



Landed Status Now!

Pragmatic policy changes to ensure rights and dignity for migrant workers

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.

I. WHO WE ARE

These submissions are being jointly made by Coalition for Migrant Worker Rights Canada (CMWRC) and the Migrant Workers Alliance for Change (MWAC). CMWRC is the representative body of migrant workers in the country. Our members include Cooper Institute in Prince Edward Island, Caregiver Connections Education and Support Organization (CCESO), Migrant Worker Solidarity Network in Manitoba, Migrante Canada, Migrant Workers Alliance for Change in Ontario, Radical Action with Migrants in Agriculture in Okanagan Valley, Temporary Foreign Workers Association in Quebec, Temporary Foreign Workers Coalition in Alberta, Vancouver Committee for Domestic Workers and Caregiver Rights in Vancouver and West Coast Domestic Workers Association in Vancouver.

The Migrant Workers Alliance for Change (MWAC) includes Alliance of South Asian Aid Prevention, Asian Community Aids Services, Caregivers Action Centre, Fuerza Pwersa, Industrial Accident Victims' Group of Ontario, Justicia for Migrant Workers, Legal Assistance of Windsor, Migrante Ontario, No One Is Illegal – Toronto, Parkdale Community Legal Services, Social Planning Toronto, South Asian Legal Clinic of Ontario, Unifor, United Food and Commercial Workers, Workers' Action Centre and Workers United.

These recommendations have been endorsed by AIDS Committee of Durham Region, Jesuit Refugee Service, Retail Action Network BC, Refugees Welcome Fredericton, SAME Brock Chapter, MigrantWorkersRights Canada, BC Employment Standards Coalition, Migrante BC, PINAY Quebec, People's Health Movement Canada/Mouvement populaire pour la santé au Canada, Maritimes-Guatemala Breaking the Silence Network, Migrant Worker Health Project (International Migration Research Centre), Gabriella Ontario, AAFQ (association des aides familiales du Québec/Caregivers Association of Quebec) and Inter Pares.

II. WHO WE WORK WITH

CMWRC members organize and work with migrant workers under the TFWP, including those working in the Caregiver Program (formerly Live-in Caregiver Program), the Seasonal Agricultural Workers Program (SAWP), the Agricultural Stream, and the Stream for Low-wage Positions. Unless otherwise specified, we are referring to these workers when using the term 'migrant workers' in this brief.

III. RECOMMENDATIONS

Immediately

1) This review should conduct, or lead to, a meaningful, multi-Ministerial, intergovernmental review that provides safe spaces to seek out the voices and lived experiences of migrant workers and their families. All future legislative, regulatory or policy changes about migrant workers must centre the voices of migrant workers.

2) **Ensure permanent immigration status for all migrant workers**

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.

- 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.

3) Ensure access to all social services and benefits

Ensure access to Canada Pension Plan, Employment Insurance and other federal entitlements to migrant workers already in Canada and portable benefits to migrant workers who are no longer here.

As interim measures

4) Stop the unilateral repatriation of migrant workers

- a) End all immigration enforcement and removal orders against migrant workers.
- b) End repatriation on medical grounds of migrant workers.

5) Increase access to permanent residency by reforming the Caregivers program and the Provincial Nominee Program

- a) Restore Caregivers' guaranteed right to apply for permanent resident status. Currently, only a small quota of Caregivers can apply for permanent residency, and must meet very restrictive criteria even after working here for two years.
- b) Expand the Provincial Nominee Program (PNP) in every province and territory to give guaranteed pathways to permanent residency to migrant workers deemed 'low-skilled'.
 - Allow workers to self-nominate under expanded PNPs so that they are not reliant on employers.
 - Allow migrant workers to apply under PNPs without a full time job confirmed.
 - Allow migrant workers who have applied under a PNP to continue to live in Canada on an open work permit until application is processed.

6) Enable labour mobility by issuing open work permits, removing caps and limits on permits, regulating recruiters, giving comprehensive access to EI and removing LMIA fees.

- a) Create open or sectoral work permits for migrant workers: Most work permit holders in Canada are not on closed permits (e.g. International Mobility Program workers, Post graduate work permit holders, refugee work permit holders, etc.) - low-waged migrant workers should have the same access and mobility.
- b) End the four-year limit on work permits: Rather than value their contributions, current policies forces migrant workers to leave after four years. This uproots long-term workers who have built lives and relationships here and helped build local businesses.
- c) 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. Migrant workers are being forced out of jobs they have held for years.
- d) Allow workers to change jobs: No new permits are being issued in the food and retail sectors in regions with unemployment greater than 6%. This moratorium has effectively locked workers already in Canada working in those industries into those jobs, greatly increasing the chances of exploitation and employer dependence.
- e) 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 shouldn't have to pay to work.
- f) Restore portable EI benefits: Allow Seasonal Agricultural Workers and other migrant workers access to pensions, parental benefits, EI and supports after injuries even after they leave Canada.
- g) 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 don't 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*.

7) Reunite families

- a) Currently, migrant workers are not able to come to Canada with their families. Visiting families at home is also often impossible. In the case of seasonal migrant workers in the Atlantic provinces, temporary resident visas that are required to enter and exit the country take tremendously long to process, leaving workers to spend the months between work simply living in remote locations without employment or income. Caregivers and agricultural workers are unable to visit their families because of a lack of guaranteed vacation.
- Mechanisms must be developed to allow migrant workers' families to travel with them to Canada and be provided with open work permits, as is the case with other 'high skill' workers.
 - Employers must be mandated to provide paid vacation including return airfare to migrant workers (as is the norm in other parts of the world).

8) Support workers' voice by ensuring access to collective bargaining, granting migrant workers the ability to negotiate contracts, and increasing proactive enforcement.

- a) Ensure access to collective bargaining:
Currently, caregivers are expressly excluded from labour relations acts in most provinces. Their work in private homes also impedes access to the standard model of organizing. Similarly, migrant agricultural workers lack adequate, constitutionally compliant protection for the right to bargain collectively.
- With provincial partners, the Federal Government must develop and institute mechanisms for migrant workers' access to a sectoral platform for collective bargaining.
 - Migrant worker groups and community organizations in Ontario are currently making recommendations for sectoral and broader based bargaining frameworks in connection with the ongoing Changing Workplace Review. Migrant workers must be enabled to participate in any policy development ensuring that the terms of their migration allow for effective and meaningful collective bargaining.
- b) Allow migrant workers a clear path to negotiating their contracts
Currently, contract negotiations for migrant workers programs have little avenue for migrant worker participation. In the SAWP program, the contract is negotiated between the Province, the Federal government and FARMS Ontario, FARMS BC, WALI, FERME, etc. In the case of CP and TFWP, model contracts are issued by Employment Social Development Canada (Annex 2). No migrant worker input is currently available in the negotiation of these contracts.
- Work with migrant workers and their representative community organizations and provinces to develop migrant worker representation in the negotiating/setting of the terms of employment contracts for migrant workers.
 - Ensure that migrant workers' expectations about their employment are met on arrival through protection against contract substitution and the ability to negotiate for any greater benefits or entitlements.
- c) Increase proactive enforcement
Major reforms of the TFWP have been directed at stopping 'abuse' of the program by employers in the context of pitting Canadian citizen and permanent resident workers against migrant workers. While the system has been revised to target employers' non-compliance with LMIA obligations, it does not center the potential abuse or exploitation of migrant workers. Enforcement through fines and exclusion from the LMIA also fails to account for migrant workers' closed work permits, tied immigration status, and financial insecurity. Employers are currently able to immediately deport seasonal agricultural workers who try to enforce workplace rights. Either through intimidation or repatriation, migrant workers' status leads to substantial barriers to access rights. To ensure real rights, the Federal Government should take the following steps:

- Federal government resources should be devoted to emphasize proactive enforcement of employment standards, health and safety and other provincial and federal standards in sectors and workplaces employing migrant workers. The Federal Government should work with workers' advocates and community organizations to accomplish this goal. Penalties on employers should result in increased rights and access for workers.
 - Work with provinces to establish a formal anonymous and third party complaint system. Inspection initiated after a formal anonymous or third party complaint is filed should aim to detect and assess monetary (e.g., unpaid wages, overtime pay, public holiday pay, vacation pay, etc.) and non-monetary violations (e.g., hours of work, breaks, agreements etc.), remedy violations with orders to pay for all current employees, and bring the employer into compliance for the future. Any report should be made available to all employees and there should be an appeal if no proactive inspection is conducted.
 - Provide anti-reprisals protection to those workers whose workplace is subject to proactive inspection. A complaint brought forward by a third party (for example a worker advocate or community stakeholder) should automatically trigger an inspection. The inspection team should collaborate with them in determining investigative strategies. Reporting tools to third-party complainants should also be developed.
 - When migrant workers, worker advocates, and community organizations bring forward individual complaints and there are confirmed violations, the Federal and Provincial authorities should work together to expand investigations to the entire workplace and carry out ongoing follow-up to ensure compliance (with anti-reprisals and transitional protections if the workplace is shut down).
 - Employers or recruiters found in violation of employment standards and related legislation should be clearly identified on the Federal as well as provincial websites (e.g. ESDC; IRCC; consulates). This will serve as a disincentive to employers and an education tool for workers.
 - To address these barriers, the Federal Government should create an open work permit program for migrant workers with workers' rights complaints against employers and recruiters to offset reprisals and repatriation threats. Open work permits for workers should instead be streamlined, and worker complainants at the provincial Ministry of Labour should have immediate access to open work permits. If the permit is made discretionary, expedited mechanisms for appeals should be instituted. This program would require active cooperation and advocacy between provinces and the federal government, as current anti-reprisals protections in provincial labour and employment laws do not prevent repatriation.
 - Provide a transparent, impartial process of appeal available to all workers before any decision to repatriate is made, especially in the context of illness, injury, or complaints.
 - A bi-annual report on enforcement activities should also be issued.
- d) In consultation with migrant worker groups, develop a one-stop shop to provide migrant worker services and serve as an accessible complaints office.

9) Ensure access to health services

- a) Migrant workers' health care services vary across the country. In British Columbia and Ontario, employers are meant to be responsible for providing healthcare for the first three months. In other cases, migrant workers are forced to take on private health insurance. Migrant workers are facing unreasonable delays in getting their applications for health status processed even after the three-month period, sometimes waiting the entire length of their contract to receive health care. Migrant workers, particularly those that are forced to leave abusive employers, may fall out of status, or are left in between work permits or employers for months at a time. Though federal law does not deny health care on the basis of immigration status, provincial legislation does. Workers are able to access lifesaving and emergency services at cost, but cannot access preventative care, leading to greater financial burden on public services and public health concerns.
- Regulations to ensure consistent and timely access, i.e. immediate access to health care, must be developed for all migrant workers regardless of immigration status.

- Migrant workers who must stay in the country for medical treatment past the end of their work permit often lack provincial health insurance plan coverage. The federal government should work with its provincial counterparts to ensure that injured migrant workers have access to such coverage or any comparatively stronger benefits (e.g. WSIB, workers' compensation).
- Injured migrant workers should be granted open work permits.

10) Expand eligibility criteria for services under Canada's National Settlement Program

- Include all migrant workers participating in the Temporary Foreign Worker Program and the Seasonal Agricultural Worker Program as recommended by the Canadian Council for Refugees.

11) Sign, ratify, incorporate and implement key international conventions including:

- U.N. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
- International Labour Organization's Domestic Workers Convention (2011)

12) Develop specific mechanisms to improve migrant worker housing

a) Migrant workers' housing (including farm workers) is often excluded from residential tenancies statutes. These gaps in protection result in unsafe, crowded and unsanitary living conditions for many migrant workers. Housing guidelines are inadequate and out-dated and enforcement is not consistent or effective.

- Inspect all workers' housing before and after occupancy.
- Frequent and random inspections should be mandated throughout the season.
- Employers who are found to be in noncompliance with standards for adequate housing should be terminated from the TFWP and adequate new jobs and open work permits provided for the affected migrant workers.
- Immediately ban the practice of housing workers above or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters. These conditions should also apply to housing rented to TFWs by employers.

IV. RESPECT THE VOICES & PARTICIPATION OF ALL MIGRANT WORKERS

"The government should encourage that workers are not scared. They should say whatever the problem, come right away to us. Because as an employee I am scared of the government." (Migrant agricultural worker)

"I think they must be open their eyes to what is happening, try to think the reality around workers. Don't get blind because they are gaining. The workers doing their jobs, they apply because they want the jobs. They give also their full support, their heart on the job. But employers and government ignoring them and trying to take advantage of them. Hopefully they will listen, they will know how to listen to all workers in Canada." (Live-in caregiver)

Throughout the many reforms over the last seven years, there has been no official review of the programs in the relevant Standing Committees since 2009. As it is structured, the current review cannot ensure the full participation of racialized, low-waged migrant workers.

However, it remains imperative that this government, this committee, and the Ministers responsible for the various portfolios dealing with migrant work (such as Immigration, Refugees, Citizenship Canada and Employment Social Development Canada) actively seek out and centre the experiences of migrant workers and their families before making any substantive changes to these programs. It is important for the Committee to remember that migrant workers face obstacles to speaking out at work or in Parliament, especially because their presence in the country is tied to the specific employer(s) on their closed work permits under immigration

law. The workers relevant to any review necessarily include those who have been through the system and were forced to leave Canada (e.g. due to injury, illness, or complaint) or become undocumented here. This review should conduct, or lead to, a meaningful, multi-Ministerial, intergovernmental review that provides safe spaces to seek out the voices and lived experiences of migrant workers and their families. All future legislative, regulatory or policy changes about migrant workers must centre the voices of migrant workers.

V. IMMIGRATION FOR ALL MIGRANT WORKERS

*“We came here to work and to live. Not we came here to work and to die.”
(Migrant agricultural worker)*

“What I am saying, we are going to get it. Because we love our job, do to the full of our ability. Fine. So treat with respect. And that’s what we ask for. Respect. Only way we can get freedom is citizenship. Not landed status, I am going to go to citizenship. When we have citizenship, you come to work and build your country.” (Live-in Caregiver)

The damage of skill classifications

Migrant workers are employed in various sectors of the economy, including as caregivers, farmworkers, greenhouse workers, and in food and retail services, with many classified as ‘lower-skilled’ (with high-school education or less, under the National Occupation Classifications C and D (NOC C & D)).

These migrant workers include those working in the Caregiver Program (formerly Live-in Caregiver Program, and comprised largely of Filipina, but also Indonesian and Latin American women); the Seasonal Agricultural Workers Program (SAWP, which is comprised largely of Black and Brown men from Mexico and the Caribbean), and the TFWP Stream for Low-wage Positions (which includes men and women from countries in the Global South).

For the most part, workers deemed ‘low-skilled’ are racialized, and it is also women’s care work and domestic work that is being deemed ‘low-skilled’. The devaluation of racialized and gendered work performed by poorer people is central to the ways in which migrant worker programs operate.

The skill classifications are important for at least two reasons:

1. they determine the employers, locations, and types of jobs that workers can apply for and work at; and,
2. they prevent certain workers from applying and entering as permanent residents.

They also generally prevent these same workers from applying to become permanent residents (and eventually citizens) even after having lived and worked in Canada.

There are some exceptions in different provincial and territorial nominee programs, but these exceptions are problematic, remain limited, depend on employer sponsorship, and do not exist in all provinces. For example, although Ontario has a provincial nominee program and a new Ontario Immigration Act, it does not provide a pathway to permanent residence for so-called ‘lower-skilled’ migrant workers. At the federal level, none of the streams mentioned above are recognized by Canada as being sufficiently ‘high-skilled’ work to merit permanent residence on arrival.

The former Live-in Caregiver Program *did* provide a guaranteed eligibility for live-in caregivers who had completed the required hours of work to apply for permanent resident status in Canada. However, even this program was recently abolished, leading to greater uncertainty for migrant caregivers.

In contrast to ‘high-skilled’ workers who are recruited for permanent residence on arrival, or allowed to apply for permanent residency after living and working here, ‘lower-skilled’ migrant workers are required to leave the country after a maximum 4 year stay on work permits (and are ineligible to return and work for 4 years). The implementation of this ‘4-in-4’ rule began on April 1, 2015, with exceptions that do not apply to ‘lower-skilled’

migrant workers.

Migrant worker programs are not ‘temporary’

The sectors where migrant workers labour are clearly not peripheral - our society could not function without the food, care, and service that they provide. Similarly, the labour that they perform is not temporary:

- the agricultural worker program is in its 50th year (with some workers, and now their children, in the program for decades),
- the domestic worker or caregiver program has been around in one form or another since the late 1800s (with no sign of a universal child and elder care program in sight),
- the so-called low-skill (now low-wage) program has remained in high demand in some form since the late 1880s when Chinese railroad workers first arrived in Canada.

Since so-called ‘low skill’ migrant workers cannot apply to enter as permanent residents, they must come to live and work in Canada on work permits. The migrant workers we organize with are forced into further precarity by being placed on closed or tied work permits.

Closed work permits and Temporary Status: Indentured work

Closed work permits that are tied to a single employer are a modern form of indentured labour where migrant workers are not free to circulate in the labour market like other workers. Closed work permits, coupled with inadequate monitoring and enforcement of labour standards, create the conditions that allow unscrupulous employers and recruiters to abuse migrant workers with impunity. Closed work permits facilitate employer control and exploitation of workers including working excessive hours without payment for overtime, unpaid hours of work and often less than minimum wage pay. The process and costs for workers to change employers are prohibitively long and expensive. While waiting for a new Labour Market Impact Assessment and work permit, migrant workers may spend six to ten months unemployed and with no source of income. Such a process might compel workers to either continue working under abusive conditions or engage in unauthorized work in order to earn money while waiting. The recent imposition of caps on new permits has further intensified the conditions for abuse since migrant workers already here in certain sectors can no longer access work permits to change employers. This lack of mobility in the workplace is only made worse when combined with the fact that many migrant workers live in employer-provided or controlled housing. In these conditions, there is often no clear boundary between being ‘on-duty’ and ‘off-duty’.

Dividing Workers & Separating Families

Canadian citizen workers have workplace mobility and, through employment insurance and social assistance supports, have the ability to re-train for jobs or access basic income in between employment. This mobility and security gives workers the choice to leave jobs that are discriminatory, abusive or are making them sick. Closed work permits create a layer of workers that do not have this choice; as a result, wages and working conditions for these workers can be reduced. This result impacts wages and working conditions in the entire sector and reduces public health and decent work for all.

Equally importantly, most migrant workers come to Canada without their families. These lengthy periods of separation have severe impacts on migrant workers and their families, both for those who are kept temporary as much as for those who are able to remain here and eventually reunite with loved ones in Canada. As long as there is a separation between temporary and permanent status – with criteria created to allow a limited group of migrants to transition from temporary to permanent status – employers, immigration consultants, and recruitment agencies will generate exploitative practices to take advantage of migrants’ needs and dreams.

Concerns with the Caregiver Program introduced in November 2014

The Live-In Caregiver Program had a pathway to permanent residency. The LCP was eliminated by the Harper Government in November 2014 and replaced with a new branch of the Temporary Foreign Worker Program

(TFWP). The rationale for the changes to the LCP on the part of the government was to “protect caregivers from abuse and reduce family separation.” However, the changes were ushered in following closed-door consultations that excluded caregivers and their advocates. The new program, in effect, increases worker insecurity and vulnerability to labour exploitation.

Under the new scheme, the ability for caregivers to apply for permanent residence has been severely restricted while closed work permits have remained intact. New eligibility requirements relating to language and education for permanent residence were also introduced with the result that some caregivers who are qualified to work in Canada as caregivers may not be eligible to apply for permanent residence.

As the Standing Committee has already heard, current proposals to transfer caregivers’ employment to recruiters, agencies, and other third parties *flies in the face* of caregivers’ experiences, demands, and all of the available evidence about precarious triangular employment relationships.

Immigration For All Workers.

This committee can provide a meaningful review that leads to real change, including the provision of permanent resident status for all migrant workers. All migrant workers must be able to immigrate to Canada immediately, independently and permanently without depending or relying on the sponsorship or good will of their employers or third party agencies. Such a program should not exclude on the basis of ‘skill level’, particularly as ‘skill level’ is often a euphemism for discrimination and devaluing certain work and contributions on the grounds of race, class, and gender that should otherwise be illegal.

VI. PROTECT THE HEALTH OF ALL MIGRANT WORKERS & THEIR FAMILIES

“You hear about Canada. When I hear about Canada, I didn’t know that when I come here, I am gonna lose my foot, suffer so much in Canada. I suffer so much in Canada. [...] So it’s like that I know that so much thousands of people come here and get so much bad treatment, and the treatment is the worse. Listen, the government get every benefit off of we guys. Because you come in legal, you pay in to the system, the government should have stand up for us and lead the change.” (migrant agricultural worker)

“Same thing with Caregivers. Like caregivers have a contract, we are aware about the wages per hour but when we count the actual hours of work. It’s actually long hours but the amount of money we are receiving is not fair. So the workload, the number of hours we work, is not consistent of what was written on the contract. So there is the actual system or dynamics within the work of caregivers.” (live-in caregiver)

“Get rid of the agencies. If there is a valid website in immigration, go right away there for transparency. Regulated.” (live-in caregiver)

Temporary status is unhealthy for migrant workers. In addition to treatment and therapy for physical injuries that they may sustain or make worse while at work in Canada, migrant workers’ mental health is also negatively impacted by stress of dangerous and low-paid work, and family separation as a result of temporary status. Ultimately, many of the issues dealing with health, such as living and working conditions, fall under provincial jurisdiction. While not the only solution, the provision of permanent residency mentioned above would go some way towards addressing many of these concerns. Even if attaining PR status might not directly address all of these issues, it would allow workers to either ‘vote with their feet’ and seek out other work or stay in their job and assert their rights to decent work, benefits, and human rights. In the current structure of the program, neither one of these two options is available. Instead, when workers become sick, injured, or have a complaint arising from their employment, their precarious immigration status (sometimes in combination with their occupation) prevents them from leaving, speaking out, or accessing the full range of their social benefits.

In fields, greenhouses, private homes, and other sites across the country, migrant workers must live with unhealthy and unsafe workplaces as well as housing conditions (usually on their employer's property). These living and working conditions are made worse due to a patchwork of regulations that either fail to address industry-specific concerns (as with agricultural workers) or simply exclude entire occupations (e.g. the exclusion of domestic workers under the Occupational Health & Safety Act). These gaps and exclusions lead to adverse effects discrimination for the racialized men and women in these programs.

As with proactive prevention of injuries and accidents, migrant workers are also excluded from the income security and social benefits that are provided to other workers (e.g. after they have been repatriated, 'deeming' migrant workers 'fit to work' in certain types of jobs that do not exist in their home countries, which robs them of their 'loss of earning' benefits).

Migrant workers in many parts of the country suffer from the three-month waiting period for healthcare, unreasonable delays in getting access to healthcare even after the waiting period, and the inability to access preventative care if they have fallen out of status (e.g. between work permits; or, leaving an abusive employer). Private insurance coverage is expensive and patchy.

To compound all of these issues, migrant workers face abuses by recruiters, including the debts incurred and fees paid on their way to Canada (or even after their arrival here).

In addition to concerns arising from poor housing, or injuries or illnesses at work, migrant workers also suffer reprisals due to their federal immigration status that would otherwise be illegal under provincial labour and employment law. Even if the anti-reprisals protections were enhanced through federal-provincial cooperation, there would still be the problem of seeking justice through an individual, complaints-based employment standards mechanism. Migrant workers require proactive enforcement, without which they would be left to fend for themselves if they were brave enough to bring forward their claims.

To make matters worse, labour laws do not enhance migrant workers' already stifled voices in employment matters. Migrant workers lack adequate, constitutionally-compliant protection for the right to bargain collectively. In fact, two of the largest groups of migrant workers in Ontario are explicitly excluded from the right to unionize under the *Ontario Labour Relations Act*. Migrant caregivers are entirely excluded from legislative protection for the right to bargain collectively. Agricultural workers are subject to the entirely inadequate *Agricultural Employees Protection Act*. And many other migrant workers are employed in sectors where the power imbalance between employers and workers is very great and unionizing is difficult in practice.

After conducting its review and drafting a report, this committee should acknowledge that *the system, when it operates as intended, will continue to exclude, abuse, and injure workers and their families*. While the program seems to assume that workers will not be injured or need care or benefits, we know that the assumption of perfect health is not rational for any workplace, let alone those employing migrant workers.

It is imperative that you provide mobility to migrant workers for when the inevitable conflicts and complaints arise at work, specifically the default of open work permits for all migrant workers. If for some reason the committee decides that open work permits should not be provided for all migrant workers, then at the very least open work permits and equal benefits should be provided when migrant workers have complaints about their conditions at work, fall sick, or become injured.

Open work permits and equal benefits are necessary in the event of injuries, illnesses, and complaints, or reprisals from complaints arising from their participation in the chain of migrant work (e.g. recruitment, employment, and repatriation).

While many of these issues related to living and working conditions are provincial matters, it is important for the federal government to recognize that migrant workers, like all other people in Canada, will have employment issues, as well as periods of injury and illness and, like all others in Canada, should be entitled to their rights, their health, and their benefits. This recognition is important because of the role that federal jurisdiction and immigration law play at the provincial level.

Generally speaking, the protection of labour and employment laws is difficult for migrant workers to access. These obstacles come up in several ways, including the combination of government reliance on a complaints-based system with the closed work permits that strictly tie 'low skill' workers to specific employers, types of work, and workplaces while in Canada.

Workers have little incentive to make labour and employment complaints where doing so might jeopardize their status in the country and ability to earn money to remit back home to families and pay off exorbitant fees, loans, or debts paid during their journey to Canada or after their arrival. Although there have been some reforms in the context of recruiter fees, including the best practices of Manitoba, they remain ad hoc across Canada and do not adequately address concerns about complaints and tied work permits.

Other important laws and policies that impact the health and working lives of migrant workers and their families include: health insurance and healthcare, occupational health and safety, housing and landlord-tenant law, unemployment insurance, workplace safety and insurance, education, and settlement services.

In provincial human rights tribunal decisions looking into the deaths and sexual assaults and harassment of racialized migrant agricultural workers in Ontario, the tribunal has reiterated that the programs fall within federal jurisdiction and that it would not be appropriate to comment upon certain aspects of the temporary foreign worker programs (Presteve, HRTO, para. 229; Peart, HRTO, para. 273).

As the Tribunal's decisions highlight, the lack of action and negative impact at the federal level is especially compounded when many of the challenges and problems of the program are left to be dealt with (or not) at the provincial level. This deadly game of jurisdictional 'hot potato' must be acknowledged and addressed in any meaningful review of the programs, including the pernicious role of immigration status at the provincial level of labour, health, and human rights.

Our detailed recommendations for this matter are at the beginning of this document.

Thank you for your support and interest. Please contact me with any questions or comments.

Syed Hussan

Coordinator

T: 1-855-567-4722 ext. 700

E: hussan@migrantworkersalliance.org

Migrant Workers Alliance for Change

720 Spadina Avenue, Suite 223,

Toronto, ON M5S 2T9

www.migrantworkersalliance.org