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# CANADA: SUBMISSION TO THE FEDERAL GOVERNMENT ON HOUSING REQUIREMENTS FOR MIGRANT WORKERS UNDER THE TEMPORARY FOREIGN WORKER PROGRAM (TFWP)

Amnesty International welcomes the opportunity to participate in the Canadian federal government consultation to reform the Temporary Foreign Worker Program (TFWP). The federal government has shared its plans concerning the creation of a new stream under the TFWP - the New Temporary Foreign Worker Agriculture and Fish Processing Stream - which would bring together the existing Primary Agricultural Stream under the TFWP and seasonal fish, and seafood processing, and seasonal primary fruit and vegetable processing.[1] This document provides feedback in the context of the first phase of the consultation, which is intended to "ensure access to safe and secure housing"[2] for migrant workers in employer-provided accommodation.[3] In addition to responding to the federal government consultation, this document outlines some general concerns about the direction of the reforms, particularly on the substitution of closed permits with sectoral permits for migrant workers hired under the new stream.

## REFORMING THE TFWP: THE NEED TO MOVE FROM CLOSED TO OPEN PERMITS

Through its own research and documentation of labour exploitation and other abuses affecting migrant workers under the TFWP, particularly those employed under the Primary Agriculture and Low-Wage Streams, Amnesty International has concluded tied visas - or so-called "closed work permits" - under the TFWP are intrinsically exploitative. Closed permits heighten unequal labour relationships, as employers hold the power over both the labour conditions and migration status of migrant workers. This makes migrant workers dependent on their employers, as they cannot leave the job, and they can rarely change jobs without changing their work permit. In practice, closed work permits prevent migrant workers from reporting abuses, as they fear reprisals if they do, including loss of income, termination of their contract and deportation.

As the Special Rapporteur on Contemporary Forms of Slavery has recommended, the Government of Canada should end the use of closed work permit regimes and allow all workers the right to choose and change their employer in any sector without restriction or discrimination.[4] The Canadian federal government should grant open work permits for migrant workers, as they constitute the best way to respect and protect workers' right to freely choose their employment[5] and ensure they can access effective remedies and leave a job when they are subjected to unfair and abusive conditions.

Despite the well-known abuses stemming from closed permits, the Canadian federal government is considering a very limited reform of the TFWP, specifically replacing some closed permits within the TFWP with sectoral permits.

This reform will affect only certain occupations in agriculture and fish, seafood processing and primary fruit and vegetable processing, specifically replacing closed permits for occupations that would fall under the New Stream with sectoral permits.[6] Other migrant workers in other economic sectors – for instance, those participating in the TFWP in care, construction, hospitality, domestic service, food processing, and industrial jobs will remain with closed work permits, and at risk of labour exploitation and other human rights abuses. Labour exploitation and other human rights abuses affect workers in all sorts of occupations, under the diverse streams of the TFWP. Any reform should be aimed at ending labour exploitation and other human rights abuses, and replace closed permits with open work permits for all workers hired under the TFWP.

[1] Government of Canada, Annex A: Proposed Features of the new Temporary Foreign Worker Agriculture and Fish Processing Stream; Annex B: Occupational Scope of the New Temporary Foreign Worker Agriculture and Fish Processing Stream. On file with Amnesty International.
[2] Employment and Social Development Canada (ESDC), *Temporary Foreign Worker (TFW) Program: Employer-Provided Accommodations Discussion Paper*, p.1, on file with Amnesty International.
[3] In the Seasonal Agricultural Workers Program (SAWP) and Agricultural Stream of the TFWP, employers must provide adequate, suitable and affordable housing. In the Low-Wage Stream, employers are only required to ensure that suitable and affordable housing is available.
[4] UNGA, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences,* 22 July 2024, para.83 (a) UN Doc. A/HRC/57/46/Add.1
[5] Art 6 International Covenant on Economic, Social and Cultural Rights (ICESCR).
[6] It will encompass seasonal and full-year primary agriculture jobs (livestock, farm machinery, nursery and greenhouse, harvesting, seasonal fish and seafood processing jobs and seasonal and primary fruit and vegetable processing work that is time sensitive and needs to be processed before it perishes.

Amnesty International is concerned about the limited ambition of the proposed reform and fears this will be another missed opportunity to end the labour exploitation endemic to the program. The organization calls on the Canadian government to abolish closed work permits completely and replace them with open work permits for migrant workers.

## SECTORAL PERMITS ARE NOT THE ANSWER

Pending the Canadian federal government's disclosure of the details of their proposal, Amnesty International understands that sectoral permits would allow workers to change employers within an economic sector of their own accord. However, the organization believes that the introduction of sectoral permits would not address the shortcomings of the current system.

First, many governments use sectoral permits to meet short-term labour shortages in specific industries, both at higher and lower paid levels. However, sectoral permits should not be the answer when a perceived labour shortage is in fact due to recruitment difficulties in the domestic labour market, primarily because of poor wages and working conditions. This is particularly the case in lower paid roles, which are often predominantly filled with racialized migrant workers who are disproportionately impacted by systemic racism, exploitation and structural inequalities. Sectoral permits cannot be a means to bind migrant workers to sectors where typically poor wages and working conditions would increase their risk of suffering labour rights violations, abuses and discrimination.

Second, sectoral permits offer no alternative for workers that have been severely injured at work and who cannot return to occupations within the sector they were formerly hired to work in.

Third, there are serious concerns that workers who leave an employer can be blacklisted by other employers in the sector.

## THE REVIEW OF THE TFWP SHOULD BE HOLISTIC: THE RIGHT TO HOUSING AND OTHER RIGHTS

While the organization understands the interest of the government in splitting the consultation into specific thematic areas, Amnesty International considers that the review of the TFWP should be approached holistically. Canadian authorities should take into consideration that migrant workers' rights are intrinsically interlinked, as are the abuses they are exposed to. The right to housing is closely intertwined with other rights, such as the right to health, the right to privacy, the right to enjoy just and favourable conditions of work, including the necessary periods of rest, or the right to not be discriminated against.

The right to housing for migrant workers in the TFWP is also linked to their right to seek and obtain justice for labour and other abuses. Amnesty International would like to bring authorities' attention to the situation of those who seek justice for an unfair dismissal or exploitative work. These migrant workers may lose their accommodation without notice upon early termination of their contract, as employers are no longer obliged to provide housing. As a result, they are rendered homeless, with the concomitant loss of livelihoods and income. To ensure effective access to justice and prevent homelessness, which is an extreme violation of the right to adequate housing,[7] authorities should ensure that any migrant workers seeking justice can access a valid permit to stay in Canada allowing them the right to work with any other employer, or provide them with an alternative accommodation for as long as they are not allowed to access employment and throughout the process to seek and obtain justice for any abuses they may have experienced.

## ACCOMMODATION STANDARDS

Amnesty International welcomes Canadian federal authorities' willingness to set accommodation standards to ensure safe and secure housing. Canada has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and therefore, any standards on housing should, at a minimum, be in line with international human rights standards on the right to housing.

[7] UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (UN Special Rapporteur on adequate housing), Report, 30 December 2015, A/HRC/31/54, documents-dds-ny.un.org/doc/UNDOC/GEN/G15/294/52/PDF/G1529452.pdf?OpenElemen t, para. 4

This is not the first consultation opened by authorities.[8] Over the years, different consultations have resulted in recommendations calling on the federal authorities to develop minimum housing standards for migrant workers hired under the TFWP.[9]

Overcrowding, unsanitary and poor conditions, including lack of potable water, lack of adequate sanitary facilities, inadequate heating and cooling, infestation, lack of privacy and limited access to services have been consistently reported by organizations, academics, unions and governmental bodies.[10] The Auditor General, after assessing the health and safety of migrant workers in 2021 following the Covid-19 pandemic and their poor health outcomes, concluded that ESDC had failed to address long-standing concerns about workers' accommodations.[11]

Workers interviewed by Amnesty International in 2023 and 2024 reported similar housing problems as the ones listed above. Some of the dwellings were uninhabitable, lacked toilets and drinking water, were affected by pest infestation, and had mould and water leaks. Overcrowding, due to excessive occupancy for long periods of time -up to eight months for SAWP workers annually- was a common issue.

Many agricultural workers are housed in dormitory style accommodations, sleep in bunkbeds with little to no privacy and insufficient storage, bathrooms and showers, as well as inadequate cooking facilities. Overcrowding affects workers in many different ways. It does not only interfere with their privacy, but it undermines their ability to rest, to cook and eat, or to clean as workers with similar schedules need to cook and wash at the same time, without sufficient amenities to do so. It can also lead to worse health outcomes. Some accommodations lacked drinking water and toilet facilities, and workers had to go outside or to the vicinity to use a toilet. Workers also shared that mattresses were ripped and in poor condition, and that the bedding provided appeared to be unsanitary.

In Amnesty International's view, the persistent inadequate housing conditions that racialized migrant workers from the Global South endure when they travel to Canada under the TFWP are a manifestation of the profound dehumanization they experience. These migrant workers are treated as merely a labour force that can be disposed of by their employers, who, through closed work permits, hold power over their housing and living conditions.

In addressing the accommodation standards for migrant workers, Amnesty International stresses that migrant workers have the right to adequate housing without discrimination, as recognized in article 11 of the ICESCR. While authorities should address safe and secure housing, they must also ensure that housing for migrant workers is adequate. Adequacy goes far beyond health and safety. The UN Committee on Economic, Social and Cultural Rights has clarified that the concept of adequacy includes several aspects, among others: legal security of tenure, availability of services, materials, facilities and infrastructure; affordability; and habitability, accessibility, location and cultural adequacy.[12]

Amnesty International recommends authorities to make some additions to the proposed principles to make them more concrete and to include that accommodations should supply adequate heating, energy for cooking, are equipped with washing facilities, means of food storage and refuse disposal.[13]

Concerning habitability, the organization recommends that authorities include that accommodations must be habitable, providing their residents with adequate space, and protecting workers from cold, damp, heat, rain, wind and other threats

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[8] In 20202, ESDC opened a consultation whose conclusions were summarized in the report , ESDC, *What we heard: Consultations on accommodations for temporary foreign workers,* April 2022, https://www.canada.ca/content/dam/esdc-edsc/images/services/foreign-workers/reports/what_we_heard_report.pdf;

[9] The Canadian federal government had engaged in other consultations which resulted in similar recommendations to develop minimum housing standards. See ESDC, *What we heard: Primary Agriculture Review*, December 2019, https://www.canada.ca/en/employment-social-development/services/foreign-workers/reports/primary-agriculture.html; National Home Inspector Certification Council, *National Housing Standard for Primary Agricultural Review (Temporary Foreign Worker Program),* December 2018, https://www.nationalhomeinspector.org/NHICCreportRsum.pdf

[10] Immigrant Workers Centre and the Association of Migrant Workers of Quebec *Decent housing for migrants agricultural workers: Report submitted for the Stakeholder Consultations on Mandatory Requirements for Employer-Provided Accommodations in the TFW Program*, 2020, https://iwc-cti.ca/wp-content/uploads/2021/07/Report-consultation-housing_CTI-2020.pdf ; Migrant Workers Alliance, *Decent & Dignified Housing for Migrant Farmworkers Food & Farmworkers: Working Group Submissions to Consultations on Mandatory Requirements for Employer-Provided Accommodations in the TFW Program*, 2020, https://migrantworkersalliance.org/wp-content/uploads/2020/12/MRN-Submission_-Decent-Dignified-Housing-for-Migrant-Farmworkers.pdf; Cooper Institute, *Falling Short: Troubles with the Seasonal Agricultural Worker Program in Nova Scotia*, March 2024, https://www.cooperinstitute.ca/sitefiles/Documents/Migrant-Workers/Falling_Short_TFWMARITIMES_NS_March_27_2024.pdf ; Cooper Institute, Unfree labour: Migrant workers in the Seafood Industry in New Brunswick, March 2023, https://www.cooperinstitute.ca/sitefiles/Documents/Migrant-Workers/Unfree_Labour_TFWMARITIMES_NB_2023.pdf; Cajax et al., "Migrant agricultural workers' death in Ontario from January 2020 to June 2021: a qualitative descriptive study", *International Journal for Equity in Health* 21:98, 2022; Leah F. Vosko, Tanya Basok, Cynthia Spring, Guillermo Candiz, Glynis George, *COVID-19 Among Migrant Farmworkers in Canada: Employment Strain in a Transnational Context*, ILO Working Paper 79, September 2022; Migrant Workers Alliance, *Unheeded warnings: Covid-19 and migrant workers in Canada*, June 2020, https://migrantworkersalliance.org/wp-content/uploads/2020/06/Unheeded-Warnings-COVID19-and-Migrant-Workers.pdf; Cooper Institute, *Safe at work, unsafe at home: Covid-19 and Temporary Foreign Workers in Prince Edward Islands*, June 2021 https://www.cooperinstitute.ca/sitefiles/Documents/Migrant-Workers/Report-Safe_at_Work_Unsafe_at_Home-TFWMARITIMES-PEI-2021.pdf

[11] Auditor General of Canada to the Parliament of Canada, 2021, Report 13, Health and Safety of Agricultural Temporary Foreign Workers in Canada during the Covid-19 Pandemic, 2021 https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202112_02_e.pdf

[12] UN Committee on Economic, Social and Cultural Rights, General Comment No.4 "The right to adequate housing", UN Doc 13 December 2014.

[13] UN Committee on Economic, Social and Cultural Rights, General Comment No.4 "The right to adequate housing", para. 8b)

to health, structural hazards and disease vectors.[14] While some of the principles proposed by federal authorities relate to some of the points listed above, sometimes the principles are quite general. For instance, principle 5 states that hazardous materials must be stored at sufficient distance, without specifying the distance. This provision remains vague. It should make clear that, to be adequate, the accommodation ought to protect workers from structural hazards. In addition to this, principle 3 refers to the fact that accommodation needs to adhere to applicable fire safety requirements and be approved for occupancy. However, it does not refer to any criteria that will make accommodation adequate for occupancy, nor to any minimum fire safety requirements, for instance, that the accommodation must be furnished with safety equipment such as smoke alarms.

Amnesty International considers that, given the persistent overcrowding, federal authorities should be more concrete in addressing occupancy and work towards the reduction and elimination of bunk beds. Some provinces have outlawed the use of bunk beds in certain workplaces, but not for foreign workers.[15] If bunk beds are used to accommodate workers, there should be a minimum amount of space between beds, equipped with storage space. Moreover, if numerous workers are housed in the same dwelling, there should be common living spaces commensurate with the number of inhabitants.

Housing should also be accessible for injured workers and workers with disabilities.

Access to phones and internet should be provided, as they allow workers to maintain contact with their families, and are instrumental to access services, such as health care, or follow up administrative processes affecting them.

Last, as observed by the UN Committee on Economic, Social and Cultural Rights, a crucial element of the definition of the right to adequate housing is the protection against any undue interference with individuals' privacy.[16] In that sense, authorities should add an additional requirement indicating that employers will not arbitrarily or unlawfully interfere with migrant workers' accommodation and therefore undermine their privacy.

## COMPLIANCE AND ENFORCEMENT OF ACCOMMODATION STANDARDS

Amnesty is aware that accommodation for foreign workers under the TFWP is regulated and enforced provincially and municipally, and therefore, varies between provinces and territories.[17] The federal government can, nevertheless, enforce accommodation standards, provided they are embedded in the conditions to hire workers. This means that, at a minimum, the housing inspection report that employers need to include with the Labour Market Assessment Impact, -a requisite to hire migrant workers- should cover all the elements that would make housing adequate for migrant workers.

The federal authorities state in the discussion paper on principles on employer-provided accommodation, that provinces will have veto powers over these principles. Amnesty International is concerned that this may render them ineffective in practice and perpetuate the poor housing conditions migrant workers experience.

Authorities at different levels must comply with Canada's international obligations and ensure adequate housing for migrant workers without discrimination. As the Special Rapporteur on Adequate Housing has said, "the international human rights obligations of a State extend to all levels of government and to any exercise of governmental authority […] That finds expression, in the context of federal States, in article 28 of the International Covenant on Economic, Social and Cultural Rights, and article 50 of the International Covenant on Civil and Political Rights which affirm: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions".[18]

Furthermore, the Rapporteur has clarified that "The internal allocation of responsibilities for implementing the right to adequate housing is a matter for State parties to determine, but the allocation must be consistent with the obligation to ensure compliance with international human rights obligations."[19] If the federal government grants work permits that

[14] UN Committee on Economic, Social and Cultural Rights, General Comment No.4 "The right to adequate housing", para. 8c)
[15] Bunkbeds have been banned in logging and mining camps in Quebec since 1981, https://www.ledevoir.com/societe/598194/societe-tensions-autour-de-nouvelles-normes-de-logement-pour-les-travailleurs-temporaires-agricoles
[16] UN Committee on Economic, Social and Cultural Rights, General Comment No.4 "The right to adequate housing", para. 9
[17] Employers s must provide proof of inspection of accommodation by the competent authorities at the provincial or municipal level to the federal government, which must have been carried out within the last eight months before the employer applies to hire a foreign worker under the TFWP. Government of Canada, Program requirements for the Agricultural Stream https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/agricultural/requirements.html; Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural/requirements.html
[18] UNGA, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, 22 December 2014, UN Doc, /HRC/28/62, para.9.
19 UNGA, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha*, para.10. That same paragraph states that "The Committee on Economic, Social and Cultural Rights has indicated that "all administrative authorities will

restrict worker's ability to freely change jobs, without having the powers to enforce compliance, in this case on housing standards, it risks placing workers in abusive situations. This is another reason to abolish closed permits and ensure that migrant workers have the right to freely change jobs, without fear of reprisals.

take account of the requirements of the Covenant in their decisionmaking". Hence, the wide range of housing policy and programme decisions often made at the local level, including budgeting, planning, zoning, allocation of benefits and publically funded housing units, the provision or regulation of basic services, rent subsidies, and any other decisions related to access to adequate housing, must comply with relevant, applicable human rights norms"