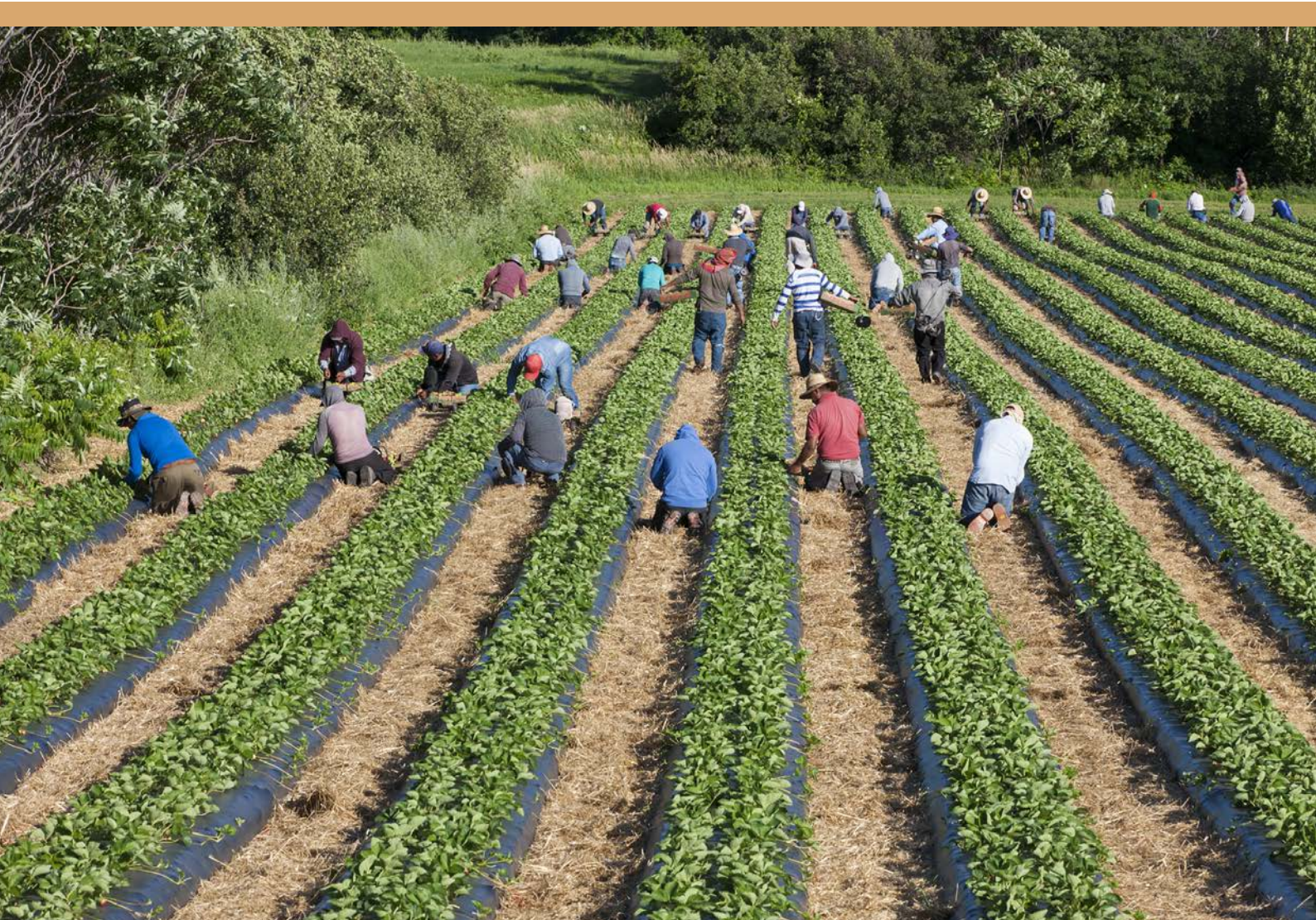


THE FIVE CORRIDORS PROJECT - CORRIDOR 5

# Mexico to Canada: Fair recruitment in review

JULY 2021



## ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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Cover photograph: Mexican migrant workers picking strawberries, Quebec, July, 2020. © Pierre Desrosiers / Getty Images

# Assessment against the Five Corridors indicators:

## 1. National migration policy

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# 1. National migration policy

*“We have a system where because a worker is tied to that employer, that’s translated into a sense that those employers have control over everything in their life from health coverage to housing.”* SOCIAL WORKER, WORKING WITH MIGRANT WORKERS,

ONTARIO, CANADA

## Summary

Mexico has traditionally been a country of emigration with large movements of permanent, temporary, and irregular migrants to the United States playing a significant role in both countries’ political economies. In the past two decades, Mexico’s economic growth provided more employment prospects at home for both its nationals and foreign migrants, while job opportunities for Mexicans in the US decreased as a result of economic contraction following the 2008 financial crisis and stricter enforcement of border controls. In parallel, undocumented migration from Central America through Mexico into the US increased, placing the government under considerable pressure from the US and internationally. The impact of Covid-19 on the Mexican economy, and expectations of a more migrant-friendly environment under the Biden administration may result in another increase in Mexican migration to the US. While the government is not heavily focused on the situation for Mexican workers migrating overseas, with domestic security and economic challenges taking priority, it has a clear preference for government-to-government bilateral recruitment over private sector recruitment. There is no bilateral scheme with the United States, where private recruitment agents mediate access to temporary visa programmes. However, close to 27,000 workers per year migrate to Canada under the bilateral Seasonal Agricultural Workers Program with Canada. Demand for places on the scheme, which is stringently managed in comparison to the poorly regulated private recruitment industry, is high. The scheme has been criticised for its low level of female participation, and in recent years the government has taken some steps aimed at reducing discriminatory hiring practices among Canadian farmers.

More than a fifth of Canada’s population was born outside of the country and under the Trudeau government’s economic strategy the rate of immigration has increased, with a plan to boost Covid-19 recovery by admitting 421,000 new permanent residents per year by 2023. Alongside

permanent immigration schemes, the federal government manages several temporary migration programmes, with responsibility for employment standards, workplace safety, labour recruitment, and health falling under provincial jurisdiction. The numbers of foreign workers arriving in Canada under the main temporary programmes, the International Mobility Program (IMP) and the Temporary Foreign Workers Program (TFWP), have nearly tripled in the last decade. Both schemes are driven by employer demand for foreign workers rather than bilateral agreements with origin states, with the exception of the SAWP agreements that sit under the TFWP. Various sectors of the economy now depend to some extent on temporary foreign workers - foreign workers made up 26% of the crop production workforce in 2017, for example. This reliance on overseas labour appears to be in tension with government commitments to provide jobs to Canadians. As a result, businesses have to go through what they see as a burdensome and costly Labour Market Impact Assessment each time they want to recruit a non-national, for most low-wage jobs. In that context, employers have pushed back against increasing pressure to abolish the employer-specific (or “closed”) work permit that ties workers to a single employer. Advocates and experts contend that this is one of the greatest drivers of worker precarity and associated human rights abuses. Many workers, including those in the SAWP, fear that they could have their contracts terminated if they complain about conditions, resulting in their repatriation and loss of crucial income. The government has stopped short of fully overhauling the closed worked permit, instead introducing an open permit for workers who report certain forms of abuse. Meanwhile the Covid-19 pandemic has intensified the national debate about the country’s reliance on a migrant workforce which is arguably not “temporary”, and has amplified calls to improve access for low-wage migrant workers to permanent residency and citizenship.

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## Recommendations to the Mexican government:

- Conduct a formal, independent review of government policies in relation to Mexican migrant workers being employed outside the country. The review should solicit views from a wide range of stakeholders and should address issues including gender-sensitivity and the effectiveness of current regulation of the recruitment sector.
- Continue to explore possibilities for new government-to-government recruitment programmes, as these at present provide additional protections for Mexican migrant workers and job seekers, in comparison to the private recruitment industry.
- Ensure that the prohibition of gender-based selection by Canadian farmers participating in the SAWP, due to take effect this year, is strictly enforced. When securing new placements for workers who have not been “named”, prioritise the placement of women.

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## Recommendations to the Canadian government:

- Provide increased job mobility:
  - Re-examine options to improve the mobility of migrant workers, with the objective of removing the employer-specific work permit that plays a key role in creating precarity for migrant workers.
  - Reduce the administrative burden associated with applying to the Open Work Permit for Vulnerable Workers scheme.
- Expand access to residency to low-wage migrant workers:
  - Building on the experiences of the Caregiver and Agri-Food Pilots, expand options for permanent residence for migrant workers in low-wage occupations where there is consistent demand for their services, including providing permanent residence from arrival, or failing that guaranteed pathways to permanent residence, and options to be joined by family members.
  - Review the 8-month SAWP work permit limit,

which largely precludes SAWP workers from obtaining permanent residence.

- Review whether the language levels required for permanent residence are appropriately accessible for migrant workers in low-wage roles, and extend funding to provide language training to assist migrant workers in meeting language requirements.

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### 1.1 Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies?

#### Mexico

Historically, Mexico has been a country of emigration - the Constitution gives citizens the right to leave the country - with large movements of permanent, temporary, and irregular migrants to the United States (in particular to California and Texas) playing a significant role in both countries' political economies. According to the Migration Policy Institute, the population of permanent Mexican immigrants in the United States was approximately 11.6 million in 2016, with approximately 6 million of those being undocumented permanent immigrants. These figures do not include 37.7 million US citizens who were born in Mexico or who report Mexican ancestry or Hispanic origin.<sup>6</sup> As one 2015 study puts it of Mexican migration to the US, “no other nation has so overwhelmed decadal migration in-flows since Ireland ... from 1830 to 1850”.<sup>7</sup> In 2020, Mexico's Central Bank announced that remittances from Mexicans living abroad exceeded US\$40B (3.8% of Mexico's GDP) setting a record, and President Andrés Manuel López Obrador hailed migrants as “heroes” in the context of Mexico's economic recovery under the Covid -19 pandemic.<sup>8</sup>

In the past two decades, the picture has become more complex. Mexico's economy grew, offering more employment prospects at home for both its nationals and foreign migrants, while opportunities for Mexicans in the US reduced with economic contraction following the financial crisis and increased enforcement along

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6. Jie Zong and Jeanne Batalova, “Mexican Immigrants in the United States in 2017”, *Migration Policy Institute*, (11 October 2018).

7. Jennifer Van Hook, Frank D. Bean, James D. Bachmeier, and Catherine Tucker, “Recent Trends in Coverage of the Mexican-Born Population of the United States: Results From Applying Multiple Methods Across Time”, *National Institute of Health*, (April 2014).

8. Lizbeth Diaz and Abraham Gonzalez, “Mexicans defy pandemic blues with record remittance surge”, *Reuters*, (1 February 2021).

the border. By 2015, the numbers of Mexicans migrating to the US had dropped lower than those returning.<sup>9</sup> In parallel, undocumented migration from Central America through Mexico towards the US increased dramatically as a result of conflict, climate change and other factors.<sup>10</sup>

In recognition of the fact that, as a 2013 OAS report put it, “of all the countries in the Americas, Mexico is doubtless the one that most clearly reflects the various faces of international migration in a country”,<sup>11</sup> Mexico developed a 2014-2018 Special Migration Program (PEM) as part of its National Development Plan. The aim of the Interior Ministry-led program was, the government said, to “allow the implementation of cross-cutting actions that involve all government agencies and levels, as well as civil society organizations, based on a focus on respect for the human rights of migrants, sustainable development, a gender perspective, intercultural relations, and security”.<sup>12</sup> The IOM has noted that the PEM programme faced challenges in its implementation, including a lack of resources and “management and economic activity at the borders”.<sup>13</sup> The main focus was on migrants transiting Mexico, an issue which was placing the government under considerable pressure from the US and internationally. Since 2018, under President Obrador (generally known as “AMLO”), the government has publicly stated that its migration policy is based on a two-pronged strategy of “defending migrants’ rights and taking a humanitarian approach to economic development in order to address the structural causes of migration.”<sup>14</sup> As an example, the Mexican government and the IOM recently started projects to assist migrants transiting or residing in Mexico to find legal employment in Mexico particularly in areas where Mexico is experiencing labour shortages through the Mechanism of Labour Intermediation (2019), and the Leaders of the Future campaign (2020).<sup>15</sup> Nevertheless, in trying to respond to pressure from the Trump administration, the government faced harsh

criticism from media and civil society organisations for its enforcement actions to stem the flow of migrants from Central America to the US - despite calls by the president, when in opposition, to provide migrants with safe passage to the northern border.<sup>16</sup> In 2019 the government promised to cut the number of migrants entering Mexico by 60%.<sup>17</sup> Mexico was accused of becoming President Trump’s wall.<sup>18</sup> 15,000 Mexican troops were deployed to the southern border.<sup>19</sup>

The medium-term impacts of Covid-19, combined with expectations of a somewhat more migrant-friendly environment under the Biden administration, may reverse the trend of reduced Mexican emigration to the US, and cause more Mexicans to head north once again. The pandemic has had a significant effect on Mexico’s economy, which was already contracting in 2019. Mexican migration to the US has traditionally risen in times of economic difficulties.<sup>20</sup> Remittances from Mexico to the US were at record levels in 2020 during the pandemic.<sup>21</sup> Nevertheless the government is not heavily focused on the situation of Mexican workers migrating overseas, with domestic security and economic challenges looming large. One senior Mexican official told us that the current administration is less focused on labour mobility [outside the country] compared to the creation of job opportunities domestically and the improvement of working conditions in Mexico.<sup>22</sup> A Mexican NGO told us that “temporary migration, and the rights violations that accompany it, is not a topic that interests the government much, apart from trying to address unemployment issues at home, which is the reason that forces people to migrate”.<sup>23</sup>

Mexican workers have played a particularly important role in the agricultural sector in both the United States and Canada, and migration from rural areas to North America has increased, particularly since liberalizing land reforms in the early 1990s resulted in

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9. Ana Gonzalez-Barrera, “More Mexicans Leaving Than Coming to the U.S.,” *Pew Research Center*, (19 November 2015).  
10. Shannon K. O’Neil, “Mexican Migration Could Be the First Crisis of 2021,” *Council on Foreign Relations*, (23 July 2020).  
11. Inter-American Commission on Human Rights, “Human rights of migrants and other persons in the context of human mobility in Mexico”, (December 2013).  
12. Secretariat of Foreign Affairs, “México frente al fenómeno migratorio: una visión para el siglo XXI”, (May 2015).  
13. “OIM acompaña la Evaluación del Programa Especial de Migración 2014-2018 en México”, *IOM*, (5 December 2018).  
14. “Mexico’s Migration Policy Is Sovereign. Seeks to Protect Migrants’ Rights”, *Secretariat of Foreign Affairs*, (3 March 2019).  
15. “La OIM lanza una nueva campaña sobre la integración de los trabajadores migrantes con la Secretaría del Trabajo en México”, *IOM*, (8 September 2020).  
16. David Agren, “Mexico has become Trump’s wall’: how Amló became an immigration enforcer”, *The Guardian*, (26 January 2020).  
17. Tom Phillips, “Mexico immigration chief vows to cut number of people migrating by 60%”, *The Guardian*, (21 June 2019).  
18. Maria Verza, “Under US pressure Mexico shifts immigration policy”, *AP*, (12 September 2019).  
19. Tatiana Arias, “Mexico sends nearly 15,000 troops to the US border”, *CNN*, (24 June 2019).  
20. Center for Strategic and International Studies, “Online Event: The Mexican Economy and Its Impact on Migration”, (27 May 2010).  
21. Anthony Harrup, “Mexicans in U.S. Sent Record Remittances Despite Covid-19 Pandemic”, *Wall Street Journal*, (8 January 2021).  
22. Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.  
23. Paulina Montes de Oca and Eduardo Villareal, ProDESC, remote interview, 15 December 2020.

the expropriation of communal agricultural lands.<sup>24</sup> In this context the regular bilateral Seasonal Agricultural Worker Program (SAWP) that Mexico has operated with Canada since the 1970s, “represents a constant source of remittances, as well as ... employment for the rural population that is not possible to create at a national level given current economic conditions and the state of rural poverty.”<sup>25</sup> A 2018 ILO report points out the attractiveness of the programme to both governments: “the SAWP is viewed as an instrument that can simultaneously address excess labour supply in the agricultural sector in Mexico and offer employers in Canada access to a foreign labour market to meet seasonal labour demand.”<sup>26</sup> A senior STPS official told us that the programme “produces great added value for both countries. It contributes to the gross domestic product for both countries.” The programme has continued to grow steadily in the past decade and there is consistently more demand for places on the scheme than supply of jobs. Wages for SAWP workers are slightly above the Canadian minimum wage and range between US \$9.50/hr and US \$17.40/hr in 2021. This is considerably higher than the 2021 minimum wage for agricultural workers in Mexico of US \$8.00/per day, and means that Mexican agricultural workers in the SAWP can earn roughly between 9 to 17 times the minimum wage for an agricultural worker in Mexico over an 8 hour work day. Furthermore, civil society organizations in Mexico argue that the current minimum wage for agricultural workers in Mexico is insufficient to support a family even for the most basic needs.<sup>27</sup> The senior STPS official told us that the department maintains a pool of workers who have passed the application and who are ready to travel, in case there is a surge in demand for workers and to prepare in advance for requests in future agricultural seasons - in March 2020 there were 13,500 workers in this position.<sup>28</sup> This discrepancy between demand and supply arguably contributes to worker reluctance to complain about their conditions, explored

further in section 7, as workers are aware that their bargaining power is limited by the large queue behind them hoping to take their position on the programme: “the worker needs the job much more than the employer needs the worker”, as the UFCW union puts it.<sup>29</sup> One worker who had been on the scheme for 30 years told us that employers exploited this knowledge: “the employers feel more able to say forcefully, ‘if you’re not happy here, you can go to Mexico because behind you, there are a thousand more’.”<sup>30</sup>

The significance for Mexico of migration means that it has been an active participant in international fora on migration, acting as a co-facilitator for the Global Compact on Migration.<sup>31</sup>

## Canada

According to the 2016 census, more than a fifth of Canada’s population was born outside the country.<sup>32</sup> Building on a long history of encouraging immigration - as one scholar put it in 2001, “permanent migration has constituted the cornerstone of Canadian immigration policy since Confederation”<sup>33</sup> - the government operates several programs, including an economic stream for highly skilled immigrants (who make up more than half those admitted as permanent residents), a family reunification program and a refugee program. The anti-immigration policies adopted by the Trump administration, reducing places available for migration to the US, made Canada increasingly attractive for prospective immigrants.<sup>34</sup> Under the Trudeau government Canada has accelerated the rate of immigration as part of its economic strategy. In 2019 a record 341,000 people arrived in Canada through these pathways.<sup>35</sup> In October 2020, the government announced a 3 year immigration plan intended to further increase permanent immigration to 401,000 permanent residents

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24. Melissa Schumacher, Pamela Durán-Díaz, Anne Kristiina Kurjenoja, Eduardo Gutiérrez-Juárez and David A. González-Rivas, “[Evolution and Collapse of Ejidos in Mexico—To What Extent Is Communal Land Used for Urban Development?](#)”, *Land*, (7 October 2019).
25. Karla Valenzuela, “[Protection of Nationals Abroad: The Mexican State and Seasonal Agricultural Workers in Canada](#)”, *Mexican Law Review*, vol.4 no.2 México January-June 2012, (14 November 2011).
26. ILO, “[Public employment services in Latin America and the Caribbean](#)”, (2018).
27. Government of Canada, “[3. Wages, working conditions and occupations](#)”; Ministry of Labour and Social Welfare, “[Salarios mínimos 2021](#)”; Blanca Juárez, “[Jornaleros agrícolas señalan que el salario mínimo de \\$160.19 es insuficiente](#)”, *Factor capital humano*, (22 December 2020).
28. Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.
29. UFCW Canada and the Agriculture Workers Alliance (AWA), “[The Status of Migrant Farm Workers in Canada](#)”, (2015).
30. Remote interview, 2 August 2020.
31. IOM, “[IOM Director General Swing lauds “historic” Global Compact for Migration](#)”, (13 July 2018)
32. Statistics Canada, “[Immigration population](#)”, 2016 Census.
33. Ravi Pendakur, “[Immigrants and the Labour Force: Policy, Regulation, and Impact](#)”, McGill-Queen’s University Press, (2000).
34. Amelia Cheatham, “[What Is Canada’s Immigration Policy?](#)”, *Council of Foreign Relations*, (3 August 2020).
35. Steve Scherer, “[Canada increases immigration targets, says they are key to economic recovery](#)”, *UK Reuters*, (30 October 2020).

in 2021, and eventually to 421,000 permanent residents in 2023.<sup>36</sup>

Alongside the permanent immigration programs, the federal government manages several temporary migration programs. Initially developed and implemented in the latter part of the twentieth century in response to changing practices on the part of Canadian employers - which were increasingly outsourcing functions and offering non-standard forms of employment - these programs are driven by employer demand, giving businesses the ability to recruit migrant workers from any country in the world. Workers on such schemes are distinguished from permanent immigrants in that they generally lack access to family reunification, employment mobility rights, and the prospect of citizenship.<sup>37</sup> The 2000s has seen a significant rise in the number of temporary work permits issued each year - from 1998 to 2018 the number of permits rose from 110,000 to 340,000 per year.<sup>38</sup> Temporary foreign workers generally receive a work permit for employment up to one year and seasonal workers for less than a year.<sup>39</sup>

The entry of temporary migrant workers into Canada occurs under two main programs: the Temporary Foreign Worker Program (TFWP) and the umbrella International Mobility Program (IMP). The TFWP requires that the employer first undergo a labour market test, known as a Labour Market Impact Assessment (LMIA), to ascertain whether there is a labour shortage that needs to be filled and requiring employers to demonstrate that no Canadian citizen or resident could be found for the role. Employment and Social Development Canada (ESDC) and Service Canada (SC) are responsible for the TFWP.<sup>40</sup> In contrast, the IMP, managed by Immigration, Refugees and Citizenship Canada (IRCC), allows for employers to hire foreign workers without undergoing a labour market test - in a number of specified exempted areas. This includes international trade agreements in particularly with the US and Mexico; “Canadian interests” (for example Working Holiday Programs,

work permits for international students during their studies and after graduation, and, since 2019, applicants under the Home Child Care Provider and Home Support Worker pilot projects); “no other means of support” (including refugee claimants); permanent resident applicants in Canada (including applicants and family members); “vulnerable workers” (including migrant workers in situations of abuse or possible abuse); and “humanitarian reasons” (including destitute students).<sup>41</sup> In general, workers entering Canada under the TFWP are recruited primarily into low-wage and “semi-skilled” roles with a smaller number of workers recruited into professional occupations that do not qualify under an exemption category. The IMP has traditionally been characterized as a programme for higher skilled migrants, though its various sub-streams vary widely.

Various sectors of the economy are now dependent to varying extents on temporary foreign workers. According to Stats Canada, in 2017 there were about 550,000 temporary foreign workers in Canada, accounting for 2.9% of total employment: “although the overall percentage of TFWs may not be large, they were particularly important in agriculture, forestry, fishing, and hunting, accounting for 15.5% of the employment in that sector.” 26% of workers in crop production specifically were temporary migrants.<sup>42</sup> A 2014 study of attitudes of Canadian farm operators towards migrant workers found employers mentioning “how crucial the [migrant workers] are to operate their business”, with one commenting: “They are very important. VERY, VERY important”.<sup>43</sup> A representative of the Canadian Federation of Agriculture told us that, “we have a very acute need for labour, every year that is a recurring need.”<sup>44</sup>

Growth in the number of temporary workers over the past decade has not been split evenly across the two main programmes. The number of migrant workers entering Canada through streams classified (since 2014) as the IMP almost doubled from 176,280 in 2015 to 306,655 in 2019, in contrast to the TFWP whose

36. “Government of Canada announces plan to support economic recovery through immigration”, *Government of Canada*, (30 October 2020).

37. Salimah Valiani, “The Rise of Temporary Migration and Employer-Driven Immigration in Canada: Tracing policy shifts of the late 20th and early 21st centuries”

38. OECD, “Recruiting Immigrant Workers: Canada 2019”, Chapter 3.

39. *Canada Gazette, Part 1*, Vol. 153, no 25, (22 June 2019).

40. Employment and Social Development Canada (ESDC) is responsible for the policies and processing of requests from employers authorizing the hiring of migrant workers; federal labour market policies related to the employment of Canadians; and the monitoring of employer compliance with the conditions related to the hiring of migrant workers under the TFWP.

41. Government of Canada, “International Mobility Program: Labour Market Impact Assessment (LMIA) exemption codes”, (3 April 2020).

42. Yuqian Lu, “The distribution of temporary foreign workers across industries in Canada”, *Statistics Canada*, (3 June 2020).

43. Miya Narushima and Ana Lourdes Sanchez, “Employers’ paradoxical views about temporary foreign migrant workers’ health: a qualitative study in rural farms in Southern Ontario”, *International Journal for Equity in Health*, (10 September 2014).

44. Scott Ross, Canadian Federation of Agriculture, remote interview, 19 January 2021.



numbers increased at a slower rate from 72,965 in 2015 to 98,275 in 2019.<sup>45</sup> Several factors may explain this trend: increased restrictions on the TFWP put in place by the Conservative government in 2014 in response to concerns that the program was being used by employers to hire migrants for roles that qualified Canadians were available for; the fact that employers do not need to obtain LMIAs in order to recruit migrants under the IMP; and the fact that migrants are not tied to a single employer once they enter Canada under many subcategories of the IMP, making it more attractive for prospective applicants. The TFWP now focuses primarily on the entry of migrant workers in trade/technical occupations, low-wage occupations, and four agricultural programmes, including the SAWP, with a relatively smaller entry under professional occupations.<sup>46</sup>

The shifting numbers between the TFWP and the IMP may reflect the contradictory pressures on the federal government. While Canadian businesses have called on the government to prevent the issue of foreign workers becoming a political issue, citing the country's low unemployment rate and "dwindling labor pool",<sup>47</sup> nevertheless there are public concerns about the rate of immigration, with nearly two third of Canadians telling a 2019 survey that the numbers of new arrivals should be limited.<sup>48</sup> The federal government has in the last decade enacted various policies aimed at addressing public concerns about the rate of immigration, with the Harper government in 2009 imposing visas on Mexican visitors, which strained bilateral relations,<sup>49</sup> and in 2011 introducing the "cumulative duration rule" or "Four Year In, Four Year Out" rule - which meant that low-income temporary foreign workers were allowed into the country for a period of up to four years, after which they would have to leave the country for a further four years before being allowed into the country again.<sup>50</sup> Both policies were reversed by the Trudeau government, the

latter after particularly heavy criticism from unions and business.<sup>51</sup>

However, there was no reversal of the requirement of businesses to obtain a LMIA, a policy that has been in place since 1976 and was tightened in 2014 with the stated aims of ending "the growing practice of employers building their business model on access to the TFWP" and ensuring that "Canadian Workers Come First". Businesses face a cap on the number of workers they can hire through the TFWP.<sup>52</sup> Despite the 2014 reforms, the Auditor General in a 2017 report found businesses continued to prefer to hire migrant workers over Canadian workers who may have been available for work, and questioned whether there were "real Canadian labour market shortages" in some sectors.<sup>53</sup> A representative of agricultural employers said the issue was that in an increasingly urbanised society, Canadians were not attracted to rural jobs, involving physical labour, that in many cases only provided work at specific times of year. Additionally foreign workers, he said, are often from agricultural backgrounds and often have specialist skills that are not available in the Canadian job market.<sup>54</sup> A union representative was however sceptical that employers who relied on the TFWP really did enough to reach out to under-employed, traditionally under-represented groups in Canada and also noted that during the Covid pandemic, when recruiting internationally was complicated, employers in the agriculture sector proved able to offer higher wages in order to attract Canadian residents.<sup>55</sup> Meanwhile there are other factors that may make foreign workers particularly attractive to employers, including closed work permits (see 1.6), which reduce their bargaining power with employers, and the fact that where unionising is possible migrant workers are often less able to do so, due to the short duration of their contracts (see 9.2). Researchers have documented exploitation and abuse of workers employed under the TFWP and linked it to the composition of the programme. A 2019

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45. Government of Canada, "Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates", (Table: Canada International Mobility Program and Temporary Foreign Worker Program work permit holders by gender, occupational skill level, and year in which permit(s) became effective).

46. Government of Canada, "Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates", *Canada - Temporary Foreign Worker Program work permit holders by gender, occupational skill level and year in which permit(s) became effective*, (11 May 2021).

47. Steve Scherer and Fergal Smith, "Canadian businesses have a message ahead of the election: We need immigrant workers", *Reuters*, (26 June 2019).

48. Teresa Wright, "Majority of Canadians think immigration should be limited: poll", *Global News*, (16 June 2019).

49. Ian Van Haren and Claudia Masferrer, "Mexican Migration to Canada: Temporary Worker Programs, Visa Imposition, and NAFTA Shape Flows", *Migration Policy Institute*, (20 March 2019).

50. Government of Canada, "Operational Bulletin 275-C - April 1, 2011", (April 2011).

51. Government of Canada, "The path forward plan for the Temporary Foreign Worker Program and the International Mobility Program", (10 April 2017).

52. Government of Canada, "Overhauling the Temporary Foreign Worker Program", (2014).

53. Office of the Auditor General of Canada, "Report 5 - Temporary Foreign Worker Program—Employment and Social Development Canada", (2017).

54. Scott Ross, Canadian Federation of Agriculture, remote interview, 19 January 2021.

55. Elizabeth Kwan, Canadian Labour Congress, remote interview, 19 November 2020.

academic paper, calling for the abolition of the SAWP, argues that the productivity of foreign workers which employers may praise in contrast to Canadian workers, “is not the result of some natural proclivity of Mexican and Caribbean workers to work hard, fast, and clean, but is made possible by their unfreedom, their assignment to a single employer, and prohibition from circulation on the labor market ... as well as the employer’s ability to dismiss (and deport) them or deprive them of work the next season.”<sup>56</sup> In 2017, the Auditor-General was critical of the federal government’s performance in ensuring the protection of migrant workers under the TFWP.<sup>57</sup>

As the government has sought to tighten up and narrow the TFWP, the number of migrant workers entering Canada under the IMP continues to grow.<sup>58</sup> The IMP comprises a range of programs with varying amounts of information available about them: one union representative told us that the complexity and relative opacity of the IMP meant it offered possibilities for businesses to switch from the more high-profile and increasingly restrictive TFWP: “The IMP is such a mesh of things that it is very difficult for us to really understand what is happening ... Our fear is that IMP is becoming a lax, open-door system for temporary labour to come through.”<sup>59</sup>

The entry of migrant workers into Canada is largely a matter of federal jurisdiction, but key areas that impact on migrant workers fall under the jurisdiction of Canada’s thirteen provincial and territorial governments, including employment standards, labour recruitment, workplace safety, labour relations, and health.<sup>60</sup> This means that migrant workers receive differing levels of service and protection depending on their province of destination, particularly in relation to employer inspections, employment standards, housing, and the ability for migrant workers to unionize. A migration specialist at York University told us the division of jurisdiction makes it difficult for workers to be aware of their rights and protections in Canada.<sup>61</sup>

In addition to the division of federal-provincial areas of jurisdiction outlined above, under the *Canada-*

*Quebec Accord on Immigration* implemented in 1991, the province of Quebec has additional authorities related to the entry of migrant workers, including the requirement for the province of Quebec to approve the hiring of migrant workers through the Quebec Certificate of Acceptance (CAQ), in addition to the federal Labour Market Impact Assessment. Furthermore, under the Accord, the province of Quebec has full authority in the design of economic permanent resident programs into Quebec, including programs for the transition of migrant workers to permanent residents in Quebec.<sup>62</sup>

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## 1.2 Does the government restrict countries that some or all workers can migrate to? / Does the government place restrictions or bans on immigration from certain countries?

### *Mexico*

There are no laws or regulations restricting the countries that Mexican nationals can migrate to. Mexico’s migration law makes no mention of restrictions, and neither do the Constitution or Mexico’s Federal Labour Law. Article 11 of Mexico’s Constitution indeed guarantees the right to leave the country: “Every person has the right to enter the Republic, leave it, travel through its territory and change residence, without the need for a security letter, passport, safe-conduct or other similar requirements.”<sup>63</sup> In practice, Mexicans migrate primarily to North America, the large majority to the US.

### *Canada*

Canada does not restrict countries that workers can migrate from. Foreign nationals must meet the regulatory requirements to obtain a work permit, and temporary resident visa if necessary. Under the IRPR, a foreign national must demonstrate to the

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56. Arthur Binford, “Assessing temporary foreign worker programs through the prism of Canada’s Seasonal Agricultural Worker Program: can they be reformed or should they be eliminated?”, *Springer*, (December 2019).  
57. Office of the Auditor General of Canada, “Report 5 - Temporary Foreign Worker Program—Employment and Social Development Canada”, para 5.63, (2017)  
58. Tyler Chartrand and Leah F. Vosko, “Canada’s Temporary Foreign Worker and International Mobility Programs: Charting Change and Continuity Among Source Countries”, IOM, (1 September 2010).  
59. Elizabeth Kwan, Canadian Labour Congress, remote interview, 19 November 2020.  
60. Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020)  
61. Dr. Ethel Tungohan, York University, interview, Toronto, 5 March 2020.  
62. Government of Canada, “Canada-Québec Accord relating to Immigration and Temporary Admission of Aliens”, (5 February 1991).  
63. Government of Mexico, “Constitución Política de los Estados Unidos Mexicanos”, (5 February 1917).

immigration officer that he/she is able to perform the job offered by the employer; will leave Canada by the end of the authorized period; is not inadmissible as a result of a past criminal conviction; and meets medical requirements.<sup>64</sup> In 2019, there were 307,265 work permit holders under the International Mobility Program with migrant workers originating from 176 countries<sup>65</sup> and 98,390 work permit holders under the Temporary Foreign Worker Program in Canada with migrant workers originating from 126 countries.<sup>66</sup>

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### 1.3 Does the government have a stated or observed preference/tendency towards government-to-government recruitment agreements?

#### Mexico

Mexican Migration Law states that the government aims to “promote, in coordination with the relevant agencies, the signing of agreements with the governments of other countries, so that emigration can take place through legal, safe and orderly channels, through temporary worker programs or other forms of migration”.<sup>67</sup> The government’s preference is for the state to be involved in recruitment through government-to-government programmes, in part because this guarantees their legal status and aims to stem undocumented migration, and because it increases the leverage of the government with employers in destination states.

However most Mexican migrants - who overwhelmingly migrate to the US - are recruited privately rather than through government channels. Mexico has long argued that Mexico-US migration should be organised bilaterally, including in a 1972 proposal arising from a

Presidential commission, and in a 2005 document on “Mexico and the Migration Phenomenon”, which was endorsed by both houses of Mexico’s parliaments and all presidential candidates.<sup>68</sup> It called for, among other things, a new Mexico-US guest worker programme and said that “Mexico should participate in its design management supervision and evaluation, under the principle of shared responsibility”.<sup>69</sup> Mexican efforts to garner US support for a bilateral agreement have however not met with success. Since the *bracero* programmes of 1917 to 1921 and 1942 to 1964, under which the Mexican government recruited approximately 4.5 million temporary workers for jobs in multiple sectors of the US economy, there has been no active bilateral labour agreement between the US and Mexico.<sup>70</sup> The majority of regulated migration from Mexico to the US takes place under the H-2 programme which allows agricultural and non-agricultural temporary work in the US.<sup>71</sup> This programme is administered by the US and is not a government-to-government agreement. Meanwhile undocumented migration, which in effect took the place of the *bracero* programme when it was shut down, accounted for approximately 6 million Mexican workers in the US in 2016.<sup>72</sup>

In contrast, the majority of labour migration from Mexico to Canada occurs under the Seasonal Agricultural Worker Program, which regulates migration flows to Canada for workers to spend up to eight months working in the country before returning to Mexico. Mexico is the biggest origin state for temporary workers in Canada’s agricultural sector - with more than 25,000 Mexican workers employed for the 2018 season, nearly three times as many as Guatemala, the second biggest origin state.<sup>73</sup> Canada and Mexico expanded their partnership on migration in 2011, through the Labour Mobility Mechanism (LMM). This mechanism “endeavors to address the temporary shortage of labour force

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64. Government of Canada, “Immigration and Refugee Protection Regulations”, (2002).

65. Government of Canada, “Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates”, ([Table - Canada – International Mobility Program work permit holders by country of citizenship and year in which permit\(s\) became effective, January 2015 - January 2020](#)).

66. Government of Canada, “Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates”, ([Table - Canada – Temporary Foreign Worker Program work permit holders by country of citizenship and year in which permit\(s\) became effective, January 2015 - January 2020](#)).

67. *Ley de Migración*, Article 76 III, 25 May 2011.

68. Michael A. Clemens, “The Need for a Bilateral Labor Agreement Between the US and Mexico, and the Responsibility for Leadership”, *Center for Global Development*, (23 October 2017).

69. US Government, “Congressional Record House”, (7 April 2006).

70. *Bracero program*, *World Heritage Encyclopedia*; Michael A. Clemens, “The Need for a Bilateral Labor Agreement Between the US and Mexico, and the Responsibility for Leadership”, *Center for Global Development*, (23 October 2017).

71. U.S. Citizenship and Immigration Services, “[H-2A Temporary Agricultural Workers](#)”; U.S. Citizenship and Immigration Services, “[H-2B Temporary Non-Agricultural Workers](#)”.

72. Jie Zong and Jeanne Batalova, “[Mexican Immigrants in the United States in 2017](#)”, *Migration Policy Institute*, (11 October 2018).

73. Statistics Canada, “[Countries of citizenship for temporary foreign workers in the agricultural sector](#)”.

and skilled personnel in Canada based on employer demand”, beyond agriculture and across skill levels.<sup>74</sup> However the numbers of workers employed through the LMM to Canada are low in comparison to the SAWP. In 2017, the Mexican government placed only 336 workers with Canadian employers through the LMM.<sup>75</sup> In the SAWP, the Mexican state, through the SNE, carries out the recruitment of workers and liaises with the private sector companies recognized by the Canadian government as SAWP administrators, in order to arrange their employment. In the LMM, the SNE essentially offers its services to Canadian businesses looking to recruit Mexican nationals outside the agricultural sector, through the TFWP or other immigration programmes. A Mexican academic working on labour migration to Canada told us the majority of migrant workers working under the LMM were in the food services and hotel sectors.<sup>76</sup>

A Mexican Embassy official told us that Mexico is continuing to seek greater bilateral cooperation with Canada outside of agriculture, and has proposed expanding the LMM.<sup>77</sup> A STPS official also told us that there is interest by the Mexican government in increasing the number of countries Mexican workers migrate to through government-to-government agreements, for example, by forging agreements with New Zealand.<sup>78</sup>

Mexican experts and civil society groups we spoke to generally support the government’s aspirations to do more recruitment bilaterally with other governments, rather than through the private sector, arguing that the SAWP demonstrates how the state’s involvement can give workers more certainty and reduce the prospect of fraud and abuse. One NGO told us that, “the programme with Canada [the SAWP] has a good reputation in comparison to private recruiters - the issue is that its impact in terms of number is small in comparison to the number of workers going to the US with informal recruiters.”<sup>79</sup> A representative of the Contratados initiative said that in her view government-to-government agreements, with the SNE carrying out recruitment, are preferable for worker outcomes

over private recruitment, as abuse and exploitation by private sector recruiters was so widespread.<sup>80</sup> Nevertheless, abusive practices within the confines of the government-to-government SAWP have been widely documented, and these are explored further throughout the assessment. The *bracero* programmes were - despite formal provisions to provide Mexican workers with human rights protections - notorious for “exploitation, racial discrimination and harsh living conditions.”<sup>81</sup>

## Canada

IRCC officials told us that foreign governments regularly seek bilateral arrangements similar to the SAWP.<sup>82</sup> However, other than its SAWP bilateral arrangement with Mexico from 1974, and with 11 Caribbean countries dating back to 1966, Canada has not entered into any more arrangements since then. The government’s consistent position over several administrations is that Canada no longer enters into bilateral agreements on the entry of migrant workers, and that the *IRPR* allows Canadian employers to hire migrant workers from any country in the world provided that both the employer and the worker meet all the requirements of the regulations.<sup>83</sup> This reflects the employer-driven nature of Canada’s immigration system: the federal government does not require the creation of bilateral frameworks before migrant workers can be recruited.

A representative of the UFCW, the agriculture workers union, which has been a prominent critic of the SAWP, told us that the union considers that all TFWP workers should be recruited bilaterally, i.e. with the involvement of origin states, to reduce human rights abuse in the recruitment process. “That is a way to really make conditions a bit better. If you give this control [over recruitment] to third parties, a lot of workers have to pay CAD\$3,000 (US\$2,500) to get into Canada.” Such practices of fee charging are reported under non-SAWP substreams of the TFWP, as discussed in section 6. A Mexican SAWP worker told us his counterparts from

74. Government of Mexico, “Labour Mobility Mechanism Operation Guidelines”, (5 August 2015): 1.

75. Government of Mexico, *Lineamientos de Operación del Mecanismo de Movilidad Laboral (MML)*, (1 January 2018).

76. Dr. Aaraón Díaz Mendiburo, Universidad Nacional Autónoma de México, remote interview, 27 June 2020.

77. Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020.

78. Interview with Director, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

79. Paulina Montes de Oca and Eduardo Villareal, ProDESC, remote interview, 15 December 2020.

80. Andrea Gálvez, Centro de los Derechos del Migrante, interview, Mexico City, 4 December 2019.

81. Marjorie S. Zatz, “Using and Abusing Mexican Farmworkers: The Bracero Program and the INS”, *Law & Society Review* Vol. 27, No. 4 (1993), pp. 851-864.

82. Canadian officials. Immigration, Refugees and Citizenship Canada, group interview, Ottawa, 6 January 2020.

83. Ibid.



Guatemala, who generally migrate to Canada through private recruiters, pay more for their jobs, and receive lower wages.<sup>84</sup> There is little disagreement that workers are less protected under the Agricultural Stream of the TFWP than under the SAWP. As one paper puts it, the former “offers fewer protections than the SAWP and ... source countries play no role in hiring, management, or oversight of temporary workers.”<sup>85</sup> The Canadian Federation of Agriculture sees the role of origin country governments in the SAWP as beneficial to workers: “the communication with partner governments is important... consular liaison officers play a vital role.”<sup>86</sup>

A representative of the Canadian Labour Congress, however, expressed some concern over the level of control that such bilateral programmes give to the origin state government - with workers dependent on the approval of their government for repeat entry - and suggested that bilateral programmes cede Canada’s responsibilities to origin state officials, who may be more motivated to ensure the continued availability of jobs for their nationals than to support workers who complain about their conditions.<sup>87</sup>

At the provincial level, British Columbia (2008), Alberta (2008), Manitoba (2010), and Saskatchewan (2013) have entered into bilateral MOUs with the government of the Philippines on labour recruitment<sup>88</sup> The MOUs are non-binding and do not involve government involvement in the recruitment process: they are instead intended to facilitate links between registered employers and labour recruiters in the respective Canadian provinces with registered labour recruiters in the Philippines<sup>89</sup>

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## 1.4 Does the government take gender and gender identity into account when formulating and implementing migration policy?

### Mexico

Under the Mexican Constitution, any form of discrimination “based on ethnic or national origin, gender, age, disabilities, social status, medical conditions, religion, opinions, sexual orientation, marital status, or any other form, which violates the human dignity or seeks to annul or diminish the rights and freedoms of the people, is prohibited”.<sup>90</sup> The Constitution furthermore stipulates that “[e]qual wages shall be paid for equal work, regardless of gender”.<sup>91</sup> The Mexican Anti-Discrimination Law of 2003 also prohibits gender based discrimination.<sup>92</sup> The RACT, the law regulating private recruitment agencies, stipulates that those offering recruitment services cannot discriminate against applicants based on the characteristics listed above.<sup>93</sup>

Historically, Mexican men have been more likely to migrate independently to the United States for work than women, who have been more likely to migrate to follow other family members, either a husband or a parent.<sup>94</sup> Within the US, the Mexican immigrant population is more than 50% male, distinct from other migrant populations from the Caribbean, South America, Asia, and Europe, where migrants are more likely to be women.<sup>95</sup> Some studies suggest that in addition to U.S. policies that favored conditions for male migrants, men have historically dominated international migration flows because of “a patriarchal Mexican culture”.<sup>96</sup> A former Mexican consular officer in Canada argues that,

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84. Remote interview, 9 August 2020.

85. Arthur Binford, “Assessing temporary foreign worker programs through the prism of Canada’s Seasonal Agricultural Worker Program: can they be reformed or should they be eliminated?”, *Springer*, (21 May 2019).

86. Scott Ross, Canadian Federation of Agriculture, remote interview, 19 January 2021.

87. Elizabeth Kwan, Canadian Labour Congress, remote interview, 19 November 2020.

88. “Canada Strengthens Immigration Ties with the Philippines”, *CIC News*, (25 February 2008).

89. “Alberta and Philippines sign worker memorandum”, *Alberta*, (1 October 2008).

90. *Constitución Política de los Estados Unidos Mexicanos*, Article 1, 5 February 1917. (own translation, original: ‘Queda prohibida toda discriminación motivada por origen étnico o nacional, el género, la edad, las discapacidades, la condición social, las condiciones de salud, la religión, las opiniones, las preferencias sexuales, el estado civil o cualquier otra que atente contra la dignidad humana y tenga por objeto anular o menoscabar los derechos y libertades de las personas.’)

91. *Ibid*, Article 123 B V (own translation, original: ‘A trabajo igual corresponderá salario igual, sin tener en cuenta el sexo’)

92. *Ley Federal para Prevenir y Eliminar la Discriminación*, Article 1 III, 11 June 2003.

93. *Reglamento de Agencias de Colocación de Trabajadores*, Article 6, 3 March 2006.

94. Marcela Cerrutti and Douglas S. Massey, “On the Auspices of Female Migration from Mexico to the United States”, *Duke University Press*, Vol. 38, No. 2 (May 2001).

95. Jeanne Batalova, “Immigrant Women and Girls in the United States”, *Migration Policy Institute*, (4 March 2015).

96. Jenna Nobles and Christopher McKelvey, “Gender, Power, and Emigration From Mexico”, *Demography*, (October 2015).

“women in Mexico are regarded as having a very specific role as mothers and wives, but they are not expected to be the support of the family”.<sup>97</sup> A 2020 CDM report found the “overwhelming majority” of Mexican workers on the US H2A agricultural programme described systemic, sex-based discrimination in hiring, with women constituting around 6% of all participants.<sup>98</sup>

The Mexico-Canada SAWP - the main programme for Mexicans migrating for labour in Canada - gives preference to single mothers and requires them to have experience of farming.<sup>99</sup> However, the number of women workers recruited through the SAWP has never risen above 3-4%. This is below the rate of female participation in the Mexican agricultural, forestry and fishing sector, which in 2020 stood at 12.7%.<sup>100</sup> It is also far lower than the rate of female participation in Canadian agriculture which in 2019 was 31%.<sup>101</sup> A Mexican NGO representative who has worked with Canadian unions said this gap indicates that recruitment under the SAWP is particularly discriminatory against women.<sup>102</sup> Under the scheme, Canadian farms can indicate whether or not they wish to recruit women. Most do not: research by a former Mexican consular officer noted that “only a couple” of farms in Quebec hired women.<sup>103</sup> Women migrant workers we spoke to described having to prove themselves capable of working as productively as male colleagues. One woman told us her employer gave extra hours (and therefore pay) to men: “He gave us from 7:30 in the morning to 4:30 in the afternoon... he gave the men from 7 in the morning to 8:30 at night. As if he had the idea that men have a responsibility [to their families] in Mexico. But then we, who are single mothers, also have the responsibility of children.”<sup>104</sup> Another woman who had worked on farms in Nova Scotia and Ontario told us her experience was that employers were reluctant to hire women because of the perceived risks of relationships

between men and women causing conflicts within groups of workers:

*“You know, a man a woman, being away from home, they start to have another type of relationship, they start to form couples, and then there are conflicts or ... men fight over women ... So this has led to the employers, the owners of the farms, to go to ask for only one gender, either male or female. So that has greatly decreased vacancies for women.”<sup>105</sup>*

In 2014 the UFCW lodged complaints with the Ontario, Quebec and British Columbia human rights commissions, the Mexican National Human Rights Commission (CNDH) and the Mexican National Council to Prevent Discrimination (CONAPRED), as well as under the North American Agreement on Labour Cooperation, alleging that the practice under the SAWP of allowing farms to decide whether they wanted to hire men or women was discriminatory.<sup>106</sup> FARMS, a Canadian operator of the SAWP scheme, argued that the problem had its origins in Mexico rather than in Canada, as “women in Mexico are either not coming forward or they aren’t being properly recruited by the government there”.<sup>107</sup> In March 2016 UFCW and STPS signed an agreement before CONAPRED in March 2016, “which includes a commitment to eliminate SAWP recruitment practices that are based on discriminatory criteria.” Under the agreement, STPS would inform Canadian agricultural employers that they would no longer be able to request the gender of workers to be recruited under the SAWP, and would provide Canadian employers with 5 years to adapt to the new policy.<sup>108</sup> In a briefing prepared in 2016 ahead of a SAWP meeting, Canadian officials expected the Mexican side to raise this issue and to request the construction of more gender-separate accommodation.<sup>109</sup>

97. Maria Fernanda Maxil Platas, “Harvesting the Future: the impacts of the Seasonal Agricultural Workers Program Mexico – Canada on the participants and in the development of the sending communities”, *School of International Development and Global Studies*, (2018).

98. Centro de los Derechos del Migrante, Inc., “Abuses of Agricultural Workers in the H-2A Visa Program”, (2020).

99. Secretaría del Trabajo y Previsión Social, “Lineamientos de Operación Programa de Trabajadores Agrícolas Temporales México – Canadá”, (January 2016): 15.

100. INEGI, “National Survey of Occupation and Employment (ENOE), population aged 15 years and older”, (March 2021).

101. Statistics Canada, “Labour force characteristics by industry, annual (x 1,000)”

102. Andrea Gálvez, Centro de los Derechos del Migrante, interview, Mexico City, 4 December 2019.

103. Maria Fernanda Maxil Platas, “Harvesting the Future: the impacts of the Seasonal Agricultural Workers Program Mexico – Canada on the participants and in the development of the sending communities”, *School of International Development and Global Studies*, (2018).

104. Remote interview, 16 July 2020.

105. Remote interview, 22 July 2020.

106. “Canada calls on Mexican government to stop gender-based discrimination against migrant agriculture workers”, *UFCW*, (10 July 2014).

107. Colin Perkel, “Gender discrimination alleged in Canada-Mexico migrant farm-labour program”, *Toronto Star*, (31 July 2014).

108. “UFCW Canada reaches historic agreement with Mexico to eliminate gender discrimination under the SAWP”, *UFCW*, (26 April 2016).

109. Global Affairs Canada (GAC), “Canada-Mexico Seasonal Agricultural Worker Program (SAWP)”, April 2016, obtained through Access to Information (ATI) request to ESDC A-2017-00599, internal briefing note in preparation for annual meeting of Canada-Mexico Seasonal Agricultural Workers Program.

A former Mexican Consular official told us that she believed employers were now starting to request more women, “particularly for the harvest of delicate products such as berries”<sup>110</sup> an activity dominated - alongside flowers - by migrant women in many countries’ agricultural sectors.<sup>111</sup> Nevertheless the SAWP remains overwhelmingly male. This has impacts on women’s living and working conditions. Firstly due to the low number of women working in agriculture in Canada, their sanitary facilities, toilets, and housing are often inadequate, a Mexican academic told us.<sup>112</sup> Because places for Mexican women on the programme are so limited, they may feel under particular pressure not to complain about such conditions. Illustrating the competition for places, one female worker described her desperate appeal to the Mexican official interviewing her, who was about to decline her application because she was not living in a rural state: “I begged ‘please give me the opportunity, I am the mother of a daughter, I am a single mother, I do not have support from my daughter’s father, I have a lot of debts, I have my parents.’ Well, the man took pity on me.”<sup>113</sup>

One 2011 study found that “positions designated for women [on the SAWP] are even more limited [than for men] and therefore highly desirable. This leads to a situation where employers can demand increased productivity from migrants since there is strong competition between the workers to obtain and keep jobs... They often do not seek attention for illness, injuries or pregnancies and do not complain about working conditions or harassment by employers because of the risk of being sent back to Mexico if they are fired.”<sup>114</sup> One woman who worked for 15 seasons in Ontario, Saskatchewan and Alberta told us that when she refused the advances of her employer’s “right-hand man”, he subjected her to bullying and harrasing the following year, using his authority to give her excessively heavy work and screaming at her in front of colleagues. Eventually she was not asked back on the program by

the farm: “he wanted to say goodbye with a kiss and I said ‘no, no, I do not want to’... he went and made my life impossible ... I said ‘maybe that’s the way it is’. Over the years I realized that, well he was treating me badly and it was harassment... Anyway they no longer asked me there. He must have told [the employer] that I was not fit for work or, I don’t know what he told him.”<sup>115</sup>

A senior STPS official told us of a case of three workers that illustrated major shortcomings in the Mexican authorities’ response to cases of sexual harassment: three women had made complaints to the consulate that their employer was harassing them, but the responsible official at the consulate was going on vacation so “did not have too much time” to review the case. The consulate subsequently called the accused employer to ask what had happened, and the employer brought one of the women into his office:

*“Obviously the worker was not able to report anything in the employer’s presence as she was extremely nervous, and lied to say that it was simply a problem with a relationship with a colleague. On their return to Mexico they shared their horrible experiences with me and mentioned that the employer had also punished them [for complaining] by making them do other activities other than the agriculture work in their contract.”*

The official said the case was now under review by the Canadian authorities.<sup>116</sup>

## Canada

Migrant women are in the minority of temporary foreign workers in Canada. In 2019 43% of 306,450 IMP work permits were issued to women and 18% of 98,150 TFWP permits.<sup>117</sup> The main sectors employing women migrant

110. Maria Fernanda Maxil Platas, former Consular Officer in Mexican Consulate in Montreal, Ministry of External Relations, interview, Ottawa, 3 March 2020.; Maria Fernanda Maxil Platas, “Harvesting the Future: the impacts of the Seasonal Agricultural Workers Program Mexico – Canada on the participants and in the development of the sending communities”, *School of International Development and Global Studies*, (2018): 53.

111. Philip L. Martin, “Migrant Workers in Commercial Agriculture”, *ILO*, (2016).

112. Rosa María Vanegas García, Instituto Nacional de Antropología e Historia (INAH), interview, Mexico City, 4 December 2019.

113. Remote interview, 16 July 2020.

114. Kerry L. Preibisch and Evelyn Encalada Grez. “The Other Side of ‘El Otro Lado’: Mexican Migrant Women and Labor Flexibility in Canadian Agriculture” *Signs*, volume 35, no 2, (2010).

115. Remote interview, 24 July 2020.

116. Interview with Director, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.

117. Government of Canada, “Canada - International Mobility Program work permit holders by gender, occupational skill level and year in which permit(s) became effective”, (11 May 2021); Government of Canada, “Canada - Temporary Foreign Worker Program work permit holders by gender, occupational skill level and year in which permit(s) became effective”, (11 May 2021)

workers are the food, hospitality, retail, agricultural and caregiving sectors.<sup>118</sup> These are low-income sectors, and given that non-white women in Ontario (Canada's most populous province, which also hosts the most temporary foreign workers) earn 36.5% less than men in the broader population,<sup>119</sup> it is likely that this pay gap is comparable or even greater for women with temporary status.<sup>120</sup>

In 2018, the Government of Canada established a Gender Results Framework designed to ensure that gender-based analysis (GBA) is part of program and policy development across all government departments, including in the allocation of budgets. IRCC has created positions "to bolster data collection and research to develop a stronger evidence base to support GBA+ activities [and to] embed more robust gender and intersectional considerations within all lines of IRCC business". ESDC has said it will "help to implement the Gender Budgeting Act, ensuring that analysis of impacts in terms of gender and diversity is an integral part of both new and existing expenditure programs".<sup>121</sup> The impacts of these initiatives for migrant women are not yet clear.

Over 90% of caregivers in Canada are women.<sup>122</sup> There are approximately 25,000 migrant women in caregiving jobs,<sup>123</sup> mainly from the Philippines and the Caribbean region.<sup>124</sup> The Live-in Caregiver program (LCP), established in 1992, and other caregiver programmes, were heavily criticised for the "precarious" route to citizenship that required migrant women to remain in the country for two years, and live at their place of employment, before they could apply for permanent residence. As the Canadian Council for Refugees (CCR) puts it: "Workers are more likely to tolerate situations of abuse in order to secure their employer's support

to apply for permanent residence or to accumulate the required hours, so these systems exacerbate the imbalance of power between employer and worker."<sup>125</sup> Research by academics and activists found migrant women routinely working hours above the legal maximum, earning below the minimum wage, and facing physical and verbal harassment.<sup>126</sup> Migrant Resources Centre Canada highlighted to us the difficulties that caregivers may face unionising, depending on their province of employment and location.<sup>127</sup> Critics of the programme charged that "the gendered and racialized nature of caregiving work and some of the legislated requirements of the LCP and FDM [Foreign Domestic Movement] before it made caregivers particularly vulnerable to exploitation and abuse".<sup>128</sup>

In 2014 the Harper government ended the live-in requirement, a change they said would "protect caregivers from abuse."<sup>129</sup> However in reality the vast majority of caregivers continue to live in their employers' homes.<sup>130</sup> The renamed Caregiver Program (CP) was split into two pathways - one for childcare and one for high medical needs carers. The government promised it would speed up applications for permanent residence, but the language and education requirements were made more stringent. Civil society organizations urged the government to do more to improve worker outcomes by offering caregivers more flexible pathways to permanent residence, minimize family separation, and provide greater work permit mobility.<sup>131</sup> Under further changes introduced in June 2019 by the Trudeau government, the government announced a new 5 year pilot - the Home Child-Care Provider Pilot and the Home Support Worker Pilot - to pre-screen migrant workers and their families for permanent residence upfront to allow the entire family unit to enter Canada together.<sup>132</sup> It is too early to assess the impact of these changes,

118. FemNorthNet, "Canada's Temporary Foreign Worker Program & Women Migrant Workers in Canada's North", (2016).

119. Ministry of Labor, *Closing the Gender Gap: A Background Paper*, (October 2015).

120. Migrant Workers Alliance for change, *Gender Wage Gap Strategy Steering Committee*, (15 January 2016).

121. Employment and Social Development Canada, "Gender-Based Analysis (GBA+)"

122. "Recruiting Immigrant Workers: Canada 2019", *OECD*, chapter 3.

123. "Behind Closed Doors: Exposing Migrant Care Worker Exploitation during Covid-19", *Caregivers Action Centre*, (October 2020).

124. Elsa Galerand, Martin Gallié and Jeanne Ollivier Gobeil, "Domestic Labour and Exploitation: the Case of the Live-in Caregiver program in Canada (LCP)", *UQAM*, (January 2015).

125. "Caregiver Pilot Program: A submission to Immigration, Refugees and Citizenship Canada", *Canadian Council for Refugees*, (April 2018).

126. See for example: Isa Galerand, Martin Gallié and Jeanne Ollivier Gobeil, "Domestic Labour and Exploitation: the Case of the Live-in Caregiver program in Canada (LCP)", *UQAM*, (January 2015).

127. Migrant Resources Center Canada (MRCC), interview, Toronto, 4 March 2020.

128. Rupa Banerjee, Philip Kelly, Ethel Tungohan, "Assessing the Changes to Canada's Live-in Caregiver Program: Improving Security or Deepening Precariousness?", *Pathways to Prosperity*, (December 2017).

129. "Improving Canada's Caregiver Program", *Government of Canada*, (31 October 2014).

130. "Behind Closed Doors: Exposing Migrant Care Worker Exploitation during Covid-19", *Caregivers Action Centre*, (October 2020).

131. "Caregiver Pilot Program: A submission to Immigration, Refugees and Citizenship Canada", *Canadian Council for Refugees*, (April 2018): 1-2

132. "Caregivers will now have access to new pathways to permanent residence", *Government of Canada*, (23 February 2019)



though concerns have been raised about the complexity of the various changes, which are hard for specialists and workers to keep up with, as well as the time needed to process entry applications, which can be up to or more than a year.<sup>133</sup> Under the new pilot, care workers must remain employed either in child care or as a home support worker, and cannot switch sectors for 24 months before being eligible to apply for permanent residency. In line with the global trend, evidence suggests that caregivers in Canada, referred to internationally as domestic workers, have experienced substantially intensified working hours during the Covid-19 pandemic - without receiving additional pay - as well as increased surveillance and controls on their personal movement.<sup>134</sup> Advocates argue that caregivers should be included in the “express entry” pathway which is used in the country’s permanent immigration system, reflecting the high language and educational requirements for caregivers and the high demand for their services within the Canadian economy.<sup>135</sup>

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## 1.5 Does the government significantly regulate the process for a worker to obtain a visa to migrate? (i.e. does the worker need multiple permissions at different levels of the state to migrate?)

### Mexico

Under the Constitution and the Federal Labour Law, “every labour contract made between a Mexican and a foreign employer must be notarized by a competent municipal authority”.<sup>136</sup> However in practice, workers do not need permission from the Mexican state to migrate, and with the exception of processes in which the Mexican state acts as recruiter, the government is not involved in individuals’ labour migration. Visa processes to migrate from Mexico are regulated and managed by the governments of the destination countries (e.g., Canada and the US), and Mexico does not add

additional requirements for migrant workers. Mexican government institutions select and admit Mexican workers, subsequently playing a supporting role in the visa application process, where bilateral arrangements have been established, such as the Canada-Mexico SAWP and the Labour Mobility Mechanism (LMM), which helps Mexican job seekers find jobs in Canada (under a bilateral agreement separate to the SAWP) as well as Germany and the US (under agreements with specific employers in those countries).<sup>137</sup>

Under the SAWP, the Servicio Nacional de Empleo (SNE), which provides support to prospective migrant workers, has the “sole authority responsible for recruitment and selection of candidates, as well as monitoring the procedures for their hiring and return”, which includes support for visa applications. To receive support to migrate to Canada under the SAWP, workers must request information about the selection process and recruitment office from their local SNE office.<sup>138</sup> Workers must meet the criteria to take part - they must be able to read and write in Spanish, must be an agricultural laborer and be from a rural area, preferably have children and preferably be married or in a relationship. The requirement that workers be from a rural area is a barrier that many prospective migrants from urban areas seek to circumvent by using alternative addresses.

SAWP workers told us that to complete the procedures, they had to travel to Mexico City and that depending on the distance they lived, this could cost between 2000 and 10,000 Mexican pesos (US\$100 to US\$500). One man who lived near Mexico City told us: “the procedures are fairly basic, birth certificate, marriage or common-law certificate, the passport... the [SNE] office does it and you just make the payment.” He paid 5000 pesos (US\$250) for his permit and medical certificate, plus 2000 pesos (US\$100) for travel to the capital.<sup>139</sup> The payment of such costs by Mexican migrant workers under the SAWP is further discussed in Section 6.1.

For migration to the US under the H-2 programmes, the Mexican government is not responsible for recruitment and selection. Prospective workers are encouraged by

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133. Lou Janssen Dangzalan, “Canada needs a permanent fix for its abuse-prone caregiver programs”, *the Globe and Mail*, (3 November 2020).

134. “Behind Closed Doors: Exposing Migrant Care Worker Exploitation during Covid-19”, *Caregivers Action Centre*, (October 2020).

135. Lou Janssen Dangzalan, “Canada needs a permanent fix for its abuse-prone caregiver programs”, *the Globe and Mail*, (3 November 2020).

136. *Constitución Política de los Estados Unidos Mexicanos*, Article 123 19. X-Z, 5 February 1917; *Ley Federal del Trabajo*, Article 28 d) III, 1 April 1970.

137. Observatorio Laboral, “¿Quieres trabajar en Canadá, Estados Unidos o Alemania?” (7 May 2020).

138. Government of Mexico, “Programa de Trabajadores Agrícolas Temporales México-Canadá (PTAT)”,

139. Remote interview, 16 July 2020.

the US government to find vacancies through “word of mouth, a local visa agent, or a job fair”. The process to obtain an H2 visa starts with the US employer, who must “apply for a petition from U.S. Citizenship and Immigration Services before scheduling workers for visa appointments”. While the US government states that “local and state governments in Mexico have contact information for ‘Centers of Attention for Immigrants’ [Centros de Atención al Migrante, or Migrant Care Centres] that can provide more information about job opportunities in the United States”, in practice Mexican government agencies do not generally provide support to Mexican migrants destined for the US, with the exception of the small movement of workers recruited under the Labour Mobility Mechanism.<sup>140</sup>

## Canada

Under the *IRPA* and *IRPR* the entry of migrant workers in low wage occupations requires that the employer first undergo a Labour Market Impact Assessment (LMIA) to assess whether the entry of the migrant worker/s is likely to have a “positive” or “negative” impact on the Canadian labour market.<sup>141</sup> Requirements that employers must meet in order to hire migrant workers in low-wage position include: paying a CAD\$1,000 (US\$830) processing fee for each position requesting a migrant worker (apart from families who are hiring caregivers and agricultural employers, who are exempt from this requirement); paying wages to the migrant worker consistent with the prevailing wages in the occupation;<sup>142</sup> paying for two-way transportation for the migrant workers; registering workers under provincial health plans and paying for supplemental private health coverage during the time that workers are not covered by provincial plans; and paying to register workers with an appropriate provincial workplace safety insurance provider.<sup>143</sup>

Under the *IRPR*, the employer must also demonstrate “past compliance of the employer, or any person who recruited the foreign national for the employer, with the

federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work”.<sup>144</sup> The application of this provision varies by province - for example in British Columbia, the province requires that the labour recruiter be licensed,<sup>145</sup> while in Ontario there has been no licensing system for labour recruiters since 2000 when the previous system was repealed.<sup>146</sup> British Columbia also requires that if an employer is using the services of a recruiter, that it only contracts provincially licensed labour recruiters licensed.<sup>147</sup> This is an additional level of assessment that an employer needs to meet first with the provincial government and then with the federal government before being authorized to hire migrant workers destined to BC.

Once an employer receives a positive LMIA from ESDC, the foreign national can then apply for a work permit from the Department of Immigration, Refugees and Citizenship Canada (IRCC) authorizing him/her to legally work temporarily in Canada. Under the *IRPR*, a foreign national must demonstrate to the immigration officer that he/she is able to perform the job offered by the employer; will leave Canada by the end of the authorized period; is not inadmissible as a result of a past criminal conviction; and meets medical requirements.<sup>148</sup>

As part of its Red Tape Reduction Action Plan the Canadian government keeps a track of the “red tape” or administrative burden for businesses associated with regulations, and reports that since 2015 the *IRPR* has contained 59 administrative burdens, compared with 14 in 2014. Businesses have complained about the “red tape” associated with the LMIA process required to hire workers under the TFWP. In 2016, for example, a clothing retailer submitted to the House of Commons on the problems caused by the LMIA process, which it said was part of the “bureaucratic, sluggish, and ill-equipped” TFWP, requesting an exemption from the process in order that the company could continue its work from “within Canada”.<sup>149</sup> Farmers have made

140. U.S. Embassy and Consulates in Mexico, “H-2 Visas”

141. *Immigration and Refugee Protection Regulations*, SOR/2002-227, part 11, 2002.

142. Defined as the highest of: the median wage on the government Job Bank; or a wage within the wage range that the employer is paying current employees for the same job and work location, and with the same skills and years of experience.

143. *Immigration and Refugee Protection Regulations*, SOR/2002-227, part 10, 2002.

144. Government of Canada, “Program requirements for low-wage positions”, (11 March 2021).

145. *Temporary Foreign Worker Protection Act*, [SBC 2018] Chapter 45, 8 November 2018.

146. Caregivers’ Action Center, Workers’ Action Center, and Parkdale Community Action Center, “Submission to the Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario”, (15 July 2009).

147. British Columbia, “Register to hire temporary foreign workers”

148. *Immigration and Refugee Protection Regulations*, SOR/2002-227, part 8, 2002.

149. Lululemon Athletica, “Study on Temporary Foreign Worker Program - Brief Submitted to the House of Commons Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities”, (1 June 2016).

similar complaints, in particular in relation to issues with the Job Bank, where they are obliged to place adverts. A representative of an employer in the food production sector told us that LMIA were burdensome and expensive, highlighting the CAD\$1,000 (US\$830) cost per worker and the overly prescriptive requirements on accommodation which, she said, assumed that employers had no intention to support workers to stay in Canada beyond a short-term contract.<sup>150</sup> The Executive Director of CAPIC, representing immigration consultants, told us employers now had reduced incentives to hire foreign workers because the LMIA had been increased significantly in cost and lasted for a shorter period, making foreign workers relatively less attractive in comparison to Canadian workers.<sup>151</sup> However the CFA, representing agricultural employers (who do not pay the CAD\$1,000 (US\$830)), supports the LMIA: “elements could of course be streamlined. But we want to make sure that Canadians are offered first... If someone cannot hire [a foreign worker], they need to be able to understand what they have to do, and if they can, they need to be able to fully understand their responsibilities.”<sup>152</sup> The organizations authorized to support SAWP employers in their applications to the Canadian government play a role in reducing the bureaucratic burden on employers.<sup>153</sup>

There are some indications that to avoid “red tape” and high costs, employers in some sectors are turning to the IMP, where (unlike the TFWP) several sub-programmes do not require a LMIA before visas can be issued, reducing the level of government oversight over work permit applications. This raises some concerns for worker protections as the IMP replicates some features of the TFWP that have been associated with exploitation - in 2017, 33% of IMP participants held “closed” (or employer-specific) work permits, including in some large sub-programmes.

Delays in processing caregiver visas in Canadian embassies overseas have been the subject of criticism for many years. A 2010 Canadian Bar Association submission to the Federal government found that

“because of long processing delays at busy visa offices, many caregivers arrive to find that their intended employer has made alternate care arrangements. Rather than accommodating these workers, they are summarily returned to their country of origin”. The CBA noted processing times of 12-18 months for applicants in Manila.<sup>154</sup> As noted in indicator, 1.4, under the caregiver pilot schemes introduced in 2019, migrant workers and their families are now screened for permanent residence prior to being granted their visas. This process is lengthy and as a result waiting times remain long, up to or more than a year. As one immigration lawyer puts it, “[Permanent residency] screening requires a stricter security, background, and health check compared with those applying for a work permit. Depending on the visa office in a caregiver’s home country, the time added to process an application could be in the order of months, or worse, years. This renders the programs untenable for most employers. Someone who needs a caregiver cannot wait that long.”<sup>155</sup> The IRCC website indicated in December 2020 (during the Covid-19 pandemic) that applications for the live-in caregiver programme were likely to take 12 months. No estimates were provided for the Home child care provider pilot or Home support worker pilot as they were new programmes.<sup>156</sup>

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## 1.6 Do national laws allow all categories of migrant workers the ability to change jobs within the destination country?

### Canada

In general, temporary work permits in Canada are issued to authorize the migrant worker to work for a specific employer in a specific occupation. Migrant workers who wish to change jobs within Canada need to first receive a job offer from another employer that has obtained approval from ESDC, and then the migrant worker must apply to obtain a new work permit authorizing them to work for the new employer. Advocacy groups have highlighted the long waiting times to go through such processes, during which period migrant workers

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150. Susan Yaeger, Maple Leaf Foods, remote interview, 17 February 2021.

151. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.

152. Scott Ross, Canadian Federation of Agriculture, remote interview, 19 January 2021.

153. Canadian Agriculture Human Resource Council, “A Review of Canada’s Seasonal Agriculture Worker Program”, (December 2017).

154. The Canadian Bar Association, “Amendments to the Immigration and Refugee Protection Regulations (Live-in Caregiver Program), *Canada Gazette, Part 1, December 19, 2009*”, 18 January 2010.

155. Lou Janssen Dangzalan, “Canada needs a permanent fix for its abuse-prone caregiver programs”, *the Globe and Mail*, (3 November 2020).

156. Government of Canada, “Check processing times”, checked on 1 December 2020.

cannot work. For the low wage stream, the average LMIA processing time is 40 days, while a temporary work permit application inside Canada takes on average 126 days.<sup>157</sup> Advocates say that “migrant workers may spend 6-10 months unemployed with no income source”. Increased job mobility for migrant workers has been one of the principal demands of advocates and activists in Canada, who argue that “closed” or “employer-specific” work permits are central to driving human rights abuse. The Migrant Workers Alliance calls them “a modern form of indentured labour in which migrant workers are not free to circulate in the labour market like other Workers”.<sup>158</sup>

One Mexican worker compared the employer-specific work permit to “a form of slavery”.<sup>159</sup> Employer-specific permits have been on the rise in Canada in the past two decades. A Statistics Canada study reported that the number of high-skill employer-specific work permit holders increased from 106,700 to 135,900 between 2001 and 2016, and increased among low-skill employer-specific work permit holders from 34,400 to 77,800.<sup>160</sup>

Not all migrant workers are on employer-specific visas. As noted in section 1.4, under the 2019 Home Child Care Provider Pilot (HCCPP) or the Home Support Worker Pilot (HSWP), Canada is transitioning to a model where it will only allow migrant workers to work in caregiving occupations if they are planning to transition to permanent residency.<sup>161</sup> Migrant workers meet certain requirements for permanent residence upfront, and if they do, they are eligible to receive an “occupation-restricted” open work permit, which allows them to work for any employer in an eligible caregiving occupation.<sup>162</sup> Family members of the migrant caregiver are also eligible to receive open work and study permits.<sup>163</sup>

Additionally, there are specific sub-programs that are both exempt from the requirement to obtain an LMIA and which provide migrant workers with “open” work permits that allow the migrant to work for any employer in Canada. Examples of these sub-programs include reciprocal youth mobility agreements, work permits authorizing international students to work after graduation, migrant workers who are at an advanced stage of their application to transition to permanent residence, and others.<sup>164</sup> A Statistics Canada study reports that “[f]rom 2001 to 2016, the number of foreign nationals who held a valid [open work permit] increased from about 87,000 to 377,700”.<sup>165</sup>

SAWP workers receive work permits that allow them to work for any SAWP employer in Canada without applying for a new work permit for each employer, but they must go through the worker transfer process outlined in their employment contract.<sup>166</sup> SAWP transfers require the agreement of the worker, the previous and new employers, and both the Canadian and Mexican governments.<sup>167</sup> The new employer must have, or obtain, a valid LMIA for the position they are filling.<sup>168</sup> One reason transfers may occur is because employers have no work for the migrant workers (and therefore they will not be paid) due to production schedules. As one farmer explained to industry organization researchers, “once we have completed our two-month asparagus season I have to transfer some of my workers to another farm because I don’t require all of them for my watermelon crop. If they had to go home it would be unlikely they would want to return to my farm next year because they couldn’t justify such a short employment period.”<sup>169</sup> Workers may also request transfers in cases where they are subjected to abuse or exploitation - these are sometimes referred to as worker-employer disputes. Workers who move without these approvals lose

157. Government of Canada, *Labour Market Impact Assessment application processing times and “Check processing times”*. Checked 3 December 2020.

158. Migrant Workers Alliance for Change, “*Temporary Foreign Workers Program in Canada Migrant Worker Priorities 2019*”, (May 2019).

159. Remote interview, 5 May 2021.

160. Yuqian Lu and Feng Hou, “*Temporary Foreign Workers in the Canadian Labour Force: Open Versus Employer-specific Work Permits*”, *Statistics Canada*, (18 November 2019).

161. Government of Canada, “*Home Child-Care Provider Pilot and Home Support Worker Pilot: Application process and who can apply*”, (21 June 2019).

162. Government of Canada, “*Occupation-restricted open work permit for caregivers*”, (30 August 2019).

163. Government of Canada, “*Spouses or common-law partners and dependants*”, (30 August 2019).

164. Government of Canada, “*Who can apply for an open work permit?*”, (16 March 2021).

165. Yuqian Lu and Feng Hou, “*Temporary Foreign Workers in the Canadian Labour Force: Open Versus Employer-specific Work Permits*”, *Statistics Canada*, (18 November 2019).

166. Government of Canada, “*Agricultural workers – Work temporarily in Canada*” (19 March 2021); Government of Canada, “*Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements*”, (15 January 2021); Government of Canada, “*Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021*”, (15 January 2021).

167. Government of Canada, “*Contract for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2021*”, (15 January 2021).

168. Employment and Social Development Canada, “*Labour Market Impact Assessment Application Seasonal Agricultural Worker Program*” (2020).

169. Canadian Agriculture Human Resource Council, “*A Review of Canada’s Seasonal Agriculture Worker Program*”, (December 2017).



the protections of their contract including employer coverage for transportation, health insurance and workers' compensation.<sup>170</sup> Meanwhile, farms who "informally transfer" workers risk a CA\$50,000 fine and up to two years in prison.<sup>171</sup> Employer organizations are heavily critical of what they see as a highly bureaucratic and overly time-consuming transfer process, which requires farms to go through a new LMIA process before finalising transfers.<sup>172</sup> Some farmers reported to a 2017 study that the process was so cumbersome they had given up on transfers and had reduced the number of workers they were going to recruit.<sup>173</sup> For workers, meanwhile, working for different farms without permission when employers cannot offer them work is highly risky but may feel like a necessity if the alternative is not to work. Under the standard SAWP contract, while the standard minimum work week should be 40 hours, employers are required only to provide workers with loans for expenses in the event they cannot provide work.<sup>174</sup> One told us:

*"We call it pirating ... the employer simply tells you there is no work tomorrow ... we quietly check out other farms where they can give us either full days or a few hours of work, but with the risk that if something happened to us, obviously it is return to Mexico immediately, and maybe something more serious, like an accident that the official employer would distance himself from... if we don't work, it hits us where it hurts, because we have to send money back, right? Particularly if we have debt or some commitment in Mexico with the children, which means we constantly need to be sending money; in those cases we are going to pirate ourselves."<sup>175</sup>*

The consulate in Toronto said that previously SAWP transfers were easier than for other temporary foreign workers and called it a "semi-open work permit", but acknowledged that this has recently become more complex given what officials called the government's "Canadians First" labour market policies and associated requirements for employers to obtain or update LMIA's.

In the case of transfers requested by migrant workers, a consulate representative said that many employers are concerned to know why the worker wants to transfer. In many cases, he said, there are not enough jobs to transfer into.<sup>176</sup> Out of 17,968 SAWP workers who worked in Ontario in 2014, 2,482 (14%) were transferred to other employers during the season.<sup>177</sup> The data is not disaggregated to show how many of these transfers were initiated by an employer - for scheduling reasons - or by a worker as a result of a dispute. SAWP workers we interviewed had in most cases transferred due to a lack of work, in many cases with the assistance of employers. Workers who had experienced difficult housing or working conditions had generally not asked to be transferred. This may suggest anecdotally that it is easier for workers to request transfers on practical grounds than asking for a transfer because of a "dispute", which risks the worker being labelled as a troublemaker. It is notable that two workers described to us asking the Mexican government to send them to different employers because of disputes or working conditions, but in both cases this transfer happened at the end of the season. One man who had been employed in Ontario and Quebec told us that when the foreman at one workplace told him, "you know what, you're going to go [back] to Mexico" because of a dispute, the consulate advised him that no transfer was possible, but persuaded him and the employer to continue the contract until the end of the season: "[the foreman] sent me to do heavier jobs and he checked my time, when he remembered he would go and tell me 'hey, you're taking too long, hey, don't do this like that'... to keep your job you have to endure everything like that... I stayed for that season... It was like punishment." He was placed back on the SAWP reserve list and it was another three seasons before he was assigned with another employer.<sup>178</sup>

The requirement for work permits to be employer-specific for migrant workers in low-wage occupations creates a number of vulnerabilities. In particular, employer-specific work permits make the migrant worker dependent on the employer in order to maintain

170. Government of Canada, "Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021", XI Transfer of workers.

171. Government of Canada, "Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements".

172. WALI, "Issues and Solutions: The Seasonal Agricultural Worker Program", (2 May 2018): 2.

173. Canadian Agriculture Human Resource Council, "A Review of Canada's Seasonal Agriculture Worker Program", (December 2017).

174. "Contract for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2019"

175. Remote interview, 16 July 2020.

176. Interview with Consular officers, Mexican Consulate in Toronto, Ministry of External Relations, Toronto, 4 March 2020.

177. Al Mussell, "The Economic Impact of the Seasonal Agricultural Worker Program in the Ontario Horticulture Sector", *Agri-Food Economic Systems*, (April 2015).

178. Remote interview, 2 August 2020.

his/her legal migration status in Canada. The fear of losing employment and therefore having to return home deters migrant workers from lodging grievances with the authorities or even with the employer themselves, making it difficult for them to, for example, refuse dangerous work or excessively long hours. One Mexican agricultural worker told us lack of job mobility “gives the employer the ability to impose everything he can over the worker, then the worker cannot even say ‘you know what, I’m going to look for work elsewhere.’”<sup>179</sup> For SAWP workers the effect of having limited mobility is exacerbated by the employer ‘naming’ system, under which employers can identify specific workers they want to hire in subsequent seasons: “such a system can create a coercive incentive for individuals to push themselves beyond their physical limits and to accept unsafe work conditions in order to secure a position the following year,” and disincentivises workers from making complaints.<sup>180</sup> A 2016 ILO report comments on this: “it is very hard to administer the SAWP in ways that avoid depressing wages and working conditions if most workers in an area are SAWP migrants who can lose their jobs and the right to be in Canada by complaining. Workers who want to be named by their employer to return next season are unlikely to complain.”<sup>181</sup>

This precarity has been termed as “deportability.”<sup>182</sup> Labour unions, academics, and worker organizations have repeatedly raised workers’ fear of rapid repatriation, and consequent loss of income as a significant area of concern. An immigration consultants organisation told us that, “the main threat to the worker is that the employer puts him out of the country.”<sup>183</sup> This is particularly problematic given that the main mechanisms for enforcing rights and obtaining remedies are complaints-driven, meaning that according to the Migrant Workers Centre BC, “if a migrant worker does not complain, he or she has no practical access to enforcing his or her rights.”<sup>184</sup> Such issues can affect

workers in any sector. An immigration consultant told us of a case she was aware of in which “an IT consultant from Mexico is being paid almost on minimum wage, CAD\$14 (US\$11.60) an hour. This is for a high-skilled job. He’s afraid to make a complaint because he’s tied to the employer. The employer knows he’s entrapped... Employers love the employer specific permit, they feel, ‘we’ve got this person. They can’t just leave.’”<sup>185</sup> A union representative told us the closed work permit “creates this huge power imbalance in that employment relationship.”<sup>186</sup> As the Association for the Rights of Household Workers has pointed out, the closed work permit can also lead to workers being placed out of status: “the precariousness of the employer-specific work permit leaves migrant caregivers too dependent on their employer and vulnerable to falling ‘out-of-status’ through no fault of their own and therefore faced with little choice but to engage in irregular employment.”<sup>187</sup> A social worker working with migrant workers in Ontario told us the employer-specific permit has wider implications, inserting the employer as an intermediary between the worker and the state:

*“We have a system where because a worker is tied to that employer, that’s translated into a sense that those employers have control over everything in their life from health coverage to housing. Every time I attempt to discuss workers’ exercising their rights ie. Accessing health coverage, I am told these are exercised through the employer.”*<sup>188</sup>

The Canadian Council for Refugees, along with a number of civil society groups, has argued that work permits should be open, or sector- or region-specific.<sup>189</sup> Experts on migration and the Canadian agricultural sector suggest that, “at the very least, migrants should be offered untied, sectoral work permits to enable their mobility within the agricultural labor market, thus removing the principal source of their unfreedom.”<sup>190</sup>

179. Remote interview, 9 August 2020.

180. C. Susana Caxaj and Amy Cohen, “‘I Will Not Leave My Body Here’: Migrant Farmworkers’ Health and Safety Amidst a Climate of Coercion’, *International Journal of Environmental Research and Public Health*, (24 July 2019).

181. Philip L. Martin; International Labour Office, “Migrant workers in commercial agriculture”, 2016: 19

182. See Vosko L.F. *Legal but Deportable: Institutionalized Deportability and the Limits of Collective Bargaining among Participants in Canada’s Seasonal Agricultural Workers Program*. ILR Review. 2018;71(4):882-907.

183. Dory Jade, Canadian Association of Professional Immigration Consultants, 16 December 2020.

184. Alexandra Rodgers, “Envisioning Justice for Migrant Workers: A Legal Needs Assessment”, *Migrants Workers Centre*, (March 2018).

185. Immigration consultant, remote interview, 4 December 2020.

186. Elizabeth Kwan, Canadian Labour Congress, remote interview, 19 November 2020.

187. The Association for the Rights of Household Workers (ARHW), “Migrant Caregivers, Canadian Immigration Policies and Human Trafficking”, (15 June 2018).

188. Shelley Gilbert, Legal Assistance of Windsor, remote interview, 2 February 2021.

189. Canadian Council for Refugees, “Evaluating Migrant Worker Rights in Canada 2018” (May 2018): 5

190. Kerry Preibisch and Gerardo Otero, “Does Citizenship Status Matter in Canadian Agriculture? Workplace Health and Safety for Migrant and Immigrant Laborers”, *Rural Sociology*, (2014).

A range of experts told us that ending the closed work permit would be one of the most significant things the government could do to support migrant workers and protect their rights. The Executive Director of CAPIC, an organisation representing immigration consultants, said he would “certainly support” the introduction of an occupational specific work permit.<sup>191</sup> In 2016 a House of Commons committee review of the TFWP recommended that the federal government “take immediate steps to eliminate the requirement for an employer-specific work permit; provided that it implement appropriate measures to ensure temporary foreign labour is only utilized within the existing provisions of the Labour Market Impact Assessment process, including sector and geographic restrictions.”<sup>192</sup>

However, in 2017 a separate Parliamentary Committee, looking at the issue of trafficking, did not back alternatives to closed work permits, raising concerns that “sector-specific permits would then allow a competing employer to offer a higher wage and *steal the employee* with no compensation to the initial employer for the [recruitment] expenses they had incurred” [emphasis added]. The committee concluded that allowing sector-specific permits “could result in employers being forced to compete against other employers in a similar field for workers in a way that was not intended by the [TFWP].”<sup>193</sup> This largely aligns with concerns raised by employers regarding changes to the closed or employer-specific work permit. A representative of the CFA told us:

*“We understand the desire for more mobility, but there is a fundamental question about the investments employers make to bring workers into the country.... One of the concerns we highlight is that someone could come onto the farm to offer a tiny bit more money for everyone to come over [to a different farm]. If you can’t then get your product picked, the cost could be massive. How would anyone compensate you for that? For a very small farmer, this could be very detrimental to people’s livelihoods.”<sup>194</sup>*

Proponents of increased job mobility argued such concerns may be overstated, but acknowledged there could be

some impacts of this kind. However, they suggested that if businesses believed a small amount of extra money could sway a workforce to immediately abandon their employ, it was an indication that working conditions and wages needed to rise in the agricultural sector.

In June 2019 ESDC and IRCC opened a public consultation on a proposal to improve the labour mobility of migrant workers by introducing “occupation-specific work permits” for migrant workers in low-wage streams, while maintaining the requirement for employers to secure a positive LMIA. The government acknowledged the human rights risks associated with the employer-specific work permit:

*“[A]s many migrant worker advocacy groups and other stakeholders have noted, the employer-specific work permit can create a power imbalance favouring the employer and conditions for potential worker abuse. Foreign workers may be more likely to stay in a job that no longer benefits them, or in some cases, where they experience abuse or exploitation.”*

The federal government said its intent was “to provide greater labour mobility to foreign workers, enabling them to leave their employer for a new one in their occupation who is approved to hire foreign workers, without the requirement to apply for a new work permit”. The government said it was interested in whether such a reform “could shift the balance of power between employers and foreign workers and lead to positive impacts for foreign workers, such as improved working conditions or higher wages”.<sup>195</sup> However, officials told us the proposal was not pursued due to the upcoming Canadian election, inconclusive feedback including opposition from employers, and other priorities.<sup>196</sup> The UFCW union, like the Canadian Labour Congress, supported the proposal as “the power imbalance facilitated by employer-specific work permits could erode”, arguing that the initiative should be coupled with a pathway to permanent residency.<sup>197</sup>

191. Dory Jade, Canadian Association of Professional Immigration Consultants, 16 December 2020.

192. House of Commons, [JUST Committee Report, no 24 - JUST \(42-1\)](#).

193. House of Commons, [Huma Committee Report, no 4 - HUMA \(42-1\)](#).

194. Scott Ross, Canadian Federation of Agriculture, remote interview, 19 January 2021.

195. [Canada Gazette Part I](#), Vol. 153, No. 25, 22 June 2019.

196. Interview with Immigration, Refugees and Citizenship (IRCC) officials, Immigration, Refugees and Citizenship, group interview, Ottawa, 6 January 2020.

197. UFCW Canada, “[United Food and Commercial Workers Union \(UFCW CANADA\) comments on introducing occupation-specific work permits under the temporary foreign worker program](#)”, (19 July 2019).

However employer groups such as the Hotel Association said that the proposed changes would “unfairly harm employers with a proven record of treating employees in a fair and respectful manner”, highlighting the investment employers make in temporary foreign workers, and expressing concerns that “there is no guarantee that an employer could rely on a stable workforce if employees can change jobs so easily”.<sup>198</sup> Farming associations agreed with this perspective, arguing in particular that “SAWP is a long-running, stable and effective program”, that no changes should apply to it, and that it should be the model for other agricultural streams of the TFWP. The Ontario Farming Association raised the question of costs: “Who will pay the costs carried by the current employer (such as those associated with TFW recruitment and transportation), if they chose to seek employment with another employer?”<sup>199</sup> The Canadian Bar Association also opposed the proposal as it considered there could be unintended consequences, arguing for faster processes for migrant workers to obtain new work permits.<sup>200</sup> Other commentators argued that the LMIA requirement should be occupation-wide and should not be specific to each individual job opportunity.<sup>201</sup>

In a separate attempt to respond to concerns about the employer-specific work permit, the government introduced the Open Permit Scheme for Vulnerable Workers in 2019, “to provide migrant workers who are experiencing abuse, or who are at risk of abuse, with a distinct means to leave their employer”. Abuse is defined as: physical abuse; sexual abuse; psychological abuse, including threats and intimidation; and financial abuse, including fraud and extortion. Officers dealing with applications must have “reasonable grounds to believe that the migrant worker is experiencing abuse or is at risk of abuse in the context of their employment in Canada” in order to use the open work permit, which is exempt from the LMIA process.<sup>202</sup> An IRCC official told a migrant worker-focused event that since the introduction of this initiative in June 2019 until

December 2020, 800 open work permits for workers in situations of abuse were issued, which amounts to about 10 per week.<sup>203</sup>

The open worker permit for workers in situations of abuse is still in its infancy so assessing its impact is challenging. Union representatives and worker organizations generally consider its introduction as a positive step, but have expressed concerns about the complexity of the application process - which likely reduces the number of applications - and continue to press for wider systemic changes. The UFCW union, which told us it has helped about 150 workers through the process, says it allocates about 15-20 hours of staff time to support each application: “we have had about 96% success when we get a case through the system, but that is because we take a lot of time to make sure the cases will meet the criteria and that we have all the right evidence. For workers who don’t have strong written english or good IT skills, this process would be extremely challenging”.<sup>204</sup> The immigration consultants organisation CAPIC also told us the government should lessen the burden of proof required from workers: “every single temporary resident who comes to you as a government and seeks help, should have an opening to get an open work permit for 1 - 2 years or more... How can I as a temporary resident approach the government if I can’t be sure that I will be believed?... Workers won’t come to the government without a guarantee of support. The employer will put them in a plane.”<sup>205</sup> One expert has called the scheme a “bandaid on a system that is broken”, in view of the fact that it does not address the fundamentals of the closed work permit.<sup>206</sup>

In a written response to FairSquare, IRCC acknowledged the complexity in the application process for open work permits for vulnerable workers, and said it has started taking steps by regularly updating program delivery instructions and by developing trauma-informed training for immigration officers that process these applications based on feedback from migrant

198. Hotel Association Canada, “[RE: Hotel Association of Canada comments on Canada Gazette, Part I, published on June 22, 2019, Introducing occupation-specific work permits under the Temporary Foreign Worker Program](#)”, (19 July 2019).

199. Ontario Federation of Agriculture, “[RE: Canada Gazette, Part I, Volume 153, Number 25, June 22, 2019. Introducing Occupation-Specific Work Permits \(OSWP\) Under the Temporary Foreign Worker Program](#)”, (19 July 2019).

200. The Canadian Bar Association, “[Re: Canada Gazette, Part I, Volume 153, Number 25 – Occupation Specific Work Permits](#)”, (15 August 2019).

201. Rebekah Smith and Anita Vukovic, “[The Benefits of ‘Untying’: How to Move from Employer- to Occupation-Specific Work Permits](#)”, *Center for Global Development*, (26 July 2019).

202. Government of Canada, “[Open work permits for vulnerable workers](#)”

203. Presentation by Glen Bornais, “[Migrant Worker Project Metro Vancouver & Fraser Valley Regional Meeting](#)”, 30 November, 2020.

204. Santiago Escobar, United Food and Commercial Workers (UFCW) union, remote interview, 18 February 2021.

205. Dory Jade, Canadian Association of Professional Immigration Consultants, 16 December 2020.

206. Sara Mojtehdzadeh, “[Open work permits for exploited migrant workers a ‘Band-Aid solution,’ critics say](#)”, *Toronto Star*, (17 July 2020).



workers and migrant worker support organizations.<sup>207</sup> The Government of Canada's Budget 2021 allocated CAD\$6.3M (US\$5.2M) over three years to support faster processing and improved service delivery for open work permits for vulnerable workers.<sup>208</sup>

*Common-law Partner category had the highest transition rates, while the transition rates for the Seasonal Agricultural Workers Program and for the Reciprocal Employment category were far below the average.*<sup>211</sup>

## 1.7 Do national laws offer migrant workers a pathway to long term residency and/ or citizenship?

### Canada

Migrant workers' ability to obtain citizenship in Canada is highly dependent on the visa programme they enter the country on. Those in higher-wage positions can generally qualify for permanent residency under Canada's Express Entry system, while migrant workers in lower-wage positions can only qualify in limited situations if they have entered as caregivers, select agri-food and agricultural workers, or in occupations identified to be in high demand by provincial governments under their Provincial Nominee Programs (PNPs). All permanent residents are eligible for Canadian citizenship provided that they have lived in Canada for 3 out of the last 5 years; that they have filed taxes as Canadian residents (if required); that they pass a knowledge test on Canada; and that they prove a moderate level of knowledge of English or French.<sup>209</sup>

63,015 migrant workers transitioned from the TFWP and the IMP into permanent residence in 2019, an increase on 2015 when the figure was 48,615 individuals.<sup>210</sup> The ability to acquire residency is highly dependent on which programme workers have entered Canada on, according to Statistics Canada, and is limited for SAWP workers in particular:

*“The rate of transition to permanent residence was strongly associated with program types. The Live-in Caregiver Program and the Spouse or*

Worker advocacy groups maintain that pathways for temporary workers remain insufficient, and that the process of gaining residency is made too onerous. One expert highlighted to the House of Commons committee in 2016 that for caregivers, there was a backlog of 38,000 caregivers awaiting the outcome of applications for them and their families. Processing time was 49 months, creating “undue stress and hardship on caregivers and their families due to family separation”.<sup>212</sup>

Migrant worker organisations question the “temporary foreign worker” terminology used in Canada for lower wage roles. The Migrant Workers Alliance argued in a 2019 submission to the federal government that “the sectors where migrant workers labour are clearly not peripheral - our society could not function without the food, care, and service that they provide. Similarly, the labour that they perform is not temporary”, referring specifically to the SAWP, which has been in place for more than 50 years, caregiver programmes and the “so-called low-skill (now low-wage) program”.<sup>213</sup> Some organisations consider the limited avenues for residency and citizenship for temporary foreign workers - who are primarily from the Global South - compared to waves of low-wage European immigrants in prior decades, to constitute racial injustice, with a 2016 submission for Canada's review by the UN Committee on the Elimination of Racial Discrimination arguing that, “lack of avenues to obtain permanent residency for the vast majority of low-skilled temporary foreign workers and seasonal agricultural workers means that these workers are kept in a perpetual cycle of precarity and exploitation without hope to obtain full recognition of their rights under the law”.<sup>214</sup>

207. Immigration, Refugees and Citizenship Canada, “Re: Fairsquare findings on fair recruitment of migrant workers”, response provided by IRCC to FairSquare on file with FairSquare, (13 May 2021).

208. Government of Canada, “Budget 2021 A Recovery Plan for Jobs, Growth, and Resilience”, (19 April 2021):219

209. Government of Canada, “Apply for citizenship: Who can apply”

210. Government of Canada, “Admissions of Permanent Residents with Prior International Mobility Program Work Permit Holder Status (for Work Purpose Only) and Temporary Foreign Worker Program Work Permit Holder Status by Province/Territory of Intended Destination and Immigration Category”

211. Yuqian Lu and Feng Hou, “Transition from Temporary Foreign Workers to Permanent Residents, 1990 to 2014”, *Statistics Canada*, (21 February 2017).

212. House of Commons, “Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities”, (16 May 2016).

213. Migrant Workers Alliance for Change, “Temporary Foreign Workers Program in Canada Migrant Worker Priorities 2019”, (18 May 2019).

214. Colour of Poverty Campaign/Colour of Change Network (COP-COC), “Submission to the Committee on the Elimination of Racial Discrimination (CERD) - Consultation with civil society”, (November 2016).

One worker, who had worked in the SAWP for more than 20 years, after her father had worked 25 seasons, told us she was joining labour organisers to demand better access to residency for agricultural workers:

*“Because it’s not fair, is it? That we as temporary workers who are thousands, who are supporting the economy of the countryside... [and] providing food for Canadians, and we can’t have a permanent residence. I want to repeat to you, I like Canada, but I can’t stay ... The funny thing about me is that I’m neither here nor there. When they do a census here in Mexico, I’m not in it. When censuses happen in Canada, I don’t count either because I’m not a resident. Look at the irony of life.”<sup>215</sup>*

Civil society organisations also argue that the concept of “pathways” to permanent residency and citizenship, requiring a period of temporary residency as a first stage, is problematic as it leaves employers with significant leverage over temporary workers, who would be unlikely to risk the prospect of permanent residence by complaining in the event of abuse. Some businesses take a similar position, with one agri-food business telling a House of Commons committee that “a successfully established low-skilled worker should be given the opportunity to apply for permanent residency on a fast-track basis, for example, by express entry.”<sup>216</sup> Organisations representing care workers have led calls for migrant workers to be granted residency on arrival: “Granting landed status on arrival to Care Workers should be the first step to granting landed status on arrival to all migrant workers, migrants and refugees.”<sup>217</sup> The Covid-19 pandemic has given additional profile and momentum to such calls, under the hashtag #StatusForAll, with a 2021 petition calling for a single-tier immigration system:

*“All migrants, refugees, students, workers and undocumented people in the country must be regularized and given full immigration status now without exception. All migrants arriving in the future must do so with full and permanent immigration status.”<sup>218</sup>*

The Canadian Federation for Agriculture told us it was “very supportive of permanent residency for anyone working year round,” flagging labour shortages in livestock management and mushroom farming as examples where they would support residency programmes that had fewer prohibitive requirements regarding education and language qualifications. With regard to seasonal workers, the issue was “more challenging... We do view greater flexibility for agricultural workers as a net positive. The idea that they immediately come in as permanent, that’s more difficult. The risk is you make it a back door programme and you undermine the immigration process.”<sup>219</sup> The UFCW acknowledged the issue, but suggested that such concerns should be addressed by improving conditions and wages in the sector: “When a migrant farmworker manages to get permanent residence, the first thing they do is leave the industry. Wages and protections are so low.”<sup>220</sup>

The Executive Director of the immigration consultant organisation CAPIC told us that providing pathways to permanent residence was a “completely different approach” from treating migrant workers as purely temporary foreign workers. “It gives much more confidence to the foreign workers. They know they have a chance to be part of the community.” CAPIC told us they supported the expansion of city immigration programmes which provided foreign workers with immediate permanent residency on arrival: “this is a growing programme, and may be the number one policy in terms of attractiveness in the future.”<sup>221</sup> Some employers are also supportive of avenues to retain workers permanently particularly when they have an ongoing demand, and a representative from Maple Leaf Foods (MLF) told us that “from early on, MLF has focused on “dual-intent” when recruiting foreign workers, with workers first entering on a temporary basis, but with the option for the worker to apply for permanent residency after arrival and MLF supporting the worker’s nomination; or alternatively, by recruiting workers through permanent residency from the start”.<sup>222</sup>

In 2016, in its report on the Temporary Foreign Worker Program, the House of Commons Standing Committee

215. Remote interview, 15 July 2020.

216. House of Commons, “Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities”, (30 May 2016).

217. Caregivers Action Centre, “Migrant Care Workers are Organizing! Add YOUR voice to OURS!”

218. Migrants Rights Network, “Open Letter: Full Immigration Status for All”

219. Scott Ross, Canadian Federation of Agriculture, remote interview, 19 January 2021.

220. Santiago Escobar, United Food and Commercial Workers (UFCW) union, remote interview, 18 February 2021.

221. Dory Jade, Canadian Association of Professional Immigration Consultants, 16 December 2020.

222. Susan Yaeger, Maple Leaf Foods, remote interview, 17 February 2021.

on Human Resources, Skills and Social Development recommended that IRCC “review the current pathways to permanent residency for all temporary foreign workers, with a view to facilitating access to permanent residency for migrant workers who have integrated into Canadian society and are filling a permanent labour market need” and “allocate adequate resources to allow for the timely processing of permanent residency applications for those migrant workers that are hired under the Temporary Foreign Worker Program.”<sup>223</sup> In 2019, the Government of Canada introduced pilot projects for caregivers and select agrifood and agricultural workers which included built-in pathways to permanent residence.<sup>224</sup> The UFCW agricultural workers’

union welcomed the agri-food pilot, which will accept approximately 8000 applications over three years, as “an important step in the right direction”, in particular the mandated involvement of unions in the programme.<sup>225</sup> In 2021, the Minister of Immigration, Refugees and Citizenship announced a temporary pathway to permanent residence for over 90,000 essential workers, including migrant workers in low-wage occupations, and international graduates. Applicants will be able to include their family members in their applications regardless of whether the dependents are in Canada or abroad.<sup>226</sup> A key question will be how accessible these new pathways are in practice to migrant workers in low-wage occupations.

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223. “Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities”, (September 2016). <https://www.ourcommons.ca/Content/Committee/421/HUMA/Reports/RP8374415/humarp04/humarp04-e.pdf>

224. “Caregivers will now have access to new pathways to permanent residence”, *Government of Canada*, (23 February 2019); “Agri-Food Pilot begins accepting applications May 15”, *Government of Canada*, (15 May 2020).

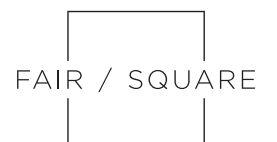
225. “Food workers’ union welcomes Canadian Agri-food Pilot”, *UFCW Canada*, (12 July 2019).

226. Immigration, Refugees and Citizenship Canada, “Re: Fairsquare findings on fair recruitment of migrant workers”, response provided by IRCC to FairSquare on file with FairSquare, (13 May 2021).

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