



FOCAL

CANADIAN FOUNDATION FOR THE AMERICAS
FONDATION CANADIENNE POUR LES AMÉRIQUES
FUNDACIÓN CANADIENSE PARA LAS AMÉRICAS
FUNDAÇÃO CANADENSE PARA AS AMÉRICAS



MAKING A CASE FOR REFORM: NON-ACCESS TO SOCIAL SECURITY MEASURES FOR MIGRANT WORKERS

BY BARBARA MACLAREN AND
LUC LAPOINTE

POLICY PAPER
OCTOBER 2009



FOCAL
1 Nicholas St., Suite 720, Ottawa, ON K1N 7B7
Tel: 613-562-0005
Fax: 613-562-2525
Email: focal@focal.ca

www.focal.ca

FOCAL projects are undertaken with the financial support of the Government of Canada provided through the Canadian International Development Agency (CIDA)



Canadian International
Development Agency

Agence canadienne de
développement international

Canada

Les projets de FOCAL sont réalisés avec l'appui financier du gouvernement du Canada agissant par l'entremise de l'Agence canadienne de développement international (ACDI)

Executive Summary

In times of crisis, non-citizen groups are often the hardest hit. Migrant workers in Canada are no exception. Temporary foreign workers (TFWs) do not enjoy the same access to social security benefits, particularly employment insurance (EI), as Canadians and permanent residents. Facing lay-offs and lacking social assistance, many foreign workers are being repatriated. What are the implications for these workers, for Canadians and for development objectives of labour mobility? This report is a thought piece to inform policy debates and to encourage government to consider these issues in a new light.

The paper seeks to answer the following questions: Do TFWs currently enjoy access to employment insurance in Canada? Is employment insurance access for TFWs an important policy issue for Canadians, as opposed to only for TFWs and their families? If so, why? What does non-access to EI for TFWs reveal about temporary foreign worker programs and about where Canada's priorities lie vis-a-vis immigration writ large? What more can the government and other actors do to address the needs of temporary foreign workers in the future?

The authors conclude that access to employment insurance and other forms of social assistance for TFWs is important for a number of reasons. They recommend a number of policy options to address the problem, including: extending systematic access of regular EI benefits to TFWs, offering exit refunds to TFWs in the absence of access to these benefits, or offering financial support and aid for sending government social insurance programs.

Introduction

Despite the global economic slowdown, the number of temporary foreign workers (TFWs) recruited to work in Canada does not seem to be diminishing. Indeed, a striking total of 251,235 TFWs were working in Canada on Dec. 1, 2008, according to stock data from Citizenship and Immigration Canada (CIC). Considering that the in-flow of TFWs is largely employer-driven, this is surprising due to the fact that domestic unemployment in Canada is increasing and remaining high, 8.7 per cent according to the Sept. 4, 2009 Statistics Canada labour force survey, disproportionately affecting youth and women.

At the same time, reports from non-profit organizations, unions and the media signal an increase in the number of laid-off foreign workers, mainly in Alberta and southwestern Ontario, since last fall¹ There has been anecdotal evidence, as well. FOCAL was contacted in August 2009 by a human rights group in Zacatecas, Mexico attempting to assist a number of workers who recently returned empty-handed from broken TFW contracts in British Columbia. The authors attempted to get estimates on the aggregate number of temporary foreign workers affected by lay-offs. However the federal department that appears to be tracking the numbers –Human Resources and Skills Development Canada (HRSDC)– did not make estimates available. Yet, a recent response to the 2009 report of the Standing Committee on Citizenship and Immigration on temporary and non-status workers, confirms that foreign workers have lately been laid-off due to the economic slowdown.²

Whatever the numbers are, increasing lay-offs for non-citizens, such as temporary foreign workers, are likely to rise in the coming year if economic conditions do not improve. Comments by UNCTAD Secretary-General Supachai Panitchpakdi lend credence to this argument: “the [global] crisis will be impacting quite significantly on the flow of migrants, especially in terms of unemployment.”³ This is not news. Experts and media pundits have been voicing concern about the impact on migrants, particularly the influx of migrants returning to countries of origin, since the economic crisis began in 2008.

The situation that temporary foreign workers face is paradoxical. On one hand, they have presumably left their country to avoid unemployment. On the other hand, they were recruited to fill a specific labour shortage but are increasingly confronted with unemployment in host countries.

What prospects are there for foreign workers finding themselves in this paradoxical situation? Such workers only have a few options available to them: 1) pack up and head home, where they are likely to face even less favorable labour market conditions; 2) go underground, placing them in a situation of power imbalance vis-à-vis their new employers; or 3) remain in Canada until such a time as they can find a new job and apply for another work permit (with the exception of seasonal agricultural workers).

For the vast majority of TFWs from poorer countries, the last option is contingent on accessing social security assistance, since they would not be able to afford the living expenses in Canada out of pocket. Skyrocketing housing costs in Fort McMurray is one example. According to the Calgary Workers’ Resource Centre, 80 to 90 per cent of the 107 temporary foreign workers (construction and general labour) they assisted between January and August 2009 are in situations of unemployment and face the real possibility of falling into poverty.

Higher-income TFWs likely fare better. If they came to Canada as an intra-company transferee, for example, they could be transferred back to a position in their country of origin or a third country or be eligible to receive a severance package.

Access to the social security system by non-citizens remains a contentious issue for the federal government –if on the policy agenda at all. First and foremost, government is concerned about inequities arising in accessing employment insurance (EI) among the domestic population. At the federal level, both the New Democrats and the Liberals proposed a number of reforms over the summer that would ease the economic stress of unemployment for Canadians. These proposals nearly brought down the government in September. The most recent reform, proposed by the current conservative government, seeks to expand the scope of EI benefits for specific groups of workers.

Although EI eligibility of TFWs was not part of this national debate, temporary migrant issues are increasingly on the Canadian Parliamentary agenda. In 2008, for example, the Standing Committee on Citizenship and Immigration Canada decided to undertake national consultations with stakeholders to examine problems associated with foreign worker programs, releasing a lengthy report in May, 2009. The government has since responded with its own report, rebuffing many of the Standing Committee’s recommendations, but in so doing, stoking more civil society interest and advocacy.

These developments set the stage for a broader discussion and reflection on social security access for both citizens and non-citizens in Canada.

In this context, the following questions will be explored in this policy paper:

- Do TFWs enjoy access to employment insurance in Canada? What is the current state of affairs?
- Is employment insurance access for TFWs an important policy issue for Canadians, as opposed to only for TFWs and their families, and if so, why?
- What does non-access to EI for TFWs reveal about temporary foreign worker programs and about where Canada’s priorities lie vis-a-vis immigration writ large?
- What more can the government and other actors do to address the needs of temporary foreign workers in the future?

Temporary Foreign Workers’ Access to Social Security in Canada

Temporary Foreign Workers’ Access to Social Security in Canada

For the first year on record, TFWs entering Canada in 2008 outnumbered the number of skilled economic immigrants. According to Citizenship and Immigration Canada, over 250,000 temporary foreign workers⁴ were in Canada on a temporary work permit on Dec. 1, 2008, substantially more than the 149,072 economic immigrants⁵ accepted as permanent residents in the same year.

The majority of TFWs come to Canada from the U.S., Mexico and the Philippines. More and more arrive from countries in the Latin American and Caribbean region. These workers enter Canada under a number of programs, including the Live-in Caregiver Program and the Temporary Foreign Worker Program, of which some categories allow Canadian businesses to apply for overseas workers from a range of occupations for up to two consecutive years. Canada also has a number of bilateral agreements with migrant sending countries under the Seasonal Agricultural Workers Program (SAWP). TFWs are allowed to remain in Canada until their work permits expire, including those whose work-term ends sooner than the date stipulated in the permit.⁶

TFWs, like domestic workers, have EI and pension contributions deducted from every pay check. In fact, both workers and employers pay into EI – one-third and two-thirds, respectively. Therefore, it would seem logical that TFWs also have the right to take from the EI fund under the same criteria facing Canadians.

There is some ambiguity, however, around the question of whether or not temporary foreign workers should be eligible for employment insurance in Canada. According to the Employment Insurance Act, anyone residing in Canada can apply for EI, including new entrants to the labour market, as long as they are available, capable and willing to work in Canada, and meet other transparent requirements (i.e. have worked a minimum number of hours of gainful employment in Canada, etc.). This legal entitlement is confirmed by information on the HRSDC website for the Temporary Foreign Worker Program. Furthermore, FOCAL has learned from a number of non-profit organizations providing social assistance to temporary foreign workers that some of these workers have successfully received regular EI benefits –albeit after a lengthy appeals process to the employment insurance commission.

One category of EI benefits that TFWs have been able to access with little problem is parental and maternal leave benefits. Eligible parents who are temporary foreign workers can apply for financial assistance for up to 35 weeks under the parental benefits category and for up to 15 weeks under maternal benefits.⁷ Since 2000, the United Food and Commercial Workers (UFCW) union, through the Agriculture Workers' Alliance, has assisted SAWP workers gain over \$23 million overseas in parental leave benefits, mainly channeled to Mexico.⁸ This assistance can and does benefit female workers (or the female spouses of male workers), who often bear the brunt of childcare, as well as male workers. Moreover, workers can receive these benefits whether or not they remain in Canada or return to their country of origin (however, an agreement must exist between Canada and the country in question on the portability of benefits for maximum benefits to be accessed). TFWs are also able to collect EI compassionate care benefits more easily than regular EI benefits, since this type of benefit is not contingent on being available for work in Canada.

Yet, the vast majority of foreign workers who apply for regular EI benefits (i.e. temporary financial assistance after being laid-off through no fault of their own) are rejected. Although it is unknown how many migrants have made failed attempts at collecting regular EI in Canada, some reports have put the proportion of TFWs that have accessed these benefits at less than 1 per cent.⁹ It appears that the administrative process is what is preventing most TFWs from accessing regular EI benefits, rather than any legal restriction. Migrant advocacy groups assert that the government administration rules them out because their work permits are tied to one employer. If they manage to acquire a new job offer, they would still need to apply for another work permit before they could be considered as available to work in Canada, thereby making the need for EI a

moot point. Considering the amount that foreign workers invest in Canadian social security and pension systems, this seems like a fairly obvious wrongdoing. A general lack of information and misperceptions surrounding the ineligibility of TFWs for EI also do not help matters.

The authors have calculated an approximation of the sum of EI contributions on a six-month and 12-month basis (see Table 1). These estimates were arrived at by using Citizenship and Immigration Canada (CIC) data on the skill level distribution of TFWs in 2008, using National Occupational Classification (NOC) levels, using Statistics Canada benchmarks for average income by industry,¹⁰ and government calculation tools assessing associated social security deductions for each income group. The resulting estimates are based on the stock of TFWs in Canada on Dec. 1, 2008 (250,000).

Worker Skill Level By NOC category	% TFW distribution	TFW wage rate (daily)	Deduction by TFWs		Deduction by Employers	
			6 month	12 month	6 month	12 month
Management (O)	6%	\$ 261.84	\$ 6,407,879.40	\$ 12,815,758.80	\$ 8,971,031.16	\$ 17,942,062.32
Professional (A)	16%	\$ 179.68	\$ 11,725,916.80	\$ 23,451,833.60	\$ 16,416,283.52	\$ 32,832,567.04
Skilled and Technical (B)	14%	\$ 161.28	\$ 9,209,491.20	\$ 18,418,982.40	\$ 12,893,287.68	\$ 25,786,575.36
Intermediate and Clerical (C)	31%	\$ 132.96	\$ 16,811,628.60	\$ 33,623,257.20	\$ 23,536,280.04	\$ 47,072,560.08
Elemental and Labourer (D)	8%	\$ 68.64	\$ 2,239,723.20	\$ 4,479,446.40	\$ 3,135,612.48	\$ 6,271,224.96
Level not Stated	25%	\$ 163.12	\$ 16,633,142.50	\$ 33,266,285.00	\$ 23,286,399.50	\$ 46,572,799.00
TOTAL			\$ 63,027,781.70	\$ 126,055,563.40	\$ 88,238,894.38	\$ 176,477,788.76

Sources:

<http://www.cic.gc.ca/english/resources/statistics/menu-fact.asp>; <http://www40.statcan.gc.ca/101/cst01/labr74a-eng.htm>;
<http://www.livingin-canada.com/minimum-wage-canada.html>

Looking at a 12-month time period, all TFWs in Canada and their employers would be paying an aggregate of just over \$300 million in EI premiums each year: \$126 million and \$176 million, respectively. Only considering the intermediate skilled worker category (NOC C) which constituted the largest proportion of TFWs working in Canada last December (31 per cent), it is estimated that these workers and their employers are paying over \$80 million a year. By contrast, if we look at a six month time period, all TFWs and their employers would still be paying an impressive \$150 million.

Of course, these numbers should be interpreted critically. It is difficult to ascertain an accurate reflection of what these workers and their employers pay into the EI system, since the length of time of each TFW work permit varies, and there is no way of knowing what real TFW incomes are in Canada. Nevertheless, the estimates do indicate that the amount of deductions paid out by these groups has been significant and will continue to grow as long as the trend of increasing TFW recruitment to Canada continues.

A Rationale Behind Employment Insurance Access for Migrants

In this context, this paper argues that extending and enforcing social security assistance for TFWs is an important issue for migrants as well as for Canadians. Indeed, domestic concerns of extending social security to foreigners are often overstated, while at the same time their access to social security is very limited.¹¹

The first reason concerns Canadian values. The recruitment of foreign workers, while yielding many positive benefits, tends to introduce new opportunities for exploitation and marginalization. While TFWs are supposed to enjoy the same rights as domestic workers, in practice this is not what is happening. Canadian values of non-discrimination are therefore not being respected and enforced with regard to social security access as well as basic labour rights. Furthermore, there is the simple notion of fairness: while Canadians may not owe a broad range of social services to non-citizens, TFWs who have paid into a program should be eligible to collect from it under a range of acceptable circumstances.

One way of minimizing the possible exploitation of migrant worker rights is to respect international labour laws. There are a number of labour conventions that have helped build a legal case for access to social security for non-citizens, including migrant workers: ILO Migrant Workers (Supplementary Provisions) Convention (1975); ILO Maintenance of Social Security Rights Convention (1982); ILO Employment Promotion and Protection against Unemployment Convention (1988); and, more recently, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), among others. Unfortunately, Canada, like the U.S., is not currently party to most of these labour conventions. In fact, only 42 countries, primarily migrant-sending ones, are state parties to the most recent convention on migrant rights.¹² This imbalance may indicate a lack of political will in migrant-receiving countries to address these concerns.

Another reason why social security assistance for TFWs should concern us hinges on poverty eradication and development debates. From a migrant-sending country perspective, previous economic gains from migration, in the form of financial remittances, can be erased quickly in an economic slump when the flow of remittances dries up. Making matters worse, migrants and often citizens from poorer countries have very limited or no access to formal social security systems,¹³ leaving returning workers without assistance, and in turn making it difficult for them to find a job in their field, as they lack time for a rigorous job search. In many cases, foreign workers to Canada are male and are supporting their wives and children at home (often parents and siblings as well). In the case of Latin America, where women earn lower salaries than men for equal work and are overrepresented in jobs not covered by social insurance, such as informal employment,¹⁴ a spouse losing his job in Canada might mean the dislocation of an entire livelihood plan.

This scenario of non-access to social assistance for migrants also restricts the potential for developing country growth considering that returning migrant workers will have a diminished ability to contribute to local economies. Even worse, they might be in debt from paying for the costs associated with migration.

For host countries, an increasing incidence of laid-off TFWs in important migrant-receiving regions may bear the same implications: lower aggregate purchasing power, less consumption and

rising levels of indebtedness and informal sector activities. In this context, an important function of employment insurance is to strengthen the purchasing power of the unemployed worker temporarily and in so doing, to preserve their skills and abilities by allowing that worker to remain in the field for which they are qualified. A parallel here can be drawn to regular economic immigrants, who benefit from EI for the same reasons.

From an employer perspective, social security access for migrants is also important. Many of the Canadian sectors that have had to lay-off TFWs, including small businesses, would not benefit from their immediate departure overseas. Many sectors in Canada, including trade, oil sands, general labour, agriculture and meat-packing, suffer from a lack of Canadians willing to do these jobs, illustrated by the fact that TFW new hires are not down significantly. Under certain TFW categories (e.g. SAWP), employers pay a significant sum of money to house and transport their foreign workers to Canada. For all these reasons, employers most likely intend to re-hire the same foreign workers once economic conditions improve, rather than look elsewhere.

As previously mentioned, Canadian employers of foreign (and domestic) workers pay two-thirds of EI deductions, whereas the worker pays only one-third. According to Stan Raper, “SAWP farmers have been arguing for over 20 years that they should be removed from the program.”¹⁵ Yet, if migrant workers were exempted from paying EI in Canada altogether, they would have an unfair competitive advantage over permanent residents and citizens because of the reduced tax burden on employers. In order to avoid this economic distortion, it might be time to consider the option of fair access to this entitlement, rather than exemption.

If EI were made more accessible, the key question would remain: who should shoulder the financial cost? Should government (and tax-payers) be responsible for providing social assistance to non-citizens on a wider-scale? After all, it is the responsibility of the federal government to approve who enters and who does not enter Canada; as such, the government should be expected to account for reasonable social costs of their legal stay in Canada. Even though labour market opinions are not needed for every category of TFW, legal work permits would provide a means of mediation of the inflow should the costs get exorbitant during the economic downturn. At the same time, some would argue that the burden should fall on the shoulders of the TFW employer (through severance pay or other means) as a result of their responsibility for deciding that there was a need to recruit a foreign worker in the first place. But in fact, the costs need not be shouldered entirely by one party; it is perhaps the best case scenario that a variety of actors are involved in providing a range of social assistance to migrants.

In the next section of the paper, we highlight some existing practices and policies from other regions that delve into this question a bit deeper.

Social Security Options in Policy and in Practice

What can Canada learn from other governments and other actors about frameworks for social assistance for laid-off migrant workers? Again, the most progressive option would be to adopt international standards on social security entitlements into domestic law, based on principles of equality of treatment and non-discrimination.

As yet, the greater progress on this account has been achieved by the European Union. In 2003, the European Union Council extended the provisions of Regulation 1408/71 regarding social security coverage to third country nationals, enabling migrant workers to access social security schemes in the EU country of employment. The move –largely a response to the ILO General Discussion at the 2001 International Labour Conference– is innovative because it recognizes social security as a basic human right.¹⁶ Although EU member states can still determine the details of their social security schemes, those offering employment insurance benefits for nationals have to make these benefits accessible to migrants as well. The approach eliminates the citizen versus non-citizen dichotomy with respect to the provision of social assistance for legal residents. In fact, beneficiaries do not necessarily need to pay into the social security system in order to access their rights.

The next best strategy would be to learn from countries that are trying to reduce citizen and non-citizen barriers to these types of assistance. In the case of Spain, for instance, all legal residents that have worked in Spain for a minimum of 360 days in the last six years are eligible to receive unemployment benefits, a right which is being claimed by an increasing number of newcomers to that country. In July 2008, the percentage of people affiliated with Spain’s public social security system who were immigrants was over 11 per cent.¹⁷ Should workers decide to return home, they maintain the option of returning to Spain to seek work again within 12 months where they can continue receiving unemployment benefits. In this scenario, both sides win: non-citizens pay into the social security system, benefiting the domestic population, but they can also receive benefits in hard economic times. Indeed, migrants who have worked in Spain can receive unemployment payments in most EU countries as well as Spain. Concern over increasing social security pay-outs in Spain last year, however, have led the government to introduce incentives for immigrants to return home (such as controversially paying for flights home in exchange for a promise not to return within three years).¹⁸

Bilateral labour agreements are considered another international best practice in managed migration because they aim to coordinate the respective countries’ labour and other relevant laws, and help match labour supply with demand, among other objectives.¹⁹ Bilateral agreements also often provide measures for protecting workers’ rights and the portability of social security benefits that are important to returning and retired workers. This is important in the case of Canada as a destination country because Canada only allows for the full portability of social security benefits to foreigners overseas in cases where a bilateral agreement with the foreign country in question has been signed. Important migrant-sending countries in Latin America with which Canada has signed seasonal agricultural worker agreements include: Mexico, Jamaica, Barbados, Organization of Eastern Caribbean States, among others.

Despite the fact that Canada has the highest number of agreements for seasonal agricultural workers in the Western Hemisphere,²⁰ access to employment insurance does not seem to be covered under any of them. Similarly, stand-alone agreements for social security (such as the Canada-Mexico Social Security Agreements) often sideline questions of employment insurance. This falls in line with a broader global trend of insufficient social security access for foreigners in destination countries.²¹ Indeed, bilateral agreements, as is the case with international labour conventions generally, are more likely to be signed by migrant-sending governments which have fewer associated obligations than receiving countries. If we hope to increase the scope of migrant

families from poor countries that are covered by social security, destination countries such as Canada must consider extending and enforcing the range of social security benefits accessible under existing and new agreements.

Alternately, some practices relegate the cost burden of social security onto the shoulders of the foreign worker. For instance, in order to encourage savings and circular migration, labour mobility programs that force migrants to save part of their earnings under temporary foreign worker programs until they return home, are sometimes proposed by sending and receiving governments. This strategy does provide extra income at the point of return for workers and is often perceived as an alternate form of self-generated employment insurance to returning workers. The SAWP agreement between the governments of Jamaica and Canada has this stipulation. On the other hand, many workers in this program are low- or medium-income earners as it is, and may need access to their full earnings at each paycheck. Furthermore, recent workshops conducted by The North-South Institute found that workers face long wait periods before being reimbursed by their Ministry of Labour.²² Such a policy of retained earnings also contravenes the ILO's Protection of Wages Convention.

A better solution might be offered by the immigration or labour regulations of the host country (i.e. renewable visas and work permits) that allow migrants longer periods with which to earn and increase wages in the host country, creating the conditions whereby voluntary savings can grow over time. Again, employment insurance access is important in times of crisis so that migrants do not lose hard-earned savings in a matter of months (which may have taken years to save).

Outside the Western Hemisphere, the Philippines is often cited as a best practice model in managed labour migration. The Overseas Workers Welfare Administration (OWWA) who manages social insurance (a cost covered in part by recruiters), provided a number of social security benefits to Filipino workers prior to the economic crisis. For example, OWWA offers loans to migrant workers before they leave the Philippines, which includes subsistence allowances and access to additional cash in cases of emergency. Livelihood loans are also offered to improve access to entrepreneurial development opportunities upon return,²³ although the level of successful participation in these self-employment initiatives is uncertain.

In the context of the current economic crisis and a higher incidence of returning Filipinos over the past year, OWWA introduced a program that offers financial assistance and training to returning overseas workers “who lost their jobs due to the global financial crisis.”²⁴ OWWA offers a new “Skills for Employment” scholarship program that offers financial assistance for Filipino temporary foreign workers or a dependent to enroll in a one-year technical or six-month vocational course, in sectors such as agriculture, fishery and tourism.

Although this follows a public-private model and falls short of providing tax-derived EI assistance to Filipinos, it may nevertheless be a step in the right direction for migrant-sending governments. Furthermore, migrant-receiving countries should consider contributing to such schemes through international assistance or by providing innovative livelihood opportunities to migrants in need in their own backyard. To some extent this is already happening in some countries. A recent Spanish labour report highlights the fact that the number of self-employed foreign workers in 2007 grew from 166,032 to 223,597 persons.²⁵ Many of these self-employed may be eligible for employment insurance.

Interestingly, TFWs can work legally in Canada as self-employed persons (and gain an exemption from a labour market opinion) if they can prove that their work translates into net benefits for Canadians. This might be a starting point; however, much more could be done. Again, it depends on questions of who should shoulder the costs associated with social security for TFWs.

In this regard, third-party actors may have an important role to play in helping governments fill the social security gap. The International Organization for Migration (IOM), for instance, coordinates a number of different labour migration programs around the globe, including for persons returning voluntarily or being deported to their home country. In Latin America, the IOM launched a new program in 2008 to assist returning Haitians, primarily from the U.S. The program includes orientation for returnees, counseling and other measures for a safer reintegration into communities of origin. This model is being expanded to the Bahamas and Guyana as part of a pilot project and will include professional, vocational and business management training and job placement.²⁶ The IOM also works closely with governments to propose and facilitate good practices in managing migration, such as by adopting international labour and migration frameworks into domestic legislation. The IOM currently helps facilitate labour mobility from a number of Latin American countries to high rural labour-demand provinces in Canada, such as Manitoba.

At the same time, the IOM sometimes comes under scrutiny for its procedures (e.g. there were allegations earlier this year of IOM staff holding the passports of Guatemalan migrant workers in Quebec). As an inter-governmental organization, the scope of IOM's programs may also be limited and can vary, depending on member government contributions.

Civil society groups such as immigrant-serving organizations, unions and workers' centres are increasing their efforts to address migrant worker issues in Canada. According to a number of interviews and consultations undertaken by FOCAL in March 2009, these groups are often volunteer-run and consist of non-profit organizations that offer material assistance and legal aid to migrants, including help for them to claim social security benefits in Canada. In one instance, an organization led by a Mexican national in Edmonton was faced with hundreds of laid-off workers in the fall of 2008 and, in response, spearheaded re-training initiatives in order to help TFWs find new jobs in a sector that was not impacted by the crisis. Unions, such as UFCW and its sister organization the Agricultural Workers Alliance, are playing a leadership role in addressing unionized migrant workers' social claims, particularly in the agricultural sector, and informing them of their rights in situations of unemployment. The role of charities and religious or faith-inspired organizations are also important to temporary foreign workers in Canada²⁷ as they often form migrant-community alliances that can reduce isolation, facilitate integration and address a number of other TFW needs in addition to social security. The question here is whether or not non-profit services can or should replace publicly-available social assistance, and if so, to what extent.

Implications for the Temporary Foreign Worker Program and Our Canadian Immigration Vision

The Canadian government's position on the appropriate role of TFW programs has been, and continues to be, ambiguous. On the one hand, the government maintains that the Temporary Foreign Worker Program and other programs (SAWP, special bilateral labour programs, trade-related categories, among others), only exist to meet temporary labour purposes.²⁸ The government states time and again that it looks to permanent immigration flows and the national labour force to solve long-term labour shortages. For example, the government's 2006 Advantage Canada report stresses reducing the barriers to the internal mobility of skilled labour in Canada and on training Canadian workers in order to enhance Canada's "knowledge advantage."²⁹

On the other hand, there are a number of important signals that Canada has sent to interest groups, particularly to business, that temporary foreign workers are easy to hire and are here to stay. In 2007, new rules for applying for Labour Market Opinions from HRSDC made it easier for employers to recruit TFWs. Bill C-50 (a budget bill introduced in March 2008) makes specific mention of "providing greater flexibility in the selection process for skilled worker applicants (including TFWs) so that local, regional, and national labour market needs are better addressed."³⁰ Furthermore, some temporary work programs lead to a clear path to permanent residency (the Live-in Caregiver Program being a case in point), and workers under those programs not providing such clear paths can always apply to provincial nominee programs which give provinces discretion in selecting new permanent residents, based on criteria like work experience.

Is the Canadian government sending mixed signals? Perhaps the current spaghetti bowl of different temporary foreign worker programs is suitable to the government for now because it means that labour shortages can be met by a temporary workforce, without the associated cost of enforced labour rights and social entitlements of citizens, while the stickier problem of reforming immigration and integration can be left on the back-burner.

Coming back to the issue of fair EI access for temporary foreign workers, the reader might have a number of questions regarding the implications of such a move. If we extend EI benefits to foreigners in practice, would this result in more TFWs remaining in Canada? Does this mean we are erasing the line between citizen and non-citizen? There are undoubtedly some positive benefits for Canadian citizens in maintaining preferential social security access. These include more resources to go around for Canadians, particularly for seasonal workers and relatively poor rural communities, a sense that national boundaries are important for nation-building, cost concerns and so on. These are all valid points.

Yet, extending social security access to new groups is not synonymous with erasing citizen and non-citizen boundaries. It is what it is: extending social security to groups who rightfully and equally contribute, in times of need. Furthermore, many temporary foreign workers are here to stay, through repeated entries, extended or new contracts as well as through changes in their immigration status. Perhaps it is time the government begins to see them as committed workers who may have an interest in remaining in Canada and eventually becoming citizens, as opposed to the status quo – undervalued temporary labour.

Recommendations

More concerted efforts are required to improve social security access for migrants working in Canada, due to their vulnerability as non-citizens and the disproportionate impact the economic downturn might have on them, among other reasons explored in this paper. Further policy-relevant research and data on this topic would be useful before moving forward. For example, research identifying the common constraints to social security access among TFWs, and research highlighting alternative approaches to addressing social security protection for non-citizens (i.e. Alberta's support for some social services for TFWs through settlement funding), would be helpful.

Policy Recommendations

In addition, governments at the appropriate levels should consider the following possible policy reforms:

1. Allow regular Employment Insurance (EI) claims from temporary foreign workers (TFWs) to be processed while their work permits are valid and they remain available to work in Canada. This would involve non-discriminatory administration procedures, providing transparent and consistent reasoning in cases where TFW claims are rejected, and increasing access to information about these benefits to TFWs.
2. Where TFWs continue facing widespread non-access to EI, offer both migrant workers and their employers exit refunds, equivalent to what they paid into the social security system for the duration of the work permit, when workers are dismissed or at the end of their contracts.
3. Match funds of migrant-sending governments that support voluntary insurance schemes for TFWs in Canada, such as those offered by the Philippines OWWA or a publicly-funded model. Forced savings schemes during temporary contracts (as in the case of Jamaican SAWP workers in Canada) are not recommended.
4. Untie work permits for TFWs, allowing them to change employers without changing work permits. This change responds to the reality of labour markets that do not remain in a static state, particularly when the economy is in a slump.
5. Strengthen existing domestic labour legislation, introducing clauses of non-discrimination where there are gaps.
6. Introduce new bilateral or multilateral labour agreements with sending countries that cover social security entitlements and procedures, involving stakeholder groups in the lead-up to negotiations.

Recommendations for Third Actors

1. Strengthen the embassy and/or consulate presence, particularly the availability of staff to attend to the needs of TFWs in Canada and upon return. These workers may be unaware of livelihood options in their home countries. Consular officials can lend assistance in applying for access to host country social security entitlements.
2. Provide training and re-training courses for laid-off TFWs while they remain available to work in Canada and are waiting for a new work permit or change of status.
3. Designate a public ombudsperson, similar to those in Australia and the U.S., to monitor and address a range of TFW issues, including non-access to social security for laid-off workers. This measure would provide a non-partisan office with a mandate to address otherwise difficult problems. For example, an ombudsperson could monitor and update a database on laid-off TFWs, as reported by migrants, unions or other representatives, and relay this information to HRSDC and CIC, informing their management of TFW programs.

Endnotes

¹ United Food and Commercial Workers (UFCW). “Reign of Immigration Raids in Southern Ontario Continues: Nine Female Migrant Workers Arrested in Leamington.” Media Release, May 28, 2009; CBC News. “Temporary Workers Fired Without Cause, Says Union.” CBC, Dec. 11, 2008, <http://www.cbc.ca/canada/toronto/story/2008/12/11/temporary-workers.html> (accessed Aug. 12, 2009); Taylor, Lesley C. “More Layoffs Hit Foreign Workers at Mushroom Farm.” *The Toronto Star*, Dec. 23, 2008; Stueck, Wendy. “Migrant Workers Fired from B.C. Greenhouse as Union Vote Nears.”

The Globe and Mail, Sept. 16, 2008; Agricultural Workers Alliance. “History of Agricultural Workers in Canada.” <http://awa-ata.ca/en/about/history-of-agricultural-workers-in-canada/> (accessed Aug. 10, 2009); Canadian Press. “Temporary Foreign Workers First to Suffer Layoffs.” *Université de Montréal, Canadian Research Chair in International Migration Law News*, Feb. 8, 2009, <http://cdim.cerium.ca/Temporary-foreign-workers-first-to> (accessed Aug. 20, 2009).

² See responses from the Canadian government to recommendations 1, 3 and 6 of the Standing Committee report in Government of Canada. “Government of Canada Response to the Report of the Standing Committee on Citizenship and Immigration: Temporary Foreign Workers and Non-Status Workers.” Report presented to the House Aug. 19, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4017803&Language=E&Mode=1&Parl=40&Ses=2> (accessed Sept. 11, 2009).

³ Comments made by UNCTAD Secretary-General Supachai Panitchpakdi, see UNCTAD. “Migrants, Hit by Recession, Termed Important for Development.” UN Expert Meeting Press Release, July 29, 2009, <http://www.unctad.org/Templates/Page.asp?intItemID=4965&lang=1> (accessed Aug. 18, 2009).

⁴ This number refers to the stock of all TFWs in Canada on Dec. 1, 2008. The number of TFWs that entered Canada during 2008 (flow data for both new entries and re-entries) puts the number at 192,519. See Citizenship and Immigration Canada (CIC). “Facts and Figures 2008 - Immigration Overview: Permanent and Temporary Residents.” Research and Statistics. <http://www.cic.gc.ca/english/resources/statistics/menu-fact.asp> (accessed Sept. 16, 2009).

⁵ Economic immigrants have been traditionally considered the most important category because they are selected through the points system for their skills and ability to contribute to Canada’s economy

⁶ This is in line with most other nations’ rules: just over half the countries in the International Labour Organization’s 2003 Labour Survey reported that they allowed migrant workers to stay and seek other employment if they lost their employment through no fault of their own. See Abella, Manolo. “Policies and Best Practices for Management of Temporary Migration.” Paper presented at the International Symposium on International Migration and Development, United Nations Secretariat, Turin, Italy, June 9, 2006.

⁷ Human Resources and Skills Development Canada “Eligibility for Canadian Employment Insurance.” http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/ceie_tfw.shtml (accessed Aug. 20, 2009).

⁸ United Food and Commercial Workers (UFCW). Status of Farm Workers Report (forthcoming, copy provided to the authors in June 2009)

⁹ Preibisch, Kerry. “Globalizing Work, Globalizing Citizenship: Community-Migrant Worker Alliances in Southwestern Ontario.” In *Organizing the Transnational: The Experience of Asian, Caribbean and Latin American Migrants in Canada*, edited by L. Goldring and P. Vandergeest,

97-114. Vancouver: UBC Press, 2007.

¹⁰ In Table 1, approximate daily earnings for NOC O workers are based on the average earnings of management sectors found at the “Living in Canada” Website (\$ 32.73/ hr) accessed online: <http://www.livingin-canada.com/minimum-wage-canada.html>; approximate daily earnings for NOC A workers are based on Statistics Canada’s “professional, scientific and technical services” average earnings (\$ 22.46/hr) accessed online: <http://www40.statcan.gc.ca/lo1/cst01/labr74a-eng.htm>; NOC B estimates are based on Statistics Canada’s average earnings for “All industries excluding unclassified enterprises” (\$ 20.16 / hr); NOC C estimates were based on Statistics Canada’s “administrative and support, waste management and remediation services” (\$16.62 /hr) accessed online: <http://www40.statcan.gc.ca/lo1/cst01/labr74a-eng.htm>; NOC D estimates are based on Canada’s average minimum earnings (\$8.58/ hr); the “Level Not Stated” category represents TFWs for whom skill levels were not reported to government. The authors averaged the above estimates for all NOC skill levels – O, A, B, C, and D above (\$20.39/hr) – and used this as a proxy average wage.

¹¹ Sabates-Wheeler, Rachel and Ian MacAuslan. “Social Security for Migrant Workers/Migration and Social Protection: Exposing Problems of Access.” Presented at the Technical Seminar in the English-speaking Caribbean of the International Social Security Association, Hamilton, Bermuda, May 18-20, 2008.

¹² United Nations. “International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.” UN Treaty Collection Database. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en (accessed Oct. 2009).

¹³ Avato, Johanna, Johannes Koetl and Rachel Sabates-Wheeler. “Definitions, Good Practices and Global Estimates on the Status of Social Protection for International Migrants.” Social Protection Discussion Paper no.0909 (May). Washington, D.C.: World Bank, 2009.

¹⁴ Meso-Lago, Carmela. “What the United States Can Learn from Social Security Reforms in Latin America.” *Latin American Studies Association Forum* 39(2) (Spring 2008): 22-24.

¹⁵ Quoted in Preibisch 2007, op.cit.

¹⁶ International Labour Organization (ILO). “Portability of Social Security Rights to Nationals of Both the EU and Third Countries.” *International Migration Programme*. http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=18 (accessed Sept. 29, 2009).

¹⁷ Euro Residentes. “Foreigners Working and Living in Spain Now Make Up 11% of the Country’s National Health Contributors.” June 19, 2008, <http://www.euroresidentes.com/Blogs/2008/06/foreign-workers-in-spain.html> (accessed Sept. 18, 2009).

¹⁸ Kingstone, Steve. “Spain’s Radical Plan for Migrants.” BBC, Sept. 3, 2008, <http://news.bbc.co.uk/2/hi/europe/7568887.stm> (accessed Aug. 17, 2009).

¹⁹ International Organization for Migration (IOM). *World Migration Report 2008: Managing World Migration in the Evolving Global Economy*. Geneva: IOM, 2008, chap.13.

²⁰ Abella 2006, op.cit.

²¹ Kulke, Ursula. “The Role of Social Security in Protecting Migrant Workers: The ILO Approach.” Paper presented at the International Social Security Association Regional Conference for Asia and the Pacific, New Delhi, India, Nov. 21-23, 2006.

²² Gibb, Heather. “Adding Value to Temporary Foreign Worker Programs.” *Workshop Reports, Barbados and Jamaica*, University of the West Indies and The North-South Institute, 2007.

²³ Agunias, Dovelyn R. “Protecting Overseas Workers: Lessons and Cautions from the Philippines.” *Insight Paper*. Washington, D.C.: Migration Policy Institute, 2007.

²⁴ Republic of the Philippines. “OWWA Responds to Manila Editorial.” News Release, Over-

seas Workers Welfare Administration (OWWA), Department of Labour and Employment, June 2009. <http://www.owwa.gov.ph/news/2009/06/owwa-responds-to-manila-times-editorial/> (accessed Sept. 18, 2009).

²⁵ Duran, Jessica. "Economic Downturn Impacts most on Migrant Workers." European Working Conditions Observatory, Oct. 16, 2008, <http://www.eurofound.europa.eu/ewco/2008/09/ESo809079I.htm> (accessed Aug. 20, 2009).

²⁶ International Organization for Migration. Press Note received via electronic mail, June 12, 2009.

²⁷ Preibisch 2007, op.cit.

²⁸ Government of Canada 2009, op cit.

²⁹ Government of Canada. Advantage Canada: Building a Strong Economy for Canadians. Ottawa: Department of Finance, 2006, 53-54.

³⁰ Kitagawa, Kurtis, Tim Krywulak, and Douglas Watt. Renewing Immigration: Towards a Convergence and Consolidation of Canada's Immigration Policies and Systems. Ottawa: Conference Board of Canada, 2008, 14.

October 2009

ISBN: 978-1-894992-55-8

Publications Mail Agreement:

The Canadian Foundation for the Americas (FOCAL) is an independent, non-partisan think tank dedicated to strengthening Canadian relations with Latin America and the Caribbean through policy dialogue and analysis. By providing key stakeholders with solutions-oriented research on social, political and economic issues, we strive to create new partnerships and policy options throughout the Western Hemisphere. FOCAL promotes good governance, economic prosperity and social justice, basing our work on principles of intellectual integrity, racial diversity and gender equality.

Additional copies of this policy document may be obtained from the FOCAL web site www.focal.ca.



FOCAL

1 Nicholas St., Suite 720, Ottawa, ON K1N 7B7

Tel: 613-562-0005

Fax: 613-562-2525

Email: focal@focal.ca

www.focal.ca



FOCAL

**1, rue Nicholas Street
Suite/Bureau 720
Ottawa, Ontario K1N 7B7 Canada
Tel/Tél: 613.562.0005
Fax/Télé: 613.562.2525
Email/Courriel: focal@focal.ca
www.focal.ca**