

ADVOCATING FOR LABOUR MOBILITY AND PERMANENT RESIDENCY FOR
CANADA'S SEASONAL AGRICULTURAL WORKERS FROM AN INTERNATIONAL
HUMAN RIGHTS LAW PERSPECTIVE

by

Lily (Faezeh) Barzegarikhaghah

A Practicum Submitted to the Faculty of Graduate Studies of the University of Manitoba

In Partial Fulfillment of the Requirements of the Degree of

Master of Human Rights

Faculty of Law

University of Manitoba

Winnipeg

March 2024

Copyright © 2024 Lily (Faezeh) Barzegarikhaghah

Table of Contents

1. Abstract.....	1
2. Introduction and Background	1
3. Methodology	2
4. Mistreatment and Exploitations Faced by Seasonal Agricultural Workers.....	3
5. Tied-Employment and Human Rights Violations.....	4
5.1 The Right to Equality	7
5.2 The Right to Liberty and Security.....	10
6. Permanent Residency Denial: Implications for Human Rights.....	14
6.1 The Right to Equality	15
6.2 The Right to Access Justice	19
7. Canada’s Responsibilities.....	21
8. Recommendations	24
8.1 Legal Guarantees	24
8.2 Empowerment and Integration.....	24
8.3 Human Rights Education	25
8.4 Transparency and Accountability.....	25
9. Conclusion	25
10. Bibliography	26

1. Abstract

This paper explores the impact of Canada's Seasonal Agricultural Worker Program (SAWP) on migrant workers' rights from an international human rights law perspective (IHRL). Established in 1966, the SAWP recruits labour from Mexico and the Caribbean to support Canada's agricultural sector. It critically examines how the program's policies, particularly tying workers to specific employers and barriers to obtaining permanent residency (PR) and citizenship, may violate human rights including equality, liberty, security, and access to justice. The study highlights Canada's obligations under international law and suggests reforms like open work permits and clear paths to residency and citizenship for SAWP workers, advocating for policies that align Canada's agricultural labour needs with its human rights commitments.

2. Introduction and Background

Established in 1966, the SAWP is integral to Canada's agricultural sector,¹ recruiting workers from Mexico and the Caribbean² to fill labour shortages. This program, part of the larger Temporary Foreign Worker Program (TFWP), allows Canadian employers to hire foreign labour for up to eight months when local workers are unavailable.³ At the end of their designated period in Canada, these workers must return home, yet many repeatedly return to work for the same employer each year.⁴ Despite its economic benefits for workers and their families, which often

¹ Government of Canada, "CIMM - Seasonal Agricultural Workers in Canada: Pathways to Permanent Residency - Nov 25, 2020," March 24, 2021, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-nov-25-2020/cimm-seasonal-agricultural-workers-canada-pathways-permanent-residency-nov-25-2020.html>.

² Government of Canada, "Hire a Temporary Worker Through the Seasonal Agricultural Worker Program: Overview," March 21, 2023, <https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural.html>.

³ Government of Canada.

⁴ Catherine E. Connelly, *Enduring Work: Experiences with Canada's Temporary Foreign Worker Program*, 1st ed. (McGill-Queen's University Press, 2023), 10, https://search.lib.umanitoba.ca/discovery/fulldisplay?docid=cdi_askewsholts_vlebooks_9780228018001&context=PC&vid=01UMB_INST:UMB&lang=en&adaptor=Primo%20Central&tab=Everything.

exceed those in their home countries, it exposes them to difficult conditions and possible abuse.⁵ The program binds workers to a single employer, barring them from taking other jobs in Canada⁶ and compels them to accept a non-negotiable standard employment contract without negotiation.⁷

Canadian employers favour migrant workers for their affordability and dependability, appreciating their diligence and acceptance of less desirable jobs.⁸ However, the economic benefits come at the cost of exposing workers to challenging conditions and potential mistreatment, creating a dichotomy between economic advantage and human rights concerns.

This paper evaluates the effects of the SAWP on migrant workers' human rights through an IHRL lens. Initially, it outlines the exploitations and mistreatment these workers encounter, then analyzes the human rights violations linked to tied employment and the barriers to permanent residency, with a focus on the rights to equality, liberty and security, and access to justice. The study also reviews Canada's obligations under IHRL and calls for significant policy reforms. It concludes with recommendations to improve the SAWP, aiming to better safeguard the human rights of SAWP participants.

3. Methodology

This study employs a qualitative approach, utilizing secondary sources like scholarly articles, reports, and legal documents on Canada's SAWP. It carefully selects resources for their relevance

⁵ Ibid., 362.

⁶ Ibid.

⁷ Palmer and Peters v. Attorney General of Canada, Statement of Claim, No. CV-23-00710918-00CP (Ontario Superior Court of Justice December 6, 2023); Government of Canada, "Hire a Temporary Worker Through the Seasonal Agricultural Worker Program: Overview."

⁸ Binford, "Assessing Temporary Foreign Worker Programs Through the Prism of Canada's Seasonal Agricultural Worker Program," 362; Connelly, *Enduring Work: Experiences with Canada's Temporary Foreign Worker Program*, 5.

and reliability, using keywords like "*Seasonal Agricultural Worker Program (SAWP)*," "*Labour Mobility*," "*Permanent Residency*," and "*Human Rights Violations*".

4. Mistreatment and Exploitations Faced by Seasonal Agricultural Workers

Advocacy and academic groups have brought attention to substantial deficiencies within the SAWP, citing prevalent exploitation and mistreatment of workers despite its agricultural significance and extensive duration.⁹ Workers experience low wages, long working hours without overtime compensation, and reside in substandard, overcrowded accommodations provided by their employers.¹⁰ Additionally, they encounter obstacles accessing healthcare and transportation to medical facilities, endure unsafe working conditions, and confront challenges including violence, sexual harassment, privacy infringements, and social isolation.¹¹ Workers' vulnerability is heightened by fear of deportation, limited English skills, financial needs, cultural barriers, and dependency on employers.¹² In case of experiencing exploitation and abuse, the complaint process is risky and cumbersome, with those who complain risking their jobs without the prospect of finding new employment.¹³

⁹ For a discussion see, Connelly, *Enduring Work: Experiences with Canada's Temporary Foreign Worker Program*, 24; Sarah Marsden, "Migrant Workers, Rights, and the Rule of Law: Responding to the Justice Gap," *Dalhousie Law Journal* 42, no. 1 (2019): 178; Eleni Kachulis and Mayra Perez-Leclerc, "Temporary Foreign Workers in Canada" (Legal and Social Affairs Division, Parliamentary Information and Research Service, Library of Parliament, April 16, 2020), 15; Jenna L. Henneby and Janet McLaughlin, "'The Exception That Proves the Rule': Structural Vulnerability, Health Risks, and Consequences for Temporary Migrant Farm Workers in Canada," in *Legislated Inequality: Temporary Labour Migration in Canada*, ed. Patti Tamara Lenard and Christine Strachle (McGill-Queen's University Press, 2012), 129, <http://www.jstor.org/stable/j.ctt1pq1k6.10>; Palmer and Peters v. Attorney General of Canada, Statement of Claim; UN Office of the High Commissioner for Human Rights (OHCHR), "End of Mission Statement by the United Nations Special Rapporteur on Contemporary Forms of Slavery, Tomoya Obokata on His Visit to Canada from 23 August to 6 September 2023," September 6, 2023, 4, <https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/eom-statement-canada-sr-slavery-2023-09-06.pdf>.

¹⁰ Ibid.

¹¹ Ibid.

¹² Connelly, *Enduring Work: Experiences with Canada's Temporary Foreign Worker Program*, 24; Eleni Kachulis and Mayra Perez-Leclerc, "Temporary Foreign Workers in Canada," 15.

¹³ Delphine Nakache and Paula J. Kinoshita, "The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail Over Human Rights Concerns?" (Institute for Research on Public Policy (IRPP), May

5. Tied-Employment and Human Rights Violations

Before hiring a foreign worker, including a SAWP participant, they must obtain a work permit or authorization to work without one.¹⁴ There are three types of work permits: open, employer-specific, and open work permits for vulnerable workers.¹⁵ An open work permit allows employment with almost any employer, while an employer-specific work permit restricts the worker to one employer, who must have a Labour Market Impact Assessment (LMIA).¹⁶ If employment ends, the worker must leave Canada or secure a new LMIA-supported job.¹⁷ The open work permit for vulnerable workers allows individuals with an employer-specific work permit who are in abusive situations to seek new employment opportunities within Canada.¹⁸

SAWP participants receive employer-specific permits, tightly restricting them to a single employer and severely limiting their autonomy in employment decisions,¹⁹ unlike Canadian citizens, permanent residents, or holders of open work permits. Consequently, should their employment be terminated—which employers can do at will—migrant workers risk both job loss and deportation.²⁰ This system creates a power imbalance that heavily favours employers and

2010), 24, <https://irpp.org/wp-content/uploads/assets/research/diversity-immigration-and-integration/new-research-article-3/IRPP-Study-no5.pdf>.

¹⁴ Immigration, Refugees and Citizenship Canada (IRCC), “Temporary Workers,” June 15, 2023, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers.html>.

¹⁵ Eleni Kachulis and Mayra Perez-Leclerc, “Temporary Foreign Workers in Canada,” 4.

¹⁶ LMIA is a Canadian document required for hiring foreign workers, indicating a need for their employment and the unavailability of Canadian workers for the job. For more details, see IRCC's explanation of an LMIA at <https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=163&top=17>; Immigration, Refugees and Citizenship Canada (IRCC), “Work Permit: About the Process,” June 14, 2023, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/work-permit.html>.

¹⁷ Connelly, *Enduring Work: Experiences with Canada's Temporary Foreign Worker Program*, 7.

¹⁸ Immigration, Refugees and Citizenship Canada (IRCC), “Open Work Permit for Vulnerable Foreign Workers Who Are Victims of Abuse,” March 31, 2022, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html>.

¹⁹ Jenna L Henneby and Kerry Preibisch, “A Model for Managed Migration? Re-Examining Best Practices in Canada's Seasonal Agricultural Worker Program,” *International Migration* 50, no. Special Issue 1 (s1) (2012): e30, <https://doi.org/10.1111/j.1468-2435.2009.00598.x>.

²⁰ *Ibid.*

exposes workers to exploitation and abuse.²¹ Employers are afforded the discretion to repatriate workers for a variety of reasons, including no longer requiring their services, health issues, or under the vague terms of the SAWP contract, for "non-compliance, refusal to work, or any other sufficient reason."²² This flexibility can lead to the exploitation of workers, who, in fear of deportation and the loss of their livelihood, often endure mistreatment, including unpaid labour, tasks outside their contractual obligations, and excessive working hours.²³

Notably, while employer-specific visas are commonplace in Canadian immigration systems,²⁴ the SAWP is distinguished by its unique challenges and the human rights concerns it raises. SAWP workers are often placed in high-risk, low-compensation roles, particularly in agriculture, an industry notorious for workplace hazards.²⁵ These challenges are exacerbated by social isolation in rural locales, stemming from an explicit mandate to reside in employer-provided housing,²⁶ and systemic discrimination in predominantly white rural communities.²⁷ The SAWP policy, which restricts family reunification for its participants, further burdens workers emotionally, exacerbating the isolation and vulnerability they already face.²⁸ Advocating for rights or reporting poor working conditions can blacklist SAWP workers,²⁹ potentially blocking future job opportunities in Canada. This is because SAWP employers control rehiring

²¹ Palmer and Peters v. Attorney General of Canada, Statement of Claim paragraphs 43 and 56.

²² Adriana Gabriela Paz Ramirez, "Embodying and Resisting Labour Apartheid: Racism and Mexican Farm Workers in Canada's Seasonal Agricultural Workers Program" (Vancouver, University of British Columbia, 2013), 16–17, <https://open.library.ubc.ca/media/stream/pdf/24/1.0103384/2>.

²³ Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA), "Temporary Foreign Worker Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities," 42nd Parliament, 1st Session, September 2016, 18, <https://www.ourcommons.ca/documentviewer/en/42-1/HUMA/report-4/page-5>.

²⁴ For more information see: <https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=165&top=17>

²⁵ Palmer and Peters v. Attorney General of Canada, Statement of Claim paragraph 127(a).

²⁶ Ibid., 127 (f).

²⁷ Ibid., 127 (h).

²⁸ Ibid., 127 (d).

²⁹ Ibid., 127 (k).

decisions based on a system where they choose workers by name for subsequent seasons, creating a coercive incentive for workers to endure unsafe conditions to secure future employment.³⁰

These distinctive challenges underscore the urgent need for reforms to protect the rights and dignity of SAWP workers in Canada, ensuring they receive fair and equitable treatment. Advocates and scholars advocate for enhancing SAWP participants' conditions by promoting labour mobility, allowing them to change employers freely within the labour market.³¹ Moving from employer-specific to open work permits would sever the legal tie to one employer, rebalance power dynamics, and provide workers with enhanced safeguards against exploitation and specific challenges. This flexibility would enable migrant workers to exit unfavorable work environments and actively seek alternative job opportunities.³²

The subsequent parts delve into how Canada's approach to limiting employment options for SAWP participants could potentially undermine or infringe upon their human rights, highlighting the critical need to shift to labour mobility through an IHRL framework.

³⁰ C. Susana Caxaj and Amy Cohen, “‘I Will Not Leave My Body Here’: Migrant Farmworkers’ Health and Safety Amidst a Climate of Coercion,” *International Journal of Environmental Research and Public Health* 16, no. 15 (August 2019): 3, <https://doi.org/10.3390/ijerph16152643>.

³¹ See, for example, Connelly, *Enduring Work: Experiences with Canada’s Temporary Foreign Worker Program*, 134–36; Fay Faraday, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity” (Metcalf Foundation, September 2012), 78, <https://metcalfoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>; Migrant Worker Solidarity Network Manitoba, “‘A Brief on the Temporary Foreign Worker Program’ Submitted to the House of Commons Standing Committee on Human Resources, Skill and Social Development and the Status of Persons with Disabilities (HUMA).,” May 20, 2016, <https://migrantrights.ca/wp-content/uploads/2016/06/MWSN-Submission-to-TFWP-Review-Final.pdf>.

³² Fay Faraday, “The Empowerment of Migrant Workers in a Precarious Situation: An Overview,” KNOMAD Paper No 39 (Washington, DC: World Bank, December 2021), 58, <https://www.knomad.org/sites/default/files/2021-12/KNOMAD%20Working%20Paper%2039-Empowerment%20of%20Worker-Dec%202021.pdf>.

5.1 The Right to Equality

The core principle of the SAWP, which ties employment to specific employers, violates the principles of equality that are fundamental to Canadian and international human rights laws. Equality, embedded in the Canadian Charter of Rights and Freedoms (Section 15)³³ and supported by international treaties like the International Covenant on Civil and Political Rights (ICCPR) (Articles 2 and 26)³⁴ and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 2(2)),³⁵ is essential for protecting all human rights. These statutes, along with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),³⁶ guarantee equality rights for all, including migrant workers. Although Canada has not ratified the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW), which also enshrines equality rights for migrants in Article 7,³⁷ these legal frameworks collectively underscore the importance of the principle of equality. IHRL requires states to ensure both legal (de jure) and substantive (de facto) equality, guaranteeing that everyone, without exception, can fully exercise their rights to equality.³⁸

³³ “Canadian Charter of Rights and Freedoms,” Part I of the Constitution Act, 1982 RSC 1985 § (1982), sec. 15.

³⁴ United Nations (General Assembly), “International Covenant on Civil and Political Rights,” December 16, 1966, arts. 2, 26, Treaty Series, Vol. 999, 171, <https://www.refworld.org/docid/3ae6b3aa0.html>.

³⁵ United Nations (General Assembly), “International Covenant on Economic, Social and Cultural Rights,” December 16, 1966, art. 2(2), Treaty Series, Vol. 993, 3, <https://www.refworld.org/docid/3ae6b36c0.html>.

³⁶ United Nations (General Assembly), “International Convention on the Elimination of All Forms of Racial Discrimination,” December 21, 1965, Treaty Series, Vol. 660, 195, <https://www.refworld.org/docid/3ae6b3940.html>.

³⁷ United Nations (General Assembly), “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,” December 18, 1990, art. 7, A/RES/45/158, <https://www.refworld.org/docid/3ae6b3980.html>.

³⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights),” July 2, 2009, paras. 8–10, E/C.12/GC/20, <https://www.refworld.org/docid/4a60961f2.html>; Kelley Loper, “Substantive Equality in International Human Rights Law and Its Relevance for the Resolution of Tibetan Autonomy Claims,” *North Carolina Journal of International Law* 37 (2011): 13–14, <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1940&context=ncilj>.

The application of tied-employment within the SAWP inherently discriminates in both its structure and its repercussions.³⁹ The SAWP's tied employment discriminates based on race, nationality, and ethnicity, primarily targeting workers from specific countries with predominantly racialized populations.⁴⁰ Furthermore, the policy discriminates based on citizenship status, akin to the discrimination grounds prohibited under Section 15, as established in *Andrews v. Law Society of British Columbia*.⁴¹ It enforces restrictions on non-citizen SAWP workers, conditions not faced by Canadian citizens.⁴² This statement conflicts with the right to equality as stipulated in Section 15 of the Canadian Charter. Moreover, it infringes upon several previously referenced provisions of International Conventions regarding equality rights, to which Canada is a party.

The examination of the SAWP's history also reveals inherent discrimination in the implementation of policies that bind workers to specific employers. This analysis shows that the application of these policies was not merely a response to labour needs in certain industries in Canada. Historically, governments both preceding and following the inception of the SAWP refrained from applying these binding conditions to workers from Europe, thereby upholding their personal dignity and freedom.⁴³ This sharply contrasts with the enforcement of similar restrictions on participants in the SAWP.⁴⁴ Such differential application of policies and the resultant disparity in treatment point to deliberate discrimination.⁴⁵ The policy aimed to enforce racial segregation, undermining the equality rights of these individuals.⁴⁶

³⁹ Palmer and Peters v. Attorney General of Canada, Statement of Claim paragraph 153.

⁴⁰ Ibid., paragraph 152 (a).

⁴¹ Ibid., paragraph 152 (b); *Andrews v. Law Society of British Columbia*, 1 S.C.R. 143 (Supreme Court of Canada 1989).

⁴² Palmer and Peters v. Attorney General of Canada, Statement of Claim paragraph 152 (b).

⁴³ Ibid., paragraphs 8, 155–157.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

Tied-employment not only embodies but also reinforces the racist stereotypes that led to its initial implementation.⁴⁷ It propagates harmful perceptions about the alleged unsuitability of Black, Indo Caribbean and Mexican farmworkers' freedom and integration.⁴⁸ This ongoing policy continues to marginalize and stereotype SAWP farmworkers in Canada, worsening the disadvantages they already face.⁴⁹ The ILO has consistently acknowledged the disproportionate impacts of employment discrimination on diverse groups, including migrant workers, as a facet of discrimination based on race and national origin.⁵⁰ In a landmark decision in 2006, the Israeli Supreme Court ruled against employer-specific permits, highlighting their negative and disproportionate impact on migrant workers' rights.⁵¹ This ruling emphasized the importance of non-discrimination and equal employment opportunities, regardless of citizenship status.⁵² Such international legal precedents from other jurisdictions could be instrumental in broadening Canada's approach to assessing comparable employment policies.⁵³

Tied employment under the SAWP also prevents migrant workers from accessing Employment Insurance (EI) benefits, despite their obligation to contribute EI premiums.⁵⁴ This

⁴⁷ Ibid., paragraphs 158, 160.

⁴⁸ Ibid.

⁴⁹ Seth Gordon, "Canadian Borderlands: Equality Rights for Temporary Migrant Labourers Under Section 15 of the Charter," *McGill Faculty of Law*, September 2022, 17, https://ciaj-icaj.ca/wp-content/uploads/documents/2023/12/1056_seth-gordon_cdn-borderlands-equality-rights-temporary-migrant-labourers_2023-chr-essayprize.pdf?id=17614&1704507708; Palmer and Peters v. Attorney General of Canada, Statement of Claim paragraph 160.

⁵⁰ ILO Committee of Experts on the Application of Conventions and Recommendations, "Discrimination (Employment and Occupation) Convention, 1958 (No. 111), General Observation" (International Labour Office, 2019), 3–4, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_717510.pdf; Seth Gordon, "Canadian Borderlands: Equality Rights for Temporary Migrant Labourers Under Section 15 of the Charter," 18–19.

⁵¹ *Kav LaOved Worker's Hotline v. Government of Israel*, 1 IsrLR 296, 305–6, 307–8 (Supreme Court of Israel 2006); Seth Gordon, "Canadian Borderlands: Equality Rights for Temporary Migrant Labourers Under Section 15 of the Charter," 19–20.

⁵² Ibid.

⁵³ Seth Gordon, "Canadian Borderlands: Equality Rights for Temporary Migrant Labourers Under Section 15 of the Charter," 19–20.

⁵⁴ Veena Verma, "The Mexican and Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program Under Unionization"

limitation stems from their work permits being tied to a single employer, barring them from accepting employment with any other employer.⁵⁵ Consequently, they cannot meet the EI eligibility criterion of being "available for work," making them ineligible for EI benefits when unemployed.⁵⁶ Therefore, SAWP participants contribute to EI without any opportunity to access its benefits, underlining a breach of equality principles.⁵⁷ It is also the subject of a of a recent class action lawsuit against the Canadian Government by SAWP participants. The suit claims the government collected nearly \$500 million in EI premiums from migrant agricultural workers and their employers over 15 years but denied them EI benefits due to employer-tied employment, alleging this violates their Charter equality rights.⁵⁸

In summary, the employer-specific permit system of the SAWP significantly contributes to discrimination against them, violating their right to equality.

5.2 The Right to Liberty and Security

The exploitation and the unique risks faced by SAWP farmworkers, as previously highlighted, are exacerbated by policies that bind them to a single employer. Their unique challenges emphasize the crucial necessity for SAWP workers to have the option to change employers. However, the SAWP enforces a model of tied employment, which infringes upon another workers' rights, the right to liberty and security. This infringement is underscored by the Supreme Court of Canada in *Dunmore v. Ontario (Attorney General)*, which acknowledged the importance of the "right to quit" an employer as a vital mechanism for farmworkers to safeguard

(North-South Institute, 2003), 78,
https://s3.amazonaws.com/migrants_heroku_production/datas/95/Verma_2003_original.pdf?1311163747.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid., 78.

⁵⁸ *Palmer and Peters v. Attorney General of Canada*.

their interests.⁵⁹ The capacity for SAWP farmworkers to switch employers freely and pursue new employment opportunities is therefore not just a matter of convenience but a fundamental aspect of their autonomy.⁶⁰ Such freedoms should be protected as integral to the rights to liberty and security.⁶¹ The current system of tied employment essentially revokes the SAWP workers' ability to resign, placing these already vulnerable migrant farmworkers in a precarious position where leaving their employer is hardly a viable option due to the risk of deportation from Canada.⁶² Consequently, by depriving SAWP workers of their right to terminate employment, Canada is not only compromising their main safeguard against potential harm and abuse but also exacerbating existing vulnerabilities and fostering new ones by granting agricultural employers undue influence and control over their workers' lives.⁶³

Moreover, work permits tied to specific employers significantly increase the risk of workers in Canada transitioning to an illegal status, despite initially entering the country legally.⁶⁴ This situation often arises when migrant workers either leave their job or are dismissed before their contract ends, or if the promised job is no longer available upon their arrival.⁶⁵ These workers, already burdened with substantial debt, find themselves unable to legally work due to their work authorization being linked to a single employer.⁶⁶ To obtain a new work permit, they must find an employer with both a LMIA and an available position, a process full of delays and

⁵⁹ *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, 2001 SCC 94.

⁶⁰ *Palmer and Peters v. Attorney General of Canada*, Statement of Claim paragraph 118; Eugénie Depatie-Pelletier et al., “Migrant Care and Farm Workers, Canadian Law, and Unfree Labour,” *Association for the Rights of Household/Farm Workers*, 2018, 11, <https://addpd.files.wordpress.com/2018/11/addpd-arhw-2018-finall.pdf>.

⁶¹ *Ibid.*

⁶² Fay Faraday, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity,” 76–77; *Palmer and Peters v. Attorney General of Canada*, Statement of Claim paragraph 125.

⁶³ *Palmer and Peters v. Attorney General of Canada*, Statement of Claim paragraph 125.

⁶⁴ Eugénie Depatie-Pelletier et al., “Migrant Care and Farm Workers, Canadian Law, and Unfree Labour,” 14.

⁶⁵ *Ibid.*

⁶⁶ Fay Faraday, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity,” 76–77; Eugénie Depatie-Pelletier et al., “Migrant Care and Farm Workers, Canadian Law, and Unfree Labour,” 14.

challenges.⁶⁷ During this waiting period, the need to earn a living and send money back home sometimes drives these workers to take up unauthorized employment.⁶⁸ Such circumstances create an ideal environment for human trafficking.⁶⁹ Human trafficking involves coercing individuals into exploitation, not always through violence but also through debt bondage, deportation threats, or other pressures.⁷⁰ Victims are forced into labour, sexual exploitation, or servitude without their voluntary consent.⁷¹ Engaging in unofficial work exposes these individuals to risks of arrest and deportation, making them susceptible to various forms of financial and physical exploitation.⁷² These factors, along with the fear of legal consequences, are often leveraged by traffickers to prevent their victims from seeking help.⁷³ Consequently, employer-specific work permits of the SAWP participants can be seen as the State's infringements on workers' fundamental right to personal security, as they heighten their vulnerability to human trafficking.⁷⁴

Additionally, migrant workers, particularly in the SAWP, are at increased risk of physical and psychological damage.⁷⁵ They often face excessive work hours and unsafe working environments.⁷⁶ Their fear of retaliation and limited job mobility prevents them from reporting these unsafe conditions or advocating for safer work practices,⁷⁷ leading to serious occupational

⁶⁷ Fay Faraday, "Made in Canada: How the Law Constructs Migrant Workers' Insecurity," 77.

⁶⁸ Fay Faraday, 76–77; Eugénie Depatie-Pelletier et al., "Migrant Care and Farm Workers, Canadian Law, and Unfree Labour," 14.

⁶⁹ Eugénie Depatie-Pelletier et al., "Migrant Care and Farm Workers, Canadian Law, and Unfree Labour," 14.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*, 16.

⁷⁵ Jenna L. Hennebry and Janet McLaughlin, "'The Exception That Proves the Rule': Structural Vulnerability, Health Risks, and Consequences for Temporary Migrant Farm Workers in Canada," 126.

⁷⁶ Eugénie Depatie-Pelletier et al., "Migrant Care and Farm Workers, Canadian Law, and Unfree Labour," 16–17, 20.

⁷⁷ Jenna L. Hennebry and Janet McLaughlin, "'The Exception That Proves the Rule': Structural Vulnerability, Health Risks, and Consequences for Temporary Migrant Farm Workers in Canada," 132.

illnesses and injuries, along with mental health issues like stress and depression, often caused by emotional and physical mistreatment at work.⁷⁸ Moreover, the requirement for SAWP workers to reside in housing provided by their employer further increases their vulnerability, exposing them to poor living conditions, harassment, and violence.⁷⁹ This combination of factors forces workers to choose between maintaining their legal status and ensuring their physical and mental health.⁸⁰

Consequently, the policy of binding migrant farmworkers to a single employer in SAWP severely compromises their fundamental rights to liberty and security by increasing the risk of human trafficking and causing physical and psychological harm. This policy conflicts with Section 7 of the Canadian Charter of Rights and Freedoms,⁸¹ which protects everyone in Canada,⁸² and also violates IHRL regarding liberty and security.⁸³ Although Section 7's right to liberty and security and corresponding international laws do not explicitly cover the freedom to change employers, the unique vulnerabilities of SAWP workers mean that Canada's policy exacerbates their risks and limits their ability to protect themselves, directly affecting their right to personal liberty and security.⁸⁴

Finally, to address the power imbalance between employers and migrant workers and protect their rights to equality, liberty, and security, replacing employer-specific work permits with open ones is crucial. This change would enhance labour mobility, allowing workers to freely navigate the labour market. The current system neither benefits workers nor assists

⁷⁸ Ibid., 16–17, 20.

⁷⁹ Ibid, 17.

⁸⁰ Ibid.

⁸¹ Canadian Charter of Rights and Freedoms, sec. 7.

⁸² *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177 at para 35.

⁸³ For instance, similar provisions are found in Article 9 of the ICCPR, Article 16 of the ICPRMW, and Article 3 of the Universal Declaration of Human Rights (UDHR), though the latter two are not legally binding on Canada.

⁸⁴ *Palmer and Peters v. Attorney General of Canada*, Statement of Claim at 126.

provinces and employers in meeting labour needs. Allowing these temporary foreign workers to switch employers as necessary would be more practical in certain industries and advantageous for employers.⁸⁵

6. Permanent Residency Denial: Implications for Human Rights

Another significant critique of the SAWP is its failure to provide a pathway to permanent residency (PR) and subsequent Canadian citizenship to workers, despite their long-term, intensive labour in Canada's agriculture. Although it is a temporary migration program, many SAWP participants repeatedly return to the same Canadian regions annually, typically for eight months at a time, over many years and even decades.⁸⁶ This long-term commitment effectively renders them "permanently temporary," despite their substantial contributions to the sector.⁸⁷ Recognizing the long-term commitment of these migrant workers, it becomes essential to consider offering them a path to PR, especially for those who have shown a dedication to Canada and express a desire for permanent settlement.

While SAWP workers are theoretically entitled to the same human rights and protections as Canadian workers, the reality often falls short of this ideal. A primary factor contributing to the infringement of their rights is the lack of a pathway to PR and citizenship.⁸⁸ Although direct

⁸⁵ Delphine Nakache and Paula J. Kinoshita, "The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail Over Human Rights Concerns?," 39–40.

⁸⁶ Christina Gabriel and Laura Macdonald, "Citizenship at the Margins: The Canadian Seasonal Agricultural Worker Program and Civil Society Advocacy," *Politics & Policy* 39, no. 1 (2011): 51, <https://doi.org/10.1111/j.1747-1346.2010.00282.x>.

⁸⁷ Jenna Hennebry, "Permanently Temporary? Agricultural Migrant Workers and Their Integration in Canada" (Institute for Research on Public Policy (IRPP), February 2012), 3, <https://irpp.org/wp-content/uploads/assets/research/diversity-immigration-and-integration/permanently-temporary/IRPP-Study-no26.pdf>.

⁸⁸ Marsden, "Migrant Workers, Rights, and the Rule of Law," 160; Janet McLaughlin and Jenna Hennebry, "Managed into the Margins: Examining Citizenship and Human Rights of Migrant Workers in Canada," in *The Human Right to Citizenship: A Slippery Concept*, ed. Rhoda E. Howard-Hassmann and Margaret Walton-Roberts (University of Pennsylvania Press, 2015), 184, 187, 190, <https://www.researchgate.net/signup.SignUpAccountBasics.html>.

acknowledgment of PR and citizenship as rights is not explicit in international conventions, citizenship remains a crucial framework for assigning rights.⁸⁹ This discrepancy often stems from a mismatch between a country's IHRL obligations and its more restrictive domestic human rights legislation. As highlighted in the forthcoming sections, the absence of citizenship or PR status often leads to restricted or denied access to human rights, including equality and access to justice. This highlights the importance of pushing for a clear PR pathway for SAWP workers, a position backed by numerous advocacy groups⁹⁰ and in line with international human rights laws, to safeguard their fundamental rights.

6.1 The Right to Equality

Under Canadian immigration policies, all temporary foreign workers can apply for permanent residency, except for SAWP farmworkers, who lack a federal avenue to transition from temporary to permanent residency.⁹¹ In stark contrast, high-skilled workers are actively provided with opportunities for permanent residency, reflecting the federal government's encouragement of skilled foreign workers to settle permanently in Canada.⁹² This approach effectively positions high-skilled migrants as prospective Canadian citizens,⁹³ while SAWP workers, despite their contributions, must leave Canada upon their work permit's expiry, though many return annually for agricultural work. This policy disparity has been criticized as unjust, particularly given the aggressive recruitment and retention strategies for high-skilled workers in

⁸⁹ Luin Goldring and Patricia Landolt, "Caught in the Work–Citizenship Matrix: The Lasting Effects of Precarious Legal Status on Work for Toronto Immigrants," *Globalizations* 8, no. 3 (2011): 338.

⁹⁰ Connelly, *Enduring Work: Experiences with Canada's Temporary Foreign Worker Program*, 137.

⁹¹ Delphine Nakache and Paula J. Kinoshita, "The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail Over Human Rights Concerns?," 31.

⁹² Patti Tamara Lenard and Christine Straehle, *Legislated Inequality: Temporary Labour Migration in Canada* (Montreal: McGill-Queen's University Press, 2012), 8, <https://search-ebscohost-com.uml.idm.oclc.org/login.aspx?direct=true&db=e000xna&AN=499936&site=ehost-live>.

⁹³ *Ibid.*, 8.

Canada.⁹⁴ This situation creates an inequitable experience for most SAWP workers who spend years in Canada without a viable path to contribute long-term to society.

The ongoing unequal treatment of SAWP workers, in comparison to high-skilled workers, breaches the principles of equality and non-discrimination enshrined in international conventions like the ICCPR,⁹⁵ ICESCR,⁹⁶ and ICPRMW.⁹⁷ Such differential treatment is deemed discriminatory “unless the justification for differentiation is reasonable and objective”, and “solely for the purpose of promoting the general welfare in a democratic society.”⁹⁸ However, the application of the SAWP contradicts these criteria. Although temporary foreign workers, including those under the SAWP, are classified as temporary by Canada—implying a short stay without the benefits of citizenship—their repeated and prolonged returns underscore their indispensable role in agriculture.⁹⁹ This ongoing pattern, alongside persistent labour shortages in the sector, challenges the justification for denying them access to PR, rendering such denial unreasonable and discriminatory.

Moreover, similar to the lack of mobility for SAWP participants, which arises from racial bias, the program's history also highlights discrimination in denying permanent residency and citizenship to these farmworkers based on their race.¹⁰⁰ Veena Verma (2003) contends that the

⁹⁴ Delphine Nakache and Paula J. Kinoshita, “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail Over Human Rights Concerns?,” 1.

⁹⁵ United Nations (General Assembly), “ICCPR.”

⁹⁶ United Nations (General Assembly), “ICESCR.”

⁹⁷ United Nations (General Assembly), “ICPRMW.”

⁹⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights),” para. 13.

⁹⁹ Jenna L. Hennebry and Janet McLaughlin, ““The Exception That Proves the Rule”: Structural Vulnerability, Health Risks, and Consequences for Temporary Migrant Farm Workers in Canada,” 120; Veena Verma, “The Mexican and Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program Under Unionization,” 40–41.

¹⁰⁰ Adriana Gabriela Paz Ramirez, “Embodying and Resisting Labour Apartheid: Racism and Mexican Farm Workers in Canada’s Seasonal Agricultural Workers Program,” 39.

SAWP was initially established within a discriminatory immigration policy that resulted in workers being deprived of any opportunity for citizenship rights despite their years of labour in Canada.¹⁰¹ The program aimed to recruit Mexican and Caribbean workers for strenuous agricultural jobs, which citizens in developed countries often avoided.¹⁰² This strategy enabled Canada to mitigate labour shortages without facilitating these workers' integration into Canadian society or granting them opportunities for personal and family advancement via permanent residency.¹⁰³ Between 1947 and 1954, Polish veterans and Displaced Persons from Eastern Europe, initially arriving in Canada on temporary agricultural work contracts, were allowed to permanently settle after fulfilling certain criteria.¹⁰⁴ Similarly, Dutch nationals who arrived in Canada to work in farm labour roles under the 1974 bilateral agreement were eligible for citizenship after fulfilling certain criteria.¹⁰⁵ In contrast, at that time, the Canadian government had concerns about the ability of Caribbean workers to adapt to Canada and the potential changes to the country's racial composition.¹⁰⁶ Thus, the government's requirement that these workers remain in Canada only on a temporary basis, with no possibility of citizenship, was rooted in early racist immigration policies.¹⁰⁷

The principle of non-discrimination and equality forbids “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly” based on

¹⁰¹ Veena Verma, “The Mexican and Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program Under Unionization,” 41–42.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, 6–7.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, 7–8.

¹⁰⁷ *Ibid.*

prohibited grounds, including race.¹⁰⁸ It is essential to note that the legal structure of the SAWP does not explicitly specify limitations on citizenship and employment opportunities based on race or nationality.¹⁰⁹ In essence, the program operates within a framework that ostensibly disregards race and ethnicity.¹¹⁰ However, the indirect discrimination of SAWP policies and practices, which may appear neutral on the surface but disproportionately impact workers due to the prohibited ground of discrimination, namely race, renders it discriminatory.¹¹¹ This is contrary to the principles of IHRL, which mandates the achievement of substantive (de facto) equality, not merely legal (de jure) equality.¹¹² The UN special rapporteur also criticizes the lack of or minimal pathways to PR for racialized migrant workers who have contributed to Canada's agriculture, including those in the SAWP, underscoring the program's discriminatory nature.¹¹³

In conclusion, Canada's pathway to PR should be equitable and accessible for SAWP workers, free from discrimination based on skill level or racial bias. Like many before them, these migrant workers, driven by their dedication and hard work, deserve the same opportunity to achieve Canadian citizenship.¹¹⁴

¹⁰⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights),” para. 7.

¹⁰⁹ Adriana Gabriela Paz Ramirez, “Embodying and Resisting Labour Apartheid: Racism and Mexican Farm Workers in Canada’s Seasonal Agricultural Workers Program,” 39.

¹¹⁰ Ibid.

¹¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights),” para. 10 (b).

¹¹² Ibid., paras. 8–10; Kelley Loper, “Substantive Equality in International Human Rights Law and Its Relevance for the Resolution of Tibetan Autonomy Claims,” 13–14.

¹¹³ UN Office of the High Commissioner for Human Rights (OHCHR), “End of Mission Statement by the United Nations Special Rapporteur on Contemporary Forms of Slavery, Tomoya Obokata on His Visit to Canada from 23 August to 6 September 2023,” 5.

¹¹⁴ Luin Goldring, “Temporary Worker Programs as Precarious Status: Implications for Citizenship, Inclusion and Nation Building in Canada,” *Canadian Issues* Spring (March 1, 2010): 63.

6.2 The Right to Access Justice

The absence of citizenship or PR status not only denies SAWP participants the right to equality but also impedes their access to a second crucial right, namely, the right to justice. Access to justice, a cornerstone of the rule of law and human rights protection¹¹⁵ recognized in IHRL,¹¹⁶ is vital for everyone, including migrant workers.¹¹⁷ It enables individuals to engage with judicial or quasi-judicial systems to safeguard their rights and seek redress for violations.¹¹⁸ This right is particularly essential for migrant workers to protect their labour rights, relying on their capacity to access and utilize the legal frameworks of their host countries effectively.¹¹⁹

Regrettably, vulnerable groups of migrant workers, including those under the SAWP, face significant barriers in accessing justice. Canadian courts and tribunals have already acknowledged the difficulties faced by migrant workers in exercising their right to access the legal system.¹²⁰ Specifically, they have recognized that SAWP employees, due to the fear of potential legal consequences, were effectively prevented from utilizing the country's judicial system.¹²¹ These workers often hesitate to pursue legal action, particularly when they lack permanent residency in Canada, as they fear losing their jobs and the right to reside and work in

¹¹⁵ UN Committee on the Elimination of Discrimination Against Women, “General Recommendation No. 33 on Women’s Access to Justice,” July 23, 2015, para. 1, CEDAW/C/GC/33, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslldCrOIUTvLRFDjh6%2Fxl1pWCd9kc8NuhsZOT1QuzhrDy1rIpOgSyxJmK%2FSo2p3MpTI9diLSL02wtx8JPse1mllicqCgIo0em30unjIY%2Fnmkn3g>.

¹¹⁶ For example, refer to Articles 7 and 8 of the UDHR; Articles 2(3)(a), 9(4), 14(1) of the ICCPR; Articles 5 and 6 of the ICERD; and Articles 16(7-9), 18(3)(5)(7), and 24 of the ICPRMW.

¹¹⁷ UN Human Rights Committee, “General Comment No. 32, Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial,” August 23, 2007, para. 9, CCPR/C/GC/32, <https://www.refworld.org/docid/478b2b2f2.html>.

¹¹⁸ International Organization for Migration (IOM), “Migrants’ Access to Justice: International Standards and How the Global Compact for Safe, Orderly and Regular Migration Helps Paving the Way,” 2022, 3, <https://www.iom.int/sites/g/files/tmzbdl486/files/documents/access-to-justice-and-the-gcm-eng-final-march-2022.pdf>.

¹¹⁹ *Ibid.*, 1.

¹²⁰ Eugénie Depatie-Pelletier et al., “Migrant Care and Farm Workers, Canadian Law, and Unfree Labour,” 23.

¹²¹ *Ibid.*; *Fraser v. Canada (Attorney General)*, No. CanLII 47783 (ON SC) (2005).

the country.¹²² The SAWP's naming system, where employers dictate rehiring decisions, further entrenches worker dependency on employers, deterring complaints about adverse conditions or rights violations, even when such conditions jeopardize health, safety, or legislated rights.¹²³ Moreover, migrant workers often miss out on provincial social protections, despite contributing on par with Canadian workers, as they risk deportation before they can pursue justice once their employment contracts or work permits expire.¹²⁴

Lacking permanent residency, migrant workers remain vulnerable, with limited motivation to challenge rights violations due to deportation fears and the importance of their jobs for their livelihood and that of their families.¹²⁵ Granting PR status would empower these workers to voice concerns about working conditions and extricate themselves from abusive employment relationships without the specter of repatriation or deportation looming over them.¹²⁶ This move towards permanent residency is essential in realizing their fundamental right to access justice, underlining the need for Canada to offer PR to SAWP workers to eliminate barriers to accessing this right.

¹²² Jenna Hennebry and Janet McLaughlin, "Submission 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." (Waterloo, ON: International Migration Research Centre, 2016), 9.

¹²³ Ibid.

¹²⁴ Canadian Council for Refugees (CCR), "Immigration Policy Shifts: From Nation Building to Temporary Migration," *Association for Canadian Studies*, 2010, 93; Eugenie Depatie-Pelletier, "Under Legal Practices Similar to Slavery According to the UN Convention: Canada's 'Non White' 'Temporary' Foreign Workers in 'Low-Skilled Occupations'" (10th National Metropolis Conference, Halifax, 2008), 24–25, https://s3.amazonaws.com/migrants_heroku_production/datas/1711/Article_Depatie-Pelletier_Metropolis_2008_original.pdf?1406165079.

¹²⁵ Patti Tamara Lenard and Christine Straehle, *Legislated Inequality: Temporary Labour Migration in Canada*, 22.

¹²⁶ Juliana Dalley, "Submissions Respecting the Temporary Foreign Worker Program Review by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities" (Vancouver, BC: Community Legal Assistance Society, 2016), 6, <https://migrantrights.ca/wp-content/uploads/2016/06/Brief-respecting-the-TFWP-review-CLAS-May-2016.pdf>.

In summary, granting SAWP participants access to permanent residency and eventual citizenship is vital. It ensures equality by upholding non-discrimination principles and provides access to justice, empowering workers to challenge abuse without fear of deportation.

7. Canada's Responsibilities

As the UN Office of the High Commissioner for Human Rights explains, within IHRL, states are tasked with three core duties: to respect, protect, and fulfill human rights.¹²⁷ The duty to respect means states should not infringe upon human rights, while to protect requires shielding individuals from rights abuses by others, including employers.¹²⁸ “Fulfill” requires proactive steps by states, through laws and policies, to enhance individuals' access to their rights.¹²⁹ Canada, as a party to numerous international conventions, bears the primary responsibility in upholding the rights of SAWP participants. The violation of human rights, including the right to equality, liberty and security and access to justice, necessitates Canada's immediate attention and corrective action.

The discriminatory nature of employer-specific work permits and the denial of opportunities for PR and citizenship to SAWP workers demand a thorough reassessment and amendment of existing policies to ensure they align with established international human rights standards.¹³⁰ In terms of protecting the rights of migrant workers, the Canadian SAWP exposes them to exploitation, vulnerability, and abuse.¹³¹ While SAWP workers occupy a relatively more

¹²⁷ UN Office of the High Commissioner for Human Rights (OHCHR), “International Human Rights Law,” accessed February 11, 2024, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights),” para. 37.

¹³¹ Jenna L Hennebry and Kerry Preibisch, “A Model for Managed Migration? Re-Examining Best Practices in Canada's Seasonal Agricultural Worker Program,” e30.

precarious position in the labour market and face unique challenges, Canada has failed to establish adequate regulatory mechanisms to protect their rights.¹³²

Despite recognizing the potential for abuse in tied employment, Canada continues to use employer-specific work permits for SAWP participants.¹³³ It introduced an ineffective remedy, the open work permit for vulnerable workers, which only allows migrant workers to change employers after facing or risking abuse. This reactive approach fails to pre-emptively safeguard SAWP workers' well-being, requiring them to suffer harm before gaining labour mobility.¹³⁴ In response to its duty to protect SAWP workers from abuse, discrimination, and exploitation, Canada should abolish employer-specific work permits immediately, as the House of Commons Standing Committee recommends.¹³⁵ It should issue open work permits from the start, avoiding the need for workers to prove abuse or rights violations before obtaining freedom of employment. Failing to take "reasonable steps" to prevent violations of migrant workers' rights demonstrates Canada's lack of due diligence.¹³⁶

Moreover, the government's justification that tied employment programs are meant to solve specific agricultural labour shortages¹³⁷ is flawed when assessed for non-arbitrariness and proportionality. Such measures are arbitrary, as labour shortages have historically been managed by the Canadian government without resorting to tied employment to other migrant agricultural

¹³² Ibid.

¹³³ Palmer and Peters v. Attorney General of Canada, Statement of Claim paragraphs 136, 142.

¹³⁴ Ibid.

¹³⁵ Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA), "Temporary Foreign Worker Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities," 31.

¹³⁶ Jennifer S. Hainsfurther, "A Rights-Based Approach: Using CEDAW to Protect the Human Rights of Migrant Workers" 24, no. 5 (2009): 876–78.

¹³⁷ "Canada Gazette Part I," June 22, 2019, Vol. 153, No. 25, <https://gazette.gc.ca/rp-pr/p1/2019/2019-06-22/pdf/g1-15325.pdf>.

workers.¹³⁸ Moreover, the negative impact of tied employment on workers – including harm to their mental and physical health, increased risk of trafficking, and violation of their inherent dignity as rights holders – far exceeds any potential benefits in addressing labour shortages.¹³⁹ Canada's responsibility extends beyond its international obligations, as the tied-employment condition also violates the Charter. This condition, which imposes systemic discrimination against workers based on their national origin, incurs significant human and social costs.¹⁴⁰ Such practices cannot be “demonstrably justified in a free and democratic society”, as required by the Canadian Charter.¹⁴¹

Canada should undertake all necessary measures to ensure that the rights of SAWP participants are fulfilled. This entails providing pathways to PR and citizenship for dedicated and long-term SAWP workers. However, the current SAWP structure fosters a type of internal apartheid, distinguishing between individuals deemed worthy of equal rights and those viewed as undeserving of rights or belonging, despite their vital contributions.¹⁴² In adherence to its international obligations, Canada must guarantee SAWP workers access to PR and citizenship without racial discrimination in accessing long-term residency.¹⁴³

In summary, Canada must uphold SAWP participants' human rights as mandated by IHRL. Through adherence to the principles of respect, protect, and fulfill, Canada can foster a

¹³⁸ Palmer and Peters v. Attorney General of Canada, Statement of Claim at 148.

¹³⁹ Ibid.

¹⁴⁰ Eugenie Depatie-Pelletier, “Under Legal Practices Similar to Slavery According to the UN Convention: Canada’s ‘Non White’ ‘Temporary’ Foreign Workers in ‘Low-Skilled’ Occupations,” 26; Canadian Charter of Rights and Freedoms, art. 1.

¹⁴¹ Ibid.; Canadian Charter of Rights and Freedoms, art. 1.

¹⁴² Jenna L. Hennebry and Janet McLaughlin, ““The Exception That Proves the Rule”: Structural Vulnerability, Health Risks, and Consequences for Temporary Migrant Farm Workers in Canada,” 138.

¹⁴³ UN Human Rights Committee (HRC), “General Comment No. 15: The Position of Aliens Under the Covenant,” April 11, 1986, paras. 13, 14, <https://www.refworld.org/docid/45139acfc.html>.

just environment for these workers, enabling labour mobility and a pathway to PR, while also addressing labour shortages.

8. Recommendations

To address the exploitation of SAWP workers, reforms are vital. This entails transitioning from employer-tied to open work permits and offering paths to PR, reducing human rights abuses. Yet, more measures are needed to ensure their protection. We recommend Canada adopt the following measures to uphold SAWP workers' rights and welfare effectively.

8.1 Legal Guarantees

8.2 Empowerment and Integration

Canada should address the core issues of racism and xenophobia affecting migrant workers,¹⁵⁶ ensure their participation in decisions impacting their welfare,¹⁵⁷ and acknowledge their valuable contributions by offering more recognition and chances for social and cultural engagement suited to their roles.¹⁵⁸ Additionally, granting all SAWP workers equal access to services like health, legal aid, and language training, currently reserved for permanent residency candidates or residents, would significantly aid their empowerment and integration into Canadian society.¹⁵⁹

¹⁵⁶ UN Office of the High Commissioner for Human Rights (OHCHR), “End of Mission Statement by the United Nations Special Rapporteur on Contemporary Forms of Slavery, Tomoya Obokata on His Visit to Canada from 23 August to 6 September 2023,” 11.

¹⁵⁷ *Ibid.*, 11.

¹⁵⁸ Leah F. Vosko et al., “COVID-19 Among Migrant Farmworkers in Canada Employment Strain in a Transnational Context” (International Labour Organization, 2022), 47, ILO Working Paper, <https://www.ilo.org/static/english/intserv/working-papers/wp079/index.html#ID0ETQAI>.

¹⁵⁹ *Ibid.*, 48.

8.3 Human Rights Education

Migrant workers often face challenges and mistreatment due to unawareness of government laws, caused by insufficient information, language barriers, or misleading facts. The Federal Government must ensure these workers receive clear, unbiased information about their rights and duties in their native language.¹⁶⁰

8.4 Transparency and Accountability

Canada needs to improve the protection of SAWP employees, by allocating more resources for labour and housing inspections, encouraging better cooperation among Federal, Provincial/Territorial Governments, and NGOs to support abuse victims, coordinating efforts to protect these rights across the country, and holding employers accountable for labour exploitation as advised by the UN Special Rapporteur on contemporary forms of slavery.¹⁶¹

9. Conclusion

In conclusion, the examination of Canada's SAWP within this paper highlights a critical need for policy reform to protect the human rights of migrant workers in alignment with IHRL. The research supports shifting from employer-tied to open work permits and establishing clear pathways to permanency. These steps are crucial for safeguarding workers' rights to equality, liberty and security, and access to justice. Implementing these reforms will address systemic vulnerabilities, and align Canada's labour practices with its human rights commitments.

¹⁶⁰ Standing Committee on Citizenship and Immigration, “Temporary Foreign Workers and Non-Status Workers: Report of the Standing Committee on Citizenship and Immigration,” 2009, 27–28, <https://www.noscommunes.ca/Content/Committee/402/CIMM/Reports/RP3866154/cimmrp07/cimmrp07-e.pdf>.

¹⁶¹ UN Office of the High Commissioner for Human Rights (OHCHR), “End of Mission Statement by the United Nations Special Rapporteur on Contemporary Forms of Slavery, Tomoya Obokata on His Visit to Canada from 23 August to 6 September 2023,” 11.

10. Bibliography

- Adriana Gabriela Paz Ramirez. “Embodying and Resisting Labour Apartheid: Racism and Mexican Farm Workers in Canada’s Seasonal Agricultural Workers Program.” University of British Columbia, 2013. <https://open.library.ubc.ca/media/stream/pdf/24/1.0103384/2>.
- Andrews v. Law Society of British Columbia, 1 S.C.R. 143 (Supreme Court of Canada 1989).
- Basok, Tanya, and Emily Carasco. “Advancing the Rights of Non-Citizens in Canada: A Human Rights Approach to Migrant Rights.” *Human Rights Quarterly* 32, no. 2 (2010): 342–66.
- Binford, Arthur Leigh. “Assessing Temporary Foreign Worker Programs Through the Prism of Canada’s Seasonal Agricultural Worker Program: Can They Be Reformed or Should They Be Eliminated?” *Dialectical Anthropology* 43, no. 4 (December 1, 2019): 347–66. <https://doi.org/10.1007/s10624-019-09553-6>.
- “Canada Gazette Part I,” June 22, 2019. Vol. 153, No. 25. <https://gazette.gc.ca/rp-pr/p1/2019/2019-06-22/pdf/g1-15325.pdf>.
- Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 RSC 1985 § (1982).
- Canadian Council for Refugees (CCR). “Immigration Policy Shifts: From Nation Building to Temporary Migration.” *Association for Canadian Studies*, 2010, 90–93.
- Caxaj, C. Susana, and Amy Cohen. “‘I Will Not Leave My Body Here’: Migrant Farmworkers’ Health and Safety Amidst a Climate of Coercion.” *International Journal of Environmental Research and Public Health* 16, no. 15 (August 2019): 2643. <https://doi.org/10.3390/ijerph16152643>.
- Connelly, Catherine E. *Enduring Work: Experiences with Canada’s Temporary Foreign Worker Program*. 1st ed. McGill-Queen’s University Press, 2023. https://search.lib.umanitoba.ca/discovery/fulldisplay?docid=cdi_askewsholts_vlebooks_9780228018001&context=PC&vid=01UMB_INST:UMB&lang=en&adaptor=Primo%20Central&tab=Everything.
- Delphine Nakache and Paula J. Kinoshita. “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail Over Human Rights Concerns?” Institute for Research on Public Policy (IRPP), May 2010. <https://irpp.org/wp-content/uploads/assets/research/diversity-immigration-and-integration/new-research-article-3/IRPP-Study-no5.pdf>.
- Dunmore v. Ontario (Attorney General), 3 S.C.R. 1016, SCC 94 (SCC 94 2001).
- Eleni Kachulis and Mayra Perez-Leclerc. “Temporary Foreign Workers in Canada.” Legal and Social Affairs Division, Parliamentary Information and Research Service, Library of Parliament, April 16, 2020.
- Eugenie Depatie-Pelletier. “Under Legal Practices Similar to Slavery According to the UN Convention: Canada’s ‘Non White’ ‘Temporary’ Foreign Workers in ‘Low-Skilled’ Occupations.” Halifax, 2008. https://s3.amazonaws.com/migrants_heroku_production/datas/1711/Article_Depatie-Pelletier_Metropolis_2008_original.pdf?1406165079.
- Eugénie Depatie-Pelletier, Hannah Deegan, Nathalie Laflamme, and Laurence Hortas-Laberge. “Migrant Care and Farm Workers, Canadian Law, and Unfree Labour.” *Association for the Rights of Household/Farm Workers*, 2018. <https://addpd.files.wordpress.com/2018/11/addpd-arhw-2018-final1.pdf>.

- Fay Faraday. "Made in Canada: How the Law Constructs Migrant Workers' Insecurity." Metcalf Foundation, September 2012. <https://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>.
- . "The Empowerment of Migrant Workers in a Precarious Situation: An Overview." KNOMAD Paper No 39. Washington, DC: World Bank, December 2021. <https://www.knomad.org/sites/default/files/2021-12/KNOMAD%20Working%20Paper%2039-Empowerment%20of%20Worker-Dec%202021.pdf>.
- Fraser v. Canada (Attorney General), No. CanLII 47783 (ON SC) (2005).
- Gabriel, Christina, and Laura Macdonald. "Citizenship at the Margins: The Canadian Seasonal Agricultural Worker Program and Civil Society Advocacy." *Politics & Policy* 39, no. 1 (2011): 45–67. <https://doi.org/10.1111/j.1747-1346.2010.00282.x>.
- Goldring, Luin. "Temporary Worker Programs as Precarious Status: Implications for Citizenship, Inclusion and Nation Building in Canada." *Canadian Issues* Spring (March 1, 2010): 50–54.
- Government of Canada. "CIMM - Seasonal Agricultural Workers in Canada: Pathways to Permanent Residency - Nov 25, 2020," March 24, 2021. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-nov-25-2020/cimm-seasonal-agricultural-workers-canada-pathways-permanent-residency-nov-25-2020.html>.
- . "Hire a Temporary Worker Through the Seasonal Agricultural Worker Program: Overview," March 21, 2023. <https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural.html>.
- ILO Committee of Experts on the Application of Conventions and Recommendations. "Discrimination (Employment and Occupation) Convention, 1958 (No. 111), General Observation." International Labour Office, 2019. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_717510.pdf.
- Immigration, Refugees and Citizenship Canada (IRCC). "Open Work Permit for Vulnerable Foreign Workers Who Are Victims of Abuse," March 31, 2022. <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html>.
- . "Temporary Workers," June 15, 2023. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers.html>.
- . "Work Permit: About the Process," June 14, 2023. <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/work-permit.html>.
- International Organization for Migration (IOM). "Migrants' Access to Justice: International Standards and How the Global Compact for Safe, Orderly and Regular Migration Helps Paving the Way," 2022. <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/access-to-justice-and-the-gcm-eng-final-march-2022.pdf>.
- Janet McLaughlin and Jenna Hennebray. "Managed into the Margins: Examining Citizenship and Human Rights of Migrant Workers in Canada." In *The Human Right to Citizenship: A Slippery Concept*, edited by Rhoda E. Howard-Hassmann and Margaret Walton-Roberts,

- 176–90. University of Pennsylvania Press, 2015.
<https://www.researchgate.net/signup.SignUpAccountBasics.html>.
- Jenna Hennebry. “Permanently Temporary? Agricultural Migrant Workers and Their Integration in Canada.” Institute for Research on Public Policy (IRPP), February 2012.
<https://irpp.org/wp-content/uploads/assets/research/diversity-immigration-and-integration/permanently-temporary/IRPP-Study-no26.pdf>.
- Jenna Hennebry and Janet McLaughlin. “Submission 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.” Waterloo, ON: International Migration Research Centre, 2016.
- Jenna L. Hennebry and Janet Mclaughlin. ““The Exception That Proves the Rule”: Structural Vulnerability, Health Risks, and Consequences for Temporary Migrant Farm Workers in Canada.” In *Legislated Inequality: Temporary Labour Migration in Canada*, edited by Patti Tamara Lenard and Christine Straehle, 117–38. McGill-Queen’s University Press, 2012. <http://www.jstor.org/stable/j.ctt1pq1k6.10>.
- Jenna L Hennebry and Kerry Preibisch. “A Model for Managed Migration? Re-Examining Best Practices in Canada’s Seasonal Agricultural Worker Program.” *International Migration* 50, no. Special Issue 1 (s1) (2012): e19–40. <https://doi.org/10.1111/j.1468-2435.2009.00598.x>.
- Jennifer S. Hainsfurther. “A Rights-Based Approach: Using CEDAW to Protect the Human Rights of Migrant Workers” 24, no. 5 (2009).
- Juliana Dalley. “Submissions Respecting the Temporary Foreign Worker Program Review by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities.” Vancouver, BC: Community Legal Assistance Society, 2016. <https://migrantrights.ca/wp-content/uploads/2016/06/Brief-respecting-the-TFWP-review-CLAS-May-2016.pdf>.
- Kav LaOved Worker’s Hotline v. Government of Israel, 1 IsrLR (Supreme Court of Israel 2006).
- Kelley Loper. “Substantive Equality in International Human Rights Law and Its Relevance for the Resolution of Tibetan Autonomy Claims.” *North Carolina Journal of International Law* 37 (2011).
<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1940&context=ncilj>.
- Leah F. Vosko, Tanya Basok, Cynthia Spring, Guillermo Candiz, and Glynis George. “COVID-19 Among Migrant Farmworkers in Canada Employment Strain in a Transnational Context.” International Labour Organization, 2022. ILO Working Paper.
<https://www.ilo.org/static/english/intserv/working-papers/wp079/index.html#ID0ETQAI>.
- Luin Goldring and Patricia Landolt. “Caught in the Work–Citizenship Matrix: The Lasting Effects of Precarious Legal Status on Work for Toronto Immigrants.” *Globalizations* 8, no. 3 (2011): 325–41.
- Marsden, Sarah. “Migrant Workers, Rights, and the Rule of Law: Responding to the Justice Gap.” *Dalhousie Law Journal* 42, no. 1 (2019): 153.
- Martin Ruhs. *The Price of Rights: Regulating International Labor Migration*. Princeton University Press, 2013. <https://press.princeton.edu/books/hardcover/9780691132914/the-price-of-rights>.
- Migrant Worker Solidarity Network Manitoba. ““A Brief on the Temporary Foreign Worker Program’ Submitted to the House of Commons Standing Committee on Human

- Resources, Skill and Social Development and the Status of Persons with Disabilities (HUMA).,” May 20, 2016. <https://migrantrights.ca/wp-content/uploads/2016/06/MWSN-Submission-to-TFWP-Review-Final.pdf>.
- Palmer and Peters v. Attorney General of Canada, Statement of Claim, No. CV-23-00710918-00CP (Ontario Superior Court of Justice December 6, 2023).
- Patti Tamara Lenard and Christine Straehle. *Legislated Inequality: Temporary Labour Migration in Canada*. Montreal: McGill-Queen’s University Press, 2012. <https://search-ebSCOhost-com.uml.idm.oclc.org/login.aspx?direct=true&db=e000xna&AN=499936&site=ehost-live>.
- Rachel Li Wai Suen. “You Sure Know How to Pick ’Em: Human Rights and Migrant Farm Workers in Canada.” *Georgetown Immigration Law Journal* 15, no. 1 (2000): 199.
- Seth Gordon. “Canadian Borderlands: Equality Rights for Temporary Migrant Labourers Under Section 15 of the Charter.” *McGill Faculty of Law*, September 2022. https://ciaj-icaj.ca/wp-content/uploads/documents/2023/12/1056_seth-gordon_cdn-borderlands-equality-rights-temporary-migrant-labourers_2023-chr-essayprize.pdf?id=17614&1704507708.
- Singh v. Minister of Employment and Immigration, [1985] 1 S.C.R. 177 (Supreme Court of Canada 1985).
- Standing Committee on Citizenship and Immigration. “Temporary Foreign Workers and Non-Status Workers: Report of the Standing Committee on Citizenship and Immigration,” 2009. <https://www.noscommunes.ca/Content/Committee/402/CIMM/Reports/RP3866154/cimmrp07/cimmrp07-e.pdf>.
- Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA). “Temporary Foreign Worker Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities.” 42nd Parliament, 1st Session, September 2016. <https://www.ourcommons.ca/documentviewer/en/42-1/HUMA/report-4/page-5>.
- UN Committee on Economic, Social and Cultural Rights (CESCR). “General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights),” July 2, 2009. E/C.12/GC/20. <https://www.refworld.org/docid/4a60961f2.html>.
- UN Committee on the Elimination of Discrimination Against Women. “General Recommendation No. 33 on Women’s Access to Justice,” July 23, 2015. CEDAW/C/GC/33. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhslDcrOIUTvLRFDjh6%2FxpWCd9kc8NuhsZOT1QuzhrDy1rIpOgSyxJmK%2FSo2p3MpTl9diLSL02wtX8JPse1mlicqCgIo0em30unjIY%2Fnkmn3g>.
- UN Human Rights Committee. “General Comment No. 32, Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial,” August 23, 2007. CCPR/C/GC/32. <https://www.refworld.org/docid/478b2b2f2.html>.
- UN Human Rights Committee (HRC). “General Comment No. 15: The Position of Aliens Under the Covenant,” April 11, 1986. <https://www.refworld.org/docid/45139acfc.html>.
- UN Office of the High Commissioner for Human Rights (OHCHR). “End of Mission Statement by the United Nations Special Rapporteur on Contemporary Forms of Slavery, Tomoya Obokata on His Visit to Canada from 23 August to 6 September 2023,” September 6,

2023.
<https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/eom-statement-canada-sr-slavery-2023-09-06.pdf>.
- . “International Human Rights Law.” Accessed February 11, 2024.
<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.
- United Nations (General Assembly). “International Convention on the Elimination of All Forms of Racial Discrimination,” December 21, 1965. Treaty Series, Vol. 660, 195.
<https://www.refworld.org/docid/3ae6b3940.html>.
- . “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,” December 18, 1990. A/RES/45/158.
<https://www.refworld.org/docid/3ae6b3980.html>.
- . “International Covenant on Civil and Political Rights,” December 16, 1966. Treaty Series, Vol. 999, 171. <https://www.refworld.org/docid/3ae6b3aa0.html>.
- . “International Covenant on Economic, Social and Cultural Rights,” December 16, 1966. Treaty Series, Vol. 993, 3. <https://www.refworld.org/docid/3ae6b36c0.html>.
- Veena Verma. “The Mexican and Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program Under Unionization.” North-South Institute, 2003.
https://s3.amazonaws.com/migrants_heroku_production/datas/95/Verma_2003_original.pdf?1311163747.
- Victor Piché, Eugénie Depatie-Pelletier, and Dina Epale. “Identification of the Obstacles to the Ratification of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: The Canadian Case,” 2006. https://unesdoc.unesco.org/ark:/48223/pf0000147310_eng.
- . “Obstacles to Ratification of the ICRMW in Canada.” In *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, edited by Ryszard Cholewinski, Paul De Guchteneire, and Antoine Pécoud, 193–218. Cambridge University Press, 2009.
- Vincent Chetail. “Book Review: Migration and Human Rights. The United Nations Convention on Migrant Workers’ Rights.” Edited by R. Cholewinski, P. De Guchteneire, and A. Pécoud. *International Journal of Refugee Law* 22, no. 4 (November 15, 2010): 677–91.