THE FIVE CORRIDORS PROJECT - CORRIDOR 5

Mexico to Canada:

Fair recruitment in review

JULY 2021





ADOLET THE DOCUMENT		
ABOUT THIS DOCUMENT The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify you measures that governments can take to ensure that		
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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Assessment against the Five Corridors indicators:

8. Information provided to workers

8.1	Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government conduct	
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8. Information provided to workers

"The sum of provincial regulatory approaches to international labour recruitment and employment is an intricate patchwork: uneven in protections and characterized by variance in scope, content, and sanctions. And this patchwork is further complicated by the way in which it irregularly layers with federal matters of immigration, including its laws and programs. From any perspective, be it from the view of a migrant worker, an employer, a recruiter, or a government, these laws are challenging to grasp at once." 2020 REPORT BY IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA (IRCC).

Summary

Mexican authorities provide little guidance to workers on the recruitment process for work abroad when conducted by private recruiters. Government officials acknowledged to us that they undertake few outreach and information initiatives on the issue, and attributed this to a lack of resources. Workers told us that their key sources of information about migration were their personal networks, social media, and the local offices of the National Employment Service (SNE). Mexico devotes greater effort on providing guidance to workers on how to enrol in government migration programmes than on how to ensure their recruitment by private operators does not leave them vulnerable to abuse. Workers departing Mexico through government programmes - the SAWP or the LMM - receive pre-departure training. However, stakeholders, including workers, have expressed concerns that the training is not as thorough as it needs to be, and that as a result workers can leave Mexico with limited insight into their rights under Canadian law.

There is an abundance of information about labour rights, including for migrant workers, at both the federal and provincial levels in Canada. Information is available, for example, on all employers that receive positive LMIAs, giving them authorization to hire migrant workers. Nevertheless, given the division of federal and provincial areas of responsibility, it is very difficult for migrant workers,

or indeed experts, to navigate and keep up to date with all the policies related to immigration, worker protections, and labour recruitment under the respective jurisdictions of the federal government and the 13 provinces and territories. Mexican migrant workers we spoke to said that they do not generally look for information on Canadian government websites, and that they rely instead on social media. The recently-established Migrant Worker Support Network (MWSN), a multi-stakeholder initiative being piloted in British Columbia, organizes quarterly face-to-face meetings involving migrant workers, federal and provincial officials, worker advocacy groups and unions, consulates, employers and recruiters, and also coordinates the provision of information to migrant workers at airports on arrival. The MWSN, which the federal government recently announced that it will expand into other provinces, is the best example of good practice in Canada in relation to the provision of information to migrant workers. A 2017 House of Commons committee review on trafficking made better provision of information to migrant workers a key recommendation and suggested that by doing so, Canada could avoid having to reform its closed, "employer-specific" work permit system. However, unions, civil society organisations and academic experts told us they feel such initiatives can only have limited impact without wider structural changes in relation to workers' protections under labour legislation, their rights to unionisation and the employer-specific work permit.

Recommendations to the Mexican government:

- Provide more information to Mexican migrant workers and job seekers, through government websites, offices of the SNE, and other means,
- about licensed labour recruiters, the risks of fraud and fee charging in the recruitment process, and information on effective complaint mechanisms in Mexico and destination countries.
- Work with the Canadian government and with
 Mexican and Canadian civil society organizations
 to provide additional information to SAWP workers

prior to their departure, particularly in relation to Canadian labour protections and Canadian federal and provincial complaint mechanisms.

 Develop collaborative initiatives with universities and civil society organizations so that transnational support networks are built to support migrants and their families.

Recommendations to Canada's federal and provincial governments

- Proactively push information to migrant workers on available federal and provincial worker protections and complaint mechanisms in multiple languages through Visa Application Centers and/or initiatives like SUCCESS under the Migrant Worker Support Network, noting that almost all workers interviewed told us that they were not aware of available Canadian protections; that they were not aware of information in Canadian government websites; and/or that they did not speak English or French.
- Proactively communicate relevant information to migrant workers regarding federal and provincial/territorial protections and complaints mechanisms. Workers provide the federal government with mobile numbers as part of the work permit application.
- Adjust standardised LMIA confirmation letters to proactively provide additional information to migrant workers in multiple languages on conditions placed on employers under the TFWP (for example clarifying that it is prohibited for workers to be required to pay for travel and recruitment costs, either upfront or through salary deductions), federal complaint mechanisms, and other information that is currently not included in LMIA letters that may be of assistance to workers.
- Expand the Migrant Worker Support Network pilot nationally, and seek to engage a wider range of

Embassies and Consulates of migrant workers, including from countries that do not have bilateral agreements with Canada.

8.1 Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government conduct outreach, including publishing "how-to" guides online, public service announcements on radio and/or television; or webinars etc.

Mexico

Relevant legislation, such as the Federal Labour Law and the Regulations for Worker Placement Agencies (RACT), is available online on government websites.877 The government also posts operational guidelines, 878 and forms for labour recruiters to obtain a license;879 requirements expected from licensees; and publishes an up-to-date list of licensed labour recruiters authorized to recruit workers for domestic and international positions.880 Mexico, however, does not appear to publish information on labour recruiters that have been penalized. Labour recruiters also told us that they experienced difficulties in obtaining information from government officials about the licensing process and related requirements when they registered, suggesting uneven awareness and training within the government about how and where to find relevant information.881

With regards to migration managed by the Mexican government through the Seasonal Agricultural Worker Program (SAWP) or the Labour Mobility Mechanism (LMM), the government provides basic information online and by phone through its Employment Portal. Information to promote the program is communicated by the Mexican government via the internet, 882 radio, 883 and social media. 884 The government generally directs job seekers to visit a local office of the National

^{877.} Ley de Migración, 25 May 2011; Ley Federal del Trabajo, 12 June 2015; Reglamento de Agencias de Colocación de Trabajadores, 21 May 2014

^{878.} Acuerdo por el que se dan a conocer los Lineamientos de operación y los formatos para la realización de los trámites administrativos a que se refiere el Reglamento de Agencias de Colocación de Trabajadores, 20 March 2015

^{879.} Government of Mexico, "Agencia de Colocación con Fines de Lucro"

^{880.} Government of Mexico, "Registro central de agencias de colocación de trabajadores con y sin fines de lucro", 30 April 2021

^{881.} Representative from labour recruiter, interview, Mexico City, February 2020

^{882.} Government of Mexico, "El Programa de Trabajadores Agrícolas Temporales México - Canadá (PTAT)", 7 May 2020; Government of Mexico, "Blinda STPS a jornaleros que viajan a Canadá", 22 March 2019

^{883.} Interview with Director, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020

^{884.} See for example: Government of Mexico "STPS Tweet", 20 June 2019; AIEDMX, "8/11/17 Reportaje: Trabajadores Agrícolas Mexicanos en Canadá", 8 November 2017

Employment Service (SNE) for additional information on recruitment and job opportunities available overseas.885 Migrant workers we interviewed told us that they referred to social media groups as a key source of information, as well as the local offices of the National Employment Service (SNE).886 A government official told us that the STPS undertakes outreach initiatives to municipal officials, so that they can in turn inform migrant workers about the dangers of fraudulent recruitment by private recruiters. The official also told us that the STPS shares information through social media platforms when the government is aware that certain labour recruiters and/or job positions are fraudulent. However, the official acknowledged that they undertake relatively few of these outreach and information initiatives as a result of resource limitations.887

Canada

At the federal level, legislation, regulations, and operational guidelines related to the hiring of migrant workers; requirements on employers and migrant workers; and the regulation of immigration consultants are available online.888 Federal websites also provide information on migrant worker rights; federal and provincial contact information in the event of abuse; the filing of complaints; a list of employers that have been found non-compliant; and lists of licensed immigration lawyers and immigration consultants. 889 Some of this information is available in several languages. The Immigration Consultants Regulatory Council of Canada (ICRCC) publishes information on the processes for obtaining a licence; lists of authorized immigration consultants; and data on penalties and enforcement activities against licensed immigration consultants.890 In recent years the federal government also has recently produced public service announcements available online and through social media platforms related

to migrant worker abuse, and on fraud and abuse in the recruitment and employment process.⁸⁹¹ The federal government also provides basic information on employers that receive, and are denied, positive LMIAs, giving them authorization to hire migrant workers.⁸⁹²

Legislation and regulations at provincial level related to employment standards, workplace safety, and labour recruitment is generally available online, along with information about processes for Canadian and migrant workers to file complaints. ⁸⁹³ In provinces that regulate the licensing of labour recruiters of migrant workers, provinces also make information available online on licensed labour recruiters. ⁸⁹⁴ However, with the exception of Ontario and Manitoba, most provinces and territories do not publish information online on employers and / or labour recruiters that have been penalized for non-compliance with the law. ⁸⁹⁵

A Canadian academic specializing in immigration policy told us that given the division of federal and provincial areas of responsibility, it is very difficult even for experts, let alone migrant workers to remain informed of all the policies and changes related to immigration, worker protections, and labour recruitment by the federal government and the 13 provinces and territories.896 Mexican migrant workers we spoke to said that they do not generally look for, or find information on Canadian government websites, and were not aware of Canadian information on their rights, protections, and contacts for Canadian government authorities - relying instead on social media channels.897 In a 2017 survey of 39 experts connected to the provision of legal information and services for migrant workers in British Columbia, only 2.6% of survey respondents said that they received 'some information' about employment laws and rights in Canada prior to migrating.898 A federal official told us that the Canadian government is increasingly moving to require all migrant workers to apply for work permits

^{885.} Government of Mexico, "Movilidad Laboral Externa"

^{886.} Remote interviews with migrant workers, several dates

^{887.} Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020

^{888.} Immigration and Refugee Protection Act (S.C. 2001, c. 27), (2001); Immigration and Refugee Protection Regulations (SOR/2002-227), (2002); Government of Canada, "Temporary Workers", 5 January 2021.

^{889.} Government of Canada, "Foreign Worker Rights" 5 May 2021; Government of Canada, "Vulnerable foreign workers who are victims of abuse", 7 August 2020; Government of Canada, "Reporting the abuse or misuse of temporary foreign workers", 30 March 2021; Government of Canada, "Employers who have been found non-compliant", 5 May 2021; Government of Canada, "Learn about representatives", 16 May 2019

^{890.} ICCRC, "Become an Immigration Professional"; ICCRC, "Find an Immigration Professional"; ICCRC, "Complaints and Professional Conduct"

^{891.} Government of Canada, "<u>Vulnerable foreign workers who are victims of abuse</u>", 7 August 2020; Government of Canada, "<u>Reporting the abuse or misuse of temporary foreign workers</u>", 30 March 2021; Government of Canada, "<u>File a complaint against a representative</u>", 24 March 2020

^{893.} See for example: Government of British Columbia, "Contact the Employment Standards Branch"; Government of British Columbia, "Make a Complaint"

^{894.} Government of British Columbia, "Licensed Foreign Worker Recruiters"

^{895.} Government of Ontario, "Prosecution and Conviction Statistics", April 2021; Government of Manitoba, "Employer Fines"

^{896.} Dr. Ethel Tungohan, York University, interview, Toronto, 5 March 2020

^{897.} Remote interviews with migrant workers, multiple dates

^{898.} Migrant Workers Centre BC, "Envisioning Justice for Migrant Workers: A Legal Needs Assessment", March 2018:13

online and noted that this might provide opportunities to remain in direct electronic contact with workers.899

8.2 Does the government carry out effective pre-departure orientations, including providing training regarding workers' rights and fair recruitment for potential migrants?

Mexico

The Mexican government provides pre-departure orientations for migrant workers recruited through the Seasonal Agricultural Worker Program, and the Labour Mobility Mechanism, but not for those recruited by private recruiters. Government officials told us that pre-departure sessions inform workers of their rights; provide workers with the tools to reach out to Consulates (for example, through a 24/7 emergency lines at the Mexican consulates); and encourage workers to report abuse to both the SRE through the Consulates in Canada and to the STPS through the workers annual end-ofseason report. 900 These sessions generally take place on the day of the worker's departure to Canada, and take approximately half a day.⁹⁰¹ A group of migrant workers who had just participated in one of these sessions in Mexico City said they did receive contact information for Mexican Consulates and informations related to their employment contract; but told us that they did not come out of the training feeling they understood the rights they should enjoy through the employment process, or how to reach out to Canadian authorities.902

One Mexican academic specialising in migrant worker recruitment to the US and Canada told us that over the years SAWP pre-departure sessions have become shorter, and include less information related to worker rights and protections in Canada.903

With regards to Mexican workers hired through private recruiters, Mexico's Federal Labour Law and the Regulation of Worker Placement Agencies (RACT) requires private recruiters to provide information to migrant workers on the working conditions of their employment overseas, including information on housing arrangements, Social Welfare, repatriation provisions, and contact information for Mexican Consulates and local authorities during the workers' employment overseas.904 Pre-departure training does not appear to be common among unlicensed private recruiters (who recruit the vast majority of Mexican migrant workers). However, some workers recruited by a licensed recruiter in Mexico told us that they took part in information sessions organized by the labour recruiter prior to their departure to the United States, which included information on their job offer and working conditions, their employment contract, and contact information in the event of problems during the worker's stay in the US.905

8.3 Does government encourage outreach to workers by employers, workers' organizations, compliant labour recruiters and civil society groups

Mexico

Recruiters and civil society organizations we spoke to said that such initiatives were rare. A STPS official acknowledged that they undertake relatively few outreach and information initiatives as a result of resource limitations. 906 In 2014 the government launched a radio and information campaign to educate migrant workers and job seekers about fraudulent recruitment, working with Centro de los Derechos del Migrante, ProDESC, INEDIM, Jornaleros SAFE, and Global Workers, encouraging workers to contact the STPS if they have questions about recruitment.907

A government official told us that the STPS and the SNE also undertake outreach efforts through social media when it is aware of specific unscrupulous labour recruiters that are making false job offers, and this information is also communicated through State governments.908

^{899.} Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020

^{900.} Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020; Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020

Dr. Aaraón Díaz Mendiburo, Universidad Nacional Autónoma de México, remote interview, 27 June 2020 902. Interview with migrant workers, 10 March 2020

^{903.} Dr. Aaraón Díaz Mendiburo, Universidad Nacional Autónoma de México, remote interview, 27 June 2020

^{904.} Ley Federal del Trabajo, Article 28-B, 12 June 2015

^{905.} Remote interview with migrant workers, 29 August 2020 and 31 August 2020

^{906.} Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020 907. Centro de los Derechos del Migrante, Inc., "ANUNCIO: SE LANZÓ UNA GRAN CAMPAÑA PARA PREVENIR EL FRAUDE EN EL RECLUTAMIENTO!"

Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020; Government of Chihuahua, "Alertan por fraudes de falsas agencias de colocación para trabajo en el extranjero", 24 November 2017

Canada

The most comprehensive federal government initiative to reach out to migrant workers and other stakeholders on issues related to the protection of migrant workers is the Migrant Worker Support Network (MWSN) being piloted in British Columbia. The MWSN organizes webinars and other outreach sessions for migrant workers on topics including employment standards protections, pathways to permanent residence, English lessons, health services and labour trafficking.909 The government says it aims to reach 80% of migrant workers in British Columbia. Key initiatives of the MWSN include organizing quarterly face-to-face meetings between migrant workers, federal officials, provincial officials from British Columbia, worker advocacy groups, embassies and consulates from countries of origin, employers and employer groups, labour unions, and other stakeholders to provide information sessions and discuss and solve issues related to the protection of migrant workers. 910 Other services being provided to migrant workers through the MWSN include reception services at the airport to provide information materials, employment standards information for British Columbia, and contacts for services available in Canada. 911 While providing reception services at airports, worker organizations under the MWSN are also establishing a process to collect workers' contact details, to provide them with updates on worker protection and other relevant information. 912 In its 2021 Budget, Canada announced that it will provide US\$41M in funding over 3 years to expand the MWSN model nationally, including to provide additional on-arrival information services to migrant workers.913

In the context of COVID-19, the federal government announced that it would provide US\$5M in funding for civil society organizations to conduct outreach to migrant workers to provide information on working and living conditions to minimize the spread of COVID.⁹¹⁴

Provincial governments undertake separate outreach activities with workers. For example the province of British Columbia holds monthly education seminars - including topics related to labour recruitment, employment standards, farm workers and farm labour contractors, and domestic workers - that can be attended in person or by phone by workers, employers, and/or labour recruiters. The province of Saskatchewan provides information sessions to migrant workers on the Foreign Worker Recruitment and Immigration Services Act (FWRISA) organized through a network of newcomer organizations.

In spite of the above initiatives, a number of Mexican migrant workers told us that they did not receive information on their labour rights in Canada, or on how to contact Canadian authorities in the event of a problem. ⁹¹⁷ It will be important to continue to assess the effectiveness of the recent federal and provincial outreach initiatives, particularly in the province of British Columbia. In addition, the federal government could also consider leveraging the use of Visa Application Centers (VACs), which interact with the large majority of migrant workers, to provide additional information related to worker protections in Canada.

8.4 Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters?

Mexico

Mexico's Employment Portal directs job seekers to contact the STPS by phone or to visit local offices of the National Employment Service (SNE) to find out about available job opportunities overseas where foreign employers are recruiting with the assistance of the Mexican government. 918 The Mexican government

^{909.} Migrant Worker Hub, "Migrant Hub Resources", 30 March 2021

^{910.} Mosaic BC, "Migrant Workers Forum"

^{911.} Interview with Alejandra Paramo, AMSSA, Vancouver, 11 March 2020

^{912.} Presentation by Mustafa Delsoz, SUCCESS, "AMSSA Metro Vancouver & Fraser Valley Meeting Panel Discussion – Local Resources, Community Support and Outreach", 30 November 2020

^{913.} Government of Canada, "Budget 2021 A Recovery Plan for Jobs, Growth, and Resilience", (19 April 2021):219

^{914. &}quot;Federal government to invest \$59M to help migrant farm workers", CBC News, (31 July 2020)

^{915.} Government of BC, "Education Seminars"

^{916.} Canadian Council for Refugees, "Evaluating Migrant Worker Rights in Canada", 2018

^{917.} Remote interviews with migrant workers, multiple dates

^{918.} Government of Mexico, "Ofertas de empleo en el extranjero"

also posts information on available job opportunities overseas under the Seasonal Agricultural Worker Program and the Labour Mobility Mechanism through social media. Migrant workers we spoke to reported getting information on available job opportunities and processes from the local offices of the SNE.⁹¹⁹

For migration to the US under the H2 visa programme, the Mexican government does not play a role in the recruitment of migrant workers, but US Consulates in Mexico provide information to help Mexican migrant workers and job seekers verify the genuineness of job offers in the US via e-mail or by phone. P20 A Mexican labour recruiter told us that they use this information to check the genuineness of job offers by US employers.

Canada

Both federal and provincial/territorial governments make labour market information publicly available. Statistics Canada provides information on broad and sector-specific labour market information in Canada at the national and provincial level, 922 while for prospective migrant workers, the main labour market tool for Canada is the Job Bank, which allows employers and workers to post and search for available jobs. 923 The Job Bank also provides workers with wage comparisons and labour market trends for occupations across Canada with the aim of assisting in employment and career decisions. 924

The Government of Canada also makes information available on all employers that receive a positive Labour Market Impact Assessment (LMIA) authorizing the employer to hire migrant workers, including the employer's name, address, occupations requested, and number of positions approved. P25 Although employer information is provided with a delay of approximately 4 months, it provides a relatively up-to-date source of information for job seekers and labour recruiters on employers that are active in the hiring of migrant workers.

8.5 Does the government collaborate with the ILO and the most representative employers' and workers' organizations to provide education and training and/or conduct awareness-raising campaigns?

Mexico

Mexico collaborates with the International Labour Organization (ILO) and the International Organization for Migration (IOM) on migration and recruitment initiatives both as a country of origin and as a country of destination. For example, the ILO has provided training on fair recruitment and labour migration to municipal offices that provide services for Mexican migrant workers destined to the United States. Mexico has "expressed its interest and commitment to align its operations with the International Organization for Migration's International Recruitment Integrity System (IRIS), to improve the recruitment system in Mexico."926

In relation to Mexico's role as a country of destination, the ILO and Mexico's Agricultural Association for Social Responsibility (AHIFORES) signed an MOU in 2018 to, amongst other things, support the adoption of the ILO's General Principles and Guidelines on Fair Recruitment amongst AHIFORES' members, which represent approximately 80% of agricultural exporters in Mexico. 927 Mexico also launched a campaign with the IOM in 2020 called "Employers of the World: Leaders of the Future" to "better inform [Mexican] employers about procedures for hiring [Central American and other] migrant workers, as well as to combat stereotypes about migrant workers". 928

Canada

Canada cooperates with both the ILO and the IOM both as a country of destination and on international labour and migration initiatives. The ILO partnership with

^{919.} Remote interviews with migrant workers, multiple dates

^{920.} Government of the United States of America, "H-2 Visas"

^{921.} Representative of labour recruiter, remote interview, 18 December 2020

^{922.} Government of Canada, "<u>Labour Force Survey, March 2020</u>", March 2020

^{923.} Government of Canada, "Job Bank", 8 April 2021

^{924.} Government of Canada, "<u>Trend Analysis - Explore the market</u>", 23 March 2021

^{925.} Government of Canada, "Temporary Foreign Worker Program (TFWP): Positive Labour Market Impact Assessment (LMIA) Employers List", 18 March 2021

 $^{926. \}quad International \ Organization \ for \ Migration, \ "\underline{Mexico \ Moves \ Towards \ Ethical \ Recruitment \ of \ Migrant \ Workers", 17 \ May \ 2019}$

^{927.} ILO, "Fair Recruitment in the agricultural sector in Mexico", 13 March 2019

^{928.} IOM, "IOM launches new campaign on the integration of migrant workers with the Secretariat of Labor in Mexico", 8 September 2020

Global Affairs Canada for example aims to "maximise the benefits and minimize the risks of labour migration."929

The IOM and the Canadian government have since 1998 jointly run Canadian Orientation Abroad (COA), a predeparture programme for refugees and immigrants who are destined to travel to Canada. 200,000 people have gone through this programme, which includes "a oneday pre-departure orientation session on labour market integration, and as of November 2015, a personalized pre-arrival planning session as well as referrals to employment and settlement partners in Canada."930

The COA programme has been implemented in Mexico; however the programme is targeted to Mexican nationals who are immigrating permanently to Canada, and does not relate specifically to fair recruitment or labour rights.

The IOM started its first IRIS pilot project on ethical labour recruitment between 2 Canadian provinces (Alberta and Saskatchewan) and the Philippines in 2018. In addition to governments, the pilot project engages employers, civil society, and select licensed labour recruiters with the objective of creating and sustaining the demand for ethical recruitment services.931

^{929.} ILO, "Canada ILO Cooperation", August 2019

^{930.} IOM, "Building Better Futures: Canada and IOM Partnerships in Action", (2015):41
931. IOM, "IRIS Philippines to Canada pilot project"

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