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Input on country visit to Canada of the Special Rapporteur on contemporary forms of slavery

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Introduction

As stated in the Special Rapporteur mandate, “the majority of those who suffer are the poorest, most vulnerable and marginalized social groups in society. Fear, ignorance of one’s rights and the need to survive do not encourage them to speak out.”

Over the last 20 years, our offices have learned from and with migrant workers with closed work permits, open work permits and those without status in various industries. The work we do is informed by the experiences of migrant workers as they attempt to understand and reconcile exploitation directly resulting from the closed work permit program and, additionally, from those who use the program restrictions to intimidate, frighten, threaten and abuse workers into compliance. The violations people experience is within a spectrum of exploitive practices, including situations of forced labour. Offenders use particular intersectionalities, including race, culture, language, poverty, immigration status and gender, to further exploit people through forced labour.

Temporary Foreign Worker Program (TFWP)¹

Temporary Foreign Workers contribute to a range of industry sectors, though many are concentrated in lower-wage positions, including jobs in hospitality or service, agriculture, trades and manufacturing, trucking, or general labour. Vulnerability and abuse are not inherent to these workers or the jobs that they do, but rather they are actively created and perpetuated by policies, programs and regulations.² For example, the TFWP is an immigration program that creates conditions akin to forced labour to flourish.

- Between January 2015 and November 2020, 728,390 permits were issued to Temporary Foreign Workers (TFWs). Of those, 18% were female or “another gender” (fewer than 15 applicants indicated a gender other than female or male). Among female applicants, the majority of permits (approximately 64%) were for lower-skilled occupations.³

¹ Temporary Foreign Worker Program, Government of Canada, <https://www.canada.ca/en/employment-social-development/programs/temporary-foreign-worker.html>

² Strauss, K., & McGrath, S. (2017). Temporary migration, precarious employment and unfree labour relations: Exploring the ‘continuum of exploitation’ in Canada’s temporary foreign worker program. *Geoforum*, 78, 199-208.

³ IRCC, *Temporary Foreign Worker Program work permit holders by gender, occupational skill level and year in which permit(s) became effective, January 2015 - November 2022* [Data set]. Immigration, Refugees and Citizenship Canada.

- In 2019, approximately 7% of TFW permits were in the care work sector, and 95% of those (around 6,500) were female applicants.⁴
- In 2021, TFWs represented around one-quarter of all agricultural workers in the country with 61,735 TFW entries in the sector that year.⁵
- Approximately 5% were female applicants.⁶

The abuses taking place within the TFWP, mainly in the sectors occupied by workers from the low-wage stream of the program and with closed work permits, is well documented. Workers are subjected to widespread financial, physical, psychological, emotional and, at times, sexual abuse. They are forced to work long hours, paid less than the minimum wage or sometimes not paid at all. Those working in the agriculture sector are required to handle dangerous pesticides and machinery without proper training and are often mandated to live in rundown, infested, and overcrowded housing on their employers' properties.⁷ Leaving the situation can lead them to lose their status and potentially lead to further victimization and exploitation.⁸

Workers in industries such as agriculture, care work and others would be issued closed work permits, depriving workers of labour mobility. During the COVID-19 pandemic, migrant workers were further isolated and subjected to additional restrictions related to mobility and forced to work and live without adequate health and safety measures.⁹ As a result, COVID-19 outbreaks on farms and food processing factories were rampant, hundreds of workers contracted COVID, and some died.¹⁰

Women and gender-diverse migrants are subjected to additional layers of abuse as a result of structural oppressions perpetuated by the TFWP and other policies. They are often forced to comply with unsafe conditions, chronic sexual harassment and sexual assault, including unwanted physical contact, sexual demands, degrading words or gestures and unwanted kissing or touching of a sexual nature as a condition of continued or extended employment.¹¹ Speaking out on workplace experiences of sexualized violence or economic coercion can be difficult—if not impossible.

Further, migrant care workers in Canada, who are mostly women of colour from countries such as the Philippines and Mexico,¹² routinely experience exploitation related to their employment. Although care

⁴ Government of Canada, *Gender-based analysis plus, 11 August 2021* <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/departmental-performance-reports/2020/gender-based-analysis-plus.html>

⁵ Government of Canada. (2022, December 2). *Employers and temporary workers to benefit from family work permits to address labour shortages*. <https://www.canada.ca/en/immigration-refugees-citizenship/news/2022/12/employers-and-temporary-workers-to-benefit-from-family-work-permits-to-address-labour-shortages.html>

⁶ Government of Canada, 2021

⁷ Caxaj, S., Tran, M., Mayell, S. *et al.* Migrant agricultural workers' deaths in Ontario from January 2020 to June 2021: a qualitative descriptive study. *Int J Equity Health* 21, 98 (2022); Snakes, rats, bedbugs, abuse. Complaints filed by Mexican migrant workers expose underside of Canada's seasonal agriculture program, Toronto Star investigation, 2019 <https://www.thestar.com/news/canada/2019/10/14/snakes-rats-bedbugs-abuse-complaints-filed-by-mexican-migrant-workers-expose-underside-of-canadas-seasonal-agriculture-program.html>

⁸ More on various abuses and vulnerabilities within the TFWP: Roberts, S.E. The Bureaucratic and Political Work of Immigration Classifications: an Analysis of the Temporary Foreign Workers Program and Access to Settlement Services in Canada. *Int. Migration & Integration* 21, 973–992 (2020); Vosko, L.F., Spring, C. COVID-19 Outbreaks in Canada and the Crisis of Migrant Farmworkers' Social Reproduction: Transnational Labour and the Need for Greater Accountability Among Receiving States. *Int. Migration & Integration* 23, 1765–1791 (2022); Zwaigenbaum J., Tulli M., Dr. Salami B., The Ongoing Exploitation of Temporary Foreign Workers, Women in Scholarship, Engineering, Science, and Technology, 2021

⁹ FCJ Refugee Centre, "It Happens Here: Labour Exploitation Among Migrant Workers During the Pandemic" (2023) <https://www.fcjrefugeecentre.org/wp-content/uploads/2023/02/FCJ-CCTEHT-%E2%80%93Labour-Trafficking-Report-EN.pdf>

¹⁰ Migrant Workers Alliance for Change, *Unheeded Warnings: COVID-19 & Migrant Workers in Canada*, June 2020 <https://migrantworkersalliance.org/wp-content/uploads/2020/06/Unheeded-Warnings-COVID19-and-Migrant-Workers.pdf>

¹¹ Alliance for Gender Justice in Migration (2023), Policy Position Statement (unpublished)

¹² Sherab, Dominique (2022), Literature Review (Unpublished) *Alliance for Gender Justice in Migration*

work is viewed as an essential occupation, it is often devalued and underpaid. Low wages and the high cost of living often leave migrant care workers no choice but to remain in their employers' homes even when this is not a requirement.¹³ Living in an employer's home creates unequal power dynamics making migrant care workers vulnerable to wage theft, including working beyond their work hours without overtime pay, loss of privacy and autonomy.¹⁴

The Canadian government, parliamentarians, and other politicians have been aware for decades of the rampant abuse and mistreatment taking place within the TFWP. Research and studies, including one done by the House of Commons Standing Committee on Citizenship and Immigration in 2009¹⁵ and another by the House of Commons Standing Committee on Human Resources, Skill and Social Development and the Status of Persons with Disabilities (HUMA) in 2016¹⁶ clearly identified widespread exploitative working conditions and sexualized violence without an immediate option to leave, as one of the primary factors contributing to the exploitation of workers in Canada.

Some changes, including increased inspections by the Employment and Social Development Canada in workplaces and an open work permit program for abused workers, have taken place. However, those changes are superficial and only "Band-Aid" solutions to deeply rooted structural inequalities built within the TFWP. Government efforts to address the high risk of abuse have largely failed since the structures preventing migrant workers from asserting their rights have remained in place. The TFWP is an essential income venue for migrant workers and their families and it merits substantive changes to provide equal and dignified labour opportunities and treatment to those communities.

Open Work Permits for Vulnerable Workers

The Open Work Permit for Vulnerable Workers (OWP-VW) implemented in June 2019 as a means to provide workers with the opportunity to escape abuse has proven to be inaccessible. Workers are often unable to provide the necessary evidence required to prove abuse or harassment, they are unable to make the application due to limited literacy or English/French skills, and, due to geographic isolation, they are unable to access the very limited services that might assist.¹⁷

In a recent assessment, numerous issues were found in the program's decision-making processes and practices. Significant issues included gaps in understanding of what constitutes abuse between immigration officers, a lack of consideration or incorrect consideration of the evidence, high evidentiary

¹³ Bhuyan, Rupaleem et al., *Responding to the structural violence of migrant domestic work: Insights from participatory action research with migrant caregivers in Canada*, *Journal of Family Violence*, 2018

¹⁴ Caregivers Action Centre, *Behind Closed Doors: Exposing Migrant Care Worker Exploitation During Covid- 19*, 2020 <https://migrantrights.ca/wp-content/uploads/2020/10/Behind-Closed-Doors-Exposing-Migrant-Care-Worker-Exploitation-During-COVID19.pdf> ; Bhuyan, R., Valmadrid, L., Panlaqui, E.L., Pendon, N.L., Juane, P. (2018). Responding to the structural violence of migrant domestic work: Insights from participatory action research with migrant caregivers in Canada. *Journal of Family Violence*, 33(8), pp. 613-627

¹⁵ Standing Committee on Citizenship and Immigration, *Temporary Foreign Workers and Non-Status Workers*, Report, 2009 <https://www.ourcommons.ca/Content/Committee/402/CIMM/Reports/RP3866154/cimmp07/cimmp07-e.pdf>

¹⁶ Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Report, 2016 <https://www.ourcommons.ca/Content/Committee/421/HUMA/Reports/RP8374415/humarp04/humarp04-e.pdf>

¹⁷ Depatie-Pelletier, E.; Deegan, H.; Berze, K. Band-Aid on a Bullet Wound—Canada's Open Work Permit for Vulnerable Workers Policy. *Laws* 2022, 11, 36.

burdens, lack of procedural fairness, and enforcement action as a consequence of application.¹⁸ All of these issues further disincentivize workers from reporting abuse and keep migrant workers in situations where they feel they must endure abuse. In addition, workers are required to have valid work permits in order to access the program. Therefore, non-status workers, a population extremely susceptible to forced labour and exploitation, are unable to apply. As well, workers who experience unfair treatment or working conditions but do not meet the definition of “abuse” set out by IRCC are not able to access this immigration remedy. Deprived of labour mobility, workers are forced to accept exploitative conditions.

One form of widespread abuse includes tricking or deceiving workers into believing work permit applications (for an initial permit or an extension of an existing permit) are in process. When these permits never arrive, and the worker consequently falls out of status, they are no longer eligible for the OWP-VW, leaving them in an even more precarious situation and at further risk of exploitation, detention and deportation by state authorities.

Other Excluded Groups

Particular policies and legislations silence the voices of migrant sex workers, those dually charged and forced marriage survivors. For example, sections 185(1)(1.b) and 200(3)(g.1) of the Immigration and Refugee Protection Regulations and related laws and policies prohibit migrant people from doing sex work-related employment.¹⁹

Women experiencing sexual violence are sometimes charged with obstruction of justice or mischief when law enforcement doubt their claims of sexual assault. Similarly, female survivors often face civil charges (such as slander) from their abusers if they report sexual assaults. Finally, victims of forced marriage who come forward frequently experience heightened scrutiny from law enforcement for their ‘criminal’ status upon arrival in Canada.²⁰ The use of criminal or civil actions against women experiencing violence undermines their trust in Canadian systems and contributes to actual and perceived helplessness to escape abusive situations.

Due to these legislative barriers and carceral approaches, people, the majority of whom are racialized women and gender-diverse migrants, are unable to contact authorities and are further exposed to violence and abusive working conditions.

¹⁸ Aziz, Amanda, A Promise of Protection? An Assessment of IRCC Decision-Making Under the Vulnerable Worker Open Work Permit Program, Migrant Workers Centre 2022 <https://mwcbc.ca/wp-content/uploads/2022/03/A-Promise-of-Protection-An-assessment-of-IRCC-decision-making-under-the-VWOWP-program.pdf>

¹⁹ Butterfly, Work Permit Restrictions on Employment in Businesses Related to the Sex Trade,” Brief submitted to the Standing Committee on Justice and Human Rights, 2018 <https://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR10006331/br-external/ImmigrationLegalCommittee-e.pdf>

²⁰ Barbra Schlifer Commemorative Clinic, Criminalization of Women. Online: <https://www.schliferclinic.com/criminalization-of-women/> and <https://www.schliferclinic.com/wp-content/uploads/2023/04/BSCC-UPR2023.pdf>, and United Nations: Human Rights Council, Special Rapporteur on violence against women and girls, its causes and consequences, “Report: Visit to Canada” (19 November 2019) at 25. Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/317/19/PDF/G1931719.pdf?OpenElement>

Victims of Trafficking in Persons Temporary Residence Permit (VTIP-TRP)

VTIP-TRP was established in the Immigration and Refugee Protection Act (IRPA) are the main immigration recourse for trafficked migrants in Canada. Established in 2006, VTIP-TRP was an important first step towards recognizing the protection needs of trafficked migrants. However, over the last 23 years, it has become evident the VTIP-TRP provides very weak assurances for trafficking survivors to be able to stay in Canada and seek redress after experiencing extreme forms of exploitation.

In fact, provisions under IRPA are focused on determining what constitutes an offence of trafficking in persons and do not directly establish that trafficked migrants in Canada have the right to seek temporary or permanent protection. Rather, trafficking survivors are provided with the chance to regularize their immigration status – not by virtue of being a survivor of human trafficking in Canada – but indirectly as an ‘exception’ to IRPA under Section 24(1) and by Ministerial Instruction in Section 24(3). This effectively means trafficked migrants do not have a legislative ground to directly claim temporary resident status in Canada, nor do they appear in IRPA as a designated class of immigrant or foreign-national. Further, the VTIP-TRP program is set up by Ministerial Instruction, which means the VTIP-TRP is by definition: (a) not established by law or regulation, (b) is subject to change and (c) limited in time.

While academic research on the TRP’s utility is scarce, our experience demonstrates that this tool is limited in scope and has an uncertain outcome due to the discretionary process. Outdated criteria and understanding of exploitation by IRCC officers reduce migrant experiences to individual culpability, often blaming them for their own demise. Those issues are compounded by the lack of a mechanism to support trafficked and exploited people to make the TRP applications. Trafficked migrants are often forced to engage with law enforcement or testify against their trafficker in order to receive a subsequent TRP, which can have dangerous consequences for their families in Canada and their country of origin. The pathway to permanent residency is rather complex, expensive and unattainable. All are serious barriers for survivors to access safety in Canada.

Conclusion

The Special Rapporteur rightly acknowledges and seeks to “recommend remedies regarding the causes and consequences of contemporary forms of slavery, such as poverty, discrimination and conflict, and the existence of demand factors.” Migrant workers in industries of low-paid labour are often racialized individuals, living situations of poverty, violence, and displacement created by colonial and neo-liberal systems. As a settler colonial state perpetuating those systems of oppression, Canada has an obligation to create fair and equitable conditions for those migrants. Access to permanent resident status upon arrival, and abolishment of the closed work permit and repeal of sections 185(1)(1.b) and 200(3)(g.1) of the IRPR, in the interim, are some of the necessary measures to address the widespread human rights violations of those communities.

Legal Assistance of Windsor is an interdisciplinary community legal clinic working with vulnerable and marginalized individuals and communities in Windsor/Essex, Ontario. Legal Assistance of Windsor has been the lead organization for the Windsor Essex Counter Exploitation Network dedicated to providing services to individuals experiencing exploitation for over 20 years.

Collaborative Network to End Exploitation (CNEE), is a collaboration of faith-based organizations and community groups. The CNEE is committed to modeling better practices of anti-human trafficking work. With the help of our partners, we root our work in the voices and experiences of people with lived experiences. We strive to ensure that our actions do not negatively impact those who have been harmed or create further pain for other targeted groups.

Alliance for Gender Justice in Migration is a network of people with lived experience, advocates, researchers, and service providers who are actively working to end discrimination against women and gender-diverse people with precarious immigration status. Launched in 2022, The Alliance is a collaborative effort aimed at building a coordinated response to systemic barriers and issues identified by its members. The Alliance has been actively engaged in promoting gender justice in migration and has made some progress in raising awareness, conducting research, building capacity, and advocating for policy changes that addresses unique needs and challenges of women and gender diverse individuals with precarious immigration status.

FCJ Refugee Centre is a grass-roots community organization based in Toronto, ON. For over 30 years, the FCJ Refugee Centre has supported hundreds of individuals and families, many in precarious situations, in regularizing their immigration status and facilitating access to services. With an open door and holistic approach, we offer a unique integrated model of providing supports and services, such as housing and shelter, integration support and notably support for migrant workers through our Migrant Workers Mobile Program. This is part of our anti-human trafficking support for survivors of human trafficking (both labour and sex).

Barbra Schlifer Commemorative Clinic offers legal services and representation, trauma-informed counselling and multilingual interpretation to marginalized and racialized women and gender diverse people who have experienced violence. Since its founding in 1985, the Clinic has assisted more than 100,000 women and gender -diverse survivors of violence through it's direct services, advocacy efforts, legal reform, submissions, projects and programs.