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Submission for the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities' Review of the Temporary Foreign Workers Program

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Submission for the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities' Review of the Temporary Foreign Workers Program

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June 1, 2016



Standing Committee on Human Resources, Skills and Social Development and the Status of
Persons with Disabilities
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada

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Introduction

We, Drs. Jenna Hennebry¹ and Janet McLaughlin,² are Associates with the International Migration Research Centre (IMRC) based at the Balsille School of International Affairs in Waterloo, Ontario. We respectfully submit this summary of key considerations for HUMA's review of Canada's Temporary Foreign Worker Program.

The following observations and recommendations are based on our extensive research and applied work with temporary foreign workers (TFWs).³ This work has been funded by the Public Health Agency of Canada, the Canadian Institutes of Health Research, the Social Sciences and Humanities Research Council, the Workplace Safety and Insurance Board of Ontario, the Ontario Centre for Excellence for Research on Immigration and Settlement (CERIS), the World Bank, UN Women, and other bodies. Our various projects have involved interviews, surveys, focus groups, and participant observation activities with hundreds of stakeholders and thousands of TFWs. Our research has been published extensively in international and national peer reviewed journals and books.

In addition to this body of empirical research, we have been engaged with community organizations involved in improving TFWs' health and wellbeing and their access to rights and protections for over a decade. We are co-founders of the Migrant Worker Health Project⁴, which endeavors to improve health care and workers' compensation accessibility for migrant workers. We also work with international bodies, such as UN Women, to address the labour and human rights of migrant workers globally.

To start, we endorse the recommendations put forward by the Canadian Council for Refugees (CCR) and the Coalition for Migrant Workers Rights Canada (CMWR). Policy changes regarding migrant workers should mirror their contribution to Canada's economic and social development, protecting their rights at all stages of the migration process. Rather than repeat their important findings here, we will instead focus on the evidence we have gathered that supports the conclusion that migrant workers experience high levels of vulnerability, and only substantial reforms to the TFWP can help to ensure their rights are respected and upheld.

We begin with a brief list of our *key* recommendations, followed by our specific concerns related to the TFWP, with particular emphasis on agriculture and carework. In so doing, we provide the evidence-base to support our recommendations.⁵

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³ For the purpose of this submission, we use interchangeably the terms migrant workers and temporary foreign workers (TFWs).

⁴ See: www.migrantworkerhealth.ca

⁵ The CCR and CMWR submissions provide more detailed recommendations, which our research findings also support.

Key Recommendations to Reduce Migrant Worker Vulnerability and Secure Meaningful access to Rights and Protections⁶

Immigration, Visa and Work Restrictions

- 1) Provide opportunities for permanent residency for all TFWs who want it, regardless of sector or skill level.
- 2) Under Federal-Provincial Immigration Agreements, expand the Provincial Nominee Program (PNP) in sectors such as carework and agriculture.
- 3) Provide open work permits or at very least sector-specific work permits for all TFWs.
- 4) Provide family visas to allow family members to unite with TFWs while in Canada.
- 5) 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.
- 6) Remove the ‘four years in/four years out’ and cumulative duration rules.

Social and Health Protections

- 7) Provide all TFWs full and equal access to settlement services (including language), and social protections, including full access to EI benefits.
- 8) Work with provincial partners to ensure that health insurance is available immediately to all TFWs upon arrival.
- 9) Work with provincial partners to offer specialized, accessible support which addresses language, literacy and logistical barriers, to allow workers full and meaningful access to social and community services, health care and workers’ compensation benefits. Examples include mobile health outreach services, multi-lingual information/support lines, provision of legal support, and free interpretation services in workers’ languages.
- 10) Work with provincial partners to provide TFWs support to stay in Canada to receive investigations and treatment for illnesses and injuries prior to repatriations, especially those which may be caused by or related to their work.
- 11) Work with sending country government partners to provide TFWs portable (bilateral) health insurance.

Labour and Human Rights Protections

- 12) Work with provincial partners to ensure provincial and federal regulations on labour and human rights (including collective bargaining rights) adhere to *international* human rights and labour standards and apply to workers across all sectors.
- 13) Ratify and enforce all international conventions and agreements relevant to migrant workers, in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and ILO Convention Concerning Decent Work for Domestic Workers (Convention 189).

⁶ Note: Recommendations apply to all streams of the TFWP including the SAWP and the CP. Some of these recommendations could be immediately implemented, while others may be seen as long-term goals.

- 14) 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.
- 15) For jobs requiring an LMIA strengthen requirements, monitoring and evaluation of employer practices, housing and workplace safety, with a range of consequences based on the severity of infractions, and incentives for compliance.
- 16) 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.
- 17) 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.
- 18) Prohibit hiring and recruitment practices that allow employers and recruiters to discriminate based on race, gender, national origin or any other differentiation category as recognized under employment standards and human rights legislation.

Summary of Major Concerns

Seasonal Agricultural Workers Program (SAWP) and the Agricultural Stream

Permanently Temporary Jobs in Agriculture

Agricultural jobs in which migrant farmworkers are employed are framed as temporary but are in reality much more permanent and long-term, as workers often engage in circular labour migration between Canada and their origin country over a period of years or decades. Further, the labour shortage in agriculture has been longstanding. In particular, the SAWP, which brings workers for up to 8 months each year, sometimes for decades in a row, is now 50 years old and the use of agricultural migrant workers has only expanded over time, now employing approximately 40,000 TFWs across the country.

In other streams of the TFWP, the ‘four in/four out’ rule reinforces the temporariness and vulnerability of workers. This rule will lead to an increase in the number of undocumented migrants in the country, through permit expiration (see McLaughlin and Hennebry, 2013). This policy can also place downward pressure on wages, as certain ill-intentioned employers may take advantages of irregular migrants that are desperate for work and at risk of detention and deportation (Flecker 2015, 135).

Limited Rights Associated with Lack of Citizenship

TFWs should be guaranteed all rights under applicable international human rights and labour laws. The UDHR lays out numerous relevant rights. For example, it stipulates that everyone has the right⁷:

to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment . . . to equal pay for equal work . . . to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection to form and to join trade unions for the protection of his interests (Article 23:1-4) . . . to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (Article 24) . . . to . . . medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Article 25).

In practice, many of these rights are routinely violated for migrant workers, as we explain below. With respect to existing domestic legislation, TFWs face a number of limitations compared to citizens. For example, the Charter of Rights and Freedoms guarantees Canadian citizens “the

⁷ See: <http://www.un.org/en/universal-declaration-human-rights/>

right to enter, remain in and leave Canada” and to “pursue the gaining of a livelihood in any province.”⁸ TFWs are excluded from this legislation; therefore, they can be repatriated at any time and do not have the right to change employers freely or pursue the gaining of a livelihood in any province (they are normally assigned to work for a specific employer in a specific province). Further, they are not typically granted the right to leave and reenter Canada, as they are only issued single-entry visas for fulfillment of a specific contract. They are also not typically given access to visitors’ visas for family members and are, therefore, denied family reunification while in Canada. Thus, by limiting TFWs’ access to citizenship rights, other rights, such as the right to freedom of movement, of residence, and to change jobs, are effectively denied (McLaughlin and Hennebry, 2015).

Moreover, despite the fact that *on paper*, TFWs are eligible for many of the same protections as Canadian workers, there are, *in practice*, multiple factors that limit workers’ access to those rights, such as lack of social support and inclusion, language and mobility barriers, poor enforcement of regulations, and complaints-driven rights systems that are unknown or inaccessible to many workers. Ambiguous mandates and poor communication between local, provincial, and national authorities compound problems. Since the TFW program is federal but labour laws are provincial, neither level of government takes responsibility for comprehensive enforcement (McLaughlin and Hennebry, 2015; Hennebry, 2010).

Rights access is most fundamentally constrained by the denial of citizenship rights. Even as workers’ social exclusion has recently lessened due to increased interaction with support groups and community members, workers’ ability to access labour and health-related protections remains constrained by the limits of their migration status (Hennebry, 2012; Preibisch, 2003). Migrant workers, as citizens in one country and workers in another, are in a uniquely vulnerable position both in Canada and in their countries of origin. For example, in Canada, workers are eligible for health care coverage only so long as they are in the country, but most often seriously ill or injured workers are immediately repatriated (Orkin et al, 2014). Working, living, and making contributions to health and social security programs in Canada, these workers do not normally contribute to the social contract of their countries of origin and, therefore, often remain excluded from many of the benefits they would otherwise have available to them when they return (McLaughlin, 2009a).

Perhaps most fundamentally, as temporary “noncitizen” residents, migrant workers’ right to stay in Canada can be rescinded at any time. This has significant consequences for the assertion of rights in practice for these migrants, as premature repatriations and lack of freedom of employment render it impossible for workers to access protections or to investigate and enforce workplace rights through dispute resolution mechanisms (Verma, 2003). As a Jamaican worker explained, “That boss in Canada is the worst one I’ve ever had, because in Jamaica when I meet someone like him, I just don’t stay with him, so I don’t have to cope with his foolishness. Up there [Canada] I just have to cope with what he is doing, so it was the worst experience for me” (McLaughlin, 2009b). With contract conditions that are rigid, temporary, and precarious, most workers do not feel empowered to make complaints about poor conditions or other rights violations, even when those conditions may compromise their health, safety, or legislated rights (McLaughlin and Hennebry 2015; Hennebry and McLaughlin, 2012a).

⁸ See under mobility rights of the Charter, available from: <http://laws-lois.justice.gc.ca/eng/const/page-15.html>

Job Security, Labour Rights and Employment Standards

Temporary foreign workers do not have job security, and can be fired at any time. Their precarious position is further entrenched as they seldom have union protection. Although all provinces in Canada other than Ontario and Alberta allow agricultural workers to bargain collectively, TFWs face intimidation not to join unions, including the risk of exclusion from future migratory opportunities by their own government (Watson, 2014). In Ontario, where the majority of migrant agricultural workers in Canada are concentrated, these workers are excluded from the Labour Relations Act and therefore unable to bargain collectively as part of a union. While they are included under the Agricultural Employee's Protection Act (AEPA), this legislation does not include the right to collective bargaining, and does not adequately safeguard the ability of workers to organize and advocate for their rights. The ILO Ruled in 2010 that Ontario's Agricultural Employees Act denies all Ontario agriculture workers the right to join a union and engage in collective bargaining, a violation of human rights under two UN conventions.⁹ While such labour legislation is under provincial jurisdiction, the heart of workers' vulnerabilities stems from the conditions of their employment as mandated at the federal level. Lacking union protections, job security, job mobility and immigration rights, workers' precarious status is compounded, and they are especially vulnerable to being fired and repatriated. Therefore, all other rights (whether related to health, labour, etc.) remain practically unattainable (McLaughlin and Hennebry 2015).

Workers in the SAWP have access to consular representation to help mediate labour disputes and issues, but advocates and researchers have continually noted that these officials are not viewed by workers as trusted, independent, or effective sources of advocacy, nor do they always represent their interests. In fact, workers and their advocates have reported that consular officials sometimes become hostile or at very least uncooperative. Even worse, workers who speak up and receive external assistance have been blacklisted from re-entering the SAWP (Hennebry and McLaughlin 2012a, 38). On several occasions, the Mexican government has attempted to blacklist Mexican migrant workers from returning to Canada due to the workers' alleged involvement with unions (UFCW 2014; CBC 2011).

The mobility of workers under the SAWP, the Agricultural Stream and the low-wage stream of the TFWP is highly restricted, as workers who want to switch employers are often unable to do so. Under the SAWP, a worker's visa is bound to a single employer, and the worker can only transfer to another workplace if they receive permission from their current and perspective new employer, the origin country's government representative in Canada, and written approval from ESDC/Service Canada. These transfers are typically coordinated among employers through Foreign Agricultural Resource Management Services (FARMS) in Ontario (and other comparable growers' groups in other provinces), and the consulate or liaison office. This practice heightens vulnerability for workers who may have conflicts or complaints with employers and in practice, workers requesting a different employer are often repatriated instead.

⁹ See: <http://www.straightgoods.ca/2010/ViewArticle.cfm?Ref=961&Cookies=yes>

Furthermore, switching employers is contingent on workers finding another employer who is willing to undertake a Labour Market Impact Assessment (LMIA). Employers must pay a \$1000 processing fee for the LMIA, which is often deducted from the workers' wages, who are already indebted from paying thousands of dollars to recruiters and private intermediaries (CMWRC, 2016). With no mechanisms in place to help migrant workers switch employers, many have little choice but to work under the table, and/or lose the right to be in Canada when their permits expire, increasing their vulnerable position (McLaughlin and Hennebry, 2013).

Gender and Racial Inequities in Recruitment and Employment

Under the SAWP, sending country governments are responsible for the recruitment and selection of participants, with input from employers (who can specify the preferred gender and national origin of their workforces). While this process minimized the role of private recruiters, it has nonetheless been extremely problematic, with discriminatory hiring practices, including blatant violations of Canada's employment equity laws (McLaughlin 2010), which stipulate that employment should not be based on factors other than ability.¹⁰

Processes of racialization and gender discrimination are readily apparent in the TFWP, as employers deem one ethnic and gendered group preferable for certain tasks over others and hire or fire whole groups of workers accordingly. Indeed, employers of TFWs are given the freedom to request a custom-made workforce from specific nationality and gender groups based on their preconceived notions of such groups' suitability for various tasks (Hennebry, 2006; McLaughlin, 2010). As such, over the past decades, there has been a marked increase in the numbers of Mexican workers in relation to Caribbean workers, in part due to racialized stereotyping and concerns regarding Caribbean workers' ability to assert their authority in English (Preibisch and Binford, 2007).

Additionally, work tasks and workplace hierarchies are not typically organized according to skill level or experience, but instead are segregated according to country of origin—with Mexicans working with Mexicans, Jamaicans with Jamaicans (each performing tasks perceived appropriate on the basis of racial stereotyping), while Canadians supervise (Hennebry, 2006). Also, the use of women workers, though increasing over the past two decades, has remained marginal. Most migrant farm workers are young, single, or middle aged men, and women make up about 3 to 4 percent of the participants of the SAWP (UFCW 2014). Women become doubly marginalized, both by employers and by male colleagues. The naming system, under the SAWP, has permitted employers to invite specific workers back for work. While against Canada's legal equity framework¹¹, this practice has allowed employers to discriminate between workers based on gender, race, social status, language and country of origin. As workers seek to be rehired by their employer, the system has also worked to reinstate employer-employee power relations, made it even more difficult for workers to refuse unsafe work and has discouraged workers from accessing social protections (Hennebry, 2014). Furthermore, employers within the SAWP often restrict women's interactions at the workplace and in residents, and women employees also face

¹⁰ See section 10 of Canadian Human Rights Act, available from: <http://laws-lois.justice.gc.ca/eng/acts/h-6/>

¹¹ As outlined by many laws, regulations and bills, including but not limited to; The Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act, and The Employment Equity Act. This is also outlined in various international conventions, such as, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which Canada has yet to ratify.

constant invitations and harassment from male colleagues (Preibisch and Grez 2010; Hennebry et al., forthcoming).

Unlike the SAWP, there is no formal mediating role for foreign government agents in the Lower-Skilled Occupations Stream (LSOS)/Low-wage stream. Under the Low-wage Stream recruiters often give false information to lure workers into paying high fees. For example, promising access to permanent residence where this option is not available, higher wages, and higher quality working conditions than offered (CCR 2016, 5). Further, workers have been pressured to sign contracts with recruiters stating that they will not pursue legal action or labour disputes with their employers, in order to secure future employment through the recruiter.

Housing for Migrant Farmworkers

The control employers exert over workers' housing and mobility is also problematic. Although jurisdiction for inspecting and managing living conditions is outside of federal authority, once again, the root of migrant vulnerabilities with respect to accommodations relates directly back to TFWP contract conditions, which is under federal control. In particular, the SAWP's stipulation that workers must live in a residence of their employer's choosing is a contradiction to international human rights law, as several UN conventions ensure freedom of mobility and choice of residence.¹² By contrast, workers in the SAWP are given no choice over where to live and their mobility can be greatly restricted while residing in their employers' residence. Research documents numerous examples of employers' restricting workers' freedom and mobility, as well as instigating a series of punitive and restrictive measures to govern their social lives (Depatie-Pelletier, 2008; Hennebry, 2006; McLaughlin and Hennebry 2015). Workers' homes, often trailers, portables, or modified farm buildings, are commonly placed behind or next to their employers' properties, or they may reside in large bunkhouses at the back of or near to farm property. In some cases, those coming or going can be monitored by the employer's family; in other situations, surveillance cameras or security companies are utilized to monitor activities.

The fact that SAWP workers cannot change housing is additionally problematic because their employer-provided accommodations are often undignified and unhealthy. In a survey of nearly six hundred migrant farm workers in Ontario, nearly 50 percent claimed that their housing was inadequate with respect to at least two factors (for example, over-crowded, poorly ventilated) (Hennebry, Preibisch and McLaughlin, 2010). Similar areas of concern have been reported in a British Columbia-based survey of one hundred Mexican workers, in which 37 percent felt that their housing damaged their health (Otero and Preibisch, 2010: 54). Common reported problems include insufficient access to clean water, safe food storage, inadequate food preparation and cleaning amenities, proximity to pesticides and fertilizers, and deficient bathroom facilities (Hennebry, Preibisch and McLaughlin, 2010; Otero and Preibisch, 2010). These factors can increase migrant workers' health problems and heighten their susceptibility to communicable diseases.

As employers are typically also workers' landlords, many workers fear making complaints about

¹² For example, article 13 of the UDHR states that "Everyone has the right to freedom of movement and residence within the borders of each State." Article 12 of the International Covenant on Civil and Political Rights (ICCPR) likewise grants persons lawfully in a state the "right to liberty of movement in the territory of the State of employment and freedom to choose their residence there" (Depatie-Pelletier, 2008).

their accommodations. Such conditions are unique to the circumstances of migrant workers, whose mobility and residency rights are tied to their employment contracts.

Health Risks, Access to Care and Compensation

Agriculture is one of the country's most dangerous industries, and migrant farm workers face numerous risks to their health and safety, including chemical and climatic exposures, ergonomic strains, work with machinery and unsafe transportation (McLaughlin et al 2014a). Our survey of approximately 600 migrant farm workers (MFWs) in Ontario suggested that the average number of weekly hours worked ranged between 64 and 74, and 51% worked without breaks, of which 20% reported that working without breaks happened "often" or "all the time" (Hennebry, Preibisch and McLaughlin, 2010).

Our research also found that health and safety training has been inconsistent and insufficient for migrant farm workers. Nearly 60 percent of workers surveyed in Ontario and 74 percent in British Columbia said that they had not received any information or training relating to their health and safety (Hennebry, Preibisch and McLaughlin, 2010; Otero and Preibisch, 2010). Of those workers who had received training, it was not always accessible; language and literacy barriers often caused problems of comprehension (McLaughlin, et al., 2014b). Workers do not feel comfortable raising health and safety concerns because of the risk of repatriation or job loss (Ibid).

The tragic consequences of exhaustion combined with unsafe working conditions were seen in 2012, where 11 workers died in a traffic accident near Hampstead, Ontario.¹³ However, many more workers experience illness, injury and deaths in less publicized cases. Between 2001 and 2011, nearly 800 MFWs were repatriated for medical or surgical reasons, including back injuries and poisoning, many without receiving treatment, despite being eligible for such care under provincial health schemes (Orkin et al. 2014, 192). Recent media attention has again shone light on the practice of pushing injured workers to return home before they have received adequate medical attention (Marchitelli, 2016).

Although workers have access to health care, research conducted by the IMRC with migrant workers and key informants has indicated that language and translation issues provided particularly significant barriers to health care provision and access (Hennebry et al. 2015a). In some cases, employers will act as intermediaries or interpreters for sick and injured workers, a violation of patient confidentiality. This problem is particularly acute for women workers with male employers.

Further, employers in the SAWP, who are responsible for arranging for workers' health coverage, often fail to do so in a timely manner or withhold health cards from workers (Hennebry et al. 2015a). Some employers are reluctant to allow workers to seek care or compensation (McLaughlin et al. 2014a, 2014b).

Temporary migrants under the Low-wage and Agricultural Streams have a three-month waiting period to receive provincial health coverage, during which time employers must provide a form

¹³ See: <http://www.cbc.ca/news/canada/ontario-crash-kills-11-including-migrant-workers-1.1159929>

of health insurance. Supplementary Coverage is not administered by governments, and accordingly sending countries do not normally provide supplementary insurance, although some workers may have such insurance.

SAWP workers' consular officials, normally assist workers in making workers' compensation claims and communicating to compensation boards on their behalf. However, legal workers and community groups suggest these officials lack legal training and might not have the capacity to provide optimal legal support to injured workers during both the claims and appeals processes. Our research has uncovered numerous and significant problems with respect to migrant workers accessing workers' compensation, in part, because they are repatriated soon after injuries, and are unable to stay in or return to Canada to seek rehabilitation, retraining and re-employment opportunities. These systemic inequities lead to long-term health and financial burdens for workers, and result in a situation in which injured workers are effectively treated as disposable (McLaughlin et al. 2014b).

Again, while health and compensation matters may be seen to be areas of provincial jurisdiction, the fact that workers can be and regularly are repatriated before their medical concerns are properly managed is a federal concern that must be addressed accordingly. Our research has concluded that regardless of provincial regulations, *fear of repatriation and job loss is the primary reason workers are unable to negotiate and ensure that their workplaces are healthy and safe*. Further, the federal government could help to alleviate these gaps by mandating that all migrant workers in Canada receive immediate access to health coverage (without the three month wait) and negotiating bilateral health care arrangements with sending countries, to ensure migrants receive adequate care both during and after trips to Canada.

Social Protections

Many migrant workers lack the broader social protections granted to citizens. Even though the average SAWP worker participates in the program for 7 to 9 years, the program does not provide the workers with a pathway to permanent residency, which means that they are largely excluded from Canada's national framework of protections (Hennebry, 2014). While there are social security agreements pertaining to Canada's Pension Plan and Old Age Security between Canada and Mexico, residency requirements (minimum 13 weeks within a calendar year), lack of access to information and resources, language barriers and illiteracy prevent many of these migrants from accessing these social protections.

Further, SAWP workers have no access to employment insurance (EI) benefits, which are normally paid to workers during times of unemployment, parental leave, or sickness; this is in spite of the fact that migrant workers contribute an estimated \$3.4 million in EI premiums per year.¹⁴ The removal of access to parental benefits under the EI program by the Harper government has been highly criticized by workers and their advocates.

Oversight and Monitoring

¹⁴ Although they could never access regular EI benefits, previously migrant farm workers were able to access special EI benefits (such as maternity and parental benefits). In 2012, the federal government revoked this right. See Laurie Monsebraaten, "Migrant Ontario Farm Workers Seek EI Parental Benefits," *Toronto Star*, 11 October 2013.

Reforms made to the program in 2013 increasing the Government's ability to revoke work permits if the process is being 'abused' has had disproportionately negative impacts on workers, rather than the 'unscrupulous employers' that it claims to target. However, few employers have been fined, and inspections are conducted on a voluntary basis when workers are typically not present. Essentially, the increased authority to revoke permits leaves workers with a more precarious status, while employers can continue to operate after being reprimanded (Reitzer 2013, 22). Evaluation and monitoring has been insufficiently resourced and prioritized. For example, in British Columbia, cutbacks to the ESB have led to a reduction of 33% of branch staff, 47% reduction in enforcement staff, and the closure of half of all branch offices (Reitzer 2013, 20).

Caregiver Program

Migrant caregivers fill much needed care deficits in Canada and throughout the industrialized world, due to the public sector's receding role in providing childcare services. Canada's Caregiver program suffers several drawbacks, including limited enforcement mechanisms, deskilling, family separation, and onerous standards for family sponsorship. The loneliness and stress of family separation are compounded by social and geographical isolation (particularly among those in the live-in category), with minimal opportunities for *self-care* or recreation opportunities (Preibisch and Hennebry 2011, 3).

While the Caregiver program is the only temporary foreign worker scheme in Canada that allows for a direct pathway to permanent residence, caregivers will be reluctant to confront employers' abuse and compromise the prospect of permanent residence. The formal and informal nature of carework further compromises the workers' security. Careworkers sign a legal contract with their employer, although the government has little to no ability to enforce its provisions (Hennebry et al., forthcoming). Both care and domestic workers in practice have little time off and face extended work hours (ibid).

Deskilling and Social Isolation

Workers in the CP are largely overqualified, and suffer deskilling due to onerous credential regimes set by professional associations. In 2009, 63% of entrants into the Live-in-Caregiver program (LCP) had a bachelor's degree or higher, and 500 LCP participants had a Master's degree or higher (Kelly et al. 2011, 12). However, upon the completion of the program many caregivers have experienced deskilling, which has not only impacted the migrants but also their family members (Pratt, 2008). Many migrants under this program have experienced downward social mobility, due to a prolonged separation from professional work.

This, coupled with prolonged family separation and social isolation, can have a very significant impact on caregivers and their families upon reunification. The lack of funding for immigrant settlement organizations pose significant barriers for the integration of caregivers, as well as TFWs, who are typically ineligible to access such services. With limited amounts of funding, Canadian settlement organizations have little choice but to allocate resources only to live-in-caregivers whose permanent residence applications have already been processed (Atanackovic and Bourgeault 2014, 20).

Reform and Withstanding Issues

Several reforms were made to the Live-in Caregiver program in November 2014, which included giving individuals the option to live outside the home of their employer, and the placement of a quota on the number of childcare providers that will be accepted as permanent residents. Essentially, while appearing to meet the demands of caregivers, NGOs, and trade unions, this change has not addressed the fundamental structures of the LCP that render caregivers vulnerable. Workers may opt to continue living with the employer given that wages for carework remain low, and exorbitant fees paid to recruiters and remittances sent to dependents back home place caregivers in already financially insecure positions (Valiani 2014). So long as the caregiver's visa is tied to a single employer, employers can place demands upon workers that make living outside the home challenging (CUPE 2015, 4). As such, live-in-arrangements continue to leave women vulnerable to sexual harassment, while fears of threats to their employment and immigration status present barriers to complaint processes (Preibisch and Hennebry 2011, 3).

Access to PR

The presence of a quota on the applications that will be processed by the CIC is not an effective mechanism to address the bureaucratic backlogs. Under this reform, 2,750 migrants, who pass the education and language requirements will be eligible to apply. This reform goes against the demands of many civil society organizations, which have advocated for permanent residency for migrant caregivers upon arrival to reduce the risk of exploitation and abuse.

Conclusion

To address the vulnerabilities we have outlined herewith, fundamental changes need to occur to Canada's TFWP, in particular, the granting of permanent status to TFWs. While granting residency or citizenship rights certainly does not guarantee easy and categorical securing of all rights, we argue that the denial of such rights has been a significant factor impeding access to other rights for migrant workers in Canada. Granting permanent residency rights would address many of the aforementioned concerns. It would provide mobility rights, enable freedom of employment and residence, provide full and equal access to employment insurance, and promote language acquisition and social and political inclusion. The enforcement of rights and protections would be more effective if migrants did not fear losing their job, income, and right to stay in Canada as a consequence of advocating for their own rights; and the threat of premature repatriation would no longer function as a deterrent to rights access. Furthermore, citizenship rights would grant TFWs the right to vote and, thus, to gain political and social capital. In addition to these rights, our detailed recommendations outlined earlier can help to address the root causes of migrant vulnerabilities.

Supplementary Resources

Please refer to the following documents attached to this submission for additional research and information:

- 1) Hennebry, J., McLaughlin, J., & Preibisch, K. (2015). Out of the Loop:(In) access to Health Care for Migrant Workers in Canada. *Journal of International Migration and Integration*, 1-18.
- 2) Preibisch, K., & Hennebry, J. (2011). Temporary migration, chronic effects: the health of international migrant workers in Canada. *Canadian Medical Association Journal*, 183(9), 1033-1038.
- 3) Hennebry, J. L., & Preibisch, K. (2012). A model for managed migration? Re-examining best practices in Canada's seasonal agricultural worker program. *International Migration*, 50(s1), e19-e40.
- 4) McLaughlin, J., Hennebry, J., & Haines, T. (2014). Paper versus practice: occupational health and safety protections and realities for temporary foreign agricultural workers in Ontario. *Perspectives interdisciplinaires sur le travail et la santé*, (16-2).

References:

Atanackovic, J., & Bourgeault, I. L. (2014). *Economic and social integration of immigrant live-in caregivers in Canada*. Montreal: Institute for Research on Public Policy, 8. Retrieved from <http://search.proquest.com.ezproxy.library.uvic.ca/docview/1520443435?accountid=14846>

Canadian Union of Public Employees (CUPE). (2015). "Fact Sheet: Temporary Foreign Workers Program and the Live-in-Caregiver Program."

Canadian Council for Refugees (CCR). (2016). "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." Retrieved from: <http://ccrweb.ca/en/submission-TFWP-review>

Canadian Council for Refugees (CCR). (2013). "Temporary Foreign Worker Program."

CBC News. (2011). "B.C. Labour Activists Rally for Mexican Migrant Workers." Available from: <http://www.cbc.ca/news/canada/british-columbia/b-c-labour-activists-rally-for-mexican-migrant-workers-1.993516>

Coalition for Migrant Workers Rights Canada (CWRC). (2016). "Migrant Workers in Canada: Submission by the CCR to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities." Backgrounder accessed from: <http://migrantrights.ca/en/latest-news/>

Depatie-Pelletier, E. (2008, April). Under legal practices similar to slavery according to the UN Convention: Canada's "non white""temporary" foreign workers in "low-skilled" occupations. In *10th National Metropolis Conference, Halifax*.

Flecker, K. (2015). "Welcome! But don't get Comfortable: The Permanence of Canada's Temporary Foreign Worker Program." *The Harper Record 2008 – 2015*, 129 – 147. Canadian Centre for Policy Alternatives: Ottawa, Ontario. Retrieved from https://www.policyalternatives.ca/Harper_Record_2008-2015/07-HarperRecord-Flecker.pdf

Hennebry, J. et al. (forthcoming). "Women Migrant Workers' Journey Through the Margins: Labour, Migration and Trafficking." *Report for UN Women*.

Hennebry, J., McLaughlin, J., & Preibisch, K. (2015a). Out of the Loop:(In) access to Health Care for Migrant Workers in Canada. *Journal of International Migration and Integration*, 1-18.

Hennebry, J., McLaughlin, J., Preibisch, K. (2015b). "Submission for the Changing Workplaces Review: Addressing Agricultural Migrant Worker Protection." *International Migration Research Centre*: Waterloo, Ontario.

Hennebry, J. (2014). "Falling through the cracks? Migrant workers and the Global Social Protection Floor." *Global Social Policy*, 14(3), 369-388.

Hennebry, J. and J. McLaughlin (2012a). The Exception that Proves the Rule: Structural Vulnerability, Health Risks and Consequences for Temporary Migrant Farmworkers in Canada. Chapter in *Legislating Inequality: Canada's Temporary Migrant Worker Program*. Christine Hughes and Patti Lenard (eds.) McGill-Queen's University Press.

Hennebry, J. & J. McLaughlin. (2012b). Responding to Temporary Migration in Ontario's Agricultural Workplaces: Submitted to the WSIB Research Advisory Council. International Migration Research Centre: Waterloo, Ontario.

Hennebry, J. (2012). *Permanently Temporary?: Agricultural Migrant Workers and Their Integration in Canada*. Montreal: Institute for Research on Public Policy

Hennebry, J. & McLaughlin, J. (2010). "Key Issues & Recommendations for Canada's Temporary Foreign Worker Program: Reducing Vulnerabilities & Protecting Rights." *International Migration Research Centre*: Waterloo, Ontario.

Hennebry, J., Preibisch, K., & McLaughlin, J. (2010). Health across borders—health status, risks and care among transnational migrant farm workers in Ontario. *Toronto ON): CERIS Ontario Metropolis Centre*.

Hennebry, J. (2010). Who has their eye on the ball? "Jurisdictional futbol" and Canada's temporary foreign worker program. *Policy Options*, 31(7), 62-7.

Hennebry, J. (2006). *Globalization and the Mexican-Canadian Seasonal Agricultural Worker Program: power, racialization and transnationalism in temporary migration*. ProQuest.

Kelly, P., Park, S., de Leon, C., Priest, J. (2011). "Profile Of Live-In Caregiver Immigrants To Canada, 1993-2009." TIEDI Analytical Report 18.

Marchitelli, R. (2016). Migrant worker program called 'worse than slavery' after injured participants sent home without treatment. *CBC News*. Available from: <http://www.cbc.ca/news/canada/jamaican-farm-worker-sent-home-in-a-casket-1.3577643>

McLaughlin, J., & Hennebry, J. (2015). Managed into the margins: examining citizenship and human rights of migrant workers in Canada. *The Human Right to Citizenship: A Slippery Concept*. Howard--Hassmann, R. & Walton--Roberts(Eds.). University of Pennsylvania Press, *Human Rights Series*. 176-190.

McLaughlin, Janet, Jenna Hennebry, Donald Cole and Gabriel Williams (2014a). The Migrant Farmworker Health Journey: Stages and Strategies. IMRC Policy Points, International Migration Research Centre, Waterloo, ON.

McLaughlin, J., Hennebry, J., & Haines, T. (2014b). Paper versus practice: occupational health and safety protections and realities for temporary foreign agricultural workers in Ontario. *Perspectives interdisciplinaires sur le travail et la santé*, (16-2).

McLaughlin, J., & Hennebry, J. (2013). Pathways to precarity: structural vulnerabilities and lived consequences for migrant farmworkers in Canada. *Producing and negotiating non-citizenship: precarious legal status in Canada*. Goldring and Landolt (eds.). University of Toronto Press. 175-195.

McLaughlin, J. (2010). Classifying the “ideal migrant worker”: Mexican and Jamaican transnational farmworkers in Canada. *Focaal*, 2010(57), 79-94.

McLaughlin, J. (2009a). *Migration and Health: Implications for Development: A Case Study of Mexican and Jamaican Migrants in Canada's Seasonal Agricultural Workers Program*. Canadian Foundation for the Americas.

McLaughlin, J. (2009b). *Trouble in our fields: health and human rights among Mexican and Caribbean migrant farm workers in Canada* (Doctoral dissertation, University of Toronto).

Orkin, A., M. Lay, J. McLaughlin, M. Schwandt and D. Cole (2014). Medical Repatriation of Migrant Farm Workers in Ontario: Coding and Descriptive Analysis. *Canadian Medical Association Journal* (CMAJ) Open. July 22, vol. 2 no. 3 E192-E198.

Otero, G., & Preibisch, K. (2010). *Farmworker health and safety: challenges for British Columbia*. WorkSafeBC.

Pratt, G. (2008). “Deskilling across the Generations: Reunification among Transnational Filipino Families in Vancouver.” *Metropolis Working Paper Series*, No.08-06.

Preibisch, K. & Hennebry, J. (2011). “Temporary Migration, Chronic Effects: the Health of International Migrant Workers in Canada.” *Canadian Medical Association Journal*.

Preibisch, K. L., & Grez, E. E. (2010). The other side of el Otro Lado: Mexican migrant women and labor flexibility in Canadian agriculture. *Signs*, 35(2), 289-316.

Preibisch, K., & Binford, L. (2007). Interrogating racialized global labour supply: an exploration of the racial/national replacement of foreign agricultural workers in Canada*. *The Canadian Review of Sociology*, 44(1), 5.

Preibisch, K. (2003). Social relations practices between seasonal agricultural workers, their employers and the residents of rural Ontario. *Canada's Seasonal Agricultural Workers' Program (CSAWP) as a Model Best Practices in the Employment of Caribbean and Mexican Farm Workers*. Ottawa: North-South Institute.

Reitzler, A. (2013). “Access to Justice for Migrant Workers in British Columbia.” West Coast Domestic Workers Association.

UFCW. (2014). [UFCW Canada denounces gender-based discrimination against migrant women under Seasonal Agricultural Workers Program](http://www.ufcw.ca/index.php?option=com_content&view=article&id=30175:ufcw-canada-under-Seasonal-Agricultural-Workers-Program). Retrieved from: http://www.ufcw.ca/index.php?option=com_content&view=article&id=30175:ufcw-canada-

[denounces-gender-based-discrimination-against-migrant-women-under-seasonal-agricultural-workers-program&catid=9536:directions-14-59&Itemid=6&lang=en](#)

Valiani, S. (2014). “Briefing Note: An Analysis on the Recently Reformed Live-in-Caregiver Program.” Retrieved from <https://salimahvaliani.wordpress.com/2014/11/04/briefing-note-an-analysis-of-the-recently-reformed-live-in-caregiver-program-in-canada/>

Verma, V. (2003). “The Mexican and Caribbean Seasonal Agricultural Workers Program:

Regulatory and Policy Framework, Farm-Industry-Level Employment Practices, and the Future of the Program under Unionization,” in *Canada’s Seasonal Agricultural Workers’ Program (CSAWP) as a Model Best Practices in the Employment of Caribbean and Mexican Farm Workers*, Ottawa: North-South Institute.

Watson, H.G., (2014). Mexico accused of blacklisting seasonal workers who unionize in Canada. Retrieved from: <http://rabble.ca/news/2014/02/mexico-accused-blacklisting-seasonal-workers-who-unioniz>
