



Conseil canadien pour les réfugiés
Canadian Council for Refugees

CCR Concerns: Human Trafficking in Canada

A submission to the House of Commons Standing
Committee on Justice and Human Rights for their study on
human trafficking in Canada

April 2018

Introduction

The Canadian Council for Refugees' anti-trafficking work focuses on the protection of trafficked non-citizens, those with precarious status, and vulnerable migrants, including women and girls. The CCR uses a human rights-based approach that recognizes the intersections in struggles for justice between Indigenous peoples, migrants and women. The CCR's anti-trafficking policy work focuses on the analysis of Canada's immigration and refugee policies, as well as anti-trafficking policies.

Protection for non-citizens

Currently, laws related to trafficking in persons criminalize trafficking by punishing traffickers but don't ensure effective rights protection or adequate support to trafficked persons, especially those without secure immigration status in Canada. Notably, the *Immigration and Refugee Protection Act* (IRPA) provides no legislated protection to trafficked persons. The only reference to trafficked persons in the legislation is a provision in the *Immigration and Refugee Protection Regulations*, which makes the fact that a person is being trafficked a factor in favour of immigration detention.,

The CCR has developed a detailed recommendation for legislative change to provide temporary and permanent protection to trafficked persons, as well as an avenue to family reunification, without which trafficked persons cannot feel secure.¹

Recommendation:

1. The federal government should introduce a legislative amendment to bring a permanent and fundamental change in policy so that trafficked non-citizens in Canada are protected.

Temporary Protection

While a path to permanent protection is required, it is also important to strengthen temporary pathways. Currently, Temporary Residence Permits are the only tool available for the protection of internationally trafficked persons in Canada.

More recently, open work permits for Temporary Foreign Workers (TFWs) at Risk were introduced in British Columbia and are considered a promising practice for all provinces as the threshold to access the remedy is risk of exploitation rather than trafficking. These open work permits would increase labour mobility for TFWs who are currently restricted to working for specific employers, and are vulnerable to abuse, such as labour exploitation that could be human trafficking.

¹ CCR, *Proposal for a Legislative Amendment to Protect Trafficked Persons*, 2007: <http://ccrweb.ca/en/proposal-legislative-amendment-protect-trafficked-persons>

Temporary Resident Permits (TRPs)

The CCR has identified serious shortcomings in this recourse set out in our report, *Limits to Protection for Trafficked Persons*².

There are very few TRPs issued annually, and they pose limitations even when issued. According to the information provided by Immigration, Refugees and Citizenship Canada (IRCC), and included in the 2016 *IRCC Evaluation of Temporary Resident Permits*³, in the period 2011–2015, between 5 and 22 new TRPs were issued per year. These numbers seem particularly low considering that Canada has been identified as a destination country for trafficking, and some 80,000 Temporary Foreign Workers enter Canada every year⁴.

The 2016 IRCC evaluation of TRPs acknowledged the need to address operational and policy issues and questions related to managing Victims of Human Trafficking cases. The CCR welcomes this acknowledgement and urges the government to address the discretionary practices that have created barriers to effectively protect trafficked persons. In particular, the CCR urges the government to follow up on the procedural gaps identified in the federal evaluation in order to ensure clear, transparent and consistent application of rules and practices across regions.

The high evidentiary burden required to access TRPs is another concern. CCR suggests reviewing the criteria for the identification of trafficked persons in order to reflect the nuanced and evolving understanding and realities of trafficked persons and those at risk of being trafficked. Civil society organizations who serve trafficked persons should be consulted to support this process.

In addition, even when TRPs are issued, they are short in duration and are not extended to family members. In order to strengthen TRPs as a pathway to temporary protection, TRPs should be issued for 12 months rather than the current 6 months; they should also be extended to family members including spouses and children.

² CCR, *Temporary Resident Permits: Limits to Protection for Trafficked Persons*, 2013: <http://ccrweb.ca/en/temporary-resident-permit-report>

³ IRCC, *Evaluation of Temporary Resident Permits*, 2017: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/temporary-resident-permits-2016.html#itm-1-3>

⁴ IRCC, *Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates*: <https://open.canada.ca/data/en/dataset/360024f2-17e9-4558-bfc1-3616485d65b9>

Key Concerns:

The weaknesses in the protections available through TRPs reinforce the CCR's argument that legislated protection is needed for trafficked persons. In the meantime, in the short term the federal government should:

- Strengthen access to Temporary Residence Permits and ensure the issuance and administration of TRPs is guided by a human rights and survivor-centred approach.
- Stop restricting migrant workers in the TFWP to specific named employers, giving them increased labour mobility (by issuing work permits that could be open, or region/sector specific).

Protecting Migrant Workers

Workers in the Temporary Foreign Worker Program (TFWP) are more vulnerable to abuse and exploitation due to their temporary status. In Canada, trafficking for the purpose of labour has mostly affected migrant workers who come in through the TFWP and are tied to a specific employer, which provides them with few effective legal and social protections. These are documented in detail in the CCR's May 2016 submission to Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA), *Temporary Foreign Worker Program*⁵.

Advocates note that opening TFW work permits to allow labour mobility so that migrant workers can leave bad work situations is a promising step. Ultimately, access to permanent residence is the only measure that will truly eliminate the vulnerability that is built into the TFWP.

In addition, migrant workers should be protected under the 2014 Protocol to the Forced Labour Convention. Signing on to the Convention would require the Canadian government to introduce mechanisms to prevent forced labour, including reviewing policies that create vulnerabilities, and introducing mechanisms to protect the rights of survivors.

Recommendations:

2. Pending changes to the legislation to offer permanent protection to trafficked persons, the federal government should strengthen access to temporary protection through TRPs.
3. The federal government should guarantee the right to all admitted as migrant workers, whatever the category, to apply for permanent residence at the same time as they apply for the work permit.
4. The federal government should ratify the 2014 Protocol to the Forced Labour Convention, and implement all of its provisions.

⁵ CCR, *Temporary Foreign Worker Program: CCR Submission to the Standing Committee on Human Resources, Skills and Social Development and Status of Persons with Disabilities (HUMA)*, 2016: http://ccrweb.ca/sites/ccrweb.ca/files/tfwp-review-submission_1.pdf

Access to Justice

CCR has a longstanding concern about the narrow way in which “trafficking” is often interpreted in Canada, leading to a denial of justice to survivors of trafficking because their experiences of rights violations are found not to match the definition of trafficking. More particularly, the definition of “exploitation” in the Criminal Code requires that the trafficked person be afraid for their safety or the safety of someone known to them. Yet, our members are aware that trafficked persons may not feel or demonstrate subjective fear as required by the Criminal Code.

This concern was echoed by immigration and refugee lawyers recently consulted by CCR as part of a legal needs consultation⁶. Some of these lawyers pointed to the need for human trafficking to be understood and conceptualized in a broader framework of exploitation, coercion and power imbalance. A more nuanced understanding of the vehicles of control used by human traffickers should be incorporated into the Criminal Code definition of exploitation, especially as this relates to labour trafficking.

The lawyers consulted also reaffirmed that the criminalization and rescue framework of current trafficking legislation can create barriers in access to justice for trafficked persons as it is not rights-based.

A discretionary approach to remedies under IRPA, the Criminal Code or even those with a lower evidentiary burden such as human rights and labour justice remedies are difficult to access, especially for those most vulnerable, including migrant workers with precarious or undocumented status, Indigenous women, and migrant sex workers. In fact, some remedies can place people at risk of further harm, such as detention or deportation. As a way forward, law reform is needed in order to remove barriers to justice.

Also, there is a need to go beyond thinking about criminal law and to pay more attention to strengthening remedies that focus on reparations for survivors, from a rights-based perspective. For example, this would include strengthening human rights and labour standards legislation.

On a practical level, access to legal aid is an important barrier in access to justice. The legal aid system needs adequate funding for recourses to support trafficked and potentially trafficked persons. Currently, there is uneven funding between provinces.

Key Concerns:

- There is a spectrum of exploitation; the trafficking discourse in Canada needs to be considered in relation to the spectrum of exploitation and the need to access recourses along the spectrum.
- Remedies need to be survivor-centred such as human rights and labour standards legislation.

Recommendations:

5. The federal government should amend the Criminal Code to remove the requirement of subjective fear on the part of the trafficked person.
6. The federal government should ensure access to legal aid for survivors of trafficking in all provinces and territories.

⁶ CCR, *Trafficking Persons: Avoiding Collateral Damage*, 2018: <http://ccrweb.ca/en/trafficked-persons-avoiding-collateral-harm>

National Action Plan

The CCR welcomes the fact that the Government of Canada recognizes the importance of developing holistic strategies that address the root causes and risk factors that can lead to human trafficking. Nevertheless, we are concerned that the four-year (2012-2016) *National Action Plan to Combat Human Trafficking (NAP)* focused too heavily on border control and enforcement (RCMP, CBSA), with too little attention to rights protection. We are also concerned that the NAP did not allocate sufficient resources to service provision.

We note that a failure to focus on protection actually undermines efforts to prosecute traffickers because people will not come forward to law enforcement if their rights are not protected.

In terms of prevention, the NAP focused mostly on awareness-raising strategies rather than addressing the root causes of trafficking. Women, girls, Indigenous women, non-status, and migrant workers are among the most vulnerable populations. These vulnerabilities are rooted in social inequalities facilitated by violence against women, systemic oppression of indigenous peoples, cultural and social biases against migrants, and global economic forces that drive migration. Therefore, prevention strategies should focus on structural changes.

In a related way, while labour trafficking was named as an emerging issue in the NAP, operationally the Plan focused mostly on domestic sex trafficking. It is widely known that Canada has increasingly shifted its focus from permanent to more precarious temporary immigration. Trafficking for the purpose of labour has mostly affected migrant workers who come in through the TFWP. Reforming the TFWP program is integral to a prevention strategy.

There is growing awareness around how exploitation can take many forms, although it may not necessarily meet the threshold of trafficking defined in Canada's legislation. Thinking around trafficking has evolved over the last decade and at the CCR we understand trafficking along a spectrum of exploitation, with varying gradations of exploitation. From labour violations to human trafficking violations, these gradations can occur concurrently, at different times, and may not necessarily follow a linear path. People need protection and access to justice along the spectrum whether they are trafficked or at risk of being trafficked. At the same time, we recognize that diverging definitions of human trafficking have created challenges to collaboration. There is a need for a more nuanced understanding of trafficking in order to implement a survivor-centred approach to prevention, protection, prosecution and partnership – the four pillars of the NAP.

Recommendations:

7. The federal government should develop prevention strategies that go beyond awareness-raising and address the root causes of trafficking and implementing policy/systemic changes.
8. The federal government should allocate adequate funds for support services for all vulnerable populations, including migrant workers, migrant sex workers, women, Indigenous women and others with or without status.

Best Practices

As part of its work on trafficking, the CCR consistently consults members and other first response organizations on the most pressing needs in service provision and providing adequate support to trafficked persons. These consultations are carried out through trafficking fora⁷, through virtual meetings, through development process of the *National Human Trafficking Assessment Tool*⁸, our guide on *Human Trafficking and the Law*⁹, and most recently, through a legal needs consultation with immigration and refugee lawyers¹⁰.

Below are three best practices named in the consultation process with immigration and refugee lawyers, and during other consultations with stakeholders. These should inform a national strategy on service provision:

- Connect and collaborate with community organizations, and use a multi-sectoral, team approach to provide legal support as well as wrap-around collective supports such as social, psychological services. Community-based practice would include letting migrant worker communities and shelters know that services are available.
- Use trauma-informed practice to ensure survivors are respected and to provide realistic and informed options. This includes disclosing the risks of all remedies and recourses proposed.
- Engage with institutions in order to educate them on trafficking and advocate for clarity, transparency and timely processes (especially in regards to criteria for assessment, access to officials, and human rights considerations).

Recommendation:

9. The federal government should implement a national strategy for the coordination and implementation of best practices in services to persons trafficked into and within Canada, including all federally funded settlement services. The strategy should be developed taking into account best practices identified by NGOs.

⁷ CCR, *National Forum on Human Trafficking Highlights Report*, 2016: <http://ccrweb.ca/en/trafficking-forum-highlights-2016>

⁸ CCR, *National Human Trafficking Assessment Tool*, 2016: <http://ccrweb.ca/en/national-human-trafficking-assessment-tool-full>

⁹ CCR, *Human Trafficking and the Law: How to Protect Trafficked Persons*, 2018: <http://ccrweb.ca/en/human-trafficking-and-the-law>

¹⁰ CCR, *Trafficking Persons: Avoiding Collateral Damage*, 2018: <http://ccrweb.ca/en/trafficked-persons-avoiding-collateral-harm>

Summary of Recommendations

Protection

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3. The federal government should guarantee the right to all admitted as migrant workers, whatever the category, to apply for permanent residence at the same time as they apply for the work permit.
4. The federal government should ratify the 2014 Protocol to the Forced Labour Convention, and implement all of its provisions.

Access to Justice

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National Action Plan

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About CCR

The Canadian Council for Refugees (CCR) is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of immigrants and refugees in Canada. The membership is made up of approximately 200 organizations involved in newcomer settlement and refugee and migrant rights, as well as refugee sponsorship. The Council serves the networking, information-exchange and advocacy needs of its membership.

Since 2003, the Canadian Council for Refugees (CCR) has provided leadership and support at a national level for NGOs concerned about trafficked non-citizens, including women, girls, as well as other vulnerable communities in Canada. CCR's main anti-trafficking activities include creating and maintaining a national network, hosting regular national meetings, developing policy analysis and practical tools for service providers, and engaging with the government about access to protection for trafficked persons.

CCR Resources Relevant to Trafficking

- CCR, *Trafficking Persons: Avoiding Collateral Damage*, 2018 at <http://ccrweb.ca/en/trafficked-persons-avoiding-collateral-harm>
- CCR, *Human Trafficking and the Law: How to Protect Trafficked Persons*, 2018 at <http://ccrweb.ca/en/human-trafficking-and-the-law>
- CCR, *National Forum on Human Trafficking Highlights Report*, 2016 at <http://ccrweb.ca/en/trafficking-forum-highlights-2016>
- CCR, *Temporary Foreign Worker Program: CCR Submission to the Standing Committee on Human Resources, Skills and Social Development and Status of Persons with Disabilities (HUMA)*, 2016 at http://ccrweb.ca/sites/ccrweb.ca/files/tfwp-review-submission_1.pdf
- CCR, *Temporary Resident Permits: Limits to Protection for Trafficked Persons*, 2013 at <http://ccrweb.ca/en/temporary-resident-permit-report>
- CCR, *Proposal for a Legislative Amendment to Protect Trafficked Persons*, 2007 at <http://ccrweb.ca/en/proposal-legislative-amendment-protect-trafficked-persons>

Other Relevant References

- IRCC, *Evaluation of Temporary Resident Permits*, 2017: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/temporary-resident-permits-2016.html#itm-1-3>
- U.S. Department of State, *Trafficking in Persons Report*, 2017 at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/temporary-resident-permits-2016.html>
- IRCC, *Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates* at <https://open.canada.ca/data/en/dataset/360024f2-17e9-4558-bfc1-3616485d65b9>