

SUBMISSION OF JUSTICIA FOR MIGRANT WORKERS TO THE STANDING COMMITTEE ON THE REVIEW OF THE TEMPORARY FOREIGN WORKER PROGRAM

Justicia for Migrant Workers (J4MW) would like to thank the Standing Committee for the opportunity to submit this brief on the review of the Temporary Foreign Worker program.

J4MW is an all-volunteer grassroots advocacy group that works with migrant workers employed under the auspices of the Temporary Foreign Worker (TFW) Program. Since 2001, Justicia for Migrant Workers has been organizing with predominantly farm workers employed under the Seasonal Agricultural Workers Program (SAWP). With the expansion of the TFW program, J4MW has also advocated with migrant workers employed in numerous occupations including fish processors, construction and produce packing.

Migrant workers work in seasonal and precarious industries that ensure food and economic security for all Canadians. Migrant workers form the backbone of these industries. Hence, as a matter of fairness, the people who grow our fruits and vegetables should not face perpetual impoverishment, vulnerability to exploitation and abuse, denial of basic rights and freedoms including labour mobility and family life, and constant uncertain life conditions as a result of our immigration laws.

We therefore submit that migrant workers should be treated in the same equitable manner as other immigrants and should be provided with permanent resident status on arrival. Furthermore, the immigration system denies migrant workers access to basic social entitlements that are the rights of *all workers* in Canada. We submit that migrant workers should be provided access to all social entitlements including Employment Insurance, Canadian Pension Plan, Old Age Security (OAS) Education, Healthcare and all other entitlements accorded to Canadian workers. Lastly, we also submit that changes made to the TFW programs by the previous government such as the 4-in-4-out rule, changes to the Labour Market Impact Assessment process and fees, and the cap on migrant workers should be revoked as they increase the vulnerability and precarity of the workers.

I. Background and Context

a. Canada's Approach to Temporary Labour Migration

A migrant worker is defined as “a foreign national engaged in paid work activity who is authorized, with the appropriate documentation, to enter and to remain in Canada for a limited period.”¹ Recruitment of migrant workers to Canada occurs under the Temporary Foreign Workers Program (“TFWP”). A federal initiative, the TFWP consists of three

¹ Parliament, Temporary Foreign Workers by Melissa Pang in Library of Parliamentary Research Publications, Social Affairs Division, Publication, No. 2013-11-E 7 (2013).

distinct labour regimes recruiting so-called low-skilled migrant workers.² The Seasonal Agricultural Workers Program (“SAWP”), in place since 1966, has brought workers from Jamaica, and later Trinidad & Tobago, Barbados and the eastern Caribbean states, and from Mexico, to work in Canadian fields.³ The Live-In Caregiver Program (“LCP”) recruits mostly women to serve as in-house care labour for Canadian families. Workers are now predominantly recruited from the Philippines. Since the 1970s, there has been increased resort to temporary labour migration in Canada and, at the turn of the century, the newest program faced significant expansion.

In the early 2000s, the federal government created the program formerly known as the Pilot Project for Hiring Foreign Workers in Occupations that Require Lower Levels of Formal Training (now referred to as the Agricultural Stream and the Stream for Lower-skilled Occupations). Through these Streams, workers arrive from such places as Thailand and Guatemala to work in virtually all sectors of the economy and all regions of the country. While our submission speaks specifically to workers in the SAWP, the concerns we raise encompass the wider migrant populace in Canada.

Ontario employers have consistently employed the largest proportion of migrant workers in Canada. In 2011, employers in the province hired 35.6 percent of all 190,842 migrant workers who were new-entry and re-entry in Canada.⁴ In 2012, of the 25,000 migrant workers employed in agriculture in Canada, 66 percent received employment in Ontario.⁵ The sizeable migrant population in Ontario suggests that the province, along with the federal government, specifically possess a unique responsibility to uphold their rights and protections. That responsibility is deepened by the vulnerability experienced by migrant workers through the TFWP and the especially acute vulnerability of SAWP workers in isolated rural areas of the province.

b. The Structural Vulnerability of Temporary Labour

A review of the core features of the SAWP presents a deeply troubling image for migrant workers beginning with the denial of Canadian citizenship. Migrant workers under the SAWP are denied the opportunity to permanently settle in Canada.⁶ They exist with

² This submission does not address high-skilled temporary labour migration to Canada.

³ The history of the SAWP is recounted in two seminal texts: Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada Since 1945* (New York: Routledge, 1991); Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (Montreal: McGill-Queen’s, 2002).

⁴ Melissa Pang, “Temporary Foreign Workers” Social Affairs Division Parliamentary Information and Research Service, Parliamentary Paper, Publication No. 2013-11-E 7 (February 2013) at 1.

⁵ “Migrant Workers: Who they are, where they’re coming from”, Canada Broadcasting Company (7 Feb 2012), online: <http://www.cbc.ca/news/canada/migrant-workers-who-they-are-where-they-re-coming-from-1.1137930>.

⁶ This differs in opportunity for LCP workers who, after satisfying a two-year residency requirement, are permitted to apply for permanent residence status. Citizenship Immigration Canada reports indicate that in 2009, over 90 percent of participants in the LCP apply for permanent resident status and 98 percent of the LICs are granted permanent residency in Canada. Fay Faraday, “Made In Canada: How the Law Constructs Migrant Worker’s Insecurity” (September 2012), online: Metcalf Foundation <http://metcalfoundation.com/publications-resources/view/made-in-canada>.

precarious migration status in that even though they are admitted to enter and work in the country, their temporary status makes them experience differential inclusion and treatment while here. They live under persistent threat of deportation that forces them to work under difficult and exploitative conditions, especially in cases of conflict with employers, workplace injuries, shortages in work, or merely by virtue of employer whim.

Workers and critics alike have termed the SAWP, a system of indentured servitude or akin to slave labour. This flows from the employer-driven nature of the SAWP (and the TFWP more broadly). Migrant workers under the SAWP are tied or bound to specific employers and not permitted to seek alternative employment.⁷ They live on or near the farm in employer-provided housing and are separated from their families and home communities for significant periods of time, upwards of eight months each year without opportunities for family reunification. They are denied the right to participate in the democratic system and yet required to pay taxes in Canada.⁸ By extension, migrant workers face severe obstacles in accessing justice.⁹

Even if one were not to accept direct comparisons to slavery, it is evident that workers in the SAWP constitute “unfree labour”, marked by the use of economic and extra-economic coercion in recruitment, exploitation, and retention. Although direct physical coercion is not its basis, the SAWP operates to socially control or pacify workers along analogous lines to historical regimes of indentureship and slavery.

*Why are migrant workers subjected to differential treatment in Canada?*¹⁰ Considerable evidence supports the conclusion that racism is a determining factor. Racism refers to

⁷ An insidious way that migrant workers are forced into a relationship of dependence for survival on their employer emanates from the requirement that agricultural workers live on the employer’s property or established accommodations. Instances have been documented where an employer charges workers rent for a year when they are only in Canada for a few months. See Marie Boti and Malcolm Guy, DVD: *The End of Immigration?* (Produced by Lucie Pageau, distributed by Diffusion Multi-Monde, 52 mins, 2012).

⁸ Veena Verma, “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,” (Ottawa, ON: North-South Institute, 2003) at 14.

⁹ Faraday, *Made In Canada*.

¹⁰ After all, Canada is widely considered a country of immigrants, a favoured immigrant destination and a country built on tolerance and fairness toward people from other parts of the world. Quite importantly, we note, this constructed image of Canada ignores longstanding examples of outright exclusion from or differential inclusion into Canada. For instance, the Chinese labourers who were instrumental in building the national railway, were subjected to considerable forms of discriminatory treatment, including a head tax, denial of family reunification and outright denial for a certain period. In contrast, central and eastern Europeans, such as Polish war veterans entering Canada in the 1940s, faced certain forms of discrimination but then were ultimately admitted as citizens. SAWP migrant workers from the Caribbean and Mexico have not received similar treatment. For the history of differential treatment in Canadian immigration and temporary migration see Donald Avery, *Dangerous Foreigners: European Immigrant Workers and Labour Radicalism in Canada, 1896-1932* (Toronto: McClelland & Stewart, 1983); Vic Satzewich, “Unfree Labour and Canadian Capitalism: The Incorporation of Polish War Veterans” (1989) 28 *Studies in Political Economy* 89, online: <http://spe.library.utoronto.ca/index.php/spe/article/view/13181>; Nandita Sharma, *Home Economics: Nationalism and the Making of ‘Migrant Workers’ in Canada* (Toronto: University of Toronto, 2006).

characterizations of certain people based on stereotype derived from perceived physical or biological traits, most notably skin colour, and do not correspond with a given person's abilities and capacities, whether physical, intellectual or otherwise.¹¹ Racism can occur through the words or deeds of an individual. This is a reality that many migrant workers face while interacting with their employers and also within Canadian communities, as they are subject to stigmatization and stereotypes that attribute criminality, ignorance, and "otherness". This can also be systematized within government institutions. For example, there is an ongoing OPP investigation of racial and citizenship-based profiling by the police after a sexual assault in the Tilsonburg area in Ontario, when migrant workers were rounded up in farms for indiscriminate DNA testing.

Racism is directly implicated when there is systemic and ongoing treatment of groups of people as inferior and thus not worthy of rights, entitlements and privileges afforded to others deemed worthy. Such forms of systemic racism is evidenced through the repetitive slotting of SAWP workers from the Caribbean and Mexico into positions of subordination in the labour market and wider social life in Canada. It is evident in denying SAWP workers permanent residence for the last *fifty* years of the existence of the SAWP program.

This structural vulnerability originates in their precarious migration status, which disadvantages them in economic and political participation and shapes their entire working and social lives in Canada. That vulnerability is not a historical accident – it is the product of and in turn produces racism in individualistic and systemic forms. These conditions produce a specific stigmatized image of "third-world" racialized migrants that extends to the entire community, even on *Canadian citizens from the countries* that the TFW programs recruit.

We therefore cannot simply ignore the calls to justice by migrant workers simply because they are racialized foreign migrant workers from poor and socioeconomically underprivileged backgrounds.

II. Measures required to address the problems in the TFW programs and ensure a just, non-discriminatory, and rights-protecting immigration system and a fair and safe workplace in all labor sectors.

a. Status upon Arrival

"I have been talking to migrants across Canada and we share the same voice STATUS UPON ARRIVAL. Other migrant workers under the skilled category have their status upon landing and why can't we? They come with their families and we are separate from our families. And yet we all come here to work and make Canadian economy better."- Statement from SAWP worker

¹¹ That said, Canadian public policy recognizes the existence of 'race' not to validate the stereotypical identification of people on this basis, but as a means to redress the deleterious impacts of racism.

J4MW urges the Federal Government to grant all temporary foreign workers permanent immigration status upon arrival. We support the MWAC/CMWC position on providing Status on Arrival:

Status for All, Status on Arrival: All migrant workers must be able to immigrate to Canada as permanent residents immediately, independently and permanently without depending or relying on the sponsorship or good will of their employers or third party agencies. This program should include migrant workers already in Canada, those that have worked here and left and those arriving in the future. Migrant workers who have been granted permanent residency should get comprehensive settlement services that will ensure their success.¹²

We reiterate the points made by MWAC/CMWC on why Status on Arrival is a necessary measure to address the workers' vulnerability to abuse and exploitation and ensure their access to services and legal protections.

- This recommendation is distinctly separate from a provision of 'pathway to permanent residency'. A 'pathway' is a two-step process that caregivers already have, and has been shown to have the same forms of abuse and vulnerability that are found in other parts of the program.
- Permanent residency ensures services: Many labour rights and basic services in Canada like healthcare and post-secondary education are tied to permanent immigration status. Migrant workers pay for all these services through taxes and deserve access to them.
- Permanent residency is the norm: Most immigrants – refugees, spouses, high-waged immigrants - arrive to Canada with permanent resident immigration status, which gives them peace of mind, the ability to re-unite with their families, and the tools they need to lay deeper roots and build our society further as soon as they arrive.
- Permanent residency re-unites families: Landed status on arrival would also allow caregivers to enter Canada with their families, thus eradicating family separation (which averages 6-8 years) while caregivers complete the program and wait for their permanent residence applications to be processed.
- As an interim step, the Federal government should create open work permits for migrant workers irrespective of sector.

Justicia for Migrant Workers (J4MW) endorses the submission of the Migrant Workers Alliance for Change and the Coalition of Migrant Workers Canada.

¹² Joint Submission of the Coalition for Migrant Worker Rights Canada (CMWRC) and the Migrant Workers Alliance for Change (MWAC) 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, May 2016

b. Social Entitlements and Migrant Workers

“From year to year I travel on this program to ensure that I am better able to provide for my family. However when there is a new addition to the family more income is needed. I am grateful for the benefits I will receive for my youngest daughter who is the newest addition to my family..”

“Back at home life is difficult and having a young child costs a lot. Therefore more funds are needed for their care and to maintain them. I would really appreciate any addition that could be made to the benefits that I would receive for her as it would take care of her expenses for a while as well as ease my financial problem a bit... Seeing that I am the sole breadwinner of the family it gets hard at times to be able to provide for my family as I should. Therefore this increase would mean a lot to us.” – Statements by migrant worker

All migrant workers should be provided with access to social entitlements such as access to Employment Insurance, Canadian Pension Plan, Old Age Security (OAS) Education, Healthcare and all other entitlements accorded to Canadians. More and more people have to cross borders to find work, not surprising in a world where governments now embrace free trade and the free movement of goods and services. However, social entitlement regulations do not match the social reality of labour migration. Reforms are therefore needed to account for the extent to which cross-border work is happening, which will only increase as Canada tries to ensure its participation and its economic viability within the current international economic system.

i. Migrant Workers and Employment Insurance (EI)

EI is a vital social safety net to counterbalance the negative consequences of a precarious labour market and should be available to every worker in Canada. Since the inception of the Seasonal Agricultural Workers Program (SAWP) in 1966, migrant farm workers have paid into Employment Insurance with no access to regular benefits because of regulatory requirements that migrant farm workers must be ready and available to work in Canada. These requirements require the worker to be physically present in Canada after the end of the contract and have the labour mobility to access all jobs available to Canadians, which is made impossible by the immigration strictures of the TFW program.

In 2002, migrant workers began to access a few special benefits such as parental and maternity benefits, which became an important source of income for migrant workers in supporting their families in their home countries. In 2012, the Federal Government tied access to all EI special benefits to valid work permits of migrant workers, shutting the door for migrant workers to access even these minimal benefits.

The EI regulations appear to be wilfully blind to the nature of the work in seasonal industries such as fish processing and agriculture. These sectors are highly vulnerable to climatic and economic uncertainties, which in turn make the workers' employment particularly insecure and precarious. Even in the absence of climatic upheavals, the

industry in general has cyclic and seasonal labour cycles. Many workers under the SAWP program come year after year to work in Canada for several decades during harvesting seasons. But in between seasons, they have no access to employment insurance or any other social benefits to tide them through to the next season. The regulations thus actively construct structural labour precarity and unfair conditions that is detrimental to the entire Canadian labour workforce and specifically produce impoverishment and insecurity for workers who contribute so essentially to the Canadian economy.

We call on the government to undertake the following:

- Provide equal access to regular employment insurance benefits for migrant workers through the development of interstate agreements between the governments of Canada and the country of origin of migrant workers. This would be modelled on similar agreements that exist with the United States.
- Restore migrant workers access to special EI entitlements including parental, maternity and compassionate benefits
- Remove the condition that makes access to Employment Insurance tied to a valid work permit. This negatively impacts seasonal workers waiting for new LMIA's/Work Permits.
- Provided migrant workers with access to training and education during unemployment.
- Improve access by reducing qualifying hours in all regions to the lesser of 360 hours or 13 weeks.
- Increase duration to at least 60% of earnings using workers' 12 best weeks. Raise the maximum benefit and eliminate severance pay allocations and the 2 week waiting period.
- Provide EI income benefits so long as workers are in approved training

These changes are necessary so that the EI regulations keeps pace with current labour market conditions.

ii. Injured Migrant Workers, and Access to Healthcare. Medical Repatriation must be prevented.

"Access to health care is problem for migrant women and injured workers. Migrant women are fired from work because of their pregnancy don't have access to health care. Injured workers being sent back home can't be treated/ avail of healthcare here in Canada"

Migrant workers should not be subjected to differential access to healthcare. Healthcare should be provided upon arrival to Canada without exclusions. Furthermore migrant workers should not have healthcare access tied to their work permit nor should they lose health coverage once their employment relationship has been terminated.

Media attention with respect to the deaths and injuries of migrant workers such as Sheldon Mckenzie, and Ned Livingston Peart has exposed the unique vulnerabilities these workers face while working in Canada. A recent study by the Canadian Medical Association Journal shows that between 2001 to 2011, 787 migrant workers were medically repatriated for injuries and illnesses sustained in Canada by their employers. This prevents workers from accessing their legally available entitlements and compensation. The report continues that

When faced with health problems or injuries that prevent them from continuing work, migrant farm workers in Canada under the Seasonal Agricultural Worker Program are normally repatriated to their country of origin. Under the program's international agreements, "the employer, after consultation with the [worker's] government agent, shall be entitled for non-compliance, refusal to work, or any other sufficient reason, to terminate the worker's employment... and so cause the worker to be repatriated."⁴ The repatriation of migrant farm workers for health-related reasons and medical termination of their employment represents a unique form of deportation from Canada. Although farm workers are entitled to receive health care before the termination of their employment and repatriation, in practice, workers are sometimes repatriated immediately, without receiving such care.⁵

We call on the government to undertake the following:

- There should be a full independent and impartial investigation into all migrant worker medical repatriations.
- Furthermore there should be an investigation into the deaths of migrant workers. To date there has never been an inquest into the death of a migrant worker anywhere in Canada.
- No injured or sick migrant worker should be sent home and should be provided with the means to stay in Canada to receive medical treatment
- No migrant worker should have their healthcare cut while in Canada- there should be no two tiered health care for migrant workers
- Migrant worker should be able to be with their families while they are sick and injured in Canada

c. Undo changes to the program made by the last administration

"The decision to ban us from working in Canada (4 in 4 out rule) is unjust and unfair," I have put food on the tables of Canadians for so many years. Why would you create laws that penalize us?"

"Used to be migrant worker in Canada, I've worked there for 6(six) years straight and now they sent me back home last October 2015 and unfortunately until now I am jobless, can't find a good job. I can say I'm upset, I did all my best when I was working there

hoping my company to absorb me and stay there for good. But still not enough and that 4x4 rules sent me back home.”

- Statements of migrant workers

On April 1st, 2015, thousands of migrant workers were forced to leave Canada as a result of the 4 in 4 out rule. Enacted by the Conservative government in April 2011, the regulation stipulated that ‘low’ skill migrant workers could work in Canada for four years and then could not return to Canada for an additional four years. This one regulation resulted in one of the largest mass deportation orders in Canadian history.

Coupled with the 4 in and 4 out rule, changes to the LMO (Labour Market Opinion) process and the creation of the stringent Labour Market Impact Assessment policy resulted in thousands of other migrant workers being denied the ability to work in Canada.

Both policies were knee jerk responses to heightened xenophobia by Canadians fearful that the numbers of temporary foreign workers were resulting in job loss for Canadians, decreasing wages, and deteriorating working conditions. In fact, both policies resulted in only creating further precarious conditions for migrant workers, with consequences for overall labour insecurity. Workers faced criminalization through immigration raids and detention in penal institutions across Canada.

The current government should also eliminate other regressive policies such as removing the cap on the number of migrant workers that could be employed in one facility and end the LMIA fee to employers. J4MW has heard many stories of the cost of the LMIA fee being downloaded to workers.

We call on the government to undertake the following:

- End the four-year limit on work permits: Instead of valuing the contributions of migrant workers, current policies force the workers to leave after four years. This uproots long - term workers who have built lives and relationships here and have helped build local businesses.
- End the Caps: Work sites with over 10 full time workers are subject to progressive “caps” on the percentage of migrant workers in their total workforce each year. It was intended to be 10% in July 2016. As a result of these caps, migrant workers are being forced out of jobs they have held for years.
- Allow workers to change jobs: Work permits are tied to a specific employer and the current regulations make it very difficult, if not impossible for workers to change jobs even when there are opportunities for change. This creates profound power inequalities and incentivizes employers to ignore labour and employment regulations. It also ignores the need for mobility within a labour sector for its viability.
- Remove LMIA fees: A \$1,000 fee has been placed on Labour Market Impact Assessment (LMIA) applications that employers are downloading to workers. Migrant workers should not have to pay to work.

- Regulate recruiters: Migrant workers have to pay tens of thousands of dollars to unregulated recruiters to get a job in Canada. To do so, they take on tremendous debt and so they arrive in the country unable to assert their basic rights. The Federal government can encourage provinces to regulate recruiters, and create inter-provincial agreements so that recruiters do not switch provinces to avoid accountability. The Federal Government should develop model recruiter legislation along the lines of best practices in Manitoba and as outlined in the 2014 Metcalf Foundation report, *Profiting from the Precarious*.¹³

III. Conclusion

Overall this submission seeks to demonstrate that providing migrant workers permanent residence, removing discriminatory regulations that deny them entitlement to social benefits, and reforming immigration laws that exploit racialized, socio-economically underprivileged temporary foreign workers are central to realising the rights of migrant workers, facilitating their meaningful economic participation and inclusion in the workforce and in the community, and creating a rights-protecting, egalitarian, and just Canadian society.

Thank you for your support and interest. Please contact us with any questions or comment.

¹³ Fay Faraday and Metcalfe Foundation, “Profiting from the Precarious - How recruitment practices exploit migrant workers” (2014), online: <http://metcalffoundation.com/stories/publications/profitting-from-the-precarious-how-recruitment-practices-exploit-migrant-workers/>