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Submission to the United Nations Special Rapporteur on trafficking in persons, especially women and children

Subject: **The Role of Employer-Tied Labour (Im)Migration in Facilitating Forced Labour and Servitude for Migrant Domestic Workers**

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Canadian Centre to End Human Trafficking

About DTMF-RHFW and The Canadian Centre to End Human Trafficking

Through research, education, advocacy, and legal action initiatives, the Association for the Rights of Household and Farm Workers (DTMF-RHFW) promotes and defends the fundamental rights of workers employed in private households and the agricultural sector, particularly those employed under precarious immigration status.

The Canadian Centre to End Human Trafficking is a national charity dedicated to ending all types of human trafficking in Canada.

Introduction

In response to the call for input regarding migrant domestic workers and trafficking in persons, DTMF wishes to draw attention to issues associated with Canada's policy of admitting foreign nationals into the country under employer-tied status—in particular through work permits that restrict, explicitly or indirectly, the right to change employers. This submission is not an exhaustive account of all the issues related to this policy—in particular, it does not cover the risks of debt bondage associated with employer/recruiter-based private sponsorship requirement for initial entry—but does highlight several key concerns regarding forced labour and servitude as it occurs within, and is facilitated, by Canada's employer-tied employment and employer-based immigration regimes.

Restrictive work authorizations limit workers' fundamental freedom in the labour market and negate their right to resign and change employers. These restricted work authorizations thus undermine workers'

capacity to refuse unsafe work conditions, assert their rights, and seek justice in cases of rights violations. As a result, exploitative and coercive labour practices are prevalent within the legal and government-authorized employment of foreign nationals.¹ In fact, following his country visits to Canada in 2023 and to Australia in 2024, the U.N. Special Rapporteur on contemporary forms of slavery, Tomoya Obokata, declared that "employer-specific work permit regimes, including certain Temporary Foreign Worker Programmes, make migrant workers vulnerable to contemporary forms of slavery (...)"². The Rapporteur further identified the obstacles in accessing permanent legal status as a key factor facilitating the systemic abuse of (im)migrant workers.³

Background

In the last decades, the Canadian federal government has dramatically increased the number of foreign workers admitted into the country on authorizations that restrict the worker's right to change employers, workplace locations, and/or occupations. This large-scale reliance on restrictive work authorizations for the employment of foreign nationals across various industries is more recent than the use of such schemes for care workers (and for agricultural workers), which has a much longer history. Since the mid-20th century, Canada has depended on employer-tied admission programs to supply labour for both the care work and agricultural sectors.⁴ Although Canada offers migrant care workers a pathway to permanent status, access to this status has historically been conditioned on accumulating a certain amount of work experience on a restrictive work authorization. In light of the well-documented link between restrictive work authorizations and forced labour, the prevalence of the latter in Canada's care work sector is thus unsurprising.⁵

¹ A review of documented cases over a period of fifteen years where labour exploitation intersected with coercion in Canada concluded that "labour trafficking is frequently occurring in legal employment sectors, under the legitimizing guise of the Temporary Foreign Worker Program (TFWP)" see Jesse Beatson et al, "The Intersection of Exploitation and Coercion in Cases of Canadian Labour Trafficking" (2017) 26:1 Journal of Law and Social Policy at 143.

² Office of the High Commissioner for Human Rights (2023), Canada: Anchor the fight against contemporary forms of slavery in human rights, a UN expert urges, at <https://www.ohchr.org/en/press-releases/2023/09/canada-anchor-fight-against-contemporary-forms-slavery-human-rights-un>; United Nations Human Rights Council (UNHRC) Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences Tomoya Obokata (22 July 2024), at [UN Doc A/HRC/57/46/Add.1](#); United Nations Human Rights Council (UNHRC), United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences Professor Tomoya Obokata Country visit to Australia 14– 27 November 2024, at <https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/2024-11-27-eom-australia-sr-slavery-en.pdf>.

³ United Nations Human Rights Council (UNHRC) Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences Tomoya Obokata (22 July 2024) [UN Doc A/HRC/57/46/Add.1](#).

⁴ Nalinie Mooten, "Racism, Discrimination and Migrant Workers in Canada: Evidence from the Literature Policy Research, Research and Evaluation Branch" (2021) Ottawa: Refugees and Citizenship Canada at 47.

⁵ In the review of documented cases over a period of fifteen years where labor exploitation intersected with coercion in Canada, the largest number of cases involved domestic workers, with all victims being adult women who had entered Canada legally through the Live-in Caregiver Program. See Jesse Beatson et al, "The Intersection of Exploitation and Coercion in Cases of Canadian Labour Trafficking" (2017) 26:1 Journal of Law and Social Policy at 150.

Restrictive work authorizations: State-sanctioned worker servitude

As a general rule, foreign nationals admitted into Canada on restrictive work authorizations have access, in theory, to many of the same labour protections and formal rights as citizens and permanent residents. However, their capacity to exercise their rights is hindered by federal measures that negate their fundamental liberty within the labour market.⁶

The most common form of restrictive authorizations, employer-tied work permits, make the worker's right to earn a living in Canada conditional on maintaining a relationship with a specific sponsoring employer or group of employers. Since the work permit is only valid for a specific employer or group of employers, the termination of the employment relationship results in the immediate revocation of the right to earn a livelihood in the country.

These authorizations explicitly negate workers' capacity to resign and therefore, as confirmed by American jurisprudence, *de facto* place the worker in a legal condition of servitude.⁷ Such work authorizations were characterized as creating "a modern form of slavery" in a unanimous decision by the Supreme Court of Israel in 2006.⁸ In 2022, Jamaican migrant farm workers in Ontario wrote an open letter to denounce the Seasonal Agricultural Worker Program (SAWP) as a form of systematic slavery.⁹

Workers on restricted work permits are hesitant to complain about or seek legal redress against abusive employers-sponsors as doing so puts their right to earn a living in Canada at risk. Workers who do file complaints but fail to be hired by another authorized employer in time to renew their status are forced to leave the country, making it extremely difficult to pursue their claim and obtain a meaningful remedy.¹⁰

Authorizations restricting workers' freedom within the labour market are associated with higher risks of employer abuse, wage theft, psychological, physical, and sexual harassment, assault, rape, as well as work-related illnesses, accidents, and death.¹¹ These authorizations are further associated with substandard and overcrowded housing, as well as employer control over workers' personal lives and movements during off-duty hours.¹²

⁶ Sarah Marsden, "Migrant Workers, Rights, and the Rule of Law: Responding to the Justice Gap" (2019) 42:1 DLJ 123.

⁷ James Gray Pope, "Contract, Race and Freedom of Labor in the Constitutional Law of 'Involuntary Servitude'" (2010) 119 Yale LJ 1474.

⁸ *Kav LaOved Worker's Hotline v. Government of Israel* (2006), HCJ 4542/02.

⁹ Ali Raza, "Jamaican migrant workers in Ontario pen open letter likening conditions to 'systematic slavery'", CBC News (20 August 2022), online:

[<https://www.cbc.ca/news/canada/toronto/jamaican-migrant-workers-open-letter-1.6557678>](https://www.cbc.ca/news/canada/toronto/jamaican-migrant-workers-open-letter-1.6557678).

¹⁰ Bethany Hastie, "The Inaccessibility Of Justice For Migrant Workers: A Capabilities-Based Perspective" (2017) 34:2 Windsor YB Access Just 20.

¹¹ Verity Stevenson, "Quebec seeing rise in injured temporary foreign workers hired to fill labour gaps", CBC News (1 March 2023), online:

[<https://www.cbc.ca/news/canada/montreal/temporary-foreign-workers-accidents-doubled-1.6764416>](https://www.cbc.ca/news/canada/montreal/temporary-foreign-workers-accidents-doubled-1.6764416).

¹² C. Susana Caxaj & Anelyse Weiler, "For migrant farm workers, housing is not just a determinant of health, but a determinant of death." *The Conversation* (12 July 2022), online:

[<https://theconversation.com/for-migrant-farm-workers-housing-is-not-just-a-determinant-of-health-but-a-determinant-of-death-186043>](https://theconversation.com/for-migrant-farm-workers-housing-is-not-just-a-determinant-of-health-but-a-determinant-of-death-186043).

These authorizations are also associated with an increased risk of debt bondage, with higher risks of ending up in undocumented work, with an irregular legal status, and within a condition of human trafficking. In particular, the U.S. State Department's Anti-Human Trafficking office now regularly acknowledges in its annual reports the correlation between employer-tied labour programs and higher risks of human trafficking.¹³ Academic researchers in Canada have also confirmed that the employer-tied work permit cultivates conditions in which workers' risk of experiencing human trafficking is greatly increased.¹⁴

Employer-based access to permanent status: State-imposed risks of servitude

Furthermore, many foreign workers admitted on temporary work authorizations are denied permanent status recognition based on their category of employment, sector, or occupation. Exclusion from accessing permanent status means workers have a continuous and never-ending obligation to renew the temporary work permit and are perpetually exposed to all the risks associated with employer-based sponsorship. In some cases, workers are provided with conditional, "snake and ladder", access to permanent status. However, the conditions imposed force workers to stay in abusive arrangements and prevent them from meaningfully accessing justice and reparation in the country during the months/years of the permanent status confirmation procedure.

In particular, employer/employment-dependent access to permanent status discourages workers from exercising their rights or filing complaints in order not to jeopardize or delay their access to permanent status. Workers who need the support or cooperation of their employer to access permanent status often face pressure to acquiesce to unreasonable, or even illegal, demands by their employers.¹⁵ When access is conditional on accumulating a certain amount of work experience, workers will remain in abusive workplaces, even at great risk to their health and safety. This issue is particularly well-documented in the case of migrant care workers in Canada, as access to permanent status has during the last four decades,¹⁶ depended on completing a required number of months of work within a set timeframe.¹⁷

¹³ See e.g. U.S. Department of State, 2022 Trafficking in Persons Report (2022).

¹⁴ Jesse Beatson et al, "The Intersection of Exploitation and Coercion in Cases of Canadian Labour Trafficking" (2017) 26:1 Journal of Law and Social Policy.

¹⁵ A 2019 Globe and Mail investigation found that employers leverage their control over access to permanent status to charge exorbitant fees in exchange for the job offer or work experience confirmation that the worker needs to apply for permanent status see Kathy Tomlinson, "Employers taking cash from foreign workers seeking permanent resident status in Canada", *The Globe and Mail* (31 May 2019), online:

<https://www.theglobeandmail.com/canada/article-employers-taking-cash-from-foreign-workers-seeking-permanent-resident/>.

¹⁶ The Canadian government has recently announced a change of policy on that regard targeting especially caregivers - but details and impact of the implementation of such change remain to be clarified, see Immigration, Refugees and Citizenship Canada (IRCC) "Canada announces new pilot programs to support caregivers and Canadian families, intends to make the caregivers program permanent" (3 June 2024), online:

<https://www.canada.ca/en/immigration-refugees-citizenship/news/2024/06/canada-announces-new-pilot-programs-to-support-caregivers-and-canadian-families.html>.

¹⁷ Salimah Valiani "The Shift in Canadian Immigration Policy and Unheeded Lessons of the Live-in Caregiver Program" (2009) Ottawa: Ontario Council of Agencies Serving Immigrants.

The implementation of ineffective and insufficient measures by the government of Canada

During the last decade, the federal government of Canada has implemented various surface-level reforms and band-aid measures, including supervision by foreign government agents, legal information initiatives, as well as access to a one-year open work permit in case of abuse confirmed by a federal immigration officer. All those measures have failed to prevent the systemic violations of migrant workers' rights by employers since the structures that prevent migrant workers from asserting their rights have remained in place.¹⁸ Band-aid solutions cannot mitigate the high risk of rights violations inherent in a system where the right to change employers is negated.¹⁹

Conclusion

Internationally, Canada has indicated a clear commitment to the goal of eradicating forced labour and human trafficking on many occasions. In 2002, Canada ratified the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. In 2015, Canada joined all United Nations (UN) Member States in committing to achieving the Sustainable Development Goals, where trafficking in persons is explicitly mentioned in targets 5.2, 8.7, and 16. In particular, target 8.7 calls for immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers. Target 8.8 requires States to "Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment". Canada also supports the implementation of the Global Compact for Migration, which includes an objective to prevent, combat, and eradicate trafficking in persons.

However, Canada's reliance on employer-tied authorizations and employer-based access to permanent status contradicts its commitments under these international instruments. The ongoing use of employer-tied legal status perpetuates a system that restricts migrant workers' ability to exercise their rights freely, leaving them vulnerable to forced labour and trafficking. If Canada is truly committed to preventing trafficking and eradicating forced labour, it must move towards open work permits and unconditional permanent status recognition for all migrant workers, regardless of occupation or national origin.

¹⁸ Eric Tucker, Sarah Marsden and Leah F. Vosko, "Federal Enforcement of Migrant Workers' Labour Rights in Canada: A Research Report" (2020). Articles & Book Chapters. 2795.

https://digitalcommons.osgoode.yorku.ca/scholarly_works/2795.

¹⁹ Evaluations by two community organizations, including one by DTMF, concluded that the limited case-by-case issuance of open work permits cannot be expected to counteract the "profoundly entrenched structural impunity of abusive employers that the employer-specific work permit has established". See Association for the Rights of Household and Farm Workers, "Band-aid on a bullet wound: Open work permits for employer-tied migrant workers facing workplace abuse" (September 2021) and Migrant Workers Centre, "A promise of Protection? An assessment of IRCC decision-making under the Vulnerable Worker Open Work Permit program" (March 2022).