



## Backgrounder for National Forum on Trafficking Some Key Issues

November 2013

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

Trafficked non-citizens may seek statutory protection in Canada through three main avenues. Existing measures to regularize the status of trafficked persons include:

- 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 Citizenship and Immigration Canada 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 are incorporated into CIC's general *Operational Manual IP1 for Temporary Resident Permits*: <http://www.cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf>.

#### **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](#)).

➤ **Refugee claims**

In some cases trafficked persons' situation corresponds to the refugee definition and they may be recognized as a refugee.

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;
- Fees will not be waived for an H&C; therefore the applicant will have to pay the \$550 fee.
- 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.

**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) have recently come into effect, modifying in particular the refugee determination system. The CCR is concerned that these changes have 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);
- Humanitarian and compassionate (H&C) applications;
- Refugee determination system:
  - Pre-removal risk assessments to consider their risk on the basis of new information revealed after they escaped their traffickers;
  - Short timelines to prepare for a refugee hearing and to find legal representation.

These changes may facilitate the arrest and deportation of trafficked persons instead of providing pathways to status and protection.

In September 2013, at a meeting with the CCR, Citizenship and Immigration Canada acknowledged that the legislative changes have created unintended bars to access to TRPs for trafficked persons. They said that they are working on the issue.

## **C. HEALTH CARE COVERAGE FOR TRAFFICKED PERSONS AFTER CHANGES TO INTERIM FEDERAL HEALTH PROGRAM (IFH)**

Following revisions to IFH, which took effect on June 30, 2012, a trafficked person who has received a Temporary Residence Permit (TRP) is entitled to full health care coverage, including: hospital services; services of health care professionals licensed in Canada; and laboratory, diagnostic and ambulance services. They may also receive “supplemental health-care benefits,” including: prescribed medications; limited dental and vision care; prosthetics and mobility devices; home care and long-term care; counselling by a clinical psychologist and health assessments. By contrast, trafficked non citizens without a permit only have limited access to health care services.

### **➤ Health care coverage for trafficked persons who are refugee claimants**

Benefits available to a trafficked person who is a refugee claimant will depend on whether their claim is successful and whether they are from a country listed by the Minister of Immigration as a “Designated Country of Origin” (DCOs are countries identified at the minister’s discretion as having democratic institutions and low acceptance of refugee claims).

Claimants who are not from DCOs would be entitled to health-care coverage of an “urgent or essential nature,” including: hospital services; services of doctors and nurses; laboratory, diagnostic and ambulance services; and medications and vaccines only if needed to prevent or treat a disease that is a risk to public health or to treat a condition of safety concern.

Claimants from DCOs and rejected refugee claimants will only be entitled to “Public Health or Public Safety Health-Care Coverage,” if needed to prevent or treat a disease posing a risk to public safety.

For more details, please see the Summary of Benefits at:

<http://www.cic.gc.ca/english/refugees/outside/summary-ifhp.asp>.

### **CCR comments on access to health care for trafficked non-citizens**

The CCR is concerned that, since access to TRPs for trafficked persons is quite limited in practice, many survivors of trafficking are left without access to necessary medical services and counselling that will help them recuperate and regain control over their lives. In the absence of federal coverage, access to health services depends on individual provinces’ or territories’ conditions.

At each stage of the trafficking experience women, men and children may face psychological, physical and/or sexual abuse. The physical and mental health risks and impacts are often long-standing and vary by the type of work carried out, whether involving sexual or labour exploitation. Health services are therefore crucial for trafficked persons regardless of their immigration status.

## **D. MIGRANT WORKERS AND TRAFFICKING IN PERSONS**

Migrant workers are particularly vulnerable to exploitation and human trafficking, because they lack legal and social protections.

In Canada, the structure of the Temporary Foreign Worker Program (TFWP) has created opportunities for the exploitation and abuse of migrant workers, increasing their vulnerability to trafficking.

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.

The CCR has developed a document, *Used and Abused: Migrant Workers in Canada*, exploring the risks, abuses and exploitation that occur in the TFWP, including trafficking of migrant workers for the purpose of labour exploitation. The document is available online, at: <http://ccrweb.ca/files/migrantworkers4pager.pdf>.

## **E. 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 is calling on Parliamentarians to turn this proposal into law.

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](#)).