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Submission for the Universal Periodic Review on Canada: Pinay

1. Pinay is a Filipino women's organization in Quebec that was founded by a social worker in 1991 with the aim of organizing and empowering Filipino women, specifically domestic workers, in Montreal. Most of the members are migrant workers working within Canada's Live-in Caregiver Program (LCP). Since 1991, it has brought domestic workers and their supporters together in the struggle for the basic rights and welfare of Filipino migrant workers in Canada. The organization is run entirely by volunteers.
2. Pinay would like to raise the following issues for consideration by the Working Group conducting the Universal Period Review on Canada:
 - Unjust restrictions on caregivers' mobility stipulated in Canada's LCP contracts
 - Obligations on caregivers working under the LCP requiring them to reside in their employers' dwellings
 - Insufficient framework regulating employers of live-in caregivers (LICs)
 - Insufficient framework regulating recruitment and employment agencies
 - Inadequate provision of essential services for caregivers working under Canada's LCP
3. Although the federal government administers the LCP, various provincial government agencies (particularly in the province of Quebec) also play an important role in the regulation of the program, and in the protection of the rights of LICs. Pinay's submission focuses on the failure of both the Canadian and Quebec governments to protect the fundamental human rights of marginalized and vulnerable LICs, who may be subject to abuse by employers and intermediary recruitment agencies upon their arrival in Canada. This failure to protect stems from the exploitative and discriminatory nature of Canada's LCP, as well as from a lack of will on the part of the federal and provincial governments, and their agencies.
4. Through its administration of the LCP the Canadian government has become complicit in the systemic economic exploitation and trafficking of migrant domestic workers, such as LICs.

Unjust restrictions on caregivers' mobility

5. For the LCP, in order to be eligible for permanent residence in Canada, LICs must complete at least 24 months of legally authorized full-time work over a 48-month period upon their arrival in Canada. These 24 months may be spent working for several employers, however a caregiver may only work for one employer at a time, and the LIC's work permit must correspond to and is dependent upon the specific employer.
6. In the event that the employment contract is terminated, the LIC's immigration work permit, which is restricted to that particular employer, will no longer be valid. The caregiver then faces possible breach of her immigration status if she does not quickly find a new employer willing to undertake the long and complex governmental procedures to receive a new work permit.
7. If an application for a change in employer is filed, governmental delays in permit processing may result in a LIC having to wait at least four to six months before a new work permit is issued. This leads to restriction of mobility and gaps in employment, as caregivers are unable to legally to work until they find a new employer and are issued a new work permit. This is an explicit violation of article 23(1) of the Universal Declaration of Human Rights (UDHR) on the right to work and protection against unemployment.
8. Unjust restrictions on a caregiver's mobility contribute to the pre-existing imbalance of power between employer and employee, and render caregivers vulnerable to abuse, harassment and economic exploitation, especially since each change of employer adversely affects their ability to successfully complete the LCP and to obtain their desired permanent resident status in Canada. As such, Pinay suggests that the Government of Canada should be called upon by the international community to eliminate the requirement that LICs' work permits be linked to a specific employer.

Unjust obligation on caregivers to reside in their employers' dwellings

9. Due in part to the fact that the domestic work is carried out in private residences and to the LCP's strict requirement of the caregiver to live-in with their employer, LICs are at an increased risk of exploitation, harassment and abuse within their workplace. Employers are required to provide workers with a private room with a locking door, but very few do so.¹ As a result, caregivers lack a space where they feel safe and secure, particularly if the relationship with the employer is strained.
10. While some LICs wish for more privacy in their employer's homes, others have their movements monitored or may be forcibly confined. Pinay assisted one woman who was imprisoned in the home of her employer, a diplomat, until she escaped. Members of Pinay put her up in their living rooms for a number of weeks. Seizure of travel documents is one of many ways in which employers may restrict a caregiver's mobility.
11. The structure of the LCP creates the conditions for vulnerability, trafficking and forced labour experienced by various caregivers. It is essential to either abandon the live-in requirement or at least to make it optional, so that this exploitation may be addressed.²

Insufficient framework regulating employers of LICs

Insufficient regulation and monitoring to ensure LICs receive appropriate remuneration

12. In their employment contracts, LICs are required to work only 40 hours per week and their common tasks include cleaning and care of children, elderly people and people with disabilities. However, many women report being responsible for tasks that require being on duty 24 hours a day, which is beyond the bounds of a caregiver's job description.³ Many of the caregivers that Pinay has worked with have reported working at least 49 hours per week, and though LICs sometimes receive pay for special events or days off, they rarely receive paid overtime, if at all, for the extra hours regularly worked on an ordinary day.⁴ This violates articles 23(3) and 24 of the UDHR on just pay and the right to rest and leisure.
13. In extreme cases, Pinay has assisted women who have been forced to work 18-hour days with no days off. Pinay has a report of a LIC who worked from 7:30am to 12:00am, but was not granted overtime pay. In another case, a caregiver reported working for months for her employer without receiving any pay.

Insufficient inspection mechanisms for the monitoring of LICs' working and living conditions

14. In Pinay's experience, LICs are exposed to psychological and sexual abuse, and they are vulnerable to physical assault. As a LIC, they are often deprived of food or sleep or required to exercise physically demanding work. They are not directly covered by the Commission de la santé et de la sécurité du travail du Québec (CSST) and are often denied employment insurance and government health insurance. Article 25(1) of the UDHR outlines decent standards of living for all, which is clearly infringed in these cases.
15. Often LICs remain in an abusive situation because they feel they have no other options. In some cases, women are actually trapped – either because a recruitment agency or employer holds documents, they are not allowed to leave the home or because they do not know where to get help.

¹ Jacqueline Oxman-Martinez & Jill Hanley & Leslie Cheung (2004), *Look at the Live-in-caregivers Program, An analysis of an Action Research Survey Conducted by PINAY with The Centre for Applied Family Studies*, IM no. 24, at 23 [Oxman-Martinez].

² International Labour Conference, One hundredth Session, Geneva, 2011, ILO Convention Concerning Decent Work for Domestic Workers, art 9.

³ Supra, note 1: Oxman-Martinez at 11.

⁴ Supra, note 1: Oxman-Martinez at 12.

16. If work permits stipulated that an LIC be attached to a specific type of work and not a specific employer there would be less potential for abuse. The LIC would not be personally indentured to one employer and would be better able to leave harmful and exploitative work placements.

Lack of awareness by LICs about labour and rental standards and limited access to effective remedies

17. In addition to the need to improve conditions for LICs, improvements are required to ensure their awareness of and access to effective remedies without fear of employer retribution. The Commission des Normes du Travail (CNT) has jurisdiction over LICs, but few claims are actually brought forward. In addition, LICs are reluctant to go to police or other authorities, often because they fear that employers have the power to impact their immigration status or application.
18. It is important that government agencies and tribunals, such as the CNT, Quebec Labour Relations Board and Rental Board, which are both provincial, be sensitized to the complexities and realities of the LCP. This will require changes to the institutional culture and their methods of assisting vulnerable migrant LICs.

Need to better protect LICs from employers' breach of employment contract

19. The Canadian Border Services Agency (CBSA) regularly enforces the law against LICs who do not comply with their work permits or who have breached their employment contracts. However, the CBSA rarely takes any enforcement actions against the employer for breach of contracts and/or immigration law. Upon arriving in Canada, the LIC may be deported if her employer no longer has sufficient income. In this situation, it is the LIC who is punished for the employer's breach of contract. In addition to the exploitative arrangements discussed above, it is very difficult for the LIC to escape an abusive situation and change employers without adversely affecting their ability to successfully complete the LCP and to obtain their desired permanent resident status in Canada.

Insufficient framework regulating recruitment and employment agencies

Defining Trafficking

20. The international and national definitions of trafficking encompass the recruitment, transfer, and receipt of domestic workers such as LICs, by means of fraud or deception,⁵ for the purposes of exploitation or facilitation of exploitation,⁶ such as forced labour.⁷ By emphasising these parts of the definition, we aim to highlight the role of recruitment agencies in brokering trafficking of LICs.

Trafficking of LICs by recruitment/employment agencies

21. Before arriving in Canada, LICs may be convinced to sign contracts by recruitment agencies that they do not fully understand, and later they are not given access to these contracts. Recruitment agencies may charge fees for placement, training, medical exams and other services. Because the LICs do not have access to their original contracts, the fees are often much higher than what they initially agree to.
22. Within Canada, there is a requirement that a work visa be attached to a specific employer.⁸ If the LICs have to look for a new employer, they may be forced into working illegally since new paperwork can take months. In the meantime, their debts with the recruitment agencies increase and they suffer threats of deportation by recruiting agents. There are agencies that keep personal and immigration documents in order to threaten the LICs with deportation. Furthermore, there are cases in which the 24 months of work within 48 months requirement is not fulfilled because the agency fails to properly file the work permit papers.

⁵ UN Protocol supplementing the *Convention on Transnational Organized Crime*

⁶ Criminal Code, R.S. 1985, c. C-46 at 279.01 [Criminal Code].

⁷ Convention concerning Forced or Compulsory Labour (ILO No. 29), 39 U.N.T.S. 55, entered into force May 1, 1932 at article 2.1.

⁸ *Supra*, note 1: Oxman-Martinez.

23. In one case 26 LICs were placed into properties owned by the owner of a recruitment agency, where they lived for months in substandard conditions. Many were pressured into signing a rental lease without being shown the full text and without being given a copy; they were also charged additional fees and penalties for repairs and late rent payment. Additional clauses were added in some cases after the signing of the lease without their knowledge. When some of them tried to move out, several were taken to the Rental Board for violating the lease conditions, of which they had never been informed. Without any assistance or proper legal counsel, these women lost and had to pay additional damages to the recruiter/landlord.
24. Women who come to Canada as domestic workers usually arrive through a legal immigration channel such as the LCP, with the appearance of consensual contractual relations. However, consent is invalid⁹ or is irrelevant if fraud, deception, or other forms of coercion have been used.¹⁰ Furthermore, although recruitment agencies do not benefit directly from the LICs' labour, the Trafficking Protocol's definition includes no requirement that the gain from trafficking be directly derived from the exploitation of the victim. In the case of LICs, recruitment agencies are profiting from an environment that creates the conditions for exploitation of women's work. Trafficking LICs is a violation of article 4 of the UDHR on slavery and servitude.

Seeking Redress

25. Regulation of recruitment agencies is extremely weak and there is little if any enforcement by federal or provincial authorities against agencies or immigration consultants who are not professionally accredited. Even for those recruitment agencies who are properly accredited as immigration consultants, complaints mechanisms have been ineffective and are rarely publicized or easily accessible to caregivers.
26. More importantly, the Quebec Human Rights Commission (QHRC) has failed repeatedly to provide effective protection to victims of discrimination, harassment and exploitation. In the aforementioned case of 26 LICs who were victims of a recruitment agency, after excessive delays and serious errors in its investigation, the QHRC finally refused to pursue the case citing among other questionable reasons a lack of jurisdiction to deal with victims of human trafficking. This has resulted in Canada and Quebec failing their international obligations on trafficking, discrimination and decent work for domestic workers such as LICs.

Inadequate provision of essential services for caregivers

27. Many LICs need legal advice about their labour, immigration and housing rights but when there are very few free legal information resources which are easily available to them because of their work hours and live-in requirement with their employer. Furthermore, many caregivers need specialized assistance which is sensitive to their cultural and linguistic needs, and particularly their vulnerability as LICs. As well, LICs need basic accompaniment, translation and explanation of their rights and legal concepts.
28. Although there is a need for transition homes and temporary emergency shelters for LICs, there is a lack of funding and institutional support. For example, Pinay's transition home was closed for lack of funding and there is under-funding of community organisations able to provide community-specific support.

Conclusions:

29. In light of these issues, with regard to the LCP in Quebec, the provincial and federal governments of Canada should be called upon to comply with Article 1(4) of the Charter of the UN on freedom for all and Article 3 of the UDHR on life, liberty and security of the person by:

⁹ Supra, note 6: Criminal Code at 270.02.

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime at 3(b).

30. Reforming the LCP, such that:
 - The “live-in” requirement is removed or altered so that it is optional, depending on the contract between the parties;
 - Amending work permit conditions such that workers are not attached to a specific employer but rather to a specific type of work, such as caregivers.
 - More established and inclusive mechanisms by which foreign credentials of migrant workers are recognized.
31. Adhering to labour standards, specifically by:
 - Stricter of enforcement of appropriate regulation to provide adequate compensation for overtime hours;
 - Creating a mechanism by which employers are obliged to report the amount of hours worked by LICs and implementing enforceable punishments (fines and legal provisions) for failure to do so.
32. Monitoring LICs’ working and living conditions by:
 - Monitoring employer’s dwellings both before commencement of employment and during periods of employment to ensure compliance with labour standards (according to ILO standards);
 - Enforcement of employers’ requirement to provide CSST coverage (for example, when completing other application paperwork);
33. Improving awareness amongst employers and LICs by:
 - Governments taking a proactive role in getting information to employers about working conditions and labour standards (for example, requiring an information workshop for prospective employers before approval of employer’s LMO application);
 - Government stake a proactive role in educating LICs as to the remedies available to them in the event of breach;
 - Promoting sharing information between the federal and provincial authorities such as Ministère de l’Immigration et des communautés culturelles and Citizenship and Immigration Canada.
34. Improving contractual relations by:
 - Reforming employment contracts in order to place obligations on employers of LICs;
 - Enforcement agencies taking action against employers for breaches of contract.
35. Reducing the vulnerability of LICs to trafficking by:
 - Including caregivers on the list of occupations needed in Canada;
 - Implementing proactive investigations of trafficking by police, based on both victim complaints and on the Criminal Code as well as raising awareness about anonymous reports of abuse;
 - Requiring CSIC to provide accessible information on bringing complaints against agencies;
 - Holding Quebec’s Régie du logement accountable for its international obligations to protect fundamental human rights.
36. Improving support services by:
 - Creating a working group with high visibility that workers can access for support and advocacy
 - Creating an emergency telephone hotline for LICs
 - Increasing access to subsidized French language courses
 - Improving access (without condition) to, and greater financial support for, socio-economic integration programs for domestic workers
 - Increasing education regarding legal rights, prescription periods and legal processes so that domestic workers can make informed decision about legal action
 - Increasing access to legal services and legal information