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## Layers of Vulnerability in Occupational Health and Safety for Migrant Workers: Case Studies from Canada and the UK

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**Malcolm Sargeant and Eric Tucker**

### Layers of Vulnerability in Occupational Health and Safety for Migrant Workers: Case Studies from Canada and the United Kingdom

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case studies from Canada and the United Kingdom**

**Abstract:** In many high-income countries, like Canada and the United Kingdom, there has recently been a significant increase in the number of migrant workers entering and participating in their labour markets. This article is concerned with the implications of this phenomenon for protective labour laws and, in particular, for occupational health and safety regulation. We identify a framework for assessing the OHS vulnerabilities of migrant workers, using a layered approach which assists in identifying the risk factors. Using this layer of vulnerability framework, we compare the situation of at-risk migrant workers in Canada and the United Kingdom.

**Keywords:** Immigration, employment, vulnerability, Canada, UK “migrant workers” “occupational health and safety”

JEL classification: K30, K31, K33

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# LAYERS OF VULNERABILITY IN OCCUPATIONAL HEALTH AND SAFETY FOR MIGRANT WORKERS: CASE STUDIES FROM CANADA AND THE UNITED KINGDOM

Malcolm Sargeant and Eric Tucker\*

## I. INTRODUCTION

Migration of workers between countries in order to find work is not a new phenomenon. It has been happening for centuries (Hahmovitch, 2003) and *there is no continent, region of the world which does not have its contingent of migrant workers*.<sup>1</sup> It is therefore an international phenomenon and has affected many States as exporters and as importers of labour.<sup>2</sup> In many high-income countries, like Canada and the United Kingdom, there has recently been a significant increase in the number of migrant workers entering and participating in their labour markets. The implications of this phenomenon for protective labour laws, and in particular for occupational health and safety regulation, are just beginning to attract attention.

It is the purpose of this paper to advance this discussion in two ways. First, we will briefly identify a framework for assessing the OHS vulnerabilities of migrant workers, which uses a layered approach. The benefit of this framework is that it recognizes the heterogeneity of migrant workers and facilitates our ability to focus on those populations that are mostly likely to be at risk (Boyd et al, 1986). As well, by identifying risk factors, we will be in a better position to make recommendations for reform. Second, using the layers of vulnerability framework, we will compare the situation of at-risk migrant workers in Canada and the U.K. A comparative framework is useful because it will allow us to better understand the salience of risk factors for OHS regulation, as well as to compare the effectiveness of institutional responses to date.

A migrant worker is treated here as someone who has migrated to another country to take up work and who currently does not have a permanent status in the receiving country. This is the basis on which we distinguish between migrants and immigrants, although we recognize that migrants may be able to obtain permanent (immigrant) status at some point in the future. The

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<sup>1</sup> *Fact Sheet 24 concerning the International Convention on the protection of the rights of all migrant workers and members of their families* – adopted by the General Assembly by Resolution 45/158 of 18 December 1990 Office of the High Commissioner for Refugees.

<sup>2</sup> According to Manpower (2008, p. 3) more than 190 million people live outside their countries of birth and roughly one of every 35 persons in the world is a migrant and their number is growing at almost three percent annually.

migrant category includes both workers who have been given a legal right to enter and work, as well as those who have entered and are working without legal authorization. The ways in which immigration laws incorporate migrant workers into the receiving country's labour market and allow them to become permanent residents may have a significant impact on their vulnerability, and these will be discussed in the case studies. We also recognize, however, that migrants and immigrants may have shared experiences in terms of occupational health and safety issues when taking up work in a new country, especially with a different language (see NIACE, 2006).

## II. LAYERS OF VULNERABILITY

An ILO Conference report, *Towards a Fair Deal for Migrant Workers in the Global Economy* (ILO, 2004), identified a number of factors that explain disparities in working conditions among migrant workers and between migrant and national workers. These included migration status, conditions of recruitment, sector of employment or occupation, employment in the informal sector, lack of freedom of association and collective bargaining rights, and discrimination and xenophobia in the workplace (see also Preibisch, 2007a and Toh and Quinlan, 2008). These provide a useful foundation, which we have built upon below. Our focus is on macro- and meso-level factors, rather than on the micro-level of analysis, since we are interested in the political, economic, and institutional influences on the OHS risks faced by migrant workers.<sup>3</sup> We have divided these risk factors into three groups: (i) migration factors; (ii) characteristics related to migrants and their country of origin; and (iii) receiving country conditions.

### A. MIGRATION FACTORS

These are concerned with the migration status and the conditions of recruitment of migrant workers. Migration status of workers in the countries in which they are employed can be a significant OHS risk factor in at least two ways. First, in some countries it may determine their formal entitlement to legal protection and, second, even where legal protection is extended to migrant workers, (im)migration status may significantly influence their ability and willingness to enforce their rights. The level of security for migrant workers varies significantly between countries and even within countries that have a multiplicity of programs through which migrant workers enter. Workers without legal status are the most vulnerable, but guest workers whose entitlement to be in a country is tied to a contract of employment with a particular employer are also in an extremely precarious position compared, for example, to a migrant worker who enjoys a stronger right to remain and a greater degree of labour market mobility.<sup>4</sup>

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<sup>3</sup> For an analogous discussion of heterogeneity among temporary workers and levels of analysis, see Silla, 2005.

<sup>4</sup> The denial of legal citizenship, which is implicit in the lack of secure status, has been identified by Preibisch, 2007a, p. 101 as the primary way through which foreign workers' vulnerability is structured.

The way in which migrant workers are recruited can also influence OHS vulnerabilities, by shaping the willingness of workers to exercise their rights, e.g., workers who have been charged excessive fees by recruitment agents may be more reluctant to jeopardize their status by making complaints than those who have not incurred debts to obtain employment.<sup>5</sup>

## B. CHARACTERISTICS OF MIGRANT WORKERS

Of importance here are the socio-economic conditions in the home country; education and skills levels; and language skills. There are significant differences between migrants who move between countries of the global north and those who migrate from the global south to work in the north. For workers coming from poor countries, the opportunity cost of losing their jobs – even if those jobs are not considered good jobs by national workers in developed countries – is significantly higher than for those workers who can return home to jobs that are comparable. Not only is this likely to negatively influence the willingness of workers to enforce their rights, but it may also create perverse incentives for workers to maximize their income in the short term by agreeing to work long hours or to cut corners, thereby increasing their risk of work injury, illness or disablement (Richardson et al, 2003).

Education and Skill Levels can influence OHS vulnerabilities in a variety of ways that are perhaps obvious. Less educated and lower-skilled workers not only have more limited labour market opportunities in both the sending and receiving country, but are also less likely to have received any OHS training or to be able to exercise control over the performance of their work. Similarly there is an important issue in relation to language skills. The inability to understand, speak and read the language of the receiving country creates obvious OHS vulnerabilities, including the ability to understand instructions, read warning signs, communicate concerns, and learn about and access legal protections. The inability to communicate at work can also interfere with the formation of supportive relations at work, which in itself can adversely affect worker health (Premji et al, 2008).

## C. RECEIVING COUNTRY CONDITIONS

The issues here are the characteristics of employment and sector; access to collective representation; access to regulatory protection; and particular problems of social exclusion/social isolation. OHS risks are not spread evenly across the labour market; some sectors and some occupations are significantly more hazardous than others. Employer competency and commitment is not randomly distributed either, but rather associated with certain characteristics, such as size. Therefore, the sectors, occupations and characteristics of the firms into which migrant workers are recruited shape their vulnerabilities, and there is evidence that migrant

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<sup>5</sup> The ILO has had a long-term concern about the role of private agents - see Martin, 2005.



workers are disproportionately recruited into more hazardous employment situations (Loh and Richardson, 2004).<sup>6</sup>

The presence of a union is not a guarantee of better OHS outcomes, but it does confer a number of benefits that may lead to that result. A union may provide access to information and knowledge about OHS risks, representation in bringing forward and pursuing OHS concerns both with the employer and with regulatory authorities, and greater job security. These can be particularly important where countries have opted for regulatory models that delegate authority onto the workplace parties to develop and implement management systems (Nichols and Tucker, 2000).

Many of the risk factors discussed earlier influence the ability of migrant workers to access regulatory protection. A factor in this cluster is the extent to which the receiving country has developed and implemented strategies aimed specifically at protecting migrant workers. Lastly the social isolation or exclusion of migrant workers can result from a number of factors in addition to language barriers that we discussed above, e.g., migrant workers may be geographically isolated because they are employed in rural areas and live on the employer's premises. They may work primarily with other migrant workers and may also be excluded because they constitute a particular racial group in the receiving country. Social discourses may also justify their unequal treatment on the basis that they are better suited to perform hard, unpleasant and dangerous work than local citizens (Bauder, 2006). To the extent that workers face social exclusion, they are more vulnerable to exploitation, including exposure to hazardous working conditions for a number of reasons, such as the fact that they are less likely to have knowledge of prevailing labour market conditions and their legal rights and because they are likely to have more difficulty getting assistance to assert their rights (Sharma, 2006 and Preibisch, 2004).

Clearly, these layers or structures of vulnerability will vary to different degrees among different groups of migrant workers within a given jurisdiction as well as between countries. Our discussion of the OHS vulnerabilities of migrant workers in the United Kingdom and Canada focuses on those groups that face multiple layers of vulnerability. A comparative study allows us to identify both similarities and differences in vulnerabilities based on differences in the respective immigration regimes, in the backgrounds of migrant workers and their countries of origin, and on the ways in which they are received into local labour markets. We also consider the extent to which governments, civil society groups and migrant workers themselves have responded to the resulting OHS challenges in each country.

### **III. CANADA: THE TEMPORARY FOREIGN WORKER (TFW) PROGRAMME**

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<sup>6</sup> Loh and Richardson do not differentiate between foreign-born and migrant workers.

Historically speaking, the creation of a legal category of temporary foreign workers in Canada is a relatively recent development. Prior to the 1960s, with a few exceptions, non-nationals who gained the legal right to participate in the Canadian labour market entered as, or became when they got work authorisations, permanent residents who could only be removed from Canada under limited circumstances and who were as free as citizens to circulate in the labour market. The development of more permanent programmes to admit a class of migrant workers, only entitled to remain in Canada for a limited period of time and whose freedom in the labour market was highly circumscribed, can be traced to 1966 when, in response to demands from farmers that they be permitted to import temporary foreign workers, the government created the Seasonal Agricultural Worker Program (SAWP).<sup>7</sup> A more general programme to permit workers into Canada on a temporary basis was created in 1973 through the Non-Immigrant Employment Authorization Program (NIEAP).

The creation of a migrant worker category provided employers with the opportunity to hire foreign workers on a temporary basis when they could demonstrate that they were unable to hire domestic labour. However, unlike permanent immigrants, workers admitted under this programme were indentured to their employers and required to leave Canada when their employment ended. The creation of a bonded system of labour was legitimated around a nationalist discourse of protecting Canadian workers against foreign competition for jobs that did attract Canadian applicants, while at the same time keeping Canada competitive globally by facilitating profitable local production by making available low-cost labour available (Sharma, 2006). In general, the way the programme worked was that to hire a temporary foreign worker the employer had to get a favourable labour market opinion (LMO) from Human Resources and Skills Development Canada (HRSDC), which required, amongst other things, a demonstration that the employer had unsuccessfully attempted to hire a Canadian. Once a favourable LMO had been obtained, the employer could then make an offer to a foreign worker who could then get a work visa from Citizenship and Immigration Canada (CIC). A number of sector-specific programmes were subsequently created that provided for a more expedited procedure and had sector-specific requirements, the most recent of which was a 2002 programme that allows employers to hire workers in 'lower skill' occupations which have experienced labour shortages. Finally, the North American Free Trade Agreement (NAFTA) and other trade agreements include provisions that allow business people to temporarily relocate without the necessity of obtaining a labour market opinion or, in some cases, a work permit.<sup>8</sup>

The TFW program grew slowly at first, but in recent years has been expanding rapidly, resulting in an enormous increase in the number of temporary foreign workers (TFWs) residing in Canada. In 2007, 165,198 TFWs entered Canada, compared to approximately 60,000 in 1980. This constituted a 34% increase from 2005 alone. In 2007 there were about 201,000 TFWs in Canada,

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<sup>7</sup> Satzewich, 1991, p. 86-98 and 107-10 discusses some earlier programmes involving American migrant tobacco workers and post-World War II Polish veterans and displaced persons that limited labour market mobility for a period of time; see also Basok, 2002.

<sup>8</sup> For an overview, see <http://www.cic.gc.ca/ENGLISH/work/special-business.asp>.

compared to 141,743 in 2005 and 110,476 in 2003 (CIC, 2007). In short, the participation of TFWs in the Canadian labour market is greater now than it ever has been in Canada's history.

However, as we argued above, the significance of this development from an OHS perspective depends on the extent to which the layers of vulnerability we identified apply to particular groups of TFWs. While there is a great diversity among TFWs in Canada, gross indicators suggest that there are a large number for whom OHS vulnerabilities are significant, e.g., in 2005, 48% of TFWs with identified skill levels were in lower categories, and included agricultural workers, caregivers and construction workers (Conference Board of Canada, 2008). In recent years there has been an increase in the number of workers at skill level "C" (intermediate and clerical, which requires secondary school or occupation-specific training), making it the largest category followed by professionals (CIC, 2006).

Even among those lower-skilled TFWs, our layers of vulnerability framework suggest that it is difficult to generalise about the OHS risks they face, given the broad range of work they perform, their diverse backgrounds, and the variety of programmes under which they enter Canada. Therefore, two groups have been chosen for closer examination, seasonal agricultural workers and lower-skill workers in Alberta.

## A. MIGRATION FACTORS

The SAWP was the first formal TFW programme in Canada. Since the 1960s, the number of seasonal agricultural workers employed has increased steadily, from approximately 264 in 1966 to 6000 in 1987 and to over 22000 in 2005 (Satzewich, 1991, p. 111; Basok, 2002, p. 34; CIC, 2006). The programme has a number of unique features which affect the vulnerability of these workers. First and foremost, workers recruited through the SAWP enter Canada on a temporary basis with no prospect of converting to a permanent status. The programme is governed by intergovernmental agreements between the sending countries and Canada. There are two agreements, one with Caribbean countries and one for Mexico. The sending countries recruit the workers for the programme, although farmers in Canada may name workers that they want returned from a prior contract. Approximately 70-80% of migrants are rehired by name. The employment contract is with a single employer and farm workers can only change employers with written permission from HRSDC. The duration of the contract can vary from a minimum of six weeks to a maximum of eight months. The average stay is between seventeen to twenty weeks. The agreement requires the employer to provide free accommodation, which is usually on the employer's property, to ensure that workers are covered by provincial health insurance and to pay workers' compensation premiums. Other provincial labour laws apply. Workers are entitled to the prevailing wage paid to Canadian workers performing similar work in that region.

Consular officials provide representation services to the migrant farm workers from their countries (Maxwell, 2006 and Preibisch, 2004).

The lower-skilled programme was introduced as a pilot project in 2002 to enable Canadian employers to hire TFWs in occupations that usually require at most a high school diploma or a maximum of two years of job-specific training. In response to employer demand, the programme was expanded in 2007, easing entry requirements and lengthening the duration of visas from a maximum of one to two years. Employers are required to cover return airfare costs, to ensure that suitable accommodation is available, and to provide medical coverage until the employee is covered under the provincial health plan. Employees are entitled to be paid prevailing wage rates. Work permits are employer specific, but there is scope for TFWs to apply for a new work permit with a new employer whilst in Canada (Conference Board of Canada, 2008, p. 33). TFWs may be able to convert to permanent residency status under a provincial nominee programme, although practices vary from province to province.<sup>9</sup> Workers recruited under this programme work in a variety of industries, such as cleaning, hospitality, manufacturing, oil and gas, and construction. There are now also low-skill migrants working in agriculture, sometime alongside seasonal agricultural workers.<sup>10</sup> The number of low-skill TFWs has grown rapidly, especially since the programme was expanded in 2007, e.g., the number of TFWs working in the food service industry rose from 109 in 2005 to 6005 in 2007, light duty cleaners from 199 to 3235, construction labourers from 183 to 2,877, and labourers in food and tobacco processing from 421 to 2041.<sup>11</sup>

The vulnerabilities that result from migrant farm workers' precarious immigration status have been widely noted. While migrant farm workers are entitled to the same legal protection as other farm workers, interviews with migrant farm workers consistently disclose they are extremely reluctant to voice complaints or to assert their rights for fear of being deported or of not being named for re-employment for the next season.<sup>12</sup> The fact that they have access to consular representation does little to mitigate this vulnerability since these representatives are caught in a conflict because of their interest in maximizing the number of migrants from their country. As a result, they appear to be hesitant to pursue complaints about working conditions or failures to comply with the terms of the inter-governmental agreement and applicable local labour standards. Moreover, some consulates report that they lack the resources to pursue complaints and do not have direct connections with provincial agencies responsible for enforcing regulations. HRSDC also has not coordinated with provincial agencies regarding enforcement or

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<sup>9</sup> Conference Board of Canada, *Renewing Immigration*, p. 33.

<sup>10</sup> For example, Rol-land Farms, a mushroom farm operation in Ontario, hired workers under both the SAWP and the low-skill program. The company went into receivership and both groups were terminated and left the country (Taylor, 2008).

<sup>11</sup> *Toronto Star* (no date).

<sup>12</sup> The policy under the SAWP of allowing employers to request workers by name each year has been identified as a source of vulnerability a number of commentators. For example, see Fairey et al., 2008, p. 55-56; Preibisch, 2007a, p. 101; Gibb, 2006; Basok, 2002, p. xviii; Suen, 2000, pp. 199 and 204.

effectively monitored this aspect of the SAWP (Fairey et al, 2008, pp. 56-57; Basok, 2002, pp. 111-14; Maxwell, 2006, p. 12). On the other hand, the framework agreement removes a layer of vulnerability by providing that recruitment in the sending countries is done by government and the cost of air fare and local transportation to the place of employment is initially paid by the employer. Although seasonal farm workers have to pay for medical screenings and travel to registration points in their own countries, leaving some in debt by the time they arrive in Canada, the worst forms of exploitation by private agents that can produce a regime of debt bondage is avoided (Maxwell, 2006, p. 6).

TFWs in the low-skill programme have been much less well studied, but there is evidence that their precarious migration status and limited job mobility also produces OHS vulnerabilities, although these may be somewhat less severe than those of seasonal agricultural workers because of the longer duration of their work visas and their marginally greater ability to transfer to a new employer. This may, for example, reduce perverse incentives to work exceedingly long hours or to avoid taking time off work for injuries or illnesses lest valuable hours of paid work are lost. However, this difference does not seem to significantly increase low-skill migrants' willingness to assert their legal rights, such as the right to refuse a dangerous work assignment for which they have not been trained. A CBC broadcast on January 24, 2008, for example, reported the story of Cesar Saenz who was seriously injured when he was directed to use a chain saw. Like other lower-skilled workers in this position, he was afraid to refuse, lest he incur the disfavour of his employer.<sup>13</sup>

As under the SAWP, low-skill programme TFWs also cannot be charged fees and employers pay transportation costs, thereby reducing their vulnerability to exploitation and reducing an additional source of pressure not to assert their rights. However, unlike under the SAWP, private agencies are often involved in the recruitment process and there have been widespread reports that workers are charged illegal fees and provided inaccurate information about the jobs and access to citizenship.<sup>14</sup> The OHS implications include increased pressure on TFWs to maximize their earnings because of the debts they may have incurred to get to Canada and a mismatch between worker skills and actual job requirements.

## B. CHARACTERISTICS OF MIGRANT WORKERS

The majority of seasonal agricultural workers are recruited from Mexico (12,000 in 2005), with the remaining coming from Jamaica (6000) or other Caribbean countries (4000) (CIC, 2006). It can be assumed, therefore, that a large number of farm workers will experience significant language barriers that will increase their OHS vulnerability because they are unable to understand instructions delivered in English. A tragic example of this problem occurred in

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<sup>13</sup> CBC Edmonton, <http://www.cbc.ca/edmonton/features/disposableworkers/faq.html>.

<sup>14</sup> Alberta Federation of Labour (2007, pp. 10-11), reported that 89 of the 123 complainants to its TFW Advocacy office came to Canada through brokers and that the majority paid a fee ranging from \$3,000 to \$10,000.

Ontario in 2000 when three non-English speaking Mexican migrant workers died after entering a closed space which contained an English-only warning sign.<sup>15</sup>

The SAWP recruits workers with agricultural backgrounds. Most Mexican workers are poor, landless, agricultural day labourers drawn from small villages (Basok, 2002, pp. 89-105).<sup>16</sup> As a result, they do not arrive with training and experience using modern farm machinery and agricultural chemicals. Moreover, according to a recent survey, most do not receive adequate training and complained of being sent into fields shortly after they were sprayed or of having safety concerns about the machinery they were required to use (Gibb, 2006, pp. 20-21; Maxwell, 2006, p. 10; Fairey et al, 2008, pp. 44-47).

The poor economic condition of the seasonal agricultural workers in their home countries, which has been exacerbated by the deeper penetration of global capitalism that results in rural populations becoming less able to support themselves on the land and more dependent on finding access to labour markets (Sharma, 2006; Simmons, 1998), create an additional layer of OHS vulnerability. Not only are these migrant workers loath to jeopardize their employment by complaining about hazardous conditions, but they are 'willing' to engage in practices that might jeopardize their health and safety in order to maximize their earnings during the time they are employed on Canadian farms. In particular, migrant farm workers generally 'want' to work as many hours as possible. Surveys found that six-and-a-half-day weeks and ten-hour days were common for migrant farm workers, notwithstanding that the work is strenuous and often performed in uncomfortable positions. Even longer hours are frequently worked during the peak season. Not only do such practices produce work-strain injuries and increase the likelihood of traumatic injuries due to fatigue and occupational illnesses due to extended exposures to toxic substances, but migrant workers reported they were extremely reluctant to take time off while sick or injured because they did not want to lose wages (Gibb, 2006, pp. 20-25; Fairey, 2008, pp. 39-44; Smart, 1998).

To date, no data has been located on the country of origin of TFWs in the lower-skill class. Unlike the SAWP, which operates by inter-governmental agreement and therefore limits the number of countries of origin, workers in this programme can be recruited from anywhere on the planet. However, it can be safely assumed that a significant number of these workers are recruited from underdeveloped countries where workers will find access to even the lower-rungs of the Canadian labour market attractive. One can anticipate that many will not have received previous training for the hazards that may be present in the jobs in which they are employed. As well, some significant number may experience language difficulties.<sup>17</sup> This issue tragically came to public attention when two Chinese workers were killed on the job when a roof collapsed.<sup>18</sup>

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<sup>15</sup> The incident is described in Tucker, 2006; even among English-speaking migrant workers from Caribbean countries, differences in dialects and accents may interfere with communication. See Cecil & Ebanks, 1991, p. 393.

<sup>16</sup> For older data on the characteristics of Caribbean workers, see Cecil & Ebanks, 1992, pp. 23-24.

<sup>17</sup> Given the diversity of occupations that are covered by the low-skill programme, it can also be expected that the language skills of these workers will vary enormously. For example, for positions in the retail trade, the ability to communicate with customers in English will be a basic requirement. Conference Board of Canada, 2008.

<sup>18</sup> CBC News, "Workers Killed in roof collapse likely didn't speak English," (26 April 2007).

### C. RECEIVING COUNTRY CONDITIONS

For migrant farm workers, the most obvious receiving country factor is that work in the agricultural sector is hazardous. Farm workers face a vast array of biological, chemical, ergonomic, mechanical, physical, and psychosocial hazards and have reported injury rates above the provincial average (Tucker, 2006; Bolaria, 1992; Denis, 1988). Although migrant farm workers are covered by provincial occupational health and safety laws, the sector has not been effectively regulated in many of the jurisdictions where farm workers are concentrated, e.g., in Ontario, where the agricultural sector was exempt from the basic OHS statute until 2006 and there are still no sector specific regulations. Nevertheless, the Ontario MOL has recently been enforcing OHS laws in the agricultural sector, including conducting inspections, issuing compliance orders and prosecuting farm employers when unlawful conditions result in worker injuries. How much of this effort is directed towards migrant workers, who as noted above are extremely reluctant to report hazards, however, is unknown. In British Columbia, regulatory protection for farm workers is stronger, but the resources devoted to enforcement have declined in recent years (UFCW, 2007, p. 12; Tucker, 2006; Fairey et al., 2008, pp. 27-28. An additional factor that increases the risk faced by migrant farm workers is that they are often hired to carry out the most dangerous, hardest work on farms, while local workers are more likely to be given supervisory positions. However, in some areas where migrant workers work alongside recent immigrants from racialised groups the line between TFWs and workers with permanent status is much thinner (Beceril, 2007).

Almost by definition, TFWs in the low-skill programme are recruited into positions that Canadian workers do not want. Oftentimes what makes jobs unattractive is that they are physically demanding, repetitive, dirty, and dangerous. To date, data on the occupations into which TFWs are recruited is not available, but we know that, in response to employer demands for the programme to be expanded, in 2007 the government listed a large number of occupations for which expedited LMOs could be obtained. These included many occupations that have significant OHS risks, such as construction trades, industrial meat cutters, and manufacturing and processing labourers (HRSDC, 2008; Worksafe Alberta, 2008, p. 3). The level of regulatory protection will vary by province. In Alberta, which has been one of the largest destinations for TFWs in the low-skill programme, regulatory enforcement has improved in recent years, including the targeting of inspection resources to high-injury industries, a practice that should benefit migrant workers who are less likely to initiate complaint-based inspections (Tucker, 2003).

Migrant farm workers and low-skill workers are covered by workers' compensation laws, but as noted above, they are extremely reluctant to make claims, both because of fear of retaliation and reluctance to lose wages because they have taken time off from work. In addition, employers may actively discourage workers because of concerns about premium increases. One study found that of twenty migrant farm workers who reported work injuries, only one had received

workers' compensation. Three were paid by their employers for missed days, four took unpaid days off and five were sent back to Mexico because they were no longer fit to work in Canada (Basok, 2004, pp. 57-58).

Access to collective bargaining has been difficult for farm workers generally and for migrant farm workers in particular. The vulnerabilities that farm workers experience generally are amplified for migrant workers because of their insecure migration status and, indeed, there have been several recent incidents in which employers have terminated the contracts of migrant workers who organized and repatriated them.<sup>19</sup> After the recent court decision in Ontario requiring the government to give farm workers access to a proper statutory collective bargaining scheme, the employer of the workers on behalf of whom the litigation was brought terminated the employment of seventy migrant farm workers, resulting in their deportation (Tambar, 2008).

Finally, migrant workers suffer from a significant degree of social exclusion that leaves them more vulnerable and reduces their access to resources that might assist them in bringing their OHS concerns to the relevant authorities. Researchers have attributed social exclusion to a variety of factors, including the limited contact migrants have with local populations due to long hours of work and the fact they commonly reside on the employer's property; language barriers; media representations of migrant workers as a social problem; racism; nationalist discourses that justify unequal treatment; small-town unfriendliness toward outsiders, etc. (Bauder, 2008).

The degree of social exclusion faced by workers in the low-skill programme varies enormously. In some cases, employers and communities may make efforts to integrate TFWs, as is reportedly the case of meat-packing workers hired by Maple Leaf at its Brandon, Manitoba factory (Conference Board of Canada, 2008, pp. 30-34). These kinds of measures, however, are probably uncommon and TFWs will often find themselves segregated from the broader community and dependent on their employers for information and other services. As a result, low-skill TFWs are often badly in need of assistance to obtain needed information and support to gain access to regulatory protection. Trade unions and community groups have worked actively with TFWs to break down their social exclusion and, in particular, to provide access to information about OHS hazards and worker rights (Preibisch, 2007a, 2004; Basok, 2004, pp. 58-60; North-South Institute, 2006). Because of widespread concern about the potential for the exploitation of low-skill TFWs, the federal government undertook to strengthen worker protections when it expanded the programme in 2007 (Preibisch, 2007b). Since then it has been negotiating memoranda of understanding (MOU) with the major receiving provinces to make arrangements to improve rights protection.

#### **IV. UNITED KINGDOM: MIGRANTS FROM A8 COUNTRIES**

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<sup>19</sup> See various press releases at <http://www.ufcw.ca/>.



In order to illustrate the vulnerability of migrant workers in the United Kingdom, it is intended here to concentrate on migrant workers from the A8 countries<sup>20</sup> as the majority are essentially itinerant and entering the United Kingdom for a limited period of time to work and earn income.

## A. MIGRATION FACTORS

In 2004, when ten new States joined the EU, other Member States were given the option, for a limited period, to stop workers from eight of the new States coming to their countries to work, for a period of up to seven years. The United Kingdom did not do this, but instead introduced a workers registration scheme (WRS) for these new workers. This scheme required registration on first entry, or on a change of job, although once the worker had completed twelve months of working he or she no longer needed to continue to register. These rules do not apply to self-employed people who only need to register for tax purposes. After one year under this scheme workers are able to apply for and obtain a European Economic Area (EEA) residence permit which gives them the right to stay and work in the UK. After a total of five years of residence and working (no more than six months absence) an individual from the EEA can apply for permanent residence. This approach is in contrast to migrant workers from outside the EEA who need to qualify under a points based entry system introduced in 2008.<sup>21</sup> Failure of A8 nationals to register under the WRS will not in itself make them liable for deportation, but it will make working illegal. There are severe penalties upon employers who employ such illegal workers. This is a really important difference between these workers and, say, those Canadian migrant workers discussed above. There is a layer of vulnerability which does not apply to them, namely that of insecurity about being able to stay in the host country. In a sense this makes them privileged migrants, although in reality there is little reason for them not to register under the scheme.

The scale of the migration resulting from the 2004 accession was considerably larger than the Government estimated at the time. The total number of approved applicants<sup>22</sup> under the WRS between May 2004 and June 2008<sup>23</sup> was 853,850 (this did not include the required re-registrations during the first year on changing jobs). The highest proportion of approved applications were from Polish nationals (67%), followed by those from Slovakia (10%) and Lithuania (9%). These figures do not reflect the total inflow of migrant workers and it is likely

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<sup>20</sup> Eight States that joined the EU in 2004 and benefitted from the ability to move freely to the UK for work after this date. These are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

<sup>21</sup> For information on this see the web site of the UK Borders Agency at <http://www.ukba.homeoffice.gov.uk>.

<sup>22</sup> Most, but not all, applications are accepted, e.g. in 2007 there were 210,775 approved applications and 1,025 refused ones.

<sup>23</sup> These figures apply to initial applications only, i.e. they exclude re-registrations which are made when individuals transfer employers; there have been 325,000 of these since May 2004.

that the actual total figure is much higher, taking into account illegal migration, self-employed migrants (Ruhs, 2006) and migrants from other countries such as Bulgaria and Romania.<sup>24</sup> Migrant workers in the United Kingdom are entitled to the same employment and OHS protection as indigenous workers, although there is some employment protection, such as entitlement to redundancy payments and the right to claim unfair dismissal, which are dependent upon length of continuous employment with an employer. These rights apply to employees only and there is a suspicion that many migrant workers are deprived of this protection by being classified as ‘workers’ (i.e. self-employed) and thus deprived of some protection (see *Hard Work: Hidden Lives*, 2008). Perhaps an example of the outcome of this is the result of one analysis which suggested that a greater proportion of recent migrants did not receive redundancy pay, pay in lieu of notice or any other kind of payment when compared to their sample as a whole. This distinction would perhaps not have the same importance in relation to health and safety, which would not normally concern itself with this distinction in terms of those protected.

It is interesting that a group of workers, despite the fact that many will be well-educated, can become vulnerable even though apparently protected from exploitation by the national law. This, of course, is a particular issue for temporary workers who make up the majority of this migrant work force. Employment agencies and businesses are regulated in the UK<sup>25</sup>, but concern for migrant workers employed or placed by such agencies has been shown, for example, in the work of the Health and Safety Executive and the regulation of Gangmasters. The Health and Safety Executive reported<sup>26</sup> that

*Migrant workers are a special case of the more general problem associated with managing the health and safety of casual and temporary labour. In addition to the generic issues, migrants present particular challenges in areas such as language, supervision and safety culture.*

The result of this concern is a focused inspection regime on the employers of migrant labour. More of this migrant workforce are in temporary jobs and, when compared to other migrants, are more likely to be in agency work (Jayaweera and Anderson, 2008). One of the large recruiters and employers of temporary labour is a group of organisations known as gangmasters. They have, historically, provided labour to those industries which require seasonal employees, such as agriculture and food processing. Often they recruit, employ and house workers, many of whom are migrants. Until recently the activities of gangmasters were relatively unregulated and there have been many reports of abuse (see CAB, 2006). Regulation was introduced as a result of one tragic incident in the north of England when twenty-three cockle pickers died as a result of becoming trapped by the incoming sea in February 2004. They were of Chinese origin and many were illegal workers.

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<sup>24</sup> See, for example, the estimates contained in UK Economic Focus (January 2007) *Net Migration has peaked* Capital Economics London; [www.capitaleconomics.com](http://www.capitaleconomics.com).

<sup>25</sup> Conduct of Employment Agencies and Employment Businesses Regulations 2003 SI 2003/3319.

<sup>26</sup> **2007/08 WORK PLAN: TEMPORARY AND MIGRANT WORKING SIM 01/2007/04 HEALTH AND SAFETY EXECUTIVE**

Gangmasters who supply temporary labour are now regulated by the Gangmasters Licensing Authority (GLA),<sup>27</sup> which issues licences to gangmasters and keeps under review the activities of persons acting as gangmasters. Some 1201 labour providers had been licensed by the end of 2008. During that time seventy-eight licenses had been revoked for breaches discovered during inspections, such as the Suffolk gangmaster who failed to pay statutory holiday pay and the Preston gangmaster who failed to check on whether employees had the right to work in the UK and was, as a result, employing illegal workers.<sup>28</sup> The GLA (Geddes and Nielsen, 2007) reported that the most common forms of non-compliance were breaches in health and safety (including induction training and transport; improper deductions of wages; annual leave entitlements not being in place; and lack of evidence that workers engaged in more than 48 hours of work per week had signed an opt out and not having a written contract).

## B. CHARACTERISTICS OF MIGRANT WORKERS

Perhaps partly because of the numbers arriving in such a short time, and despite the relatively benign immigration status, the A8 migrant workers, as a whole, display the characteristics of a vulnerable workforce taking part in precarious working. Most of the layers of vulnerability that apply to a vulnerable workforce also apply to them. This profile is important when considering occupational health and safety implications. As a generalisation the characteristics of the majority of this workforce are that they are young, in low paid and temporary employment; are working longer than the normal minimum full time hours; and that they come from countries where English is not the first language.

These features may be those of a vulnerable workforce characterised by a willingness to take up precarious employment which has been readily available to them.<sup>29</sup> The UK has seen an increasing use of flexible employment. The European Commission in the document *Improving quality and productivity at work* stated that although progress was being made, some groups are more exposed than others. These included young workers, workers whose jobs are insecure, older workers and migrant workers. It also suggested that some types of companies were more vulnerable than others, especially small and medium-sized enterprises.

In some instances this has led to exploitation and a lack of employment protection. In a TUC survey of Polish workers, for example, a quarter said that they did not have a written contract of employment and only half of these were registered under the WRS, whilst some 10% said they were paid wages in cash (Jayaweera and Anderson, 2008). Trade unions in the UK have been concerned with this imbalance and the inability of migrant workers to enforce employment

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<sup>27</sup> Established by the Gangmasters Licensing Act 2004.

<sup>28</sup> See Gangmasters Licensing Authority news releases of 5 November 2008 and 10 November 2008 on the news section of the website at [www.gla.gov.uk](http://www.gla.gov.uk).

<sup>29</sup> For a consideration of precarious working see Barratt and Sargeant 2008.

rights.<sup>30</sup> It is the lack of awareness of these rights according to one trade union, which may cause vulnerability to exploitation.<sup>31</sup>

There are a number of potential layers of vulnerability, in the UK context, which are linked to the characteristics of migrant workers. These are the motivations for migration, the willingness to accept short term temporary employment and the level of skills offered.

One study by Quinlan et al. (2001) found a number of factors which linked precarious work and adverse health and safety outcomes. These included economic and reward pressures which meant that workers were more prepared to work for longer hours and undertake riskier work than others. This was as a result of greater economic pressures relating from the competition for jobs or contracts. It is clear that the motivation for migrating to another country can be for a complex series of reasons, but it is likely to include a desire to earn a higher income than that which is available in the home country. Levels of income in the main migrant supply countries in the A8 are much lower than the UK. If one takes, as a measure, the statutory minimum wage in the UK compared to the source States of Poland, Slovakia and Lithuania, for example, one can see the scale of the difference. In the United Kingdom the statutory minimum wage, from October 2008, was approximately 1250 euros per month; compared to 330 in Poland, 295 in Slovakia and 230 in Lithuania.<sup>32</sup> These figures are indicative of the significant differences in income to be earned, although, of course, they do not reflect the differences in the costs of living in the United Kingdom and these other countries. This difference might also explain why the majority of the jobs taken by this group were low skilled minimum wage ones.

The one aspect that overwhelmingly singles out the migrant workforce as a particular type of vulnerable workforce is the capacity to speak and communicate in English (Dustmann et al., 2003, chapter 6). A survey of migrant workers in the Southeast of England showed that just 13% claimed to be fluent or have very good English; 27% said they were 'good'; 36% reported that they were 'OK' and 24% were 'poor' or 'very poor'. In addition the survey showed that there was higher level of English skills amongst males compared to females and younger people (21-29 years) had higher levels of skills than others (Green et al., 2008). In its employers' survey, it found that 56% of employers found communications problems due to poor English as the main difficulty in employing migrant workers. With regard to language training the McKay et al. report (2006) stated

*In some cases we were informed of employers making provision for language training, but of workers not taking this up. One key respondent told of how in his workplace there was a union learning scheme, however, to access it the worker had to make up half an hour of the hour that the class took up. Migrant workers, working long hours to*

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<sup>30</sup> See, for example, UNISON's Welfare Information Sheet titled *Support for Migrant Workers*; [www.unison.org.uk](http://www.unison.org.uk).

<sup>31</sup> See *Organising migrant workers: a UNISON branch handbook* at [www.unison.org.uk](http://www.unison.org.uk).

<sup>32</sup> Taken from the web site of the Federation of European Employers; [www.fdee.com](http://www.fdee.com); of course the actual figures are subject to currency fluctuations, but it is the relative levels that are important here.

*accumulate money and with very long journeys to and from work, just did not have the energy to attend the classes.*

This is an example of how an itinerant work force committed to long hours and accumulating income can fail to take advantage of the language training that may be necessary for effective management of health and safety. The workers in this survey were supervised in English and employers experienced particular problems where the migrant labour force spoke a number of different languages, with no common one; where they were unable to check whether health and safety instruction was being communicated correctly because the language of instruction was not English; and where teams of migrant workers could only be moved as groups to maintain the interpretation arrangements. Thus there is evidence of language difficulties concerning occupational health and safety training and understanding. The Trades Union Confederation (TUC) has recognised this issue as have a number of other unions with various guides for workers about rights, including health and safety, in a number of different languages.

What also distinguishes the A8 migrant workforce from other migrant workers is the willingness to enter low skilled work regardless of worker qualifications. One analysis suggested that some 40% of A8 workers were employed in 'elementary' occupations, compared to just over 10% of UK and other foreign born workers (Dickinson et al., 2008). This analysis also shows that whereas a significant proportion of foreign born workers are employed in public administration, education and health, this is not the case for A8 migrants. They are more likely to be employed in manufacturing, construction, agriculture and hospitality and catering. It is this combination of longer working hours in order to maximise income, plus some language difficulties together with the apparent transient nature of the workforce which provide a combination of layers of vulnerability with regard to OHS. A reasonable assumption would be that this will result in a greater willingness to take risks and a lesser likelihood of participating in measures to achieve higher levels of health and safety.

### C. RECEIVING COUNTRY CONDITIONS

The top five sectors for workers who registered under the WRS between May 2004 and June 2008 were business and management (39%), hospitality and catering (19%), agriculture (10%), manufacturing (7%) and food, fish, meat processing (5%). Evidence that low skill jobs predominate is that the biggest group of workers registered with the WRS were classified as process operatives (28%). This was followed by warehouse operatives (8%) and packers (6%). Among those who registered in the 12 months to June 2008, 52% were in temporary employment, but this figure was much higher for some sectors, e.g. with 74% of agricultural workers in temporary employment.<sup>33</sup> Many of these have been categorised as employing vulnerable workers. The TUC Report *Hard Work Hidden Lives* illustrated areas where problems

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<sup>33</sup> *Accession Monitoring Report May 2004-June 2008 A8 Countries* Joint report by UK Border Agency, Department for Work and Pensions, HM Revenue and Customs and Department for Communities and Local Government.

are common, such as care homes, cleaning, hotels and restaurants, hairdressing and beauty, and security. This vulnerable employment affected the health of workers.

In agriculture there has been enough concern for the Health and Safety Executive to produce a leaflet for overseas workers. It includes advice for such workers as making sure that employers give sufficient instruction and training in order to work safely; making sure that safety signs are understood and making sure that the overseas worker can always speak to an experienced supervisor who can understand the worker.<sup>34</sup> Whilst these matters can apply to all vulnerable workers, including migrant ones, further research carried out for the Health and Safety Executive (McKay et al., 2006) pointed to the particular vulnerability of migrant workers in relation to health and safety. These included issues of communication and the motivation for coming to work in the UK. It is the prior lack of knowledge of the health and safety system, the desire to earn as much as possible in a short period of time and difficulties in accessing OHS training that all added to the vulnerability of such migrant workers.

The role of health and safety representatives is an important feature of the rules regulating this subject in the UK. Where trade unions are recognised for this purpose, these roles are occupied by trade union officials. There is evidence of a relationship between a lack of awareness of employment rights and being a temporary employee and not a member of a trade union. The evidence *suggests that the groups of workers that may be more vulnerable with lower awareness levels of their rights at work do in fact have lower awareness* (Casebourne et al., 2006). Many vulnerable workers are employed in workplaces where there is no union presence, although there is an increasing awareness amongst trade unions of the need for action. This lack of awareness is an issue for the enforcement of employee rights. Two of the enforcement issues identified by a UK Government report were, firstly, the low awareness of rights and how to enforce them amongst vulnerable workers and, secondly, the reluctance of vulnerable workers to report (or knowledge of how to report) problems at work.<sup>35</sup> This has, of course, serious implications for consultation on health and safety in workplaces. Although UK law provides for employee involvement, it is something that is lacking in those areas most likely to employ vulnerable workers. These include small workplaces (especially those with ten or less employees), the distribution and hospitality sector, single-site (rather than multi-site) operations, new operations (most likely to be in the private, rather than the public, sector), and non-union workplaces (*Workplace consultation*, 2008).

A further investigation identified particular difficulties which face migrant workers. These were difficulties with permits and national insurance numbers; difficulties with setting up bank accounts and with changing employers; wages and conditions – unscrupulous agencies and gangmasters, including deductions from wages for housing, cleaning, etc.; pay below the national minimum wage; being asked to sign a copy of an employment contract in the language

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<sup>34</sup> The leaflet can be found at <http://www.hse.gov.uk/migrantworkers/worker.htm#pocketcard>.

<sup>35</sup> *Vulnerable Worker Enforcement Forum – Final Report and Government Conclusions* (2008) Department for Business Enterprise and Regulatory Reform.

of the country of origin, which can be different to the one they are asked to sign in English.<sup>36</sup> This same report mentioned issues related to fitting in with the local community and the lack of information about local services, so there is an issue with regard to social exclusion or isolation. This may be especially true with regard to the many workers who are in jobs at a lower skill level than perhaps justified by their individual qualifications. One study (Anderson et al., 2006) reported feelings of isolation amongst migrant workers, although others equally found the experience of being in a new community and learning a new language to be a much more positive one. Many of these problems are associated with arriving in a new country with inadequate knowledge of language or customs, and are not necessarily unique to migrant workers, A8 or otherwise. They do, however, constitute another level of vulnerability which can make other difficulties even worse.

## V. CONCLUSIONS

Some of the layers of vulnerability suffered by migrant workers are those that might be typical of any vulnerable workforce. It is also clear that not all migrant workers are vulnerable and not all will suffer from the disadvantages described above. Those executives relocating to Canada under the NAFTA programme and those A8 workers in the UK who take up employment as doctors and teachers will not be as vulnerable as their compatriots who enter the low skilled, temporary labour force. Despite this, there is enough evidence to show that many migrant workers from both countries make up a workforce that has common characteristics in its vulnerability.

There are other differences, especially those related to the insecure immigration status of workers in the Canadian TFW programme compared to the A8 workers in the UK. A8 workers are also disproportionately employed in temporary jobs and often work through temporary agencies and gangmasters, whilst TFWs in Canada are bound to a single employer by the terms of their work permits.

That said, the layers of vulnerability approach that we outlined at the beginning of this paper makes clear that comparisons, even between groups of migrants in the same country, need to be made on the basis of multiple levels of analysis, and not just on immigration status. One of the major strengths of the approach adopted here is that it allows us to be quite specific about the OHS vulnerabilities of different groups of migrant workers.

It should also be noted that we have not attempted to demonstrate that the migrant workers we have examined suffer above-average rates of occupational injury or disease. The state of the data simply do not allow for such determinations to be made. However, it is unacceptable from a public policy point to wait for the bodies to be counted before taking action. While this is the approach that has historically driven the development of occupational health and safety

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<sup>36</sup> *Supporting the employment rights of migrant workers: policy issues and community activity* (April 2008) a briefing paper for an Oxfam/Minority Rights Group workshop, online: [www.migrantsrights.org.uk/files/briefingpaper/migrantworkers.doc](http://www.migrantsrights.org.uk/files/briefingpaper/migrantworkers.doc).

regulation, it should no longer be allowed to continue. As we noted in the introduction, migrant labour is rapidly increasing, yet little attention has been paid to the OHS implications of this development. The layers of vulnerability approach can be used to trigger preventive activity, hopefully before those vulnerabilities materialize in unacceptably high levels of work-related death, injury, disease and disablement.



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