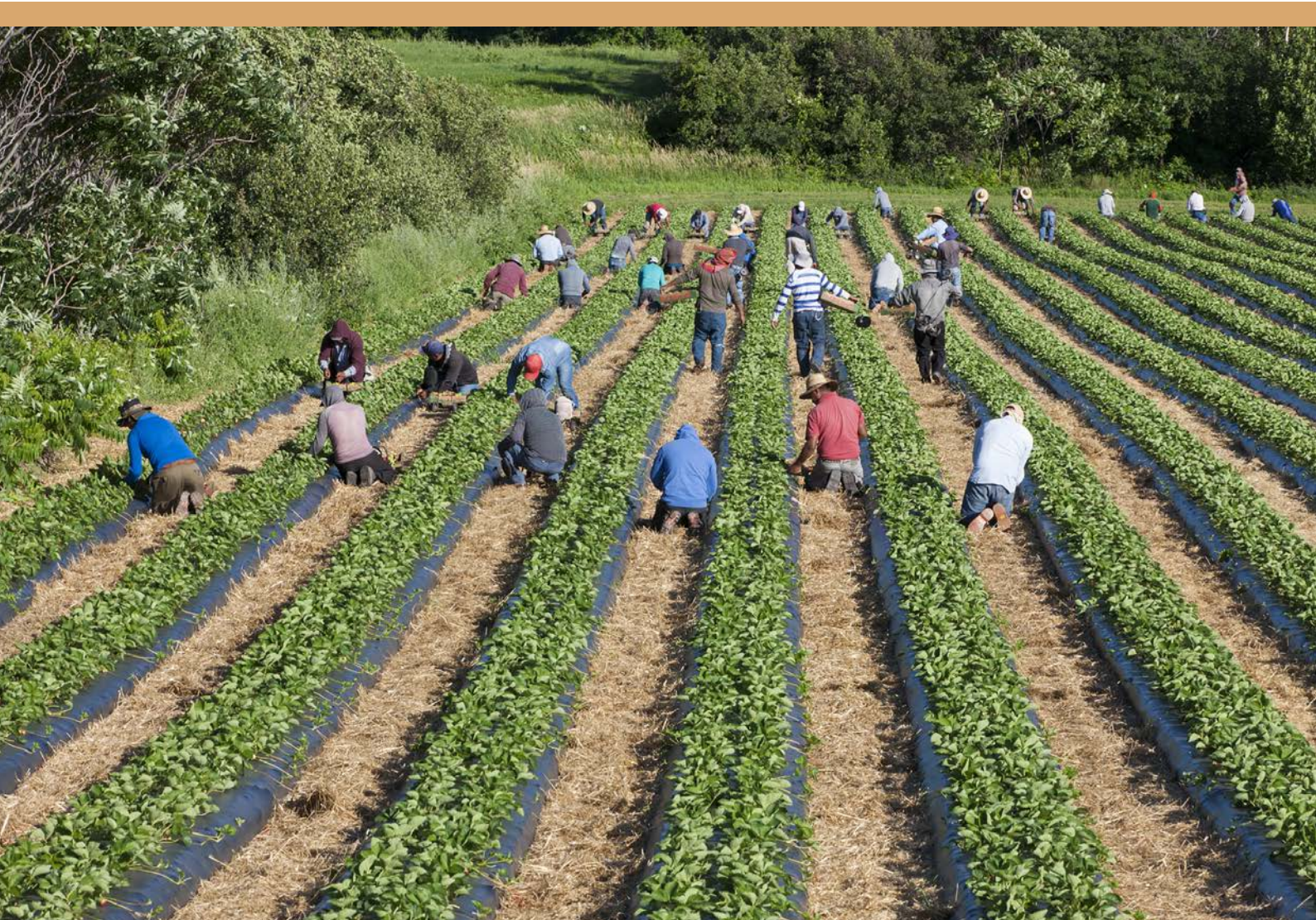


THE FIVE CORRIDORS PROJECT - **CORRIDOR 5**

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:

9. Freedom of association

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Temporary agricultural workers from Ontario, about to return to their accommodation from a shopping trip, 2013. © Peter Haden / Flickr

9. Freedom of association

“The absence of any machinery [in Ontario] for the promotion of collective bargaining of agricultural workers constitutes an impediment to one of the principal objectives of the guarantee of freedom of association: the forming of independent organizations capable of concluding collective agreements.” ILO COMMITTEE OF EXPERTS, 2010.

Summary

Mexico’s laws protect the right to freedom of association, but the development of active, independent unions has been hampered by the tripartite Conciliation and Arbitration Boards (CABs), which effectively act as gatekeepers for union strike action. CABs have long been accused of facilitating undemocratic workplace control, including by installing and defending employer-aligned “protection unions”, which are estimated to represent about 90% of unionized workers in the country. Such unions conclude collective agreements with little genuine worker input, in some cases before factories have even been opened. Governments have tolerated such schemes, which have the support of businesses, because they keep wages “competitive”. In 2019,

the government introduced major labour reforms aimed at addressing these issues, ahead of the 2020 ratification of the Canada-US-Mexico Agreement (CUSMA). It will be important to monitor the implementation of these changes, and any impact that they have on migrant workers. In this context, some workers resort to striking against their union’s will. Independent labour activists face a hostile environment, with threats and violence not uncommon. The current administration has set out labour reforms it says would improve democratic participation in unions and collective bargaining, but given the context, it is not surprising that until now Mexican trade unions have not been active on the issue of Mexican migrant worker rights in the recruitment cycle. The Mexican authorities also have a track record of suppressing worker organization among migrants in Canada. In the early 2010s a court

in British Columbia found that the Mexican consulate in Vancouver “improperly interfered” in support of a Canadian company’s efforts to stop unionization. In recent years the government has however sought to work more closely with the UFCW union representing agricultural workers, cooperating over efforts to increase the proportion of women in the SAWP and to improve protections for migrant workers, including during the COVID pandemic.

Canada has active trade unions, many of which have sought to improve their representation of migrant workers since the increase of temporary workers in the 2000s and 2010s - with several positive initiatives by unions resulting in better outcomes for migrant workers, through new legislation or joint programmes with state agencies. For provinces and industry sectors where workers are allowed to unionize, migrant workers enter Canada covered by the provisions of the collective agreements negotiated by the unions. Unions in industry sectors like meatpacking and construction have also worked with employers to implement changes into their collective agreements, and have worked with governments to address areas of interest to migrant

workers like facilitating the transition to permanent residence, and the provision of language courses. However, the ability of migrant workers in Canada to unionize depends on the province and sector in which they are working. Importantly for the Mexico-Canada corridor, agricultural workers in Ontario and Alberta are entirely prevented from unionizing while other provinces heavily limit the right to freedom of association. Canada was censured by an ILO expert committee for violating the right of migrant workers in Ontario to freedom of association, but a legal challenge to the prohibition brought by the UFCW, which represents Canada’s agricultural workers, was defeated in Canada’s Supreme Court in 2011. The ILO has maintained its position on this legal block, which Canadian unions say is a critical factor in undermining the protection of agricultural workers, alongside the closed work permit. At a policy level, the SAWP’s annual review meeting between the two governments and Canadian employers, has no mechanism for direct input by migrant workers, worker organizations, or labour unions. Employers argue that since agricultural workers are not unionised, it is not appropriate for Canadian unions to represent workers.

Recommendations to the Mexican and Canadian governments

- Allow worker representation and participation at SAWP annual meetings, in line with ILO guidance on bilateral agreements.

Recommendations to Canada’s provinces and territories:

- Remove restrictions on freedom of association that prevent migrant or other workers from exercising their legitimate right to form or join trade unions.

9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain?

Mexico

Under Mexico’s Constitution, the “right to peacefully associate or assemble for any lawful purpose cannot be restricted”.⁹³² The Federal Labour Law further states that “workers and employers have the right to form unions, without the need for prior authorization” and confirms that any ‘undue interference will be sanctioned in the terms provided by the Law’.⁹³³

Under the Federal Labour Law, “unions must file for registration with the appropriate Conciliation and Arbitration Board (CAB) or with the Ministry of Labour

932. [Constitución Política de los Estados Unidos Mexicanos](#), Article 9, 5 February 1917

933. [Ley Federal del Trabajo](#), Article 357, 12 June 2015

and Social Welfare (STPS)”.⁹³⁴ The CABs operate under a tripartite system and have representatives from government, workers and employers. The Mexican Constitution states that the “laws shall recognize strikes and lockouts as rights of workers and employers’ when ‘their purpose is to harmonise labour rights and the purposes of capital’, while they will be considered illegal “only when the majority of strikers carry out violent acts against persons or property”.⁹³⁵ However under the labour law, the “CAB and the corresponding civil authorities must enforce the right to strike, giving workers the necessary guarantees and the support they require to suspend work”.⁹³⁶ A union “may call for a strike or bargain collectively” but as the US State department human rights report points out, it must “file a ‘notice to strike’ with the appropriate CAB, which may find that the strike is ‘nonexistent’ or, in other words, it may not proceed legally”.⁹³⁷

Critics of the effectiveness of Mexican unions have “raised concerns that the [CABs do] not adequately provide for inclusive worker representation and often perpetuate a bias against independent unions, in part due to the prevalence of representatives from ‘protection’ unions on the boards”. The Solidarity Center notes that, “CABs are comprised of representatives from protection unions, employers and government, and actively facilitate undemocratic workplace control, for example, by delaying elections for workers seeking to oust protection unions.”⁹³⁸ Protection unions (also dubbed “ghost”, “faux” or “yellow” unions) are employer-aligned unions which tend to pursue the interests of the company rather than workers and may actively undermine worker rights. A Mexican union representative told us that only ten per cent of workers in Mexico have a union that really represents them, and that corruption within Mexican unions is a big challenge.⁹³⁹ In its 2018 human rights report, the US State Department found that protection unions “circumvent meaningful negotiations and preclude labor disputes”.⁹⁴⁰

In 2019, Mexico passed a major labour reform, attempting to address these longstanding issues regarding collective bargaining and CABs.⁹⁴¹ The introduction of the legislative changes related to freedom of association were a specific commitment under the Canada-US-Mexico Agreement (CUSMA), signed in 2020.⁹⁴² At the end of 2020, the Independent Mexico Labor Expert Board commended the Mexican government for continuing its reform efforts despite the pandemic, but noted “a number of serious concerns” with implementation of the law.⁹⁴³

Canada

When an employer requests permission from the federal government to hire a migrant worker, the employer must provide information on whether the requested position is part of a union, and must offer the migrant worker the same wages and benefits as outlined in the collective agreement.⁹⁴⁴ The *Immigration and Refugee Protection Regulations (IRPR)* also require employers to “comply with the federal and provincial laws that regulate employment, and the recruiting of employees, in the province in which the foreign national works.”⁹⁴⁵ In provinces and occupations where unionization is permitted, migrant workers are legally able to join unions, bargain collectively, and strike. Most collective agreements tend to include termination provisions, and grievance and arbitration processes. The ability for a union to challenge a termination and associated repatriation is an advantage over non-unionized workplaces where the only way for migrant workers to challenge wrongful dismissals is through provincial labour tribunals or in Court - as noted in section 7, migrant workers may struggle to pursue these mechanisms in practice, given the risk of repatriation by the employer to their countries of origin.⁹⁴⁶ The Regulations also provide that migrant workers’ work permits ‘cannot be revoked despite the occurrence

934. Government of the United States, “Mexico 2018 Human Rights Report”, (2018): 31

935. *Constitución Política de los Estados Unidos Mexicanos*, Article 123 A XVIII, 5 February 1917

936. *Ley Federal del Trabajo*, Article 449, 12 June 2015

937. Government of the United States, “Mexico 2018 Human Rights Report”, (2018): 31

938. Testimony of Gladys Cisnero, Solidarity Center, “Presented to the Committee of Ways and Means”, 25 June 2019

939. Victor Enrique Fabela, Union of Telephone Operators of the Mexican Republic (STRM), interview, Mexico City, February and March 2020

940. Government of the United States, “Mexico 2018 Human Rights Report”, (2018): 31

941. AFL-CIO, “Mexico’s Labor Reform: Opportunities and Challenges for an Improved NAFTA”, 25 June 2019

942. Government of Canada, “Labour Chapter Summary”, 20 January 2020; Government of Canada, “Canada-United States-Mexico Agreement (CUSMA) - Chapter 23 - Labor”, Annex 23-A, 31 July 2020

943. Panel Finds ‘Serious Concerns’ With Mexican Labor Reforms, *New York Times*, 15 December 2020

944. Government of Canada, “Program requirements for low-wage positions”, 29 April 2021

945. *Immigration and Refugee Protection Regulations (SOR/2002-227)*, regulation 209.2(1)(a)(ii), 2002

946. Robert Russo, “Collective Struggles: A Comparative Analysis of Unionizing Temporary Foreign Farm Workers in the United States and Canada”, *Houston Journal of International Law*, 2018:32

of a labour dispute at the workplace.⁹⁴⁷ There are positive examples from provinces and industries where unionization is permitted: for example, migrant workers joining the UFCW and being covered under collective agreements with employers in the meatpacking sector (e.g., Maple Leaf Foods), and being part of negotiations that secured relevant benefits to migrant workers, including access to language courses and support from employers for transitioning to permanent residence.⁹⁴⁸ In 2020 the Canadian Labour Congress and IRCC announced a cooperation programme to provide a pathway towards permanent residence for 500 undocumented workers in the construction industry in the Greater Toronto Area.⁹⁴⁹

Most provincial labour relations legislation allows Canadian and migrant workers the right to join unions and bargain collectively. However there are significant limitations in some provinces, most notably applying to: agricultural workers in Ontario, Quebec, and Alberta; domestic workers in Ontario; childcare workers in Quebec; nurse practitioners in Alberta; select occupations in the livestock industry in Alberta; and select occupations in the public service in British Columbia.⁹⁵⁰ Employers have played an important role in arguing for the maintenance of limitations in the legislation for the ability of agricultural workers to unionize.⁹⁵¹

The Canadian Foundation for Labour Rights argues that since 1982, at both federal and provincial level, there has been a “serious erosion of [the] right to organize into a union and engage in full and free collective bargaining”, citing 230 pieces of restrictive legislation in this regard.⁹⁵² In 2020 Canada improved in the ITUC’s Global Rights Index from a rating of 3 (regular violations) to 2 (repeated violations).⁹⁵³ In 2019 the global union had flagged the forcing back to work in 2018 of 50,000 postal workers, depriving them of their right to strike,

following the adoption of a special law by the federal government.⁹⁵⁴

In Ontario, the prohibition in the *Agricultural Employees Protection Act (AEPA)* on the right of agriculture workers to unionize and bargain collectively was challenged by the United Food and Commercial Workers (UFCW) in several court cases in Canada, as well as in a submission to the International Labour Organization. Based on the UFCW’s submission, in 2010, the ILO Committee of Experts found that the Agricultural Employees Protection Act, 2002 (AEPA) violated ILO Conventions 87 and 98.⁹⁵⁵ However, in a significant ruling in 2011, the Supreme Court of Canada ruled in Ontario (*Attorney General v. Fraser*) that “the Ontario legislature is not required to provide a particular form of collective bargaining rights to agricultural workers, in order to secure the effective exercise of their associational rights.”⁹⁵⁶ The AEPA allows “employee associations” in the agricultural sector to make representations to employers regarding their terms and conditions.⁹⁵⁷ In response to the Supreme Court’s decision, the ILO Committee noted that “it continues to consider that the absence of any machinery for the promotion of collective bargaining of agricultural workers constitutes an impediment to one of the principal objectives of the guarantee of freedom of association: the forming of independent organizations capable of concluding collective agreements.”⁹⁵⁸ Ultimately, foreign agricultural workers in Ontario - the country’s biggest province, home to 25,611 foreign agricultural workers or almost half of all foreign agricultural workers in Canada - remain unable to unionize.⁹⁵⁹ The country’s main agricultural union notes that, “no group of agricultural workers in Ontario has succeeded in achieving a collective agreement under the AEPA regime”, and has as a result called for legislative change in Ontario to address this legal gap which it has said “is practically not workable and provides workers with virtually no protection”.⁹⁶⁰

947. Government of Canada, “Foreign workers: Assessing in the event of a strike situation”, 4 June 2019

948. UFCW, “Local 832 builds bonds with migrant workers”, 26 April 2011; UFCW, “UFCW Canada Local 832 negotiates landmark protections for migrant worker union members”, 7 January 2009.

949. CLC, “Permanent Residence for “Out-of-Status” Construction Workers in the GTA”, 3 January 2020.

950. Canadian Foundation for Labour Rights, “Restrictive Labour Laws”

951. Robert Russo, “Collective Struggles: A Comparative Analysis of Unionizing Temporary Foreign Farm Workers in the United States and Canada”, *Houston Journal of International Law*, 2018:34

952. Canadian Foundation for Labour Rights, “Restrictive Labour Laws”

953. ITUC, “2020 ITUC Global Rights Index”, (2020):10

954. ITUC, “2019 ITUC Global Rights Index”, (2019):42

955. National Union of Public and General Employees, “Canada and Ontario violating farm workers’ rights”, 19 November 2010

956. National Union of Public and General Employees, “Supreme Court Decision on Rights of Agricultural Workers Unworkable” 29 April 2011

957. *Agricultural Employees Protection Act, 2002, S.O. 2002 c. 16*, article 5, 2002

958. ILO, “Interim Report - Report No 358, November 2010 Case No 2704 (Canada) - Complaint date: 23-MAR-09 - Closed”, November 2010

959. Government of Canada, “COVID-19 Disruptions and Agriculture: Temporary Foreign Workers”, 17 April 2020

960. UFCW, “The Struggle Continues” 29 April 2011; UFCW, “THE STATUS OF MIGRANT FARM WORKERS IN CANADA, 2020”, (2020):38

In provinces such as Quebec and New Brunswick where unionization in agriculture is legally possible, there are stringent regulations requiring the agreement of a minimum number of continuously employed workers in a workplace, before unions can be created. More specifically, “[in Quebec,] agricultural workers are able to bargain collectively only if the workplace employs at least three workers ordinarily and continuously throughout the year, while in New Brunswick with less than five employees are exempt from compulsory collective bargaining”.⁹⁶¹ The seasonal nature of agriculture makes it very difficult for such requirements to be met, limiting the opportunity for migrant workers to take this up.⁹⁶² Alberta’s Bill 26 of 2019, which the provincial government said would “restore balance, fairness and common sense regulations”, removed the right of farming and ranching workers to unionise by no longer classifying them as “employees”.⁹⁶³

With regards to the right to strike, the Supreme Court of Canada ruled in 2015 in *Saskatchewan Federation of Labour vs. Saskatchewan* that restrictions on the right to strike violate the freedom of association rights in section 2(d) of the *Canadian Charter of Rights and Freedoms*.⁹⁶⁴ However, there are still cases of provincial legislation that limit the right to strike for workers deemed to be essential with varying views from the affected workers.⁹⁶⁵

Canada-US-Mexico agreement (CUSMA)

Under the CUSMA labour chapter, Canada, the US, and Mexico committed to maintain their statutes and regulations consistent with the ILO Declaration of Rights at Work, including on freedom of association and the right to strike.⁹⁶⁶ The Agreement allows for “the rapid deployment of a three-member panel of labour experts to a facility”, which could result in “imposing penalties, including suspending benefits or blocking shipments of goods”.⁹⁶⁷

9.2 Can trade unions operate effectively in practice, are their activities free from disruption and harassment?

Mexico

While Mexican laws provide for workers’ participation in labour unions, in practice worker organization is undermined by structural barriers and security factors. Mexico is rated in the second worst tier of the ITUC’s Global Rights Index “systematic violations of rights”, a slight improvement on 2018 when it was categorised as a country where there was “no guarantee of rights”.⁹⁶⁸ This has an effect on migrant workers travelling to the US and Canada.

At a structural level, as noted in 9.1, the existence of “protection” unions under the Conciliation and Arbitration Boards (CABs) ‘circumvent[s] meaningful negotiations and preclude labor disputes’ in practice.⁹⁶⁹ A Mexican trade union representative told us that the vast majority of collective agreements filed with the Mexican labour department are fraudulent “protection contracts” or “pretend contracts” meant only to block real unions from forming.⁹⁷⁰ These are sometimes dubbed “yellow unions”.⁹⁷¹ In this context, some workers resort to striking against their union’s will: in 2019, US media reported that workers in Mexico’s US border region, ‘angry with their employers for paying them poverty wages, but [...] also upset with their labor unions’, went on strike to demand better wages.⁹⁷² The global trade union Industrial and the ITUC have taken up the issue of protection contracts and CABs with the ILO Committee of Experts, which has registered its “deep concern” and stressed the availability of ILO technical expertise to address these “problems”.⁹⁷³

Following 2019 reforms on trade unions - put in place ahead of the 2020 ratification of the Canada-US-Mexico

961. Bradley Walchuk, “ONTARIO’S AGRICULTURAL WORKERS AND COLLECTIVE BARGAINING: A HISTORY OF STRUGGLE”, *Just Labour: A Canadian Journal of Work and Society*, (2019):158

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

963. Government of Alberta, “Farm freedom and safety engagement”, 2019

964. *Saskatchewan Federation of Labour v. Saskatchewan*, Supreme Court of Canada, 30 January 2015

965. See Eric Tucker, “Regulating Strikes in Essential Services - Canada”, *Articles & Book Chapters. 2706.*, (2019):105

966. Government of Canada, “Canada-United States-Mexico Agreement (CUSMA) - Chapter 23 - Labor”, Article 23.3 and Annex 23-A, (31 July 2021).

967. Government of Canada, “Labour Chapter Summary”, (20 January 2020).

968. ITUC, “2020 ITUC Global Rights Index”, (2020)

969. Government of the United States, “Mexico 2018 Human Rights Report”, (2018): 31

970. Victor Enrique Fabela, Union of Telephone Operators of the Mexican Republic (STRM), interview, Mexico City, February and March 2020

971. ITUC, “2018 ITUC Global Rights Index”, (2018):19

972. Alexia Fernandez Campbell, “Thousands of workers at US factories in Mexico are striking for higher wages”, *Vox*, 28 March 2019

973. ILO, “Observation (CEACR) - adopted 2018, published 108th ILC session (2019) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Mexico (Ratification: 1950)”, (2019)

Agreement (CUSMA) - the government reported that 4,572 labour unions (33%) out of a total of 13,657 currently active labour unions had revised/updated their statutes, with 690 collective agreements being legitimized.⁹⁷⁴ The process of legitimization requires that workers approve the content of their collective agreements through free, personal, direct, and secret votes.⁹⁷⁵ Civil society representatives were cautiously positive about the development. The impact of such changes for migrant workers is yet to be seen.

Anti-union violence and intimidation is a serious concern in Mexico. One Canadian union that works with Mexican and US unions on union rights noted in 2016 that “workers who try to set up independent trade unions are often subjected to intimidation, threats, violence, firing, and blacklisting.”⁹⁷⁶ Union representatives told us that there have been many cases of unexplained deaths of union organisers and workers associated with unions.⁹⁷⁷ The ITUC, Industriall and the UNT (National Union of Workers, representing independent unions) submitted a series of complaints to the ILO regarding violence, including killings, against individuals affiliated with trade unions between 2015 and 2018.⁹⁷⁸ In 2019 the leader of Mexico’s national chemical and petrochemical union was shot dead by unknown gunmen.⁹⁷⁹

These issues have extended to unions working on migrant worker rights. In 2007, Santiago Rafael Cruz, an organiser from a US union who worked in the union’s office in Mexico was killed, allegedly for ‘trying to stamp out the practice of guestworkers paying fees to Mexican recruiters’.⁹⁸⁰ The Farm Labor Organizing Committee (FLOC) said at the time that “the motivation was that the union contract was adversely affecting the labor contractors, the recruiters... They have been unhappy with the union taking away their gold mine.”⁹⁸¹

In this context, experts agree that “no Mexican trade unions have sought to address the recruitment or

working conditions of Mexican migrants.”⁹⁸² Instead, civil society organisations have sought to address this gap. In 2013, under the umbrella of the ProDESC CSO, a group of 40 Mexican migrant workers in the US formed the Coalición de Trabajadoras y Trabajadores Temporales de Sinaloa (Sinaloa Temporary Workers’ Coalition) “to defend the rights of all temporary workers during the process of recruitment and employment”.⁹⁸³ The coalition achieved recognition from STPS, a significant achievement as it had previously denied that H-2 workers were entitled to its protection on the basis that the U.S. government was responsible for addressing issues that arose in the migration process. However, workers associated with ProDESC “have been blacklisted by employers and recruiters for their activism” which has led others to “become afraid to step forward”.⁹⁸⁴

In Canada, the Mexican government has previously engaged in efforts to suppress workers’ efforts to unionize. In 2011 the UFCW union filed a complaint against the government with the British Columbia Labour Review Board, accusing the Vancouver Mexican consulate of waging “a concerted battle to rid BC SAWP employers of any and all involvement from trade unions in general, and the [UFCW] in particular.”⁹⁸⁵ The Labour Relations Board confirmed in 2014 that the Mexican authorities had a policy to “identify SAWP workers who were Union supporters or who had even contacted the Union and to block them from returning to Canada”.⁹⁸⁶ The court found a “a clear case of improper interference under the Code” and in the case of one man who was named by the Mexican authorities as a union supporter, noted that “when viewed objectively, [this] would have a dramatic chilling effect on the Union’s members”.⁹⁸⁷ An appeal by Mexico was dismissed in 2015.⁹⁸⁸

Relations between the Mexican government and Canadian unions appear to have improved in recent years, and examples of cooperation include the signing of migrant workers’ protection pacts between Mexico and

974. Government of Mexico, “[Reforma Laboral](#)”, 13 April 2021

975. Government of Mexico, “[Legitimación de Contratos Colectivos](#)”, 13 April 2021

976. PSAC Social Justice Fund, “[Violations of Labour Rights in Mexico](#)”, 4 February 2016

977. Victor Enrique Fabela, Union of Telephone Operators of the Mexican Republic (STRM), interview, Mexico City, February and March 2020

978. ILO, “[Observation \(CEACR\) - adopted 2018, published 108th ILC session \(2019\) Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\) - Mexico \(Ratification: 1950\)](#)”, (2019)

979. Dave Graham and Rosalba O’Brien, “[Mexican union leader shot dead in troubled oil refining city](#)”, *Reuters*, 12 May 2019

980. Daniel Costa and Philip Martin, “[Temporary labor migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration](#)”, *Economic Policy Institute*, (1 August 2018):44

981. Dan La Botz, “[Farm Labor Organizer Is Murdered in Mexico](#)”, *Labor Notes*, 29 April 2007

982. Jennifer Gordon, “[Roles for Workers and Unions in Regulating Labor Recruitment in Mexico](#)”, *Solidarity Center*, (January 2015): 22

983. ProDESC, “[COALICIÓN DE TRABAJADORAS Y TRABAJADORES MIGRANTES TEMPORALES SINALOENSES](#)”

984. Jennifer Gordon, “[Roles for Workers and Unions in Regulating Labor Recruitment in Mexico](#)”, *Solidarity Center*, (January 2015): 10

985. Darryl Greer, “[Union Fights Mexican Consulate in Canada](#)”, 27 March 2013

986. Fay Faraday, “[Profiting from the Precarious: How recruitment practices exploit migrant workers](#)”, *Metcalf Foundation*, (April 2014):43-44

987. [CERTAIN EMPLOYEES OF SIDHU & SONS NURSERY LTD. \(“Certain Employees”\) - and SIDHU & SONS NURSERY LTD. \(the “Employer”\) - and UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 1518 \(the “Union”\)](#), BCLRB No. B56/2014, (2014)

988. [United Mexican States v. British Columbia](#), (Labour Relations Board), 2015 BCCA 32, (2015)

the UFCW.⁹⁸⁹ UFCW labour representatives told us that prior to the start of the COVID-19 pandemic, the UFCW had Senior Level meetings with Mexico's STPS to discuss areas of cooperation between the union and Mexico.⁹⁹⁰

Canada

The increase in immigration under temporary work schemes has meant that Canadian unions have had to invest increasing effort in representing the interests of migrant workers. Until the 2000s, the number of temporary workers in the country was not significant and so for unions, "addressing the issue of temporary foreign labour has no historical precedent in Canadian labour."⁹⁹¹ A 2014 study of how five unions reacted to the growing number of temporary workers in the 2000s and 2010s, "unions have been conflicted over TFWs [temporary foreign workers] ... partly due to tensions in interests. For example, the need to represent existing workers can clash with the desire to defend incoming migrant workers."⁹⁹² In this context some unions initially adopted a "Canadians First" policy, though the 2010s have seen a gradual shift to a more diverse and representative approach.⁹⁹³ As an example of this shift, the Canadian Labour Congress in 2019 announced its participation in an initiative with the federal government to help undocumented migrant workers in construction gain permanent residency.⁹⁹⁴

The UFCW has worked with migrant workers for many years as a result of the SAWP. Advocacy by UFCW with the government has played a role in securing benefits for migrant workers, including the open work permit for migrant workers in situations of abuse;⁹⁹⁵ access to employment insurance protections for migrant workers related to the COVID pandemic;⁹⁹⁶ and a pilot project for pathways to permanent residence for migrant workers in agri-food occupations.⁹⁹⁷ UFCW has also

negotiated collective agreements with employers in the meatpacking and food processing industry to include provisions related to language training and assistance with the application process for permanent residence, which are both positive for migrant workers.⁹⁹⁸

Nonetheless, agriculture is not a panacea for union-employer relations in Canada. As noted in 9.1, foreign agricultural workers in three major provinces are prohibited or severely limited from unionizing. In provinces where unionization in agriculture is possible like British Columbia, there have been cases where migrant workers under the SAWP have joined unions in limited cases including at Greenway Farms,⁹⁹⁹ Siddhu & Sons,¹⁰⁰⁰ and Floralia farms.¹⁰⁰¹ However, these cases are known largely because of the struggles faced by workers and the union. According to the UFCW, "only twelve of thirty-five Mexican workers at Greenway who had been part of the organizing drive in 2008 were brought back in 2009, a number that was lower than regular SAWP retention levels[...]. Other repatriations [...] also occurred during the Greenway [...] challenge. In September 2008, Floralia Plant Growers in Abbotsford laid off and repatriated fourteen SAWP workers shortly before a certification vote."¹⁰⁰² These certification drives were eventually successful following continuing efforts by the UFCW and decisions by British Columbia's Labour Relations Board.¹⁰⁰³ It is ultimately highly challenging for migrant agricultural workers to unionize in Canada, and those who do face a very real risk of not returning for the next year's season.

Additionally, while SAWP is regularly promoted as a best practice model of labour recruitment, unions are excluded from its governance. A 2016 ILO study noted that there are "annual consultations between governments, and input from Canadian farm employers but not unions".¹⁰⁰⁴

989. UFCW, "UFCW Canada and CONOFAM sign migrant workers protection pact"; UFCW, "UFCW Canada engages migrant communities in Michoacán", 2 July 2015

990. Derek Johnstone and Santiago Escobar, UFCW, interview, Toronto, 23 January 2019

991. Jason Foster and Alison Taylor, "Growing immigration has meant Canadian unions have had to learn how to better represent migrant workers", *LSE US Centre*

992. Jason Foster, Alison Taylor and Candy Khan, "The dynamics of union responses to migrant workers in Canada", *Work, Employment & Society* Vol. 29, No. 3, (June 2015):409-426

993. Jason Foster, "From 'Canadians First' to 'Workers Unite': Evolving Union Narratives of Migrant Workers", *Relations Industrielle/Industrial Relations*, 69(2), (2014):241-265

994. CLC, "Support Migrant Workers", 25 September 2015; CLC, "Permanent Residence for 'Out-of-Status' Construction Workers in the GTA", 3 January 2020

995. UFCW, "Migrant workers discuss need for open work permits at Leamington consultation", 22 April 2019

996. UFCW, "UFCW and allies secure pay protection, EI eligibility for migrant workers during COVID-19 pandemic", 6 April 2020

997. UFCW, "Food workers' union welcomes Agri-Food Pilot", 12 July 2019

998. UFCW, "UFCW Canada Local 832 negotiates landmark protections for migrant worker union members", 7 January 2009

999. UFCW, "Seasonal farm workers in B.C. go union with UFCW Canada"

1000. UFCW, "Seasonal Agricultural Workers at BC farm go union with UFCW Canada"

1001. UFCW, "Agriculture members at Floralia score important victory - UFCW 1518", 27 January 2017

1002. Eugénie Depatie-Pelletier, "Canada's violation of (im)migrant workers' right not to be held under slavery or servitude": Meta-analysis of empirical data (1966-2016) and policy alternatives", (2016)

1003. UFCW, "Labour board upholds certificate of UFCW 1518 Floralia agriculture unit", 10 March 2016; UFCW, "Mexico found guilty of blacklisting Mexican migrant workers in Canada suspected of being pro-union", 21 March 2014

1004. Philip Martin, "Migrant Workers in Commercial Agriculture", ILO, (2016):15

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