

Policy Brief

Migrant Workers *in* Canada:

A review of the
Canadian Seasonal
Agricultural Workers
Program



The North-South Institute

research for a fairer world

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Introduction

For the past 40 years, farmers in Ontario and other provinces have been meeting some of their seasonal labour needs by hiring temporary workers from Caribbean countries and, since 1974, from Mexico under the Canadian Seasonal Agricultural Workers Program (CSAWP). This federal initiative allows for the organized entry into Canada of low- to mid-level skilled farm workers for up to eight months a year to fill labour shortages on Canadian farms during peak periods of planting, cultivating and harvesting of specified farm commodities. The program is run jointly with the governments of Mexico and the participating Caribbean states, which recruit the workers and appoint representatives in Canada to assist in the program's operations. In 2004, some 10,777 seasonal workers came to Canada from Mexico and 8,110 came from Jamaica, Barbados, Trinidad and Tobago and the Organization of Eastern Caribbean States (Grenada, Antigua, Dominica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Monserrat). The program was first developed with Jamaica on a trial basis in 1966 and subsequently extended to the other countries.

The migrants spend an average of 17 to 20 weeks in Canada each year, between January 1 and December 15, performing manual work on some 1,800 farms in nine provinces, nearly 1,600 of them in Ontario. Collectively, these farms produce a significant share of the fruits and vegetables, flowers, tobacco, honey, nursery tree products, shrubs and sod produced in Canada. Some of the migrants also work in canneries, processing and packing plants. When their seasonal contracts are done, the workers return to their home countries.

Agreements with the labour-sending countries are designed to ensure that workers from the Caribbean and Mexico will arrive in Canada in time to meet whatever seasonal labour needs arise in the Canadian farm commodity sectors served under the program and, as importantly, will remain to work for the

duration of the harvest. Horticultural employers are thus assured that there will always be a reliable supply of workers to meet seasonal needs and sudden labour emergencies. The participation of the foreign workers has become essential as fewer and fewer resident Canadians are willing to accept the low wages and onerous working conditions found in agriculture.

For the seasonal workers, the opportunity to earn Canadian wages provides a welcome strategy to supplement the low incomes and limited employment available in their home countries where economic conditions have been declining. This is particularly the case in rural areas affected by trade and other economic liberalization policies, loss of traditional export markets (Caribbean sugar and bananas) and disinvestment in small-scale agriculture in Mexico and many Caribbean islands. Remittances of wages earned by the foreign workers generate foreign currency for their countries' economic development.

In 2003, The North-South Institute completed an extensive set of studies looking at the multi-faceted aspects of the Seasonal Agricultural Workers Program — legal, institutional, trade-related, labour, development, community relations and other aspects of the program. With a large number of countries increasingly dependent on foreign migrant workers to meet their agricultural labour needs, the project set out to identify the "good practices" involved in the Canadian program which might be replicated elsewhere, as well as areas for improvement. Site visits and interviews were conducted in Ontario farm communities, and surveys were conducted among a substantial sample of returned workers and officials in the Caribbean and Mexico. This policy brief summarizes and updates the main findings and recommendations from the studies, focusing particularly on Ontario. Summaries of the main background papers can be seen on the Institute's website at: <http://www.nsi-ins.ca/english/research/archive/2004/05.asp>.

The Canadian Economic Context

The demand for foreign workers is linked to the growing importance of horticulture, including floriculture, in Canadian agricultural production and exports. In Ontario and Quebec, the sector accounted for 56 per cent and 42 per cent of crop receipts respectively in 2001, up from 30 per cent in each province in 1981. Rising domestic consumption of fruits and vegetables and access to wider North American markets for Canadian agricultural commodities under free trade has stimulated increased investment, particularly in hydroponic greenhouse production. Farm sizes have increased due to expansion and consolidation of farms, leading to a reduction in family farms and their replacement by corporate farms needing wage labour.

Canada has shifted from being a net importer to a net exporter of six of the seven key crops employing CSAWP workers: apples, tomatoes, tobacco, cucumbers, peaches, cherries, ginseng, and greenhouse tomatoes and cucumbers. Ontario alone exported \$2.6 billion worth of horticultural products to the US and Mexico in 2002, including fresh and processed fruits and vegetables, flowers and nursery products, maple and honey products. Competition is intense in both the domestic and export markets, leading to a reliance on low-cost labour in all three countries — Canada, the US and Mexico.

The number of resident Canadians willing to work in horticulture declined 25 per cent during the 1990s. This leaves the offshore workers as a key component of those sectors in which they are concentrated, sustaining investment, exports and the employment of Canadians. In 2000, Caribbean and Mexican workers represented around 18 per cent of the total horticultural work force in Canada but an estimated 53 per cent of employment in the sectors using CSAWP or 45 per cent in terms of person-hours.

The Institutional Framework

At the intergovernmental level, a Memoranda of Understanding (MOU) between Canada and the governments of the sending countries set out the objectives of the seasonal worker program and describe the steps involved, and each party's role, in bringing the workers to Canada. The institutional arrangements allow workers to enter Canada legally under governmental supervision and are designed to safeguard them from exploitive practices often associated with private labour contractors and illegal migration.

In Canada, Human Resources and Social Development Canada (HRSDC) is the federal ministry with responsibility for the program. Employers requesting migrant workers must first obtain approval from a local HRSDC Human Resources Centre. In accordance with the "Canadians First" policy, employers must submit a human resources plan and demonstrate that they have not been able to find sufficient Canadian workers. In Ontario, Nova Scotia and Prince Edward Island, the application, if successful, is handed over for processing to FARMS (the Foreign Agricultural Resource Management Service), or in Quebec and New Brunswick to its francophone counterpart FERME (Fondation des entreprises pour le recrutement de la main-d'oeuvre étrangère). FARMS or FERME communicates the request to the government of the labour-supply country chosen by the employer.

In 1987, HRSDC privatized the administration of the program to FARMS, a non-profit organization controlled by Canadian growers and funded by user fees, at the same time as the federal government lifted the annual quotas on the number of workers allowed into Canada, which until 1987 had stood constant at about 4,100 for almost two decades. CSAWP was henceforth allowed to operate on a supply and demand basis, leading to a dramatic rise in the flow of seasonal workers, to 8,539 in 1988 and 12,237 in 1989. FARMS informs employers about the program, compiles statistics on the workers' movements and sends reports to HRSDC.

In the sending countries, workers are recruited by the Caribbean Ministries of Labour and the State

Employment Service in Mexico. Officials are normally given up to 20 days in which to select workers in response to a request. The workers' documents, including medical clearances and passports, are presented to a Canadian Immigration office, which issues a work permit for the period requested by the employer. The vast majority of those selected are men. The temporary work authorization does not allow family members or dependents to accompany the workers to Canada.

Workers are sent to specific farms and employers sign an Employment Agreement, which is also signed by a representative of the sending country government and, in the case of Caribbean workers, by the worker. (There are two Employment Agreements, one for Caribbean countries and one for Mexico, broadly similar.) The Agreements provide for a minimum of 240 hours of work within a six-week period or less, including a 14-day probationary period, and free accommodation, usually on the grower's property. Employers must ensure provincial health coverage and enrol workers in the provincial workplace safety insurance program. Other provisions in the Agreements define each party's rights and obligations regarding transportation costs and subsidies, working conditions, wages, meals and repatriation of workers.

Between 70 and 80 per cent of the migrants are rehired by name from a previous season and receive priority in immigration processing. The practice of "naming" allows workers to expect continuing employment each season so long as they remain satisfactory to employers. Farmers benefit from this practice too because the returning workers are already familiar with the farm. In interviews, some workers said they tended to withhold criticism of working conditions on farms so as not to jeopardize their chances of being recalled in a future season.

The sending countries' representatives in Canada (Caribbean liaison officers and staff of the Mexican consulate) monitor the migrants' working conditions, check that wages are properly paid, inspect workers' housing, investigate disputes, assist the migrants with various administrative services, and provide policy

advice and suggestions on the operation of the program to HRSDC. Due to conflict of interest issues confronting the sending country representatives, who must consider employers' needs in certain circumstances and their home government's interest in securing as many work positions as possible, sending country agents are hampered in their capacity to represent workers in labour disputes. Farm workers cannot bargain collectively in Ontario and Alberta and there is no independent voice for the workers in the program.

HRSDC consults regularly on the CSAWP with the Canadian Horticultural Council and commodity sector advisory committees that give growers direct input into policy development. Employers are also represented through FARMS and FERME in the annual meetings that review the operations and administration of the program, including wages and other aspects of the Employment Agreements. While sending country officials may speak from a workers' perspective at these meetings and may consult with trade unions in some of the participating countries, there is no independent labour representation at the annual review discussions.

Issues concerning seasonal agricultural workers also involve provincial ministries. While CSAWP is a federal program, it is the provincial governments in Canada that legislate human rights, employment standards, and workplace health and safety laws, and that define health standards for the inspection of migrant workers' accommodation — all matters that affect the welfare of CSAWP workers. In Ontario, for example, three ministries are involved in these concerns: the Ministry of Labour, the Ministry of Health and Long-Term Care, and the Ministry of Agriculture, Food and Rural Affairs. The provincial government has observer status at the annual CSAWP reviews.

Key Issues and Recommendations

Worker recruitment and orientation issues

The CSAWP Operational Guidelines require that sending countries maintain a pool of workers ready to depart for Canada when requests are received from Canadian employers. Workers are to be available in cases of harvest-related emergencies or when worker replacements are needed. In Mexico, the reserve is equal to 10 per cent of the total number of workers requested each year. The costs associated with meeting this requirement have to be absorbed by the Mexican authorities and by Mexican workers who have to pay for medical screenings and travel to the registration points in Mexico City.

The research in Mexico suggests that Mexican workers being recruited for the program must make five or more trips per season to Mexico City to undergo interviews, medical examinations and documentation procedures. Although the Mexican government provides a small subsidy to help new workers cover their registration expenses, the workers themselves pay most of the costs and many are already in debt by the time they arrive in Canada. Part of the cost relates to HIV and other medical screenings required by Canada. Moreover, in Mexico the Canadian Immigration Health Services has approved only a very few clinics, and none outside Mexico City, that can carry out the required medical screenings.

Workers in several participating countries told researchers that information given to them at pre-departure workshops about the program and what to expect in Canada was inadequate. They complained that they were not always told about the different types of farm work available in Canada, or about their rights under Canadian law, including, for example, the Ontario Human Rights Code.

Recommendations

The Government of Canada should review its requirement that Mexico retain a workers' reserve pool equivalent to 10 per cent of the total number of workers requested in view of the high cost to the authorities and the workers concerned.

The Government of Canada should approve more medical clinics closer to workers' home communities and open an office of the Canadian Immigration Public Health Service in Mexico City. Recognizing the workers' economic needs, the cost of medical examinations and HIV tests should be paid for by employers or the Canadian government.

Caribbean governments should establish transparent screening criteria and processes for the recruitment of workers.

Sending and host governments should ensure that workers receive documents that clearly set out:

- ▶ The different types of farm work available under the program (tobacco, fruits, vegetables, etc.)
- ▶ CSAWP rules and regulations
- ▶ The work situation, employer expectations, workers' rights and Canadian law on fringe benefits, insurance, pension scheme, reimbursement of taxes, workers' compensation, legal deductions made to workers' wages, and mechanisms for claiming benefits
- ▶ Topics could also include work ethic and how to conduct oneself on and off the job.

The quality of information provided at pre-departure workshops in the sending countries should be improved. Former migrant workers could be used as resource persons at pre-departure sessions, and separate workshops should be held for new and returning workers. Repeat workers' workshops could be targeted to different groups; for example, to workers with three to seven years' experience in the program, and to those returning after eight or 10 years (who might have an interest in pension issues).

Transferring workers between farms

The CSAWP agreements allow for the legal transfer of workers to a second farm on completion of their initial assignments (or for other reasons), subject to written consent by the local HRSDC office, the government agent and the worker. Workers who have

finished their duty on tobacco farms, for example, have gone on to work in the apple harvest. Sometimes workers are transferred because of disagreements with their first employer. Through this “best practice” mechanism, transferred workers can extend their seasonal earnings within the eight-month period, and farm employers can obtain additional labour without the necessity of importing new workers through the immigration process. In 2004, 1,863 of the 16,986 farm vacancies filled through CSAWP in Ontario were filled through worker transfers.

However, government agents interviewed for NSI’s study said the transfer provision is under-used because the current procedures for effecting transfers are cumbersome — there is no central coordinating body. FARMS, though it does not administer the transfer process, says that, as a courtesy, it is willing to advise employers which workers will soon be finishing their work terms and may be available to move to another farm. It is up to the employers concerned to make their own arrangements and solicit approval from HRSDC and the government agent concerned. FARMS and the government agent may sometimes facilitate an appropriate “match”. Workers can also request their employers and country representatives to let FARMS know they are seeking a transfer.

Another concern relates to the movement of workers between farms when not authorized by HRSDC and the respective government agents. Unauthorized transfers expose both workers and employers to significant risks; for example, both may be liable to prosecution, and workers may find that they are not covered by health insurance when working for the second employer. HRSDC policy states that offending employers may be expelled from future participation in CSAWP.

Recommendation

The Government of Canada, together with FARMS and the labour-supply country representatives, should review the procedures for enabling worker transfers with a view to making it easier for transfers to occur.

Wages and deductions

According to the Employment Agreements, the migrants are to be paid no less than Canadians performing the same type of work — what is called the “prevailing wage rate”. The method for determining the prevailing wage rate for each commodity has varied over time. Between 2000 and 2002, when no provincial wage surveys were carried out as a basis for comparison, wage rates for the following years were decided through negotiation among HRSDC, the horticultural industry, federal and provincial agriculture ministries and the sending country governments. Since 2003, improvements have been made: new rates have been negotiated for each year through to 2007 based on a Statistics Canada national wage survey conducted for HRSDC in 2003. Thus improvements in setting the rates have been made since NSI’s research was conducted in 2002-03. It is to be hoped that the method for setting CSAWP wages will continue to be based on an objective, transparent process.

CSAWP wage rates in Ontario are generally very close to the provincial legal minimum wage. In 2005, for example, most CSAWP workers in Ontario received \$8 an hour, whereas the provincial minimum was \$7.45. NSI’s research found earlier that resident Canadians were sometimes paid more. For instance, a survey in the Niagara region indicated that Canadian farm workers’ hourly rates were from 9 to 14 per cent higher than the migrants’ for similar tasks between 2001 and 2003.

There is no provision in the Employment Agreements for higher rates of pay for skilled or experienced returning workers who can provide higher value to farmers because of their extensive experience on the same farm. The Employment Agreements state only that workers who have been with the same employer for five or more consecutive years and are ineligible for vacation pay should receive a “recognition” bonus of \$4 per week to a maximum of \$128, payable at the end of the season. Twenty-eight per cent of the workers surveyed in Jamaica reported receiving end-of-season bonuses.

Farm workers in Ontario are not eligible for overtime pay regardless of the number of hours

worked, although some CSAWP workers reported receiving overtime payments. Similarly, some workers received vacation pay while many others did not. Under the Ontario Employment Standards Act, vacation pay and public holiday pay are payable to “harvesters” who have been employed for 13 weeks but not to “general farmworkers”. Some temporary workers perform both roles, requiring the employer to allocate the extra pay accordingly.

Like other workers in Canada, seasonal migrant workers are subject to the rules regarding payment of Canadian income tax. They also pay Canadian Employment Insurance (EI) premiums and contribute to the Canada Pension Plan (CPP). In addition, employers recover a large part of the workers’ airfare (up to \$505 for Caribbean workers and \$350 for Mexican workers) and the full cost of the Canadian work permit (\$150) through weekly payroll deductions. Caribbean workers have 25 per cent of their wages automatically remitted to their governments under the Compulsory Savings Scheme.

CSAWP workers in Ontario paid \$3.4 million in EI premiums in 2001, although in practice the migrants cannot claim regular EI benefits, which are designed to support a worker’s search for another job in Canada. To collect such benefits, the migrants would have to remain in Canada illegally in violation of both their immigration permits and the Employment Agreements. Payment of the EI premium is therefore highly contentious among workers and worker advocates, as well as an extra expense for employers. Workers can claim maternity or parental leave benefits under the EI program, even if their children are born outside Canada, but few CSAWP migrants are aware of their eligibility or understand the system clearly. Moreover, some migrants do not qualify for benefits because they do not work enough insurable hours in Canada.

While they are eligible for Canadian pension benefits, the pension amounts are low, reflecting the workers’ limited earnings in Canada and the fact that typically they will draw their pensions before they are 60 or 65. The pension benefits too are not well understood among the migrants from all countries. For Mexican workers an additional problem is the dearth of Spanish-language information and Spanish-speaking government officers to assist them.

The Caribbean and Mexican government representatives in Canada are responsible for processing workers’ tax returns. In interviews, some Mexican workers said their employers had assisted them with their taxes and others said they had paid private accountants. Many Mexican workers said they did not know whether their tax returns had been filed. The Mexican consulate has arranged with an accounting firm in Leamington to do the work of processing returns for a fee of \$35 paid by the worker and \$35 paid by the consulate.

Recommendations

The Government of Canada should review the participation of CSAWP workers in the Employment Insurance scheme with a view to exempting them entirely or reducing their premiums in recognition of the limited benefits they receive. An alternative suggestion is for their EI premiums to be pooled in a special fund from which workers can draw working capital for starting a small business back home. In addition, some observers have suggested channelling EI contributions to pay for worker training in Canada. For example, training on farm safety, pesticides, or farm machinery would benefit both growers and workers.

The Mexican consulate should contract locally based firms in all communities with Mexican workers to process workers’ tax returns.

The Government of Canada should be preparing for a significant increase in the number of workers applying for pensions in the near future due to the length of time some workers have been in the program. There is a need to improve the program’s efficiency in making pension benefits available to workers.

The Government of Canada, through the Canada Customs and Revenue Agency and HRSDC, should provide targeted information to workers through bilingual workshops and print publications. There is an immediate need for Spanish-language documentation and Spanish speaking officials who can explain the EI and CPP programs to Mexican workers.

Compulsory Savings Scheme

Under the Compulsory Savings Scheme for Caribbean (but not Mexican) workers, 25 per cent of workers' wages are withheld and remitted to their respective governments, thus assuring a minimum level of foreign currency remittances. Caribbean governments retain from five to eight per cent of the funds, depending on the country, as administrative expenses, and the rest is placed in the workers' accounts at the end of the season.

During the research surveys in 2002, most Caribbean workers said they approved of the savings scheme. Positive support ranged from 79 per cent in Jamaica to 51 per cent in Barbados and 42 per cent in Trinidad and Tobago. The major criticism is the length of time before funds are deposited in the workers' accounts at the end of the season. According to worker surveys, the average delay in Jamaica was 2.4 months. Workers in Barbados complained that Barbadian authorities taxed the remitted savings after taxes had already been paid in Canada.

Suggestions for improving the savings scheme included:

- ▶ Depositing the savings in the workers' accounts in increments rather than in a lump sum at the end of the season
- ▶ Allowing workers in all of the countries to withdraw some of the monies for family needs or to support family-owned businesses while the workers are in Canada
- ▶ Giving workers the option to withdraw from the scheme.

Recommendation

The Commonwealth Caribbean governments should review the Compulsory Savings Scheme, with input from program participants.

Steps should be taken to significantly reduce the time workers have to wait before receiving their savings.

Hours of work and rest periods

The majority of migrant workers want to work as many hours as possible so as to maximize their seasonal earnings. The Employment Agreements provide for a minimum average work week of 40 hours and, for Mexican workers, a normal work day of eight hours with the possibility of extension by mutual consent. In the NSI surveys among migrants when they returned home, workers reported that working hours varied extensively during the season, with work day highs of up to 15 hours for some workers at peak periods, and seasonal work day averages of 9.5 hours for Jamaican workers and 9.3 hours for Mexican workers, averaging more than six days per week. Similarly, most Barbadian workers work seven-day weeks.

While farmers and other personnel may also work long hours, migrant seasonal workers generally do repetitive, manual work that often involves working on bent knees, continuous stooping, reaching out from ladders or carrying heavy loads, with few periods of relief. Some Mexican workers reported 10-hour days kneeling and squatting during harvest periods.

Adequate rest is important but not always attainable. The Employment Agreements allow for only two 10-minute rest periods in the day and a 30-minute meal break after five consecutive hours of work. The Agreements call for one day of rest after six consecutive work days but employers may ask workers to defer their rest day during peak agricultural periods for up to six more days.

Currently, farm workers in Ontario are exempted from the legal minimum standards in the Ontario Employment Standards Act relating to maximum hours of work, daily and weekly rest periods, statutory holidays and overtime pay.

Recommendations

Recognizing that employers and workers alike benefit from a productive and well rested labour force, the Ontario Employment Standards Act should be amended to extend minimum standards to agricultural workers. Alternatively, adequate standards for work and rest, including one complete day of rest per week, should

be prescribed in the CSAWP Employment Agreements. Where possible, rest days should occur on weekends when workers may participate in social activities with each other and the broader community.

Where possible, workers engaged in activities entailing repetitive strain should be offered the opportunity to alternate their work with lighter tasks.

Health and safety issues

Agriculture is one of the most dangerous occupations in Canada, accounting for several times the rate of work-related injuries and deaths than many other industries. Farm workers face risks to their health and safety when operating machinery, applying pesticides and other agro-chemicals, or working in the extreme heat of greenhouses and tobacco ovens — to name a few of the situations Caribbean and Mexican workers regularly encounter in Canada. Workers' safety is jeopardized when training is inadequate or workers do not understand safety instructions, as when instructions are delivered in English to Spanish-speaking workers. Gaps in training, instructions and understanding can also lead to food safety problems.

Fewer than half of the CSAWP workers surveyed in their home countries said they received adequate training in the handling of machinery or agricultural chemicals, and many said they were not given protective clothing or equipment to wear. Fewer than half of the workers who said they used pesticides said they had received the recommended training. Other workers complained of being sent into fields shortly after or during pesticide spraying. With regard to tractors and other farm machinery, more than half of the Jamaicans interviewed for the study expressed safety concerns. Workers said that they often feared reprisals if they took their concerns to their employers or to their home government representatives.

In June 2005 the Ontario government extended the Occupational Health and Safety Act (OHSA) to farming operations with paid workers, the new regulation coming into effect on June 30, 2006. Until that date, farmworkers have been exempt from most of the protections in the Act. Farm employers will now have to develop health and safety policies and

programs, advise workers about workplace dangers, provide proper training, and notify the authorities when there are fatalities or critical injuries. The requirements vary for farms with smaller and larger numbers of workers. Officials from the Agriculture and Labour ministries have been meeting with farmers to review the changes over the past year. Some questions remain concerning the responsibility for informing CSAWP workers about the changes and their right to refuse unsafe work, and the means by which workers will be able to appeal to an independent tribunal if disciplined for refusing unsafe work.

Not surprisingly, the combination of long hours and exposure to chemicals and other hazards has resulted in high rates of reported sickness or injury among the migrants, affecting one in three workers from St. Lucia, Grenada and Mexico, and one in five workers from Jamaica, Trinidad and Dominica, according to surveys among returned workers. Reported ailments include vertebrae and knee problems, skin diseases, respiratory tract infections, hypertension, allergies and depression among older workers. However, the NSI research found that between one-half and one-third of workers tend to go on working rather than risk losing wages or being considered so unfit they could be sent home. Many Mexican workers reported difficulty communicating their health concerns to employers due to the language barrier.

Health problems can persist after workers return to their home countries, when they no longer have health coverage provided through OHIP or the additional private coverage several governments arrange while their workers are in Canada. As many as one-third of Jamaicans in the survey sample reported they suffer long-term ailments arising from their work stays in Canada.

Recommendations

Revisions taking effect in 2006 under the Occupational Health and Safety Act extend new protections to farm workers in Ontario. Training should be given to CSAWP workers, employers and government agents regarding workers' rights to refuse unsafe work under the new regulation. The Employment Agreements should be amended to ensure that workers cannot be penalized for refusing unsafe work.

Workers who need treatment for health problems derived while working in Canada should continue to be covered under health insurance after their return home, perhaps through agreements between the Canadian insurers (Ontario) and the home country social security scheme.

The Government of Ontario and regional municipalities should try to recruit Spanish-speaking health professionals in counties where a high numbers of Mexican workers are employed.

Workers' accommodation

Employers are obligated to provide “adequate living accommodation” for CSAWP workers, including separate accommodation for women workers. Workers are typically housed in bunkhouses or trailers, or in farmhouses or “instant” homes. To most workers surveyed, the accommodations were acceptable. There is consensus that housing standards have improved over the years, although overcrowding was reported as a concern on some farms and some housing units lacked indoor plumbing for water, washing and toilet facilities. Some employers, on the other hand, provide their workers with separate bedrooms, sufficient bathrooms, and air conditioning in summer.

The Employment Agreements require that accommodations be inspected annually to ensure that they meet provincial health standards for occupied dwellings (including water safety), a task normally undertaken by municipal health inspectors following Ministry of Health guidelines. The NSI research found that inspections were not always carried out before the workers arrived, when it may be up to the sending government agents alone to approve or reject the housing. If a government agent refuses to provide workers because of substandard housing, an agent from another country may accept the housing for his country's workers instead. This competition for placements can soften criticism of housing conditions that might otherwise be voiced by the government agents. Similarly, an agent may be reluctant to press employers to undertake expensive repairs if workers point out deficiencies in their living conditions.

While HRSDC asserts that local Human Resource Centres will not validate an authorization for foreign workers without documentation showing that housing has been approved by the relevant provincial or municipal health unit, practices appear to vary by municipality. There are also concerns regarding the kind of inspections that are undertaken (for example, health inspections do not cover fire safety or building standards), and the number of inspectors available, as well as jurisdictional issues. FARMS has recently distributed more detailed guidelines on housing standards to employers.

Recommendations

The Government of Ontario should upgrade the Ontario Ministry of Health Guidelines on Accommodation for Migrant Workers (last revised in 1982) in consultation with representatives of the labour supply countries and other stakeholders. Inspection procedures and standards should be harmonized across the province. In addition, regional and municipal health inspectors should be encouraged to undertake mid-season inspection of farms.

Farm rules

The Employment Agreements state that farmers can establish rules covering safety, discipline, and care and maintenance of property, and that the rules should be posted and copies given to the government agents. NSI research found that on some farms there were no posted regulations. In some cases, rules were posted in English but not in Spanish for Mexican workers.

The research found that employers can exercise considerable control over workers' movements and social life through the imposition of farm rules that bar workers from leaving the grower's property or restrict the entry of visitors. Some employers have actively encouraged their workers to limit their social commitments in their off hours, so as to inhibit social networks developing among their workers.

More positively, some employers have provided bicycles or other vehicles for their temporary workers' use and organized recreation and social events for them, sometimes accompanying their workers to church or

transporting them to picnics or tourist venues. Many farms provide TV, table games and sports equipment. In a few cases, employers have also facilitated spousal visits to Canada for workers with eight-month contracts. Exceptionally, a few long-time CSAWP employers have gone in the reverse direction, visiting long-time workers in their home countries during the off-season and building friendships with the workers' families.

Recommendations

FARMS should take a lead in developing model guidelines for farm rules to be included in its Employer Information Package. Material could be added to the package about workers' rights, the OHSA, anti-discrimination laws and the Ontario Human Rights Code.

Employers should establish fair and consistent rules and regulations. They should be posted, along with information about the program rules and workers' rights, where the migrants can easily see them, and in English and Spanish where there are Spanish-speaking workers. Farm rules should not attempt to restrict the mobility of workers or deny them opportunities for social contact with the wider community.

Dispute resolution and workers' rights

There is no formal mechanism in the Employment Agreements for ensuring that employers and workers respect their obligations under the contracts. There is no grievance process or formal method for handling disputes. Farmworkers do not have the right to bargain collectively in Ontario or Alberta. The only way the CSAWP workers can hope to enforce the provisions of their Employment Agreements is by relying on their government representatives — Caribbean liaison officers and Mexican consular staff — to monitor their working conditions and intervene with employers.

In the research surveys, workers expressed different levels of satisfaction with their government representatives. Most notably, nearly half of the returned Mexican workers surveyed in Mexico in 2003 said they were unhappy with the services of the Mexican consulate in Toronto. Reflecting their

frustration, 60 per cent of the returned Mexican workers surveyed in 2003 said they would support joining a union in Canada, and another 14 per cent said they would do so in some circumstances. In 2003, the Mexican consulate in Toronto employed five officers and some volunteers to look after 7,633 Mexican seasonal workers in Ontario. Since then, Mexico has opened a new consular office in Leamington, Ontario, Canada's greenhouse and tomato "capital" some four hours' drive from Toronto. Mexico appointed three additional officers to the Leamington office when it opened in March 2005. Jamaica also opened a liaison office in Leamington in 2005.

In the home country surveys, migrants from all the participating countries indicated they would like more ongoing assistance from their respective government representatives in Canada. A small percentage of Caribbean workers and one-quarter of Mexican workers reported that their employers had mistreated them on occasion, but many did not report the problems to the government agents. Thus the agents may not have a complete picture of the difficulties that workers have experienced with their employers.

When labour disputes or other conflicts arise, the sending country agents are placed in an awkward situation. On the one hand, they are designated as the workers' representatives for the purposes of the Employment Agreements. On the other hand, the CSAWP Operational Guidelines state that the agents' duty is to help "ensure the smooth functioning of the program for the mutual benefit of both the employers and the workers". This requires the agents to act as "mediators" or "neutral arbiters" in worker-employer disputes in conflict with their role as worker representatives. "I am here for the farmer and for the worker," one government agent declared. The agents' capacity as advocates for workers is further constrained by the requirement that they source as many farm positions as possible for their citizens so as to maximize foreign exchange remittances to their country. The resulting competitive structure among the labour supply countries is encouraged by both HRSDC and employers, and tends to make the government agents responsive to an employer's point of view rather than potentially risk "losing the farm" to another country.

The lack of independent representation for workers becomes particularly acute in cases involving

involuntary repatriation. At any time after the initial 14-day probation period, employers have total discretion to terminate a worker's employment for "non-compliance, refusal to work, or any other sufficient reason". The government agent may or may not be consulted. Unless the worker can be transferred to another farm, the worker must promptly leave Canada. There is also a financial penalty. If the worker was not requested by name, he or she will be liable for the cost of the flight home. NSI's research revealed that employers have repatriated workers for reasons that include falling ill, questioning wages, refusing unsafe work, and complaining about radio noise and humidity emanating from a greenhouse into the worker's adjacent accommodation.

While migrant workers are entitled to the same rights as Canadian-based farm labourers to protest their dismissal before a Canadian court or employment tribunal, in practice the repatriation removes the worker from the country before he or she can exercise this right. Under the terms of the Employment Agreement and the temporary work visa, the worker must leave Canada as soon as his or her employment ends. This suggests there is a need for an independent body that will provide due process to both workers and employers in the event of disputes.

Recommendations

The Government of Canada should institute a fair and impartial dispute resolution system to hear disagreements relating to the Employment Agreements. The process should be open, quick and cost-effective for both worker and employer, and the worker should be entitled to independent representation.

The government should explore the feasibility of allowing workers facing repatriation a two-week waiting period before being sent home. This would give the worker the opportunity to raise a complaint about the validity of the repatriation decision. The worker may be transferred to another farm during this period.

The CSAWP Operational Guidelines should be revamped to clarify that, while the government agent will facilitate the smooth functioning of the program, his or her role is to represent the workers' best interests should a conflict arise between a worker and employer.

Guidelines or a policy statement should be drafted on the interpretation of "non-compliance, refusal to work, or any other sufficient reason" in the Employment Agreements.

There should be a central database of worker complaints that have been validated by government agents, FARMS or HRSDC. There is currently no consistency in how worker complaints are recorded or dealt with. Sometimes government agents share their information with FARMS and at other times they do not. Without access to some dispute resolution or tracking mechanism, there is the danger that unacceptable working conditions will continue unaddressed, to the detriment of both resident Canadian and migrant farmworkers.

Right to unionize

Farmworkers in Ontario are not covered by the Ontario Labour Relations Act, which means they cannot engage in collective bargaining. In 1999, the Supreme Court of Canada ruled that farmworkers enjoy the same rights as other workers to associate without intimidation, coercion or discrimination by their employers. Instead of including them under the Labour Relations Act, the Ontario government enacted the Agricultural Employees Protection Act of 2000. This legislation permits farmworkers to form employee associations, but such associations when formed have no teeth. There is nothing in the law that requires employers to negotiate or do more than acknowledge receipt of workers' submissions. The United Food and Commercial Workers (UFCW) union, which has argued that Ontario's position contravenes the equality provisions in the Charter of Rights, is attempting to challenge the 2000 legislation.

In Quebec, it is reported that a small number of CSAWP workers have worked in unionized greenhouse operations covered by a collective agreement. Even if the CSAWP Employment Agreement were to be modified to take account of workers in unionized environments, it is thought sending government agents could still be involved with these workers in matters not covered by collective agreements.

The UFCW has established Migrant Worker Support Centres to assist seasonal farmworkers at Bradford, Leamington, Simcoe and Virgil in Ontario and at St-Rémi in Quebec, communities with high concentrations of migrants. Union-paid staff helps workers obtain health services and workers' compensation benefits, advocate with employers, and provide translation, health and safety training, and other services.

Judging from experience in the United States, unionization among farmworkers could result in increased wages and benefits for some migrant workers. Another outcome, however, could be increased mechanization of farms, especially those farms that harvest produce for processing, and this could reduce employment for migrant workers.

Recommendation

CSAWP workers should be informed during orientation the extent to which they have the right to join an employee association or trade union in Canada and this information should be included in the FARMS Employer Information Package. The CSAWP Employment Agreements should be amended, as appropriate, to recognize and protect the workers' rights to freedom of association without intimidation, coercion or discrimination.

CSAWP and the international conventions for migrant workers

While Canada's Seasonal Agricultural Workers Program adheres in many respects to international conventions regarding the treatment and rights of migrant workers, there are some areas where the CSAWP falls short of meeting international standards as set out in the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (effective July 2003) and four earlier conventions of the International Labour Organization. Canada has yet to ratify any of these instruments.

According to the conventions:

- ▶ Workers should not sustain costs in the recruitment and placement for employment

- ▶ They should have the right to unionize, bargain collectively, and elect representatives for this purpose
- ▶ Voluntary organizations that assist migrant workers should receive formal recognition for their role in the process
- ▶ Workers should have mobility rights and the freedom to choose their residence
- ▶ Employment contracts should indicate how they would be enforced
- ▶ There should be effective enforcement mechanisms.

Relations with Ontario rural communities

While migrant workers have been a significant economic force in parts of rural Ontario for 40 years, many feel there is an invisible barrier between them and the local population. There are few opportunities to interact socially or develop friendships with local people. Physical separation on farms, long workdays, cultural differences and language problems exacerbate the migrants' feelings of social exclusion.

Contact between the migrants and the surrounding population occurs mainly through commercial interactions and some recreation, health care, literacy, and other support programs developed by churches and community organizations. Several community groups organize welcome activities. In addition, faith-based and labour groups that urge social justice for the migrants attempt to promote broad-based communication between the local population and the seasonal workers. However, all these programs suffer from a lack of stable funding and the absence of formal recognition by other CSAWP participants. Combined, these efforts reach only a small fraction of the approximately 17,000 Caribbean and Mexican workers who come to Ontario each year.

Merchants and other businesses certainly appreciate the value of the seasonal migrants' direct spending in the rural communities, which amounts to an estimated \$82 million a year. Workers spend on average about \$1,500 on food, clothing, family gifts and other consumer items, and such articles as second-hand bicycles and long-distance phone cards. Local banks and wire transfer services capture a large share of the migrants' spending through the

processing of remittances, which in the case of Mexico costs an average of \$23.25 per remittance. On average each season, Mexican workers send home approximately \$4,835 and Jamaican workers approximately \$1,317 through remittance transfers.

Recommendations

The Governments of Canada and Ontario should conduct workshops and public forums in rural Ontario communities to promote greater awareness of the migrants' economic and social rights and their contributions to host communities and to promote greater cultural understanding. Both levels of government should formally recognize and financially support community activities to welcome the migrants and contribute to their human and social well-being while they are in Canada.

Impact of CSAWP on the workers' home communities

The migrants' seasonal earnings in Canada can equal several times their annual incomes in the Caribbean and Mexico. Many workers in the program are male heads of household from communities where local incomes are depressed. The migrants rely heavily on their Canadian earnings to maintain the well-being of their families at home, which often include adult dependents as well as children. Research in the workers' home countries found that:

- ▶ Children's education is a high priority for the workers' extra income. More than one-third of Jamaican workers' remitted earnings are spent on their children's schooling. In Mexico, researchers found that children of CSAWP workers stay in school markedly longer than children in the same communities whose parents have not worked in Canada, and many go on to find work in non-agricultural occupations.
- ▶ Housing is another priority for the additional income. Many Mexican workers invested their savings to rebuild or remodel their homes or expand room for them in parents' houses. The longer the workers remained in the program, the more modern are the amenities in their homes.

Due to the fact that workers come from different communities, it is not easy to determine the economic impact of the workers' remittances. Some workers have set up small shops or other businesses, and in Mexico house construction has stimulated some local economic activity. In terms of agricultural improvements, some Jamaican workers have tried to adapt farming methods they learned in Canada to their own small family holdings in Jamaica, and a few said they had taught other farmers the rudiments of drip irrigation based on what they had picked up in Canada.

A key consideration for the future is whether the value of the CSAWP can be enhanced to deliver additional economic benefits for the sending countries. For example, it was suggested during the research in the Caribbean that workers could be taught specific farming skills in Canada that could then be put to use if local authorities in the Caribbean were to organize agricultural projects, perhaps in conjunction with improvements to local infrastructure and the provision of low-interest loans for equipment and farm inputs. Another suggestion made was that some workers could be given additional training and deployed as farm extension workers. In interviews, some Caribbean workers said they would like to learn about crop sciences, animal husbandry, irrigation, plant disease control and other farming practices that could be taught in Canada if a capacity-building element were added to the CSAWP.

There is also the possibility of creating a fund from some portion of the workers' remittances to support the development of small businesses by workers and their families. If managed well, the fund might attract additional assets from local financial institutions or donors. As noted earlier, a portion of the workers' EI premiums could conceivably be directed to such a fund.

Recommendation

The Governments of Canada and the labour-supply countries should review suggestions for enhancing the benefits of the CSAWP for the workers and their communities, including but not limited to the suggestions made above.

