

# **Human rights and COVID-19: Temporary foreign workers in Canada at the intersection of human rights and COVID-19**

*By Anwaar Baobeid*

As the global spread of COVID-19 brings social, political, civil, and economic inequities to the forefront, many questions arise at the intersections of human rights and public and global health. Panellists in a webinar co-sponsored by the Dalla Lana School of Public Health's (DLSPH) Centre for Global Health and the Faculty of Laws Mary and Philips in Health Law Policy and Ethics Seminar series sought to explore this intersection. This webinar was part of an ongoing webinar series on COVID-19 at DLSPH.

"We're at a very painful moment right now reckoning with anti-Black racism and I think this makes it all more important to acknowledge that racism is a fundamental determinant of COVID infections, deaths, and of human rights violations," says Dr. Lisa Forman, Associate professor at DLSPH and Canada Research Chair on Human Rights and Global Health Equity. "I think this reinforces that if our public health systems simply mirror our larger social systems, they're likely to deepen inequities rather than resolve them," she continues.

It is imperative that the human rights of marginalized populations are protected in all countries during and post pandemic. This article applies some general lessons discussed in the webinar to the case of temporary foreign workers in Canada, a topic not explicitly addressed in the webinar. I explore the importance of the right to health and a human rights-based approach during the COVID-19 pandemic for this particularly marginalized population in this article.

The COVID-19 pandemic has reshaped our understanding of essential labour. For decades, thousands of workers from the Caribbean and Latin America are employed through the Temporary Foreign Worker Program and the Seasonal Agricultural Worker Program in Canada to work on farms, greenhouses, and factories during the summer seasons. Now, more than ever, it is clear that undocumented and migrant workers contribute to economic and agricultural prosperity in Canada. At the same time, temporary foreign workers in the agricultural and food processing sectors are being denied their basic rights and legal protections and are contracting COVID-19 at increasing rates. As of July 7th, more than 1,000 workers have been infected with COVID-19, and three have died. Canada falls short in protecting the human rights and the right to health of these workers as the pandemic exposes the social and economic inequities and vulnerabilities that temporary foreign workers face.

## **What is the right to health?**

"The right to health has two dimensions. It's about access to health care but it's also about securing the underlying social determinants of health in the realization that health care alone will not satisfy good health among the population," says Brigit Toebes, Professor at the Faculty of Law, University of Groningen, "what we see is that problems surrounding COVID-19 are more prevalent in settings where there's poverty and other forms of deprivation emphasizing the need to improve socioeconomic living conditions."

The right to health of foreign workers is threatened on many fronts. With regard to access to proper housing and to healthcare centres, workers are usually housed in cramped quarters in nearby farms, farther away from healthcare centres. They are not provided vehicles and public transport is very limited. Their vulnerability is further compounded by the lack of access to field sanitation and personal protective equipment (PPE). Beyond limitations to physical access to healthcare centres, they face language and cultural barriers and often do not have access to translators. These conditions limit their ability to physically distance, receive treatment, or access critical health services.

What is more concerning, as Dr. Brigit Toebes points out, are the socioeconomic living and working conditions of the workers, an underlying social determinant of health that puts them in a more vulnerable position to COVID-19 infection. The greatest barrier to accessing health care is the fear of deportation, as their closed work permits are tied to a specific employer. Many workers fear that by showing signs of illness, demanding better pay or living conditions, or missing a day of labour due to illness will result in their employers firing and deporting them. Furthermore, they are paid minimum wage for this gruelling work, and work long hours to save up enough money to send to their families. Together, these social, environmental, geographical, and legal conditions impact their fundamental human rights and right to health as it exposes them to a greater risk of COVID-19 infections.

“States have legal obligations to realize the right to health for everyone on their territory. There is a bottom line below which no country should fall these so-called core obligations in the right to health which apply under all circumstances,” says Dr. Brigit Toebes. There is an urgent need to treat the public health emergencies of migrant workers as a matter of domestic and international human rights obligation and accountability. Canada has a legal obligation to protect the rights of these temporary foreign workers both nationally and internationally.

### **International obligations**

Dr. Sharifa Sekalala, Associate Professor and Fellow of the Higher Education Academy, School of Law, University of Warwick, delved into the international obligations of nation-states when it comes to human rights in other countries. She stated, “We need to protect the human rights of other people in places that might be far away from us, and this is going to involve stopping third parties whom we have control over from violating rights”. Sharifa provides the example of preventing the IMF and World Bank from imposing debts to pay on lower- and middle-income countries; an approach that can be extended to large Canadian agribusinesses.

The issue of temporary foreign workers spans many borders and includes international relations between Canada and other countries. Two seasonal workers from Mexico have died from COVID-19 in Ontario, Bonifacio Eugenio Romero and Rogelio Muñoz Santos. After the death of these two workers, Mexico suspended sending temporary foreign workers to Canada, until the Canadian government ensures worker protections. The global flow of labour highlights the interdependence of nation-states on one another; thus, countries must ensure mutual protections of vulnerable workers.

Dr. Sharifa Sekalala proposes that we can fulfill the right to health internationally by offering “technical assistance in terms of diagnostics and equipment, we can offer financial assistance so

that people in the poorest parts of the world are shielded from the social economic impacts of the crisis.”

### **Human rights dimension of access to COVID-19 health products**

As COVID-19 health products such as tests and vaccines are developed, how do we ensure the most vulnerable, such as temporary foreign workers, are able to access them? Dr. Jennifer Sellin, assistant professor at the Department of International & European Law, Maastricht University, outlined the key principles for a human rights-based approach. She stated that this includes, “first and foremost the fundamental principle of non-discrimination and equality. For example, if governments manage to substantially increase their testing capacity but exclude vulnerable or disadvantaged populations, such as undocumented migrants, then that is not a success.”

As Dr. Lisa Forman also highlighted in the beginning of the webinar, social inequities, such as race, class, and migrant status, are determinants of COVID-19 infections [1-2]. In contrast to the service sector, agricultural workers have not seen a pay boost, are not eligible for income supports, or been provided adequate protective equipment. We cannot continue to ignore the working and living conditions of racialized and immigrant workers who help sustain our health and food supply infrastructures.

The future cost of vaccines is of importance in this context. Which countries will be able to afford and what populations will have access to vaccines and therapeutics? Many migrants are living on minimum wage, saving for their families’ livelihoods in their home country. If the vaccines are unaffordable, alongside their limited ability to access health care centres, workers will be at an even greater risk of contracting COVID-19. We must ensure that COVID-19 responses, including testing and therapeutics, are accessible to all regardless of race, social class, and migrant status.

“To this day, essential medicines are still out of reach to millions of patients often because they are prohibitively expensive and are therefore unaffordable.” Dr. Jennifer Sellin explains that this “is linked to intellectual property rights especially the patenting of such medicines because the current patent system rewards developers of new products with legally enforceable monopoly rights, typically for 20 years. That means pharmaceutical companies are free to set prices for those products.”

Dr. Katrina Perehudoff, a postdoctoral fellow at DLSPH and the Ghent University, Belgium, and member of the Strategic Institutional Partnership between the University of Toronto and Ghent University suggests that a solution to this is through the COVID-19 Technology Access Pool. She highlighted that governments have a pivotal role to play in shaping company behaviour during the COVID-19 crisis. “Human rights require that governments insist on those receiving public funding also share their results and their rights with the pool. After all, governments have the primary duty to coordinate the actions of others and to ensure that everyone has equal access to the benefits of science. Supporting the COVID-19 Technology Access Pool is a way for governments to fulfill their duty to assist because the pool knows no geographic boundaries.”

Governments shape and coordinate actions and responses to ensure that everyone has equal access to COVID-19 health products, and therefore ensuring that all workers in Canada have access to

therapies and vaccines. Access for the most vulnerable populations, such as temporary foreign workers, is critical.

### **Human rights at the core of the COVID-19 response**

“I think that we are really at a turning point. How we respond now as a global community will carve out our paths in future pandemics. This is really an opportunity to establish and reinforce human rights norms as the core of any pandemic response, but also more broadly as a societal response in the face of hardship,” Dr. Katrina Perehudoff concludes.

The structural inequities faced by temporary foreign workers in Canada highlight the impacts and importance of government responses to the COVID-19 crisis, and their effects on vulnerable and marginalized communities. As discussed in the panel, a human rights-based approach rooted in the right to health is imperative to ensure equitable access to COVID-19 vaccines and therapeutics internationally.

#### References:

1. Abrams, E. M., & Szeffler, S. J. (2020). COVID-19 and the impact of social determinants of health. *The Lancet. Respiratory Medicine*, 8(7), 659–661. [https://doi.org/10.1016/S2213-2600\(20\)30234-4](https://doi.org/10.1016/S2213-2600(20)30234-4)
2. Ontario Hospital Association. (2020). *Health Systems News The Latest Research and Information on COVID-19: Social Determinants of Health*. <https://www.oha.com/news/the-latest-research-and-information-on-covid-19-social-determinants-of-health>