

Universal Periodic Review

Canada

United Nations Human Rights Council

Human trafficking in Canada: sexual exploitation and forced labour

Joint submission presented by:

Comité d'action contre la traite humaine interne et internationale

Franciscans International (NGO in General Consultative Status with ECOSOC)



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30th session of the Working Group on the Universal Periodic Review

May 2018

Introduction

1. Founded in 2004, the Comité d'action contre la traite humaine interne et internationale (CATHII)¹ is a non-governmental organization whose achievements include the publishing of a study on the needs of victims in Canada,² another on cases of forced labour in Canada³ and a directory of resources for trafficked persons. CATHII also sets up the Coalition québécoise contre la traite des personnes. The members of CATHII are religious orders and faith groups, most of which are members of UNANIMA International, an NGO having consultative status with ECOSOC. In addition, two members are associated with the Franciscan family represented at the United Nations by Franciscans International. CATHII is a member of Talitha Kum, an international network against human trafficking, the Canadian Council for Refugees, the Concertation des luttes contre l'exploitation sexuelle (CLES) and also the Migrant Workers Committee of the Front de défense pour les non-syndiqués. CATHII has presented briefs and taken part in consultations at the provincial, national and international levels.
2. Franciscans International ("FI") is a non-governmental human rights organization founded in 1989. It has had consultative status with ECOSOC since 1995. It supports Franciscans and their partners working at the local and national levels. Franciscans International helps bring the concerns and expertise of its partners before the UN in order to remedy the structural causes of human rights violations.
3. On the occasion of Canada's second Universal Periodic Review, many of the recommendations were related to human trafficking. In particular, it was recommended that Canada continue implementing its action plan to combat trafficking;⁴ place special emphasis on the victim-oriented approach to address the challenges of trafficking;⁵ intensify efforts to identify and eradicate trafficking in children and women for the sex trade;⁶ establish mechanisms and procedures for the protection of rights of child victims⁷ and provide training in this regard for police and prosecutors.⁸ Canada accepted these recommendations.⁹
4. In this paper, CATHII and FI wish to contribute to the analysis of the implementation of these recommendations and present the current status of the fight against human trafficking in Canada.

¹ Cf. Comité d'action contre la traite humaine interne et internationale, online: <<http://www.cathii.org/>>.

² *Frontline responses to human trafficking in Canada: Coordinating services for victims*, Alexandra Ricard-Guay and Jill Hanley, Comité d'action contre la traite humaine interne et internationale (CATHII), 2014, online: <http://www.cathii.org/sites/www.cathii.org/files/CATHII_english_0.pdf>.

³ *The Exploitation of Foreign Workers in Our Own Backyards: An examination of labour exploitation and labour trafficking in Canada*, Jesse Beatson and Jill Hanley, Comité d'action contre la traite humaine interne et internationale (CATHII), 2015, online: <<http://www.cathii.org/node/23>>.

⁴ Report of the Working Group on the Universal Periodic Review, Canada, 28 June 2013, A/HRC/24/11, §128.107.

⁵ *Ibid.*, §128.108.

⁶ *Ibid.*, §128.109.

⁷ *Ibid.*, §128.110 and §128.111.

⁸ *Ibid.*, §128.111.

⁹ Report of the Working Group on the Universal Periodic Review, Canada, Addendum, *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 17 September 2013, A/HRC/24/11/Add.1, paras. 40-41.

Canada's efforts to combat human trafficking

5. Canada introduced legislative measures concerning human trafficking in 2002 in the *Immigration and Refugee Protection Act*.¹⁰ In 2005, Canada amended its *Criminal Code* to include human trafficking.¹¹ Since then, Parliament has imposed minimum sentences for the trafficking of minors¹² and added human trafficking to the list of offences committed outside the country for which Canadian citizens and permanent residents can be prosecuted in Canada.¹³ In 2015, a law criminalizing early or forced marriage amended the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code*.¹⁴ Furthermore, two bills concerning human trafficking (C-452¹⁵ and C-38¹⁶) seek to amend the *Criminal Code* to facilitate the prosecution of persons charged with human trafficking by introducing the following presumption: “evidence that a person who is not exploited lives with or is habitually in the company of a person who is exploited is, in the absence of evidence to the contrary, proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation.”¹⁷ The legislative amendment is currently being given second reading in the House of Commons.¹⁸
6. In addition, among the initiatives introduced by the federal government, the Royal Canadian Mounted Police (RCMP) set up the Human Trafficking National Coordination Centre (HTNCC) in 2005. In 2012, Canada adopted its first National Action Plan to Combat Human Trafficking.¹⁹ It presented four annual reports on the projects implemented under the Plan, which ended in March 2016. An evaluation process should be completed in August 2017.²⁰ A document entitled “A Handbook for Criminal Justice Practitioners on Trafficking in Persons” was updated in February 2015 and is available online.²¹ Regulatory amendments adopted in 2013 also limit the granting of work permits for certain sectors of activity.²²

¹⁰ *Immigration and Refugee Protection Act*, (S.C. 2001, c. 27), s. 118.

¹¹ *Criminal Code*, (R.S.C. (1985), c. C-46), ss. 279.01-279.04.

¹² *Ibid.*, s. 279.02(2).

¹³ *Ibid.*, s. 7(4.11).

¹⁴ *Zero Tolerance for Barbaric Cultural Practices Act*, (S.C. 2015, c. 29).

¹⁵ *An Act to amend the Criminal Code (exploitation and trafficking in persons)*, Bill C-452, (S.C. 2015, c. 16), online: <http://www.parl.ca/Content/Bills/412/Private/C-452/C-452_4/C-452_4.PDF>.

¹⁶ *An Act to amend the Criminal Code (exploitation and trafficking in persons)*, Bill C-38, online: <http://www.ourcommons.ca/Content/Bills/421/Government/C-38/C-38_1/C-38_1.PDF>.

¹⁷ *An Act to amend the Criminal Code (exploitation and trafficking in persons)*, Bill C-452, (S.C. 2015, c. 16), §1.

¹⁸ *LegisInfo*, Parliament of Canada, online: <<http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8734953>>.

¹⁹ Public Safety Canada, *National Action Plan to Combat Human Trafficking*, 2012, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/index-en.aspx>>.

²⁰ *National Action Plan to Combat Human Trafficking – 2015-2016 Annual Report on Progress*, Public Safety Canada, p. 3 and p. 24, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt-prgrss-2016/index-en.aspx>>.

²¹ Federal/Provincial/Territorial Working Group on Trafficking in Persons, *A Handbook for Criminal Justice Practitioners on Trafficking in Persons*, February 2015, online: <<http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/hcjpotp-gtpupjp.pdf>>.

²² *Guide 5553 - Applying to Change Conditions or Extend Your Stay in Canada - Worker*, online: <<http://www.cic.gc.ca/english/information/applications/guides/5553ETOC.asp>>.

7. Canada made a record of its efforts to combat human trafficking as part of achieving the 2030 Agenda for Sustainable Development.²³

Identifying trafficked persons

8. Identifying trafficked persons was the subject of a recommendation accepted by Canada during its last UPR.²⁴
9. Since 2005, files concerning 237 trafficked persons were dealt with in Canada. In July 2016, 219 files related to trafficking were brought before the courts concerning 314 victims.²⁵ In January 2017, 401 cases of trafficking had been identified since 2005 by the RCMP's Human Trafficking National Coordination Centre, 382 of which were national matters.²⁶
10. In spite of these numbers, Canada admits that it is hard to accurately measure human trafficking. Various Canadian organization have highlighted challenges when it comes to identifying trafficked persons, including the lack of a shared understanding of what trafficking is; the complexity of the phenomenon; the difficulty of separating cases of human trafficking from other forms of abuse or exploitation; the fact that victims may not see themselves as trafficked persons, and the difficulty of identifying a victim at the border when Border Services' priority is to determine whether the person is eligible to enter Canada.²⁷ There are two more issues that make it hard to collect information, according to a study published by Statistics Canada: "the minimal information that is available in Canada is dispersed across different departments and agencies within government and other organizations including law enforcement and NGOs each using their own criteria to define a victim of trafficking thus generating non-comparable information."²⁸
11. As the United Nations High Commissioner for Human Rights points out, "A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights."²⁹
12. Since the current information on trafficking is based on cases reported to the police, "[s]ituations that community organizations encounter, for example, are not systematically documented across the

²³ *National Action Plan to Combat Human Trafficking – 2015-2016 Annual Report on Progress*, supra note 20, p. 22.

²⁴ A/HRC/24/11, supra note 4, §128.109; A/HRC/24/11/Add.1, supra note 9, §40.

²⁵ *National Action Plan to Combat Human Trafficking – 2015-2016 Annual Report on Progress*, supra note 20, p. 6.

²⁶ Royal Canadian Mounted Police, *Human Trafficking National Coordination Centre*, online: <<http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>>.

²⁷ Jourdain, G., *Entre répression et protection : l'Agence des services frontaliers du Canada (ASFC) et la traite de personnes migrantes au Québec – points de vue des agents de l'ASFC et d'intervenants auprès de victimes migrantes*, Master's thesis, Université de Montréal, 2015, p. 79, online:

<https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/12443/JOURDAIN_Geraldine_2015_memoire.pdf?sequence=5&isAllowed=y>.

²⁸ Ogrodnik, Lucie, *Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons*, Statistics Canada, 2010, occasional, Ottawa, p. 5, online: <<http://www.statcan.gc.ca/pub/85-561-m/85-561-m2010021-eng.pdf>>.

²⁹ *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, 2002, p. 6. Cf. also: *Report on the seminar: "A human rights approach to combating human trafficking: challenges and opportunities. Implementing the Recommended Principles and Guidelines on Human Rights and Human Trafficking"* (Geneva, 27 and 28 May 2010), Addendum, *Views on the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, A-HRC-15-27-Add.1, 15 September 2010, p. 9.

country.”³⁰ In addition, very little research is done to document forced labour as well as other forms of human trafficking.³¹ Several organizations that aim to raise awareness in the general public emphasize one of the causes of human trafficking: demand. In the Statistics Canada report published in 2010,³² respondents to the study, which was aimed at examining “the feasibility of developing a national data collection framework that would identify options for measuring trafficking in persons in Canada”³³, stated that they wanted “to know more about the demand side of the equation”³⁴ and indicated their interest in how the local sex industry contributes to trafficking both internationally and domestically, and “how the demand for cheap labour is tied to human trafficking.”³⁵ This consultation was undertaken with “key stakeholders from provincial and federal government departments including members of the Interdepartmental Working Group on Trafficking in Persons (IWGTIP), the police community, non-governmental organizations (NGOs) and academics.”³⁶

13. Among best practices for the identification of trafficked persons to provide greater protection, we can take the example of French associations that use a multi-level system (from informal with previous identification to formal identification, not to mention self-identification as a trafficked person) including certain rights trafficked persons are acknowledged to have before any formal identification by the police.³⁷

Recommendations

14. Canada should adopt a global approach to research and data collection on the different forms of human trafficking in Canada in cooperation with trafficked persons, various community players, and police, legal and civil authorities.
15. Canada should base itself on best practices and the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the United Nations High Commissioner for Human Rights concerning the identification of trafficked persons.

Financial support and accompaniment of trafficked persons

16. Effective implementation of the action plan to combat trafficking in persons and the establishing of mechanisms and procedures aimed at protecting trafficked persons were the object of recommendations accepted by Canada.³⁸ Financing the implementation of such a national plan and the protection mechanisms is an essential part of these recommendations.

³⁰ *Frontline responses to human trafficking in Canada: Coordinating services for victims*, Alexandra Ricard-Guay and Jill Hanley, *supra* note 2, p. 25.

³¹ For instance, debt bondage, organ purchase, forced marriage, etc.

³² Ogrodnik, Lucie, *Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons*, *supra* note 28.

³³ *Ibid.*, p. 7.

³⁴ *Ibid.*, p. 16.

³⁵ *Idem.*

³⁶ *Ibid.*, p. 6.

³⁷ Sebtaoui, N., Harrison, C., *Identification et protection des victimes de la traite dans un contexte de migration de transit*, *Les cahiers du social*, n°39, Avril 2017 p. 56, online: <http://www.france-terre-asile.org/images/stories/publications/pdf/Identification_et_protection_des_victimes_de_la_traite_dans_un_contexte_de_migration_de_transit.pdf>.

³⁸ A/HRC/24/11, *supra* note 4, §128.107, §128.110, §128.111; A/HRC/24/11/Add.1, *supra* note 9, §40.

17. Adopted in 2012,³⁹ the National Action Plan to Combat Human Trafficking was intended to be a comprehensive and coordinated national response to help combat human trafficking so that Canada could meet its international commitments under the *Palermo Protocol*, ratified in 2002.⁴⁰ It calls for an annual budget of C\$8 million, including a maximum of C\$500,000 for “Enhanced Victim Services”⁴¹ from Justice Canada’s Victims Fund.⁴²
18. In February 2016, *The Globe and Mail* published an article with an estimate of the amounts spent to combat trafficking and to provide victim services.⁴³ The article concluded that 90% of the spending was allocated to the application of legislation and to combat international trafficking, and that less than 10% went to victim support.
19. As pointed out by many researchers and civil society organizations, as well as the research report published by CATHI: “Services to help trafficking victims remain marginal”⁴⁴ in the national plan. According to Hastie and Yule: “Further, while the Action Plan specifies particular projects and outcomes for law enforcement, such as the development of an enhanced border team, it does not specify or recommend any particular practices or projects for victim services under the ‘Protection’ section. This silence is a disappointing result for many individuals and organizations engaged with the issue of human trafficking at a service provision level.”⁴⁵
20. Looking after the basic needs of trafficked persons with such an amount is impossible. Apart from accommodations,⁴⁶ other resources that are just as necessary to meet the needs of trafficked persons are protection services, legal assistance, psychological support and interpretation, medical care, social assistance benefits, access to professional training, etc. It should be added that certain trafficked

³⁹ Continued until 2016.

⁴⁰ *A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, ratified on May 13, 2002.

⁴¹ Public Safety Canada, *National Action Plan to Combat Human Trafficking*, *supra* note 19, p. 11.

⁴² A Justice Canada backgrounder dated February 2017 states that an amount of “\$4 million over 8 years (2012-2020) has been made available to non-governmental organizations to contribute to enhanced direct service delivery to victims of human trafficking in Canada.” Cf., online:

<https://www.canada.ca/en/department-justice/news/2017/02/combating_humantraffickingandsupportingvictims.html>.

⁴³ *The Globe and Mail*, *The Trafficked: Sexual exploitation is costing Canadian women their lives*, February 10, 2016, online: <<https://www.theglobeandmail.com/news/national/the-trafficked-sexual-exploitation-is-costing-canadian-women-their-lives/article28700849/>>.

⁴⁴ *Frontline responses to human trafficking in Canada: Coordinating services for victims*, Alexandra Ricard-Guay and Jill Hanley, *supra* note 2, p. 25. Cf. also: Barnett, L., *Trafficking in Persons*, (Background Paper), Library of Parliament, publication no 2011-59-E, 17 March 2011, p. 15.

⁴⁵ Hastie, B. & Yule, A. *Milestone or Missed Opportunity? A critical analysis of the impact of Domotor on the future of Human Trafficking Cases in Canada*, *Appeal*, vol. 19, 2014, pp. 83-93, online: <<https://journals.uvic.ca/index.php/appeal/article/view/12886/3966>>.

⁴⁶ To set up a comparison and get a better idea concerning the \$500,000 granted per year, it is worth referring to the amount dedicated to shelters for women in difficulty or victims of violence. The annual calculation base established by the Quebec government to provide nine places in such shelters for one year is C\$600,000. However, a Statistics Canada survey determined that 2% of shelter residents declared that they were trafficked persons, the equivalent of 67 women. While participation was voluntary, the responses given by the shelters on services provided during the 12 months prior to April 16, 2014 show that 2% of residents mentioned human trafficking, namely 67 women. (See Statistics Canada, Table 3: <<http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14207/tbl/tbl03-eng.htm>>). With reference to the benchmark established by the Quebec government, more than \$4.4 million would be required to fund accommodations for these 67 women, far more than the \$500,000 granted.

persons, such as children, adolescents, homeless youth,⁴⁷ First Nations people and migrants, will need specific services. Every victim of human trafficking, whether domestic or international, must be entitled to personalized support in the short, medium and, in some cases, long term.

21. In addition, federal laws and regulations (*Immigration Act* and *Criminal Code*) are what legally determine whether someone is deemed to be a victim of trafficking or recognized as a victim of trafficking, but responsibility for social services and health care is incumbent on the provinces, not to mention the indispensable role played by civil society organizations in delivering services to trafficked persons.⁴⁸

Recommendation

22. The federal government, in partnership with the provinces, should provide adequate funding to coalitions and organizations with the expertise to provide assistance, accompaniment and support services for trafficked persons to guarantee them short-, medium- and long-term protection, aid and support.

Protection of trafficked persons

23. In the context of Canada's second UPR, the State accepted the recommendation to place special emphasis on the victim-oriented approach to address the challenges of human trafficking,⁴⁹ as well as the recommendations related to establishing mechanisms and procedures to protect victims.⁵⁰

24. In this regard, the temporary resident permit (TRP) is one of the main protection measures for potentially trafficked persons.⁵¹ The temporary resident permit is granted by an officer of *Immigration, Refugees and Citizenship Canada* (IRCC).⁵² The decision whether or not to grant a temporary resident permit is up to the officer of this department.

25. A short-term (180-day) temporary resident permit is granted if the officer is able to say that the person could be a victim of human trafficking based on certain criteria. The TRP offers a 180-day cooling-off period during which the deemed victim may choose to return to their country of origin or remain in Canada to take part in the criminal investigation. It also gives the victim time to recover from trauma

⁴⁷ *Bill C-310, An Act to amend the Criminal Code (trafficking in persons)*, Brief submitted by UNICEF Canada to the Standing Senate Committee on Legal and Constitutional Affairs, June 2012, online: <http://www.unicef.ca/sites/default/files/imce_uploads/TAKE%20ACTION/ADVOCATE/DOCS/bill_c-310_submission.pdf>; Murphy, Laura, *Labor and Sex Trafficking among Homeless Youth, A Ten-City Study Executive Summary*, Loyola University, 2016, online: <http://covenanthousestudy.org/docs/Loyola-Research-Results.pdf?_ga=2.146008948.1981533720.1496163411-37038704.1496163411>.

⁴⁸ As Ricard-Guay and Hanley point out, "... in the context of Canadian federalism, social and health service provision falls largely within provincial jurisdictions. This obviously creates significant complexity that needs to be taken into account in the development of any national response. The commitment and measures adopted by provincial governments differ from province to province. However, the Action Plan neither proposed nor provided for any direction or recommendation to develop a coordinated response at the provincial level, nor any steps to strengthen interprovincial collaboration." *Frontline responses to human trafficking in Canada: Coordinating services for victims*, Alexandra Ricard-Guay and Jill Hanley, *supra* note 2, p. 26.

⁴⁹ A/HRC/24/11, *supra* note 4, §128.108; A/HRC/24/11/Add.1, *supra* note 9, §40.

⁵⁰ A/HRC/24/11, *supra* note 4, §128.110 and §128.111.

⁵¹ *Temporary Resident Permits (TRPs): Considerations specific to victims of human trafficking*, Government of Canada, online: <<http://www.cic.gc.ca/english/resources/tools/temp/permits/victim.asp>>.

⁵² On November 4, 2015, *Citizenship and Immigration Canada* (CIC) became *Immigration, Refugees and Citizenship Canada* (IRCC). Cf. *Machinery of Government Changes*, Privy Council Office, Government of Canada, online: <<http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=docs&doc=mog-ag-eng.htm>>.

and stay outside the influence of the traffickers. Deemed victims will have access to health care under the Interim Federal Health Program,⁵³ a program reintroduced on April 1, 2016,⁵⁴ and to psychological help. The person may request a work permit. In addition, it is specified that the deemed victim is not required to testify against the trafficker to obtain a temporary or permanent resident permit. There is no charge for the first TRP or work permit. The department responsible specifies that a TRP might not be issued if the deemed victim has status under another program.

26. The longer-term temporary resident permit may be granted after the 180-day period by an officer of *Immigration, Refugees and Citizenship Canada*, after verification of the facts with law enforcement. The permit is granted if it is uncertain whether the victim can return to their country of origin or if the victim has participated in the criminal investigation or criminal proceedings. Individual circumstances may be taken into consideration, but no criteria are suggested in the guidelines. For instance, it is not clearly stated that the victim can be allowed more time to recover from trauma to promote a return to acceptable conditions.
27. In 2015, 44 TRPs were issued, and 25 TRPs were extended (longer-term TRP or subsequent TRP) were granted across Canada.⁵⁵ However, in spite of positive aspects reported by interveners on the ground,⁵⁶ TRPs are not well known to organizations and are underused. According to the research report by Ricard-Guay and Hanley (2014), "...even from law enforcement, the limitations of the TRPs were discussed, among others the difficulties to renew the TRP and the delay in renewing it."⁵⁷ A report from a workshop on human trafficking held by Public Safety Canada in March 2015 mentions other difficulties: "...there is difficulty in accessing TRPs either because a trafficker has forced criminal conditions on a victim, or there is a lack of awareness at Citizen and Immigration Canada (CIC) about the issue and how TRPs can be awarded and by whom."⁵⁸
28. The Canadian Council for Refugees adds that: "The inconsistency in the issuing and administration of permits across the country is one of the key barriers to the effectiveness of TRPs, causing the treatment of survivors of trafficking to vary greatly across regions and both between and within agencies."⁵⁹
29. There is also another limit on access to temporary resident permits: "the applicant must be able to prove that she/he is a victim of human trafficking. Many victims do not know what human trafficking is; some may suffer from Stockholm syndrome, developing strong attachments to their trafficker and unable to acknowledge the trafficking situation."⁶⁰

⁵³ To find out more about the Interim Federal Health Program, cf. *Notice – Changes to the Interim Federal Health Program*, Government of Canada, online: <<http://www.cic.gc.ca/english/department/media/notices/2016-04-11.asp>>.

⁵⁴ To read a description of the program online: <<http://www.cic.gc.ca/english/department/laws-policy/ifhp.asp>>.

⁵⁵ McCrae, K., *Labour trafficking in Edmonton, Holding Tight to a Double-Edged Sword*, ACT Alberta, 2016, p. 6, online: <<http://www.actalberta.org/news/reports/labour-trafficking-in-edmonton-report-released/>>.

⁵⁶ The Canadian Council for Refugees (CCR) points out that "TRPs are an important tool that responds to the right of trafficked persons to access status and assistance." Cf. <<http://ccrweb.ca/en/trafficking/temporary-resident-permit-report>>.

⁵⁷ *Frontline responses to human trafficking in Canada: Coordinating services for victims*, Alexandra Ricard-Guay and Jill Hanley, *supra* note 2, p. 96.

⁵⁸ *Workshop on Human Trafficking Summary Report*, Public Safety Canada, March 26-27, 2015, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-wrkshp-hmn-trffckng-smmry-rprt/index-en.aspx>>.

⁵⁹ *Temporary Resident Permits: Limits to Protection for Trafficked Persons*, Canadian Council for Refugees, online: <<http://ccrweb.ca/en/trafficking/temporary-resident-permit-report>>.

⁶⁰ Ontario Women's Justice Network, *The Law and Human Trafficking in Canada*, 2014, online: <<http://owjn.org/2014/07/the-law-and-human-trafficking-in-canada/>>.

30. The short-term temporary resident permit does not give trafficked persons the time they need to reflect and heal,⁶¹ does not allow family reunification and does not offer any financial support for trafficked persons and the families that depend on their earnings. It also does not automatically give a work permit, which, as things stand, requires an additional effort. The longer-term TRP may be granted after the 180-day period by an officer of *Immigration, Refugees and Citizenship Canada*, but there is no explicit mention in the guidelines of a criterion aimed at giving the trafficked person more time to recover from trauma.
31. Exploited workers may hesitate to turn to the authorities, for fear of being deported.⁶² If the officer responsible refuses to issue a temporary resident permit, they find themselves in an irregular situation and risk deportation. The temporary resident permit is a “fragile protection”⁶³ because of the obstacles mentioned. In 2013, in Halifax, a group of 29 foreign workers feared deportation. Their temporary visas were no longer valid because their employer, after a visit from Canadian Border Services Agency as part of an investigation into the migrants’ working conditions, could no longer employ them.⁶⁴
32. A human rights-oriented approach requires protection of persons to take priority over border protection, even if the investigation into whether or not there is a victim of human trafficking has not started or ended. The fact that a potential victim of human trafficking may have worked illegally for another employer as a result of being tricked or forced, or have violated other immigration regulations or laws of the country should not justify detention or deportation from Canada.⁶⁵
33. In November 2016, *Immigration, Refugees and Citizenship Canada* published the results of an evaluation of temporary resident permits for trafficked persons. It was apparent that better communication is needed between the parties responsible, along with guidelines for managing longer-term TRP files and specialized training for officers designated to issue TRPs for trafficked persons.⁶⁶
34. Another limit to protection is that the TRP does not guarantee access to protection and assistance services,⁶⁷ except for the Interim Federal Health Program.

⁶¹OCTIP, *Labour Trafficking Roundtable, Summary*, March 5, 2014, Vancouver, 2014, p. 4, online: <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/victims-of-crime/human-trafficking/resources/labour_trafficking_roundtable_summary_report.pdf>.

⁶²*Human trafficking in Canada*, Royal Canadian Mounted Police, 2010, p. 38, online: <http://hopeforthesold.com/wp-content/uploads/2011/04/SECLUSION_Unclassified_EN-Final-version.pdf>.

⁶³ Wallace, Frances, *A Fragile Promise – the Inadequacy of Assistance Measures for Victims of Human Trafficking in Canada*, University of Alberta, April 2014, p. 14, online: <<http://www.actalberta.org/news/act-alberta/a-fragile-promise-the-inadequacy-of-assistance-measures-for-victims-of-human-trafficking-in-canada/>>.

⁶⁴ Trafford, Erin, *Foreign workers allegedly paid \$3 an hour in Halifax granted reprieve from deportation*, Global News, April 24, 2013, online: <<http://globalnews.ca/news/507946/29-foreign-workers-granted-reprieve-from-deportation/>>.

⁶⁵ See case reported by Radio-Canada: *Des travailleurs étrangers victimes de trafic d'êtres humains, selon l'un d'eux*, May 5, 2014, online: <<http://ici.radio-canada.ca/nouvelle/665380/travailleur-etrangeur-temporaire-traffic-êtres-humains>>. Another case reported by The Hamilton Spectator: *Human-trafficking victim faces deportation to Hungary*, February 9, 2013, online: <<http://www.thespec.com/news-story/2235078-human-trafficking-victim-faces-deportation-to-hungary/>>.

⁶⁶*Evaluation of Temporary Resident Permits*, Immigration, Refugees and Citizenship Canada, November 2016, online: <<http://www.cic.gc.ca/english/resources/evaluation/pdf/temporary-resident-permits.pdf>>.

⁶⁷ Stephens, A., Hettiarachchi, R., Yun, S.H., *Responding to labour trafficking. Suggestions from experiences of local service providers*, in *Labour migration, human trafficking and multinational corporations: the commodification of illicit flows*, London, Routledge, 2012, p. 153.

35. Special measures and policies must be adopted so that trafficked persons, particularly women, or persons who have witnessed such situations, can contact the authorities, regardless of their immigration status, without fear of being detained or deported.⁶⁸

Recommendation

36. Canada should ensure that protection measures like the TRP are granted based on a human rights-oriented approach and that they are easy to access and not to be made conditional on cooperation with a criminal investigation or criminal proceedings, in line with international standards for human rights.⁶⁹

Forced labour by foreign workers

37. The ratification of the *United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*⁷⁰ has been the subject of many recommendations made to Canada.⁷¹ If Canada ratified this convention, the government would have to introduce mechanisms to protect the rights of migrant workers, regardless of their migration status, and harmonize national laws, not based on the economy or employers, but based on human rights. Otherwise, according to the researchers, the absence of such a mechanism could “indirectly constitute an incentive for exploitation of this category of migrant workers in Canada.”⁷²

38. Since its last UPR, Canada, which takes in hundreds of thousands of migrant workers each year, has carried out a reform of programs for temporary foreign workers based on the needs of employers and market studies. The *Temporary Foreign Worker Program* (TFWP) has several categories, including primary agriculture and the *Live-in Caregiver Program*.⁷³ According to Statistics Canada, “...there were 386,000 temporary foreign workers present on December 1, 2013.”⁷⁴ For 2015, 73,111 persons were

⁶⁸ See the case in Ontario: *Migrant women should be able to call police without fear*, The Star, August 17, 2015, online: <<https://www.thestar.com/opinion/commentary/2015/08/17/migrant-women-should-be-able-to-call-police-without-fear.html>>, “An ‘access without fear’ policy would protect women caught up within trafficking investigations, such as the one that took place in Ottawa in May 2015, which saw 11 innocent women deported.”; Cf. also: *Eleven women face deportation following human trafficking investigation in Ottawa*, OHS Canada, May 19, 2015, online: <<http://www.ohscanada.com/eleven-women-face-deportation-following-human-trafficking-investigation-in-ottawa/>>.

⁶⁹ Resolution adopted by the Human Rights Council on 30 June 2016. *Trafficking in persons, especially women and children: protecting victims of trafficking and persons at risk of trafficking, especially women and children in conflict and post-conflict situations*, 2016, A/HRC/RES/32/3, §2 (e); *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 2000, article 7(1); *Frontline responses to human trafficking in Canada: Coordinating services for victims*, Alexandra Ricard-Guay and Jill Hanley, *supra* note 2, p. 169.

⁷⁰ Adopted by the General Assembly in its resolution 45/158 of 18 December 1990.

⁷¹ A/HRC/24/11, *supra* note 4, §128.3.

⁷² Piché, V., Pelletier, E., and Epale, D. Identification of the Obstacles to the Ratification of the *United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*: The Canadian Case, report commissioned by UNESCO, SHS/2006/MC/9, 2006, online: <<http://unesdoc.unesco.org/images/0014/001473/147310e.pdf>>.

⁷³ “The TFWP lets employers hire foreign workers to fill temporary labour and skill shortages. The IMP lets employers hire temporary workers without a Labour Market Impact Assessment (LMIA).” Cf. *Temporary workers*, Government of Canada, online: <<http://www.cic.gc.ca/english/resources/tools/temp/work/index.asp>>.

⁷⁴ Lu, Yuqian and Hou, Feng, *Transition from Temporary Foreign Workers to Permanent Residents, 1990 to 2014*, Social Analysis and Modelling Division, Statistics Canada, February 21, 2017, online: <<http://www.statcan.gc.ca/pub/11f0019m/11f0019m2017389-eng.htm>>.

admitted under the TFWP and 176,772 more under the IMP (International Mobility Program).⁷⁵ However, it seems that “the 2014 changes to The Temporary Foreign Worker Program and the Caregiver Program that were designed to eliminate worker abuse have led to the opposite effect by making temporary foreign workers and caregivers more vulnerable.”⁷⁶

39. The *Live-in Caregiver Program* allowed applying for permanent residence after two years.⁷⁷ Eighty-three percent of live-in family caregivers who arrived between 1995 and 1999 and between 2000 and 2004, and 56% of those who arrived between 2005 and 2009, became permanent residents within five years of their arrival.⁷⁸ In comparison, the rate of foreign agricultural workers who were able to make the transition to permanent residents during those periods did not exceed 2.1%. On May 19, 2017, the government website stated that the *Live-in Caregiver Program* was closed to new applicants and recommended applying for a regular work permit. The *Express Entry Program* is intended for qualified and specialized workers. In 2016, the program sent out 34,000 invitations to these workers to apply for permanent residence. The invitation depended on the score given by the system based on information provided by these workers when they created their profile on the government website.⁷⁹ Access to permanent residence is related to the type of program.

40. For many non-governmental organizations and researchers, the problems experienced by lower-skilled temporary foreign workers in becoming permanent residents are real, and little was done in the 2014 reform “to ensure the integrity of the program with regards to rights protection and prevention of abuse.”⁸⁰ In addition, non-governmental organizations pointed out that it was hard to find consistent information on access to permanent residence for these lower-skilled foreign workers.⁸¹ Lower-skilled foreign workers should be able to apply for permanent residence at the same time as they apply for a work permit⁸² to make them less vulnerable to abuse and exploitation.

41. The 2014 reform of the programs attacked employers’ abuse of the program by increasing the number of inspections. However, the Auditor General of Canada, in his 2017 report to Parliament on the management of the *Temporary Foreign Worker Program* issued the following findings: Employment and Social Development Canada “did not use the information it had to focus its activities on employers

⁷⁵ *Annual Report to Parliament on Immigration, Section 2: Managing Temporary Migration*, 2016, online: <<http://www.cic.gc.ca/english/pdf/pub/annual-report-2016.pdf>>.

⁷⁶ Tungohan, E., *Changes to the Temporary Foreign Worker Program and Live-in Caregiver Program*, Prepared for the Standing Committee on Human Resources, Skill and Social Development and the Status of Persons with Disabilities, 2016, p. 1, online: <http://s3.amazonaws.com/migrants_heroku_production/datas/2367/DrEthelTungohan-e_original.pdf?1475512708>.

⁷⁷ *Become a permanent resident – Live-in caregivers*, Government of Canada, online: <http://www.cic.gc.ca/english/work/caregiver/permanent_resident.asp>.

⁷⁸ Lu, Yuqian and Hou, Feng, *supra* note 78, table 3.

⁷⁹ *Express Entry – Year-End Report 2016*, Government of Canada, online: <<http://www.cic.gc.ca/english/resources/reports/ee-year-end-2016.asp>>.

⁸⁰ *Migrant workers: precarious and unsupported, A Canada-wide Study on Access to Services for Migrant Workers*, Canadian Council for Refugees, March 2016, p. 6, online: <<http://ccrweb.ca/sites/ccrweb.ca/files/migrant-workers-2016.pdf>>.

⁸¹ Canadian Council for Refugees, *National Forum and Workshop on Trafficking in Persons, Forum and Workshop Report*, Montreal, November 24-25, 2016, p. 13, online: <http://ccrweb.ca/sites/ccrweb.ca/files/report_on_2016_forum_workshop_on_trafficking_in_persons.pdf>.

⁸² *Reforming the Temporary Foreign Worker Program: CCR Response to the HUMA Report*, Canadian Council for Refugees, October 2016, online: <<http://ccrweb.ca/en/ccr-response-huma-report>>.

of the most vulnerable temporary foreign workers”⁸³ and did very few on-site inspections. In addition, the Auditor General of Canada reviewed the 13 completed inspection reports out of 173 on-site inspections and found that “temporary foreign workers had not been interviewed during any of these inspections”⁸⁴ and concluded that this “limited the Department’s ability to verify that employers complied with program requirements, such as ensuring that workers did the jobs that had been approved and that workers were not mistreated.”⁸⁵

42. The research report by Ricard-Guay and Hanley (2014), like those of other organizations such as the Canadian Council for Refugees and the Action Coalition on Human Trafficking Alberta (“ACT Alberta”), identifies temporary foreign workers as being at risk of exploitation.⁸⁶ As ACT Alberta points out, “the vast majority of trafficked people were reported to come through legal means to work in Canadian jobs.”⁸⁷ In fact, a number of specialists acknowledge that the conditions imposed on foreign workers in these programs increase their vulnerability⁸⁸ and constitute a structural for human trafficking in the form of forced labour.⁸⁹ The RCMP also emphasizes the need to implement changes to current programs to ensure safety and fair working conditions for temporary foreign workers.⁹⁰
43. In 2005, CATHII commissioned a report on forced labour in Canada.⁹¹ The report lists 36 situations of forced labour between 2001 and 2015, including situations involving domestic workers. Some of the worker recruitment agencies employ questionable, or illegal, practices and contribute to trafficking with the goal of worker exploitation.⁹² In 2010, in a report entitled *Human Trafficking in Canada*, the RCMP found that most cases of forced labour had to do with migrant workers who had entered Canada legally.⁹³ It also points out the role played by third party organizations, as detailed below.⁹⁴
44. Two major problems identified in this submission are the activities of third party organizations and work permits related to a specific employer.

A. Activities of third party organizations

⁸³ Office of the Auditor General of Canada, *Independent Audit Report, Report 5, Spring 2017*, section 5.63, online: <http://www.oag-bvg.gc.ca/internet/English/parl_oag_201705_05_e_42227.html>.

⁸⁴ *Ibid.*, section 5.79.

⁸⁵ *Idem.*

⁸⁶ *Frontline responses to human trafficking in Canada: Coordinating services for victims*, Alexandra Ricard-Guay and Jill Hanley, *supra* note 2, p. 37; McCrae, K. *supra* note 59; *Labour Trafficking and Migrant Workers in British Columbia*, West Coast Domestic Workers' Association, 2014.

⁸⁷ McCrae, K. *supra* note 59, p. 19.

⁸⁸ OCTIP, *Labour Trafficking Roundtable, Summary*, *supra* note 65, p. 4.

⁸⁹ Dandurand, Y., Chin, V., and Wilson, L., *Improved Response to Labour Trafficking*, International Centre for Criminal Law Reform and Criminal Justice Policy, March 2017, online: <<http://icclr.law.ubc.ca/publications/improved-response-labour-trafficking>>; Hastie, B., *Doing Canada's dirty work, A Critical Analysis of Law and Policy to Address Labour Exploitation and Trafficking*, in Ato Quayson and Antonela Arhin (eds.), *Labour Migration, Human Trafficking and Multinational Corporations*, New York, Routledge, 2012, p. 121.

⁹⁰ *Human Trafficking in Canada*, Royal Canadian Mounted Police, 2010, p. 31, online: <http://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-78-2010-eng.pdf>.

⁹¹ *The Exploitation of Foreign Workers in Our Own Backyards: An examination of labour exploitation and labour trafficking in Canada*, *supra* note 3.

⁹² *Ibid.*, p. 49.

⁹³ RCMP (2010), *Human Trafficking in Canada*, *supra* note 94, p. 34.

⁹⁴ *Ibid.*, p.34.

45. Researchers have documented the abusive practices of placement agencies for temporary migrant workers.⁹⁵ In particular, in its study on the *Temporary Foreign Worker Program* in Edmonton, ACT Alberta spotlights some of the recruitment agencies' practices: "By manipulating the weaknesses of a program that fails to robustly protect the rights of migrant workers, recruiters and employers traffic workers both into and across the country with impunity."⁹⁶ Cases of trafficked foreign workers are regularly documented by non-governmental organizations and are also heavily reported by the media.⁹⁷

46. Canadian organizations have requested stronger regulation of placement and recruitment agencies.⁹⁸ In 2009, Manitoba led the way by passing *The Worker Recruitment and Protection Act*,⁹⁹ including the registration of recruiters and employers of migrant workers and by setting up a Special Investigations Unit to ensure the application of employment laws.¹⁰⁰

B. Work permit tied to a specific employer¹⁰¹

47. One of the factors raising the risk of human trafficking through forced labour is the fact that the work permit is tied to a specific employer. "In theory, all temporary foreign workers are required to work for only one employer, namely the one that brought them to Canada ... In sum, the specific employer clause places less specialized, poorly paid and poorly protected foreign workers at a definite disadvantage."¹⁰² For live-in caregivers, if the caregiver is considered to be the victim of abuse, Canada authorizes changing jobs without deportation as well as priority processing for a new work permit

⁹⁵ Faraday, F., *Profiting from the Precarious: How recruitment practices exploit migrant workers*, Metcalf Foundation, 2014, online: <<http://metcalfoundation.com/wp-content/uploads/2014/04/Profiting-from-the-Precarious.pdf>>; Gesualdi-Fecteau, D., Thibault, A., Schivone, N., Dufour, C., Gouin, S., Monjean, N., Moses, E., *Who, How and How much? Recruitments of Guatemalan Migrant Workers to Quebec*, June 2017, online: <<http://www.onthemovepartnership.ca/wp-content/uploads/2017/06/who-how-howmuch-Report-sm.pdf>>.

⁹⁶ McCrae, K. (2016), *supra* note 59, p. ii.

⁹⁷ Cf. in particular: *Des travailleurs étrangers victimes de trafic d'êtres humains, selon l'un d'eux*, Radio Canada, May 5, 2014, <<http://ici.radio-canada.ca/nouvelle/665380/travailleur-etranger-temporaire-traffic-etres-humains>>; *Des travailleurs étrangers logés par McDo se sentaient « comme des esclaves »*, Radio Canada, April 17, 2014, <<http://ici.radio-canada.ca/nouvelle/663084/travailleurs-etrangers-belize-mcdonalds-logement>>; *Des Guatémaltèques floués par une agence de recrutement*, La Presse, November 12, 2016, <<http://www.lapresse.ca/actualites/justice-et-faits-divers/actualites-judiciaires/201611/10/01-5040162-des-travailleurs-guatemalteques-floues-par-une-firme-de-placement.php>>; *Labour exploitation enabled by temporary foreign worker program, report says*, CBC News, December 2, 2016, <<http://www.cbc.ca/news/canada/edmonton/labour-exploitation-temporary-foreign-worker-program-1.3879689>>; *Pour contrer le phénomène de femmes soumises au travail forcé*, Le Devoir, March 28, 2017, <<http://www.ledevoir.com/societe/actualites-en-societe/494995/des-idees-en-revues-pour-contrer-le-phenomene-des-femmes-soumises-au-travail-force>>; *The murky world of the agencies that recruit temporary foreign workers*, Calgary Herald, September 14, 2016, <<http://calgaryherald.com/news/national/the-murky-world-of-the-agencies-that-recruit-temporary-foreign-workers>>.

⁹⁸ "No More" *Ending Sex Trafficking in Canada*, Report of the National Task Force on Sex Trafficking of Women and Girls in Canada, Canadian Women's Foundation, 2014, p. 126.

⁹⁹ *The Worker Recruitment and Protection Act*, C.C.S.M. c. W197, online: <http://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=w197>.

¹⁰⁰ Manitoba's legislation is seen as pioneering the best-practices model in the Canadian context, and should inspire federal legislation. Cf. Faraday, Fay, *Profiting from the Precarious, How recruitment practices exploit migrant workers*, Metcalf Foundation, April 2014, p. 68.

¹⁰¹ Cf. *Temporary foreign workers: Your rights are protected*, Government of Canada, online: <<https://www.canada.ca/en/employment-social-development/services/foreign-workers/protected-rights.html>>.

¹⁰² Eid, P., *Les programmes de travailleurs étrangers temporaires au Canada : une arme d'exploitation massive*, *Bulletin de l'Observatoire international sur le racisme et les discriminations*, vol. 8, no 1, 2012, p. 14. [Translation by CATHII]

application.¹⁰³ Seasonal farm workers can apply for another work permit, but cannot work until they have received it. If they are victims of human trafficking, they may possibly be given a TRP.¹⁰⁴ Many organizations consider an open or transferable work permit to be a viable solution.¹⁰⁵

Recommendations

48. Canada should abolish work permits tied to a specific employer and grant an open work permit while taking measures to protect temporary foreign workers against abuse.
49. Canada should pass a legislation concerning third party organizations and recruitment agencies to protect foreign workers from abuse and exploitation.
50. Canada should sign and then ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

¹⁰³ *Guide 5553 - Applying to Change Conditions or Extend Your Stay in Canada - Worker*, supra note 22.

¹⁰⁴ *Temporary foreign workers: Your rights are protected*, supra note 101.

¹⁰⁵ OCTIP, *Labour Trafficking Roundtable, summary*, 2014, supra note 65, p. 7.