



*UFCW Canada National Report on
The Status of Migrant Farm
Workers in Canada, 2004*



Presented to:

The Right Honourable Paul Martin
Prime Minister

The Honourable Lucienne Robillard
Minister of Human Resources and Skills Development Canada

The Honourable Joe Frank Fontana
Minister of Labour and Housing

Executive Summary

Over the past several years, UFCW Canada (the United Food and Commercial Workers union) has delivered support services, information, training, and advocacy to thousands of migrant farm workers working in Canada through the *Canadian Seasonal Agricultural Workers Program*, or CSAWP.

UFCW Canada operates five regional Migrant Worker Support Centres. Four are located in Ontario in Leamington, Simcoe, Bradford, and Virgil, and one is in Québec in St-Rémi. Through the work of these centres, UFCW Canada has compiled information and documentation regarding the CSAWP from the migrant farm workers' perspectives and experiences, elements of which are detailed in the following pages.

As was the case in previous reports, this fourth annual report focuses on the many inadequacies of the CSAWP. We have once again detailed recommendations the federal government must make to amend the program and ensure migrant workers are protected from unfair labour practices and human rights violations.

For example, over 80% of migrant farm workers are placed with employers in Ontario. The province of Ontario excludes agricultural workers from the legislative protections of health and safety laws, numerous provisions of the employment standard laws, and does not allow agricultural workers to join unions. Recognizing the absence of legislative provisions and protections for these workers, we call on the government to make significant changes to the terms of the CSAWP to provide at least minimal protections for migrant workers.

The CSAWP is a federal program initiated in response to employers' demands for a government solution to severe labour shortages in the agricultural industry. It would seem that the government believes its responsibility with regard to migrant workers in this program begins and ends with the issuance of work visas. The government has indicated that consulates of the sending countries and their staffs are responsible for supporting and advocating on behalf of workers, even when that support is not up to the task.

Similarly, the government's response to the critical absence of

UFCW Canada presents its fourth annual report on the status of migrant farm workers in Canada to the federal government.

health and safety legislation for a majority of migrant workers is to defer the onus for action onto the provincial government. We contend that the federal government must shoulder the burden of responsibility for migrant agricultural workers because it is a federal government initiative that allows these workers to work in Canada in the first place. The federal government has the legislative authority to amend the terms of the CSAWP to address the serious problems migrant workers have encountered year after year since the inception of the program in 1968.

Staff members at our centres over the past four years have assisted thousands of workers with problems including, but not limited to, health coverage, WSIB benefits and appeals, inadequate housing, work-related injuries, illness, and death. Additionally, we have provided English-as-a-second-language (ESL) training, health-and-safety training and manuals, information on payroll deductions, assistance with income tax filing and recovery of refunds, and a myriad of translation services, including accompanying workers to hospitals and doctors' offices to translate for health-care providers.

Based on our experience working with and on behalf of migrant farm workers, we have informed the federal government of these continuing problems and urged government to intervene and enact amendments to the CSAWP. To date, this and previous governments have done nothing. This report identifies practices experienced by migrant farm workers in Canada that contravene provisions of the United Nations *International Bill of Human Rights*, a bill ratified by the government of Canada. There appears to be little else on which these workers can depend while in Canada to assure them of personal dignity, fair labour practices, and adequate living conditions.

This report is being forwarded to the International Labour Organization (ILO) and to the United Nations Committee on Migrant Workers, with an invitation to both bodies to visit our Migrant Worker Support Centres and observe the work of our staff members as they help thousands of migrant farm workers.

For reasons detailed in the following report, we call on the government to institute the following changes to the CSAWP and other legislation and programs as necessary in order to afford the protections and provisions of the U.N. *International Bill of Human Rights* to migrant agricultural workers in Canada:

- 1) Amend to make it a condition that migrant workers are covered under provincial health and safety legislation in

order for employers of any province to qualify for participation.

- 2) Provide a transparent, impartial process of appeal, available to all workers before any decision to repatriate is made, and appoint a representative from UFCW Canada to fully participate in this appeal process on behalf of the migrant worker(s).
- 3) Exclude, in accordance with UFCW Canada's recent legal challenge, migrant farm workers' mandatory participation in the Employment Insurance (EI) program.
- 4) Comply with the ruling of the Supreme Court of Canada and make it a condition of the CSAWP that migrant farm workers belong to a union and acknowledge UFCW Canada as the union representative for migrant farm workers in Canada.
- 5) Immediately make public the statistics used by Human Resources and Skills Development Canada (HRSDC) to determine the yearly wage rates to be paid to migrant workers.
- 6) Include migrant farm workers in the process to determine the yearly wage rate and provide levels of pay based on seniority, past experience, and being "named" by an employer, and include UFCW Canada as a full and equal participant on behalf of the migrant workers in this process.
- 7) Inspect workers' housing prior to and following their occupancy, with random inspections mandated to occur regularly throughout the season, and terminate employers from the CSAWP who are found to be in non-compliance in meeting the standards for adequate housing.
- 8) Immediately ban the practice of housing workers in, above, or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans, and/or industrial heaters.

Introduction

Over the past several years, UFCW Canada (the United Food and Commercial Workers union) has delivered support services, information, training, and advocacy to thousands of migrant farm workers working in Canada through the *Canadian Seasonal Agricultural Workers Program*, or CSAWP.

UFCW Canada operates five regional Migrant Worker Support Centres. Four are located in Ontario in Leamington, Simcoe, Bradford, and Virgil, and one in Québec in St-Rémi. Through the work of these centres, UFCW Canada has compiled information and documentation regarding the CSAWP from the migrant farm workers' perspectives and experiences, elements of which are detailed in the following pages.

As was the case in previous reports, this fourth annual report focuses on the many inadequacies and shortcomings of the CSAWP. Our reports have provided recommendations for change to the program that, if implemented, would help ensure that migrant farm workers in Canada are treated with dignity, respect, and equality. The federal government has not responded to our previous reports, nor has the CSAWP been modified to reflect any of the recommended changes.

The *Report on Migrant Agricultural Workers in Canada – 2001* concluded by reiterating the Anglican Church of Canada's resolution from the 2001 General Synod, which appealed to the government of Canada to ratify the United Nations *International Convention of the Protection of the Rights of all Migrant Workers and their Families*. Canada has still not ratified this convention. We are disappointed in the apparent determined resolve of the government of Canada as it continues to ignore its responsibility to migrant farm workers labouring in our country.

We believe it is extremely unlikely, given the federal government's inaction to date, that Canada will ratify the *International Convention of the Protection of the Rights of all Migrant Workers and their Families* any time soon. We feel it necessary to remind the government that Canada *has* voted in favour of the United Nations *International Bill of Human Rights*. In a thorough review of the provisions, policies, and practices of the CSAWP, the program comes up woefully short of the provisions of the articles of the *International Bill of Human Rights*. Following this assessment, we urge the government to begin instituting corrective measures and amendments to ensure that the CSAWP complies with the *International Bill of Human Rights*, to which Canada is a signatory, and provides protection to migrant workers from any abuses to their human rights.

As was the case in previous reports, this fourth annual report focuses on the many inadequacies and shortcomings of the Canadian Seasonal Agricultural Workers Program, or CSAWP.

The federal government must shoulder the burden of responsibility for migrant agricultural workers and their working and living conditions while in Canada, because the federal government is the primary legislative body making it possible for these workers to be brought into Canada in the first place.

This report will provide the government with an overview of this assessment. The report identifies circumstances in which the provisions and/or practices of the CSAWP contravene the *International Bill of Human Rights*. It is based on the experiences of thousands of migrant farm workers who have attended one of UFCW Canada's five Migrant Worker Support Centres.

The CSAWP is a federal program initiated in response to employers' demands for a government solution to severe labour shortages in the agricultural industry. It would seem that the government believes its responsibility with regard to migrant workers in this program begins and ends with the issuance of work visas. The government has indicated that consulates of the sending countries and their staffs are responsible for supporting and advocating on behalf of workers in instances in which workers feel their rights are violated or the provisions of the CSAWP are being contravened – even when that consular support is not up to the task.

Similarly, the federal government's response to date defers to provincial responsibility where labour laws or lack thereof for migrant farm workers place them in situations of vulnerability with respect to occupational health and safety and dangerous working conditions. Our contention is that the federal government must shoulder the burden of responsibility for migrant agricultural workers and their working and living conditions while in Canada, because the federal government is the primary legislative body making it possible for these workers to be brought to Canada in the first place. The federal government has the legal and legislative ability to amend the terms of the CSAWP to address shortcomings and inadequacies that continue to see migrant farm workers encounter the same problems year after year since the inception of the program in 1968.

Just as importantly, the federal government is also obligated by its endorsement of the *International Bill of Human Rights* to ensure that the CSAWP conforms to the provisions and objectives of this bill. In becoming a signatory, the government accepted "*the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and the peoples of territories under their jurisdiction.*"

The federal government of Canada began a pilot project in 2002 to facilitate Canadian employers' labour needs in industries other than agriculture requiring low-skilled workers. This low-skilled

worker program provides even less protection and governmental supervision than the CSAWP, and opportunities for human rights abuses are therefore even greater. The government's attempt to divest from itself all responsibility for migrant workers under this program is shameful.

In just one example, UFCW Canada was contacted last summer and asked for help and intervention on behalf of Mexican workers brought to Ontario to pick worms. Working conditions for these workers included little access to drinking water, no latrines, and no water with which to wash their hands. The advertised bonus pay of up to \$5,000 per month was beyond possibility of achievement. The contract they were sent in Mexico was in Spanish but not signed by the employer – on arrival in Ontario, they were given new contracts in English, which they could not read.

The employer started the season with 40 workers. Before the end of September, most had returned to Mexico either of their own accord, or sent home (“repatriated”) by the employer because they could not meet his quotas. UFCW Canada provided housing for three women from this program whom the employer was determined to send home. They did not want to return to Mexico worse off than they were when they left, and had hoped to obtain alternate employment. Their employer was quoted in local media describing them as “lazy low-life from Mexico”. He accused one of being a prostitute, and another of drug dealing.

If this project is the government's new direction with regard to providing employees to industries that do not easily attract Canadian workers, then we anticipate many more instances of human rights abuses. The federal government has clearly indicated that it is not a party to the employment contract. The government insists it has no authority to intervene in the employer-employee relationship or to enforce the terms and conditions of the contract. This government “washing of the hands” is completely unacceptable.

Migrant workers in this low-skilled worker program more often than not cannot speak English. They are not aware of provincial labour laws; they are not provided with any information as to how to resolve a dispute with regard to their employment contract; they do not know where or how to contact the Ministry of Labour, or how to file a WSIB claim, or who to call if the employer has not provided health insurance. These workers are even less visible than migrant farm workers and far less protected. This program is not a viable or ethical alternative to the CSAWP. It is a reprehensible attempt to relieve the government of any responsibility to the migrant workers included in this program.

The federal government acted swiftly in the face of Canadians' condemnation of its participation in the temporary worker program that supplied migrant exotic dancers to an industry awash

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in allegations of forced prostitution and other criminal activity. We expect the government to act as swiftly and with equal moral certitude and scrap this pilot project. Vulnerable migrant workers deserve and need more protection and advocacy – more so than simply providing them with a work visa, placing them in industries in which Canadians don't wish to work, and suggesting they resolve their own employment difficulties and contractual disputes on their own.

Free to be Unfree

Based on information requested by migrant workers who attended UFCW Canada's Migrant Worker Support Centres, and on information received by our staff through their outreach activities, it remains clear that there are persistent difficulties experienced by migrant agricultural workers in Canada. Once again, we urge the federal government to institute changes to the CSAWP to address its systemic inadequacies. Rather than continuing to mitigate human rights violations against migrant workers, it is past time to facilitate changes that will support and protect their rights.

Article 1 of the *International Bill of Human Rights* states

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 states

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made on the basis of political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing, or under other limitation of sovereignty.

Article 3 states

Everyone has the right to life, liberty, and security of person.

Article 12 states

No one shall be subjected to arbitrary interference with his

privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Migrant workers have relayed information to staff at our centres indicating workers within the CSAWP experience objectionable and discriminatory practices by some employers. Even more disturbing is the fact that these workers often feel they have no recourse but to hope they will be assigned to a different employer in the next season.

We again point out that this program is an initiative of the federal government in response to employers' demands for the government to address labour shortages experienced in the agriculture industry. It is incumbent on the government to ensure that its program is designed, monitored, and enforced in such a way that human rights abuses – both individual and systemic – do not occur.

Staff at our newly-opened centre in St-Rémi, Qué. were alerted to difficulties experienced by workers at one particular farm. This farm's major crop is strawberries, and there were approximately 85 women from Mexico and Guatemala working there under the CSAWP. Our staff received a phone call from one of the women working on this farm – she spoke in a low voice, very fearful of being overheard. She said the women on the farm were constantly watched, and that they were rarely allowed to go anywhere without an employer representative. She related that their work day was typically from 6:00 a.m. to 9:00 p.m. with one half-hour break during the whole period. Several women asked to go home, but only four were able to do so.

Two women at the farm became so desperate that they tried to commit suicide – one by slitting her wrists, the other by swallowing pills. The woman who initially spoke with our staff representative repeatedly asked for help, stating, “This place is like hell. Please come to help us.”

Under difficult conditions, a meeting was arranged with some of the women from this farm. They related similar experiences and confirmed the circumstances of the two attempted suicides. The farm site is situated such that one cannot easily enter it without notice. Our staff representative was unable to gain access to the farm, but we are working with a local community advocacy group in order to address the incredible difficulties these women endured this past summer.

There have been other instances noted in which workers were not allowed to leave farm property after work hours without the employers' express permission. In some cases, in which workers have exercised their right to be free and left the farm after their work day, they were penalized by unpaid suspensions of one to

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two days. At one farm in Niagara-on-the-Lake, Ont., the Mexican women working there were not allowed to leave the farm property after work. In order to call home to their families in Mexico, they had to sneak off the farm late at night and walk to the nearest pay telephone located a substantial distance away. At this same location, the laundry facilities were so inadequate that the workers were reduced to washing their clothes in the lake.

The reality of life on many Canadian farms means that workers often live close to their employers and almost always on the employers' property. This reality can cause conflict and inappropriate interference. Employers can decide who is allowed on their property and may therefore decide who may or may not visit with workers, even on their own time.

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In many cases, workers have complained about lack of personal freedom and privacy during non-work hours. Workers indicated that they were afforded little privacy while making phone calls because their employer shared the phone line and was believed to be monitoring their conversations. Others reported that their mail was opened by the employer.

In one case, a female employer insisted that she be present during a medical examination of a male migrant worker, even though he was clearly uncomfortable with the situation. This intrusion occurred at a medical follow-up examination after the worker decided to consult a doctor of his choosing. The reason for her insistence was that she objected to the doctor and the resulting determination that the injury was work-related and therefore compensable.

There have also been situations in which workers feel they need medical attention, but their employer is reluctant to arrange for their transportation to the nearest doctor, medical clinic, or hospital. Workers have been told to "wait a couple of days". One employer charged his worker \$20 to drive him to a doctor.

Some employers retain passports, health cards, social insurance cards, work permits, and private medical contracts belonging to migrant workers. The employers suggest that they are simply being helpful and are trying to ensure the documents do not get lost. In Québec, most employers retained medicare cards, claiming that they "had been told to do so", although this has been denied by Québec government staff. This practice allows the employer to limit or deny the worker the right to consult with medical practitioners.

Workers are often not provided with their *Record of Employment* nor their T4 slips, and are therefore unable to verify if the deductions noted on their pay stubs (for those who receive them) are properly noted or accounted for. The Mexican consulate forwards the T4 slips to a company in Leamington, Ont. that prepares income tax returns for migrant workers for a fee of \$35. This practice essentially prevents an employee from seeing his T4 slip of his completed income tax return.

Health and Safety

Article 7 of the *International Bill of Human Rights* states

*All are equal before the law and are **entitled without any discrimination to equal protection under the law.** All are entitled to equal protection against any discrimination in violation of this Declaration and against incitement to such discrimination.*

Article 7 of the *International Covenant on Economic, Social, and Cultural Rights* states

The States party to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular:

- (a) *Remuneration which provides all workers, as a minimum, with:
 - i) *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant;**
- (b) **Safe and healthy working conditions;**
- (c) *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) *Rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

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Agriculture is a dangerous industry – in fact, one of the most dangerous industries. The *London Free Press*, in its November 13, 2004 edition, reported, “In Canada, farm-related deaths per 100,000 are nearly four times higher than the rate for all industries combined.”

The statistics on the dangers of agricultural work are not unfamiliar to the federal government. Yet the government refuses to modify the terms of the CSAWP to restrict participation to provinces that have legislative provisions for the health and safety of agricultural workers. The federal government continues to operate the CSAWP and permit the placement of migrant workers in Ontario despite the dangerous nature of the work and the lack of protective legislative rights.

All agricultural workers in Ontario are placed at extra risk due to this legislative inequity. Migrant farm workers are affected to a greater degree because

- they are not legally entitled to seek other employment if they believe their current work activities or employment environment are characteristically less safe than farming is already considered,
- they fear repatriation or punitive actions if they raise concern over unsafe working conditions, and,
- if they are repatriated before half of their designated contract term expires, they are responsible for the costs of their flights to and from Canada, in which case they are unlikely to have the funds to make these payments.

The Canadian North-South Institute on International Development conducted surveys of migrant farm workers in 2002 and reported that

- Only 45% of Mexican migrant workers reported receiving training in the work they did.
- 24% of Mexican workers had applied chemicals on a field. Of those, 43% had not used a protective mask; 57% had not used other protective clothing; and 44% had not received training in the use of chemicals.
- Additionally, several survey respondents indicated that although they were not required to apply pesticides or chemicals themselves, pesticides or chemicals were applied in the fields while they were working there.

Staff representatives at all of our Migrant Worker Support Centres have advocated on behalf of migrant workers with regard to workplace injuries and illnesses. They have attended hospitals in order to provide translation and to ensure that the incident is correctly reported as a workplace injury or illness when that is the case. Our staff representatives have interceded on behalf of migrant

workers when they encountered difficulties with the processing of their WSIB claims. We have also initiated the development and distribution of Spanish-English health and safety manuals to migrant workers, and held numerous workshops at the centres to provide training and information to workers on health and safety issues.

Our staff representatives have spent an enormous portion of their time accompanying workers to the hospital, clinics, and pharmacies. Our centres are located in the heart of each of the major agricultural regions experiencing high numbers of migrant workers year after year. In spite of the migrant workers' presence each year and the numerous times these workers attend at hospitals and clinics, there has been little to no effort to arrange for translation services by these health care providers. Members of our staff translate for the workers the nature of the injuries, how to treat them, what medications are being prescribed, how and when to take the medications, and for how long.

Additionally, we have been able to intervene in instances when employers insist that the injury or illness is not work-related, and therefore no claim for WSIB benefits should be made. In St-Rémi, our staff advocated for a worker who broke his collarbone when he fell of a moving platform at work. The worker had not received an explanation in his own language regarding his injury. The worker was also unsure if an accident report had been filed. When we accompanied this worker to the hospital, we indicated to the doctor that this was a workplace injury – it had not been reported as such until then. Unfortunately, following the hospital visit, the employer applied enough pressure on the worker that he agreed to say it was not work-related. As a result, this worker returned to Mexico unsure whether any claim had been filed, and without receiving proper WSIB benefits.

Staff members at all of our centres have witnessed attempts by employers to convince workers and/or their health care providers that their injury or illness is not work-related. The employers are then shielded from WSIB premium increases. The employees often return home still injured or sick, and unable to work yet not entitled to receive WSIB benefits.

UFCW Canada is proud of the work we do on behalf of migrant farm workers. However, we believe that the paramount responsibility for migrant farm workers' health and safety is and always has been a federal government responsibility. The issue could easily have been addressed by barring provinces without appropriate legislation from participating in the CSAWP. The federal government not only had the *right* to exercise this authority, but, under the *International Covenant on Economic, Social, and Cultural Rights*, the federal government of Canada has had an *obligation* to ensure that migrant farm workers enrolled in the CSAWP could depend on

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The employment agreement provides terms to which the employer must adhere, including the provision of accommodations and the costs for airfare. These costs are to be in addition to the establishment of a wage rate that, in theory, conforms to the basic human rights principles of equal pay for equal work, but in practice does not. The criteria for establishing a wage rate does not include any calculation for subsidizing employer-borne costs by the employee.

and enjoy safe and healthy working conditions.

UFCW Canada has launched a legal challenge under the *Charter of Rights and Freedoms* against the province of Ontario with respect to both migrant and resident farm workers in the province who have been denied equal access to legal protections. We are confident that this inequity will finally be resolved in favour of agricultural workers in Ontario by our judicial system.

Wages

Articles 7 and 23 of the *International Bill of Human Rights* and Article 7 of the *International Covenant on Economic, Social, and Cultural Rights* all state that everyone has the right to equal pay for equal work. The CSAWP employment agreement itself stipulates that the wages for migrant farm workers cannot be less than what Canadian farm workers receive for the same work. Specifically, the agreement states that

... a rate equal to:

- i) the minimum wage for workers provided by law in the province in which the worker is employed;*
 - ii) the rate determined annually by Human Resources and Skills Development Canada to be the prevailing wage rate for the type of agricultural work being carried out by the worker in the province in which the work will be done;*
or
 - iii) the rate being paid by the employer to his Canadian workers performing the same type of agricultural work;*
- whichever is the greatest ...*

In our previous reports to the federal government, we have indicated the yearly wage rate established for migrant farm workers did not meet the stipulation of the CSAWP employment agreement itself, and in fact migrant farm workers received less than resident workers performing the same work. The federal government has refused to respond to this evidence of its breach of the agreement, evidence based largely on statistical information provided by HRSDC itself. The government has offered no defence to this contravention, nor any indication of an intent to remedy the situation.

There has been an attempt to justify the fact that wages do not conform to the requirements of the employment agreement by asserting that the employer-borne costs of the program – i.e., flights and provision of accommodation broken down by worker per hour of work – would more than compensate for the disparity between the wages migrant workers receive compared with those received

by resident workers. This would be valid reasoning if there were any provision for the annually-established wage rate to include the employers' costs of participating in the CSAWP. However, this is not the case. In fact, the employment agreement provides terms to which the employer must adhere, including the provision of accommodations and the costs for airfare. These costs are to be in addition to the establishment of a wage rate that, in theory, conforms to the basic human rights principles of equal pay for equal work, but in practice does not. The criteria for establishing a wage rate does not include any calculation for subsidizing employer-borne costs by the employee.

Statistics Canada's 2003 *Wage Survey of Seasonal Employees in Horticulture* indicates that Canadian residents working in nurseries and greenhouses were paid an average of \$8.58 per hour. StatsCan figures also indicate that the general farm labour average wage for Canadian residents was \$9.00 per hour. Yet migrant farm workers in Ontario – with the exception of those who worked on tobacco farms and were paid by piece rate – were paid just \$7.85 per hour.

The federal government's belief that it is not responsible for any breaches of the CSAWP employment agreement with regard to wages is simply unacceptable. The federal government established the program and provided the framework by which it was to operate, including the clear stipulation on how wage rates were to be calculated. This program is the vehicle by which migrant workers enter Canada, and it is the federal government's paramount responsibility to ensure that migrant workers' human rights are not contravened, denied, or abridged through their participation in this government-sanctioned initiative.

Accommodations

Article 25 of the *International Bill of Human Rights* states

- 1) *Everyone has **the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.***

Under the CSAWP, participating employers must provide accommodations for migrant workers. The accommodations are to be inspected by municipal public health departments to ensure they meet current standards.

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There have been documented instances in the past and continue to be now in which migrant workers are penalized and repatriated when they have attempted to address with their employer the state of their living conditions.

grant Worker Support Centres over inadequate housing. Our staff representatives try to intercede in a way that will shield the workers from possible reprisals from the employers, including repatriation. There have been documented instances in the past and continue to be now in which migrant workers are penalized and repatriated when they have attempted to address with their employer the state of their living conditions.

On the positive side, our staff representatives at the Simcoe, Ont. support centre this past year have noticed improvements to housing conditions that were identified to them the year prior. In one case, the farmer has built a new complex to house the workers, providing significant improvements to their living quarters.

On the other hand, inadequate living quarters were a notable problem for many workers attending our newly-opened centre in St-Rémi, Qué. In one case, 16 workers were housed in a basement room in which the bunk beds were arranged a body-width apart, completely filling the room. Pictures of this particular farm also show that, in the very narrow space between two of the bunk beds, there was the electrical supply box for the entire building. The workers assigned to sleep in these beds were inches away from major electrical wiring. The consulate staff had inspected this particular location and deemed it fit for living quarters. Our staff representatives believe the migrant workers had valid complaints.

In another location, the washroom facility had holes in the floor through which the ground below was visible. In another instance, three workers were housed together in a tiny trailer. The space was so limited that personal belongings had to be stored outside. Two of the workers were required to share a double bed, and the third worker slept on a couch that didn't accommodate the full length of his body.

Our staff representatives in Simcoe also heard complaints with regard to workers housed in a garage. As would be not uncommon in such a facility, there was neither heat nor insulation and the workers were cold at the beginning of the season in the spring and again in the late fall.

In some instances, accommodations are directly attached to or located directly over greenhouses. This practice invites safety concerns that are obvious. We are at a complete loss trying to understand how these accommodations could pass inspection from the local public health departments. We cannot comprehend the reasoning of anyone who would place workers at risk in this way.

During the 2003 growing season in the Leamington area, two workers were housed in the boiler area of a greenhouse. The boilers malfunctioned, causing a fire. The workers were away from the living quarters at the time of the fire, but all of their clothing and possessions – including passports and other documents – were com-

pletely destroyed by the fire. It was near the end of the season, and these workers returned home with just the clothes on their backs. The employer would not compensate them for their losses.

When the two workers returned to Canada this past year, they sought the assistance of our staff at the Leamington support centre. As a result of our intercession on their behalf and with the help of the Windsor Bilingual Legal Clinic, the employer was persuaded to compensate the workers \$1,000 each for their losses.

In 2003, two Caribbean workers were repatriated following their complaints that the radio music that was played inside a greenhouse 24 hours a day, seven days a week, was very disturbing to them as their living quarters consisted of a trailer attached to the greenhouse. These workers also indicated that chemicals and pesticides applied inside the greenhouse seeped into their living quarters. In addition to the incessant music and the smell of chemicals, their accommodations were damp and excessively humid, as would be expected given that they were directly attached to a greenhouse with high temperatures and constant watering.

Providing housing directly attached to or within greenhouses clearly does not provide adequate or safe accommodations. The terms of the CSAWP should be immediately amended to prohibit this practice as it is apparent that municipal public health departments fail to comprehend the safety issues associated with the practice.

Repatriation

Article 8 of the *International Bill of Human Rights* states

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by constitution or law.

Article 10 states

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The ability of employers to have workers sent back to their home countries for any reason is perhaps the most significant negative aspect of the CSAWP. Migrant workers have no remedy, no appeal, and no fair and impartial representation with regard to this provision of the CSAWP. There have been too many instances of repa-

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triation in cases in which workers were compelled to seek remedies for injustices they experienced while participating in the CSAWP.

In essence, this provision provides a nearly blanket immunity for employers to treat workers as they choose. Should any workers object, the employer can simply have them removed not only from his workplace, but from the country altogether. If a worker has not been requested by name and is repatriated before the completion of half of the work term specified in the contract, the worker must bear the costs of the flight home. For many workers, this additional financial penalty becomes a major consideration, effectively inhibiting them from speaking against unfair labour practices or woefully inadequate housing that they may experience.

The federal government can address this glaring inequity by simply instituting a fair and impartial appeal process to which all migrant workers have access. This appeal system would benefit not only the migrant workers, but would also benefit the CSAWP itself. Workers who believe they are fully protected from unjust reprisal can object to unfair labour practices and seek the remedies and justice they are due. This would allow all participants in the CSAWP – workers, employers, sending countries, and Canada – to identify employers who abuse the program and the migrant workers in it. These employers could then be banned or suspended from participation in the program and any remedial measures needed could be identified.

We acknowledge that many of the employers participating in the CSAWP are responsible individuals who uphold the minimal contractual obligations of the CSAWP. However, there is an ever-growing awareness amongst faith-based groups, community advocacy groups, consular officials, unions, and even fellow employers participating in the CSAWP that there are a number of employers who do a great disservice to the program – and all who participate in it – when they treat migrant workers with little respect and dignity and fail to comply with the terms and conditions of the contract.

The *International Bill of Human Rights* states that everyone should have access to effective remedies by national tribunals for acts violating fundamental rights, and that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal. Canada proudly voted in favour of the *International Bill of Human Rights* and has ratified or acceded to its many conventions. Articles 8 and 10 of this bill call for the most basic level of fairness by stating everyone has the right to a fair and public hearing – yet the CSAWP provides not a glimmer of this basic human right within its policies and procedures.

Employment Insurance

We again refer the government to Article 7 of the *International Bill of Human Rights*, which states, in part,

All are equal before the law and are entitled without any discrimination to equal protection of the law.

This has never been the case for migrant workers in the CSAWP program with respect to the mandatory deductions for Employment Insurance (EI).

It has been only within the last two to three years that a very small minority of migrant workers has been able to access any benefits from this program. The terms of their contract specify that when their work term is finished they must return home – and Employment Insurance benefits are not payable to laid-off workers who are not in Canada. In spite of this glaring contradiction, there has been no effort by the federal government to exempt migrant workers from mandatory EI deductions nor to provide other services or benefits through this program in recognition of their contributions and inability to access the fundamental portion of the EI program.

Migrant workers have authorized staff at our support centres to intercede on their behalf in order to assist them in filing claims for the one portion of the EI program for which they are eligible – parental benefits. Our staff representatives encountered varying degrees of reluctance and resistance from regional HRSDC offices with regard to these parental benefit claims. Through persistence and appeals, we have been successful in ensuring that the one small portion of the EI program for which a very small minority of the migrant workers are actually eligible was finally accessed.

UFCW Canada has initiated a challenge under the *Charter of Rights and Freedoms* on behalf of migrant workers with regard to this inequitable application of the EI legislation and regulations. While we commend our staff members at our centres for their due diligence in ensuring that a minority of migrant workers obtain these benefits from the EI program, it remains a fact that migrant workers are not eligible to claim EI benefits when they are laid off, and only a minority of the workers are able to claim parental benefits. Once again, we find that we must rely on our judicial system to ensure fairness and equity for all under our laws, as the federal government has chosen to not exercise its responsibility do so.

The terms of migrant workers' contracts specify that when their work term is finished they must return home – and Employment Insurance benefits are not payable to laid-off workers who are not in Canada. In spite of this glaring contradiction, there has been no effort by the federal government to exempt migrant workers from mandatory EI deductions.

The federal government and the federal government alone has the authority to amend the terms of the CSAWP. The federal government should ensure that migrant workers' human rights are protected by including provisions for union representation for the migrant workers in the program.

Unionization

Article 23, paragraph 4 of the *International Bill of Human Rights* states

Everyone has the right to form and to join trade unions for the protection of his interests.

Article 8(a) of the *International Covenant on Economic, Social, and Cultural Rights* further grants

... the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

More than 80% of the workers in the CSAWP are placed on farms in Ontario. This province has steadfastly refused, most recently under the Progressive Conservative government starting in 1995 and continuing under the current Liberal government, to allow agriculture workers to form or join a trade union. The only other province in Canada that continues to deny this basic human right to agriculture workers is Alberta. UFCW Canada has successfully challenged this denial of human rights to agriculture workers, and won a December 2000 Supreme Court of Canada decision on behalf of agriculture workers, but the government of Ontario continues to refuse to amend legislation in compliance with the court's ruling.

UFCW Canada is challenging the Ontario government's assertion that its Agricultural Employees Protection Act (AEPA) complies with the Supreme Court decision that agriculture workers are entitled to the freedom to associate. We contend that, without enabling legislation providing a legal framework for collective bargaining, the current AEPA does not provide the legislative right to form or join a trade union. The AEPA instead merely provides the opportunity for these workers to belong to a government-sanctioned social group.

As previously stated, the federal government and the federal government alone has the authority to amend the terms of the CSAWP. The federal government should ensure that migrant workers' human rights are protected by including provisions for union representation for the migrant workers in the program. This basic

human right – the virtues of which this federal government extols on the international stage as a worthy objective towards which all countries should strive – is not available to more than 80% of all migrant workers participating in the CSAWP.

Given the continuing problems experienced by migrant workers while living and working in Canada, the demonstrated need for services and advocacy to which staff at our support centres have been responding, and the fact that migrant workers have no voice or representation within the parameters of the CSAWP, the right to join a union is urgently needed.

The government's insistence that the consular staff of CSAWP sending countries are the workers' best representatives does not reflect reality. More than one study has reported that migrant workers are wary of and dissatisfied with the representation of consular staff. In the North-South Institute report, over 60% of the Mexican workers indicated that they favoured joining a union.

It is apparent that the federal government wishes to distance itself as much as possible with all aspects of the CSAWP, save for the initial issuance of temporary work visas. While we do not absolve the federal government from its ultimate responsibility for this program and all that it encompasses, we would urge the government to provide migrant workers participating in the CSAWP with an alternate form of representation and advocacy in this determined absence of governmental intervention.

Recommendations

The federal government's responsibility for the working and living conditions of migrant farm workers in Canada cannot be minimized. There are significant problems experienced by workers participating in the CSAWP. In fact, the government acknowledges breaches of the CSAWP in a policy statement to employers participating in the program. In this policy statement, the government warns that serious breaches of the contract may lead to termination of participation in the program. It suggests that employers govern themselves accordingly and ensure that workers are accorded safe and fair treatment.

This report is being forwarded to the International Labour Organization (ILO) and to the United Nations Committee on Migrant Workers, with an invitation to both bodies to visit our Migrant Worker Support Centres and observe the work of our staff members as they help thousands of migrant farm workers.

Our experience in working with migrant workers over the past years indicates that self-regulation does not provide the workers with the protections to which they are entitled.

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We call on the federal government of Canada to institute these changes to the CSAWP and other legislation and programs as necessary in order to afford the protections and provisions that are the basic human rights of migrant agricultural workers in Canada while they work in this country.

Accordingly, we call on the federal government of Canada to institute the following changes to the CSAWP and other legislation and programs as necessary in order to afford the protections and provisions that are the basic human rights of migrant agricultural workers in Canada while they work in this country:

- 1) Amend to make it a condition that migrant workers are covered under provincial health and safety legislation in order for employers of any province to qualify for participation.
- 2) Provide a transparent, impartial process of appeal, available to all workers before any decision to repatriate is made, and appoint a representative from UFCW Canada to fully participate in this appeal process on behalf of the migrant worker(s).
- 3) Exclude, in accordance with UFCW Canada's recent legal challenge, migrant farm workers' mandatory participation in the Employment Insurance (EI) program.
- 4) Comply with the ruling of the Supreme Court of Canada and make it a condition of the CSAWP that migrant farm workers belong to a union and acknowledge UFCW Canada as the union representative for migrant farm workers in Canada.
- 5) Immediately make public the statistics used by Human Resources and Skills Development Canada (HRSDC) to determine the yearly wage rates to be paid to migrant workers.
- 6) Include migrant farm workers in the process to determine the yearly wage rate and provide levels of pay based on seniority, past experience, and being "named" by an employer, and include UFCW Canada as a full and equal participant on behalf of the migrant workers in this process.
- 7) Inspect workers' housing prior to and following their occupancy, with random inspections mandated to occur regularly throughout the season, and terminate employers from the CSAWP who are found to be in non-compliance in meeting the standards for adequate housing.
- 8) Immediately ban the practice of housing workers in, above, or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans, and/or industrial heaters.

