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### Issue 02: Key Issues & Recommendations for Canada's Temporary Foreign Worker Program: Reducing Vulnerabilities & Protecting Rights

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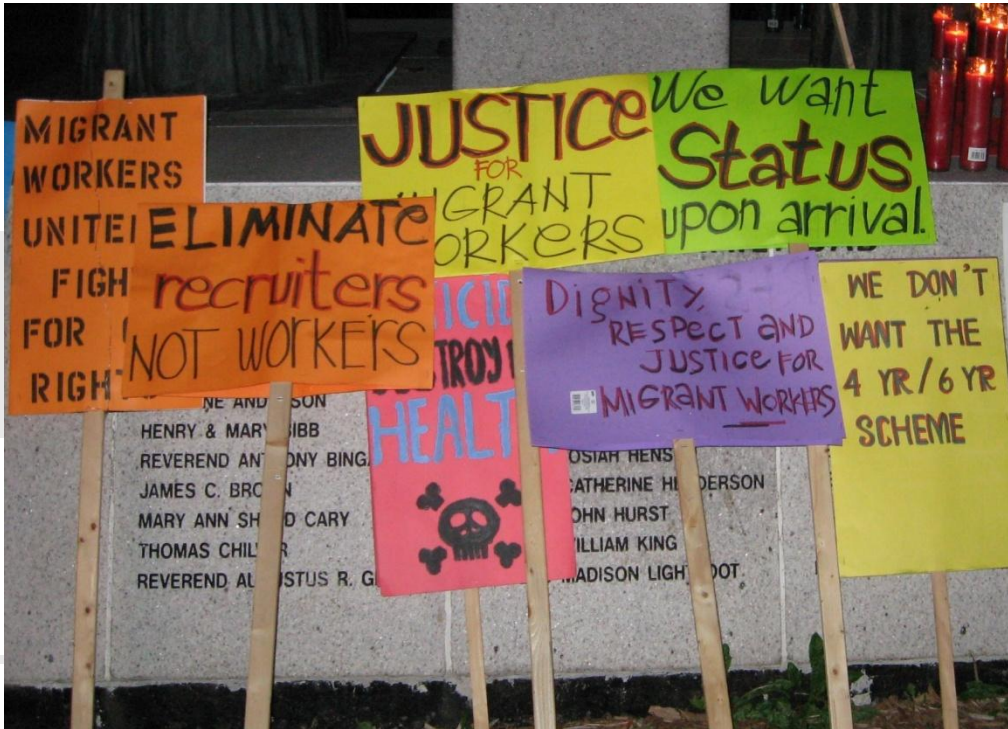
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# Policy Points

Issue II, March 1<sup>st</sup>, 2011



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Migrant workers place protest signs on the Windsor Monument for Freedom, Thanksgiving, 2010. Photo: J. McLaughlin

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## Key Issues & Recommendations for Canada's Temporary Foreign Worker Program: Reducing Vulnerabilities & Protecting Rights

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**Introduction:** *In this issue of Policy Points we have identified some of the most significant rights issues facing Temporary Foreign Workers (TFWs) in Canada based on our empirical research amassed over a decade of study. In order to address these problems, we have provided a number of recommendations for the Temporary Foreign Worker Program (TFWP) with an emphasis on some of the most vulnerable workers – those in the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C & D Pilot), and the Seasonal Agricultural Worker Program (SAWP). While recognizing that there are jurisdictional differences and many other changes could be integrated at the provincial and municipal levels, the following provide the most essential federal-level recommendations.*

- **Differential Permits & Pathways:** Currently TFWs are divided by skill level and in some cases across different sectors – with fewer rights and protections for those in occupations deemed low-skill (National Occupation Codes C & D) as opposed to high-skill (NOC A, B and O). For example, while TFWs classified as high-skill may enjoy open work permits, those in the SAWP and the NOC C & D Pilot have work permits tied to one specific named employer that are restricted to a maximum of 8 months (SAWP) or two years (NOC C & D Pilot). (Under a new proposed scheme, NOC C and D permits could be issued for a maximum of 4 years, after which the worker would have to leave Canada for a minimum of 6 years.) Furthermore, unlike those with higher skilled work permits (NOC A, B & O), those in the SAWP and the NOC C & D Pilot have no *direct* pathway to permanent residency and their family members are not eligible for open work permits – despite the fact that many have worked in Canada for decades, and over 60% of migrant agricultural workers surveyed in a recent study indicated that they would like to settle in Canada.<sup>i</sup> Though technically eligible for the Provincial Nominee Program (PNP), this has not typically been a pathway available to most temporary migrants in NOC C & D level jobs, such as agriculture.

**Recommendations:** Allow the same opportunities and processes for TFWs classified as both low-skill (NOC C & D) and high-skill (NOC A, B & O), including work permit eligibility for family members and an immediate pathway to permanent residency for *all* TFWs including those here under the SAWP. Work permits should also be renewable without a maximum number of years, and eligibility for permanent residency should not depend on successive periods of work to account for seasonal workers or those who return to countries of origin in between work permits or periods. Secondly, provide open, sector specific or even regional work permits, regardless of skill level, in place of employer-specific work permits. This would facilitate retention of the workforce in a given sector or region, and it would permit TFWs to accrue sufficient work experience to apply for permanent residence in line with other TFWs (e.g. currently highly skilled workers must amass 24 months of work experience to apply through the Canadian Experience Class).

- **Job Security & Protections:** TFWs have no job security and they have precarious migration status; they can be fired at any time and when those in the SAWP or NOC C & D Pilot lose their employment, they cannot work for other employers without either an approved transfer (in the case of the SAWP) or without finding an employer with an approved Labour Market Opinion (LMO) (in the NOC C & D). Since there is no mechanism to help workers to switch employers, many will work under the table and eventually lose their right to be in Canada when their work permits expire. Shouldering debt, and without other viable options, many of those who lose their employment fall out of legal status, contributing to a growing problem of unauthorized migration in Canada.<sup>ii</sup> Employers also influence

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TFWs' right to return to Canada in subsequent years. For example, in the SAWP, employers name specific workers who they wish to request back the following year and employers may replace entire workforces with new groups of TFWs each year, regardless of seniority, creating an environment of intense competition and vulnerability. Similarly, in the NOC C & D Pilot, employers can hire different workers from year to year, with their application for permission to hire foreign workers contingent on little more than a two week advertising requirement to demonstrate the unavailability of Canadian workers. Therefore, knowing how easily they can be replaced, TFWs are continually fearful of loss of current or future employment, and subsequent loss of their work permit - making them vulnerable to exploitation and abuse, and less willing to report unsafe living or working conditions.<sup>iii</sup>

**Recommendations:** Provide job security and protections for TFWs. Specifically, all TFWs must have eligibility for renewed employment based on seniority and Canadian work experience before an employer can have approval to hire different TFWs. In cases where an employer wishes to dismiss a TFW, make available an independent, impartial appeals process to the worker from both within and outside of Canada. For jobs requiring an LMO, strengthen requirements, monitoring and evaluation of employer practices, with a range of consequences based on the severity of infractions, and incentives for compliance. The renewal process for LMOs should be simplified as outlined in the Standing Committee on Citizenship and Immigration's Report on Temporary Foreign Workers and Non-Status Workers (2009).<sup>iv</sup>

- **Services & Barriers:** TFWs are not eligible for most support services provided to other newcomers in Canada, as settlement service providers are not typically funded to provide support to them. Although all TFWs have legal access to public and/or private health insurance in Canada, TFWs classified as low-skilled face many barriers in accessing these services, such as language barriers (many do not speak English or French), poor access to transportation, long work hours, etc. Thus, in practice, they remain largely excluded.<sup>v</sup>

**Recommendations:** Make newcomer services, including language, skills training and support programs, readily available to TFWs. Institute programs to ensure health, social and community services are fully accessible to TFWs. Examples include mobile health outreach services, multi-lingual information/support lines, and free interpretation services in workers' languages.

- **Benefits & Insurance:** There is no long-term health insurance arranged for most TFWs, nor are they eligible for regular EI benefits despite contributing to the Canadian income tax system and EI premiums. When TFWs become sick or injured in Canada, they are typically either dismissed and repatriated immediately, or they may stay on in Canada without legal status, no safe place to live and no access to services.<sup>vi</sup> This context severely compromises their ability to access workers' compensation and needed health services. This is especially problematic given that many TFWs are employed in sectors with high rates of injury and illness (e.g. agriculture, construction).<sup>vii</sup>

**Recommendations:** Provide TFWs access to EI benefits when they lose their employment, to portable health insurance plans (to which they and their employers may contribute), and support to stay in Canada to receive

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investigations and treatment into illnesses and injuries, especially those which may be caused by or related to their work. Offer specialized, accessible support which addresses language, literacy and logistical barriers, to allow workers to access workers' compensation and other benefits.

- **Recruiters & Agents:** With the growth in TFWs in Canada, there has been a consequent growth in recruiters, brokers and consultants charging fees to migrants and employers alike. Without adequate federal level legislation, regulation and monitoring, unscrupulous recruiters have taken advantage of many workers, charging exorbitant fees that put migrants and their families into significant debt, providing fraudulent documents or bogus employment offers, or misrepresenting the nature of work, employment contracts, living arrangements, etc.<sup>viii</sup>

**Recommendations:** Commit adequate funds to support enforcement and regulation of unscrupulous employers and recruiters. Create federal legislation or changes to the Immigration and Refugee Protection Act (IRPA) that strengthen regulation and monitoring of immigration recruiters and consultants in partnership with provinces, as well as immigration Foreign Service offices. To better ensure commensurability and effective regulation, build on the few examples of existing regulation (e.g. Worker Recruitment and Protection Act in Manitoba). For example, build recruitment into the LMO approval process in order to ensure employers use legitimate recruiting agencies which have been officially identified and vetted by either a provincial or federal body.

- **Rights & Accountability:** Canada has not ratified the international agreements most relevant to protecting the rights of migrant workers, including the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) and the ILO Conventions (C97 Migration for Employment Convention; and C143 Migrant Workers Supplementary Provisions). Furthermore, the right to join a union, bargain collectively and to protection under provincial health and safety and employment standards acts are not ensured for agricultural workers across all provinces. For example, the ILO recently ruled (November 22, 2010) that Ontario's Agricultural Employees Act denies all Ontario agriculture workers the right to join a union and engage in collective bargaining, which is a violation of human rights under two UN conventions.<sup>ix</sup> TFWs also have no official *independent* advocate to whom they can turn for support, assistance, or mediation of labour disputes. Due to their vulnerability, they do not typically feel comfortable issuing formal complaints over their living or working conditions.<sup>x</sup>

**Recommendations:** Call a commission or inquiry to further identify the problems faced by TFWs and appoint a federal level ombudsperson / advocate whose responsibility is to receive complaints from TFWs and advocate on their behalf to various levels of government, while ensuring protection from employer reprisals. The advocate's office should work in partnership with and support the efforts of community groups who have long provided assistance to TFWs. Inform all workers upon entry about the presence of this advocate and have a toll-free telephone support line where complaints can be lodged, available in the most common mother tongues spoken by TFWs. Finally, adhere to provincial and federal regulations on labour and human rights (including collective bargaining rights) and to *international* human rights and labour standards. Specifically, Canada should ratify and enforce all aforementioned international conventions and agreements relevant to migrant workers.

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<sup>i</sup> Hennebry, J.L. "Who Has Their Eye on the Ball?: Jurisdictional Fútbol and Canada's Temporary Foreign Worker Program." *Policy Options*, Vol. 63, 2010: 62-68. <http://www.irpp.org/po/archive/jul10/hennebry.pdf>

<sup>ii</sup> McLaughlin, J. and J. Hennebry. *Pathways to Precarity: Structural Vulnerabilities and Lived Consequences in the Everyday Lives of Migrant Farmworkers in Canada*. Presented at the workshop on "Producing and Negotiating Precarious Migratory Status in Canada." York University, Toronto: Research Alliance on Precarious Status (September 16, 2010). <http://www.yorku.ca/raps1/>.

<sup>iii</sup> Hennebry, J.L. "Not Just a Few Bad Apples: Structural Vulnerability, Health Risks and Temporary Migration in Canada." *Canadian Issues/Thèmes canadiens*, March 2010: 73-79.

<sup>iv</sup> Report available on-line at:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3866154&Mode=1&Parl=40&Ses=2&Language=E>.

<sup>v</sup> McLaughlin, J. & J. L. Hennebry, "Backgrounder on Health and Safety for Migrant Farmworkers" *IMRC Policy Points*, Issue I, January 1, 2011. International Migration Research Centre, Waterloo, Ontario. Available on-line at: <http://www.wlu.ca/imrc>.

<sup>vi</sup> McLaughlin, J. and J. Hennebry. *Pathways to Precarity: Structural Vulnerabilities and Lived Consequences in the Everyday Lives of Migrant Farmworkers in Canada*. Presented at the workshop on "Producing and Negotiating Precarious Migratory Status in Canada." York University, Toronto: Research Alliance on Precarious Status (September 16, 2010). <http://www.yorku.ca/raps1/>.

<sup>vii</sup> See: McLaughlin, J. "Migration and Health: Implications for Development." *The Canadian Foundation for the Americas (FOCAL) Labour Mobility and Development Project. Policy Paper #2*, 2009a. Available on-line at:

<http://www.focal.ca/pdf/Migrant%20Health%20McLaughlin%202009.pdf>.

<sup>viii</sup> Hennebry, J.L. "Bienvenidos a Canadá? Globalization and the Migration Industry Surrounding Temporary Agricultural Migration in Canada," *Canadian Studies in Population*, 35, no. 2, 2008: 339-56.

<sup>ix</sup> See: <http://www.straightgoods.ca/2010/ViewArticle.cfm?Ref=961&Cookies=yes> for more information.

<sup>x</sup> Hennebry, J.L. and J. McLaughlin, "The Exception that Proves the Rule": *Structural Vulnerability, Health Risks and Consequences for Migrant Farmworkers in Canada* in *Legislated Inequality: Temporary Migrant Workers in Canada*. Patti Lenard and Christine Hughes, eds. McGill-Queen's University Press (under review).