



**Universal Periodic Review  
16<sup>th</sup> Session (2012)**

**Joint Submission**

**Human Rights in Canada**

**Submitted by:**

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Women, Education, Development  
(NGOs in consultative status with ECOSOC)**

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## A. INTRODUCTION

1. The following report is a *joint submission* of the above mentioned organizations. Taking note of the significant advances achieved by Canada to guarantee the full enjoyment of human rights in the country, this report focuses on major issues affecting **victims of human trafficking and migrant workers in Canada**. Each section of the report conveys recommendations to the Government of Canada.

2. This report is a result of an intensive consultation process that took place over the course of three months. Employing a methodology of empirical investigation, the data and information reflect the experience of IIMA and VIDES and of their partners<sup>1</sup> in the field. An open-ended questionnaire was sent to collect all pertinent information considering the report that resulted from the 1<sup>st</sup> cycle of the Universal Periodic Review<sup>2</sup>.

3. **IIMA** is an international NGO in special consultative status with the Economic and Social Council. IIMA is present in 95 countries where it provides education to children and adolescents, particularly the most disadvantaged and vulnerable.

4. **VIDES International** is an international NGO in special consultative status with the Economic and Social Council, which is present in 40 countries worldwide. Founded in 1987, VIDES promotes volunteer service at the local and international levels and protects children and women's rights.

## B. GENERAL REMARKS ON 1<sup>st</sup> UPR OF CANADA

5. This NGO coalition welcomes the constructive participation of Canada in the 1<sup>st</sup> cycle of the Universal Periodic Review (UPR). The present joint submission represents the follow-up to the UPR recommendations accepted by Canada in 2009 regarding victims of human trafficking and migrant workers.

## C. THE MOST VULNERABLE GROUPS

6. This NGO coalition perceives migrant workers and victims of trafficking as the most vulnerable groups in Canada, due to the exploitation and discrimination they suffer in the enjoyment of their rights.

7. In February 2009, the Government of Canada accepted several recommendations,<sup>3</sup> which directly or indirectly aimed at ameliorating the situation of these specific groups. With specific regards to trafficking in persons, the government has agreed *to conduct a review of the effectiveness of its legislation relevant to trafficking in human beings and implement reforms where necessary to strengthen the protection of the rights of victims of trafficking;*<sup>4</sup> and to *strengthen enforcement legislation and programs regarding prohibition of commercial*

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<sup>1</sup> In particular, we thank the Office for Systemic Justice of the Canadian Federation of Sisters of St. Joseph of Canada for its support and collaboration.

<sup>2</sup> Canada passed its first Universal Periodic Review on February 3, 2009 in Geneva. The outcome document of the review was adopted during the 11<sup>th</sup> Session of the Human Rights Council (June 2009). U.N. Doc. A/HRC/11/37.

<sup>3</sup> See Report of the Working Group on the Universal Periodic Review, Canada, Addendum, UN Doc. A/HRC/11/17/Add.1, 8 June 2009.

<sup>4</sup> Recommendation n. 39, *ibid*.

*sexual exploitation of children*<sup>5</sup>. Concerning migrant workers, we welcome the acceptance of recommendation n. 60 which asked Canada, *inter alia*, to “*make its immigration procedures more transparent and objective [...]*”. Nevertheless, we regret that Canada only partially accepted recommendations n. 57<sup>6</sup>, 58<sup>7</sup>, 59<sup>8</sup> as well as Canada’s views on family reunification that while being “*an integral part of Canada refugee and immigration programs [...] is not viewed as a ‘right’*”.<sup>9</sup>

## **D. HUMAN TRAFFICKING**

8. This NGO coalition commends Canada for the ratification of the Palermo Protocol and for the adoption of a National Action Plan to Combat Human Trafficking, which is wide ranging and incorporates several key components, such as: prosecution of traffickers, protection of people who have been trafficked, preventive measures, as well as measures to confront the demand-side of human trafficking and proposals for collaboration between groups that are working against human trafficking.

9. Nevertheless, we note with concern that the above-mentioned areas are still missing some key elements, which hampers the effectiveness of measures taken in order to address human trafficking in Canada.

### **Labor exploitation v. sexual exploitation**

10. While noting statistics suggesting that sexual exploitation is the most common form of human trafficking, we report that human trafficking for the purpose of labor exploitation is significantly increased in the past years. We welcome that the national action plan recognizes human trafficking for the purposes of labor exploitation, though we express our concern about the lack of effective measures to address this specific phenomenon.

### **Workers’ human rights**

11. Furthermore, we highlight that a national action plan on human trafficking needs to give priority to the protection of workers’ human rights. This can be achieved through an adequate monitoring of conditions and eliminating the abuse of vulnerability.

12. Unfortunately, changes to the Temporary Foreign Worker Program, announced by Immigration Minister Jason Kenney in October 2009, did not have this effect. Instead, these changes limited the stay of foreign workers in Canada to four years and banned them from returning to Canada for at least another six years. Rather than protecting workers, these changes function to penalize temporary foreign workers and reinforce a disposable workforce in Canada. Likewise, the suggestions to review Canada’s visa exempt policies, and to meet

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<sup>5</sup> Recommendation n. 40, *ibid*.

<sup>6</sup> Increase efforts to enhance the protection of the human rights of migrants and hold open consultations with civil society on the ICRMW (Philippines).

<sup>7</sup> Launch a comprehensive review leading to legal and policy reforms which protect the rights of and migrants, including rights to family reunification and enact legislation creating an offence for racial violence, and design and implement training for judges and prosecutors on the nature of hate crimes on the basis of race (Egypt).

<sup>8</sup> Continue efforts to bring its system of security certificates concerning immigration into compliance with international human rights standards (Switzerland).

<sup>9</sup> See Report of the Working Group on the Universal Periodic Review, Canada, Addendum, UN Doc. A/HRC/11/17/Add.1 (8 June 2009), § 43, p 6.

with young female immigrants on a monthly basis, penalize those who are trying to come to Canada instead of deterring those who commit human trafficking. It would be more helpful to ensure that people entering Canada receive information about NGOs that have resources to assist people who have been trafficked should there be a need.

13. The report of the Standing Committee on Citizenship and Immigration, “Temporary Foreign Workers and Non Status Workers,” studied the Temporary Foreign Worker Program and made many helpful recommendations to improve the program. Unfortunately, most of the recommendations were not adopted by the government.<sup>10</sup>

### **Poverty as factor of vulnerability**

14. This NGO coalition expresses deep concern for the key role that poverty plays in creating a vulnerability to human trafficking. While welcoming that the national plan identifies action items for addressing First Nations’ poverty issues, including but not limited to issues of safe and affordable housing, education and land rights, we point out that the national plan should examine and respond to the root causes of poverty both nationally and internationally, stressing poverty as a root cause of human trafficking.

### **Prosecution of Human Trafficking**

15. We commend government’s commitment to provide additional resources for the training and education of judges, prosecutors and law enforcement on human trafficking legislation. Nevertheless, we call on the government to extend this initiative to immigration consultants as well as criminal and labor lawyers. This training could be offered by provincial law societies through the development of a Continuing Legal Education program on human trafficking.

16. Moreover, we note that the Criminal Code, in particular Section 279.04, should be amended by removing the stipulation that ‘exploitation’ requires the person to fear for their safety or that of someone known to them.<sup>11</sup> This change would enable the Criminal Code to more fully reflect Canada’s international obligations under the Palermo Protocol.

### **Partnership with NGOs**

17. This coalition welcomes that the national plan calls for “adequate funding for NGOs to deliver care, counseling, shelter and assistance to victims.” We also support the government efforts to foster partnerships and collaboration between Canadian agencies, law enforcement and NGOs. In this regard, we particularly reiterate the role of NGOs in reaching out and providing assistance to victims of trafficking.

***18. This coalition of NGOs recommends Canada to:***

- a) Make detailed indicators of human trafficking for the purpose of both labor exploitation and sexual exploitation widely available to Canadian citizens;***

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<sup>10</sup> For further information, please refer to section E) of this report.

<sup>11</sup> Section 279.04 defines exploitation as « causing a person to provide, or offer to provide, labor or services by engaging in conduct that leads the victim to reasonably fear for their safety or that of someone known to them, if they fail to comply. It would apply to the use of force, deception or other forms of coercion causing the removal of a human organ or tissue » (*emphasis added*).

- b) Give equal attention to awareness-raising campaigns for both labor and sexual exploitation;*
- c) Modify the Temporary Foreign Worker Program in order to ensure a better protection for victims of human trafficking;*
- d) Adopt a national strategy for poverty eradication and for the implementation of both human rights and poverty-reduction criteria in the development of trade agreements;*
- e) Provide immigration lawyers and immigration consultants as well as criminal and labor lawyers with adequate training on human trafficking legislation;*
- f) Eliminate the ‘requirement of fear’ in the Criminal Code provisions concerning human trafficking in accordance with Canada’s international obligations under the Palermo Protocol;*
- g) Continue its efforts to support the role of NGOs to address current gaps in the protection of non-citizens who have been trafficked in Canada.*

## **E. MIGRANT WORKERS**

19. This NGO coalition expresses deep concern for the growing number of migrant workers from Indonesia and Thailand who have suffered terrible exploitation in Southwestern Ontario. Most of these workers came to Canada under the federal Temporary Foreign Workers Program (TFWP). While there have been successful worker placements through this program, the examples of abuse were staggering. The exploited migrant workers paid between \$10,000.00 - \$15,000.00 (CAD) to recruiters in Thailand and Indonesia in order to work in Canada. Some of these workers had participated in similar programs in Taiwan, Singapore and Israel, without incident.

20. These migrant workers coming to work in Canada encountered several problems. For instance:

- (i) Some workers did not have contracts, some couldn’t read their contracts, and others discovered that their contracts were meaningless since they were never taken to the place of employment that was listed on the contract.
- (ii) The living conditions were unsafe and unhealthy, with mattresses lined up side by side on the floor, up to a dozen people in a small house or apartment, and men and women living together.
- (iii) Farms at which they were employed did not have sufficient work for them so that many found themselves out of work after the first few weeks or months of employment, and they still had crushing debts to pay.
- (iv) The combination of no legal permission to work, no facility with English, and the pressure of huge debt payments meant that other workers often found themselves working mandatory overtime (some working 12 hours a day, 6-7 day per week).
- (v) Workers who were not taken to the “place of employment” listed on the contract were most vulnerable to precarious pay levels. Some found themselves working very few hours for \$7.50/hr because agents took \$1.50/hr from their pay. Others found that, as work became more difficult to find, they labored, at times, for as little as \$7 - \$10 /day.

## **Link between the exploitation of migrant workers and human trafficking**

21. While acknowledging that some migrant workers had satisfactory work placements thanks to the federal Temporary Foreign Workers Program, we note that others under the same program are extremely exploited. The reason of such inconsistency is that there are significant elements of human trafficking in the situations of the latter. In fact, in the stories of the migrant workers who have been victims of exploitation, the key elements of the U.N. definition of trafficking<sup>12</sup> are present:

22. **(a) Elements of Fraud and Misrepresentation of Salary / Working Conditions.** Many recruitment agencies are fraudulently charging exorbitant fees for workers who are seeking a work placement outside of Thailand and Indonesia. We report a pattern in which workers from northeast Thailand became burdened by unbearable debt after going overseas for work. In particular that most of the workers who go abroad are from the Northeastern region of Thailand where poverty is deeply entrenched. Likewise, some of Indonesia's licensed and unlicensed migrant labor recruiting agencies operated in ways similar to trafficking rings, leading both male and female workers into debt bondage and abusive labor situations.

This is consistent with situation experienced by Thai migrant workers who are being extremely exploited in Southwestern Ontario. They paid a minimum of \$10,000.00 (CAD) to the recruitment agency.<sup>13</sup> They were assured by the recruitment agency that they would be able to make enough money in the first several months of work to pay back the loan, and then they could make money for their family in Thailand. Instead, when these workers arrive in Canada, they receive a very much lower salary and there is no way they can ever pay off their debts.

23. **(b) A Direct Link between Exploitation in Country of Origin and Exploitation in Canada.** In most cases, the workers found themselves being handled by agents in Canada who took \$1.50/hr from their wages, meaning that the workers moved from jobs that paid \$9.00/hr to a payment of \$7.50/hr. In some cases, the workers were never taken to the farm that was identified on their contract. In other cases, after 2 -8 weeks of work at the farm on the contract, the work ran out, and they were moved from one placement to another, receiving inconsistent hours and knowing that they would never be able to pay off their loans under such circumstances. These migrant workers had hoped to make enough money to provide for their families in their country of origin. Instead, they and their families were made more vulnerable by loans which could not be paid. The only people benefitting from this arrangement are agents in the country of origin, agents in Canada, and farmers in Canada who have access to a mobile work force for whom they bear no responsibility.

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<sup>12</sup> The U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (ratified by Canada in May 2002) defines trafficking in persons in this way: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 3,a). The Protocol then goes on to explain that "the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in paragraph (a) have been used." (Article 3, b).

<sup>13</sup> By contrast, an amount of \$2,000.00 or \$2,500.00 (CAD) would be considered reasonable.

24. **(c) Elements of Control and Coercion.** The migrant workers who have endured extreme exploitation were controlled by agents in a variety of ways. They may have their passports or their contracts taken away as soon as they left the airport. Many were told not to leave the farm to which they had been taken because they would be arrested and deported since they were not working at the farm on the contract. This allows the agents in Canada to exercise a continuous control on the workers, moving them from farm to farm for the agent's profit and the farmers' convenience. Finally, in the case of a number of workers who were being helped by concerned citizens in the area, phone calls were made to the workers' family in Thailand and these calls led the migrant workers to withdraw from receiving any aid from the concerned citizens.

25. **(d) Elements of Exploitation.** The migrant workers who find themselves moved around from place to place by agents in Canada describe very difficult living situations. A typical example is the following: "There were 11 people, male and female, living in a 4-room house with mattresses lay out side by side on the floor." Many of these workers are taken to farms where they worked all day for \$7/day.

26. It is evident that there are weaknesses and gaps in the Temporary Foreign Worker Program that allow this exploitation, with strong elements of trafficking, to occur. There needs to be sufficient monitoring of the program in order to prevent the misrepresentation by recruiting agencies in Thailand as well as abusive living and working conditions in Canada. The link between agents in Thailand and agents in Canada is particularly troublesome. This makes it possible for there to be two streams of migrant workers, some of whom get legitimate working situations at farms in Canada and others who find themselves in situations of extreme exploitation because there were never legitimate job placements for them.

27. Moreover, we note that there are very strong reasons why the vast majority of these exploited migrant workers will not apply for a Temporary Resident Permit (TRP) as a Trafficked Person. The first and more important reason is that they are not protected by the process. In fact, the Temporary Resident Permit requires an unreasonable burden of proof on the trafficking survivor to convince an immigration office that she/he is indeed a survivor of trafficking.

28. Finally, the mandatory involvement of law enforcement agencies deters trafficking survivors from applying for the TRP because of potential consequences. If migrant workers victims of trafficking come forward and tell their story, only to find that the trafficking elements of the story are not accepted by the CIC officer, they will be deported back to their country of origin where they will have an enormous debt to pay and no means to pay it. For many, this means that their extended family members will also be thrown in debt bondage, and the exploited migrant worker will have to live with the shame and social stigma of being blamed for this hardship.

**29. This coalition of NGOs recommends Canada to:**

- a) Ensure adequate monitoring of the Temporary Foreign Worker Program in order to prevent the misrepresentation by recruiting agencies in Thailand as well as abusive living and working conditions in Canada;**
- b) Develop a comprehensive and human rights-based policy addressing the root causes of migrant workers' exploitation;**

- c) *Use the definition of trafficking from the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in persons Especially Women and Children (Palermo Protocol) as the operative definition in decision-making about trafficking survivors.*
- d) *Use "reasonable grounds for suspecting" as the criteria for issuing the person a special temporary protection permit for trafficked persons, valid for a period of 6 months.*
- e) *Include particular provisions for the protection of children who are trafficking survivors in consideration of their particular vulnerabilities and needs.*