

Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion

The Honourable Sean Fraser, Minister of Immigration, Refugees and Citizenship

The Honourable Marie-Claude Bibeau, Minister of Agriculture and Agri-Food

Cc: Graham Flack, Deputy Minister of Employment and Social Development, and Disability Inclusion; Brenda Baxter, Director General, Workplace Directorate, Labour Program - Compliance, Operations and Program Development Directorate; Christopher Chevrier, Director, Policy and Program Design, Temporary Foreign Workers Program,

December 15, 2021

RE: ESDC Complaints, Inspections and Reprisals Against Migrant Workers

Dear Minister and Deputy Minister,

We are writing to you following the Auditor General's report, "Health and Safety of Agricultural Temporary Foreign Workers in Canada During the COVID-19 Pandemic", that found serious problems with ESDC's inspections regime that have made it unable to assure the health and well-being of temporary foreign workers in primary agriculture. We share the concerns raised in the Auditor General's report and are writing today to provide further evidence of failures in inspections from the perspective of migrant workers themselves and reiterate our call for a proactive inspections regime and full and permanent resident status for all .

Attached to this letter is a snapshot report of complaints made by migrant farm workers using ESDC Canada's webform and tipline, as documented by members of the Migrant Rights Network's Food and Farm Workers Working Group.

The complaints were made during the same time period covered by the Auditor General's report. These complaints did not result in improvement in worker rights but migrant workers faced reprisals, including termination and workers not being invited back the following season. These cases underscore how the crisis in the temporary foreign worker program is systemic and cannot be fixed by training or new regulations, as your department's response to the Auditor General's report suggests.

In 2020-2021, the Migrant Workers Alliance for Change, AMexCal, and Cooper Institute supported 59 workers who wanted to file complaints with ESDC. Of these, only 16 actually proceeded with filing a complaint. The majority chose not to file complaints because of fear of reprisals and lack of trust that complaints would trigger inspections or force employers into compliance. The Auditor General's report confirmed that this is the reality, and that the inspections regime gives employers a free pass to exploit workers.

Of the sixteen complaints we are sharing with you:

- Five complaints received no response at all from ESDC.
- Workers were only interviewed by ESDC in four instances. In some cases, workers received informal phone calls from ESDC but were not officially interviewed for evidence.
- In three cases, workers interviewed had been selected by the employer and were monitored while speaking to ESDC, either by the employer directly or other workers.
- In four cases, workers were terminated immediately or were not called back to work in Canada the following season, a direct reprisal for making complaints. Others remain afraid that they may not be called back for the 2022 season.
- None of the workers that complained received any update from ESDC about the results of inspections.

One of the workers that complained to ESDC is David, a Jamaican father of three, who has been coming to Canada for six years. He says, "It took me 3 months to gain courage to make a report. I was afraid word would get back to the boss and I wouldn't be called back on the program. I don't know what I'm going to face next year with the living conditions. I hope things will get better next season, but I don't hear anything. The boss has so much power and gets away with everything. Something has to be done, we need change."

This snapshot report builds on concerns that we have raised regarding the ESDC inspections regime and the temporary foreign worker program on numerous occasions. We have highlighted blacklisting as a widespread consequence of the current enforcement model. These concerns were outlined most recently in our [letter from March 15, 2021](#) (see pages 5 and 6), in which we made clear and concrete recommendations for changes to enforcement mechanisms.

As is clear from this most recent Auditor General report, the entire infrastructure and culture of inspections is one that prioritizes employers over workers. As the Auditor General reported, "*In many of the inspections we examined in 2020 and 2021, we found gaps and inconsistencies in what workers and employers reported to inspectors – including differing accounts of the quarantine and isolation accommodations and how many workers were housed together – and these issues were not investigated further. We also found instances where workers reported serious concerns, such as lack of food when in isolation, yet we saw no*

evidence that inspectors had acted to address these”. The AG further found that “Most inspections concluded that employers complied with the new requirements ... without sufficient evidence or, sometimes, with no evidence at all. In some cases, the department accepted information that indicated possible non-compliance yet found employers compliant anyway.”

The focus on employer profit rather than worker rights was also identified by the Auditor General’s report: “We found that the program’s [Emergency On-Farm Support Fund] performance indicators focused on farm productivity and were not linked to accommodation improvements. Agriculture and Agri-Food Canada established 1 performance indicator to measure improved worker safety, but it did not collect any information to report against it.”

These systemic issues in ESDC’s enforcement approach require more than just minor changes to the system, as your department’s response to the report outlined. Even if inspections were improved, under federal policies migrant workers do not have direct enforceable rights. There is no legislation that governs enforcement, no court or legal process to turn to for workers to denounce violations of their rights and there is no meaningful mechanism for ESDC to ensure workers receive reparations for violations of their rights.

We urge you to create a responsive monitoring and enforcement system, in consultation with migrant worker organizations like ourselves, to ensure the protections are accessible to migrant workers. At a minimum, this enforcement and monitoring system must include:

1. A dedicated joint enforcement unit of federal and provincial authorities, building on Employment and Social Development Canada’s compliance unit. Contact information about the enforcement unit must be shared with migrant worker organizations and migrant workers;
2. The enforcement unit must assess fields, farms, greenhouses and housing conditions prior to workers arrival to ensure physical distancing is possible and health and safety rights protected including cooking, cleaning and washing facilities are adequate;
3. A 24-hour accessible telephone hotline and web interface for workers to confidentially and anonymously make complaints about employer non-compliance in their own languages, or through third parties such as migrant worker support organizations, including through photos and videos. The unit must respond to every complaint;
4. The enforcement division must do swift, unannounced inspections on employers where complaints have been made, in coordination with local public health officials and always include federal and provincial labour officials. During unannounced inspections, workers must be interviewed in their own language, individually and

separately from other workers and employers unless workers specifically request an off-farm support person to participate with them;

5. Non-compliance should be met with fines that will incentivize compliance. In addition, specific measures must be enacted to ensure workers are appropriately compensated where employers put their lives at risk through non-compliance;
6. Workers must be provided information on how to make labour complaints and how to access the Open Work Permit for Vulnerable Workers; and
7. Results of inspections must be provided to all workers, as well as to those that made complaints if they provided their contact information.

In addition to these changes, as we have stressed on multiple occasions, there is an urgent need to provide permanent immigration status to migrant workers in order to give them the power to access any rights and protections they are granted. Otherwise, the inspections regime will remain an ineffective and band aid solution to the abuses made possible by temporary immigration programs. We made the need for systemic changes clear in our [letter to the new Cabinet](#) in October of this year.

Our recommendations are also outlined in [our submissions on behalf of farm workers to the consultation on national housing standards](#). The ESDC response outlined in the “[What We Heard](#)” report ignores most of the submissions made by farm workers. Migrant farm workers deserve dignified and decent housing and the power to enforce rules if their housing does not meet basic expectations - no changes have been proposed to make that a reality.

As the Omicron variant threatens another wave of the pandemic, the lives and livelihoods of migrant workers continue to be put at acute risk as a result of their temporary immigration status and their living and working conditions. We urge the government to take action immediately and we remain keen to meet with you to discuss immediate steps that can be taken to prevent the further abuse of workers’ rights and any more loss of life.

Please feel free to contact us at info@migrantrights.ca to continue the conversation.

Sincerely,

Migrant Rights Network - Food and farm worker Working Group

Snapshot of Migrant Workers Complaints to ESDC and Results 2020 and 2021

1. 29 April, 2020, Colchester County, Nova Scotia: Migrant farm workers complained about not being paid wages during quarantine, illegal deductions for “food” and threats from the employer. Details of this farm were shared by email to the Director General, Senior Program Advisor, and Policy Analysts of the Temporary Foreign Workers Program. No response was provided about the specific farm by ESDC.
 - On May 3, ESDC visited the farm, and the supervisor chose five workers to speak to the inspectors. One of the workers reported, *"The supervisor told them to say that they are treating us good and paying us ok and if they don't they are going to go back to Jamaica and they won't be able to go to another farm either cause is like they wanna mess up their papers"*. Conditions continued to worsen after the inspections, and eventually on August 4th, the workers left the farm.
2. 28 June, 2020, Leamington, Ontario: Migrant farm workers complained to ESDC about illegal \$300 deductions from quarantine pay, and increased hours of work without pay.
 - The workers received no response and are not aware of any inspection being done. **The worker who complained was not hired back next season.**
3. 3 July, 2020, Elgin County, Ontario: Migrant farm workers complained about overcrowded housing where physical distancing was impossible, and unsafe water that was undrinkable and was causing rashes when workers showered.
 - The employer halved the number of workers per room, 10 days later, but no changes were made to the water supply. Workers continued to use their wages to buy bottled water to drink and shower until the end of the season.
4. 19 September, 2020, Leamington, Ontario: Migrant farm workers complained about overcrowded housing where it was impossible to physically distance, and mistreatment.
 - No changes were made.
5. 22 September, 2020, Norfolk County: Migrant farm workers made complaints about overcrowding (13 workers in the same house), and not being paid for hours of work.
 - **The worker who made the complaint was fired without cause.** The worker believes it is because he complained to ESDC and the consulate.
6. 03 October, 2020, Nova Scotia: Migrant farm workers complained about not being allowed to leave the farm since their arrival in April, and receiving threats of deportation.
 - ESDC inspectors interviewed workers on October 13, 2020 via video. The workers interviewed had been pre-selected by the employer, who was in the room listening to what workers said. No changes were made.
7. 12 November, 2020, Oxford County, Ontario: Migrant farm workers complained about employers restricting their mobility and not being allowed to leave the farm.
 - Select workers were interviewed, but prevented from speaking the truth out of fear for their jobs. Workers are not aware of any changes made.

8. January 2021, PEI: Migrant worker made a complaint about her treatment at a seafood processing plant.
 - The worker received a phone call from ESDC but did not respond. She was not contacted again.
9. 03 February, 2021, Leamington, Ontario: Migrant farm workers complained about unpaid quarantine wages.
 - No response from ESDC. Workers were eventually paid when they refused to continue working.
10. 04 March 2021, Niagara region, Ontario: Migrant farm workers complained about lack of hot water and not being allowed to leave the farm.
 - ESDC inspectors called the workers and visited the farm. However, no changes were made.
11. 14 April 2021, Eastern Alberta: Migrant farm workers made complaints to ESDC about verbal abuse, threats, and wage theft. Women workers faced intimidation and verbal sexual threats. Other workers were fired for seeking medical help for a co-worker who broke his foot at work. Follow up letters were sent by AMexCal and Migrant Workers Alliance for Change.
 - ESDC interviewed some workers in the presence of co-workers who the complainants feared would identify them to the employer. **None of the workers that complained have been asked to return next season as a reprisal.** No changes were made at the farm.
12. 01 May, 2021, Brantford, Ontario: Migrant farm worker complained about verbal abuse and being housed in a mechanical room without a stove, a fridge or a sink.
 - The worker received no response to his complaint, and eventually left the farm in June.
13. June 2021, PEI: Cooper Institute made a complaint regarding a seafood processing plant.
 - Cooper Institute reports that the call was not positive and it didn't really seem like an inspection was going to happen. It is uncertain if an inspection happened.
14. 9 August, 2021, Niagara region, Ontario: Employers sold 20 migrant farm workers rotting chicken that had expired in 2018. Five workers ate the chicken and got sick. Workers requested that they be reimbursed.
 - ESDC called back to request more information. No interviews took place. The workers received no further communication from ESDC, and the employer did not apologize or pay them back.
15. 01 September, 2021, Westmorland County, New Brunswick: Migrant farm worker complained about being sent home mid-season after requesting to go get groceries and visit the bank. Employer told the worker that they “pissed him off and anyone who pisses him off will be going home”.

- **Employer has since told co-workers that he knows “who reported him to Service Canada and he's going to make sure they can't work on any farm as long as they live.”**
16. September 2021, PEI: An agricultural migrant farm worker made a complaint about crowded housing, insufficient cleaning, and lack of appliances.
- The employer received a call a week after the complaint was placed. The employer was told there was a complaint made and they would be doing an inspection next week. The employer put in place various things they were lacking, including changing living arrangements, installing a new appliance, having workers sign a contract, and placing COVID-19 signage. The worker who complained felt very uncomfortable, as he was one of very few workers, and left his housing and workplace prior to the inspection. He is uncertain what happened afterward.