



UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants

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

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Introduction

The *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families* (MWC), adopted by the United Nations (UN) in 1990, came into force 13 years later, on July 1st, 2003, after having been ratified by 20 signatory countries. As was the case with women and children, the adoption of this specific Convention by the international community targeted the human rights protection of a particularly vulnerable group: non-citizens (workers and members of their families). Since coming into force in 2003, 14 other signatories have ratified the Convention (bringing the number of states that have ratified it to 34 as of 2006) and campaigns geared towards its ratification are underway in several countries.

Canada has a history based on immigration and systematic colonisation of its territory by recent arrivals, a national culture developed by waves of consecutive immigration and an economy that depends greatly on continued immigration policy. Furthermore, thousands of foreign workers are brought into Canada every year of which an increasing number are deemed not to have any “specific skills” or are “unskilled.”

Despite Canada’s official recognition of the importance of respecting human rights at different levels, and despite the fact that the Convention¹ is a tool that allows the orientation and critical evaluation of its policies, Canada has still not ratified it. This report on Canada comes as a result of a UNESCO commissioned initiative to identify the obstacles to the ratification of the UN *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*. (MWC²).

There are several actors that play or could play a significant role in the promotion and protection of the rights of migrant workers in Canada: (1) the Federal government, (2) elected provincial and federal members of parliament, (3) Human Rights Commissions, (4) Provincial

¹ In this document, the term « Convention » and « Migrant Workers’ Convention » refers to the *United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*.

² Pécoud, Antoine and Guchteneire, Paul (2004), **Migration and Human Rights and the United Nations: An Investigation of the Obstacles to the UN Convention on Migrant Workers’ Rights**, Paris, UNESCO and Global Commission on International Migration.

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governments, (5) employers unions, (6) workers unions, (7) migrant workers associations, (8) non-governmental organisations (NGOs), and community-based organisations devoted to the respect and promotion of migrants rights.

Given the means at our disposal, this report will focus primarily on the federal government's point view that has the mandate to sign international conventions. However, this point of view will be challenged in phase two by Canadian civil society groups.

In summary, four broad reasons to the federal government's objection to the Convention were identified and could be stated as follows: (1) Migration management (including the rights accorded to migrant workers) lies within the national sovereignty of each nation state and should consequently not be subjected to multilateral institutions. (2) The spirit of the Convention is historically far removed from Canadian philosophy in terms of the selection of foreign workers which favours access to Canadian citizenship. (3) Fundamental rights of all persons, irrespective of their legal status, are already guaranteed in Canada. (4) Signing and ratifying the Convention would force Canada to review its temporary migrants programmes in order to make them more respectful of the Convention.¹

I. The Canadian Context of the Migrant Workers Programme²

Canada's Immigration and Refugee Protection Act (IRPA) of 2002 establishes two types of migrant workers: (1) immigrants admitted under the « independent category »³ to whom granted permanent residency and (2) those admitted into Canada temporarily upon obtaining a working visa. Finally, in the sections regarding expulsion procedures of foreigners from the country, the law also makes implicit reference to a third type of migrant notably, “undocumented” foreign workers. Table no. 1 gives a run down of statistics of different forms of labour migration in Canada for 1980 and 2004.⁴ One of the first obvious things is that

¹ At the time of writing this report, we had not been able to obtain the legal brief commissioned by the Department of Citizenship and Immigration to the judicial services of the Department of Justice which identifies the legal obstacles to ratifying the convention.

² For a historic analysis of Canada's Immigration policy, refer to Piche, Victor (2003), « Un siècle d'immigration au Québec : de la peur à l'ouverture », dans Piché, Victor et LeBourdais, Céline (eds), **La démographie québécoise – enjeux du XXI^e siècle**, Montréal, Presses de l'Université de Montréal, p. 225-263.

³ The two categories of immigrants admitted following certain family re-unification or humanitarian criteria are potential workers but are not admitted into Canada to fulfill this economic requirement.

⁴ These two years represent the first and last years for which this type of statistics is available.

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temporary workers constitute an important part of economic migration in Canada. In 1980, the number of temporary workers exceeded the number who obtained permanent residency. However, given the rise of economic migrants in the course of the 1990s in Canada - a jump from 35% to 57% - we notice that in 2004 about 133,700 “independent”¹ immigrants were admitted permanently into Canada and 90,600 migrant workers were admitted temporarily: the “temporary” migrant worker category is far from being negligible. Furthermore, we notice an important increase in the « seasonal » (mainly agricultural) category of temporary workers: an increase from 5% in 1980 to 17% in 2004. Finally, amongst migrant seasonal workers, men outnumber women despite the fact that women’s numbers have increased from 23% in 1980 to 33% in 2004.

Table 1: Some indicators of permanent and temporary economic migration in Canada, 1980 and 2004

Categories	1980	2004
(1) Temporary entry (total)	172,771	245,731
Males	111,406	143,324
Females	61,218	102,401
<i>% of women</i>	35.5	4.7
Foreign workers (total)	58,728	90,668
Males	44,918	60,613
Females	13,760	30,155
<i>% of women</i>	23.5	33.3
<i>% of temporary*</i>	34.0	36.9
<i>% of seasonal</i>	4.8	17.5
<i>% of seasonal males</i>	99.1	97.8
(2) Permanent residents (total)	143,145	235,824
Males	71,950	114,155
Females	71,192	121,668
<i>% females</i>	49.7	51.6
“economic” category (total)	49,894	133,746
Males	26,539	70,073
Females	23,355	63,673
<i>% females</i>	46.8	47.6
<i>% of total permanent</i>	34.9	56.7

* Other categories include: foreign students (20,652 in 1980 and 56,536 in 2004), asylum seekers and other humanitarian cases (93,391 in 1980 and 98,527 in 2004).

Source: Citizenship and Immigration Canada, Facts and Figures. A look at Immigration: permanent and temporary workers, 2004, P. 8 and 62 (C&I-743-08-05F).

¹ As opposed to “sponsored” immigrants by a family member in Canada, or by the Canadian government as in the case of asylum seekers.

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In terms of rights, the two categories of migrant workers have a clear distinction. Immigrants with permanent residence status are protected under civil and socio-economic laws by the Canadian constitution and applicable federal and provincial laws (with the exception of the right to vote or to be elected) which give them the right to an education in the official language of their choice and the unconditional right to live in Canada.¹

The situation of temporary workers, and in particular of « low skilled » temporary workers, is very different. Their precarious legal and working conditions make us believe that they are part and parcel of migrant workers who are specifically targeted by the Convention. Due to the fact that there exists very little information on the situation of undocumented migrant workers, we will consequently concentrate on analysing « low skilled » temporary foreign workers programmes and on examining to what extent the existence and expansion of these temporary programmes constitute an obstacle to Canada ratifying the Convention in this study.

Given the current high levels of education and per capita income, as well as the ageing of the population and an immigration policy that is favourable to business and highly qualified immigrants, the pool of workers ready to accept people with low skills in difficult physical and/or psychological and /or difficult working conditions is seeing a downward trend amongst the active Canadian population. Consequently, the Canadian Government recognises that an increasing number of Canadian employers are facing a critical shortage of « unskilled » labour. This explains the systematic increase in the number of « unskilled » temporary foreign workers and the introduction of the Foreign Workers Programme (FWP) since 2002 to assist with the recruitment of this group of people in other sectors apart from agriculture and domestic services.

¹ On this last point, it should be noted that permanent residents, as well as new citizens to Canada, can lose their status and be deported if they are suspected of criminal activities that could jeopardize national security. So even if Canada ratifies pertinent international conventions (such as the protection of refugees, protection against torture, etc) and if the Charter of Rights and Freedom (including the section on legal guarantees) is applied without discrimination to all residing in Canada, it is important to note that detention procedures and relevant deportations related to immigration laws are not subjected to the same procedures since in criminal matters any foreigner who is a suspect in Canada regardless of his/her legal status can be detained and deported by Canadian authorities in a relatively arbitrary fashion. See Crépeau, F. and Nakache, D. (2006), «Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection», **Choices**, Vol. 12, no 1, p. 1-39.

The Foreign Worker Programme: (FWP)

The temporary foreign worker visa programme was started in 1973 and was eventually part of the Immigration law adopted in 1976 (which came into force in 1978). The FWP was formalised in its current structure as a result of the Immigration Law of 2002. This federal programme of issuing temporary work visas permits Canadian employers to quickly¹ recruit foreigners to fill the shortage of manual labour jobs. Upon convincing the authorities that all attempts made to fill the position(s) by permanent residents or Canadian citizens were unsuccessful, any Canadian employer can obtain permission to recruit a foreign worker through the Department of Human Resources and Skills Development Canada (HSRDC) in their respective region.

The Live-in Caregivers Program (LCP)

This program is geared towards the recruitment of foreign domestic workers to carry out domestic work while living in the home of their employer. After having worked for at least 24 out of 36 months from their initial entry into Canada, the domestic workers – regardless of their level of qualification – can obtain permanent residence status. During their temporary stay, domestic workers also have the opportunity to make a new request for a temporary work permit for specific jobs and to be hired by another employer to do the same thing.

The Seasonal Agricultural Worker Programme (SAWP)

Several bilateral agreements², re-evaluated annually, specifying recruitment terms have targeted citizens from Latin America and the Caribbean who are temporarily employed as agricultural workers in Canada. One of the peculiarities of this programme is the formal involvement of the federal government, consular, and in Ontario and in Quebec regional Federations of Agricultural Producers representatives in the recruitment process. Some constraints to the foreign worker are directly integrated in the typical labour contract, specifically applicable to the agricultural sector. In particular, no foreigner associated with this sub-programme can work for any other employer in Canada except the one they were assigned to, unless the employer eventually authorises a move to a second Canadian employer. Also, after a trial period, which varies between 7 and 14 days, any agricultural producer can terminate his/her employment thereby setting the ball rolling for their

¹ Delays are between 4 and 8 weeks.

² For example, between 1966 and 2005, several agreements were signed between Canada and Mexico, British Columbia and Mexico and Canada and Caribbean countries that are members of the Commonwealth.

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repatriation to their country of origin. Finally, the agricultural worker is obliged to live in the place chosen by the employer.

Hiring of « low-skilled » worker pilot project¹

It was not until the coming into force of the new immigration law (2002) that clear directives were given on the recruitment of « low-skilled » foreign workers in economic sectors other than agricultural and domestic work. Only then did the situation regarding the recruitment process of this type of foreign worker by Canadian employers get normalized. If this new recruitment method simplifies the admission of a « low-skilled » foreign worker, we will also see further on that it also significantly reduces the chances of such residents of integration at the community level in Canada. If these foreign workers – as opposed to the « skilled » or the “highly-skilled” temporary workers - are authorized to work for only one employer, their socio-economic integration (and consequently their mobility) is greatly legally jeopardised: this group has to return to their country of origin for at least four months after every contract of a maximum of one year before they can officially re-submit an application for a temporary work visa in Canada. So, contrary to the situation of other foreign workers², the federal government has not put into place any options to facilitate obtaining permanent residence status by « low-skilled » foreign workers.³

Undocumented foreign workers in Canada

Given the geographical and geopolitical situation of Canada, very few foreigners succeed to cross the borders clandestinely or buy falsified Canadian passports on the black market. As a

¹ During the writing of this study, the external evaluation report on the pilot project requested by Department of Human Resources and Skills Development wasn't available; however, there is no indication that this pilot project will eventually be transformed into a permanent sub-programme of the Foreign Worker Programme (co-sponsored by HRSDC and CIC)

² In the case of « highly skilled » foreign workers (or people who have already worked in Canada as domestic workers living with their employers) for example, the fact that they were « sponsored » by an employer maximises the chances of obtaining their permanent residence status.

³ That said, all Canadian provinces are encouraged by the Department of Citizenship and Immigration to support corporate investors and skilled foreign workers in their provinces. A future fundamental change to the selection process in Quebec could mean that « low-skilled » foreign workers would be allowed to apply for permanent residence without a job offer. Similarly, some provinces notably the governments of Manitoba and Saskatchewan, have profited from this new scheme created by the federal government, to support the corporate sponsorship of « low-skilled » foreign workers.

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result, it is believed that the majority of « undocumented » workers in Canada came in legally and are working clandestinely since the expiration of their temporary visas.

The number of undocumented workers in Canada cited by politicians, by groups defending the rights of undocumented and non-status people and Canadian media in 2006 varies between 200,000 and 500,000, even if in the current context, a scientific evaluation of the number of “undocumented” in Canada seems impossible. The apparent significant contribution by this group to the Canadian workforce has become apparent in the past few months on the economy as a result of accelerated deportation measures¹.

In the following section, we discuss the methodology used and the basic results of the study regarding the obstacles to Canada’s ratification of the migrant workers convention.

II- Methodology

During the first phase of the project (September – December 2005), we identified the departments most involved in the protection of the rights of migrant workers from the federal government’s organisation chart, that is, departments that deal with human rights related issues, migration management and the application of labour standards. Five federal departments and one agency were targeted for this study:

- Canadian International Development Agency (CIDA)
- Citizenship and Immigration Canada (CIC)
- Foreign Affairs Canada (FAC)
- Heritage Canada (HC)
- Human Resources and Skills Development Canada (HRSDC)
- Justice Canada (JC)
- Public Works and Government Services Canada (PWGSC)

Semi-structured interviews (generally done in person, and in rare cases, by phone or internet) were conducted with senior bureaucrats in all key departments in charge of migrant workers

¹ For example, the important financial contribution of undocumented workers was brought to light thanks to media coverage regarding the deportation of a dozen Portuguese employees who worked in the construction business in the Toronto metropolitan area.

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or human rights related issues. The interviews were conducted in a manner that allowed them to express not only their views regarding past and present obstacles to the ratification of the Migrant Workers' Convention but also to express their views regarding the future promotion and protection of the rights of migrants in Canada and at the international level. In all, over twenty civil servants in charge of pertinent programmes were interviewed. We attempted to diversify our sample by interviewing several civil servants from different divisions, sections and branches in the same department.

The second phase of our study (April – August 2006) involved the views of elected officials in the current federal parliament. To do this and given the resources at our disposal for this project, we targeted members of the House of Commons Standing Committee on Citizenship and Immigration. In Canada, there are four main federal political parties: the Conservative Party of Canada (the present minority government), the Liberal Party of Canada (the official opposition party), the Bloc Québécois (opposition party) and the New Democratic Party of Canada (opposition party). The federal parliament's House of Commons has a Standing Committee on Citizenship and Immigration made up of 12 members.

Of the fifteen requests for an interview, nine Members of Parliament (MPs) agreed to meet with us:

- Four MPs from the Liberal Party (Albina Guanieri, Andrew Telegdi, Blair Wilson and Raymonde Folco);
- Two MPs from the Conservative Party (Barry Devolin and Ed Komarnicki; the former is also the Parliamentary Secretary to the Minister of Citizenship and Immigration Canada);
- Two MPs from the Bloc Québécois (Meili Faille and Johanne Deschamps)
- One MP from the New Democratic Party (Bill Siksay).

Throughout the two phases of this study, a number of Canadian civil society actors who are involved in the rights of migrant workers in Canada were contacted. Given their small numbers, a majority of them have been directly or indirectly contacted during the course of this study. Interviews conducted with representatives of non-governmental organisations were mainly carried out as round table discussions during members meetings and in individual telephone interviews «see Appendix 1 for list of groups contacted).

III- Obstacles to ratification: the perspective from Canada's federal government

An analysis of interviews conducted with civil servants in charge of human rights related issues enabled us to identify four obstacles to the ratification of the Convention: (1) the management of migration has to remain a national prerogative; (2) the philosophy of the convention is not in line with the Canadian tradition and situation; in particular (3) the convention grants social rights to migrant workers that Canada does not consider as being fundamental and which they prefer limiting to permanent residents; (4) existing legal Canadian laws and international treaties and protocols are sufficient to protect the human rights of migrant workers.

Obstacle 1 : Migration and national sovereignty

« Migration policies are exclusively national sovereignty issues and should not be determined by Conventions at multilateral or international levels. »

Even if Canada encourages the expansion of bilateral and multilateral dialogue on international migration issues (for example in the context of the Commission on Labour Cooperation¹), their view is that migration policies should be decided exclusively at a national level. The opposition to a formal international framework dealing with migrant workers is directly linked to the necessity of reaffirming the rights of states to act contrary to human rights rules in certain cases (for example the right not to be deported to a country where there is the risk of being tortured or executed) under the guise of fighting terrorism. Consequently, Canada does not see the legitimacy of setting up migrant rights in an international convention that will impact freedom of countries in terms of their migration policies, rights which are said to be already enshrined in the Convention on the protection of the rights of refugees and the Convention against torture.)

Obstacle 2: Immigration philosophy

« The spirit of the Convention in terms of migration management is historically

¹ Tri national consultative body (Canada, United States and Mexico) that was created in 1993 as a result of the North American Agreement on Labour Cooperation (NAALC).

removed from Canadian culture and tradition. »

The initiative behind the Migrant Workers Convention was started during the 1970s in an international context that was characterized by an increase in the guest workers programme, which was geared towards addressing labour shortages in Europe, a concept that was very remote in a Canadian context.¹ Canada was not part of the mobilization around the Convention, but just shortly before the UN adopted it in 1990, last minutes efforts by Canada to change the general philosophy of the Convention towards a less rigorous approach that would have been more acceptable were in vain.

In the past, the number of temporary workers in Canada was « negligible » in comparison to the selection of a substantial and ever increasing number of foreign workers with the goal of permanent attraction and complete socio-economic integration (by having relatively easy access to citizenship). Unlike many European countries, access to citizenship is viewed as a means of integration rather than a reward for those who will have “well” integrated. Basically, Canada does not see why it should sign a Convention that has very little in common with the realities of Canada.

Obstacle 3: Temporary workers

«Given the nature of the type of contract work that low or unskilled migrants have, by ratifying the Convention, Canada will be forced to restructure its programmes and grant certain rights considered fundamental in the Convention. »

Given the tightening of human capital entry criteria into Canada, only a highly skilled worker can be selected under the current immigration policy. Under pressure by employers to quickly address the problems of low-skilled labour shortages, Canada is systematically

¹ Though a comparison with the levels of the Europeans cannot be compared, during this era Canada also signed bilateral agreements with several countries to initially frame the migration of guest workers to Canada: Jamaica (1966), Barbados (1967), Trinidad & Tobago (1967), Mexico (1974), « Organization of Eastern Caribbean States » (1976). However, as noticed above, since coming into force of the new immigration and refugee protection law in 2002, these bilateral programmes have been transformed into simple contractual agreements between coalitions of Canadian employers and foreign governments representatives (except in the case of Mexico, where the Canadian government remains involved in theory, in the annual re-evaluation of programmes carried out by agriculture industry representatives and Mexican consulates).

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increasingly granting permits to employers to recruit foreign workers as deemed necessary¹. However, the federal government does not exercise any implicit or explicit monitoring rights in regards to the contractual revoking of various fundamental rights by migrant workers who are in totally asymmetrical situation towards employers. When it comes to the extension of work contract as well as control of work-place health and security standards, which fall under provincial jurisdictions, the federal government does not have the powers to act.

In other words, no government body in Canada seems to use its powers to limit the revoking of fundamental rights involved in labour contracts and which are spelled out in the Migrant Workers Convention. In this context, the federal government is not interested to commit itself, through the ratification of the Convention, to have rights enshrined in a formal international framework.

Obstacle 4: Respect of fundamental rights

« It is unnecessary to sign the Convention since fundamental rights of all, irrespective of their legal status, are already guaranteed. »

A forth justification to the non-ratification, concerns the effective domestic and international application of legal instruments guaranteeing the respect of human and workers rights. Canada is already a signatory of two international agreements (Civil and political rights treatise and the Economic, social and cultural rights treatise), which encompass respect of human rights. If in addition the Convention against torture, the Convention against racial discrimination, the Convention against gender discrimination and the Convention on the rights of the child are included, Canada considers that the Migrant Rights' Convention is unnecessary. In other words, migrant workers and members of their families do not constitute a group that requires particular protection mechanisms as are for example, women, children, refugees and ethnic minorities. UN Conventions dealing with universal human rights protection are sufficient to guarantee the protection of the rights of migrants.

¹ However, Canadian employers are not required to obtain a government permit for different types of highly skilled professions as well as specific employment within multilateral agreements such as the Free Trade Agreement (FTA) or General Agreement on Tariffs and Trades (mode 4) administered by the WTO.

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The Canadian Charter of Rights and Freedom covers the respect of fundamental rights in Canadian law at the constitutional level. The protection of the rights of migrant workers/temporary residents is guaranteed by provincial legislation under health and work safety standards and by municipal housing by-laws, as well.

Following this argument, the ratification of the Migrant Workers Convention for the protection of the rights of migrant workers in Canada is not necessary.

IV- Obstacles to ratification: the Parliamentarians point of view

Interviews with nine members of the Standing Committee on Citizenship and Immigration made us realise that the Migrant Workers Convention is largely unknown. According to elected officials, this is the most important obstacle. Note should be taken that two political parties, the Bloc Québécois and the New Democratic Party, are in favour of Canada ratifying the Convention.¹ Furthermore, the official critique of the Liberal Party has also given support for its ratification.

The ratification of the Convention does not feature on the list of priorities of the Committee. On the list of 17 priorities identified by members of the Committee, none explicitly addresses migrants' rights. However, one of the priorities concern working conditions of vulnerable workers, in particular foreign temporary workers. At the time of writing this report, it was not possible to know if this priority had finally been included amongst the priorities of the Committee.

During his first speech before the Committee, it should be mentioned that the Immigration Minister talked about his own priorities and the issue of migrant rights was not mentioned. He however mentioned the importance of temporary workers and affirmed that their Canadian experience will enable them to improve their linguistic competency and their knowledge of

¹ A New Democratic Party member of parliament has recently written to the Minister of Citizenship and Immigration requesting that Canada ratify the Migrants Rights Convention (letter dated June 13, 2006). The Minister's response presented the same objections developed during the previous administration and presented in the present study.

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« Canadian life », something that can increase their chances of satisfying the criteria to obtain permanent residency.¹

V. Obstacles to the ratification: NGOs points of view

Our interviews and meetings with more than twenty representatives of Canadian Civil Society Organisations and groups (who work significantly with migrant workers and/or on related issues) made us realise that mobilization for the ratification of the Convention at the non-governmental level is still weak but growing.

Even though we are witnessing the emergence of coordinated efforts between different provincial and national actors representing civil society (human rights associations and NGOs) who are currently interested in migrant workers rights, the majority of these efforts are concentrated on the “field” and focuses on everyday support granted to migrant workers in cases of violation of their fundamental rights and on issues around the legality, in the context of the Canadian Charter of Rights and Freedom, of domestic policies that determine the living and working conditions of migrant workers in Canada . With some important exceptions, Canadian civil society does not seem to play a pro-active role as regards migrant rights at the international level nor do they promote international standards such as the Migrant Workers Convention.

For these groups, the official reasons given to the unwillingness to ratify the Migrants Workers Convention are unfounded. Here are briefly presented the criticisms of the government’s position made by civil society representatives mentioned that were interviewed.

(1) Human rights and the limits of national sovereignty

From an economic globalization and social networks framework, the management of migration flows exclusively at the national level is limited in several ways by, firstly, the medium and long term sustainability of a purely nationalist management of migration that ignores the socio-economic interests of the countries of origin, secondly, the pertinence of limiting fundamental social rights of temporary residents to guarantee national security and,

¹ See Canada, Standing Committee on Citizenship and Immigration, evidence of Committee no. 03, May 10, 2006.

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thirdly, the capacity of governments to effectively control cross-boarder movements of human beings.

According to this first criticism, the phenomenon of migration of workers in the world is determined by economic, political, demographic, cultural, community and individual forces that operate domestically, regionally and globally. States have to recognise the limits of absolute national sovereignty in the management of international migration in order to maximize socio-economic benefits of migration and prevent the development of social tensions fed by social exclusion, especially in the case of migrant workers.

According to this approach, the ratification of the Migrant Workers' Convention would not prevent Canada to continue its unilateral approach to its migration policies, but it would help in minimizing the risks of favouring a framework conducive to abuse and violations of fundamental social rights of workers in Canada.

(2) Permanent immigration vs temporary migration ?

If Canada can be proud of its migration philosophy with a focus on permanent immigration, this does not eliminate the fact that programmes for temporary workers exist and are becoming more and more key for hiring unskilled or low-skilled workers to fill jobs that are difficult or impossible to fill with nationals.

Thus, the rights of these persons constitute a real issue. Furthermore, the fact that immigration is geared towards permanent residence in Canada, there is no official body for the management and coordination of the Temporary Workers Programme. Employers initiate projects for foreign workers offering a limited contractual social integration; the federal government does not have jurisdictions over working conditions but it nevertheless allows recruitment of temporary workers despite the absence of control and monitoring mechanisms and agreements with the provinces.

If Canada was to ratify the Convention in the current state of affairs, it would be forced to rethink its legislative and institutional framework related to the recruitment and use of low-skilled foreign workers. Several people have suggested that given the Canadian immigration

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philosophy, the temporary workers programme should be abolished and replaced by a recruitment system using selection criteria for permanent residency. If the need for low-skilled workers is real, the selection process should be modified to favour this type of economic immigrants. This will eliminate the current double standards in terms of migrant workers rights, which is one of the major obstacles to ratifying the Convention.

(3) The usefulness of a Canadian endorsement of the Convention

The argument that migrant workers are covered under other United Nations¹ conventions implies that temporary workers are not in any specific vulnerable situation, although there exists cases of exploitation and non-respect of certain rights involving this category of workers in Canada. The ratification of the Convention would allow for supplementary rights and would put within the reach of workers a tool specific to the protection of their rights.

(4) The protection of foreign workers' rights in Canada

In Canada, different fundamental rights and governmental obligations towards foreign workers – though considered « non-negotiable » in the Migrants Workers Convention – are not recognised by the government in the general framework of foreign workers programme nor in the framework of its three sub-programmes geared towards « low-skilled » foreign workers. On the contrary, international standards with respect to the protection of foreign workers and implicit or explicit standards established by the Canadian government clash in a number of ways. Here are some examples.

The systematic information of foreign workers of their rights

According to article 33 of the Convention, the Canadian government would be held accountable to ensure that employers, governmental organisations, Canadian workers union, community-based groups and/or foreign consulates systematically inform each and every foreigner of their principal rights as a temporary resident in Canada prior or upon arrival.

¹ Canada's performance, even at the level of fundamental rights, is increasingly criticized in Canada as well as at the UN. For example, during Canada's appearance before a committee of UN experts to report on the state of economic, social and cultural rights in May 2006, a Quebec coalition of social and community representatives noted that « on the ground, the government's choices in the last few years translated into violations of citizens rights and a deterioration of living and working conditions» (See "Rapport social de la Ligue des Droits et Libertés," March 2006). The UN committee also heavily criticized Canada on the subject (as reported by Lisa Schlein in Le journal La Presse of May 9, 2006, p. A14).

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If, on the one side, work contracts associated with low-skilled foreign workers include the responsibility of every Canadian employer to inform the foreign worker of their responsibilities and obligations in Canada, as well as any other specific rules to follow in their work place or place of residence, on the other hand, nowhere is mentioned the legal responsibility of employers to inform migrant workers of their rights. In the instruction sheet that accompanies the employment contract associated with the new « low-skilled » workers pilot-project, the Canadian government not only explicitly distances itself from all responsibilities in terms of information on migrant workers rights, but he also avoids recognising the importance and/or the necessity of systematic interventions in this matter by provincial agencies, non-governmental groups or unions.

Despite the number of individual cases that highlight the risks associated with the lack of knowledge by foreign workers of their fundamental rights in Canada (in particular those related to health and safety standards and the procedures to follow in case of work-place injuries) and brought to the attention of the Canadian public by the United Food and Commercial Workers union in Canada (UFCW) and other human-rights based community-based groups or organisations, the management of the Temporary Workers Programme have until now refused to develop a proactive approach. In the meantime, the federal government appears to limit itself to meeting some representatives from the Departments of Public Works and Government Services from different provinces in order to secure their future implication in certain aspects of the management of programmes to recruit foreign workers that touch upon their relevant jurisdictions, such as the management of work relations and eventually the training of foreign workers on the subject of fundamental rights.

The hiring and employment of foreign workers managed by the government

The Migrant Workers Convention also mentions in explicit terms, the necessity for the State not only to oversee the management of foreign workers programmes by systematically maintaining an active dialogue process with foreign governments of countries from which foreign workers are recruited, but also to offer minimum direct services to foreign workers admitted in their countries (articles 64 and 65).

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If the Canadian government was historically implicated in the management of foreign workers in Canada, its theoretically proactive¹ role appears to have been reduced significantly in recent years to the advantage of well-organized agricultural production corporations². The tendency to “privatize” the management of the recruitment of migrant workers is not limited to the agricultural sector. The framework, put into place in 2002 by the Department of Human Resources to make it easier for all other Canadian industries to hire « low-skilled » foreign workers, no longer offers systematic interventions by the Canadian government nor by representatives of countries where foreign workers come from, the only exception being the initial authorization of employment. Thus, there is no involvement in contract negotiations nor in the supervision of the smooth running of these programmes.

There emerges, from the right of foreign workers to be informed of their rights in the province of employment, and their right to be publicly supported in the event of abuse, another responsibility for the Canadian government (article 37): that of insuring that every foreign worker upon arrival in Canada is given the contact information of all provincial, federal and non-governmental institutions that are competent in the areas related to health, housing and working conditions and that can be reached by the foreign worker in the event where the employer’s and consular support was lacking in case of illness, accident or abuse during their period of residency in Canada. In reality, the respective responsibilities of several government agencies in providing services in the areas of health, working condition, housing, working relations, protection of individuals, etc. have not yet been defined. At the level of several governmental agencies, such as the federal Department of Citizenship and Immigration, provincial departments of Immigration and Labour as well as municipal administration, the reason given for the absence of any services adapted for foreign workers is that only the federal department of Human Resources is legally mandated (according to the Immigration law) to intervene in the recruitment of foreign workers programmes by Canadian employers. However, officials in Ottawa as well as regional directors of the Department of Human Resources working on the temporary workers programmes deny having any jurisdictions in the area of foreign workers services, thereby limiting their work to servicing Canadian employers and foreign government representatives involved in the sector.

¹ For example, the Canadian government is officially part of the annual renegotiations of contract-type work between the Canadian Federation of Agriculture and the Mexican government. .

² In particular, F.A.R.M.S (Ontario) and F.E.R.M.E. (Québec) with time have become the main groups in charge of the day-to-day orientation and management of the Seasonal Agricultural Workers programme.

The right of migrant workers to be consulted

Even though the need to systematically consult with representatives of foreign workers during re-negotiations and the re-evaluation of contract-type work is clearly mentioned in the Convention (article 64), and despite the demands of foreign consulates at least in the agricultural sector, the Department Human Resources has not yet decided to force, or guarantee at least the creation of migrant workers' associations that will be able to democratically identify a number of representatives capable of adequately formulating their different concerns and where possible to make proposals for improving the employment process based on their own interests.

The desire of the UFCW to be seen as a body in Canada that represents the interests of migrant and agricultural workers during annual negotiations of minimal working conditions has systematically been ignored by the Canadian government with its policy of excluding all union representations or foreign workers official representatives.¹

The right for foreign workers to unionize

The right for all foreign workers to join a workers union is clearly recognised by the Convention (article 40), as well as the right of any migrant authorized to work in the province to create one (article 26). The lack of recognition to the right to unionize by agricultural workers in Ontario and Alberta is a contradiction of the spirit of the Convention.

Equal treatment for foreign workers

One of the fundamental principles brought forward by the Convention remains the equal treatment between local and foreign workers hired in the same country (article 25). The Canadian government does not seem to pay much attention to this fundamental principle in its current programming. Thus, in the absence of official competition between employers, this places foreign workers in a relatively disadvantaged position compared to local workers. Furthermore, being forced to work with only one employer and to accept their living arrangements gives rise to a disparity between local and foreign workers as far as guaranteeing the rights that are granted to them by law in the event of any violations.

¹ UFCW Canada (the United Food and Commercial Workers Union in Canada) 2005 annual report on the status of migrant workers.

Possibility of an impartial reconsideration of the reasons that led to an expulsion or exclusion from a programme

According to the Convention, the existence of an independent body (article 22) having the role to examine the legitimacy of the decision to expel a migrant worker (article 20) is absolutely necessary in order to avoid that the deportation of workers become an impediment to the exercise of their rights recognised in Canada (article 56) such as access to health care, financial compensation as a result of a work-place accident, the pursuing of a legal process, or the reporting of cases of abuse (article 13)..

For the moment however, by attaching the validity a foreign worker's visa to a specific employer, the Canadian government implicitly realises the right of all employers to deport any migrant worker at will or prevent them from being re-hired by another Canadian employer. In the event that the employer sends the worker back to their country of origin, the reconsideration of the cancellation of the residence permit and/or the expulsion of the worker is actually at the discretion of the consular representative from the worker's country of origin.

In terms of expulsion, note should be taken that the Convention also stipulates the obligation of all states to take into consideration humanitarian considerations before authorizing the expulsion of a migrant worker (article 56). The Canadian government has never recognised, at least not officially, the value of such an interpretation to consular representatives who have the final say for the expulsion, sometimes called « voluntary return », of its citizens sent back by their employers.

The respect of the fundamental principle of family re-unification of all residents

The Convention recognises that legal migrant workers have the right to return to members of their family without detriment (article 38): all efforts have to be made to authorize migrant workers and members of their family to be temporarily absent without this affecting residency or work permit, depending on the case. This being said, receiving countries are aware of the obligations and particular needs of migrant workers and members of their family, especially in their country of origin. Workers have the right to be informed of these possibilities. In fact, this article implies the right to vacation without pay for family reasons, accompanied by a right to multiple entries into Canada. If in the case of seasonal agricultural workers, the right to leave Canada quickly is generally guaranteed by their consular representatives when

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necessary, workers lose their right to return to Canada to pursue their work and will often not be called back the following season to take part in the Seasonal Agricultural Workers Programme (SAWP). Prejudices associated with the return to the family in the country of origin for temporary workers in Canada exist thereby affecting the right to family reunification.

Minimizing the possibility of undocumented migrant workers being exploited

The Convention recognises that all migrant workers, irrespective of their legal status in the country where they are employed, have the right to ask the employer for any unpaid wages before being sent back to their country of origin by government authorities (article 25). Up until now, no protection mechanism for this fundamental right has been put in place by the Canadian government, which can indirectly constitute an incentive for exploitation of this category of migrant workers in Canada.

Conclusion

This study suggests six major conclusions on the obstacles to ratification by Canada of the *UN International Convention on the Protection of the Rights of Migrant Workers and Members of their Families*. The first two conclusions concern the views of elected members of the Canadian parliament belonging to the four political parties and which are members of the Standing Committee on Citizenship and Immigration. First, the lack of knowledge of the existence of the Convention by the majority of elected officials is a significant obstacle. Second, only two opposition parties have already expressed their support to Canada ratifying the Convention (the Bloc Québécois and the New Democratic Party)¹.

With regard to federal senior bureaucrats working on files on the protection of human rights, four obstacles were identified. First, migration policies are sovereign rights of countries and should consequently not be determined by Conventions at multilateral or international levels. Second, the spirit of the Convention is contrary to the Canadian culture and tradition of management of migration which focuses on the granting of permanent residency. Third,

¹ The official opposition critique on immigration for the Liberal Party has also given her support.

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given the current state of contract-type work that regulates the stay of skilled or low-skilled migrant workers, by ratifying the Convention Canada will be forced to re-evaluate its programmes and grant certain rights that are considered fundamental in the Convention. Forth, it is unnecessary to sign the Convention given that fundamental rights of all in Canada are legally guaranteed irrespective of their legal status.

The point of view of NGOs who work on issues related to migrant workers rights puts into question the validity of the government argument. To begin, the principle of national sovereignty is not absolute and the current context of globalization supports the management of migration policies at the global level. Furthermore, the growing importance of temporary work constitutes a flagrant contradiction with the Canadian philosophy and tradition in terms of immigration. Third, the number of violation of fundamental rights enshrined in international conventions is testimony to the fact that the signing of these conventions by Canada is no guarantee that the rights of migrant workers, especially the most vulnerable, are protected. Finally, the Temporary Foreign Workers Programme in Canada is lacking in several ways especially with respect to the rights covered in the Convention. The main rights that are not respected, or for which monitoring mechanisms are insufficient, include:

- the right to full and complete information;
- the right for the government to frame the recruitment practices as well as working and housing conditions;
- the right for temporary workers to be consulted during re-evaluations of contracts;
- the right to unionize;
- the right to equal treatment with local workers;
- the right to re-evaluation of expulsion reasons or exclusion from the programme by an impartial, independent body;
- the right to family reunification;
- and finally, the right for undocumented migrant workers to receive the wages for work done prior to deportation or expulsion.

If we listen to the current group of people working on strategic priorities in the different federal departments approached for this study, the Convention will never be a major interest to Canada. However, the emergence of a national coalition of community groups and NGOs in the defence of migrant workers rights represents a first important step in the mobilization

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of resources and of forces favourable to the ratification of the Convention in Canada.

Appendix 1

List of Key NGOs and Groups Contacted

- Amnesty International, francophone section (Montreal)
- Association des aides familiales du Québec (Montréal)
- Centre des Travailleurs Immigrants (Montréal)
- Centre Justice et foi (Montréal)
- Coalition d'Appui aux Travailleurs et Travailleuses Agricoles (Montréal)
- Committee for Domestic Workers' and Caregivers' Rights (Toronto)
- Canadian Council for Refugees (Montréal)
- Equitas
- Migrant Justice Network (Toronto)
- Kairos (Toronto)
- Ligue des Droits et Libertés (Montréal)
- National Alliance of Philippine Women in Canada (Vancouver)
- PINAY (Montréal)
- Table de concertation des organismes au service des réfugiés et des immigrants (Montréal)
- Toronto Organization for Domestic Workers' Rights (Toronto)
- Travailleurs Unis de l'Alimentation et du Commerce – Québec
- Travailleurs Unis de l'Alimentation et du Commerce – Canada
- United Food and Commerce Workers
- West Coast Domestic Workers Association (Vancouver)

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