migrants in societies of destination. In the Philippines, it is frequent to demand HIV tests from migrant workers, regardless of the fact that legislation prohibits it<sup>42</sup>.

#### International Covenants on the Right to Health

Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries

International Covenant on Economic, Social and Cultural Rights

Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries

Convention concerning Minimum Age for Admission to Employment

Convention on the Elimination of All Forms of Discrimination against Women

International Convention on the Elimination of All Forms of Racial Discrimination

Convention on the Rights of the Child

Optional Protocol to the Convention on the Elimination of Discrimination against Women

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Some governments include plans and programs on migration and health in their policies, this is very important in order to channel the repercussions that population mobility has in public health, as well as to facilitate integration of migrants in countries of origin.

In the right to health, the role of NHRIs is central for the worth of life involved. It is for this reason that NHRIs must strive for the most full recognition of the right to health for migrants, interpellate in order for States to consider the link that exists between migration and health in national health programs, taking into consideration human rights and aspects of public health, promoting investigation, gathering of data, and exchange of information between countries, as well as provide trustworthy and current information on questions regarding migration and health. In this area, the German Human Rights Institute has carried out exhaustive research regarding economic, social, and cultural rights of irregular migrant workers, with an emphasis on their rights, in education, and more particularly, migrants' right to health.

Moreover, NHRIs can facilitate and promote cooperation between countries, international organizations, and other parts concerned in order to concretely face the challenges of public health propounded by international movement of persons, strengthening international collaboration, and overseeing the exchange of information, data, technical expertise, and materials, while at the same time, facing the concerns regarding migrants' right to privacy.

In this regard, NHRIs must strive to take procedures of observation, evaluation, and follow up of migration and health policies and programs to practice, in all stages of the migratory process, guaranteeing transparency, swiftness, accessibility, and coverage, as established by current international legal norms.



### 5.3. Migration of qualified personnel

NHRIs must mitigate the impact of migration of highly trained personnel in key sectors of the economy and society, such as the administration of energy resources, public health, and education. Several years ago, the concept of “brain drain” came to be, in order to explain this matter. It is possible to assess nowadays that “brain drain” is more of rotation, and that countries of destination, transit, and origin benefit actively from it, for various reasons.

On this matter, it is important to indicate the international cooperation and dialogue between states can favour the shared contribution of qualified workers in societies of origin and destination. The role of NHRIs in this field is key in order to mitigate the risks of migration of highly skilled personnel, mainly in the preparation of reports that allow to address the topic from an integral view, and with respect for human rights, in light of that established by Chapter A, No. 3, letter a), iii) of the Paris Principles, but also in the coordination with other NHRIs in countries with migratory flow, such as the relationship between universities, and training centers.

For a great portion of the depressed populations in the developed centers in Africa or Latin America, the absence of doctors and academics is and will continue being a factor that multiplies poverty, inequity, and exclusion. Canada and Australia have a greater proportion of educated immigrants in relation with the total amount of immigrants in said countries<sup>43</sup>.

In Bamako, the European Union signed an agreement with Mali in order to create a Migration and Employment agency, within the framework of a reunion of the international association of francophone regions. The agency will be completely under the guide of Mali authorities, who will decide the type of workers that they offer to countries petitioning manpower, in order to avoid so called “brain drain” as the selective recruiting of workers in a determined sector.

Programs of co-development are an interesting initiative in this regard, that allow for an integration of vision of developed and developing countries. The II World Forum on Migration indicated the convenience of promoting this type of initiative for Asia, Latin America, and Africa. NHRI reports may help to identify depressed or marginalized sectors, as well as assess the need of qualified, international, professional assistance, or provide technical assistance in order to improve the capacity and competitiveness of professionals in countries of origin.

UNESCO has indicated that it is possible to revert “brain drain”, through “brain gain”<sup>44</sup>. Undoubtedly, without migration of the best and most brilliant citizens, development in various parts of the world would not have been possible. Currently, the pattern of the qualified migrant that does not return to his or her country of origin, has been overcome. An exemplary case is that of resident technicians that have created TIC<sup>45</sup> companies in Bangalore, India.

One of the most effective ways of addressing the topic is the construction of Diaspora networks, which allow for the association of migrants in countries of destination in order to promote their identities and common ends. The United Nations Digital Network for Diaspora is an example of this, which aims at generating a network of experts and information technology businesspeople, based on African Diaspora in Europe and North America. Digital inclusion improves the options of migrants, favouring greater participation and social integration, such as the development of identity and contact with their origin surroundings.

UNESCO has developed an initiative with Hewlett Packard Experimental Solutions, in order to convert brain drain into brain gain, oriented towards stimulating the development of scientific or business surroundings necessary to reach academic excellence, facilitating contact with international experts, access to libraries in other countries, and promoting the collaboration with fellow citizens in other countries. Universities of Albania, Bosnia Herzegovina, Serbia, and the Yugoslavian Republic of Macedonia have received new generation computers, and training in grid computing, which has the potential of convincing talented people that it is not necessary to go beyond international frontiers in order to reach the most recent technology.



## 6. Migrant Remittances

Migrants have the right of remission of resources to their families in countries of origin, and must be able to rely on norms, institutions, and adequate conditions that will permit them to send said resources. In this regard, varied figures have been given, and there is a true interest on behalf of many organisms, to examine the possibility of orienting remittances of countries of destination, towards the most urgent needs of development in countries of origin. In the Human Rights Commission Resolution 2002/59, called “Protection of Migrants and Their Families”, the commission encourages “all governments to eliminate illegal obstacles that impede the quick transfer, without restrictions and in safe income conditions, of goods and pensions of migrants to their countries of origin, or any other country, in light of applicable legislation, and to consider measures to resolve other problems that may hinder said transfers.”<sup>465</sup>

Article 47 of the International Convention on the Protection of the Rights of All Migrants and their Families states that migrant workers have the right to transfer income and savings, particularly funds needed for the sustenance of their families, from the State of their employment to the state of origin, or any other state. Said transfers must be done in accordance with procedures established by applicable legislation of the state interested, and in accordance with applicable international agreements. Furthermore, states ought to adopt the measures necessary in order to facilitate said transfers.

See Article 47 of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families

### The Spanish Government signs agreement with banks regarding remittances

The Secretariats of Cooperation, Emigration, and Government of Spain signed an agreement with Ceca, patron of Credit Unions, and AEB, patron of banks, in order to promote greater participation and implication of parties in order to put mechanisms in motion so that remittances have a greater impact on financial development. In order to do this, banks and unions have agreed to increase transparency, outlining conditions under which remittances are made (commissions, installments, and security of transfers), as well as amplifying their services. The government in turn committed itself to carry out a study on remittance operators in Spain, and the price of remittance. The government also said that it would give funds in order to improve remittance statistics, in Spain as well as in receiving countries, and impulse the reception of remittances in such a way that they associate with lines of savings credit, or financially attractive investments. ([www.remasas.org](http://www.remasas.org)).

The World Bank has manifested that “migration and remittances: a) reduce poverty in the homes of those that receive them; b) increase investments in human capital (education and health), as well as other productive activities; c) reduce child labour and improve the education of children; d) increase business activities. Other additional corroborations include: a) the effects of remittances on investments in human capital and other productive activities, are greater than those that have other sources of income, and b) increases in income can also benefit homes that do not have migrants. Basing ourselves on those studies, apparently migration and remittances have a positive effect on the development and well being of countries of origin.

Remittances make up triple the amount of official aid for development in low income countries. In Latin America remittances already constitute the second average income in the region. Money sent to countries of origin increased from USD 102 billion in 1995 to 232 billion ten years later, in 2005. The percentage of remittances that are sent to developing countries had an increase from 57% (58 billion) to 72% in 2005 (167 billion).

### Bank of America eliminates charges and commissions on remittances

Mexican residents in Chicago will be able to send their monies to their families with no additional charge. Through the Safe Send service, this financial group is the first to implement this policy, as a part of their strategy to gain terrain in this market, and begin to aid conationals in this regard. “Our main objective is to eliminate charges, and to not charge commissions, to help people to send their money for free in a fast and safe way, to their families or friends that live in Mexico,” said Eduardo Vergara, senior vicepresident for remittances, Bank of America.

Representatives of the bank of America agree that the safe sending of remittances translates into the continuity of the project of the President of Mexico, Mr Vicente Fox, who asks all financial entities that deal with remittances, to lower their costs gradually, so that commissions will be eliminated by 2008.

However the effective and concrete link between remittances and development is complex; notwithstanding the amounts, it does not appear to be an effective solution in overcoming poverty, if it does not go in hand with more global agreements for strengthening democracy, integration, and fight against poverty, as well as inequality and assistance for remittent families and beneficiaries.

Remittances are generally small amounts of money that are intended to aid the needs of families of origin, generally people with low income, with a considerable impact on the situation of the particular family, multiplying and



diversifying the capacity of income without being held to the economic fluctuations of the country of origin. As we have pointed out, there is a debate that exists as to whether the effective capacity ought to be conducted at a global, regional, or bilateral level, due to the fact that it deals with a diversified flow in small quantities.

Certainly the dependence of a country on remittances is a clear sign that the policies that exist to avoid conditions that provoke migration are failing. A national economy based on migratory remittance is not sustainable in time. Greater actions are needed in the generation of the capacities of benefited families that permit the rational and adequate use of funds, in such a way that it permits a greater impact in the development and human rights of the family, locality, and country.

Remittances have had impacts in the sending and benefiting countries, in the transference of resources, in the reception and destinations of expenditures, savings, and investment. In all of these phases situations are produced that are linked with the human rights of migrants, which modify the situation regarding economic, social, and cultural rights of millions of people, due to the generality, quantity, and entity of the same. It is for this reason that the attention of NHRIs is required.

One of the topics indicated in Migration Forums has been the excessive charge on behalf of states as taxes or rates on remittances<sup>47</sup>. This is burdensome due to the application of a cost for the transfer of money, and particularly according to the exchange rate that transfer agencies apply, according to their own will. Both of these quantities combined can constitute an important levy on remittances, which generally fluctuates between 100 and 400 US dollars as a maximum.

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families. 2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

See Art. 48 of the International Convention on the Protection of the Rights of Migrant Workers and their families

Regarding this point, NHRIs can exercise an active role at a regional level, recommending the subscription of agreements in order to avoid double payment between states, or formulating interpellations before economic and financial authorities regarding the disproportionate charge of commissions, mainly between NHRIs and countries of origin and destination. These actions can be developed in societies of destination, guaranteeing transparency, free competence, and respect for the rights of the migrant consumer with regards to financial services, such as in countries of destination, favouring non-taxation, formation of remittance associations administrated by families of origin, as well as training processes for receiving families.

In receiving developing countries, NHRI intervention can mean an important contribution in overcoming poverty, since the incidence of these measures greatly affects the availability of income, particularly regarding remittances of less than USD 100 per month. The Paraguayan Defensoria del Pueblo petitioned the Central National Bank in 2006 to establish agreements with financial institutions that deal with remittances with Paraguayans living abroad, in order to lower rates for services provided<sup>48</sup>. The Venezuelan Defensoria has called for fast and safe transfers, with low costs for remittances, goods, and pensions, in the OAS Special Session on Migrant Workers<sup>49</sup>. Similar initiatives have been developed by NHRIs in Costa Rica, Guatemala, Mexico, Peru, Nicaragua, Argentina, El Salvador, Bolivia, Ecuador, Colombia, and Belize, among others.

In countries of remittance remission, NHRIs can begin processes of control and follow up of the financial flows, and of public information, regarding remittance costs, certification. Agencies that have state authorization may ask parliaments for a minimum regulation of remittance institutions in order to guarantee consumer rights, such as popular education and counsel for organized groups, regarding the use of these mechanisms. Agreements with transfer agencies and banking institutions may link remittance beneficiaries with innovative initiatives regarding savings and credit<sup>50</sup>.



### 3x1 Program for Migrants

The 3x1 Program seeks the collaboration of Mexicans residing abroad, of social actions and efforts, oriented towards gathering resources, initiatives, and efforts in action with social content in order to favour the development of the communities of origin of migrants, and to improve their quality of life.

The objectives of the program are as follows: (1) Support initiatives of migrants living abroad, in order to carry out projects through the concurrence of Federation, State, Municipal, and migrant resources, promoting equity and focusing on the benefits of the program, (2) impulse co-responsible initiatives in which migrants and the three levels of government, carry out projects that improve the social conditions of chosen localities, (3) Promote the channeling of investment proposals to the communities of high migration and poverty, and (4) foment bonds of identity of co-nationals living abroad with their respective communities of origin.

Projects are financed in the following manner: 25% corresponds to the Federation, 25% to migrant organizations, and 50% to state and municipal governments.

behalf of irregular migrants that do not have proper identification, due to the fact that this impedes the access to social services (as well as access to public services and social security). From the starting point of agreements with financial institutions, the use of identification from countries of origin, as well as consular certificates, is being made possible, for the sending of monies. This presents a practical solution to the human situation of irregular documentation. This situation is controversial, due to the fact that authorities of developed countries feel that in this way, irregular migration is being regularized.

The relationship between NHRIs and migrants that send remittance is key, in the process of “remittance literacy”, which translates into the education of migrants, in order for them to operate as consumers of financial services, which in turn allows them to operate with forms written in their own language, count on the right to information regarding effective remittance costs, demand the absence of deceitful publicity, ask for receipts that

serve as proof of the operation, as well as being able to present complaints.

In countries that benefit from remittances, NHRIs can carry out important actions for families that benefit from said remittances. In the same token, NHRIs have an important role in the stratification and characterization of the use of remittances by families of origin, training and advising towards saving and social investment of resources, through a process of “financial literacy for development”, establishing mechanisms for micro-credits, and petitioning the intervention of the consular body, facilitating the administration of remittances as humanitarian assistance, in the cases of extreme need.

The Ombudsman of Catalonia, Rafael Ribo, sustained that immigrants send more money to countries of origin, than what the north invests in the south, and highlighted the fact that in Spain, we must not forget that social security begins to sustain itself with the investments of the migrant population.

See Barcelona Forum, 2004  
[www.barcelone2004.org](http://www.barcelone2004.org)

He action of NHRIs must also strive towards the active observation of a series of phenomena related with migratory remittance, such the constant return of migrants as tourists in known and accepted conditions, the expeditious and non-discriminatory re-entry to the country of origin, benefiting from the rights given to him or her due to the condition which they have, along with the study of resources that the migrant directly leaves as a result of his or her visit. In this manner, the monies of the migrant are multiplied with the direct expenditure he or she makes during visits and tourist activities.

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin. 2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

See: Art. 17 No. 1 and 31 No. 1 of the International Convention on the protection of the rights of all migrant workers and their families.

Migrants invest resources in transportation, telecommunication, computers, exchange agencies, payment of fees for consular services in order to obtain documentation or official procedure, acquisition of assets with the currency of the cultural origin in their country of origin, and that maintain their national identity, such as handicrafts, clothing, or other products. NHRIs must have trustworthy and verifiable information sustained through time, in order to benefit the rights of migrants in these aspects.

In this manner, intervention of NHRIs in the area of remittances must be global, in States and Economic forums, among NHRIs involved in



migratory flows, for the defense and promotion of human rights (as well as consumer and traveller rights), both in countries of remittance and receiving countries. As in the entire migration, refuge, displacement axis, action must necessarily be global.

## 7. Cultural diversity and Migratory integration.

The cultural make-up of humanity changes due to migration, and modifies the way we understand the sense of belonging, as well as the notions of citizenship and sovereignty. In XXI century society various languages are spoken; there is a diversity of customs; different nations joint, and dimensions are integrated, that define a society of multiple social, ethnic, and cultural composition. The most developed cities in the world are those that are most open to migratory integration. This is the vision of cultural diversity that overrides the traditional dialectic of “denial of others”<sup>51</sup> that may be indigenous, afro, marginal, and substitutes it with a all inclusive vision that rescues wealth and opportunity in others.

### Guidelines for NHRIs regarding migratory integration

Policies of integration must:

1. Be approached from a universal and integral dimension, and from multidiscipline.
2. Base themselves on human rights, equality, and the principle of non-discrimination.
3. Be designed, implemented, and evaluated with migrants and their respective associations.
4. Be communicated through public awareness campaigns, taking into consideration humanity and diversity.
5. Facilitate dialogue among sectors, groups, and various interest groups.
6. Make an emphasis on uniting points, rather than differentiating points.
7. Bring those that have been distanced together, strengthening the values of peace and solidarity.
8. Spread a sense of extended citizenship, orienting and informing with regards to the human rights of migrants.
9. Fix or establish a safe, transparent, public, and trustworthy statute on migratory rights.
10. Effectively sanction practices that are xenophobic, discriminatory, or intolerant.
11. Establish incentives or recognition of best practices with regards to integration, guaranteeing diffusion and replicability.
12. Define criteria of concrete and precise political will towards integration, with serious, public, and verifiable commitments.
13. Educate regarding diversity.

Migratory integration is an ethical, cultural, and legal obligation in the societies of the world, and is an imperative in the entire world. All nations have at one point in their history been constructed by migration in states of origin, transit, or destination. The principles of equality, non discrimination and equity found in the Corpus Juris of International Law, invite us to the construction of policies, plans, and programs that guarantee a culture of non discrimination as well as equal opportunity, and in which differentiation based on racial, national, or ethnic origin is not possible. A great part of NHRIs in the world adopt this vision and develop actions for the integration of migrants in societies of destination, as well as the return to societies of origin.

The German Human Rights Institute have carried out dissertations and publications on human rights and cultural diversity, analyzing concepts and practical matters on education regarding Islam, the use of traditional clothing in schools, laws of naturalization and acquisition of citizenship, among others. The Institute also actively participates in the National Integration Plan in Germany.

From this vision, migrants must integrate themselves in societies of destination, within the framework of good policies, plans, and programs that favour economic, social, and political participation, thus enriching societies of origin and destination, and developing a sense of belonging, favouring peace as well as social, economic, and cultural stability, and reducing racism, xenophobia, and discrimination.

In New Zealand, the Kiwi Life program was implemented, in order to give migrants orientation with regards to integration in New Zealand’s society, counselling on ways to find employment, accessing the educational system, driving,

### University for migrants

The University of Alcala has implemented a University for migrants. This is an innovative program of socio-cultural integration that aims to be a place of gathering for people and cultures, for better coexistence and cultural development. The objective is, therefore, to help the migrant population to learn the Spanish language and culture, whether they be in an initial state coming to know the culture, and wanting to develop themselves in said culture; or in an intermediate or superior state, by virtue of which they can have access to a job position of greater responsibility. Regarding their nationalities, the attendees came from 27 different countries: Romania, Morocco, Brazil, Bulgaria, Nigeria, Poland, Iran, Guinea, Ghana, Cameroon, Russia, Bielorrussia, Senegal, Ukraine, India, Lithuania, Ivory Coast, Argelia, Moldavia, Mozambique, Syria, China, Iran, Taiwan, Egypt, Mauritania, and Jordan.





learning the lifestyle, as well as on public institutions, such as the health system, acquisition of property, and the New Zealand police force. Said program begun as an initiative of Manukau City, and was incorporated as of 2004 to the New Zealand Diversity Action Program, which was developed by community leaders, counsellors, and religious leaders. Among those affiliated is the Human Rights Commission.

The Ministry of Citizenship and Multicultural Affairs of Australia, together with the Ministry for Children and Youth Affairs created “Living in Harmony”, with the purpose of informing, diffusing, and training the migrant communities in Australia in order for them to understand Australian Family Law, and face the fears that they may have with regards to the legal system, including the judicial system.

#### Multicultural Library for Migrants

In Spain, a Catalan entity exchanges books among migrants in order to help them with regards to integration (Llibre Viu Association), in the Rocafonda district, a neighborhood with roughly 40% immigrants, with the purpose of facilitating and contributing towards integration and cultural diversity. The association has over 12,000 books, as well as 70,000 books found in storage. The place of gathering, with tables and shelves filled with books on various genres, some in Arabic, works in a very simple way. A person brings a book, and exchanges it for another, regardless of whether the book given is in worse conditions than the one taken. Moreover, one can leave only one book, and take two or three.

The Human Rights Commission in Canada created the Discrimination Prevention Program, with the objective to promote Human Rights understanding and acceptance, and to establish alliances with stakeholders with the purpose of preventing discrimination, sharing the Commission’s experiences and other organizations’ best practices.

The transnational family is slowly appearing as the parental nucleus, developing relationships in various countries; this will provoke and continue motivating changes in the global order, with grandparents, parents and children living, studying, working and retiring in different countries, and with more than one nationality. This notion changes that of traditional citizenship axis linked to a State and proposes interregional citizenship as a universal or “pluriversal” challenge.

A wise attitude will be that States strengthen the contribution to migrants’ development and their families, with public policies favoring the most complete integration to the society, avoiding situations generating separation, facing climates and the alteration of the economic and public order of the countries. Facts of this kind marked the France’s public agenda in the month of December 2005. Similar facts have occurred in other places of the world.

In many countries of the world, among them Sweden, Australia, Canada, programs have been developed for the learning of the language and of the cultures of the reception society, that constitute the first stage of the migratory integration.

The NHRIs plays a central role in the social, cultural, economic, juridical, and political “citizenship extension” to the migrants in diverse ways: facilitating information about their rights, orienting about the access to the public services and the State social rendering of services, adopting measures for their labor working insertion, educational qualification, dwelling settlement, relation to the social security system, incorporation of their children to school and orientation regarding rights as pointed out by the CPTMF, facilitating translation services, recommending to authorities the adoption the measures to allow the homologation of degrees in the countries with migratory flow, striving for the access to the official documentation by consular means with reasonable costs, information regarding the mechanisms of the remittances delivering costs, formation as consumer and producer in various cases, among others.

The NHRIs can strengthen the intercultural dialogue with the migrants, promoting intercultural educational programs at all teaching levels, ecumenical and interreligious meeting spaces, carrying out manifestations or artistic expressions multiplying the richness of each cultural expression for the migrant’s culture knowledge. This process can be supported by the Churches, religious confessions, networks and civil society organizations.



One of the ways of promoting the multiculturalism is the NHRIs action in the favoring of the migrant association as Diaspora, looking for common interests. In this regard, in Australia, under the NHRI's sponsorship in the Victoria region, a Professional Association for migrants was created, called "Goulbum Valley Ethnic Professional Association (GVEPA)", whose main purposes are: to attract to the Victoria region migrant workers,

#### Guide of action for migratory integration

- To promote the migrant integrations at a long range, through educational and social policies favoring their naturalization and voluntary assimilation.
- To try exhaustive integration programs and policy developments, facing the integration of the linguistic, social, sanitary, educational and economic aspects, and respect to the basic human rights, the good social behavior, an equal opportunities, and the respect to the migrant dignities, at the same time encouraging the support to the reception communities taking care of the migrant integrations.
- To influence for the discriminatory legal rules against the migrants being derogated: as difficulties to acquire properties, disqualification for being directives of certain organizations, unions or enterprises, etc.
- To make a call for the development of a Doctrine and culture of promotion for the diversity, and the one of the migrant rights in the police and armed forces, in the cases to be in order to law to reform the military doctrine indicating the migrants as a threat to the national security.
- To develop and give training, language teaching and cultural orientation courses in the origin countries in order the integration process are facilitated.
- To encourage the migrant active participations in integrating programs and, consequently, at the general integrating process.
- To promote the association possibilities in the migrants as the generation of enterprises and cultural organizations.
- To encourage integrating programs considering the participation of pertinent interlocutors in the society bosom, particularly of representatives of political, social, cultural and private sectors in the integration process, in order a wide support in front of the migrant integrations be developed.
- To request the adoption of measurements that allow the regular migrants and their relatives, whose permanency in the country of reception is legally authorized, to enjoy the social, political, civil and economic, social and cultural rights.
- Programs of integration realize that beneficiaries avoid the discrimination between groups and also between them and the local population
- To provide and to spread information adapted as for the programs, rights and services of integration for the migrants.
- To elaborate Guides and Manuals of good treatment, of information about public services for migrants and of training in migratory integration for civil servants, teachers and policemen.
- To adopt programs of struggle against the discrimination to prepare her to public and private level.
- To try the adoption of political migratory national that grant a general access to the regular migrants of to the social services
- Present Does in the Reports of the NHRIs the grant of the right to local vote for immigrants and the adhesion to political parties for the foreigners.
- To request measurements that guarantee that the migrants receive the necessary elegant ones and medical attention, without any other distinction that those of medical character
- To request measurements that guarantee that the migrants, especially the children, have access to educational services, without it is a requirement to credit the documentary condition of the parents.
- To give humanitarian assistance in order to integrate the migrants who find an employment, by means of services of placement, of professional training and of professional update.
- To promote measurements to recognize the qualifications and competitions of the migrants.
- To request to regional level the homologation of titles and degrees.

Elaborated with base to practices systematized of NHRIs taking as base report, response to questionnaires and press, and practices of integration in San Francisco, USA.

to facilitate the support and information of references for the employers, to promote the professional development and intercultural training for their most complete integration in the Australian society.

Another interesting experience is the census of real properties actions and "migrant census" following-up, or the adoption of measures to favor censal questions about migration, to adequately envisage the public policies directed to the most in danger. The Migrant Rights Commission (San Francisco, CA) along with the Complete Count Committee developed the Census Extent Project 2000, whose mission was to credit the inclusion of the entire migrant communities in the 2000, to obtain veridical and reliable results, in order to obtain the state and federal funds to benefit the migrants that were not considered upon the 1990 Census<sup>52</sup>.

At the cultural field, there are interesting experiences of investigation, diagnosis, census of properties, and culinary encounters, musical, artistic, literary, politic and economic among different countries because of the migration.

A concrete kind of contribution to the integration is the establishment of public funds to support projects and migrant small initiatives. The Program XENOS "Living and Working in Diversity" of the Federal Ministry of Economy and Work of Germany, that is directed to young people who have disadvantages regarding work, education and vocational training, because of challenges such as the xenophobia and racism. XENOS concentrate its assistance in: integral local projects and advisory movable equipments, and experts, training of



multipliers, measures in schools, professions and plants, and improvement of awareness information, there are more than 200 projects approved.

### 7.1 Actions against migratory discrimination.

NHRIs must develop actions against migratory discrimination, not only using legal, juridical, or administrative means, but also through the education, formation, information of rights, and public awareness, in order to obtain the greatest possible equality among natives and migrants, as the defense of the principle of equal opportunity within employment, property, as well as spaces for social, political and economic participation within a society.

The San Francisco City District Supervisor has made various public calls in order to safeguard migrants' rights with regards to a discriminatory law. Together with NGOs, they have pointed out their concern, due to the fact that new migration legislation impaired the stereotype regarding migrants, and contributed to the misinformation and poor treatment of migrants within the city. Among the supervisor's activities that were carried out, one million dollars were obtained for the city budget, with the purpose of giving legal counsel and language services for the migrant communities. Among other initiatives in San Francisco, the "Migrant Non-Discriminating Ordinance" was presented. This is a best practice of a model norm that intends to establish permanent rules favoring a culture of integration, in order to fight discrimination, through an initiative of the Immigrant Rights Commission, along with the San Francisco supervisor's Directive Board, of the "Migrant Non-Discriminating Ordinance", declaring San Francisco as an antidiscrimination security zone.

### 7.2. Migrants' and natives' Right to Vote in migratory conditions.

Article 21 of the Universal Declaration of Human Rights, recognizes the suffrage right of every person, to elect and to be elected. One of the most frequent

Integration demands of the migrant associations is the Demand of political rights, and among them, the right Of suffrage or right to vote, to be elected to popular representative offices, and to opt to public offices, among others. In Europe, foreign migrants have the right to vote in Belgium, Denmark, and the United Kingdom. Lately the right to suffrage was granted to migrants with permanent residence, and was recognized by diverse countries in different ways: (a) at local level, the right to vote and to be eligible: Denmark, Finland, Ireland, Lithuania, Netherlands, Slovene and Sweden, (b) at local level, the right to vote without being eligible: Belgium, Estonia, Hungary, Luxemburg and Slovakia, (c) countries recognizing the suffrage at local level only under reciprocity conditions: Spain, Portugal and the Czech Republic and (d) the particular case, recognize the right to suffrage in all the elections to the proceeding from the Commonwealth: United Kingdom.

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

*"SEE: Art. 25 of the International Covenant on Civil and Political Rights"*

The Egyptian National Human Rights Commission has developed a strategic plan for the protection of the migrant workers by means of the participation in the country's public affairs, through a series of measures, among which the following must be mentioned: legal reforms, the exercise of political rights, program preparations, and announcements for public awareness of Egyptians abroad, regarding the standards of electoral registration in their respective countries; establishing registry centers for Egyptians, abroad among others.

In general, the nations of the European Union recognize foreigners' suffrage right under diverse modalities and conditions. Sweden, Finland and Denmark are granting this right after 3 years of residence, Holland at 5 years, and Ireland only after three months, Spain and Portugal granted it under reciprocity. In Italy migrants elects 6 senators and 12 deputies, in France they can elect the President and vote in the referendums electing 12 senators.

A second political participation modality is the right to be allowed regarding nationals abroad in migratory condition. Migrants abroad from Mexico, Peru, Colombia, Australia, Spain, Argentina, Brazil, Venezuela,



Dominican Republic are allowed to vote, and a total of 61 countries in the world recognize said right for their nationals.

On February 13, 2003, a law allowing Philippine nationals residing abroad to participate in the country's elective processes was approved. Migrant active campaigns are carried out in the country, as well as in Spain by the Migrant Association Federations (FERINE) and in Chile, in order to obtain the right to vote for foreign migrants as well as nationals in migratory condition<sup>53</sup>. OCIM, along with other networks and institutions, have constituted the International Coalition for Migrants' right to vote.

## 8. Internet and Social Media (SM)

The role of the Media is central for the development of a culture migratory integration and Human Rights. The Media performs a key role in the promotion of cultural diversity campaigns and in migration positive values. It is for this reason collaboration with the Media is fundamental for the success of an integratory society free from xenophobic or discriminatory concepts.

The multiplying role of information takes various forms and modalities in the world. In Latin America and Africa they have the radio media, which has an ample territorial coverage and develops a proper identity redeeming and integrating roles of the most far away populations and places. In this regard, a successful campaign for the diffusion of rights must consider the characteristics of the Media in light of each particular place. In the Seminary on Migration and Regional Integration of the World Social Forum, held in Porto Alegre in 2005, migrant associations pointed out the importance of handing out fliers outlining rights, in diffusion campaigns in Latin America, Asia, and Africa that consider border actions, and which include images and texts in their own language. In light of this, an adequate campaign must consider the role of community radio, as well as popular diffusion media.

The migrant condition brings certain communicational difficulties and vulnerabilities. Most NHRIs rely on web pages backing their action offering information for migrants, as well as opinion and consultation spaces, that does not imply presence, greatly facilitating the solution of daily problems regarding migratory difficulties. Internet as a source of information is presented as a reliable information network. In this way, NHRIs' webs must offer truthful information regarding the migratory question, and must take advantage of all of the innovative ways of action in the human rights field that this global network offers.

Within this multimediality it is highly important to highlight the different use of formats allowing the message's wide diffusion. We must point out the television announcements that the Colombian Ombudsman's website offers. Also worth replicating is the possibility of providing information through chat sessions with public authority, on behalf of the Peruvian Ombudsman, thus taking advantage of all innovative forms of action in the field of Human Rights, that this global network offers.

" This reaction of our people who live abroad, symbolizes the potential of a cultural market that we have to discover ... " " For centuries our wooden vessels were sufficient in order to take our grandparents in the Asia Pacific region to new rich worlds in trade and culture. Today we are crossing this route again, only that this time in a different direction, towards new worlds of freedom and democracy " " we Must learn to communicate better, to expressing the values that mark our agenda and the connection to plan between the cultures of the Asian Pacific Region, for the preservation and promotion of our cultural diversity "

Sitiveni Halofaki, Director of Programs of the Fiji Corporation of Diffusion (FBC), SEE: Manual of Best practices 2006: Broadcast television of public service, UNESCO. [www.unesdoc.unesco.org](http://www.unesdoc.unesco.org)

Iconography is another important element, since it permits a language of universality. The Philippines Human Rights Commission's Web site, presents several photographs, the Panamanian Ombudsman shows images and headlines that are varying, showing diversity and giving space to groups such as migrants. The use of images as well as internet hypertext, allows each group to be able to access the sites that they are interested in, and above all allows migrants to access Ombudsman's websites, to information prepared for him/her. It is in this manner that thematic access presented by the Ombudsman's offices of Spain, Panama, and Australia, are an



example, in the sense that they attract the attention of those requiring information, through what is today the most massive form of access.

Finally we must highlight the reciprocity that the Internet allows, regarding NHRIs and the people. The possibility of presenting information in various languages, offering spaces for counsel and complaints, makes this an option of high importance for migrant groups in the world, and which is unfortunately absent in various countries.

Other means integrate and bring migrants together, other than the Internet. UNESCO has developed a Good Practices Manual regarding Radio television as Public Service, highlighting its role in the case of “Philippines in Contact”, a program which allows Filipinos to stay in contact.. The majority of the Philippines channels makes the transmissions via satellite abroad, through private stations, however it is through a special Law regarding Public Television and Radio, that private infrastructures may be used in order to diffuse public announcements on a regular basis. A great deal of information is used to promote communication with migrants abroad, informing them of their rights. Moreover, Radio and Television with a migrant public has reached the Fiji Islands.

Regarding the relationship between migration and the Media, in the Republic of Korea an Agreement between the Herald Media Inc. and the Migrant Workers Center was celebrated, in order to improve migrant workers’ welfare, engaging themselves to work together to enhance the migrant life and rights in the Korean Republic, raising funds for the improvement of health care for foreigners. Also, Herald Media Inc. engaged itself to facilitate the contents free use of the three journals of that company, in order to publish their bulletins. Herald Media also engaged itself to publish more articles regarding the migrant workers’ rights, in order to reach a better social understanding of their positive contribution to the Korean economy.

The Bolivian Ombudsman accomplished a very important role in the communicational strategy derived from the organization of the VIII NHRI International Conference, that considered the diffusion of public awareness posters in public offices, television coverage, radial and written, national and international of communication media and international organism offices, the production of documents regarding migration and development, including a paper containing the Conference’s effective results, that counted with the presence of the President of the Republic of said Country.

## 9. Prevention of Racism, Xenophobia, and all forms of related discrimination.

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

See: Part(Report) III, Article 7 of the CPRMWF

Equality of persons and the discrimination prohibition is widely contained in the Human Rights International Treaties. It is indicated by the Universal Declaration of Human Rights in its Articles 1 and 2, the American Declaration of Rights and Duties, in its preamble and Article II, The Political and Civil Rights International Agreement in articles 2, 3 and 26, The American Convention on Human Rights in its articles 1 and 24, the International Convention on the elimination of

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

SEE: Art. 1 of the Universal Declaration of Human Rights

all Forms of racial discrimination in all its contents, and especially in its Article 1, the Convention on the elimination of all kinds of discrimination against women in its article 1, and the Convention on the Rights of Children in its Article 2, among others. The CPTMF regulates said matter, in the article 7, Part III and 13, number 3 letter d).

The Human Rights Treaties adopted in 1966 and 1969 include the obligation of prohibiting conduct that violates human rights, but only with regard to discrimination (PIDCP Art. 26 ). The PIDCP Art. 20 establishes the prohibition of all acts of national hatred, whether it be racial or religious, and which incites discrimination,



hostility, and violence. These acts are of such seriousness that International Law has penalized genocide motivated by the intention to “destroy, total or partially, a national, ethnic, racial or religious group...”<sup>54</sup> This interpretation is confirmed by International Jurisprudence, which recognizes racial discrimination, as a norm that bonds the international community as a whole. Racism constitutes a form of human rights violation per se, due to the fact that it affects the principle of equality and non discrimination. It manifests itself as characterizing others as inferior in any social activity, and is present with regards to migrants when it is manifested in conditions that differentiate them, socially, culturally, or politically, with regards to nationals.

It is important for NHRIs to take into account racial discrimination suffered by indigenous, African, and Asian women, as well as the access to production resources in equal conditions with regards to men, the implementation of preventive measures in order to remedy the grave situation that certain migrant working groups are in; foreign domestic workers, as well as victims of trade and trafficking, discrimination, and violence, and the struggle against prejudices against them.

The NHRIs action in this field is important and territorially ample. As the VIII Conference in Santa Cruz has indicated, the NHRIs have to reinforce training and public awareness activities in Right Humans matters intended to the immigration functionaries, border police, detention centers, the local authorities and other public order functionaries, as well as educational personnel, in order to prevent xenophobic discrimination. Also, to take actions in order to avoid the stereotypes, and particularly the promotion of migrants false images, in order to prevent, among the public, the diffusion of xenophobic feelings and to foment an objective and equilibrated representation of the persons, occurrences and history.

#### It fights against the Racism and Xenophobia towards the Arabic Communities

In March, 2003, the HREOC launched the Project Ismaʿ. Ismaʿ, that means to listen in Arab, was developed as response to the concerns of Arabic organizations and Muslims immediately after the increasing prejudice against Arabs and Muslims in Australia. The project consisted of three parts:

- National Consultations to Arabic and Moslem Australians. More than 1.400 persons participated in 69 consultations in all the states and territories throughout Australia between April and November, 2003
- Empirical and qualitative Investigation realized by the Center of Cultural Study of Western Sydney's University, by means of questionnaires and interviews of follow-up.
- Development of strategies and initiatives that were looking for the suitable treatment of prejudice against Arabic and Muslims and discrimination. The HREOC contacted more than 100 local, state and federal agencies, and realized more than 50 meetings with representatives of the above mentioned organizations to be able to check existing strategies and identify vacuums.

After having obtained the results of the project, the Unit of Discrimination of the HREOC realized numerous projects to attack racism and discrimination in opposition to migrant communities. For example, they were destined \$1.1m annually for four years (2006 / 2010) to realize projects with the Moslem community, particularly focusing in legal and educational topics for young men, teachers and other sections of the Moslem community.

(HREOC's response to OCIM March 2007)

The Australian Commission for Indigenous Peoples, Social Justice, and Racial Discrimination, has carried out an investigation called “Face the Facts: Countering Myths About Refugees, Migrants, and Indigenous People”, that contains a study of the discrimination and xenophobia main myths and stereotypes with which the migrants, refugee and indigenous people are commonly associated. It contains information and measures that improve migrants' and indigenous people's acceptance and integration. This publication was distributed into a selective network of institutions and organisms, among which must be pointed out the educational institute and civil brigades, including the Fire Brigade. The launching of the

#### Institutional Exchange Programme between the Commission for Racial Equality of Great Britain and the Special Secretariat of Policies for the Promotion of Racial Equality of the Federative Republic of Brazil

Recognising the strong relations that exist between the United Kingdom and the Federative Republic of Brazil;

Conscious of the special importance of promoting racial equality that our countries share; Endorsing the need for joint leadership of efforts to promote racial equality more widely in the international community;

Considering the benefits of exchange and learning between our two institutions: The Commission for Racial Equality of Great Britain and the Special Secretariat of Policies for the Promotion of Racial Equality of the Federative Republic of Brazil intend to jointly participate in an institutional exchange to share policy and practical experiences of tackling racism, racial discrimination, xenophobia and related intolerance.

The Commission for Racial Equality of Great Britain and the Special Secretariat of Policies for the Promotion of Racial Equality, Federal Republic of Brazil take pride in this stated intent of our organizations to work together for a period of twelve months to exchange our knowledge, experience and skills for tackling discrimination, promoting human rights, investing in public awareness, reducing institutional racism and seeking social justice for all members of our diverse societies\*

publication of the 2005 was carried out to commemorate the 30th anniversary of the Racial Discrimination Act. The publication is accompanied by a brief manual to be used in the teaching Schools for children and youth, and as an educational instrument.



In Canada, the Ontario Human Resources Coalition and the UNESCO Canadian Commission, called for the creation of the Coalition of Municipalities against Racism and discrimination, establishing a Plan of Action of 10 points that establishes commitments and model actions that can be adopted by Municipalities, in order to prevent and face Racism and Discrimination in its respective areas of responsibility. The Pan-Canadian working group along with the UNESCO Canadian Commission made up by municipalities, Human Rights Commissions, experts and civil society organizations, elaborated a proposal by means of local consultations to municipalities and civil society actors in diverse Canadian provinces.

One of the interesting experiences developed by political groups, is the campaign carried out in the streets of Belgium, entitled “Streets Without Hatred”, promoted by the NGOs and political right groups with the object to prevent racism and xenophobia against migrants after various racist attacks against foreigners, including Turks. The campaign is called “Zonder Haat Straat” and started with the city of Anvers, and later expanded to Aals, a city where a Turkish migrant was killed by a policeman. Campaign members handed out pamphlets, calling people to strengthen common sense and to fight against discrimination. Small Belgium enterprises showed a great interest in the campaign.

In Northern Ireland the Human Rights Commission, made a call to the government to sign the U.N. Migrant Workers International Convention, on the occasion of the International Migration Day (December 18<sup>th</sup>). Said treaty is the only U.N. Human Rights treaty not to have been subscribed by the United Kingdom. Moreover, a call is made to the Northern Ireland Office in order to ensure the recognition of the rights of all migrant workers in the proposal for the Racial Equality Strategy.

Upon the assassination of three foreigners on a train in September 1998, the Commission held a conference on Xenophobia, the following month. The Conference adopted a declaration, calling for a public awareness campaign, with the purpose of reducing violence committed against foreigners, as well as improving police reaction. The Commission has maintained a focus on this subject, leading a National Coalition regarding Refugee Affairs, the NCRA, and which gathers NGOs, regional refugee coalitions, the State Department, and international agencies such as the UNHCR. The Commission led the efforts towards the development of a manual for the training of immigration personnel, as well as a national plan of action on Xenophobia entitled “Roll Back Xenophobia 1999”. Moreover, Zonke Majodina, who was named commissioner of the South African Human Rights Commission in 1999, created a Master’s Program for the University of Witwatersrand, on forced Migration.

Another experience gathered as a best practice, due to its consideration of two states celebrating agreements for the exchange of information and best practices, is the Inter-institutional agreement between the Secretariats for Racial Equality of England and Brazil. Its purposes are to exchange know-how, information, successful policy, practical experiences, as well as the development of abilities necessary for the prevention of racism, discrimination, xenophobia, and other forms, promoting social integration, generating public awareness, reducing institutional racism, and promoting social justice and human rights.

## 10. Migration in Irregular Documentary Condition<sup>55</sup>.

Article 5 of the CPMWF indicates migratory workers are considered to be in irregular condition if they had not been authorized to enter, to remain and perform an activity in the country of destination. The State has the sovereign right to order who enters and exits its territory, with respect of the migrant human rights in the complete migratory process. Generally, a migrant is considered as being in an irregular migratory condition if he or she enters or remains in a country without authorization of the state, or if he or she does not comply with an expulsion order. It is estimated that 10-15% of the world migratory population falls within this category, over



half in Latin America, the Asia Pacific region, and Africa. This documentary condition exposes migrants to absolute vulnerability, and makes them victims of human rights violations.

The most regular forms of irregular migration take place with the evasion of entry control, the stay of a migrant after authorization has expired in a country, the entry through prohibited areas, or mined areas, as well as illegal tunnels, the carrying of false documentation, unregistered travel by ship, even swimming through areas of little control, among others.

### **10.1 Entry to countries.**

The State has the right to determine the entrance and permanence of the foreigners in their territory, authorizing the ingress in cases of permanent residence, family reunification, humanitarian reason, work, study or visit.

The visa is the preventive control mechanism that a State has to determine whether or not a person or group of people may be permitted to enter its territory; it constitutes a political, economic and cultural control, since in general the visa conditions are imposed on countries that are suffering political or economic crisis, or ethnic-cultural conflicts.

In this case, NHRIs may, in accordance with the Paris Principles, watch over protocols that have to do with granting visas, so that said processes may be transparent, accessible, non discriminatory, fast, and easy to follow, guaranteeing migrants' human rights as contained in the CPMWF and other international instruments, pursuant to Point 14 of the Santa Cruz Declaration. They may also request uniformity in the norms regarding entry to the country, the facilitation of visa systems that allow multiple entry for families of migrants', as well as other temporal purposes, using information technology, information exchange with NHRIs found in states of origin of principle migrant flow, requests to consulates so that they can make the facilitation of information clear and transparent, as well as humane treatment of persons requiring visas, and to consider the exoneration of visas for certain countries, in accordance with humanitarian situations.

At regional group levels, NHRIs can request the homogenization of visa granting regimes from those countries that grant visas.

### **10.2 Migratory and border control.**

Migratory control is directly tied with the topic of security and doctrine applied by the police, border guards and State agents. These controls can establish actions hinder fair treatment of migrants, respect to the private life and to the migrant integrity. Some countries have implemented biometrical controls, fences, barriers and walls at frontiers, requirements of additional and unilateral visas regarding migrants' country of origin, travel bags demands, and previous contracts, among other measures. In this regard, international reciprocity and good faith among the States<sup>56</sup> must not be forgotten, in such a way that the NHRIs may be able to indicate to State authorities, with relation to the standard the Principle 3.b) of the Paris Principles, that the practices and uses of entering to the country be harmonized with the Human Rights international treaties.

The action of NHRIs is fundamental in the promotion and defense of migrants' human rights, particularly those in irregular documentary condition, in all fields of action and intervention possible: promoting reforms to legislation based on a human security concept, in order to guarantee the respect, protection and the guarantee of the migrants human rights, training functionaries, policemen and frontier agents in a fair treatment to the migrants, installing information offices, juridical assistance and orientation in the frontiers, as in the State institutions that are attending migrants, elaborating manuals regarding the respect of migrants' Human Rights, requesting the collaborative action of all the State organisms intervening in the migratory process defining known and efficient "courses of action".





A form of acting is investigating what happens with border entry control. Based on a series of denouncements on behalf of organizations and the Media, the Spanish Ombudsman began an investigation in order to see if irregularities were committed upon the refusal for entry of thousands of extra-communitary immigrants at the border between Spain and France. The Ombudsman's Office petitioned all information regarding the expulsion

Guideline of Observation of the situation of migrants in the Borders for the NHRIs.

- To study the homogenization of migration norms with Human Rights International Treaties. To detect through this analysis zones of risk or conflict.
- To install places of border observation monitoring the good treatment and non discrimination in the management of entry, transit, and exit of the country.
- To design a system of alarm and an immediate course of action for the cases in which migrants' human rights are violated, through a panic button that allows the immediate intervention of a civil servant who intercedes for his rights.
- To credit as soon as possible the documentary condition of the migrant with documents and information that it carries and to obtain immediate copy of them. To avoid the retention of the documents.
- To register by means of photographs, testimonies or declarations the condition of the migrant. When necessary, to represent by means of medical or psychological counselling.
- To give due legal assistance for migrants. When possible, to accredit oneself before police and frontier agents.
- To avoid the arrest or preventive detention or the imprisonment in special border centers. The allegation of the rights of the migrant has to take place at liberty and with the respect to the principle of innocence.
- To consult the migrant on the reasons of his entry or transit to the country, identifying whether or not he is in a situation that may permit condition of asylum.
- In case he is in situation to request asylum: To intercede or to give notice to the Competent state institution regarding the request for asylum that the migrant has formulated.
- Give account through the quickest way possible to the consulate of the country of origin or to the family of the migrant when possible, only if the migrant expressly petitions it.
- To consult the migrant on the existence of some humanitarian reason or disease that needs to be informed to the Justice.
- Strive for the respect of the right to a natural Judge in order to solve the migrant's documentary condition. To avoid the administrative resolution of the matter.
- To intercede for the respect of the procedure of a due and just process before the competent Justice, in order to ensure the migrant the due process of law. This is (a) (1) possibility of being listened to, of presenting evidence and accrediting his remarks, (2) possibility of accrediting a humanitarian situation that makes a humanitarian action of the State possible, or of the International Organisations, (3) possibility of presenting resources in opposition to the resolution in case of objection, all this in his language or with an interpreter.
- To give directly juridical counselling in the process or to intercede for his legal defense. In any case, to support the alertness on the process.
- If the violations of human rights are massive, give notice to the competent organisations of the State and to report to the International Organisms.

Elaborated with base to practices systematized of NHRIs taking as base report, response to questionnaires and press.

of foreigners to the Police General Direction as well as the Civil Guard, with regards to border control. In an official Report submitted by the Ombudsman's office, the institution warns the Minister of State that the entry of undocumented immigrants cannot be impeded without legal assistance, or an interpreter, in the case that he or she does not speak Spanish.

The border situation, administrative deportations, or arbitrary refusals of entrance are topics of action with regards to human rights. Different Civil Society organizations have indicated an important increase in deportations at borders; this matter requires urgent actions<sup>57</sup>.

The refusals of entry are generally based on undetermined concepts that can give place to arbitrariness on behalf of border agents, such as delinquent activity, terrorism, public health questions, work market or national productive market protection, and national security. To point these concepts out in legislation can be of great usefulness in light of the principle found in letter a, No. 3, letter I of the Paris Principles. In this regard, an interesting initiative is the establishment of a catalogue that establishes, with transparency and legal security, precise conducts that define every concept and their corresponding accreditation in each case. Another interesting initiative is the request to States to digitalize data bases regarding border information, allowing a portion to be accessed by the public, under international access standards with regards to information of public interest.

**Arrest and Detention Without Reasonable Reason: A persistent problem**

" It is essential that the legal rules that exist in the right to the human rights are respected by the judges and accusers, and that the attorneys are acquainted with its contents, in order for them to act effectively for their clients "

( Arrest and Detention Without Reasonable Reason, Pág. 161 Human rights in the Administration of Justice)

In Germany, the German Human Rights Institute has performed research regarding the International Convention on the Protection of Migrant Workers and their Families, on the application of the principle of non-defoulement



in European Policy (within the context of Frontex), and has carried out workshops on forced marriages, with an emphasis on practical measures, prevention, and stigmatization of migrant communities.

### 10.3 Administrative Deportations.

Regarding deportation, article 13 of the International Pact on Civil and Political Rights, as well as article 22 paragraph 6 of the American Convention on Human Rights in the Inter-American System, recognize the right of the foreigner that is legally residing in a territory, to not be expelled without due process. The International Pact on Civil and Political Rights adds the right to be heard, to a review of the decision, and to be represented during proceedings that review said decision. The CPMWF prohibits collective expulsion (Art. 22 paragraph 9). General Observation 15 of the Human Rights Committee, in paragraph 10, demonstrates the objective of impeding arbitrary expulsions, when allowing for expulsion based on a decision made according to law. Migrants must be allowed to take legal action against said expulsion. Also, all foreigners expelled must be allowed to go to countries that show the willingness of receiving him or her. Pursuant to General Observation number 27 (paragraph 8), foreigners also have the right to choose their state of destination, in accordance with said States agreement.

We must also consider article 22 of the International Convention regarding the protection of migrant workers and their families, which states that migrant workers and their family members cannot be subject to collective measures of expulsion. Each case of expulsion must be examined and decided individually.

GO 27 adds that each foreigner's situation depends on the internal law, but only when they are adapted to the international obligations of said State. In light of this, the legality of entry to a given country is not essential, but rather the foreigner's current situation. A foreigner that entered a country under irregular documentary conditions may choose a humanitarian solution, request asylum, or have his or her situation regularized. Jurisprudence regarding the decision of expulsion is clear in this regard.<sup>5859</sup>

With regard to deportation, the role of NHRIs is determinant. The Spanish Ombudsman's Office requested all information regarding expulsions of foreigners and border control from Police General Direction and the Civil Guard. Moreover, in an official Report from the Ombudsman, a warning is made to the State Department, stating that it cannot continue impeding the entry of migrants without documents, without guaranteeing legal assistance, as well as an interpreter in the case that he or she does not speak Spanish.

The Colombian Ombudsman's Office has implemented frontier missions in order to attend the pressing situation of thousands of migrants and forced displaced persons due to armed conflict, establishing criterion of action for delegates and advisors at borders. The main guidelines or rules of action for intervention at borders are to: monitor, accompany and support settlers, carry out visits and humanitarian missions, attend and handle claims, spread information regarding human rights and international humanitarian law, impulse judicial action for the defense of a culture of peace, promote spaces of institutional coordination for the elaboration of prevention plans, and attend to communities that are in risk of displacement, or have already been internally displaced.

The Colombian Ombudsman's Office, when having to confront the situation of internal forced displacement and border crossing, has made a call to authorities to adopt measures of prevention, and, within the framework of bi-national meetings, has contributed to explore strategies in light of international law for refugees, and/or processes of repatriation under conditions of free will, security, and dignity.

#### To be observed in the Control of Borders:

- To monitor the publicity of norms, forms and procedures applicable to the borders.
- To demand the existence of a just and not discriminatory process, not arbitrary.
- To make sure of the good procedure of border crossing, with regard for human rights.
- To promote the fulfillment of international standards in the emission of travel documents.
- To report on procedures in case of falsification, theft or malicious utilization of the documents of revenue.
- To report on procedures in case of falsification, theft or malicious utilization of the documents of revenue.
- To train the civil servants in matters of national, subregional and international law with emphasis on the human rights of the migrants.
- To collaborate in the prevention of trade and trafficking in persons.
- Promote aid for the rescue of migrants that are in danger.

Elaborated using as a base information provided by Defensoría del Pueblo de Colombia.



### The right to the freedom and safety of the persons

Legal universal responsibility: All the States are forced by the law. In spite of the fact that a State has not ratified or has not adhered to the international agreements of human rights, they are obligated by other juridical sources to assure to the freedom and safety of the persons. (The Law to the freedom and safety of the persons, Pg. 162, Human rights in the Administration of Justice)

### Prohibition of arbitrariness in the detention of the persons

The prohibition of arbitrariness means that the privation of freedom cannot be motivated by the discrimination. One faces arbitrary privation of the freedom in the cases in which the persons are detained without imputation and without the possibility of bail. (Prohibition of arbitrariness in the detention of the persons, Pg. 167 of Human rights in the Administration of Justice)

In order for arrest or detention to be lawful according to the international law of the human rights, the following must be met: (1) To execute according to the both formal and substantive rules of the domestic and international law, including the principle of non-discrimination; (2) To be free of arbitrariness, to the effect that the laws and his corresponding application must be adapted, just, predictable, and that are in harmony with due process. (Source): Chart Page 169, Is afraid of 4.2., on the notions of legality and arbitrariness, Human rights in the Administration of Justice)

### Not recognized detentions

The International Law prohibits arrests and detentions that are not recognized. The States are responsible for all the persons who are under their custody. Especially, the date, hour and location of all the detentions must be available for the families, attorneys and judicial competent authorities at all time, in official records. The precision of the records must not leave space for doubt.

The involuntary disappearances and unrecognized detentions constitute a serious violation of the human rights, including the rights of freedom and safety of the persons. (Chart Page 171, 4.2.1. Unrecognized detention, abductions and involuntary disappearances, Human rights in the Administration of Justice)

### Detention to anticipate escape

As general principle, freedom is the rule and detention is the exception. The privation of freedom of a person must be justified in an objective way, to the effect that the detention must be reasonable from the point of view of an objective observer, and based on facts and not on subjective suspicion. The most common foundations for the lawful privation of freedom are (1) dictated one by virtue of a penalty for a competent, independent and impartial court; (2) existence of reasonable suspicion of having committed a crime or in order prevent a person from doing so; and (3) dictated only to anticipate a person who flees after having committed a crime. (Chart Page 175, 4.6 Detention to prevent escape, Human rights in the Administration of Justice)

### Privation of freedom of persons looking for asylum and for the intentions of deportation and extradition

" Detention must not continue beyond the period for which the State could offer appropriate justification. For example, the fact of illegal entry can indicate the need for investigation and other particular factors can exist to the individual, as the probability of escape and lack of cooperation, which can justify the detention in a period. Without the above mentioned factors detention may seem arbitrary, even when entry was illegal "( 4.7.3. Privation of freedom of persons looking for asylum and for the intentions of deportation and extradition: Communication Not. 560/1993, A. v. Australia, in the doc. UNO GAOR, A/52/40 (vol. The IIInd), p. 143, for. 9.4, mentioned by Human rights in the Administration of Justice).

The basic rules relating to the arrest and detention also are applicable to the administrative detention (ej. Detention in the cases of deportation and extradition). ( Chart 4.7. Pg. 181 Human rights in the Administration of Justice)

IDCM puts the life and physical as well as psychological integrity of persons at risk. The numbers regarding migrants that lose their lives due to drowning, insulation, hunger, thirst, or lack of adequate medical attention are staggering; as well as the situation of women and children that, in some occasions, are the object of trade and trafficking, which in turn violates their sexual integrity during the course of migratory travel, with clear risks of exposure to HIV/AIDS. Due to these reasons, NHRIs have an important role in identifying and taking in victims of trade and trafficking. It is important for NHRIs to coordinate with governments and/or civil society, in order to ensure reception of migrants, as well as to monitor their human rights.

The risk of deportation is a condition that exposes migrants to the violation of their human rights, to the impossibility of going to public or justice services, to petition assistance from state institutions, or to accept precarious working conditions, sub-employment, or even exploitation. In this manner, they do not receive medical, psychological, or legal assistance when required. This is a humanitarian situation that requires the action of NHRIs. Actions of effective supervision and control are necessary, in order to determine the working conditions of migrants. Civil as well as criminal sanctions are necessary, against employers that exploit migrants, and more particularly, migrants that are in an irregular documentary condition.

NHRIs' action in this field must be directed towards the respect of International Law standards in each case, establishing the principle that they have the human rights regardless of the person's documentary condition, to render the necessary counsel for obtaining the migrants naturalization or regularization in the country with regards to related topics (agreements for the remittances, non double taxation, homologation of titles and degrees, etc.) to raise public awareness regarding the situation the migrants in IDC, and to promote the diversity,



diffusion, and cultural integration. NHRIs can make the need of agreements to regulate respectfully known, regarding the human rights, as well as the repatriation of migrants. They must also use all of the means within their legal competences in order to impede the taking of migrants to borders by virtue of summary deportations, above all when there is the threat regarding the life or integrity of the migrant in his or her country of origin.

In particular, NHRIs must strive to give a temporary solution for those that seek asylum and whose condition has not been solved, or are exercising action or claims against resolutions.

#### **10.4 Migrant detainees.**

NHRIs must strive to make sure that the temporal waiting period for the resolution of migratory conditions, do not become the object of preventive detention. Migrants have the right to wait for the resolution regarding their situation in freedom, with full application of the principles of equality, non-discrimination, innocence, and due process. The conditions under which criminally processed migrants fulfill their sentence must also be monitored.

The National Human Rights Commission of Mexico , along with the Pastoral of Human Mobility, have formulated formal claims initiated officially in Tehantepec, due to the illegal privation of freedom against migrants without documents, or the violation of their human rights, pointing out that this is not an infrequent situation in Mexico, given the fact that various analogue cases have been detected in Ixtepec, Oaxaca, Tamaulipas, and Veracruz. The Commission also actively denounces, due to the disappearance of migrants, given organized crime's modus operandi, which dedicates itself to trafficking in persons.

The Irish Human Rights Commission has made a great emphasis on formally stating to the Ministry of Justice that irregular migrants and asylum seekers cannot be the object of detention due to this reason, making frequent visits to prisons, detecting persons that were detained due to illegal entry to the country.

But the action of NHRIs ought not to end there. In the case of migrants fulfilling sentences, in situ visits to detention centers are of extreme import, such as the case of the Tanzanian Ombudsman, with the purpose of working towards adequate attention for migrants that have been the object of discrimination or inadequate treatment. Some NHRIs are working with Ministries of Justice in order to establish International Agreements for the Execution of Sentences in migrants' countries of origin.

The South African Human Rights Commission, together with the legal clinic of the Center for Applied Legal Studies of the University of Witwatersrand, and with the NGO "Lawyers for Human Rights", have carried out an investigation regarding the circumstances of arrest as well as detention conditions at the Lindela Repatriation Camp, a private installation used by the Department of State, in order to retain migrants in irregular documentary condition, prior to their deportation. Law students held interviews that served as a base for the final report. In the report's conclusions, they state that there is evidence for unnecessary and illegal suffering inflicted through procedures of public force on foreigners.

#### **10.5. Temporary migrations.**

Regarding temporal migration, we stop at migration for educational purposes, given the fact that study programs can be an important source of transference of competences for a more integrated educational and labor market. Apprenticeships are a beneficial experience for dialogue and multicultural action. In this area, NHRIs can increase cooperation and training exchange for apprentices, volunteers, students, and professionals, through short term migration and scholarships, in order to carry out some sort of work activity or internship in countries where studies are being carried out, and petition the celebration of agreements for the homologation of titles and degrees.



An interesting experience has been the information spread by NHRIs of MERCOSUR, regarding the approval of norms with regards to the homologation of elementary and high school teaching degrees in member and associated countries.

Regarding migration within the business sector, it is necessary to make sure that information is clear, transparent, and accessible, particularly considering a section on migration necessary for the fulfillment of objectives established in an agreement of economic integration, with regards to fundamental rights.

Regarding family reunification, NHRIs have a specific role, striving towards integration, interceding for the dictation of norms that recognize the rights of reunification, and which allows for the petition of permanent resident status; NHRIs must also request regional agreements for the homologation regarding family cultural definition.

### 10.6 Right to Identity

One of the most frequent themes in the MRD axes is the privation, disturbance, or threats regarding human rights of migrants due to the lack of identification documentation. This simple refusal deprives them of the possibility to rely on the coverage of national public services.

In the sentence “Yean and Bosico vs. the Dominican Republic”, the Inter-American Court has stated that all children have the right to a name as well as identification document, regardless of whether or not he or she is the son or daughter of migrants. Many children of migrants face legal troubles, due to the fact that schools reject registration in the case that they cannot accredit their parents’ identification.

An interesting best practice at an international level is that of the State of Uruguay, which granted a temporary identification card to all irregular migrants on International Migrants Day 2006, which would allow “migrants without documentation the access to work, to rent housing, as well as the peace of mind brought upon by having documentation, a right which we all strive for permanently”<sup>60</sup>. The Vice Secretary of State added on said occasion, that documents would be granted to Peruvians, in order to obtain permanent Uruguayan documentation.<sup>61</sup>

### 10.7. Displaced Persons.

Internal displacement is a kind of migration that is produced within the frontiers of an internationally recognized State, product of an armed conflict, political crisis, natural catastrophes or caused by persons, or of other rights violations. This phenomenon has become the main expression of the forced migration and is considerable in magnitude, intensity and complexity. Regarding this, NHRIs must have in consideration the diffusion and application of the United Nations Displacement Principles of 1994.

In Asia, East Timor, a program was created together with the Human Rights Ombudsman, in order to establish an active monitoring network of NGOs throughout the country, mostly comprised of volunteers, in order to carry out diagnoses, investigation, and monitoring of the human rights situation with regards to displaced persons. The role of the Office has been to: monitor the humanitarian conditions of displaced persons due to a crisis which originated in the capital of Dili, monitor the safety situation of displaced persons, monitor procedures for arrest and detention of persons involved in said crisis, carry out activities of public education – such as pamphlets on displaced persons’ human rights, bulletins, and radio programs, produce a documentary on displaced persons, funded by APF/Brookings Bern.

The situation of the internally displaced persons is analogous to that of the refugees, with the exception that they have not gone out of the territory of their country. This situation bears to the lack of help and protection offered to the refugees by the High Commissioner for Refugees (ACNHUR), unless authorization is given to take charge exceptionally of the displaced population of a certain country. In 1998 the UN Secretary General published the Governing Principles Regarding Internally Displaced Persons, inside which the right is established that every human being has " to the protection against arbitrary displacements by which he or she is removed from his home or from his place of habitual residence ", and that, prior to the decision of persons' displacement, the competent authorities must insure " that all the viable alternatives have been explored to avoid it. "



The Kenya Human rights Commission published its first public report in 1998. The chapters written by the Standing Committee referring to the political violence that occurred in the Rift Valley province are the most detailed and comprehensive examination among the human rights problems in Kenya up to that date. Since 1991, 400,000 Kenyan citizens have been systematically attacked and displaced from their homes through state sponsored violence towards ethnic groups favoring the political opposition. The Commission has made this information readily available for the public in order to raise public awareness with regards to displaced persons.

### 10.8. Environment and Migration.

The natural catastrophes or caused by the man give place to population displacements and generates what is called “Ecologic Migration”. Countries recognize the importance of ecological matters, as well as the interdependence between the reduction of catastrophes and the protection of national resources, seeking global solutions for forced displacement, and which generates natural disasters. The Climate Change Conference which was recently held stated the need of addressing said issue.

“Environmental migrant is the person who leaves a region or a locality, when the environmental damage worsens; causing serious environmental impact that generates human mobility, generally related to change “.  
See: Luiz Vega ad Cunha”

Environmental Security and management of Water resources  
\*<http://andh.nl/congresocua98>

In this field, NHRIs are themselves in a privileged position to study, investigate and to make a list of environmental disasters that could generate displacements. Not only this, but they must also act in order to protect migrants expelled from their countries due to ecological reasons, just as Central American NHRIs have done in 2005, by requesting Temporary Protection Status for Guatemalans in the United States, due to catastrophes caused by hurricanes, or the protection of “environmental refugees” given by the South African Human Rights Commission to migrants affected by doubts, erosion, or extension of the desert.

The Climatic Change Conference has stated that a global climatic change is approaching, and which will change people’s way of life. Undoubtedly, this change will result in the movement of persons from their places of origin, in search of safe weather and sustainable development.

In some countries such as Egypt, Switzerland, Peru, Australia, and Korea, systems of environmental evaluation of economic investments consider, among analyzed factors, those related to the risk of human displacement. In accordance with the Paris Principles, NHRIs can propose a reform of environmental mediation systems, incorporating biomedical factors, descriptors, and principles found in recommendations made by International Human Rights Treaty Committees, and the risk that forced displacement bears with regard to investment.

Moreover, NHRIs must promote the need to reduce causes and consequences of natural catastrophes as well as the degradation of the environment, increase international cooperation and efforts to protect and improve the environment, promote activities for the prevention of grave repercussions of population displacement in the environment, particularly those that are the result of prolonged stay, and oversee the protection and guarantee of human rights in situ.

The Colombian Ombudsman, along with the United Nations Organization for Refugees, ACNUR, carried out permanent in situ visits in order to watch over and protect human rights of displaced persons. Through constant monitoring, they accompanied and supported inhabitants, carried out visits and humanitarian missions, attend and process claims, diffuse human rights and humanitarian international law, in the effort to build a culture of peace, impulse legal actions for their defense, promote spaces of institutional coordination for the elaboration of plans for prevention, and attention for the communities that are at risk of displacement, or that have already internally displaced.

### 10.9 NHRIs. Preventive actions

#### NHRI Action Regarding Legal Initiatives.



NHRIs have acted not only with regards to the violation of migrants' human rights. Some of them maintain a commendable attitude with regards to the observation/control, vigilance, and permanent monitoring of any legal initiative that purports to (1) diminish the legal condition of established migrants, or (2) penalizes illegal migration, as well as the harmonization of international Human Rights Instruments.

The Australian Human Rights Commission has manifested, before the Senate Constitutional Committee in January 2007, the fact that the reform regarding migratory law that purported to establish a quick review of the situation of refugees, was in violation of human rights, due to the fact that it did not establish due process, nor did it grant the guarantees that migrants ought to have with regards to the right to a hearing. The Commission stated that the process of granting or denying refugee status as established by the legal reform, would only increase the inconsistency, confusion, and injustice in the process of review, increasing the risk of poor decision making as well as refolement. The stage of constitutional control ended on February 20<sup>th</sup> 2007, thus the outcome is not available as of yet.

Within this same course of action, the Mexican National Human Rights Commission promoted the abrogation of Article 123 of the General Law on Population, which established the illegal entry of foreigners to the country as a crime. Due to this article, authorities carried out migratory verification without the authorization to do so, thus committing all manners of arbitrary acts, harming migrants finding themselves in irregular documentary condition.

Although the sanctions established in said legal system do not apply, the mere fact that irregular migration is penalized, not only is contrary to the international tendency which leans towards the depenalization of this infraction, in Mexico it has created a situation in which there is abuse of migrants with irregular documentary condition, with regards to their human rights.

Last November 17<sup>th</sup>, the National Human Rights Commission emitted General Recommendation Number 13, in which the document points out the authorities that carry out migratory verification without the authority to do so, and, on occasion, detain migrants. Said situation goes against the State of Law. Within this framework, the faculty to do so is only endowed upon elements of the National Migration Institute and the Preventive Federal Police. The NHRC formally requested the depenalization of undocumented migration, through the abrogation of Article 123 of the General Law on Population.

In another best practice, the same Commission emitted reports though general recommendations, through which the names of authority figures that carry out migratory verifications and arbitrary migrant detentions are pointed out.

The work of NHRIs has not only allowed the creation of reports regarding the prevention of negative effects of the application of norms that are either in the process of being passed or in force, but have also made their opinion known with regards to norms that enter into force in countries of destination. In this sense, the Human Rights Ombudsman of El Salvador, made a petition to the President of said country to bear in mind the concern of NHRIs with regards to the United States, regarding the Law of Border Protection, Anti-Terrorism and Illegal Immigration Control, due to the implications that this law would have with regards to Human Rights, given the fact that said law would militarize international borders. Said law would also criminalize irregular migratory status, as well as authorize the construction of five double bards at the Mexican border. It was also stated that the application of measures that only privilege security aspects, and that do not consider the regularization of undocumented persons, or a temporal employment program for those that are in the United States illegally, would definitely complicate the human rights situation regarding thousands of persons that are in that country.

## 11. Prevention of trade and trafficking in persons.



The United States Department of State estimates that each year, between 600 and 800 thousand persons are the victims of trade in human beings throughout the world. This situation is made even more serious due to the irregular documentary condition that puts many women and children at risk. It makes them virtually invisible and impairs the processes of follow up and investigation with regards to crimes. Criminal organizations that deal in trafficking promote this form of migration, with the purpose of creating conditions for their illegal activity.

The Palermo Protocols establish a distinction based on the affirmative will of persons subject to trafficking and victimization, offering a solid and effective base for this problem. The actions of NHRIs are fundamental for the ratification of these instruments, in the implementation of the Paris Principles, and Recommendations 30 and 31 of the Declaration of the VIII Conference of NHRIs, as well as GO 30 (2004) of the Committee for the Elimination of Racial Discrimination. We must also duly consider the policies, plans, and programs regarding trade and trafficking, found in the Principles, Guidelines and Recommendations with regards to Human Rights and Trade in Persons, emitted by the United Nations in New York, in 2002.

Article 3 (a) of the Protocol of the United Nations on the trade and trafficking defines it as the following: " trade of persons the contracting, transport, transfer, the lodging or the persons' receipt under threat or use of force or other forms of constraint, kidnapping, fraud, deception, abuse of power or of the position of vulnerability, or obtaining or receipt of payments or presentations to achieve the assent of the person who has control on another person, with purposes of exploitation.

As minimum, the concept of exploitation includes the exploitation of the prostitution of third parties or other forms of sexual exploitation, hard labour or forced services, slavery, or practices similar to the slavery, servitude or ablation of organs ". This one is the first definitions of it trade approved by the international community.

See: a) Protocol to prevent, suppress and sanction trade in persons, especially women and children, and which complements the Convention of the United Nations against Transnational Organized Crime, article 3). New York: United Nations.

Web site: [www.ohchr.org/english/law/protocoltraffic.htm](http://www.ohchr.org/english/law/protocoltraffic.htm)

#### NHRI Action Plan Regarding Trade and Trafficking in Persons

The Asia Pacific Forum of National Human Rights Institutions held a regional workshop on "Trade and Trafficking in Persons and National Human Rights Institutions Regional Workshop on Human Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People", in November 2005. A plan of action was devised in order to end with impunity for traffickers, and assure justice for the victims of trafficking. Among the measures that were established, the following are particularly noteworthy:

- NHRIs should ensure that their own Commissioners and relevant staff are trained and sensitised to the complexities of trafficking and to its human rights aspects.
- Where States have National Human Rights Action Plans, NHRIs should advocate the inclusion of trafficking in these Plans. Where there is a Trafficking National Action Plan it should be based on human rights principles.
- training for law enforcement officers should advocate investigatory techniques and processes which do not rely exclusively on the evidence of victim witnesses. NHRIs should emphasize that training for law enforcement officers and prosecutors include information about the effects of giving evidence on victim witnesses.
- NHRIs should conduct or support research on trafficking that will inform government responses and ensure that a human rights approach to trafficking is adopted. NHRIs should encourage that all research into trafficking protects the safety and privacy of trafficked people and does not further traumatize victims.
- NHRIs should review trafficking and related laws and policies to determine their conformity with international human rights standards and should recommend amendments as needed.
- NHRIs should advise government to provide alternatives to immigration detention for people who have been trafficked, recognizing that the detention environment can in itself breach the human rights of trafficked people and is counter productive from a law enforcement perspective. NHRIs should regularly visit detention centers with a view to assisting in the identification of victims of trafficking.
- NHRIs should promote ratification, as well as signature, of all human rights instruments.
- NHRIs should encourage States to provide trafficked people with a minimum period of residency in the destination country. That residency should include work permits that allow the person to undertake any legal form of work without restriction.
- NHRIs should consider developing or participating in protocols or memorandum of understanding with State agencies working on trafficking, especially criminal justice agencies including police.
- NHRIs should consider recommending that government enter bi-lateral and multi-lateral agreements with countries in the trafficking chain to ensure appropriate information exchange on trafficking, repatriation and reintegration. Any such agreements should ensure that data exchanges operate within a human rights

NHRIs must strive towards the effective penalization of crimes with regards to trade and trafficking in persons (Recommendation 32 of the Declaration of the VII Conference for NHRIs in Santa Cruz), and the adaptation of internal legislation pursuant to the United Nations Protocols that deal with this matter. The actions of NHRIs are both national and international in nature, given the fact that these crimes generally reach various jurisdictions. We must bear in mind that civil society organizations must prevent campaigns for the penalization of crimes dealing with trade and trafficking in persons, from creating conditions that violate migrants' human rights or their criminalization or stigmatization, mainly regarding migrants in irregular documentary condition. Protection must be given to victims against deportation or defoulement, if it means placing these persons or their families at risk.





NHRIs also carry out information and personnel training, as well as training of police, border guards, assistance professionals, lawyers, judges, and district attorneys in order for them to comprehend the integral attention necessary with regards to this phenomenon, and to avoid partial or simplistic treatment of the topic. The Human Rights Commission of Armenia investigates the situation of trade and trafficking, carries out prevention through campaigns, assists victims through attention centers, and supports those that have gone through this ordeal. The commission has also participated in deliberations before the Constitutional Tribunal of said country.

In October 2006, the Conference for the Fight Against Trafficking in Persons was held in Minsk, with the purpose of strengthening cooperation between countries of origin and destination in the fight against trafficking in persons, as well as sharing best practices with regards to the fight against trafficking in persons. A special focus was made regarding cooperation among police agencies, in countries of origin as well as destination, trafficking in children, and labor exploitation. This event was organized by the Belarus Department of Domestic Affairs, IOM, the Organization for Security and Cooperation in Europe, and UNICEF. Also participating were government representatives from Central, Western, and South Eastern European countries, as well as international organizations such as ILO, UNODC, foreign diplomatic missions within the Republic of Belarus, and public associations.

In Portugal, in October 2006, the Office of the Immigration and Ethnic Minorities Commission trained approximately 40 Portuguese speaking nuns, in order to strengthen their abilities in aiding and assisting victims of trade and trafficking. Nuns from Angola, Brazil Guinea, S. Tome and Principe, Cabo Verde, Mozambique, and Portugal learned regarding the social implications of trafficking in persons, criminal networks, and recruiting methods, as well as how to strengthen victims, and how to protect groups involved in assistance programs.

#### Fights against trafficking

As is it mentioned in our best practices form, pressure on the part of the HREOC, NGOs and the media iwas essential in the conviction of the Government to take action to attack the problem of trafficking. In October, 2003, the Australian Government announced the destination of 20 \$ million for measures such as detector, to investigate and to sue persons accused of trafficking. Legislative changes in 2005 introduced a range of new offences, penalizing in this way all the forms of trafficking.

The Unit of Gender Discrimination of the HREOC continues to monitor the situation of trafficking in women in Australia, and has supported contact with NGOs, academics and agencies of government, just as the U.S. Department of State, which prepares an annual report on the initiatives of every country to face the above mentioned problem.

( HREOC's response to OCIM, March, 2007)

In the Philippines, a halfway house was created for victims of trafficking. Said halfway house provides non-stop services, giving emergency temporary asylum for reintegration, information assistance regarding travel, employment, support networks, legal mediation, counseling via an emergency hotline, support for deserted passengers, and training for port community members such as police, coast guard, crews, and security guards. This initiative began as an association between the Philippines Port Authority and the Visayan Forum (Visayan Forum is a non profit NGO that works with marginalized migrants within the Philippines, particularly migrant workers and women/children that are victims of trafficking), and it has existed since 1991.

NHRIs have also carried out effective actions with regards to public awareness in society and of vulnerable groups, such as women and children, in order to prevent trade in persons. The Irish Human Rights Commission began a campaign in May 2006 along with civil society organizations, in order to raise public awareness and vigilance for the prevention of trade in persons in said country. They have also denounced the possible increase of crimes regarding trade in persons in Ireland to the media, particularly regarding women traded for sexual exploitations.

Denouncements often are accompanied by investigative measures as well as concrete judicial actions for the determination of this crime, as well as the assignment of criminal responsibility. The Argentinean Ombudsman's Office has made criminal denouncements due to crimes regarding trafficking in persons, along with civil society organizations (Centro Comunitario La Alameda and Cooperativa de Trabajo 20 de Diciembre), and which involve the exploitation of irregular migrants, and which are subject to inhuman, and unhealthy conditions, completely unprotected with regards to their rights.



The role of NHRIs in the judicial process is important. They ought to require all measures necessary for the protection of victims, and ensuring the respect of their human rights. In general, the crime of trade is linked to organized groups that require swift and effective action imposed by justice, identifying those responsible, confiscating assets and bank accounts, identifying national and international contacts that demand sexual services provided by trade, contraband, or illegal transport of migrants. Without a doubt, this point requires concrete actions on behalf of States, and the establishment of an Operational Protocol among NHRIs.

Damages produced by trade in persons for sexual exploitation require psychological support given by NHRIs together with Churches and NGOs. Particularly noteworthy is the psychological and family assistance provided

#### Practices of Action with regards to Trade and Trafficking in Migrants

1. Demand the ratification and application of the Palermo Protocols.
2. Establish a system of shared information with other NHRIs, implementing border offices where possible.
3. Petition the designation of sanctions for those that organize irregular migration, as well as trade and trafficking in persons.
4. Adopt measures to impede the criminalization of migrants, and to make certain that the fight against trade and trafficking in persons does not become a migrant hunt.
5. Strengthen institutional collaboration with State offices.
6. Train police, border agents, district attorneys, lawyers, and members of the judicial branch, with regards to human rights.
7. Work towards the establishment of operative agreements with Civil Society organizations and churches.
8. Gather information and create maps indicating the risk of trade and trafficking at a national, regional, and international level.
9. Adopt measures to impede or mitigate the effects fumigations at borders.
10. Oversee that excessive sanitary restrictions are not used as an excuse for the criminalization of migrants or violation of their privacy.
11. Establish operative means that will allow for the ceasing of property belonging to traffickers.
12. Establish means of oral, written, and photographic records at international borders.
13. Strengthen efforts aimed at raising public awareness in border populations, airports, ports, and areas of land control.
14. Oversee the safe crossing of children at borders, between one control and another.
15. Install volunteer groups for international protection at borders.
16. Give assistance to victims, installing shelters, medical and psychological services, legal counselling, witness protection, religious counselling, among others.
17. Implement mechanisms for economic assistance, as well as assistance pertaining to food and clothing.
18. Facilitate the safe return and reintegration regarding human rights, when it is the will of the migrant.
19. Defend in situ the rights of migrants, and the right to petition asylum when there is a risk of return, or by virtue of some other humanitarian cause, when the case calls for it.
20. Promote the respect of the obligation of consular assistance when a migrant has been detained, making sure to inform the respective consul, if this does not present a risk for the integrity of the victim.
21. Impede the return of migrants to their country when it creates risks on his life or integrity.

Elaborated on the base of systematized practices of NHRIs, using press, questionnaires, and forms as sources.

by the Pastoral de Neuquen of the Catholic Church, together with the Local Ombudsman of said locality in Southern Argentina.

This places great importance on the training of police, border agents, and personnel involved in order to achieve an integral approach with regards to the human rights of victims of trade and trafficking. NHRI actions are also considered within the framework of public campaigns in order to prevent trade and trafficking, as well as actions within the fields of forced labor, modern slavery that can present itself in various forms, electronic prostitution, sexual tourism, and cybernetic pornography.

In Brazil, the Secretariat for Human Rights of the Ministry of Justice, and the United Nations Drugs and Crimes Office developed a campaign against trafficking in persons and sexual exploitation for women in Brazil, with the purpose of warning potential victims regarding international trafficking in persons that travel abroad. Every woman between the ages of 18 and 35 that applied for a passport received a pamphlet along with their passport, which said “first they take your passport, then they take your freedom.” The pamphlet included a list of indicators of trafficking, with a series of contact telephone numbers in order to place claims. Posters as well as radio and television spots were developed, for the purposes of preventing trafficking and sexual exploitation.

Another possible action is the constitution of special funds for the promotion of activities aimed towards the protection of victims of trade and trafficking. The United States Office for Victims of Crime set apart funds in order to finance NGOs dedicated to giving assistance to victims of trade and trafficking, by means of specialized professional services. Said services include providing shelter, food and clothing, legal assistance, medical and



dental services, as well as treatment for mental health, professional training, transport, and interpretation services.

In the Republic of Korea, the Ministry for Family and Gender Equality, along with the Ministry of Justice passed the Act on the Punishment and Intermediating in the Sex Trade and Associated Acts, thus expressly prohibiting trafficking in persons, including prison due to debts, and similar activities. In Albania, a hotline was implemented for help and information with regards to irregular migration and counsel on the topics of trafficking in persons. The help line was also advertised in public areas, as well as four main television networks, for a period of three months.

In Mauritania a meeting took place with superior legal personnel, experts from IOM, and the French government, in order to study formulae for the adaptation of penal legislation, with the purpose of prosecuting traffickers in light of international legal norms. In the seminar, participants recognized the importance of creating a legal framework through the application of the United Nations Convention Regarding Organized Crime, and its corresponding protocols, subscribed to by Mauritania in 2005.

## 12. Migratory amnesty and regularization.

Plans for the regularization of migrants that have been practiced by certain countries of the world are of particular interest, including Spain, the United States, Argentina, Australia, among others, that offer permanent status for reasons of establishment, residence, natural disasters in countries of origin, etc. Many reports clearly point out the processes of selective naturalization with regards to ample migratory amnesty, and which tend to benefit a broader number of individuals as well as their families.

The role of NHRIs in this area deals with the initiative, in the search for the establishment of guarantees of non discrimination, and in avoiding any aspect that could mean the criminalization of migration, such as the use of recorded information for the purposes of public security. In the period in which said initiatives are carried out, NHRIs have been in situations of meeting, information, diffusion, and orientation with regards to the benefits in the processes of regularization and recording of migrants, such as control, monitoring, and transparency during procedures of accreditation, registry, and certification. After the initiative, follow up ought to be carried out in the process of migratory integration, such as reaching equal levels in rights in comparison with national citizens.

A clear example in this regard has been the active role of the Argentinean Ombudsman, along with provincial ombudsman's offices, in the process of migratory regularization known as "Patria Grande", through which migrants from countries of MERCOSUR were regularized, establishing a new criteria based on the accreditation of nationality in a MERCOSUR country, based on the good faith with regards to provided information as a guiding principle. Two months after this initiative entered in force, 130,000 migrants were regularized. The Offices diffused the rights with regards to regularization and informed migrants in order for them to reap the benefits of this measure, from a national to a local and provincial level.

Upon questioning, the Argentinean Ombudsman stated that their migratory policy in this regard has been to understand that experience has shown that the best attitude possible is the legalization of migrants finding themselves in irregular migratory condition, and that the principle of action of the Ombudsman's office has been to "strengthen the right to settlement that everyone has, understanding said right as the the right to develop him or herself in their place of birth, where his or her family lives, and where his or her cultural identity is recognized."

In the selective naturalization process, the role of NHRIs is limited to the information, orientation and control of regularity, transparency, celerity and effectiveness of the process of granting of nationality, safeguarding the existence of due administrative process and the possibility to practice appeals, claims o recourses against of the resolution. NHRIs can have an active role in this regard, and guarantee the condition of national granted by the State.



### 13. Sectors requiring special actions of positive affirmation.

We have affirmed that the conditions of migration, refuge, and displacement that may affect a person, generates a situation of vulnerability that requires affirmative actions. Said vulnerability is multiplied when several states of social exposure affect one individual. Thus, a migrant woman that is a part of an indigenous community and of extremely low income, is discriminated against four fold, due to her conditions as a poor, migrant, indigenous woman. In light of this, migration of these types of groups requires specific measures of observation. NHRIs must take these sort of characteristics with regards to migration into account.

There has been an evolution regarding women that migrate in the 90's, for example, with the purpose of reuniting with her family, and the woman that migrates individually in order to seek new opportunities, for various reasons, political, economic, social, or cultural. Besides those reasons for migration that belong to each person, there are a series of specific reasons that place women in greater risk, and vulnerability with regards to her human rights.

It is important to highlight the need of improving legal protection of the migratory condition, and particularly with regards to women and child migrants. This reality creates the need to create new international instruments, strategies, and State Agreements, as well as agreements among NHRIs and International Organisms, networks, and Civil Society organizations in the Americas, following the recommendation 36 of the Santa Cruz Declaration. We must also mention the collaboration of NHRIs within the framework of the Working Plan of the Inter-American Program, for the promotion and protection of migrants' human rights, of the Organization of American States (OAS).

This situation requires the establishment of specific affirmative actions due to the fact that the vulnerability and invisibility of migrant women is more complex, in intensity as well as impact. The specific vulnerability is made manifest at borders, due to degrading examinations carried out at borders, sanitary control, mandatory medical control due to epidemics, police procedure with regards to naturalization and preventive control, poor statistical information, the absence of legal guarantees, temporary arrest, the stigmatization of the trade and trafficking phenomenon, including the use of "bait" in order to attract relatives or to expose a state of documentary irregularity, among other phenomena regarding the human rights situation of migrant women. Recommendation 40 of the Santa Cruz Declaration proposes the establishment of offices at border cities on behalf of NHRIs.

The situation of migrant women requires specific public policy, recognizing its particular characteristics, from the causes of feminine migration (mainly poverty and inequality not only for her, but also for her family), to their role in societies of destination, as well as the defense of her interests and the interests of her children. For countries of destination, "the work of migrant women is so imbricated in society, that it goes almost unnoticed<sup>62</sup>", thus creating the need to advance in the field of gender equality and the migratory process. When women migrate, the family structure is left with the lack of the person in charge of the chores of the home, as well as the care of children and senior citizens. Therefore, NHRIs must develop actions for the promotion of their human rights, maintaining effective networks, as well as the providing of information and diffusion of mechanisms of access to public services, as well as processes for the productive use of remittances, among other aspects.

The HIV-AIDS situation deserves special consideration. Contrary to the beliefs in many places in the world, migration and migrants do not increase the risk of the transmission of the HIV virus. The factors that increase the vulnerability of migrants to this disease show a relationship between the risks and the lack of protection during the migratory process.

Concerning the youth, it is estimated that they represent close to a third of the migrants to developed countries, mainly youth at working age. According to the UNFPA Population Report 2006, adolescents have the highest proportion.



The Commission on Human Rights of Ghana has faced its harmful traditional practices head-on, which violate the rights of women and children. The commission has worked together with traditional leaders and NGO's to ensure the freedom of women and young girls that have been subject to sexual slavery for fetish priests in the Volta region. These women and children are taken from their homes and sent to temples to serve the fetish priests, as punishment for their family's transgressions. The commission has achieved the freedom of some of these women and children, and has created educational activities to educate the public against these practices.

#### 14. Indigenous and Afro-descendant migrants.

Migration has been part of the ancestral and culture of certain Indigenous Peoples and of Afro-descendant communities that have certain characteristics. The NHRIs of these regions with large indigenous populations recognize the varying actions of investigations protection and defense as well as the right of self determination of these peoples.

The cross frontier migration is frequent, and the exchange between culture and goods between countries is frequent between America and Africa. In the world perspective of these indigenous people there is no such thing as the State, but rather a relationship between nature and all of its elements. Indigenous migration is frequently circular. The vulnerability and the precariousness of using their proper customs and language makes these people more vulnerable to forced relocation, and to certain abuses contrary their human rights.

##### The Power To name

"Next to the loss of the political power and the lack of control of the Wallmapu, the power to name the things in their own language of the country was lost, whereas, on its report, the settlers were imposing their names, legalizing and legitimizing them up to the point of making their use habitual and obvious, even for our population ", I populate Mapuche

(Azkintuwe, On February 21, 2007, International Day of the Mother Language).

Thanks to the actions of the Asociacion Uk'aslemal Xokopila<sup>63</sup> and the Movimiento Tzun Kim Pop, OCIM has requested from the Guatemalan State that the consular partition in Guatemala consider informing documenting and giving legal help in the United States in 3 of the 53 Mayan languages, especially those that speak K'ich'e, Mam and Q'eqchi', since these are important part for the Mayan migrants.

Very few consuls have information about indigenous languages. There are countries in which there is an important percentage of migrants have an indigenous component and have no knowledge of the official language of the country they are in nor in the country they are headed to. This is the case of the members of the Ngobe tribe that travel between Panama and Costa Rica, for the coffee crop. Through this the role of the NHRIs will be able to help in informing and acting when needed in the indigenous language in the country of origin, transit and destination. This will help the NHRIs have access to the Paris Principles and promote the human rights in the language of indigenous peoples, apply common law with special ancestral norms, in addition to the rights granted in the OIT Convention 169. In the country of destination

##### Guide of the Yucateco Migrant.

In order to support the indigenous migrants in The United States, the Institute for the Development of the Mayan Culture of the State of Yucatan (Indemaya) edited and started distributing, starting last year, the Guide of the Yucateco Migrant, second in its type in the country and in that the necessary steps are explained in detail to enter legally to The United States. Nine thousand guides and hundreds of CDs with the same content were produced. Nevertheless, the written version has more diffusion between the inhabitants of the entity, due to the fact that in the rural populations few people have access to a computer and, necessarily, to Internet. They have been distributed in 106 municipalities. Given the wide acceptance 8 thousand copies were distributed.

The small volume highlights eight basic points: documents to enter to American territory; risks and precautions in crossing the border; rights and obligations of those that are stopped by authorities of the neighboring country; citizens of yucateco origins that take root in this nation; services that the Mexican government offers; directory of the government of Yucatan; directory of federal institutions for migrant support, and, finally, the list of consulates of Mexico in The United States and Canada.



many controversies have arisen because of the use of fairs, religious practices, without any discrimination whatsoever that are evident human rights of self determination.

Just as migration is an important of the culture of certain Indigenous People, for the Afro-descendant people it is a historical condition that gives them foundation, purpose and understanding of what they are and how they will project to the future. The forced migrations from Africa to Europe, America and Asia constitute one of the biggest population movements in history.

During 2005 various indigenous peoples gathered in Central America with procurators, ombudsmen, and NHRI commissioners<sup>64</sup>, in order to get to know the state situation of indigenous peoples in the Central American region, while at the same time creating spaces for dialogue and consensus, which resulted in a sub regional agenda, and an agenda for every country, in the search for ancestral cultural respect and full exercise of indigenous communities human rights.

In 2006 the Defensoria del Pueblo of Bolivia developed a diffusion of rights package, containing messages and notes in three native languages, informative and preventive videos, posters for raising awareness, and massive pamphlets, in areas of greater migrant expulsion. The Paraguayan Defensoria del Pueblo has implemented instruments for information and campaigns for the diffusion of Human Rights in the Guarani language.

## 15. Child Migrants

Child migrants are particularly vulnerable to all possible forms of human rights violations. The figures are not inspiring. There has been an increase of dead child migrants at international borders, due to their attempts of reunification with their parents. It is for this reason that OCIM has begun a campaign for adhesion of international organizations called “Bandera de los Niños”. NHRIs have an absolute priority regarding this subject, needing to preferentially apply policies, plans, or programs regarding the exercise of actions for the protection of child migrants, as indicated in the recommendations made in the Santa Cruz Declaration.

The South African Human Rights Commission works with offices that give assistance to refugees. In said offices, families of refugees are assisted, and places where they petition the Government to guarantee the right to an education for their children, while their refugee status is processed.

The rights and interest of the Children, after which the Migration Committee will attempt to reunite the children with their parents. The cases of migrating children without parents are given priority in the action of the Ombudsman. The commission of Human Rights of Norway will start in 2007 a project of investigation on the rights of the children in the process of asylum.

The Irish commission of human rights has declared to the Irish government their special concerns for children and the children of immigrants that are in detentions centers due to the negative impact that this generates in the family and the inconvenience created if the children are assigned under care of a

### Monitoring condition of children's migratory detention

Australia has the administrative detention as a policy regarding migrants with irregular documentation and persons who seek asylum. The HREOC realizes visits to the centres of migratory detention regularly, with the purpose of monitoring the human rights of detainees. The HREOC has established constructive relations of work with the Department of Immigration and suppliers of detention facilities. The observations of the HREOC of the above mentioned visits are an important contribution towards the improvement of the conditions of detention. The HREOC has also fulfilled a national investigation regarding detained children.

See: Report on said investigation, entitled "A last resource " Report of the National Investigation on children in migratory detention ", which was presented in Parliament in May, 2004.



state institution separated from their parents. As it is referred by the Irish commission of Human Rights through their press report in May 2006, the phenomenon of trade is frequently ignored and not efficiently investigated, causing the invisibility in the Irish society. In this occasion the NGOs that were involved were congratulated for the initiative to combat the trafficking.

The Ombudsman of Spain and the General Council of Spanish Attorneys in January 2007 recommended that specific practices should be modified in order to offer the legal guaranties on the repatriation of the immigrant minors. They recommend that the minors should be heard by the authority that would decide on the repatriation and that a detailed analysis should be made in every case, paying attention to the age, maturity level and conditions of the country of origin.

The Commissioner denounced that the future legislation in Australia will contravene the Convention of the Human Rights of the Children and the International Agreement of the Civil and Political Rights and call to the attention to his observations for the legal reform and the exercise of the veto.

In South Africa, the South African Commission for the Human Right presented a demand before the Ministry of Internal Affairs for the negotiation of the right for education of a daughter of an immigrant with irregular documentation. Starting with this case the Ministry has established the policy that it is unacceptable to negate education to the children of parents seeking political asylum. Going forward the offices that receive refugees has to take the actions to ensure that the children of refugees are allowed access to education. This action was well accepted by the national and international community.

**Guidelines relative to the Asylum and Refugees' protection:**

- To reinforce the putting in practice of the Convention of 1951 on the refugees and of the Protocol of 1967 and to guarantee their universal access
- To report on the rights of asylum in borders and to realize follow-up of the requests, avoiding the intermediate conditions of the legislation, working towards the integration of the solicitor
- To propose complementary forms of protection for those that do not fall within the area of the Convention of 1951, but that need international protection
- To level the interpretation of the Convention of 1951 in the light of the progresses registered in the right of the refugees
- To work towards the respect of the refugees and to establish suitable mechanisms of reception
- To monitor the improvement of the systems of inscription and documentation of the refugees
- To react effective and predictably to situations with massive influences
- To protect the refugees who are a part of migratory wide movements
- To improve the identification and the response adapted to the needs of those seeking asylum and refugee, included the access to the protection inside the wide context of the management of the migration
- To carry out campaigns of information in order to guarantee that the potential migrants are conscious of the perspectives of legal migration and of the dangers of trade and trafficking in persons.
- To collaborate in order to consolidate the protection capacities in the countries of refugees' reception
- To enable to the refugees' communities so that they may satisfy their own needs as for protection
- To make sure that refugee matters are considered in national, regional, and multilateral development projects
- To help to the States to guarantee the safety of the refugees
- To improve the conditions of voluntary repatriation when the refugee requests it, stating the absence of risk.
- To intercede in order to extend the opportunities of reaccession with other NHRIs, using it as an instrument of protection and as lasting solution
- To rehabilitate the regions from which refugees left countries of origin
- To satisfy the needs regarding protection of the women and refugee children

Elaborated with the base of NHRI systematized practices, taking official information as a base or of press, and conclusions of the process of consultation of Berna Initiative.

With regard to this subject we need to consider the directions given by the Commissioner of the United Nations for Refugees about the protection and care of the children refugees.



## 16. Refugees.

The acts of control of migrations by the States in order to prevent irregular migration should not create conditions to undermine the institution of asylum, as it has been established in the Protection Program of ACNUR<sup>65</sup> that indicates that refugees should not be object of penal sanctions due to their illegal entry or presence in the country. They should be presented without delay to the proper authority and present justification of their illegal entry or presence. The conditions of the refugee should be resolved quickly and in an effective manner by the States. The NHRIs have a primary roll in the visibilization of refugees, in such a way that they can enjoy the international status that protect them. In many places of the world the States have granted the conditions of “prima facie” refugees in situations of a massive affluence.

Some NGOs have denounced the non-compliance of the States obligations committed when granting the condition of refugee, by returning them to the country of origin of the refugee, putting them at risk of their lives and their integrity. This principle (non-refoulement) prohibits the return of any person to any country where their lives could be endangered or where their freedom could be at risk due to race, religion, nationality or political ideology. This principle is the center of the international protection of the refugees and has been widely considered in the International Common Law. The International Law also prohibits the return of any person to a place where he or she could be tortured or treated in a cruel or inhuman way. The NHRIs must pay attention that the institutions, norms and national practices have the effective controls against the refoulement.

Due to the importance of the topic, the Australian Commission of Human Rights and Equal Opportunity on World Refugee Day, publicly recommended the Government to not approve the legal amendment that violates the rights of those seeking asylum and refuge, considering that the norm would endanger the non-return of the refugees.

During April 2002 the Commission of Human Rights in South Africa had public demonstrations to condemn the violation of the Human Rights of the refugees and migrant in South Africa. The Commission of Human Rights in Uganda requested in 1998 a special investigation for the disappearance of Congo Refugees in Uganda for their legal protection.

In the area of the protection of refugees, during the month of January 1998, the Commission of Human Rights in Benin, Africa, protested against the intention of the government to refoule 40 refugees from the Congo, which did not have the status of legal immigrant. This protest resulted in the suspension of the expulsion of the refugees.

The States should attempt to protect effectively the refugees, the guaranty of their security and a reasonable quality of life, their integration or relocation in the case of it being necessary, to avoid the circulation of refugees to diverse countries for the fear of attacks against their security. Third Countries of reallocation have been an important solution to humanitarian crisis. There are several States that have established programs of protection taking potential refugees from the countries in which they could be object of persecution. The NHRIs should in this area safeguard the planned reallocation, in an orderly and safe manner, in the identified humanitarian cases.

We need to bear in mind the Directions of the ACNUR in relation to the prevention of sexual violence against refugees, High Commissioner of the United Nations for Refugees. Geneva, 1995





## 17. Relationship between NHRIs and Civil Society Organizations and Churches

Currently there is consensus in the world regarding the need, pertinence, and opportunity to link NHRI incidence initiatives with Civil Society Organizations, in order to generate collaborative bridges in order to strengthen the capacity of action, incidence, and effective achievement of migrants' human rights.

This relationship is defined through mutual respect, the consideration of an independent space for every entity and organization, at a level of consideration, respect, and mutual tolerance, unity in the promotion of human rights doctrine, open and transparent participation at levels of consultation, decision, or monitoring of the actions of NHRIs, the opening of channels for permanent dialogue and communication, the establishment of meetings, commissions, or permanent meeting boards.

### OCIM Humanitarian Agenda:

Humanitarian Visa for current affectation of human rights and threat or disturbance of the right to the life.  
Humanitarian Remittances exempt of commission of 100 USD per family, distributed through consular services or concessions.  
Document of temporary Identity for irregular migrants  
General Migratory amnesty.  
Grant of temporary citizenship for humanitarian reasons.  
Migratory model law for Parliaments of the World.  
Subscription of World Declaration on the Rights of Migrants.

System of Migratory Early warning (SATEM in Spanish)  
[www.migrante.info](http://www.migrante.info)

In all of the best practices analyzed, we have considered the multiplying role of CSOs in the administration, coordination, diffusion, or the joint practice with NHRIs of migration actions. The Norwegian Ombudsman indicated, upon being consulted for this report, the convenience of working with Civil Society in the investigation and monitoring of migratory matters. The Ombudsman strives to strengthen cooperation among various ombudsmen (such as parliamentary members of public administration, of children, and of equality and non-discrimination), and civil society organizations in Norway.

Some churches such as the Pastoral of Human Mobility, the Company of Jesus, and the Scalabrinian Pastoral of the Catholic Church, the Lutheran Church, the American Friends Committee (Quakers), develop interesting actions for information, diffusion, and assistance for the material, human, and spiritual conditions of migrants. Keeping a relationship of dialogue has with other churches for the humanistic perspective has been a constant, as well as keeping a global, territorial presence, the strengthening of the role of the family, and the role of accompanying assistance that they carry out with migrants throughout the world.

In this Regard, the Pastoral of the Bishopric of Neuquen, in Argentina, has been working with universities regarding migration, producing better and greater amounts of migration information, socializing the information towards spaces of greater public incidence and political decision, as well as contributing to the professionalization of migratory services, creating specialized courses on migration, and implementing the Clinic for Human Rights and Migration, under the coordination of the Pastoral of Migrations; as well as training psychologists, lawyers, and social workers specializing them with regards to migration<sup>667</sup>. The Pastoral has given courses and seminars on the migratory phenomenon for professionals, professors, and community organizations<sup>68</sup>. The Pastoral has promoted the creation of Municipal Offices for migration in the areas with greater concentration of migrants, through agreements with Municipalities and other organisms<sup>69</sup>.

Equally noteworthy is the role of the Pastoral Service for Migrations in Brazil, which has had an active role in spreading information, diffusion, orientation, accompanying and defense of migrants' rights, maintaining assistance centers for refugees, migrants, and displaced persons.



The role of the migratory attention centers of the Pastoral of the Scalabrinian Congregation of the Catholic Church, has been of extreme import, having taken into consideration the dignity of persons and the human family, as well as centers for reflection, documentation, and migratory assistance in the world sponsored by the Jesuit Congregation.

Just as noteworthy, is the work of Grito de los Excluidos, the Comision Andina de Juristas, and associations such as the Spanish Center for Refugee Assistance (CEAR), the Latin American Center on Migration (CEMLA), among other institutions and organizations, such as the United Nations Population Division, and Centers on Population and Demography.

NHRIs have indicated to this consultant regarding the development of various successful initiatives with civil society, throughout the world. This permits the multiplication of capacity and potential to have influence with regards to public life, as well as in the concrete lives of migrants, protecting their human rights. In this regard, we must highlight the participation of NGOs in the VIII International Conference of NHRIs in Santa Cruz, as well as the role of the Bolivian Defensoria del Pueblo, in collaboration with various NGOs, including OCIM, communicating information, assisting in the bestowal of refugee status, concerting joint initiatives, as well as other measures. The initiatives between NHRIs and NGOs are uncountable in the United States, Ireland, Bolivia, Paraguay, Australia, Mexico, Peru, East Timor, South Africa (which has been detailed in this report), among others.

For example, the New Zealand Human Rights Commission created a report on the most relevant aspects of migrant human rights within the framework of migration law reform, so that international standards may be incorporated, both in policies derived from the law, as well as in procedures. The Report has been made available to institutions, NGOs, and associations for the promotion of active participation processes of discussion regarding migratory legal reform.

## 18. Conclusions

The study of good practices has allowed us to formulate the following conclusions:

1. It is satisfactory to observe that great part of the NHRIs develop some sort of action linked to migration, refuge and displacement, mainly diffusion of information regarding migrants' human rights. In this way all NHRIs effectively answer to the promotion of a human rights approach with respect to migration, and the recommendations contained in the Declaration of the VIII International Conference of NHRIs is reaffirmed at a global level, basing itself on the Paris Principles. We have been able to appreciate that an important part of this information is available in NHRIs web pages, or in press reports, but we must bear in mind, at its respect, that the migrant communities in Africa, Asia, and Latin America are generally lacking of TICs to access the Internet.
2. A clear asymmetry exists among the NHRIs and their capacities of action, as in the levels of information, recourses and actions they have developed in this field. The most developed can be found in countries of origin and destination with great migratory flows, there is little development in the countries of transit, or in countries of intermediate flows. There are new NHRIs that do not have the same experience of others, or that have different economic and personal levels. We believe that these are topics and particularities that must be observed by Regional Forums as well as International conferences.
3. The capacity and the incidence of the NHRIs actions is multiplied when they act harmonized and associatively among them. Particularly noteworthy are the agreement subscriptions, the conformation of working boards, realization of joint events in some cases in all continents, even



- when we believe that collaborative work must be strengthened, mainly between countries of origin, transit and destination, beginning with the agreement to work with regards to migratory flows.
4. The capacity of the NHRIs is strengthened when developing actions with Civil Society organizations, with the Churches, with the Universities and investigation centers. It has been gratifying to observe the united role among them in all continents, generally limited to the national realities. In this way new challenges and opportunities are opened to initiate sub-regional, regional and international topics, with networks and international associations. This consultant wishes to express his gratitude for the fact that this report was entrusted to an academic belonging to civil society, dedicated to the migration/refugee/displacement axis.
  5. New opportunities arise to strengthen the work of the NHRIs with companies, businesses, enterprise associations and social media, mainly in the frame of the new migratory themes such as climatic change and forced displacement. The effects of the climate change such as hurricanes, earthquakes, droughts and floods, can force the migration of 200 millions people, a report from the British Journal “The Observer” elaborated by Nicholas Stern, states that the number of refugee victims of drought or floods could reach some 200 million people.
  6. There are NHRIs that have developed interesting operative internal structures for initiating the migration, refuge and displacement that can be replicated by other NHRIs, such as attached defenses, working boards, specific unities, delegates at borders, and ombudsmen offices, among other initiatives. In the analysis we did not detect any specific operative structure for migrations at a sub regional level, only forums at regional levels in all the continents; it is probable that the consideration of migration as a transnational problem will generate modalities of operative administration at a sub regional level in the future.
  7. At the educational level there are best practices of multiculturalism and of migratory integration in some destination countries, but actions must be multiplied transforming them in programs, plans and public measures. In this field there must be the development of more reports, guides and manuals in migration, refuge, displacements and its related topics (slavery, trafficking, remittances, migratory working programs, migration of women, indigenous migration, afro descendant migration, among others). Standard models must be promoted that can be applied in a sub region or in an area of circular migration, applying the Paris Principles in migration situations, refuge and displacement. Only some NHRIs have manuals of action with regards to border visits, detention centers, attention for refugees, among others.
  8. Particularly noteworthy is the fact that some NHRIs that formulate representations regarding legal norms in order to prevent the diminishment of human rights of migrants, refugees, and displaced persons, even public calls made upon the adoption of policy or ratification of International treaties on behalf of Governments or Parliaments. There are other NHRIs that establish border missions, defending migrants legally, giving medical and social assistance, repatriating deported migrants, showing the human side of human rights and promoting an effective change in the concrete lives of migrants.
  9. Making use of the Paris Principles, NHRIs can fulfill a central role in the generation of public policies regarding migration, refuge and displacement, in order to transform best practices regarding the migration/refugee/displacement axis into a dimension of Government, Parliament, and Court Policy. NHRIs must strengthen the use of the International System of Human Rights, as well as Regional systems at all levels, in the practice of the Paris Principles.



## **Appendix I: Action Guide for NHRIs Regarding Migration and Development. NHRI and Migration Principles of action.**

The principles or guiding criteria that we propose to orient policies, plans, programs, or actions in the migratory axis, refuge, and displacement, on behalf of NHRIs, are the following:

- Migration is a characteristic of contemporary life.
- Due to its nature it ought to be addressed from a global perspective.
- It must be considered in its entirety and in a sense of process.
- In migration, Human Rights must be respected in all of their aspects.
- The principle right is that of migrating freely, voluntarily, and without any sort of force.
- Migration is principally a positive contribution for development.
- Migration may only be addressed from the logic of cooperation, reciprocity, and international dialogue.
- Migration is pre-visible, therefore measures must be adopted in order to act previously, preventively, and always looking towards the protection of persons.
- The implementation of coherent national and sub regional policy permits the development of efficient international initiatives.
- The participation and consideration of all actors, including civil society, churches, migrant associations and businesses, is fundamental.
- It is only possible if all factors are taken into consideration; economic, social, cultural, political, environmental, etc.

States:

- Sign, ratify, and above all implement treaties referring to migrants' human rights such as the International Convention on the Protection of All Migrant Workers and their Families.
- State policies should consider regular and irregular migration integrally and coherently, as a transversal dimension and not as a hindering compartment.
- Norms on migration should not be considered in a dispersed manner, but rather in an only and coherent normative body, that may facilitate its knowledge and diffusion.
- A uniform Corpus Juris must be constructed on the basis of the human right to migrate at a global level, with regards to the observations relating with dispersion, in international texts referred to migration, as expressed by the States in the Berna Initiative.
- An interinstitutional agenda must be implemented on migration and development, assumed as a dimension of the administration of States, and not as a matter relative to state unity of migratory control.
- Coordination between authorities, institutions, and organizations must be established, in which they may participate in the various stages of the migratory process, with an emphasis on the situation of internal and external borders.
- Measures ought to be adopted in order to centralize information regarding migration in one organism; said organism may then report publicly and operate transparently and with clear procedures, under the supervision of NHRIs and citizens.
- Policies ought to be developed through consultation and collaboration with NHRIs, civil society organizations, businesses, NGOs, Churches, Universities, and migrant associations as well as their family members.
- NHRI contributions are fundamental; therefore necessary agreements must be celebrated in order to endow NHRIs, networks, and OSCs with locus standing.
- When confronted with the urgency, emergency and magnitude of the violations of migrants' human rights, it becomes crucial to approve a humanitarian agenda on migration.

In this sense, NHRIs must:



- Promote the signing, ratification, and above all, application of treaties that deal with migrants' human rights such as the International Convention on the Protection of All Migrant Workers and their Families.
- Recommend the harmonization of national legislation with regards to international law.
- Be effective through the presentation of resources, recommendations, reports, etc.
- Establish a commission of political and operative dialogue on migration.
- Coordinate measures of global action on migration, such as the celebration of agreements regarding global operative frameworks on modalities of intervention on the topics of migration among various NHRIs.
- Exchange information, studies, investigations, and plans of action with regards to migration.
- Develop means of technical cooperation that favor the qualified assistance of experts and/or experience for NHRIs that would require it.
- Petition states to take concrete measures: recognition of temporal visas, and establishing agreements for a humanitarian agenda on migration.
- Petition regional blocks regarding the following: liberalization of passports, migratory amnesty, and exoneration of the prerequisites for visas, wherever possible.
- Prepare a model norm on migration with international standards.
- Report to treaty organisms.
- Pay special attention to detained migrants during NHRI visits to detention facilities, particularly in the cases of administrative detention.

### 18.1 Emerging Topics

One of the fundamental tasks in the promotion and defense of human rights, is the development of capacities of predictability and prior planning, in order to approach certain questions regarding migration in an anticipated manner: migration for environmental or ecological reasons, displacement caused by climatic change, migration provoked by free commerce, the need to advance in electronic procedures in the cases of trade and trafficking caused by sexual tourism and commerce made available by the internet, among other topics.

### 18.2. Recommendations regarding structure, competence, and functions of NHRIs.

#### 1. Structure:

- The establishment of commissions or specialized units for migration, refuge, and displacement.
- Naming of delegates for in situ visits or for the carrying out of missions to borders, for the protection of rights and in order to address the needs of migrants.
- Naming of ombudsmen or delegates with the specific mandate to protect the human rights of migrants.
- Designation of international delegates with competences to celebrate agreements at a bilateral, sub regional, or international level.
- Conformation of National Migration Boards with integration in Ombudsmen's Offices and with an active role, with several of them having legal mandate.
- Intercession with other Ministries for the establishment of operative work structures with Foreign Ministries and others linked with migration and public service.
- Establishment, at a sub regional level, of pro tempore Rapporteurs for the study of reports, best practices, and recommendations on topics related with migration: trade, trafficking, irregular migration, etc.
- The consecration, at an international level, of a Special Commission or International Thematic Board, dedicated to migration, refuge, and displacement, with counseling and orientation of the ICC of the OHCHR.
- Installation and operation of border assistance offices, located in the sectors with most migratory flow, and of highest risk of human rights violations.



- Participation of NHRIs in International and Regional Forums on migration and development with an institutional place within the forum.

## 2. Human Rights Competence:

- Consecration in NHRI legal statutes of the legal attributes to celebrate technical agreements at a bilateral, regional, or international level, in order to achieve objectives as established by the Paris Principles.
- Strengthening of NHRIs' active role in autonomously presenting reports and petitions directly to organisms within the United Nations system, as well as Regional Human Rights Systems, acting for the defense of human rights. Having analyzed 27 NHRI statutes, very few of them had the express attribution of autonomously presenting reports, petitions, and recommendations to international human rights organisms, even appealing directly to international delegations and judicial or diplomatic organs.
- Indication of the express faculty of representation of migrants' collective interests, as well as those of foreigners, refugees, and stateless persons, for the defense of their human rights.
- Modification of legal norms found within certain NHRI statutes that establish limits to the right of access to public information that NHRIs have, dealing with international relations.
- Consecrate an express norm that indicates that NHRIs may promote the signing, ratification, adhesion, and effective diffusion of international treaties on human rights.
- Even though it may be induced from the general norms of NHRI competences, there is not an express norm that recognizes the right that NHRIs have to obligatorily provoke Parliamentary action in the case of legal silences, like the case of various migratory topics.
- One of the interesting advances regarding human rights is the exception of human rights, which allows for the deposit of the burden of proof upon the State (which has human rights obligations), and directly plead a Human Rights Treaty norm as a judicial exception with supremacy over a constitutional or legal norm. This figure allows for the plea of victims such as irregular migrants, with greater ease than if they were to do so by way of actions that deposit the burden of proof and suit open them.
- Yet another open possibility is the link between migration and due process, pleading "migrant exemption or 'fuero'" in judicial processes in the defense of migratory rights, as a conjunction of norms, customs, and uses with legal value before administrative and/or judicial organs of countries of origin, transit, and destination. In this manner, contributing to the generation of active jurisprudence on migrants' human rights.

## 3. Presentation of recommendations and reports to State authorities:

- Presentation of public reports on migration, being specific on every topic of migration.
- Naming of joint rapporteurs for every migratory topic for the emission of reports, seeking counsel from Civil Society Organizations.

## 4. Presentation of reports to Congresses and Political Parties

- Presentation of reports with initiatives for laws for the effective establishment of norms with regards to migratory rights, particularly norms that protect irregular migrants. In this aspect, model norms elaborated by NHRIs or experts may be presented.
- Reports requesting parliamentary control with regards to the violation of migratory norms, as well as labor and social security norms.
- Present demands for the ratification of the International Convention on the Protection of All Migrant Workers and Their Families, as well as other related treaties.
- Incise regional Parliaments for the promotion of model norms.
- Elaborate a manual on migration for Parliamentary members, and cosponsor training.



- Present reports of complaints, infractions, and officials involved, as contained in black lists of people individualized as participants in the violation of migrants' human rights.
5. Recommendations: Deliver recommendations to the entire migration, refuge, and displacement axis, indicating focal points of priority.
  6. Examination of legislation and administrative norms.
    - Indicate the possible unconstitutionality and legal contradiction, among other cases, of legal and administrative norms when they infringe migrants' human rights, in a previous, anticipated, and even preventive manner.
    - Consecrate the right to "suspensive veto" by the expert Institution on Human Rights, which suspends the norm until a Superior Court with the obligation to pronounce itself regarding involved International Treaties.
    - Consecrate the possibility of beginning a Popular Law Initiative dealing with proposals for norms that apply or regulate Human Rights Treaties.
    - Request the non-application, reform, or suspension of effects of norms that consecrate administrative deportation due to human rights violations.
    - Propose deontological norms, codes of conduct, or manuals on anti discrimination to the media. Apply the same for the publicity industry.
  7. Present general reports on human rights, considering the border situations, and reciprocal actions among various NHRIs, and indicating the application of norms of reciprocity between different States where migrant nationals may be found.
  8. Demand attention or focalization from the State, in border zones or areas, in places where irregular migrants live, safeguard health, education, and housing for migrant families.
  9. Emission of dictums regarding State reaction, due to the application of measures of deportation, arbitrary denial of entry or exit of the country, impunity for those responsible for trade and trafficking, denial of identification documents, non-compliance with the obligation of consular assistance for migrants, pursuant to art. 5 of the Vienna Convention, etc.
  10. Harmonization of norms with Human Rights International Treaties, and their effective application, through norms based on international best practices and model legislations.
  11. Ratification of said treaties and the pursuit of norms that allow their immediate application.
  12. Cooperation with regional institutions and other NHRIs, through the celebration of agreements regarding the flux of migratory information, labor conditions, exoneration of costs for sending remittances, fulfillment of court sentences in countries of origin, etc.
  13. Collaboration in the elaboration of teaching programs aimed toward multicultural education, mainly in border zones, educating towards integration of peoples.
  14. Inform people regarding human rights and the fight against discrimination, raising public awareness, through research, publications, non-discrimination and equal treatment public campaigns.
  15. Appropriate infrastructure. In this point it is important to mention the need to advance with regards to technical, operative, and computer coordination connections between various NHRIs under the counsel of the ICC.



16. Resources and the possibility of asking for technical assistance from experts for the design of policies, programs, and plans dealing with migration, in order to approach new migratory phenomena.
17. Reception and recording of testimonials, such as the periodic systematization of information from all public services in the country dealing with migration and development. Propose, at a national level, the elaboration of cadastral guidelines of socio-economic information on migration. There have been interesting experiences with migratory censuses or the incorporation of census questions regarding migration, refuge, and displacement.
18. Communication with public opinion, through the delivery of information for the formation of a responsible public opinion.
19. Establishment of work groups; basically one work group for every migratory subject: trade and trafficking, irregular migrants' rights, human rights, migrant workers, xenophobia and discrimination, vulnerable sectors and migration, and regional integration.
20. Coordination with the Judicial Branch and training for judges, district attorneys, and lawyers, celebration of operative agreements regarding humanitarian agenda, non-deportation, and the application of the principle of a natural judge at borders, and the fulfillment of sentences in countries of origin, guidelines for the application of the protective, preventive, and cautionary principle in the migratory axis, as well as the universal competence of human rights dealing with migrants or persons without nationality.
21. Reception and examination of denouncements and suits in particular situations, as well as the recording of them, and in loco visits in order to receive denouncements from irregular migrants at international borders, as well as visits to the schools of migrant children, and health centers in order to verify the level of coverage of ESC rights for migrants.
22. Regarding the confidentiality of procedure and the protection of the victims of trade and trafficking, racism, and xenophobia, as well as the violation of human rights.
23. Information regarding rights, and resources, as well as access to them, in the various languages of migrants, and not only in the national language. Along with this, placing information in the various consular and diplomatic divisions.

### 18.3. Specific recommendations regarding collaboration among NHRIs.

Beyond that which has been already stated, work towards regional and global agreements regarding migration as a human right, with various technical-operative covenants on various migratory topics, and a work plan, promoting manuals, information, and model norms, maps showing global risk in migration for human rights, under the coordination of the ICC.

<sup>1</sup> We have used the concept of "migration in irregular documentary condition", diffused by OCIM in various documents, given the fact that a person cannot be considered to be irregular as mentioned in the Global Commission Report 2005, but can only be referred to regarding his or her documentary condition.

<sup>2</sup> Declaration of the Eighth International Conference of National Human Rights Institutions for the Promotion and Protection of Human Rights, Santa Cruz, Bolivia, October 24 – 26, Point 22.

<sup>3</sup> Carrasco, Diego, is an Attorney, holding a Master's as well as Ph.D. in Law, expert on migration, regional integration, and human rights. Professor of 13 universities in Latin America as well as the United States, Executive Director of the International Observatory for Migrations OCIM

<sup>4</sup> Observatorio Control Interamericano de los Derechos de los Migrantes OCIM, an international network dedicated to matters regarding the migration/refugee/displacement axis, present in 25 countries, with the generous support of the Ford Foundation and the Bread for the World Foundation (more information at [www.observatoriomigrantes.org](http://www.observatoriomigrantes.org) and [www.migrante.info](http://www.migrante.info))

<sup>5</sup> Report of the Global Commission for Migrations 2005

<sup>6</sup> Carrasco, Diego "Hacia un Consenso Global Migratorio", presented at the Encuentro Iberoamericano de Migración y Desarrollo, Madrid, July 2006

<sup>7</sup> Document entitled "Migraciones en un mundo interdependiente: nuevas orientaciones para actuar", in the Report of the World Commission for International Migrations, October 2005.

<sup>8</sup> Referente document of the Eighth International Conference of National Human Rights Institutions for the Promotion and Protection of Human Rights, Santa Cruz, Bolivia, October 2006.





- <sup>9</sup> Document entitled “Las migraciones en un mundo interdependiente: nuevas orientaciones para actuar”, in the Report of the World Commission for International Migrations, October 2005.
- <sup>10</sup> *Ib.* Docto. ii
- <sup>11</sup> Office of the United Nations High Commissioner for Human Rights. Migration and Development: A Human Rights Approach. Available only in English
- <sup>12</sup> Enrique Iglesias in Inaugural Speech in the Ibero-American Summit of Migration and Development, he states that migration is per se a global way of overcoming poverty.
- <sup>13</sup> The World Bank has stated that by 2010 86% of worldwide workforce will come from developing countries, adding the fact that developed countries are going through decrease in population, certainly the workforce necessary to sustain the economies of developed countries will be migrant (Report of the Global Commission of Migrations 2005).
- <sup>14</sup> We must mention the role of the Irish Human Rights Commission, which has made calls for the subscription to the International Convention for the Protection of the Rights of All Migrant Workers and Their Families.
- <sup>15</sup> Point 6 of the Final Declaration of the VIII International Conference of NHRIs, which adds that “Recognizing the unique role that NHRIs have in the application of international norms with regards to human rights at a national level, assuring the sustainable protection of human rights”.
- <sup>16</sup> *Ibid.*, Point 15.
- <sup>17</sup> *Ibid.* Point 16.
- <sup>18</sup> Convention approved by the General Assembly, December 18th 1990 (A/RES/45/158). New York, United Nations, from this point forth referred to as CPMWF.
- <sup>19</sup> Situation regarding ratification can be found in [www.ohchr.org/english/countries/ratification/13.htm](http://www.ohchr.org/english/countries/ratification/13.htm)
- <sup>20</sup> NHRIs play a key role when petitioning the ratification of Conventions regarding International Conferences, including Rabat 2000, Copenhagen 2004, and Seoul 2004.
- <sup>21</sup> TPS, Temporary Protected Status, is a legal status that allows nationals of countries in crisis due to armed conflict, natural disasters, or extraordinary temporary conditions, to obtain a condition of protection. Those that have qualified have been citizens from Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, and Sudan.
- <sup>22</sup> World Forum Migrations I, held in Porto Alegre Brazil, January 2005, and the World Forum of Migrations II, held in Vaciamadrid, Spain, July 2006. For more information, please visit [www.fsmm2006.org](http://www.fsmm2006.org)
- <sup>23</sup> Carrasco, Diego. “Avances en los Derechos Humanos de los Migrantes”, 2<sup>nd</sup> Hemispheric Forum of Public Policy and Migration, Caracas, January 2006, OCIM and other networks.
- <sup>24</sup> MENAMIG of Guatemala has been a member of OCIM since 2004.
- <sup>25</sup> Center for Central American Resources (CARECEN), Catholic Relief Service (CRS), Foundation for Studies for the Application of the Law (FESPAD), El Salvador Human Rights Commission, CARITAS El Salvador, Lutheran Church of El Salvador, Sinodo Luterano Salvadoreño, Salvadoran Foundation for Social Promotion and Economic Development (FUNSALPRODESE), Episcopal Church of El Salvador, among others.
- <sup>26</sup> Among the initiatives informed to the consultant on behalf of El Salvador, the following are worth mentioning: (1) Elaboration of public statements on the topics of TPS, abuses committed by “minutemen” on the southern U.S. border, Law HR 4437 regarding Human Rights, monitoring for the detection of human rights violations with regards to deportations at the El Salvador International Airport (2) Construction of a minimum platform for Migrants’ Human Rights, follow up activities for the minimum platform, public presentation of said platform, and particularly, to the Vice Minister of Foreign Relations for Salvadorans abroad.
- <sup>27</sup> I and II World Migration Forum, January 2006 Porto Alegre Brazil, and July 2007, Vaciamadrid, Spain.
- <sup>28</sup> Human Rights and Equal Opportunity Commission (HREOC), Australia.
- <sup>29</sup> Laws applied by the HREOC cover discrimination in employment on the basis of gender, pregnancy, marital status, or family responsibilities; race, color, national origin, migrant status, ethnic origin; current disability, disability with regards to physical, intellectual, or psychiatric condition, discrimination due to age, religion, political opinion, union activity, sexual preference, or criminal record.
- <sup>30</sup> Prologue of the Inter-American Report on Migrations OCIM, Patricia Bezars, Diego Carrasco, and other authors ([www.migrante.info/publicaciones](http://www.migrante.info/publicaciones)).
- <sup>31</sup> More information available at [www.wto.org](http://www.wto.org).
- <sup>32</sup> I and II World Forums on Migration, held in Porto Alegre Brazil, January 2006, and Vaciamadrid Spain, July 2007
- <sup>33</sup> These norms dictated by the World Bank have to do with various policies concerning social protection and safeguarding the effects caused by investments, within a framework of initiatives aimed towards sustainable decrease in poverty. More information available at [www.worldbank.org](http://www.worldbank.org).
- <sup>34</sup> More information available at [www.ethicaltrade.org](http://www.ethicaltrade.org)
- <sup>35</sup> More information available at [www.easa-alliance.org](http://www.easa-alliance.org)
- <sup>36</sup> New York Commission on Human Rights and the New York Immigration Coalition
- <sup>37</sup> In the presentation of said report, a recommendation was made to create a center for Migrants in Marlborough, and a network for receiving new migrants.
- <sup>38</sup> Law Centre of Northern Ireland and the Dungannon Animate Project.
- <sup>39</sup> By the end of July 2006, over 90 million people benefitted from said insurance, 18.17 of them being migrant workers. Coverage of this insurance increased by 6.2 million people from 2005.
- <sup>40</sup> Order TAS/2865/2003 dated October 13th 2003, Chapter II, Section 3, Articles 15 – 17.
- <sup>41</sup> GO 14 uses the expresión “illegal migrants”.
- <sup>42</sup> Philippine Statement by Mr. Tomas Osias, [www.un.int/philippines/statements/20050404.html](http://www.un.int/philippines/statements/20050404.html)
- <sup>43</sup> Report entitled “International Migration, Remittances, and Brain Drain”, World Bank, October 2005.
- <sup>44</sup> Article entitled “Brain Drain and Brain Gain”, January 2007, available at [www.unesco.cl](http://www.unesco.cl)
- <sup>45</sup> Information and Communications Technology.



- <sup>46</sup> See 55th session, April 25th 2002, Approved without vote, See chapter XIV. [www.unhcr.ch](http://www.unhcr.ch)
- <sup>47</sup> Report entitled “International Migration, Remittances, and Brain Drain”, World Bank, October 2005.
- <sup>48</sup> See [www.defensoriadelpueblo.gov.py](http://www.defensoriadelpueblo.gov.py)
- <sup>49</sup> Special Session on Migrant Workers, OAS, September 30<sup>th</sup> 2004, speech by Dr. German Mundarain, found at [www.defensoria.gov.ve](http://www.defensoria.gov.ve)
- <sup>50</sup> There are experiences of Ombudsman’s offices regarding clients, private in nature, that promote the publication of Rate Lists regarding costs for remittance transfers, BBVA Bank, Sucursal Bélgica, Ombudsman Bancario.
- <sup>51</sup> Hopenhayn, Martin. “The Challenge of Identities and Multiculturalism”, OEI Cultural Review, “Pensar Iberoamerica”, February 2002.
- <sup>52</sup> During the 1990 Census, many members of the migrant communities did not fill out the census forms, and thousands were not taken into consideration due to the following conditions: homelessness, low income familias, linguistic minorities, as well as race. Due to these problems, the City did not assign federal and state funds totaling over 35 million dollars for the following 10 years. For the time of the 2000 Census, the Commission, along with the Complete Count Committee worked towards obtaining a complete record of persons in the city, particularly the migrant community.
- <sup>53</sup> Campaign carried out by the Migrants Vote Coalition, of the Federation of Migrant Associations in Spain FERINE, and the Coalition for Chileans’ Right to Vote Abroad, of the Federation of Chilean Associations in Argentina, Universidad Academia Humanismo Cristiano, Centro de Capacitacion y Educacion CEC, as well as OCIM.
- <sup>54</sup> A similar norm is found in article 13 paragraph 5 of the American Convention on Human Rights
- <sup>55</sup> We have used the concept of “migration in irregular documentary condition”, diffused by OCIM in various documents, given the fact that a person cannot be considered to be irregular as mentioned in the Global Commission Report 2005, but can only be referred to regarding his or her documentary condition.
- <sup>56</sup> Document entitled “Migrations in an Interdependent World: New Orientations for Action”, found in the Report of the World Commission for International Migrations, October 2005.
- <sup>57</sup> Inter-American Report on Migrations, OCIM, Americas Social Forum, Caracas, January 2006
- <sup>58</sup> Human Rights Committee, Maroufidou case, Sweden, paragraphs 9.3, 10.1, and 10.2
- <sup>59</sup> Inter-American Commission on Human Rights, Riebe Star v. Mexico, paragraph 107, Tajudeen v. Costa Rica, Paragraph 17
- <sup>60</sup> Speech by the Sub Secretary of Domestic Affairs, December 18th 2006.
- <sup>61</sup> [www.december18.net/web/papers/view.php?paperID=4765&menuID=41&lang=EN](http://www.december18.net/web/papers/view.php?paperID=4765&menuID=41&lang=EN)
- <sup>62</sup> Report entitled “State of the World Population 2006”, UNFPA, United Nations
- <sup>63</sup> Uk’aslemal Xokopila’ Association, of the indigenous Maya Quiche community, in activities directed by Carlos Tamup Canil. The Txuk Kim Pop movement, under the direction of Juan Gabriel Ixcamparij
- <sup>64</sup> Summit of the Attention Network for Indigenous Communities of Central America and Panama, 2005, see Guarare Summer publication
- <sup>65</sup> Article 31 of the United Nations Convention of 1951 on the Status of Refugees
- <sup>66</sup> In order to achieve this objective the Pastoral of Neuquen made a proposal to the National University of Comahue, regarding the creation of an elective course “Don Jaime de Nevaes”, which was accepted by the university and created by an Ordinance of the Superior Council in 1998. In this same sense, and following the same process, in 2005 the Clinic on Migration and Human Rights” was created, coordinated by the Pastoral for Migrations and teaching students from three different majors, Psychology, Law, and Social Work, while at the same time providing daily assistance for migrants.
- <sup>67</sup> Jorge Muñoz, Coordinator for Migratory Affairs, Pastoral for Migrants of Neuquen, CDI, OCIM.
- <sup>68</sup> Courses and seminars are being taught, impuled by the Pastoral for Migrations as well as through the elective course Don Jaime de Nevaes and the Clinic on Migration and Human Rights. Said courses are taught with regards to the migratory phenomenon.
- <sup>69</sup> Three are already functioning, and three more will open during the course of this year.

