

Ottawa, Canada
September 15, 2004

Dr. Miguel Angel Rodriguez
Secretary General
Organization of American States
17th and Constitution Avenue N.W.
Washington, D.C. 20006

Dear Dr. Rodriguez,

The Canadian Foundation for the Americas (FOCAL) welcomes the opportunity to submit a formal intervention for the preparation of an Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, including migrant workers and their families.

There is serious concern for respect for fundamental rights of migrants, including migrant workers. While there is great debate around the rights of undocumented migrant workers versus those documented, and how to ensure that these rights are respected, we will center this presentation on a program implemented by the Canadian government as a model for managed migration flows. Overall, some 90,000 foreign workers enter Canada temporarily to help Canadian employers address skill shortages in Canada. One such program is the Seasonal Agricultural Workers Program (SAWP).

The Canada Seasonal Agricultural Workers Program began with bilateral agreements brokered in 1966 with the Caribbean and in 1974 with Mexico. The SAWP currently operates in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island. Given years of experience with this program we are now able to analyze some of the successes as well as the problems that it has faced during this period.

Historical Background:

- The SAWP is a bilateral program with the intention of meeting the supply shortages of labour in Canada, in the agricultural sector.

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- The program calls for giving guest workers equal treatment to that given to Canadian workers.
- The two governments act as guarantors that the labour standards will be respected.
- Canada has a bilateral agreement in the context of the SAWP with the following countries: Antigua y Barbuda, Barbados, Dominica, Grenada, Jamaica, Mexico, Montserrat, St. Kitts and Nevis, St. Vincent & the Grenadines, Trinidad & Tobago.

Best practices:

- The successful management of migration flows that raises labour conditions and that reduces the risks implied in undocumented migration (Institutionalization of the process).
- There is shared responsibility of both the host and the sender countries to ensure that labour standards are respected.
- Employees are paid the same wage as Canadian agricultural workers performing the same tasks and given housing, access to health and medical services during their stay in Canada.
- The Minimum term of employment is six weeks and the maximum term is of eight months.
- The guest workers' program is based on the structure of demand of the host country as opposed to the establishment of quotas.
- The large rate of return of workers is interpreted as acceptance of the program.

There is space to discuss other issues related to the situation of migrant workers, and about how the different levels of governments can ensure that the practice of labour standards are respected. Currently Canada is considering the inclusion of other sectors into this scheme with the Caribbean and Mexico, including the construction sector, tourism and other services for a period of employment up to two years. Pilot projects are currently underway with the International Organization of Migration and specific employers in Canada. This specific project is a perfect example of how governments can work together.

Employment wages, such as the minimum wage are set by Provincial Governments. Deductions from their wages include unemployment insurance something that due to the length of their stay in Canada, that they are not entitled to claim. Employees do pay into the Canada Pension Plan and are entitled to the benefits once they retire

There is a need to educate the workers about their rights. In the provinces of Ontario, Quebec, Nova Scotia and New Brunswick, two non-profit corporations assist with the processing of foreign workers and the Canadian employer may be required to pay a non recoverable fee for these services. A greater presence of consulates to assist the workers in overseeing compliance with the agreed conditions could be a starting point. There is also a great need to strengthen the presence of civil society organizations as links between migrant workers and the communities in which they work, and to educate them about their rights.

We thank you for the opportunity to express our views.

Sincerely,

Sharon O'Regan
Deputy Director

APPENDIX A

FOCAL COMMENT ON THE RESOLUTIONS PERTAINING TO HUMAN RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES

- The wording of the resolutions are too idealistic and broad.
- There is an absence of definition and clarity between what is a legal migrant and an illegal migrant.
- The key is in finding appropriate phrasing to make resolutions acceptable and respectful of domestic laws.
- Resolutions should be workable on both the short term and long term to improve the plight of the migrant worker.
- Resolutions should not be lyrical declarations, instead should be practical so as to be enforceable.
- Resolutions should not be the place for collective ideals, instead for agreements that can be respected by National constitutions and enforceable through law.
- Resolutions should both respect and protect national laws and if so then the documents would be a good starting point for resolutions that can be implemented and enforced.
- We need to begin to look at the national positions of states (what is offered to the citizens, what is offered to migrants).
- There is a need for a system that manages migration and the international law should not precede domestic law.
- Canada could not respect the resolutions as they are not realistic in either theory or practice.
- These resolutions cause a problem for Canada because if they were binding they would be equivalent to law.
- These resolutions overrule Canadian domestic laws and in particular the Canadian Immigration and Refugee Protection Act.

CLOSING REMARKS

- This Special Session has been an excellent initiative on the part of the OAS.
- We need to find more opportunities to share both knowledge and experience in order to engage Civil Society more in the process.
- The dissemination of information is very important and we need to find better ways to keep each other informed and to inform migrants of their rights.

Appendix B

More information can be found in the following sites

1) The North-South Institute (NSI):

<http://www.nsi-ins.ca/ensi/research/progress12.html>

Social Relations Practices between Seasonal Agricultural Workers, their Employers and the Residents of Rural Ontario.

Prepared for NSI by Dr. K. Preibisch, University of Guelph.

Jamaican Workers' Participation in CSAWP and Development Consequences in the Workers' Rural Home Communities.

Prepared for NSI by Roy Russell, Agro-Socio Economic Research, Kingston, Jamaica.

Canadian Migrant Agricultural Workers' Program Research Project: The Caribbean Component.

Prepared for NSI by Professor Andrew Downes and Cyrilene Odle-Worrell, University of the West Indies.

Mexican Farm Workers' Participation in Canada's Seasonal Agricultural Labour Market and Development Consequences in the Rural Home Communities.

Prepared for NSI by Gustavo Verduzco and Maria Isabel Lozano.

The Canadian and United States Migrant Agricultural Workers Program: Parallels and Divergence between Two North American Seasonal Migrant Agricultural Labour Markets with respect to "Best Practices" .

Prepared for NSI by Professor David Griffith, East Carolina University.

The Mexican and Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program under Unionization .

By Veena Verma.

Hemispheric Integration and Trade Relations: Implications for CSAWP.

Ann Weston, Vice-President and Research Coordinator and Luigi Scarpa de Masellis, NSI.

2) The United Food and Commercial Workers Union of Canada:

www.ufcw.ca

National Report: Status of Migrant Farm Workers in Canada December 2002.

Brief presented to the Honourable Jane Stewart, Minister of Human Resources Development Canada by the UFCW Canada and the Canadian Labour Congress.