

**Canada' Seasonal Agricultural Workers Program as a Model of Best Practices in
Migrant Worker Participation in the Benefits of Economic Globalization**

**“The Mexican and Caribbean Seasonal Agricultural Workers Program:
Regulatory and Policy Framework, Farm Industry Level Employment Practices,
and the Future of the Program under Unionization”**

**Executive Summary
Prepared for The North-South Institute**

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Executive Summary

The Canadian Seasonal Agricultural Workers Program (CSAWP) has been in existence for approximately 36 years. CSAWP began as a pilot program between Canada and Jamaica in 1966. Since that time the CSAWP has expanded to include Mexico, Barbados, Trinidad & Tobago, and the Eastern Caribbean States of Dominica, Grenada, St. Kitts/Nevis, St. Lucia, and St. Vincent & the Grenadines.

CSAWP is a formal program of “managed” circular migration. It facilitates the temporary migration of Caribbean and Mexican agricultural workers into Canada to meet fruit, vegetable and horticulture (FVH) growers’ demand for low-skilled labour. HRDC’s stated objectives of the program are paraphrased as follows:

- Meet qualifying FVH growers’ seasonal demand for low-skilled agricultural workers during the peak planting and harvesting season when there is a relative shortage of similarly-skilled Canadian workers;
- Help maintain Canada’s economic prosperity and global agricultural trade competitiveness through timely planting, harvesting, processing, and marketing of fruits, vegetables and horticulture crops, and expand job prospects for Canadian citizens dependent on agriculture and agriculture-related employment opportunities;
- Enhance and maintain the Canadian economy’s efficiency through better allocation of local labour resources;
- Improve the economic welfare of the migrant workers by providing them with temporary full-time employment in the labour-intensive commodity sectors of the FVH industry at relatively higher wages than they could obtain from similar or alternative activities in their home countries;

- Facilitate the return of the workers to their home countries at the end of their temporary employment in Canada.

CSAWP is managed and implemented within a three-tier institutional framework. At the federal level, the program is implemented within the framework of the Immigration Refugee and Protection Act and Regulations and a labour market policy premised on the “Canadians first” principle. At the provincial level, statutes relating to employment standards, labour, and health govern program implementation. The program is also implemented within bilateral administrative arrangements between Canada and the source countries. These arrangements are formalized in Memoranda of Understanding (MOUs) and Employment Contracts between FVH growers and migrant workers and the government agents of the supply country.

The main objective of the research undertaken by The North South Institute on CSAWP’S institutional framework is two-fold. First, to factually establish the “good practice” areas of CSAWP’S regulatory and policy mechanisms and industry-level employment practices that have worked, or are working well in the interest of the migrant workers and their FVH employers, and areas that might not have worked, or are not working well in the interest of both the migrant workers and their employers and which, therefore, may need “good practice” principles attention. Second, to propose practical recommendations, that CSAWP managers might use to build upon the areas of the program that are found to have worked or are working well, in order to address the challenges in those areas that might not have worked, or are not working well in the interest of both the migrant workers and their employers. The research also examines a possible role for unions in CSAWP operation at the FVH industry level in shaping the future direction of the program. The findings, conclusions, and recommendations presented in this report are based on content analysis of the relevant federal and provincial statutes, the MOUs, Employment Agreements, the Supreme Court of Canada's decision in *Dunmore v. Ontario (A.G.)*, and international conventions, as well as sample interviews with CSAWP policy and operational managers. Data from workers was derived from surveys collected and summarized by researchers in Mexico and Caribbean.

Section I of the Executive Summary presents findings on the CSAWP'S institutional framework; Section II, industry-level employment practices; and Section III, the role of unions in the context of the *Dunmore v. Ontario (A.G.)*. Conclusions regarding CSAWP “best practice” features and recommendations for future action follow.

Ontario was used as the case study since the majority of the CSAWP workers are placed on Ontario farms.

I. The Program's Institutional Framework

The CSAWP is established under a series of instruments that operate within the general labour and employment legislative scheme in Canada and the provinces.¹ These instruments delineate the duties and obligations of the various stakeholders in the program and provide a comprehensive scheme for the migration of workers. The CSAWP may be described as a “government-to-government” managed program of migration. Private actors and any role they may have in the CSAWP are defined and regulated by government. The primary Canadian government agency in the administration of the Program is Human Resources Development Canada (HRDC). Government agents from Mexico and the Caribbean act as government agents in Canada between the workers and the Canadian government and growers. The Canadian government privatized the administration of the CSAWP by delegating certain duties to the Foreign Agricultural Resource Management Services (FARMS) in Ontario, which is a non-profit organization charged with transmitting and processing employment orders accepted by Human Resource Centres. A board of directors elected from representatives in the grower community governs FARMS. It identifies itself as an organization “run by employers and it is for the employers.” Similar private administration has been established in Quebec, with the Fondation des Entreprises en Recrutement de Main d’oeuvre Agricole Étrangère (FERMES).

¹ The primary documents are the Memoranda of Understanding between Canada and Mexico and Canada and the Caribbean states. Attached as annexes are the Operational Guidelines and the Employment Agreement that is required to be signed by all participating employers and workers.

Some of the key findings of the CSAWP institutional framework are the following:

1. The starting point in understanding the industry-level practices of the CSAWP is to note the legal vacuum that exists for the protection of agricultural employment and labour rights in Ontario. As the Supreme Court of Canada noted in the *Dunmore v. Ontario (A.G.)* decision, the workers' exclusion from such a protective regime has disadvantaged them while living and working in Canada.
2. The legal status of the MOU between Canada and the supply countries is defined as an "intergovernmental administrative arrangement," not an international treaty. Therefore, the MOUs do not legally bind the parties. However, the Canadian government's decisions may still be reviewed under the Charter of Rights and Freedoms and general principles of administrative law.
3. The MOUs incorporate the policy objectives and rationale of the CSAWP. It emphasizes the role of the state as determining those aspects of the program which are to their "mutual benefit"; monitoring the movement of workers; and ensuring that CSAWP workers do not displace domestic labour. The benefit to Canada and growers has been outlined at the outset of this Executive Summary. From the perspective of the sending countries, the CSAWP supports economic development at home through remittances of foreign currency. For example, in 2001, Organisation of Eastern Caribbean States (OECS) reported that approximately \$2 million per year is sent back in remittances, and Jamaica benefited from approximately \$7.6 million in remittances. Workers benefit from earning Canadian dollars used to improve living conditions for themselves and their families when they return home.
4. The Employment Agreement is an employment contract that is supposed to be signed by the worker, the employer, and the supply-country government agent. It does not state how the Employment Agreement is to be enforced. Therefore, theoretically, it can be enforced like any other employment contract in the Canadian courts.

5. Workers are admitted into Canada under the general provisions relating to the issuance of temporary work permits under the Immigration and Refugee Protection Act. HRDC is required to provide a labour market opinion for each application based on factors outlined in the Act:
 - Is the work likely to result in direct job creation or job retention for Canadian citizens or permanent residents?
 - Is the work likely to result in the creation of transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents?
 - Is the work likely to fill a labour shortage?
 - Will the ages and the working conditions offered be sufficient to attract Canadian citizens or permanent residents to, and retain them in, that work?
6. The labour shortage in agriculture has been couched in terminology of “reliability” and “suitability.” There is no shortage of low-skilled Canadian workers, but rather, the shortage is qualitative in that even unemployed Canadians refuse to work in agriculture because of low wages and difficult working conditions.
7. CSAWP workers are authorized to remain in Canada only for a temporary period not exceeding eight months. Workers are required to live on the grower’s property and to work only in agriculture. The majority of the CSAWP workers are “named” by growers to participate in the program. The “naming” process provides workers a level of job security for future employment; but at the same time it may also act as a disincentive for a worker to raise complaints for fear of the employer not “naming” him/her for the next season. Many workers have been returning to Canada over several years under the “naming” process; however, workers do not accrue any rights to Canadian citizenship.
8. The CSAWP allows for workers to be transferred to another farm with permission from HRDC and the government agent. This allows workers to extend their stay in Canada thereby earning more wages, and growers have access to labour without going through the

immigration process again. Government agents may also activate the transfer process to ensure that a worker does not have to go home if he/she has difficulties with his/her employer. Currently, government agents report that the transfer process is cumbersome and believe that FARMS should take a greater lead in administering this process. Because FARMS arranges for travel for all workers, it is able to track the dates of departures and arrivals of migrant workers, and therefore, has information readily available if there are openings on another farm. Mexico and the Caribbean states only have information about the movement of workers from their own countries. FARMS argue that this role should be assumed by government.

9. The Employment Agreement allows employers to repatriate workers for “non-compliance, refusal to work, or any other sufficient reason”. Government agents may also remove workers from a farm if the grower breaches the Employment Agreement. The repatriation provisions are interpreted at the discretion of the employer and the government agent, and there is no formal right of appeal. The premature repatriation provisions undermine the workers’ ability to enforce their rights under the Employment Agreement or laws of Canada. The practical implication is that the worker is immediately removed from the grower’s property, requiring costs for alternative accommodation to be incurred at the same time as employment income has ceased. If a transfer placement is not available, there is some urgency to return the worker home to avoid any additional costs for room and board. It is extremely difficult for the worker to claim damages for breach of contract in these circumstances.
10. Interviews with various stakeholders suggest that the role of FARMS is no longer limited to administration; it also participates in setting the policy direction of the program. This has become most apparent at annual regional and national meetings where the operational aspects of the CSAWP are reviewed.
11. While the commodity groups play an integral role in the CSAWP and are formally recognized as such, there is no recognition for workers’ participation. The rationale for this exclusion is that the supply-country consulates provide this representation.

12. The role of the government agents is program administration, policy inputs, and dispute resolution. They process approved requests for workers; provide worker orientation; inspect accommodations on the farms; investigate conflicts and disputes between workers and between workers and employers. They also provide general administrative services, such as processing tax returns and worker's compensation claims. All of the government agents are situated in Toronto.
13. The Mexican consulate currently lacks resources to effectively manage the administration of the program. There were 7,633 Mexican workers under the CSAWP in Ontario in 2002 and only five Mexican officers and some volunteers to serve them. Workers voice frustration with the consulate's failure to respond to their complaints. FARMS voiced similar complaints.
14. Interviews with stakeholders reveal that government agents may also act in the interests of employers. The Operational Guidelines also state that the role of the government agent is to act in the interests of the employer. This "dual role" may create a conflict of interest in the government agent's role as the workers' representative.
15. The government agents also ensure that their respective countries' receive as many placements as possible in order to maximize the return of remittances. Combined with the employers right to select the supply country of workers, there is a competitive structure among the consulates. This has been encouraged by the Canadian government. This structure undermines the government agent's ability to pursue workers' grievances, knowing that an employer may often find a worker from another supply country if one government agent does not agree with his or her treatment of a worker.
16. There currently lacks a formal independent dispute resolution mechanism in the Employment Agreement. An informal mechanism is in place whereby employers and government agents exercise discretion in determining whether there is a breach of the Employment Agreement, and the remedy for either party is to remove the worker from the farm. The government agents play a "dual" role of representing workers' interests and acting as a "neutral" mediator,

also representing the employer's interests. government agents may also concede to the employer's interests for fear of "losing the farm." This raises a potential conflict of interest and denies workers independent representation should the worker and the government agent disagree on any particular matter relating to the worker's employment.

17. Despite any disagreement with the government agent or worker, the employer can make the ultimate decision and repatriate the worker. The current tool for employer accountability is the country's right to refuse to provide the employer a worker in future seasons. However, as reported by the government agents, the employer has little difficulty obtaining a worker from another country in these circumstances creating a competitive dynamic among the supply countries. The current mechanism also does not allow the employer to challenge a government agent's decision to remove a worker from the farm if the government agent feels that the employer has breached the contract.
18. Canadian government representatives and consulate officers reported that this informal system is functioning well from their perspective because it is flexible and cost-effective. While the current informal dispute resolution mechanism may ensure that the interests of the state parties are met, this conclusion was examined from the perspective of the worker and against the policy objectives of the CSAWP.
19. The Canadian government has devised a program for managed migration to meet the private sector's demand for labour and to prevent illegal trafficking of workers. There are at issue two relevant policy objectives in the CSAWP instruments and immigration laws: 1) migrant workers are to be afforded equal treatment to Canadian workers, and 2) the hiring of migrant agricultural workers will not result in depressed wages and working conditions unattractive to Canadian workers. Canadian agricultural workers have access to employment-related tribunals and courts to enforce their rights. Migrant agricultural workers may also theoretically access these mechanisms. However, migrant workers do not have the same labour mobility rights as Canadian workers and may be subject to premature repatriation before they are able to access or realize their rights under mechanisms otherwise available to Canadian workers. Migrant

workers have further disincentives to raise complaints for fear of repatriation or being “blacklisted” from future participation in the CSAWP. The unique circumstances of migrant agricultural workers and their lack of mobility rights reveals that workers are not provided equal treatment with Canadian workers when the *effect* of the repatriation provisions makes it difficult to enforce their rights.

20. The current mechanism allows for the earlier stated objectives to be undermined because the effect of the CSAWP's structure denies migrant workers equal access to dispute resolution mechanisms otherwise available to Canadian workers. This, in turn, leads to the potential of worker complaints about poor working conditions being ignored. Persistence of poor working conditions will continue to be unattractive to Canadian low-skilled workers. Therefore, from a public policy perspective, migrant agricultural workers and employers should have an open, accessible mechanism to ensure due process of complaints. While flexibility and cost-effective mechanisms are worthy considerations, structuring and checking discretion will also strengthen the instrumental framework as a credible mechanism by preventing the potential for arbitrary decision-making and creating procedural fairness for workers. The call for a mechanism that guarantees due process is consistent with standards in the international conventions applicable to migrant workers.

21. The findings suggest that provincial authorities take a “hands off” approach as it relates to the application of labour and employment legislation to migrant workers because there is an assumption that HRDC is ensuring enforcement. However, expertise in the provincial laws lie with provincial authorities. Furthermore, it is the provincial authorities that can ensure that proactive steps are taken as it relates to housing and working conditions. HRDC does not have this jurisdiction.

II. Industry Level Practices of the CSAWP

This component examines migrant labour costs; working conditions; and rules and regulations. Generally, the government and private sector stakeholders were satisfied with the operation of the program. This section highlights portions of the report relating to industry-level practices that may require improvement. Some of the key findings include the following.

1. Migrant workers' wages are low and heavily deducted. The Employment Agreements provide that workers shall be paid wages, whichever is greatest: the provincial statutory minimum wage, the rate determined annually by HRDC 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 the rate being paid by the employer to his Canadian workers performing the same type of agricultural work. The minimum wage in Ontario is C\$6.85; wages for CSAWP workers in 2002 based on the "prevailing wage rate" was C\$7.25.
2. The methodology of setting the "prevailing" wage rates has proved to be the most contentious issue among the parties and stakeholders at this time. HRDC is attempting to resolve this problem by contracting departments within the government to establish a standard national wage structure methodology. A large number of workers are returning workers from previous seasons, but wages do not reflect their seniority or skills appreciation.
3. In addition to the normal deductions Canadian workers incur, migrant workers' wages are subject to additional deductions that reimburse employers for partial travel expenses and visa fees. As well, workers from Mexico and certain Caribbean states have deductions for non-employment related insurance coverage. Caribbean workers remit 25 per cent of their wages as part of the compulsory saving scheme; a portion is returned to the worker when he/she returns home, and another portion may be allocated for liaison office administrative costs and other expenses relating to the program. The government agents identified the "unfairness" of the employment insurance premium deductions when the migrant workers cannot access unemployment benefits because of their temporary status in Canada. Workers may theoretically collect sickness and maternity/parental benefits under the EI Act, however, collection of these benefits is extremely

rare. The federal government rationalizes the deduction because it is the work that is insurable and not the worker. A deeper analysis of the Employment Insurance Act reveals that this rationale is inconsistent with the broader policy purpose of the EI Act which is to provide temporary income for workers who are unemployed not at the fault of the worker.

4. CSAWP workers work extremely long hours (9-15 hours per day), up to seven days a week, with few rest periods. However, the Ontario Employment Standards Act excludes agricultural workers from provisions relating to minimum hours of work, daily and weekly/bi-weekly rest periods, statutory holidays, and premium overtime pay. The Mexican Employment Agreement attempts to fill this gap by providing some standards for rest periods.
5. Agricultural work is one of the most dangerous occupations in Canada. However, agricultural workers continue to be excluded from Occupational Health & Safety Act in Ontario. A large number of CSAWP workers are exposed to workplace hazards including pesticides and operation of machinery. However, safety training is inconsistent and based on employer discretion.
6. The government agents reported that while they had heard cases of workers being exposed to pesticides, there were very few recent cases reported. Some government agents also reported that health and safety training and protective clothing are provided, while others believed that there was inadequate protection against pesticides. The University of Guelph provides pesticide training but 2001 data indicates that training is still low relative to the number of CSAWP workers that come into Ontario. The training is provided to workers doing the actual spraying. However, workers not directly handling the pesticides raised concerns about being in the fields when the spraying was done or being ordered to re-enter fields too early after spraying. Government agents stated that when such cases were reported, investigations were performed and the workers' concerns were unfounded. There appears to be a gap between what are proper re-entry times and the workers' understanding of these guidelines. It was acknowledged by some Government agents that the problem of workers' exposure to pesticides is difficult to assess because their information is dependent on workers reporting incidents. This may not always happen for fear of repatriation by the employer. Government agents also report that a worker's attempt to refuse unsafe work may lead to repatriation.

7. In terms of housing, government agents reported that most housing was acceptable and that housing has improved over the years. Housing is reviewed in a two-stage process. The Ministry of Housing inspects accommodation prior to the arrival of the worker; and then the government agent visits the site to determine whether it meets an “acceptable standard.” Two issues were raised as concerns. First, many accommodations do not have indoor plumbing facilities, and second, not all Ministry of Health housing inspections are being completed before a worker arrives in Ontario. The second stage of housing inspections, i.e., the liaison officer's inspection, is assessed at the discretion of the government agents. Some government agents state that the Ministry housing guidelines were not high enough and out of date. A worker may not be placed with an employer if the government agent believes the accommodation is not acceptable and the employer refuses to improve them. However, it was acknowledged that if one country does not place a worker in housing considered to be sub-standard by a government agent, another country may accept the conditions for their workers.

III. Unionization and Industry Level Migrant Agricultural Labour Markets

The recent Supreme Court of Canada decision in *Dunmore v. Ontario (A.G.)* was hailed as putting to rest the controversy of whether agricultural workers have the constitutional right to join a union. The Court held that agricultural workers have the right to form employee associations and protective legislation to allow workers to organize “without intimidation, coercion or discrimination.” While growers and most government agents expressed concerns and resistance in the unionization of migrant agricultural workers, the decision of the Supreme Court of Canada has indicated that workers’ rights to organize and join an association of their choice should be recognized while they are in Canada.

More recent events indicate that this matter continues to be the centre of significant political tensions in the Ontario agricultural community. At present, agricultural workers, as held by the Supreme Court of Canada, are disadvantaged in all aspects of Canadian society. Agricultural workers and migrant workers continue to be denied the right to unionize and collectively bargain despite the *Dunmore* decision and the enactment of the Agricultural Employees Protection Act, 2000. Rather, the Ontario

overnment has applied a minimalist approach in its interpretation of *Dunmore* by only allowing workers to participate in “associations” and make representations which do not require an employer to engage in any additional consultations or negotiations. Therefore, the current impact of *Dunmore* on migrant agricultural workers is minimal in terms of having any effect on their current working conditions.

Some key findings on the implication and impact of unionization are:

1. If farms were covered by the model of unionization based on current labour relations law in Ontario, farms will most likely be unionized on a farm by farm basis, assuming that a sufficient number of union cards are voluntarily signed by workers. Based on the current model, unionization on these individual farms, where a union has been certified, will likely cause reconfiguration of the applicable instruments that apply to migrant workers' terms and conditions of employment. Based on the definition in the collective agreement, the union may be the only recognized bargaining agent on behalf of workers in a defined bargaining unit on an individual farm.
2. If unions are permitted to bargain for the terms and conditions of migrant workers, the Employment Agreement will likely be replaced by the collective agreement based on current labour relations law. The role of the government agent would continue to be important to the operation of the CSAWP in recruiting workers; managing the migration of workers from the supply country to Canada; processing income tax returns, CPP and worker's compensation claims; providing policy inputs into the direction of the program; and negotiating with the Canadian government as it relates to the framework of the CSAWP. These roles may be strengthened while the union may relieve government agents from workers' grievances about working conditions or the enforcement of local laws.
3. Unionization will likely result in increased wages and benefits for migrant workers. Traditionally, unions have also ensured job security for workers by providing a dispute resolution mechanism if workers were unjustly terminated. Remedies may include reinstatement.

4. One outcome of unionization may be increased mechanization resulting in a decreased demand of agricultural labour, including migrant workers.
5. Growers have expressed that if unions were to come onto farms, they would consider moving or closing operations as a response. This would also result in a decreased demand of farm labour or as a response of employers to avoid perceived costs of a unionized labour force. The perceived costs growers associate with unions, including increased wages and benefits, which make it difficult for the farm to be viable. Growers are concerned about the right to strike which may have devastating consequences on the harvest.
6. Unions may be sensitive to the unique circumstances of agriculture as evidenced by the union's concession to give up the right to strike when agricultural workers briefly gained the right to collective bargain in Ontario between 1994-95 under the Agricultural Labour Relations Act.
7. If migrant agricultural workers gain the right to collectively bargain, this will result in union dues deductions from migrant workers' wages ranging from 1-2 per cent.. Currently, Caribbean workers pay 5-7 per cent of their wages for services of the government agent to cover expenses relating to the general administration of the CSAWP as well as employee representation in the day to day employment matters of workers.

IV. Conclusions

A. "Good practice" areas of the CSAWP

"Best practices" are defined as practices that have "proven and have produced successful results" that are sustainable, and that can be replicated elsewhere. Taking this definition and applying it to the Canadian seasonal agricultural labour markets, best practice may be described as good practices at the policy and regulatory, labour-management relations, farm industry employment, and migrant worker-farm community levels that make the farm labour markets work well in the interest of both the migrant workers and the growers who employ them. Based on this definition, the research finds that CSAWP

exhibits “good practices” in the following areas:

- Government controlled migration of foreign labour, which minimizes the exploitation of migrant labour via labour contractors or other unregulated or exploitive private means. Managed migration reduces the risk of illegal migration.
- The instrumental framework of the CSAWP including the MOU, Operational Guidelines, and the Employment Agreement which delineates the roles, duties, and obligations of the various stakeholders. This delineation provides benchmarks for program evaluation in determining what is working in the interests of workers and employers and what is not working in the interests of workers and employers at all levels of the program.
- The Employment Agreement provides an instrument by which workers and employers are made aware of the terms and conditions of employment before the commencement of the employment relationship. Because agricultural workers are exempted from several Ontario employment-related statutes, the Employment Agreement fills this gap in some circumstances. For example, Mexican workers are entitled to meal breaks which they would not otherwise be entitled to under provincial laws.
- The instrumental framework of the CSAWP, in particular the Operating Guidelines, provides an informative tool of detailing every step in a multi-party, complex set of administrative processes in bringing migrant workers to Canada.
- Annual CSAWP review meetings at both the regional and international levels. Regular face-to-face meetings among the various stakeholders ensure the smooth operation of the CSAWP and provide a reliable forum for issues to be addressed on a regular basis. This serves to create a program that is responsive to all interests as well as building relations and contacts among the stakeholders.
- The constructive role of the government agents in providing information to workers, administering the program in certain aspects and providing policy inputs into the program. An

example is one consulate which provided a comprehensive orientation for workers which includes some training about the nature of the program.

- The ability of farmers to have “named” workers return on an annual basis, which may minimize the transient nature of the migrant worker by having the stability of returning to the same employer.
- The transfer process which allows workers to move to other farms as opposed to returning home, should problems arise with a grower during their work permit.

B. CSAWP areas that may need “good practice” principles attention

- The “dual” role of government agents as worker representatives which creates potential for conflict of interest and may undermine independent representation of workers.
- The competitive structure of the program among the consulates to place workers on farms which may undermine enforcement of the contracts for fear of having workers replaced by workers in other supply country.
- The impact of the repatriation provisions, the competitive nature of the program among the supply countries, and the lack of migrant worker's mobility in Canada have had an adverse impact on the enforcement of employment standards and the Employment Agreement between the worker and the employer.
- The increasing role of agricultural private sector interests (i.e., FARMS) in policy-making is causing tensions in relations between supply countries and the Canadian government. This also diminishes the “government-to-government” nature of the CSAWP.
- The Mexican consulate has inadequate resources to service the number of Mexican workers currently in the program.

- The lack of an objective methodology in the determination of appropriate wages for migrant agricultural workers.
- The application of Canadian laws and the policy objectives that underline them need to be responsive to the unique circumstances of migrant agricultural workers. For example, the policy objectives for the deduction of EI premiums cannot be reconciled with the immigration restrictions and lack of mobility placed on migrant workers.
- There is an inconsistency of interpretation of “acceptable standards” in housing among the liaison officer and guidelines for housing inspections are outdated.
- There are varying practices relating to training and protective clothing against pesticides. In light of the exclusion of agricultural workers from the Occupational Health and Safety Act in Ontario, the level of pesticide training and use of protective clothing is dependent on the goodwill of the employers.
- There is no system in place to address disputes that cannot be amicably resolved or to provide open accountability to all participants in the program. Enforcement of employment standards and contracts are left to the discretion of individuals instead of objective criteria.
- There is hesitancy of some participants in the CSAWP to recognize independent migrant worker associations in the operation of the program whereas employers are provided formal recognition and opportunities for policy inputs.

C. Selected Recommendations

The following are selected **key** recommendations arising from the findings. Additional recommendations may be found in the full report.

Government of Ontario

1. Provincial ministries should become more active in the annual review meetings in order to educate themselves on the CSAWP and how it fits within the provincial legislative framework, and to provide government agents with resources and contacts in case of questions about provincial employment and labour laws.
2. The Ontario Employment Standards Act should be amended to include agricultural workers under provisions relating to minimum hours of work, vacation pay, daily and weekly/bi-weekly rest periods, and overtime pay.
3. Stakeholders should encourage and allow for agricultural workers to be covered by the Occupational Health and Safety Act (OHSA) in Ontario. Inclusion of agricultural worker under OHSA will assist in addressing worker's health and safety concerns, including pesticide use, by providing an institutional framework in which this may be addressed.
4. Housing inspection guidelines need to be updated in consultation with all government agents collaboratively to ensure that consistent standards are applied for all migrant workers regardless of the supply country from which they come.

Government of Canada

5. Review of deduction of Employment Insurance (EI) premiums should be undertaken with the recognition that CSAWP workers are paying premiums into a system in which it rarely sees any benefit. It is recommended that workers be exempt from paying EI premiums or be reduced in recognition of the limited access workers have to benefits under the EI scheme.
6. An objective formula for the appropriate calculation of migrant workers wages should be established. This initiative is under way by the federal government and is encouraged to be completed. A stable and reliable formula for the calculation of wage rates will serve to minimize the current hostilities among the state stakeholders.

7. Seniority of returning named workers should be recognized in the wage rate calculation as well as skill levels of workers.
8. Absent legislative protection under the Occupational Health and Safety Act or the Employment Standards Act, migrant agricultural workers should be provided with rest periods, overtime pay and health and safety protections under the Employment Agreement recognizing that there are benefits to employers and workers for such protections.
9. Guidelines or a policy statement be drafted on the interpretation of “non-compliance, refusal to work, or any other sufficient reason.” In particular, note that a breach of contract will not be found where a worker refuses work that is unsafe.
10. The power of the employer to repatriate workers should be minimized. It is recommended that there should be a minimum two week waiting period before a worker is sent home in order to allow the worker the opportunity to raise a complaint about the validity of the repatriation decision. If the worker accepts the repatriation decision, the two week period may be waived to allow for immediate return. If the worker files a complaint, then an independent body should investigate the complaint and the worker should be allowed to stay until the investigation is complete or a decision on the merits of repatriation has been determined. The transfer process may be utilized during this period in order to place workers with other farmers during this interim period.
11. It is recommended that a review of the dispute resolution mechanisms in the CSAWP be undertaken in order to ensure procedural fairness and enforcement of the various instruments. A credible dispute resolution mechanism will strengthen the existing instrumental framework of the CSAWP by structuring and checking the exercise of discretion.
12. If contemplating a possible dispute resolution mechanism, the following factors should guide the deliberation:
 - proceedings must be quick and cost effective since migrant workers are restricted to Canada for a short period of time and farm production should not be jeopardized.

- to address these concerns, negotiation and mediation be built into the mechanism as stages of dispute resolution before using formal hearing processes.
- if workers are members of a union, then the Employment Agreement should explicitly recognize the arbitration process under any applicable collective agreement as required by law.

13. The dispute resolution process may include stages of informal process which may escalate to binding processes of arbitration should the dispute not be resolved. For example, the parties may try to mediate the dispute with all representatives in a formal meeting; the next stage would be to use a trained neutral third party mediator to attempt to resolve the dispute; the next step would be binding arbitration with reasons for decision. The Employment Agreements should include a roster of mutually agreeable arbitrators or mediators. An established list will ensure that the dispute is heard expeditiously and supersedes time that may be expended in finding agreement on the arbitrator.

14. The dispute resolution mechanism should be open equally to both workers and their employers. Therefore, while government agents should be able to file disputes with the dispute resolution mechanism on behalf of a migrant worker, the worker should also be able to access the mechanism should the government agent disagrees with the worker.

15. The dispute resolution mechanism should be paid for by the Canadian government in recognition that resources will need to be committed in ensuring that policy objectives and contractual provisions intended to guarantee fair treatment of migrant workers are in fact enforceable. This will reinforce that HRDC's mandate to ensure that wages and working conditions are not depressed by the hiring of migrant workers.

16. The workers' right of association and their right to appeal involuntary repatriation should be enshrined in both the MOUs and the Employment Agreements.

17. A central database of all worker complaints should be maintained by HRDC in order to track patterns of industry level practices which may assist in developing future policy objectives and

guidelines for the CSAWP. The database may also be used to track good and bad employment practices and employers in assessing future employer participation in the CSAWP.

18. In light of the greater policy role that the private sector is taking in the operation of the CMAWP, this perspective needs to be balanced with greater participation of workers, their representative organizations, and/or labour groups at the annual meetings. They may give input on the impact of the program on the current labour market as well as addressing concerns about wages and working conditions.

Supply Countries

19. Amend the Operational Guidelines to clarify that, while the government agent will endeavour to ensure the smooth functioning of the program, the role of the supply country's government agent is to represent the worker's best interest should a conflict arise between the worker and the employer.

20. Consulates are underresourced in performing their task as worker representative and additional resources are required if they are going to continue to provide services for its nationals. Physical distance makes it difficult to effectively and expeditiously resolve dispute as they emerge on the farms. Local or satellite offices closer to the farming communities in which workers are placed should be considered

21. The orientation program should include information on migrant workers' right to join a union or any other worker association of their choice while working in Canada.

22. If the migrant workers voluntarily elect to join a union or any worker association of their choice, the Canadian, Caribbean, and Mexican governments and growers participating in the program should grant institutional recognition of such unions or worker associations.

23. If workers are unionized on a particular farm, consider whether the current compulsory administrative deductions for these workers may be decreased in light of some of the administration costs relating to contract enforcement being shifted to the union.

FARMS

24. Employers could be made aware through the FARMS. information package of the right of migrant workers to join an employees' association or to become a member of a trade union.

25. Further review and discussion is required about FARMS role in the administration of the transfer process. In the alternative, the central database of information that FARMS currently controls as it relates to the movement of workers needs to be shared in a format that is accessible and will reduce the cumbersome nature of the transfer process. It is recommended that a central body that has access on the movement of workers from all supply countries be mandated to administer the transfer process.