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To: Senate Standing Committee of Social Affairs, Science and Technology

Attn: Emily Barrette, Procedural Clerk

Topic: Study on Canada's Temporary and Migrant Labour Force

Submitted by: Alliance for Gender Justice in Migration

Introduction

This briefing document represents a position statement from the Alliance for Gender Justice in Migration to contribute to studying Canada's Temporary and Migrant Labour Force. The themes related to the temporary and migrant labour force include health, welfare, legal and immigration concerns; challenges for specific industries such as agriculture and food processing, accommodation, food services, tourism, and caregiving.

The document is a summary of three categories of relevant issues and recommendations to advance gender justice in migration. The full version of Alliance policy position statements on employment rights, regularization, closed work permits, and gender-based violence are available on the Migrant Workers Center (MWC) website.

About MWC and the Alliance

Founded in 1986, Migrant Workers Centre (“MWC”) is a non-profit organization that facilitates access to justice for migrant workers in British Columbia through the provision of education and legal services. MWC also works to advance fair immigration policy and improved labour standards for migrant workers through law and policy reform and test case litigation.

Women and gender-diverse people, who have come to Canada on a temporary work permit and who are employed in low-paid, precarious jobs, those who are refugee claimants, international students, or migrant sex workers, those who have been exploited by unscrupulous recruiters and immigration practitioners, and those who are in the process of family sponsorship but who have left their spouse due to domestic or gender-based violence often experience multiple oppressions and face unique challenges.

Thus, the Alliance for Gender Justice in Migration was formed in 2022. Comprised of members across Canada, the Alliance identifies trends and promotes policy solutions aimed at ending discrimination against women and gender-diverse migrants in Canada. We are a network of

people with lived experience, academics, advocates, and service providers who conduct research, develop policy solutions, raise public awareness, and advocate for change by centering the voices of those with lived experience.

The Alliance calls for proactive, coordinated, and sustainable efforts to ensure women and gender-diverse workers with precarious immigration status are protected from violence and abuses, including recruitment and employment-related abuses and that victims have full access to rights and justice in the form of proactive grievance mechanisms that do not further amplify their vulnerability.

Issues

Due to inconsistent and uneven protections across provinces, the current landscape of employment rights is not only difficult to navigate for people with precarious status but also leaves room for recruiter and employer-related abuse. The Special Rapporteur on contemporary forms of slavery has raised several concerns with the Government of Canada, specifically with regards to migrant workers' employment conditions, with first-hand information gathered from migrant workers and other relevant stakeholders (OHCHR, 2023b). Many of these points raised coincide with the experiences of women and gender-diverse people with precarious immigration status whose voices the Alliance for Gender Justice in Migration has been centreing. These voices point to a number of inequities in accessing basic employment rights and justice discussed below.

Lack of Full Access to Employment Standards, Unionization and Collective Bargaining

Women and gender-diverse individuals with precarious status currently lack full access to employment rights, both to individual employment rights and to collective bargaining guaranteed by provincial and federal legislation.

While Employment Standards legislation is designed to provide a general set of minimum standards, it often includes exemptions and special rules that affect specific categories of workers resulting in selective inequity (Thomas et al., 2019). Historically and continuing into present time, certain categories of workers, such as agricultural workers and domestic caregivers have been excluded from legal protections enjoyed by most other workers (Drolet & Etmanski, 2015; Thomas et al., 2019; Vosko et al., 2019).

For example, the BC Employment Standards Act exempts live-in home support workers, night attendants, and residential care workers from limits on overtime and hours of work (Employment Standard Regulation BC, n.d., s.34(q), (w), (x)).

The provisions of the BC Employment Standards Act concerning hours of work, overtime, and statutory holidays do not apply to farm workers (ibid, s.34.1).

These exclusions from guaranteed labour rights disproportionately affect racialized migrant workers, as they predominantly serve in sectors excluded. For example, over 90% of care workers in Canada are women, most of whom are from the Philippines, but also from African, Latin American, and Asian countries (Hanley et al., 2017).

In addition, women, and gender-diverse individuals with precarious immigration status often work in industries that are non-unionized or face barriers to unionization and collective bargaining (Faraday, 2012; Hanley et al., 2020; Vosko, 2014). For example, in the case of care work and other domestic work performed in employers' homes, there are barriers to accessing unionization and collective bargaining because this right was designed for large workplaces, not for single employees of one employer (Migrant Workers Centre, 2018b).

Women and gender-diverse workers with precarious status often face barriers to organizing and joining unions, such as long working hours, working in remote and isolated places, language barriers, limited knowledge of rights, fear of reprisal by employers etc. (International Labour Organization, 2023).

Such exclusions from employment rights and collective bargaining further limit access to resources, such as those needed to seek proper healthcare and housing and to prevent food insecurity, in addition to the lack of economic resources for basic needs already experienced by women and gender-diverse people with precarious immigration status.

These conditions may be exacerbated for people without formal immigration status due their reliance on informal work, which, generally, lacks the protections provided under provinces' labour standards.

Exploited via Recruitment and Labour Trafficking but Lacking Access to Justice

Women and gender-diverse people with precarious status who work in Canada and lack access to employment rights are left vulnerable in the face of recruiter and employer abuse. Due to a lack of proactive monitoring, the current labour and employment legislation is not reflected in the reality of the lives of many women and gender-diverse workers with precarious status. Legislation that has been introduced to protect migrant workers from recruitment fees and trafficking has fallen short of being able to truly protect these workers (Beatson et al., 2017; De Shalit & Van Der Meulen,



2016; Faraday, 2016; Ricard-Guay, 2016; Roots & De Shalit, 2015). For example, recruiters utilize strategies to avoid enforcement of Canadian legislation that forbid recruitment fees, such as not providing receipts, demanding the fees to be paid into offshore accounts or to be paid before arrival in Canada (Hastie, 2021).

A significant number of workers who find themselves in low-wage jobs after coming to Canada have experienced exploitation at the hands of recruiters, including demands for exorbitant and illegal recruitment fees and threats and intimidation for not paying fees (Faraday, 2016). Fees up to \$50,000 Canadian dollars have been reported by media and researchers, and indebtedness of this nature can force workers to stay in employment situations that are unfair and abusive, increasing the likelihood of forced labour and trafficking (Dixon-Perera, 2020). At times, as is well documented, many migrant workers are ‘released on arrival’ - that is, no employer exists, or work conditions are not as promised resulting in workers finding themselves with no jobs as soon as they arrive in Canada.

Migrant workers who have precarious immigration status with such experiences are vulnerable to being trafficked for labour purposes because traffickers can take advantage of their structural vulnerability, e.g., due to closed work permits that tie their immigration status to working for a single employer, limited employment opportunities while having dependents who rely on their income, and knowledge that their activities may make them vulnerable to criminal charges related to violating immigration laws (Beatson et al., 2017).

Labour trafficking often operates off the radar of law enforcement because employers avoid identification and victims often do not come forward due to fear of criminalization (ibid). Issues arising from the charging of recruitment fees and misinformation about the intended employment are often further amplified by employer abuses (Hastie, 2021). Especially workers in ‘low-skilled’ streams, such as under the Temporary Foreign Worker Program (TFWP) are vulnerable to such abusive practices, as they receive tied work permits associated with one single employer and, often, it is not feasible for them to quit their jobs due to legal and financial restrictions (OHCHR, 2023b). While over the years, changes to the TFWP promised an increase in inspections and more severe punishments, reports of abuse continue (Canadian Council for Refugees, 2016), and inspections are rarely made without prior notice and, sometimes, take place remotely via phone or photos (OHCHR, 2023b). Workers continue to experience a variety of abuses. For instance, in 2020, The Migrant Workers Alliance for Change spoke to migrant workers who represented over 1000 workers, reporting a myriad of abuses, including wage theft from employers.



Thus, closed work permits facilitate the existence of such mistreatments and expose workers to continued abuses which are well documented (Canadian Council for Refugees, 2016). Workers have reported debt from recruitment fees, unsafe working conditions, and difficulty changing jobs to be their greatest challenges (ibid).

In the face of such abuses, women and gender-diverse workers with precarious status face numerous practical barriers to knowing about their rights and accessing support services (Migrant Workers Centre, 2018a), such as language barriers, working in rural locations, disincentive to accessing services due to fear of serious repercussions, and other forms of marginalization (Beatson et al., 2017; Campbell et al., 2014; Gagnon et al., 2022; Machado et al., 2022). Undocumented workers are especially vulnerable to exploitation by employers because they are at a heightened risk of deportation or detention and in many cases feel they depend on their employer to maintain their immigration status or to work towards a more permanent status (Casey et al., 2019; Foster, 2021).

This vulnerability is exacerbated due to a lack of proactive enforcement as the system is predominantly complaint-driven and depends on individual complaints by precarious workers. In terms of deterrence value, the prospect of large fines or prison time is significant, however, according to research such consequences are relatively rare as informal approaches of education and rectification are adopted before other enforcement mechanisms, and violations often do not come to the attention of enforcement officials (Dixon-Perera, 2020; Hastie, 2021; Vosko et al., 2019).

In response to reports of widespread abuse and exploitation of migrant workers, eight provincial governments in Canada have enacted regulatory frameworks to enhance protection of migrant workers from unscrupulous recruitment practices and abuse in their employment (Dixon-Perera, 2020). While these efforts are a recognition on the part of provincial governments that temporary foreign workers are a uniquely vulnerable workforce in Canada that merits specific regulation, the result is an uneven and inconsistent patchwork of protections for workers which vary from province to province. In the absence of robust legislation and proactive enforcement to prevent and sanction the charging of recruitment fees and other related mistreatment in all jurisdictions where migrant workers are employed, recruitment-related abuse will continue to persist.

Disproportionately Impacted by Violence and Harassment

The barriers experienced in accessing employment rights and the lack of proactive enforcement options can leave women and gender-diverse people with precarious status disproportionately vulnerable to and impacted by sexual harassment and other forms of gender-based

violence in their workplaces. Women and gender-diverse migrants may face added risks that come with being isolated due to job type (e.g., caregiver or farm worker) associated with remote job locations, or due to their immigration status (Ontario Women's Justice Network, 2014), all of which isolate them from community and make accessing resources especially difficult.

Furthermore, for undocumented women and gender-diverse migrants, a lack of authorization to engage in formal employment pushes people to work informally under precarious, unregulated, unsafe, and poorly compensated conditions.

Pregnant workers with precarious immigration status face barriers to accessing supports and protections such as access to parental leave and public childcare and protection from unfair dismissal (Hanley et al, 2020; Larios, 2022). These kinds of inequities result in pregnant people with precarious status to be more likely to receive care later in their pregnancies, which in some cases can result in long-term consequences, for example, increased risk of emergency procedures, as well as higher incidences of stillbirth, early neonatal death, and maternal health complications (Almeida et al., 2013). Migrant workers are often responsible for sending money back to their families in their home countries. Low wages and the high cost of living often leave migrant caregivers no choice but to remain in their employers' homes even when it is not a requirement (Bhuyan, 2018).

Overworked, often without extra compensation, such circumstances can mean not only being susceptible to loss of privacy and, potentially, wage theft, but also not being able to take time off to seek medical care for themselves or their children. Women migrant agricultural workers, whose permits are tied to their employers, face similar issues to caregivers. Some women migrant farm workers face chronic sexual harassment at work, which includes unwanted physical contact, sexual demands, degrading words or gestures, and unwanted kissing or touching of a sexual nature. However, they often will not report due to fears of not being hired next season and losing valuable income (Ontario Women's Justice Network, 2014).

Furthermore, investigations, such as the statement of the Special Rapporteur on contemporary forms of slavery, have pointed out that culturally sensitive and trauma-informed support is rarely provided to victims of abuse, if at all (OHCHR, 2023b), which can make the aftermath re-traumatizing and obstruct a path towards recovery.

Such Gender-based Violence occurrences are rooted in unequal power dynamics (Tan & Kuschminder, 2022), such as, e.g., in instances where work permits are closed or restricted to one single employer. Providing women and gender-diverse workers with precarious status with open

work permits and stronger protections and proactive enforcements that have higher deterrent value is a crucial step towards preventing such abuses.

The Vulnerable Worker Open Work Permit Program (VWOWP), an initiative implemented in 2019 to allow immigration officers to issue LMIA-exempt open work permits to migrant workers who are experiencing abuse related to their employment in Canada, has also been found to perpetuate harm against migrant workers in many ways. 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 evidence, high evidentiary burdens, lack of procedural fairness, and enforcement action as a consequence of application (Aziz, 2022). All these issues further disincentivize workers from reporting abuse and keep migrant workers in situations where they feel they must endure abuse.

Individuals without status and their families are under constant risk of detention and deportation. These threats discourage them from interacting with official systems, even in cases where assistance is available, or the situation is life-threatening (for example, by calling the police, including to report incidents of gender-based violence). For example, women and gender-diverse people with precarious status who perform sex work, often, hesitate to consult law enforcement, due to fear of detention and deportation (Cargo, 2021; OHCHR, 2023b). As a result, migrant sex workers have become increasingly susceptible to targeted violence by predators who know these workers, given their precarious legal and social status, have no effective recourse to protection. Women and gender-diverse individuals with precarious status deserve to feel safe at work.

Since Gender-based Violence occurrences are rooted in unequal power dynamics (Tan & Kuschminder, 2022), such as, e.g., in instances where work permits are closed or restricted to one single employer. Providing women and gender-diverse workers with precarious status with open work permits, stronger protections and proactive enforcements that have higher deterrent value is a crucial step towards preventing such abuses. In addition, support mechanisms and programs available in the face of mistreatment need to be culturally sensitive and trauma-informed to ensure the process towards recovery itself is not re-traumatizing to the very same people who are in need of care and justice.



Recommendations

Systemic inequalities and barriers that contribute to the marginalisation of women and gender-diverse migrants with precarious status, including those related to immigration policies, employment rules and regulations, and lack of access to justice need to be addressed immediately in order to create a healthier and safer environment for this Labour Force that is integral to our communities.

Women and gender-diverse people with precarious status or without status working in Canada face significant barriers to accessing employment rights, including exclusions from provincial and federal legislation, lack of access to sectoral bargaining, and ineffective protections against gender-based violence or sexual harassment in the workplace. They tend to work in sectors that are characterized by low wages, non-unionization, and lack of access to pensions and other non-wage remuneration. It is essential to take urgent action to make legislative and policy changes to increase access to justice for women and gender-diverse workers with precarious immigration status.

In response to the barriers, we put forward the following recommendations:

1) Access to permanent residence

Permanent resident status on arrival and family unity for all migrant workers with precarious status or no status without increased educational, language or financial requirements or the need for job offers is necessary. There is a need to implement a broad, gender-responsive, inclusive and rights-based regularization scheme that includes both a short-term regularization program and a longer-term plan. For example, most workers in the lowest-wage streams, including agricultural workers in the SAWP and most low-wage workers in the TFWP, do not have the ability to apply for permanent residence, no matter how long they live and work here. In order to avoid the power imbalance between them and employers, new pathways are needed to ensure women and gender-diverse individuals with precarious or no immigration status do not keep finding themselves without access to permanent residence status as a result of shortcomings in the design of Canada's immigration system. This will ensure workers can migrate safely and access their full labour and employment rights.

Furthermore, immediate access to permanent residence for those experiencing gender-based violence or labour exploitation must be prioritized. IRCC should implement a new pathway for

trafficked and vulnerable persons who have experienced abuse and exploitation in Canada, with the right to seek both temporary and permanent status in Canada.

2) Abolishment of closed work permit

End the use of employer-specific work permits altogether. Without permanent status on arrival for all migrant workers, IRCC should phase out the use of permits which tie workers to a specific employer, in favour of open work permits. Migrant workers in the lowest-wage streams arrive in Canada with temporary immigration status and work permits which tie the worker to a single employer. Having temporary immigration status means that the worker's ability to live and work in Canada, the services they can access, and their long-term prospects in Canada, if any, are uncertain and dependent on the continuation of the employment relationship. Furthermore, as mentioned, such power imbalances are breeding grounds for a variety of abuses.

Furthermore, unscrupulous employers who steal wages from migrant workers not only affect these workers but also drive down wages for Canadian and permanent resident workers in Canada. With labour market mobility for workers, wages will be corrected by the market, creating fairness that will benefit all workers in Canada.

3) Full access to Employment Standards

All workers must be covered by Employment Standards. Any and all exemptions under Employment Standards for work predominantly being done by racialized migrant workers, such as those for agricultural workers and domestic caregivers, should be discontinued. Labour legislation in all provinces, including Employment Standards and workplace health and safety, should be proactively monitored, and enforced.

4) Ensure all workers can collectively bargain and unionize

All workers must have the right to form unions and collectively bargain, including through broader-based bargaining such as sectoral bargaining. Sectoral bargaining is a type of collective bargaining in which labour agreements are negotiated to cover an entire industry or a sector of a country's economy, rather than just a single employer or workplace. In the case of care work and other domestic work performed in employers' homes, there are barriers to accessing unionization and collective bargaining because this right was designed for large workplaces, not for single employees of one employer (Migrant Workers Centre, 2018b). Proactive measures should be taken to ensure migrant workers can join unions without retaliation by employers.



5) Proactive enforcement and repercussions with high deterrent value

Legislation and systems created to protect migrant workers from illegal recruitment practices must be proactive and not rely on complaint-based processes. Many migrant workers borrow funds to cover exorbitant recruitment fees. Workers can thereby be forced to remain in unacceptable employment situations for many years. Specifically proactive and unannounced inspections of workplaces are needed to ensure standards are being adhered to. However, inspections conducted proactively are not common, and employers are typically notified in advance, and investigations may be conducted remotely rather than in-person, rendering many of these investigations grossly ineffective (Faraday, 2022; OHCHR, 2023b).

Furthermore, enforcement must have real deterrent value for recruiters and employers. Informal approaches of education and rectification are adopted before other enforcement mechanisms, and violations often do not come to the attention of enforcement officials (Dixon-Perera, 2020; Hastie, 2021; Vosko et al., 2019). Thus, enforcements must not only be proactive but have real and serious consequences for employers and recruiters to ensure women and gender-diverse individuals with precarious status are protected from exploitation and harassment.

Furthermore, a proactive enforcement strategy should prioritize industries which employ large numbers of migrant workers, such as agriculture, meat industry, and caregiving. Overall, it needs to be ensured that worker recruitment legislation across provinces is consistent in who is protected against these abuses. Identified best practices and methods across Canada must be adopted across to ensure improvements are implemented in all provinces for a more streamlined fair recruitment framework/process.

6) Culturally sensitive and trauma-informed support

Trauma-informed and culturally sensitive support is needed for workers who have experienced abuse and mistreatment. It is imperative to involve women and gender-diverse people with precarious status in the creation of such support mechanisms. Furthermore, in terms of support, migrant workers should be eligible for affordable or pro bono legal services, settlement services, and all services eligible to Canadian citizens, and immigration status should have no bearing on migrants' access to services.

The Vulnerable Worker Open Work Permit Program (VWOWP) is a band-aid solution that does not address the systemic issues that allow the conditions for rampant exploitation to occur (e.g., closed



work permits). Without structural changes to the way work permits are issued in Canada, the VWOWP provides only a temporary and inadequate solution to the framework of the TFWP that creates the circumstances for situations of abuse in the first place. The VWOWP does not address a worker's lack of access to permanent residence, and many workers are left in a precarious position after the expiry of their VWOWP if they are not able to obtain new employment and a new employer-specific work permit. Changes need to be made to the program, including making the process more trauma-informed so that the path towards recovery post-abuse is not jeopardized.

Conclusion

Regardless of the rights that women and gender-diverse workers with precarious immigration status may be entitled to on paper, the systemic barriers that prevent them from accessing their rights (e.g., lack of full access to employment rights and collective bargaining) leave them exposed to exploitation.

The Government of Canada must consider the impact of tied work permits and precarious immigration status on women and gender-diverse people who are more likely to experience workplace sexual harassment and other forms of gender-based violence, and discrimination on intersecting grounds.

Our well-being is connected as a community, as the events of the last past years have shown us, and this realization will lead us towards a more equitable future in the long term.

The way forward involves pathways to permanent residency, ending the practice of issuing tied work permits, ensuring all workers have access to employment rights, as well as proactive enforcement measures in the face of violations. Additionally, accessible trauma-informed and culturally sensitive services are needed to ensure women and gender-diverse people with precarious immigrant status, who are so integral to Canadian communities, are treated humanely and with dignity.



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