

Guaranteeing the rights of migrant workers

Written submission by Inter Pares to the House of Commons
Standing Committee on Human Resources, Skills and Social
Development and the Status of Persons with Disabilities, as part of
its study on Canada's Temporary Foreign Worker Program



June 1, 2016

“Through our labour in Canada, we guarantee a supply of fresh food to each Canadian household, and contribute to the country’s national economy through payment of our taxes... But unfortunately, temporary migrant workers in Canada are subject to violations of our human and labour rights. These include prohibition to communicate with other people and organizations, and physical and verbal aggression... We are not allowed to form unions, face long hours of overtime without compensation, and are not given immediate medical assistance when accidents occur at the workplace...”

Excerpt from presentation given by José Sicajau Xoc, President of the Association of Guatemalans United for our Rights (AGUND), Guatemala City, February 2011.

For a number of years, Inter Pares has worked closely with organizations comprised of and/or working with current or past migrant workers, primarily from Latin America and the Caribbean. Between 2011 and 2014, our principal counterpart in Latin America, [Project Counselling Service \(PCS\)](#), organized two regional conferences on this theme in Guatemala City. The conferences brought together a wide range of governmental and non-governmental actors¹ together with over 100 migrant workers from various parts of Guatemala. The vast majority of these workers were Mayan Indigenous women and men who had previously participated in the programs in Canada, primarily as agricultural workers. A number of them were members of an incipient grassroots organization Inter Pares has supported, called the Association of Guatemalans United for Our Rights (AGUND). AGUND was created by former migrant workers to Canada who were expelled from the program for having spoken out about abuses taking place on the Canadian farms in which they had been placed.

As a follow-up to the conferences referred to above, and at the request of our Latin American counterparts, Inter Pares organized and hosted the “Just Work” tour in 2012. The tour brought to Canada three advocates for the rights of migrant workers, among them Mr. José Sicajau Xoc, a former migrant worker in Canada and President of AGUND. The visitors travelled to nine cities in Ontario, Quebec and Alberta, meeting with hundreds of people, among them migrant workers, members of the Parliament and Senate, trade unions, academics, churches, NGOs, community-based organizations, and various members of the media. The tour helped reinforce important links between individuals and organizations in Canada and Latin America that share a common concern for the rights of migrant workers, both in the sending and receiving country.

¹ Governmental representatives included: members of Guatemala’s Congress (and its Commission on Migrants); members of the Central American Parliament; senior officials from the Guatemalan Ministries of External Relations and Labour; members of Guatemala’s National Commission on Migrants and the Human Rights Ombudsman’s Office; senior officials from the Embassies of the United States and Mexico and officials from the International Organization for Migration (IOM).

Within Canada, Inter Pares continues to collaborate with organizations comprised of migrant workers and their allies, a number of which form part of the Coalition for Migrant Worker Rights Canada. We maintain connections with academics that have conducted rigorous studies into Canada's migrant worker programs and have provided financial support for the production of a powerful new documentary on the theme entitled [Migrant Dreams](#), produced by the award winning filmmaker Min Sook Lee. Finally, within Canada's national movement for food security and food sovereignty, Inter Pares has helped to give greater visibility to the issues affecting migrant workers by co-sponsoring panel discussions that facilitate exchanges between Canadian farmers and migrant workers.

Through the regional conferences our counterparts have organized in Latin America, the activities in Canada that Inter Pares has organized including the Just Work tour, and our ongoing collaboration with migrant workers in Canada and their allies, we have had the opportunity to hear directly from a wide range of migrant workers.

Undoubtedly, the Temporary Migrant Worker Program has brought a number of positive benefits to migrant workers and their family members as it has to Canadian employers and the Canadian public. The statement by Mr. Sicajau Xoc holds true for migrant workers we have met from many different countries of origin:

"[T]he modality of temporary agricultural work legally established in Canada offers the possibility of an alternative to the undocumented migratory movement... Without a doubt it is economically beneficial to Guatemalan workers who are unable to find permanent work in agriculture or other areas in our places of origin."

At the same time, there is no doubt that there are systemic problems with this program which have paved the way for numerous abuses and violations of the rights of migrant workers.

The study into Canada's Temporary Migrant Worker Program being conducted by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities is timely: this year marks the 50th anniversary of the Seasonal Agricultural Workers Program. Urgent changes are required to ensure the fundamental rights of the women and men that continue to make huge contributions to our country, often at great personal cost.

Inter Pares is pleased to contribute to this study with a number of policy recommendations based on the concerns of our counterparts and the lived experiences of migrant workers with whom we have interacted. In addition to these, we are pleased to endorse the recommendations submitted to the Committee by the Coalition for Migrant Worker Rights Canada in its brief "[Landed Status Now! Pragmatic Policy Changes to Ensure Rights and Dignity for Migrant Workers](#)".

We regret that the timeline and framework of the current study has provided little space for Canadian parliamentarians to hear directly from migrant workers themselves. For this reason, we share the hope expressed by the Coalition for Migrant Worker Rights Canada that the current study should lead to a more comprehensive whole-of-government review that will have at its centre the voices of migrant workers. Adequate attention must be given to seek out, create safe spaces, and listen to the voices and real life experiences of migrant workers and their families.

Recommendations:

1. The United Nations has affirmed that a rights-based framework must govern transnational labour migration, recognizing that “migrants are not commodities.” This requires labour migration policies to be assessed against the global agenda for decent work and a development agenda anchored in the principles of human rights, equality and sustainability.²
 - **Canada must guarantee the human rights of migrant workers and should immediately sign, ratify and implement key international conventions protecting the rights of migrant workers.** These include the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the International Labour Organization Conventions 97, 143 and 189 and accompanying recommendations dealing with migrant workers and domestic workers.
2. Migrant workers contribute to Canada in many different ways. Yet with few exceptions, they cannot apply for permanent residency. The current Temporary Foreign Worker Program creates a two-tiered system in which large numbers of workers have access to a diminished set of rights and are not given the opportunity to integrate more fully into Canadian society. Inter Pares concurs with the position of the Canadian Council for Refugees that “access to permanent residence is the only measure that will truly eliminate the vulnerability that is built into the [Temporary Foreign Worker Program]”³. This would put so-called “low-skilled” migrant workers and seasonal agricultural workers on an equal footing with the rest of Canadian society.
 - **Current and future migrant workers should be presented with the option of acquiring permanent residency in Canada immediately, independently and permanently** without depending or relying on the sponsorship or good will of their employers or third party agencies.
3. At present, workers under the so-called “lower-skilled” labour migration programs have “tied” work permits that bind them to a single employer, location and time period. The employer has the power to terminate their contract at any time and have the workers deported. This skewed power dynamic undermines the autonomy of the workers in being able to choose their employer. It also places them in a situation of great vulnerability, making it next to impossible for them to refuse unfair treatment or exploitation.
 - **Labour mobility should be guaranteed immediately by issuing open work permits.**
4. Anecdotal accounts and empirical research have demonstrated that migrant farm workers are often exposed to health risks through their living and working conditions including sub-standard housing.⁴ Live-in caregivers also face greater exposure to violence and abuse due to being forced to live with their employer.⁵ In general, migrant workers face heightened workplace health and safety risks, and although they pay taxes in Canada, many can’t access Employment Insurance or public health services if they become ill or injured.

² United Nations, “Report of the Secretary- General on the promotion and protection of human rights, including ways and means to promote the human rights of migrants” (9 August 2013), United Nations General Assembly, A/68/292 at pp. 3–5. Cited in Fay Faraday, “Profiting from the Precarious”, April 2014.

³ Canadian Council for Refugees, Temporary Foreign Worker Program”, May 2016, p. 5.

⁴ Jenna Hennebry, IRPP Study, No. 26, “Permanently Temporary?” February 2012, p. 10.

⁵ Elsa Galerand, Martin Gallié and Jeanne OllivierGobeil, “Domestic Labour and Exploitation: The case of the Live-In Caregiver Program (LCP),” January 2015.

- **Migrant workers should have access to all social and medical services and benefits including Employment Insurance, pensions, parental benefits and support after injuries even after the worker leaves Canada. There should be no unilateral repatriation of migrant workers on medical grounds.**
5. In April 2011, the federal government introduced legislation known as the "four in and four out" rule. The legislation, which took effect in April 2015, obliges migrant workers who have worked in Canada for four years or more, to return to their country, without any possibility of re-applying for another four years. Although experience has shown that the need for jobs fulfilled by migrant workers is ongoing, rules like this reinforce the fabricated notion of temporary needs. Worse, it depicts migrant workers as a disposable labour force.
- **The "four in and four out" rule should be rescinded, and there should be an end to the repatriation of migrant workers.**
6. Migrant workers often incur large debts with third-party, for-profit recruiting agencies.
- **The federal government should ensure common standards for regulating recruiting agencies** along the lines of the Manitoba example of best practices documented in the 2014 Metcalf Foundation report "*Profiting from the Precarious*."⁶
7. At present, migrant workers have few ways of collectively improving their working conditions. They are largely prevented from unionizing, they are not party to contract negotiations or consulted in the design of model contracts, and their labour rights are only enforced reactively at best.
- **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.
 - **The federal government should develop nationwide framework for migrant workers to access collective bargaining.**
 - **Migrant workers and their associations should be included in negotiating and setting terms for employment contracts.**

* * * * *

Inter Pares is a Canadian social justice organization dedicated to empowering people in Canada and around the world to be at the center of their own development and to assert their own agency. Working with local counterparts, Inter Pares helps communities confront injustice, implement locally adapted solutions, spark innovative initiatives and occupy the political space that belongs to them.

www.interpares.ca

⁶ Fay Faraday, Op. Cit.