

Global labour mobility and recognition of the citizenship boundary: The case of temporary
foreign workers in Canada and South Korea

by

Sunju Yoon
B.A., Chung-Ang University, 2011

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Supervisory Committee

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Abstract

Supervisory Committee

Dr. Oliver Schmidtke, Department of Political Science

Supervisor

Dr. Avigail Eisenberg, Department of Political Science

Co-Supervisor

This thesis investigates the citizenship boundary encountered by foreign workers in the global labour market, with a focus on Canada and South Korea. In the past few years, there has been an increase in the number of incoming temporary migrant workers to both these countries. Temporary foreign workers often struggle to exercise their legal rights in the country of residence because they lack the membership that imparts the rights and duties inherent in citizenship. Territory-based citizenship fails to address the potential for access to citizenship of these immigrants in their countries of residence and the notion of “stakeholder principle,” initially introduced by Rainer Bauböck, is suggested to provide a flexible perspective on the criteria for access to the membership. This thesis uses the case of temporary foreign workers in Canada and South Korea as a case study to argue the relationship between this membership and its actual application of providing rights and protections to the resident aliens. Stakeholder citizenship provides a means of access to certain legal rights and protections to newcomers, but the limitations placed on certain migrant workers may result in their ineligibility for stakeholder status. The thesis concludes that, if temporary foreign workers cannot gain full access to social rights and integration, they should not be required to participate fully in the duties that accompany those rights. In all cases, both countries, the host state and the sending state, should cooperate to protect the legal status of TFWs.

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November, 2014

Abbreviations

| | |
|-------|---|
| CEC | Canadian Experience Class |
| CIC | Citizenship and Immigration Canada |
| EPS | Employment Permit System (<i>Goyong heoga jedo</i>) |
| HRSDC | Human Resources and Skills Development Canada |
| IRPA | Regulations of the Immigration and Refugee Protection Act |
| ITP | Industrial Trainee Program (<i>Saneop yeonsu jedo</i>) |
| LCP | Live-in Caregiver program |
| LSPP | Low-Skill Pilot Program |
| NOC | National Occupational Classification |
| PTNP | Provincial/Territorial Nominee Programs |
| SAWP | Seasonal Agricultural Workers Program |
| TFW | Temporary Foreign Worker |
| TFWP | Temporary Foreign Workers Program, Temporary Migrant Worker Program |
| VEP | Visit and Employment Programme (<i>Bangmun Chuieop jedo</i>) |

Introduction

Around the world, massive movements of temporary workers take place across national borders in response to labour shortages. The status of these workers is a frequent cause of strife within the nations that house them, as people worry about the boundaries of membership, and whether the set of rights in a particular country should apply to those not born in that country. Freedom of mobility is a basic right of individuals, and the development of transportation and communication technologies has greatly facilitated international movement. A number of high-income countries have introduced some version of a Temporary Foreign Worker Program (TFWP, also known in some countries as a Temporary Migrant Worker Program) to manage labour immigration over the past couple of decades, TFWP has become an increasingly common avenue for hiring migrant workers. So-called Temporary Foreign Worker Systems have been growing around the world, including the Guest Workers Program in Europe, Temporary Foreign Workers Programs (TFWPs) in Canada, and Employment Permit System (EPS) in South Korea. Under the program, foreign workers enter the country on a temporary basis, and are employed in industries across the nation to solve labour shortages, generally in occupations requiring less-skilled workers. In theory, the TFWP is beneficial for not only migrant workers but also for the host state. On the one hand, temporary foreign workers (TFWs) chosen for the program can expect to experience better employment options and better wages than in their local society. On the other hand, the developed nation that hosts the TFWP reaps straightforward benefits from the cheap labour provided by foreign workers over a short-term period without incurring the increased social costs needed to integrate long-term workers as permanent residents. The system does have the potential to create problems, however. In the global market, goods and services move easily, but cross-border movements of people and labour are restricted. Increasingly, those

workers are demanding access to rights in their destination states that are generally only authorized to citizens of those states.

While TFWs are present in a host state, the host state must decide whether to permit this mobile group to access rights and duties that are typically only available to citizens. This situation creates challenges for the nation-state that is accountable to and responsible for their citizens, since it must shift its citizenship boundaries to accommodate resident aliens. Citizenship has long been understood as a status entailing certain rights and duties that proceed from the legal relationship between citizens and a nation-state. Traditionally, this relationship is defined on the basis of territory. However, this traditional definition can cause the marginalization of foreign workers and make it difficult for them to gain access to the full set of rights and protection. “The case of temporary migrant workers is one of the most poignant examples of the invisibility and exploitation that can result when people live and work in a state whose basis for the dissemination of rights and freedoms is the legal category of citizenship.”¹

In response to this condition, various theories have been put forward to resolve the problem of the mismatch between the legal status of citizenship and its territorial boundedness of nation-states. One such theory is the “stakeholder principle,” described by Rainer Bauböck. Bauböck (2009) suggests that citizenship can no longer be clearly confined to territorial borders; ² he proposes that the boundary of political authority must be redrawn in those cases where international migration has led to a situation in which citizens find themselves living outside the country whose government is supposed to be accountable to them and inside a country whose government is not accountable to them.³ However, this paper will focus on access to the

¹ Nandita Sharma and Donna Baines, “Migrant workers as Non-Citizens: The Case Against Citizenship as a Social

² Rainer Bauböck, “The rights and duties of external citizenship,” in *Citizenship Studies* 13, no. 5 (October 2009): 475.

³ Bauböck, “Stakeholder Citizenship: An Idea Whose Time Has Come?,” *Migration Policy Institution* (2008): 2.

citizenship rights in a political community with regards to the stakeholder principle, rather than seeking to understand political boundary renewal. The principle of stakeholder citizenship contends that individuals who have a long-term interest in a particular community should have the ability to claim citizenship in that community. This principle highlights the flexibility of citizenship status, which simultaneously allows TFWs to access various rights, while also stipulating certain restrictions that block the full inclusion of all people who are categorized as TFWs.

Starting from this premise, the present thesis will describe the notion of stakeholder citizenship and its application to the case of the TFWs in Canada and South Korea; I will focus on both the theoretical explanation of the sociopolitical notion of stakeholder citizenship and the implications of its actual implementation. The research questions explored by this thesis in relation to stakeholder citizenship are as follows: (1) How does stakeholder citizenship apply to the case of TFWs? Are TFWs legally entitled to identify as stakeholders in order to claim the social benefits of their country of residence? If this is possible, under what conditions can it occur? And if it is not possible, what are the concerns? (2) How can TFWPs be modified to improve the protection offered to migrant workers?

Outline of the thesis

To address these questions, the paper is organized into three main chapters. The first chapter explores the notion of territory-based citizenship, which confers a specific set of rights and duties constituted by and constitutive of membership. I discuss how the applicability of this notion of citizenship has been brought into question as a result of the inflow of non-citizen

migrants labourers, and propose to approach the problem by renewing our definition of citizenship to include *stakeholder citizenship*. Stakeholder citizenship applies to all individuals that hold a permanent interest in a certain community. It expands the citizenship boundary to include resident foreigners and limits that citizenship according to each citizen's future intentions and the duration of their residency in the nation in question. I will also discuss an alternative theoretical perspective that holds that individual rights and belonging should derive not from state-based citizenship but from a more global concept, which holds that global standards of human rights should apply beyond the boundaries of individual nation-states. The second chapter discusses the present conditions of TFWs through a comparative study of TFWPs in two states, Canada and South Korea. I provide a general overview of the purpose of the program, a description of the various TFWPs available in both state, and a discussion of the administration mechanisms and categories that distinguish TFWs according to skills levels and ethnicity. In the third chapter, I consolidate my discussion into three aspects of policy provisions - political, social and civic rights. I illustrate the challenges that TFWs have faced in each of these arenas as non-citizens under the TFWP, which pre-determines the rights and protections that TFWs can hold in their country of residence. The labour-receiving states focus on the economic benefits of this program so as to solve the labour shortage problems by easily securing cheap foreign workers, while they also have to protect workers social status and rights in the work place. However, TFWs are denied access to a large swath of citizenship rights in the country of residence, despite their participation in legal obligations in the host states in general. In the fourth chapter, the process of transition to long-term residency in the destination society will be discussed. There are two different pathways available to TFWs wishing to prolong their stay in the country of residence: rotation policy and permanent residency. Particularly interesting is the

similarity in the manner in which these two different states, Canada and South Korea, treat TFWs, especially those who are low-skilled. Whereas skilled foreign workers can easily transfer their temporary status to permanent, less-skilled foreign workers not only face barriers to achieving permanent residency, but also are required to go back and forth to their country of origin through the “rotation policy,” which aims at encouraging worker circulation. This policy leads to increased economic benefits in host states by reducing the costs of worker integration. Finally, in the fifth chapter, the correlation between the theoretical boundary of stakeholder citizenship and its actual application to TFWs in Canada and South Korea will be explored. I will show how the interpretation of the stakeholder principle is not an absolute standard but relative, depending on the intentions of the country interpreting that principle. In particular, the stakeholder principle fails to provide a clear explanation for dealing with TFWs; although in theory, the principle provides a flexible tool that permits resident aliens to access citizenship rights, the short-term residency of most TFWs makes it very difficult for them to achieve stakeholder status. TFWs are presently unable to acquire stakeholder citizenship in either Canada or Korea. The systemically regulated status of TFWs imposed by individual states denies their authority to demand citizenship rights, and the stakeholder principle restricts them from achieving that membership. I conclude the thesis by offering a discussion on how current policies can be revised to improve the situation of TFWs. TFWs need special help that requires both states, the sending state and the receiving state, to cooperate to manage their citizenship policies. Otherwise, TFWs should not be required to participate in the full legal obligations unless they can access the full set of rights.

Chapter 1: Citizenship boundary and International migration

This chapter sets the framework for understanding the elements of citizenship and proposes that the notion of “stakeholder citizenship” should be introduced to address the challenges faced by nations due to the free movement of populations. Presently, citizenship comprises both rights and duties to members, with membership determined on the basis of territorial boundary. Due to the rise in immigration in recent years, it is necessary that our international understanding of citizenship should shift from a territorial-nation-based concept to a post-national concept or a trans-nation-based concept. Bauböck (2009) introduces the “stakeholder principle” as a criterion for determining who is entitled to access the benefits of citizenship in a particular country. This principle states that those who are permanently subjected to a certain political community should gain membership status in the community. Other criteria, like Yasemin Soysal’s “post-national citizenship,” hold that the universal principle of human rights should form the basis upon which states distribute rights and membership.

The notions of citizenship: rights, membership, and boundary

Territorial jurisdiction, the boundaries of membership, and the rights and duties conferred by that membership constitute the basic elements of citizenship. “Citizenship can be interpreted as membership in a nation and the related state authority to regulate that membership and, in terms of rights and duties for the citizens, assign meaning to it.”⁴ Citizens have basic rights and legal obligations (duties), which are derived from membership in a certain territory. On the one

⁴ Oliver Schmidtke, “National closure and beyond,” in *Of states, rights and social closure: governing migration and citizenship*, eds. Oliver Schmidtke and Saime Ozcurumez. (Palgrave Macmillan, 2008), 3.

hand, the laws of citizenship identify those who are eligible for membership status; on the other hand, they specify a set of rights and duties that those persons hold.

T.H. Marshall defines citizenship as the compendium of basic rights – civil (civic), political, and social rights – promised to the members of that state. Civil rights may include the rights to liberty and equality in law, the right to own property, freedom of speech and the right to justice; political rights include the right to vote and participate in the political process; social rights include the right to basic welfare and full participation in society.⁵ In addition, in exchange for these rights, citizenship confers upon its members certain duties that they must perform on behalf of the state. In other words, “the legal bond between individuals and a state endows these individuals with certain rights and obligations.”⁶

Citizenship not only signifies inclusion in a specific community and access to a set of associated rights, but it also carries with it a substantive intent to exclude those who are not a member in a community. That is, citizenship crucially determines who can become a member of a certain state. Membership rights have always been the subject of significant political scrutiny, since the definition of citizenship carries with it the privilege to decide who belongs in a certain state. “The right of nation-states to determine the membership of ‘their’ societies creates the conditions by which a hierarchy of national rights and entitlements (or lack thereof) is organized.”⁷ When Hannah Arendt defines citizenship as “the right to have rights,” it indicates that the fundamental concept of those rights is achieved when a state recognizes a person as a citizen of its body. Historically, citizenship has not been given to all people at the same time,

⁵ Peter Dwyer, *Understanding Social Citizenship: Themes and Perspectives for Policy and Practice* (UK: Policy, 2004), 4.

⁶ Maarten Peter Vink and Rainer Bauböck, “Citizenship Configurations: Analysing the multiple purposes of citizenship regimes in Europe,” *Comparative European Politics* 11, no.5 (2013): 622.

⁷ Sharma, “The “difference” that Borders Make: “Temporary Foreign Workers” and the Social Organization of Unfreedom in Canada,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle. (McGill-Queen’s University Press, 2012), 40.

even among those who were qualified to obtain that citizenship. Throughout history, the laws of citizenship have applied very differently to women, people of colour, and those marginalized by state policies, regions and locations.⁸ As a result, there are inherent contradictions between the two notions of citizenship: one notion is linked to rights and advocates principles of inclusion, and the other is linked to membership in a community and advocates principles of exclusion, which negates any achievements made with the respect to the former.⁹

Citizenship implies both inclusion and exclusion at the same time. It operates simultaneously as a boundary that can be expanded to embrace others, and a boundary that can be restricted to exclude people. In this sense, citizenship is a mechanism for inequality, which elevates or dismisses certain individuals on the basis of the set, often arbitrary, conventions of a particular community. The state, which comprises the members of a specific community, has the right to exercise discretion in providing its citizenship to others. “Citizenship is the mechanism by which a state recognizes an individual as belonging to it, and thus implies substantial rights of protection as well as rights against interference by the state.”¹⁰

TFWs as a distinct category of non-citizens and the dilemmas created by territory-based citizenship

Temporary foreign workers (TFWs) allow states to justify their territorial citizenship boundaries by categorizing foreign workers in different terms. Both South Korea and Canada have operationalized unequal treatments of workers by linguistically dividing residents into ‘Canadian’ / ‘Korean’ workers and ‘foreign’ workers. That is, the state separates TFWs from

⁸ Sharma and Baines, “Migrant workers as non-citizens,” 82.

⁹ Tanya Basok, “Human Rights and Citizenship: The Case of Mexican Migrants in Canada,” *Center for Comparative Immigration Studies* 72 (April, 2003): 2.

¹⁰ Bauböck, “Changing the boundaries of citizenship: the inclusion of immigrants in democratic polities,” in *Selected Studies in International Migration and Immigrant Incorporation* 1, eds. Marco Martiniello and Jan Rath. (Amsterdam University Press, 2010), 279.

native workers both legally and socially, which in turn prevents TFWs from accessing the full set of citizenship rights in the country of residence. However, although TFWs are restricted in their ability to retain social rights or access to the labour market, they are nevertheless required to participate in the legal duties that go along with membership.

TFWs, as “non-citizens,” are highly exploitable and excluded compared to “citizens” in the same nation space. Citizenship status governs access to a full range of rights, with the result that non-citizen status strengthens TFWs’ marginalization, even while they retain the responsibility to social duties such as paying taxes or contributing to pension funds like citizens.¹¹ “This differentiation is embedded in migrant policies through processes of separation and categorization.”¹²

The standard stipulation that territory-based citizenship can only be acquired through descent (*jus sanguinis*) or by birth (*jus soli*) has prevented migrant workers from enjoying the opportunities of membership. *Jus sanguinis* allocates citizenship to a person whose parents are the citizens of the country in question; *jus soli* regards the birthplace as a standard for citizenship.¹³ Citizenship is thus associated with the territorial nation-state into which one was born or into which one’s parent was born. Thus, only the state can enforce citizenship rights and distinguish citizens according to their country of birth or their mode of acquiring citizenship.¹⁴

Those principles automatically exclude individuals whose membership derives from a different

¹¹ Abigail B. Bakan and Daiva Stasiulis, “Foreign Domestic Worker Policy in Canada and the Social Boundaries of Modern Citizenship,” *Science & Society* (1994): 11.

¹² Jenna L. Henneby and Janet McLaughlin, “The Exception that Proves the Rule: Structural Vulnerability, Health Risks, and Consequences for Temporary Migrant Farm Workers in Canada,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle. (McGill-Queen’s University Press, 2012), 121.

¹³ Dong-Hoon Seol, “Global Dimensions in Mapping the Foreign Labour Policies of Korea: A Comparative and Functional Analysis,” *Development and Society* 34, no.1 (June, 2005): 79.

¹⁴ Bauböck, “Changing the boundaries of citizenship,” 301.

territory, they provide no recourse for dealing with those people who are not “entitled” to access the social welfare of the state.

Moreover, although frequently denied full access to the rights provided to citizens, TFWs are nevertheless required to follow the legal obligations of the state, such as payment of taxes or pensions. It is clear that locating citizenship within a territorial conception and permitting the bundle of citizenship rights to derive from that territorial conception fails to take into account the mismatch between territory-based membership and persons who hold rights without membership. Rights are granted to the people who live within territorial boundaries, but mobile groups like TFWs challenge this premise for citizenship. As a result, there is an ambiguous relationship between rights and membership in terms of citizenship, and the line where membership begins can often be blurred, so that citizens and non-citizens co-exist under similar circumstances within the same jurisdiction. This phenomenon has raised concerns about the validity and applicability of nation-based citizenship, which in principle equates territorial occupancy with membership, requiring the state to provide rights only to those who were born within a certain territorial demarcation.

In conclusion, we have observed above that defining citizenship on the basis of territory does not allow us to account for the situation in which non-citizens hold rights and duties without membership within a jurisdiction. Rights that have traditionally been associated with national belonging are separated from it because of those who have gained access to rights without membership status. Moreover, the rights of the people who are categorized as temporary migrant workers are already determined by regulations and laws of a territory-based nation state on the basis of their entry regardless of their membership status. Nonetheless, TFWs are very much part

of Canadian and Korean society in a sense that they reside, pay tax and work the same way citizens do. The TFW category itself marginalizes their status in the labour market and society within the country of residence.

Stakeholder Citizenship and TFWs

In order to account for this large and growing group of people, citizenship boundaries need to be dynamically re-defined. Bauböck's notion of "stakeholder principle" provides a mechanism for determining who is eligible to claim membership. One innovative aspect of stakeholder principle is its provision that allocation of citizenship should apply both within and beyond the territory boundary. On the other hand, Yasmine Soysal believes that this provision does not go far enough; she argues instead that supernational institutions should be integrated to create alternate boundaries for the allocation of citizenship rights.

Membership boundaries and stakeholder citizenship

Bauböck defines citizenship as "an equal membership in a self-governing political community;" he proposes the stakeholder principle as the standard to determine who can become a member in a certain community. "A self-governing political community is a community comprising all individuals who have a right to membership."¹⁵ Citizenship is not merely about passive entitlements, but also about active participation or representation in the making of laws. "In democracies, political legitimacy is grounded in the idea of popular sovereignty, that is, of a self-governing political community"¹⁶ in which members are subject to the authority of their community and simultaneously provide that authority, in the sense that they represent the

¹⁵ Bauböck, "Rights and duties of external citizenship," 478.

¹⁶ Bauböck, "International migration and liberal democracies: the challenge of integration," *Patterns of Prejudice* 35, no.4 (2001): 37.

community and regulate their own membership. People in the community have a responsibility to that community, inasmuch as they have the political authority to participate in the decision-making process that organizes their society. Therefore, the individual residents themselves can transform the identity of the nation-state. Such a shift is ongoing in many states today, reflecting several factors including history, public opinion, and the international political environment. A community needs a stable core of resident citizens who exercise membership. Bauböck proposed the stakeholder principle as a measure for determining who has a right to access that membership.

The stakeholder principle: criteria

Given the concerns sketched above, the stakeholder principle has been proposed as a standard against which to determine who has a claim to membership in a particular polity. This principle holds as its premise the notion that people who have a permanent interest in a certain community have a stake in a future of that community. Stakeholder principle emphasizes not only permanent interest in the community but also the connections between individuals within that community. Two criteria, the biographical subjection criterion and the dependency criterion, play a key role in defining which individuals are eligible to argue for stakeholder status in certain states. Only individuals who satisfy particular requirements of stakeholder status are eligible to claim citizenship in a certain political community. Self-governing political communities should include those individuals as citizens whose circumstances of life link their individual autonomy or well-being to the common good of the political community.¹⁷

The stakeholder principle first requires long-term interest in the community of residence; this criterion of stakeholder status is essential because it affects the legitimacy of a political

¹⁷ Bauböck, "Rights and duties of external citizenship," 479.

community. “Individuals who are or have been subjected to a community’s political authority for a significant period over the course of their lives”¹⁸ are eligible to claim citizenship in that community according to the biographical subjection criterion. Those individuals are eligible to claim citizenship not only because their own life prospects are interlinked with the future of the political community, but also because, by their actions in that community, they have embraced the shared responsibilities and burdens of self-government. Thus, the stakeholder principle considers an individual’s relationship to the community from both a future-oriented and a life-course-oriented perspective. This long-term membership can be maintained beyond territorial and non-territorial boundaries. On the one hand, resident foreigners can demand membership in their country of residence based on their future intentions; on the other hand, expatriates can demand membership in their country of origin based on their historical background. This idea does not dissolve the relevance of the territorial boundaries of a nation-state, but instead, it expands the boundary to encompass a broader swath of society.

Second, the dependency criterion holds that the political community has a responsibility to provide protection and basic rights to the people who rely on that community. A permanent population depends on its state’s protections and provision of rights, because each member’s well-being is linked to that of other members as part of the common good. An individual who resides in the community and participates in social duties like education, taxation and employment should have the right to rely on protection from that political community, since the obligations they perform are not only connected to others’ well-being in that society but also fall within the criteria for determining citizenship within the political community. Individuals who actively represent themselves and participate as members of a community qualify to hold stakeholder status. In other words, the political community is responsible for protecting those

¹⁸ Ibid., 479.

who access its rights and perform its responsibilities, but it need not protect individuals who make no community contribution, like tourists.

Consequences and limitations of stakeholder citizenship

Permanent interest in a certain community and an intention to continue life-sharing with other members of that community are the main characteristics of stakeholder citizenship. It suggests that the individuals' circumstances of life encompass not only political authority but also the ability to enjoy rights in the political community. Furthermore, this definition has the capacity to apply to TFWs, who are newcomers to their country of residence; to determine a TFW's eligibility to claim citizenship, the stakeholder citizenship considers his or her future intention to become a stakeholder.

The stakeholder principle addresses the internal cohesion of a community composed of individuals who are permanently involved in forming a self-governing political entity. Internal cohesion of people can come from various sources, such as co-habitation over a long period of time, sharing social relations with others, and participating in the labour market. Each of these actions transforms the culture and history of a certain community as well as the identity of the polity. Stakeholdership in this sense is not just a matter of individual choice, but is determined by basic facts of an individual's biography, such as having grown up in a particular society, being a long-term resident there, or having close family members in another country where one does not presently reside.¹⁹ The definition of "stakeholder" introduced above simply takes into account the fact that residence in a region over the long-term allows noncitizens to forge significant links with others that transform the political community. Their life-long perspective helps to create the

¹⁹ Bauböck, "Stakeholder Citizenship," 4.

future of the community; at the same time, their past and present experiences influence and are influenced by the shape of the community.

The stakeholder principle contends that immigrants are eligible to access citizenship rights by virtue of their involvement in the social affiliation of a political community with overlapping social connections and continually shifting political boundaries. Resident foreigners can claim the benefits of citizenship on the basis of their co-residence during the period of their stay. Immigrants become directly involved in the transformation of society by strongly tying their own culture and history to their life in their new country of residence. “Societies that are themselves divided into many different interests and identities but are politically integrated through the rule of law, equal citizenship and democratic representation.”²⁰ That is, immigrants can be considered as equal who involve in the internal diversity of society.

This principle conveys entitlement to citizenship on individuals with long-term interests in the community; under the stipulation, individuals who are permanently dependent on and subject to a community are eligible to claim membership in that community. Having an intention to settle down to a certain political community over the long term is the initial step one must take in the process of becoming a stakeholder. Those people are considered lifelong members whose whole life is tied to a certain political community; their long-term residence in that community provides them with the authority to claim membership. In other words, this principle permits even long-term resident foreigners to claim citizenship on the basis of their co-residency during the period of their stay, provided that they can be seen to share political interests, and it permits those foreigners to participate in their own self-governing society. Moreover, these foreign residents are eligible to obtain social welfare in their temporary state, because their rights and protections are associated with those of other members. Finally, according to the stakeholder

²⁰ Bauböck, “International migration and liberal democracies,” 48.

principle, TFWs are qualified to access citizenship in their country of residence provided that they can show themselves to be stakeholders in that country; long-term residency within a shared social boundary entails equal basic rights.

Problems with the stakeholder principle

The stakeholder principle proposes that those having permanent interests in a community or contributing to a community's future should be qualified for access to citizenship rights according to the length of their stay. Under this system, the status of an individual's involvement and entitlement within the political community is determined by how long one has stayed and will stay within the community. There are two main objections to this notion. First, "if all long-term residents enjoyed equal rights, then citizenship would lose its liberal value and would instead become a mere symbol of national belonging."²¹ Second, the stakeholder principle neglects the short-term contribution of resident foreigners. Those residents are regarded as "sojourners," who stay for a certain period until they leave, and are not to be treated as equals. Their citizenship rights derive from their current residence, and do not constitute full membership status; furthermore, they will no longer enjoy those rights after their departure from the political community. That is, the stakeholder principle over-includes people whose stay is long-term, and excludes people whose residence is short-term.

Application of the stakeholder principle to newcomers who are not current or past residents of the community presumes those newcomers' future intention is to take up long-term residency. It creates a contradictory situation for temporary migrant workers, whose status falls somewhere between that of sojourners and that of long-term residents. Those who are able to obtain permanent residency are entitled to access citizenship, while those who are legally

²¹ Bauböck, "Rights and duties of external citizenship," 493.

legislated as short-term residents cannot access citizenship regardless of their involvement in community building. In other words, the spirit of the stakeholder principle clearly recognizes only long-term TFWs as significant enough to deserve access to citizenship.

The stakeholder principle is a future-oriented standard, and when it comes to TFWs, this future-oriented characteristic makes its application ambiguous; the ability for a TFW to stay in the country of residence long term relies on the original members in a self-governing political community regardless of their actual involvement as stakeholders. Some TFWs readily acquire permanent residency to prolong their stay, thus opening up the possibility of becoming stakeholders, while other TFWs are merely considered targets for deportation. Even if a person under the TFWP is eligible to claim membership in a country of residence as a stakeholder, this membership cannot be freely given, because the jurisdiction or laws of individual states play a gatekeeper role. As a result, if TFWs are not suitable candidates for permanent residency or the visa system does not guarantee their long-term stay, these workers will never be able to access stakeholder citizenship despite their ongoing community involvement. Each state operates at its own discretion in regulating both membership and recipients and this discretion applies not only to the retention of their present members, but also to the inclusion of new members under their authority. Hence, the ability to determine whether TFWs should be considered long-term stakeholders falls under the sole purview of those who already hold membership. Likewise, this system implies that rights for TFWs are not derived from their dependence on the destination state but from the administrative discretion of individual states whose political institutions regulate each resident's legal status.

Furthermore, there is an ambiguity between "citizenship" as a political term and the factors that allow access to citizenship on a social level. Within the realm of politics, citizenship

is defined as equal membership in a self-governing community. This is a definition that highlights the political participation that individual members undertake within their self-governing community. However, stakeholder citizenship, which outlines the way in which membership is achieved, relies upon basic facts of an individual's biography, such as having grown up in a particular society or being a long-term resident there.

The stakeholder principle is designed to regulate access to citizenship status, not to determine the boundary of the self-governing community. "Stakeholder conditions provide rough guidelines on how wide the circle should be drawn with regard to access to citizenship status, but they do not define a self-governing democracy in the narrower sense of a political community, each of whose members has to enjoy equal opportunities of representation in democratic legislation."²² Therefore, a situation arises in which certain people should have political rights as members of a self-governing community, but do not have a political right as stakeholders. Residents who will be more immediately exposed to the political decisions that they authorize through their vote have a qualitatively stronger claim to self-government.²³

Accordingly, stakeholders can enjoy civil and social rights while being denied access to political rights, especially voting rights. This classification of different rights to different segments of the population suggests that civil and social rights are derived on the basis of demonstrated dependency, and are thus guaranteed to those who deserve to be protected by the institution, whereas political rights are not guaranteed to all stakeholders. Such a segregation of rights arises in part to assuage citizen concern that migrant persons can weaken the political authority of the community; under this system, temporary migrants are permitted access to a certain number of civil and social rights and duties, but are not permitted to participate in the

²² Bauböck, "Rights and duties of external citizenship," 491.

²³ *Ibid.*, 488.

political space. The lack of political rights denies residents a voice in representation, a chance at political participation, and the ability to meaningfully express their interests. If citizens regard themselves not as ruled over but as ruled by their state representatives, underlining political rights as the rights to be constituted by membership boundary, stakeholders cannot gain any protection. In conclusion, the boundaries for social and civil rights can be easily expanded, while the extension of political rights is more delicate.

To sum up, the stakeholder principle creates barriers to citizenship for those who are not long-term residents. Since many TFWs can only stay for a short period of time, any community involvement they exhibit within that duration cannot be taken into account by the stakeholder citizenship principle and count in favor of their life-long interest in the community. Short-term TFWs affect the integration of a community by overlapping their cultures, participating in the labour market and maintaining legal obligations, but are ignored as subjects to the political authority according to the stakeholder principle. Requiring TFWs to demonstrate long-term involvement in their country of residence discriminates against a wide swath of TFWs. The original members of the political community manage the citizenship status for TFWs by allowing and denying them opportunities to assure their long-term stay. According to the standards that an individual state provides, TFWs may or may not be deemed to belong to a certain community, depending on the standards set and regulated by that community. In this sense, stakeholder citizenship guarantees autonomous institutions of the community the discretion to delineate the pathway that determine who can become a stakeholder and thus achieve community belonging. Under this strategy, short-term TFWs are only eligible to gain limited civil and social rights, but no political rights.

Post-national citizenship and its limitation

So-called post-national citizenship, global citizenship or supranational citizenship is a concept that supports the proliferation of extended membership rights across national borders. This principle highlights the fact that the civil, political and social rights enjoyed by citizens of most nations are derived from universal human rights. Transnational regimes or corporations are endeavoring to move the discretion of membership to global levels; under such a system, migration rights would be considered human rights, detached from the boundaries of individual polities. This approach shifts the citizenship boundary from the national level, at which states allocate rights and membership, to the global level, with membership based on the principles of universal human rights. In particular, Soysal argues that the individual rights associated with national belonging should be legitimated within a larger framework of human rights;²⁴ she advocates for the rights of migrants to be discussed on the international stage and for a shift toward post-national membership and away from the current nation-state system.²⁵ Furthermore, Nandita Sharma suggests that the boundaries of citizenship should be widened to the global level and that “society should be redefined as occurring, not between citizens, but between co-members of a global community.”²⁶ As a result, these arguments call for the consolidation of a global form of belonging and rights to replace territorially bounded citizenship. “Foreign residents may be simultaneously offered membership in an international community of citizens, as defined legally, and denied citizenship in the national and/or local community, as defined in terms of belonging and identity.”²⁷

²⁴ Yasemin Nuhoglu Soysal, “Post-national citizenship: Rights and Obligations of Individuality,” *The Wiley-Blackwell Companion to Political Sociology* 33 (2012): 384.

²⁵ Soysal, *Limits of citizenship: Migrants and Post-national membership in Europe* (University of Chicago Press, 1994), 143.

²⁶ Sharma, ““difference” that borders make,” 46.

²⁷ Basok, “Post-national Citizenship, Social Exclusion and Migrants Rights: Mexican Seasonal Workers in Canada.” *Citizenship Studies* 8, no.1 (March, 2004): 51.

Although the above proposal sounds promising, there is a problem with the universality of the human right framework: it cannot guarantee that the scope of moral obligations will be translated consistently within each state, furthermore, it downgrades the self-determination of individual states. “Certain conceptualizations of citizenship can be influenced by the discourse on human rights, but transnational regimes of virtue cannot disengage citizenship from the state’s jurisdiction.”²⁸ Even if the principle of post-national citizenship regulates each state’s ability under international law to administer citizenship, this principle cannot supercede the power of individual states. Global regimes have no means to force a particular definition of citizenship on nation-states, and the nation-state exists as the key player that determines who is able to become a member and obtain rights. Human rights regimes cannot displace citizenship, because they do not exist as formal pieces of legislation with enforceable rights and obligations to a territorialized citizenry.²⁹ As a result, global citizenship does not replace the citizenship provided by a nation-state, although it may raise the concern that citizenship boundaries should be extended so that transnational norms of human rights can be guaranteed for migrants.

In conclusion, this chapter has shown that the traditional definition of citizenship, delineated by territorial boundary, cannot accommodate the phenomenon of TFWs as non-citizens who obtain certain rights and duties but lack membership status. Their lack of membership exposes TFWs to vulnerability in their destination state. I introduced the stakeholder principle as a better means of understanding who is entitled to access legal membership and basic rights in a certain community. According to the stakeholder principle, people who have a permanent interest in, or reliance on, a community should be eligible to

²⁸ Aihwa Ong, "Citizenship in the midst of transnational regimes of virtue," *Political power and social theory* 20 (2009): 305.

²⁹ *Ibid.*, 305.

access citizenship rights. However, some difficulties arise in applying this principle to newcomers who have no history in the community. TFWs must prolong their stay in order to become long-term residents. However, in order to prolong their stay, TFWs must fit the permanent residency criteria designated by the country of residence, which, in the case of Canada and South Korea, means that they must be highly skilled. Moreover, even when newcomers are able to access certain social and civil rights based on the stakeholder principle, they are still forbidden from accessing political rights. People who do not have political rights struggle to represent themselves, and are therefore easily exposed to vulnerability. In the next chapter, I will use the case of TFWs in Canada and South Korea to examine the process of inclusion/exclusion inside national boundaries and reveal the vulnerable position that TFWs face in both countries. I will also weigh evidence to consider whether TFWs are qualified to claim membership as stakeholders in their country of residence.

Chapter 2: Overview of TFWPs in Canada and South Korea

I begin this second chapter by providing a general introduction to the Temporary Foreign Workers Programs (TFWPs) in Canada and South Korea. These programs provide the basis for a wide range of temporary migration policies. This section is divided into three parts: an overview of the TFWPs, an outline of the administration mechanisms of the program, and a discussion of the divided categories of TFWs with regard to the skill levels, ethnicity and/or gender. I will first explain the general purpose of hiring foreign workers as TFWs in Canada and South Korea and describe the various programs for TFWs that have been developed in both states. Then, I will examine who is in charge of both the operation and protection of this program. Finally, I will discuss the classification of TFWs with regards to skill levels and ethnicity. In the last part of this chapter, I will suggest similarities and differences between the two countries' programs and elaborate on the important features of each program: the pre-determined contract that reinforces systematic discrimination against TFWs during their period of stay and weakens their opportunity to obtain membership status in the community.

Purposes of the TFWPs

The main goal of TFWPs is to allow the host state to hire foreign workers to fill labour shortages at a low cost; foreign workers, in this context, are foreign nationals with non-permanent resident status who have crossed the borders to access labour markets during designated periods. TFWPs permit host states to reap the benefits of importing labour from all over the world without having to finance the overhead costs of labour reproduction.³⁰ Migrant

³⁰ Sharma and Baines, "Migrant workers as non-citizens," 93.

workers admitted and employed under the TFWPs are given restricted work permits that specify a workplace and duration of stay before their arrival at the destination state. Their working conditions are designed before their entry and the contract is a detailed job description that stipulates the terms and conditions of employment, including the minimum and maximum number of hours of work per week and the rate of pay.³¹ In addition, the program is not only employed by various states as a solution to a high demand for domestic labour, but it is also seen as a way for international societies to help solve global inequalities and supplement the labour opportunities offered in developing nations. According to proponents of the program, free mobility of labour encourages workers to move around to find a better environment globally, and to expect a higher standard of living and better wages in comparison with those available in their home country. Remittance by migrant workers not only helps their families and home communities but also can contribute to the equality of global wealth as capital from wealthy states spreads to poor states. For example, the Seasonal Agricultural Workers Program (SAWP) in Canada hires workers for its agricultural industry. This is often represented as a form of foreign aid for or co-development with impoverished southern countries.³²

Despite these much-touted benefits, however, TFWPs are a double-edged sword. In the destination state, TFWPs are mostly beneficial, economically, but there are also concerns about their integration. On the one hand, TFWPs solve the labour market shortage problems of both skilled and non-skilled workers in many developed countries. “TFWs are a flexible and effective

³¹ Lenard and Straehle, “Introduction,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle (McGill-Queen’s University Press, 2012), 11.

³² Kerry Preibisch and Jenna L. Hennebry, “Buy local, Hire global: Temporary migration in Canadian Agriculture,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle (McGill-Queen’s University Press, 2012), 52.

way to solve the labour shortage as a disposable source of workers.”³³ On the other hand, international societies are worried about the relationship between TFWs and global justice. The global justice principle holds that all individuals are entitled to be treated equally, yet temporary workers cannot gain full access to protection during the “temporary” period of their work-stay. Sometimes, these workers give up their right to access social benefits in their home country and agree to poor work conditions in their destination country on the promise of better wages and a higher standard of living, yet often the reality of their life during this work period does not line up with these expectations. Furthermore, even if TFWPs provide an effective way to fill labour shortages, “some governments fear that temporary migrant workers might displace domestic workers and bring down wages for permanent residents,”³⁴ because filling low-skilled jobs with TFWs eliminates the need to increase wages for those jobs. As a result, TFWs provide a flexible, low-wage workforce to fill jobs at the bottom of the labour hierarchy, which consequently discourages native workers from filling these jobs, due to the stigma of low social status and low remuneration attached to them.

History and various TFWPs in Canada and South Korea

1) TFWPs in Canada

Canada’s TFWP began life as an emergency measure for handling labour shortages, but nowadays the program has become essential as a means of access to an unlimited supply of just-in-time labour throughout the country. In the late 1970s, the Canadian labour market faced an economic crisis and the inflow of TFWs to Canada has significantly increased since the Non-

³³ Lenard, “How Does Canada Fare? Canadian Temporary Labour Migration and Comparative Perspective,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle (McGill-Queen’s University Press, 2012), 291.

³⁴ Arthur Sweetman and Casey Warman, “Canada’s temporary foreign workers programs,” *Canadian Issues*, ed. Christopher Worswick (Metropolis Spring, 2010), 22.

immigrant Employment Authorization Program (NIEAP) was launched in 1973 and authorized the inflow of temporary employers. NIEAP first defined the non-immigrant foreign workers category, in which people were recruited as temporary, indentured “migrant workers.” It was initially targeted at professional occupations such as academic appointments, business executive positions and engineering jobs, and has expanded to lower skill levels due to demand from employers.³⁵ By the 1990s, local employers had substantially pressed the government to increase the breadth of the temporary migrant workers program. Industries experiencing labour shortage problems, including the nursing and sewing industries in Manitoba and oil, gas and construction sectors throughout the country lobbied the federal government with their political clout.

Table 1. Admission of permanent residents and temporary foreign workers to Canada, selected years, 1980-2012

| | Permanent residents | Temporary foreign workers |
|------|---------------------|---------------------------|
| 1980 | 143,141 | - |
| 1985 | 84,343 | - |
| 1990 | 216,452 | 99,572 |
| 1995 | 212,865 | 86,419 |
| 2000 | 227,456 | 116,250 |
| 2005 | 262,242 | 122,365 |
| 2010 | 280,689 | 179,075 |
| 2011 | 248,748 | 190,568 |
| 2012 | 257,887 | 213,573 |

(source: CIC, Facts and Figures, 2006 and 2012, as cited in Institute for Research on Public Policy Insight, no.4, p.3)³⁶

TFWs in Canada come from various countries, including Mexico, several Caribbean states, the global South, and the Philippines. Table 1 shows that the annual admission of TFWs has increased dramatically over the past several decades, while the number of permanent

³⁵ Delphine Nakache, “The Canadian Temporary Foreign Worker Program: Regulations, Practices and Protection gaps,” *The Research Alliance on Precarious Status Workshop: Producing and Negotiating Precarious Migratory Status in Canada* (2010): 2.

³⁶ Christopher Worswick, “Economic Implications of Recent Changes to the Temporary Foreign Worker Program,” *Institute for Research on Public Policy (IRPP) Insight*, no.4 (October, 2013): 3.

residents show a much less significant change. This dramatic increase in the inflow of TFWs was the result of a conscious decision on the part of the federal government to help firms that were struggling to find Canadian workers to fill job positions.³⁷ The labour demand is high in certain low-skilled industries, inspiring employers to actively force the federal government to establish solutions. The Canadian government has continuously increased the number of low-skilled temporary foreign workers permitted into the country including the National Occupational Classification (NOC) C and D and the Low-Skill Pilot Program (LSPP) in order to ensure a flexible and cheap labour supply in Canada from the economic benefit of immigrants.

Canada has a long history of welcoming TFWs in both general and specific sectors to take advantage of the extensive range of cheap labour. To encourage temporary labour migrants to fill the domestic employment needs, the government has established various programs over the years, including the Seasonal Agricultural Workers Program (SAWP) and Live-in Caregiver program (LCP) in the mid-1990s, and the LSPP and high-skilled workers program.

The SAWP was established in 1966 to hire migrant farm workers to help meet agricultural labour shortages through a series of bilateral agreements between Canada and a number of other countries, including the Caribbean countries and Mexico. It has been especially heavily utilized by agricultural industries in Canada. A bilateral agreement operates between two states: in the case of foreign worker programs, between the sending state and the receiving state. The sending country manages recruitment of labour and decides wages and working conditions. Workers under the SAWP are permitted to work during eight months of the year and to return year after year. They are banned from traveling with their family and are required to return to their country of origin upon completion of their contract.

³⁷ Ibid., 4.

The objective of the LCP is to import migrant household workers to provide care for children, the elderly, or persons with disabilities in family households. Foreign caregivers, mostly women from the global South, are lured with the benefit of applying for permanent residency after being employed for a period of twenty-four months during a four-year period. On the one hand, caregivers must live in the family's home, a compulsory live-in requirement that frequently leads to extra working hours.

LSPP was introduced to facilitate the entry of temporary labour workers into low-skilled occupations to Canada. "Demand for a much broader range of low-skilled workers to perform jobs in a range of different sectors increased as Canada's economy grew in the early years of the twenty-first century."³⁸ The LSPP opens the gate for TFWs in various fields including construction, manufacturing, services and agriculture. Employers had asked the government to expand the program to permit temporary workers in other fields such as oil, gas and construction sectors, and as a result, in 2002, the federal Liberal government was promoted to create the LSPP. This program is officially known as the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D).³⁹ The intention of the LSPP is to facilitate the filling of a broad range of lower-skilled jobs with less government involvement. Work permits for low-skilled workers under this program were initially restricted to one year, at the end of which workers had to leave the country for four months. This period was extended to two years in 2007. Human Resources and Skills Development Canada (HRSDC) assesses employers' Labour Market Opinions (LMO) and the requirement for admission is a high school diploma or two

³⁸ Judy Fudge and Fiona MacPhail, "The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour," *Comparative labor law and policy journal* 31(2009): 22.

³⁹ Christine Hughes, "Costly Benefits and Gendered Costs: Guatemalans' Experiences of Canada's "Low-Skill Pilot project,"" in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Strahle (McGill-Queen's University Press, 2012), 139.

years of occupation-specific training (NOC C), or a short work demonstration or on-the-job training (NOC D).⁴⁰

Recent changes in Canada's immigration policies with regard to TFWs increasingly reflect short-term labour needs. First, note that the LSPP has kept growing since it was introduced in 2002; 21 new occupations have been added to this program in low-skilled fields including construction, hospitality, food and beverage services, manufacturing and residential cleaning; in addition, Alberta, British Columbia and Saskatchewan have recently expanded the range of occupations for which temporary foreign workers may be nominated to include NOC C and D occupations in specific industries.⁴¹ Second, LMO has simplified the entry of TFWs by allowing employers to recruit workers individually. Employers directly hire workers through several application processes, resulting in the formation of a specific contract between two participants, the employer and the potential TFW. This process may increase the flexibility in the job markets, but it means that employees in the LSPP are exposed to more abusive conditions than others in TFWPs. For example, under the LSPP, "workers are not eligible for provincial healthcare on arrival, but instead are subject to a three-month probationary period, during which time employers must provide workers with access to a private health insurance plan."⁴²

Finally, in 2008, Citizenship and Immigration Canada (CIC) launched the Canadian Experience Class (CEC) designed to simplify the transition to citizenship for immigrants who do well in the labour market. TFWs whose work experiences in professional occupations or in other skills occupations are subjected and by introducing this new class, the Canadian government is

⁴⁰ Nakache and Kinoshita, "Canadian Temporary Foreign Worker Program: Do Short-term Economic Needs Prevail Over Human Rights Concern?," *Institute for Research on Public Policy Study*, no.5 (2010): 5.

⁴¹ *Ibid.*, 37.

⁴² Hennebry and McLaughlin, "The Exception that Proves the Rule," 125.

trying to offer permanent resident status to workers who comply properly with the standards. However, the rigid criteria associated with the program mean that the shift from temporary to permanent immigrant is facilitated only for high-skilled workers.

2) TFWPs in South Korea

Temporary migrant workers' policy in South Korea is designed to provide increased benefits to people who have ethnic ties to the nation. Korean TFWPs follow two different policies: one is to hire foreign workers in low-skilled industries, especially at small- and medium-sized companies to do the so-called "3D" jobs; dirty, difficult and dangerous; the other is to preferentially fill temporary jobs with ethnic Korean immigrants through special programs. The former program is known as the Employment Permit System (EPS, *Goyong heoga jedo*); this program has been reformed in recent years by broadening the scale of industries and rights for migrant workers. The latter is the Visit and Employment Programme (*Bangmun chueiop jedo*), which specially targets ethnic return migrations mostly from China (*Joseonjok*) or Russia.

Table 2 Admission of temporary migrant workers and admission of illegal workers to South Korea, selected years, 1994-2012

| | Temporary migrant workers | Illegal migrant workers |
|------|---------------------------|-------------------------|
| 1994 | 28,328 | 48,231 |
| 1995 | 38,812 | 81,866 |
| 1998 | 47,009 | 99,537 |
| 2002 | 39,661 | 308,165 |
| 2005 | 113,000 | 204,254 |
| 2007 | 175,000 | 114,295 |
| 2009 | 101,955 | 177,955 |
| 2012 | 231,538 | 85,424 |

(Sources: Ministry of Justice, Republic of Korea, *Ch'uilpuk kwalli t'onggyeyonbo* [Statistical yearbook on departure and arrival] and Korean Statistical Information Service)

Table 2 shows a substantial growth in the number of TFWs in South Korea since the program was legislated. Over roughly the same time, there was a significant increase in the number of illegal workers. “In 2002, a report issued by the Office of the Prime Minister suggested that there were an estimated 337,000 foreign workers in South Korea, 90% of whom were unskilled labourers and almost 80% of whom were illegal workers.”⁴³ The number of undocumented migrant workers decreased when the state start admitting foreign workers through the EPS. Most of the workers come from neighboring countries like China, Philippines, Pakistan, Bangladesh and Nepal.

Importing TFWs into Korea began in the late 1980s as a solution to labour shortages arising from the dramatic economic development the country was experiencing. At the time, however, there was no policy in place to regulate the admittees. At the initial stage, the government was not prepared to deal with such a sudden increase in the number of migrant workers and no polices were in place to regulate the dramatically increased inflow of foreign nationals.⁴⁴ In 1991, the Industrial Trainee Program (ITP; *Saneop yeonsu jedo*), the first foreign workers program in Korea, was initiated, which made it possible for foreign workers to be hired as trainees. Under the ITP, foreign workers were hired as trainees, not as regular workers, and they primarily worked in factories without training.⁴⁵ They were initially only allowed to work in large companies, but through the lobbying of small- and medium-sized companies, the ITP was expanded in 1993 and the number of trainees grew rapidly. In this expanded ITP, the foreign workers were classified as trainees for the first year of their stay and allowed to remain for two further years as employees. However, the employers continued treating them only as trainees.

⁴³ Wang-Bae Kim, “Migration of Foreign workers into South Korea: From Periphery to Semi-Periphery in the Global Labor Market,” *Asian Survey* 44, no.2 (2004): 321.

⁴⁴ Seol, “Foreign Workers in Korea 1987-2000: Issues and Discussions,” *Kasarinlan: Philippine Journal of Third World Studies* 15, no. 1 (2009): 116.

⁴⁵ *Ibid.*, 116.

Unskilled foreigners who entered Korea as trainees did not have the same rights as local employees. Even the minimum wage laws did not apply to these temporary foreign workers, as a result of which they consistently received lower wages than local workers in the same jobs. Moreover, the trainees had few employee benefits and little protection, and many TFWs experienced delayed payments, poor working conditions, industrial accidents, and sexual and racial discrimination in their workplace. During the same period, the number of undocumented migrant workers dramatically increased; “many of these workers would enter the country through tourist or short-term visiting visas and occupy positions in a variety of small and medium-sized businesses in Seoul and its satellite cities.”⁴⁶ Illegal workers suffering from severe human rights violations held rallies with legal trainees in order to appeal their working conditions and bring public attention to their human rights issues. The Korean government could not fully stem the inflow of these undocumented workers, but the transition to EPS nevertheless opened more spaces for new workers.

The EPS was introduced as an alternative to the ITS, and it was initially designed with the intention of giving temporary migrant workers necessary legal protections to provide the same status and protections retained by native workers; this new system was added to the previous system and began operating independently in 2007. During the early part of the first decade of the 21st century, the EPS and the ITP operated concurrently, and TFWs could enter the country as either workers or trainees depending on the decision of the employer. “The main aim of the EPS was not only to eradicate human rights violations, but also to replace undocumented workers with legal foreign workers.”⁴⁷ The EPS is mainly used to hire foreign workers in 3D jobs in textile, plastic, assembly, and auto-parts industries, in small- and medium-sized firms.

⁴⁶ Ibid., 116.

⁴⁷ Seoul, “Global Dimensions,” 102.

When the EPS was introduced, the cutoff size for businesses was fifty employees, but has recently been expanded to three-hundred employees. Under the system, management and employment is undertaken at the government level through a bilateral agreement between Korea and the labour-sending country. In EPS, foreigners may enter the country on fixed-term contracts as migrant workers for up to three years and the contract must be renewed every year with the employer. Also, such workers may not change their workplace.

In addition to the EPS, the Visit and Employment Programme (VEP; *Bangmun Chuieop jedo*) was introduced in 2007 to facilitate the entry and departure of ethnic return migrant workers from China and Russia. Ethnic Korean-Chinese workers, so-called *Joseonjok*, constitute the majority of VEP migrant workers in Korea. The Korean government has begun to promote the return of ethnic Koreans from abroad to strengthen the domestic economy.⁴⁸ The ethnic return migrants, who are legally classified as foreigners, have always been located in a privileged category in comparison to other TFWs; they are paid higher wages and are employed in better-paying jobs. For example, a short-term service work visa is available for work in the labour-service industries for two years exclusively for *Joseonjok*. South Korea's first preference for foreign workers is these fellow Koreans, who are felt to "pose less of a threat to South Korea's tight-knit, homogenous society."⁴⁹ TFWs under the VEP, who hold H-2 visa status, can work in any company, predominantly in the construction and service industries, for a maximum of three years and can freely enter and depart from Korea for five years.

There have been notable policy improvements in South Korea in recent years, increasing the social benefits for TFWs in terms of human rights; however, the Korean government has also

⁴⁸ Ibid., 104.

⁴⁹ Dong-Hoon Seol and John D. Skrentny, "Ethnic return migration and hierarchical nationhood: Korean Chinese foreign workers in South Korea," *Ethnicities* 9, no. 2 (2009): 154.

shown some near-sightedness in dealing with temporary migrant workers in the TFWPs. The policy is reactionary, with new legislation being implemented only after a hardship has occurred or a social issue has been raised. The government tends to become aware of TFW issues only when civil movement activists or international organizations raise questions about discrimination against foreign workers. In other words, social benefits for migrant workers are not provided until remarkable movements or requests happen.

Pressure from both these fronts has operated as a political and social force to shape the development of the Korean TFWP. It is not only global regimes that demand protection for migrant workers, but also labour movements that strive to promote labour values as well as better wages and working conditions for workers. First, several foreign workers' movement and advocacy coalitions supporting migrant workers have appeared to exert pressure on the government, causing the Korean government to keep revising TFWPs and improving benefits for migrant workers. A remarkable labour movement occurred in January 1995, when Nepalese workers demonstrated at Myeong Dong Cathedral in Seoul to protest unjust treatment from their employers and their exploitation by brokers. The event, which protested the labour conditions, lower wages, and longer working hours for foreign workers as compared with domestic workers, captured the attention of the public and the Ministry of Labour. Second, international organizations have stepped in to encourage the provision of social benefits for TFWs in South Korea. Since October 15, 1998, all migrant workers have been covered by the Labour Standards Act, which is a product of the continuous advocacy by migrants and supporting Non-Governmental Organizations (NGOs).⁵⁰ Also, provision of industrial accident insurance to illegal foreign workers was legislated in 1992 thanks to international organizations, including the United Nations Development Program (UNDP) and the International Organization for Migration

⁵⁰ Seoul, "Foreign Workers in Korea," 121.

(IOM) that pressed the Korean government to solve their foreign immigration problems by improving their human rights record. In each of these cases, the country has followed the expectations of international society and civil society and tried to address the rights and the needs of resident foreigners for protection.

Administration and protection of the TFWPs in Canada and South Korea

It is not only the Canadian and Korean federal governments that organize and operate the TFWPs; many actors in each host state play key roles in managing the programs. The variety of players who are involved in determining the entry and stay of temporary migrant workers creates protection and communication gaps in terms of the system's operation. Neither Canada nor Korea has a clear representative department assigned to govern the overall TFW system; instead, a variety of involved parties take partial charge of the operation and protection of TFWs. In addition, only the host countries determine the extent to which rights and protections are allocated to TFWs.

1) Complex and confusing administration of TFWPs in Canada

The responsibility for the organization and protection for TFWs in Canada falls under the purview of various departments in the federal and provincial governments. Imbalance in the administration of TFWPs between government actors at the provincial and federal levels makes it hard to navigate the operation appropriately and gives employers an inordinate amount of power in governing the program.

First of all, the overlapping jurisdiction between government agencies produces communication gaps, causing complications in the operation of the TFWP. Three federal players

administer the program, which creates opportunities for miscommunication and confusion.⁵¹ The CIC is responsible for immigration, and controls the workers' immigration documents in collaboration with HRSDC; the Canada Border Services Agency (CBSA) opens the port of entry for migrant workers. HRSDC provides an LMO to foreign workers and also checks the terms and conditions of the recruitment before TFWs come. Then, workers ask a work permit to CIC and only those who get it can come to the state when they pass the final door from manCBSA. These agencies have very different philosophies and approaches, which often leads to situations in which, for instance, a CIC officer issues a work permit, but the CBSA officer that reviews that permit blocks the migrant worker from entering the country.⁵²

Furthermore, it is the responsibility of each provincial government to undertake the protection of migrant workers, while the federal government governs the administration of the TFWP. "The federal government regulates entry and stay periods and unemployment insurance, but almost everything else is covered by provincial governments."⁵³ Both the control and discipline of the program depend on federal legislation, whereas the jurisdiction of the provinces is limited to legislating work-related protections in the context of federal restrictions. For instance, workplace safety and alleged discrimination are governed, to a significant degree, by provincial legislation and regulation.⁵⁴ In these cases, the federal government merely provides guidelines for the housing or monitoring of workers, without details. In short, the provincial and territorial governments have greater duties to assist temporary migrant workers, but a number of challenges to this process arise, due first to the reluctance of many Canadian provincial

⁵¹ Nakache, "Canadian Temporary Foreign Worker Program," 12.

⁵² *Ibid.*, 5-6.

⁵³ Tom Carter, "Provincial Nominee Programs and Temporary Worker Programs: A Comparative Assessment of Advantages and Disadvantages in Addressing Labour Shortages," in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle (McGill-Queen's University Press, 2012), 192.

⁵⁴ Worswick, "Economic Implications of Recent Changes," 12.

governments to administrate issues and second to the limitation of provincial power in this area by federal restrictions. Each province has individual organizations to support worker protection under the Provincial Employment Standards Act; provincial jurisdiction is more likely to produce the support workers need. For example, the Manitoba Worker Recruitment and Protection Act require the province to monitor workplaces and to penalize employers who fail to comply.⁵⁵

Second, the fact that there are no overall administration systems in place to manage the program and protect TFWs means that a huge amount of power is offloaded onto employers. The employer has a great deal of power to manage and control the temporary migrant workers right from the initial stages, because the employee must sign an employment contract before initiating the work permit. Details of the contract, such as minimum wages and hours of work, are determined by employers before migrant workers arrive. Besides, even though employment contracts contain mandatory provisions, if an employer fails to provide protection to TFWs, the federal government cannot use these contracts to enforce the employment rights, because the federal government does not have the authority to get involved in employer-employee relation,⁵⁶ instead, the protection of those workers falls under provincial jurisdiction. For example, workers under LSPP have a right to receive return airfare paid by their last employer; however, there are no regulations to enforce compliance by the employer when he/she refuses to pay.

Especially in the case of this program, the employer is understood to be the sole arbiter of the operator. “LSPP is passing responsibility for setting the terms of migrants’ entry, work, and living conditions from the government – from HRSDC and CIC – toward the employer.”⁵⁷ Not

⁵⁵ Hennebry, “Permanently Temporary? Agricultural Migrant Workers and Their Integration in Canada,” *IRPP*, no.26 (2012): 8.

⁵⁶ Nakache and Kinoshita, “Canadian Temporary Foreign Worker Program,” 23.

⁵⁷ Hughes, “Costly benefits and gendered costs,” 149.

only is the program oriented to demands from employers, but they also drive it, and its regulations are not constrained under the bilateral agreement. The employer-driven system of LSPP means that the employer has discretion to influence workers' return to their home state and determine their ability to reenter the program in following years. For example, the employer writes an evaluation form at the end of the program that is sent to the worker's country of origin; the contents of this form strongly influences the worker's future ability to apply for rehire as a TFW in Canada. Additionally "because of the employer-oriented nature of the LSPP, economic and labour market considerations have taken priority over migrants' rights and the quality of their experiences in Canada more generally."⁵⁸

In summary, the lack of an effective operating system to govern the TFWP not only imbues the employer with enormous power to manage their workers but it also weakens the temporary migrant workers' ability to protect their rights. In addition, it means the TFWs are limited in their ability to rely on government agencies to provide protection and integration. When individual employers enjoy the legal prerogative to control all details of workers' lives, a serious danger of exploitation and discrimination results.

2) Lack of mechanisms to manage the TFWPs in South Korea

There are no specific departments governing and protecting TFWs in South Korea. Several divided department bodies are involved in this task, which leads to managerial confusion and inefficiency overall. Civil advocacy groups have taken charge of providing the assistance that migrant workers need, such as help receiving delayed payment and receiving proper pay levels (including compensation and health care services); governmental agencies, by contrast,

⁵⁸ Ibid., 150.

merely provide general guidance. For example, the Foreign Workplace Policy Division, chaired by the prime minister, was set up in cooperation with other bureaucratic departments. The Ministry of Employment and Labour is authorized to administer the government policies and supervise job markets. This ministry selects the labour-sending countries, sets quotas for each industry and provides permission to employers, who have the opportunity to choose their workers. The Ministry of Justice determines workers' visa status. However, these government players lack the control to coordinate and monitor policies; the responsibility to safeguard the rights of TFWs falls to other governmental agencies or NGOs. Further, since no specific provincial rules exist in the matter of protecting TFWs, all the work in this area is done by independent organizations with minor municipal support. Given that the majority of TFWs are employed at central industrial cities, there is little recognition in the provinces concerning the plight of migrant workers. The Migrant Workers' Welfare Support Division in Ansan is the single department covering migrant workers issues for all municipalities.

Second, there is no specific legislation to protect migrant workers, although advocacy groups have done good work developing workplace protections for TFWs. Two organizations governed by the Human Resources Development Service of Korea (HRDKorea) in government levels provide assistance to foreign workers: HRDKorea itself and the Korea Support Centre for foreign workers merely provide general assistance for the entire immigrant population, not specifically aimed at foreign workers. Both provide educational programs, language support and counselling services to foreign workers who face difficulties.

Additionally, labour and human rights groups mainly monitor and speak to government to call for justice on behalf of foreign workers. NGOs have been active not only in supporting the creation of labour movements for workers but also shoring up support for human rights

legislation in the face of a lack of interest from government agencies. The Joint Committee with Migrants in Korea (JCMK) has been a major advocacy organization supporting migrant workers both historically and currently. This organization has occasionally used labour movements to express its demands; one major movement they were involved in was the Nepalese workers' demonstration at Myeong Dong Cathedral in 1995. This demonstration remains to date the biggest action influencing government policy surrounding migrant workers in Korea. However, conflicting interests between civil organizations make it hard to gather power to improve protections for migrant workers.⁵⁹ While some communities focus on the welfare of workers, others are more interested in an improvement of the system itself. The majority of organizations support addressing the problems that migrant workers are struggling with such as delays in receiving payments or industrial accident compensation; however, groups like the Migrant Trade Union (MTU; Seoul Gyunggi and Incheon migrant workers labour union) strongly support labour movements that intend to change the TFWP structure itself. This organization has concerns about long-term solutions that foster rights for migrant workers by reforming the irrational system or improving working environments.⁶⁰

The lack of regulation and administration of TFWPs in Korea means that TFWs confront serious challenges when seeking to protect their rights. Both presently and historically, the Korean government has not been focused on supervising discrimination in workplaces or human rights abuses from employers of TFWs. Rather, the vast majority of this task is shouldered by informal groups such as NGOs and communities, who do their best to protect migrant workers from the hardships inflicted on them by local employers.

⁵⁹ Kyung-Tae Park, "Characteristics of Migrant Workers' Movement in Korea," *Economy and Society* 67 (Autumn, 2005): 101.

⁶⁰ *Ibid.*, 103.

The different categories of TFWs

TFWs are classified as non-citizens, and may be further subcategorized according to their skills level, gender, and ethnic backgrounds. These categories reflect asymmetric conditions beneficial to the labour-receiving state and ensure the vulnerability of short-term migrant workers — especially low-skilled workers — during their life in the country of residence.

1) Occupational inequality among TFWs in Canada

Low-skilled TFWs are categorized as a subordinate class of workers at both the national level and within labour markets in Canada. TFWs are categorized by Canada's immigration laws on the basis of skill level, and this categorization affects the treatment they receive. "Several significant consequences arise for the worker and the employment relationship from this differentiation of labour flows."⁶¹ For example, high-skilled workers can bring their spouses or children with them to Canada for the duration of their work term, and study permits for the children will be granted, while low-skilled workers are excluded from all of these rights. Furthermore, high-skilled workers can easily extend their work permits without leaving Canada, while the permits granted to low-skilled workers are stricter. Low-skilled workers are subject to restrictions on extending their work permits beyond a two-year period.⁶² The difference in attitudes towards different occupational statuses is also apparent when employers are hiring workers. Employers who desire to hire low-skilled foreign workers need more patience than those who want to hire skilled foreign workers; they must advertise for a longer period and

⁶¹ Sarah Marsden, "Assessing the regulation of temporary foreign workers in Canada," *Osgoode Hall Law Journal* 49, no.1 (2011): 47.

⁶² *Ibid.*, 47.

specify underemployed communities and post special wages.⁶³ In addition, an occupational hierarchy continues along race and gender divisions. Low-skilled workers who cannot access the labour mobility or social entitlements of their high-skilled counterparts are mostly from the global South. Most of the high-skilled workers come from wealthier countries, while people from the global South and particularly women occupy lower-paid jobs.

2) *Three-layered categories among temporary foreign workers in South Korea*

A three-layered hierarchy among TFWs exists in South Korea, consisting of high-skilled American-Koreans, low-skilled Chinese-Koreans (*Joseonjok*), and general temporary migrant workers from numerous Asia countries who want to work in Korea. The policy towards TFWs is restrictive towards non-Korean immigrants but offers special preferences for ethnic Koreans. As stated above, the Korean TFWP divides TFWs themselves into foreigners and semi-foreigners according to their shared ethnic background with Koreans. Because of this distinction, general TFWs encounter more difficult situations than any others; not only are they located at the bottom line in the labour market but their rights, benefits, and protections are also distributed based on their ethnic position.

First of all, TFWs have access to different visa statuses according to their skill levels, which determines their social welfare and benefits during their stay. “Labour policy has focused on complementing the Korean economy through foreign labour, thus it gives priority to professionals and skilled workers, even encouraging their naturalization, while strictly controlling the inflow of less-skilled workers.”⁶⁴ In particular, low-skilled TFWs cannot extend their visa status voluntarily; extension is only possible when an employer requests it. By contrast,

⁶³ Ibid., 50.

⁶⁴ Seol, “Global dimensions,” 99.

high-skilled TFWs can easily extend their status on their own. Also, high-skilled workers can bring their families with them to Korea, while low-skilled workers cannot.

Additionally, classifying foreign workers by skill levels plays into the public perception that people from Asia are poor, unskilled and located in the bottom lines of the labour market, while "whites" (note that their actual race is not important; if they come from an advanced country they are perceived to be "white") are professional and well-educated. High-skilled temporary migrant workers in professional and technical fields mostly come from developed Western societies such as the US, Canada, UK or Germany, while the majority of low-skilled workers, mainly engaged in the small manufacturing companies, come from low-income regions of Southeast Asia such as Nepal, China, Bangladesh, Indonesia and the Philippines.

Foreign workers are further categorized according to their ethnic background, a policy that reflects the Korean government's goal of prioritizing the selection of Korean-heritage migrant workers. The state gives priority to people with similar ethnic backgrounds, so-called *dongpo* (blood-related compatriots),⁶⁵ and treats them preferentially in comparison to visible minorities who are not the majority race in South Korea. "Ethnic returnees are descendants of those who crossed national boundaries and established settlements in the north-eastern provinces of China in the area formerly called Manchuria, Siberia, Sakhalin Island, and Central Asia in the late Chosun dynasty from the 1860s to 1900s and during the Japanese colonial rule in 1910-1945."⁶⁶ These "ethnic returnees" come to South Korea not only for their own economic purposes but also because of their interest in the development of the Korean economy. Besides, they share the same ethnic background and language as native Koreans, which cause them to be received preferentially by employers compared to other workers. Ethnic Korean workers receive

⁶⁵ Seol and Skrentny, "Ethnic return migration," 157.

⁶⁶ Seol, "Foreign Workers in Korea," 126.

better wages and have access to richer job markets than other temporary migrant workers, with special policies or different work visas specifically granted to them. For example, in 2002, a short-term service work visa for *Joseonjok*, Chinese-Korean return worker, was launched to expand possibilities for these migrants to work in labour-starved service industries such as restaurants, cleaning companies, and nursing facilities.⁶⁷

However, despite the beneficial preferences from the state, ethnic returnees — especially *Joseonjok* who occupy low-skilled jobs — have also experienced discrimination by the Korean state. The state provides better legal openings for American-Koreans than it does for the *Joseonjok*. Thus, *Joseonjok* feel (correctly) that the Korean government is preferentially selecting ethnic returnees from wealthy advanced states, especially America. For example, the Overseas Korean Act, enacted in 1999, which primarily facilitates the entry and exit of American-Koreans, is an overt demonstration of the government's intention to encourage immigration of wealthy ethnic returnees from Western countries. This policy guarantees benefits for ethnic people from Western countries in order to encourage them to come to Korea to work in skilled or professional jobs.⁶⁸ At the same time, people who are employed as manual workers in Korea, which includes the vast majority of *Joseonjok*, are excluded. By contrast, the government merely offers special work visas or larger trainee programs for *Joseonjok* to work in low-wage jobs without providing any particular social benefits.

Characteristics of the TFWP in Canada and South Korea: Economic Implications of the Program and Systemically Restricted Conditions

In this chapter, I explored the case of TFWPs in Canada and South Korea and provided a general explanation of those programs, including the purpose of the programs and the various

⁶⁷ Ibid., 154.

⁶⁸ Seol and Skrentny, "Ethnic return migration," 157.

versions. I also discussed the administration system particularly as regards operation and protection, and illustrated that TFWs themselves are divided into separate groups based on skill level, ethnical background, and gender. Due to the continued rise of labour shortages in the 1990s, both Canada and South Korea introduced TFWs as part of their labour market strategy, which exhibited both similar and different patterns. For instance, Canada has operated various programs in specific fields, while South Korea has developed a single general program and a special program geared exclusively towards ethnic Korean migrants. Obviously, the policies are designed to facilitate management of TFWs rather than to treat TFWs as resident-citizens who may seek stakeholder citizenship. That is, the policies focus on improving benefits to the host states, and as such, they may increase the vulnerability of TFWs.

First, each government's objective in bringing in foreign workers under temporary work permits is obvious: to fulfill labour shortages in areas where domestic workers are unlikely to work with people who will work for less money than native citizens. Canada has been clear about its economic intentions toward the TFWs, and South Korea has also openly recognized the foreign workers' considerable contributions towards resolving labour shortage problems. The ultimate goal of this program is economic development, and both states have similarly approached temporary migrant workers to fill a range of needs.

Second, both countries, Canada and South Korea, have created separate departments to administer and carry out the TFWP; this system can increase discrepancies among different pieces of legislation and reinforce the disadvantages faced by temporary migrant workers who wish to appeal their rights. "The overall TFWP involves a number of key players who do not always take full responsibility for the protection and well-being of TFWs."⁶⁹ The government agencies that control the policy and support protection for workers are divided and isolated.

⁶⁹ Nakache, "Canadian Temporary Foreign Worker Program," 10.

Additionally, the government treats the administration of the program and the distribution of worker protections as separate issues. The ambiguity of the management system has resulted in a lack of effective mechanisms to operate policies. It also places employers in a position of power and exacerbates the barriers that foreign workers face in accessing social benefits.

Third, TFWs are unequally treated not only because of their non-citizen status but also because of their skill levels and/or ethnicity. The state restricts rights and freedoms of foreign workers, imposing discriminatory practices according to different categories such as “sending” government, “skilled” workers or “ethnic return” workers. Both states have created a range of TFWPs, designed to discriminate between high-skilled and low-skilled temporary workers. Moreover, TFWs in South Korea experience two levels of discrimination based on occupational levels and ethnic status. Additionally, the unequal status of employees is related to the intrinsic non-citizens status of temporary migrant workers in both states, and increases their exposure to discrimination in daily life in the destination state. “Low-skilled migrants occupy a doubly unequal status vis-à-vis, first, citizens and, second, high-skilled migrants, who in most cases are able to attain, and indeed are encouraged to attain, citizenship”⁷⁰ Even though low-skilled foreign workers have bolstered the economy significantly by resolving the labour force shortage for small labour-intensive firms or other labour markets, the existing categories created by individual states make it difficult or impossible for these workers to gain access to similar rights as domestic workers.

Finally, the pre-conditions of workers’ contracts systemically block TFWs from access to rights in their destination states. Details of the employment contracts for migrant workers are designed before their arrival without their input through government players in both the host country and the sending country, or by the employers in the host state. The goal of this process is

⁷⁰ Lenard and Straehle, “Introduction,” 4.

ostensibly to protect TFWs from exploitation, but in practice, it does the opposite. It officially prevents migrants from designating their own workplace or accommodation; it restricts mobility and reinforces the vulnerability of foreign workers by automatically fixing the social benefits under the regulation. Most migrant workers experience a different environment from the one described in the contract when they arrive in the state, but they have no rights to demand change because the contract does not permit it and the TFWs are not able to break the contract.

In conclusion, TFWPs are of interest to the host states, and thus supervision of them also relies on the host states. While TFWs are present in a host state, it is the responsibility of that state to administrate the system and to ensure that this mobile group is able to access its rights and duties. The sending state does not have enough power to protect workers officially during their stay as TFWs in the host country. TFWs are affected by the legislation that the Canadian and Korean governments have passed, which reflects their preferences for highly-skilled workers and, in the case of South Korea, for migrant workers who share Korean ancestry. These facts contribute to increase the difficulty faced by low-skilled TFWs during their work periods. “TFWs are less able to supervise the treatment of their citizens or intervene on their behalf.”⁷¹ During their residence period, migrant workers are treated as citizens neither of their country of origin nor their country of residence.

Furthermore, the fact that the conditions of TFWs are predetermined upon their entry to the state contradicts the stakeholder principle. The stakeholder principle is a residence-based concept in terms of newcomers which requires that the political community provide protections and basic rights to those who reside there. Such a principle can apply to TFWs only in limited measure, since the state-driven system not only determines the range of their freedom but also

⁷¹ Hughes, “Costly benefits and gendered costs,” 150.

rejects the prospect of awarding them full protection equivalent to that of domestic workers. Moreover, even though the stakeholder principle emphasizes the duration of one's stay as the key factor identifying stakeholdership, individual states consider skill level as the key characteristic providing access to citizenship.

This chapter provided an overview of TFWPs in Canada and South Korea with a focus on three components: program details, administration systems, and different categories of TFWs. I have shown that TFWs are discriminated against based on the pre-contract drawn up on their behalf, the isolated operation mechanisms of provincial and federal administration, and preferential treatment in terms of skill levels or ethnical background. In the next chapter, I will illustrate how those characteristics of TFWPs influence the vulnerable conditions faced by TFWs in Canada and South Korea.

Chapter 3: The rights of TFWs in Canada and South Korea

This section illustrates how the status of TFWs and their pre-conditioned contract relegate TFWs to highly exploited conditions in terms of the legal rights that they hold in the destination states. It will examine the civil, social and political rights provided to TFWs regardless of their non-citizen title. There are differences between rights and duties officially attached to citizenship status and the practical experience of migrants in gaining access to them. Temporary migrants have accumulated social, civic rights and even some political rights in their country of residence,⁷² yet those claiming rights are often denied.

Civil rights: internal mobility

Civil rights guarantee workers protection of life, liberty, and property, the right to freedom of conscience, and certain associational rights.⁷³ Freedom of mobility within the labour market and geographical movement within the country are the main concerns in the context of TFWs. The right to move and to stay is one of the essential, common rights that citizens are free to access, but which is forbidden to TFWs. TFWs are the poster children for free global movement, but this movement is severely curtailed when they arrive in the destination state. For example, Filipinos, one of the largest migrant worker groups in Canada, go abroad due to the labour shortages in foreign domestic economies; they move to various states as workers but their mobility is blocked once they settle down in the destination state with a work permit.

⁷² Basok, "Human Rights and Citizenship," 3.

⁷³ Seyla Benhabib, *The rights of Others: Aliens, Residents, and Citizens*, (Cambridge: Cambridge University Press, 2004), 145.

Although the U.N. supports the guidelines protecting mobility rights for migrant workers, it does not guarantee these rights strongly. The residential rights for TFWs are stated in Art. 39 of the U.N. Convention on Migrant Workers:

Article 39

1. migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there
2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention⁷⁴

The wording of this article reflects the position that the freedom to move in the country of residence is a human right to which migrant workers should have access. However, the majority of the states that support this convention are migrant-sending states rather than receiving states.

1) Restricted internal mobility in Canada

The restrictions on internal mobility occur in the areas of “freedom of occupational choice” and “change of residential area.” The former is due to the fundamental status of temporary workers, which is typically tied to a single authorized employer; the latter is due to a compulsory housing requirement. First of all, officially, all TFWs are allowed to change

⁷⁴ Eugénie Depatie Pelletier, “Under legal practices similar to slavery according to the U.N. Convention: Canada’s “non white” “temporary” Foreign Workers in “low-skilled” occupations,” (paper presented at the 10th National Metropolis Conference, Halifax, Canada, April 5, 2008): 21.

employers, but this is hard to implement in practice because their work permits are issued to a single authorized employer. This implies that workers cannot leave their employer even if positions with better wages come up. Even if TFWs are eligible to change their workplace, this is hard to apply in practice; workers must find a new employer to support them and obtain a new work permit, which can take an extended amount of time even if the process is reduced. The workers in SAWP are a good example of limited domestic mobility. SAWP workers, migrant farm workers, are immobile in Canada under the terms of the bilateral agreement; this restriction is written into their contract. The authorities of both countries must sanction workplace changes for SAWP workers. “They are mobile and travel long distances to work on Canadian farms, yet they are immobilized once in Canada and restrained from changing employers at will, from traveling freely in the country, and from dwelling outside the premises assigned to them by their employers.”⁷⁵ Moreover, TFWs are confined to designated locations. Workers tied to a single employer are also limited to certain geographical locations. Especially in the case of SAWP and LSPP workers who are employed in agricultural industries, the farms where they work are generally located outside of the urban centers and are isolated workplaces. Those workers cannot easily leave the property unless the employer provides a transportation system. The bilateral agreement specifies that SAWP workers cannot move without permission from their employer. The contract also specifies that the employer should take the workers outside for shopping and errands once a week, which means the freedom to move for those workers depends entirely on their individual employers.

Second, TFWs are limited in their ability to change their residence. Workers must live in certain places: either on their employer’s property, or nearby their work places. For instance

⁷⁵ Patricia Tomic and Ricardo Trumper, “Mobilities and Immobilities: Globalization, Farming, and Temporary Work in the Okanagan Valley,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle. (McGill-Queen’s University Press, 2012), 76.

Live-in Caregivers (LICs), who provide household work to Canadian families, are required to live in the same residence as their employer; workers in SAWP must live in on-farm housing while paying up to seven percent of their wages for the lodging expenses; employees under the LSPP do not have to live with their employer, but are required to live nearby. Restricted housing causes exploitation, confinement and marginalization for TFWs. In particular, LICs, whose main job is care work, are frequently overworked because they live in the same place with their employer, who can easily require them to continue working long after their regular working hours. Moreover, even though some programs oblige TFWs to reside in employer-provided housing, there are no standardized housing requirements provided by the federal government, a situation which often leads to humble environments and poor housing conditions.

2) Limited workplace changes in South Korea

Temporary migrant workers under the EPS have limited permissions for workplace changes but no restriction on residence in South Korea. The state controls freedom of mobility within the country for TFWs for many reasons. First, the Korea Immigration Service justifies blocking the internal mobility of migrant workers within the borders as a means to prevent illegal workers dispatched from employers or private actors. Second, the Korean government constrains the mobility of migrant workers in order to protect native workers. There is a concern that if migrant workers could move their workplaces, they would choose not only low-skilled work but also other local jobs that could deprive local workers of these opportunities.

The internal freedom to change workplace for TFWs is legally limited to 3 times, recently revised to 4 times, during their stay. Employees can only move due to the shutdown or temporary closure of their workplace. The cancellation of an employment contract, strike, or

layoffs by the companies are acceptable reasons, but none of those acceptable reasons are related to the practical situations that migrant workers typically encounter, such as human rights violations or discrimination. This so-called “three-times rule” causes the workers to worry about deportation. Although, officially, EPS policy considers worker injury or abuse by employers a valid reason for applying for a change of workplace, in practice, reporting employer abuse or complaining about their situations is hard for migrant workers due to the worry about deportation. Furthermore, TFWs in seasonal job markets such as agriculture, forestry, and fisheries face another problem related to restricted mobility: even if their contracts are awarded for a three-year period, the same as other TFWs, they may only work a certain number of months and then be laid off during the rest of the year without the opportunity to change workplace or obtain another job.

TFWs in Korea have the freedom of residence in that they do not necessarily have to live in their workplaces and they build ghettos in certain places where they can live cheaply. They mainly have spread into the major cities in South Korea, particularly Seoul, and Gyeonggi province, where most of the factories exist. While some employers do provide places to live close to or in the factory, unhealthy conditions are often rampant due to the failure of the EPS to mandate accommodation standards for foreign workers. Workers do not have to live in their workplaces but most of them choose to live in the places that employers provide them due to financial concerns, even though these locations tend to be overcrowded, noisy, messy and unsafe. The employer often subtracts a good chunk of income from the employees to pay for food and lodging, despite the bad conditions of the housing facilities.⁷⁶ Deducting accommodation fees

⁷⁶ Yun-ho Seo, “Protecting the migrant workers’ rights in immigration society,” *Ilkam Law Review*, no. 26 (2012): 222.

from the minimum wages of TFWs overloads the financial hardship for TFWs who already receive lower pay than local workers.

Social Welfare Rights: Employment and Labour Rights

Social rights are workplace benefits that all workers are entitled to receive regardless of their status, whether temporary, migrant, or local. These include employment benefits like Employment Insurance (EI), health care, and workers' compensation, as well as labour rights such as unionizing, collective bargaining, and collective action. TFWs are only able to access these rights to the extent that the work permit guarantees them; very often, the short-term work permit status of TFWs is a major obstacle to them receiving employment benefits.

1) Limited accesses to Employment Benefits for TFWs in Canada

TFWs have little or no access to the same rights as local workers – not only because they lose their status when they reach the end of their contract or the validation period of their work permit, but also because their immigrant status itself produces barriers to asserting their rights. First of all, despite their participation in the same legal obligations as local workers, TFWs cannot straightforwardly access any social benefits. TFWs are subject to pay into EI and health care services, and to have a portion of their income deducted as pension and income tax the same as local workers, but they are not guaranteed any benefits from these contributions. “By law, workers under temporary status must receive the same work conditions and protection mechanisms as Canadian workers, which are indicated by the Regulations of the Immigration

and Refugee Protection Act (IRPA).”⁷⁷ Contrary to this law, however, TFWs barely receive the basic insurance coverage that they are due — the rest of the money goes into the federal budget. That is, the government gains benefits from TFWs, who increase tax revenue but leave the country at the end of their visa term without receiving anything in return. In the case of pensions, TFWs are enabled to receive those benefits when they turn 65 years old, but not only may TFWs be unaware of this, but most of them will return to their country of origin before reaching that age. Likewise, TFWs are legislated to receive provincial health care, but it is often difficult for them to receive compensation due to their vulnerable conditions and the arbitrary power of their employer. TFWs who depend on employers for healthcare are unlikely to access the medical helps. “At the most fundamental level, awareness of rights and access to the means and knowledge to attain benefits are often mediated by employers.”⁷⁸ Moreover, nearly twenty percent of SAWP workers do not have a Provincial Health Insurance Card because their employer does not provide it.⁷⁹ Even though workers are aware of their rights, workers are hard to access the compensation that may be blocked to appeal by employers who do not want their workers to report a workplace injury.

Receiving EI is a particularly common problem for TFWs. The EI program is designed not only to compensate workers who are unemployed to assist them to find jobs, but also provides benefits to workers who need help when they are sick or need maternity/paternity leave.⁸⁰ TFWs have a difficult time qualifying to receive these benefits for three main reasons: the limited status of their work permit, the discretionary power of their employer, and the segregation of government. As a result, foreign employees who are laid off and cannot find

⁷⁷ Pelletier, "Under legal practices," 21.

⁷⁸ Hennebry and McLaughlin, "Exception that Proves the Rule," 133.

⁷⁹ Ibid, 133.

⁸⁰ Nakache, "Canadian Temporary Foreign Worker Program." 8.

alternative employment are expected to return to their home countries rather than being protected by EI.

First of all, the position of these individuals as temporary migrant workers makes them ineligible to access EI; there is a contradiction in applying for EI. To receive EI, a worker must be “capable of and available for work and unable to obtain suitable employment,”⁸¹ but the restricted work permits of TFWs do not legally allow them to work with other or new employers. A single-employer-dependency contract restricts TFWs from shifting employers and therefore makes them ineligible for EI. Plus, some TFWs are not considered eligible to receive any employment benefits, including holiday pay and vacation pay, due to their employment conditions. Receiving both holiday pay and vacation pay is dependent on the will of the employer, and sometimes an employer gives these payments merely as a reward. For example, “the Employment Standards Act classified harvest and farm workers differently – only “harvest” workers who have been employed for thirteen weeks as harvesters can be paid public holiday and vacation benefits.”⁸² Finally, the fact that multiple different government organizations share responsibility for EI causes difficulties for migrant workers when applying for this benefit. It is hard to match the standards of the Employment Standard Act to the situation of TFWs, and although the HRSDC indicates that TFWs can apply for EI, the department’s EI policy manual is confusing. The guidelines of EI state that a person whose work permit expires or limits the worker to one employer cannot demonstrate availability, even if the worker is willing to seek work.⁸³ Alberta is the only province to provide EI to migrant workers despite these regulations.

⁸¹ Canada. *Employment Insurance Act*, section 7(3), 1996. Quoted in Nakache, “Canadian Temporary Foreign Worker Program,” 6.

⁸² Basok, “Human Rights and Citizenship,” 11.

⁸³ Nakache, “Canadian Temporary Foreign Worker Program,” 9.

2) Many impediments to receiving employment benefits in South Korea

The main purpose of the EPS is to provide the same employment benefits to migrant workers as local workers, but differences exist in practice. The rights for temporary migrant workers, like those for native workers, are covered under the National Labour Relations Acts within the jurisdiction of the Ministry of Labour. This includes four major social insurance plans — National Health Insurance, National Pension, Industrial Accident Compensation Insurance, and Employment Insurance, determination of minimum wages, and regulation of standard working hours. Industrial Accident Insurance applies to all workers in South Korea, except for those employed by a company with fewer than four employees, seasonal industries such as agriculture, forestry, fishery, and the housekeeping service industry. Health Insurance applied to every employee, and National Pension follows the reciprocity-based policy between nations. Therefore, only those foreign employees for whom both countries have an agreement to pay mutual pensions are eligible to receive the pension in South Korea. For example, workers from Indonesia, the Philippines, Sri Lanka and Thailand receive severance, while those from Vietnam, Cambodia, Pakistan, Bangladesh, Nepal and Myanmar do not.⁸⁴ Moreover, TFWs should also be registered for several types of insurance specifically built for workers within the EPS, including Return Cost Insurance (which assists TFWs in collecting money for their return ticket) and Casualty Insurance (which covers non-occupational injuries and diseases).⁸⁵ The employer must sign the Departure Guarantee Insurance, which is designed to set aside money on a monthly basis

⁸⁴ “4 Major social insurance,” Ministry of Employment and Labour, accessed May 13, 2014, https://www.eps.go.kr/ph/duty/duty_03.jsp.

⁸⁵ “Legal Obligations”, Ministry of Employment and Labour, accessed May 13, 2014. https://www.eps.go.kr/ph/duty/duty_02.jsp.

to provide severance pay to the employee when he or she completes the contract and leaves the country, as well.⁸⁶

Unfortunately, TFWs have a hard time receiving employment benefits that they are entitled to for two primary reasons: the short-term length of their stay and unbalancing system problems. First of all, a short-term length of the stay under the EPS disqualifies migrant workers from receiving EI. EI in Korea serves two functions: first, it helps to promote employment by providing services such as language training and culture explications; second, it assists the unemployed by providing an allowance. Only the former service, training assistance, is available to temporary migrant workers; this component of EI is offered as a service to assist TFWs in adapting to life during their stay in Korea. However, TFWs cannot receive money during unemployment, nor can they use the fund they pay into as retirement pay or access it during the re-hiring process. If a worker cancels his contract or has it cancelled, he is required to obtain a new contract within a certain time or face deportation. Thus, when their contract is over, they face forced deportation rather than being given the option of reemployment.

Next, TFWs may be deprived of their employment benefits due to misuse of the system by employers. Employers have the power to decide whether to give benefits to their workers, which leads to an abuse of authority. In particular, joining EI for TFWs is carried out through the employer, so it only applies to workers when their employers register for it. Also, TFWs tend to experience long working hours with low or absent payment. Sometimes, the employer takes a cut from the migrant workers' salary if they receive compensation.⁸⁷ This situation occurs most frequently on farms and in small-scale, isolated workplaces. Moreover, workers in the

⁸⁶ Rahn Kim, "All migrant workers entitled to severance pay," *The Korea Times*, June 21, 2011, accessed May 13, 2014, http://www.koreatimes.co.kr/www/news/nation/2011/06/117_89352.html.

⁸⁷ Ra Hyeon Kang, "A study on Improvement of the Employment Permit System for Foreign Workers," (MA diss., Inje University, 2012): 45.

agricultural and stockbreeding industries cannot receive any employment rights because the Ministry of Land, Infrastructure and Transport administrates them even though they enter the state under the EPS like other TFWs. In other words, social rights provided under the Labour Standard Act, such as restricted working hours, access to days off, and recess hours, are not applied to foreign workers who work in agriculture, stockbreeding, and fisheries.⁸⁸

Furthermore, the most recent version of the Departure Guarantee Insurance policy, enforced from December 30, 2013, makes it hard for TFWs to receive severance pay. Employers are required to offer severance pay when TFWs complete their contract and leave the state, and the introduction of Departure Guarantee Insurance was designed to prevent employers from withholding severance pay when migrant workers leave. To avoid a situation in which an employer fails to make sufficient payment during the designated periods, that employer is obligated to pay severance equivalent to a month's wages steadily to the worker. However, the recent policy change, which offers retirement payment 14 days after migrant workers leave the country, makes it difficult for workers who have already left the country to claim their money through lawsuits.

3) Labour rights for TFWs in both countries

Labour rights include the right to organize labour unions and to perform collective bargaining and action. These rights are limited for temporary migrant workers in both countries. In Canada, most TFWs do not have the right to collective bargaining. For example, migrant farm

⁸⁸ "Legal Rights," Ministry of Employment and Labour, accessed May 13, 2014, https://www.eps.go.kr/ph/duty/duty_01.jsp.

work is often characterized by little or no access to collective bargaining rights,⁸⁹ and workers in LSPP in Canada cannot join any group or association. In 1995, the New Democratic Party in Ontario tried to introduce unionization of agricultural temporary migrant workers, but this attempt was repealed by the Conservative Party. A revised version of this law that came out in Fall 2002 gave agricultural workers the right to form and maintain associations, but not to strike or bargain collectively.⁹⁰

In South Korea, TFWs are entitled to labour rights, but their involvement in existing labour unions is forbidden. Foreign workers voluntarily built a labour union in South Korea in 2004; the Migrant Trade Union (MTU) is a community created by migrant workers to protest against unfair working conditions. This labour union continues to exist unofficially even though the government refuses to acknowledge its legality because the majority of these labourers are undocumented workers.⁹¹

4) Challenges that TFWs in both states face in gaining access to social welfare

In both Canada and South Korea, TFWs are socially weak and unable to gain social welfare benefits equivalent to those of local workers. Generally, the same barriers affect migrant workers in both countries; single-employer dependency, lack of information, language barriers, and isolation from the local community.

Temporary workers have trouble accessing social benefits because of a lack of information and an excess of complicated processes. For example, in South Korea, when migrant workers want to receive money from the Return Cost Insurance, three years of calculation period

⁸⁹ Christina Gabriel and Laura Macdonald, "Debates on temporary agricultural worker migration in the north American context." in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle (McGill-Queen's University Press, 2012), 97.

⁹⁰ Basok, "Human Rights and Citizenship," 19-20.

⁹¹ Seol, "Migrant Workers and Human Rights," *Democracy and Human Rights* 5, no. 2 (2005): 64.

are required for eligibility; therefore, TFWs who do not fulfill the minimum duration cannot receive money. In addition, the process of gaining benefits is confusing. Employees have to pay first and receive later when their contract is over, and then they must submit many papers, including flight tickets and confirmation-of-departure documents.

In Canada, on the other hand, a complaint-driven process violates the employment rights of TFWs. Not only do a large number of workers not know their rights, thus making it impossible for them to report a claim to protect themselves, but also the law requires that migrant workers themselves must complain to the employer directly when they face the problems. This process intimidates migrant workers who may fear losing their jobs if they file a complaint.⁹² Plus, due to lengthy bureaucratic conditions, even if migrant workers applied for compensation, in most cases, they will not receive it until they get return home.

Language barriers limit workers' ability to advocate for their rights. Most TFWs are not fluent speakers of the official languages of Canada and South Korea — English and Korean, respectively. This may lead to serious problems, such as doctors failing to understand the cause of an accident or employers failing to accurately describe safety protocols in the workplace. Even though both states provide language courses for workers, these are generally not sufficient to enable fluid communication with local people. “Typically, migrant farm workers cannot enrol in formal language training while in Canada, nor are they typically eligible to take language training services offered to newcomers, but many would like to.”⁹³

Finally, isolation from the local communities contributes to the problems experienced by workers employed in agricultural industries, in particular. These workers live apart from the rest of the community, and they do not have opportunities to go out easily. Also, because TFWs will

⁹² Nakache, “Canadian Temporary Foreign Worker Program,” 13.

⁹³ Hennebry, “Permanently temporary?,” 14.

eventually go back to their home country, they are often treated as sojourners who do not have an interest in the development of the local ethnic community.

Political rights: TFWs without voting rights

Political rights include the ability to appeal one's rights to the state, both directly and indirectly, as well as voting rights, eligibility for election, and other political activities which are categorized as a privilege extended to citizens.⁹⁴ Here, voting rights are considered the core of political rights. The right to vote is a basic right to participate in the political processes in order to contribute to policy changes. Temporary migrants in both Canada and South Korea are not allowed to participate in voting at either the national or municipal levels, although they have often been influenced by the policies and laws in these states where they do not have the power to speak with their own voice.

There are some general ideas that support or reject electoral rights for non-citizens who stay within a territory. People who support election rights for resident aliens suggest that "what affects all should be approved by all," and hold with the principle of territorial inclusion, which states that people who share the same political authorities and laws should be extended the same rights. On the contrary, people who disagree with voting rights for non-citizen residents maintain that this is a privilege for members within the national boundaries.

1) None of the political rights for TFWs in Canada

In Canada, even immigrants with permanent residence status cannot exercise political action, thus it is hard to argue that TFWs in Canada should have access to political rights.

Absence of voting rights is closely related to exploitation by host states and exacerbates the

⁹⁴ Seol, "Migrant Workers," 50.

difficulties that temporary migrant workers face in attempting to overcome their restricted status. For example, “Live-in Caregivers (LICs)’ social and labour rights are not preserved, perhaps due to the absence of representatives for their political power.”⁹⁵ LICs have very few financial resources and their integration is constrained, as the program restricts their social mobility. Their non-voting position gives them no recourse to capture the interests of policymakers to develop rights for them.

2) Discourse about providing political rights for TFWs in South Korea

South Korea offers voting rights to long-term resident foreigners, to which TFWs are not entitled due to their short-term period of stay. However, there at least exist several public discourses about offering political rights, especially voting rights, to TFWs in South Korea. Advocate scholars maintain that TFWs should have delegates by themselves in the state, and insist that the lack of political membership creates difficulty for these workers to participate in political society. A lack of voting rights causes inequalities between natives and foreigners even when both live within the same residential boundaries; foreign workers do not have access to the membership necessary in order to speak out and push their opinions. The situation also leads to the entrenchment of unfair conditions, since neither the central nor municipal governments care about migrant workers who cannot support them during the election. Furthermore, people who support giving voting rights to migrant workers often request giving them at least votes in local elections. Compared to national voting rights, municipal voting rights are more flexible, and may be open to the participation of migrant workers in local elections, since these workers are often acknowledged as an important component in the residential district. Local voting gives migrant

⁹⁵ Mely Caballero Anthony, “Reflecting on Managing Migration in Southeast Asia-Mitigating the unintended consequences of securitization,” in *Security and Migration in Asia*, eds. Melissa Curley and Sin-lun Wong (Routledge, 2008), 243.

workers not only responsibilities and duties as local residents but also provides them with opportunities where they can participate in the public decisions of where they live. As a result, municipal voting is permitted to long-term residents aged 19 and over who have lived in South Korea for at least three years and hold qualification for permanent residency. Temporary workers, especially low-skilled workers whose stay is limited to a maximum of two years and ten months, are generally not qualified to participate. People who meet the local voting criteria are primarily Chinese-Korean workers, ethnic returnees (who are categorized as native rather than foreigners in this case and can stay in the country for five years), and highly-educated or highly-paid investors.

Holding partial rights as TFWs

This section has illustrated the rights and challenges that temporary migrant workers encounter during their stay. TFWs, as non-citizens residing in the national territory of the destination state, hold certain rights and duties, but these are limited by the stipulations of their work permit and even those limited rights they do have access to can be difficult to claim. While legal access to certain social welfare benefits, such as health care and minimum/maximum hours and wages, are extended to non-citizens upon their entrance to both Canada and South Korea, TFWs have few civic rights such as internal mobility, the opportunity to change workplace or residence, and the right to vote for political representation. Exercising what legal rights they do have is hard for TFWs because of their contract status and systemic and language issues. “TFWs are afforded as many legal protections in the workplace environment as are other workers in any province, but those rights do not transfer well into practice.”⁹⁶

⁹⁶ Nakache, “Canadian Temporary Foreign Worker Program.” 10.

It is particularly interesting that both states provide rights and protections to TFWs on paper that are poorly applied in practice. First, internal mobility, suggested as one of the civil rights that should apply to TFWs, is restricted in both Canada and South Korea. Canada officially does not ban temporary workers from changing their employer and residence, but doing so involves embroiling oneself in a complicated process; South Korea legally limits foreign workers to four changes of workplace. As a result, internal mobility does not really exist for temporary foreign workers in either state. Second, social rights, which include such basic worker rights as employment insurance (EI), pension, and health care services, are guaranteed on paper but hard to access in the case of TFWs in both Canada and South Korea. For example, receiving EI in Canada is a problem for TFWs because when a TFW is unemployed, he/she is a target of deportation rather than a candidate for EI compensation and re-hiring. In South Korea, EI can only be used for the purpose of training; the state does not provide money when a worker is unemployed. Although both states specify that TFWs are supposed to receive social benefits, barriers to access arise not only because of abuse by employers and overlapping jurisdictions but also because of obstacles such as language problems, lack of information, and complicated and long processes. Third, neither Canada nor Korea offers political rights to TFWs at the municipal or national levels. There are some people who support providing political rights to TFWs, and in South Korea, some long-term foreign residents can vote in municipal elections. However, even in this case, these rights do not apply to TFWs, who are unable to participate in any political action. This situation weakens the TFWs' status in the community: they are affected by decisions made in the community even though they do not have the right to appeal against any harassment. In all these cases, TFWs in both Canada and South Korea enjoy rights on paper that are poorly protected in reality.

The case of TFWs illustrates how a notion of citizenship that is glued to the nation-state leads to the exclusion and marginalization of those who do not hold legal entitlement as citizens. The extent of rights and protections that TFWs are eligible for is determined upon entry by destination states, who maintain the authority to manage foreigners within their own nation-state boundaries. For example, preventing TFWs from changing job is a strategy aimed at protecting native workers. The state worries that if migrant workers could move their workplaces, they would choose not only the low-skilled work intended for them to fulfill but also other local jobs that should instead be filled by local workers. The rights and duties for TFWs are different from those granted to and imposed upon natives, and beyond that, the rights of TFWs may be denied even though they fulfill the same duties as residents, such as paying for pension and insurance. Furthermore, this system relegates TFWs to a socially excluded and vulnerable position. TFWs exchange their social and civic rights for better wages during their work period, and this exposes them to exploitation. They come to the destination state spontaneously, knowing they cannot have the same rights as a native does. They arrive to work on a temporary basis, "expecting to return, cash in hand, in just a few months or a few years," and these benefits motivate them to "sign up for dirty, dangerous, or difficult work abroad."⁹⁷

The fact that TFWs can access certain citizenship rights within a certain territory indicates a mismatch between the principles of territory-based membership and the actual practice. It permits rights to be assigned to persons without membership who live within the same territorial borders. In this regard, the stakeholder principle provides guidelines for determining whether resident foreigners are able to access the citizenship rights. Resident aliens

⁹⁷ Cindy Hahamovitch, "Creating perfect immigrants: Guestworkers of the world in historical perspective," *Labour History* 44, no.1 (2003), Quoted in Patti Tamara Lenard and Straehle Christine, "Temporary Labour Migration, Global Redistribution and Democratic Justice," *Politics, philosophy & economics* (2011): 210.

may be able to rely on the community for their rights and protections not as members but as stakeholders.

In summary, in this chapter I discussed the set of social, civic and political rights held by TFWs. Legally, even if both states, Canada and South Korea, provide the same rights to TFWs as they do to local workers, it remains difficult for foreign workers to access these rights, and they are still marginalized and exploited due to their lack of membership and other obstacles such as language problems, abuse from employers, and complex application processes. In the next chapter, I will illustrate two different ways TFWs can lengthen their stay in their destination states.

Chapter 4: Permanency and Rotation in the TFWP

This chapter illustrates the two ways that TFWs can extend their stay in their destination states: through rotation policy and permanent residency (PR) policy. Both Canada and South Korea offer two legal systems to support TFWs' external mobility; one is the "rotation policy" - especially for low-skilled workers - which requires that they leave the country for a while before being rehired as TFWs. The other is PR system, which permits qualified workers to stay permanently in the destination state. TFWs who have a transnational life and go frequently back and forth between the sending and receiving states tend to become permanent residents and/or request re-entry to the host state after the end of their work permit. On the other hand, there may be back-home purposes that cause TFWs to want to return home after their stay in the destination state.

Enforcing circularity of TFWs

Rotation policy builds circularity into the TFWP. Circularity mandates the return of foreign workers to their country of origin with the end of their contract and at the same time opens up the chance for them to re-enter the country to work after a certain period. This policy aims at maximizing economic benefits in the host state not only by reducing the time and costs to teach skills but also diminishing the costs for social welfare. To re-enter the host state as TFWs, workers need to mandatorily spend a certain period of time outside of that state. Valeria Ottonelli and Tiziana Torresi argue that temporary migrants have neither protections for their rights nor anything approaching citizenship: "people whose life plans are oriented towards return can be

effectively used by the destination country.”⁹⁸ That is, in both Canada and South Korea, the rotation policy prevents migrants from settling in the host nation and reinforces the state boundary at the same time.

1) Promoting returning of TFWs in Canada

Instead of offering special programs which dictate the circularity of TFWs, the Canadian government operates some policies that permit TFWs to widen the duration of their stay as temporary migrant workers. There are two options to gain a new work permit for TFWs; one is renewing a work permit with the same employer, which takes 80 days, and the other is contracting with a new employer, which takes 25 days.⁹⁹ Recent changes in Canada have streamlined the conditions for TFWs to renew their work permit. “For example, in 2009, the requirement to return home for low-skilled workers under the LSPP was rescinded (CIC 2010b, 34), allowing workers to renew their permits from within Canada as many times as necessary without having to leave the country.”¹⁰⁰ However, even if the government reinstates the processing time and criteria required for temporary migrants to receive and renew their permits, they are not guaranteed that CIC will restore their status. This policy is aimed at helping employers fill vacancies immediately, rather than at assisting TFWs to prolong their stay.

Despite the policy described above, Canada also actively encourages the deportation of TFWs at the end of their contract. TFWs who are laid off or lose their job during the authorized work permit duration are only allowed to stay in Canada as long as they have enough funds to

⁹⁸ Bauböck, "Temporary migrants, Partial citizenship and Hypermigration," *Critical Review of International Social and Political Philosophy* 14, no.5 (2011): 683.

⁹⁹ Citizenship and Immigration Canada, *Operational Bulletin 087 – Separation of Processing Streams at CPC-V, New vs. Existing Employer Applications, Applications processed in Canada*, Ottawa, November 14, 2008e, Quoted in Nakache and Kinoshita, "Canadian temporary foreign worker program," 17.

¹⁰⁰ *Ibid.*, 34.

support themselves. This means that foreign workers who face financial difficulty, as most of them do, are the target of deportation. The case of the SAWP illustrates this forced return particularly clearly. The condition of circularity of workers under SAWP is written into their contract as part of the bilateral statement agreed to by the sending and receiving governments. That is, workers do not have the right to refuse repatriation when their work permit is expired. SAWP workers can stay in Canada for a maximum of eight months in a year and must leave with the completion of their contract; this includes those who have a chance of reemployment for the following year when requested by the employer.

In addition, to encourage the workers to return to their home state, both Canada and the sending countries play a decisive role. The Canadian government cooperates with the sending state to facilitate and encourage workers' return. Canada employs strategies such as banning family trips and giving a huge incentive to returning workers, and these strategies are supported by the sending state as well. States try to make temporary workers deliberately uncomfortable so as to promote their leaving. On the other hand, workers receive a huge incentive when they return to their home country. Indeed, some portion of their wages is only made available to workers when they exit the country.¹⁰¹ Additionally, sending countries expect that this regular remittance will contribute to their economic development, and that the experiences and knowledge acquired by the workers in the developed state will help the development of their home country when they return; there is therefore incentive for the sending countries to encourage the workers' return. For example, in Mexico, where most workers enter Canada through the SAWP, only married people or others with dependents in Mexico may apply to the program.

¹⁰¹ Lenard, "How Does Canada Fare?," 291.

2) Reinforcing Rotation for TFWs by “carrot and stick” methods in South Korea

The Korean government reinforces the circularity of TFWs not only by intentionally forcing them to go back home but also by providing benefits to people who re-enter the state after leaving for a certain period. Plus, return to the workers' home state is already written into the bilateral statement by both governments before the foreign workers arrive in South Korea.

The state runs several programs that facilitate re-entry for TFWs who voluntarily return to their country of origin at the end of the work permit; these include the “re-entry policy for faithful workers” and the “Special Korean language test.” If the worker exhibits the intention to go back home voluntarily or works well, they get benefits to come back to Korea. The "re-entry policy for faithful workers" is offered to workers who did not change their workplace during their working period. They can be re-hired at the same place for four years and ten months after they leave the country for three months. Also, workers who voluntarily return home when the contract term ends and did not change their job during the first employment period are qualified to take a "Special Korean language test." If the employee passes the Korean test, he/she can re-enter and work for a different company after six months from the departure day. The government also runs a "Happy Return Program" to promote the return of TFWs to their country of origin; this is a job-matching program connecting return workers who arrive at their home state with a Korean company located there.

In contrast, especially for undocumented workers, the Korean government strictly threatens them to encourage their departure for home. According to the government plan, most illegal migrant workers need to be deported, and employers who continue hiring illegal workers are punished with fines. Surveillance groups have been introduced to accelerate this process and a massive crackdown on migrant workers has occurred, which led to human rights violations of

many TFWs. For example, when a police officer or immigration officer who considers undocumented workers as potential criminals or troublemakers arrests them, violence, racism and even sexual violence are common. On the other hand, to encourage the return of illegal TFWs, the government sets a “penalty exemption period” in which undocumented migrant workers are allowed to go back home without paying penalties.¹⁰² The government ensures illegal workers who voluntarily return to their home state can re-enter and be re-employed after a year, and provides advantages in priority hiring through the Employment Permit System.

Pathway to Transition to Permanent Residency and Barriers to low-skilled TFWs

The transition to permanent resident status is a route for TFWs to stay in the destination society with the full benefits of integration. Permanent residency policy is designed to encourage the integration of newcomers economically, socially and culturally, so that they can enjoy their life in their destination states long-term without worrying about deportation. The qualifications for a worker to access permanent residency depend entirely on that worker's skills, education level, and ethnic background.

1) Barriers in transitioning to Permanent Residency for low-skilled TFWs in Canada

The state treats TFWs differently based on their skill levels when they apply for PR, and laws are mostly regulated to give opportunities only to skilled workers. Legally, all TFWs, except seasonal workers admitted under the SAWP, may eligible to apply for permanent residence.¹⁰³ There are four ways that TFWs can transfer to PR status: through the Federal

¹⁰² Seol, “Foreign Workers in Korea,” 120.

¹⁰³ Nakache, “Canadian Temporary Foreign Worker Program,” 16.

Skilled Worker Program (FSWP), the Canadian Experience Class (CEC), the Live-in Caregiver Program (LCP) and the Provincial-Territorial Nominee Programs (PTNPs). FSWP and CEC are designed to retain skilled TFWs, PTNPs apply to both high-skilled and low-skilled workers, and the LCP is the only program that focuses specifically on low-skilled workers shifting temporary migrant workers to permanent resident status. Nevertheless, the state prevents low-skilled TFWs from gaining permanent resident status by requiring high standards or limiting the available options.

Beginning in April 2011, federal regulations mandated that low-skilled TFWs can stay in Canada for a maximum of twenty-four months and must thereafter leave for a minimum of four months in order to be allowed to return under the same conditions, while skilled workers can apply to become permanent residents after working full-time for two years. In other words, the state legally obscures the process for transitioning to PR for low-skilled migrant workers. PR criteria demand high levels of education and skill that low-skilled workers have little hope of meeting. “The regulations reinforce the message that the skilled are welcome to settle here permanently, whereas the low-skilled are expected to leave when their temporary work permits expire.”¹⁰⁴ Both the FSWP and the CEC, although theoretically providing pathways for TFWs to become permanent residents, generally exclude low-skilled TFWs as potential applicants.¹⁰⁵ Through FSWP, at least one year of high-skilled work is required for eligibility; CEC permits any foreign worker with two years of high-skilled full-time work experience in the past three years, or any foreign graduate from a Canadian post-secondary institution with at least one year

¹⁰⁴ Delphine Nakache and Sarah D’août, “Provincial/Territorial Nominee Programs: An Avenue to Permanent Residency for Low-Skilled Temporary Foreign Workers,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle. (McGill-Queen’s University Press, 2012), 163.

¹⁰⁵ Nakache and Kinoshita, “Canadian Temporary Foreign Worker Program,” 32.

of full-time work experience, to apply for PR.¹⁰⁶ Low-skilled workers cannot meet these standards because they specify work experience in highly skilled occupations and/or education at a post-secondary institution in Canada. Thus, although “officially” low-skilled workers can apply to become PR, since they were hired for low-skilled jobs, they will always be deemed unsuitable. “Eligibility for PR crucially depends on the kinds of jobs the applicant has held in Canada, thus, access to permanent residence is entirely contingent upon employers recruiting TFWs into jobs commensurate with their skills and education.”¹⁰⁷

As a result, existing federal programs block the ability for low-skilled workers to become permanent residents. TFWs, except for those in the LCP, experience significant legal barriers to achieving permanent residency, and are mostly accepted on a case-by-case basis. For LCPs, “an applicant is allowed to apply for PR within Canada after being employed as a live-in caregiver for at least two years during the four years immediately following entry to Canada.”¹⁰⁸ For low-skilled workers outside the LCP, the easiest way to apply for PR is through PTNP, a program operated by each provincial government. Even in this case, not every worker can apply for the program, and there are still restrictions.

2) The exclusion of low-skilled temporary foreign workers from the Province-Territory Nominee Programs (PTNPs) in Canada

For low-skilled TFWs, the PTNPs represent the clear federal avenue for PR application, although barriers still exist. “PTNPs allow each province to tailor their own criteria to select individuals who will contribute significantly to their economic development and who are likely

¹⁰⁶ Ibid., 32.

¹⁰⁷ Sophia J. Lowe, “Transiting Temporary Foreign Workers to Permanent Residents: A Case for Better Foreign Credential Recognition,” *CERIS – The Ontario Metropolis Centre Working Paper*, no.91 (2012): 1-2.

¹⁰⁸ Bakan and Stasiulis, “The Political Economy of Migrant Live-in Caregivers: A Case of Unfree Labour?,” in *Legislated Inequality: Temporary Labour Migration in Canada*, eds. Patti Tamara Lenard and Christine Straehle. (McGill-Queen’s University Press, 2012), 204.

to become successfully established.”¹⁰⁹ PTNPs aim at long-term retention of workers and seek workers with lower levels of education and skills compared to the FSOWPs.¹¹⁰ The goal of those programs is to encourage a regional distribution of immigrants and allow small provinces and cities to solve their labour force shortages and receive benefits from migrant workers in various positions, including low-skilled and high-skilled jobs. Therefore, the provinces and territories have a huge responsibility to select targets who are willing to transfer their status from temporary to permanent residence. Applicants who are selected by a province or territory are granted permanent residency if they meet federal health and security requirements; it is the responsibility of provincial officers to nominate acceptable people as permanent residents and send that information to the federal government.¹¹¹

Manitoba is a good example of a province where low-skilled workers may actually transition to PR status through the Manitoba Provincial Nominee Program (MPNP).¹¹² “All TFWs are eligible to apply for permanent residency through the MPNP after acquiring six months’ work experience, provided that they have ongoing employment in the province.”¹¹³ Initially, this program only targeted skilled workers, but in light of changes in the labour market over time, Manitoba announced that workers of all skill levels would be eligible to apply for nomination through the program. Therefore, all TFWs in Manitoba have the possibility to become permanent immigrants.

However, outside of Manitoba, PTNPs primarily target skilled workers, and there are still problems. Generally, the hardships of the process drive from (1) the employer-driven system of TFWPs, and (2) the discretion of each province. First of all, as with other TFWPs, the process of

¹⁰⁹ Nakache and Kinoshita, "Canadian Temporary Foreign Worker Program," 35.

¹¹⁰ Carter, "Provincial Nominee Programs," 186-187.

¹¹¹ *Ibid.*, 184.

¹¹² Nakache and D'aoust, "Provincial/Territorial Nominee Programs," 168.

¹¹³ *Ibid.*, 170.

nomination for permanent residency through PTNPs depends on the employer, which creates an imbalance between workers and those who hire them. Workers must have a full-time permanent job offer with a local employer to be eligible for nomination. The process is tied to a specific job, meaning that if the worker is laid off during the process of attaining permanent residency, the application is likely to be cancelled. Workers can move to other places, but in this case, they will have to start again from the beginning. For example, in Alberta, when a worker becomes unemployed in the middle of this process, that worker must find a new employer and begin the application process from the beginning again.¹¹⁴

Second, workers holding the same job in different provinces have different opportunities to become PR. Because PTNPs are designed to fill labour market shortages in a particular province, workers' opportunities to apply for PR depend on the place where they first settle. This means that "two temporary foreign workers with the same profile could have different opportunities to settle permanently based on the province or territory of their original work permit."¹¹⁵ Each province has its own authority to operate the PTNP as it sees fit, by demanding different standards from its TFWs. In fact, there are some provinces where low-skilled categories do not even exist in the PTNP. Only six (Alberta, British Columbia, Saskatchewan, Prince Edward Island, the Northwest Territories, and the Yukon) out of the eleven provinces that operate PTNPs have specific categories for "low-skilled" or so-called "semi-skilled" TFWs, while all PTNPs have skilled workers categories.¹¹⁶ Each province has different categories for low-skilled workers, so that the list of jobs is different between provinces and depends on the

¹¹⁴ Ibid., 167.

¹¹⁵ Office of the Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons Canada*, Ottawa, 2009: 10, Quoted in Nakache, "Canadian Temporary Foreign Worker Program," 20.

¹¹⁶ Nakache and D'aoust, "Provincial/Territorial Nominee Programs," 171-173.

province's own labour markets and industries.¹¹⁷ Additionally, certain provinces make case-by-case determinations on low-skilled applications and low-skilled TFWs are required to fit into narrow categories. In most provinces, the number of spaces for PR for low-skilled workers is extremely limited and the governments no longer consider further applications once the limited positions are filled. For instance, in the case of the food service industry in Alberta, only 600 nominations are allocated for three eligible occupations: food and beverage servers, food counter attendants, and kitchen helpers.¹¹⁸ Thus, if the capable spaces filled, they are no longer accept people under the program.

3) No benefits to become a permanent resident in South Korea

Until the PR system was initiated in 2002, the government ignored and refused the integration of foreigners despite the continuous inflow of resident foreigners from the 1980s onward. Resident foreigners that are managed through the visa system are prevented from permanently settling no matter how long they have stayed.¹¹⁹ The South Korean government operates these visa systems in order to extend the residence period for foreigners rather than providing full integration as PR. Long-term resident foreigners must have F-2 visa status (residential qualification) and must renew their visas every five years. In addition, workers in EPS, with an E-9 visa, cannot extend their visa status by themselves and can request it only when there is a demand from their employers.

Since the PR system was launched in 2002, the state has put out the message that it is willing to consider PR status only in the case of high-skilled foreign employees and foreign brides. High-skilled TFWs and foreign "urban" brides (a category that has replaced the first

¹¹⁷ Ibid., 176.

¹¹⁸ Ibid., 172.

¹¹⁹ Seol, "Global dimensions," 99.

wave of foreign women who came to Korea in the 1990s to marry older farmers and fishermen) are offered the chance to obtain PR and experience a facilitated visa extension process, while low-skilled migrant workers are afforded none of these opportunities.

Ironically, there are no benefits to holding permanent resident status in Korea and the processes of naturalization and permanent residency are almost the same. There are neither specific social welfare systems beneficial for PRs, nor are they extended the rights enjoyed by naturalized foreigners, such as welfare, career choice, and full employment. In essence, South Korean PR only increases the convenience of the entry and departure and the stability of residence.¹²⁰ PR is considered equivalent to a "visa exemption" or permission to stay. It merely authorizes his/her long-term stay in the state, while the rights of Korean permanent residents remain almost the same as those of resident aliens. In addition, accomplishing PR is as difficult as becoming a naturalized Korean citizen, and the qualification level for PR is equivalent to that required for naturalization. A long-term foreigner who lives in the country more than five years and fits the highly specific qualifications can obtain permanent residence, while those who spend three years of time in five years in South Korea can apply for naturalization. Both demand the same elements, including assets, high education, employment, income, language, and a criminal background check.

4) The exclusion of low-skilled TFWs from PR status in South Korea: threading the eye of a needle

Low-skilled TFWs are qualified neither to apply for PR nor to extend their stay through visa renewal by themselves. Instead of providing PR quotas for them, the state has made efforts to promote circularity and encourages TFWs to return to their state of origin in order to block

¹²⁰ In-hoe Ku et al., "Social Integration of Immigrants in Korea: Examination of the Eligibility of Permanent Residents to Social Welfare Benefits," *Health and Social Welfare Review* 29, no.2 (2009): 138.

their settlement. Extending the visa for TFWs is only permitted under the support of the employment contract, increasing the difficulty of lengthening their stay.

Low-skilled TFWs are not allowed to change their visa status voluntarily and have no pathway to transition to PR at all, even if the duration of their stay fits the requirements. Low-skilled migrant workers can legally stay four years and ten months; if such a worker re-enters South Korea through the re-hiring program, they may stay more than five years, with three or six months of absence before returning, depending on which program the person is re-hired under. In this case, even though their stay is no longer temporary, still they are ineligible to apply for PR. In principle, the PR standard can be used flexibly; indeed, it seems as though qualification should be possible for any person who has lived in South Korea for three years during a five-year period. However, the Ministry of Justice rejects the authority of those migrant workers to apply for PR, arguing that the purpose of their residence was not to encourage permanent settlement but to ease labour shortages.¹²¹

The only route by which low-skilled migrant workers can obtain permanent residency is marriage to a Korean. However, up until 1997 this policy did not apply when a foreign man wanted to marry a Korean woman, although the opposite situation was readily accepted. “This restrictive policy was based on the principle of *jus sanguinis* and the patrilineal system, which entails that the nationality of a child follows the fathers’ nationality.”¹²² Therefore, even if a migrant worker, most of whom were men, were to marry a Korean woman, he and their child still could not achieve nationality. The wife would be able to maintain her nationality, but the rest of her family would have to renew their visas every five years as foreigners. Even further

¹²¹ Seung-Woo Sim, “The Increase of Immigrants and the Improvement Direction of the Nationality System,” *Korean Association for Political and Diplomatic History* 35, no.1 (2013): 191.

¹²² Seol, “International Migration and Immigrants’ Citizenship: A Comparison of Germany, Japan and South Korea,” *The Population Association of Korea* 36, no. 1 (2013): 31-32.

generations of this family who were born and lived in Korea were not permitted to access citizenship. Since 1997, however, if either one of the parent holds Korean citizenship, the child becomes Korean.

Furthermore, the law is restricted to open the door only to persons who are born in a certain state of blood relation ethnicity. Such workers are permitted to extend their stay in South Korea as permanent residents but there are contradictions in the policy: certain types of migrant workers – particularly those who are defined as ethnic returnees – face a simpler transition to permanent resident status than other TFWs do. The term “blood-related compatriots”¹²³ (so-called *dongpo*) illustrates the state’s preference for migrants who share Korean ancestry. However, the blood-related compatriots system operates differently both in policy and public opinion depending on one’s nationality. It is not designed, for instance, to encourage immigrants who come from Asia, where their economy is less developed than South Korea and the workers mostly fill low-skilled jobs; on the other hand, it does provide integration benefits for high-skilled foreigners and those who come from a developed Western society. In particular, Korean-American workers easily achieve de facto citizenship, while there has been a long debate concerning whether to treat Korean-Chinese workers as natives or foreigners; to date, they are still categorized as foreigners. Korean-Chinese workers categorized as TFWs, despite their shared ethnic background, can prolong their stay only through extending their visa, just like other workers, while Korea-American workers may easily apply to become permanent residents.

Permanently Temporary

This chapter addresses two ways - rotation and PR policy – by which TFWs can indefinitely prolong their period of stay in Canada and South Korea. All TFWs, regardless of

¹²³ Seol and Skrentny, “Ethnic return migration,” 157.

their skill-level, have already started the settlement and integration process and would be well-positioned to continue this process with their families and the more stable conditions of permanent residence.¹²⁴ However, both states operate two different systems, one which admits TFWs as candidates for settlement and another which limits their candidacy. Rotation policy enforces the circulation of TFWs; it does not integrate workers but only extends the duration of their stay under TFW status. PR status guarantees eligibility for long-term stay and full benefits. Both states prefer to maintain an open rotation policy for low-skilled TFWs, while providing the option to transfer to PR status to high-skilled TFWs or, in the case of South Korea, to ethnic returnees. Canada encourages the circulation of TFWs by reducing the processing time to renew work permits; South Korea provides incentives to returning foreign workers. In contrast, transitioning from TFW status to PR status is difficult for low-skilled workers, who make up the majority of the program in both states. Both states not only demand high qualifications to apply for PR but also limit the number of spaces available to certain occupations. For example, even though Canada operates various programs (CEC, FSWP, LCP and the PTNPs) that officially provide pathways for TFWs to transfer their status, none of those pathways except the LCP is open to low-skilled TFWs, due to high eligibility criteria regarding education and skills. Besides, the PTNPs, which seem to provide the obvious avenue for low-skilled workers to upgrade to PR status, offer only a limited number of spaces – too few for the number of low-skilled TFWs who want to transfer. Similarly, South Korea has next to no pathways to PR for low-skilled TFWs and only extends this option to migrant workers from wealthy Western countries. A high skill level and naturalization are both required to meet the criteria for this pathway, and only ethnic Korean TFWs from wealthy Western states can reasonably qualify. The subtext in both cases is that

¹²⁴ Lowe, “Transiting Temporary Foreign Workers to Permanent Residents,” 10.

highly skilled TFWs are expected to contribute to the society in the long-term and are therefore viewed as desirable targets of integration, while those of lower skill levels are considered to be valuable only as short-term workers.

TFWPs are designed not to allow workers to be easily integrated on a long-term basis, but to permanently maintain temporary conditions for workers in low-skilled jobs with restricted work permits. The TFWPs allow workers to be simply used and thrown away whenever the host society and employer want. “The expectation for TFWs in low-skilled jobs is that they will come to the state, fill a labour shortage for a specific period of time, then return to their country of origin.”¹²⁵ Their integration is systematically blocked and they are merely enabled to renew their temporary status continuously. Through such programs, the state sends a message that low-skilled workers are treated as workers, while highly-skilled workers are viewed as future citizens.¹²⁶ Moreover, the host state encourages sending migrant workers back to their own country, and then re-hiring the return workers. Both states, Canada and South Korea, understand the benefits of re-hiring the same workers who are already familiar with the culture and working environment, so the receiving state's educational budget can be reduced. Nevertheless, both states prefer to avoid providing permanent residency status to TFWs. They instead prefer to prolong the workers' stay within a “temporary” status for as long as possible, and thereafter to return them to their home states. On the one hand, states return workers to the country of origin, saying it costs more to provide social benefits to TFWs than they actually contribute to the society. On the other hand, states make it easy for workers to re-obtain the work visa, knowing the benefit of re-hiring the same workers without the possibility of PR.

¹²⁵ *Ibids.*, 3.

¹²⁶ Nakache, “Canadian Temporary Foreign Worker Program,” 22.

Furthermore, not allowing less-skilled TFWs to apply for PR status reinforces social and economic integration deficits. TFWs who are eligible to become PR are mostly skilled workers who can gain benefits such as changing their workplace and bringing their family to their destination state, while these rights are not available to TFWs in low-skilled jobs. Low-skilled workers are isolated, vulnerable and subject to exploitation because host states are only willing to hire and re-hire workers if doing so will not expand their rights.

Logically, lengthening the work permit for TFWs implies that their stay is no longer temporary. Nonetheless, individual states deliberately maintain the temporariness of migrant workers in order to continue treating them as noncitizens and/or non-residents. TFWs are legally denied access to protections granted to citizens or permanent residents. The state plays a key role in regulating the opportunities for migrant workers to enter into society. Not only do the PR standards set by individual host states act as gatekeepers to determine who is able to gain full integration within their borders, but also a rotation policy is maintained that solidifies the division between sovereign and migrant rights. The state claims that encouraging worker circularity is appropriate, given that the main purpose of TFWPs is to meet labour needs in the short term, not to integrate temporary workers into the nation. This phenomenon reinforces the vulnerability of TFWs during their stay. However, TFWPs still must be considered the first step toward permanent integration.

Individual workers who re-enter the state or become permanent residents are acting on the general desire of individuals to settle in a destination state long-term, which is the primary criterion for stakeholder principle. However, the status of these individuals as “temporary foreign workers” does not guarantee their entitlement as stakeholders because, when the stay is

prolonged through the circularity principle, these workers' time of residency will never be permanent enough.

In this chapter, I discussed the ways in which TFWs can extend their period of stay in Canada and South Korea and illustrated that both states operate two systems, a rotation policy and a permanent residency policy, access to each of which is regulated based on skill level and/or ethnicity. In general, the former is aimed at low-skilled TFWs and the latter is aimed at skilled workers, and, in the case of Korea, at those workers from wealthy Western countries who share Korean ethnicity. Even if low-skilled workers are officially able to apply for PR status, achieving that status is hard in practice. Moreover, the criteria to qualify for PR or the rotation policy are determined solely at the individual state's discretion, thus allowing each state to include/exclude resident aliens preferentially.

Chapter 5: An application of the stakeholder principle to TFWs

This chapter considers the applicability of the stakeholder principle to the case of TFWs. It investigates whether TFWs can become eligible to access stakeholder citizenship in their country of residence — South Korea or Canada — on the basis of the practical situations that these TFWs face. I will first discuss the vulnerability of TFWs, who cannot qualify for traditional citizenship yet access certain rights and duties available to citizens/members. I will argue that the boundary of citizenship should be re-drawn to solve this mismatch and that the stakeholder principle is a suitable measure to determine who can claim membership in a certain community. I will show how two criteria of the stakeholder principle — the biographical subsection criterion and the dependency criterion — apply to the case of TFWs. Throughout, I will draw on evidence provided in the previous chapters to demonstrate the eligibility of TFWs to hold stakeholder citizenship in Canada or South Korea.

TFWs and stakeholder citizenship

Canada and South Korea have introduced TFWPs to solve their respective labour shortage problems in various fields by filling jobs with cheap foreign labour. However, the inflow of TFWs has created a new mobile populace that needs to be protected and to hold rights during their working period in their country of residence. Generally, access to such rights is only available to those who hold traditional, territory-based membership in a community, for which TFWs who come from other territories are not qualified. Nevertheless, TFWs are expected to participate in legal duties in their destination states and they hold a certain number of rights, such as social, civil and labour rights. The situation highlights the contradiction inherent in the

definition of territorial citizenship, which is based on a set of rights and duties entailed for its members. Moreover, there are only two ways to achieve territorial citizenship – by descent or by birth – which presents an insurmountable obstacle for TFWs born in other states. In recent years, territorial borders and the criteria for membership within those borders has blurred.

In this thesis, I have suggested that Bauböck's stakeholder principle provides a useful measure for determining who is able to claim membership in a certain political community. Compared to traditional citizenship, which is defined according to territory, this principle allows access to foreign-born individuals, including TFWs. To be eligible for stakeholder citizenship, individuals must meet either the biographical subjection criterion or the dependency criterion. The biographical criterion applies to those whose circumstances of life have caused them to be linked to a community; this can include having a close family member who belongs to the community, having grown up in the society, or having lived there over a long period. This criterion is especially important in the case of TFWs who do not have a past background in the political community, since it gives equal weight to an individual's future plans and whether or not he/she intends to stay in the community over the long term. Next, the dependency criterion demands that an institution provide basic rights and protections to those individuals who have a stake in the society. To be dependent, an individual's well-being must be tied to the society in certain measurable ways, such as having a family there and performing social responsibilities such as paying taxes.

Applying the biographic criterion to TFWs: Contradiction of the future-oriented principle

The biographic criterion considers one's permanent interest in a community as the basic factor determining whether or not one holds a stake in that community. This criterion assumes

that one's life circumstance and long-term interest in the polity's future bestow political authority. In the context of TFWs, because newcomers do not share a long history with their nation of residence, the measurement of this standard needs to be based on their future intention: whether the TFW has a permanent future interest in the country of residence. Even if, as the term "*temporary foreign worker*" implies, these workers enter the country for a short-term stay, both Canada and South Korea accept prolonged stays by foreign workers, which opens up the possibility for TFWs to be eligible to achieve stakeholder citizenship. That is, the choice of individual TFWs to become permanent residents or return under the rotation policy may be understood as a key variable affecting their qualification as stakeholders. The choice to reside in the host country long-term reflects a TFW's sense of social affiliation with that nation; this affiliation may be significant enough to qualify for stakeholder status.

PR status guarantees the right to permanently stay in the host country, but not all TFWs are eligible to transfer their status to PR. In fact, as the last chapter described, there are many barriers to access PR status, especially for the low-skilled TFWs who constitute the majority of workers imported under TFWPs. Both South Korea and Canada mainly aim their permanent residency programs at highly skilled foreign workers who can transfer their status. Moreover, in Canada, each province has its own authority to operate PTNPs, one of the primary official channels to become a permanent resident, which adds a complication to the process by applying different standards to different individuals depending on where they settle down. On the other hands, in South Korea, the qualifications required by the state for PR are as strict as those required for naturalization.

If PR status demonstrates one's permanent interest in settling down, rotation policy permits a flexibility in the system, requiring even those TFWs that wish to remain in their host

nation in the long term to maintain temporary status. That is, even when workers keep extending their stay, under the rotation policy they are still understood to be temporary. At the same time, the rotation policies demonstrate that membership can arise outside of territorial boundaries: through this policy, TFWs have an individual choice whether to hold a stake in the country of residence. They can express themselves by voluntarily lengthening their stay in Canada or South Korea, and those who prolong their stay can be regarded as stakeholders. Therefore, while traditional citizenship argues that membership is naturally given within the territorial boundary, the stakeholder principle suggests that membership is derived from the trans-national boundary; rotation policy is an avenue available to TFWs through which they can demonstrate the will to become a member of their host country. For most TFWs, rotation policies provide the easiest path for returning to work in the host state, despite the intention of the policies themselves to send workers back to their home countries. Both Canada and South Korea reinforce their rotation policies by facilitating the processing time or operating various programs to encourage workers' re-entry. Through rotation policies, in South Korea, TFWs can stay more than five years after an absence of three to six months – a duration that is almost equivalent to that of permanent residents. In Canada, workers under certain programs, particularly the LSPP, can prolong their stays as much as they want without leaving the country.

As a result, TFWs can express their future intention as stakeholders in two ways, either by acquiring PR status or by pursuing re-hiring under rotation policies. The former path guarantees TFWs' status as stakeholders, while the latter's efficacy in this regard is uncertain. Under the rotation policies, TFWs can express their intention to either extend or terminate their stay in the host country when their contract comes up for renewal; however, even in situations where a worker wants to extend his stay, he/she may not be able to keep doing so indefinitely.

For example, in South Korea, there is a limit to the number of times that a worker can apply for re-hiring, which means that once this end point is reached, the TFW will no longer be a long-term resident. Furthermore, it is hard to define these workers who go back and forth to their home country under rotation policies as stakeholders, since they may choose to cease returning as TFWs at any time; furthermore, their choice to remain in their country of residence is restricted in both Canada and South Korea.

Besides, even though the individual choice of TFWs to stay in the host country long-term theoretically establishes their eligibility to meet the biographical criterion, in practice, TFWs' future plans are already determined: they must return to their country of origin when their work permit expires. No matter what a given individual's choice might be at the end of the temporary period, whether to extend their sojourn to a long-term stay or to leave, their contract restricts the possibility for true long-term residence in the host country. For instance, in South Korea, foreign workers must leave the country for three to six months even if they want to become return workers. In Canada, the LCP is the only TFWP that provides an official channel for migrant workers to achieve PR status.

Additionally, the case of ethnic returnee migration (*dongpo*) workers in South Korea reflects the ambiguous application of the stakeholder principle in terms of TFWs. TFWs whose ethnic background is Korean are further divided into two groups, despite the fact that all the members in this category share an ethnic background with the host nation. This policy reflects the state's preference for return workers from wealthy Western countries; ethnic return workers from China are placed into the same category as regular non-ethnic TFWs in terms of the requirement that they renew their visa status to prolong their stay, while ethnic return workers from America enjoy a greater range of privileges, including a facilitated application for

permanent resident status. This phenomenon, in which the host state expresses different attitudes toward migrant workers from different ethnic groups, conflicts with the premise of the stakeholder principle. All of these workers should be treated as stakeholders, since they not only share a historical background with their host country but they also obviously intend to return and contribute to the economic development of South Korea. That is, with regard to the stakeholder principle, ethnic returnees from China and America should be treated equivalently, no matter how their potential economic contributions to South Korea may differ; nevertheless, the state ignores this principle and draws artificial divisions on the basis of its own standards. It is hard even for eminently qualified TFWs to argue for their status as stakeholders as long as the individual states maintain the right to reject applications for stakeholdership at their own discretion.

To sum, as discussed in the previous chapters, the system of TFWPs is entirely designed before migrant workers' entry, by other players such as individual states and/or employers, without the workers' involvement. The criteria required to access PR and to be re-hired under the rotation policy are determined by the policies of the host states as well as pre-established details of each TFW's status, as determined under contract before their entry into the host country. Even in cases where TFWs can prove their intention to remain long-term or return to the host state, the rotation and PR policies essentially guarantee that they must nevertheless return to their country of origin. For instance, even though PR status guarantees permission for permanent settlement in the host country, the pathway to PR is limited or barely available to TFWs. Moreover, under rotation policies, the number of times that a migrant worker can come back is limited, and even if the workers keep returning to the host state on what might reasonably be understood as a "long-term" basis, their status as "temporary aliens" cannot be changed.

Applying the dependency criterion: Not a permanent resident, not a subject to be protected

TFWs can also qualify as stakeholders through the "dependency criterion," which states that one's rights must be protected by the political community in which only those individuals who contribute to the well-being of the society fit this criterion, because their involvement creates a social tie with the society. This criterion is based on the understanding that each community member's well-being is not determined exclusively on an individual basis, but is linked with others. Therefore, eligibility as a stakeholder on this criterion can be determined based on a given TFW's dependency on his/her community of residence.

TFWs play a key role as resident aliens during their resident periods: they participate in the labour market as short-term workers and pay into employment insurance and pension in both Canada and South Korea. They have even been involved in demonstrations in South Korea, which can be interpreted as political participation with the purpose of expressing one's opinions so as to develop one's rights. In both states, TFWs are expected to fulfill the same responsibilities as domestic workers; fulfillment of these responsibilities constitutes a contribution to the wellness of society. The demonstrations of TFWs in South Korea have not only improved their own access to social benefits, but have also improved the welfare of all workers in the "3D" industries. Based on these contributions, TFWs should have the right to rely on their country of residence for protection. However, in practice, both states ignore these contributions from TFWs that build the connections between society and TFWs and protect only certain rights for TFWs designated by their work permits.

The country of residence covers several rights within the context of the pre-written contract. In particular, all of the TFWPs in South Korea and the SAWP in Canada are based on bilateral agreements operated and managed by the sending and receiving states. Some programs,

such as the LSPP in Canada, give an opportunity for employers to be involved in determining the details of workers' conditions. This system indicates that the rights of TFWs are not derived from the workers' relationship with other residents but from the special conditions specified by the system. That is, TFWs hold a set of rights not because they share social ties with other people in the country of residence but because the agreement between the country of origin and the country of residence demands it.

Even though TFWs are qualified to access social and civil rights just like local workers, in practice, there are barriers to overcome. Although both states guarantee certain social rights that every worker deserves to enjoy, such as health care, EI and compensation, migrant workers often face difficulties in achieving these rights and protections due to language barriers, lack of information, and fear of deportation. Moreover, the freedom of internal mobility, which is understood internationally as a civil right — the right to protect one's freedom — is often restricted for TFWs, even in the context of workplace and accommodation change. For instance, in Canada, all TFWs are technically able to change their workplace, but their contracts systemically deny this right by requiring individual workers to find a new employer to support them and endure a long processing time. In South Korea, TFWs can change their workplace at the most four times, and only in the case of an external problem encountered by the employer, such as bankruptcy or business closure. Political rights are the most problematic for TFWs. Even though TFWs do not hold any political rights, they are clearly affected by the decisions made in certain political communities, just like citizens, yet only citizens are qualified to resist or appeal by voting and representing themselves. Neither Canada nor South Korea guarantees political rights, especially voting rights, to TFWs. There may be an ongoing debate about the possibility

of providing voting rights to migrant workers, but at the present time, no policy to this effect exists in either country.

Furthermore, South Korea and Canada maintain the attitude that TFWs deserve access to the same social welfare as local workers as long as domestic workers are not being harmed. This policy is expressed in two principles: first, that domestic employers should actively seek local workers first before hiring foreign workers, and second, that certain rights, such as the right to change workplace, must be limited in order to stop foreign workers from taking away desirable jobs from domestic workers. Thus, rights are segmented and governed according to citizenship status. TFWPs are one way that the state justifies their citizenship boundary, by categorizing temporary migrant workers in different terms. Unfortunately, this creates challenges for the social and political inclusion of migrant workers. Creating a category of “migrant workers” crystallizes the social organization of nationalized difference in the states’ labor markets and within the society at large.¹²⁷

To conclude, it is obvious that the rights of TFWs derive not from their dependency on the society but from pre-determined contracts. Even if TFWs also play a key role as residents who contribute to the development of the community, they are restricted from retaining social rights or accessing the labour markets; individual states neglect TFWs’ connection with society and fail to acknowledge their contribution. Plus, TFWs have no power to change or overcome the details of their contracts, which are built without their consultation by the two individual states or employers. This situation results in a high rate of social exclusion and exploitation among TFWs.

¹²⁷ Sharma, *Home Economics: Nationalism and the Making of ‘Migrant Workers’ in Canada*. (Toronto: University of Toronto Press, 2006), 166.

TFWs who are not able to hold the stakeholder citizenship

In conclusion, even if temporary migrant workers live in the same environment and share a similar lifestyle with others in their country of residence, they have the opportunity neither to become stakeholders nor to take advantage of the benefits that other citizens enjoy, because their status restricts them from staying in the country beyond a given period. Their legal status as TFWs, and the limited time-frame of the work permit that accompanies that status, relegates TFWs to a position where they are legally discriminated against and suffer from restricted access to the benefits that are provided to citizens. It also means that TFWs are limited from full integration, full protection and full participation in their host states. TFWs cannot change any of their conditions of entry, employment or duration of stay, since all of these factors are controlled by the state. In other words, both Canada and South Korea restrict the rights and freedom of foreign workers systemically. Their contracts under the TFWP determine their future opportunities not as long-term residents but as sojourners, and as such, their access to permanent resident status is restricted; these opportunities are further constrained by the migrant workers' skill level and, in South Korea, their ethnicity. Moreover, the contract imposes these restrictions on workers' rights without input from the migrant workers themselves. The intent behind determining the TFWs' contract details before their entry is to prevent the abuse of the TFW status by employers. However, in practice, this pre-determined contract often creates additional barriers that block TFWs' rights to appeal to their destination state.

The stakeholder principle does not take into account the role each individual state plays in determining the openness of its borders to new members. Individual states have their own criteria according to which they admit foreigners or forbid entrance. The provision of eligibility criteria for the transfer from temporary to permanent status, the operation of rotation policies,

detail of TFWs status and the determination of the duration of contracts for migrant workers are all enacted by agents who hold membership in the host states. That is, membership in a particular community determines not only the boundaries for rights and duties but also determines the administrative process necessary to gain legal access to citizenship. Therefore, although migrants may hold an intention to settle down in the host state, the pathways to legitimate community membership are not determined by the migrants themselves, but by the existing members of the community, who selectively determine the standards for future inclusion in the community. Consequently, the criteria of the stakeholder principle can be interpreted differently within individual political communities. Individual states have different jurisdictions and laws based on their own individual needs and cultures. For example, the term “long-term period” is left undefined in the stakeholder principle, and the actual length of this period may be determined differently in each state.

Based on these considerations, it seems that, although stakeholder citizenship is a flexible idea, it still has only limited capacity to apply to all people who live within the same political boundaries. Stakeholder citizenship considers residence and connection with the society within territorial boundaries as key factors when ascertaining whether a newcomer’s social presence in a political community is significant enough for that person to be granted membership in that community. In the case of TFWs, they are not qualified because they are resident aliens whose stay will always be short term, regardless of policies allowing for extended work duration or partial rights. Only long-term resident foreigners can gain the bundle of rights that derive from the social affiliations that tie them to others. In other words, even if TFW status can be presupposed as the first step toward long-term residency and contribution to the country of

residence economically and socially, these workers are nevertheless treated as short-term sojourners without full benefits and protections. Note, however, that because this thesis has focused specifically on the case of TFWs, the conclusions drawn here cannot be applied to the entire immigrant community of a given country of residence; it is possible that the principles of stakeholder citizenship may be applied meaningfully to other types of migrants.

Conclusion: Rights and membership for temporary migrant workers

In this thesis, I have highlighted the citizenship boundary and the rights of the global labour mobility group known as “temporary foreign workers.” In the first chapter, I explored the political notion of citizenship, concluding that this notion consisted of both membership in a territorially fixed political community and the bundle of rights associated with that membership. I noted that, because the notion of citizenship is rooted in fixed territorial membership, certain types of residents, particularly TFWs, are prevented from attaining rights that only citizens can achieve. To counter this problem, I proposed the adoption of the “stakeholder principle” of citizenship, which holds that the people who have a stake in a community should be eligible to request the protection of rights; I contended that this type of qualification might helpfully broaden the range of residents eligible to access national membership. To be a stakeholder according to this principle, one must either express one’s intention to remain permanently in the country of residence *or* have a connection with the society to earn the rights and protections offered by the society where they reside. In the second chapter, I fleshed out my proposal by presenting a comparative case study based on empirical data concerning the experience of TFWs in South Korea and Canada. I demonstrated that, although the TFWPs developed by these two countries are quite different in design, they are quite similar in terms of the consequences for TFWs in their country of residence; in both states, TFWs are especially vulnerable to exploitation in various forms. The operation and protection of the TFWs mainly relies on pre-determined conditions in their destination states, and does not take into account the TFWs’ involvement in the community. In addition, TFWs are divided into various categories according to variables which reinforce the vulnerability of those individuals. These categories, which have been formed by the host states, contribute to an emergent hierarchy between those TFWs who

can easily access social benefits and permanent residency status in their host country and those who are rejected. In the third chapter, I described the basic rights - civil, social and political - that are protected for TFWs in Canada and South Korea, respectively. I showed that, in both countries, TFWs often experience difficulty in gaining the benefits promised by their contracts, even though they participate in legal duties just like citizens. The pre-designed TFW contracts limit TFWs' access to rights, and this problem is confounded by various other obstacles, such as language barriers, short-term duration of stay, confusion over jurisdiction and abuse from employers. In the fourth chapter, I discussed how TFWs can make the transition from temporary status to permanent residency or rotation in Canada and South Korea. There are two pathways that TFWs can take to lengthen their stay in both states: permanent residency (integration) and rotation (recurrent re-hiring of TFWs without the benefits of integration). Each state sets high qualification criteria for permanent residency, so only skilled foreign workers are able to apply. For low-skilled TFWs, both states encourage a period of departure to the home country, followed by re-hiring (rotation). In the final chapter, I have combined the practical situation faced by TFWs in Canada and South Korea with the theoretical approach of stakeholder citizenship to determine whether TFWs are eligible to claim membership as stakeholders in their country of residence. I concluded that, because the future intention of TFWs — repatriation to their country of origin at the end of the work term — is predetermined before the work permit comes into effect, and because the rights of TFWs are pre-designated and mandated under the terms of their contract before entry to the host country, these migrant workers are not eligible to become stakeholders.

The stakeholder principle is designed to facilitate the acquisition of membership for non-citizens; it emphasizes one's permanent interest and guarantees the well-being and continuity of the community while allowing for the inclusion of resident foreigners as well. However, it also provides a criterion to distinguish those who should be excluded for membership: length of stay. The stakeholder principle therefore does not guarantee the rights of all residents; for temporary migrant workers, whose duration of stay is inherently short-term, the stakeholder principle offers no avenue to membership, regardless of whether these workers attempt to extend their stay as long as possible and regardless of their contributions to the host society during their stay. Both biographical aspect and the dependency criterion derive from a notion of permanency that is impossible for TFWs to achieve. Consequently, although stakeholder citizenship is more flexible than territory-based citizenship, it is not flexible enough to protect the rights of short-term foreign workers. In this case, TFWs are treated in the same manner as short-term sojourners or tourists whose rights are not protected in terms of citizenship but who are covered under contracts designed cooperatively by individual states.

Additionally, the system of TFWPs has benefit to the host state as its primary goal, a situation that can contribute to the vulnerability of TFWs. The system is not only built to facilitate opportunities for employers to hire people easily, but may encourage the power of employers to abuse foreign workers. In both Canada and South Korea, TFWPs are legislated for the purpose of economic benefits, and under growth programs, TFWs are required to fulfill the same duties as citizens with fewer rights and less protection. Further, it is mainly skilled TFWs that are considered to be targets for future citizenship. Low-skilled TFWs have faced challenges to achieving permanent resident status and other social benefits such as permission to bring their

families or extend their staying period, while highly-skilled workers have a much easier time accomplishing these goals.

To sum up, TFWs are relegated to the category of permanent non-citizens, may or may not be eligible to become stakeholders, and certainly face hardship in attempting to access the rights and protections associated with citizenship due to their special status. The denial of membership blocks TFWs from acquiring social benefits even when they are qualified to access those benefits by virtue of their participation in duties and their influence on the social, culture and economic wellbeing of their host state. Therefore, it is necessary that these policies be modified in order to improve the conditions of TFWs. To be effectively overhauled, TFWPs needs special attention, with the cooperation of all players both in the sending states and the receiving states. Both states are in charge of providing protection for those workers whose “temporary worker status” is built by their relations. Since more than one state is involved in migrants’ citizenship status, these governments should coordinate their citizenship policies so as to avoid unjustified exclusion or inclusion.¹²⁸ The balance of power and responsibility in this context is likely to fall with the host state, which has a duty to provide legal protection due to territorial jurisdiction. Thus, the sending states should advocate strongly for their workers when they design the details of the program with the receiving states. Plus, it is not reasonable for TFWs to participate in all the same duties as domestic workers unless they can achieve the same rights. That is, they should either be eligible for the full range of social benefits, including EI or severance pay, or not pay into benefits that they cannot fully access. People within the same jurisdiction who share equivalent social responsibilities deserve the same protections, yet the TFWs are relegated to separate categories from native workers despite their participation in

¹²⁸ Baubock, “stakeholder citizenship,” 6.

paying taxes or pensions like nations. This strengthens their marginalization and prevents them from receiving protections.

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