

Contrasting responses to migrant worker precarity in Canada and the United Arab Emirates

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Abstract

This study critically examines the protections and support services available to migrant workers who are vulnerable to labour exploitation in Canada and the United Arab Emirates (UAE). This study addresses five key questions: (1) in what ways are precarious migrant workers vulnerable to labour exploitation; (2) how is labour exploitation addressed through international instruments; (3) what instruments and programs have the governments of Canada and the UAE adopted to protect precarious migrant workers; (4) how is civil society in Canada and the UAE responding to the needs of precarious migrant workers, and; (5) what can be done to ensure that precarious migrant workers in Canada and the UAE are protected against exploitation. The research methodology comprises a literature review and semi-structured interviews with fifteen service providers in Canada and the UAE. This study presents recommendations to address the vulnerabilities of migrant workers, and increase their access to supports when experiencing exploitation.

Keywords: migrant worker; labour; precarity; exploitation; human trafficking

Dedication

To my family.

Acknowledgements

Thank you to the research participants who took the time to share their experiences. I am also grateful for the support of my family and friends.

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Executive Summary

Domestic and international labour markets have undergone dramatic changes in recent years. Global labour trends indicate the expansion of temporary migrant worker programs and an increase in precarious work across sectors and occupations. Temporary migrant labour programs are often framed as a triple win solution, bringing benefits to destination countries, origin countries, and migrant workers themselves. However, research increasingly demonstrates that migrants who engage in low-wage, low-skilled work experience intersecting precarious immigration and employment status that make them vulnerable to exploitation, and in extreme cases human trafficking for forced labour. Countries such as Canada and the United Arab Emirates (UAE) have identified anti-trafficking as a policy priority, yet migrant workers accessing migrant labour programs in both countries experience a continuum of exploitative employment and immigration activities.

This study looks at Canada and the UAE, two countries that represent different social, political, and economic contexts. As this study demonstrates, despite stark differences, both states share two commonalities that inform their treatment of precarious migrant workers: (1) government-sponsored programs designed to meet temporary labour demands that place migrants in low-skilled, low-paid work with little or no opportunity for settlement, and (2) the identification of curbing human trafficking as a pressing policy priority. This study critically examines the protections and support services available to migrant workers who are vulnerable to labour exploitation in Canada and the UAE. The research methodology comprises a literature review and semi-structured interviews with fifteen service providers in Canada and the UAE. This study presents recommendations to Canada and the UAE for addressing migrant worker vulnerability and enhancing supports and services.

Canada's Temporary Foreign Worker Program (TFWP) provides an inadequate response to migrant workers' experiences of precarity. The government's focus on human trafficking and law enforcement has limited or restricted the efficacy of government programs and supports for migrant workers experiencing exploitation or

vulnerabilities. Workers may experience barriers in exercising their legal rights and in accessing law enforcement or other government supports. Although civil society and nonprofits are increasingly relied upon to provide services and programs to migrant workers, they experience barriers related to decreased government funding, relationship building, communication, and an absence of coordinated government responses.

In the UAE, current government programs designed to protect migrant workers are inadequate. Most migrant workers enter into a *kafala* or sponsorship relationship with their employer and are therefore covered by UAE labour laws. However, in practice, many workers are not able to exert their full rights because of the power relationship that exists between employer and worker, and the arbitrariness of the UAE in enforcing its labour laws. Workers often find themselves in the informal labour market as a result of deceitful employer practices, which increases worker vulnerability to labour exploitation or abuse. While the UAE has taken few steps to reform labour policy and legislation, it has taken a strong stance against human trafficking. However, significant barriers prevent migrants from accessing government-sponsored services. These barriers include: a lack of clarity around who constitutes a human trafficking victim; a need for victims to be identified by, and cooperate with, police; and a lack of services for men. The government relies on a network of civil society responses and support services to help trafficking victims and migrant workers. Although religious groups and registered charities receive some government support, informal associations provide services without official or legal recognition and support. In the UAE, there is a reliance on private philanthropy to address the needs of precarious migrant workers. However, private donors support the causes of their choice, and not necessarily the causes with the greatest need.

Despite different historical approaches to immigration and settlement, both Canada and the UAE rely on temporary labour migration programs to bring in migrants to work in low-skilled, low-paid positions. While both countries construct vulnerabilities for migrant workers engaged in low-wage, low-skilled work, neither country provides sufficient supports to address these vulnerabilities. Barriers to access common in both countries include difficulties in accessing legal, social, health and housing supports and services. Social service providers in the UAE experience greater legal barriers than

service providers in Canada. While both countries have taken steps to combat human trafficking, their approaches have emphasized trafficking for sexual purposes. Whereas Canada has placed some attention on trafficking within the TFWP, the UAE denies a connection between human trafficking among migrant workers and a lack of labour protections. There are also structural differences in how services and programs are delivered by government in Canada and the UAE. In Canada, social services are primarily delivered through the nonprofit sector. In contrast, the UAE directly funds and operates social services for trafficking victims. However, there is ambiguity concerning who can access these services.

Recommendations directed toward the Government of Canada include:

- Increase workers' knowledge of their rights
 - *Provide accessible and language appropriate materials, and educate and inform migrant workers of their rights under the Criminal Code, IRPA, and provincial and territorial labour laws.*
- Reform contract financing models to increase governmental support of service providers
 - *Ensure that migrant workers have access to legal and social services by adequately and sustainably funding organizations that provide legal and social services*
- Repeal the residency obligation and provide residence alternatives
 - *Repeal the residency obligation that requires live-in caregivers to live with their employer and increase seasonal agricultural workers' access to alternative residence options*
- Collaborate with provinces and territories to ensure employer and recruiter accountability
 - *Establish and enforce labour and recruitment standards through interprovincial and federal collaboration*

Recommendations directed toward the Government of the UAE include:

- Increase workers' knowledge of their rights

- *Provide accessible and language appropriate materials, and educate and inform migrant workers of their rights under UAE labour laws*
- Ensure workers have access to legal and social services
 - *Clarify and extend access to legal and social services for migrant, trafficked and absconded workers*
- Provide accurate and transparent data
 - *Develop an accessible repository for data on migrant workers in the UAE*
- Take proactive measures to enforce workers' rights
 - *Increase the number of inspectors in the private sector and empower them with a mandate to enforce labour laws*
- Combat fraudulent and problematic contract practices
 - *Amend labour laws so that employment contracts are in both Arabic and in a language understood by the worker*
- Charity law and application process reformation
 - *Reform charity laws to allow charity status for informal groups and standardize charity application process*

This study offers insights into how migrant worker precarity is constructed and responded to in Canada and the UAE. However it does not assess all possible recommendations for improving conditions for migrant workers. The recommendations outlined in this study focus on government responses, and are not comprehensive, in that they do not cover every possible scenario, area, or response. Future research may approach recommendations comprehensively, examining best practices and recommendations in areas such as health, justice, education, labour, migration, industry, and by demographics such as region, gender, age, marital status, ethnicity, country of origin, and language.

Chapter 1. Introduction

Domestic and international labour markets have undergone dramatic changes in recent years. Global labour trends indicate the expansion of temporary migrant worker programs and an increase in precarious work across sectors and occupations (Faraday, 2012; Landolt & Goldring, 2013; Mahdavi, 2011). This study looks at Canada and the United Arab Emirates (UAE), two states with high migrant worker populations, and which represent different social, political, and economic contexts.

Temporary migrant labour programs are often framed as a triple win solution, bringing benefits to destination countries, origin countries, and migrant workers themselves (Wickramasekara, 2011). However, research increasingly demonstrates that precarious migration and employment status intersect to create vulnerabilities for migrant workers (Faraday, 2012; Landolt & Goldring, 2013; Mahdavi, 2011). Migrants who engage in low-wage, low-skilled work experience intersecting precarious immigration and employment status that make them vulnerable to exploitation, and in extreme cases human trafficking for forced labour. While governments implement policy and legislation aimed at combating human trafficking, community organizers, scholars and migrant workers point to discrepancies between these responses, and the realities of forced labour and migration (Mahdavi, 2011). This raises questions about the efficacy of contemporary state responses to human trafficking, and the ability of states to respond to the real needs of precarious status migrants who are vulnerable to exploitation. It also raises the question whether states are complicit in constructing precarious status for migrant workers engaged in low-wage, low-skilled work.

This study critically examines protections and support services available to migrants who are vulnerable to labour exploitation, both in Canada and the UAE. While Canada and the UAE represent different contexts, both states share two key commonalities that apply to the study of migrant labour: (1) government-sponsored programs designed to meet temporary labour demands that place migrants in low-wage,

low-skilled work with little or no opportunity for settlement, and (2) curbing human trafficking as a pressing policy priority.

Chapter 2 describes the methodology for this study. Chapter 3 provides background on the temporary labour programs in Canada and the UAE, and introduces concepts that are useful to understanding migrant worker precarity. Chapter 4 examines international protections available to precarious migrant workers. International protections provide the background and context for many domestic protections and supports for migrant workers. Chapter 5 and 6 analyze domestic protections for precarious migrant workers in Canada and the UAE. For each country, four types of analysis are provided: first, an overview of temporary migration programs; second, an overview of the conditions for precarious migrant workers, third, an overview of state responses to migrant worker precarity, and fourth, an overview of civil society responses to migrant worker precarity. In chapter 7 Canada and the UAE's treatment of precarious migrant workers is compared and contrasted. Finally, chapter 8 proposes recommendations directed towards the Governments of Canada and the UAE for improving protections for precarious migrant workers in both states. These recommendations are not comprehensive, as they do not cover every possible scenario, area, or response. The recommendations are needs based and have been informed by participant interviews and literature review.

Chapter 2. Methodology

This study critically examines protections and support services available to migrants who are vulnerable to labour exploitation, both in Canada and the United Arab Emirates.¹ This section describes the research questions used to analyze this policy problem and the approach adopted to address these questions.

2.1. Research Questions

This policy problem is explored through the study of five key research questions:

- In what ways are precarious status migrants vulnerable to labour exploitation;
- How is labour exploitation addressed through international instruments;
- What instruments and programs have the governments of Canada and the UAE adopted to protect precarious status migrants;
- How is civil society² in Canada and the UAE responding to the needs of precarious status migrants, and;
- What can be done to ensure that precarious status migrants in Canada and the UAE are protected against exploitation.

¹ While a number of categories of migrants experience precarious status, this study focuses primarily on economic migrants who migrate through government-sponsored programs. The analysis contains less of a focus on irregular migrants and non-economic government-sponsored migration programs.

² The World Bank defines civil society as the following: “the term civil society refers to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations [and includes]: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations” (World Bank, 2013).

2.2. Research Approach

This study addresses these questions using two qualitative research methods:

- A literature review on labour exploitation and trafficking, and the history of related laws and policies internationally and in Canada and the UAE;
- Semi-structured interviews with individuals who provide support services to precarious migrant workers.

2.2.1. Literature review and analysis of related policies and legislation

This study demonstrates how migrant worker precarity is constructed and responded to at international and domestic levels. This study reviews the literature on labour exploitation and trafficking, and the history of related laws and policies internationally, and in Canada and the UAE.

An extensive literature review identifies international instruments that provide protections for migrant workers:

- The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the UN Trafficking Protocol);
- The United States' Trafficking Victims Protection Act (TVPA);
- The UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Migrant Workers Convention); and,
- The International Labour Organization (ILO)'s Declaration of Fundamental Principles and Rights at Work.

Domestic instruments are also selected for analysis. These include:

- Canada's Criminal Code and Immigration and Refugee Protection Act (IRPA);
- The UAE's Labour Law and Federal Law 51 on Combatting Human Trafficking Crimes.

2.2.2. Semi-structured participant interviews

Services and supports for precarious migrant workers are evaluated using semi-structured interviews with individuals who provide support services to precarious migrant

workers. Seven service providers in the UAE emirates of Abu Dhabi and Dubai were interviewed in July and August 2013, and eight service providers in the Canadian provinces of Alberta, British Columbia, and Ontario were interviewed in September and November 2013. Participants described the services they provide, services in development and factors that inform service provision, including policy and legislative barriers. Participants described how they reach clients, and how they sustain the programs delivered.

Due to the range of supports required by migrant workers, participants represent a diverse range of services. Participants in Canada include community organizers, law enforcement, a lawyer, and nonprofit staff and volunteers. Participants work with migrant agricultural workers, migrant sex workers, live-in caregivers, and human trafficking victims. Participants in the UAE include community organizers, religious leaders, and volunteers. Participants work with workers engaged in low-wage, low-skilled work who live in labour camps, women in shelters for absconded workers, Overseas Filipino Workers (OFW), and seafarers.

While many participants approved the use of their name in this study, the author does not reveal the identities of participants so as to ensure the confidentiality and safety of participants. Participants are identified by randomly assigned numbers and identifying features are deliberately omitted. Analysis of the data obtained through interviews with service providers is conducted using thematic analysis. The recruitment process, interview format and analysis used for participant interviews are described in Appendices A and B.

Chapter 3. Background

This section introduces concepts that are useful to understanding migrant worker precarity. First, a brief definition of migrant worker is provided. Second, the concept of guest worker programs in Canada and the UAE is introduced. The Temporary Foreign Worker Program (TFWP) in Canada is introduced, in relation to low-wage, low-skilled migrant workers. The *kafala* system and migrant worker experiences in the UAE are also described. Third, the concept of migrant worker precarity is introduced and briefly described. Fourth, migrant worker precarity is articulated as a continuum of experiences of exploitation among low-wage, low-skill economic migrants. Finally, the concept of human trafficking is introduced, in particular as it relates to the international and domestic policy and legislative objectives and beliefs held by states.

3.1. Who are migrant workers

Migrant workers are people working outside of their home country. The United Nations defines the term migrant worker, as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (UN, 1990). In addition, “seasonal workers”, “project-tied workers”, and “specified-employment workers”, who earn remuneration as a result of their activity in a state where they are not nationals are all considered migrant workers (UN, 1990).³

Migrants’ experiences are shaped by the migration path they use and by factors including gender, age, race, ethnicity, religion, language, social location, and health (Hanley, Oxman-Martinez, Lacroix & Gal, 2006). In *Gridlock: Labor, migration, and*

³ Although neither Canada nor the UAE are party to the UN Migrant Workers Convention, this is an authoritative source of international law on the definition of migrant worker.

human trafficking in Dubai, Madhavi describes the experiences of migrants as diverse and shaped by both individual and macro-social factors. Mahdavi writes:

Migrants' experiences take on a range of shapes, forms, and narratives involving the interplay of individual and macro-social factors and decision making. Some migrants are seeking better employment opportunities, others are fleeing violent situations in their home countries. Some are exploited and become trafficked when they elect to migrate, others face abuse when arrested in the host country and forcefully detained or deported. Still others migrate in search of love, adventure, or a chance at a better life. Many will risk violence, abuse, and possible detainment hoping to make money to send home to their families (Mahdavi, 2011, p.214-215).

Migrant workers may also be defined more narrowly in the policies and legislation of host countries. Many programs define migrant workers in terms of their labour-role or position, and not through the broader macro-social factors that shape migrant workers' experiences of labour.

3.2. Guest worker programs

Canada and the UAE are two countries that use temporary labour migration programs, also called guest worker programs, to address gaps in their domestic labour markets. In Canada, the Temporary Foreign Worker Program places temporary foreign workers in high need sectors. In the UAE, the *kafala* or sponsorship system is a formalized national legal framework for migrant residence and employment derived from historical principles of hospitality regarding the treatment and protection of guests (Harroff-Tavel & Nasri, 2013). While the *kafala* system is unique to the Gulf Cooperation Council (GCC),⁴ it is functionally similar to temporary worker programs such as in Canada. While migrants in Canada and the UAE migrate through various programs, this research focuses on the experiences of migrant workers engaged in low-wage, low-skilled work who migrate to Canada through the TFWP and migrants in the UAE in a *kafala* relationship with their employer or employed in domestic work.

⁴ The GCC is a political and economic union of six Arab states: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE.

While the experiences of migrant workers vary, and many do not experience exploitation, programs such as the TFWP in Canada and the *kafala* system in the UAE are structured in ways that “facilitate the further precarization of workers” (Mclaughlin & Hennebry, 2013, p.176). The next section uses the concept of precarity to describe the experiences of migrant workers who experience intersecting precarious immigration and employment status.

3.3. Migrant worker precarity

The concept of precarity has been used to describe both immigration (Goldring, Berinstein, & Bernhard, 2009) and employment status (Vosko, 2006; Vosko, Zukewich & Cranford, 2003). Goldring et al. (2009) define precarious immigration status as “undocumented or documented illegality, and other forms of insecure and irregular migrant status” (Goldring et al., 2009, p.240). Precarious status is marked by the absence of any of the following elements normally associated with permanent residence: (1) work authorization; (2) the right to remain permanently in the state; (3) not depending on a third party to remain in the state; and (4) social citizenship rights available to permanent residents (i.e. public education, public health coverage) (Goldring et al., 2009, p.240). Vosko (2006) defines precarious employment as “work [that is] characterized by limited social benefits and statutory entitlements, job insecurity, low-wages, and high risks of ill-health” (Vosko, 2006, p.11).

For migrant workers, precarity encompasses both the contingent and temporary nature of their migration and employment status. Migrants experience “compounding insecurities generated at the *intersections* of precarious legal status and precarious work (Goldring & Landolt, 2013, p.154). As a result, focusing on only one of these two dimensions of precarity, namely immigration or employment status, reveals a partial picture of the challenges faced by migrants (Goldring & Landolt, 2013).

Migrant workers engaged in low-wage, low-skilled work are especially vulnerable to exploitation due to their precarious immigration status and the employment sectors within which they work (Berg, 2007; CCR, 2013; Faraday, 2012; Hastie, 2012; Mahdavi, 2011; Pécoud, 2009; Richards, 2004; WCDWA, 2013). Exploitation occurs in “industries

[that] tend to be characterized by ‘3D work’: dirty, dangerous, and difficult” (Hastie, 2012, p.121). “3D” industries such as agriculture, cleaning, construction, and domestic work typically involve low skill levels and low wages, and require many flexible workers (Hastie, 2012).

Migrant worker precarity is structured by employer-worker relationships and work permit models. Both Canada and the UAE use single-employer work permit designation models; models that “[create an] extreme power imbalance in the employer-worker relationship” (Hastie, 2012, p.125). Single-employer models require the worker to depend on the employer for a work visa, salary, accommodation and food. In this way, the worker’s legal status is contingent on their employer. Migrant workers may be too fearful of reprisals to fully claim their legal rights (Basok & Carasco, 2010). Exploitative employer practices may erode or undermine an employee’s legal status and push them into precarious circumstances, including irregularity (Mclaughlin & Hennebry, 2013). As Hastie writes: “[E]ven without an escalation of violence, these [programs] present a high risk of labour exploitation because of the economic vulnerability of the workers and extreme control in the hands of the employer” (Hastie, 2012, p.125). Programs and policies intended to address migrant worker precarity must therefore acknowledge and respond to existing and novel imbalances in the employer-employee relationship.

3.4. A continuum of experience

Scholars use the concept of a spectrum to describe the varying degrees of exploitation experienced by workers. Hastie (2012) uses a spectrum that delineates precarious work, from low-skill/service jobs on one end, through permanent migrant workers, temporary migrant workers, irregular migrant workers, debt bondage, forced labour, to slavery on the other. Skrivankova (2010) presents a similar framework that conceptualizes working people’s experiences “from decent work, through minor and major labour law violations, to extreme exploitation in the form of forced labour”

(Skrivankova, 2010, p.4).⁵ These frameworks capture the reality that labour exploitation is not static, but a continuum of experiences and situations.

States address issues of labour exploitation by attempting to fit a complex reality into either too narrow or too broad a concept (Skrivankova, 2010). Defining the experiences of workers is complicated not only by the dynamic nature of their experiences, but also by complex external and individual circumstances, such as legal responses, labour market functions, migration, individual agency and immigration status. While there can be commonalities in workers' experiences, these circumstances make it difficult to characterize their experiences as "binary values: either forced labour or not forced labour, with nothing in between" (Skrivankova, 2010, p.16). The diversity in workers' experiences is further complicated by the lack of clear and consistent definitions to mark transition points between conditions of work. Terms such as forced labour and labour exploitation are often used interchangeably (Skrivankova, 2010). A continuum of labour experiences can help to capture the individual situations of workers, and the complex exploitative environments in which they may find themselves (Skrivankova, 2010).

There are challenges however to the recognition of a continuum of labour exploitation. State interventions often fall within different spheres; some interventions fall under criminal law, whereas others fall under the realm of labour law (Skrivankova, 2010). While criminal prosecutions play a role in protecting vulnerable workers, they create a binary between victims and offenders, which does not reflect the complex reality of a continuum of exploitation (Skrivankova, 2010). Andrees and Besler (2009) argue that criminal responses alone do not prevent exploitation, and must be combined simultaneously with increased labour inspections, enforcement of minimum wage legislation, and the regulation of recruitment agencies (Andrees & Besler, 2009 in Skrivankova, 2010). The relationship between criminal and labour spheres may also imply distinctions between criminal and non-criminal, permissible, exploitative activities.

⁵ The ILO's Forced Labour Convention No.29 (1930) defines forced labour as: (a) all work or service; (b) which is not voluntary; (c) and is exacted under the menace of a penalty.

Skrivankova (2010) advocates for “a positive definition of what labour exploitation entails as a continuum ranging from the positive extremity (desirable situation) of decent work to the negative extremity of forced labour (most serious form of labour exploitation)” (Skrivankova, 2010, p.18). This allows us to situate decent work as the desired standard of work, and places forced labour into juxtaposition (Skrivankova, 2010). Doing so does not mean treating ‘decent work’ and ‘forced labour’ as binary values, rather, these need to be understood through a lens of a continuum of exploitation and interventions (Skrivankova, 2010).

The concept of human trafficking further complicates responses to labour exploitation. The issue of human trafficking has become popular in recent years; international anti-trafficking legislation has been developed, and states have been pressured to legislate, and take action against trafficking. Rather than re-define concepts of labour exploitation, forced labour, and slavery, states have “attempted to define situations either as trafficking or not. In practice, potential correlations and intersections with other forms of violations relevant to someone’s working situation have on the whole been ignored” (Skrivankova, 2010, p.4). The experiences of exploited workers that do not fit narrow definitions of trafficking do not garner the same degree of attention or intervention. However, any violation of workers’ rights undermines the conditions of decent work and allows for more extreme labour violations to emerge, contributing to the existence of forced labour or human trafficking (Skrivankova, 2010).

The absence of consistent definitions to define the experiences of workers combined with the reality that workers’ experiences are rarely static creates limitations for effective state responses. Such limitations also restrict government’s capacity to describe the challenges faced by workers, to develop research that accurately depicts these challenges, and to develop effective policy and legislation (Skrivankova, 2010). Furthermore, the development of appropriate responses has become increasingly complicated due to the emergence of the issue of human trafficking.

3.5. Human trafficking

In recent years human trafficking has become a pressing policy priority. Human trafficking is linked to issues of international labour migration, the gendered division of labour and sexual exploitation, the feminization of poverty and migration, and global inequalities between countries in the Global North and Global South (Chang & Kim, 2007; Kempadoo, 2012; Misra, 2007; Pécoud, 2009). While there are many definitions of human trafficking, the most widely accepted definition originates from the UN Trafficking Protocol. While the UN definition of trafficking implies a continuum of diverse experiences, states have interpreted its definition in narrow ways. Experiences that fall outside narrow definitions of trafficking do not garner the same degree of attention or intervention. Research by Hanley et al. (2006) reveals tensions in terms of how definitions of trafficking apply to exploited migrant workers. The researchers found that the number of people who fit the exact definitions of international human trafficking is small, despite a range of irregular economic migrants who experience exploitation and who require assistance. Migrants rarely fit a “one size fits all” definition of trafficking, and approaches that do not recognize this can be counter-productive (Hanley et al., 2006, p.86). Policy and legislative responses draw a line between human trafficking, as defined by law, and other types of exploitation (Hanley et al., 2006). Scholars call to “reconceptualize human trafficking as one particular form of abusive practices found along a continuum of diverse experiences” (Mahdavi, 2011, p.30).

Anti-trafficking programs do not meet the needs of migrants as they are “absorbed into state security agendas which tend to prioritize surveillance, immigration controls and border controls over human rights” (Sullivan, 2010 in FitzGerald, 2010, p.281). While the UN Trafficking Protocol establishes that the consent of a trafficked person is irrelevant where there is use of illicit means, in practice, trafficked migrants are often seen as criminals (Mahdavi, 2011). In the case of workers who are undocumented or working in a sector that is criminalized, their “violation of state laws...neutralizes their status as victims” (Mahdavi, 2011, p.30). While the UN Trafficking Protocol states that supports should be accessible to trafficked persons regardless of their level of cooperation with law enforcement, the supports a person receives often depend on their level of cooperation with law enforcement (Shamir, 2012). As a result, efforts to protect

trafficked persons take a back seat to criminalization-based strategies (Mahdavi, 2011; Shamir, 2012).

While there is a clear link between labour and trafficking, labour and immigration policies do not reflect this relationship (Hanley et al., 2006; Mahdavi, 2011; Shamir, 2012). In contrast to increasing anti-trafficking efforts, programs and policies that increase systemic inequities for migrants have become increasingly common (WCDWA, 2013). Scholars argue that governments remain largely “unsympathetic to the legitimate rights of migrant workers –whether regular, illegal, trafficked, or otherwise –despite the crucial role they play in host and state-of-origin economies” (Richards, 2004, p.164). Current human rights frameworks that should offer all workers protection of fundamental rights have yet to be extended to migrants (Richards, 2004). Furthermore, international legislation designed specifically to protect migrant workers, such as the Migrant Workers Convention has received little support from industrialized states (Pécoud, 2009; Pollock, 2010; Richards, 2004). State interpretations and definitions of trafficking emphasize specific highly politicized exploitative activities, and interventions target specific demographics, often by age or gender.

In summary, migrant workers accessing guest worker programs may experience a continuum of exploitative employment and immigration activities. Migrant worker precarity is informed both by exploitative practices and by the way in which states construct, understand and respond to exploitative employment and immigration activities. States often adopt narrow definitions of labour exploitation that restrict the ability of states to respond effectively to migrant worker precarity. The recent international emphasis on human trafficking also informs how states construct and respond to exploitative labour practices and experiences. Thus, migrant workers’ experiences of labour exploitation are informed by the broader exploitative employment and immigration activities of non-state actors, as well as by state and international constructions of and responses to labour exploitation and human trafficking. The focus of the next section is on how the international level understands the relationship between migrant workers, labour exploitation and human trafficking, and the primary policies and protocols it has constructed in response.

Chapter 4. International protections for migrant workers

4.1. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

4.1.1. Overview

The UN Trafficking Protocol is one of three optional protocols within the Convention Against Transnational Organized Crime, known as the Palermo Convention.⁶ The Convention was adopted and opened for signature on December 12, 2000 at a conference in Palermo, Italy. The Palermo Convention is a multilateral treaty against organized crime, and falls within the jurisdiction of the United Nations Office on Drugs and Crime (UNODC).

The purpose of the UN Optional Protocol on Trafficking, as stated in Article 2 is: “to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties in order to meet those objectives” (UN, 2000).

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children defines human trafficking as the following:

The recruitment, transportation, transfer, harbouring 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 of a position of

⁶ The UN Trafficking Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air are generally collectively referred to as the Palermo Protocols. A third protocol on the Illicit Manufacturing of and Trafficking in Firearms was finalized three months later.

vulnerability or of 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs...The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used (UN, 2000).

The UN Trafficking Protocol definition of trafficking can be described as comprising three elements: (1) the act; specifically, the recruitment, transportation, transfer, harbouring, or receipt of persons, (2) the means; including the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving or receiving payments or benefits to a person in control of a victim and (3) the purpose or intent; which can include the exploitation of the prostitution of others, sexual exploitation, forced labour or services, slavery or similar practices, and the removal of organs. The definition of trafficking applies when all three conditions are present. Consent is irrelevant as to whether the elements of human trafficking can be established; Article 3(b) of the Protocol states that “the consent of a victim of trafficking in persons to the intended exploitation... shall be irrelevant where any of the means of coercion...have been used” (UN, 2000).

4.1.2. Limitations

The inclusion of the UN Trafficking Protocol within an anti-transnational crime convention reflects an approach that situates human trafficking within a criminal justice framework and limits its ability to be victim-centred. Whereas the UN Trafficking Protocol contains strong law enforcement provisions, its provisions for victims are limited and discretionary (Chuang, 2010; Ditmore, 2012; Richards, 2004). Consequently, domestic laws and policies informed by the Protocol provide limited supports to those who are especially vulnerable to trafficking, including those with precarious immigration status (Bastia, 2006; Chuang, 2010; Richards, 2004).

The UN Trafficking Protocol provides few human rights protections for migrant workers. Hastie (2012) argues that the Protocol limits trafficking to 'forced labour' as defined in the ILO Convention Concerning Forced or Compulsory Labour, meaning "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Hastie argues that this idea of voluntariness is inconsistent with Article 3(b) of the UN Trafficking Protocol, which states that consent of a trafficking victim is irrelevant where one of the listed means is used. The inclusion of voluntariness in the ILO concept of "forced labour" adopted in the UN Trafficking Protocol creates ambiguity when read alongside Article 3(b); the application of "forced labour" is therefore unclear where migrant workers consent to a labour arrangement but nevertheless experience exploitation or activities amounting to forced labour at any point during that arrangement.

During the development of the Protocol, a definition for forced labour specific to the Protocol was proposed that would have expanded the scope of protection for labour exploitation in three ways: (1) by expanding the means of exploitation to include 'any scheme or artifice to defraud', (2) by making explicit reference to debt-bondage situations without the requirement of violence or coercion, and (3) by expanding the definition to include fraudulent pretenses, such that the person reasonably believes that he or she has no alternative but to comply (Hastie, 2012, p.127). These inclusions would have clarified the meaning of 'forced labour' and the applicability of the Protocol. Including this definition would have expanded the protections available to migrant workers (Hastie, 2012).⁷ Had it also omitted the inclusion of voluntariness in its definition, it may have also ensured consistency with Article 3(b). However the definition of labour exploitation adopted in the Protocol was limited to "defined circumstances of slavery and forced labour [as it] is these two forms of labour exploitation [that] are widely and historically accepted as illegal and involuntary in the present-day international community, thus clearly falling within trafficking in persons" (Hastie, 2012, p.128). Member states may have been reluctant to accept the broader definition of labour exploitation because of its potential to interfere with domestic immigration policies.

⁷ During the development of the Protocol, there was also debate about explicitly extending protections to irregular, or undocumented, migrant workers, however, this was omitted from the final text (Hastie, 2012).

While the UN Trafficking Protocol defines human trafficking as exploitation within any industry, government and agency responses have focused primarily on sex trafficking of women to the exclusion of other forms of labour exploitation (Kempadoo, 2012; Mahdavi, 2011). This has further limited the protections afforded by the Protocol. This discourse has been strongly informed by U.S. domestic and international policies on trafficking, in particular the Trafficking Victims Protections Act (TVPA).

Canada ratified the UN Trafficking Protocol on May 13, 2002. The UAE ratified the UN Palermo Convention in May 2005 and on January 21, 2009 ratified the UN Trafficking Protocol, but does not consider itself bound to article 15, paragraph 2 concerning arbitration.⁸

4.2. The Trafficking Victims Protection Act of 2000

4.2.1. Overview

The UN Trafficking Protocol should be understood within the context of other anti-trafficking legislation developed within a similar timeframe. In 2000, the United States signed into effect the Trafficking Victims Protection Act (TVPA). The TVPA is one of the most comprehensive pieces of anti-trafficking legislation in the world, with its reach extending far beyond the borders of the United States. Specifically, it authorizes sanctions in the form of the removal of non-humanitarian aid, subject to presidential mandate, from countries that do not sufficiently comply with the United States' minimum standards for eliminating trafficking (Chuang, 2006). This allows the United States to influence the actions of other states through sanctions that may be inconsistent with international legislation such as the UN Trafficking Protocol.

⁸ Article 15, paragraph 2 states “Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court” (UN, 2000).

Central to the TVPA is the creation of the Office to Monitor and Combat Trafficking in Persons, which is responsible for publishing an annual report on trafficking in states throughout the world. The Trafficking in Persons (TIP) report ranks nations in a three-tiered system based on the perceived severity of human trafficking within state boundaries and the perceived adequacy of state policy responses (Mahdavi, 2011). Countries ranked Tier 1 are deemed to comply fully with the TVPA's minimum standards for the elimination of trafficking. Countries ranked Tier 2 do not fully comply with the minimum standards of the TVPA, but have made significant efforts to bring themselves into compliance with TVPA standards. Countries on the Tier 2 Watch List do not fully comply with the TVPA's minimum standards, but may be making efforts to comply with TVPA standards.⁹ Countries on the Tier 3 list do not comply with the TVPA's minimum standards and are not making efforts to bring themselves into compliance with TVPA standards.

4.2.2. Limitations

The TIP report is strongly criticized for its criteria, the lack of transparency in how data is compiled, and its "prejudice and differential treatment based on the racial and religious composition of a given country" (Mahdavi, 2011, p.20). Countries placed on the Tier 3 or the Tier 2 Watch List are predominantly Muslim countries, whereas Tier 1 countries are primarily Western. The rankings of the TIP report are criticized as being both "anti-Arab and anti-Islam" (Mahdavi, 2011, p.25). The rankings are criticized for "[revealing] more about the current state of U.S. foreign relations priorities than about actual global human trafficking trends and flows" (Mahdavi, 2011, p.19).

The TVPA is seen as undermining the "fragile international cooperation framework" created by the UN Trafficking Protocol (Chuang, 2006, p. 439). Countries that fail to meet U.S. designated anti-trafficking standards are threatened with U.S. sanctions, which therefore elevates U.S anti-trafficking policy and norms above those of the international community. The TVPA has allowed the United States to export its own domestic anti-trafficking standards, under the guise of universally applicable norms.

⁹ See the 2013 TIP Report for the full Tier 2 Watch List criteria.

There are arguably greater social and economic repercussions when not complying with the TVPA than with the UN Trafficking Protocol given its optional nature (Chuang, 2006). As a result, some states only adopt selective references to the UN Trafficking Protocol.

4.3. The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

4.3.1. Overview

The Migrant Workers Convention is the most comprehensive international human rights treaty in the field of migration (Pécoud, 2009). It provides protections to migrant workers and their families “without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status” (UN, 1990). The Convention was adopted by the UN in 1990 and came into force 13 years later, on July 1st 2003, after it was ratified by 20 signatory countries. To date (as of March 2014) 47 states have ratified the Convention, many of which are originating states for migrant workers.

4.3.2. Limitations

The impact of the Migrant Workers Convention is limited by the lack of support it has received. To date, no industrialized country primarily responsible for the mistreatment of migrants has ratified the treaty or has indicated a commitment to ratifying it (Richards, 2004).¹⁰ This indicates a lack of political will to adhere to international human rights standards for migrant workers (Platt, 2001 in Richards, 2004).

¹⁰ It took 13 years for the Convention to be ratified; a low ratification record compared to other UN Conventions such as the UN Trafficking Protocol, which took 3 years to come into force (Pécoud, 2009).

While the Convention provides protections for non-citizens and their families, regardless of legal status, Articles 36 through 56 grant greater protections for documented migrant workers than for those who are undocumented.

Neither Canada nor the UAE have indicated that they will sign and ratify the Migrant Workers Convention.

4.4. The International Labour Organization's Declaration of Fundamental Principles and Rights at Work

4.4.1. Overview

The International Labour Organization (ILO) has adopted 189 Conventions, eight of which define four fundamental principles and rights at work. Adopted in 1998, the ILO's Declaration of Fundamental Principles and Rights at Work is a non-binding international norm. The Declaration commits ILO member states to respecting and promoting each principle regardless of whether they have ratified the eight Conventions. The four categories of rights are: (1) freedom of association and the effective recognition of the right to collective bargaining, (2) the elimination of all forms of forced or compulsory labour, (3) the effective abolition of child labour, and (4) the elimination of discrimination in respect of employment and occupation.

4.4.2. Limitations

There remain barriers to the implementation and enforcement of these principles. The four categories of rights guaranteed in the Declaration are criticized because they arise from the ILO Constitution itself, and therefore the 1998 Declaration does not promote new legal obligations for member states (de Wet, 2008). While the ratification rate of most ILO Conventions is low, the impact of these Conventions cannot be measured exclusively on the basis of their ratification (de Wet, 2008). Due to ongoing dialogue between the ILO and member states, many labour laws adopted at a state-level are informed by these Conventions regardless of whether they have been formally

ratified. The impact of the Declaration is further limited by states' reluctance to see human trafficking as an issue of labour that can be addressed through ILO Conventions.

Both Canada and the UAE have only ratified six of the eight ILO Conventions guaranteeing fundamental rights. Canada has not ratified Convention No. 98, the Right to Organize and Collective Bargaining Convention and Convention No. 138, the Minimum Age Convention. Only in June 2011 did Canada ratify Convention No. 29, the Convention concerning forced or compulsory labour. The UAE has not ratified Convention No. 87, the Freedom of Association and Protection of the Right to Organize Convention and Convention No. 98, the Right to Organize and Collective Bargaining Convention.

In summary, the UN Trafficking Protocol, U.S. TVPA, UN Migrant Workers Convention and various ILO Conventions inform state responses to migrant worker labour exploitation and human trafficking to varying degrees. The UN Trafficking Protocol is limited by inconsistent definitions of forced labour, which may exclude its application to migrant workers. Moreover, the UN Trafficking Protocol is effectively displaced as an international instrument by the TVPA, which has an international reach despite its domestic character. Both the UN Trafficking Protocol and the TVPA also propose less than complete definitions of human trafficking, notably when it comes to the human rights of migrant workers and their experiences of labour exploitation. The Migrant Workers Convention arguably either fills the gap created by the UN Trafficking Protocol or formalizes a distinction between criminal and non-criminal exploitation activities; moreover, the Migrant Workers Convention is limited by the lack of ratification by migrant-receiving states in North America, Western Europe, the Gulf States and Australia. Finally, although ILO Conventions inform state policy and legislation responses, they lack mechanisms for enforcement or sanction. State policies and legislation are informed by many of these international instruments to varying degrees and in different ways.

Chapter 5. Migrant worker precarity in Canada

This section describes how migrant worker precarity is constructed and responded to within a Canadian context. First, an overview of the Temporary Foreign Worker Program (TFWP), with a focus on low-skilled work, is introduced. Second, the experiences of precarious workers within the TFWP are described. Third, an overview of government responses to migrant worker precarity is provided. Finally, an overview of civil society responses to migrant worker precarity is described. In this section, reflections from participants who work with precarious migrant workers in Canada are introduced.

5.1. The Temporary Foreign Worker Program in Canada

The Temporary Foreign Worker Program is designed to “help fill genuine and acute labour needs” (Economic Action Plan, n.d.). Employers may hire foreign workers for an authorized period if they “can demonstrate that they are unable to find suitable Canadians/permanent residents to fill the jobs” (CIC, 2014). Employers can recruit foreign workers with a wide range of skills to meet labour shortages in all business types (CIC, 2014). Besides shared eligibility requirements, each program has its own criteria for employees and employers. The federal government jointly administers Canada’s temporary labour migration programs through three departments: Citizenship and Immigration Canada (CIC), Service Canada, and the Canada Border Service Agency (CBSA).

Jobs completed under the TFWP are categorized into four skill levels as defined by Canada’s National Occupational Classification (NOC) system. The term “low-skilled” refers to workers performing jobs categorized as C and D under the NOC. Jobs under Skill Level C are intermediate jobs that require high school and/or job specific training, including long-haul truck drivers, butchers, and food and beverage servers. Jobs under

Skill Level D are labour jobs, where on-the-job training is typically provided, including cleaning staff, oil field workers, and agricultural workers (CIC, 2013b).

Migrant workers performing low-skilled work migrate to Canada through one of four programs:

The Stream for Lower-skilled Occupations allows employers to hire foreign workers for NOC C and D occupations for a maximum of 24 months. Recruitment through this program happens privately usually through recruitment agencies based in Canada or abroad (Faraday, 2012).

The Agricultural Stream allows employers to hire agricultural workers from all source countries. Recruitment happens privately usually through recruitment agencies based in Canada or abroad.

The Seasonal Agricultural Worker Program (SAWP) allows employers to hire agricultural workers from Mexico and Caribbean Commonwealth countries during planting and harvesting seasons. There is a high degree of government participation in the administration of the SAWP as the program is established through bilateral Memoranda of Understanding (MOU) signed by Canada and each participating sending country (Faraday, 2012).

The Live-in Caregiver Program (LCP) allows families to hire a foreign live-in caregiver where Canadian citizens and permanent residents are not available. The LCP is established through public regulations made under the IRPA.

Before a work permit is issued for a worker coming to Canada through one of these four programs, the employer must obtain a positive Labour Market Opinion (LMO) from Service Canada. The LMO assesses the impact of hiring a foreign worker on the Canadian labour market. Once a positive or neutral LMO is granted, the worker applies to CIC for a work permit. Each applicant must meet standard requirements to obtain a

work permit.¹¹ Additional eligibility criteria vary based on the program. Each program contributes to shaping a workers' experiences in Canada, including their admissibility, recruitment, work permit conditions, and working conditions.

While the TFWP was originally introduced in 1973¹² to place foreign nationals in high-skilled positions that no Canadian resident was willing and able to fill,¹³ a labour shift in the late 1990s created an increasing need for low-skilled workers.¹⁴ The creation of the Pilot Project for Hiring Foreign Workers in Occupations that Require Lower Levels of Formal Training in 2002 (now called the Stream for Lower-skilled Occupations) signaled a shift toward low-skilled work (Vineberg, 2010). Nakache (2013) writes that as a result of this project, a higher proportion of low-skilled workers have since entered Canada. Whereas in 2002, only 26.3 percent of all temporary foreign workers (TFWs) were in low-skilled occupations, in 2008 the proportion shifted to 34.2 percent (CIC, 2009 in Nakache, 2013). The greatest increase was in NOC D occupations, which accounted for 1 percent of the workforce in 2002 but 8.8 percent in 2008 (CIC, 2009 and Nakache & Kinoshita, 2010 in Nakache, 2013).

The number of workers in occupations NOC C and D is increasing, and yet few among these workers will have the opportunity to achieve permanent residency. Although there are federal immigration programs in place to attract and retain high-

¹¹ The applicant must fulfill the following requirements in order to obtain a work permit: satisfy an officer that he or she will leave Canada at the end of his or her employment; demonstrate that he or she has enough money to take care of his or her self while in Canada and to return home; "be law-abiding and have no record of criminal activity"; "not be a danger to the security of Canada"; "be in good health and complete a medical examination, if required"; "not intend to engage in employment with an employer on the List of Ineligible Employers found on CIC's website"; "not have worked in Canada for one or more periods totaling four years after April 1, 2011"; "provide additional documents requested by the officer to establish...admissibility" (Library of Congress, 2014a).

¹² At the time called the Non-Immigrant Employment Authorization Program (NIEAP).

¹³ Despite this focus, there were at the time avenues for workers to engage in low-skilled work, such as through Student Working Holiday Programs and Seasonal Agricultural Workers Programs.

¹⁴ This shift is linked to baby boomers retiring, and Canadians and immigrants becoming increasingly educated and less likely to take low-skilled jobs (Vineberg, 2010).

skilled TFWs, the same cannot be said for low-skilled work.¹⁵ To the contrary, recent actions demonstrate deliberate efforts to limit opportunities for permanent residency for low-skilled TFWs.¹⁶ While Canada's TFWP is framed as a triple win scenario, where migrant workers, origin countries, and the Canadian economy all benefit, Canadian immigration policies are criticized for being designed with Canada's labour needs in mind, and at the expense of migrant workers' rights and safety.

5.2. Migrant worker precarity in Canada

This study has described how migrant workers engaged in low-wage, low-skilled work are particularly vulnerable to exploitation. This section provides an overview of how precarity is constructed for migrant workers engaged in low-wage, low-skilled work in Canada. This section demonstrates how current practices in Canada are inadequate for protecting migrant workers, and subsequently make them vulnerable to labour exploitation, and in extreme cases forced labour or trafficking. This section demonstrates many of the ways in which vulnerabilities are constructed for low-wage, low-skill workers at different stages of the labour migration process.

¹⁵ TFWs can apply for permanent residency from within Canada through four programs: the Live-in Caregiver Program (LCP), the Federal Skilled Worker Program (FSWP), the Canadian Experience Class (CEC), and the Provincial/Territorial Nominee Programs. The LCP provides opportunities for permanent residency for low-skilled workers, whereas workers admitted through the FSWP and CEC are overwhelmingly classified as skilled (Nakache & D'Aoust, 2012).

¹⁶ In 2011 restrictions were imposed so that low-skilled TFWs can only stay in Canada for up to four years, followed by a period of four years during which time they cannot work in Canada (CIC, 2011). In November 2013, without notice or consultation, the federal government announced substantial changes to the Canadian Experience Class (CEC), the immigration stream under which most temporary foreign workers apply (Byl & Foster, Edmonton Journal, 2013). TFWs with skilled work experience in six specified jobs: cooks, food service supervisors, administrative assistants, accounting technicians and bookkeepers, and retail sales supervisors can no longer apply for permanent residency through the CEC (CIC, 2013a). While these changes affect all TFWs, they most strongly affect low-skilled workers, as these jobs are the most common pathways for lower-skilled TFWs to achieve permanent residency. At the same time, CIC introduced an annual cap on the number of new CEC applications. CIC will accept a maximum of 12,000 CEC applications from November 9, 2013 to October 31, 2014 (CIC, 2013a).

Migrant workers often experience precarity before they arrive in Canada. Workers are vulnerable to being exploited by recruiters. Recruiters, both in Canada and in a worker's country of origin, often charge workers high recruitment or "consulting" fees. While this practice is illegal in Canada, recruiters take advantage of migrant workers' vulnerability and lack of information regarding their rights (Faraday, 2014). Recruiters often give false information about salary and working conditions in Canada (CCR, 2012). There is a lack of government oversight over the recruitment process, and migrant workers' experiences can vary drastically as a result.

Migrant workers experience precarity during their time in Canada. There are conditions of migrant workers' contracts and protections under provincial and federal laws that construct vulnerabilities. Some of these factors include the single-employer model and residency requirements for migrant workers. First, being tied to one employer means that low-wage, low-skill migrant workers cannot easily change jobs or move within the same industry. If a worker files a complaint against their employer their work permit could be terminated. Second, migrant workers are required to live with their employer or in accommodation provided by their employer. These residency requirements compromise workers fundamental rights, including their mobility rights, freedom of association and the right to privacy (CDPDJ, 2011). Live-in caregivers who are required to live with their employer experience a lack of privacy. Seasonal agricultural workers, whose employers are obligated to provide living accommodation and meals at a reasonable cost, are likely to live with their employer, and face similar difficulties. Given that most farms are in rural areas, agricultural workers often experience increased social and physical isolation. These barriers prevent workers from accessing supports, including health services and access to the justice system.

While in principle TFWs are protected by the same provincial employment standards acts as other workers, they are often unable to exercise these rights. One participant interviewed for this study describes migrant workers in Canada as having "virtual rights". As a result, when workers face exploitation, such as being denied pay, being asked to work hours outside of their contract, experiencing physical, emotional and sexual abuse, or working in dangerous conditions (Hanley et al., 2006) they are

rarely in a position to fully assert their rights. Exploitation can therefore escalate to cases of forced labour and trafficking.

Both the RCMP and Public Safety Canada have expressed concern about the safety of migrant workers in Canada. In 2010, the RCMP completed a Human Trafficking Threat Assessment to determine the extent of human trafficking in Canada from 2005 to 2009. The assessment confirmed that “vulnerable, economically challenged and socially dislocated sectors of the Canadian population represent a potential pool of trafficking victims” (Canada, 2012, p.6). The report specifically identified migrant workers as vulnerable to forced labour: “Investigations into claims of labour exploitation have centred on the treatment of migrant workers, and in some cases, the fraudulent use of the Temporary Foreign Worker Program by third parties” (Canada, 2012, p.7).

In 2012 Public Safety Canada completed stakeholder consultations on human trafficking. Stakeholders described “an increase in cases of labour trafficking of foreign nationals and concerns surrounding the exploitation and trafficking of migrants and temporary foreign workers” (Public Safety Canada, 2013, p.6). The study confirms that the temporary nature of migrant workers’ immigration status and their fear of being sent back to their country of origin make them vulnerable to exploitation and abuse. The study elaborates that structural issues within the TFWP, including an inability for many provinces to confirm whether a TFW arrives in Canada as expected, and whether they are working for their identified employer, provide possible avenues for exploitation (Public Safety Canada, 2013).

5.3. Government responses to migrant worker precarity in Canada

The Government of Canada has identified migrant workers as vulnerable to exploitation and trafficking but has taken few steps to address the vulnerabilities constructed through the Temporary Foreign Worker Program. This section describes the government’s anti-trafficking efforts, and their impact on precarious migrant workers.

The Government of Canada has identified human trafficking as a pressing policy priority. In June 2012 the Government released its first National Action Plan to Combat Human Trafficking. The action plan outlines the Government's response, the 4-Pillars (the 4-Ps): prevention, protection and assistance for victims, detection, investigation and prosecution of traffickers, and partnerships and knowledge. A Human Trafficking Taskforce, led by Public Safety Canada, and comprised of key departments, is responsible for overseeing the implementation of this plan.

The Action Plan describes the government's investment of \$6 million annually to fight human trafficking. Of this total, \$4.9 million is being invested through the RCMP.¹⁷ The government has committed up to \$500,000 a year beginning in 2013/14 toward a Victims Fund to support services for victims of human trafficking. While migrant workers are identified as particularly vulnerable to trafficking, the Plan only dedicates \$140,000 of its total annual budget of \$6 million towards the TFWP. The plan contemplates enhanced protections for foreign nationals including the creation and dissemination of information materials on the TFWP and the improvement of mechanisms to prevent and detect labour exploitation. The Plan also commits to exploring the possibility for on-site employer visits.

The Government of Canada's responses to trafficking have emphasized law enforcement, particularly the involvement of the RCMP, while undermining the role of community partners. This approach contradicts the Government's knowledge that migrant workers may be hesitant to engage with and trust police:

Obtaining cooperation from foreign victims has been particularly challenging for law enforcement. Foreign victims who were trafficked are usually in the country alone, without family or a support system, and may be obstructed by language barriers. Also, they may not always see themselves as victims of human trafficking. In most cases, they are skeptical of police and see little value or nothing to gain from cooperating with police (Canada, 2012, p.7).

¹⁷ In 2012/13 the Government committed: \$2,030,000 toward a dedicated enforcement team (RCMP and CBSA), \$1,300,000 toward a human trafficking national coordination centre (RCMP), \$1,600,000 toward regional coordination and awareness (RCMP), \$445,000 towards border service officer training/awareness (CBSA), and \$1,200,000 toward the Global Peace and Security Fund (DFAIT). For the full list of investment areas, see the National Action Plan.

Participants who work with migrant workers and/or trafficked persons describe different experiences collaborating with law enforcement. Participant 10, who represents an anti-trafficking organization, describes how collaboration with law enforcement is key to the success of their organization's work. This organization collaborates with law enforcement throughout the country, with both regional police and RCMP. In contrast, Participant 14, who represents an organization that supports migrant sex workers, describes the role of law enforcement as detrimental to their work: "Law enforcement really hinders and prevents us from doing our work...they may go in, guns blazing, and for that reason it creates distrust of all outsiders including ourselves".

Participants describe hesitancy on behalf of migrant workers to engage with law enforcement. Migrant workers are often reluctant to report labour exploitation because they fear that if a police complaint is made, the focus may turn onto their immigration status, rather than on the exploitation they have experienced. This presents barriers to reporting exploitation. While the law enforcement officer interviewed as part of this study stated that the immigration status of a victim of trafficking does not concern them, other participants fear that this is not always the case. Furthermore, law enforcement efforts to address human trafficking can be traumatizing for workers. Raids and searches of migrant sex workers' workplaces create fear and further distrust of the police and of social service providers (Chuang, 2010; Mire, Vice, 2014). Despite these concerns, Participant 15 describes how some workers who have been victimized by their employer use meeting with the police as a strategy of resistance. Meeting with police may give them leverage to receive their pay and/or passport, regardless of whether they intend to pursue a criminal case.

While the government recognizes that migrant workers are vulnerable to human trafficking, legislative and policy responses to human trafficking are not designed with migrant workers in mind. Human trafficking offences are recognized in ss 279.01

(Trafficking in persons)¹⁸, 279.011 (Trafficking of a person under the age of eighteen years), 279.02 (Material benefit), and 279.03 (Withholding or destroying documents), 279.04(1) (definition of exploitation)¹⁹ of the Criminal Code of Canada (RSC, 1985, c C-46)²⁰, and in s 118²¹ of the Immigration and Refugee Protection Act (IRPA). Both instruments differ in the underlying acts and mental intent necessary to substantiate a conviction for a human trafficking offence. Whereas the human trafficking provisions of the Criminal Code contemplate both the entrance and exit of trafficking persons, s 118 of IRPA only contemplates the entrance of trafficking persons. The enumerated activities that constitute the underlying acts of trafficking also differ; most notably, s 279.04(1) provides a definition for the term “exploitation”, which provides greater detail for the underlying acts of human trafficking. As Hastie (2012) notes, the underlying acts of trafficking in persons recognized under s 297.01 are broad and encompass movement activities that go beyond the UN Trafficking Protocol.

The mental intent required in the Criminal Code is arguably also lower and easier to demonstrate than what is required for s 118 in IRPA. Whereas the human trafficking provisions of the Criminal Code contemplate a modified objective standard of the

¹⁸ “279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable: (a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or (b) to imprisonment for a term of not more than fourteen years in any other case.”

¹⁹ “279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they: cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.”

²⁰ It is important to note that the Criminal Code contains additional provisions that may be of interest to migrant workers and their experiences of abuse or victimization, such as extortion (section 346), assault (section 265), sexual assault (section 271), and criminal negligence (section 219). These provisions apply throughout Canadian jurisdiction. However, these Criminal Code provisions are punitive or prohibitory, and are not intended to specifically address migrant workers’ experiences. For this reason, the four human trafficking offences in the Criminal Code are most likely to be tailored for the experiences of migrant workers in Canada.

²¹ “Section 118 (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion (2) For the purpose of subsection (1), “organize”, with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.”

reasonable person, “*in all the circumstances*, [the offender’s conduct] could reasonably be expected to cause the other person to believe...”, s 118 of IRPA employs a strict, higher, subjective standard that the offender must have “*knowingly organized*” the trafficking activity. What is common to both is the lack of any victim-centred language.²²

The human trafficking provisions of the Criminal Code and IRPA may not meet the requirements of the UN Trafficking Protocol, where the UN Trafficking Protocol contemplates the physical, economic, and psychological security of the person. Section 279.04 will not meet the requirements of the UN Trafficking Protocol because it only contemplates the physical security of the person, as indicated by the underlying aggravating offences considered in sentencing, namely, the presence of aggravated assault, aggravated sexual assault, kidnapping, or death. The reference to the belief of the victim in s 297.04, whether the offender’s conduct “*in all the circumstances is reasonably expected to cause the other person to believe* that their safety or someone else’s is being threatened”, does not focus on the worker’s own, *actual* belief; instead, it focuses on whether a reasonable person in all the circumstances would expect the conduct to create a belief of threat in the victim. The focus is clearly on the offender’s state of mind, and provides no direct consideration of the *actual* psychological security of the victim. Similarly, s 118 of IRPA does not contemplate anything other than the physical security of the victim.

These structural limitations may limit the effectiveness of the Criminal Code and IRPA as legal instruments that can protect migrant workers. Since introducing Canada’s anti-trafficking laws in 2005 there have been 35 human trafficking convictions. Only two involved trafficking for forced labour (Public Safety Canada in Moore & Levasseur, 2014). These legal instruments also fail to meet considerations under the UN Trafficking Protocol.

²² It is important to note that the Criminal Code and IRPA are legal instruments that are structurally designed and intended to serve a punitive or prohibitory purpose. They contemplate offenders of Criminal Code and IRPA provisions, and not specifically victims of crime. Moreover, as a special class of victims, migrant workers are only indirectly contemplated in the human trafficking provisions.

Government programs such as the TFWP create and exacerbate migrant workers' vulnerabilities to trafficking, and recent policy responses suggest that abuses within the TFWP are not a priority.²³ Study participants argue that there are elements of human trafficking present in the experiences of migrant workers, regardless of whether these elements are formally recognized within Canadian legislation. The TFWP creates a state of precarious employment and immigration status that prevent migrants from exercising their full legal rights. Participant 15 uses the term "shades of human trafficking" to describe the spectrum of experiences of exploitation that occur but that may not meet the Criminal Code or IRPA definition.

"The law is very clear on what constitutes human trafficking, so I find that sometimes [my colleagues] see exploitation but they don't relate it to the Criminal Code or IRPA. In those cases, I agree that the person has been treated poorly and yeah, they have been exploited in the sense that you and I understand the word exploitation, but they haven't necessarily been exploited in terms of what the laws says".

While access to criminal justice may seem impossible for many migrant workers, the abuses they experience can often be addressed through labour law provisions. Participant 15 explains, "Criminal justice is a sweet tasting victory, but sometimes some of these individuals don't necessarily need justice, they need to get on with their lives, they need to be paid back the money they didn't get when they were exploited". This can be achieved by filing a claim with provincial employment standards tribunals. While factors such as precarious immigration and labour status make it challenging for many migrant workers to assert their labour rights, this participant argues that it is possible for migrant worker to navigate this process with the help of an advocate. In contrast, criminal cases can take a lot of time to reach court.

Canada has been criticized for not sufficiently monitoring the living and working conditions of migrant workers. While the TFWP is a federal program, employment standards fall under the jurisdiction of provinces and territories. As a result, TFWs have

²³ In June 2013, the Government of Canada released draft regulations with the purpose of improving the TFWP. Included were provisions to enhance protections for TFWs, including new conditions for employers. These provisions included banning employers convicted of human trafficking, sexual assaulting an employee or causing the death of an employee from accessing the TFWP (Canada, 2013). However, these provisions were removed from the final version of the regulations that came into effect on December 31, 2013.

uneven access to labour protections depending on where they work.²⁴ Canada does not currently have an effective and proactive system to monitor employers and therefore the onus is on the individual to seek help when they experience exploitation (CCR, 2012). The current approach is “hands-off” leaving workers vulnerable to abuse and exploitation. Given their precarious immigration and employment status, migrant workers in low-wage, low-skilled work are especially unlikely to report exploitation. As one participant describes, “these TFWs are attached to their employers and they cannot do anything about it, and it makes them vulnerable”. Labour and criminal violations are therefore seldom reported.

Participants fundamentally question whether the exploitation of migrant workers is a government priority. One participant describes how the issue can fall by the wayside for law enforcement, since they are so busy with other issues. “You end up with a priority project, maybe young girls are being attacked around town...do you give up checks on farm workers? Who aren’t indicating anything negative anyway?” Participant 10 also describes how there is much less of a sense of moral outrage for labour exploitation or trafficking, compared to instances of sex trafficking. “Until we get enough thousands of Canadians outraged and fighting and demanding change, then I don’t know that the government, either federal or provincial, will care”. The government’s responses indicate

²⁴ Employment standards differ greatly across the country. For example, in Alberta and Ontario agricultural workers are denied the right to unionize and collectively bargain. This significantly impacts farm workers’ ability to assert their labour rights. In British Columbia while the Employment Standards Act prohibits the charging of a fee to a person who is seeking employment, recruitment agencies can charge migrant workers for a variety of other services. The penalties for infractions are small, meaning that there is little financial incentive to abide by the law (CCR, 2013). In contrast, some provinces are making advances to enhance protections for migrant workers. Manitoba has set a precedent for other provinces by introducing the Manitoba Worker Recruitment and Protection Act (2009), which requires employers and recruiters of migrant workers to register with the province, and prohibits the charging of recruitment fees to workers, and enforces severe penalties in the case of violations. The WRAPA is not perfect however; article 16(2) permits employers to sue workers to recover recruitment fees in the case of certain behaviours, including “dishonesty” (CCR, 2013). The province has also created a Special Investigations Unit (SIU) to conduct both complaint-driven and proactive investigations of employers to ensure their compliance with labour laws. Employers who repeatedly violate labour laws have their names published on the Manitoba Employment Standards website. Another best practice comes from Alberta, the only province with a TFW helpline and Advisory Office to provide information on rights and recourses for workers with concerns or complaints. These examples demonstrate how migrant workers’ rights are inconsistently protected and enforced throughout Canada.

a commitment to tackling trafficking for sexual exploitation, but a lack of commitment to addressing the precarity constructed for migrant workers through the TFWP.

5.4. Civil society responses to migrant worker precarity

In Canada, the government relies heavily on civil society organizations to deliver a variety of services. There are two overarching trends that shape civil society responses to precarious migrant workers. First, service-delivery is shaped by the government's shifting approaches to nonprofit funding. Second, the framing of issues of migrant worker precarity and trafficking shape the work of community-based service providers.

Shields (2014) traces the evolution of the government's approach to funding the nonprofit sector. Prior to the 1980s, the Canadian government provided funding that could be used to support both direct programming and the administrative infrastructure of nonprofit organizations (often called project and core funding) (Shields, 2014, p.258). During this time, nonprofits acted to supplement and deepen state-led social supports, without replacing them. However beginning in the 1980s under neoliberal governance, nonprofit agencies were contracted to deliver many government-funded services (Shields, 2014). "While commonly described as a partnership, this new relationship [was] in fact a top-down financial and administrative accountability controls that moved the relationship away from bonds of trust to contractually driven obligations" (Shields, 2014, p.259). Since the 2007-2008 financial crisis, the Canadian government has relied even more heavily on the nonprofit sector to provide much needed social services, and often

without the benefit of additional financial support (Shields, 2014). Government funding for the nonprofit sector continues to be largely short-term and project-based.²⁵

While the government recognizes that migrant workers engaged in low-wage, low-skilled work experience precarity and a lack of access to services, it provides limited support services. This creates a gap in service-provision that is being filled by nonprofit organizations and informal community groups. These groups provide a variety of supports; many do outreach at workers' sites of employment, whereas others operate through referrals. Participants interviewed as part of this research provide supports to agricultural workers, live-in caregivers, and migrant sex workers.

Some participants question whether the safety of migrant workers is a priority, given that they receive so little government support for their work. Many participants represent organizations that receive little or no government funding. Participants describe different reasons for why this is. Some participants describe challenges with applying for grants. Participant 10 describes no longer applying for private and government funded grants, given the barriers presented by funding applications. Grant writing is a time consuming process. Participant 14 argues that there are simply too few funding sources available:

"It's just sometimes really frustrating when you think about how little money nonprofit community groups receive, and how much work that they do, and then when I think about some government ministries or agencies, how much funding they receive, and I'm sorry but how little work that actually gets done".

²⁵ There are negative consequences to the short-term, project-based financing of the nonprofit sector by government: (1) Staff positions are contingent and paid less than in other sectors; (2) Programming priorities are shaped by government funders regardless of the experience and expertise of service providers; (3) Services and funding streams deal with clients in isolation contributing to a "cookie-cutter approach" to service-delivery; (4) Government funds larger multi-service nonprofit organizations over smaller and ethno-specific agencies despite the reality that vulnerable communities are often best served by grassroots groups with specialized knowledge; (5) Nonprofits are discouraged from advocating on behalf of the communities they serve. Organizations who depend on the state are reluctant to criticize government policies in fear that it may negatively affect funding decisions. Nonprofit organizations also lack the resources to engage in advocacy in addition to direct service-provision (adapted from Shields, 2014).

Participants 11, 12 and 13 accept not receiving government funding for their work, as it allows them to engage in lobbying work without fear of reprisals. However these organizations continuously face financial challenges. All nonprofit and community organizations rely on volunteers. Participant 11 states: “It’s essentially sweat equity. It’s a lot of hours spent, a lot of volunteer gas for those with cars...so a lot of it is not recorded because it’s all from the volunteers themselves”.

While there are limited funds for precarious migrant workers, there is increasing funding for anti-trafficking initiatives. However, participants argue that there is a disconnect between funding proposals for anti-trafficking initiatives and the needs of trafficked or exploited migrants. Consistent with research by Hanley et al. (2006), this research finds that the work of service providers is rarely confined to trafficking, and the line between human trafficking and other forms of abuse or exploitation is often unclear (Hanley et al., 2006). While the government-sponsored 2006 study by Hanley et al. revealed that the experiences of services providers who work with trafficked persons defy popular conceptions of trafficking, human trafficking discourse within government granting competitions remains inconsistent with the work performed by community-based service providers. Furthermore, this discourse shapes private and provincial grant competitions. Participant 14 states:

“[W]hatever way we try to frame this issue...if we frame it as sex work among migrant workers, that’s a very unpopular cause and that few are going to advocate on behalf, or donate to, if it’s human trafficking, well that’s a very popular cause and there’s lots of money out there, but we don’t necessarily adhere to a lot of the perspectives that are out there in that framework because we have to be ethical and we have to be true to the women’s experiences that we see on the ground, so it makes it challenging to apply for anti-trafficking funding”.

Participants argue that the federal government should provide funding for direct services to migrant workers. Doing so would ensure service provision for workers with varying experiences, and not just those that fit the definition of a trafficked person. Doing so would also help migrant workers access supports before a situation worsens.

In the absence of significant government support, community organizations in Canada create networks to provide supports to precarious migrant workers (Hanley et

al., 2006). Coordination among service providers is required. As Participant 13 states “no one organization has all the answers”. By making referrals to other community service providers, it prevents the duplication of services, and helps strengthen relationships among service providers. Participant 12 states: “We work with other groups who are seeing the same issues which is good...collective voices are better than a single voice”.

It can however be challenging for some groups to feel comfortable reaching out to others. Participant 14 speaks to the need for migrant support agencies to become more knowledgeable about the issues affecting migrant sex workers. While at times their organization needs to call on agencies with expertise in immigration issues, they often do not feel comfortable referring the women they work with to other community partners who may discriminate against sex workers. This speaks to the unique challenges experienced by service providers working with different migrant worker populations.

Relationship building is key to the success of community-based initiatives. In addition to building relationships with other service-providers, participants describe the importance of developing relationships and acquiring the trust of employees and workers. Participants who do outreach to migrant agricultural workers describe some farm owners as open and receptive to their visits, while others are afraid to let them interact with workers. Participant 13 who works for a faith-based organization describes how their affiliation with advocacy groups and unions is sometimes of concern to farm owners. Participant 9 represents a project sponsored by a provincial labour ministry, which creates fear among some farmers that they will attempt to unionize their workers. Owners have deep-seated fears that community workers will unionize their migrant workers. Some employers are also distressed and defensive as they feel that they are being accused of providing harsh conditions for their workers, when they believe that they are providing a safe environment.

Participant 14 who represents an organization that does outreach to migrant workers in indoor sex work sites describes some managers as receptive to their visits, and others as skeptical and untrusting. A great deal of relationship building is required with managers and the workers themselves. In these scenarios, managers and workers

are often skeptical of “so-called helpers [who] have their own agendas that can be very harmful to the managers or owners or to the workers themselves”. Participant 10 further explains that when it comes to exploitation within the sex industry, “[p]eople have agendas...there’s all of these preconceived assumptions that are piled on to the issue”.

There are other factors that make reaching migrant workers challenging. Migrant farm workers, for example, work long hours and are physically isolated. Workers can typically only be accessed through their employer, and they may not speak English fluently, and require resources in their first language. Participant 11, who works with a Filipino migrant justice organization states:

“While we know there are Filipino temporary foreign workers in the farms, because we operate by volunteers [we] can only go when we’re not working...it’s very hard...they take a big risk in coming out to talk with people who are offering them things that their employer doesn’t think is important...And they can’t get out, they’re so far away, they need bus tickets, or biking to work so there’s a lot of challenges”.

Service providers experience a range of challenges in providing supports to migrant workers. It is clear that gaps in communication between service providers and policymakers contribute to systemic barriers to service provision. Many participants believe that government and the Canadian public are apathetic to the needs of migrant workers. Discourses on migrant work are deeply politicized and “migrant bashing” can be common. There is concern that the lack of government support of migrant workers demonstrates that the rights and safety of migrant workers are not a priority.

Chapter 6. Migrant worker precarity in the United Arab Emirates

This section describes how migrant worker precarity is constructed and responded to within the UAE. First, an overview of low-wage, low-skill migrant work is introduced. Second, the experiences of precarious workers within the UAE are described. Third, an overview of government responses to migrant worker precarity is provided. Finally, an overview of civil society responses to migrant worker precarity is described. In this section, reflections from participants who work with precarious migrant workers in the UAE are introduced.

6.1. Low-skill, low-wage migrant work in the UAE

The UAE is one of the largest migrant-receiving countries in the world (Mahdavi, 2011). The National Bureau of Statistics of the UAE estimates that in 2010 over 80 percent of the population were foreigners (UAE National Bureau of Statistics, 2010).²⁶ The indigenous Emirati workforce is therefore small, and unable to meet the growing labour needs of the country. Migration to the UAE is overwhelmingly for work. According to the UAE government, 82 percent of the workforce is non-local (UAE National Bureau of Statistics, 2013). This percentage is believed to be higher in the emirates of Abu Dhabi and Dubai. The majority of migrants work in low-skill or semi-skill jobs in the construction and service sectors. Most migrant workers originate from India, Pakistan, and Bangladesh, and many workers in low-skilled jobs also originate from countries including China, the Philippines, Thailand, Korea, Afghanistan, and Iran (Sambidge, Arabian Business, 2009). While many migrants work in the UAE for several years,

²⁶ UAE immigration law (1973) states that anyone who does not hold UAE citizenship is considered a foreigner.

permanent settlement and the attainment of citizenship is not legally permissible (Mahdavi, 2011).

Migrant labour in the UAE and in other GCC countries is structured by the *kafala* or labour sponsorship system. Only UAE nationals may hire foreign nationals; they do so by directly sponsoring a worker. Migrant domestic workers are an exception however, as they can be sponsored by either UAE citizens or non-citizens. Businesses can sponsor employees when a UAE citizen is a partner, owner, or majority shareholder of the business-sponsor.

An employer who wishes to hire a migrant worker applies to the Ministry of Labour. In submitting an application the employer commits to: (1) sponsoring and being responsible for the worker; (2) preparing the worker's employment contract within a week of the worker's arrival in the UAE; and (3) repatriating the worker to their home country when necessary (Library of Congress, 2014b). The Ministry will only approve applications where no citizen is available to complete the job. Once an application is approved, it is forwarded to the General Directorate of Citizenship and Stay or to other authorities based on instructions issued by the Ministry of Interior (Library of Congress, 2014b).

In the UAE, the terms for low-skill, low-wage workers are shaped by gender and country of origin. Low-skill, low-wage male workers are typically referred to as migrant workers or labourers, whereas low-skill, low-wage female workers are often referred to, regardless of industry, as housemaids (*khaddamah*), nannies, or "the help" (Mahdavi, 2011). In contrast, Western migrant workers are referred to as expatriates (expats), regardless of gender. The term expat implies highly skilled Western guest workers of a "certain class and...countries of origin" (Mahdavi, 2011, p 13-14). Although the UAE's migration policies may seem unique to the GCC, they resemble guest worker programs used in Europe's post war era, most commonly in Germany and Switzerland, and which are now re-emerging in the Global North, in countries such as Canada (Gross & Schmitt, 2012; Migrant Rights, 2014). Following the influx of migration during the oil boom of the 1970s, the UAE introduced legal and social boundaries for migrants to preserve the cultural 'homogeneity', identity and socio-economic privileges of the Emirati. Historically,

the UAE has implemented barriers to citizenship and residency to prevent the permanent settlement of migrants (Migrant Rights, 2014).

6.2. Experiences of precarious migrant workers

The UAE receives strong international criticism for its labour rights violations. While on average, UAE residents enjoy a comfortable living standard and income; a large percentage of the UAE non-resident population works in exploitative conditions. While statistics that breakdown income according to nationality or occupation are not available, news reports and studies are increasingly demonstrating the challenges faced by migrant workers in the UAE, particularly those working in low-wage, low-skilled occupations (Kanna, 2011). Many of the exploitative labour practices experienced are illegal according to UAE law, including the non-payment of wages, the withholding of passports and visas, contract switching, and employers forcing workers to pay for their own visas and travel expenses (HRW, 2006). This section provides an overview of how vulnerability is constructed for low-wage, low-skill migrant workers in the UAE.

Migrant workers in low-wage, low-skilled occupations often experience precarity during the recruitment process. The recruitment of migrant workers is either carried out by a recruitment agent who is a UAE national or by an UAE company whose partners are UAE nationals. While Western expatriates, or wealthy non-Western expatriates hired by a company in the UAE can anticipate that their travel and visa expenses will be paid by their employer, migrants employed in low-skilled work cover their own travel and visa expenses (Kanna, 2011). Workers must often borrow money from recruitment agencies to cover these expenses. These expenses are usually high relative to the salary they will make in the UAE, and repayment is complicated by the high interest rates charged by agencies. Due to a combination of extortionate agency fees, loans with high interest rates, and low-wages, many low-skilled workers who work in the UAE cannot save money, but instead, spend years repaying their creditors (HRW, 2009; Kanna, 2011).

Arabic language requirements create vulnerabilities for migrant workers. UAE labour law states that “the Arabic language is...to be used in all records, contracts, files, statements and other documents [and]...shall also be compulsory in instructions and

circulares issued by the employer to his employees” (UAE Labour Law, 1986). In addition, in the case of disagreements between an employer and employee, both parties must submit their complaints in writing (presumably in Arabic). This presents barriers for migrants who are illiterate or do not speak the same language as their employer (Mahdavi, 2011). In most instances workers cannot read their own contracts as they are in Arabic. While middlemen (such as recruiters) may be more versed in Arabic, they are known to deceive workers regarding their contracts (Mahdavi, 2011). It is, for example, common practice for workers to sign Arabic language contracts upon their arrival in the UAE that do not match the remuneration and conditions promised to them in their home country. Participant 3 explains:

“A lot come here as economic migrants and they get themselves into debt before they come, so the race is on to try and get their money back, but of course, when they get here, they’re often victims of unscrupulous agencies that change the contracts...they promise them ‘x’ amount of money, and as soon as they land, they’re offered an Arabic contract they sign, sometimes willingly, sometimes unwillingly, which changes the whole context in which they thought were coming to. And I’ve seen some very bad abuses of that”.

The *kafala* system creates an unequal power relationship between employer and worker (Harroff-Tavel & Nasri, 2013; HRW, 2006, 2009; Mahdavi, 2011). Exploitative labour conditions created by this system often lead migrants into exploitative situations (Mahdavi, 2011). Under the *kafala* system, each migrant worker is tied to a sponsor, or *kafeel*, who acts as his or her employer. The worker’s legal working papers and residency depend on the relationship with the sponsor. While in theory either the employer or worker can break the contract at any time, there are factors at play that prevent workers from breaking their contract so easily. Workers are often required to pay the cost of their return flight ticket, a cost in addition to the other debts they have often undertaken to migrate for work (Mahdavi, 2011).

The UAE has received strong criticisms from the international community for its treatment of precarious migrant workers. Studies by the ILO and Human Rights Watch identify the *kafala* system as a cause of exploitation, and argue that there are a lack of laws and governance in place to protect workers. Research by Andrew Gardner demonstrates that “the *kafala* system renders extreme variability in the experiences of workers in that the governance of the individual depends entirely on the sponsor”

(Mahdavi, 2011, p.49). While some employers respect their workers' rights, others can be exploitative (Mahdavi, 2011). Even in cases where workers' sponsors are sympathetic, workers may experience abuse from middlemen who limit communication between workers and their sponsors.

Kafils or sponsors are required by law to provide accommodation for their workers. While quality of accommodation for workers in low-skilled occupations varies, it is typically inadequate. The spread of communicable diseases is common particularly in labour camps that are crowded, and have inadequate sanitation, sewerage and ventilation systems, and substandard drinking water (Carroll, The National, 2014). For example, in 2008, public health authorities in Dubai found that 40 percent of the emirate's 1,033 labour camps violated minimum health and fire safety standards (HRW, 2009). Men's labour camps are large, and house thousands of workers, whereas women's camps are smaller, and house approximately fifty women (D'Souza, Gulf News, 2012). As part of their accommodation, men typically receive meals, whereas women are expected to pay for and prepare their food. Women typically do not have much money to afford food, or proper facilities to prepare meals.

Participants describe how the needs of migrant labourers living in labour camps are emotional as much as physical. People feel isolated, struggle with language barriers, and do not have access to people outside of their group. Tensions can run high among workers, and there are few outlets. Even on days off, low-skill workers living in labour camps do not have constructive social activities in which to engage.

Most migrant workers enter into a *kafala* or sponsorship relationship with their employer and are therefore covered by UAE labour laws. However, in practice, many workers are not able to exert their full rights given the power relationship that exists between employer and worker, and the arbitrariness of the UAE in enforcing its labour laws (Kanna, 2011).²⁷ Workers are afraid to demand better treatment or payment of

²⁷ Interpretation of UAE law is discretionary and as a result the experiences of migrant workers vary enormously. Hasso (2011) argues that UAE law is flexible and discretionary as a result of ongoing tensions between: (1) federal and regional authority; (2) classical sharia and "Islamicized" legal codes; and (3) "the "developmental" needs of a unified nation-state versus clan, regional, and Muslim traditions that are more fluid and plural" (Hasso, 2011, p.55).

outstanding wages out of fear of being fired and deported (HRW, 2009). The government has jailed tens of thousands of striking workers over the years, according to news releases, and an unknown number have been deported; however, the exact numbers are unknown (HRW, 2009). The Ministry of Labour does not release figures on labour disputes, and the only reliable way to keep track of labour disputes is through media reports (Keane & McGeehan, 2008). This information likely only captures a fraction of labour abuses.

Workers often find themselves in the informal labour market as a result of deceitful employer practices. Workers who wish to leave the UAE cannot do so without the authorization of their employer. Workers must regulate their work contract and their debts, as well as retrieve their passport from their sponsor. While UAE labour law prohibits the confiscation of workers' passports, it is a common practice. For example, all construction workers interviewed in a Human Rights Watch (2006) study had their passports confiscated by their employers upon their arrival in the UAE. This practice restricts workers' ability to leave the country and their ability to seek work elsewhere. Furthermore, it is common practice for sponsors to recruit foreign workers for non-existent jobs. "[F]raudulent sponsors generate sizeable profits by auctioning off the visas of these workers to the highest bidder, while the workers themselves are stranded in the destination country, often in debt, with no job, and forced to look for irregular work" (Harroff-Tavel & Nasri, 2013, p.13). Working in the informal labour market increases a worker's vulnerability to abuse or exploitation.

Domestic workers are among the most vulnerable workers in the UAE as they are excluded from protection under UAE labour law. Domestic workers are characterized as falling under the sovereignty of the family for whom they work. The family is considered the domestic worker's guardian, as opposed to their *kafil*, or sponsor, meaning that national labour laws do not apply (Kanna, 2011). UAE labour law state that "domestic servants working in Private residences and the like" are excluded from the provisions of the law (UAE Labour Law, 1986).²⁸ Workers are directly sponsored by

²⁸ Under Article 3, workers employed in agriculture are also excluded from the provisions of the labour law. Under Article 72, seafarers are also excluded.

individual families and there is therefore no accountability for salary payment, working conditions, or working hours. Disputes between a domestic worker and their employer are a private matter not to be resolved in a court of law (Mahdavi, 2011). Participant 3 explains:

“Usually what happens in the home, between a man and his wife is seen as none of our business. And that’s very much the mentality here, what happens in someone’s home belongs to the domain of the head of the household and not the government. But it is changing slowly”.

Domestic workers are as a result considerably vulnerable to exploitation. As a result of their lack of labour protections, domestic workers experience penalties and threats that prevent them from leaving exploitative situations (Harroff-Tavel & Nasri, 2013). These can include: the retention of personal documents, such as passports and residency cards, a balance of power that favours employers, the withholding of wages, and (the threat of) psychological, physical and sexual violence. Participant 2 describes how the biggest issues faced by domestic workers are emotional abuse and harassment. Women are shouted at, called names, and harassed by adolescent boys. “There is a bit of a problem with sexual harassment, especially amongst adolescent boys, so the girls are not necessarily sexually abused, but they’re in fear of that abuse”. As a result of local customs, food and sleep deprivation is also common. Participant 4 explains:

“It’s quite common for the girls to have to take care of a family and not be allowed to go to bed until the last member of the family has gone to bed, and then...be up before the first. They have to get up before mosque, so they could have somebody in the family who stays up to 2, 3, 4 in the morning, and [are still] supposed to have organized breakfast before mosque. [It’s] the same with the food, sometimes they’re not allowed to eat until the last person has eaten”.

Domestic workers have few avenues for recourse in instances of disagreement with their employer or in cases of abuse. It is therefore not uncommon for domestic workers to abscond from their employer. A domestic worker who has absconded for seven consecutive days has committed a criminal offence according to UAE labour

law.²⁹ Regardless of their reasons for leaving their employer, when a domestic worker flees, they “virtually overnight...become undocumented and subject to heavy fines, arrest, and deportation. Avenues for recourse or assistance—in the case of abuse or the withholding of wages, for example—are limited” (Mahdavi, 2011, p.146). Police frequently side with the worker’s employer-sponsor and will often return a worker to the home of their employer (Mahdavi, 2011).

Makeshift shelters have been established to house domestic workers who abscond. Participants interviewed for this study describe how women who arrive at these shelters often do not have their passport or visa, and few if any personal possessions. Many have not been paid in months, and can therefore not afford a plane ticket home. Most women flee due to lack of payment, however, as participant 7 states some have been “pushed out of windows, burned, starved and beaten by their employers”. While most women abscond due to abuses by their employer, some abscond due to loneliness and homesickness. Participant 4 explains:

“...they have no idea what to expect and you can imagine most of them have kids as well, of course they’re going to miss their kids...you might get really homesick and run away, but you know people don’t look very kindly on that when they’ve paid this much money to get you out here, we can see it from both sides, but not a lot of people do”.

Participants describe public apathy as contributing to the condition of precarious migrant workers. Many see the current treatment of these workers as an intrinsic part of the local culture. Participants who work with absconded domestic workers note that the women in the shelters worked predominantly for Emirati and Arab families. Participants argue that the sentiment that these workers fare better in the UAE than in their home countries prevents broader reforms:

“Look where these people have come from, and understand exactly how their lives have improved by coming here. It’s an interesting and

²⁹ Article 120 of UAE labour law states that an employee’s work visa will be cancelled if they are absent from work for more than 20 non-successive days in a single year, or for more than seven successive days. Workers who abscond are reported by their employers to the Ministry of Labour, who then shares information with the Ministry of Immigration and regional police. However, there are widespread reports of employees filing false absconding cases (Al Jandaly, Gulf News, 2013).

for some, convincing line of arguing...and there's some truth in it" (Participant 3).

"[E]verybody that's here whether it's the boy who sweeps the street or the man who runs the banks...they are better off here, than they were in the place from which they've come...even the guy on the street whose earning 400 dirhams a month, he's better off than he would have been if he'd stayed at home, and that's the problem" (Participant 4).

"As long as Emiratis and the powers that be consider abuse of their fellows to be just a normal part of the fabric of UAE life, as long as they remain blind to the need to treat workers as fellow human beings, then few services, and little justice, will be afforded to migrant workers" (Participant 7).

6.3. State responses to migrant worker precarity

The government of the UAE denies a relationship between a lack of labour protections and human trafficking. While the UAE has taken a strong stance against human trafficking, its efforts are largely focused on preventing sex trafficking, and not on reforming policies and legislation that create vulnerabilities for all migrant workers. This section describes the UAE's anti-trafficking efforts and their impact for precarious migrant workers, and also describes government initiatives to prevent labour exploitation among migrants.

While the UAE has taken few steps to reform labour policy and legislation it has taken a strong stance against human trafficking. In 2006, the Government enacted UAE Federal Law 51 on Combatting Human Trafficking Crimes. The law "calls for strong punitive measures, including maximum penalties of life imprisonment and covers all forms of human trafficking – not just overt enslavement, but also sexual exploitation, child labour and commerce in human organs" (UAE Ministry of Foreign Affairs, n.d.). In 2013 the UAE Federal National Council (FNC) approved amendments to Federal Law 51 with the purpose of ensuring maximum protection for victims in line with international conventions, including changing the definition of trafficking and increasing penalties for traffickers, and those who fail to report knowledge of these crimes (Abu Dhabi Week, 2013). The UAE has adopted a four-pillar approach to fighting human trafficking—

legislation, enforcement, victim support, and bilateral agreements and international cooperation. This approach reflects the principles adopted by the United Nations, the so-called “Five Ps” of Prevention, Prosecution, Punishment, Protection and Promotion (of international co-operation) (UAE Ministry of Foreign Affairs, 2013). In 2007 as a public statement of the UAE’s commitment to anti-trafficking, His Highness General Sheikh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi donated US\$15 million to support the launch of The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) (UAE Ministry of Foreign Affairs, 2013b).

The government has created a network of support services to help trafficking victims.³⁰ The Dubai Foundation for Women and Children established in 2007 can accommodate up to 250 people and includes a school that can accommodate up to 300 people. Three Ewa’a shelters also provide a variety of services to human trafficking victims, including psychological and medical care, and support during criminal trials. The first facility opened in Abu Dhabi in 2008 and accommodates up to 60 victims. Two additional shelters opened in 2011 in the emirates of Sharjah and Ras Al Khaimah and can accommodate 70 victims. In 2012 twenty-four women and children received Dh100,000 worth of support from Ewa’a, including medical and psychological treatment, shelter, legal assistance, vocational training and airline tickets home (Dajani, The National, 2013). The UAE frequently launches new initiatives to support victims of trafficking. For example, in 2013 a resolution was issued for the establishment of a centre for adult male victims of human trafficking and sexual abuse (Al Khan, The National, 2013; UAE Ministry of Foreign Affairs, 2013c).³¹ The NCCHT is also studying a mechanism of laws and bylaws to facilitate the licensing of more shelters.

Study participants who work with absconded domestic workers describe having no interaction with state-sponsored shelters for victims of trafficking. One participant

³⁰ Many of these programs are overseen by the National Committee to Combat Human Trafficking (NCCHT), a coordinating agency created in 2007. This committee includes representatives from federal ministries, as well as public prosecutors, law enforcement officers, and representatives from federally-funded shelters for victims of trafficking.

³¹ Sara Shuhail, Director of Ewa’a, states that while they have not received cases of male victims, the creation of a shelter for male trafficking victims will hopefully encourage male victims to come forward (Al Khan, The National, 2013).

expresses that they do not believe that exploited domestic workers are accessing government-sponsored services for trafficking victims. They state that while the local Ewa'a shelter houses 12-13 women, the makeshift shelter with which they are affiliated has housed up to 200 women. Participant 2 states:

"It's not quite clear which women are defined as having been trafficked and absconding maids definitely wouldn't go there because they will just be dragged back by the police to their former employer. That's not somewhere where they can run".

Participants explain that domestic workers who have absconded do not have access to government-sponsored shelters, and will likely be deported regardless of the cause of their absconding. This raises questions as to who is accessing government-sponsored shelters. The shelters are criticized for their narrow mandates. The Dubai Foundation for Women and Children, for example, will only admit women who are victims of sex trafficking and who have been referred to the shelter by the police (Mahdavi, 2011). An official at the shelter explained that they focus on service provision for women in the sex industry because the organization is modeled on groups in the U.S, and on teachings from a group that visited from the University of Texas (Mahdavi, 2011).

The UAE's anti-trafficking efforts are criticized for being shaped by international politics and not by evidence-based approaches. Mahdavi (2011) argues that the UAE's current responses to human trafficking have been strongly informed by international discourses and policies originating primarily from the United States (Mahdavi, 2011). While the *kafala* system, is "the largest challenge facing migrant workers in the UAE... with the [Trafficking in Persons Report] Tier 3 ranking of 2005...attention was redirected from *kafala* toward the issue of policing sex work" (Mahdavi, 2011, p.26). Over the years the TIP report has recommended that the UAE tighten its borders and increase police. The TIP however does not "mention any existence of or merit to be found in civil society-centred approaches" (Mahdavi, 2011, p.164). In response the UAE rushed to pass anti-trafficking legislation, and "[take] control of the campaign against human trafficking...while ignoring or co-opting the actions of informal groups that had been organizing around these issues and assimilating them with a national plan of action" (Mahdavi, 2011, p.164).

Research strongly demonstrates that precarious migrant workers are vulnerable to labour exploitation and trafficking, yet the UAE government denies the link between a lack of labour rights and human trafficking:

The UAE has introduced several changes to its labour policies to protect the expatriate workforce, which is having a positive impact. It must be stressed, however, that the UAE – with expatriates making up about 85 per cent of its population – believes that labour issues should not be linked to human trafficking, and should be treated separately (NCCHT, 2012, p.21).

While the *kafala* system is strongly criticized for the imbalanced relationship it creates between employer and employee, the UAE government has not indicated that it will introduce reforms to the *kafala* system. Rather, UAE government officials defend the system and liken it to other labour migration programs. Dr. Al Ghafli, member of the NCCHT states:

“[The employer] must give them accommodation, health insurance, and if they die they must be sent to their country...Kafala is even in America. If you want to work in America you would need a work permit – this is the kafala system. The name is different, but it links worker to work” (Salem, The National, 2013a).

International studies that identify the *kafala* system as a cause of exploitation in the UAE are also strongly contested by government officials. In response to the findings of the ILO (2013) report, *Tricked and Trapped: Human Trafficking in the Middle East*, Dr. Abdul Rahim Al Awadi, Assistant Foreign Minister for Legal Affairs argues that the report “did not rely on clear scientific method, it relied on talk from the street” (Salem, The National, 2013c). Dr. Saeed Al Ghafli, of the NCCHT argues that the findings are merely anecdotal as researchers only interviewed 65 key witnesses and 61 migrant workers (Salem, The National, 2013a).

While the government refuses to institute broader reforms of the *kafala* system, it has taken some steps to improve labour rights for migrant workers. For example, in 2009, the Ministry of Labour introduced an electronic wage protection system that allows UAE-based companies to pay employees electronically, proving an alternative to cash payments. The initiative also allows workers to file grievances confidentially online in 12 languages. The government quotes that over 1,500 complaints were registered against

368 companies in 2011 (NCCHT, 2012). The Ministry of Labour has also launched awareness programs through campaigns, brochures and films translated into 12 languages with the objective of informing migrants about their rights at work. In an effort to limit the number of undocumented workers in the UAE, the government offers periods of amnesty during which migrants can regulate their work permits or leave the country without penalty (Mahdavi, 2011). For example, irregular migrants were given a two-month amnesty from December 2012 to February 2013. A reported 60,000 individuals benefitted from the amnesty (Khaleej Times, 2013).

Despite the implementation of these programs, critics argue that there has been virtually no improvement for workers in the past decade (Arsenault, Al Jazeera, 2013; Mahdavi, 2011). While these measures may help workers understand their rights, they do not address the barriers they face in asserting them. The system remains complaint-driven, and migrant workers experience barriers that prevent them from raising complaints. One Ministry official was quoted in the Gulf News as saying: “[W]e only recognize [abuses] when there’s a complaint, but there’s rarely a complaint. Workers are too scared or they’ve paid money for their visa and they have to pay that back.” (Keane & McGeehan, 2008, p.87).

The UAE government has not indicated interest in reforming labour and migration policies and legislation that make migrant workers vulnerable to exploitation, and current government programs designed to protect workers are inadequate. The UAE has introduced significant measures to address the needs of trafficking victims, but continues to deny the link between a lack of labour protections and human trafficking. Furthermore, there remain significant barriers that prevent migrants from accessing government-sponsored services. These barriers include: a lack of clarity around who constitutes a human trafficking victim; a need for victims to be identified by, and cooperate with, police; and a lack of services for men.

6.4. Civil society responses to migrant worker precarity

In the UAE, civil society organizations deliver a variety of services to migrant workers. Religious groups, registered charities, and informal associations provide

support services to workers whose needs would otherwise go unmet. This section highlights overarching trends that shape civil society responses to precarious migrant workers.

Civil society organizations provide a variety of supports to precarious migrant workers. Supports can include the delivery of meals to workers living in labour camps, the collection and distribution of small personal items including toiletries and clothing, the housing and support of absconded domestic workers, advocacy and fundraising efforts to help return a worker to their home country, and social events to build and strengthen community. These initiatives are community-led and often initiated without the explicit consent of UAE government officials. As a result many groups operate “in the grey” and can only access workers at the sole discretion of their employers.

Service providers work hard to develop strong relationships with employers so that they may access and provide services to migrant workers. Workers engaged in low-wage, low-skilled work are typically socially and geographically isolated from the greater community, and live in labour camps outside of major cities. Even those living in the city face extreme isolation. Participants describe striving to remain impartial and non-judgmental in an effort to develop strong relationships with employers. They are cautious about publically expressing opinions about the quality of facilities or services.

“[We’re] not here to pass judgment on what anyone is doing, [we’re] not even here to change the status quo, [we’re] here to find out what a marginalized population needs and do it” (Participant 5).

“You have to really approach these things with a very positive spin, we’re helping the workers, we’re thanking them for their hard work” (Participant 2).

Participants describe not minding how companies justify the programs, as long as they can access and provide supports to the workers. Some companies frame these programs as corporate social responsibility initiatives; others simply recognize the positive benefits these programs bring to their workers. Participants describe how relationships can be slow to develop, and easily compromised. For example, Participant 2 describes an instance where a relationship between a company and volunteer group suffered when volunteers indiscreetly voiced criticisms of the company within earshot of

staff. In addition, the UAE can be a transient place, with company staff and service providers coming and going. Due to the informal and ad hoc nature of some groups, it can be challenging to coordinate services with employers and with other volunteer groups. For example, within one shelter, different community groups do different work with limited coordination. While there is a move towards greater collaboration amongst groups, it can be difficult to achieve.

Migrant workers depend on the crucial services these informal groups provide and yet these efforts remain largely unrecognized by local governments. Informal associations cannot legally operate or fundraise in the UAE without obtaining official charity status, which is challenging to achieve. The presence of informal associations therefore “both contradicts and challenges the Emirati law that prohibits the creation of [labour] unions and official NGOs (according to Law 155 and 160 of [the UAE Labour Law])” (Mahdavi, 2011, p.152). However, the UAE government is not unaware of these informal groups. Although the government does not publically acknowledge these groups, it relies strongly on them to provide much needed services to precarious migrants. For example, participants who work with absconded domestic workers describe meeting police officers in the shelters where they volunteer:

“I’ve been in the shelter while the police have been there. The Emirati government is aware that this is happening, they probably even think that it’s a good thing that there is a makeshift shelter [for absconded domestics], you just can’t openly advertise that” (Participant 4).

Service providers strive to remain on good terms with local authorities. Many participants describe being relatively uncritical of the UAE government’s labour migration policies. Many recognize that the UAE is experiencing growing pains in response to a rapid period of growth. Most participants are not interested in challenging the status quo, and focus on providing social services to persons in need. They recognize that by respecting UAE laws and customs, they will be able to continue supporting migrant workers.

“The project is only viable because we have mutual respect...of one, what the [shelter] is doing and the services they’re providing to the girls, and two, the UAE itself, we may not agree with what goes on, and the way in which the UAE handles domestic workers...whether they’re legal or illegal, but we really don’t make that judgment public,

that's just a personal thing, it's not something that we discuss at all" (Participant 4).

"...you are not allowed to help [absconded domestics] and let them stay in your house because it's illegal, so as much as we want to help, we cannot go beyond that, otherwise we will also be put into trouble and we cannot extend more help, so we forward them to our consulates and embassies here" (Participant 6).

This is consistent with Mahdavi's research that shows that groups "with the most promising, most developed networks of action and influence were those that remained on good terms with the state...[and worked] within the parameters of state power" (Mahdavi, 2011, p.154). Informal groups that remain on good terms with the government have in some cases become involved in changing state regulations that are harmful towards migrant workers, such as the creation of a law prohibiting construction labourers from working between 12:30 PM and 3:00 PM during the summer months (Mahdavi, 2011).³² Yet given their precarious status, informal groups cannot "raise, legal, legitimate [voice] to hold the government...accountable for their actions" without risking sanctions (Mahdavi, 2011, p.169).

Informal volunteer groups operate without authorization from the state, and therefore have limited opportunities to fundraise or operate formally (Mahdavi, 2011). This "complicates fundraising efforts from both the campaigning side and the donating side" (Mahdavi, 2011, p.179). Participants describe having to take precautions when fundraising, since they are not legally permitted to do so. "We can't go out very loud and very publically because what we're doing is illegal, we could get in trouble, we could be asked to leave, we could be seen as intervening with the UAE law" (Participant 4). Donors may also prefer to donate to a licensed charity, and not risk "the potential legal ramifications of being linked to an organization not recognized as official" (Mahdavi, 2011, p.179).

³² In 2005, Abu Dhabi imposed a work ban during the hottest hours of the day in July and August, originally from 12:30 to 4:30 pm, however, after industry lobbying, the break was reduced to 12:30 to 3:00 pm (HRW, 2009).

Some representatives of informal groups describe initiating small fundraising efforts, while others describe operating “in the grey”, by only accepting non-monetary donations.³³ Some participants describe hosting informal fundraising events. The money collected is used to support programming, such as to purchase craft supplies, or to help pay for a worker’s tickets home. Informal groups also receive donations in the form of art supplies, toiletries, and clothing. Some can rely on religious groups for donations. Participant 4 states: “It’s a balance between keeping to ourselves, but being public as well because one we need the volunteers and two we need the donations”.

Given the associated risks, informal groups can experience challenges in soliciting support for their efforts:

“The greatest challenge for an organization like ours in the UAE is overcoming fear of reprisals. I had many friends who were simply afraid to get involved in any kind of volunteer effort that seemed to imply that the government was not doing something well, that something needed fixing. These women were even sometimes stopped by their husbands who feared for their jobs” (Participant 7).

“We’re in a place where people think talking about this is a criticism of the government, that they aren’t doing enough, a criticism of these companies, that they aren’t doing enough” (Participant 5).

“I’m sure I’m not the UAE government’s priority by a long shot but if you talk to some people they really do think that, they think that they’re sitting out front taking down the number plates of your cars, and whatever, no really, I think they’ve got bigger things to worry about” (Participant 2).

Some UAE residents go further and refuse to support precarious migrant workers because they do not want to take on what they believe are the responsibilities of employers. Participant 5 adds, “I don’t know how many friends won’t help because they don’t want to support the companies. They believe that if we provide these services, the companies won’t. The companies aren’t legally entitled to do so, so they won’t”.

³³ UAE law states that permission is required to collect both monetary and non-monetary goods (The National, 2010).

In contrast, participants representing religious organizations and registered charities describe operating freely without fears of reprisals. Religious institutions including churches and mosques and organizations with charitable status can provide supports to migrant workers and fundraise without scrutiny from the government. Participant 1 represents an official charity with religious affiliation that is sanctioned to fundraise through events and corporate sponsorship. The organization fundraises throughout the year but particularly during religious holidays such as Ramadan, Christmas, and Iranian New Year. Religious institutions are also better equipped to solicit help from the community. Participant 3 represents a religious organization with a ready-made network of worshippers that represent multiple languages and traditions. Community members tend to feel more comfortable donating to registered charities or religious groups.

While charitable status is desirable, it is difficult to achieve. For example, in 2010, only seven local charities had authorization from the Dubai government to collect donations (The National, 2010). Setting up a charity in the UAE is lengthy and complicated, and applications submitted to the UAE Ministry of Social Affairs are much more likely to be approved if submitted by a UAE national. A powerful political advocate is a means of achieving charity status, as Participant 3 describes, “what you really need above everything else is a very powerful Emirati who is known and respected by the authorities; you get one of them, and you can accomplish a great deal”. Another participant adds, “One needs the protection of an established institution, which presents its activities and services extremely diplomatically. One must never look like one is pointing the finger”. The UAE government does not encourage private enterprise in the area of human rights and prefers to lead social initiatives. Participants representing religious institutions however can successfully navigate this red tape and are exempt from many restraints.

The UAE government’s approach severely limits efforts to improve supports for migrants in need. In the UAE, there is a reliance on private philanthropy to address the needs of precarious migrant workers. However, private donors support the causes of their choice, and not necessarily the causes with the greatest need. In addition, private charity cannot “match the scope and scale of state-sponsored programming” (Shields,

2014, p.274). For example, while substantive donations are raised for migrant labourers during religious holidays such as Ramadan, this generosity is not matched during other times of the year. Furthermore a reliance on charity does not address the structural factors that create inequalities for migrant workers.

Chapter 7. Contrasting Canada and the UAE

Canada and the UAE are two countries that represent different social, political, and economic contexts. As this study demonstrates, despite stark differences both states share two commonalities that inform their treatment of precarious migrant workers: (1) government-sponsored programs designed to meet temporary labour demands that place migrants in low-skilled, low-paid work, with little or no opportunity for settlement, and (2) the identification of curbing human trafficking as a pressing policy priority.

Historically, Canada and the UAE have had different approaches to immigration and settlement. Canada has a history of “a national culture developed by waves of consecutive immigration and an economy that depends greatly on continued immigration policy” (Piché et al., 2006, p.2). However recent policy changes in Canada indicate a shift towards bringing an increasing number of low-skilled migrant workers deemed illegible for permanent status. Comparatively, since the oil boom in the 1970s, the UAE has implemented obstacles to citizenship and residence to prevent the settlement of migrants, and therefore protect the identity and socio-economic status of the Emirati. Both Canada and the UAE’s temporary labour migration programs overwhelmingly bring in migrants to work in low-skilled, low-paid positions.

While the *kafala* system of labour governance is unique to GCC states, it does bear some similarities to the low-skill streams of the TFWP in Canada. Both systems construct vulnerabilities for migrant workers engaged in low-wage, low-skilled work in different stages of the labour migration process. First, during the recruitment phase, workers are vulnerable to extortion and may pay extortionate fees to recruiters. Additional vulnerabilities are present following the recruitment stage. Second, workers in both countries are tied to a single employer for their job and living accommodation. As a result, a worker’s authorization to work and remain in the country is dependent on their

relationship with their employer. Third, a worker's access to social, legal and health supports is contingent on their relationship with their employer. Fourth, workers either cannot organize, or experience barriers to organizing. Fifth, workers experience physical and social isolation and barriers to accessing social and legal supports.

While both programs are different, they can produce similar outcomes for migrant workers. In both countries, migrant workers engaged in low-wage, low-skilled work experience intersecting precarious immigration and employment status that make them vulnerable to exploitation. However, neither country provides sufficient supports to address these vulnerabilities. Barriers to access in both countries include difficulties in accessing legal, social, health and housing supports and services. Social service providers in the UAE experience greater legal barriers than service providers in Canada. In Canada service providers can obtain charity or nonprofit status relatively easily. In the UAE charity status is difficult to obtain without the support of a powerful local Emirati. Thus service providers remain informal and operate without legal authorization. Because labour organization is illegal in the UAE, social service organization that operate without legal authorization experience barriers to fundraising and the fear of sanctions. As in both countries religious organizations can freely provide services.

While both countries have taken steps to combat human trafficking, their approaches do not reflect the lived experiences of vulnerable and trafficked migrants. Both countries have emphasized trafficking for sexual purposes in their responses to human trafficking. Whereas Canada has placed some attention on trafficking within the TFWP, the UAE denies a connection between human trafficking among migrant workers and a lack of labour protections.

There are also structural differences in how services and programs are delivered by government in Canada and the UAE. In Canada, social services are primarily delivered through the nonprofit sector. The Canadian government supports the nonprofit sector through the allocation of funding. However not all nonprofits are equally funded by government. Since nonprofits provide services for different communities, invariably some communities experience a lack of adequate funding. Study participants identify that funding for organizations that support migrant workers is not a government priority. In

contrast, the UAE directly funds and operates social services for trafficking victims. However, there is ambiguity concerning who can access these services. For example, absconded domestic workers face barriers to accessing government-sponsored shelters. Despite these structural differences migrant workers in both countries have difficulty accessing services tailored for their needs.

Despite the precarity of migrant workers, which in some cases amounts to exploitation, public discourse in both countries emphasizes the positive impact of migrant labour on domestic unemployment rates. Arguably, government prioritizes domestic economic needs over human rights considerations for migrant workers.

Chapter 8. Recommendations

This study explores recommendations that can reduce the vulnerabilities of migrant workers engaged in low-wage, low-skilled work in both Canada and the UAE, and increase their access to supports when experiencing exploitation.

The scope of this issue is large and recommendations can fall under different jurisdictions: international, domestic, and regional, such as by emirate or province. A comprehensive survey of all possible areas for recommendations is therefore beyond the scope of this study. This study focuses on recommendations directed at the governments of Canada and the UAE, given that Canada's temporary foreign worker program and the UAE's labour migration policies are administered federally.

This study identified through a literature review and participant interviews many recommendations that have the potential to improve conditions for migrant workers. Due to time constraints and the complexity of these recommendations it was not possible to assess in greater detail more long-term and comprehensive recommendations. Recommendations that fall outside of the scope of this analysis and that merit further study are outlined in chapter 9.

The recommendations that are evaluated in the next sections are short-term recommendations that can be implemented without dismantling current labour migration programs for low-wage, low-skilled workers in Canada and the UAE. These recommendations have also been selected because they can be implemented in the short-term with a more immediate effect for migrant workers. These recommendations are evaluated with consideration for scope of impact for migrant workers, required resources, political feasibility, and public acceptance. Public acceptance is excluded from analysis of recommendations to the UAE government.

8.1. Recommendations to Government of Canada

8.1.1. Increase workers' knowledge of their rights

Provide accessible and language appropriate materials, and educate and inform migrant workers of their rights under the Criminal Code, IRPA, and provincial and territorial labour laws.

The Government of Canada can educate and inform migrant workers of their rights under the Criminal Code, IRPA, and provincial and territorial labour laws. Information should be readily available in multiple languages, and designed for local migrant labour demographics. Initiatives should consider the challenges that migrant workers face in accessing resources. They need to be available in the languages spoken and understood by workers, and need to be accessible at times and in mediums convenient to workers. The government should collaborate with service providers to promote their services to migrant workers both on their arrival and during their time in Canada.

The experiences and insights of civil society and service providers are essential to tailoring government education and information programs and initiatives. Initiatives should begin upon a worker's arrival in Canada, and continue throughout the duration of their work contract.

As Participant 15 recommends:

"I think that when we give someone a foreign worker permit and say you've passed all the immigration hoops, you're welcome to come to Canada and work, that we also need to sit them down for a day, and make them go through mandatory training and explain to them the rights and responsibilities of the employer and the employee, what is acceptable and what is not, and give them human trafficking scenarios".

Impact for migrant workers

This recommendation would be highly effective at increasing migrant workers' knowledge of their rights. Employers may be benefited by the increased role of

government in the public education of migrant workers' rights. Employers may lack the resources and capacity to adequately and accurately inform workers of their rights. Employers are often not experts in rights nor law. The government, including federal and provincial ministries of justice and employment have the mandate, responsibility, institutional knowledge and capacity to undertake these initiatives in a manner that is uniform, adequate and most of all accurate.

Resources

Resource costs for accessible and language appropriate materials are likely low to medium. Currently, materials related to the legal rights of migrant workers are already provided by the government through its website. However, these materials are not region or industry specific, and are available in only French and English. Additional resource costs will be required to make the materials appropriate for different regions and industries, and for multiple languages. The number of regions and industries could be limited to the most common 3D industries, including agriculture, food and beverage, and caregiving. The number of languages may be greater, however, it is likely that existing language translation services of the government may be used. For these reasons, resource costs are likely low to medium. However, it may also be important for funding to be provided for additional government support to assist workers in understanding the content of these materials; although the materials may be in the appropriate language and for the particular industry, it is possible that workers may have additional difficulties understanding the materials. If additional support is required, the resource cost is likely medium to medium high because it will entail funding for training programs and the hiring of facilitators/support workers.

Much of these resource costs for appropriate language and industry specific materials, and for facilitators/support workers are offset by existing resources in the nonprofit sector. If the government capitalizes on these existing resources, many of which have tailored materials for specific industries and languages, and which may also have experience supporting workers in understanding the existing materials, then the resource costs are likely low to medium.

Overall, therefore, the resource costs are likely low to medium.

Political feasibility

All levels of government can welcome this recommendation, as it would support Canada's Human Trafficking Action Plan. However, there is the possibility that the government may not promote migrant workers' rights, as indicated by the reluctance of the Government of Canada to ratify the Migrant Workers Convention; this however, would likely provide bad optics for government, and therefore, support for such initiatives is likely medium to highly politically feasible. Among other recommendations, informing workers of their rights is the most politically feasible because it fits within the bailiwick of government.

The Canadian public is likely to oppose initiatives that are costly to implement. Given that the anticipated cost will be low, there is unlikely to be strong public opposition, and this may also make the recommendation politically feasible for government.

Civil society and service providers are already providing services and supports to migrant workers and would welcome the support of Government in educating workers of their rights.

Overall, the recommendation is medium to highly politically feasible.

Public acceptance

Given that the resource costs are likely to be low to medium, the public is likely to support the recommendation. The concept of legal rights in Canada is highly valued, and the public is likely to support initiatives that advance legal rights.

8.1.2. Reform contract financing models to increase governmental support of service providers

Ensure that migrant workers have access to legal and social services by adequately and sustainably funding organizations that provide legal and social services

This recommendation would ensure that migrant workers have consistent access to legal and social services throughout their stay in Canada. Since the 1980s the Canadian government has increasingly relied on the nonprofit sector for the delivery of programs. Nonprofit organizations require sustainable and predictable funding to function effectively and to provide legal and social services to migrant workers.

As Participant 14 states:

“The bottom line is [we need] more funding...we’ve developed a whole lot of best practices over the years, that have been very well thought-out...but unfortunately lots of ideas but not lots of money to implement them”.

Government should use “Evergreen” contracts to ensure sustainable funding arrangements. Evergreen contracts are government-funded service delivery contracts with community-based nonprofit organizations that are often: (1) performance based; (2) built on the assumption that if performance indicators are met, funding will continue for the long-term; (3) constructed to allow for flexibility in terms of how contracted funds are spent; (4) constructed to ensure that advance notice (usually six months) is provided if they are to be cancelled due to poor performance or changing needs (Shields, 2014, p.272).

Impact for migrant workers

Evergreen contracts present several advantages for government, nonprofit providers and the communities they serve: (1) nonprofit organizations can enhance service-delivery and plan for the long-term. They provide stability and predictability that allow organizations to hire and retain qualified staff and build competencies; (2) relationships between service providers and service users are strengthened. Service use and effectiveness of services improves under these circumstances, and relationships between nonprofit workers and the communities they serve are enhanced. As services become increasingly recognized within the community, community members are likely to increase their involvement and engage with organizations as volunteers; (3) and the government benefits from the support of the development of sustainable hiring and service delivery practices in the nonprofit sector. Evergreen contracts epitomize a balance between efficient government funding and nonprofit autonomy; “Evergreen

arrangements are one creative way within a contract culture in which a balance between accountability and nonprofit autonomy and stability can be better secured” (Shields, 2014, p.272).

Community based nonprofits are best positioned to provide supports given their expertise and the fact that they are not affiliated with government, Citizenship and Immigration Canada, and law enforcement.

Resources

Resource costs for evergreen contracts are likely to be medium to high. In so far as evergreen contracts and other sustainable funding models necessitate increased spending for adequate service provision, the resource costs are likely to be medium to high.

Resource costs might be offset, however, by greater efficiencies in project performance. Evergreen models are long-term, but still include performance-based resource allocation mechanisms. This incentivizes efficient resource allocation in nonprofits. Short-term funding encourages one-off projects that are often unsustainable past funding. Successive short-term funding contracts continue to allocate resources for discrete activities or pilot projects, ignoring existing, established projects that require funding. Evergreen models may reduce resource costs in the long-term, as nonprofits specialize in the services they provide, and retain workable and sustainable activities.

Overall, resource costs are likely to be medium to high. Over the long term, resource costs may be offset by increased efficiencies and thus may be more appropriately assessed as medium.

Political feasibility

The current government has emphasized restraint in funding nonprofits. Other government spending is often framed in terms of performance based resource allocation. A strong sense of fiscal restraint is apparent in current government policy. On this point, there is a strong likelihood that a performance-based funding model, such as

is present in evergreen contracts, would be politically feasible. However, the current government has pursued policies that limit the permissible activities of charities and other nonprofits, most notably restricting a charity's ability to engage in political advocacy. For this reason, there is a very low likelihood that an evergreen contract model, which emphasizes nonprofit autonomy and control, would be politically feasible. It is thus difficult to predict, overall, whether evergreen contract models, or other sustainable funding models, would be politically feasible.

Public acceptance

The general public is likely to accept this recommendation as it results in more efficient government spending and improved social services. Public acceptance is likely dependent on a critical balance between increased spending, and the perception that this increased spending results in greater efficiencies and improved services, such that the increased cost is offset. The concept of performance based resource allocation has become increasingly well-known and supported since the 1980s in Canada.

8.1.3. Repeal the residency obligation and provide residence alternatives

Repeal the residency obligation that requires live-in caregivers to live with their employer and increase seasonal agricultural workers' access to alternative residence options

It is this author's reasoned opinion that repealing the residency obligation and providing residence alternatives is one of the most fundamental recommendations for stopping worker abuse and exploitation. As canvassed earlier, when a worker resides with an employer, the employer is provided increased opportunity to exploit the employer-worker relationship.

Migrant workers that must fulfill residency requirements may experience increased difficulties with access to health services, unequal power relationships, and restricted mobility rights. Maintaining residence is often contingent on the worker's relationship with the employer; this increases the power imbalance between a worker

and his or her employer. Repealing the residency obligation and providing access to alternative residence obligations will reduce the impact of existing employer-worker power imbalances, where and when they are present.

Impact on migrant workers

This recommendation is likely to have medium-high to high impact on migrant workers. The recommendation will reduce the reliance of workers on their employer for basic needs, including shelter. The recommendation will also increase worker autonomy and freedom. It is highly likely that workers will have increased access to support services, as increased autonomy reduces the control of employers over workers. This does not assume that all employers wish to limit workers' access to support services; rather, this recommendation recognizes that inappropriate power dynamics have a significant impact on workers where they are present. This recommendation is intended to impact vulnerable migrant workers.

For agricultural workers, however, an additional difficulty is present if workers must transit to rural work areas. If agricultural workers are living in rural work areas, this barrier is significantly reduced. However, rural work areas generally have lower availability of social supports. Nevertheless, workers may benefit from increased autonomy in their residence choices and options, even if they reside in a rural work area that is not close to social services.

For these reasons, the positive impact on migrant workers is likely medium-high to high. For agricultural workers, this positive impact may be dependent on the location of the workplace and support services.

Resources

Resource costs are difficult to assess for this recommendation. Repealing the residency obligation is likely to increase costs for the worker, who would, in the best possible scenario, pay a lower rent to the employer than they would likely pay privately; however, rent abuse may exist. If the employer is required to subsidize the cost of residence alternatives for the worker, the risk of employer abuse is reduced, however

the employer still exercises some degree of discretion over the choices of the worker because of the subsidy-relationship. If government subsidizes the residence costs of workers, the resource costs are likely to be very high.

It is possible that workers may prefer co-op housing or shared housing opportunities. If so, resource costs will likely be lower, and may in fact be low.

Overall, it is difficult to assess the resource costs for this recommendation.

Political feasibility

This recommendation is likely low in terms of political feasibility. The TFWP itself, with its current residency obligations, is politically feasible because it reduces the obligations and responsibilities of the government to workers in terms of their residency needs. Increased government obligations or responsibilities for the residency needs of workers are therefore likely to be resisted.

The political feasibility of this recommendation is also likely determined by its acceptance by employers of migrant workers and the general public. This recommendation is likely to face opposition from farm owners who may fear that accommodation costs will increase or that they will have less oversight over their workers. This may cause the demand for migrant workers to decrease.

For these reasons, the recommendation is likely low in terms of political feasibility.

However, the TFWP has recently come under scrutiny for employer related abuses of the system. It may be politically feasible for government to act on the recommendation, so as to improve the optics of the TFWP and to reduce the likelihood of employer abuse of the program.

Overall, political feasibility for this recommendation is likely low.

Public acceptance

Public acceptance for this recommendation is likely low. The general public may have reservations about this recommendation as it applies to the Live-in Caregiver Program. The live-in requirement is a defining feature of the program. Public acceptance might also be low as a result of anti-immigration sentiments related to the recommendation for alternative residence options.

8.1.4. Collaborate with provinces and territories to ensure employer and recruiter accountability

Establish and enforce labour and recruitment standards through interprovincial and federal collaboration

The federal government may collaborate with provinces and territories to ensure more proactive enforcement of labour standards. The current disconnect between provincial and federal oversight creates loopholes that allow exploitation to persist. Better enforcement of labour standards will support and empower migrant workers in their assertion of their full labour rights. This recommendation would likely face opposition from provinces and territories whose budgets are already stretched. The federal government may need to contribute funds to help increase oversight of the TFWP, a federal program.

Impact on migrant workers

Direct impact on migrant workers is likely to be medium. Interprovincial collaboration may assist in bridging gaps between federal administration and provincial provision of services. Greater interprovincial and federal collaboration is likely to improve the experiences of migrant workers throughout all stages of the labour migration process. Interprovincial collaboration will result in the dissemination of best practices between provinces. Greater collaboration will therefore likely result in more consistent supports for migrant workers throughout Canada.

Resources

Resource costs are difficult to assess for this recommendation. If improved interprovincial and federal collaboration requires the creation of new programs and services, it is likely that resources costs will be medium-high. If improved interprovincial and federal collaboration means improving efficiencies of existing systems, resource costs will be low. Either type of scenario will result in cost savings over time.

Political feasibility

Political feasibility is likely to be low. Current programs in place for migrant workers vary by province and territory. Whether migrant worker issues are a priority depends on factors that include political will and the number and type of migrant workers in a province or territory. Although provinces and territories with high migrant worker populations would likely welcome additional federal support and collaboration, the federal government has not indicated a desire to work collaboratively on issues of labour migration.

Public acceptance

Public acceptance of this recommendation will likely be high if it results in improved government spending and efficiency. Public acceptance is likely dependent on a critical balance between increased spending, and the perception that this increased spending results in greater efficiencies and improved services, such that the increased cost is offset. High initial costs and a lack of political will on the part of government will limit political acceptance.

However, public acceptance may be difficult to determine because of public understandings of the role of provinces in migrant labour and immigration. Whereas the public understands that labour laws are within provincial jurisdiction, the public perceives that migrant workers and immigration are the purview of the federal government. This tension makes it difficult to determine public acceptance of interprovincial collaboration related to *migrant* labour.

8.2. Recommendations to Government of UAE

Measuring public acceptance is likely not appropriate or relevant to an analysis of recommendations to the UAE government. The local Emirati population is relatively small in relation to the non-local population. Moreover, the local Emirati population is the appropriate representative public for the governance structures present in the UAE. Non-locals are not represented in UAE governance structures. The governance structures in the UAE draw from Emirati families, but also incorporate federal and regional authority. Therefore, the public often overlaps with governance. In addition, state-controlled media makes public acceptance difficult to assess. The author also does not have enough familiarity with local Emirati media and opinions because of language differences. For these reasons, public acceptance is likely to be an inappropriate or irrelevant measure for recommendations to the UAE government.

8.2.1. Increase workers' knowledge of their rights

Provide accessible and language appropriate materials, and educate and inform migrant workers of their rights under UAE labour laws

Educate and inform migrant workers of their rights under UAE law. Information should be readily available in a language understood by the worker. Initiatives should consider the challenges that migrant workers face in accessing resources. They need to be available in the languages spoken and understood by workers, and need to be accessible at times convenient to workers. The government should continue to work in collaboration with informal groups that are developing innovative information and outreach programs.

The UAE should support innovative community-based legal education projects and materials that address the needs and concerns of migrant workers. Many precarious migrant workers cannot read UAE labour laws, which are only accessible in Arabic and English. In response, one religious organization is, for example, developing a solar powered mp3 device on which they have recorded an accessible version of the labour laws in 12 languages. At the end of each recording are the corresponding embassy's hotline, and the Ministry of Labour's hotline. In addition to the device, they are also

preparing written copies of the recordings, both in print and online. At the time of the interview, the Ministry of Labour had approved the initiative, and was seeking corporate funding to manufacture the device and distribute it. Initiatives such as this should be adopted and supported by the UAE government.

Impact for migrant workers

This recommendation would be highly effective at increasing migrant workers' knowledge of their rights. Current initiatives, such as the mp3 player project described above, have been successful and well regarded by government. Employers may be benefited by the increased role of government in the public education of migrant workers' rights. Employers may lack the resources and capacity to adequately and accurately inform workers of their rights. Employers are often not experts in rights or law. The UAE government has the mandate and capacity to undertake these initiatives in a manner that is uniform, adequate and most of all accurate.

Resources

Resource costs for accessible and language appropriate materials are likely low to medium. Currently, materials related to the legal rights of migrant workers are already provided by the religious organizations. Additional resource costs may be required to make the materials appropriate for different regions and industries, and for multiple languages. The number of regions and industries could be limited to the most common industries including construction and food and beverage. The number of languages may be greater and may pose additional resource costs. For these reasons, resource costs are likely low to medium.

However, it may also be important for funding to be provided for additional government support to assist workers in understanding the content of these materials; although the materials may be in the appropriate language and for the particular industry, it is possible that workers may have additional difficulties understanding the materials. If additional support is required, the resource cost is likely medium, to medium-high because it will entail funding for training programs and the hiring of facilitators/support workers.

Much of these resource costs for appropriate language and industry specific materials, and for facilitators/support workers are offset by existing resources among religious organizations. If the UAE government capitalizes on these existing resources, then the resource costs are likely low to medium.

Overall, therefore, the resource costs are likely low to medium.

Political feasibility

This recommendation has medium to high political feasibility. The UAE government will accept this recommendation as long as it can continue to lead efforts to improve labour conditions for workers. Informal and religious groups will need to operate at the pace determined by government officials.

8.2.2. Ensure workers have access to legal and social services

Clarify and extend access to legal and social services for migrant, trafficked and absconded workers

There are government-sponsored programs designed to support trafficked migrants. However, there is presently confusion about who qualifies for these services. Given that the UAE is expanding services for victims of trafficking, it is important that migrant workers who experience exploitation and trafficking for forced labour have access to these services. The scope of these services must be expanded and clarified, so as to be available to migrant workers who experience exploitation and trafficking for forced labour.

These services need to be available to exploited migrants, regardless of whether they have absconded to escape an abusive employer. The UAE should develop policies for legal and social services that are consistent with the UN Trafficking Protocol. Migrants who experience trafficking should receive access to social services, regardless of legal or migration status.

In line with increasing protections for workers, the charge of absconding should be revisited. The charge is used to control the movement of workers, and it creates a strong power imbalance between worker and employer.

Participant 3 states:

“[S]o often absconding is abused as a charge and it’s used as an excuse to get rid of the services of perfectly innocent people who are then criminalized by that charge. I really get angry at the abuse of that charge. The default sentence is six months imprisonment, deportation, no questions asked. And that for me, it’s a plain injustice”.

To improve access to supports, the UAE should increase training for law enforcement officials, government officials and members of the legal system. This will improve referral mechanisms, and ensure that trafficking victims are connected with service providers and advocates.

Impact on migrant workers

Clarified and extended access to legal and social services for migrant, trafficked and absconded workers will likely have a high level of impact for workers. Clarified legal and social supports will increase the likelihood that workers will access services, since many workers choose not to access services because of unfamiliarity and because they do not know that they are eligible. Expanded legal and social supports will increase the types of workers that can access services; combined with clarified services, this will increase the availability and provision of legal and support services.

This recommendation is likely to have an even higher impact for absconded workers, who often do not access legal supports or services because they will be returned to their employer, imprisoned or deported. If legal and social services are provided to absconded workers, regardless of status and without fear of reprisal, then absconded workers will be positively impacted by the recommendations to a very high degree.

The training of enforcement officials, government officials and members of the legal system will also have a very high impact on migrant workers. Migrant workers may

not access services because of the fear of reprisal or lack of understanding among government and legal agents. Increased training for government and legal agents will help agents better provide referrals and services to workers, in a manner that builds trust and further enhances services. Sensitivity training for how to spot instances of abuse will further increase the positive impact of the recommendation for migrant workers.

Resources

Resource costs are likely medium to high. In so far as the UAE government has already indicated an interest in expanding legal and social services for migrant workers, the costs will be relatively comparable to what has already been allocated. Additional resource costs are likely to exist for absconded workers, who are currently not contemplated by existing government reforms and initiatives. Including services for absconded workers will present additional, high resource costs.

Political feasibility

Political feasibility for the recommendations is difficult to assess. The UAE government may struggle to reconceptualize human trafficking as a labour issue, given that it has publically denied the connection between labour and trafficking. For this reason, political feasibility is likely low because it would require expanding the provision of human trafficking resources to situations that involve labour.

The UAE government will likely oppose the recommendation to repeal the crime for absconding, since it is written in the UAE labour laws. While the UAE has attempted to introduce new laws to improve protections for domestic workers, these protections fall short of providing workers with full labour rights. While it may be difficult to abolish the charge without fully restructuring labour migration governance, the charge could be adjusted to account for workers' experiences of abuse and exploitation.

The UAE government may however be less resistant to expanding the mandates of government shelters to include absconded workers, in an effort to broaden absconded workers' access to services in cases of abuse.

It is also worth noting that the UAE government has indicated an interest in establishing a men's shelter. This suggests that similar services for working men might be politically feasible.

Overall, although the political feasibility of the recommendation is difficult to assess, individual initiatives might range from low to medium feasibility. Although expanding human trafficking services to include labour exploitation might be less feasible, for example, expanding the mandate of government shelters to include absconded workers might be feasible.

8.2.3. Provide accurate and transparent data

Develop an accessible repository for data on migrant workers in the UAE

There is currently a lack of reliable data on the situation of migrant workers in the UAE. This prevents the government from conducting rigorous research, and from implementing evidence-based policies and programs. The Ministry of Labour should provide quantitative and qualitative data on labour disputes, work-related injuries and deaths, and government responses to these issues.

Impact on migrant workers

Direct impact on migrant workers is likely to be low. Accurate and transparent data has a low direct impact, unless it is accessed and used by service providers or government to improve services. Indirectly and in the long-term, the impact on migrant workers is likely to be very high; this is because current data collection and analysis is poor to very poor.

Resources

In so far as government and educational institutions are currently working on building better data collection and analysis mechanisms, the resource costs are likely to be medium, with many costs already having been allocated. Overall, resource costs are likely to be medium to high because developing accessible repositories for data requires

not only technical infrastructure, such as digital libraries, but also expertise in information technology, public policy, and empirical research methodologies.

Political feasibility

The UAE government is likely to support collecting this data, however it may oppose making it publicly available. This assessment is based on the observation that historically the UAE has not made raw data and information publicly accessible. UAE academic institutions, supported by the UAE government, have indicated a desire to improve data collection and analysis.

8.2.4. Take proactive measures to enforce workers' rights

Increase the number of inspectors in the private sector and empower them with a mandate to enforce labour laws

Increase the number of inspectors overseeing the private sector's treatment of migrant workers. Ensure adequate training so that they can perform their duties. In addition, meaningful and consequential penalties must exist for companies that violate workers' rights. These efforts will put an end to the present atmosphere of impunity. The UAE must take affirmative steps to prosecute the widespread violation of the law, and impose meaningful penalties on companies in violation. This would send the message that there are consequences to violating the law, and discourage violations. This recommendation is in line with more proactive approaches that the government has indicated a desire to pursue.

Impact on migrant workers

Increased numbers of inspectors with the mandate to enforce UAE labour laws will likely have a high impact on migrant workers. The inadequate enforcement of UAE labour laws is one of the fundamental barriers to the safety and security of migrant workers. Thus, increased inspectors will improve worker safety and reduce the likelihood of exploitative employer practices.

Resources

Resource costs are likely to be high. The hiring and training of inspectors is likely to require substantial resource costs. Moreover, inspectors are given the mandate to enforce the law, and if abusive and exploitative practices are consistent with current levels, then the number of criminal charges is likely to be high. High levels of criminal charges will increase the resource burden on UAE courts and other legal mechanisms. Convictions may offset the cost if a fine model is adopted; in contrast, convictions may increase resource burdens if imprisonment is adopted as a punitive mechanism.

Political feasibility

It is likely that this recommendation has high political feasibility. In the past, the Ministry of Labour has been responsive to complaints. This recommendation would require a more proactive approach. Additionally, but outside the scope of this paper, it is possible that inspector positions might provide opportunities for Emirati job growth. This is likely a desirable incidental effect, which might contribute to the political feasibility of the recommendation.

8.2.5. Combat fraudulent and problematic contract practices

Amend labour laws so that employment contracts are in both Arabic and in a language understood by the worker

Government should stipulate that contracts and instructions issued to workers from government agencies or employers be available in both Arabic and in a language understood by the worker (HRW, 2006). This will reduce the likelihood of a worker signing a fraudulent contract. While UAE law stipulates that all official government documents be written in Arabic, in a case where there are discrepancies between the Arabic contract, and the contract in the worker's language, the Arabic contract should not automatically become the default contract.

In addition, minimum labour standards should be a required component of labour contracts. Domestic and agricultural workers require contracts that make explicit

reference to all minimum standards that apply, including, minimum wage, hours of work, leave entitlements, benefits, health and safety, and right of representation (HRW, 2006).³⁴

Impact on migrant workers

It is difficult to assess the level of impact on migrant workers because no data is currently collected on how prevalent contract discrepancies are in practice, although study participants commonly noted contract discrepancies as a problem. If study participants are correct in their assessments, it is likely that rules regarding the legal interpretation of contracts will highly impact migrant workers. Moreover, if minimum labour standards are mandatorily required in contracts, this will greatly impact migrant workers, although such standards will also require consistent enforcement in order to be practically beneficial.

Resources

Resource costs are likely to be low. The recommendation will require at a minimum amendments to existing UAE contract law. The recommendation will return increased success if minimum labour standards with mechanisms for enforcement are included, although this will also increase the resource cost to medium. If labour standards and enforcement mechanisms are included, these costs may be offset if the government also pursues the recommendation to increase the number of inspectors; this is because inspectors would already be enforcing whichever labour standards are in place.

Political feasibility

³⁴ In 2012 the UAE Federal National Council passed a draft law to standardize domestic workers' contracts (that as of March 2014 has yet to be passed). While the implementation of a mandatory standard contract would protect domestic workers more than the current legal void does, it falls short of the comprehensive legal reforms needed to end the vulnerabilities of domestic workers (HRW, 2013). The standard contract would provide domestic workers with fewer protections than if current labour laws were extended to them.

It is difficult to assess the political feasibility of this recommendation. None of the study participants commented on the political feasibility of contracts or their enforcement. It is possible that employers may resist any rules of legal interpretation for contracts that might be seen as preferring the worker. For this reason, political feasibility may be low, although this is only a preliminary assessment and would likely be re-evaluated with more information on government policy on contract law and amendments.

8.2.6 Charity law and application process reformation

Reform charity laws to allow charity status for informal groups and standardize charity application process

Charity laws need to be reformed to acknowledge the informal groups that provide supports to migrants on an ongoing basis. The current existence of these informal groups challenges Law 155 and 160 of the UAE Labour Law that prohibit the creation of labour unions and unofficial NGOs.

Creating a consistent application process for informal groups to achieve charity status will allow groups to operate and fundraise without fear of sanctions. This will enhance service provision for precarious migrant workers.

Impact on migrant workers

The impact on migrant workers is likely to be medium. Reformed charity laws may increase the number of charities providing services to migrant workers. Improved charity application processes will also support this process. However, the impacts are likely to be at first indirect.

Resources

Resource costs are likely to be low. Resource costs will primarily include amendments to existing charity laws, and the creation of a standardized application process, neither of which require high levels of expenditure, and are executable within existing budgetary frameworks.

Political feasibility

Political feasibility is difficult to assess, but is likely to be low to medium. The UAE government may oppose the recommendation to standardize the charity application process, as it prefers to lead social initiatives. However, there are examples of partnerships between the UAE government and civil society, such as for religious organizations, that suggests that greater relationship building is possible.

Chapter 9. Conclusion

While countries such as Canada and the UAE identify anti-trafficking as a policy priority, increasing programs and policies that intensify systemic inequities for migrants tell a different story. Community members and scholars point to discrepancy between “imagined ideas about trafficking and actual realities of forced [labour] and migration” (Mahdavi, 2011, p.123). This raises questions about the efficacy of human trafficking legislation and policy in addressing the real needs of migrants who are vulnerable to exploitation. This contradiction is rarely addressed; reporting on issues of non-citizenship examines specific categories of precarious legal status within silos, and neglects to connect policies that institutionalize precarious status for migrants and issues of exploitation and trafficking. This in turn, prevents us from unraveling how forms of non-citizenship intersect with multiple systems of oppression involving racialization, gender, class, language, skill, and ability. Drawing out these connections can support an agenda for change, and in particular the uptake of a human rights approach to migrant rights. Neither Canada nor the UAE are taking sufficient measures to address the root causes of migrant worker precarity. If both states wish to stop the exploitation of vulnerable migrants, they must institute changes that address the factors that make migrants precarious in the first place, and work with community groups that have the expertise and networks to help precarious status migrants.

9.1. Limitations

This study offers insights into how migrant worker precarity is constructed and responded to in Canada and the UAE. However it does not assess all possible recommendations for improving conditions for migrant workers. The recommendations outlined in this study focus on government responses, and are not comprehensive, in that they do not cover every possible scenario, area, or response. Future research may approach recommendations comprehensively, examining best practices and

recommendations in areas such as health, justice, education, labour, migration, industry, and by demographics such as region, gender, age, marital status, ethnicity, country of origin, and language. This section highlights recommendations that were raised in the literature review and in participant interviews, but that were excluded from the analysis.

9.2. Areas for future consideration in Canada

- Establishing an independent commission to investigate and publicly report on the situation of migrant workers in the country
- Implementing sectorial work visas to enable temporary foreign workers to change employers freely within the same labour sector
- Amending the Criminal Code human trafficking provision so that it more appropriately captures all types of labour exploitation
- Ending the Temporary Foreign Worker Program and creating paths to permanent residency for all migrant workers regardless of country of origin, sector, or designated skill-level
- Signing the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and amending Canadian laws and labour migration programs to reflect the Convention's protections

9.3. Areas for future consideration in the UAE

- Improving labour migration governance through the reform of the *kafala* system
- Reforming labour laws to include protections for domestic workers, agricultural workers and seafarers
- Ratifying ILO Conventions No. 87 and No. 98 on freedom of association and collective bargaining, and amending UAE labour law to reflect the Conventions' protections
- Ratifying the International Labour Organization's Convention No. 155 on occupational safety and health and amending UAE labour law to reflect the Convention's protections
- Signing the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and amending UAE Labour Law to reflect the Convention's protections

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Appendix A.

Sample Interview Schedule: Support Service Providers

Sample Discussion Topic	Sample Questions
Experience providing support services to precarious migrant workers	<ul style="list-style-type: none">• Please describe your involvement providing support services to migrant workers.• Please describe any organizations with which you have been affiliated.
Services provided to precarious migrant workers	<ul style="list-style-type: none">• What services does your organization provide to migrant workers?
Factors that shape access to precarious migrant workers	<ul style="list-style-type: none">• How do your organization reach the clients it serves?
Organizational resources	<ul style="list-style-type: none">• Can you speak to how your organization funds or sustains the programs it provides?
Service provision	<ul style="list-style-type: none">• What factors inform the services provided by your organization?• Are there any barriers to service provision?• More broadly, can you think of factors that inform the services available to precarious migrant workers in Canada?
Future programs and services	<ul style="list-style-type: none">• Are there any programs and services in development at your organization?
Recommendations	<ul style="list-style-type: none">• What would you recommend to improve service provision for precarious migrant workers at your organization?• What would you recommend to improve service provision for precarious migrant workers in Canada?

Appendix B.

Details for Interviews with Support Service Providers

Organizations and individuals that provide supports to migrant workers are identified through online searches and conversations with service providers. Participants whose contact information is publically available are contacted directly by email or phone. Other participants are referred to the author through participating service providers. A semi-structured interview format is used to gather information from participants, while providing room for participants to guide the discussion and speak to their personal experiences. Participants were prompted with sample discussion topics and sample questions indicated in Appendix A. Findings from the literature review inform key topic areas explored in semi-structured interviews with participants.

Interviews are conducted in person and by telephone, with one interview completed by email. Opdenakker (2006) describes advantages and disadvantages to the three interview types, which can be attributed to their differences in the dimensions *synchronous communication in time and/or space* and *asynchronous communication in time and/or space*.

In person interviews are characterized by synchronous communication of time and place (Opdenakker, 2006). In person interviews allow for rich data collection as the person conducting the interview can fully appreciate the social cues of the person they are interviewing. In person interviews with participants lasted between 40 minutes and 3 hours, and were conducted at a participant's work, home, or at a restaurant.

Telephone interviews are characterized by synchronous communication of time and asynchronous communication of place. Telephone interviews are useful in instances when in-person interviews are not possible. Telephone interviews are advantageous as they allow for the participation of individuals who are unavailable for in-person interviews or geographically inaccessible. However social cues are reduced as the interviewer cannot see the interviewee (Opdenakker, 2006). Telephone interviews with participants lasted between 45 minutes to an hour.

Email interviews are characterized by asynchronous communication of time and place. An email interview is used in an instance where an in-person or telephone interview is not possible. Email interviews are advantageous as they allow interviewees to respond to questions at their own convenience. However one disadvantage is that there is a complete lack of social clues. Interview questions were sent to one participant who could not meet or speak over the phone. This participant responded to questions at their convenience.

Following the completion of participant interviews, all audio files are transcribed. Notes and transcripts are entered into NVivo 10 research software for the purpose of analyzing research themes. Notes and transcripts are analyzed for overarching themes.

Appendix C.

Example of Study Consent Form

Participant Consent Form (In-person interview)

Interview Information

The objective of this study is to explore how international and domestic policy and legislation inform service provision for exploited and trafficked persons in Canada and the United Arab Emirates (UAE). Specifically, this study explores support services available to migrants who experience labour exploitation or trafficking in Canada and the UAE.

The purpose of this interview is to learn about your experiences in the area of service provision for migrant workers. The information from this interview will be used to inform my major research project tentatively titled, “A Comparative Analysis of Support Services for Exploited and Trafficked Migrant Workers in Canada and the United Arab Emirates”. The interview will take approximately 45-60 minutes to complete.

Confidentiality and Risk

If you choose to participate in this study, this consent form will need to be completed and returned to me in person. With your permission, I will audio record the interview. The interview will be transcribed, and the audio files will be destroyed following transcription. The interview notes, recordings and transcripts will be for my private use only. I will be incorporating your ideas into my research however; your answers are confidential and any identifying details (such as your name and occupation etc.) will only be used in the report if you give your written consent below.

After the primary questions, you may be contacted for some follow-up details within 6 months. After this point there will be no further contact for this project. If you wish, I will send you an electronic copy of my research paper once it is complete and approved. You can indicate below if you would like a copy.

There are no foreseeable risks to you from participating in this research. There is also no direct benefit to you, and there will be no costs to you, other than your time. Your participation in this research is voluntary. You are free to refuse to take part or to exit the interview at any time. Your employer has not been contacted for permission for your participation in this study. There is no foreseeable risk of loss employment from participating in this research. Refusal to participate or withdrawal after agreeing to participate will have no adverse effects on your employment.

I can ensure confidentiality for any and all information that you request to remain confidential (please see the check box in Question 2 below). You can retract any statements or discontinue participation at any time without any penalties. If you would like to withdraw participation, you can send me an email at xxx and I will destroy all information associated with you. All data associated with you and this study will be

stored on a USB storage drive and kept in a locked fireproof safe for a period of 2 years, at which point it will be destroyed.

I have permission from the Simon Fraser University Research Ethics Board to conduct this interview. The final decision about participation is yours.

If you have any questions regarding this study, please contact me (principle researcher), Emily Cordeaux by email at xxx or by phone at xxx.

Complaints or questions that may arise can be directed to my supervisor:

Professor: xxx

Simon Fraser University

Email: xxx

Phone: xxx

Alternatively, you may contact Simon Fraser University's principle ethics supervisor:

xxx

Associate Director, Office of Research Ethics

Simon Fraser University

Email: xxx

Phone: xxx

If you agree to the above mentioned items, please provide written consent by answering the following four questions.

1. Do you consent to participating in this study?

Please answer Yes or No in the space provided here:

2. Do you consent to having your name and identity used when referencing your comments?

Please answer Yes or No in the space provided here:

Indicate by writing an "X" in the boxes below for each piece of information that you require to remain confidential:

Please write an "X" in the space next to the items you would like to remain confidential	
--	--

	Name
	Professional designation
	Current field (nonprofit, government, academic institution)
	Current employer
	Other (please describe)

3. Would you like a copy of the completed research paper?

Please answer Yes or No in the space provided here:

4. Do you consent to having this interview recorded?

Please answer Yes or No in the space provided here:

Please confirm your answers by signing below.

Participant name:

Participant signature:

Date (MM/DD/YYYY):

Thank you for your participation.