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Sihwa Kim
skim2449@uwo.ca

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**Assessing the Impact of Denizenship in the
Making and Evaluation of
Temporary Foreign Worker Policies
in Canada**

**Sihwa Kim
University of Western Ontario
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Introduction

The number of temporary residents entering Canada is rising each year. Among those individuals admitted on a temporary basis are temporary foreign workers (TFWs). On its surface, the purpose and intent of Temporary Foreign Worker Program (TFWP) do not seem complicated. It serves a function of contributing to Canada's economic gain by conveniently addressing labour shortages in many sectors. However, when examined through a critical lens, the matter encompasses different issues on systemic level. These workers are integrated into Canada's labour market and wider social fabric, and many of them have been returning for years.

Despite the large number of workers that are channeled through this long-standing TFWP, their experience with the program and, more broadly, within the Canadian society has been overlooked. The dearth of attempts on a government level to evaluate the TFWP with a focus on the precarious working conditions and integration issues facing TFWs motivated me to explore the political, social, and economic dynamics behind it.

I start with introducing the concept of denizenship, an important theoretical framework of which I will be situating the paper within. Second, I discuss the ways in which the longstanding inequality is embedded in the structure of TFWP, in turn legitimizes differential entitlements and experiences of TFWs depending on their skill categories. Third, I analyze the impact of government discourse within the existing accountability and protection mechanisms on fulfilling its purposes – protection of the TFWs against employment abuse and exploitation. I conclude by recommending ways to make TFW policies more responsive to TFWs' unique circumstances and to enhance their social and economic well-being.

Theoretical Framework

In the colonial era, slave trade was a significant part of the political economy. When slavery was abolished, it was succeeded by “unfree labour” recruited overseas by colonial states (Castles, 2006). Until the 18th century, most workers laboured under the working conditions that resembled that of slaves, which entailed exploitation, terror, brutal working conditions, and early death (Walia, 2010). The migrant labour from settler colonies made the European industrialization possible. Gradually, the migrant labour transitioned into a profitable form of labour reflecting the capitalist ideology and restructuring of national labour.

As Marx once stated in *Capital*, capitalism relies on exploitation and class rule to generate profit (Seidman, 2017). The expansion of global capitalist market increased the interconnectedness across borders and built a network of commercial exchange of goods, money, capital, and, most importantly, labour beyond the national territories (Seidman, 2017). Both territorial forms of power and power centred around expansion of market and accumulation of profits formed the basis of the migration legislations. The policies concerning migrants reflected the capitalist states' motives for economic benefits, as well as the territorial forms of the state power, including notions of sovereignty, membership, national identity, and border control (Marsden 2011).

The territorial basis of the states was widely institutionalized in Canada through several explicit policies. The purposes of these legislations were to preserve Canada's 'Whiteness' and prevent non-white immigrants from permanently settling in the country (Banerjee et al., 2018). The overtly racialized legislations were lifted in the 1960s due to post-war economic conditions of Canada and declined immigration from traditional source countries. Declined immigration

from Europe meant labour shortages in economy sectors that predominantly hired immigrants. As a result, Canada started facilitating the neoliberal migration from the global South.

In 1967, the Canadian government amended the *Immigration Act* to contain a specific “non-discrimination” clause on the grounds of “race, national or ethnic origin, colour, religion or sex” (Marsden, 2011). For the first time, an individual’s eligibility to immigrate to Canada was determined by a points system. Within the system, potential immigrants were allocated points for their ability to assimilate and, specifically, to contribute to the national economy. As a result, immigrant’s source country dramatically shifted throughout the 20th century (Marsden, 2011). However, it did not address the systematic racialized differences in membership, belonging, power, and wealth in Canadian society (Sharma, 2006).

The new immigrants did not have seamless, uniform migratory experience in Canada. Portes (1981) developed three modes of immigration labour market incorporation to account for varied experiences across the immigrant groups in a host country. The first suggests that immigrants who enter the primary labour market tend to have high human capital, including professional, managerial, and technical skills. The employment in the primary labour market is characterized by higher wages, job stability, and great career mobility (Portes, 1981). These immigrants are often deliberately recruited by the large corporations and institutions to fill well-paying positions. The second mode of which immigrants are incorporated into a host society is through the immigrant enclave, which is characterized by high rates of ethnic concentration and businesses that are owned by co-ethnic immigrants. These firms, regardless of whether they provide services exclusively to their own ethnic clientele, are established based on the ethnic solidarity and provides a basis for capital accumulation, an occupational heterogeneity, and opportunities for economic mobility (Portes, 1981).

Throughout history, temporary migrant schemes have been channelling a significant number of migrant workers into the secondary labour market, and this constitutes Portes’ third mode of immigrant incorporation. Secondary labour market incorporation is characterized by unstable jobs, precarious working conditions, lower wages, and limited career mobility (Portes, 1981). Immigrants who accept these jobs in the peripheral sector of the economy typically possess a small amount of human capital (Bonikowska, Hou & Picot, 2015). This particular mode of incorporation demonstrates the ways in which the jobs in the primary labour market are seen as belonging to Canadians while immigrants are expected to remain in the racialized and nationalized second labour market and perform undesirable work. It is because, as MP H.W. Danforth once put it, “it is natural for them to do it” (Sharma, 2006, p.100). Portes’ third mode of incorporation can help to identify the defining characteristics of low-skilled TFWs in the Canadian labour market.

One of the crucial features of low-skilled TFWs in the secondary labour market is their denizen status. Denizenship refers to an inferior social status that is differentiated by the related concepts of freedom and unfreedom (Benton, 2014). Based on this definition, some immigration scholars have exemplified permanent residents as denizens whose status is inferior to the citizens (Hammar, 1990). While the magnitude of unfreedom of which permanent residents are subjected to may vary by countries, the permanent residents in Canada enjoy comparable treatment, entitlement, and public recognition to citizens. They have the right to freely move and remain permanently in Canada along with unlimited access to social and economic benefits. Furthermore, despite their inability to exercise voting rights, the ties and communities that permanent residents built in Canada over time allow indirect democratic representation of the

population and their political needs to be met. Their contribution to the Canadian economy and nation-building project is widely acknowledged instead of facing public scrutiny.

TFWs, on the other hand, are forced to work under conditions of unfreedom due to their position within the power relations of the national state (Freeman, 2004). Although the TFWP appears to rely on economic compulsion in general, denizen status is the fundamental politico-legal mechanism of unfree labour. The assertion of being free is made in relation to unfree others, who are simultaneously identified as racialized, ethnicized, gendered, and, importantly, nationalized (Sharma, 2006). These TFWs with low-skill are more likely to experience language and cultural barriers, have lower formal education levels, and increasingly be citizens of the global South. For this reason, they occupy a socially and economically marginal position in Canadian society and constitute distinct class from both citizens and permanent residents (Marsden 2011).

The process of locating some workers as free and others as unfree is part of the nation-building project. National identity is attainable for citizens and permanent residents who are able to legitimately claim membership in the civil society, in relation to those that are represented as denizens, as are migrant workers in Canada. This emerging marginalized population resides within a national territory of Canada and fulfills certain obligations, such as paying taxes, but face both formal and informal exclusions due to being classified as the Others (Leitner & Ehrkamp, 2016). They have been isolated in the geographical, economic, and social periphery of the Canadian society, which often translates into specific occupations, actual places, and work sites that are racially identified.

Racially defined spaces are consequences of public policy and legal sanctions, not the unfortunate but irreversible results of purely private or individual choices (Marsden 2011). The state locates the migrant workers at the bottom of the hierarchy of belonging through cultural dichotomies like majority and minority, deserving and undeserving, normal and abnormal, desirable and undesirable, and moral and immoral. The discourse of us-Canadians versus them-TFWs facilitates the discussion of who constitutes as Canadians (Sharma, 2006). Furthermore, this Othering process of state assigning differentiated legal categories of non-membership has economic consequences; this materiality is based in the hierarchy of belonging, race, gender, and class (Sharma, 2006).

A TFWs' vulnerability as a denizen is shaped by several factors, including types of work permit, country of origin, socio-economic status, and the amount of human capital he or she possesses. First, individuals with different types of work permit encounter unique challenges in relation to employment. In particular, employer-specific work permit typically specifies the length, skill level, occupation, location, and employer, which limits the worker's mobility within the labour market and increases the TFW's dependence on her employer (Benton, 2014). Next, low-skilled TFWs' vulnerability is magnified due to racial hierarchy that exists within the host country. Recently, sending countries of low-skilled workers who experience Portes' third mode of incorporation shifted from traditional source countries, such as Western Europe and the United States, to the Philippines, China, India, and Mexico (Palacio, 2017). These workers lack access to accountability mechanisms and protection because their countries of origin do not have considerable diplomatic influence (Benton, 2014). For example, European Union citizens enjoy the protection of EU institutions regardless of their denizen status in Canada. Other factors associated with the shift in source countries include language barriers, racial discrimination, cultural differences, and the issue of belonging (Picot & Sweetman, 2012). These workers from

the global South, in particular, are seen as a threat to a shared white national subjectivity and channeled into the racialized second labour market.

Third, class struggle between workers and employers shapes the use and scale of unfree labour (Sharma, 2006). Migrants with higher socio-economic status have more political influence and bargaining power because the host country wishes to attract and retain them (Benton, 2014). For these higher-skilled TFWs, the exit costs and level of dependency on employers are likely to be lower as they can afford to migrate elsewhere. Consequently, they are not as vulnerable as TFWs with low socio-economic status who are more likely to stay in exploitative, unfree employment relationships. Lastly, workers with low human capital are more likely to be vulnerable to domination (Benton, 2014). Lack of proficiency in official language may make it difficult for these workers to understand and navigate through the system.

Moreover, highly-skilled workers enjoy favourable treatment from many countries and are provided with opportunities to permanently settle in Canada, while many low-skilled workers remain “permanently temporary” in the secondary labour market (Horgan & Liinamaa, 2017). Often, their only hope for guaranteed permanent residency is either working as a domestic caregiver under the Live-in Caregiver stream or having their employer or a Canadian spouse sponsor them. Without having much options, many low-skilled migrant workers are channeled into the secondary labour market and find themselves “stuck” in precarious occupations. For example, the economic and social difficulties that domestic caregivers face during their time in the program continue even after they obtain their permanent residency (Tungohan, Benerjee, & Chu, 2015). In such a situation of minimal legality (Menjivar, 2006), the low-skilled workers are forced to be highly dependent on private relationships, which is likely to translate to considerable vulnerability to domination. Hence, these unskilled TFWs who possess weaker bargaining power may find themselves dependent on exploitative employers for a job and their continued presence in Canada.

These factors maintain low-skilled workers’ marginal social positions in the host country. Denizenship is assumed to be a biological quality and representative of what the person actually is. The argument of ‘undeserving’ Others justifies their lack of access to rights, inability to participate in the civil sphere, insecurity in residence status, and limited mobility and flexibility within the labour market (Leitner & Ehrkamp, 2016). Hence, denizenship is a salient and far-reaching force that delimits a TFW’s everyday lives. Much of these limitations are shaped by processes of racialization, the type and wages of job a person works at, and the conditions applied to their legal status under the TFWP.

High- skilled and low-skilled TFWP Stream

Canada has been increasingly accepting temporary workers, both high and low skilled. In fact, the number of work permits issued annually has eventually outnumbered the number of permanent residents admitted for the last couple of years (Geddes, 2012). The notion of denizenship is demonstrated in differential access to key social, economic, and civic rights depending on the amount of human capital of a migrant (Clifton, 2010). For instance, the current points system of the Canadian government is designed to encourage permanent settlement of high-skilled temporary workers. They have the ability to extend their permit without leaving the country as well as are entitled to bring their family, which help them integrate and form ties with the Canadian society. As Canada moves to increase the employers’ access to migrant workers, the government is increasingly adopting a two-step employer-demand driven system of

recruitment (McDonald & Worswick, 2015). Thus, those with high-skills are provided with opportunities to obtain permanent residency under various streams, including Provincial Nominee Program (PNP), Canada Experience Class (CEC), and many others.

Although Manitoba and British Columbia have pathways to permanent residency specifically designed for low-skilled workers, they often have to fit in narrow categories that are employer-driven, and in some cases, occupation-specific. The permanent residency is contingent on a job offer, wage that is higher than prevailing wage of the job, and a level of financial independence that is often unrealistic for low-income workers to achieve (Polanco, 2016). In addition, the offer is based on the relationship to a specific employer, which lends itself to a host of violations, such as unpaid overtime work. The vulnerability of temporary workers created corresponding to the neoliberal ideology allows employers to access a disciplined, committed, and, thus, desired workforce. Such conditions benefit employers at the expense of workers, while deteriorating work and employment conditions and downloading risks onto workers (Polanco, 2016). The limited pathway to permanent residency for low-skilled TFWs in general accentuates the two-tiered nature of the TFWP.

The differential inclusion of TFWs based on skill categories have implications for nation-building and membership. Although the categories and entitlements used to distinguish classes of working migrants are seemingly neutral in the language of their approach, the regulations in fact legitimize particular social and ethnic groups as disposable workforce and exclude them from the national community despite the evidence that refute the temporary nature of their labour. Such differentiated citizenship politics will continue to have direct impacts on the well-being of low-skilled migrants (Clifton, 2010).

Labour Market Impact Assessment (LMIA)

Temporary migrant schemes demonstrate Canada's strategic use of managed migration to create a readily available pool of labour (Basok & Belanger, 2016). The Canadian government created the category of denizens who were legally positioned as unfree, indentured labour. These TFWs received little support from the public because they were perceived as a threat to Canadians (Sharma, 2006). Limiting the access to certain rights and pathways to settlement for non-immigrants emerged as a means to maintain the status quo and keep the Canadian border "in control" without jeopardizing Canada's new image as a "multicultural" society (Sharma, 2006). In 1973, the Canadian government introduced the Non-Immigrant Employment Authorization Program (NIEAP), which issued employer-specific work permits and recruited workers from overseas to meet the labour demands in agriculture and care work. The program restricted the participants' mobility within the Canadian labour market and did not provide pathways to settlement. By making them perform work that was not attractive to Canadian workers who enjoyed freedom in the labour market, the program worked to further differentiate who was part of the Canadian national community (Fudge & MacPhail, 2009).

The notion of labour shortages that facilitated the NIEAP continued even after the program was overhauled and transformed into a bifurcated Temporary Foreign Worker Program (TFWP) at the turn of the 21st century. The 'labour shortage' referred to the job vacancies that did not belong to Canadians based on the perspective of state-building and membership, rather than quantitative or actual shortage of workers (Sharma, 2006). In fact, there is no universal definition of labour shortage. These vacancies could typically be "solved" by employers improving working conditions and raising prevailing wages. Instead, employers recruit TFWs to

perform work that is not qualitatively attractive to Canadians in order to maintain the low wages and employment conditions (Anderson & Ruhs, 2012).

Although the dual meaning of ‘labour shortage’ behind recruiting TFWs remained the same, the TFWP entailed some significant changes to employment-specific work permit requirements. The Canadian government started actively connecting the immigration to a constantly changing economy (Clifton, 2010). In 2001, the government developed the National Occupational Classification (NOC) system, of which became the basis of issuing work permits. The work permits are now issued only when the employer applies for TFWs and the Employer and Social Development Canada (ESDC) confirms that there is a mismatch between the skills of local Canadians in the area and what is required for the position. As a result, employer-specific work permits correspond to the NOC code based on the type of job duties and level of education required to work in the occupation. Basically, when tied to the immigration system, the NOC code is used to differentiate jobs that are contingent on a strong economy from the ones that do not require the same level of training and are deemed risky for permanent entry (Clifton, 2010). This process is called the Labour Market Impact Assessment (LMIA), formerly addressed as Labour Market Opinion (LMO).

LMIA effectively maintains and conceals the disparities between the working conditions of citizens or permanent residents and denizens. LMIA legitimizes the TFWs’ unfree labour and lack of rights through creating a perspective that TFWs are brought into Canada just to fill in temporary vacancies as employers continue to search for Canadian workers (Sharma, 2006). The supposition renders the temporary nature of the jobs, which does not account for employers’ constant use of TFWs for low-paying, unattractive jobs in many sectors (Sharma, 2006).

Typically, Levels 0, A, and B occupations are grouped as “high skills” while Levels C and D jobs are classified as “low-skill” (Lu & Hou, 2019). These skill categories in the case of immigration policy are socially constructed and are linked to education level and the notion of “labour shortage”, as well as to other social identities, such as race and gender (Rajkumar, Berkowitz, Vosko, Preston, & Latham, 2012).

NOC Skill Level
0 Management occupations
A Occupations usually require university education
B Occupations usually require college education, specialized training or apprenticeship training
C Occupations usually require secondary school and/or occupation-specific training
D On-the-job training is usually provided for occupations

Vulnerable Workers in Precarious Jobs

In 2002, the Canadian government introduced the Low-skilled Pilot Program mainly to meet the demands of employers in Alberta’s tar sands and Toronto’s construction sector (Fudge & MacPhail, 2009). Following employers’ lobbying efforts, in 2006 the elected Conservative government transitioned and expanded the pilot into a stream for low-wage positions. The change made the program even more accessible to employers by assisting them with the LMO process in newly established local TFW support centers (Fudge & MacPhail, 2009). In addition, the employers were only required to advertise the jobs to Canadians for 14 days (Palacio, 2017).

Within a few years, the number of TFWs residing in Canada grew rapidly. The majority of the growth occurred in lower-skilled occupations in industries such as agriculture, retail, and administrative support as well as semi-skilled occupations in construction and trades. In Alberta and British Columbia, one in every four low-skilled workers in hospitality, construction, and tourism was a TFW. In 2008, 50% of total LMOs requested in food and beverage services, cleaning and support industry in the two provinces were administered as part of the pilot program (Fudge & MacPhail, 2009).

Employer-specific work permit makes the state control visible by imposing specific conditions and regulations of freedom on the workers. These work permit holders are vulnerable to two universal key issues. These concerns are as follows: (1) employment-related issues, including non-payment or under-payment of wages and unauthorized deductions; and (2) welfare, occupational health and safety issues related to accommodation, long working hours, and workplace hazards (Goldring & Landolt, 2012; Piper, 2010). For instance, the pilot allowed the employers to pay 5 – 15% below the median wage until the union voiced their concerns in 2012 regarding an increase in abuse and complaints (Palacio, 2017).

In June 2014, ESDC increased the LMIA employer application fee significantly from \$275 to \$1,000 per worker and capped the number of hired TFWs at 10% of the total employed labour force in the business. The cap, however, did not apply to employers with fewer than 10 employees and businesses in the agriculture and caregiving sector (Faraday, 2016). The policy is one of the few that directly regulates the actions of an employer, rather than the TFW; the official purpose of the reform was to deter employers from hiring TFWs, so that Canadians would have increased employment opportunities (Fudge & MacPhail, 2009). While it achieved its initial goal of reducing the number of newly approved LMIA applications by significantly, the reform had negative impact on the economic well-being of temporary workers (House of Commons Canada, 2016). According to the Migrant Mothers Project (2016), the rise in the fee has led some employers to put the onus of covering these costs on low-skilled TFWs.

Employers are one of the groups that are most actively involved in the design and administration of TFWP. A government that facilitates employers' easy access to the TFWs runs a risk of encouraging them to turn to the flexible workforce rather than improving working conditions and wages. It should be the responsibility of the government and employers to address the labour shortage by first investing in training and offering more desirable working conditions and wages to workers, before looking to migrant workers to fill the jobs (Ontario Federation of Labour, 2013). To ensure that employers are turning to low-skilled TFWs as the "last resort", they are required to promote the occupations to the Canadian public for certain period of time. However, advertisement alone is not an effective measure to address the "labour shortage"—it must be accompanied by higher wages and improved working conditions.

The low-skilled stream posits that "employers pay the temporary foreign workers the prevailing wage rate for jobs of that type in the particular region" (Fudge & MacPhail, 2009, p.9). The way that the prevailing wage is set, however, is controversial and opaque; the employer establishes the wage rate for a specific job in his or her LMIA application, which is then reviewed by the ESDC official who considers general labour market and specific industry surveys completed by employers (Fudge & MacPhail, 2009). The details about employment conditions, including wages, job responsibilities, work schedule, accommodation, and insurances, are typically specified in employment contracts. TFWs, however, generally do not have the opportunity to review or negotiate their contract before or upon their arrival in the country, as it is an agreement between the employer and the ESDC.

Furthermore, ESDC is not legally bound to regularly monitor and evaluate employer compliance against the details specified in the initial contract (Fudge & MacPhail, 2009). It is because the right to monitor and enforce contract requirements fall onto an employment standards officer on a province level. Even then, these officers cannot intervene unless the TFW files complaints. The federal government lacks mechanisms to enforce the rights of employees, because the Canadian government, in fact, is not a party to the contract and therefore ESDC has no authority to intervene in the employment relationship (Fudge & MacPhail, 2009). While both levels of government offer protections to TFWs, they are inaccessible as each is limited in its ability to enforce these rights.

Many employers are dissatisfied with how the prevailing wage is set up, believing that it is too high; as such, some cases indicate employers simply ignore the suggested wage (Fudge & MacPhail, 2009). Specifically, studies have demonstrated the negative effect of denizenship on TFWs' wages. Approximately 25% of low-skilled TFWs come from India, the Philippines, and China (Palacio, 2017). According to the Census, non-permanent residents get paid an hourly wage in between \$10.10/hr and \$19.10/hr depending on the industry, with the Filipinos being the lowest earners (Palacio, 2017). In fact, most industry sectors pay migrant workers significantly less than citizens and immigrants. For instance, Indian truck drivers earn wages 20% less than that of Canadian-born truck drivers (Palacio, 2017). It is questionable whether TFWs have the bargaining power to negotiate for higher wage and exercise their employment rights given several barriers, such as their denizen status, fear of deportation, language barriers, and limited knowledge in the Canadian system.

In addition to receiving low hourly wage, TFWs are often subjected to deduction in paycheques. Commonly, employers rely on overseas agencies to advertise jobs, recruit potential employees, and process immigration documents. Although it is legally specified that employers should not charge the TFWs with any costs that incur during the recruitment process, there have been numerous accounts of which agricultural workers from Mexico and the Caribbean were forced to pay the processing fees since the LMO application fee was first introduced in 2012 (Hennebry & Preibisch, 2012). For example, a visa processing fee is first paid by employers upfront for each agriculture worker and later deducted from their wages; they also get 5% of their income deducted to cover travel expenses (Hennebry & Preibisch, 2012).

Furthermore, a TFW cannot change job without receiving a new offer from a prospective employer who has a positive LMIA. There is a lot of confusion regarding the TFWs' ability to access Employment Insurance (EI) or other social assistance during this time for several reasons. First, they must have worked a certain number of hours within the last 52 weeks to be qualified for the benefits despite paying into it (Nakache, 2013). In addition, a claimant must prove their willingness and capability to work as well as being unable to obtain suitable employment. The nature of their employer-specific work permit, however, restricts the holder from being "ready to work" for other employers (Nakache, 2013).

Eventually, a worker is put in an untenable situation of having to work jobs that pay cash to make ends meet while they wait for a new work permit, which can take up to several months (Nakache, 2013). In this time, TFWs are not able to access many of the basic support and services, which exacerbates their vulnerability to abuse and exploitation (Polanco, 2016). Once TFWs are legally available for work, it would mean they received a new work permit for another employer with positive LMIA and therefore are no longer in need of EI. As a result, unions representing TFWs claim that only a very small number of TFWs – less than 1 percent – can access to regular EI benefits in Canada (MacLaren & Lapointe 2010). The confusion is

consequences of policies and regulations that are designed to actively prevent settlement of TFWs, especially the ones with low-skilled who have more difficulty finding a new employment.

As demonstrated in the example of EI, most TFWs are extremely unlikely to enforce their rights despite, in theory, having the same basic employment and human rights as other workers (Nakache, 2013). The lack of security of presence and employment retaliation are common barriers to migrant workers raising their concerns and accessing the justice system.

TFW Protection Policies and Regulations

The provincial governments have been resolving employment-related complaints at employment standards branches. However, these branches are understaffed and under-funded, and, most importantly, they rely on TFWs' reports rather than implementing proactive measures. For instance, only eighteen out of 4,000 complaints received in Alberta in 2006 were from people who identified themselves as TFWs (Fudge & MacPhail, 2009). In the recognition of ineffective enforcement on a provincial level, the federal government entered into memoranda of understanding (MOU) with the provinces in 2007 to strengthen the inspection and protection mechanisms. Since then, the staff shortage at local offices in some of the provinces have been addressed (Fudge & MacPhail, 2009).

As aforementioned, TFWs seldom proceed with their complaints about labour exploitation or unlawful recruitment practices due to lack of secure status in Canada. By the time they obtain permanent residency, an option that does not exist for many workers, the period of which they can file complaints has often expired (Dalley, 2016). Even in the rare instance where a worker does successfully seek justice, the worker may have left Canada by the time her complaint is processed without receiving a substantial remedy (Dalley, 2016).

The federal government also launched a monitoring initiative in 2009. The initiative, however, is favourable to employers, as they can choose not to participate in the program. In fact, based on information obtained through access to information act requests to ESDC, 43 per cent of employers who were issued positive LMOs from April 2009 to January 2010 did not give their consent (Marsden, 2011). After 19 months of operation, only 7 employers were subject to some sort of sanctions, such as corrective measures (Marsden, 2011). The voluntary nature of the process results in self-selection of employers who comply. Even with high rates of participation, the absolute lack of enforcement actions demonstrates inability of the initiative to provide necessary protection for TFWs.

Furthermore, since 2010, the onus has been on workers to refuse to work for non-complying employers (Marsden, 2011). Failure to do so could result in reporting and enforcement actions against these workers. However, it is difficult to expect the workers to have done a background check on the employers as many of them may not be familiar enough with the Canadian system to navigate through it, experience language barriers, have limited access to the internet, and most importantly, are not even aware of this obligation (Marsden, 2011). This is especially true for low-skilled TFWs from the global South or workers who often complete the immigration process through a third party, such as a recruitment agency.

The most recent audit of TFWP in 2017 made it clear that the ESDC was not effectively using its resources it had to enforce these existing mechanisms in a meaningful way. Specifically, the department was randomly selecting employers for inspection most of the time despite having the information that workers in certain sectors, such as low-wage, caregiving, and agriculture were most vulnerable to exploitation and poor working conditions (Office of the

Auditor General of Canada, 2017). It only began inspecting agriculture employers in July 2015 and no caregiver employers were subject to inspection. As a result, one of the recommendations made in the audit report for the ESDC was to take a comprehensive risk-based model and work with provincial governments to identify high-risk employers. Amongst the inspections carried upon randomly selected employers in 2017, only 13 of them were on-site (Office of the Auditor General of Canada, 2017).

In addition, ESDC did not interview TFWs during any of these inspections, limiting the workers' representation in the process. Employers were also notified well in advance, given an opportunity to take corrective measures. These actions that seem to greatly hinder the ability of ESDC to select out non-complying employers are indirect results of the framing of this initiative. According to the Canadian government, the purpose of the enforcement is to ensure "that Canadians can have confidence that the program is being used as it should be", rather than improving temporary workers' well-being or preventing mistreatment of these workers (Office of the Auditor General of Canada, 2017). The consequence of such policy is exclusion of TFWs' voices in the enforcement process.

The audit of TFWP fails to look beyond the interest of those granted membership into the national community. For instance, it criticizes ESDC for not knowing whether the program had "unintended consequences, such as suppressing wages, allowing business to rely on foreign workers instead of hiring Canadians, or discouraging capital investment and innovation" (Office of the Auditor General of Canada, 2017). None of these listed unintended consequences discuss bifurcation of labour market based on racial and gender identity, erosion of human rights and labour rights for low-skilled TFWs, or the harm that inadequate mechanisms may inflict upon these workers. The concerns regarding the program should be expanded to include the impact it has beyond Canadians and the Canadian labour market.

In short, although there is no national statistics on the frequency of TFWs mistreatment, various account of persistent exploitation of low-skilled workers suggest that these instruments are unlikely to have an ameliorative impact without an effective enforcement actions or viable legal remedies that takes the generations of the systemic power structure of which the workers were situated within into consideration (Marsden, 2011).

Making and Evaluation of Migration Policies

Although Canada eliminated explicitly discriminatory immigration policies, the dominant group continued to retain the power structure and have disproportionate access to social and economic benefits. Subsequently, it did not dissipate the racially identified spaces nor the bifurcated labour market (Marsden, 2011). In a society with a history of racism, race neutral laws and policies continue to entrench segregation and socioeconomic stratification of migrant groups. One way the status quo is remained is through attaching differential entitlements to various legal status.

Migration should be better understood as nested within a much broader and bigger discussion about the state power and sovereignty as well as meaning of membership based on presumed economic contribution (Geddes, 2006). For instance, migration policies have become increasingly important in the era of globalization and staggering inequality between the global North and the global South (Castles, 2004). Immigration policies can act as boundary institutions that shape migratory experiences of TFWs, including their employment relationships, without being direct interveners (Benerjee et al., 2018). Martin (2010) refers to boundary institutions as

sites that “profoundly [affect] the structure of economic opportunity that she will confront, from her ability to participate at all in employment, to the segment of the labour market open to her, to the wages she will be paid” (p. 130). These migration policies, when developed based on short-term and narrow views of the migratory process, often fail to achieve its goal and even run the risk of causing unintended consequences (Castles, 2004).

There are several factors, such as competing interests and hidden agendas of different groups, that affect the development of migration policies (Castles, 2004). It has been assumed that liberal-democratic state changes as a result of primarily internal social and cultural dynamics (Seidman, 2017). Civil society is at the centre of the dynamics, as it is the social sphere where members of the national community participate to form public opinion and public policy. Memberships that have historically been constructed through national identity helps to reinforce the notion that there is one group, citizens, for whom the state rules and another group, TFWs workers, that it rules over (Sharma, 2006).

Employers, unions, governments, and non-profit organizations typically constitute the ‘imagined community’ of the nation state. Together, they are considered to have the most impact on designing, implementing, and evaluating a policy, as well as shaping and directing the public’s reaction to the policy. While one group’s interests cannot easily be prioritized in the policy development and evaluation process, historically, TFW program policies around the world have been overwhelmingly instigated by employers due to the ‘clientelist politics’ of neoliberal government (Castles, 2004). This was exemplified in the expansion of low-skilled stream as a result of the agricultural or construction employers’ lobbying. Increased privatization and labour market deregulation amplify the power of employers in the making and evaluation of TFWP policies (Castles, 2004).

Migrants’ voice, on the other hand, is often not recognized due to their denizen status and non-membership in the receiving country. Migrants are excluded from Canada’s political community despite their presence in the labour market and the wider society. They are often the passive objects of policy, the ‘problem’ to be solved (Geddes, 2006). Along with the weakened inspection mechanisms and lack of global governance in relation to international migration, migrant workers fall between the cracks of legal status protection (Castles, 2004; Walia, 2010). They also receive little support from the wider public due to political discourse and media that portrays them as a collective ‘threat’ to the Canadian labour market and national identity (Sharma, 2006). As a result, the gap between the intents of national immigration policy and the ways it is experienced by migrants themselves is growing wider in all industrialized democracies (Cornelius, 1994, as cited in Castles, 2004).

Existing political and regulatory mechanisms function to further entrench segregation and exclusion of TFWs in the Canadian society by maintaining their denizen status, which primarily supports the interests of employers (Marsden, 2011). The federal government appears to keep experimenting with the immigration policy in regard to the TFWP, as demonstrated in number of changes that were made to the policy between 2002 and 2014, including the ones that are no longer valid (Palacio, 2017). Although some scholars argue that the 2014 reform met the policy objective of decreasing employers’ reliance on TFWs and hiring more domestic workers, some of the changes have been criticized to have extended and even exacerbated the precarious working conditions of foreign workers (Faraday, 2016).

Importantly, as demonstrated in the Audit Report of 2017, many of the policy outcomes have not been evaluated using the evidence-based approach, especially in relation to how they affect the well-being of low-skilled TFWs. An examination of the historical conditions that

situates the TFWP within may lead to the recognition of migrant status as a basis for anti-discrimination claims against social, economic, and political exclusion (Marsden, 2011).

Recommendations

Given the reliance of Canadian government and employers on TFWs to address qualitative labour shortage, the TFW population in Canada will only continue to grow. Therefore, more adequate measures that account for unique circumstances that TFWs are situated within should be put in place to mitigate the risks of abuse and poor working conditions they may be subject to.

First, migrants should be agents of change. TFWs are a resilient and continuous group with a contribution to make, but whose plight and interests are too often neglected due to their denizen status (Geddes, 2006). To mitigate these constraints of denizenship, many non-profit organizations across Canada, such as Migrante International, Migrant Workers Centre, Migrant Workers Alliance for Change, and Migrant Rights Network, actively advocate migrants' rights on their behalf. It is important to ensure their voices are represented and integrated into the planning, implementation, monitoring and evaluation of protection programmes. These monitoring and corrective measures should expand its purpose from satisfying the demands of the public to protecting the actual participants of TFWP—the temporary foreign workers.

Second, the communication between different levels of governments could reduce inconsistent administration and confusion over day-to-day operations of the program. As demonstrated in the cases of EI and the employment contract, the administration of the TFWP is complex and confusing. While provincial government govern employment rights, LMIA, health care, education and housing, the IRCC regulates the workers' immigration documents and admissibility requirements, and Canada Border Services Agency processes cases at the port of entry (Nakache, 2013). For instance, an employer could get a positive LMIA but the prospective worker who is applying for a work permit at the port of entry may be denied at the immigration officer's discretion. Given the shared federal-provincial jurisdiction of the TFWP, each of these government department is somewhat restricted in its ability to resolve various challenges within the program. Better communication between ESDC, CBSA, and IRCC will prevent TFWs from falling into an apparent grey area, of which the IRCC admits to (Nakache, 2013).

Third, as mentioned above, one of the main factors that increases low-skilled TFWs' vulnerability is their employer-specific work permit. The nature of this work permit bounds a worker to a specific employer, exacerbating the existing power dynamics in employment relationship. Replacing the employer-specific work permit with open-work permit that allows TFWs to work anywhere in Canada for the limited period of time or even sector- or province-specific work permit could ensure the migrant workers have some sorts of bargaining power and protection.

Fourth, eligibility criteria for accessing settlement services should be expanded to all migrant workers. Currently, the access to most supports and services is only available to permanent residents. The pervasive notion that TFWs come to work in Canada temporarily and will return once their work permits expire limits their access to federally funded settlement services. However, as aforementioned, research has shown that TFWs have indeed become a persistent feature of the Canadian labour market (Preibisch, 2007). Low-skilled workers, particularly, have traditionally made invaluable contribution in different sectors and are increasingly used by employers to fill permanent vacancies (Elgersma, 2014). The limited access

to settlement services for TFWs lead to feelings of social exclusion in Canada, which directly affects their well-being. Despite the effort made on the provincial and territorial or community level to provide language training, transportation assistance, and orientation, the support is uneven across the country (Elgersma, 2014).

The difficulties that TFWs experience, including social isolation, downward mobility, and loss of skills, have long-term impact on their well-being even after they obtain permanent resident status (Hou, 2019). TFWs' consistent low income after they achieve permanent residency is often used as a justification to limit their pathway to PR. This unsuccessful transition, however, may be partially due to the fact that they did not have access to settlement or language services when they arrived. Because TFWs—those with the option—must live in Canada for certain amount of time to be eligible for permanent residency, not having access to the support they need will have implications on their long-term relationship to Canada (Nakache, 2013).

Lastly, the Canadian government should expand the pathway to permanent residency for low-skilled TFWs. Providing low-skilled TFWs with more opportunities for guaranteed permanent residency would effectively address the underlying cause of their vulnerability (House of Commons Canada, 2016). As previously mentioned, the work that TFWs are employed for are, in fact, not temporary. Employers relying on disposable TFWs to fill permanent vacancies will continue to create a growing population with fewer rights and supports in relation to others who are deemed to be making more contribution to the Canadian society. They are, and always have been important feature of our economy and community life and should be entitled to stay in Canada permanently. It would also proactively protect the TFWs from potential employer abuse to a great extent by empowering them to seek justice without fearing for the possibility of retaliation.

Conclusion

The paper discussed the ways in which denizen status coupled with other social factors, such as race and the amount of human capital, create marginalizing migratory experience for low-skilled TFWs in Canada. Denizenship is the fundamental politico-legal mechanism of unfree labour and non-membership. As denizens, these migrant workers are isolated in geographical, economic, political, and social periphery of the Canadian society. The exclusion not only undermines TFWs' contribution to the Canadian society but also legitimizes the economic and social integration challenges they experience.

The critical analysis of the government publications demonstrated the nation's neoliberal approach to TFWP, exclusively driven by the state's economic gain. TFWs are unarguably a group that is most directly affected by temporary foreign worker policies. These policies mediate TFWs' experiences in Canada in many ways from everyday interaction with their employer and settlement service providers to their security of presence in Canada. In turn, overwhelming representation of employers' interests and lack of TFWs' involvement in the making, administration, and evaluation of the policies will continue to reproduce the precarity of these workers and the broader racial, social, and political inequality of which they are situated within.

Thus, I conclude this paper by recommending ways to achieve a more inclusive and equitable TFWP for low-skilled TFWs. I first suggest actively involving TFWs into the process of planning and administration of protection mechanisms. Second, I recommend re-evaluating the way TFWP is administered across different levels and departments of the government to

simplify its day-to-day operations. Third, I suggest replacing employer-specific work permit with open-work permit that allows mobility and freedom for TFWs in the labour market. Fourth, I suggest expanding the eligibility criteria for government-funded settlement services to support the social integration of these workers. Lastly, expanding the pathway to permanent residency for the low-skilled TFWs will not only improve their overall working condition but also effectively mitigate their social and political exclusions.

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