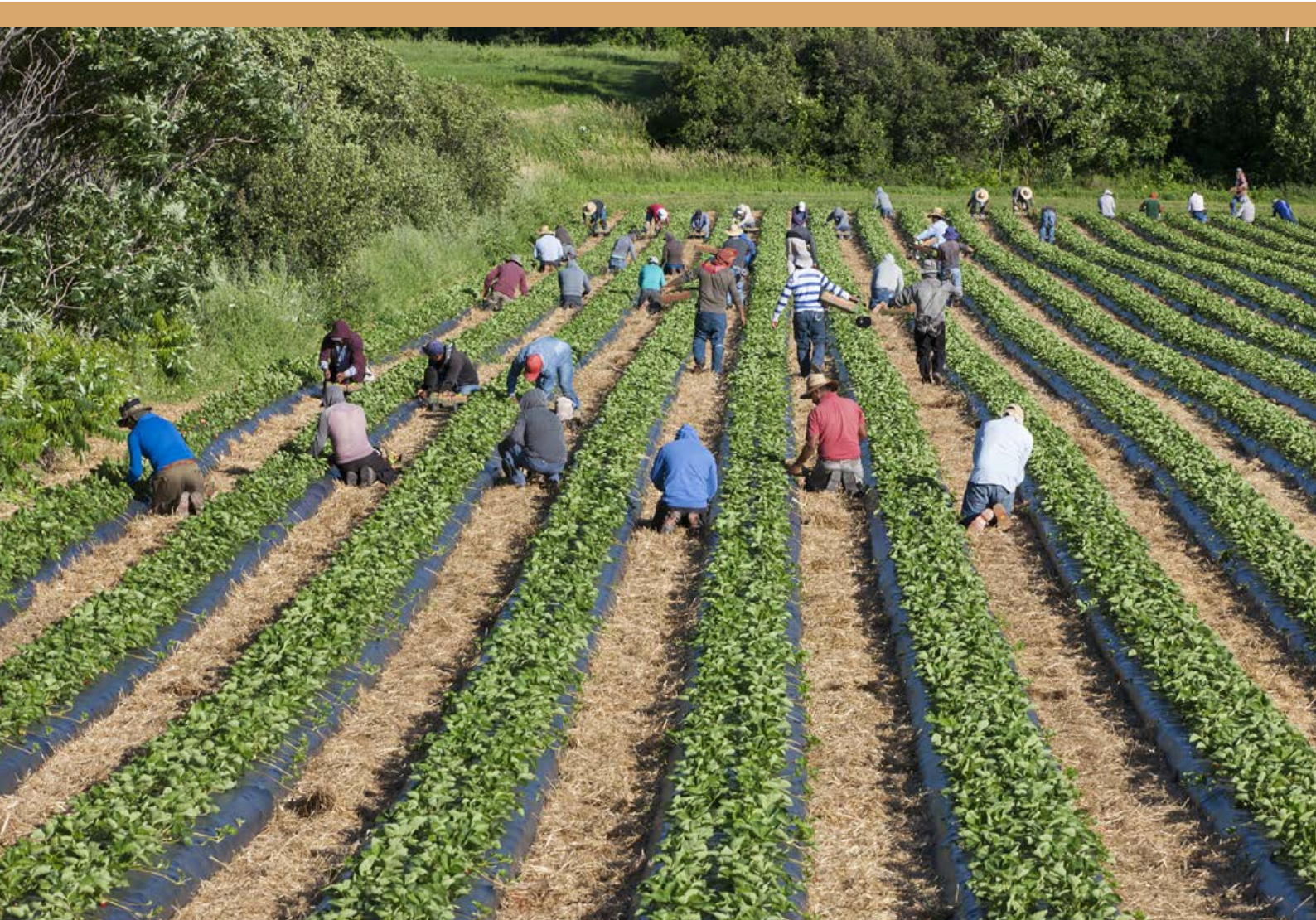


THE FIVE CORRIDORS PROJECT - CORRIDOR 5

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

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Acronyms

AEPA	Agricultural Employees Protection Act of the province of Ontario
CABs	Conciliation and Arbitration Boards (Juntas de Conciliación y Arbitraje)
CBSA	Canada Border Safety Agency
CICCA	College of Immigration and Citizenship Consultants Act
CLC	Canadian Labour Congress
DGIFT	Dirección General de Inspección Federal del Trabajo
DGPME	Dirección General de Protección a Mexicanos en el Exterior
EI	Employment Insurance
EPFNA	Employment Protection for Foreign Nationals Act of the province of Ontario
ESDC	Employment and Social Development Canada
eTA	Electronic Travel Authorization
FWRISA	Foreign Worker Recruitment and Immigration Services Act of the province of Saskatchewan
ICCRC	Immigration Consultants of Canada Regulatory Council
ILO	International Labour Organization
IMP	International Mobility Program
IOM	International Organization for Migration
IRCC	Immigration, Refugees and Citizenship Canada
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
LCP	Live-in Caregiver Program
LMIA	Labour Market Impact Assessment
LMM/MML	Labour Mobility Mechanism / Mecanismo de Movilidad Laboral
MOU	Memorandum of Understanding
MP	Ministerio Público (Public Ministry)
MWSN	Migrant Worker Support Network
PEM	Programa Especial de Migración
RACT	Reglamento de Agencias de Colocación de Trabajadores
RCMP	Royal Canadian Mounted Police
SAWP	Seasonal Agricultural Worker Program
SC	Service Canada
SIN	Social Insurance Number
SNE	Servicio Nacional de Empleo
SRE	Secretaría de Relaciones Exteriores
STPS	Secretaría de Trabajo y Previsión Social
TFW	Temporary Foreign Worker
TFWP	Temporary Foreign Worker Program
UFCW	United Food and Commercial Workers union
VACs	Visa Application Centers
WRAPA	Worker Recruitment and Protection Act of the province of Manitoba



Overview

An **overview** of fair recruitment in the Mexico-Canada labour migration corridor

Mexico has traditionally been a country of emigration. In 2020, Mexicans living abroad sent back approximately US\$40 billion in remittances, representing nearly 4% of Mexico's GDP. Ninety-five percent of this sum was sent from the United States, which is home to a Mexican diaspora of many millions. In recent decades Mexican migration to Canada has steadily risen, as Canada has increased the number of migrant workers in its labour force.

Every year, Canada issues more than 30,000 temporary work permits to Mexican nationals, who comprise approximately 10 % of Canada's migrant workforce. The majority are agricultural workers recruited through the Seasonal Agricultural Worker Program (SAWP) - called the PTAT in Mexico - that has been in place for nearly half a century. These workers, 96% of whom are men, travel to and from Canada each year as part of the popular scheme that the Mexican government administers with Canadian employers. Salaries for SAWP workers, which

are slightly above the Canadian minimum wage, are considerably higher than the minimum wage for Mexican migrant workers.

In recent years, the Mexican government has focused more on its policies on inward and transit migration than emigration. SAWP, a government-managed programme that provides consistent remittances, is a slight exception, and the government devotes attention to its administration and to the annual review meeting with Canada. This investment stands in stark contrast to its efforts in regulating recruitment to the United States, where - despite Mexican lobbying - there is no bilateral programme for labour migration, and informal Mexican private recruiters operate in a loosely regulated space, placing workers at risk of serious abuse in the migration process.

In Canada, the SAWP is notable in the sense that it is based on a bilateral programme with Mexico (and similar

agreements with some Caribbean countries) rather than solely on employer demand. Outside this programme, Canadian employers can hire migrant workers from any country as long as they and the workers meet the various immigration requirements. 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. 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.

Canada's increasing reliance on migrant labour, particularly in low-wage jobs, has created some political tension in the context of the government commitments to provide jobs to Canadians. As a result, businesses have to complete what they see as a burdensome and costly Labour Market Impact Assessment (LMIA) each time they want to recruit a non-national, demonstrating that it is not possible to hire Canadian residents for the position (this requirement applies to most low-wage jobs). In this context, employers have pushed back against increasing pressure from civil society organisations and others to abolish the employer-specific (or "closed") work permit that ties temporary foreign workers to a single employer. Canada has an active and engaged civil society, and trade unions, activists and experts argue that migrant workers' rights are not adequately protected, particularly under the TFWP, which includes Mexican and Caribbean workers hired under the SAWP. They point to persistent complaints by migrant workers across multiple sectors of poor working and living conditions, salary irregularities, and more serious forms of exploitation.

Canada's legal and regulatory framework applying to migrant workers and labour recruitment cuts across its federalised governance structures, with the federal government taking primary responsibility for immigration, and provincial authorities responsible for workplace safety and employment standards, including the regulation of labour recruitment. This creates a multitude of legal and enforcement regimes and the result can be confusion over jurisdiction and responsibility, which has been brought into sharp focus during the Covid-19 pandemic. In 2021 the federal government announced that it would expand the Migrant Worker Support Network, a collaborative

outreach initiative to provide workers with information about their rights, to all provinces, after its pilot in British Columbia.

Covid-19 placed a renewed focus on the conditions of migrant workers in Canada, particularly those in the agriculture sector. In many cases, migrant workers were unable to socially distance properly in cramped accommodation and faced various difficulties observing quarantine requirements. The pandemic intensified the national debate about the country's reliance on its migrant workforce, categorised as "temporary" though many workers have worked in Canada for decades, and amplified calls to improve access for low-wage migrant workers to permanent residency and citizenship.

The following addresses the key recruitment-related issues driving positive and negative worker outcomes for Mexican workers in Canada.

Loosely regulated private recruitment in Mexico

Recruiters in Mexico engage in widespread fraudulent and abusive practices, and government efforts to address them have to date proven inadequate. While charging workers for jobs is banned under the country's Constitution, it is in reality commonplace and enforcement of the legal prohibition is extremely rare. Surveys suggest that up to 58% of workers going to the US may be charged illegal fees, amounting on average to four months of the Mexican minimum wage. Informal, unlicensed recruiters are particularly likely to charge fees to workers, but the practice exists among the small number of licensed operators as well. It is common for workers to find that terms and conditions they were promised in Mexico do not materialise on arrival. Canadian media investigations have documented Mexican workers paying as much as CA\$40,000 (US\$33,200) for jobs, being promised wages far in excess of the wages they were eventually paid. In many cases, recruiters charge workers fees to secure jobs that do not actually exist. Mexican recruiters on Facebook offered us fake jobs in Canada for 2500 pesos (US\$120). Experts told us that Mexican workers sometimes pay fees, buy themselves tickets, and get as far as airports in Canada, only to find there is no-one waiting for them.

The government is supposed to verify each overseas contract for Mexican workers, but this does not happen in practice, and enforcement efforts against unlicensed recruiters - who often have ties to the largely rural communities in which they recruit - fall between the cracks of the STPS and the police. The General Directorate of Federal Labour Inspections, within STPS, is empowered to carry out inspections of licensed recruitment agencies. However, officials told us that the inspectorate is mainly focused on employment standards within Mexico and that its staff are not properly trained to inspect the recruitment agents who deploy Mexican workers abroad. There is no evidence of a systematic inspection regime for recruitment agencies - civil society organisations report that STPS rarely inspects recruitment agencies, even on receipt of complaints and two recruitment agencies told us they had never been inspected. Furthermore, registered agencies are vastly outnumbered by the informal, unregistered recruiters who carry out the bulk of recruitment in Mexico. Only nine agencies are licensed to deploy workers overseas. The Regulation of Worker Placement Agencies (RACT) regulates the role of licensed recruitment agencies, but has limited application in regard to unregistered recruiters and intermediaries, a situation described by a senior official as a “legal gap” that impacts the ability of STPS to tackle these actors or take forward worker complaints about them. Victims of fraud by recruitment agencies have the right to report the crime to law enforcement authorities themselves, but with some rare exceptions, the authorities have generally not invoked this provision to tackle the recruitment industry.

SAWP as a model for managed labour migration?

In stark contrast to other models of outward migration, the SAWP is strictly controlled by the Mexican authorities and allows workers a relatively “safe” migration journey to Canada. Under the SAWP, Canadian employers apply, typically via recognised employer organisations, to the federal government to hire agricultural workers. When applications are approved by the Canadian government, the Mexican government - through the SNE (National Employment Service) - recruits the workers and coordinates logistics in order for migrant workers

to travel to Canada. This reduces the instances of fee charging and other exploitation on the Mexican side of the migration journey. Workers who migrated through the SAWP told us there was a significant difference between using private recruiters and migrating to North America through the STPS: “I’ve heard about people paying and I actually know people who recruit workers in exchange for large quantities for money, but I have never paid for anything,” a 39 year old woman from Oaxaca state, about to begin her seventh season in British Columbia’s SAWP, told us. Because the SAWP removes the Mexican private sector from the equation, illegal charging of fees to workers appears to be restricted to cases of corruption among officials (which while not rare are not endemic). In addition, workers receive and sign contracts in Spanish, and undergo pre-departure orientation.

From the Mexican perspective, when compared to the loosely regulated and abusive private recruitment route to North America, the SAWP is a programme with significant benefits for migrant workers. One NGO told us that the SAWP “has a good reputation in comparison to private recruiters - the issue is that its impact in terms of numbers is small in comparison to the number of workers going to the US with informal recruiters.” Mexican experts and civil society groups we spoke to generally support the government’s aspirations to do more recruitment itself, through bilateral partnerships with other governments, rather than through the private sector, arguing that the SAWP demonstrated how the state’s involvement could give workers more certainty and reduce the likelihood of fraud and abuse, in the context of widespread abuse and exploitation by private sector recruiters. It is a measure of the relative merits of the SAWP that some experts also expressed concerns that swingeing spending cuts announced by the President in 2020, including to the SNE, might affect the administration of the SAWP.

In part because of its efficient administration and the fact that workers generally do not pay for jobs, the SAWP has been hailed as a “model” for labour migration. For a Mexican agriculture worker, the SAWP may present a more attractive and reliable proposition than paying unlicensed recruiters in the hope of getting a place on the US H-2A programme, or migrating across the border irregularly. This explains why there is a waiting list of 13,500 pre-screened job seekers for places on the

programme. SAWP workers told us they saved between CAD\$3,000 (US\$2,500) and CAD\$13,000 (US\$11,000) annually depending on the length of the season, putting the money they earned towards their children's education, buying land, building houses, or starting businesses.

However, there are a number of aspects of the SAWP that call into question whether it should be considered a model. Firstly, while workers should not, and generally do not, pay recruitment fees, they are required every year to pay for some travel and administrative costs related to recruitment. These charges appear to be out of step with ILO standards on the prohibition of recruitment fees and related costs. Since workers have to go through these processes each year, this can result in workers contributing many thousands of dollars to the programme over the course of their time on the SAWP.

The most serious concerns about the SAWP have been raised in the employment phase in Canada. A Mexican NGO told us that “the problems of the SAWP are in the employment part of the programme, not so much in recruitment.” A social worker in Ontario said that while abuse and fraud in the recruitment process was not common, “when workers get here, there is a whole range of forms of exploitation.” Complaints raised by workers include being asked to carry out different forms of work than they were hired for, as well as underpayment, illegitimate pay deductions, excessive and sometimes extreme working hours, and crowded, unhygienic accommodation. The most common violations identified by Ontario officials in the agricultural sector between 2011/12 and 2014/15 related to unpaid wages and termination pay, while other common violations included public holiday pay and illegal deductions from wages.¹ A senior Mexican official, speaking prior to the Covid-19 pandemic, said the main issue that they had raised with the Canadian government in recent years related to farms failing to provide adequate accommodation for the number of workers they had hired. The issue of housing conditions came to the fore during the Covid-19 pandemic, given the need for workers to socially distance themselves. A woman working in Alberta told us that during the pandemic her employers had concealed her and her colleagues from Canadian inspectors: “they locked us in the dining room ... there are 16 in the house where I live, 8 or 10 women

have been taken there, it looked perfectly fine [to the inspectors].”

A representative of the Canadian Farmers' Association said to us that the scale of abuses was sometimes inflated by critics but also acknowledged that instances of bad practices could not be categorised as outliers. In 2017/2018, Employment and Social Development Canada (ESDC) carried out 402 inspections in primary agriculture (at least 336 of which were of SAWP employers), and found 127 employers (32%) needed to correct non-compliances. The main corrections required related to accommodation and wages. There is some evidence that Canada's agricultural sector is under-inspected. That same year ESDC reported that 40% of the “workable tips and allegations” it received nationally were in the agriculture sector, but the sector only made up 14% of the national inspection programme.

There are two key underlying factors that undermine the agency of migrant agricultural workers in Canada and the claims of SAWP to be a model: provincial prohibitions on worker organising in the agricultural sector; and the coercive effects of workers' inability to freely transfer employers.

Agricultural workers and labour rights in Canada

There are structural factors that appear to drive abuses in the agricultural sector. According to the terms of the Memorandum of Understanding that set up the Mexico-Canada SAWP, Mexican workers must receive “treatment equal to that received by Canadian workers performing the same type of agricultural work, in accordance with Canadian laws.” Canadian employment law is set at provincial level, and agricultural workers are exempted from key worker protections in many parts of the country. Agricultural employer organisations say this is justified: “most if not all of our worker protection legislation had their origins rooted in the industrial and manufacturing industries. The nature of work in the manufacturing setting is very different to the nature of work in farming”. This has been termed “farm worker exceptionalism”.²

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1. Vosko, Leah F.; Tucker, Eric & Casey, Rebecca. ‘Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability’. *International Journal of Comparative Labour Law and Industrial Relations* 35, no. 2 (2019): 243.
 2. See for example, Vosko, Leah F.; Tucker, Eric & Casey, Rebecca. ‘Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability’.

In Ontario, which hosts more Mexican migrant workers than any other province, agricultural workers cannot establish or join unions under the 1995 Labour Relations Act and the 2002 Agriculture Employees Protection Act, which stresses “the unique characteristics of agriculture”. This exclusion was upheld by Canada’s Supreme Court in 2011, invoking public criticism from the International Labour Organization (ILO). A 2015 Solidarity Center report details how outcomes for Mexican migrant agricultural workers in the US have been improved by the involvement of unions in the recruitment and employment process. The UFCW union, which represents agricultural workers and brought the case against Ontario, told us that, “once they are in Canada, these workers are totally voiceless.” Because most SAWP workers are not able to unionise, unions are also excluded from the annual review process, meaning there is a lack of worker representation in discussions relating to their conditions and the contents of the standardised contract.

Agricultural workers in Ontario are not only unable to unionise - Regulation 285/01 has the effect that no agricultural workers are entitled to receive: daily and weekly limits on hours of work, daily rest periods, time off between shifts, weekly/bi-weekly rest periods, or overtime pay. With few exceptions, agricultural workers are not entitled to eating periods, public holidays or public holiday pay. Unions argue that this means that workers can be coerced into working exceptionally long hours in circumstances that technically are within the law, and told us they have assisted migrants who have worked for several months without a day-off. Fishers and most farm workers also have no right to the minimum wage, the “three hour rule”, or vacation pay.

Ontario is not the only Canadian province that restricts agricultural workers’ labour rights and protections in this way. Alberta’s Bill 26 of 2019, which the provincial government said would “restore balance, fairness and common sense regulations” by reversing a 2015 law, removed the right of agricultural workers to unionise (by no longer classifying them as “employees”), and exempted any farm with five or fewer employees (defined as someone working for more than six months consecutively, ruling out many seasonal workers) from the requirement to carry workplace insurance and from

the provisions of the Employment Standards Code. It also expanded the definition of agricultural worker, increasing the number of people covered by these exclusionary provisions.

In raising concerns about the persistent exemption of agricultural workers from labour laws, the ILO has noted that this may explain why such jobs are often unpopular among citizens, and in the context of Covid-19, has highlighted the discrepancy between societies’ acknowledgement of the importance of agricultural workers for the food chain,

and their lack of labour protection: “recognizing these workers as essential implies the need to address their exemption from labour laws.”³

Temporary status and the employer-specific work permit

In addition to agricultural workers’ exclusion from labour protections and their inability to unionise in some large provinces, another significant structural issue that seriously undermines worker outcomes is the restricted job mobility for migrant workers in Canada.

For most migrant workers employed under the TFWP, their work permit is “employer-specific”, sometimes referred to as “closed”. Migrant workers who want to change employers within Canada first need a job offer from an employer with approval from Employment and Social Development Canada (ESDC) to hire migrant workers, and then they must apply to obtain a new work permit. As advocacy groups have highlighted, there are long waiting times associated with this process, during which time migrants are unable to work. A temporary work permit application inside Canada took 126 days in early 2021. Increased job mobility for migrant workers has been one of the principal demands of advocates and activists in Canada, who argue that closed work permits are central to driving human rights abuse. The fear of losing employment and 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 refuse dangerous work or excessively long hours. A representative of an

3. ILO, ‘Seasonal Migrant Workers’ Schemes: Rethinking Fundamental Principles and Mechanisms in light of COVID-19’, May 2020: 6

immigration consultants organisation told us that, “the main threat to the worker is that the employer puts him out of the country.”

SAWP workers are in a slightly different situation, in that they do not need a new work permit to change employers but must go through a specific transfer process to move employers mid-season: transfers need the agreement of the worker, the previous and new employers, and both the Canadian and Mexican governments. Employers must have obtained LMIAAs demonstrating that no Canadian residents are available for the positions. Workers do change employers during the season - about 15% of SAWP workers in 2014 - often at the instigation of employers who don't have work for them, though Mexican officials told us that in recent years transfers have become more complex. However this rate of transfers cannot disguise the most salient characteristic of the system, which is that no transfer can take place without the agreement of the employer and in this regard the system places workers in a similarly vulnerable position to those under the employer-specific permit. One Mexican agricultural worker told us the transfer system “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.’” The transfer system is exacerbated by the SAWP’s employer ‘naming’ system, under which employers can identify specific workers they want to hire in subsequent seasons, disincentivising workers from making complaints. A 2016 ILO report comments that, “workers who want to be named by their employer to return next season are unlikely to complain.”

The precarity created by such structures, sometimes termed “deportability”,⁴ is particularly problematic given that the main mechanisms for enforcing rights and obtaining remedies in Canada are complaints-driven, meaning that according to the Migrant Workers Centre British Columbia, “if a migrant worker does not complain, he or she has no practical access to enforcing his or her rights.” This can have particularly profound effects for the small proportion of women who take part in the SAWP. Several workers told us of cases of harassment and abuse by employers against women who were scared to complain, because of the risk of losing their jobs and being excluded from the SAWP.

In a case that reveals the power imbalance between employers and their workers, one woman told us that when she rejected inappropriate advances from her supervisor, 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. She told us was not asked back on the program by the farm: “he [the supervisor] must have told [the employer] that I was not fit for work or, I don’t know what he told him.”

There has been increased public focus on job mobility for migrant workers in recent years, with proposals to create an occupation-specific or sector-specific work permit as a less restrictive alternative to the status quo. 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”, but in 2017 a separate committee looking at trafficking took a different view, 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”.

A 2019 government consultation on the employer-specific work permit did not result in any reforms to the system, with employers opposing proposals to create an occupation specific permit. However, in a separate attempt to respond to concerns about the employer-specific work permit, the government introduced the Open Work Permit 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”. In the first 18 months of the scheme’s introduction, approximately 800 open work permits for workers in situations of abuse were issued, at a rate of roughly 10 per week. Union representatives and worker organizations generally welcome the existence of such a mechanism, but continue to push for broader systemic change that would allow migrant workers the unconditional right to change employers, with one expert on migrant workers in Canada calling the scheme a “bandaid on a system that is broken”. Those supporting workers in accessing the permit have also expressed concerns about the complexity of the

4. See Vosko LF. ‘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.

application process, which creates barriers and likely reduces the number of applications. The 2021 federal budget 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.

SAWP workers are the least likely of any category of migrant workers to obtain permanent residency in Canada despite in many cases having worked in the country for decades. Civil society and worker organisations maintain that the pathways for migrant workers in low wage roles to gain Canadian residency are too limited and remain too onerous, and question the “temporary foreign worker” terminology. The Migrant Workers Alliance argued in 2019 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”. During the Covid-19 pandemic there have been intensified calls for migrant workers to be given “status on arrival” to appropriately recognise their contribution to society and remove their dependence on employers that the employer-specific work permit provides. We spoke to workers, immigration consultants, employers and unions who, in different ways, supported increasing low-wage migrant workers’ access to residency and citizenship. The 2021 budget saw a pledge by the federal government to introduce temporary pathways to permanent residence for over 90,000 essential workers (including migrant workers in low-wage occupations) and international graduates who are “actively contributing to Canada’s economy”.

Mexican consulates

The terms of the Memorandum of Understanding that set up the SAWP assign Mexican consular officials in Canada a special role in the implementation and monitoring of the programme. The six Mexican consulates conduct site visits to farms - the Toronto consulate visits about 50 per season - and play a direct role in managing complaints they receive from workers. They are generally the first point of contact for workers in the event that they have a grievance. Mexican officials told us they attempt to mediate problems between workers and employers, and that only in cases that are more difficult to solve, or where they identify a potential

breach of Canadian federal or provincial law, do they refer those cases to the Canadian authorities. A former Mexican Consular official estimated that they only refer approximately 20% of cases to Canadian federal or provincial officials.

Consulates have considerably more resources and authorities available to support SAWP workers than are available for other Mexican workers in Canada. Nonetheless, the large number of workers and the remote locations of farms in Canada places their resources under considerable pressure. Consular officials told us that officials have to respond to a large number of worker calls, as well as carrying out visits to farms, and that there have been cases where they were unable to assist some groups of workers due to the volume of requests. An academic who specializes in the SAWP told us that consulates did not have sufficient staff, that they were located too far from farms, and that officials were not adequately trained to deal with employer-employee relations. Workers told us they often did not get responses when they called the consulate asking for help.

Workers also told us of instances where officials sided with employers during the mediation process and critics of the SAWP have frequently accused consular officials of being too close to employers and under their sway. In one notorious case, the British Columbia Labour Relations Board confirmed in 2014 that the Mexican consulate in Vancouver had identified SAWP workers who were in contact with unions with a view to blocking them from returning to Canada. One former consular official, by then employed by a Canadian union, testified that the consulate was “terrified” of challenging employers and that “the priority was to keep employers happy so they continue to request Mexicans.”

These serious concerns notwithstanding, unions and others working with migrant workers told us the provision of consular support by Mexico was considerably better than other countries who were not part of the SAWP, and also praised the efforts of some of the Mexican consulates in Canada, noting that the quality of provision depends on the individual officials present at specific missions. For all its documented faults, the authority that the SAWP delegates to origin state officials improves workers’ abilities to raise complaints, as compared to workers outside the SAWP from countries such as Guatemala, El Salvador, Honduras, and Thailand.

Canada’s “remedial, rather than adversarial” federal enforcement regime

Provincial inspection and enforcement regimes vary significantly. Since 2015, however, ESDC has been federally mandated to inspect employers’ adherence to the terms under which they are approved to hire migrant workers under the TFWP - this includes complying with relevant federal and provincial laws that regulate employment and recruitment, as well as the protection of the Canadian labour market. ESDC carries out around 2800 inspections per year, which corresponds to 13% of all TFWP employers. A Mexican consular official told us that while the increased number of federal inspections in recent years was a positive development, the resources being allocated were still “not at the necessary level”. Mexican workers we spoke to generally recalled visits by their consulate but not inspections by Canadian officials. During the Covid-19 pandemic, the inspection programme was halted and was subsequently replaced with virtual inspections. In 2021, the federal budget allocated an additional CAD\$54.9M (US\$45.5M) over three years to increase inspections of employers of migrant workers.

Inspectors can issue warnings, fines, a ban from the TFWP, and/or revocations of valid LMIAs, which are necessary to hire foreign workers. Offending companies can also be named on the IRCC website. Importantly, the programme is designed to be “remedial, rather than adversarial”, as Marsden, Tucker and Vosko put it. According to available data inspectors found non-compliance at almost half of the employers they inspected in 2017/18, but the vast majority of issues were resolved through “corrective measures” such as compensation to workers. Only about 3% of employers inspected were penalised, and only in a handful of those cases were employers fined more than CA\$5000. Authorities have levied more significant fines in relation to the protection of workers during the Covid-19 pandemic. Nevertheless, questions remain about whether the ESDC’s administrative penalties adequately deter poor practices. The RCMP has the mandate to carry out criminal investigations into human trafficking, but sex trafficking is prioritised above labour trafficking and successful prosecutions are anyway very rare, averaging about 2 or 3 per year.

The tapestry of Canadian private recruitment regulation

Canada’s federal governance structure creates varying legal regimes relating to migrant workers’ recruitment, immigration and employment, depending on the province and sector in which they work. An IRCC research paper notes that “the consequence is markedly distinct coverage of migrant worker protections across Canada and inconsistency of rules for relevant players, including recruiters active in multiple jurisdictions.” This can cause confusion even for SAWP workers who, although recruited as part of a federally negotiated bilateral programme, are subject to differing levels of protection depending on the province where they work. But it is particularly stark for Mexican and other migrant workers recruited privately through labour recruiters and / or immigration consultants. Those who assist migrant workers in taking forward grievances describe a complex tapestry of regulation and a proliferation of different, often disconnected routes that workers have to navigate if they are seeking a remedy.

Provincial governments have jurisdiction over the regulation of labour recruitment. Practices vary by province, and there are good examples of well-designed systems that take account of and seek to mitigate the risks of abuse in the recruitment process. Six provinces - most of those that host large numbers of migrant workers - require labour recruiters to be licensed in order to operate, with some also requiring employers to register in order to hire migrant workers. To provide greater oversight of recruitment activities outside Canada, provinces like British Columbia require licensed recruiters to provide information on their international partners, and makes the licensed recruiter in BC liable for the actions of their international partners. Legislation in Ontario, British Columbia, Saskatchewan, Manitoba, Quebec, and Nova Scotia allows for employers to be held responsible for the actions of recruiters, to increase employer adherence to fair recruitment practices. However, the province which hosts the most migrant workers, Ontario (along with six other provinces and territories) does not require labour recruiters to register in order to operate, a policy which unions and recruitment agencies have called to be reversed. Ontario officials told us that the previous licensing scheme that was abolished in 2001 had become a “rubber-stamping

exercise”, and the focus of their efforts is on enforcement rather than licensing. However, experts argue that this discrepancy between provinces allows unscrupulous labour recruiters to focus their activities in provinces where regulations and monitoring are weakest.

Federal immigration law reinforces provincial prohibitions on fee charging, but also permits registered immigration consultants to charge workers for their services, a vexed issue that cuts across provincial regulation. As consultants may simultaneously operate as recruiters, this dual role opens up a grey area that has been exploited with relative ease by unscrupulous operators, who sell jobs to migrant workers - sometimes

for exorbitant sums - and bill them for “immigration advice”. One consultant, who never charges workers for any services, told us that, “the trouble is that selling jobs is where the money is to be made”. Saskatchewan and Manitoba have tried to tackle this conflict of interest in their legislation. There are also widely documented problems associated with “ghost” immigration consultants, who are unlicensed, in some cases operate from outside Canada, and often charge workers without providing any services. The federal government established a new regulator in 2021, with additional powers, in response to repeated concerns about the weakness of the two previous self-regulatory regimes set up in 2004 and 2011 respectively.

Priority recommendations to strengthen efforts to ensure fair recruitment.

The Mexican authorities should:

- **Revise** the Federal Labour Law and the RACT to provide the STPS with explicit authorities to investigate and penalize unlicensed labour recruiters and intermediaries.
- **Substantially increase** investments in the monitoring and inspection of licensed recruiters, and establish accessible and effective grievance mechanisms for workers subjected to abuse and fraud.
- **Publish** information on the outcomes of inspections of labour recruitment agencies, including where penalties are issued.
- **Increase** resources for consulates in Canada, and explicitly instruct officials that their priority consideration must be the safety and dignity of workers.

Canadian federal authorities should:

- **Provide** increased job mobility, in particular by removing the employer-specific work permit, and expand access to residency to low-wage migrant workers.
- **Ensure** that federal inspectors always interview migrant workers, without employers or supervisors present, during inspections, and provide channels for them to communicate any threats or retaliatory measures following inspections.
- **Ensure** that inspectors include questions related to worker payment of recruitment and related costs that are prohibited under the TFWP; and that they hold employers accountable when workers have been charged for these costs, including by third parties contracted by employers.

- **Provide** federal funding for legal aid to assist migrant workers, in particular to help with the filing of federal and provincial complaints and related processes, including obtaining open work permits in situations of abuse.
- **Carry out and publish** a review of whether the policy of allowing immigration consultants to charge foreign nationals applying for temporary work permits is fully consistent with the ILO definition of recruitment fees and related costs, adopted in 2019, with a view to prohibiting such payments in the case of workers applying to the TFWP and other programmes where work permits are linked to specific employers.
- **Require** licensed immigration consultants to provide information to federal authorities on all their overseas partners and make them liable for the actions of their overseas partners; ensure the new regulator has a focus on enforcement; and expand CBSA investigations into unlicensed consultants.
- **Give** increased political importance to federal/provincial/territorial coordination over legislation and enforcement regarding recruitment and employment of migrant workers.

Canadian provincial authorities should:

- **Remove** restrictions on freedom of association that prevent migrant or other workers from exercising

their legitimate right to form or join trade unions.

- **Remove** blanket exemptions from employment standards legislation that leave migrant or other workers without basic legal protections, with respect to their working conditions, for example working hours, breaks, and wages.
- **Implement** licensing systems for any individual or company engaged in the recruitment of migrant workers, where these are not already in place; require employers as well as recruiters to register with the province; and hold employers and recruiters liable for the actions for third parties in the recruitment process.

With respect to management of the SAWP, the Mexican and Canadian authorities should jointly:

- **Align** SAWP programme requirements with ILO standards on recruitment fees and related costs, to ensure that workers do not pay for costs related to their recruitment into the programme.
- **Allow** worker representation and participation at SAWP annual meetings, in line with ILO guidance on bilateral agreements.
- **Significantly ease** the ability of SAWP workers to transfer employers, removing the role of the current employer in the transfer process.

Methodology

Project Aims

The aim of this research was to test the performance of the governments of Mexico and Canada against a set of 44 indicators that cover nine areas of government policy. The indicators examine laws, policies and government practices in relation to recruitment and to evaluate their effect on outcomes for migrant workers:

1. National migration policy (7 indicators)
2. Legal and regulatory framework (5 indicators)
3. Bilateral arrangements (5 indicators)
4. Licensing, registration and certification schemes (5 indicators)
5. Machinery to implement and enforce regulation (4 indicators)
6. Measures to prevent fraudulent and abusive recruitment (5 indicators)
7. Enforcement, access to grievance mechanisms and remedies (6 indicators)
8. Measures to provide accurate information to workers (5 indicators)
9. Freedom of association (2 indicators)

The indicators are anchored in existing international standards, in particular the ILO General Principles and Operational Guidelines on Fair Recruitment. Full details of each indicator, and how they are derived from ILO and other standards, is provided in the Five Corridors methodology.

The corridor research team comprised of Jorge Aceytuno, James Lynch, Dr. Aaraón Díaz Mendiburo, Margarita Maura Pascual, Ariadna Tovar Ramirez, and Amira El-Sayed. Researchers were tasked to take account of the following considerations, in addition to relevant laws and formal policies:

- **The object and purpose of laws and policies:** What stated and unstated goal/s does the government have with regard to this intervention? Goals could include economic development, increasing remittances, migration management, protection of human rights, national security, immigration control etc.
- **The implementation of laws and policies:** What does the government do in practical terms to implement this measure? For example: financial

and personnel commitment made to the policy; levels of professionalism and responsiveness of state institutions; whether key institutions have the appropriate mandate and authority; whether independent institutions scrutinise and report on performance; and whether there is transparency in the way the government carries out this measure.

- **The effects and outcomes of laws and policies:** What is the effect of the government's intervention on migrant workers? In particular, to what degree does it ensure fair recruitment?

Sources of Information

In order to assess laws, policies and practices in Mexico and Canada against the indicators, we conducted a thorough review of secondary source material, and sought information and perspectives from a wide range of individuals directly involved in, affected by or knowledgeable about the regulation of migration and recruitment in these corridors. In total we carried out interviews with 22 such experts. In addition, we held eight meetings with government officials in Mexico and Canada, and interviewed 29 Mexican migrant workers.

Legal and policy frameworks, and secondary sources:

We conducted a thorough review of secondary sources, including books, NGO reports, peer-reviewed academic journals, and newspaper articles and a full analysis of relevant laws and policies in Mexico and Canada.

Key stakeholders and experts in migration processes:

We interviewed a wide range of stakeholders and experts either remotely or in person, including NGOs working on migrant workers' rights, trade union representatives, academics, think-tanks, journalists, lawyers, recruitment agencies, and representatives of intergovernmental organisations such as the IOM. We explained to interviewees our preference of attributing all comments to named individuals, but offered them the option of withholding their names. The organisations we consulted included the National Network of Agricultural Workers (CECIG), the Centro de los Derechos de Migrante (CDM), the Union of

Telephone Operators of the Mexican Republic (STRM), ProDESC, the Immigration Consultants of Canada Regulatory Council (ICCRC), the Canadian Federation of Agriculture, Maple Leaf Foods, the Canadian Labour Congress (CLC), the United Food and Commercial Workers (UFCW), the Migrants Resource Center Canada (MRCC), the Migrant Workers Centre BC (MWCBC), the Canadian Association of Professional Immigration Consultants (CAPIC), Legal Assistance of Windsor (LAW), and the Immigration Consultants of Canada Regulatory Council (ICCRC). The individuals we consulted included academics Dr. María Antonieta Barrón Pérez, Dr. Karla Valenzuela, Rosa María Vánegas García, Dr. Ethel Tungohan, Professor Leah Vosko, Professor Jennifer Gordon, and individuals involved in the recruitment industry in Mexico and Canada, including recruitment agencies and immigration consultants. We also attended AMSSA regional meetings between October 2020 and January 2021, hearing presentations from a wide range of speakers, including federal and provincial officials, civil society organisations, trade unions, employers, employer organizations, and immigration lawyers, and asking research questions during participatory sessions.

Governments: In Mexico we met two senior officials at the Ministry of Labour and Social Security (STPS), and Mexican consular officials in Ottawa and Toronto. We also met former officials from both the STPS and the SRE. In Canada we met Directors and officials from Employment and Social Development Canada's (ESDC) Temporary Foreign Worker Program (TFWP) Directorate, including their groups responsible for Integrity (employer inspections), the Seasonal Agricultural Worker Program (SAWP), and the Migrant Worker Support Network (MWSN). We also met Directors and officials from Immigration, Refugees and Citizenship Canada's (IRCC) Temporary Resident Policy and Program division, Permanent Resident Policy and Program division, and Research and Evaluation. At the provincial level, we met with officials from Ontario's Ministry of Labour, Training and Skills Development responsible for employment standards, labour recruitment, and inspections.

We wrote to STPS and SRE in Mexico, and to ESDC and IRCC in Canada in April 2021 outlining the report's draft key findings and recommendations for Mexico and Canada. IRCC provided a written response to this letter, and provided us with an opportunity to present our report's recommendations to officials from both ESDC and IRCC, including their groups responsible for the Seasonal Agricultural Worker Program and immigration consultants.

Migrant workers: We spoke to migrant workers to help us understand better recruitment and migration processes from workers' perspectives, and to provide us with insights into how particular measures work in practice. Our interviews with migrant workers were not designed to provide representative samples, and we did not attempt to carry out large-scale quantitative surveys of migrant workers. We intended to interview workers in person, in a mixture of group and individual interviews, envisaging that this would take place both in Mexico and in Canada. The Covid-19 pandemic largely prevented us from carrying out interviews in this way, apart from a small number conducted before restrictions took force. As a result we elected to carry out remote interviews. We interviewed 29 Mexican migrant workers in the course of this research, 25 one-to-one interviews and one group interview of four workers. We spoke to 7 workers at the STPS in Mexico, as they were going through their recruitment process for the SAWP. Connections through academics and civil society organizations in Canada and Mexico linked us to 16 workers, while a private recruiter in Mexico introduced us to two workers. The group interview we conducted was arranged with the assistance of the Legal Assistance of Windsor (LAW). The interviewees were drawn from the agricultural sector.

We used interview questionnaires structured around the recruitment process, including questions on the experiences of workers with regard to:

- Their decision to migrate;
- Introduction to and interaction with officials and recruitment agents;
- Payment of fees and exposure to debt, where applicable;
- Pre-departure experience, including contract processes and any orientation programmes;
- Arrival and working in the destination country;
- Getting support if something goes wrong; and
- Returning home after migration.

We explained the purpose of the interview and the wider project in advance and secured the express consent of all of the individuals we spoke to to use the information they provided to us for the purpose of the project. Where we have cited worker comments directly, we have opted to withhold workers' names, generally referencing only their age, gender, agricultural produce they worked with, and the province in which they were employed in Canada.



Migrant agricultural workers from Mexico arriving at Trudeau Airport in Montreal, April 2020. © Canadian Press / Shutterstock

Recruitment pathways: How Canadian employers hire Mexican migrant workers

This is a brief description and analysis of the most prevalent recruitment pathways in this migration corridor, which is dominated by the government-run recruitment Seasonal Agricultural Worker Program (SAWP), which sits under Canada's Temporary Foreign Worker Program (TFWP). Private recruitment pathways also exist under the TFWP, and these are also described below. Any employer looking to hire a foreign worker through these routes must obtain a Labour Market Impact Assessment (LMIA) in order to demonstrate that no Canadian citizen or resident could be found for the role.⁵

Government recruitment under the SAWP and LMM

In 2019, the government of Mexico recruited 26,407 migrant workers under the SAWP, and approximately 700

migrant workers under the Labour Mobility Mechanism (LMM). Collectively, this represents approximately 87% of the 30,960 Mexican migrant workers who entered Canada under the TFWP. Under the SAWP, Canadian employers apply to the federal government to hire agricultural workers, with most using the services of officially recognized employer organizations to support them with the application process. When applications are approved by the Canadian government, the Mexican government then recruits the workers and coordinates logistics with the recognized employer organization in order for migrant workers to travel to Canada.

The Seasonal Agricultural Worker Program

An agricultural employer who wants to hire foreign workers under the SAWP must first apply for a LMIA from the department of Employment and Social Development Canada (ESDC). Under the provisions of the SAWP MoU, recognized employer organizations (FARMS, FERME, and

5. The International Mobility Program (IMP) is Canada's other main temporary labour migration programme. 4,845 Mexican workers entered Canada in 2019 under the IMP. Unlike the TFWP, employers generally do not require LMIA's to hire under the IMP. The majority of workers entered under professional occupations and intra-company transfers through the Canada-US-Mexico Trade Agreement (CUSMA), a work scheme for graduates from Canadian post-secondary institutions, and a smaller movement of young workers under the International Experience Canada programs between Mexico and Canada. These processes are not described in detail as they are not the main focus areas of this report.

WALI) are authorized to provide assistance to Canadian employers with the LMIA application process and with logistics related to the workers' travel between Mexico and Canada. These organizations play a major role in administering the programme on the Canadian side.

If the employer's application is approved by ESDC, the government of Mexico nominates candidates who have been recruited through its Ministry of Labour and Social Security (STPS). Job seekers apply for participation in the SAWP through the local offices of the National Employment Service (SNE), an agency of the STPS, and are screened through a standardized test that requires, amongst other things, for applicants to be agricultural workers in Mexico, reside in a rural area, and have agricultural work experience in select agricultural crops. In reality, many workers return to Canada every season for several years and even decades. The matching process is often straightforward - employers "name" workers they would like to hire again the following year. The programme is heavily oversubscribed, and there is currently a waiting list of more than 13,500.

Once a migrant worker is selected, the STPS/SNE helps the worker to apply for a work permit at the Canadian Embassy, organizing medical tests, biometrics, and other requirements. The STPS/SNE also helps workers register to receive public health care and supplementary private insurance in Canada (paid by the worker), and coordinates details of the workers' travel to Canada with the appropriate recognized employer organization. The STPS also provides migrant workers with a pre-departure orientation session that explains the employer-employee agreement, and provides contact information for the Mexican Embassy and consulates, as well as information related to workers' rights in Canada.

The longest possible contract for SAWP workers in Canada is eight months per year. As a result all these recruitment processes, with associated costs, are repeated every season for each employer and worker, regardless of whether a worker is returning to a previous employer.

The main elements of the **fee structure** are as follows:

- Neither the worker nor the employer pay recruitment fees. Advertising, screening and selection of workers is delivered by the Mexican state as part of the SAWP MOU.

- Mexican workers must pay for the costs of medical tests, biometric tests, and work permit application fees required by the Canadian government. They must also pay for the internal transport costs within Mexico to attend these processes. In most provinces they pay up to half the cost of the airfare through salary deductions (see below). After arrival in Canada, workers also pay for supplemental health and life insurance that covers workers over-and-above Canadian public health plans in the event of an emergency. Employers can also make deductions from workers' salaries for utilities up to provincial limits.
- The Canadian employer pays a nominal fee to the recognized employer organizations for the services that they render, and pays several costs associated with the recruitment of workers to Canada, including transport from airport to job sites, and registration of workers into Worker Compensation Plans. In British Columbia, employers pay the full return airfare for the worker, while in other provinces employers can recuperate up to half of the workers' airfare from workers. Employers must also provide workers with free housing that has been inspected by government inspectors - the exception is again British Columbia, where they can recuperate an agreed amount for housing.

The fee structure is generally respected under the relatively tightly controlled SAWP, though there are some cases of corruption in Mexico, where workers are charged by officials to enter the programme, and of pay deductions by Canadian employers which go beyond what is permitted under the SAWP contract. Mexican consulates in Canada have authorities to visit farms and to resolve disputes between workers and employers, and the STPS takes a "report of return" from each worker at the end of the season, which is designed to identify any breaches of the SAWP contract. The most common worker complaints relate to housing, pay and other working conditions.

The Labour Mobility Mechanism

The Mexico-Canada LMM is designed to provide opportunities for Mexican workers beyond the SAWP. It is a small programme and recruited only 700 workers in 2019. The process of recruitment is similar to the SAWP on the Mexican side, and the fee structure is similar. The main differences are on the Canadian side, where

employers deal directly with the Mexican government as there are no recognized employer associations to coordinate the programme, and where Mexican consulates have no special authorities to oversee the implementation of contracts. Additionally, the STPS only provides LMM applicants with information about the Canadian work permit application, meaning they get much less assistance than workers going through the SAWP. Given that completing a work permit application can be complex and must be done in English or French, workers may as a result need assistance from employers or from an immigration consultant to complete the work permit application process.

Private recruitment between Mexico and Canada

Recruitment outside bilateral programmes, which typically involves private recruitment agencies and/or immigration consultants, represents a considerably smaller share of the Mexican migrant workers hired in Canada than the SAWP. In 2019 about 4,000 Mexican migrant workers who entered Canada under the TFWP did so outside the government-administered SAWP and LMM schemes.

Once a Canadian employer has obtained a Labour Market Impact Assessment from ESDC, they can proceed to recruit the migrant worker. There are multiple ways in which this recruitment might legally take place:

- **Some employers advertise and hire directly** without the involvement of third parties. In some provinces, employers must register to be able to hire any migrant workers, in addition to the federal LMIA process.
- Employers in some cases directly engage the services of **Mexican recruitment agents**, which are required under Mexican law to be registered, to screen and select applicants.
- Some employers hire **agencies based in Canada** to carry out the recruitment. These Canadian agencies may in some cases themselves hire Mexican agencies. If the employer is hiring in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan, which require private recruiters to be licensed, the employer must

only contract recruiters who are licensed in that province. In other provinces, there are no licensing requirements restricting who can act as a recruiter.

Under Mexican law, all contracts for migrant workers in foreign countries are supposed to be verified and approved by the government. In practice this is not a requirement that Mexican authorities enforce, and so there is no meaningful involvement of the government in private recruitment processes. All significant formal processes take place on the Canadian side. Once a worker has been selected by one of the means above, they must apply for their Canadian work permit, a process which includes medical tests and biometrics. Employers may use the services of **immigration consultants**, both to help secure LMIA's and to ensure workers are successful in obtaining Canadian work permits. Many immigration consultants work within recruitment agencies, and provide both recruitment services and immigration advice.

The **fee structure** for this model is supposed to work as follows:

- The Canadian employer pays all recruitment fees charged by agents, as well as costs associated with the recruitment of workers to Canada, including return airfares, transport from airport to job sites, and registration of workers into Worker Compensation Plans. Employers must also assist workers in finding quality affordable housing, but housing is paid by workers.
- Under both countries' laws, Mexican workers should not pay any recruitment fees to licensed labour recruiters in either Mexico or Canada. However under Canada's Immigration and Refugee Protection Regulations, workers must pay for the costs of medical tests, biometric tests, and work permit application fees required by the Canadian government. Workers also pay for associated travel in Mexico in order to complete the work permit process.
- Licensed immigration consultants are permitted under Canadian law to charge either employers or workers for immigration advisory services.

In practice

Employers, recruitment agents and immigration consultants in some cases take great care to respect

and protect the rights of workers through the migration process, in line with the principles above. However, a description of the legal pathways alone does not capture several important features of migration from Mexico and to Canada.

Firstly, despite requirements in law, the Mexican recruitment industry is highly informal, and the vast majority of recruitment for jobs in North America is carried out by unlicensed agents who pay little heed to regulations. In many cases workers are recruited by members of their rural communities who connect them directly to employers or to larger unlicensed agencies in cities who are offering jobs in North America. Much recruitment happens through Facebook, making it difficult to identify recruiters. There are only nine agencies formally licensed to recruit for jobs abroad, and even these are not subject to a regular inspection programme. In this context, fee charging is very common in Mexico, with one 2013 study finding workers paid on average US\$591 for jobs in the US.

Secondly, recruiters may charge workers for jobs in Canada where employers have not obtained LMIA and associated approval to hire migrant workers. In these cases, Mexican recruiters advise workers not to obtain work permits but to travel to Canada directly as visitors,

under the Electronic Travel Authorization (ETA) scheme. Workers can arrive in Canada to find there are no jobs for them, or that the positions, terms and conditions differ significantly from those promised.

Unscrupulous recruiters in Canada develop relationships with employers and recruiters in origin countries including Mexico, and deliver workers to employers either free of charge or at low cost, passing the cost of recruitment onto the workers, from whom they may charge fees upfront or deduct fees from their salaries throughout their contract. Fees vary significantly depending on workers' country of origin and other factors, but can amount to many thousands of Canadian dollars.

Finally, the role of licenced Canadian immigration consultants adds a further layer of complexity to the fee charging model, as it is permitted for consultants to charge workers for immigration services but not recruitment services. These services are so closely linked that it may be unclear to workers what they are being charged for, and unscrupulous consultants deliberately blur the lines in order to charge for jobs. Unregistered or "ghost" immigration consultants, who charge extortionate fees for jobs that may not exist, are a persistent problem.

A simplified impression of a typical recruitment process for a Mexican agricultural worker employed in Canada under the “SAWP”



Assessment against the Five Corridors indicators:

1. National migration policy

- 1.1** Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies? _____ 24

- 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? _____ 29

- 1.3** Does the government have a stated or observed preference/tendency towards government-to-government recruitment agreements? _____ 30

- 1.4** Does the government take gender and gender identity into account when formulating and implementing migration policy? _____ 32

- 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?) _____ 36

- 1.6** Do national laws allow all categories of migrant workers the ability to change jobs within the destination country? _____ 38

- 1.7** Do destination country laws offer migrant workers a pathway to long term residency and/or citizenship? _____ 44

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.

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.

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.

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.⁶ 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”.⁷ 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.⁸

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

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.⁹ In parallel, undocumented migration from Central America through Mexico towards the US increased dramatically as a result of conflict, climate change and other factors.¹⁰

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”,¹¹ 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”.¹² 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”.¹³ 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.”¹⁴ 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).¹⁵ 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.¹⁶ In 2019 the government promised to cut the number of migrants entering Mexico by 60%.¹⁷ Mexico was accused of becoming President Trump’s wall.¹⁸ 15,000 Mexican troops were deployed to the southern border.¹⁹

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.²⁰ Remittances from Mexico to the US were at record levels in 2020 during the pandemic.²¹ 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.²² 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”.²³

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

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).
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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).
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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).
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20. Center for Strategic and International Studies, “Online Event: The Mexican Economy and Its Impact on Migration”, (27 May 2010).
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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.²⁴ 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.”²⁵ 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.”²⁶ 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.²⁷ 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.²⁸ 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.²⁹ 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’.”³⁰

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.³¹

Canada

According to the 2016 census, more than a fifth of Canada’s population was born outside the country.³² 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”³³ - 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.³⁴ 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.³⁵ 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 2023.³⁶

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.³⁷ 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.³⁸ Temporary foreign workers generally receive a work permit for employment up to one year and seasonal workers for less than a year.³⁹

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.⁴⁰ 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).⁴¹ 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.⁴² 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”.⁴³ 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.”⁴⁴

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 2019.⁴⁵ 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.⁴⁶

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",⁴⁷ 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.⁴⁸ 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,⁴⁹ 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.⁵⁰ Both policies were reversed by the Trudeau government, the

latter after particularly heavy criticism from unions and business.⁵¹

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.⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ 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.”⁵⁶ In 2017, the Auditor-General was critical of the federal government’s performance in ensuring the protection of migrant workers under the TFWP.⁵⁷

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.⁵⁸ 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.”⁵⁹

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.⁶⁰ 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.⁶¹

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.⁶²

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.”⁶³ 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

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.⁶⁴ In 2019, there were 307,265 work permit holders under the International Mobility Program with migrant workers originating from 176 countries⁶⁵ and 98,390 work permit holders under the Temporary Foreign Worker Program in Canada with migrant workers originating from 126 countries.⁶⁶

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”.⁶⁷ 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.⁶⁸ 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”.⁶⁹ 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.⁷⁰ 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.⁷¹ 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 2016.⁷²

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.⁷³ 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

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.⁷⁴ 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.⁷⁵ 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.⁷⁶

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.⁷⁷ 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.⁷⁸

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.”⁷⁹ 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.⁸⁰ 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.”⁸¹

Canada

IRCC officials told us that foreign governments regularly seek bilateral arrangements similar to the SAWP.⁸² 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.⁸³ 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.⁸⁴ 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.”⁸⁵ 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.”⁸⁶

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.⁸⁷

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 recruitment⁸⁸ 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 Philippines⁸⁹

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.”⁹⁰ The Constitution furthermore stipulates that “[e]qual wages shall be paid for equal work, regardless of gender.”⁹¹ The Mexican Anti-Discrimination Law of 2003 also prohibits gender based discrimination.⁹² The RACT, the law regulating private recruitment agencies, stipulates that those offering recruitment services cannot discriminate against applicants based on the characteristics listed above.⁹³

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.⁹⁴ 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.⁹⁵ 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.”⁹⁶ A former Mexican consular officer in Canada argues that,

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”.⁹⁷ 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.⁹⁸

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.⁹⁹ 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%.¹⁰⁰ It is also far lower than the rate of female participation in Canadian agriculture which in 2019 was 31%.¹⁰¹ A Mexican NGO representative who has worked with Canadian unions said this gap indicates that recruitment under the SAWP is particularly discriminatory against women.¹⁰² 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.¹⁰³ 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.”¹⁰⁴ 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.”¹⁰⁵

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.¹⁰⁶ 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”.¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹

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”¹¹⁰ an activity dominated - alongside flowers - by migrant women in many countries’ agricultural sectors.¹¹¹ 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.¹¹² 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.”¹¹³

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.”¹¹⁴ 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.”¹¹⁵

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.¹¹⁶

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.¹¹⁷ 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.¹¹⁸ 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,¹¹⁹ it is likely that this pay gap is comparable or even greater for women with temporary status.¹²⁰

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".¹²¹ The impacts of these initiatives for migrant women are not yet clear.

Over 90% of caregivers in Canada are women.¹²² There are approximately 25,000 migrant women in caregiving jobs,¹²³ mainly from the Philippines and the Caribbean region.¹²⁴ 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."¹²⁵ 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.¹²⁶ Migrant Resources Centre Canada highlighted to us the difficulties that caregivers may face unionising, depending on their province of employment and location.¹²⁷ 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".¹²⁸

In 2014 the Harper government ended the live-in requirement, a change they said would "protect caregivers from abuse."¹²⁹ However in reality the vast majority of caregivers continue to live in their employers' homes.¹³⁰ 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.¹³¹ 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.¹³² 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: 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).

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.¹³³ 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.¹³⁴ 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.¹³⁵

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”.¹³⁶ 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).¹³⁷

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.¹³⁸ 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.¹³⁹ 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

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.¹⁴⁰

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.¹⁴¹ 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;¹⁴² 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.¹⁴³

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”.¹⁴⁴ The application of this provision varies by province - for example in British Columbia, the province requires that the labour recruiter be licensed,¹⁴⁵ while in Ontario there has been no licensing system for labour recruiters since 2000 when the previous system was repealed.¹⁴⁶ British Columbia also requires that if an employer is using the services of a recruiter, that it only contracts provincially licensed labour recruiters licensed.¹⁴⁷ 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.¹⁴⁸

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”.¹⁴⁹ 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's 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.¹⁵⁰ 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.¹⁵¹ 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."¹⁵² The organizations authorized to support SAWP employers in their applications to the Canadian government play a role in reducing the bureaucratic burden on employers.¹⁵³

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.¹⁵⁴ 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."¹⁵⁵ 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.¹⁵⁶

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

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.¹⁵⁷ 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”.¹⁵⁸

One Mexican worker compared the employer-specific work permit to “a form of slavery”.¹⁵⁹ 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 77,800.¹⁶⁰

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.¹⁶¹ 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.¹⁶² Family members of the migrant caregiver are also eligible to receive open work and study permits.¹⁶³

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.¹⁶⁴ 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”.¹⁶⁵

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.¹⁶⁶ SAWP transfers require the agreement of the worker, the previous and new employers, and both the Canadian and Mexican governments.¹⁶⁷ The new employer must have, or obtain, a valid LMIA for the position they are filling.¹⁶⁸ 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.”¹⁶⁹ 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.¹⁷⁰ Meanwhile, farms who "informally transfer" workers risk a CA\$50,000 fine and up to two years in prison.¹⁷¹ 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.¹⁷² 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.¹⁷³ 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.¹⁷⁴ 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."¹⁷⁵

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.¹⁷⁶ Out of 17,968 SAWP workers who worked in Ontario in 2014, 2,482 (14%) were transferred to other employers during the season.¹⁷⁷ 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.¹⁷⁸

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.’”¹⁷⁹ 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.¹⁸⁰ 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.”¹⁸¹

This precarity has been termed as “deportability.”¹⁸² 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.”¹⁸³ 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.”¹⁸⁴ 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.’”¹⁸⁵ A union representative told us the closed work permit “creates this huge power imbalance in that employment relationship.”¹⁸⁶ 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.”¹⁸⁷ 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.”*¹⁸⁸

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.¹⁸⁹ 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.”¹⁹⁰

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.¹⁹¹ 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.”¹⁹²

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].”¹⁹³ 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.”¹⁹⁴

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”.¹⁹⁵ However, officials told us the proposal was not pursued due to the upcoming Canadian election, inconclusive feedback including opposition from employers, and other priorities.¹⁹⁶ 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.¹⁹⁷

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”.¹⁹⁸ 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?”¹⁹⁹ 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.²⁰⁰ Other commentators argued that the LMIA requirement should be occupation-wide and should not be specific to each individual job opportunity.²⁰¹

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.²⁰² 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.²⁰³

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”.²⁰⁴ 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.”²⁰⁵ 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.²⁰⁶

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.²⁰⁷ 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.²⁰⁸

*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.*²¹¹

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.²⁰⁹

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.²¹⁰ 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".²¹²

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".²¹³ 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".²¹⁴

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.”²¹⁵

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.”²¹⁶ 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.”²¹⁷ 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.”²¹⁸

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.”²¹⁹ 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.”²²⁰

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.”²²¹ 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”.²²²

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.”²²³ 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.²²⁴ 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.²²⁵ 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.²²⁶ A key question will be how accessible these new pathways are in practice to migrant workers in low-wage occupations.

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).

Assessment against the Five Corridors indicators:

2. Legal and regulatory framework relating to fair recruitment

- 2.1 Has the government ratified core international human rights and core/relevant labour conventions and enshrined them in domestic law? Does it meaningfully engage with UN and ILO oversight bodies? _____ 49
- 2.2 Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated? _____ 51
- 2.3 Are all workers (formal, informal, regardless of category) covered by relevant legislation? _____ 55
- 2.4 Are workers' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? _____ 57
- 2.5 Are employers' and recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? _____ 58

2. Legal and regulatory framework relating to fair recruitment

“Recognizing [agricultural] workers as essential implies the need to address their exemption from labour laws.”

INTERNATIONAL LABOUR ORGANIZATION REPORT ON COVID-19 AND AGRICULTURAL WORKERS, 2020.

Summary

Mexico is party to all the core UN human rights conventions including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, all 8 ILO core conventions and the domestic workers convention. Largely due to Mexico’s long history of emigration to the United States for work, the 1917 Constitution itself includes specific provisions relating to fair recruitment, requiring employment placement services to be free, contracts with foreign employers to be notarised by a government entity, and specifying that foreign employers must cover the cost of workers’ repatriation. More detailed regulation of private recruiters of migrant workers was developed relatively recently, with Mexico enacting significant changes to the Federal Labour Law and the Regulation of Worker Placement Agencies (RACT) in 2012 and 2014 respectively. The RACT regulates the role of employment agencies at various stages of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment, and return to Mexico. It has limited application, however, in regard to unregistered intermediaries who carry out the bulk of recruitment to North America, and who are often involved with unethical and abusive practices. A senior official told us that this “legal gap” has a real-world impact on the ability of STPS (the labour ministry) to tackle such practices. Workers who migrate through the SAWP with Canada are recruited by the government rather than private agencies, with the bilateral MOU and associated SAWP contract providing the framework for this more tightly regulated recruitment.

Canada’s legal and regulatory framework applying to migrant workers and labour recruitment cuts

across its federalised governance structures, with the federal government taking primary responsibility for immigration, and provincial authorities responsible for labour protections, including the regulation of labour recruitment. The core federal framework is the Immigration and Refugee Protection Act (IRPA), which underwent significant amendments in 2014-2015. Along with its accompanying regulations (IRPR), it outlines the conditions that employers must meet in order to hire migrant workers, which include a number of fair recruitment measures. Immigration consultants are also regulated nationally, with a 2019 act establishing a self-regulatory body with expanded authorities, subject to what the government told us will be “significant oversight”, to replace the previous self-regulating body. Provincial legislation varies in scope and content: some provinces have additional employment protections for migrant workers and specific licensing requirements for labour recruiters of migrant workers, while others cover migrant workers under standard employment standards and labour recruitment provisions. The variance in treatment depending on the province of destination, and the interplay between federal and provincial legislation, creates a high degree of regulatory complexity, while provinces where regulations and monitoring are weakest are attractive jurisdictions for exploitative recruiters and employers. In agriculture, a major sector for low-wage migrant workers, workers in many provinces face exclusion from key employment protections on working hours, wages and holiday, as well as bars on unionisation, which have been upheld by the Supreme Court and led to stern ILO criticism. Civil society organisations, labour unions and employers actively participate in government consultations and discussions, as well as in parliamentary reviews in recent years on the TFWP, immigration consultants, and trafficking.

Recommendations to the Mexican government:

- Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181)
- Revise the Federal Labour Law and the RACT:
 - To provide the STPS with explicit authorities to investigate and penalize unlicensed labour recruiters and intermediaries.
 - to stipulate that labour recruitment fraud is a violation that can be investigated by the STPS regardless of whether it is performed by licensed and unlicensed recruiters or intermediaries.
 - to ensure that authorities can require recruiters to provide workers with financial compensation beyond repatriation costs.

Recommendations to the Canadian federal government

- Give increased political importance to federal/provincial/territorial working groups, with a view to coordinating legislation related to worker protections, labour recruitment, and immigration consulting; consider options to develop agreed inter-provincial minimum standards regarding the rights and protections of migrant workers.
- Where inconsistencies in provincial application of employment standards may be undermining Canada's efforts to meet its commitments to international treaties, review the possibility of using Constitutional authorities for the Parliament to legislate in areas related to employment "declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces" (s. 92.10.(c)). Areas where there could be advantages from federal legislation in employment could include, for example:
 - The ability for migrant workers to form and join unions in all industry sectors, noting that this would be consistent with Canada's international commitments under the ILO

- conventions 87 and 98 on the freedom of association and the right to collective bargaining.
- Strengthen the legislative authorities for the federal government to require employers to compensate migrant workers, including ensuring that migrant workers are considered as a party in employer-worker disputes and inspections.
- Develop a national framework for regulating, licensing, and penalizing labour recruiters involved in international recruitment of migrant workers, noting that the federal government already regulates licensed immigration consultants who are often involved in labour recruitment processes.
- Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181) and work with provinces and territories to ensure its implementation.

Recommendations to Canada's provinces and territories:

- Remove restrictions on freedom of association that prevent migrants or other workers from exercising their legitimate right to form or join trade unions.
- Remove blanket exemptions from employment standards legislation that leave migrants or other workers without basic legal protections, with respect to their working conditions, for example working hours, breaks, and wages.

2.1 Has the government ratified core international human rights and core/relevant labour conventions and enshrined them in domestic law? Does it meaningfully engage with UN and ILO oversight bodies?

Mexico

In Mexico international treaties signed by the government are automatically incorporated into the domestic legal framework after Congress approves them.²⁷⁷ The

227. ILO, "Ratifications for Mexico"

Constitution stipulates that “all individuals shall be entitled to the human rights granted by this Constitution and the international treaties the Mexican State is part of, as well as to the guarantees for the protection of these rights” and guarantees that “such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself”.²²⁸ Mexico has ratified all core UN human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and most optional protocols.²²⁹ Mexico has also ratified the American Convention on Human Rights,²³⁰ and 78 Conventions adopted by the ILO, including the core 8 ILO Conventions and the Domestic Workers Convention, but not the Private Employment Agencies convention.²³¹ In 2018 the Senate approved ILO Convention 98 on the Right to Organise and Collective Bargaining, following campaigning by national and international trade unions.²³²

Mexico engages closely with international bodies including around human rights and migration, given its role as an origin, transit and destination state. The majority of its engagement with UN bodies such as the Committee for the Protection of the Rights All Migrant Workers and Members of their Families, and the Special Rapporteur on the Human Rights of Migrant Workers has related to the situation of migrants within Mexico rather than to the recruitment of Mexican workers for jobs abroad, though both entities have made recommendations relating to Mexico’s consular protection for migrant workers in the United and States and beyond.²³³

2020 saw the ratification of the Canada-US-Mexico Agreement (CUSMA), formerly known as the North

American Free Trade Agreement (NAFTA), which introduced a new binding labour chapter.²³⁴ The labour chapter includes commitments for all three governments to maintain statutes and regulations consistent with the ILO Declaration of Rights at Work, including on freedom of association, with specific requirements for Mexico to revise its domestic legislation on worker representation in collective bargaining.²³⁵ The CUSMA also requires each government to protect migrant workers under its respective labour laws, and introduced a rapid-response labour mechanism for parties to address complaints.²³⁶

Canada

Canada has ratified 7 of 9 core UN Human Rights Treaties.²³⁷ It has not ratified the UN’s International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and in 2019 made clear at the UN Universal Periodic Review that it had no plans to do so.²³⁸ Canada has also ratified 37 ILO Conventions and 1 Protocol, including the core 8 ILO Conventions. It has not ratified the Convention 181 on private employment agencies or 189 related to domestic workers. Canada is not a party to the American Convention on Human Rights, though as a signatory to the Charter of the OAS since 1990 it is committed to the right to collective bargaining, workers’ right to strike and the principle of non-discrimination on the basis of race, sex and nationality among other characteristics.²³⁹

International treaties must be incorporated into Canadian domestic law through legislation in order to have direct legal effect, a position confirmed by the Supreme Court.²⁴⁰ Because Canadian domestic law is applied at both federal and provincial level, “provinces, when affected, should be consulted on those provisions of the treaty that may impact upon their constitutional jurisdiction”.²⁴¹ In engaging international partners

228. Government of Mexico, “[Constitución Política de los Estados Unidos Mexicanos](#)”, Article 1, 5 February 1917.

229. United Nations Human Rights Treaty Bodies, “[Ratification Status for Mexico](#)”

230. OAS, [American Convention on Human Rights “Pact of San José, Costa Rica” \(B-32\)](#), 22 November 1969.

231. ILO, “[Convenios Ratificados por México](#)”

232. ITUC, “[Major win for Mexican workers as senate approves ILO organising and collective bargaining treaty](#)”, (21 September 2019).

233. UN Human Rights Council, “[Report of the Special Rapporteur on the human rights of migrants](#)”, A/HRC/11/7/Add.2(24 March 2009); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families “[Concluding observations on the third periodic report of Mexico](#)”, CMW/C/MEX/CO/3, (27 September 2017).

234. Government of Canada, “[Temporary entry chapter summary](#)”, (29 November 2018); Government of Canada, “[Labour chapter summary](#)”, (20 January 2020).

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

236. Government of Canada, “[Canada-United States-Mexico Agreement \(CUSMA\) - Chapter 23 - Labor](#)”, Article 23.8, (31 July 2021). Government of Canada, “[Labour chapter summary](#)”, (20 January 2020).

237. United Nations Human Rights Treaty Bodies, “[Ratification Status for Mexico](#)”

238. Government of Canada, “[Information related to Canada’s response to recommendations, Third Universal Periodic Review](#)”, (2019): 2.

239. OAS, [Charter of the Organization of American States \(A-41\)](#), Chapter IV, (27 February 1967).

240. Supreme Court of Canada, [Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817, (09 July 1999).

241. Government of Canada, “[Policy on Tabling of Treaties in Parliament](#)”

around the Global Compact on Migration, a Canadian briefing document instructed the Canadian delegation “to avoid text that falls within the jurisdiction of Canada’s provinces and territories.”²⁴² A 2001 Senate committee noted with concern that “the vast majority of Canada’s international human rights treaty obligations have not been the subject of implementing legislation. This means that Canadians cannot, through their courts, compel government respect for their international human rights as such.”²⁴³ The *Immigration and Refugee Protection Act (IRPA)* simply states that “this Act is to be construed and applied in a manner that (f) complies with international human rights instruments to which Canada is signatory”, without elaborating on which human rights may be relevant in the context.²⁴⁴

This “implementation gap” has continued to be a source of friction between Canada and international bodies. A 2017 Amnesty International report, which called on federal, provincial and territorial leaders to develop an international effective human rights implementation agenda, highlighted what it called the “impatience” of 7 UN bodies on this matter:

*“Implementation is where Canada falls short. This shortcoming arises as a concern virtually every time Canada’s record is reviewed internationally. Findings are made, conclusions reached and suggestions for reform formulated; but in the face of the challenges of federalism, a lack of clear political responsibility and accountability, and a system shrouded in a lack of transparency, those expert international-level recommendations languish more often than not.”*²⁴⁵

A 2017 intergovernmental meeting of federal, provincial and territorial representatives agreed to develop a protocol for following up on the recommendations that Canada receives from international human rights bodies.²⁴⁶ This protocol was endorsed by the group’s next meeting in 2020, though it was unclear what effect it was having in practice.²⁴⁷

Canada has clashed with the ILO over the right to freedom of association. 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). Based on the UFCW’s submission, the ILO Committee of Experts found in 2010 that the AEPA violated ILO Conventions 87 and 98.²⁴⁸ However, 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.”²⁴⁹ In response 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.”²⁵⁰

The Supreme Court has meanwhile relied on ILO supervisory bodies as important sources in other cases on labour, including *Saskatchewan Federation of Labour v. Saskatchewan* (2015), in which the court referred to the fact that “the ILO supervisory bodies, including the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, have recognized the right to strike as an indissociable corollary of the right of trade union association” under ILO Convention 87.²⁵¹

2.2 Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated?

242. Global Affairs Canada, “Instructions for CanDel - Outcome document of the Sept. 19 HLM - 20 July 2016”, (19 July 2016):287, obtained through Access to Information (ATI) request to ESDC A-2017-00599, instructions for Canadian Delegation for negotiations related to the Global Compact on Migration

243. “Report of the Standing Senate Committee on Human Rights”, 2b, (December 2001).

244. *Immigration and Refugee Protection Act (S.C. 2001, c. 27)*, section 3, (2001).

245. Amnesty International, “From Promise to Reality: Amnesty International’s Recommendations for the 2017 Federal/Provincial/Territorial Human Rights Meeting”, (2017).

246. “Federal, Provincial and Territorial Ministers from across the country gather to discuss Human Rights”, *Canadian Intergovernmental Conference Secretariat*, (12 December 2017).

247. “Federal-Provincial-Territorial Videoconference of Ministers Responsible for Human Rights”, *Canadian Intergovernmental Conference Secretariat*, (10 November 2020).

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

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

250. ILO, “Interim Report - Report No 358, November 2010 Case No 2704 (Canada)”

251. Supreme Court of Canada, “*Saskatchewan Federation of Labour v. Saskatchewan*”, (30 January 2015).

Mexico

Largely due to Mexico's long history of emigration for work, the 1917 Mexican Constitution itself includes specific provisions relating to fair recruitment. It requires employment placement services to be free, whether delivered by the state or private sector, requires contracts with foreign employers to be notarised by a government entity as well as a consulate of the destination state, and specifies that foreign employers must cover the cost of workers' repatriation.²⁵²

The 1970 Federal Labor Law regulates labour and recruitment in more detail, and article 28 includes provisions relating to living and working conditions, healthcare, and consular support.²⁵³ In 2012, the law was reformed and included new recruitment regulations that, according to a 2015 Solidarity Centre study brought "significant positive changes to the law governing recruitment", including the requirement for recruitment agencies to register with the STPS and that recruiters may not charge migrants for their services, whether directly or through arrangements with employers to make deductions from workers' pay.²⁵⁴

The 2006 Regulation of Worker Placement Agencies (RACT) - amended in 2014 - establishes the overall framework for recruitment agents, and requires that when "the possible commission of a crime is detected, the labor authorities will file a report of the facts before the competent Public Ministry".²⁵⁵ However a senior STPS official told us the RACT was "very permissive" and "needs teeth" to be able to be stricter and more effectively enforced, and said the government was considering amendments to the legal framework to be more specific about types of fraudulent practices and increase sanctions on both licensed and unlicensed labour recruiters. Specifically, he told us there is a "legal gap", as the RACT "does not mention or classify offences committed by unregistered agencies", which are often responsible for exploitation of migrant workers. "It is also necessary to regulate not only legal entities but also the intermediaries, that is, the natural persons who play the role of a recruitment agency," he said.²⁵⁶

Advertisements: The Regulations for Employment Agencies (RACT) prohibit the dissemination of false or misleading job vacancies, working conditions, or any information provided by a labour recruiter that deceives a migrant worker (Article 10.III). The penalty for violating this prohibition is a fine between 50 to 5000 times the minimum wage, or the equivalent of between US\$340 to US\$34,000 (Article 33.I.1(c)).

Information dissemination: The RACT expects the STPS to design and implement permanent campaigns to provide information about rights and obligations related to the employment placement agencies (Article 18).

Selection: The RACT allows labour recruiters to request and collect information from migrant workers on their skills and knowledge in order to select and recruit the workers, and to advertise information to match the employer supply and the worker's demand for a job (Article 11). It prohibits labour recruiters from establishing requirements that may discriminate against worker applicants on the basis of ethnic or national origin, gender, age, disabilities, social and health conditions, pregnancy, religion, migratory status, sexual preferences, civil status, or any other factors for discrimination (Article 6). The penalty for violating this prohibition is a fine between 50 to 5000 times the minimum wage, or the equivalent of between US\$340 to US\$34,000 (Article 33.I.1(c)).

Placement into Employment: The RACT requires that labour recruiters make efforts to verify the genuineness of the employer, the job offer, general working conditions, and conditions related to housing, Social Welfare, and the repatriation of workers, and that worker applicants have applied through the necessary legal processes related to migration and the issuance of visas and work permits (Article 9 Bis). The Federal Labour Law requires that employers and migrant workers enter into an employment contract in the context of the migration process, and requires that information be provided to migrant workers in writing related to the employer and the job offer (Article 28 I and IV). Information must also be provided to workers clarifying that costs associated with the repatriation of workers are the responsibility

252. Government of Mexico, *Constitución Política de los Estados Unidos Mexicanos*, Article 123 19. X-Z, (5 February 1917).

253. Government of Mexico, *Ley Federal del Trabajo*, Article 28, (1 April 1970) (amended on 12 June 2015).

254. Gordon, Jennifer, "Roles for Workers and Unions in Regulating Labor Recruitment in Mexico", *Solidarity Center*, (January 2015): 3.

255. Secretaría del Trabajo y Previsión Social, *Reglamento de Agencias de Colocación de Trabajadores*, Article 30 bis, (21 May 2014).

256. Director, Ministry of Labour and Social Welfare, interview, Mexico City, 10 March 2020.

of the employer, as well as information on housing arrangements and health coverage in the country of destination (Article 25 and 28 I). The Federal Labour Law (Article 28) and the RACT (Article 9 IV) also require labour recruiters to provide contact information to migrant workers for consular services and relevant authorities from other governments that are available to assist the workers in relation to their rights in the country of destination.

Transport and Return to the Country of Origin:

The Federal Labour Law specifies - in line with the Constitution - that costs associated with the repatriation of workers are the responsibility of the employer (Article 28 I a)), while the RACT further clarifies that labour recruiters also must take steps to ensure that transport be provided free of charge to workers employed more than 100km away from their homes (Article 9, VI). In the event that an employer has not complied with the terms of the contract, the law makes the labour recruiter responsible for the costs associated with the repatriation of the migrant worker (Article 9 Bis, V).

Canada

Under Canada's *Constitution Act*, the federal government is responsible for regulating the entry of foreign nationals into Canada, while provincial/territorial governments are responsible for the regulation of employment (including labour recruitment), labour relations (including the rights to form and join unions), education, housing, and health care.²⁵⁷

At the federal level, the 2001 *Immigration and Refugee Protection Act (IRPA)*, and 2002 *Immigration and Refugee Protection Regulations (IRPR)* - both amended several times since their introduction - outline the conditions that employers must meet in order to hire migrant workers, including requirements related to employment contracts, employers covering the transportation of migrant workers, and registration of workers in

workplace compensation plans, amongst others. They authorize the federal government to inspect the employer's compliance with these conditions.²⁵⁸

At the provincial level, while specific legislation varies for the regulation of employment standards and labour recruitment, provincial policies can be broadly grouped into 3 models:

- provinces with additional employment standards protections for migrant workers and licensing requirements specific to labour recruiters of migrant workers (British Columbia,²⁵⁹ Alberta,²⁶⁰ Saskatchewan,²⁶¹ Manitoba,²⁶² Quebec,²⁶³ and Nova Scotia²⁶⁴);
- provinces that have additional employment standards protections related to migrant workers, but no specific licensing requirements for labour recruiters of migrant workers (Ontario²⁶⁵ and New Brunswick²⁶⁶); and
- provinces/territories that cover migrant workers under the same employment standards and labour recruitment provisions as residents of Canada (Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Yukon, and Nunavut).

A 2020 research study by IRCC on regulatory approaches to international labour recruitment finds that "in general, the provinces prohibit either individuals or relevant entities involved in recruitment activities from charging either (1) any fees or (2) fees for strictly recruitment and/or employment-related services". This distinction alludes to the fact that in Canada licensed immigration consultants are permitted to charge prospective migrants for services exclusively related to immigration processes, which Canada treats as separate from recruitment costs. The 2020 IRCC study notes that "fees for immigration services and how they are regulated alongside more traditional recruitment services are a curious consideration in the Canadian immigration context".²⁶⁷ This issue is discussed in more detail in section 6.

257. Sandra Elgersma, "Temporary Foreign Workers", *Library of Parliament*, (1 December 2014).

258. Government of Canada, "Temporary Foreign Worker Program Compliance", (29 March 2021).

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

260. Government of Alberta, "Resources for Temporary Foreign Workers" (2021).

261. Government of Saskatchewan, "Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities"

262. Government of Manitoba, "Employment Standards", (14 April 2020).

263. Government of Quebec, "Placement of Personnel and Recruitment of Temporary Foreign Workers"

264. Government of Nova Scotia, "Foreign Workers"

265. Government of Ontario, "Employment Protection for Foreign Nationals", (25 June 2020).

266. Leanne Dixon-Perera, "Regulatory approaches to international labour recruitment in Canada", (June 2020): 13.

267. Leanne Dixon-Perera, "Regulatory approaches to international labour recruitment in Canada", (June 2020): 28.

Federal and provincial legislation contains specific provisions relating to the different stages of recruitment. There are variations between provinces, some of which are minor and some of which are more substantive.

Advertisements: At the provincial level, practices vary. British Columbia's *Temporary Foreign Worker Protection Act (TFWPA)* prohibits anyone from "provid[ing] recruitment services or act[ing] as or purport[ing] to be a foreign worker recruiter unless the person holds a licence".²⁶⁸ This extends to advertisement, and individuals who operate without a license can be fined.²⁶⁹ Labour recruiters in British Columbia are also prohibited from producing or distributing false or misleading information relating to recruitment services, immigration, immigration services, employment, housing for foreign workers, provincial and federal laws, and/or misrepresenting employment opportunities.²⁷⁰ Ontario, meanwhile, has no stipulations regarding advertisements in the recruitment process in the 2009 *Employment Protection for Foreign Nationals Act (EPFNA)*. At the federal level, there is a requirement to advertise TFWP jobs initially to Canadian residents, as part of the process of obtaining a LMIA.²⁷¹ IRPA also prohibits anyone who is not a member of a provincial or territorial law society, a notary in the province of Quebec, or a member of the ICCRC to advertise offering to provide immigration advice - an offence punishable by fines, imprisonment or both.²⁷²

Information dissemination: At the provincial level practices vary. British Columbia's *Temporary Foreign Worker Protection Act (TFWPA)* requires licensed labour recruiters to provide a services contract to the migrant worker outlining the services provided, and the fees that a recruiter is charging the migrant worker if it is providing immigration consulting services.²⁷³ The licensed labour recruiter must also disclose in writing to the migrant worker the referral fee that it is receiving from the employer, and to disclose if it is providing recruitment services to the employer and immigration

services to the migrant worker, and obtain consent from both the employer and the migrant worker.²⁷⁴ In Ontario, a person who employs a foreign national is required to give the worker (in a language they understand) a copy of the most recent documents published by the Director of Employment Standards about the protection of migrant workers in the province.²⁷⁵

Selection: Canadian provinces generally prohibit discrimination in the hiring process. For example, the Ontario Human Rights Code prohibits discrimination by employment agencies "against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer".²⁷⁶ British Columbia's Human Rights Code contains a similar provision.²⁷⁷ The *Immigration and Refugee Protection Regulations (IRPR)* nevertheless requires that employers make reasonable efforts to hire Canadians or permanent residents first before being authorized to hire a migrant worker (unless an exemption from the LMIA process applies under the regulations).²⁷⁸ Where employers have gained a positive LMIA and are able to recruit internationally, migrant workers must meet the regulatory requirements to obtain a work permit, including demonstrating to the immigration officer that they are able to perform the work that is being offered.²⁷⁹

Placement into Employment: at the federal level, the *IRPR* requires that employers provide documentation to the authorities to demonstrate the genuineness of the employer and of the job offer at the time of application (for example provide tax and employment payroll records).²⁸⁰ For the TFWP, employers of migrant workers in low-wage occupations must provide or ensure that suitable and affordable housing is available for workers, and ensure they are covered by appropriate healthcare from the point that they arrive in Canada. Wages offered to migrant workers "should be similar to wages paid to Canadian and permanent resident employees hired for

268. [Temporary Foreign Workers Act \[SBC 2018\] chapter 45](#), section 3, (2018).

269. Government of British Columbia, "Apply for a foreign worker recruiter's licence"

270. Government of British Columbia, "Recruiter Partner Agent Affiliate Obligation Factsheet"

271. Government of Canada, "Program requirements for low-wage positions"

272. [Immigration and Refugee Protection Act \(S.C. 2001, c. 27\)](#), part 1, (2001).

273. [Temporary Foreign Worker Protection Act \[SBC 2018\] Chapter 45](#), section 27, (2018).

274. *Ibid*, section 23.

275. [Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, chapter 32](#), section 10, (2009).

276. [Human Rights Code, R.S.O. 1990, c. H.19](#), (1990).

277. [Human Rights Code \[RSBC 1996\] Chapter 210](#), section 13, (1996).

278. [Immigration and Refugee Protection Regulations \(SOR/2002-227\)](#), section 203(3)(e), (2002)

279. *Ibid*, section 200(3)(a)

280. Government of Canada, "Business legitimacy", (4 May 2021).

the same job and work location, and with similar skills and years of experience”.²⁸¹ Provincial employment laws provide detailed provisions on working hours and wages.

Transport and Return to the Country of Origin: at the federal level, employers applying to hire migrant workers in low-wage occupations must pay for return transportation to the migrant workers’ country of origin, and may not recover any of these costs directly or indirectly from the workers.²⁸² At the provincial level practices vary, but as an example, the province of British Columbia prohibits a labour recruiter from taking or keeping a migrant worker’s passport or official documents; from threatening to send a worker back to their country or threaten other action for which there is no legal basis; and/or from taking action against or threatening to take action against someone for participating in a legal investigation or proceeding or for making a complaint or inquiry.²⁸³ Ontario also bans employers and recruiters from holding worker’s passports or work permits and from issuing threats against workers who complain to the authorities, without specifying types of possible threats that would constitute a violation of the law.²⁸⁴

2.3 Are all workers (formal, informal, regardless of category) covered by relevant legislation?

Mexico

Protections included in the Federal Labour Law and the Regulation of Worker Placement Agencies (RACT) appear to apply to all Mexican migrant workers and job seekers, and there is no reference to any exceptions.²⁸⁵ Mexico has previously attempted to defend the rights of undocumented Mexican workers overseas, particularly in the United States - in 2002 requesting the Inter-American Court of Human Rights to give an opinion in relation to what it termed “the negation of labor rights based on discriminatory criteria derived from the migratory

status of undocumented workers” in certain states in the region. This negation, the Mexican government suggested, “could encourage employers to use those laws or interpretations to justify a progressive loss of other labor rights; for example: payment of overtime, seniority, outstanding wages and maternity leave, thus abusing the vulnerable status of undocumented migrant workers.”²⁸⁶

Canada

ESDC states that “Canadian law protects all workers in Canada, including temporary foreign workers. The exploitation of temporary foreign workers is considered a violation of Canadian laws and human rights.”²⁸⁷ Nevertheless, there is significant variation in precise legal protections afforded to migrant workers across Canada, depending on their occupation, the immigration program they entered Canada on, their legal status and the province they are employed in. This creates differences that can be meaningful in terms of rights protections.

As noted in sections 1.6 and 1.7, the ability of foreign workers to move jobs within Canada and to gain permanent residence differs significantly depending on their immigration program and occupation. Careworkers, for example, have a highly distinct immigration status as compared to agricultural workers. Even within each of these sectors, there are multiple programmes that have differing entry requirements and offer different possibilities of progressing to residence.

Additionally, workers in agriculture - a sector where migrant workers play a critical role - are exempted from key worker protections in many parts of the country. In Ontario, they are not able to establish or join unions - under the terms of the *1995 Labour Relations Act and the 2002 Agriculture Employees Protection Act (AEPA)*, which stresses “the unique characteristics of agriculture”.²⁸⁸ This has been termed “farm worker exceptionalism”.²⁸⁹ As noted in 2.1 and in section 9, this

281. Government of Canada, “[Job duties and working conditions](#)”, (29 April 2021).

282. Government of Canada, “[Wages](#)”

283. Government of British Columbia, “[Obligations for Partners, Affiliates and Agents of Recruiters Licensed in B.C.](#)”

284. [Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32](#), section 9.(3), section 10, (2009).

285. [Ley Federal del Trabajo](#), article 28, (1 April 1970).

286. Inter-American Court of Human Rights, [Advisory Opinion OC-18/03 of September 17, 2003, requested by the United Mexican States](#)

287. Government of Canada, “[Wages](#)”

288. [Agricultural Employees Protection Act, 2002, S.O. 2002, c. 16](#), (2002); [Labour Relations Act, 1995, S.O. 1995, c. 1, Sched. A](#) (1995).

289. See for example, Vosko, Leah F.; Tucker, Eric & Casey, Rebecca. ‘[Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability](#)’. *International Journal of Comparative Labour Law and Industrial Relations* 35, no. 2 (2019): 227–254.

exclusion has been argued in the Supreme Court and has been a source of friction between Canada and the ILO. Agricultural workers are not only unable to unionise: Ontario Regulation 285/01 excludes various sectors of the economy from the protections of the Provincial Employment Standards Act.²⁹⁰ This has the effect that no agricultural workers in Ontario are entitled to receive: daily and weekly limits on hours of work; daily rest periods; time off between shifts; weekly/bi-weekly rest periods; or overtime pay. Almost all agricultural workers are not entitled to eating periods, public holidays or public holiday pay. Fishers and most farm workers also have no right to the minimum wage, the “three hour rule”, or vacation pay.²⁹¹

Similarly, Alberta’s Bill 26 of 2019, which the provincial government said would “restore balance, fairness and common sense regulations”,²⁹² removed the right of agricultural workers to unionise (by no longer classifying them as “employees”), exempted any farm with 5 or fewer employees (who must have worked more than 6 months consecutively to be counted) from the requirement to carry workplace insurance and from the provisions of the Employment Standards Code. It also expanded the definition of agricultural worker, increasing the number of people excluded from these provisions. The Bill reversed Bill 6 of 2015 which had introduced workplace protections for agricultural workers.²⁹³

Agricultural organisations argue that, “most if not all of our worker protection legislation had their origins rooted in the industrial and manufacturing industries. The nature of work in the manufacturing setting is very different to the nature of work in farming”.²⁹⁴ The ILO has raised concerns about the persistent exemption of agricultural workers from labour laws, noting that it may contribute to such jobs being unpopular among citizens, and in the context of Covid-19 has highlighted

the discrepancy between acknowledgement of the importance of agricultural workers for the food chain, and their lack of labour protection: “recognizing these workers as essential implies the need to address their exemption from labour laws.”²⁹⁵

Undocumented or “non-status” workers in Canada - the number of whom is not accurately known - have a distinct experience from other temporary foreign workers, as a result of their irregular status. A foreign national in Canada is only considered “a member of the worker class” if they have been authorized to enter and remain in Canada as a worker.²⁹⁶ Under the *IRPA*, employers who employ migrant workers “in a capacity in which the foreign national is not authorized under this Act to be employed” face a fine of up to CAD\$50,000 (US\$41,400) or up to two years in prison if indicted - or up to CAD\$10,000 (US\$8,200) or up to six months in prison on summary conviction.²⁹⁷ Where the *IRPA* criminalizes the employer in such situations, the *IRPR* places responsibility on the foreign national: “a foreign national must not work in Canada unless authorized to do so by a work permit or these Regulations.”²⁹⁸ Foreign nationals cannot obtain a new work permit for six months after being found to have worked without authorization,²⁹⁹ while those who cannot show they have the correct visa to match their purpose in Canada can be subject to an exclusion order barring them from the country for a year.³⁰⁰

As a result, undocumented workers are less likely to file complaints. As one worker organization puts it, “many of us who are undocumented fear deportation if we speak out when there are problems at work”.³⁰¹ A study of employment standards in Ontario held that “workers with insecure immigration status who face substandard conditions of employment are rarely in a position to complain due to implicit or explicit threats that they will be penalized by the immigration system (e.g., with deportation).”³⁰² A 2012 Toronto

290. *O. Reg. 285/01: when work deemed to be performed, exemptions and special rules*, section 1.1, (2000).

291. Government of Ontario, “Agriculture, growing, breeding, keeping and fishing”

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

293. Bob Barnetson, “Bill 26 strips farm workers’ basic employment rights”, Parkland Institute, 27 November 2019.

294. Canadian Agricultural Human Resource Council (CAHRC), “Agriculture Workplace Management: A Comparison of Labour Relations, Employment Standards including Regulated Agricultural Wage Rates, Occupational Health and Safety, Workers’ Compensation”, (June 2016).

295. “Seasonal Migrant Workers’ Schemes: Rethinking Fundamental Principles and Mechanisms in light of COVID-19”, *ILO*, May 2020.

296. *Immigration and Refugee Protection Regulations (SOR/2002-227)*, (2002).

297. *Immigration and Refugee Protection Act (S.C. 2001, c. 27)*, (2001).

298. *Immigration and Refugee Protection Regulations (SOR/2002-227)*, (2002).

299. *Ibid*, section 200(3)(e)(i).

300. *Ibid*, section 228(1)(c)(iii).

301. “Undocumented”, *Sudbury Workers’ Centre*, (March 2015).

302. Leah F. Vosko, “Rights without Remedies”: Enforcing Employment Standards in Ontario by Maximizing Voice among Workers in Precarious Jobs, *Osgoode Hall Law Journal* 50.4 (2013).

City Council report assessed undocumented migrant workers as “particularly susceptible to situations where they are required to work for low wages, under poor and unsafe work conditions, and where they have no protection against unfair dismissal, abuse and/or exploitation by their employers”, noting the barriers undocumented workers face in accessing insurance and state services.³⁰³ Temporary foreign workers lose their Social Insurance Number (SIN), which gives them access to many government programmes and benefits, with the expiry of their work permit.³⁰⁴ During the Covid pandemic in 2020, when many temporary foreign workers lost their jobs at short notice, the Migrant Rights Network wrote to the federal government asking for the Canada Emergency Response Benefit (CERB) to be extended to people without valid SINS, pointing out that “as they have limited access to Social Welfare programs, they are not able to pay their rent, buy food and feed their families”.³⁰⁵ The government agreed to give access to workers without valid SINS, though it was unclear whether information about the legal status of those applying would be shared with immigration authorities.³⁰⁶

In 2019 the Federal government initiated a pilot project to address the situation of some undocumented workers, providing pathways to permanent residence for out of status construction workers in Toronto.³⁰⁷

2.4 Are workers’ organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?

Mexico

Since 2000 public consultation has been required on all legislation originating in the executive branch (as opposed to parliament), about a third of all primary laws

in Mexico.³⁰⁸ Trade unions have previously complained about the failure to meaningfully consult them on significant labour reforms, for example in 2011 when changes to the federal labour law raised concerns about the facilitation of outsourcing and precarious contracting, and the failure to address the issue of “protection contracts” (see section 9).³⁰⁹

Unions and worker organisations in Mexico are not, in comparison to some other origin states, heavily invested in fair recruitment issues. “Mexican trade unions have not taken up recruitment as an issue”, as a 2015 Solidarity Center study puts it. Civil society organisations, including the Project for Economic, Social and Cultural Rights (ProDESC), Centro de los Derechos del Migrante, Global Workers and the Jornaleros-SAFE project have led efforts to advocate for strong regulations and a more effective Mexican government response on recruitment issues.³¹⁰ An academic specialising in Mexican migrant workers told us that even so there are relatively few civil society organizations focusing on migration and recruitment, and there are currently no formal avenues for such groups to contribute to the setting of relevant legislation and policy. Recently, some small organisations have been established by former migrants, but these tend to have limited resources, making sustained engagement on legislation challenging.³¹¹

Canada

Worker organizations including labour unions contribute actively to discussions relating to migrant workers and fair recruitment, both at the federal and provincial level. Parliamentary reports into the Temporary Foreign Worker Program in 2016 and into the oversight of immigration consultants in 2017 included substantial input from worker organizations, for example.³¹² Worker organizations have been active in calling for policy and

303. Staff report for action on Undocumented Workers in Toronto, (2013).

304. Government of Canada, “Social Insurance Number that begins with a “9”

305. Migrants Rights Network, “Re: Regulatory changes to ensure Canada Emergency Response Benefit is available to migrants and undocumented residents”, (26 March 2020).

306. Migrants Rights Network, “Income Supports for Migrants in Canada”, (15 May 2020).

307. Government of Canada, “Temporary public policy for out-of-status construction workers in the Greater Toronto Area”

308. OECD, “OECD regulatory policy outlook 2018”, (2018): 214-215.

309. ITUC CSI, “Reforma de la legislación laboral en México”, (5 April 2015).

310. Jennifer Gordon, “Roles for Workers and Unions in Regulating Labor Recruitment in Mexico”, *Solidarity Center*, (January 2015): 4-5

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

312. House of Commons, “Report 4 - Temporary Foreign Worker Program”, (19 September 2016); House of Commons, “Starting Again: Improving Government Oversight of Immigration Consultants”, (June 2017): 43-49.

legal changes to support migrant workers during the COVID-19 pandemic.³¹³

At the federal level there are examples where advocacy by worker organizations has resulted in changes to laws and policies affecting migrant workers. For example, civil society groups and unions made strong calls for more effective federal monitoring of employer compliance with the hiring of migrant workers that led to legislative changes and new funding for the introduction of federal inspections of employers of migrant workers. The 2017 and 2018 budgets saw additional funding for inspection and compliance programmes.³¹⁴ New policy requirements for all employers under the Seasonal Agricultural Worker Program to have housing inspected by provincial, municipal, or licensed housing inspectors on an annual basis also responded to civil society and union feedback as part of a primary agriculture review.³¹⁵ Worker organisations have also called for the strengthening of licensing and monitoring of immigration consultants,³¹⁶ and in 2019, the government passed legislation creating a new statutory framework to regulate immigration and citizenship consultants including “the establishment of a victims’ compensation fund to support clients harmed by wrongful conduct by a consultant”.³¹⁷ Worker organizations have also pushed for stronger employment standards and inspections at the provincial level, for example in Ontario and British Columbia.³¹⁸

Migrant worker organisations supported proposals for the open work permit for migrant workers in situations of abuse, which the government introduced in 2019, but stressed that they saw this as an interim measure.³¹⁹ In this vein, the UFCW also supported a pilot project for permanent residence for agri-food migrant workers “as an important step in the right direction”.³²⁰ This

reflects the position that migrant worker and union organisations have generally taken in favour of open work permits (either occupation specific or sector specific) and permanent residency for migrant workers, as expressed in submissions to the government’s 2019 consultation on occupation-specific work permits.³²¹

In 2018, the Government of Canada established the Migrant Support Network, with a pilot in British Columbia, “to enhance the protection of migrant workers by providing resources, to those who support them.” Among the project’s goals is the strengthening of “the relationships between federal/provincial/territorial and community organizations, employers and employer representatives, employees and employee representatives”, giving worker organisations access to policymakers on a regular basis.³²² Some agricultural employers have expressed concern about the influence that worker organisations have gained through the network, referring to “the arbitrary funding of activist groups”.³²³ In its 2021 Budget, the federal government announced that it will provide \$49.5 million over three years, to expand the Migrant Worker Support Network nationally, and “to support community-based organizations in the provision of migrant worker-centric programs and services, such as on-arrival orientation services and assistance in emergency and at-risk situations.”³²⁴

2.5 Are employers’ and recruiters’ organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?

313. “UFCW and allies secure pay protection, EI eligibility for migrant workers during COVID-19 pandemic”, *United Food and Commercial Workers Union*, (6 April 2020); Government of British Columbia, “Licensing recruiters to protect foreign workers”, (19 July 2019).

314. Canadian Council for Refugees, “Temporary Foreign Worker Program: A submission by the Canadian Council for Refugees to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities”, (May 2016): 3; Alberta Civil Liberties Research Center, “Changes to the TFWP - 2018”

315. Government of Canada, “What we heard: Primary agriculture review”; Government of Canada, “Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements”

316. House of Commons, “Starting Again: Improving Government Oversight of Immigration Consultants”, (June 2017)

317. Government of Canada, “Government changes will strengthen the regulation of immigration and citizenship consultants”

318. “Budget 2019 strengthens employment standards and highlights path for good, green jobs”, *BC Federation of Labour*, (19 February 2019); Michael Mitchell and John Murray, “The Changing Workplaces Review: An Agenda for Workplace Rights - Final Report”, *Government of Ontario*, (May 2017); Government of Ontario, “The Changing Workplaces Review - Information from Public Consultations”

319. Migrant Workers Alliance for Change, “Expanding Worker Rights - Open Work Permit Program for Migrant Workers Facing Risk”, (December 2017).

320. “Food workers’ union welcomes Canadian Agri-food Pilot”, *United Food and Commercial Workers Union*, (12 July 2019); “Canada’s unions applaud pilot project offering greater protections to migrant workers”, *Canadian Labour Congress*, (12 July 2019).

321. See for example: *The United Food and Commercial Workers Union (UFCW Canada)*, *The United Food and Commercial Workers Union (UFCW Canada) comments on introducing occupation-specific work permits under the temporary Foreign Worker Programme published in Canada Gazette, part I, Volume 153, Number 25: Government notices (June 22, 2019)*, (19 July 2019).

322. Migrant worker hub, *Migrant Worker Support Network*

323. WALL, “Issues and Solutions: The Seasonal Agricultural Worker Program”, (2 May 2018).

324. Government of Canada, “BUDGET 2021 A RECOVERY PLAN FOR JOBS, GROWTH, AND RESILIENCE”, (19 April 2021):219.

Mexico

Registered recruitment agencies appear to play a relatively limited role in policymaking in Mexico. There are limited avenues for external stakeholders to contribute to the setting of legislation and policy relevant to overseas recruitment.³²⁵ A 2018 ILO report says that “collaboration between the SNE and private employment agencies is conducted through mutually agreed joint coordination and cooperation mechanisms”, with little further detail.³²⁶ A representative of a Mexican recruitment agency told us that they had never been invited to provide input into proposed legislative or policy changes by the government.³²⁷

Canada

Employer, immigrant consultant and recruiter organizations are active in providing input to the setting and review of federal and provincial legislation, regulations and policy. For example, multiple employers and employer organisations took part in the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities review of the TFWP in 2016, including representatives from the seafood, agriculture, hotel and technology sectors.³²⁸ As a general rule, employer organisations have supported the continuation - and even expansion - of temporary work permit

programmes, arguing that they help address critical shortages in the Canadian labour market. However employer groups largely opposed the government’s 2019 proposals to introduce an occupation specific work permit for temporary foreign workers, for example arguing that “employer-specific work permits provide employers with critical predictability in meeting critical labour needs, where employers have been unable to find available Canadians to fill these positions.”³²⁹

In general, input from recruiter and immigration consultant organizations tends to support the tightening of licensing requirements and monitoring, to reduce the prevalence of unregistered immigration consultants and to increase the regulation of the sector, which has come under scrutiny after high-profile cases of exploitation by unscrupulous consultants, both registered and unregistered, of migrant workers.³³⁰ There have been calls to end the industry’s self-regulation and to bring regulation of the sector under the aegis of the federal government.³³¹ In responding to such suggestions, industry bodies have generally argued instead that the regulatory body should be strengthened to improve its enforcement. Ahead of the introduction of the *College of Immigration and Citizenship Consultants of Canada Act* in 2019, industry submissions supported legislative amendments to penalize unauthorized consultants outside of Canada, and the need to improve enforcement of the Act and conduct additional investigations of regulated immigration consultants.³³²

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

326. ILO, “Public Employment Services in Latin America and the Caribbean: Mexico”, (2018): 23.

327. Representative of recruitment agency, remote interview, February 2020.

328. House of Commons, *Temporary Foreign Worker Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities*; Appendix A, (September 2016): 41-43.

329. 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).

330. Kathy Thomlison, “False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada”, *the Globe and Mail*, (5 April 2019).

331. See for example: House of Commons, “Starting again: improving government oversight of immigration consultants, Report of the Standing Committee on Citizenship and Immigration”, (June 2017).

332. Canadian Association of Professional Immigration Consultants, “Review of Bill C-97’s College of Immigration and Citizenship Consultants Act”, (3 May 2019); Gerd Damitz, “Submission for Standing Committee on Citizenship and Immigration, studying Division 15 of the Bill C-97”; Jacobus Kriek, (Regulated Canadian Immigration Consultant and Policy Analyst, Matrixvisa Inc.), “Evidence - Standing Committee on Citizenship and Immigration”, (1 May 2017).

Assessment against the Five Corridors indicators:

3. Bilateral labour arrangements

- 3.1 Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them? _____ 62
- 3.2 Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices? _____ 63
- 3.3 Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards? _____ 65
- 3.4 Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps? _____ 65
- 3.5 Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms? _____ 66

3. Bilateral labour arrangements

“One of the biggest issues with the SAWP is that it lacks worker voice.” PROFESSOR LEAH VOSKO, YORK UNIVERSITY, 2020.

Summary

The section focuses primarily on the Mexico-Canada SAWP Memorandum of Understanding (MOU), since both countries have relatively few bilateral arrangements regarding labour migration. The Mexico-Canada SAWP MOU is the most significant such arrangement for either country. Canada also has SAWP MOUs with Caribbean countries, and four Canadian provinces have MOUs with the Philippines.

The Mexico-Canada SAWP has a high profile in Mexico and Canada. While the underpinning MOU is only available via freedom of information requests in Canada, the programme’s key provisions are widely accessible, including the standard annual employment contract. The MOU makes no explicit reference to internationally recognised human rights and labour standards, but outlines the principle of non discrimination for Mexican workers, stating that workers are to receive, “adequate accommodation and treatment equal to that received by Canadian workers performing the same type of agricultural work, in accordance with Canadian laws.” As such, the degree to which migrant workers’ human rights are protected depends primarily on Canada’s domestic legislative regime, which - in several important provinces - limits the rights and protections for agricultural workers, irrespective of nationality, with respect to trade unions and labour standards.

The Mexican government’s commitment to the “selection, recruitment and documentation” of workers - in response to Canadian requests for labour - is arguably the core fair recruitment mechanism within the agreement, eliminating the need for private sector recruiters. This has an effect in reducing the risk of exploitative fee charging and fraudulent recruitment, as explored in section 6. The Mexican government also has authority to directly involve itself in the implementation and monitoring

of the programme in Canada. A representative of the Mexican government signs the employment contract alongside the worker, and the consulate must formally approve the accommodation (alongside Canadian inspectors) and the private insurance provided by the employer. Mexican consulates conduct site visits to farms and play a direct role in managing complaints they receive from workers. Worker transfers must be approved by the consulate. As explored in section 7, many workers consider that the consulates could do more to support them, and quality of provision appears highly dependent on the personnel at specific missions and the geographic location of the workers in Canada. Housing conditions, wages and working hours, among other issues, remain significant concerns. Nevertheless, most experts agree that the enhanced authorities the SAWP awards to origin state officials improves workers’ abilities to raise complaints, as compared to workers outside the SAWP.

The SAWP MOU provides for annual reviews by both Mexico and Canada “after consultation with employer groups in Canada.” Changes to the employment contract are agreed at this review. At present, workers are not represented in the meetings, and thus are not able to directly negotiate improvements to working conditions and the fair recruitment of migrant workers under the SAWP. Employers have resisted the inclusion of unions, on the basis that because workers cannot unionise in many provinces of Canada, Canadian unions are not the right actors to represent their interest. For its part the Mexican government says it represents workers’ interests in SAWP meetings and seeks contract amendments based on feedback from workers each season. However a former official told us that the government has to prioritise keeping demand for Mexican seasonal workers high, reducing its appetite for tough negotiations over the SAWP contract.

Recommendations to both the Mexican and Canadian governments

- Allow worker representation and participation, including by Mexican and Canadian unions and civil society organizations at SAWP annual meetings, in line with ILO guidance on bilateral agreements.

Recommendations to the Mexican government

- Make data available from the Report of Return and the STPS' Information System of Labour Mobility (SIMOL) publicly, to allow academics and civil society organizations to undertake analysis of worker outcomes under the SAWP and the LMM on wages, remittances, and other relevant programme information, while respecting workers' confidentiality.

3.1 Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them?

Mexico

We were unable to locate the SAWP MOU itself on any Mexican government site. However, information related to the bilateral Mexico-Canada Seasonal Agricultural Worker Program (SAWP), including general guidelines,³³³ operational manuals,³³⁴ and summaries of the MOU³³⁵ are accessible online from Mexican government websites. More generally, the SAWP has a relatively

high profile in Mexico, and information to promote the program is communicated by the Mexican government via the internet, radio, and social media.³³⁶

Migrant worker organizations such as ProDESC, Centro de los Derechos del Migrante and the National Network of Agricultural Workers, are aware of the SAWP and its provisions. Information on the SAWP for migrant workers available online is relatively basic and directs migrant workers and job seekers to visit local offices of the SNE to obtain additional information related to the program.³³⁷ Migrant worker interviewees told us that they obtained the majority of information related to the SAWP at local offices of the SNE during the selection process, and during information sessions prior to their final departure to Canada, rather than online.³³⁸

Copies of the SAWP employer-employee contract are not available online in Mexican government websites, and Mexican SAWP guidelines explain that “since the 2017 season, the employer-employee contract was integrated into a single version that is published every year by Employment and Social Development Canada through its website [in English, French, and Spanish]”.³³⁹ Migrant worker interviewees told us they only received the employer-employee contract from Mexican officials once selected for work in Canada.³⁴⁰

Canada

We were unable to locate the SAWP MOU itself on any Canadian government site and instead obtained a copy via an access to information request.³⁴¹ Nevertheless information related to the programme, including employer requirements,³⁴² the annual SAWP employer-employee contract,³⁴³ and modifications to the employer-employee contract negotiated at annual SAWP review meetings,³⁴⁴ are available online from Canadian

333. Ministry of Labour and Social Welfare, “Lineamientos generales del programa de trabajadores agrícolas temporales México-Canadá (PTAT)”, (March 2019).
334. Subsecretaría de Empleo y Productividad Laboral, Coordinación General del Servicio Nacional de Empleo, Subcoordinación General del Servicio Nacional de Empleo, “Programa de trabajadores agrícolas temporales México-Canadá (PTAT): Manual de Reclutamiento y operación”, (January 2016).
335. Elma del Carmen Trejo García and Margarita Alvarez Romero, “Programa de trabajadores agrícolas temporales México-Canadá (PTAT)”, Centro de Documentación, Información y Análisis Dirección de Servicios de Investigación y Análisis Subdirección de Política Exterior, (June 2007).
336. See for example: AIEDMX, “8/11/17 Reportaje: Trabajadores Agrícolas Mexicanos en Canadá”, Youtube, (8 November 2017).
337. Servicio Nacional de Empleo, Programa de Trabajadores Agrícolas Temporales México-Canadá (PTAT).
338. Remote interviews, 7 July, 15 July, 16 July, 19 July, 22 July, 24 July, 26 July, 29 July, 30 July, 2 August, 14 August, 14 August 2020.
339. Ministry of Labour and Social Welfare, “Lineamientos generales del programa de trabajadores agrícolas temporales México-Canadá (PTAT)”, (March 2019).
340. Remote interviews, 7 July, 15 July, 16 July, 19 July, 22 July, 24 July, 26 July, 29 July, 30 July, 2 August, 14 August, 14 August 2020.
341. Government of Canada and Government of Mexico, “Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States regarding the Seasonal Agricultural Workers Program (SAWP)”, 1 January 2001, obtained through Access to Information (ATI) request to ESDC A-2017-00599.
342. Government of Canada, “Hire a temporary worker through the Seasonal Agricultural Worker Program: Overview”, 5 February 2021.
343. Government of Canada, “Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021”, 15 January 2021.
344. Government of Canada, “2021 Amendments to the Seasonal Agricultural Workers Program Employment Contract with Mexico”, 15 January 2021.

government websites in English, French, and Spanish. Information on worker rights, complaint mechanisms, and COVID-19 is also available online.³⁴⁵ Comparable information relating to the SAWP for workers from Caribbean countries is available on government websites.³⁴⁶

The Mexico-Canada SAWP and its provisions has a relatively high profile in Canada, and labour unions and a number of migrant worker organizations are active in advocacy initiatives and the provision of direct assistance to migrant workers employed under the SAWP. Unions and worker organizations that actively work with SAWP migrant workers in Canada include the United Food and Commercial Workers (UFCW) union, the Migrant Workers Alliance for Change, Justicia for Migrant Workers, Niagara Migrants Workers Interest Group, Migrant Workers Health Project, the Canadian Council for Refugees, the Network of Assistance for Agricultural Migrant Workers in Quebec (RATTMAQ), and many others.

3.2 Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices?

Mexico

The Federal Labour law commits that when entering in a bilateral mechanism, “the general working conditions for Mexican nationals in the destination country will be dignified and equal to the ones provided to workers in that country, [and] the conditions related to repatriation, housing, Social Welfare, and other benefits will be determined in the agreement.”³⁴⁷ Consistent with

this, the 2001 bilateral MOU for the Mexico-Canada SAWP states “that workers are to be employed at a premium cost to the employers and are to receive from their respective employers, while engaged in employment in Canada, adequate accommodation and treatment equal to that received by Canadian workers performing the same type of agricultural work, in accordance with Canadian laws.”³⁴⁸

Mexican officials told us that they base their requests to the Canadian side for amendments to the SAWP employment agreement partly on the feedback from migrant workers received through a “report of return”, which migrant workers provide to the STPS and the SNE at the end of each season.³⁴⁹ The report of return includes feedback from all SAWP migrant workers on working conditions, accommodation, transportation, payments, treatment by employers, and additional support for workers.³⁵⁰ Modifications made to the employment agreement are made public in the Employment and Social Development Canada website each year.³⁵¹

Nevertheless, a former Mexican government official told us that Mexico is unable to effectively negotiate for workers’ rights beyond minor amendments, and will ultimately accept whatever is requested by the Canadian side: “Mexico is afraid that if they ask for any request or proposal, the Canadian employers will not want to work with Mexican workers anymore and request workers from other countries, therefore they agree and accept any kind of conditions.” The government, she said, “is starting to consider itself as a travel and recruitment agency. Officials working on the SAWP are in their comfort zone and minimal changes are being introduced to the program.”³⁵² A 2016 internal Canadian government briefing ahead of a SAWP meeting noted that the Mexican government is “unlikely to raise” media reports of unfavourable conditions for workers employed on the programme.³⁵³

345. Government of Canada, “Foreign Worker Rights”, 5 May 2021.

346. Government of Canada, “Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements” 5 February 2021; Government of Canada, “Contract for the employment in Canada of commonwealth Caribbean seasonal agricultural workers - 2021”, 15 January 2021.

347. *Ley Federal del Trabajo*, Article 28-A, 1 April 1970.

348. Government of Canada and Government of Mexico, “Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States regarding the Seasonal Agricultural Workers Program (SAWP)”, 1 January 2001, obtained through Access to Information (ATI) request to ESDC A-2017-00599.

349. Interview with Mexican Consular Officials, Consulate of Mexico in Toronto, Ministry of External Relations (SRE), Toronto, 4 March 2020; interview with Director, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

350. Luis Manuel Muñoz Carrillo, “Seasonal Agricultural Workers Program Mexico-Canada: Costs and Benefits”, *George Washington University*, (2010).

351. Government of Canada, “2021 Amendments to the Seasonal Agricultural Workers Program Employment Contract with Mexico”, 15 January 2021.

352. Interview with former official, Ministry of Labour and Social Welfare (STPS), interview, Mexico City, 4 December 2019.

353. 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.

As noted in section 7.6, this can affect consular support for Mexican workers, with one 2010 study arguing that “the Mexican government’s interest in maintaining the status quo for economic reasons” reduced its ability to advocate for its nationals.³⁵⁴ Highlighting the perception that any raising of human rights issues risks reducing SAWP opportunities for Mexicans, a senior official - discussing a case of women who had made formal complaints of sexual harassment against their Canadian employer - told us that, “now this employer will not ask for Mexican workers but for Guatemalan, as they are more submissive.”³⁵⁵

As noted in 2.4, while civil society organisations do work with the Mexican government on information dissemination campaigns for prospective migrant workers (see section 8), there is limited ability for worker organisations to feed into government policy on the recruitment of migrant workers, including in its negotiations with destination state governments.

Canada

In its SAWP bilateral MOUs with the governments of Mexico and the Caribbean, Canada has committed to ensuring migrant workers enjoy “adequate accommodation and treatment equal to that received by Canadian workers performing the same type of agricultural work, in accordance with Canadian laws.”³⁵⁶

As such, the degree to which migrant workers’ human rights are protected relies primarily on Canada’s domestic legislative regime. Nevertheless, origin state consulates play a significant role in the inspection and complaint processes of the SAWP. Some unions have raised concerns that the importance of their role reflects the Canadian government stepping back from and delegating its role as host state in protecting workers’ rights.³⁵⁷

There is very little explicit content in the Mexico-Canada SAWP MOU or its additional protocol specifically relating to human rights protections, as the agreements primarily function as a framework for the recruitment and employment process, establishing the different roles of the two governments and the private sector organizations authorized by Canada to assist employers and administer elements of the scheme. The SAWP is described in internal briefings as “vital to the sustainability of Canadian agriculture [and] ... an international model for the managed migration of seasonal agricultural labour”, illustrating the two key objectives of the government in its management of the scheme.³⁵⁸ Nevertheless, access to information requests demonstrate that when Canada engages in discussions and reviews over the SAWP, its officials evidently factor in issues related to worker conditions as one element of the wider management of a temporary migration programme.

One issue where Canada has demonstrated its ability and willingness to dictate terms to its MOU partners on an issue of labour standards is in regard to the forced saving schemes which were until recently imposed on workers from the Caribbean - with 25% of workers salaries deducted by their employers to be passed on their governments, 5% for the administration of the scheme and 20% put into compulsory saving schemes in their home country. Such policies, which reduce the agency of workers to control their own earnings but are favoured by some origin state governments, are not consistent with international labour standards.³⁵⁹ Specific worker complaints include delays in receiving these forced savings at home and the low exchange rate used to convert their savings into their national currency.³⁶⁰ In any case the deductions are not compliant with labour law in several provinces and between 2015 and 2017, Canada informed its Caribbean partners of its intent to remove the 20% deduction from the standard contract, leaving only the 5% contribution to the programme administration. As one official noted in a 2016 email, “ESDC indicated that they would not be

354. Jenna L. Hennebry and Kerry Preibisch, “A Model for Managed Migration? Re-Examining Best Practices in Canada’s Seasonal Agricultural Worker Program”, *International Migration*, (2010).

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

356. Government of Canada and Government of Mexico, “Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States regarding the Seasonal Agricultural Workers Program (SAWP)”, 1 January 2001, obtained through Access to Information (ATI) request to ESDC A-2017-00599.

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

358. Global Affairs Canada (GAC), “Agenda item: Labour/SAWP”, 14 September 2015, obtained through Access to Information (ATI) request to ESDC A-2017-00599, internal briefing note in preparation for meeting between Canadian and Jamaican officials.

359. ILO, “Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review”, (2015).

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

able to approve a contract with any illegalities.”³⁶¹ The change of policy caused some bilateral difficulties with the Jamaican government, in particular.³⁶²

As noted in section 3.5, Canadian trade unions, in particular the UFCW, have pressed for substantive involvement in the annual SAWP discussions, arguing that their absence undermines their ability to advocate and secure protections for workers. The government instead attempts to consult workers, unions, and worker organizations directly, outside the sphere of bilateral discussions. For example in 2017 and 2018, ESDC conducted a review of provisions related to the employment of migrant workers in primary agriculture - including the SAWP - that included, amongst others, discussions with 75 migrant workers, working with trade unions.³⁶³

3.3 Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards?

Mexico and Canada

The SAWP MOU itself does not make references to internationally recognised human rights and labour standards, acting primarily as an administrative framework for the recruitment and employment of workers.

The MOU does state “that workers are to be employed at a premium cost to the employers and are to receive from their respective employers, while engaged in employment in Canada, adequate accommodation and treatment equal to that received by Canadian workers performing the same type of agricultural work, in accordance with Canadian laws.”³⁶⁴ This is broadly consistent with a key provision of the International Convention on the Rights of Migrant Workers and Their Families, to which Mexico - but not Canada - is a State

Party: “Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and: (a) Other conditions of work [and] ... (b) Other terms of employment.”³⁶⁵ The *IRPR* requires Canadian government officials to apply this principle when considering work permit applications, assessing “whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards”.³⁶⁶ In practice, unions have highlighted systematic policy areas in which SAWP workers do not always receive equal treatment to Canadian residents, for example in relation to access to Employment Insurance (EI) regular benefits, and regarding barriers to practical access to parental, maternal, and compassionate care benefits.³⁶⁷

The SAWP MOU contains no guarantees relating to freedom of association, a key area of international standards for migrant workers. As noted in section 9, agricultural workers in multiple provinces are denied the right to join a union and engage in collective bargaining, a prohibition on which the ILO and the Canadian Supreme Court have clashed.³⁶⁸

3.4 Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps?

Mexico and Canada

In keeping with the government-to-government nature of the agreement, the Mexican government has specific authorities under the SAWP MOU, additional protocol, and attached employment contract to directly involve itself in the implementation and monitoring of the

361. Global Affairs Canada (GAC), “Agenda item: Labour/SAWP”, 14 September 2015, obtained through Access to Information (ATI) request to ESDC A-2017-00599, internal briefing note in preparation for meeting between Canadian and Jamaican officials.

362. Teresa Wright, “Minister urged to press Jamaica over wage deductions of migrant workers in Canada”, *National Post*, (28 September 2018).

363. Government of Canada, “What we heard: Primary agriculture review”, 12 February 2019.

364. Government of Canada and Government of Mexico, “Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States regarding the Seasonal Agricultural Workers Program (SAWP)”, 1 January 2001, obtained through Access to Information (ATI) request to ESDC A-2017-00599.

365. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990.

366. *Immigration and Refugee Protection Regulations*, SOR 2002/227, Part 11, r. 203(3)(d), 30 April 2020.

367. UFCW Canada and the Agriculture Workers Alliance (AWA), “The Status of Migrant Farm Workers in Canada, 2020”, (2020).

368. ILO, “Interim Report - Report No 358, November 2010”, Conclusions: 351-360, Recommendations: 361,(November 2010).

programme. The Mexican government's commitment in the additional protocol to the "selection, recruitment and documentation" of workers - in response to Canadian requests - is the core mechanism that should ensure fair recruitment.³⁶⁹ The degree to which the replacement of the private sector by the state for the recruitment phase of the migration journey contributes to better outcomes is explored in sections 1.4 and 6.

Additionally, the Mexican government is directly involved in mediating the relationship between the employer and worker, giving it a stronger role in consular protection than origin states enjoy in the case of the entry of migrant workers under the TFWP when there are no MOUs with origin states. The "government agent" (meaning, in effect, Mexican consulate staff) signs the employment contract in addition to the worker, while the accommodation and private insurance provided by the employer must meet with the satisfaction of the consulate.³⁷⁰ Employers must share details of hours worked and wages paid with the consulate, notify them of any workplace injuries within 48 hours, agree to any worker transfer with them, and consult them before any dismissal or repatriation if the worker is accused of not fulfilling their contract. The Mexican government commits to paying the repatriation flight in the event of employer insolvency. If employers do not meet their side of the contract, the Mexican government - in consultation with ESDC - is entitled to rescind the contract, and if alternative employment cannot be found, the employer must pay the cost of repatriation and at least wages that would have been owed to the worker under the minimum duration of the contract.³⁷¹ These provisions create the overall framework for the Mexican consulates' role in protection of migrant workers employed under the SAWP. They allow the consulates to pay on-site visits to farms and to play a direct role in managing complaints they receive from workers. However, as noted in indicator 7.6, concerns have been raised about the consulates' discharge of these duties in practice.

Canada's other MOUs, with Caribbean states under the SAWP, establish similar mechanisms to the Mexico-Canada MOU.³⁷²

3.5 Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms?

Mexico and Canada

Under the Additional Protocol to the SAWP, "the present Operational Guidelines may be reviewed and amended annually through consultation between officials".³⁷³ These review meetings take place and review the employment contract. Amendments are published following this process.³⁷⁴

Decisions of the SAWP review process can have a material impact on migrant workers as they directly influence the terms of their contracts with employers. In this context, the major issue of contention relating to this process is participation. As well as officials, these annual meetings include employers: the Canadian Horticultural Council (CHC) is the employer representative, via its Labour Committee, in addition to a number of other sectoral industry associations.³⁷⁵ Experts in agriculture, migration and labour may be invited to address the review process. However there is no formal representation of workers at the meeting. In particular, the UFCW, the main agricultural trade union in Canada, is not a stakeholder to the process. A leading academic expert on temporary migration in Canada who has submitted to the SAWP review process told us that "one of the biggest issues with the SAWP is that it lacks worker voice", and argued that unions should not only be included in review discussions, but should be directly involved in the recruitment and deployment

369. Government of Canada and Government of Mexico, "Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States regarding the Seasonal Agricultural Workers Program (SAWP)", 1 January 2001, obtained through Access to Information (ATI) request to ESDC A-2017-00599.

370. Government of Canada, "Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements", 5 February 2021.

371. Government of Canada, "Contract for the employment in Canada of seasonal agricultural workers from Mexico - 2021" 15 January 2021.

372. Government of Canada and Government of Mexico, "Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States regarding the Seasonal Agricultural Workers Program (SAWP)", 1 January 2001, obtained through Access to Information (ATI) request to ESDC A-2017-00599.

373. Government of Canada and Government of Mexico, "Operational Guidelines to the Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States", 1 January 2001, obtained through Access to Information (ATI) request to ESDC A-2017-00599.

374. See for example: Government of Canada, "2021 Amendments to the Seasonal Agricultural Workers Program Employment Contract with Mexico" 15 January 2021.

375. WALI, "Annual SAWP Review Process", (28 September 2018).

process.³⁷⁶ A Mexican migrant rights organization told us it believed that the UFCW should be recognized as a formal stakeholder to the SAWP and represent workers' interests in bilateral discussions and negotiations.³⁷⁷

Mexican officials told us that workers' input informs their negotiations at annual review meetings,³⁷⁸ while employers have opposed the involvement of Canadian trade unions in the process, as the vast majority of SAWP workers are not unionized due in part to provincial legal restrictions. As the Canadian Federation of Agriculture

told us, "the challenge is that the workers who are actually on farms are not unionised. So the question is whether unions are the right body to represent the workers".³⁷⁹ There are also concerns among some employers about inviting parties to the table who may not support the SAWP's overall framework. The UFCW told us it was hoping things might change in upcoming meetings, but that as of early 2021, "workers are not represented at the SAWP committee, so their concerns and their issues are not part of the discussion. This is totally unfair and very problematic."³⁸⁰

376. Leah Vosko, York University, remote interview, 14 December 2020.

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

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

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

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

Assessment against the Five Corridors indicators:

4. Licensing, registration and certification schemes

- 4.1 Is the system comprehensive? Does it apply to recruitment for all kinds of work? _____ 70
- 4.2 Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers? _____ 74
- 4.3 Are worker and recruiter organizations consulted on the design and implementation of these schemes? _____ 75
- 4.4 Does the government put in place measures that incentivise ethical recruitment practices? _____ 76
- 4.5 Are employers and recruiters jointly liable/accountable for respecting workers' rights in the legislative and regulatory regime governing recruitment? _____ 77

4. Licensing, registration and certification schemes

“Recruitment in Mexico is a highly decentralized and unregulated system” CENTRO DE LOS DERECHOS DEL MIGRANTE, 2020.

Summary

The Regulation of Worker Placement Agencies (RACT) provides Mexico’s framework for the licensing of recruitment agents. All for-profit employment agencies must register with the STPS (the labour ministry) and obtain authorisation before providing domestic or international recruitment services, with additional requirements for recruiters placing migrant workers overseas. Recruitment agencies are banned from charging jobseekers any kind of fees; agreeing with employers to deduct any fees from workers’ salaries; offering illegal or non-existent employment; and/or misleading applicants. Recruiting for jobs overseas without a licence is prohibited, punishable by fines ranging between 50 to 5000 times the minimum wage, or the equivalent of between US\$340 to US\$34,000. However, in practice, the registered agencies are vastly outnumbered by the informal, unregistered recruiters who carry out the bulk of recruitment in Mexico. The agency licensing regime does not currently play a meaningful role in promoting or ensuring fair recruitment. As of August 2020 there were only nine registered agencies licensed to recruit Mexican workers for jobs overseas, despite the fact that hundreds of thousands of workers are recruited every year for work in North America, reflecting what one NGO calls “a highly decentralized and unregulated system.” The government maintains a public register of agencies but this contains only basic information - it does not for example provide any detail about any recruitment agencies that may have been penalized and/or had their licenses revoked. There is no data about inspections and their outcomes. At present, there are few disincentives for unethical or unlicensed recruiters. The failure to curb the activities of unlicensed recruiters is an important factor in explaining why so few recruiters opt to formally register.

Canada’s federal government has jurisdiction over the licensing of immigration consultants, who are authorized to provide assistance with immigration applications, including work permits.

There is a national registry of licensed immigration consultants, and the outcomes of disciplinary proceedings, including in relation to fraudulent recruitment and fee charging, are posted online by the regulator. However, the federal government established a new regulator in 2021 in response to repeated concerns about the weakness of the two previous self-regulatory regimes set up in 2004 and 2011 respectively. The inability of regulators and the federal government to deal effectively with unregulated representatives or “ghost consultants” was particularly highlighted in a 2017 parliamentary review. Provincial governments have jurisdiction over the licensing of labour recruiters. Provincial practices vary, with the first comprehensive legal framework for the regulation of labour recruitment of migrant workers introduced by the province of Manitoba in 2009. Six provinces - most of those that host large numbers of migrant workers - require labour recruiters to be licensed in order to operate, with some also requiring employers to register in order to hire migrant workers. Quebec and Saskatchewan have taken the additional step of requiring immigration consultants to be registered both federally and provincially in order to operate. However, the province which hosts the most migrant workers, Ontario (along with six other provinces and territories) does not require labour recruiters to register in order to operate, a policy that unions and recruitment agencies have called to be reversed. Experts argue that this discrepancy between provinces allows unscrupulous labour recruiters to focus their activities in provinces where regulations and monitoring are weakest. The oversight of recruitment activities outside Canada also remains a significant challenge, and some provinces, including British Columbia and Saskatchewan, require licensed recruiters to provide information on their international partners. British Columbia has taken the additional step of making licensed recruiters liable for the actions of their overseas partners.

Recommendations to the Mexican government:

- Consider changes to the Federal Labour Law and the RACT to license individuals, instead of, or in addition to the current system that provides licenses to agencies that can re-incorporate in order to avoid sanctions.
- Revise the Federal Labour Law and the RACT to clarify the penalties against unlicensed labour recruiters and intermediaries offering services to migrant workers and job seekers; to make licensed labour recruiters liable for actions of any unlicensed partners and intermediaries; and to authorize and fund the STPS to implement and enforce penalties for unlicensed labour recruiters and intermediaries both as companies and as natural persons.
- Institute an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- Publish information on labour recruitment agencies that are inspected and penalized to allow migrant workers and job seekers to avoid these agencies.

Recommendations to Canada's federal government

- Require licensed immigration consultants to provide information on all their Canadian and overseas partners and make them liable for the actions of their overseas partners, similar to recent changes introduced by the province of British Columbia for licensed recruiters and their partners.
- Promote the importance of licensing labour recruiters with provinces and territories that do not currently have licensing regimes, and

allow provinces to share best practices on labour recruitment.

- Communicate proactively to employers about relevant legislation that requires them to use licensed labour recruiters and immigration consultants in Canada.

Recommendations to Canada's provinces and territories:

- Implement licensing systems for any individual engaged in the recruitment of migrant workers, where these are not already in place;
- Institute an ethical recruitment framework into provincial licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; require employers to register with the province in order to be involved in the hiring of migrant workers, in line with regulations adopted by BC, Saskatchewan, Manitoba, Quebec, New Brunswick, and Nova Scotia;
- Amend legislation to hold employers and recruiters liable for the actions by any Canadian and overseas partners in the recruitment process, similar to recent changes introduced by the province of British Columbia;
- Provide increased transparency about licensed recruiters, indicating on provincial public registers where recruiters have been inspected and the key outcomes of these inspections.

4.1 Is the system comprehensive? Does it apply to recruitment for all kinds of work?

Mexico

The 2006 Regulation of Worker Placement Agencies (RACT) - amended in 2014 - establishes the overall

framework for recruitment agents. Under the Federal Labour Law and the RACT, all for-profit employment agencies must register with the STPS and obtain authorization in advance prior to providing domestic or international recruitment services, with additional requirements for recruiters involved in the placement of Mexican migrant workers overseas. For non-profit recruitment agencies, it is sufficient to “inform the STPS about their operations, for the purposes of registration and oversight”.³⁸¹ Non-profit recruitment agencies mostly include municipal governments, universities, industry associations, but also include recruitment agencies like CIERTO Global, which conducts international recruitment as a core activity on a non-profit basis.³⁸² In the event of an inspection, the law states that “in the absence of information or registration before the [STPS], it will be assumed that the recruiter is a for profit recruiter unless proof to the contrary is provided [by the recruiter]”.³⁸³ Under Article 28-B of the Federal Labour Law, recruiting for jobs overseas without a licence is prohibited, something the RACT indicates is a grave infraction, punishable by fines ranging between 50 to 5000 times the minimum wage, or the equivalent of between US\$340 to US\$34,000.³⁸⁴ The RACT also lists activities prohibited for recruitment agencies, including: charging jobseekers any kind of fees; agreeing with employers to deduct any fees from workers’ salaries; offering illegal or non-existent employment, and/or generally misleading the work applicant.³⁸⁵

As of August 2020 there were only 9 registered agencies licensed to recruit Mexican workers for jobs overseas.³⁸⁶ This small number, when compared to the hundreds of thousands of workers recruited every year by the private sector, reflects the reality of what the Centro de los Derechos del Migrante calls “a highly decentralized and unregulated system”, in which “hundreds of recruiters operate in Mexico seeking workers on behalf of employers in the U.S.”³⁸⁷ A Solidarity Center report describes how “employers subcontract recruitment to agencies that in turn deal with brokers in remote

communities, creating a labor supply system that allows each actor to plausibly deny any knowledge or legal responsibility for abuses that take place further down the chain.”³⁸⁸ A senior STPS official acknowledged that the RACT’s exclusive focus on licensed recruiters was a significant concern, calling this a “legal gap”, as the RACT “does not mention or classify offences committed by unregistered agencies”, which are often responsible for exploitation of migrant workers. “It is also necessary to regulate not only legal entities but also the intermediaries, that is, the natural persons who play the role of a recruitment agency”.³⁸⁹

Canada

The regulation of labour recruitment in Canada falls under provincial authority, with requirements differing depending on the location of the recruitment, while the provision of immigration advice and consultancy - closely linked to recruitment services, with many businesses operating as both immigration consultants and recruiters - is regulated at the federal level.

IRCC defines immigration consultants as someone providing Canadian immigration or citizenship advice or representation for a fee or other consideration, and who are not an immigration lawyer, paralegal, or (in Quebec) a notary.³⁹⁰ Immigration consultants have been regulated in some form since 2004, following a 2003 expert report which found that “Canadian laws have not been adequate to address the problem of unscrupulous or incompetent [consultants].” Issues of concern noted in the report overlap considerably with abusive recruitment practices: “We know that some immigration consultants abuse their client’s trust by promising the impossible and failing to deliver. We know that some immigration consultants charge exorbitant fees for their services.”³⁹¹ In 2004 the Canadian Society of Immigration Consultants (CSIC) was established by the federal government as an “independent and self-regulating

381. Ministry of Labour and Social Welfare, “Reglamento de Agencias de Colocación de Trabajadores”, Article 4, (3 March 2006).

382. Ministry of Labour and Social Welfare, “Registro central de agencias de colocación de trabajadores con y sin fines de lucro”, (1 March 2021)

383. Ministry of Labour and Social Welfare, “Reglamento de Agencias de Colocación de Trabajadores”, Article 31, (21 May 2014).

384. Ibid, Articles 32 and 33.

385. Ibid, Article 10.

386. Contratados, “Learn how the placement agencies of registered workers in Mexico should operate”, (1 December 2020).

387. Centro de los Derechos del Migrante, Inc., “Ripe for Reform”, (April 2020):20.

388. Jennifer Gordon, “Roles for Workers and Unions in Regulating Labor Recruitment in Mexico”, *Solidarity Center*, (January 2015): 21.

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

390. *Immigration and Refugee Protection Act (S.C. 2001, c. 27)*, Section 91(2), 2001.

391. Minister of Citizenship and Immigration, “Report of the Advisory Committee on Regulating Immigration Consultants”, *Minister of Public Works and Government Services Canada*, (May 2003).

body” which officials said would “provide protection to vulnerable applicants, while enhancing public confidence in the Canadian immigration program”.³⁹² Nevertheless, a 2008 Parliamentary report found that “despite the establishment of CSIC, complaints from the public and from within the profession about unacceptable practices by immigration consultants have continued” and said that the CSIC was not ensuring that “immigration consultants are being adequately regulated in the public interest.”³⁹³

In 2011, new legislation - the “Cracking Down on Crooked Consultants Act” - was passed, amending the IRPA, to make it an offence (punishable with fines, imprisonment, or both) for anyone other than an authorized representative to provide immigration advice or represent clients on immigration matters and receive direct or indirect compensation for it.³⁹⁴ The ICCRC was selected as the new regulator in 2011,³⁹⁵ its role entailing establishing specific educational and professional requirements, investigating and adjudicating complaints; and administering sanctions.³⁹⁶ Individual consultants (rather than businesses) must register with the ICCRC. The CBSA is responsible for enforcement of the law with regard to both unlicensed and licensed consultants. Beyond making referrals to the CBSA criminal proceedings, the ICCRC lacks authority over unlicensed consultants. During a 2017 Parliamentary review of the regulation of immigration consultants, “the inability of ICCRC and federal partners to deal effectively with unregulated representatives or “ghost consultants” was raised by witnesses repeatedly.”³⁹⁷ There are no clear estimates on the number of such ghost consultants operating, inside and outside Canada. In its 2019 Annual Report, the ICCRC reported that out of 4085 complaints it received between 2011 and 2019, 35% were against unlicensed consultants.³⁹⁸

The 2017 Parliamentary review also heard evidence about a number of shortcomings relating to the ICCRC’s governance and its ability to discharge its function,

ultimately finding that it was “unable to serve its purpose”, and recommending that the government “create, by statute, an independent public-interest body empowered to regulate and govern the profession of immigration consultants”. The committee recommended that the new body be empowered to investigate and prosecute unlicensed consultants.³⁹⁹

Following this, in 2019 the government passed the *College of Immigration and Citizenship Consultants Act*, establishing a new regulator it described as “an arms-length institution mandated to regulate the profession in the public interest”. The College’s powers would include the ability to “request court injunctions to address unlicensed actors providing immigration advice without authorization”, and to enter the premises of a consultant in order to carry out investigations.⁴⁰⁰ The law also saw maximum penalties for unauthorized consultants doubled, and the creation of an administrative monetary penalties and consequences regime to be administered by IRCC. The new College - the third regulator of consultants since 2004 - is expected to open in 2021, replacing the ICCRC. The Executive Director of CAPIC, an immigration consultants organisation, described the development of regulation as an “evolution 40-50 years in the making” and said that it was similar to the development of regulation of other professions, such as lawyers, which had taken place over a longer period.⁴⁰¹

Provincial licensing of recruiters

A 2020 federal government report notes that mandatory licensing of recruiters is “a proactive way for governments to clearly authorize who can and cannot engage in the recruitment and placement of migrant workers”.⁴⁰² As noted in section 2.2, most provinces that host large numbers of migrant workers, require recruiters to register with the province, with variations in requirements and processes. These provinces are British Columbia, Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia. The significant exception is Ontario - host to the most temporary foreign workers - which does

392. Government of Canada, “Government announces creation of a self-regulating body for immigration consultants”, (31 October 2003).

393. House of Commons, “Regulating immigration consultants”, (June 2008).

394. Immigration and Refugee Protection Act (S.C. 2001, c. 27), Section 91, 2001.

395. Government of Canada, “Evaluation of the Immigration Consultants of Canada Regulatory Council”

396. ICCRC, *Annual Report 2019*, (2019):6

397. House of Commons, “Starting again: Improving government oversight of immigration consultants”, (June 2017).

398. ICCRC, *Annual Report 2019*, (2019):16

399. House of Commons, “Starting again: improving government oversight of immigration consultants”, (June 2017).

400. “Minister Mendicino announces the coming into force of the *College of Immigration and Citizenship Consultants Act*”, *Government of Canada* (26 November 2020).

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

402. Leanne Dixon-Perera, “Regulatory approaches to international labour recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020): 28.

not require recruiters of migrant workers to be licensed. Quebec only recently introduced a licensing system, in early 2020.⁴⁰³

British Columbia's licensing framework is relatively typical of the provinces that require recruiters to obtain licences: its *Temporary Foreign Worker Protection Act (TFWPA)* prohibits anyone from "provid[ing] recruitment services or act[ing] as or purport[ing] to be a foreign worker recruiter unless the person holds a licence".⁴⁰⁴ Applicants have to: provide information related to his/her licensing as a federally registered immigration consultant or as a provincial immigration lawyer; provide a list of partners, agents, or affiliates in Canada and overseas, noting that a licensed recruiter is liable for actions taken by its partners in the event of a breach of the TFWPA;⁴⁰⁵ and provide a financial security bond upfront of CAD\$20,000 (US\$16,600) that can be used "to reimburse foreign workers who incur fees or costs in violation of the TFWPA, or to cover fines imposed on the recruiter if found to be in violation with the Act."⁴⁰⁶

Uniquely, Quebec and Saskatchewan additionally require immigration consultants to register at the provincial level - the only two provinces whose regulatory systems respond to what an IRCC research report calls "the highly integrated nature of recruitment and immigration consulting services", by regulating them together. The fact that immigration consultants must register with the province - after registering with the IRCC at the federal level - means that the province is able to monitor and investigate consultants alongside recruitment activity.⁴⁰⁷

Several provinces go further than requiring recruiters to register, expecting employers themselves to register in order to hire migrant workers. Requirements of this kind are in place in British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, and Nova Scotia.⁴⁰⁸ A federal report notes that since provinces do not hold information related to visa and work permit applications

(which sit at federal level), licensing allows provinces to have a better understanding of which employers are hiring migrant workers and to link this information up with their own data regarding employer compliance with employment and other relevant standards. The requirement to register is "generally limited to employers of migrant workers considered more "vulnerable" by regulators than others".⁴⁰⁹

Ontario, Canada's biggest province by population and host to the most migrant workers, has specific legislation in place relating to migrant workers, but overall takes a less stringent approach to the regulation of labour recruiters. Under the 2009 *Employment Protection for Foreign Nationals Act*, a labour recruiter is defined simply as someone who "finds, or attempts to find, an individual for employment" or "finds, or attempts to find, employment for an individual", or who helps someone else, or suggests someone to help with either of these tasks.⁴¹⁰ There is no licensing required before acting as a recruiter, in effect. Until 2001, when the *Employment Agencies Act* was repealed, Ontario had a licensing regime for temporary employment agencies, but officials told us that "in our experience, this became partly a rubber-stamping exercise as third party agencies that were penalized could quickly reincorporate as a different business to avoid bans." The province's approach, officials said, is instead to focus on monitoring and enforcement of any agency that is undertaking labour recruitment.⁴¹¹ There is indeed some evidence that the prior licensing regime was not effective: according to a national association representing recruiters, which dubbed the programme a "tin badge" at the time of its repeal,⁴¹² no licences were ever revoked in 30 years of its operation. However the same association has since called on the province to reverse this decision and reinstate a licensing system that is "meaningful, effective, and addresses the shortcomings of the previous licensing regime", noting that the recruitment industry operates effectively in other provinces that have licensing systems.⁴¹³ Unions

403. Government of Quebec, "[Agences de placement de personnel](#)"

404. *Temporary Foreign Worker Protection Act [SBC 2018] Chapter 45*, section 3, 2018.

405. Government of British Columbia, "[Obligations for Partners, Affiliates, and Agents of Recruiters Licensed in BC](#)",

406. Government of British Columbia, "[Apply for a foreign worker recruiter's licence](#)"

407. Leanne Dixon-Perera, "[Regulatory approaches to international labour recruitment in Canada](#)", Immigration, Refugees and Citizenship Canada, (June 2020): 28.

408. Leanne Dixon-Perera, "[Regulatory approaches to international labour recruitment in Canada](#)", Immigration, Refugees and Citizenship Canada, (June 2020): 42.

409. *Ibid.*, 41.

410. *Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32*, Section 2, 2017.

411. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

412. [Ontario staffing agencies no longer regulated](#), *HR News*, (16 July 2001).

413. Association of Canadian Search, Employment & Staffing Services (ACSESS), "[Ministry of Labour, Training, and Skills Development Consultation Improving compliance with the Employment Standards Act, 2000 in the Temporary Help Sector. Submission of the Association of Canadian Search, Employment & Staffing Services \(ACSESS\)](#)", 25 January 2021.

have made the same call on Ontario,⁴¹⁴ while the Migrant Workers Alliance argued in a 2015 submission to the province: “Currently anyone can recruit migrant workers in Canada or abroad, charge them large fees, and either put them in contact with a Canadian employer or walk away without actually providing the job they promised. To counter the abuses inherent in this system, all recruiters in Ontario must be licensed, the list of licensed recruiters should be easily accessible online to migrant workers around the world, and the licensing should include a financial bond.”⁴¹⁵

Other provinces and territories that do not require labour recruiters to be licensed in order to operate are New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nunavut, Yukon, and the Northwest Territories.⁴¹⁶

Some experts have argued that the differences in approach to regulation between different provinces and territories have material impact for the abuse of migrant workers. A 2014 study by Fay Faraday cites the case of a Filipino worker who reported that the recruiter who placed them in their job in Canada charged “[CA]\$7,000 for a job in Alberta, [CA]\$5,800 for a job in Ontario, but charged no fees at all for a job in Manitoba because the proactive licensing and registration regime in that province prevented the recruiter from charging fees.”⁴¹⁷

4.2 Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers?

Mexico

A regularly updated register of licensed recruitment agencies is publicly available online, including the agencies’ names, registration number, date of authorisation, their status as a profit or non-profit

agency, the number of offices, address and contact details. However the register of agencies contains only basic information - it does not for example provide any detail about any recruitment agencies that may have been penalized and/or had their licenses revoked. There is no data about inspections and their outcomes.⁴¹⁸ The civil society organisation CDM has called on the Mexican government to “maintain databases on authorized labour recruiters that are public, updated in real time, and accessible to migrant workers” and that this should include “the names of all the agents involved in the recruitment process, the names of the employers for whom migrant workers are hired, the number of people recruited and their sociodemographic characteristics.”⁴¹⁹

Out of the 423 agencies authorized to provide worker placement services in Mexico in December 2020, only nine were listed as providing work placement services for migrant workers destined overseas.⁴²⁰ Given the large permanent, temporary, and irregular migration of Mexican nationals to work overseas, particularly to the United States, and the large number of intermediaries involved, it is clear that in reality only a small number of recruiters placing workers internationally are covered by the licensing system.

Canada

The ICCRC operates a registry search function, allowing the public to check whether immigration consultants are licenced in Canada. The registry specifies which consultants are active and which have resigned, deceased or on a leave of absence. It provides company and contact details as well as each consultant’s registration number. The registry includes immigration consultants whose licences have been revoked or suspended, specifying whether this is for administrative or disciplinary reasons. It is also specified when consultants who have resigned have done so while under investigation. In some cases of administrative revocation and suspension some additional information is provided on the registry, such as specifying that the cause was “Failure to complete Compliance Audit Requirements”, “Failure to Pay Membership Dues” or “Failure to complete PME [practice

414. See for example: Ontario Federation of Labour and the Canadian Labour Congress, “[Submission to The Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario](#)”, (21 August 2009).

415. The Migrant Workers Alliance for Change, “[Ontario Immigration Act \(Bill 49\): Submission by Migrant Workers Alliance for Change to Standing Committee on Justice Policy of the Legislative Assembly of Ontario](#)”, (16 April 2015).

416. Leanne Dixon-Perera, “[Regulatory approaches to international labour recruitment in Canada](#)”, Immigration, Refugees and Citizenship Canada, (June 2020): 34.

417. Fay Faraday, “[Profiting from the Precarious: How recruitment practices exploit migrant workers](#)”, *Metcalf Foundation*, (2014):69.

418. Ministry of Labour and Social Welfare, “[Registro central de agencias de colocación de trabajadores con y sin fines de lucro](#)”, (1 March 2021).

419. Centro de los Derechos del Migrante, Inc., “[Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment](#)”, (April 2019): 35-36.

420. Ministry of Labour and Social Welfare, “[Registro central de agencias de colocación de trabajadores con y sin fines de lucro](#)”, (1 March 2021).

management education] course” and the date of the revocation.⁴²¹

The causes of disciplinary revocations are not specified on the general registry. However, details of disciplinary revocations and suspensions, and limitations on consultants’ licences are provided separately. This includes detailed reports of allegations against licensed consultants, proceedings of the ICCRC’s tribunal processes (including representations made by the consultant), and the decisions taken against consultants found to have violated the Code of Professional Ethics. Where relevant, details of separate criminal proceedings are included.⁴²² The ICCRC does not maintain a single consolidated list of individuals who have acted as immigrant consultants without a licence.

Lists of recognized lawyers (who are permitted to provide immigration advice and assistance) are available online from and from the respective provincial/territorial law societies.⁴²³ As a rule, these directories also include details of hearings or cases against lawyers, as well as in some cases directories of unauthorized practitioners.

Provincial information related to licensed labour recruiters

In provinces that have mandatory licensing regimes for labour recruiters that recruit migrant workers, information is made available on licence holders. However, this generally entails basic contact information and details of the issue and expiry dates of licences. None of the provinces appear to maintain public lists with information relating to recruiters whose licences have been suspended or revoked. Only Nova Scotia appears to provide information on additional conditions that have been placed on select recruiters, and recommends that workers and other users consult the list of licensed recruiters often, given the province’s authority to suspend or revoke licenses if appropriate.⁴²⁴ Lists of valid licensed labour recruiters are available for:

- British Columbia: a list of all registered recruiters authorized to recruit foreign workers is provided. Licences can be viewed.⁴²⁵
- Alberta: a list of all licensed employment agencies is available.⁴²⁶
- Saskatchewan: separate lists of all registered recruiters authorized to recruit foreign workers and provincially authorized immigration consultants are provided.⁴²⁷
- Manitoba: a list of all registered recruiters authorized to recruit foreign workers is provided.⁴²⁸
- Quebec: separate lists of all registered recruiters authorized to recruit foreign workers and provincially authorized immigration consultants are provided.⁴²⁹
- Nova Scotia: a list of all registered recruiters authorized to recruit foreign workers is provided, with specific notes where particular conditions have been attached by the province to recruiters’ licences.⁴³⁰

4.3 Are worker and recruiter organizations consulted on the design and implementation of these schemes?

Mexico

Two academic researchers focusing on migrant worker protections and recruitment, told us that there was generally a lack of avenues for civil society and worker organizations to contribute to the setting of legislation and policy relevant to recruitment.⁴³¹ ProDESC told us that opportunities to engage with the government on issues of policy, including in relation to agency licensing, were sporadic and not consistent or sustained.⁴³² One recruitment agency registered to place workers in jobs abroad told us that they had never been invited to provide input into the design or implementation of agency licensing schemes, while another said that they have found some opportunities to raise some concerns with the STPS about the RACT’s application to cases of fraud by unlicensed labour recruiters.⁴³³

421. Immigration Consultants Regulatory Council of Canada, “[Registry of Regulated Canadian Immigration Consultants](#)”

422. ICCRC, “[Revocations, suspensions and restrictions](#)”

423. Government of Canada, “[Find out if your representative is authorized](#)”, (5 March 2021)

424. Government of Nova Scotia, “[List of Licensed Recruiters](#)”

425. Government of British Columbia, “[Licensed Foreign Worker Recruiters](#)”

426. Government of Alberta, “[Find if a business is licenced](#)”

427. Government of Saskatchewan, “[Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities](#)”

428. Government of Manitoba, “[The Worker Recruitment and Protection Act C.C.S.M. c.W197 VALID LICENCE HOLDERS](#)”

429. Government of Quebec, “[Trouver un titulaire de permis](#)”; Government of Quebec, “[Réglementation sur les consultants en immigration](#)”

430. Government of Nova Scotia, “[List of Licensed Recruiters](#)”

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

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

433. Representatives from recruitment agencies, remote interviews, February 2020, and December 18, 2020

Canada

There is a significant degree of interaction between worker organizations, immigration consulting and recruitment organizations, and the various layers of Canadian government in the development of policy. At the federal level, the most formal consultation processes have occurred through a 2016 Parliamentary report on the Temporary Foreign Worker Program,⁴³⁴ a 2017 Parliamentary report on the oversight of immigration consultants,⁴³⁵ and consultations for the drafting of the *College of Immigration and Citizenship Consultants Act* in 2018/19, and provincially through equivalent exercises to introduce changes related to employment standards, labour recruitment, and/or labour relations. Unions and civil society organizations in British Columbia have for example engaged closely with legislative and regulatory changes on the licensing of labour recruiters of foreign workers.⁴³⁶ As noted in section 4.2, worker and recruiter organisations have also called for Ontario to re-introduce a licensing scheme for recruiters. Recruiter and immigration consultancy organisations have also engaged significantly in these discussions. In general immigration consultants and their representative associations have asked the federal government to strengthen licensing processes and to increase regulators' authorities to investigate unauthorized consultants.⁴³⁷

4.4 Does the government put in place measures to incentivise ethical recruitment practices?

Mexico

According to a 2019 IOM report, the Mexican government “expressed its interest and commitment to align its operations with the International Organization for Migration’s International Recruitment Integrity System

(IRIS), to improve the [private] recruitment system in Mexico.” The IRIS programme, developed by the IOM, is “a social compliance system designed to promote international ethical recruitment for companies, governments and workers”.⁴³⁸ One of the aims of IRIS is to provide certification to recruiters that can demonstrate their ethical conduct, providing a high level of assurance to both workers and businesses.

Beyond this, it is unclear whether the Mexican authorities have any specific strategies to encourage ethical recruitment. The RACT should in theory act as a deterrent to unethical recruitment. It requires recruitment agencies that provide services to migrant workers to be licensed, with a violation of this considered a grave infraction.⁴³⁹ Fines for the more serious offences under the RACT can be up to 5,000 times the minimum wage, or the equivalent of US\$34,000.⁴⁴⁰ However in reality, as discussed in section 5, enforcement of the RACT regime is weak. At present, there are few disincentives for unethical or unlicensed recruiters. This may explain why so few agencies are licensed to recruit for overseas jobs.

Canada

With regard to immigration consultants, interlocutors told us that weaknesses in enforcement of the laws - detailed in section 5 - continue to incentivise unethical and illegal practices, in particular relating to charging workers extortionate fees for standard processes and services that in reality entail recruitment. One consultant told us, “we need to enforce the law better. Because ultimately at the moment selling jobs is where the money is to be made. My colleague saw someone was charging [CA]\$25,000 for an LMIA. This is an extreme example but it illustrates the point.”⁴⁴¹

A representative of the ICCRC regulator told us that one of the key constraints on the organization was

434. House of Commons, “[Report 4 - Temporary Foreign Worker Program](#)”, (19 September 2016).

435. House of Commons, “[Starting Again: Improving Government Oversight of Immigration Consultants](#)”, (June 2017): 43-49

436. “[UFCW welcomes new TFWP regulations in BC, calls for further reforms](#)”, *UFCW*, (31 October 2018); “[Licensing recruiters to protect foreign workers](#)”, *Government of British Columbia*, (29 July 2019).

437. See for example: House of Commons, “[Submission for Standing Committee on Citizenship and Immigration, studying Division 15 of the Bill C-97](#)”; House of Commons, “[Standing Committee on Citizenship and Immigration](#)”, (1 May 2017); The Canadian Association of Professional Immigration Consultants (CAPIC), “[Review of Bill C-97’s College of Immigration and Citizenship Consultants Act](#)” (3 May 2019).

438. “[Mexico Moves Towards Ethical Recruitment of Migrant Workers](#)”, *IOM*, (17 May 2019).

439. Ministry of Labour and Social Welfare, “[Reglamento de Agencias de Colocación de Trabajadores](#)”, Article 33, (21 May 2014).

440. *Ibid*, Article 33, (21 May 2014).

441. Licensed immigration consultant, remote interview, 4 December 2020.

that “although we currently can inspect and fine non-compliant immigration consultants, we cannot currently force them to pay fines or compensate workers, and our main ‘threat’ is to suspend the licence of the non-compliant consultant”.⁴⁴² The director of CAPIC, the immigration consultants’ association, was hopeful that the 2019 reforms, creating the College of Immigration and Citizenship Consultants - which will enjoy stronger enforcement powers than the ICCRC - would help: “Once the College is in action, and we see some information in the media about some enforcement actions, including prison terms, those things might make people think twice. At the moment, people think ‘well I’m making enough to risk the penalties’. I’ll do it till they catch me.”⁴⁴³

Beyond immigration consultants, the fact that labour recruitment is regulated at the provincial level - with some significant variation between tightly regulated provinces such as British Columbia and Ontario, which favours a loosely regulated approach - hinders the ability of the federal government to create strategic incentives for ethical recruitment firms. Nevertheless some provinces have put in place innovative measures to encourage ethical recruitment practices. A 2014 report for the Metcalfe foundation notes a practice by Nova Scotia and Saskatchewan that incentivise employers to ensure they are using ethical recruiters: under both provinces’ laws, illegal recruitment fees paid by workers can be recovered from the recruiter who charged it, or from the employer when an unlicensed recruiter has been used: “this provides real incentive to employers to ensure that they are dealing with legitimate recruiters. It brings the employer’s self-interest to bear in enforcing compliance with fair recruitment practices.”⁴⁴⁴

In 2018 the IOM launched an pilot of the IRIS programme between the provincial governments of Saskatchewan and Alberta in Canada and the government of the Philippines, the aim being to “create a framework to promote ethical recruitment in the labour migration corridor between the Philippines and the two Canadian provinces”. Two Canadian recruitment agencies were participating in the pilot.⁴⁴⁵

4.5 Are employers and recruiters jointly-liable/accountable for respecting workers’ rights in the legislative and regulatory regime governing recruitment?

Mexico

In the event that an overseas employer does not comply with the terms of a worker’s contract, the RACT makes registered labour recruiters responsible for the costs associated with the repatriation of the migrant worker.⁴⁴⁶ There are no further references to joint liability in the legislation.

Canada

Canada’s federal immigration system holds employers who require a Labour Market Impact Assessment (LMIA) responsible for the actions of any third party they have used to recruit migrant workers.⁴⁴⁷ The LMIA specifically prohibits employers from recovering costs of hiring the temporary foreign worker and specifies that “this also applies to any third parties used.”⁴⁴⁸

Some provinces also hold employers and recruiters jointly liable. In Ontario, the Employment Protection for Foreign Nationals Act (EPFNA) has since 2018 explicitly made employers and labour recruiters jointly and severally liable “for any contravention of this Act and for any amounts owing to a foreign national by any of them for the contravention”.⁴⁴⁹ This followed calls from groups such as the Migrant Workers Alliance for Change to follow the pioneering example of Manitoba, which introduced this provision first and was followed by Nova Scotia and Saskatchewan: “this practice... ensures that responsibility for violations is not passed to recruiters abroad. Instead, employers should be held accountable for working with appropriate recruiters (who should be licensed in Ontario) to ensure that migrant workers do not face abuse. This practice ensures predictability and certainty for employers, recruiters and migrant workers.”⁴⁵⁰ A 2017 amendment to the EPFNA removed the limiting caveat

442. Michael Huynh, ICCRC, interview, Burlington, 23 January 2020.

443. Dory Jade, CAPIC, remote interview, 16 December 2020.

444. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, *Metcalfe Foundation*, (2014):76.

445. IRIS, “Philippines to Canada IRIS Pilot Project”

446. *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*, Article 9 Bis, V., 21 May 2014.

447. Employment and Social Development Canada, “Labour market impact assessment application: Low-wage positions”, (March 2021): 14.

448. *Ibid*, 12.

449. *Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32*, section 4, 2009.

450. Migrant Workers Alliance for Change, “Ontario Immigration Act (Bill 49): Submission by Migrant Workers Alliance for Change to Standing Committee on Justice Policy of the Legislative Assembly of Ontario”, (16 April 2015).

that employers and recruiters were only jointly liable for actions that had the intent or effect of “defeating” the purpose of the law.⁴⁵¹ Under British Columbia’s 2018 Temporary Foreign Worker Protection Act, meanwhile, labour recruiters are held liable for the actions of partners, affiliates, or agents.⁴⁵²

Faraday argues that in Manitoba, the effect of such arrangements, combined with employers being required to register in order to recruit foreign nationals, and proactive inspection regimes, has been to reduce exploitative recruitment practices.⁴⁵³

451. Government of Ontario, [Employment Standards Act Policy and Interpretation Manual](#), Section 4, (2000).

452. [Temporary Foreign Worker Protection Act \[SBC 2018\] Chapter 45](#), part 5, 2018.

453. Fay Faraday, “[Profiting from the Precarious: How recruitment practices exploit migrant workers](#)”, *Metcalfe Foundation*, (April 2014): 6.

Assessment against the Five Corridors indicators:

5. Machinery to implement and enforce legislative and regulatory regimes

- 5.1** Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates? _____ 82
- 5.2** Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters? _____ 84
- 5.3** Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment? _____ 95
- 5.4** Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector? _____ 98

5. Machinery to implement and enforce legislative and regulatory regimes

“Workers can apply for a job in Canada for free personally with the National Employment Service, but workers would not get a job 100% like with us.” UNLICENSED RECRUITERS ON FACEBOOK, CHARGING MEXICANS FOR FAKE JOBS IN CANADA, MARCH 2020.

Summary

The Ministry of Labor and Social Welfare (STPS) is the lead government agency on the recruitment of migrant workers seeking work overseas, working with the Ministry of External Relations (SRE) and others. The General Directorate of Federal Labour Inspections, within STPS, is empowered to carry out inspections of licensed recruitment agencies. However, officials told us that the inspectorate is mainly focused on employment standards within Mexico and that its staff are not properly trained to inspect the recruitment agents who deploy Mexican workers abroad. There is no evidence of a systematic inspection regime for recruitment agencies - civil society organisations report that STPS rarely inspects recruitment agencies, even on receipt of complaints and two recruitment agencies told us they had never been inspected. Victims of fraud by recruitment agencies have the right to report the crime to law enforcement authorities themselves, but the authorities have not invoked this provision to tackle the recruitment industry except in some rare large cases. The STPS is better resourced and empowered in relation to the SAWP, which it manages through its National Employment Service (SNE) offices around the country, in coordination with the SRE and its Embassy and consulates in Canada. There have been instances of corruption within the administration of the SAWP, with some SNE officials who control elements of the application process for the scheme charging workers for access. Officials acknowledged that such cases were “not rare”. Among the cases that have been investigated, dismissal appears to be the most serious penalty. We are unaware of cases in which SNE officials have been prosecuted for such practices.

Canada’s federal governance structure creates varying legal and enforcement regimes relating to

migrant workers’ recruitment, immigration and employment, depending on the province and sector in which they work. The result can be confusion over jurisdiction and responsibility, which has been brought into sharp focus during the Covid-19 pandemic. Employment and Social Development Canada (ESDC) has been mandated since 2015 to inspect whether employers are respecting the terms under which they are approved to hire migrant workers under the TFWP - this includes complying with relevant federal and provincial laws that regulate employment and recruitment, as well as the protection of the Canadian labour market. ESDC carries out around 2800 inspections per year, representing 13% of all TFWP employers. Inspectors can issue warnings, financial penalties, a ban from the TFWP, and/or revocations of valid Labour Market Impact Assessments, which are necessary to hire foreign workers. Companies that are found non-compliant are named on the IRCC website. The programme is designed to be “remedial, rather than adversarial”. According to available data and analysis by Marsden, Tucker and Vosko, inspectors found non-compliance with almost half of the employers they inspected in 2017/18, but the vast majority were resolved through “corrective measures” such as compensation to workers. Only about 3% of employers inspected were penalised, and only in a handful of those cases were employers fined more than CAD\$5,000 (US\$4,100), raising questions about whether the inspection programme adequately deters poor practices. Provincial authorities carry out inspections related to employment standards, workplace safety, and recruitment. Concerns have been raised that some provinces, including Ontario, Alberta and New Brunswick, focus mainly on responding to complaints by workers rather than on proactive inspections, which means that those who find complaining more difficult - including migrant

workers, whose legal status is tied to their jobs - may be covered less by the inspection programme. Legislation in Ontario, BC, Saskatchewan, Manitoba, Quebec, and Nova Scotia allows for employers to be held responsible for the actions of recruiters, which should in principle increase employer adherence to fair recruitment practices. In terms of law enforcement, prosecutions and convictions for fraud by immigration consultants and trafficking are relatively rare - an average of just under 5 per

year for immigration consulting fraud and 2-3 for trafficking. CBSA and RCMP officials, which have the respective federal leads on the two issues, acknowledge that investigations of the offences are time-intensive and victims are often unwilling to come forward, something experts argue is related to the closed work permit. Provincial criminal investigations of labour recruiters are also rare and time-intensive, with only a few successful prosecutions reported in recent years.

Recommendation to the Mexican government:

- Ensure that inspection of licensed recruitment agencies and investigation of complaints by workers against recruitment agencies is carried out by an effective and sufficiently resourced labour inspectorate.
- Hold accountable any STPS or SNE official accused of demanding or accepting illegal payments for access to government migration programmes, including through referring them to law enforcement agencies, and make information publicly available on the number and nature of such cases identified.

Recommendations to the government of Taiwan:

- Undertake a greater number of employer inspections each year, to increase the likelihood of being inspected; consider increasing employer compliance fees to fund additional inspections.
- Strengthen the legislative authorities for the federal government to require employers to compensate migrant workers (if possible, under the Constitutional authorities in (s. 92.10.(c)), and formally publish information on the number of cases where employers are required to take corrective measures, the amounts of money compensated to migrant workers, and what non-compliances these amounts relate to.

- Ensure that federal inspectors always interview migrant workers, without employers or supervisors present, during inspections, and provide channels for them to communicate any threats or retaliatory measures following inspections.
- Ensure that inspectors include questions related to worker payment of recruitment and related costs that are prohibited under the TFWP; and that they hold employers accountable when workers have been charged for these costs, including by third parties contracted by employers.
- Require employers to clearly display summary feedback from completed federal inspections in the workplace, so that migrant workers can view the conclusions and outcomes of inspections.
- Increase resourcing attached to the investigation and prosecution of immigration fraud, and labour trafficking, by CBSA and RCMP respectively.
- Use federal/provincial/territorial working groups to improve coordination and information sharing between federal and provincial inspection regimes

Recommendations to Canada's provinces and territories:

- Ensure that businesses in sectors of the economy with significant representation of migrant workers are subject to regular and sustained proactive employment standards inspections.

5.1 Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates?

Mexico

The key government institutions relevant to the recruitment of Mexican nationals for work abroad are the Ministry of Labor and Social Welfare (STPS) and the Ministry of External Relations (SRE). The Federal Labour Law charges the STPS to “intervene, in coordination with the Secretaries of the Interior, Economy and Foreign Relations, within the scope of their respective mandates, in the hiring of nationals who are going to provide their services abroad.”⁴⁵⁴ An agency of the STPS, the National Employment Service (SNE) has since 1978 delivered recruitment services for the SAWP and other bilateral migration programmes.⁴⁵⁵ A senior STPS official told us that, “the STPS is in charge of the recruitment and hiring of the migrant workers in Mexico. When the worker arrives in Canada, the SRE must be vigilant to provide consular protection.”⁴⁵⁶ The STPS is also responsible for the licensing of private labour recruiters, and the administrative inspections of private labour recruiters through the General Directorate of Federal Labour Inspections (DGIFT).⁴⁵⁷

Within the SRE sits the General Directorate for the Protection of Mexicans Overseas (DGPME), with a mandate to coordinate issues related to consular protections, human rights, labour protections, migration, and legal assistance for Mexican nationals working and/or living overseas. The DGPME’s “standards for the implementation of protection programs for Mexicans abroad” has a substantial focus on the protection of migrants’ human and labour rights, and states that consular protection is regulated by

international law, listing the international human rights conventions to which Mexico is a party.⁴⁵⁸

A Mexican consular official in Ottawa told us that cooperation between the STPS and the SRE was generally good with respect to the SAWP, and said that the two agencies were focused on ensuring that workers were aware that they could report abuse to both the SRE through the Embassy and consulates in Canada, and to the STPS through the worker’s annual end-of-season report.⁴⁵⁹ The involvement of the STPS is however considerably less with regard to workers migrating to the US or Canada through private channels. A senior STPS official told us that his department had participated with the SRE in awareness raising initiatives for workers going to the US, highlighting the risks they might face and the government programmes they could access. However he acknowledged that these initiatives were small in number.⁴⁶⁰ A civil society organisation told us that in their view, outside government-to-government programmes like the SAWP, “the Mexican government doesn’t have a policy with regard to the recruitment of migrant workers. It’s seen as a private relationship between the worker and the recruiter and employer.”⁴⁶¹ A Mexican Embassy official told us that it is currently a challenge for Mexico to regulate private recruitment companies that are recruiting workers into Canada, noting that, “in the few cases that we are aware of, we see many problems - recruiters double-charging employers and workers, employers recovering recruitment costs from workers, and workers taking on large debts.”⁴⁶²

Canada

At the federal level, the primary departments relevant to fair recruitment issues are the IRCC, which administers the IMP and is responsible for the policy and issuance of work permits to foreign nationals, and the ESDC which administers the TFWP, including the processing of employer applications to hire migrant workers through its Service Canada offices. ESDC and IRCC are also responsible for employer inspections under the TFWP and IMP respectively.⁴⁶³ The CBSA is

454. *Ley Federal del Trabajo*, Article 539, II, (d), 1 April 1970.

455. Servicio Nacional de Empleo, “*Subsecretaría de Empleo y Productividad Laboral*”, November 2017.

456. Interview with Director, Ministry of Labor and Social Welfare, Mexico City, 20 March 2020.

457. Ministry of Labour and Social Welfare, “*Reglamento de Agencias de Colocación de Trabajadores*”, Articles 7 and 30, (21 May 2014).

458. Ministry of Foreign Affairs, “*Normas para la ejecución del programa de protección consular a personas mexicanas en el exterior*”, (May 2017):5.

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

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

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

462. Gabriel Morales, Embassy of Mexico in Canada, interview, 3 March 2020.

463. Government of Canada, “*Temporary Foreign Worker*”

responsible for immigration enforcement, and for the issuance of work permits to foreign nationals at Ports of Entry, the latter responsibility performed under delegation on behalf of IRCC.⁴⁶⁴

While under Canada's Constitution the federal government shares jurisdiction over immigration (a "concurrent" power) with the provinces and territories,⁴⁶⁵ the federal government has historically led on policy and legal development, and enforcement, in this area. Meanwhile, provincial governments have jurisdiction over employment standards, labour relations, and labour recruitment, except in sectors of the economy that are designated as federally regulated - these include banks, telecommunications, air transport, ports and shipping.⁴⁶⁶

The Forum of Ministers Responsible for Immigration (FMRI) brings together federal authorities, provinces and territories - with Quebec having observer status.⁴⁶⁷ The Forum meets annually and has produced a "Federal-Provincial-Territorial Strategic Plan for Immigration 2020-2023", a one slide document with four principles, including "Canada protects vulnerable, displaced, and persecuted persons", but the published plan contains no detail of what this means in practice.⁴⁶⁸ Meanwhile, an ESDC official told us that the department also co-chairs a federal-provincial-territorial working group that coordinates issues related to migrant workers and working conditions (including labour recruitment) on a regular basis, and reports to the Federal-Provincial-Territorial Ministers of Labour.⁴⁶⁹ For example, IRCC announced in March 2021 that as part of the process to introduce upcoming regulations for immigration consultants, officials were discussing with provinces and territories the nexus between the federal College of Immigration and Citizenship Consultants Act and provincial legislation dealing with labour recruiters.⁴⁷⁰

The implication of Canada's federal governance structure for migrant workers is to create varying legal

and enforcement regimes relating to their recruitment, immigration and employment, depending on the province and sector in which they work. This can be bewilderingly complex even for experts. A 2020 IRCC research paper neatly summarises the issue:

"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. The consequence is markedly distinct coverage of migrant worker protections across Canada and inconsistency of rules for relevant players, including recruiters active in multiple jurisdictions."⁴⁷¹

A former Mexican consulate officer told us that the ability of consulates to support migrant workers depended on the provinces they were employed: she said that in Quebec, relatively well-resourced provincial government provincial officials were highly engaged in responding to and acting on enquiries from consulates, in contrast to some other smaller provinces.⁴⁷² A 2014 Metcalfe report recommends the design of legislation and practices that "ensure that the federal and provincial jurisdictions work together to use multidirectional oversight. The federal government's refusal to process LMIA's until an employer has secured provincial registration is one example of such collaboration".⁴⁷³ Ontario officials told us they had been improving information sharing with the federal government and this had allowed them to target inspections more precisely, based on information provided by ESDC.⁴⁷⁴

464. Government of Canada, "Instrument of Designation and Delegation", (26 January 2021):34-35

465. Government of Canada, "Federal-Provincial/Territorial Agreements"

466. Government of Canada, "List of federally regulated industries and workplaces"

467. Forum of Ministers Responsible for Immigration

468. Forum of Ministers Responsible for Immigration, "Federal-Provincial-Territorial Strategic Plan for Immigration 2020-2023"

469. ESDC official, Employment and Social Development Canada, remote interview, 8 April 2021.

470. Government of Canada, "Forward Regulatory Plan: 2021 to 2023 Governor in Council regulations to establish a new system of administrative penalties and consequences related to the provision of immigration representation and/or advice", (31 March 2021).

471. Leanne Dixon-Perera, "Regulatory approaches to international labour recruitment in Canada", (June 2020): 62.

472. Maria Fernanda Maxil Platas, former Consular Officer in Mexican Consulate in Montreal, Ministry of External Relations, interview, Ottawa, 3 March 2020.

473. Fay Faraday, "Profiting from the Precarious: How recruitment practices exploit migrant workers", Metcalfe Foundation, (April 2014):81.

474. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

The Covid-19 pandemic has brought into sharp focus the complexity of Canada’s governance of migrant labour, with an urgent need to address questions about housing conditions and social distancing, quarantine arrangements, sick pay and self-isolation pay, and how to conduct inspections without being physically present. The pandemic led to new coordinated federal/provincial initiatives on inspection (see section 5.2), but concerns were raised into 2021 about the tendency for migrant workers to effectively slip through the gaps. An Ontario MP told media with regard to quarantining procedures for workers arriving for the new season in early 2021: “this is a really challenging space because of the multiple jurisdictions and agencies that are involved at the federal, provincial and local level.” The Leamington Mayor meanwhile said, “no one knows who’s in charge”.⁴⁷⁵ A social worker who works with migrant workers in Ontario was frustrated by the impact that confusion of overlapping responsibilities had on workers:

“Migrant workers historically have lived in horrific accommodation like garages and with Covid that creates a whole new layer of risks. Nobody is really willing to take responsibility ... We have an ongoing dialogue with the federal and provincial government over who should take responsibility for conditions at the workplace, and who in the worker’s home. Who has jurisdiction? Very little progress has been made.”⁴⁷⁶

5.2 Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters?

Mexico

In Mexico, responsibilities over labour inspections fall under the authority of the General Directorate of Federal Labour Inspections (DGIFT), which operates under the Ministry of Labor and Social Welfare (STPS). In the context of international labour recruitment, the Federal Labour Law outlines requirements that employers must meet to hire Mexican nationals overseas, including the requirement for employment contracts, and establishes the requirement for labour recruiters to be licensed. For its part, the RACT sets more detailed requirements that labour recruiters must respect when recruiting Mexican nationals for jobs overseas. Both the Federal Labour Law and the RACT include authorities on sanctions and penalties that labour inspectors can impose.⁴⁷⁷

Labour inspectors are required to “monitor and promote, within their respective jurisdictions, compliance with labour legislation”,⁴⁷⁸ and they are authorised to carry out ordinary and extraordinary inspections, including of worker placement agencies.⁴⁷⁹ In the context of labour recruitment, labour inspectors are responsible for: ensuring that labour recruiters operating in Mexico have the necessary authorisation and licensing; verifying that recruitment services being provided are free for workers; requiring labour recruiters to compensate migrant workers for repatriation costs in the event that the workers have been deceived in relation to their working conditions overseas; and any other requirements outlined in the Federal Labour Law and the RACT.⁴⁸⁰ In the event of breaches by the employer or the labour recruiter, the Federal Labour Law and the RACT authorize inspectors to impose fines that range from 50 to 5,000 times the minimum wage, or the equivalent of US\$340 to US\$34,000 in 2021.⁴⁸¹

Individuals can complain about recruiters and request an inspection, by emailing or phoning STPS. In 2016, STPS labour inspectors conducted 438 inspections of worker placement agencies.⁴⁸² It is unclear how many of these inspections involved agencies recruiting for overseas jobs. Out of the 423 agencies authorized to

475. “‘No one knows who’s in charge:’ Poor quarantine coordination puts migrant worker health at risk”, *CBC*, (26 January 2021).

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

477. *Ley Federal del Trabajo*, articles 25, 28, and 28B, 1 April 1970; *Reglamento de Agencias de Colocación de Trabajadores*, articles 9Bis and 10, 21 May 2014.

478. *Reglamento General de Inspección del Trabajo y Aplicación de Sanciones*, Article 8 VIII, IX, and X, 17 June 2014.

479. *Ibid*, Article 11.

480. Government of Mexico, *Reglamento General de Inspección del Trabajo y Aplicación de Sanciones*, Article 8 VIII, IX, and X, 17 June 2014; *Ley Federal del Trabajo*, Article 28-B, 1 April 1970; *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*, 21 May 2014.

481. *Ley Federal del Trabajo*, title XVI, 1 April 1970; *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*, article 33, 21 May 2014; Ministry of Labour and Social Welfare, “*Salarios mínimos 2021*”

482. Ministry of Labour and Social Welfare, “*Programa de Inspección 2016*”, (2016): 10.

provide worker placement services in December 2020, only 9 (2%) were listed as providing work placement services for migrant workers destined overseas.⁴⁸³ These inspections relate to licensed agencies. The STPS is able where it receives complaints from workers to carry out inspections of unlicensed agencies, but only if the workers can provide a legitimate permanent address for these agencies. They can also take action to close unlicensed agencies. In 2015, following worker complaints that were supported by a civil society organisation and municipal authorities, STPS closed down an agent in Cerritos, San Luis Potosi, who had been charging US\$4500 for visas to the United States.⁴⁸⁴ A senior official at the STPS told us that the inspectorate does not have sufficiently trained staff to conduct many inspections of labour recruiters of migrant workers destined overseas, and said that in general the inspectorate faces resource pressures.⁴⁸⁵ Another senior STPS official told us that “labour inspectors are there to inspect general labour rules, but not really the work that recruitment agencies do or the fraud in recruitment processes,” noting the logistical challenges of overseeing recruitment activity, which is often concentrated in rural areas, and which is often highly informal, with no written job offers or contracts. As a result, he said, the STPS focuses on preventive information campaigns to prevent migrant workers from being taken advantage of.⁴⁸⁶ A 2015 Solidarity Centre report noted that STPS “rarely if ever employed” their powers to inspect recruitment agencies on receipt of complaints.⁴⁸⁷ A Mexican recruitment agency which places workers in jobs overseas and has operated for several years told us they have never been inspected by STPS and did not know of other agencies which had been.⁴⁸⁸

Civil society organisations are heavily critical of these weaknesses in Mexico’s inspection regime, which one says contributes to “a system characterized by near-total impunity”.⁴⁸⁹ The few enforcement actions that do take place are heavily dependent on workers to complain. ProDESC told us that, “while workers can make

complaints, most of the time they are afraid. If they say something, they can’t return to the company again. All the incentives are against the worker.”⁴⁹⁰

During 2020 and 2021 the government has initiated a series of labour reforms, including phased legislative changes related to the resolution of labour conflicts, introducing new Labour Conciliation Centres to encourage the mediation and resolution of labour conflicts, and strengthening the authorities of Independent Labour Tribunals that have judicial powers.⁴⁹¹ The government states that it recovered 248 million pesos (US\$12.5M) for workers through conciliation, over a two month period.⁴⁹² It is as yet unclear if the resolution mechanisms can or will apply to labour recruitment cases that impact migrant workers.

Canada

The recruitment and employment of migrant workers in Canada is subject to a range of different inspection regimes, at federal and provincial level. Since 2015, the federal government has carried out inspections of employer compliance with the conditions placed on them when initially approved to hire migrant workers. Violations by employers of these conditions - which include requiring employers to comply with provincial labour standards and provide decent working conditions - are considered to constitute breaches of immigration law.⁴⁹³ Meanwhile, provincial labour inspectorates have responsibility for labour standards, workplace safety, labour relations, and labour recruitment. In some cases, federal and provincial labour inspectorates have operated in partnership to carry out joint inspections, particularly during the COVID pandemic, and federal and provincial governments have also established agreements to share information on the outcomes of inspections.⁴⁹⁴ Additionally, at the national level, the Immigration Consultants of Canada Regulatory Council (ICCRC) is a professional regulatory body that carries out inspections of licensed immigration consultants.

483. Ministry of Labour and Social Welfare, “Registro central de agencias de colocación de trabajadores con y sin fines de lucro”, (1 March 2021).

484. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019): 31-32

485. Interview with senior official, General Directorate of Federal Labour Inspections, Ministry of Labour and Social Welfare, Mexico City, 2 March 2020.

486. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

487. Jennifer Gordon, “Roles for Workers and Unions in Regulating Labor Recruitment in Mexico”, *Solidarity Center*, (January 2015).

488. Representative from recruitment agency, interview, Mexico City, February 2020.

489. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019): 32

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

491. Government of Mexico, “LOS 3 EJES DE LA REFORMA AL SISTEMA DE JUSTICIA LABORAL Y NEGOCIACIÓN COLECTIVA”

492. Government of Mexico, “Recupera Centro Federal Laboral 248 millones de pesos a favor de los trabajadores, vía conciliación”, (26 January 2021).

493. *Immigration and Refugee Protection Regulations (SOR/2002-227)*, regulations 209.1 to 209.92, (2002).

494. “Protect migrant workers or face consequences, Ford and Trudeau warn farmers”, *the Canadian Press*, (22 June 2020); Government of Canada, “Temporary Foreign Worker”, (18 March 2021); and Government of Canada and Government of Ontario, “Temporary Foreign Worker Program Information Sharing Agreement”, 23 July 2014, obtained through Access to Information (ATI) request to ESDC A-2018-02770.

Federal inspection of employers

Until 2011, the federal government had only played a role in the initial approval for employers to hire migrant workers, but did not have mechanisms to monitor or enforce the employers' compliance after workers' arrival. Some observers have accused the government of having "shirked responsibility" in this respect.⁴⁹⁵ After much criticism, revisions to the *IRPA* and *IRPR* that came into force in 2015 mandated federal agencies to carry out onsite inspections to assess whether employers were among other things making "reasonable efforts to provide a workplace that is free of abuse".⁴⁹⁶ A 2017 Auditor General report was critical of the inspection programme, though the report's findings were weighted less towards worker protections and more towards failures to strictly implement the protectionist labour market policies of the TFWP, protecting jobs for Canadians and residents.⁴⁹⁷

ESDC and Service Canada - "ESDC/Service Canada inspectors" - are responsible for conducting inspections of employers' compliance. Inspections under the TFWP assess employer compliance with at least 22 different criteria. Six relate to the protection of migrant workers' rights, including one specific to the conditions of live-in caregivers, with the remainder focusing on whether employers are doing enough to provide jobs for Canadians and residents, and the quality of their record keeping. The six rights-related criteria assess whether employers:

- Comply with **federal and provincial laws** that regulate employment and recruitment.
- Provide workers with employment in the **same occupation** as stated in the offer of employment.
- Provide workers with **wages and working conditions** that are "substantially the same but not less favourable" than in the job offer.
- Make "reasonable efforts" to provide a **workplace**

free of abuse. Workplace abuse is defined as "physical abuse, including assault and forcible confinement; sexual abuse, including sexual contact without consent; psychological abuse, including threats and intimidation; [and] financial abuse, including fraud and extortion."⁴⁹⁸

- Provide **live-in caregivers** (not applicable to other sectors) with "adequate furnished and private accommodations in the household".⁴⁹⁹

As of January 2021, employers could be found "non-compliant" for 24 reasons, largely derived from the inspection criteria - covering worker protections, labour market protection, and employer cooperation and documentation - and including five reasons that relate directly to migrant rights regarding Covid-19, quarantine and isolation.⁵⁰⁰

According to ESDC public documents, there are approximately 22,000 employers employing migrant workers under the TFWP, and ESDC carries out around 2800 inspections per year, representing just less than 13% of all relevant employers.⁵⁰¹ Government data disclosed through ATI requests, providing information about TFWP inspections until 2018, shows:

- **Total number of inspections:** ESDC carried out 3,441 inspections in the 2015/16 financial year (1 April to 31 March), 3,549 inspections in 2016/17 and 2,888 in 2017/18.⁵⁰²
- **Inspection processing time:** Government data shows that completed cases under the SAWP took an average of 148 days in 2016/17, and 270 in 2017/18. Non-SAWP cases took an average of 156 days in 2016/17 and 213 days in 2017/18.⁵⁰³ The time taken to process inspections, particularly when workers make complaints, has been criticised, particularly as little information is provided to complainants during this period. This issue is explored further in section 7.

495. Sarah Marsden, Eric Tucker and Leah Vosko, "Federal Enforcement of Migrant Workers' Labour Rights in Canada", *SSRN*, (January 2020).

496. *Regulations Amending the Immigration and Refugee Protection Regulations Amendments*, Vol. 148, No. 1, 1 January 2014.

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

498. The question of what constitutes "reasonable efforts" in this context remains contested. According to an article in the *Canadian HR Reporter*, the Federal Court in *Obeid Farms v. Canada (Minister of Employment and Social Development)* 2017 found that "even though the employer did not have specific anti-abuse policies in place, that did not mean that an abuse situation existed on the farm. That finding constituted a reviewable error and was referred back to the Minister for redetermination. The court held that in so doing, it would provide the Minister with the opportunity to publish further guidelines for small employers as to what reasonable efforts regarding abuse situations are expected under the SAWP".

499. Government of Canada, "Temporary Foreign Worker Program compliance", (29 April 2021).

500. Government of Canada, "Employers who have been found non-compliant", (5 May 2021).

501. Government of Canada, "The Temporary Foreign Worker Program and compliance regime"

502. Employment and Social Development Canada (ESDC), "Facts and Figures TFWP", (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

503. Employment and Social Development Canada (ESDC), "Processing Time of Completed Cases", (1 January 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of processing times of ESDC employer inspections under the Temporary Foreign Worker Program.

- Paper-based vs on-site inspections:** Most inspections were paper-based. A 2017 Auditor General report criticised the fact that the ESDC “conducted few on-site inspections and face-to-face interviews with employers or temporary foreign workers”.⁵⁰⁴ However, the number of on-site inspections gradually increased during this period, rising from just 4 in 2015/16, to 111 (3%) in 2016/17 and 851 (29%) in 2017/18.⁵⁰⁵ A 2020 study on federal enforcement suggests that the increase in onsite inspections explains why the overall number of inspections dropped during this period, as onsite visits would be expected to take longer. The study however notes that in the manual for inspections “although the regulations themselves allow for extensive onsite inspections, paper-based inspections remain implicitly framed as the norm, and onsite inspections the exception”.⁵⁰⁶ A union representative told us that the Auditor-General’s report had spurred on action, but “still each employer gets one inspection every 3 or even 5 years, at most. It’s not enough - they said they would do more.”⁵⁰⁷
 - Provinces:** Four provinces accounted for most federal inspections. About half of both paper-based and onsite inspections in 2016-17 and 2017-18 took place in Ontario and Alberta, while Quebec and British Columbia between them accounted for approximately a third.⁵⁰⁸
 - Industries:** between 2015-16 and 2017-18, the main sector inspected under the TFWP regime through paper-based reviews was accommodation and food services (around 25% over this period). In terms of onsite inspections, in the first half of 2017-2018 caregiving (30%) and agriculture (28%) dominated.⁵⁰⁹ In 2017-18, 336 inspections (more than 10% of all TFWP inspections) were for employers operating under the SAWP, with another 61 under the primary agriculture stream.
 - Triggers for inspections:** Inspections can be conducted as part of a random inspection programme (“random selection”), on receipt of a complaint (“reason to suspect”), or as a result of past employer non-compliance (“Known past non-compliance”).⁵¹⁰ The large majority of inspections are selected randomly (95% in 2016/17, 89% in 2017/18), with almost all other inspections during this period taking place because authorities had “reason to suspect”.⁵¹¹ The 2017 Auditor General report criticised the reliance on random inspections, arguing that a risk-based approach - focusing on specific sectors known to be problematic - would be more effective: “such an approach would also let the Department make the best use of its limited enforcement resources.” The ESDC accepted this recommendation, and in 2018 told Parliament that it had launched “a new risk-based predictive model to help identify who to inspect, prioritizing the highest-risk cases”, carrying out 1300 inspections using this model.⁵¹²
 - Announced / unannounced:** In 2017/18, 25 inspections out of 2888 (about 1%) were unannounced.⁵¹³ Unannounced inspections were not carried out before 2018 - the Auditor General’s 2017 report had specifically highlighted the fact that inspections were almost always declared to employers.⁵¹⁴ Unannounced inspections are “undertaken in situations where there is a high-risk of non-compliance and the safety of temporary foreign workers may be at risk”, according to ESDC.⁵¹⁵
- Inspectors can impose a series of measures on employers found to be non-compliant, including: warnings; administrative monetary penalties

504. Office of the Auditor General of Canada, “[Report 5—Temporary Foreign Worker Program—Employment and Social Development Canada](#)”, (Spring 2017).
505. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
506. Sarah Marsden, Eric Tucker and Leah Vosko, “[Federal Enforcement of Migrant Workers’ Labour Rights in Canada](#)”, SSRN, (January 2020):10.
507. Elizabeth Kwan, Canadian Labour Congress, remote interview, 19 November 2020.
508. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
509. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
510. Government of Canada, “[Temporary Foreign Worker Program compliance](#)”, (29 April 2021).
511. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
512. House of Commons, “[Report 5—Temporary Foreign Worker Program—Employment and Social Development Canada of the Spring 2017 Reports of the Auditor General of Canada](#)”, (December 2017).
513. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
514. Office of the Auditor General of Canada, “[Report 5—Temporary Foreign Worker Program—Employment and Social Development Canada](#)”, (Spring 2017).
515. Government of Canada, “[The Temporary Foreign Worker Program and compliance regime](#)”, (9 August 2018).

(AMP) ranging from CAD\$500 (US\$420) to CAD\$1M (US\$830,000); a ban from the TFWP and IMP (ranging from one year to permanent); their naming on the IRCC website with details of the violation/s; and the revocation or suspension of LMIAs. The precise measures are determined on a points-based system depending on factors such as past history and the type and severity of the violation.⁵¹⁶ Those gaining scores of 0 and 1 are given an opportunity to provide a justification and to carry out corrective actions.⁵¹⁷ Employers who carry out corrections adequately are termed “compliant with intervention”.⁵¹⁸ This is also sometimes termed “satisfactory with justification and compensation”, reflecting the fact that the corrective action often entails compensating migrant workers.⁵¹⁹

In 2017/18, of the 2,888 inspections completed for all employers under the TFWP, 1422 (49%) were found to be satisfactory i.e. compliant. A further 1317 (46%) were “compliant with intervention” i.e. non-compliances were identified, but effectively employers attained compliant status through corrections. Just 86 cases (2.9%) of definitive non-compliance were identified during the year, with 103 cases awaiting adjudication.⁵²⁰ The previous year had seen a similar pattern.

There is no specific data available about the main issues resolved through correction. In the first part of 2017-18, government data indicates with no further detail that employers made correction actions with respect to “wages, working [conditions and] document production”.⁵²¹ Within agriculture, ESDC reported that more than half of primary agriculture employers that took corrective actions made changes to accommodation. About a quarter required changes to wages paid, and the remaining quarter made changes to other working conditions and occupation.⁵²²

Where employers are found non-compliant (a score of 2 or more), their details - with information on which non-compliance/s were identified and what

penalty they received - are made available publicly online on a consolidated IMP/TFWP list. This causes, as the Canadian Bar Association notes with concern, “reputational damage” to these companies.⁵²³ Analysis of the public list as of January 2021 finds:⁵²⁴

- **Number of named companies, and when they were added to the list:** 273 companies were named on the database. 94 were added in 2017 and 2018 and 177 in 2019 and 2020, showing an increase since the system’s introduction. 56 of the total cases (including 6 in 2019) related to incidents that took place before December 2015, demonstrating the time lag between inspections and the naming of companies.
- **Provinces hosting companies:** 80% of the companies named as non-compliant under the federal inspection regime were from four provinces: Ontario (99), Alberta (44), Quebec (43) and British Columbia (36), which is broadly in line with the pattern of inspection activity. Five companies were located in the USA.
- **Reasons for being named as non-compliant:** the most common reason employers were named was for criteria 6 “the employer didn’t give the inspector the documents they asked for”. 95 companies were named solely for this reason and a further 35 were named for this reason alongside other issues. The other common reason related to worker conditions, with 52 companies named solely for criteria 9, offering pay, conditions, or work that didn’t match what was in the offer of employment, and a further 22 named for this alongside other issues. 17 employers received fines for not being involved in the business they had hired the worker for, which may reflect non-compliance with LMIA restrictions. 56 companies were named for unspecified reasons as their non-compliance was before December 2015. Just two employers were penalised for failing to provide a workplace free of abuse. It is unclear whether any employers were penalised in relation

516. Government of Canada, “[Temporary Foreign Worker Program compliance](#)”, (29 April 2021).

517. Sarah Marsden, Eric Tucker and Leah Vosko, “[Federal Enforcement of Migrant Workers’ Labour Rights in Canada](#)”, SSRN, (January 2020): 12.

518. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018): 5, obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

519. Sarah Marsden, Eric Tucker and Leah Vosko, “[Federal Enforcement of Migrant Workers’ Labour Rights in Canada](#)”, SSRN, (January 2020): 12.

520. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (31 January 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

521. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

522. Ibid.

523. Canadian Bar Association, “[Express Entry System and Temporary Foreign Worker Program](#)”, (April 2016).

524. Government of Canada, “[Employers who were found non-compliant](#)”, (5 May 2021).

to the payment of recruitment fees, which would be most likely to fall under criteria 8 - breaking federal, provincial or territorial employment and recruitment laws.

- **Bans applied:** A total of 60 companies have been banned from employing migrant workers for various time periods since the introduction of the federal inspection regime, and named in the public list of non-compliant employers. Of those, 55 companies were named in relation to incidents that took place prior to December 2015 and received two year bans from the IMP or TFWP - there were no fines before then. Since December 2015, four employers have received one year bans alongside fines of more than CAD\$20,000 (US\$16,500).
- **Financial penalties applied:** the most common penalty was a fine of CAD\$1,000 (US\$830) or less,

which was applied to 43% of all companies on the list and almost all companies named for failing to provide documentation. For non-compliance only related to criteria 9 (giving workers pay, conditions, or work that didn't match their offer of employment), employers were fined on average CAD\$2,365 (US\$2,000). Out of 217 employers that received fines in this three year period, 190 paid less than CAD\$5,000 (US\$4,100). A smaller number of employers - almost all of whom were penalised for more than one reason - were fined more significant amounts. For example, a combination of criteria 4 (false declarations in the LMIA process) and 9 (pay and working conditions not in line with the contract) resulted in three employers being fined an average of CAD\$22,333 (US\$18,500).

Reason fine issued	No of fines 2017 - 20	Total value of fines (CAD \$)	Average fine (CAD \$)
1. Couldn't show that offer of employment was true	8	\$19,250	\$2,406
2. Didn't keep documents showing they met conditions of employing a temporary worker	1	\$500	\$500
4. Couldn't show that the job description on the LMIA application was true	1	\$1,000	\$1,000
5. Didn't show up for a meeting with the inspector	0	\$0	\$0
6. Not producing documents requested	95	\$98,500	\$1,037
8. Broke applicable laws on employment or recruitment of migrant workers	2	\$2,000	\$1,000
9. Pay, conditions, or work didn't match offer of employment	52	\$123,000	\$2,365
15. Employer not actively engaged in business that worker hired for	3	\$11,000	\$3,667
17. Failure to provide a workplace free of abuse	1	\$30,000	\$30,000
20. Failure to provide agreed wages when worker required to isolate or quarantine	3	\$21,000	\$7,000
Both 1 & 9	2	\$16,250	\$8,125
Both 4 & 9	3	\$67,000	\$22,333
Both 4 & 15	1	\$16,000	\$16,000
Both 6 & 15	9	\$123,500	\$13,722
Both 6 & 9	11	\$33,500	\$3,045
All of 5, 6 & 8	1	\$49,750	\$49,750
Other mixed criteria	24	\$73,750	\$3,073
Total / Average	217	\$686,000	\$3,161

Key takeaways from this snapshot of federal inspection activity are that:

- While onsite inspections have increased, the majority - until 2018 at least - were still paper-based.
- The vast majority were conducted according to a randomised programme, rather than being based on complaints, past behaviour or other risk factors.
- Processing of inspections took between six and nine months, depending on the sector.
- The vast majority of non-compliances are dealt with through corrective measures. While nearly half of employers were found non-compliant at the point of inspection, only 2.9% of employers who were inspected faced consequences for being non-compliant. Little information is publicly available about the large number of employers found “compliant with intervention” after taking corrective actions and/or compensating workers.
- Of the 217 companies who were fined for non-compliance between 2017 and 2020, using the federal government’s new powers to issue fines, more than half were fined CAD\$1,000 (US\$830) or less for issues with documentation. 87% were fined less than CAD\$5,000 (US\$4,100). 55 companies were banned from hiring migrants during this period.

2021 saw some much larger fines in the context of Covid-19, with two employers receiving fines of CA\$200,000 (US\$165,000) or higher, including for violations related to the revised Quarantine Act due to COVID-19.

Providing public information on the number and type of corrective actions, and the dollar amounts compensated to workers would provide a more complete picture of the effectiveness of the inspection regime, and the level of protections provided to migrant workers. However, based on available information, the overall picture is of an inspection regime that is still in development in terms of its capacity to carry out onsite investigations, and which seeks primarily to improve employers’ compliance through giving them warnings and opportunities to correct issues identified. Marsen, Tucker and Vosko call this a “compliance orientation”, noting that the ESDC inspection manual encourages inspectors to be “remedial, rather than adversarial:

work with employers during the inspection to educate them about their responsibilities under the IRPR and assist them to comply with TFWP conditions.”⁵²⁵ In the relatively rare cases where penalties are issued, fines are normally so low that they may not present a deterrent. Only in a handful of cases (27 in a four year period) were employers been fined more than CAD\$5,000 (US\$4,100). This is consistent with ESDC’s perspective on the inspection programme: “The Department’s goal is to work with employers to bring them into compliance so that everyone is on a level playing field. This means that investments in the Program’s compliance regime shouldn’t be considered punitive to employers who don’t follow the rules but as an investment in employers who do.”⁵²⁶

This cautious approach is a shift in tone from the previous government’s narrative, which in 2014 announced in its overhaul of the TFWP that it was introducing “stronger enforcement and tougher penalties”.⁵²⁷ This may reflect an attempt to respond to criticism from entities like the Canadian Bar Association, which in 2016 argued that “TFWP users now face virtually unrestrained powers of inspection, punitive compliance measures and potentially crippling financial penalties, all without due process or adequate recourse” - and called for the government to “move away from the ‘law and order’ enforcement approach”.⁵²⁸ Farming bodies have complained specifically about the behaviour of inspectors, which they say causes anxiety for farmers. The Western Agriculture Labour Initiative said in 2018: “ It is a common complaint from farm operators that some [Service Canada] Integrity Services Division field workers are abrupt and discourteous. We feel this is mainly a result of sending untrained ESDC personnel to farms and a lack of leadership. Growers do not know what to expect of an audit...Many farm operators feel abused and mistreated by government officials, but fear to make a complaint because access to adequate labour through the SAWP program is critical to their business.”⁵²⁹

A Mexican consular official with responsibilities over the SAWP told us that in his view, while the increased number of federal inspections in recent years was a “positive step”, there were still many areas for improvement. In particular, he said, “the resources

525. Sarah Marsden, Eric Tucker and Leah Vosko, “Federal Enforcement of Migrant Workers’ Labour Rights in Canada”, SSRN, (January 2020): 10

526. Government of Canada, “The Temporary Foreign Worker Program and compliance regime”, (9 August 2018).

527. Government of Canada, “Overhauling the Temporary Foreign Worker Program”, *Employment and Social Development Canada* (2014).

528. Canadian Bar Association, “Express Entry System and Temporary Foreign Worker Program”, (April 2016).

529. WALI, “Issues and Solutions: The Seasonal Agricultural Worker Program”, (2 May 2018).

being allocated, like the number of inspectors, is not at the necessary level.”⁵³⁰ Mexican agricultural workers we spoke to had generally not experienced inspections by Canadian officials - despite coming to the country for many years - and mainly recounted experiences of visits by Mexican consular officials. The consulate in Toronto, responsible for Ontario, told us they carry out about 50 farm visits per year, out of a total of 855 farms participating in the SAWP.⁵³¹ A Mexican academic told us that inspections by Canadian federal and provincial governments are often “staged” by employers, since employers often know when inspections will take place, and workers will be asked, for example, to leave their rooms in the case of housing inspections.⁵³² One woman who had worked in Canada for more than 20 seasons said that she had never been at a farm visited by a Canadian inspector until the Covid-19 pandemic, when her employers had concealed her and her colleagues from Canadian officials for two hours, in order that the numbers of women sharing accommodation seemed acceptable: “do you know what they did to us? ... they locked us in the dining room ... there are 16 in the house where I live, 8 or 10 women have been taken there, it looked perfectly fine [to the inspectors].” It was not clear whether the officials in question were federal or provincial.⁵³³

During the pandemic, the federal government faced particular scrutiny over its actions to ensure the protection of migrant workers, in particular in the agricultural sector. Accommodation conditions - which in many cases may not adequately allow for social distancing or self-isolation - were a particular concern. In March 2020 inspections were halted entirely. In April 2020 ESDC introduced new requirements for employers to meet, and amended inspection requirements, reducing the timelines for employers to respond to questions from officials. At the same time it announced that all inspections would be conducted virtually.⁵³⁴ A government representative told the Senate that, “the employer provides live video of the premises showing different locations as directed by the inspector, and it enables the inspector to view all living and working environments and to interview

temporary workers on the spot for their input”.⁵³⁵ There are clearly serious questions about how an inspector can adequately carry out their role in such circumstances, in particular how migrant workers could be expected to speak openly about their conditions and concerns when their employer was holding the camera. A union representative told us that, “virtual inspection is not good enough, we’ve still had outbreaks and workers dying.”⁵³⁶ By June 2020, Mexico had stopped the migration of migrant workers to Canada, concerned at the rate of infections, in what an official said was a “a temporary pause in order to determine the circumstances surrounding the safety conditions on farms”.⁵³⁷ In July 2020 the federal government announced it would be “strengthening the employer inspections regime” with an investment of CAD\$16.5M (US\$13.6M), and in August ESDC resumed onsite inspections to deal with “serious allegations of worker mistreatment, or health and safety concerns”, but virtual inspections continued to be used for what were deemed as low-risk cases.⁵³⁸ In its Budget 2021 the federal government announced an additional CAD\$54.9M (US\$45.5M) over three years to increase inspections of employers of migrant workers.⁵³⁹

Provincial inspections of employment, workplace safety, and labour recruitment

Canada’s provinces conduct inspections to enforce compliance with provincial laws and standards on employment, labour recruitment, and workplace safety - including in relation to migrant workers. While these operate under a distinct legal framework from federal inspections, recent years have seen an increase in initiatives to coordinate provincial and federal efforts, including through joint inspections and information sharing. As the most populous province, host to the most migrant workers under the TFWP, Ontario offers an important example of how labour inspection is conducted at the provincial level. The province shares some data about its inspection activities.

In early 2020 the province employed 175 labour inspectors (“employment standards officers”), according

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

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

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

533. Remote interview, 15 July 2020.

534. Government of Canada, “[Compliance inspections for Employers of the Temporary Foreign Worker Program during the COVID-19 pandemic](#)”, (24 April 2020).

535. Senate, “[Debates of the Senate](#)”, 1st session, (16 June 2020).

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

537. Paula Newton, “[Mexico temporarily forbids workers to go to Canada due to coronavirus](#)”, CNN, (16 June 2020).

538. Government of Canada, “[Inspections for the Temporary Foreign Worker Program during COVID-19](#)”, (29 October 2020).

539. Government of Canada, “[Minister Mendicino highlights immigration investments in Budget 2021 in support of Canada’s economic recovery](#)”, (12 May 2021).

to officials.⁵⁴⁰ This is a reduction on the numbers in 2018, which had stood at 271 after an effort by the previous Liberal administration to increase the province's inspection capacity.⁵⁴¹ Bill 148, passed early in 2018, planned to double the province's capacity of 175 to 350 with the aim of "stepping up enforcement";⁵⁴² in response to a 2016 independent review which concluded there was a "serious problem" with the enforcement of ESA provisions.⁵⁴³ The incoming Progressive Conservative administration, which won power in mid-2018, reversed the decision to hire more inspectors as part of budget cuts, with the Ministry of Labour telling media that "digital service delivery" would reduce employer non-compliance and "allow Ministry of Labour inspectors to focus on high-risk employers".⁵⁴⁴ However in March 2020, Ontario officials told us they were currently in the process of hiring 20 more inspectors, and jobs were being advertised, suggesting that policy on this issue was not settled.⁵⁴⁵ Officials told us that it takes approximately a year for inspection officers to become proficient at their roles, including obtaining the soft skills needed to operate effectively.⁵⁴⁶

In 2019/20, Ontario carried out a total of 18,965 "claim investigations", meaning that they responded to complaints made to the Ministry, and 2,490 "proactive inspections". 11 Inspectable Standards are evaluated during a workplace inspection: the Employment Standards Act Poster Requirement; Wage Statements; Unauthorized Deductions; Record Keeping; Hours of Work; Eating Periods; Overtime Pay; Minimum Wage; Public Holidays; Vacation with Pay; and Temporary help agencies charging employees fees and providing information.⁵⁴⁷ The top five violations found by officials were the same in both proactive and reactive inspections, with some variation in the order: wage payment; termination pay; vacation pay and time; public holidays and associated pay; and overtime pay.⁵⁴⁸ Proactive inspections are carried out as part

of focused initiatives (until 2018/19 termed "blitzes") lasting a discrete period of time, each concentrated on a particular group designated as vulnerable - for example young workers or migrant workers - or a higher risk industry such as construction or employment agencies. Both forms of inspection result in similar rates of non-compliance identification: between 75 - 80% of the time, according to the province's 2016 review.⁵⁴⁹

The fact that there are significantly fewer proactive inspections than claim investigations has been the subject of substantial critical focus. A 2016 review of the province's employment standards enforcement mechanisms noted: "It has long been a goal of the Ministry of Labour to continually increase the number of proactive inspections it conducts. That goal is, however, balanced with the need to limit wait times for claim investigations. More resources are currently allocated to reactive rather than proactive measures."⁵⁵⁰ Four years later, provincial officials told us that a key objective of the province remained maintaining complaint backlogs to a minimum and to conduct inspections promptly. The average claim inspection takes about 2 months to complete, they said.⁵⁵¹

Employee and labour advocates have called for higher numbers of proactive inspections, arguing that they are more effective in securing remedy for workers: a Freedom of Information request by the Star newspaper revealed that in the previous year, around one-third of unpaid or illegally deducted wages were recovered following claim investigations, in comparison to nearly 100% in proactive inspections.⁵⁵² The other reason analysts and advocates caution against a reliance on complaints is that so many workers may be reluctant to complain. The 2016 Ontario review noted that around 90% of complaints are made by people who have left their jobs voluntarily or after they have been terminated, suggesting that people in their jobs feel less able to

540. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

541. Global News, "Protect migrant workers or face consequences, Ford and Trudeau warn farmers", (22 June 2020)

542. Government of Ontario, "A plan for fair workplaces and better jobs (Bill 148)", (22 November 2017).

543. Government of Ontario, Ministry of Labour, Training and Skills Development, "Changing Workplaces Review Special Advisors' Interim Report", chapter 5.5, (27 July 2016).

544. Sara Mojtehdzadeh, "Labour ministry to reduce number of inspectors probing workplace abuse, union memo reveals", *Toronto Star*, (10 June 2019).

545. Government of Ontario, Ministry of Labour, Training and Skills Development, "How to Apply: Employment Standards Officer", (December 2019).

546. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

547. Leah F. Vosko, Eric Tucker and Rebecca Casey, "Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability", *International Journal of Comparative Labour Law and Industrial Relations*, (2019).

548. Government of Ontario, Ministry of Labour, Training and Skills Development, "Claim and Inspection Statistics", (10 July 2020).

549. Government of Ontario, Ministry of Labour, Training and Skills Development, "Changing Workplaces Review Special Advisors' Interim Report", chapter 5.5, (27 July 2016).

550. Ibid.

551. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

552. Sara Mojtehdzadeh, "Labour ministry to reduce number of inspectors probing workplace abuse, union memo reveals", *Toronto Star*, (10 June 2019).

alert the authorities.⁵⁵³ Relying heavily on complaints is likely to skew enforcement efforts towards sectors of the economy and categories of worker where there is less reason to be fearful of employer reprisal - for example where workers are more likely to have permanent residence status. Migrant workers are in positions of enhanced vulnerability due to their immigration status and may be less likely to complain, as noted in sections 1.6 and 7. Ontario officials told us that fear of reprisal is “a real concern that stops many workers from filing complaints”, acknowledging that the fact that federal TFWP permits are closed is a “complicating factor” and welcoming the new open permit for workers in vulnerable situations.⁵⁵⁴ An IRCC report noted that in 2019-20, Ontario inspections under the Employment Protection for Foreign Nationals Act were mostly proactive, which may suggest that migrant workers are indeed reluctant to make claims and/or that officials are seeking to address this issue with increased proactive inspections, although no figures were provided.⁵⁵⁵

For employers found to have violated the Employment Standards Act - and/or, in relation to migrant workers, the Employment Protection for Foreign Nationals Act - the officer can issue a non-monetary compliance order, requiring an employer to stop contravening a provision and to take certain steps to comply. An officer can also issue an order to pay wages owing to the employee. If they do not comply with orders, companies can be issued “tickets”, which involve the payment of a fine, normally in the hundreds of dollars. Finally, companies may be prosecuted.⁵⁵⁶ However, in a large number of cases, non-compliances are settled through the repayment of wages to employees. For example, a 2018 four-month “blitz” on the construction sector saw officers use 1,463 compliance tools - including 1,324 compliance orders - against 695 companies, out of a total of 1266 companies they inspected. 93% of companies voluntarily complied, recovering CAD\$1.56M (US\$1.3M) for employees.⁵⁵⁷

The 2016 independent review commissioned by the province highlighted the concern that a combination of unwillingness to complain, and the low consequences of non-compliance for employers, may significantly undermine the enforcement system: “some employers are confident that because their employees will not complain, and the likelihood of government inspection is very low, non-compliance is a risk worth taking calculating that if they are caught, they can extract themselves from the legal consequences of non-compliance without much difficulty and with trivial costs.”⁵⁵⁸

Vosko, Tucker and Casey have also highlighted specific concerns about the rate of inspections within Ontario’s agricultural sector, finding in an analysis of data shared with their institution that in the four years between 2012/13 and 2015/16 only 172 agricultural workplaces were inspected, or on average forty-three a year. In 2016, 12,305 farms reported having hired labour, suggesting that “about one-third of a percent of these farms were inspected annually”.⁵⁵⁹ It is notable that none of Ontario’s proactive “blitz” initiatives since 2012-13 have focused on agriculture, despite the widely documented risks in the sector.⁵⁶⁰ Ontario provincial officials told us that in 2019 they had run a one-year pilot initiative where provincial Workplace Safety Insurance Board inspectors developed information sharing agreements with SAWP country of origin consulates and determined which farms to inspect based on this shared information. Officials said the information consulates provided was useful to help determine which farms were of higher risk, though the scheme did not have as much involvement from the consulates as the province would have liked.⁵⁶¹

In June 2020, responding to public concerns on the conditions of migrant agricultural workers, after the deaths of three workers from Covid-19, the federal and Ontario governments announced that they would conduct additional joint inspections of farms, with the Ontario Premier warning of “extreme” actions against farmers who did not cooperate with the authorities on health protocols.⁵⁶² The province said it would conduct

553. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Changing Workplaces Review Special Advisors’ Interim Report](#)”, chapter 5.5, (27 July 2016).

554. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

555. Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020):59

556. Ibid.

557. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Inspection initiative results: Construction](#)”, (4 November 2019).

558. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Changing Workplaces Review Special Advisors’ Interim Report](#)”, chapter 5.5, (27 July 2016).

559. Leah F. Vosko, Eric Tucker and Rebecca Casey, “[Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability](#)”, *International Journal of Comparative Labour Law and Industrial Relations*, (2019). h

560. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Proactive Employment Standards Inspections](#)”, (July 2018).

561. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

562. Sara Mojtehdzadeh, “[Labour ministry to reduce number of inspectors probing workplace abuse, union memo reveals](#)”, Toronto Star, (10 June 2019).

more than 200 on-farm inspections, without specifying the time period.⁵⁶³ A November 2020 preventive strategy published by the Ministry of Agriculture, Food And Rural Affairs, designed to protect agricultural workers during the 2021 season, recommended that the government “collaborate on a streamlined approach to inspections of agriculture worker dwellings (e.g., ESDC, public health units) to ensure that a COVID-19 prevention and mitigation lens has been applied to address any gaps and that multiple, duplicative inspections are avoided.”⁵⁶⁴

Faraday has raised concerns with respect to the specific enforcement of the EPFNA - as distinct from the ESA - noting in her 2014 report that “when EPFNA was introduced [in 2010], no new positions were created within the Ministry’s Employment Standards Program to administer the new legislation”, and highlighting the small number of enforcement actions against recruiters, particularly in respect of illegal fee charging.⁵⁶⁵ A Toronto based lawyer also told us that in his experience the EPFNA is not well-known or applied.⁵⁶⁶ It is not clear that this situation has changed since 2014. In a nearly six month proactive compliance initiative in 2019 - 2020 which focused on “repeat violators, temporary help agencies and workplaces that employ temporary foreign workers”, the province found non-compliance in 277 out of 831 inspected employers (33%), recovering \$322,160 (US\$266,850) for employees. While the initiative had the enforcement of the EPFNA in its mandate, illegal fees and other specific recruitment-related concerns do not feature in the list of issues identified.⁵⁶⁷ Ontario officials told us they processed far fewer claims in relation to the EPFNA than the ESA.⁵⁶⁸

Inspections of immigration consultants by the Immigration Consultants of Canada Regulatory Council

The ICCRC, the industry’s self-regulatory body described in section 4, carries out “compliance audits and inspections (including financial inspections)” of licensed

immigration consultants. (Criminal investigations of licensed and unlicensed immigration consultants are the responsibility of the CBSA, as discussed in 5.3). The ICCRC’s audits are designed to assess whether members comply with the ICCRC’s Code of Professional Ethics. All members submit documents to the ICCRC once a year, which are subject to a “spot audit” - if there are any issues identified they must be corrected within 30 days.⁵⁶⁹

Beyond this, the ICCRC carries out “investigations” in response to complaints, 4551 of which have been received since the institution’s establishment (an average of 506 per year) - 3032 relating to registered consultants.⁵⁷⁰ Complaints are managed by the Complaints and Discipline department.⁵⁷¹ Concerns have repeatedly been raised about the lack of teeth of the ICCRC. The head of the ICCRC has acknowledged weakness in its capacity, telling media that “it’s fair to say that prior to 2018, the council did not have an efficient complaints and discipline process,” and arguing that the organization had been “set up to fail” by the government.⁵⁷² A parliamentary committee examining the regulation of immigration consultants heard cases where consultants who were under criminal investigation as a result of complaints were not suspended from the register of consultants and remained able to practice, because their guilt had not yet been proven in law.⁵⁷³ An immigration consultant told us: “There is a lack of resources and skills within the ICCRC to do [investigation]. They have never quite lived up to what they should have done.”⁵⁷⁴

As well as skills, the other concern that has been raised about the enforcement ability of the ICCRC relates to deficiencies in its authorities - for example to carry out investigations of unauthorised “ghost consultants”.⁵⁷⁵ Immigration consultants told us that some of the most egregious cases of exploitation involve unregistered consultants outside Canada charging fees to secure non-

563. Government of Ontario, “Ontario Moving Toronto and Peel Region into Stage 2”, (22 June 2020).

564. Government of Ontario, Ministry of Agriculture, Food and Rural Affairs, “Prevention, Control and Outbreak Support Strategy for COVID-19 in Ontario’s Farm Workers”

565. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, *Metcalf Foundation*, (April 2014): 62.

566. Toronto lawyer, remote interview, 20 January 2021.

567. Government of Ontario, Ministry of Labour, Training, and Skills Development, “Compliance initiative results: vulnerable workers”, (6 November 2020).

568. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

569. Immigration Consultants of Canada Regulatory Council, “By-Laws 2016-1”, (12 November 2016).

570. ICCRC, *Annual report 2020*.

571. Immigration Consultants of Canada Regulatory Council, “By-Laws 2016-1”, (12 November 2016).

572. Brian Hill and Jeff Semple, *Arrest of immigration consultant sparks questions about why regulator didn’t act sooner*, *Global News*, (25 February 2020).

573. House of Commons, *CIMM Committee Report, Starting again: improving government oversight of immigration consultants*, (4 October 2016).

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

575. House of Commons, “Starting again: Improving government oversight of immigration consultants”, (June 2017).

existent jobs.⁵⁷⁶ An immigration consultants organisation also told us that, “the ICCRC can’t go into an office and ask for files. The College [of Immigration Consultants] will have that right. The ICCRC cannot act on news - the College will. The ICCRC cannot act on anonymous tips. The College will be able to.”⁵⁷⁷ The ICCRC told us they were confident that legislative amendments introduced by the government in 2019, creating the College of Immigration Consultants, will help address many of these issues.⁵⁷⁸ In introducing the Act, the government highlighted that the College would have both the “the ability to enter the premises of a consultant for investigations when it suspects wrongdoing and the ability to request court injunctions against unauthorized consultants.”⁵⁷⁹ The ICCRC was empowered to do all of these things under its governing statutes, which stated that investigators may “require the production of and examine any document or thing that is relevant to the investigation, including a client file”, and that they “may be instructed to investigate information [that] comes from ... [an] apparently reliable source [or] ... suggests that a non-Member or suspended Member or RISIA may be practising unlawfully as an immigration/citizenship consultant”.⁵⁸⁰ However the new regulator will have those powers established by federal law.

The outcomes of the ICCRC complaints process is addressed in more depth in section 7.

5.3 Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment?

Mexico

Between 2005 to 2018 the NGO CDM received about 6,500 reports from people who paid an average

recruitment fee of more than 9,000 pesos (US\$450) for a job that didn’t exist, which the organisation points out represents the equivalent of more than three months of a minimum wage Mexican salary.⁵⁸¹ CDM, which has a focus on Mexico-US labour migration, argues that these numbers “likely represent only a fraction of the Mexican population affected by fraud” and that “neither U.S. nor Mexican laws provide an efficient mechanism for workers to seek justice”.⁵⁸² The US State Department reported in 2020 that “[Mexican] authorities did not report efforts to inspect, regulate, or hold accountable delinquent labor recruiters.”⁵⁸³

Neither the RACT nor the Federal Labour Law explicitly criminalise fraudulent recruitment or spell out what would constitute such an offence, something that a senior STPS official told us was problematic, as it left STPS unable to play a role in enforcement of the crime.⁵⁸⁴ The RACT simply requires that if STPS finds “non-compliance with legal provisions related to the matter of placement of workers, whose application and monitoring is the responsibility of other parts of the Federal Public Administration”, it must notify those agencies within 5 business days, sending a copy of the respective inspection for legal purposes.⁵⁸⁵ Similarly, with respect to criminal activities, the RACT simply states that “if during the performance of monitoring or inspection activities, it is detected that there is the possible commission of a crime, the labour authorities will file a complaint of the facts with the responsible public ministry.”⁵⁸⁶ A registered recruiter told us about an unregistered operator that had cloned his agency’s website and Facebook page in order to sell fake jobs in Canada to workers: “There is no one to file complaints within the STPS on a case like this, so a complaint has to be filed with the Mexican Police.”⁵⁸⁷ While victims of fraud theoretically have the right to report the crime to law enforcement authorities themselves under Article 386 of Mexico’s penal code, CDM report that “even when victims report fraud to the Public Ministry, authorities very rarely investigate fraud when it occurs on a small scale.”⁵⁸⁸

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

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

578. Michael Huynh, ICCRC, interview, Burlington, 23 January 2020.

579. Government of Canada, “Government changes will strengthen the regulation of immigration and citizenship consultants”

580. Immigration Consultants of Canada Regulatory Council, “By-Laws 2016-1”, (12 November 2016).

581. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019): 11.

582. Ibid, 4 and 8.

583. US Department of State, 2020 Trafficking in Persons Report: Mexico, (2020).

584. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

585. Ministry of Labour and Social Welfare, “Reglamento de Agencias de Colocación de Trabajadores”, Article 30, (3 March 2006).

586. Ministry of Labour and Social Welfare, “Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores”, Article 30 Bis, (21 March 2014).

587. Representative from recruitment agency, remote interview, 18 December 2020.

588. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019).

While most issues appear to arise among unregistered agencies, a STPS senior official told us about a registered agent he understood to be charging workers 70,000 Mexican pesos (US\$3500) for recruitment services, promising them details of the job in Canada after they paid, but never delivering jobs. He told us that the biggest problem with proving fraud against such agencies - whether registered or not - is that, “there is no documentation that the workers sign or any proof, and at the end it is the worker’s word against that of the recruiter. In other words, it is a form of fraud through an oral contract.”⁵⁸⁹ A registered recruiter told us that “what we need most is for the government to do something about scams and frauds.”⁵⁹⁰

There have been some efforts to prosecute recruiters for fraud. In 2013 ProDESC filed a collective criminal complaint with the Sinaloa Prosecutor’s Office on behalf of fifteen men, seeking - according to the Solidarity Center “what would be the first-ever fraud conviction of a Mexican labor recruitment agent.”⁵⁹¹ Updates provided to us by ProDESC in January 2021 detail protracted legal processes around the case, which was still ongoing when Mexican courts closed in 2020 due to Covid-19.⁵⁹² CDM also notes the case of the Chambamex agency, which defrauded more than 3,000 Mexican workers in 19 states out of 60 million pesos (US\$3M) between December 2012 and April 2013, with the promise of jobs in the United States and Canada.⁵⁹³ Despite the scale of the fraud, only one attorney general’s office in one of the affected states - Zacatecas - processed and investigated the complaints. In 2018, CDM concluded that “Mexican authorities systematically failed to investigate the complaints against Chambamex.”⁵⁹⁴

Canada

The CBSA is responsible for enforcing immigration offences related to “fraudulent documents, misrepresentation [and] counselling misrepresentation”

while investigations and prosecutions of human trafficking cases fall under the auspices of the RCMP. CBSA therefore has responsibility for actions by unauthorized or authorized immigration consultants which go beyond “unethical or unprofessional” behaviour, the purview of the ICCRC regulator, into the territory of criminal activities.⁵⁹⁵

CBSA representatives have previously stated to Parliament that convictions are published on the ICCRC website, though in January 2021 no such data was available on the site, as far as we could ascertain. Data provided to Parliament shows that between 2011-16, the CBSA opened 217 investigations of immigration consultant-related IRPA offences, with charges laid in 44 cases, with 29 consultants convicted - an average of just under 5 per year. In 2016, out of 6 convictions, two cases received prison sentences.⁵⁹⁶ In 2017 and 2018, according to the Globe and Mail newspaper, the CBSA received 554 leads, carrying out 73 investigations. The newspaper also found that between 1 January 2014 and 31 December 2018, only 11 convicted consultants served time in prison.⁵⁹⁷

A CBSA official told a 2017 parliamentary committee review that obtaining evidence of immigration consultant fraud was challenging.

“Individuals are very hesitant to come forward and provide evidence to us. Generally when they do come forward, it’s when their immigration application has failed. We have tried to discuss this with people when we look for witnesses with respect to a criminal investigation. They are generally very hesitant. They are afraid. They view any questioning by CBSA as a possibility of their being deported from the country.”⁵⁹⁸

While the CBSA states that such fears on the part of migrant workers are unwarranted, experts have expressed concern about cases where this has happened. A 2014 report by the Metcalfe Foundation found that “some migrant workers who have attempted

589. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

590. Representative from recruitment agency, remote interview, 18 December 2020.

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

592. Written updates from ProDESC, on file with FairSquare Projects.

593. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019).

594. Eugenia Jimenez Caliz, “Defraudados por Chambamex piden ayuda a la PGR”, *Milenio*, (26 August 2014); Opinion board, “ONG en EU denuncia estafas a migrantes mexicanos para obtener visa temporal H-2”, *Proceso*, (15 October 2018).

595. House of Commons, *CIMM Committee Meeting*, (6 March 2017).

596. House of Commons, *CIMM Committee Report, Starting again: improving government oversight of immigration consultants*, (4 October 2016).

597. Kathy Tomlison, “False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada”, *the Globe and Mail*, (5 April 2019).

598. House of Commons, *CIMM Committee Meeting*, (6 March 2017).

to use the criminal law to combat exploitative recruitment practices that left them without status in Canada have been deported upon coming forward to provide evidence to authorities while their exploiters continued to operate unpunished”.⁵⁹⁹ A social worker in Ontario also strongly challenged the assertion that deportation is not a real risk for migrant workers reporting abuse:

“I have had cases where people bring forward claims, and have report 44s [a report written under Section 44 of the IRPA, if an officer has reason to believe an individual is in violation of immigration law] against them, and get referred to CBSA. I’ve been able to intervene to prevent that. In one case, traffickers reported workers as “escaped”, and they had to report weekly to CBSA because deportation proceedings were started against them. How can that happen to a victim of violence whose trafficker reported them?”⁶⁰⁰

The CBSA has also acknowledged to parliament that resources to tackle the phenomenon of unauthorised “ghost consultants” are “finite”, given that CBSA has only 200 investigators to cover its entire enforcement mandate. It therefore prioritizes cases based on their risk profile: “Generally, we go after individuals, or investigate individuals, who are the organizers of, let’s say, mass misrepresentation or mass fraud, rather than the one-offs.” It takes two to five years to build a case against a consultant and obtain a court verdict - with about a 95% conviction rate once the Public Prosecutor takes up a case.⁶⁰¹ More recently, the federal government announced new funding for IRCC to conduct administrative inspections of immigration consultants under a new monetary penalties and consequence regime, as well as for the CBSA to conduct additional criminal investigations of immigration consultants as part of a CAD\$48.3M (US\$40M) investment over 4 years as part of the implementation of the new *College of Immigration and Citizenship Consultants Act*.⁶⁰²

Criminal convictions for recruitment-related abuse remain relatively rare at the provincial level. The Ontario Ministry of Labour and Training conviction database lists convictions, since 2018, of businesses under the Employment Standards Act and their penalties. Only one conviction featured on the database involved a prison sentence, a restaurant owner who was jailed for 90 days after failing to pay wages to her employees, who may have been migrant workers - “many of the claimants did not speak English as a first language and required the assistance of an interpreter and of a legal aid clinic to file their claims.”⁶⁰³ It is unclear whether there have been any convictions against recruiters or involving the payment of recruitment fees during this period - there is no published information regarding convictions under the EPFNA which deals specifically with these issues.⁶⁰⁴ For instance, in a nearly six month proactive compliance blitz in 2019 - 2020 which targeted “repeat violators, temporary help agencies and workplaces that employ temporary foreign workers”, Ontario found 277 cases of non-compliance and recovered CAD\$322,160 (US\$266,850) for employees, but it did not list illegal recruitment fees or other recruitment violations as part of its findings even though enforcement of the EPFNA was part of the mandate of this particular proactive blitz.⁶⁰⁵ Ontario officials also told us that enforcement actions under the EPFNA are much rarer than under the ESA.⁶⁰⁶ The Metcalfe Foundation report states that between 2010-2013 there were 28 claims filed against recruiters (around 9 a year), with a total of CAD\$12,100 (US\$10,000) in illegal fees recovered for employees.⁶⁰⁷ A rare high-profile Ontario prosecution took place in 2017 against a recruiter who charged Indonesian workers fees for jobs in greenhouses in Leamington. According to media reports of the trial, the recruiter would send two men “to collect cash payments from the workers each week”. Fearing that they would lose their jobs and status if they failed to pay, the workers complied. After striking a plea deal, he was given probation, fined CAD\$300 (US\$250) and was ordered to make restitution of CAD\$15,380 (US\$12,700) to the three workers he exploited.⁶⁰⁸

599. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, Metcalfe Foundation, (April 2014): 11.

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

601. House of Commons, *CIIMM Committee Meeting*, (6 March 2017).

602. 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).

603. Government of Ontario, “Director Faces Jail, Corporations Fined \$900,000 for Failing to comply with orders to pay”, (31 July 2018).

604. Government of Ontario, Ministry of Labour, Training and Skills Development, “Prosecution and Conviction Statistics”, (30 April 2021).

605. Government of Ontario, Ministry of Labour, Training, and Skills Development, “Compliance initiative results: vulnerable workers”, (6 November 2020).

606. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020; Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020):59.

607. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, Metcalfe Foundation, (April 2014): 62.

608. Sarah Sacheli, “Thieving recruiter ordered to return illegal fees he charged migrant workers”, *Windsor Star*, (10 February 2017).

Human trafficking

Human trafficking is investigated at the federal and provincial levels, with the RCMP leading federal efforts - though the federal government states the “vast majority” of investigation and prosecution takes place in the provinces.⁶⁰⁹ The focus of law enforcement bodies is generally on sex trafficking rather than labour trafficking. According to Statistics Canada, reports of trafficking to police, which have increased in number over the past decade are “predominantly sex trafficking.”⁶¹⁰ According to information provided by the Canadian government to the ILO, there were 428 cases between 2005 and 2017 where specific charges related to human trafficking were laid: “The majority of 408 domestic trafficking cases were for sexual exploitation, while the 20 international trafficking cases were primarily related to labour exploitation.” The longest sentence for human trafficking for forced labour involved a guilty plea and resulted in imprisonment of nine years.⁶¹¹

A Statistics Canada expert reported to parliament that between 2005-06 and 2015-16 there were 84 completed adult criminal court cases where a human trafficking offence was the *most serious offence*, of which 30% resulted in a conviction.⁶¹² This suggests 25 convictions in a ten year period, around 2-3 per year. As with convictions for recruitment fraud, law enforcement officials suggest the small number is partly because victims find it difficult to come forward: “Prosecuting traffickers has proven very difficult ... most survivors have been manipulated and convinced to be distrustful of police.”⁶¹³ An Ontario social worker supporting workers with legal cases told us that there was also a problem in that cases did not meet the threshold for prosecution because there was a failure to recognise the threat of termination and repatriation as an instrument of coercion on the part of employers: “I like to think it’s getting better with the criminal justice system. But ... everybody who prosecutes looks like us [i.e. they are white] - they don’t register the implications of being fired and repatriated as legitimate fear.”⁶¹⁴

Lawyers representing migrant workers have held the TFWP’s closed work permit system responsible, arguing that law enforcement authorities in some cases criminalise workers who complain rather than those responsible for their exploitation: “When [workers] do speak up about abuse, they are often subject to arrest, detention and removal from Canada for not fulfilling the conditions of their temporary residence or for working without authorization. Too often, little or no action is taken by law enforcement officials against the trafficker.”⁶¹⁵ In its 2019 response to a parliamentary committee report on human trafficking, the federal government pointed to the December 2018 introduction of the open work permit for workers in vulnerable situations as evidence of its commitment to address this issue (see section 1.6 on job mobility).⁶¹⁶ Since 2007, the federal government has also issued Temporary Resident Permits for victims of human trafficking to allow victims to escape the influence of the traffickers, or for “any other purpose that is relevant to facilitate the protection of vulnerable foreign nationals who are victims of human trafficking.”⁶¹⁷ A Senior IRCC officer told a Parliamentary Committee that in 2016, IRCC issued 66 Temporary Resident Permits to victims of human trafficking.⁶¹⁸

5.4 Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector?

Mexico

It is estimated that between 5% and 9% of Mexican GDP is lost every year to corruption. A 2015 Gallup

609. Government of Canada, *Government response to the report of the Standing Committee on Justice and Human Rights “Moving Forward in the Fight against Human Trafficking in Canada”*

610. House of Commons, *JUST Committee Meeting, Number 88, 1st Session*, (27 February 2018).

611. ILO, “*Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018): Forced Labour Convention, 1930 (No. 29) - Canada (Ratification: 2011)*”

612. House of Commons, *JUST Committee Meeting, Number 88, 1st Session*, (27 February 2018).

613. Open Parliament, “*Sergeant Damien Laflamme (Human Trafficking Unit, Ottawa Police Service) at the Justice and Human Rights Committee*”, (27 March 2018).

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

615. Embarkation Immigration Lawyers, “*Brief to the Standing Committee on Justice and Human Rights Study of Human Trafficking*”, (15 June 2018).

616. Government of Canada, *Government response to the report of the Standing Committee on Justice and Human Rights “Moving Forward in the Fight against Human Trafficking in Canada”*

617. Government of Canada, “*Temporary resident permits (TRPs): Considerations specific to victims of trafficking in persons*”, (5 May 2016).

618. House of Commons, “*Standing Committee on Citizenship and Immigration, number 88, 1st Session, 42nd Parliament: Evidence*”, section (1155), (27 February 2018):4.

survey found that 70% of Mexicans believed corruption to be widespread in government.⁶¹⁹ Corruption has gained in political significance in recent years, and President López Obrador “made combatting corruption a centerpiece of his campaign platform.”⁶²⁰ On winning power, the President said that he was “absolutely convinced that this evil is the main cause of social and economic inequality, and also that corruption is to blame for the violence in our country.”⁶²¹ There was some evidence of progress, with 2019 seeing a meaningful increase in the number of Mexicans believing corruption had decreased.⁶²² In 2020, more than 1000 immigration officials were removed from their jobs for corruption, reportedly accused of extorting Central American migrants among other practices.⁶²³ Critics have nevertheless been concerned by the President’s reluctance to hold corrupt officials accountable, citing his statement shortly after taking power that, “I don’t think it’s good for the country to get bogged down chasing those accused of corruption.”⁶²⁴ Civil society groups have called on the government to give more meaningful support to the National Anti-Corruption System (SNA), established by law in 2016 to play a coordinating role across government departments, and its Citizen Participation Committee.⁶²⁵

Within the STPS, which regulates recruitment agencies and manages bilateral recruitment programmes including the SAWP, and its subordinate agencies, there have been cases of corruption identified. In 2017, a prosecution was initiated against a group of officials from the Infonacot agency, the state credit fund for workers, who were accused of demanding kickbacks from workers in exchange for credit.⁶²⁶ In 2020 Reuters reported that corruption was widespread within the STPS labour inspectorate, with inspectors accepting bribes in order to give employers a clean bill of health.⁶²⁷ There are also cases of corruption within the administration of the SAWP, with some officials who control elements of the application process for the scheme charging workers for access. An official at the Mexican consulate in Toronto told us such cases were

“not rare”, partly due to the decentralized nature of the STPS/SNE with SNE local offices located in remote rural areas of Mexico.⁶²⁸ A Mexican academic with an extensive network of migrant worker contacts estimated that between 10 and 20 percent of migrant workers have to make illegal payments to officials in government recruitment schemes. He had been personally involved in a case where an SNE official charged workers for payments of approximately 40,000 pesos (US\$1,700) for access into the SAWP. The official was fired but the migrant workers who had made payments were also barred from the program, until he lobbied the STPS to reverse this decision.⁶²⁹

Several SAWP workers told us they knew of other workers being charged by government officials to first enter the programme, though none we spoke to said they had personally been subjected to this practice. While some interlocutors told us that they believed the scale and severity of such practices was less pronounced than the exploitative treatment workers were subjected to by private sector recruiters, others also stressed that this issue should not be played down.

For those cases which are investigated and where evidence is forthcoming, dismissal appears to be the most serious penalty, and it is not clear that SNE officials have been prosecuted for such practices. A senior STPS official told us of a case in which an officer responsible for selection in the SNE sub-office in Aguascalientes State was dismissed after telling multiple job seekers - who recorded their conversations - that they would not be placed into the SAWP unless they paid him 5,000 pesos (US\$250). In another instance, workers accused a Nayarit official of requesting extortionate payments simply to send documents to Mexico City for processing, but because the workers did not want to make a formal complaint, the official was transferred to a different position rather than dismissed: “if the affected potential migrant workers do not report cases, we cannot do anything. There must be a complaint in order to proceed with the dismissal of the abusive SNE

619. OECD, “OECD Integrity Review of Mexico: Taking a Stronger Stance Against Corruption”, *OECD Public Governance Reviews*, (2017): 5.

620. Gina Hinojosa and Maureen Meyer, “The Future of Mexico’s National Anti-Corruption System The anti-corruption fight under President López Obrador”, WOLA, (August 2019):2.

621. “Mexico election: López Obrador vows to fight corruption”, *BBC*, (2 July 2018).

622. Transparency International, “Latin America and the Caribbean”

623. “Mexican government forces out over 1,000 immigration officials accused of corruption”, *Reuters*, (15 August 2020).

624. David Agren, “Mexican president-elect’s new plan to fight crime looks like the old plan”, *Guardian*, (21 November 2018).

625. Gina Hinojosa, “What’s Happening with Mexico’s National Anti-Corruption System?”, WOLA, (28 October 2019).

626. María Del Pilar Martínez, “STPS cesa a funcionarios del Infonacot por corrupción”, *El Economista*, (10 April 2017).

627. Christine Murray, “Exclusive: Red tape, bad data and bribes endanger Mexico’s workers”, *Reuters*, (26 November 2020).

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

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

employee. The STPS cannot accuse one of its employees of fraud or abuse of authority without actual evidence. If we denounce them without enough proof, they could accuse us of defamation.”⁶³⁰ Given that places on the SAWP are highly sought after, it is unsurprising that many workers are reluctant to complain. The official believed that many workers do not report such cases as, “if they are asked to pay 40,000 pesos [US\$2,000] for access to the SAWP - with the prospect of earning 600,000 pesos [US\$30,000] - they may consider it more convenient to simply pay.”⁶³¹

Canada

The Criminal Code of Canada applies to any federal or provincial official who is appointed or elected to discharge a public duty. The Code specifies offences related to (s 119) Bribery of judicial officers, (s 120) Bribery of officers, (s 121) Frauds on the Government, (s 122) Breach of trust by a public officer, and (s123) municipal corruption.⁶³² Offences under the Canadian Criminal Code are prosecuted almost exclusively by provincial justice officials. The Immigration and Refugee Protection Act (IRPA) includes separate provisions and penalties with regard to specific provisions related to corruption by public sector officials related to accepting bribes in return for the issuance of false immigration documents or other benefits.⁶³³

Canada’s reputation for effective anti-corruption controls has in recent years been challenged, particularly with regard to foreign bribery, shell companies, and money laundering. That said, civil society groups note that petty corruption remains less prevalent in Canada than many other countries: “on a day to day level, Canadians do not face the same demands for bribes as so many citizens of countries that fare much worse on the [Corruption Perception Index]”.⁶³⁴ There have been some rare reported cases of labour inspectors found to have abused their powers. In 2014 an Ontario inspector was arrested after apparently demanding money to give a business a clean bill of health, having identified safety violations.⁶³⁵

A 2017 Auditor General report on Preventing Corruption in Immigration and Border Services found “examples of improper (though not necessarily corrupt) actions at [IRCC and CBSA] that were similar to known violations of code-of-conduct scenarios”, but concluded that there was “no evidence that the improper actions we observed were the result of corruption at either the Department or the Agency.”⁶³⁶ A 2020 BC Auditor General report into the province’s skills immigration scheme found that while the province had set up safeguards against corruption, they also identified “several gaps where good practice guidance recommends more comprehensive safeguards.”⁶³⁷

630. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

631. Ibid.

632. *Criminal Code (R.S.C., 1985, c. C-46)*, section 119-122.

633. *Immigration and Refugee Protection Act (S.C. 2001, c. 27)*, section 129, 2001.

634. “Canada Falls from its Anti-Corruption Perch”, *Transparency International Canada*, (23 January 2020).

635. Chelsea Rasmussen, “Canada: Ontario Ministry Of Labour Inspector Charged With Extortion”, *Mondaq*, (31 October 2014).

636. Office of the Auditor General of Canada, “Report 3—Preventing Corruption in Immigration and Border Services”, (Spring 2007).

637. Auditor General of British Columbia, “Skills immigration stream of the British Columbia Provincial Nominee Program”, (June 2020).

Assessment against the Five Corridors indicators:

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Mexican workers under quarantine Covid-19 in a Manitoba farm, April 2020. © REUTERS/Shannon VanRaes/Alamy

6. Measures to prevent fraudulent and abusive recruitment

“The trouble is that selling jobs is where the money is to be made.” LICENSED CANADIAN IMMIGRATION CONSULTANT, 2021.

Summary

Private recruiters and intermediaries in Mexico engage in widespread fraudulent and abusive practices, and government efforts to address them have to date proven inadequate. The Mexican Constitution bans the charging of recruitment fees for migrant workers, but in practice fee charging is common amongst private recruiters and enforcement of the legal prohibition is extremely rare. Surveys suggest that up to 58% of workers going to the US - where there is no government-facilitated recruitment - may be charged illegal fees amounting to four months (or more) of the Mexican minimum wage. Many workers take out loans to pay the recruitment fee. Informal, unlicensed recruiters

are particularly likely to charge fees to workers, but the practice exists among licensed operators as well. It is common for workers to find that terms and conditions they were promised in Mexico do not materialise on arrival. A 2020 Centro de los Derechos del Migrante survey of Mexican H-2A workers in the US found that 44% were not paid the wages they were promised. In many cases, recruiters charge workers fees to secure jobs that do not actually exist. While the government is supposed to verify each overseas contract for Mexican workers, this does not happen in practice, and enforcement efforts against unlicensed recruiters - who often have ties to the largely rural communities in which they recruit - fall between the cracks of the STPS and the police. Illegal charging of fees to

SAWP migrant workers, who are recruited by the government, is less common and appears to be restricted to cases of corruption among officials. However, workers migrating through the SAWP are required every year to pay for some travel and administrative costs related to recruitment, charges that are in tension with international standards on recruitment fees. SAWP workers, consulates and worker organisations also report that it is not uncommon for farms to not respect the terms of the standard contract, particularly in relation to housing and pay.

All of Canada's provinces prohibit the charging of recruitment fees to workers, with many explicitly extending the prohibition beyond labour recruiters to include employers. Federal immigration law reinforces provincial legislation on fee charging, and TFWP visas and work permits cannot be approved unless workers have a signed employment contract. Nevertheless, fee charging and associated fraudulent practices continue to be documented, and experts say they remain a significant problem. The amount workers pay varies significantly depending on their sector of employment, country of origin, and ability to borrow, but sums of between CAD\$5,000 (US\$4,100) and CAD\$15,000 (US\$12,400) are typical. Such sums may amount to many months or even years of salary in workers' home countries. Workers may be falsely promised the prospect of permanent residency to secure their agreement

to pay. Investigations have uncovered abusive temporary labour agencies operating as both recruiter and employer, providing services to major brand names. The Mexican consulate told us of cases where employers recover recruitment costs they have paid to agencies by making deductions from the salaries of workers - who may have already paid fees themselves to the recruiter. Provincial officials noted the difficulty in pursuing recruitment-related abuse, as recruiters - who may be outside Canada - often leave minimal evidence, asking for payment in cash and not signing contracts. Workers routinely pay for jobs that don't exist, and sometimes only discover this deception upon their arrival in Canada. The role of immigration consultants in illegal fee charging is notably problematic. Unlike recruiters, registered consultants are permitted to accept fees from prospective migrant workers to assist with immigration processes. As consultants may also operate as recruiters, this dual role opens up a grey area that has been exploited with relative ease. One consultant told us that, "the trouble is that selling jobs is where the money is to be made". Saskatchewan and Manitoba have tried to tackle this conflict of interest in their legislation. There are also widely documented problems associated with "ghost" immigration consultants, who are unlicensed, in some cases operate from outside Canada, and often charge workers without providing any services.

Recommendations to the Mexican government:

- Proactively investigate unlicensed recruitment agencies and intermediaries and hold accountable those who subject to migrant workers to fraud and abuse.
- Work with Canada to align SAWP programme requirements with ILO standards on recruitment fees and related costs, to ensure that workers do not pay for costs related to their recruitment into the programme. In particular, migrant workers should not pay for the medical, travel, transport

and work permit costs that are required to secure access to their employment.

Recommendations to the Canadian federal government

- Carry out and publish a review of whether the policy of allowing immigration consultants to charge foreign nationals applying for temporary work permits is fully consistent with the ILO definition of recruitment fees and related costs, adopted in 2019, with a view to prohibiting the policy in the case of workers applying to the TFWP and other programmes where work permits are linked to specific employers.

- **Require employers to reimburse workers the costs associated with low-wage temporary workers' work permits, in line with ILO guidelines.**
- **Ensure that the new immigration consultants regulator has sufficient resources to ensure that it can effectively enforce the law and proactively investigate cases of exploitation, among both licensed and unlicensed consultants.**
- **Increase the number of proactive CBSA investigations into fraudulent activities by immigration consultants, including unlicensed operators.**

Recommendations to Canada's federal and provincial governments

- **Prohibit immigration consultants from being involved in the recruitment process for the same worker, in line with legislation adopted by the province of Manitoba, or at a minimum, ensure that immigration consultants inform both workers and employers if they are providing services to both, and require that both parties consent.**

6.1 Does government prohibit the charging of recruitment fees and related costs to workers and jobseekers, and take measures to enforce its policy on fees?

Mexico

Mexican law prohibits the charging of recruitment and placement fees for all migrant workers whether recruitment services are provided by the government or by private recruiters. In reality, it is a widespread practice amongst private recruiters - some of whom charge fees without then offering any job at all. Illegal charging of fees to SAWP migrant workers, who are recruited by the government, appears to be limited to some cases of

corruption among officials. Workers migrating through the SAWP, however, pay for some of the costs associated with recruitment themselves, including travel costs, seemingly in tension with international standards.

The Mexican Constitution states that, "employment services shall be free for workers, whether the service is performed by a municipal office, an employment agency or any other public or private institution".⁶³⁸ The RACT further clarifies that the "provision of the job placement service shall be free for workers in all cases" and emphasises that it is "prohibited to charge job applicants any amount for any reason".⁶³⁹ The RACT imposes fines of between 5 and 5,000 times the minimum wage for agencies that breach conditions outlined in the regulations, including the charging of fees.⁶⁴⁰ This is equivalent to fines of between US\$34 to US\$34,000.

Despite these provisions, CDM, which has carried out surveys among migrant workers, finds that "it remains standard practice in Mexico for recruiters to charge workers for their services". In a 2013 survey with Mexican workers destined for the United States on H-2 visas, the organization found that 58% of workers reported paying a recruitment fee to their recruiter. The average recruitment fee charged was US\$591.⁶⁴¹ This is the equivalent of almost four months salary at the Mexican minimum wage. CDM notes in a 2019 report that "expecting to earn higher salaries in the United States, Mexican workers often use up their savings or obtain a loan in order to pay their recruiters."⁶⁴² A subsequent CDM study of 100 H2A workers published in 2020 found that 26% of workers paid recruitment fees - as high as US\$4500 in some cases - for their jobs, and that 62% took out loans to fund the costs associated with recruitment such as travel costs and visas.⁶⁴³

Representatives of ProDESC, a civil society group working on migrant rights told us that workers expected to pay fees: "workers think it's part of the process to pay for a good job. There is a lot of corruption in Mexico, so it seems normal to pay if there is a job at the end of it. It's seen as an investment. When we tell workers the law says you shouldn't pay for your job, people don't

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

639. *Reglamento de Agencias de Colocación de Trabajadores*, Article 5, 3 March 2006.

640. *Reglamento de Agencias de Colocación de Trabajadores*, Article 33 I c, 21 May 2014.

641. Centro de los Derechos del Migrante, "Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change", (2013): 16.

642. Centro de los Derechos del Migrante, "Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment", (2019).

643. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

believe us.”⁶⁴⁴ A study by INEDIM found that “workers find themselves in a vulnerable situation due to their need for employment, and their willingness to accept an unfavorable bargain in order to get the job.”⁶⁴⁵ Workers told CDM that they were specifically told by recruiters to lie to consular officers about recruitment fees at the time they applied for H-2A visas: “If they did not, they risked not even obtaining the visas for the jobs for which they had paid such high fees.”⁶⁴⁶

ProDESC told us that in their experience, fees may vary between 3000 and 10,000 pesos (US\$150 to US\$500), depending on the context; for example, sometimes workers will pay less if going through the same recruiter for a second time, to incentivise workers not to complain about their first placement. Most fee charging is driven by informal unregulated recruiters, they told us: “It is very often someone with a relationship already to someone in the US. It’s a very grey area. Most of the time the recruiters are part of the communities. That is why it’s so complicated. Workers don’t want to expose this person, maybe they are relatives.”⁶⁴⁷ A senior STPS official described the difficulties in tackling such cases: “there are many intermediaries who charge large amounts of money to workers, violating their labour and human rights, during the recruitment process. However many of the affected communities are in very remote villages. It is hard for us to monitor these activities, as we lack the capacity.”⁶⁴⁸

However these issues are not unique to the informal unregistered sector. INEDIM’s 2013 report describes two typical recruiters of migrant workers for jobs in North America: a family connection, with links to an employer, or a more formalised “Mexican contractor who charges a commission fee both to the company and to the workers themselves”. This outsourcing of recruitment by employers to private recruiters “limits employers’ responsibility and increases migrant workers’ risk of being exposed to abuse.”⁶⁴⁹ A recruiter told us he knew

of a case at another registered agency where workers were being charged 5,000 and 10,000 pesos (US\$250 to US\$500) for jobs in the US and Canada, but the STPS had not closed the agency despite reports against the agency.⁶⁵⁰ Some workers pay considerably more than these amounts. A Globe and Mail investigation in 2019 spoke to Mexican workers who paid US\$1,700 for jobs in Canada, on the false promise that they would be paid twice that amount monthly.⁶⁵¹

Some recruiters who charge for jobs have no real jobs to offer in the US or Canada: “having collected payment, recruiters often disappear and become unresponsive”.⁶⁵² A senior STPS official told us that he knew of a case where job seekers were charged up to 70,000 Mexican pesos (US\$3,500) for fake offers with no job available.⁶⁵³ In March 2020 we exchanged messages with a Mexican recruiter that migrant workers had informed us was charging for fake jobs. The unregistered agent - who provided an address we were able to confirm to be fake - offered our researcher a choice of jobs in Canada’s horticulture, agriculture and construction sectors, 2,500 pesos (US\$125) for people holding passports, 3,000 pesos (US\$150) for those without passports. The recruiter claimed that “payment is requested to guarantee that workers will show up on the day of departure.”⁶⁵⁴ This issue is explored further in section 6.4 under contract substitution.

Workers may go into debt in order to cover the costs of recruitment fees for the jobs they are promised. 47% of workers surveyed by CDM in 2013 said they took out a loan to cover pre-employment expenses. CDM notes that since most individuals giving out loans “are not regulated by the government or anyone else, they can charge whatever they want, often resulting in abuse.”⁶⁵⁵ A 2014 criminal complaint brought by victims of abuse, with ProDESC and the Coalition of Sinaloenses Workers and Temporary Workers, describes how in January 2012, representatives of a recruitment agency called a meeting

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

645. Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, “Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare”, INEDIM, (February 2013).

646. Centro de los Derechos del Migrante, “Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program”, (2020).

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

648. Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.

649. Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, “Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare”, INEDIM, (February 2013).

650. Representative of recruitment agency, remote interview, 18 December 2020.

651. Kathy Tomlinson, “False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada”, The Globe and Mail, (5 April 2019).

652. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (2019).

653. Interview with senior official, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.

654. Email exchange on file with FairSquare, March 2020.

655. Centro de los Derechos del Migrante, “Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change”, (2013).

in Topolobampo, Sinaloa and “informed the people that, to secure their employment [on the US H-2 programme], it was necessary to make a deposit of US\$200 dollars... Approximately 36 people made deposits... most of the people, in order to get the money to secure employment, applied for loans with very high interest rates through friends, family or companies that engage in this type of activity.”⁶⁵⁶ No jobs materialised.

Mexico / Canada: SAWP

Migrant workers told us the charging of fees was common practice, but those who migrated through the SAWP said there was a big difference between using private recruiters and migrating through the STPS: “I’ve heard about people paying and I actually know people who recruit workers in exchange of large quantities for money, but I have never paid for anything,” a 39 year old woman from Oaxaca state, about to begin her seventh season in British Columbia’s SAWP, told us.⁶⁵⁷ The SAWP, like other government-run recruitment programmes, removes the Mexican private sector from the equation. Under the SAWP, the Mexican government - through STPS / SNE - carries out recruitment and matches workers with Canadian employers. On the Canadian side, employers normally recruit workers through one of three recognized private sector SAWP administrators which work with the Mexican government to coordinate the matching process: for example, FARMS in Ontario.

Ontario officials said because recruitment is tightly regulated under the SAWP through the countries of origin, they had never heard of workers being charged illegal recruitment fees.⁶⁵⁸ Interviews with civil society organisations and academic experts in both countries, as well as with SAWP workers we spoke to, broadly support the assessment that illegal fee payments are rare in the SAWP. It is however clear that there are cases where SNE officials have demanded cash from workers in order to admit them into the SAWP. As is further detailed in section 5.4 regarding corruption, Mexican officials acknowledged this was a problem in the programme.

While only a minority of SAWP workers appear to be affected, these cases are nonetheless certainly not rare and the penalties for offending officials are light. One man who had worked six seasons in Ontario told us that he had been given information about this practice by officials in Mexico City and was told to report any officials who asked for money or threatened not to admit them into the programme if they didn’t pay: “they told us in Mexico City that in [the SNE office in] Yucatán they were doing that, and someone had complained.”⁶⁵⁹

Migrating through the SAWP is however not free for workers, as they pay a variety of legal costs for various elements of their participation, many of which - under the ILO’s 2019 definition - are associated with recruitment, and would ordinarily be expected to be covered by employers.

Work permits, biometrics and medical test

The cost of applying for work permits to the Canadian Embassy fall to SAWP workers (as for workers under other streams) and cost US\$130.⁶⁶⁰ In Ontario, a specific exception to provincial law is in place to allow for this.⁶⁶¹ Before departing Mexico each season, workers are expected to pay the costs of medical tests, which are required for workers to obtain their Canadian work permit. While the costs of medical examinations vary, tests must be done with clinics approved by the Canadian authorities.⁶⁶² Workers reported paying between 600 and 3,000 pesos (US\$30 to US\$150) for medical tests depending if they had to do tests at private clinics, and how quickly they needed tests done in order to return to Canada. Some workers, not all, said they could have the tests done for free if doing them at authorized Mexican public hospitals or clinics. Workers are also expected to pay the costs for biometric tests, which are valid for 10 years, and cost US\$70.⁶⁶³

Mexico in-country transport and accommodation costs

There are 160 medical clinics located across Mexico authorised to deliver the medical test for SAWP workers.⁶⁶⁴ Biometrics can only be taken at the Canada Visa Application Centre in Mexico City, and all SAWP

656. “Caso: Fraude en el reclutamiento de trabajadores migrantes temporales, Sinaloenses. Jesús Ramón Mercado Márquez alias el “Machurro””. On file with FairSquare.

657. Interview, Mexico City, March 2020.

658. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

659. Remote interview, 19 July 2020.

660. Government of Canada, “[What are the fees for visa applications](#)”, (28 April 2021).

661. [Employment Protection for Foreign Nationals Act, 2009](#), Ontario Regulation 348/15, Regulation 1, 26 November 2015.

662. Government of Canada, “[How can I find a doctor to do my immigration medical exam?](#)”

663. VFS Global, “[Service and service charge schedule](#)”

664. Government of Mexico, “[Programa de Trabajadores Agrícolas Temporales Mexico-Canada \(PTAT\)](#)”, 15 December 2015, Mexican workers going to Canada in other streams have a choice of only 10 clinics, 5 of which are in the capital.

workers must travel to Mexico City in order to receive their pre-departure package at the STPS including flight tickets and employment contracts. Traditionally, most SAWP workers came from central states near to the capital, because of the need to travel to Mexico City for these procedures.⁶⁶⁵ However, in recent years, as the SAWP has grown in size, workers have been recruited from as far away as Oaxaca and Yucatan, driving up their transport costs for these processes and requiring that they make overnight stays. A round trip bus journey from Yucatan to Mexico City may cost 2000 to 3000 pesos (US\$100 to US\$150).⁶⁶⁶ Many workers told us that the requirement to travel long distances within Mexico, incurring costs for this, was one of the aspects of the SAWP that needed to be reviewed. A 2013 INEDIM report also notes that applicants must cover transportation costs “without any guarantee of eventually being contracted.”⁶⁶⁷

Workers we spoke to told us that they generally spent between 1,100 and 6,000 pesos (between US\$55 and US\$300) on the costs of domestic transport costs and accommodation, depending on how far away they lived from Mexico City and from other cities where they must conduct tests, and depending on whether they needed to stay overnight to complete these processes.⁶⁶⁸

Airfare

Who bears the travel costs of SAWP workers differs according to the Canadian province workers travel to. In all participating SAWP provinces, with the exception of British Columbia, employers can recover up to 50% of airfare costs from the worker, through payroll deductions.⁶⁶⁹ In Ontario, this is covered by a specific exception in provincial legislation, to allow for employers recruiting through SAWP to recover travel costs, unlike other employers recruiting under the TFWP.⁶⁷⁰ In Manitoba employers can recover up to US\$620, while in Ontario the maximum is US\$460 or US\$470 depending on the airport. All of these maximum amounts are reviewed annually. In British Columbia,

employers must cover all the costs of airfare, consistent with the province’s Employment Standards Act.⁶⁷¹

A former Canadian government official told us that the requirement for workers to pay a portion of airfare costs dates back to the early years of the SAWP and despite government efforts to remove the provision, employer associations have lobbied for it to remain in the programme.⁶⁷² The requirement for workers to pay for part of their airfare is not consistent with Canadian government requirements on agricultural employers recruiting migrant workers outside the SAWP, which require employers to pay for full return airfare. However, employers outside the SAWP are allowed to charge workers up to US\$25 per week for accommodation. SAWP employers cannot charge for accommodation,⁶⁷³ though they charge workers for utility costs - US\$2.12 is the daily maximum in Ontario.⁶⁷⁴

In British Columbia, where SAWP employers cannot charge for airfare, they are permitted to recover accommodation costs from workers up to a maximum of US\$684 per season.⁶⁷⁵ The situation of SAWP workers in British Columbia is broadly consistent in this respect with that of other TFWP agricultural stream workers.

ILO definition of “related costs”

The requirement that SAWP workers to pay for costs related to obtaining the work permit, the internal transport within Mexico required for this, and part of their airfare - which could in some cases amount to a total of over US\$1,000 per worker per year - is arguably in tension with international standards. The ILO’s 2019 definition of recruitment fees and associated costs, makes clear that such costs are related to the recruitment process, which means they should be borne by employers and not workers:

“When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or

665. Dr. Marie-Hélène Budworth, Mr. Andrew Rose and Dr. Sara Mann, “Report on the Seasonal Agricultural Worker Program”, *Inter-American Institute for Cooperation on Agriculture Delegation in Canada*, (March 2017).

666. Prices checked at [ADO](#), 5 February 2021.

667. Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, “Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare”, *INEDIM*, (February 2013).

668. Interviews with migrant workers, multiple dates.

669. Government of Canada, “Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021”, VII Travel and reception arrangements, 15 January 2021.

670. [O. Reg. 348/15: Employer recovery of costs](#), (26 November 2015).

671. Government of Canada, “Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021”

672. Former ESDC government official, email exchange on file with FairSquare, 4 February 2021.

673. Government of Canada, “[Hire a temporary foreign worker through the Agricultural Stream: Program requirements](#)”

674. F.A.R.M.S., “[SAWP/Agricultural Stream Comparison](#)”

675. Government of Canada, “[Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021](#)”, section 2.2.

placement; or imposed during the recruitment process, **the following costs should be considered related to the recruitment process:** i. **Medical costs:** payments for medical examinations, tests or vaccinations;... vi. **Travel and lodging costs:** expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation; vii. **Administrative costs:** application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits⁶⁷⁶ [Emphasis added]

The ILO definition allows for some governments to allow such costs to be borne by the worker in exceptional circumstances “after consulting the most representative organizations of workers and employers”. The definition argues that in any such cases, these exceptional costs should be “in the interest of the workers concerned; **and** ... limited to certain categories of workers and specified types of services; **and** ... disclosed to the worker before the job is accepted.”⁶⁷⁷ [emphasis added] It is not clear whether Mexico and Canada believe that the SAWP meets all of these criteria, and whether relevant worker and employer organizations have been consulted. While SAWP workers we spoke to expected to pay these costs, many nevertheless commented on the fact that these add up to substantial sums each year.

The upshot of the current position is that over the course of their involvement with the programme, which for some people can be as long as 20 years or more, migrant workers pay many thousands of dollars in costs associated with their recruitment.

Canada

All provinces prohibit the charging of recruitment fees to workers and job seekers in their employment standards legislation and/or in legislation specific to the protection of migrant workers. A federal government report observes that, “in general, the provinces prohibit either individuals or relevant entities involved in recruitment activities from charging either (1) any fees or (2) fees for strictly recruitment and/or employment-related services”.⁶⁷⁸ Federal immigration law reinforces provincial legislation in this regard: employers applying to hire migrant workers are prohibited from “recovering costs of hiring the temporary foreign worker(s) such as the LMIA fee, recruitment, etc. This also applies to any third parties used.”⁶⁷⁹

Nevertheless, the illegal payment of recruitment fees continues to be documented, and while firm data is difficult to obtain, our research indicates it is not unusual and remains a substantial problem. The Migrant Workers Alliance for Change has said workers can often pay “an equivalent of two years’ salaries in fees in their home countries”.⁶⁸⁰ The Migrant Rights Resource Centre told us that they often see cases where the workers have been charged fees overseas before they come to Canada, including through on-line payments to recruiters: “we have seen cases where individuals have been charged up to [US]\$16,500.”⁶⁸¹ An Ontario social worker said fees workers paid varied depending on their country of origin and ability to borrow, but could range from US\$4,100 up to US\$12,400. In some cases, workers’ repayments to recruiters could absorb the majority of their monthly paycheck.⁶⁸² Ontario officials cited cases where Filipino caregivers had been charged US\$2,900-\$4,100 by recruiters overseas to gain access to the job offers.⁶⁸³ The Caregivers Alliance found in a 2011 survey of 132 caregivers in Ontario that 65% had paid recruitment fees, at an average of US\$2,700.⁶⁸⁴ In her 2014 report for the Metcalfe Foundation, Faraday find the normal range is between US\$3,300 and US\$8,300, though amounts between US\$830 and US\$12,500 are also not uncommon.⁶⁸⁵ As noted above, within the SAWP, the

676. ILO, “General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs”, (2019).

677. Ibid.

678. Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020):28

679. Employment and Social Development Canada, “Labour Market Impact Assessment application - Low-wage positions”, (2021): 12.

680. Migrant Worker’s Alliance for Change, “Ending migrant worker exploitation by recruiters”, (16 December 2013).

681. Jesson Reyes and Mithi Esguerra, Migrant Resources Centre Canada (MRCC), interview, Toronto, 4 March 2020.

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

683. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

684. Caregivers’ Action Centre, “Submission by the Caregivers’ Action Centre Ontario’s Changing Workplaces Review Consultation Process”, (18 September 2015).

685. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, Metcalf Foundation, (April 2014):32.

payment of illegal recruitment fees appears to be rare, apart from some cases of bribe payments to Mexican officials.

False promises are often used by recruiters to persuade workers to hand over money, with many taking on large loans to fund the fees, in some cases becoming indebted to the recruiters. According to the Canadian Council of Refugees, “recruiters often give false information to lure workers into paying high fees, for example promising access to permanent residence where there is none, or higher wages and better working conditions than those that are actually available”.⁶⁸⁶ A number of interlocutors mentioned that the draw of long-term visas offering permanent residence, whether true or not, was used by recruiters to inflate fees.⁶⁸⁷

An official from the Mexican Embassy in Ottawa told that in his experience, the private recruitment process of Mexican workers starts in Canada with employers hiring Canadian lawyers, immigration consultants, and labour recruiters to recruit foreign workers, and then those actors subcontracting to agencies in Mexico: “in the few cases that we are aware of, we see many problems, with recruiters double-charging employers and workers, employers recovering recruitment costs from workers, and workers taking on large debts.”⁶⁸⁸ The degree to which employers are involved in or aware of the charging of recruitment fees is not always clear. A social worker in Ontario who provides legal and welfare support to migrant agricultural workers told us:

*“Many employers choose to ignore recruitment risks, and they work with Canada-based recruiters who extort workers. Farmers say to me, ‘that’s not my business, that’s between the worker and the recruiter’. Yes, some growers have come to me and said, ‘I don’t like this guy, he’s a dodgy recruiter’. But many others will continue to use people that are widely known to have been demanding monthly payments from workers for their recruitment.”*⁶⁸⁹

An immigration consultant told us that some employers will actively insist on not paying recruitment fees:

“dodgy employers will try to get the foreign worker to pay the fees.”⁶⁹⁰ An academic specialising in migrant labour told us about instances of employers in Alberta not charging fees upfront, but clawing back the costs they have incurred for recruitment by placing workers into their accommodation and charging above-market rents to the workers.⁶⁹¹ In British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, and Nova Scotia, employers are prohibited from recovering recruitment fees from workers through wages or benefits, while in Alberta the legal framework is “limited to employment agencies, and therefore does not have direct requirements over employers in this respect”. Ontario, Quebec and Manitoba allow employers to recover some costs from workers when this is permitted by federal programmes such as the SAWP (see above).⁶⁹²

Some employers with labour needs hire through temporary agencies, which also act as recruiters of workers, charging them fees. This saves the employer the transaction costs of going through immigration procedures and places responsibility, and legal liability, for the migrant worker on someone else. A Toronto lawyer representing Filipino agricultural workers who had hundreds of dollars of illegal recruitment fees deducted from their paychecks - resulting in them earning almost nothing for their labour - told us that the farm they worked on was arguing that it was not responsible because the recruiter was technically their employer and carried out the salary deductions.⁶⁹³ A major 2019 investigation by the Globe and Mail detailed the cases of migrant workers from Mexico and Philippines whose recruiters put them to work as temporary labour in major fast-food and hotel chains, deducting most of their salaries from their paychecks in supposed fee repayments. Most of the ultimate employers, including well-known brands, did not respond to the newspapers’ requests for comment.⁶⁹⁴

Ontario officials told us that in their experience, fees are often charged by recruiters abroad before the workers travel to Canada, and that fraudulent recruiters often

686. Canadian Council for Refugees, “Temporary Foreign Worker Program”, (May 2016).

687. See for example Natalie Drollet here: House of Commons, “Standing Committee on Citizenship and Immigration, number 56, 1st Session, 42nd Parliament: Evidence”, section (1545), (10 April 2017).

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

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

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

691. Dr. Ethel Tungohan, York University, interview, Toronto, 5 March 2020.

692. Leanne Dixon-Perera, “Regulatory approaches to international labour recruitment in Canada”, IRCC, (June 2020).

693. Louis Century, lawyer, remote interview, 20 January 2021.

694. Kathy Tomlison, “False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada”, *The Globe and Mail*, (5 April 2019).

leave minimal evidence, asking for payment in cash and not signing contracts with workers. This made recruitment cases harder to investigate, they said.⁶⁹⁵ Several interviewees noted the problem of pursuing cases where payments were made to recruiters overseas, and legislative gaps may to some degree be responsible for this. The Canadian Council of Refugees told parliament in a 2016 submission that “provincial legislation is not effective for addressing the problem of recruitment fees in the source country.”⁶⁹⁶ A 2017 On the Move Partnership report on the recruitment experience of Guatemalan workers in Quebec also argued that “one of the main obstacles [temporary foreign workers] will face when seeking the protection of provincial regulations is the territorial limitations of national legislation.”⁶⁹⁷ Some provinces have sought to address this through joint liability and bonds. For example in British Columbia, licensed labour recruiters pay a US\$16,500 financial security bond as part of their licensing application, which can be drawn upon to repay victims of abuse, and are liable for the actions of all their overseas partners and associates.⁶⁹⁸

The role of Canada’s immigration consultants in illegal fee charging has gained particular prominence in discussions over fee charging. A representative of CAPIC, an organisation that represents immigration consultants, told us that, in his view, most illegitimate fee charging is carried out by unlicensed or fake consultants: “this is widespread. In some instances, there are massive abuses.”⁶⁹⁹ As in Mexico, there is a major problem with “ghost” consultants who charge workers for fake jobs. This is explored further in section 6.4. However, registered immigration consultants have also been associated with illegal fee charging. In its study on the regulation of labour recruitment, the IRCC notes that “fees for immigration services and how they are regulated alongside more traditional recruitment services are a curious consideration in the Canadian immigration context.”⁷⁰⁰

Unlike recruiters, registered immigration consultants are permitted to accept fees from prospective migrant workers - to provide paid assistance with the completion and filing of any immigration application to the federal government, including work permits. In most provinces, immigration consultants are permitted to carry out recruitment as well, including for the same worker, provided that they don’t charge the worker for the recruitment services. A representative of CAPIC explained how situations that overlap labour recruitment and immigration consultancy typically work if immigration consultants act legitimately and legally: “the employer may ask an immigration consultant to recruit employees for them. So the immigration consultant does the recruitment, then says to the worker, ‘if you want to sort the visa, you can pay me.’”⁷⁰¹ This dual role opens up a grey area that has been exploited with relative ease by those seeking to charge workers recruitment fees. As an IRCC research paper puts it, “if any prohibition against charging fees is strictly limited to costs related to recruitment services, recruiters may easily hide fees charged as ‘immigration-related’ to evade consequences.”⁷⁰² The ICCRC, the immigration consultants regulator, says in its 2020 annual report that it “continues to receive serious complaints” with regard to registered consultants “promising a job or accepting fees for jobs.”⁷⁰³ A registered immigration consultant, who told us she recommends that workers get their employers to pay all consulting fees, explained what she knows of how this works in practice:

“It’s Illegal for us to charge for assistance in a job search, that is selling jobs. But that doesn’t mean that it doesn’t happen. People say to the worker ‘we’re not charging you for finding a job’; and then they inflate the price for their consultancy services to include recruitment costs. The trouble is that selling jobs is where the money is to be made. My colleague saw someone was charging a worker US\$20,700 to get a job that had a LMA. That’s an extreme example, but we know

695. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.
696. Canadian Council for Refugees, “[Temporary Foreign Worker Program: A submission by the Canadian Council for Refugees to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities](#)”, (May 2016).
697. Dalia Gesualdi-Fecteau, Andréanne Thibault, Nan Schivone, Caroline Dufour, Sarah Gouin, Nina Monjean, Éloïse Moses, “[Who, how and how much? Recruitment of Guatemalan migrant workers to Quebec](#)”, *On the Move Partnership*, (June 2017).
698. Government of British Columbia, “[Temporary Foreign Worker Protection Unit: Guide for Clarifying Roles of Recruiters, and their Affiliates, Agents, and Partners](#)”, (2019).
699. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.
700. Leanne Dixon-Perera, “[Regulatory approaches to international labour recruitment in Canada](#)”, *IRCC*, (June 2020).
701. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.
702. Leanne Dixon-Perera, “[Regulatory approaches to international labour recruitment in Canada](#)”, *IRCC*, (June 2020).
703. ICRC, “[Annual Report 2020](#)”

*that when people are desperate they will take desperate measures.*⁷⁰⁴

A judgement by the British Columbia Court of Appeal in 2016 found against an immigration consultant who had bundled together recruitment fees and immigration services in the way described above. The consultant argued to the court that the province's prohibition on the charging of recruitment fees to workers was in effect preventing it from carrying out its role as an immigrant consultant in line with federal law (as the provision of recruitment services and immigration advice are closely tied), an argument the court rejected.⁷⁰⁵

To attempt to address this blending of these two linked roles, some provinces have introduced provisions that either prohibit licensed labour recruiters from simultaneously charging for immigration consultancy services for migrant workers destined to their province (e.g., Manitoba),⁷⁰⁶ or require the licensed immigration consultant to disclose if it is providing labour recruitment services paid by an employer, and immigration services to the migrant worker (e.g., Saskatchewan, British Columbia).⁷⁰⁷ Saskatchewan also requires that consent be obtained from both the migrant worker and the employer for these types of arrangements, and prohibits a licensed recruiter from requiring that a migrant worker purchase other services, such as immigration consulting.⁷⁰⁸

The regulator of immigration consultants, the ICRC, received 4551 complaints against its members between 2011 and 2020, an average of about 500 a year or 10 a week. However, only 39 consultants had their licence revoked or suspended during this period.⁷⁰⁹ As noted in Section 4, such statistics have raised questions about whether issues such as fee charging were being adequately addressed, one of the factors leading to the 2019 College of Immigration Act which established a new regulator. An immigration consultant told us that complaints lodged with the regulator were dealt with “ridiculously slowly”.⁷¹⁰

In this context, some Canadian lawyers have argued that the mixing of recruitment and immigration services, and associated abuse, is sufficiently rife to justify the abolition of licensed immigration consultants, so that only registered lawyers can advise on immigration matters for a fee.⁷¹¹ Those who represent immigration consultants argue that the payment of fees by migrant workers to immigrant consultants for advice is essential for their ability to have control over their immigration status, and that better enforcement is needed, rather than a prohibition: “the right of representation is paramount. The worker loses the right of representation if someone else, for example the employer or the government, pays.”⁷¹²

6.2 Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them?

Mexico

The Regulation of Worker Placement Agencies (RACT) stipulates that it is forbidden to “charge workers requesting employment, whether in money, services or kind, directly or indirectly, including expenses for the dissemination and advertising of their job applications, the cost of training courses”, and that it is furthermore forbidden to “[a]gree directly or indirectly with the employers to whom they provide the service, that their fees be deducted partially or totally from the wages of the workers placed”.⁷¹³ The RACT also requires private labour recruiters to provide the STPS with a copy of a model contract where it is clear to workers that recruitment services for migrant workers are to be provided free of charge, and to disclose to the STPS how much they charge to employers.⁷¹⁴ However there is no requirement in law to provide a breakdown of recruitment costs to employers.

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

705. Court of Appeal for British Columbia, “Gorenshtein v. British Columbia (Employment Standards Tribunal), 2016 BCCA 457 (CanLII)”, (18 November 2016).

706. Government of Manitoba, “Foreign Worker Recruitment Licence Information”, (14 April 2020).

707. Government of Saskatchewan, “Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities”; Government of British Columbia, “Apply for a Foreign Worker Recruiters’ License”.

708. Government of Saskatchewan, “Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities”.

709. ICRC, “Annual Report 2020”.

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

711. The Canadian Bar Association, “Immigration Consultants”, (March 2017).

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

713. Reglamento de Agencias de Colocación de Trabajadores, Article 10 I., II, 3 March 2006.

714. Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores, Article 23 V-VI, 21 May 2014.

Mexico-Canada SAWP

The permitted allocation of costs through the recruitment and employment process is transparent to both workers and employers, as it is specified in the annually negotiated SAWP employer-employee contract. This contract breaks down the costs for airfare, a portion of which can be recovered from the workers in most provinces; the provision (in most provinces) of free housing by the employer; the requirement for the employer to register workers into provincial public health plans and worker compensation plans; the requirement to register workers for additional private health insurance plans (paid by the worker); and other detailed deductions (e.g. meals).⁷¹⁵ As noted in 6.1, there are question marks about whether workers are being asked to bear costs which relate to recruitment - in particular airfare. However this is a question of policy substance rather than one of transparency.

Canada

Requirements on recruiters are set at provincial level and vary as a result. As noted in section 6.1, one of the potential routes for recruiters to exploit migrant workers is through inflation of costs for immigration services (if they or someone within their firm also act as immigration consultants), to disguise recruitment-related costs.

As a result, certain provinces have specific regulations in place that require recruitment agencies to disclose to workers and employers what they are paying for, in particular, distinguishing between payment for recruitment services and other services such as immigration advice. The province of British Columbia requires, for example, that recruiters conclude contracts with employers and workers, that “in the case of recruitment services provided to an employer, describes the fees and expenses to be charged to the employer and the services for each fee and expense charged [and] ... in the case of immigration services provided to a foreign national, describes the fees and

expenses to be charged to the foreign national and the services for each fee and expense charged”.⁷¹⁶ Saskatchewan also requires transparency of this kind.⁷¹⁷ Alberta requires that agencies can only provide non-recruitment services to individuals seeking jobs if a signed agreement is concluded making clear what these services are, with reasonable fees set out.⁷¹⁸ Alberta also requires all agreements with workers to carry out a specified wording on the prohibition of fee charging for recruitment services.

6.3 Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker’s language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements?

Mexico

The Federal Labour Law requires that contracts within Mexico specify the nature of the job, establishing wages and working conditions.⁷¹⁹ Additional provisions must be included in contracts for Mexican migrant workers overseas, including confirmation that the employer will fund the worker’s repatriation at the end of the contract, details of living conditions, health provision, and information about Mexican consular and diplomatic authorities in the destination state.⁷²⁰ The law states contracts should be reviewed and approved by the Federal Conciliation and Arbitration Board, though this does not generally happen in practice for private recruitment to North America - the US and Canada manage unilateral labour migration systems (the H-2 and TFWP/IMP programmes respectively) and as Inedim put it, “the Mexican government does not participate in this system, despite the fact that it is bound by law to verify recruitment and contracting conditions for Mexican workers to work abroad”.⁷²¹ Perhaps reflecting this fact, a 2012 amendment to the law places the onus

715. Government of Canada, “[Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021](#)”

716. [Temporary Foreign Worker Protection Act \[SBC 2018\] Chapter 45, section 27.](#)

717. Government of Saskatchewan, “[Protection for Immigrants and Foreign Workers](#)”, Article 27 (1)(d).

718. [Consumer Protection Act: Employment Agency Business Licensing Regulation](#), Alberta Regulation 45/2012, Article 12(2), 2012.

719. [Ley Federal del Trabajo](#), Article 25, 1 April 1970.

720. *Ibid*, Article 28.

721. Alejandra Constanza, Ancheita Pagaza and Gisele Lisa Bonnici, “[Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare](#)”, *INEDIM*, (February 2013).

on licensed Mexican agencies to ensure the veracity of the terms and conditions promised by employers, and they are responsible for the costs of repatriation in cases where workers have been deceived.⁷²² The RACT also requires private labour recruiters to provide the STPS with a copy of a model contract for workers, which should inform job seekers about the nature of the work, service or services.⁷²³ There is no requirement that workers are provided a contract in their first language, whether that be Spanish or another language.

In practice the experience of migrant workers in this regard depends to a significant extent on the specific employer and recruiter they deal with. Inedim's assessment is that "little of what is established by law is complied with in practice, as contractors disregard regulations and the Mexican government is not involved in the contracting process."⁷²⁴ A 2013 CDM survey found 52% of Mexican workers recruited for the US were never shown a written contract.⁷²⁵ Even when workers do get contracts, they may not get the opportunity to give genuine informed consent. A 2020 CDM report relates numerous case studies of workers given contracts only in English and/or being presented with contracts just ahead of migrating, with no chance to review or check them.⁷²⁶ One man who was recruited privately into Canada's agricultural sector in 2019 told us that he didn't see his contract until he got to the airport. The key terms and conditions were briefly explained verbally at that point: "they showed us the contract ... well, they gave me the boss's name, the name of the farm, the place, pay, like how many hours, hourly payment, and the deductions that would be made."⁷²⁷

Additionally CDM notes it is almost unheard of for indigenous Mexican migrant workers - who increasingly make up a significant proportion of migrant workers to the United States - to receive a contract in their own language: "some of the indigenous speakers interviewed for the report stated that they did not understand or understood very little what the contracts stated".⁷²⁸

For workers recruited through the SAWP, the Mexican government effectively acts as recruiter and there are detailed provisions relating to contracts. Workers all sign a standard employment agreement which is publicly available in Spanish as well as English, and French.⁷²⁹ The standard agreement, which is amended each year following discussions between the two governments and Canadian employers, includes all relevant terms and conditions, as well as workers' rights and their responsibilities. Migrant workers recruited through the SAWP told us they had received employment contracts in Spanish prior to migrating. Some felt confident with the content of contracts, particularly workers who have been through the programme many times: "on your paper it's stipulated where you're going, which employer, how long you're going for, how much you'll be paid."⁷³⁰ Nevertheless, workers said it was not unusual for colleagues not to scrutinise some documents properly. One worker told us: "what happens is they give us an envelope of papers and that's where they include your rights and obligations. But there are many people who have not read them... They say, 'what paper?'"⁷³¹ Other workers told us that in their pre-departure orientation (see section 8) such issues were discussed, but more effort may be needed by the STPS to talk workers through the key provisions of their contracts.

Some workers expressed frustration that they had no ability to negotiate alterations to the contract, which is set by the governments and employers and cannot be individualised. One worker noted the fact that worker organisations were not at the table in determining this contract (explored further in section 9), which he argued was not like a contract in the normal sense:

*"It's not really a contract, it's a deal that has a memorandum of understanding... we are not allowed to organize ourselves to make demands."*⁷³²

The standardised SAWP contract lacks clarity on a number of issues, which cannot be standardised due to the differing provincial labour standards. The contract

722. [Ley Federal del Trabajo](#), Article 28-B, 1 April 1970.

723. [Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores](#). Article 23 VI, 21 May 2014.

724. Alejandra Constanza, Ancheita Pagaza and Gisele Lisa Bonnici, "Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare", INEDIM, (February 2013).

725. Centro de los Derechos del Migrante, "Recruitment Revealed: Fundamental Flaws in the H-2A Temporary Worker Program and Recommendations for Change", (2013):5.

726. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

727. Remote interview, 2 July 2020.

728. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

729. Government of Canada, "Contrato de trabajo para trabajadores agrícolas temporales Mexicanos en Canadá - 2020", (7 February 2020).

730. Remote interview, 16 July 2020.

731. Remote interview, 29 July 2020.

732. Remote interview, 9 August 2020.

does not contain any reference to collective agreements, as agricultural workers in Ontario and Alberta are not able to join trade unions, as noted in sections 2 and 9. Language in the contract regarding hours of work and overtime is broad and non-prescriptive. The Canadian Agricultural Human Resource Council details the provinces that currently exempt agricultural workers in almost all agricultural sub-sectors from coverage under key provisions of their respective employment standards legislation, including hours of work, rest days, overtime, and vacation days.⁷³³ The variation between provinces and the exclusion of agricultural workers from key provincial standards undermines the role that the standardised SAWP contract plays in terms of spelling out workers' specific rights and entitlements ahead of their decision to migrate - and leaves them dependent on their relationship with their employers for key elements of their treatment.

Canada

For employers hiring through the TFWP but outside the SAWP, there is a requirement for employers to provide a copy of the employment contract - signed by both the worker and employer - to Service Canada, as part of the process to obtain a LMIA.⁷³⁴ A model contract is provided for employers to use as a basis, which includes explicit reference to employers' responsibility to cover airfare costs and that no recruitment costs will be recovered by the employer. The aims of the contract, according to Service Canada, include to "articulate the employer's responsibilities and the worker's rights" and to "help ensure that the worker gets fair working arrangements."⁷³⁵ Employers are also required to provide migrant workers a printout of the approved LMIA that covers the terms and conditions of their employment in Canada, and workers must submit this document as part of the process to apply for a work permit.⁷³⁶ There is however no federal requirement that the contract be made available in the worker's language. One Mexican worker recruited

by a private recruiter for a job in Quebec told us his employment contract was only provided in French: "If I wanted to check anything in it, I would have scanned it and translated it online."⁷³⁷ Within the SAWP, contracts must be provided in Spanish as well as either English or French.⁷³⁸

6.4 Are there effective measures to prevent contract substitution?

Mexico

Under the Federal Labour Law, recruitment agencies are responsible for ensuring the "veracity of the general working conditions offered, as well as those relating to housing, Social Welfare and repatriation to which workers will be subject." Where workers are deceived about their working conditions, the law holds labour recruiters responsible for covering the costs of repatriation.⁷³⁹ The RACT includes financial penalties if provisions in the law or the regulation are violated.⁷⁴⁰

In practice it is not uncommon for workers to find that terms and conditions they were promised in Mexico do not materialise on arrival. A 2020 CDM survey of Mexican H-2A workers in the US found that 44% were not paid the wages they were promised: "many find that when they arrive in the U.S. conditions are far different from those promised."⁷⁴¹ Recruitment agents are incentivised to make false promises about wages and other conditions (accommodation, the type of work), in order to persuade workers to pay them fees and to deliver the workers that employers want. As SPLC notes, promises may extend to immigration status: "recruiters often exploit workers' desperate economic situation by deceptively promising them lucrative job opportunities and even green cards or visa extensions."⁷⁴² Media reports have also highlighted the practice among recruiters of falsely promising pathways to permanent residency to Mexican migrants seeking jobs in Canada.⁷⁴³

733. The Canadian Agricultural Human Resource Council (CAHRC), "Canadian Agriculture and Agri-Food Workforce Action Plan Labour Task Force and the Alberta AGCoalition, Agriculture Workforce Management Comparison of Provincial Agriculture Regulations for Labour Relations Employment Standards including Regulated Agricultural Wage Rates Occupational Health and Safety Workers' Compensation", (June 2016).

734. Government of Canada, "Hire a temporary foreign worker in a low-wage position" (25 February 2021).

735. Government of Canada, "Temporary Foreign Worker Program: Annex 2: Instruction Sheet to Accompany Employment Contract"

736. Government of Canada, "Hire a temporary foreign worker in a high-wage or low-wage position - After you apply" (19 November 2020).

737. Remote interview, 14 August 2020.

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

739. *Ley Federal del Trabajo*, Article 28-B, 1 April 1970.

740. *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*. Article 33, 21 May 2014.

741. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

742. Southern Poverty Law Center (SPLC), "Close to Slavery: Guestworker Programs in the United States", (19 February 2013).

743. Kathy Tomlinson, "False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada", *The Globe and Mail*, (5 April 2019).

There are many concrete examples of such practices when workers seek to find employment in the US, the main destination for Mexican migrant workers. To participate in the H-2 program, “migrants may negotiate with recruiters that employers have contracted to fill their H-2 allotment; however, recruiters do not provide contracts and may promise high wages ... employers may pay them a lower rate than promised”. Once workers are in this situation, it is very difficult to challenge the situation without risking deportation, as “employers threaten to call U.S. Immigration and Customs Enforcement (ICE) to report that temporary workers ‘abandoned’ their work (making them unauthorized workers)”.⁷⁴⁴

As noted in section 6.1, many recruiters sell fake jobs. Officials at the Mexican consulate in Toronto said that some private recruiters “promise workers false jobs, charge fees, and then take advantage of Mexican nationals after they arrive in Canada”.⁷⁴⁵ A Canadian social worker, working with migrant workers in Ontario, said it was not uncommon for Mexican workers to arrive at Toronto airport and not meet the recruiter who was supposed to be there; only at this point did they realise they had been tricked into paying for non-existent jobs. She said that workers often seek support from other migrant workers in this situation.⁷⁴⁶

The Contratados initiative, developed by CDM, allows migrant workers from Mexico to post reviews, with a star system, of recruiters and recruitment agencies, whether licensed or not. Contratados told us the site receives 29,000 visits a month, with the majority being workers searching for information on employers and recruiters. A review of the database in some cases shows cause for serious concern with regard to deceptive practices in respect of certain recruiters.⁷⁴⁷ One recruiter, for example, was accused of fraud by the majority of the 16 workers who posted reviews over a two year time period, between 2019 and 2021, alleging that the individual charged between 4000 and 8500 pesos (US\$200 to US\$425) for jobs in the United States, only in many cases to then transport them across the border without documentation and abandon them. One worker reports:

“We want to report this person, we don’t know how to notify the American consulate, they charged us 4,000 pesos [US\$200] for passing over the bridge only”.⁷⁴⁸

CDM’s 2013 report found that one in ten workers paid for non-existent jobs.⁷⁴⁹ The Chambamex case presented a rare case of the defrauding of migrant workers attracting attention at a national level in Mexico, due to its scale. The agency defrauded more than 3,000 Mexican workers in 19 states out of 60 million pesos (approximately US\$3M) between December 2012 and April 2013 with the promise of jobs in the United States and Canada. A researcher at the National Network of Agricultural workers told us that, “Chambamex was the first time that a case with these characteristics came to light in Mexico. Previously there had never been anything like this in the press or the media, on false recruitment or fraudulent recruitment.”⁷⁵⁰

A senior STPS official told us that previously, when workers received overseas offers from private recruitment agencies, they could send the information to the STPS to review the veracity of such offers, either through embassies or other networks. In many cases, the STPS would advise workers it could not verify these offers, since they appeared on social networks and there was no identifiable recruitment agency in Mexico, Canada or the USA. However, such programmes had been stopped in 2019 due to austerity measures.⁷⁵¹ It is clear that such practices take place in licensed recruiters as well as unlicensed ones. Licensed agencies may advertise genuine jobs in the US or Canada, but charge many more workers than they have jobs available. A Mexican migration expert told The Guardian in 2019 that, “a recruiter can advertise 500 jobs and really only have 100 vacancies. Some will get a job, others will pay a fee and get no job”.⁷⁵² STPS officials told us that they were aware of licensed agencies selling fake jobs.

Mexico-Canada SAWP

Mexican workers who migrate through the SAWP, which is monitored by the Mexican government both countries,

744. Lauren A. Apgar., “Authorized Status, Limited Returns: The Labor Market Outcomes of Temporary Mexican Workers”, Economic Policy Institute, (21 May 2015): 4.

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

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

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

748. Contratados, “Search reviews”

749. Centro de los Derechos del Migrante, “Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change”, (2013).

750. Mayela Blanco, National Network of Agricultural Workers (CECIG), interview, Mexico City, February 2020.

751. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

752. Milli Legrain, “‘Be very careful’: the dangers for Mexicans working legally on US farms”, *the Guardian*, (16 May 2019).

and overseen by private Canadian administrators, may not in most cases experience the kinds of fully-fledged contract substitution or deception that some Mexican workers who migrate through private recruiters are subjected to. For example, workers are in the vast majority of cases employed at the farms specified in their contracts. Nevertheless, within this overall framework, there are routinely complaints about employers failing to deliver on the full terms outlined in workers' contracts. Rosa María Vanegas García, author of a major study on the SAWP between 1974 and 2014, told us that, "while better employers do respect the contracts, others do not."⁷⁵³ A social worker working with migrant workers in Ontario argued that while blatant fraud in the recruitment process was not common in the SAWP, that did not mean workers' experience was free of abuse: "I think it's accurate that SAWP workers from Mexico typically are not experiencing that type of violation involving fraudulent recruiters and fee payment. But when they get here, there is a whole range of forms of exploitation."⁷⁵⁴ A Mexican NGO also told us that, "the problems of the SAWP are in the employment part of the programme, not so much in the recruitment."⁷⁵⁵ Complaints raised by workers include being asked to carry out different forms of agricultural work than they were hired for, as well as underpayment, excessive working hours, illegitimate pay deductions, and provision of inadequate accommodation. A woman employed in Saskatchewan told us that she was hired to work in a greenhouse, where she worked from 0430 through until 2100 at night. After two months she was subsequently moved to working in the fields: "they sent me to the field, though I was never hired to work in the field... there they took out the potatoes with a tractor, and we had to walk on our knees gathering it." The hours she worked in the field were irregular and she told us that the employer had underpaid workers for these hours.⁷⁵⁶

Other SAWP workers told us their conditions were broadly in line with their contractual expectations. There is limited available data about the precise prevalence of such concerns among SAWP workers. In Ontario, between 2011/12 and 2014/15, the most common

violations validated by Employment Standards Officers among agricultural workers (which include but are not limited to SAWP workers) were for unpaid wages and termination pay, while other common violations included public holiday pay and illegal deductions from wages. A 2019 study analysing these figures and comparing them against other industries finds that, "although the number of employees in agriculture that complain is quite low, those that file complaints are often found to be owed large sums of money" - raising concerns about the number of workers who may not be raising complaints out of fear of the potential reprisals (see section 1.6 and 7).⁷⁵⁷ In 2017/2018, ESDC completed 402 inspections in primary agriculture (at least 336 of which were of SAWP employers), identifying 127 employers (32%) which needed to address issues. About half of employers had to make changes to accommodation, about a quarter had to correct wages, and the remaining quarter had to correct other working conditions and questions related to workers' occupations. Notably, ESDC reported that 40% of the "workable tips and allegations" it received nationally were in the agriculture sector, but the sector only made up 14% of the national inspection programme that year, suggesting it was relatively under-inspected given its risk profile.⁷⁵⁸

A representative of the Canadian Farmers' Association said:

"I think the programme has got better, and I'm sure there were issues in the past that would not happen now. There can be very blanket statements made about the scale of problems. I don't think abuse is endemic. That said I won't say it's just a few bad apples - we shouldn't just dismiss this issue. We continue to work incrementally on these concerns. The main issues that we tend to hear about most frequently involve housing conditions and issues with pay."⁷⁵⁹

A senior Mexican official, speaking prior to Covid-19, said the main issue that they had raised with the Canadian government in recent years was farms failing

753. Rosa María Vanegas García, interview, Mexico City, 4 December 2019.

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

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

756. Remote interview, 24 July 2020.

757. Leah F. Vosko, Eric Tucker and Rebecca Casey, "Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability", *International Journal of Comparative Labour Law and Industrial Relations*, 35, no. 2 (2019).

758. Employment and Social Development Canada (ESDC), "Facts and Figures TFWP", (26 April 2018): 11. Obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

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

to provide adequate accommodation for the number of workers they had hired. Housing conditions rose to the fore during the Covid-19 pandemic, given the need for workers to socially distance from each other and the difficulty of doing so in cramped living spaces on many farms. Several workers told us of accommodation that does not meet the “clean, adequate” requirement set out in the SAWP contract. One commented of his accommodation in a British Columbia farm: “I have my little house in Mexico, but there I do not have rats grunting at me, where I am even afraid that they are eating my food.”⁷⁶⁰ A man from Jalisco returning for his second season in Ontario told us that, “we reported to the consulate that there are too many workers sleeping in the same house. The conditions are not right for so many people. We are 20 people in a single house, with only 2 stoves.”⁷⁶¹

Canada

As noted in section 6.3, there is a requirement for employers to provide a copy of the employment contract - signed by both the worker and employer - to Service Canada, as part of the process to obtain a LMIA.⁷⁶² Immigration officers are required to assess the genuineness of a job offer before approving work permit applications.⁷⁶³ Once workers have arrived in Canada, employers can change the terms and conditions offered to workers and outlined in the LMIA and are not required to inform IRCC of these changes. However, they must provide evidence of an “acceptable justification” for any such changes - they can be found non-compliant if inspectors find they have made changes that affect workers “negatively” (for example reducing hours worked or salary), and they have not applied for a new work permit with a new job offer.⁷⁶⁴ Beyond financial penalties for non-compliance, the IRPA also classifies recruitment into Canada by means of “fraud or deception” as an offence of trafficking.⁷⁶⁵ This is punishable by life imprisonment and/or a fine not exceeding US\$830,000.⁷⁶⁶ Separately, under the Criminal Code’s definition of trafficking, the question of

whether an accused person uses deception is one of the determinants of whether they have exploited someone, and thus whether the case amounts to trafficking.⁷⁶⁷

In 2017/2018, ESDC noted that at least some employers were found non-compliant for reasons related to “genuineness” of the job offer.⁷⁶⁸ Data available on companies that have been penalised under the ESDC inspection programme indicates that between 2015 and 2020, 53 companies were penalised solely because “pay, conditions, or work didn’t match offer of employment”, with average fines at US\$2,000. Eight companies were penalised because they “couldn’t show that offer of employment was true”, with an average fine of US\$2,000. For issues that suggest more a more serious divergence from the worker’s contract, fines are heavier and there have been fewer penalised companies: three companies were penalised both because they “couldn’t show that the job description on the LMIA application was true” and because “pay, conditions, or work didn’t match offer of employment”, and were fined an average of US\$18,500. Nine companies were fined for not being “actively engaged in [the] business that [the] worker [was] hired for” and not producing documents on request, with an average fine of US\$11,400.

According to a 2014 Metcalf Foundation report, deception over terms and conditions is a significant problem: “many workers ... arrive in Canada to find that the job they were promised does not exist, that it is significantly different from what they were promised, that it is different from what appears on their work permit, or that it is for a much shorter period than promised. The worker does not learn of this contract substitution until after they are physically in Canada.” This has the effect, the report says, of forcing them “out of status” and placing them in a position of reliance on their recruiter.⁷⁶⁹ Workers interviewed for a 2014 study of labour trafficking in British Columbia, which was supported by the province, reported that “they were lured to Canada with offers of false jobs and were tied to exploitative work because of illegal recruitment fees charged by third party recruiters. Recruiters could

760. Remote interview, 6 July 2020.

761. Interview, Mexico City, March 2020.

762. Government of Canada, “[Hire a temporary foreign worker in a low-wage position](#)”

763. Government of Canada, “[Assessing the genuineness of the offer of employment on a work permit application](#)”

764. Government of Canada, “[Employer compliance inspections](#)”

765. [Immigration and Refugee Protection Act \(S.C. 2001, c. 27\)](#), section 118, 2001.

766. [Immigration and Refugee Protection Act \(S.C. 2001, c. 27\)](#), section 120, 2001.

767. [Criminal Code \(R.S.C., 1985, c. C-46\)](#), part VIII, section 279.04(1), 1985.

768. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018): 13. Obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

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

easily control newly arrived workers through a mix of tactics including threats of deportation and promises of regularization of immigration status”. WCDWA, who led research for the report, said the prevalence of such practices was increasing.⁷⁷⁰ The issue of migrant workers being forced out of status by arriving to find that promised jobs are non-existent has been a particular problem for caregivers. According to Caregivers Action Centre data cited by the Metcalf foundation, at least 19% of members surveyed arrived in Ontario to find the job they were promised was false.⁷⁷¹ The Association for the Rights of Household Workers submitted to a parliamentary review in 2018 that “workers arrive in Canada and discover that the job they were promised no longer exists, either because the employer’s need for the worker legitimately expired during the delay between the job offer and the arrival of the worker, or because the job offer was fraudulent (known as ‘release upon arrival’).”⁷⁷² Advocates argue that the closed work permit that most low-wage migrant workers are bound by - combined with the debt they have taken on to fund their migration - leaves them in a precarious position in such eventualities, and in order to remain in Canada they take on new work as undocumented workers, placing them at heightened risk of exploitation.

As noted in section 6.1, the Globe and Mail’s 2019 investigation featured exploitative immigration consultants who promised migrant workers from several countries well-paid jobs with the prospect of permanent residence, in return for exorbitant fee payments. As noted in section 5.3, prosecution by the CBSA of immigration consultants for fraud is quite rare and between 1 January 2014 and 31 December 2018, only 11 convicted consultants served time in prison for such offences.⁷⁷³ Prosecution of human trafficking for labour exploitation in Canada is also not common - as noted in section 5.3, there are about 2-3 convictions a year. A social worker supporting migrant workers in Ontario told us a significant problem in the state’s response to cases of fraudulent recruitment was that if cases didn’t reach the criminal code’s threshold of trafficking - i.e. if deception over work visas was not clearly linked to an intent to exploit the individuals in question - they tended not to be pursued by law enforcement:

“People from Mexico routinely arrive at Toronto airport, the job that was promised for them does not materialise and their recruiters disappear. Would I consider that trafficking if there is no exploitation at the end? I’ve tried to get RCMP to deal with this, but it’s not going anywhere from a criminal justice perspective if it doesn’t meet the threshold of trafficking. Crown prosecutors must understand immigration law as well as trafficking law.”⁷⁷⁴

6.5 Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts?

Mexico

The Federal Labour Law requires that employers hiring migrant workers for overseas work provide them with an employment contract and job offer information in writing,⁷⁷⁵ and not providing a written contract would in itself represent a breach and would legally result in penalties outlined in the law.⁷⁷⁶

Recruiters regularly take workers’ money without giving them any form of written contract or job offer. More than half of workers surveyed by CDM for their 2013 report did not receive a copy of their job contract.⁷⁷⁷ This is particularly likely to happen when such jobs are illusory. A senior STPS official told that “there is no document that the workers sign, it’s an oral contract. At the end it is the worker’s word against that of the recruiter.” The practice makes it even less likely that workers are able to challenge fraudulent recruiters by complaining to the government. The official told us of a specific case he was aware of, a recruiter who had been named by a series of workers for charging for jobs and then cheating workers: “the problem is to prove the facts. The problem is that the evidence is minimal, since the workers have no way to prove the facts, it is all verbal and in cash.”⁷⁷⁸

770. West Coast Domestic Workers’ Association (WCDWA), “Labour Trafficking and Migrant Workers in British Columbia”, (May 2014).

771. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, Metcalf Foundation, (April 2014).

772. The Association for the Rights of Household Workers (ARHW), “Migrant Caregivers, Canadian Immigration Policies and Human Trafficking: Written submission to the Standing Committee on Justice and Human Rights (JUST) - Study on Human Trafficking in Canada”, (15 June 2018).

773. Kathy Tomlinson, “False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada”, The Globe and Mail, (5 April 2019).

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

775. Ley Federal del Trabajo, Article 25, 1 April 1970.

776. Ibid, Title 16.

777. Centro de los Derechos del Migrante, “Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change”, (2013).

778. Senior official, Ministry of Labor and Social Welfare, interview, Mexico City, 20 March 2020.

Canada

Canadian courts have indicated that oral employment contracts are protected and can be enforced. For example, a 2019 Ontario Divisional Court judgement reinforced the principle that “settlements are enforced so long as the parties have agreed on the ‘essential terms’”.⁷⁷⁹

For migrant workers, under immigration law, there should be no instance under which they do not have contracts. As noted in sections 6.3 and 6.4, migrant workers in low-wage occupations in Canada must have a written contract as part of the process to receive a work permit authorizing them to work and enter Canada. Federal immigration law does not, in effect, allow for migrant workers without contracts - a migrant worker

without a written contract is therefore highly likely to be an undocumented worker, who has been forced “out of status”. Experts have told us of cases of Mexican migrants who arrive in the country, having travelled on the ETA scheme as visitors, with no contract but under the impression - conveyed verbally by recruiters - that a job exists for them. In many cases such workers are simply left to fend for themselves, while in other instances recruiters may pressure them to work in a different job from the one they were promised.

Despite the potential protection for oral contracts under the law, any migrant worker seeking to claim rights arising from a verbal agreement would by definition be out of status and at risk of repatriation. As discussed in section 7.4, undocumented workers may therefore be reluctant to seek to uphold the terms of their oral contract.

779. Ontario Superior Court of Justice Divisional Court, “*Chete, Lada, and Chung v. Bombardier Inc.*, 2019 ONSC 4083 (CanLII)”

Assessment against the Five Corridors indicators:

7. Access to grievance mechanisms, provision of remedy and accountability

- 7.1** Do workers irrespective of their presence in the country or legal status have access to free or affordable grievance / dispute resolution mechanisms in cases of abusive/fraudulent recruitment? _____ 123
- 7.2** Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures? _____ 125
- 7.3** Are workers provided with remedy including compensation as a result of such grievance procedures? _____ 127
- 7.4** Are workers raising grievances and whistleblowers effectively protected from retaliation, including deportation? _____ 128
- 7.5** Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy? _____ 130
- 7.6** Does the origin state provide effective and timely consular support through its missions to workers who have been subjected to fraudulent or abusive recruitment? _____ 132



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

7. Access to grievance mechanisms, provision of remedy and accountability

“Mexico [the Consulate] will always be on the side of the employer, always, always the same suggestion from them will be to return to Mexico. Instead of solving the problem: return to Mexico. If you are not happy anymore, go back [to Mexico]. But how? How am I going to go back to Mexico if this is my job?” MEXICAN MIGRANT AGRICULTURAL WORKER IN CANADA, 2020.

Summary

Mechanisms for Mexican migrant workers to hold exploitative recruiters accountable are not fully developed. Under the law, labour recruiters are liable for repatriation costs if a worker is deceived regarding their working conditions overseas, but the law and the regulations make no provision for other forms of remedy or compensation for migrant workers. Workers can request an inspection of recruiters through the STPS or complain to the Public Ministry (Ministerio Público) if they have been defrauded, but in practice, inspections of labour recruiters responding to complaints are very rare. Migrant workers who file complaints face blacklisting by recruiters, and this deters others from making complaints. For SAWP workers in Canada, Mexican consulates in Canada, which

operate a 24/7 hotline, are the designated first point of contact for workers who have a grievance. Their approach is to seek mediation and if this cannot be achieved, to explore options for workers to transfer employers - only raising cases with the Canadian authorities if they have reason to suspect a violation of federal or provincial law. The consulates have a heavy workload and their resources are stretched thin. Both workers and those who support them have repeatedly raised the tendency of consular staff to side with employers, apparently fearful of dissuading agricultural employers from hiring Mexican workers. Nevertheless, trade union representatives and other experts noted that Mexican consular staff are often proactive and committed to supporting workers with grievances, and most agree that the enhanced authorities the SAWP awards to origin state officials improves

workers' abilities to raise complaints, as compared to workers outside the SAWP.

Canada has a proliferation of mechanisms to accept complaints from workers. Indeed some experts argue that Canada's labour protection systems are too heavily dependent on workers complaints and are insufficiently proactive. Complaints can be raised in a range of ways, with the nature of the issue determining the path taken: workers can for example pursue a provincial employment standards claim; provide a "tip" to federal authorities for non-compliance under the TFWP; make a claim of discrimination under provincial human rights codes; file a complaint to the national immigration consultants regulator; and/or a criminal complaint of trafficking. It can be confusing for workers to know which is the appropriate complaint mechanism to pursue. There is no funding for legal aid for migrant workers bringing employment cases, unless they can be classified as trafficking, so workers are often reliant on intermediaries in civil society organizations and unions to support them. With such support, workers can and do file cases successfully, most commonly being awarded back payment of wages owed to them. Seasonal workers can be reluctant to make complaints as processes are time-consuming, with federal complaints taking around 200 days - normally longer than their time in the country. The most important barrier to workers raising grievances is the fear of retaliation, in particular contract termination and repatriation. Employers can terminate any worker who has been employed for less than two years by providing between 7 and 14 days notice depending on the

province, or by providing payment in lieu of notice. Workers who have been employed for shorter periods of time can be terminated without notice. Combined with the closed work permit that is an integral part of the TFWP, this reduces the likelihood of workers making a complaint, as employers have the ability in practice to terminate the workers and repatriate them. In 2019, the government introduced the Open Permit scheme for vulnerable workers, "to provide migrant workers who are experiencing abuse, or who are at risk of abuse, with a distinct means to leave their employer." It is currently too early to tell if the scheme will be effective in increasing workers' confidence in accessing grievance mechanisms by significantly diminishing their fears of retaliation. Early feedback indicates that while those who do apply have a good chance of being successful, applying for the scheme is complex and challenging for workers who do not have assistance from civil society or union groups, something the government has acknowledged. Workers and worker organizations have also raised concerns that even if a worker receives an open work permit to leave an abusive employer, workers still face challenges in securing another job, applying for employment insurance and finding alternate housing.

2020 saw the introduction of an additional grievance mechanism through the Canada-US-Mexico Agreement (CUSMA) and its rapid-response labour mechanism that applies to the three governments. Two complaints under this new mechanism are currently under review.

Recommendations to the Mexican government:

- Increase resources for consulates in Canada, and explicitly instruct officials that their priority consideration must be the safety and dignity of workers. Ensure that details of all complaints by Mexican workers regarding their employers are communicated to Canadian federal and provincial

authorities, even where the consulate resolves these through mediation.

- Establish accessible and effective grievance mechanisms for workers subjected to abuse and fraud, whether by licensed or unlicensed recruiters.
- Fully empower PROFEDET to assist Mexican migrant workers and job seekers who have been victims of labour recruitment fraud.

- Follow up on complaints and keep migrants notified to build confidence in the inspection processes.

Recommendations to Canada’s federal government:

- Provide federal funding for Legal Aid to assist migrant workers, in particular to help identify which entity is appropriate to raise complaints with, and to assist the filing of federal and provincial complaints and related processes, including obtaining open work permits in situations of abuse.
- Reduce the length of time taken in processing federal complaints under the TFWP, and provide feedback to workers on progress with these complaints.
- Reduce the administrative burden associated with applying to the Open Work Permit for Vulnerable Workers scheme, to allow workers to lodge complaints without fear of being repatriated.
- Carry out and publish a review into the nature of the role played by the employer-specific work permit in preventing victims of labour abuse from coming forward to make complaints to law enforcement authorities.

Recommendations to the federal and provincial governments:

- Introduce measures to prevent the rapid repatriation of workers, similar to recent changes introduced by Quebec; and facilitate the continuation of inspections and compensation to workers from federal and provincial inspections even after the return to their countries of origin.

7.1 Do workers, irrespective of their presence in the country, have access to free or affordable grievance / dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process?

Mexico

Under the Federal Labour Law and RACT, labour recruiters are liable for repatriation costs if a worker is deceived regarding their working conditions overseas, and they must provide an advance security deposit to the STPS to cover these costs.⁷⁸⁰ Recruiters can also be fined between 50 and 5,000 times the minimum wage for breaches of the law and the regulations.⁷⁸¹ Mexico’s Federal Penal Code defines fraud as when someone ‘deceives or takes advantage of someone else for illicit and wrongful gain’ and includes provisions for penalties which can reach up to 12 years in prison.⁷⁸²

Legally, migrant workers have access to two mechanisms to file grievances related to labour recruiters. The first is by requesting an inspection of the labour recruiter through Mexico’s Ministry of Labour and Social Welfare (STPS). The General Directorate of Federal Labour Inspections (DGIFT) under the STPS is responsible for enforcing provisions related to breaches by labour recruiters. The second is by filing a complaint with the Public Ministry (Ministerio Público) if the migrant worker or job seeker has been a victim of fraud. There is no cost to making complaints through either channel.

In practice, however, government officials told us that inspections of labour recruiters are rare, and cited as primary reasons resource limitations, as well as the difficulty that fraudulent recruiters rarely provide an address or other written documentation to be able to prove violations.⁷⁸³ Reports from worker organizations also confirm that both labour inspections and criminal investigations of licensed and unlicensed labour recruiters are rare. A 2015 Solidarity Center report which documented an inspection of a labour recruiter as a

780. [Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo](#), articles 28-B, 30 November 2012; [Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores](#), article 23 VII, 21 May 2014.

781. [Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores](#), article 33, 21 May 2014.

782. [Código Penal Federal](#), Article 386, 14 August 1931

783. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020; Interview with senior official, General Directorate of Federal Labour Inspection, Ministry of Labor and Social Welfare, Mexico City, 2 March 2020.

result of complaints by civil society organisations said this was “one of the first times [STPS] had ever used this power”.⁷⁸⁴ A 2019 report by CDM cites the case of a recruitment agency Chambamex, which defrauded more than 3,000 Mexican workers in 19 states out of more than 20 million pesos (approximately US\$1 million) between 2012 and 2013 with the promise of jobs in the United States and Canada: “despite the scale of the fraud, Mexican authorities systematically failed to investigate complaints against Chambamex. Only one attorney general’s office in one of the affected states processed and investigated the complaints.”⁷⁸⁵ CDM told us that when they request inspections - including of unlicensed agencies - from STPS, “they do happen, though with mixed results.”⁷⁸⁶

With respect to supporting worker grievances while they are overseas, Mexican consulates in Canada also provide general services for Mexican nationals, with additional authorities and resources under the Seasonal Agricultural Worker Program (SAWP). Officials told us that under the SAWP, consulates are generally the first point of contact for migrant workers in the event of a problem with the employer, and that they first attempt to mediate the problem between the worker and the employer, but that if a case appears to be a breach of Canadian federal or provincial laws, they then refer those cases to the appropriate Canadian govt authority.⁷⁸⁷ According to a former Mexican government official, consulates help workers resolve approximately 80% of complaints (including through transfers to other employers if requested by the worker), and only in approximately 20% of cases there is a need to refer complaints to Canadian federal or provincial officials.⁷⁸⁸ If a problem between an employer and a worker cannot be mediated, and alternate employment cannot be found for a transfer, the former official said that workers are generally repatriated.⁷⁸⁹ A Senior STPS official also told us that an additional penalty mechanism under the SAWP is the ability for Mexico to ban employers from hiring Mexican migrant workers under the SAWP, which is used in more serious cases of abuse by employers.⁷⁹⁰

Canada

In Canada, there are a range of mechanisms for workers to file grievances, all of which are free. The responsible agency depends on the type of violation by the employer, immigration consultant, and/or labour recruiter.

At a federal level, if the employer is non-compliant in relation to the requirements that led to the hiring of the migrant worker, workers or others can submit “tips” or complaints to ESDC, who can initiate inspections of employers in response.⁷⁹¹ In 2017/18, ESDC received 1,233 tips or complaints regarding possible employer non-compliance, and referred 527 or 42% onwards for an administrative inspection or for a criminal investigation.⁷⁹² Of the tips received, “just under 40%” related to the agriculture sector”, potentially suggesting that migrant workers, consulates, and/or worker organizations in agriculture are responsible for inspections in a relatively large share of cases.⁷⁹³

All provinces also have authorities to inspect employers and labour recruiters in relation to breaches of employment standards, workplace safety, and labour recruitment on receipt of complaints by workers. Officials of the largest province, Ontario, told us that while it has powers to carry out proactive inspections as well, the province conducts the large majority of its inspections in response to worker complaints. While statistics do not distinguish between complaints filed by Canadian or migrant workers, in 2019/20, Ontario initiated a total of 18,965 inspections in response to complaints, compared to 2,490 proactive inspections.⁷⁹⁴

The Immigration Consultants of Canada Regulatory Council (ICCRC) receives complaints against immigration consultants. In 2018-19, the ICCRC received 488 complaints against registered immigration consultants and 91 complaints against unauthorized representatives. The key areas of misconduct requiring

784. Jennifer Gordon, “Roles for Workers and Unions in Regulating Labor Recruitment in Mexico”, *Fordham Law School*, (22 January 2015): 10.

785. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (2019): 20.

786. Remote interview with Rachel Micah-Jones, Centro de los Derechos del Migrante, 19 April 2021.

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

788. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020

789. *Ibid.*

790. *Ibid.*

791. *Immigration and Refugee Protection Regulations (SOR/2002-227)*, section 209.5, 2002.

792. Employment and Social Development Canada (ESDC), “Facts and Figures TFWP”, (26 April 2018). Obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

793. *Ibid.*

794. Ministry of Labour, Training and Skills Development, “[Claim and Inspection Statistics](#)”, (10 July 2020).

discipline included: “1) failing to provide services or act within agreed timelines, 2) misrepresenting application status to client, 3) falsifying government documents and letters, 4) promising a job or accepting fees for jobs, and 5) failing to cooperate with ICCRC investigations”.⁷⁹⁵ As a result they suspended or revoked the licenses of 16 registered immigration consultants.⁷⁹⁶ ICCRC representatives said that the organization has insufficient authorities to inspect authorized immigration consultants, particularly in cases when members are non cooperative, and they hoped legislative amendments introduced by the government in 2019, which would give them “the ability to enter the premises of a consultant for investigations when it suspects wrongdoing and the ability to request court injunctions against unauthorized consultants” would help.⁷⁹⁷

The Canada Border Services Agency (CBSA) and/ or other investigative bodies (e.g., Royal Canadian Mounted Police, provincial police, etc.) can investigate an employer, immigration consultant, or labour recruiter if they are involved in possible criminal activity either under the *Immigration and Refugee Protection Act (IRPA)* or under the *Criminal Code of Canada*.

Migrant workers can also bring cases against employers under provincial human rights codes. Human rights protections, and the mechanisms to claim them, differ according to the province.⁷⁹⁸ Migrant workers bringing claims against employers would generally need to demonstrate discrimination on the grounds of a protected characteristic, in their access to employment, housing,

Canada-US-Mexico agreement (CUSMA)

With the ratification of the Canada-US-Mexico Agreement (CUSMA) in July 2020, the three participating countries added a new grievance mechanism for migrant workers. CUSMA introduced a new binding labour chapter that includes commitments for all three governments to maintain its statutes and regulations consistent with the ILO Declaration of Rights at Work, including on freedom

of association, and on the elimination of discrimination in respect of employment and occupation.⁷⁹⁹ The CUSMA also requires each government to protect migrant workers under its respective labour laws, and introduces a rapid-response labour mechanism for parties to address complaints.⁸⁰⁰ The agreement provides for the creation of “arbitral panels, consisting of independent candidates having the appropriate qualifications, to assess whether a party has violated its obligations”.⁸⁰¹ As of June 2021 there were two complaints under consideration, with the first one being presented by CDM to the Mexican government in March 2021. The complaint argues that Mexican female migrant workers are being discriminated against under the US H2 programs, and that this has resulted in situations of female workers facing violence, abuse, and lower salaries.⁸⁰² The second complaint was filed by US and Mexican unions and “accuses auto parts manufacturer Tridonex of harassing, beating and firing hundreds of workers at its factory in Matamoros in the northern state of Tamaulipas, Mexico” to discourage union activity.

7.2 Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures?

Mexico

The STPS operates a central complaint mechanism (Centro de Mando) operated by the General Directorate of Federal Labour Inspections (DGIFT), for workers or others to file complaints related to violations of the Federal Labour Law. Information is available online and workers or others can phone or email the DGIFT to request an inspection. To file a complaint, the worker must provide the name, address, and activity of the company, name of the legal representative, identifiers for the company, and the reason for the complaint.⁸⁰³ Because fraudulent recruiters rarely provide an address or other written documentation, it is unusual for such complaints to proceed to the investigation stage.⁸⁰⁴

795. ICCRC, “Annual Report 2019”

796. ICCRC, “Revocations, Suspensions and Restrictions”

797. Michael Huynh and Beata Pawlowska, Immigration Consultants of Canada Regulatory Council, interview, Burlington, 22 January 2

798. Canadian Centre for Diversity and Inclusion, “Overview of Human Rights”, (January 2018). Codes by Province and Territory in Canada”, (January 2018).

799. Government of Canada, “Canada-United States-Mexico Agreement (CUSMA) - Chapter 23 - Labor”, Article 23.3 and Annex 23-A, (31 July 2020).

800. Government of Canada, “Canada-United States-Mexico Agreement (CUSMA) - Chapter 23 - Labor”, Article 23.8, (31 July 2020). Government of Canada, “Labour chapter summary”, (20 January 2020).

801. Government of Canada, “State-to-state dispute settlement chapter summary”, 20 January 2020.

802. Micaela Varela, “La acusación de discriminación hacia trabajadoras del campo mancha el T-MEC en su primer año”, El Pais, (23 March 2021).

803. Government of Mexico, “Atiende STPS quejas laborales a través del Centro de Mando”, (15 April 2016).

804. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020; Interview with senior official, General Directorate of Federal Labour Inspection, Ministry of Labor and Social Welfare, Mexico City, 2 March 2020.

Canada

Migrant workers can file complaints variously at the federal or provincial level, or with the immigration consultants regulator by phone, in person, or online, with information sometimes provided in multiple languages.⁸⁰⁵

There remain issues related to accessibility of complaints processes for migrant workers. The first is complexity. As one analysis of access to justice under the TFWP puts it: “when a temporary foreign worker has a concern or a grievance, the particulars of the issue dictate the path to resolution, whether it is the courts, a provincial administrative body (such as an employment standards officer or workers’ compensation board), a federal administrative body (such as CIC) or a public or private social service. All this makes it hard even for a legal expert to navigate through the appropriate channels.”⁸⁰⁶ A UFCW representative noted that the process of gathering supporting information and filing a federal complaint are complex, and generally require that migrant workers receive assistance from civil society organizations to undertake the process.⁸⁰⁷

The second is the length of the process. ESDC statistics published in an access to information request show that in 2017/18, the average length of administrative inspections was 270 days for SAWP cases and 213 days outside the SAWP. This can obviously present a significant barrier for migrant workers, particularly in cases like the SAWP where workers could be back in their country of origin by the time that an inspection is completed.⁸⁰⁸ “Because migrant workers are in Canada for only a temporary period, moving through adjudicative processes can be stalled or effectively terminated when, and if, they have to leave Canada.”⁸⁰⁹ Such issues are exacerbated by Canada’s *Privacy Act*

and ESDC inspection practices, which means - a Mexican consular official and a union representative separately told us - that authorities do not update migrant workers or advocates on whether action is taking place, unless and until there is a final, public determination of non-compliance. The consular official told us that this can discourage workers from filing complaints, since they feel their complaints are not followed up on.⁸¹⁰

At the provincial level, Ontario officials told us that one of their priorities was to maintain complaint backlogs to a minimum and to conduct investigations and render decisions in a timely manner. A 2016 provincial review found that, “budgetary considerations do not permit the hiring of enough ESOs to complete the investigation of all complaints in a timely fashion while also maintaining a significant proactive presence. The result is that there is a backlog of uninvestigated and unresolved complaints”. The report found that cases took an average of 38 days to be assigned to the first officer managing the complaint, and an average of 119 days to be assigned to the second officer.⁸¹¹

Other fora for workers to bring complaints, such as human rights commissions, also suffer from long delays. A Toronto lawyer told us the Ontario Human Rights Tribunal was “intended to be accessible but is plagued with severe delays”.⁸¹² In 2021, three senior former and serving judicial officials in Ontario argued that the province’s Human Rights Tribunal had been deliberately allowed to decline under the Ford administration, noting that “Ontarians who appear before the Human Rights Tribunal cannot be confident that their case will move forward in a reasonable time period.”⁸¹³ Outside Ontario, the Center for Research-Action on Race Relations has repeatedly criticised long delays in the handling of human rights cases at the Quebec Human Rights and Youth Rights Commission.⁸¹⁴

805. Government of Canada, “Reporting the abuse or misuse of temporary foreign workers”; Government of British Columbia, “Make a complaint”; ICCRC, “Complaints”

806. Delphine Nakache and Paula J. Kinoshita, “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?”, *JRPP Study*, 5 May 2010.

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

808. Employment and Social Development Canada (ESDC), “Facts and Figures TFWP”, (26 April 2018). Obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

809. Bethany Hastie, “The Inaccessibility Of Justice For Migrant Workers: A Capabilities Based Perspective”, Allard Research Commons, (2017).

810. Government of Canada, “Report abuse or misuse of temporary foreign workers: What to tell us”; Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020 Santiago Escobar, United Food and Commercial Workers (UFCW) union, remote interview, 18 February 2021.

811. Ministry of Labour, Training and Skills Development, “Changing Workplaces Review Special Advisors’ Interim Report”, chapter 5.5, (27 July 2016).

812. Louis Century, lawyer, remote interview, 20 January 2021.

813. Raj Anand, Kathy Laird and Ron Ellis, “Justice delayed: The decline of the Ontario Human Rights Tribunal under the Ford government”, *the Globe and Mail*, (29 January 2021).

814. Jesse Feith, “Quebec human rights cases thrown out after massive delays”, *Montreal Gazette*, (3 February 2020) ; Elysha Enos, “Racial profiling cases against Montreal police face long delays”, *CBC*, (4 October 2016).

7.3 Are workers provided with remedy including compensation as a result of such grievance processes?

Mexico

The Federal Labour Law and the Regulation of Worker Placement Agencies (RACT) state that labour recruiters are responsible for covering a worker's repatriation costs in the event that the working conditions offered to the worker overseas were not met.⁸¹⁵ However, with the exception of repatriation costs, the Federal Labour Law and the RACT are silent on other forms of compensation that migrant workers can obtain. As mentioned in 7.1, workers can also file a complaint with the Public Ministry (Ministerio Público) if the migrant worker or job seeker has been a victim of fraud. The Executive Director of the civil society organization CDM told us that in limited cases, it has been possible to recover fees charged to workers and job seekers through various legal channels, including through complaints to the STPS or a Public Ministry, avenues that use US law, and voluntary compensation by recruiters. She also told us that when identifying information is available (in particular, an address), the STPS has conducted inspections with the aim of closing down fraudulent actors. However in many cases, workers only have a WhatsApp number for recruiters.⁸¹⁶

Canada

Federal and provincial governments have varying legal authorities to require workers to be provided with monetary repayment when there has been a violation of the relevant immigration or employment standards legislation. Compensation for damages is less common.

At the federal level, employers can avoid being found non-compliant, or reduce penalties, if they rectify issues identified by officials and pay back workers in

cases of financial non-compliance.⁸¹⁷ IRCC operational guidelines state that: "if it is determined that the actual wages paid are different from those set out in the offer of employment [...], the employer must either provide compensation or (if compensation is not possible) demonstrate sufficient efforts to do so. During an inspection, the employer must inform IRCC of any compensation that has been provided to all temporary foreign workers who suffered a disadvantage resulting from the employer's error."⁸¹⁸ ESDC statistics show that in 2017/18, out of 402 inspections completed in agriculture, 127 employers had to undertake corrective actions. Of those, about a quarter required changes to wages paid and compensation to migrant workers - meaning that approximately 30 agricultural employers paid compensation to workers in that year.⁸¹⁹ This reliance on correction and compensation has been criticised by some who argue it lacks deterrent effect. As a 2020 study on federal enforcement points out, "despite the fact that nearly half of all inspected employers are noncompliant in the first instance, very few employers are cited for non-compliance and punished. Rather, most non-compliance is excused on the basis of employer justification and payment of compensation where applicable."⁸²⁰ Furthermore, unlike provincial legislation that allows officials to order that employers or labour recruiters repay workers, and in some provinces like BC can extend to seizure of assets, the *IRPA* and *IRPR* rely on employers voluntarily providing compensation as a way to avoid or minimize fines and/or bans.⁸²¹

In general, the relevant employment standards or legislation provide provincial governments with authorities to order repayment of owed wages to workers by employers and/or labour recruiters. As an example, the Ontario *Employment Standards Act* and the Ontario *Employment Protection for Foreign Nationals Act* include legislative authorities related to orders for compensation and reinstatement of workers, and collections.⁸²² In Saskatchewan, recruiters and consultants must deposit post US\$16,500 to obtain a licence, which can be used to pay workers.⁸²³ Only

815. [Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores](#), Article 9 Bis. V., 21 May 2014.

816. Rachel Micah-Jones, Centro de los Derechos del Migrante, remote interview, 19 April 2021.

817. Canadian officials, Immigration, Refugees and Citizenship Canada, group interview, Ottawa, 27 January 2020; Canadian officials, Employment and Social Development Canada, group interview, Ottawa, 21 January 2020;

818. Government of Canada, "Employer compliance inspections", section on compensation.

819. Employment and Social Development Canada (ESDC), "Facts and Figures TFWP", (26 April 2018). Obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

820. Eric M. Tucker, Sarah Marsden and Leah F. Vosko, "Federal Enforcement of Migrant Workers' Labour Rights in Canada: A Research Report", (2020).

821. [TEMPORARY FOREIGN WORKER PROTECTION ACT \[SBC 2018\]](#), Part 8, 2018; Government of Canada, "Employer compliance inspections", section on compensation.

822. [Employment Standards Act, 2000, S.O. 2000, c. 41](#), section 104; [Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32](#), section 45.

823. Canadian Council for Refugees, "Evaluating migrant worker rights in Canada 2018", (May 2018).

Ontario publishes amounts paid to migrant workers through inspection processes, recovering US\$14,500 in 2016-17 - a figure that appears relatively low - for violations relating to public holidays, overtime pay, and vacation pay.⁸²⁴ Compensation for damages caused are less commonly applied: as a 2016 Ontario province review noted, investigating officers in the province can only require the payment of compensation for damages in specific circumstances such as where employers have been involved in reprisals against workers.⁸²⁵

For many SAWP workers, one form of remedy is likely to be transferring to another employer. Transferring employer is one of the main mediation approaches adopted by Mexican consulates in Canada, who generally take the lead in dealing with SAWP worker complaints. Out of 17,968 migrant workers who worked in Ontario in 2014, 2,482 workers or 14% of workers were transferred to other employers during the season, suggesting that the transfer mechanism is used relatively often. However, transfers can be initiated to respond to drops in demand rather than because of a complaint.⁸²⁶ SAWP transfers are explored in more depth in section 1.6.

Workers who have support from civil society organisations or unions have had some success in bringing severe cases to court to win more significant compensation payments. In 2015, two Mexican women employed under the TFWP at a fish processing factory won US\$166,000 at the Ontario Human Rights Tribunal after being subjected to repeated sexual harassment and abuse by their employer.⁸²⁷ This was a 7 year case that was supported by a union, a legal support centre and a civil society organization.

Despite a landmark 2017 Ontario court decision, significant concerns continue to be raised by civil society organizations about the practice of “deeming” in tribunals relating to compensation for workplace injuries, including in a 2019 submission to the UN Committee of the Rights of Persons with Disabilities.⁸²⁸

This practice has particularly affected migrant workers, who have been denied compensation after being injured and returning to their home countries, because courts deemed that they could take up alternative minimum wage roles within Canada, despite the fact that they had no right to return to Canada.⁸²⁹

Currently there is no specific mechanism, beyond court action, for workers to receive compensation in the event of fraud committed by immigration consultants. However, a law passed in 2019 that is currently in the process of implementation may change this, as it includes a proposal to establish a victims’ compensation fund to support clients harmed by wrongful conduct by a consultant.⁸³⁰

7.4 Are workers raising grievances and whistleblowers effectively protected from retaliation?

Mexico

Mexico’s Federal Labour Law does not regulate whistleblowing or provide any specific protection for whistleblowers. However, certain protections are provided under discrimination provisions, as an employer cannot unfairly discriminate against a whistleblower on the basis of whistleblowing.⁸³¹

Information on the few available cases suggests that when migrant workers file complaints, there is a significant risk of retaliation with little or no protections. In 2014, after ProDESC and the Sinaloa Workers’ Coalition placed a successful complaint against a recruiter with the STPS, workers were blacklisted by employers and recruiters for their activism, and others “have become afraid to step forward.”⁸³² The Solidarity Centre notes that the group was careful to choose its first case in a distant state: “Such a target raises far fewer concerns of retaliation than taking on a local recruiter with relationships in the community, which the workers

824. Ministry of Labour, Training and Skills Development, “Blitz Results: Young Workers and Temporary Foreign Workers”, (30 September 2016).

825. Ministry of Labour, Training and Skills Development, “Changing Workplaces Review Special Advisors’ Interim Report”, chapter 5.5, (27 July 2016).

826. Al Mussell, “The Economic Impact of the Seasonal Agricultural Worker Program in the Ontario Horticulture Sector”, (April 2015).

827. CanLII Connects, “Vulnerable Migrant Workers Assaulted and Taken Advantage Of By Employer: O.P.T. v. Presteve Foods Ltd.”, (27 December 2015).

828. The Ontario Network of Injured Workers’ Groups (ONIWG), “Deeming laws and practices as violations of the rights of people with work-acquired disabilities in Canada: Submission to the 22nd Session of the UN Committee on the Rights of Persons with Disabilities held 26 August to 20 September 2019 in Geneva, Switzerland”, (4 September 2019).

829. Sara Mojtehedzadeh, “Tribunal slams WSIB practice that cuts benefits to injured migrant workers”, *Toronto Star*, (5 October 2017).

830. Government of Canada, “Government changes will strengthen the regulation of immigration and citizenship consultants”

831. Francisco Javier, Peniche Beguerisse and Julio Rodrigo Alvarez Ortega, “Employment and employee benefits in Mexico: overview”, *Thomson Reuters Practical Law*, (1 January 2020).

832. Jennifer Gordon, “Roles for Workers and Unions in Regulating Labor Recruitment in Mexico”, *Fordham Law School*, (22 January 2015): 10.

fear would lead directly to blacklisting.”⁸³³ ProDESC told us, “most of the time the recruiters are part of the communities. That is why it’s so complicated.”⁸³⁴ In 2007, Santiago Rafael Cruz, an organiser from a US union who worked in the union’s office in Mexico was killed, allegedly by labour recruiters, for his work on the payment of illegal fees to Mexican recruiters.⁸³⁵

In the case of the SAWP, the Mexican authorities themselves have been accused of retaliating against workers. In 2014 the British Columbia BC Labour Relations Board ruled that Mexican government and consular officials blacklisted migrant workers who were suspected union sympathizers from returning to Canada.⁸³⁶

Canada

The Criminal Code of Canada makes it a criminal offence for an employer to retaliate, or threaten to retaliate, against a worker in relation to a complaint to the authorities, with a maximum penalty of 5 years in prison.⁸³⁷ Provincial employment legislation also includes protections for worker whistleblowers. For example, the Ontario Employment Standards Act prohibits employers from penalizing or threatening to penalize workers for filing a complaint, and more generally, for trying to exercise any rights under the Act. In cases where an employer still penalizes a worker, an officer can order the employer to reinstate the worker to their job, or to compensate him/her for any loss incurred due to a violation of the Act.⁸³⁸

Despite such protections, employers can fire any worker who has been employed for less than two years by providing between 7 and 14 days notice depending on the province, or by providing payment in lieu of notice. Workers who have been employed for shorter periods of time can be terminated without notice.⁸³⁹ While workers can in theory challenge an employer in court for wrongful dismissal, employers can generally

repatriate migrant workers very quickly rendering these avenues null for the large majority of migrant workers.⁸⁴⁰ Labour unions, academics, and worker organizations have repeatedly raised the problem of rapid repatriations, and consequent loss of income, as a major concern for migrant workers. The UFCW has argued that “fear of repatriation is the employer’s bluntest tool in suppressing the rights of the workers.”⁸⁴¹ A representative of the Canadian Farmers Association told us that in his view, such cases were less common than was portrayed in the media. Precise data on this issue is not available. There is nevertheless widespread consensus about the chilling effect that the fear of repatriation generates. A lawyer representing migrant workers at a small claims court in Ontario told us:

“You’re not going to [submit a claim] if you rely on your employer. The problem is most extreme with closed work permits. Your immigration status is tied to satisfying that employer. They effectively have the power of deportation... You could have the best tribunals in the world but who is going to use them? With the SAWP and similarly with the TFWP agriculture stream, tying the workers to one employer is really fatal to any meaningful access to justice.”⁸⁴²

A report by the Vancouver Migrant Workers Center additionally argues that “the hesitancy to voice complaints is particularly problematic given that the available legal mechanisms for enforcing rights and obtaining remedies [in British Columbia] are complaints-driven, meaning that if a migrant worker does not complain, he or she has no practical access to enforcing his or her rights.”⁸⁴³ As an ILO study of the SAWP notes, “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”⁸⁴⁴

Given that for migrant workers, it may be difficult to secure another job in Canada if repatriated, a simple

833. Ibid.

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

835. 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.

836. Court of Appeal of British Columbia, “United Mexican States v. British Columbia (Labour Relations Board), 2015 BCCA 32”, (30 January 2015).

837. *Criminal Code (R.S.C., 1985, c. C-46)*, part X.

838. Government of Ontario, “Your guide to the Employment Standards Act”, section on reprisals.

839. Government of Ontario, “Your guide to the Employment Standards Act”, section 17.

840. Ibid.

841. Wayne Hanley, “The Status of Migrant Farm Workers in Canada 2008-2009”, *UFCW*, (2009): 11.

842. Remote interview with Louis Century, 20 January 2021

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

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

cost-benefit analysis may tip them away from making a labour complaint: as one study of access to justice for migrant workers puts it, “while workers may receive compensation for their abusive treatment or rights violations, the existing remedial options are not likely to provide the longer-term employment and administrative security that often are core values and needs in migrants’ decision-making processes in this context.”⁸⁴⁵ For most analysts of this issue, the tied visa and lack of job mobility (explored in section 1) that is an integral part of the TFWP is core to the problem, significantly reduce the likelihood of workers making a complaint against the actors who have the ability to deny them legal status in Canada.

In an attempt to respond to these concerns, 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. Workers who were eligible for the scheme can obtain an open work permit that is exempt from the Labour Market Impact Assessment (LMIA) process.⁸⁴⁶ A government official told us that immigration officials will make a decision on whether abuse is likely to be happening solely on information provided by the migrant workers, and they will only initiate an inspection of the employer after they have issued an open work permit to the migrant worker.⁸⁴⁷ It is too early at this stage to fully evaluate what impact the scheme is having, but between June 2019 when this initiative was introduced, and December 2020, 800 open work permits for workers in situations of abuse were issued by IRCC.⁸⁴⁸ As noted in 1.6, union representatives and others supporting workers through this process have expressed concerns at the complexity of the process. The UFCW told us:

“It’s very difficult - we allocate about 15-20 hours per case to assist someone. Language is a particular issue. First you have to open an

account on the IRCC website, and there is a long questionnaire. You have to upload all the forms, as well as supporting evidence and pictures. It’s a complicated process, you need particular software on your computer, attachments must be less than a certain size. There are a lot of barriers. If your work permit has expired, you are also not eligible.”⁸⁴⁹

Furthermore, workers and advocates have told us that even if a worker receives an open work permit to leave an abusive employer, they still face challenges in securing a new job, applying for employment insurance, and finding alternate housing if the housing was being provided by the initial employer.⁸⁵⁰ These issues can act as serious disincentives for a worker to file a complaint in the first place.

7.5 Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy?

Mexico

Mexico has an independent and dedicated legal support organization under the STPS called the Federal Attorney for Labour Protections (Procuraduría Federal de la Defensa del Trabajo - PROFEDET), which has as a core function the representation or provision of advice to workers and labour unions, if they request it, before any authority in matters related to the application of labour standards, including in any appeals proceedings.⁸⁵¹ This would in theory extend to cases related to labour recruitment as these are covered under the Federal Labour Law and the Regulation of Worker Placement Agencies (RACT), which fall under the responsibility of the STPS. PROFEDET has 47 offices across the country.⁸⁵² However, we have not been able to find any evidence of PROFEDET providing assistance to migrant workers in a labour recruitment case.

845. Bethany Hastie, “The Inaccessibility Of Justice For Migrant Workers: A Capabilities Based Perspective”, *Allard Research Commons*, (2017).

846. Government of Canada, “Open work permits for vulnerable workers”

847. Glen Bornais, Deputy Director, Immigration, Refugees and Citizenship Canada, presentation at [Migrant Worker Project Metro Vancouver & Fraser Valley Regional Meeting](#), (30 November 2020).

848. Leanne Dixon-Perera, “Regulatory approaches to international labour recruitment in Canada”, *IRCC*, (June 2020): 55.

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

850. Legal Assistance of Windsor, group interview with staff and migrant workers, 7 May 2021.

851. Government of Mexico, “¿Qué es la PROFEDET y cuáles son sus funciones?”

852. Government of Mexico, “Procuradurías Foráneas”

Within Mexican civil society, ProDESC has established itself as a non-profit organization that provides legal support to workers.⁸⁵³ ProDESC provided advice and assistance in the initial establishment of the Sinaloa Migrant Workers' Coalition, as well as in the first labour inspection and penalties against a labour recruiter by the STPS.⁸⁵⁴

Canada

In Canada, the Legal Aid system is “split jurisdiction” and is funded jointly between the federal and provincial Departments of Justice, with the actual service delivery being done at the provincial level. Free or subsidized legal assistance varies by province, but generally assistance is provided to economically disadvantaged individuals in criminal cases. In British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland and Labrador, legal aid services are provided to individuals involved in the immigration and refugee determination system under the provisions of the *Immigration and Refugee Protection Act*.⁸⁵⁵ This includes free legal assistance for victims of sex and labour trafficking.⁸⁵⁶

In almost all provinces, however, free or subsidized legal assistance does not extend to workers who are pursuing cases in administrative labour tribunals on employment standards, including cases related to labour recruitment. A Migrant Workers Centre (MWCBC) report noted that “access to the proper support and guidance to navigate the legal system is a widespread issue for migrant workers in Canada, as most provinces do not allow public resources such as legal aid or immigrant settlement services to receive workers under the TFWPs as clients.” The report found that workers instead rely on informal channels for legal information, or (within the SAWP) on their embassy liaison officer (see 7.6).⁸⁵⁷ A social worker working with migrant workers in Ontario told us how challenging it is for migrant workers to navigate the Canadian system without legal assistance:

“For an exploited migrant worker, they know something bad has happened. Where that fits

along our legal remedy system, even I am not always sure. When we see people, they may sometimes feel a level of comfort with their rights under the labour code... they then come to understand the other levels of violation which may have occurred - sexual, violence, harassment and so on... It's a matter of talking to people about what their ultimate hope is - do they want to stay in Canada, or to work and then go home? What do they think about pursuing criminal justice, or making a human rights claim? What are the different remedies open to them? If they want to take forward a criminal justice claim, but they don't have status, I talk to the police, to stop people being reported to CBSA [for immigration offences. Then there is even the option of bringing a civil case.”⁸⁵⁸

A 2016 review by Ontario province pointed out the impact of a lack of legal representation for workers involved in settlement processes with their employers, a process which a lawyer told us can become “adversarial”:

“Complainants are often very dissatisfied with the settlement process. They may feel out of their depth, unduly influenced, and even pressured in many circumstances to settle in a way that they feel is inappropriate... Settlement is never an easy process. It requires honest reflection on the merits of the case and weighing of options. It is especially hard when you are unrepresented and have no advice you can rely on.”⁸⁵⁹

Civil society organisations attempt to fill this gap. MWCBC told us that they offer free or subsidized legal aid services to represent migrant workers in complaints related to employment standards, including labour recruitment.⁸⁶⁰ In 2019, they supported a class-action lawsuit on behalf of approximately 450 migrant workers against Mac's Convenience Stores and three labour recruiters, partly related to the charging of illegal recruitment fees.⁸⁶¹

853. ProDESC, “Nuestra historia”

854. ProDESC, “La Coalición de Trabajadoras y Trabajadores Migrantes Temporales Sinaloenses”

855. Government of Canada, “Legal Aid Program”

856. Ministry of the Attorney General, “Human Trafficking”

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

858. Shelley Gilbert, remote interview, 2 February 2021.

859. Ministry of Labour, Training and Skills Development, “Changing Workplaces Review Special Advisors' Interim Report”, chapter 5.5, (27 July 2016).

860. Natalie Drolet, Migrant Workers Centre BC, remote interview, 20 November 2020.

861. “BC Supreme Court certifies temporary foreign workers' class-action lawsuit”, *Global News*, (19 September 2017).

7.6 Does the origin state provide effective and timely consular support through its missions to workers who have been subjected to fraudulent or abusive recruitment?

According to Mexico's Migration Law, consular offices shall "protect Mexican nationals who are located in their constituency", and this extends to Mexican migrant workers.⁸⁶² The General Directorate for the Protection of Mexicans Overseas (DGPME)⁸⁶³ operational guidelines set out the services that Mexican Consulates can provide to Mexican nationals overseas including on human rights, immigration, penal, civil, administrative, and labour cases (including cases related to work injuries and unpaid wages).⁸⁶⁴ Mexico has established a 24/7 assistance line for Mexican nationals in emergency situations under the Center of Information and Assistance for Mexicans (CIAM), which also provides information for migrant workers about the risks of abuse in migration and on accessing legal assistance.⁸⁶⁵

An academic who specializes in Mexican consular services told us that Consulates in the US increasingly leverage the large Mexican diaspora in the US and associated civil society organizations, in order to support Mexican nationals.⁸⁶⁶ Mexican Consulates in Canada, where there is not such a large diaspora, instead have additional authorities and dedicated funding to manage the SAWP workers, who comprise the substantial majority of temporary Mexican workers in Canada. A STPS official told us that the Ministry of External Relations (SRE) and the Ministry of Labour and Social Welfare (STPS) jointly aim to protect SAWP workers in three ways:

- Empower workers so that they are aware of their rights and report abuse to both the SRE through the Consulates in Canada and to the STPS through the worker's annual end-of-season report
- Undertake proactive visits to farms, in addition to

visits in response to worker complaints

- Provide workers with the practical tools (for example operating a 24/7 emergency hotline) to reach out to Consulates.⁸⁶⁷

In practice under the SAWP, Mexican consular officials are generally the first point of contact for workers in the event of a dispute between an employer and a worker. Mexican officials told us that embassies and consulates attempt to mediate problems between the worker and the employer, and that only in cases that are more difficult to solve, or where they identify a potential breach of Canadian federal or provincial law, do they refer those cases to the Canadian authorities.⁸⁶⁸ A former Mexican consular official in Canada estimated that consular officials resolve approximately 80% of complaints, including through arranging mutually agreed transfers to other employers, and only about 20% of cases are referred to Canadian federal or provincial officials.

Consulates face resource pressures under the SAWP given the significant number of workers and the remote locations of farms in Canada. Consular officials told us that officials have to respond to a number of worker calls, as well as through visits to farms, and that there were cases where workers could not be helped simply due to the volume of requests.⁸⁶⁹ An academic who specializes in the SAWP told us that consulates did not have sufficient staff, that they were located too far from farms, and that officials were not adequately trained to deal with employer-employee relations.⁸⁷⁰

A number of migrant workers told us that in situations where either they, or co-workers, had reached out to the Consulate, they often did not receive sufficient or timely support from consular officials. Workers said that in some cases, officials sided with employers in relation to the complaint. For example, a female worker told us: "it is like the Consulate is more on the side of employers than of workers, and they just tell you to take care and behave well, and that you came to Canada to work and not to create problems. If you have problems, discuss

862. *Ley de Migración*, Article 3 XIX, 25 May 2011.

863. Government of Mexico, "*Documentos de interés de la Dirección General de Protección a Mexicanos en el Exterior*", (2 February 2018).

864. Secretaría de Relaciones Exteriores, "*Guía de procedimientos de protección consular*", (2013).

865. Government of Mexico, "*Centro de Información y Asistencia a Mexicanos*"

866. Karla Valenzuela, Universidad Iberoamericana, remote interview, 26 August 2020.

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

868. *Ibid.*

869. Consular officials, Mexican Consulate in Toronto, Ministry of External Relations, group interview, Toronto, 4 March 2020.

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

it amongst yourselves, talk it out well and avoid those tensions. In other words, the Consulate ... made no efforts to learn about the problem to solve it.”⁸⁷¹ Another worker told us that, “Mexico [the Consulate] will always be on the side of the employer, always, always the same suggestion from them will be to return to Mexico. Instead of solving the problem: return to Mexico. If you are not happy anymore, go back [to Mexico]. But how? How am I going to go back to Mexico if this is my job?”⁸⁷² This concern, that consular officials are too close to employers, has been raised repeatedly by critics of the SAWP programme. Notoriously, the British Columbia Labour Relations Board confirmed in 2014 that the Mexican authorities had identified SAWP workers who were in contact with the Union in order to block them from returning to Canada.⁸⁷³ One former consular official, subsequently employed by a Canadian union, testified that the consulate was “terrified” of challenging employers and that “the priority was to keep employers happy so they continue to request Mexicans.”⁸⁷⁴ A 2010 study argued that consular officials’ ability to represent

the interests of SAWP workers was compromised due to “the vast differences between Consular officials and workers with respect to class (exacerbated by language differences with the many indigenous workers from Mexico), combined with the Mexican government’s interest in maintaining the status quo for economic reasons.”⁸⁷⁵

Nevertheless, trade union representatives and other experts told us that Mexican consular staff are often proactive and committed to supporting workers with grievances, and most agree that the enhanced authorities the SAWP awards to origin state officials improves workers’ abilities to raise complaints, as compared to workers outside the SAWP. A social worker supporting migrant workers in Ontario told us: “In certain contexts, it’s really helpful to have the consulate in the community... I think their performance depends on who is there... They can provide connections with the community for us. But there can definitely be conflicts.”⁸⁷⁶

871. Remote interview, 16 July 2020.

872. Remote interview, 16 July 2020.

873. British Columbia Labour Relations Board, “BCLRB No. B56/2014”, (2014).

874. Dan Levin, “Foreign Farmworkers in Canada Fear Deportation if They Complain”, *New York Times*, (13 August 2017).

875. Jenna L. Hennebray and Kerry Preibisch, “A Model for Managed Migration? Re-Examining Best Practices in Canada’s Seasonal Agricultural Worker Program”, *International Migration* Vol. 50 (S1), (2012).

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

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 outreach, including publishing “how-to” guides online, public service announcements on radio and/or television; or webinars etc? _____ 136
- 8.2** Does the government carry out effective pre-departure orientations, including providing training regarding workers’ rights and fair recruitment for potential migrants? _____ 138
- 8.3** Does government encourage outreach to workers by employers, workers’ organizations, compliant labour recruiters and civil society groups? _____ 138
- 8.4** Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters? _____ 139
- 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 awarenessraising campaigns? _____ 140

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 LMIA's, 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,
- Work with the Canadian government and with Mexican and Canadian civil society organizations to provide additional information to SAWP workers

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.

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 LMIA's, 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, "[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, "[File a complaint against a representative](#)", 24 March 2020

892. Government of Canada, "[Temporary Foreign Worker Program \(TFWP\): Positive Labour Market Impact Assessment \(LMIA\) Employers List](#)", 18 March 2021

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-of-season 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

901. 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!"

908. 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.⁹¹⁵ 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.⁹¹⁶

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. "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.⁹²⁰ A Mexican labour recruiter told us that they use this information to check the genuineness of job offers by US employers.⁹²¹

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.⁹²⁵ 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, “Labour Force Survey, March 2020”, March 2020

923. Government of Canada, “Job Bank”, 8 April 2021

924. Government of Canada, “Trend Analysis - Explore the market”, 23 March 2021

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

926. International Organization for Migration, “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 pre-departure programme for refugees and immigrants who are destined to travel to Canada. 200,000 people have gone through this programme, which includes “a one-day 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](#)”

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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