



## **Backgrounder for National Forum on Trafficking**

### **Some Key Issues**

November 2016

#### **A. ACCESS TO PROTECTION FOR TRAFFICKED NON-CITIZENS**

Trafficked non-citizens may seek protection in Canada through three main avenues:

- Temporary Resident Permits (TRPs)
- Refugee claims
- Applications for humanitarian and compassionate (H&C) consideration

##### **➤ Temporary Resident Permits**

TRPs offer a legal immigration status to some trafficked non-citizens, albeit temporary. TRPs are currently the main avenue to protection offered under Canada's immigration legislation.

##### Background:

In May 2006, the Canadian government issued guidelines for TRPs for trafficked non-citizens. This represented an important step towards recognition of the protection needs of trafficked persons.

TRPs are granted by Immigration, Refugees and Citizenship Canada (IRCC) and offer:

- A “reflection period” of 180 days, during which they may remain in Canada;
- Access to health care through the Interim Federal Health (IFH) Program, including medical and social counselling during this time;
- The right to apply for a work permit.

Following the 180 day period, an immigration officer may extend the permit depending on the circumstances of the individual case.

The guidelines for issuing TRPs were updated in April 2015 and have taken the form of Program Delivery Instructions, *Temporary Resident Permits (TRPs): Considerations specific to victims of human trafficking*: <http://www.cic.gc.ca/english/resources/tools/temp/permits/victim.asp>.

##### **CCR comments on TRPs**

Despite their many positive features, experience has shown that there are continuing gaps in access to protection and rights for trafficked persons through TRPs. Some of the gaps identified by the CCR include:

- Access to TRPs is limited in practice, and now in law;
- When trafficked persons do receive TRPs, their rights are restricted;
- Options for receiving permanent protection are uncertain;
- Trafficked persons continue to be detained and deported.

The CCR has developed a detailed report on *Temporary Resident Permits: Limits to Protection for Trafficked Persons*, available online at: <http://ccrweb.ca/en/temporary-resident-permit-report> (also available as [print copy](#)).

IRCC was scheduled to conduct an evaluation of TRPs starting in 2014-15 and to end in 2015-16. IRCC indicated that adjustments were made to the evaluation and its conclusion was expected in the third quarter of 2016.

➤ **Refugee claims**

In some cases trafficked persons' situation corresponds to the refugee definition and they may be recognized as a refugee. If they are, they can apply for permanent residence.

Shortcomings:

Some trafficked persons do not meet the refugee definition, which was not designed to address their situation. The refugee claim also in some regards offers less access to services than a TRP.

➤ **Applications for humanitarian and compassionate (H&C) consideration**

A trafficked person may also apply to remain in Canada on H&C grounds to allow for consideration of the hardship their trafficking situation in Canada has caused them.

Shortcomings:

- An H&C application takes a long time to be assessed;
- There is a \$550 fee to apply for H&C.
- An H&C application will not stay a deportation, meaning that the person may be removed from Canada before the application is considered.
- While waiting for a decision, the applicant may not have access to basic rights, such as a work permit, health care or other benefits.
- Some trafficked persons are barred by law from making an H&C application (see below).

**CCR comments on access to protection for trafficked non-citizens**

Current laws relating to trafficking in persons criminalize trafficking by punishing traffickers, but do not protect the rights of trafficked persons specifically. Furthermore, existing measures to regularize the status of trafficked non-citizens do not provide adequate protection for all trafficked persons who need it. **There is a need for clearer statutory protection for trafficked non-citizens.**

**B. CHANGES TO IMMIGRATION AND REFUGEE POLICIES**

Important changes to the *Immigration and Refugee Protection Act* (IRPA) came into effect in 2012, modifying in particular the refugee determination system. These changes barred people whose refugee claims have been rejected, withdrawn or abandoned from applying for status.

In some cases, trafficked persons are forced by their traffickers to make a refugee claim, which is either meant to fail or is not pursued, so that the person is subject to removal and can be threatened and controlled by their trafficker. The CCR expressed concern that these changes created new barriers for trafficked persons to access status in Canada, leaving them more vulnerable.

Changes to the law may specifically limit trafficked persons' access to:

- Temporary Resident Permits (TRPs): for 1-year, or 5 years for Designated Foreign Nationals.<sup>1</sup>
- Humanitarian and compassionate (H&C) applications for 1 year.
- Refugee determination system:
  - 1 year bar to access a pre-removal risk assessment (PRRA) in order to consider their risk on the basis of new information revealed after they escaped their traffickers;
  - 3 year bar to access PRRA for refugee claimants from a designated country of origin (DCO).<sup>2</sup>
  - Short timelines (15 days) to provide a Basis of Claim to the Immigration and Refugee Board, involving preparation for a refugee hearing and finding legal representation.

These measures may make it harder for trafficked persons to escape their traffickers and may also facilitate their arrest and deportation instead of providing pathways to status and protection.

The CCR raised these legislative changes with IRCC, which acknowledged that they created unintended bars to access to TRPs for trafficked persons. As a result, the operational guidelines on TRPs were revised to address the legislative ban and now clarify that section 24 of IRPA allows an immigration officer to consider, issue and refuse a TRP **on their own initiative** to a potentially trafficked person.

The government is currently reviewing the refugee claim system and is expected to table legislation making changes in the coming months. This may be an opportunity to advance protection for trafficked persons.

### **C. FORCED LABOUR AND TRAFFICKING IN PERSONS**

In recent years, Canada has increasingly shifted its focus from permanent to more precarious temporary immigration. This shift has increasingly created opportunities for people to be trafficked for the purpose of forced labour, by creating additional vulnerabilities that traffickers take advantage of.

People with insecure immigration status or no status at all are particularly vulnerable to trafficking for their labour. Whether they enter as a Temporary Foreign Worker, a refugee claimant, a student, a tourist or irregularly, traffickers may take advantage of their limited rights in Canada and the threat of detention and deportation, to force them to carry out work. Due to changes in immigration policy, more people are in Canada with temporary and precarious status.

---

<sup>1</sup> Trafficked persons might be among groups designated by the Minister of Public Safety, since one of the grounds for designation is that the group's irregular arrival is undertaken by or for a criminal organization. A group of exploited people being brought into Canada by an organized group of traffickers would meet this criterion – if the group is designated, the trafficked persons could be denied access to the TRP, even though it is the only recourse designed for them (*IRPA 24(5)* and *201.1*).

<sup>2</sup> DCOs are countries identified in 2012 at the Minister's discretion as having democratic institutions and low acceptance of refugee claims. The CCR has raised concerns with the DCO scheme.

The CCR has developed a *Backgrounder on Trafficking in Persons and Forced Labour* explaining the various dimensions of labour trafficking in Canada. The backgrounder is available online at: <http://ccrweb.ca/en/trafficking-forced-labour> (also available as [print copy](#)).

### **A note on migrant workers and labour trafficking**

As part of the shift towards more restrictive immigration policies in Canada, more workers are now being brought into Canada on a temporary basis with fewer rights than other workers to fill labour needs. These conditions and the lack of employment options available to them have made migrant workers extremely vulnerable to abuse and exploitation.

In Canada, trafficking for the purpose of labour has predominantly affected migrant workers. Those most affected by abuse and exploitation often come with valid work permits under the “low-skilled” streams of the Temporary Foreign Workers Program (TFWP). Migrant workers are particularly vulnerable to exploitation and trafficking because they lack legal and social protections.

Specifically, Temporary Foreign Workers in Canada have limited access to protection because:

- Work permits are tied to a single employer;
- Workers are isolated and lack access to information on their rights;
- The Canadian and most provincial governments do not ensure monitoring of Temporary Foreign Workers’ workplaces, and have largely depended on a complaints system that migrant workers are unlikely to use as this can still lead to deportation.

The CCR has developed a number of resources exploring the risks, abuses and exploitation that occur in the TFWP, including trafficking of migrant workers for the purpose of labour exploitation. These resources are available online at: <http://ccrweb.ca/en/migrant-workers>.

In 2016, the federal government announced it would review the TFWP. CCR welcomed this review and submitted a [brief](#) to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA). The review was concluded in September and the CCR has published [key recommendations](#) for next steps to improve the integrity of the program by protecting the rights of migrant workers (<http://ccrweb.ca/en/ccr-response-huma-report>).

### **D. CCR PROPOSAL FOR LEGISLATIVE AMENDMENT TO PROTECT TRAFFICKED PERSONS**

The CCR is calling for measures to adequately protect the rights of trafficked persons in Canada, in particular through legislative amendment. A *Proposal to amend the Immigration and Refugee Protection Act* has been developed to advocate for legislative changes that would ensure the unconditional protection of trafficked persons’ rights, as well as the provision of temporary and permanent protection to trafficked persons.

The CCR has identified the following principles to guide responses to trafficking:

- **Non-punitive:** Measures must not penalize trafficked persons

- **Human rights:** Measures and legal provisions must be guided by and be respectful of the human rights of trafficked persons
- **Economic rights:** Measures must be guided by and be respectful of the economic rights of trafficked persons
- **Supportive services:** There is a need for supportive services for trafficked persons
- **Gender and race analysis:** A gender and race analysis should be brought to any consideration of trafficking issues
- **Inclusive of trafficked persons:** Discussions about trafficked persons should include trafficked persons themselves

The full Proposal is available at: <http://ccrweb.ca/en/proposal-legislative-amendment-protect-trafficked-persons> (also available as [print copy](#)).

#### **E. CCR CALLS ON GOVERNMENT TO RATIFY FORCED LABOUR CONVENTION**

In June 2014 the International Labour Organization (ILO) adopted a new [Protocol to the Forced Labour Convention, 1930](#). The Protocol is relevant to trafficking in persons and specifies measures to prevent trafficking for the purpose of forced labour and to adequately protect and support survivors.

The CCR is calling on the government of Canada to ratify the Protocol to the Forced Labour Convention and to implement all of its provisions, and urges the government to adopt the Protocol's recommendation.

More information about the measures in the Forced Labour Convention and the CCR call for ratification is available at: <http://ccrweb.ca/en/protocol-2014-forced-labour-convention>.