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CANADIAN HUMAN RIGHTS INTERNATIONAL ORGANIZATION

Reclaiming Human Dignity . Protecting Fundamental Human Rights

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Regularization Proposal

Problem/Issue

The marginalized identity of non-status individuals residing in Canada and their accompanying inability to experience rights forwarded in the National Declaration of Human Rights, specifically, medical care, necessary social services, and the right to work in conditions that are just and favourable require critical analysis and remedy.

Desired Outcome

Regularization Initiative which grants status to all foreign nationals who have resided in Canada for a period of five or more years, have demonstrated community involvement, have no evidence of a criminal record in their country of origin, and basic knowledge of either English or French languages.

Regularization beyond Canadian borders

Between 1973 and 2008, the European Union (EU) implemented 68 programmes which regularized approximately 4.3 million non-status migrants. As such, Canada can find precedence within the variety of regularization initiatives implemented by Member States of the EU. Between 1973 and 2008, the EU implemented 68 programmes which regularized approximately 4.3 million non-status immigrants. The regularization of these 4.3 million people within this 35 year time frame saw the evolution of policies, definitions, criteria, and programmes within the EU Member States. As a result, it was decided that baseline definitions and criteria to explain regularization initiatives be implemented. From this derived two types of regularization initiatives:

- (1) programmes, which are time-limited procedures, exceptional measures on the basis of extraordinary legislation and frequently, but not necessarily, involve a large number of applicants, and
- (2) Mechanisms, which are part of the regular migration policy framework and run on a continuous basis. Typically, mechanisms involve individual applications and, in most cases, a smaller number of applicants.

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Within those two larger frameworks, three specific regularization procedures were established which aimed "to distinguish different forms of regularisation by distinguishing the intention and rationale of procedures that have regularizing effects" (Kraler, 2009, p.11). These procedures are:

- (1) formal regularisations, where status adjustment is the explicit objective of awarding a legal status, whether such a policy is actually carried out informally or whether it is formally laid out in primary or secondary legislation;
- (2) regularisation by entitlement, for example entitlement to a legal status by virtue of a marriage to a national/ an EU citizen, giving birth to a citizen- child in countries with a strong ius soli tradition⁵ or as a consequence of EU-accession⁶, and
- (3) informal regularisation, the delayed and post-immigration acquisition of a residence permit, for example illegal entry or entry on a tourist visa and acquisition of a residence permit entitling to work from within the country.

A Brief History of Regularization in Canada

Special Regularization Program for Haitians Residing in Quebec: 1981

- Program for Haitians without full legal status
- About 4,000 people became regularized

Many Haitians started to arrive in Canada in 1980, most of these immigrants arrived on student or work visas. Due to the political situation in Haiti, these individuals overstayed their visas instead of risking the dire consequences if they returned to their country. Haitians in Quebec started to organize and pushed for this program that met the needs of this group. This regularization project looked at these individuals from Haiti collectively, instead of on a case-by-case basis.

Adjustment of Status Program: 1973

- Anyone in Canada without proper status was eligible
- 39,000 people from over 150 different countries were regularized

During this time there were a high number of people in Canada without status. A large portion of these people without status included war resisters from the United States who did not agree with the war in Vietnam. Due to pressure from many community and political groups that supported the right for conscientious objectors to stay in Canada, the Adjustment of Status

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Program was introduced. This was the biggest regularization program implemented in Canada's history.

Chinese Adjustment Statement Program: 1960-1972

- For Chinese people who came to Canada prior to 1960 and had no legal status
- About 12,000 people were regularized

Due to difficult immigration laws until the late 1950's, many Chinese-Canadian residents faced many barriers when they attempted to bring their family members to Canada. This forced a vast majority of Chinese people to pretend to be someone else, pretending to be part of another family. These immigrants from China were called "Paper Sons", due to the fact they had papers saying they were from another family. Due to pressure from the Chinese-Canadian communities, the Chinese Adjustment Statement Program began in 1960. This program was considered a great success. This was due to the fact that "the government put a lot of resources into making sure that people knew about the program and knew how to apply. The government cooperated with community groups and the media to make sure that many people across the country were reached"

How Canada legally defines a Non-Status Person

Under Canadian law, the criteria utilized for assigning a non-status designation is exclusively derived from section 46 and 47 of the Immigration and Refugee and Protection Act (IRPA). These sections of the IRPA define non-status people in the following manner; a) individuals residing in Canada who are unable to claim either naturalized citizenship or permanent residency, and b) individuals residing in Canada, who are on either an expired work or study permit. While the issuing of a removal order is often thought to be the lone procedure in which an individual may experience a formal loss of status, immigrants residing in Canada may face a loss of status based on a number of immigration based procedural happenings, including a sponsorship breakdown, a failed refugee application, Humanitarian & Compassionate application or a Pre-Removal Risk Assessment (PRRA).

Troubling the "Illegal Migrant" Label

The dominant portrayal of non-status people in Canada is of a person or a group people that have operate outside the rule of law and as a result deserving of the "illegal migrants" label. This

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designation positions non-status people in direct opposition and or contradiction to the “legal” citizen. The binary notion of legal vs. illegal Canadian is reinforced by individuals occupying positions of significant political and social power. For example, Toronto City Council’s recent initiative to establish a “sanctuary city”, and thereby, increase non status peoples access to city services prompted the following response from Jason Kenney (Canada’s former Immigration Minister): “If you’re here illegally, please respect our laws and go back to your country” (Keung, para 3, 2013). As such, immigration officials have placed an increasing emphasis on conducting professional duties in a punitive manner, with acts of enforcement and policing representing prized occupational conduct.

However, the blanket portrayal of non-status people as “law breakers” obscures the possibility for citizens to engage in a deeper analysis of Canada’s immigration system, in particular, the bureaucratic processes (e.g. rigidity & top-down power structure) responsible for the loss of status. Upon arriving to Canada, newcomers often experience financial, legal, and linguistic barriers, and as such, have a particularly difficult time navigating complex immigration law. Thus, the loss of status for many newcomers is a direct feature of interacting with rigid immigration procedures while occupying positions of considerable disadvantage.

Furthermore, newcomers employed in temporary work streams such as the Live In-Caregiver Program (LCP) face the troubling reality of having one’s employers determine legitimacy of a given status claim based on personal discretion pertaining to job satisfaction. As such, immigrant worker rights claims around adequate financial complementation and safe working conditions have the potential to generate termination, which results in an accompanying loss of status. Furthermore, temporary work streams stipulate the manner in which a migrant can acquire both employment and residence, with non-compliance in relation to either requirement resulting in the loss of status. Therefore, it is clear that the loss of status and accompanying non-status designation has little to do with a person’s inability to “play by the rules”, and instead generated by systemic flaws located squarely in Canada’s immigration policy.

United Nation’s Declaration on Human Rights

Rights Pertaining to Medical Care & Necessary Social Services

Despite being an internationally granted set of rights, the distinction between citizen and non-citizen appears to influence the equal implementation and protection of human rights. According to the United Nations Declaration of Human Rights. Article 2, all people are entitled to the rights set forth, regardless of “national or social origin” or “status”. However, when researching the

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circumstance of many non-status individuals within Canada, there is violation of such human rights.

Article 25 (1) states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. This clearly demonstrates that necessary social and medical services are to be granted by the state to all peoples.

Also, many non-status individuals within Canada enter through the Temporary Foreign Worker Program (TFWP); therefore, the rights related to migrant workers worker’s rights are especially significant. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families emphasizes and specifically outlines such rights (United Nations General Assembly). Numerous of these rights are often violated and disregarded under the conditions of TFWP.

Rights Pertaining to Just Working Conditions

Article 25 (1) states that “Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and: (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms”. Yet, according to UFCW’s Report on the Status of Immigrant Workers in Canada 2011, there are areas of significant concern as they are excluded from worker protections, often over-worked without compensation, forced to work under dangerous conditions and are subject solely to the employers’ terms and conditions. Most importantly, the Temporary Foreign Worker Program does not offer a clear or probable path to obtain Permanent Residency. Additionally, based on the UFCW Report, Article 20, 22, 43 and 44 are often violated within the current TFWP system.

Canada’s commitment to upholding the Declaration

Since ratifying the Universal Declaration of Human Rights, Canada has been internationally recognized in striving to protect, uphold and further develop human rights. This commitment is directly reflected with the incorporation of the Canadian Charter of Rights and Freedoms in 1982. However, throughout history, there have been instances where the Canadian government

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has failed to protect these rights, such as in regard to missing and murdered Aboriginal women. Yet, Canada strives to remedy these human rights related issues and further promote an international commitment to respecting conventions and treaties rooted in these fundamental rights guaranteed to all individuals.

Evidence of difficulties experiences by non-status people in accessing medical care

Three key areas in society in which human rights are violated and non-status individuals are most vulnerable include lack of access to health care, social services and difficult working conditions. The equal treatment of all people within the borders of Canada should be a right, not a privilege based on status. In terms of medical care, not all those who live in Canada are receiving proper and necessary treatment. Even though non-status residents are ill or have conditions the government needs to take into consideration that these medical conditions are brought on while in Canada as well. When forced to accept jobs that do not have proper safety conditions these conditions have lasting and negative effects on those who do not have status.

Evidence of difficulties experienced in accessing necessary social services

While prominent initiatives aimed at diminishing barriers faced by non-status people upon attempting to social services exist (e.g. Don't Ask Don't Tell Campaign), the absence of formal status remains as a persistent obstruction to the obtainment of basic necessities. Often, the intersecting marginalized experiences of non-status people combine to render existing services offered entirely unhelpful. For example, a non-status person is often required to work multiple jobs in order to achieve a basic level of personal income, as well as participate in a regular sending of remittance payments. This absence of time spent away from a formal workplace setting diminishes the opportunity for a non-status person to meet with community aids, especially if a particular helper is employed on a 9-5 basis. Additionally, the relative secrecy associated with non-status service delivery is made virtually invisible to individuals that may not have a large social circle.

Next, the incidences in which a non-status person is able to access basic necessities (e.g. sheltered housing) tend to be accompanied by the multiple denial of additional resources. An illustration of this is found amongst non-status women with children, who reside in shelters but are unable to access a variety of supports associated with Canada's social safety net, such as child support payments, medical insurance, and rent supplement payments. As such, non-status women have a particularly difficult time exiting sheltered living arrangements and transitioning into traditional housing units.

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Difficulties experience in accessing right and just working conditions

In regard to working conditions, the Temporary Foreign Worker Program (TFWP) is the most common method for obtaining employment that demonstrates the inequalities and challenges that non-status and temporary status individuals may experience in the workplace. Although there are positive aspects and implications for the worker and the employer through the TFWP, many scholars and professionals are concerned for the reality that the lack of status provides grounds for vulnerability and susceptibility to exploitation. This is product of the lack of protection and guarantee for the legal rights and principles granted by international conventions, such as the United Nations Declaration for Human Rights. Many barriers hinder migrant workers from exercising these rights including language barriers and a general lack of “knowledge for the appropriate laws, agreements, policy statements, and other legal documents”. Although these challenges are specific to analysis of individuals with temporary workers, there is reason to argue that non-status workers experience similar challenges and vulnerability in the workplace.

The obvious remedy to this issue is to offer support and training for migrant workers as means to empower them to know, advocate for and demand protection of their rights. If Canada values the work and involvement of migrant workers through the Temporary Foreign Worker Program, we have a responsibility to make the necessary knowledge and training available.

Why naturalization works for Canada

Re-strengthening Traditional Canadian Values

Understanding these complex issues faced by immigrants in Canada is foundation to the creation of programs and support systems specifically geared towards them. There is a critical need for the Canadian Government to create programs and workshops to further enrich the lives of individuals who have suffered through great obstacles and are establishing a new in Canadian society. According to the social justice movement, No One is Illegal, there are estimates that as many as 500,000 people are living in Canada without status. As Canadians we cannot simply turn our backs and let fellow man fend for themselves, we need to embrace each other, learn from one another for a prosperous future together.

As many newcomers arrive in Canada with no support system, they are often left vulnerable to mediate this experience on their own. Improving social services can dramatically change the

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conditions they endure by providing relevant resources and guidance to most efficiently integrate into Canadian culture. Without altering current practices to invest in and target the necessary services for non-status individuals, these unfortunate realities will continue to hinder the potential for the immigrant population to flourish in Canada.

Regularization holds the potential to further promote the diversity, culture and progressive image of our nation. For these core fundamental values and morals to which the Canadian people and society was built on to continue defining our nation, there is a critical need to evaluate our current structure in how it fails to protect the rights, offer support and access of services to a portion of the population. Canada prides itself on its diversity and its multiculturalism, to deny status to so many who strive for better opportunities here in Canada is a direct challenge to this image.

Improving Canada's economy

According to the OECD 2013 Immigration Report, employment is the key factor in determining the net fiscal contribution of migrants. Therefore, increasing the availability and accessibility of substantial employment opportunities would have positive implications for the Canadian economy. Overall, studies have shown that immigration is not an economic drain to a country, but rather offers opportunity to meet the changing demands of the market and population shifts (OECD 2013).

In terms of population impact, research has shown that without the contribution of migration, there would be a 30% decrease in the labor force in most OECD countries by 2020 (OECD 2013). Obvious implications would be a shortage of people to fill the necessary positions and contribute to the sustainability of the economy. In addition, average life expectancy is increasing thus placing a higher demand on social services, pensions and long-term care (OECD 2013). As such, granting status to migrants offers an easier integration into the Canadian labour force which will fill the expected shortages and mediate the costs of an aging population. Inclusion is a key mediator in the positive impact on the Canadian economy.

Furthermore, an increase in population will benefit the economy through an additional demand on goods and services and a larger tax pool. Scholars such as Orrenius and Zavodny (2012) argue “that regularisation of immigrants’ status would lead to higher tax revenue as some workers would move onto the books and beneficiaries’ incomes would tend to increase” (OECD 2013). Logically, by extending status to those who meet the requirements would allow the government to gain tax contributions while diminishing barriers from fully utilizing their skills and training with more access to employment opportunities.

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Conclusion

Throughout history, Canada has played a pivotal role in shaping the international and national landscape for human rights. Amending the current immigration structure is presently one such opportunity to continue this trend. Regularization holds benefits for migrants seeking a better life in Canada and for the nation itself economically, socially and culturally. Without status, a significant portion of the population remains vulnerable to exploitation, without necessary social services and hindered from fully integrating and contributing to society. We urge you to lead the Canadian government in ushering in this beneficial policy as a means to promote the protection and guarantee for the human rights of all individuals who call Canada home. Without state protection through status, the guarantee of human rights is threatened.

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