

2020

Does Canada Meet International Standards on Employment Rights for Migrant Workers? An Analysis of The Effects of Labour Market Inequality

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Does Canada Meet International Standards on Employment Rights for Migrant Workers?

An Analysis of The Effects of Labour Market Inequality

A Major Research Paper submitted in partial fulfillment of the requirements for the degree of
MA in Political Science

by

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Abstract

The goal of this paper is to carefully assess the international standards of labour and the effects of the rise in labour market inequality specifically in Canada while also looking at what is going on in China and the United Arab Emirates (UAE) as case studies. By analyzing empirical and qualitative data, this paper ultimately concludes that the dominant explanation and interpretation of related literature in this subject depicts a broad sense of injustice to migrant workers who are only increasing internationally. These migrant workers face countless hardships while only pursuing jobs in foreign countries in the attempts of going beyond the conditions offered in their home countries. However, instead of their situations getting better, it seemingly is only getting worse when they arrive in these new countries to begin work because of the temperament, the lack of and the violation of fundamental employment rights.

The academic research covered in this paper also highlights the skill paradox in the Canadian labour market. To better explain, this paper also attempts to unpack the systemic patterns of differential social structure such as citizenship status, gender, and much more that exist to exhibit how migrant workers face more hardships in the labour market when compared to their Canadian-born citizen counterparts. The central argument in the paper recognizes that as a matter of fact, Canada is not meeting international standards on employment rights for migrant workers and outlines how the government has been severely negligent of migrants' economic, human and social rights. This paper will also make some recommendations on what governments around the world can do to support migrants better and attempt a critical appraisal of the different approaches of scholars within the field.

Keywords

Labour Market Inequality, Migration, Labour Standards

Acknowledgements

This paper would not have been possible without the help of many people in the Department of Political Science at the University of Western Ontario. I am beyond grateful to meet every professor I have come across in this department who has pushed me to do my best. Special thank you goes out to Teresa McLauchlan for making sure my transition from finishing my undergrad at UTM a year early to starting grad school here at UWO was extremely smooth. I am particularly indebted to Dr. Marta Dyczok, who stepped in last minute to be my supervisor. You have shown me nothing but unconditional support, patience and understanding during this pandemic. I could not have completed this project without your encouragement, and well wishes.

Also, I would like to thank my family for being my backbone and pushing me to complete my Master's degree even when I thought I could not do this anymore. None of this would be especially possible without my sister, Rumu, who has been my mentor, best friend, and confidant. You are the light of my life. More than anything else, thank you, abbu, for sacrificing everything and leaving a comfortable life back in Bangladesh to make sure your daughters get the best education and life possible here in Canada. You have been my inspiration throughout the darkest of times; I could not have asked for any better. Ammu, your love does not go unnoticed; thank you for being so understanding and allowing me to grow into the woman I am today.

Nanu-bondhu and nani, you two are the reason why I am here; thank you for everything. None of this would be worth it without you guys. Finally, thank you to everyone who has made this journey possible. I hope I make you proud!

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List of Abbreviations

| | |
|-------|--|
| ILO | International Labour Organization |
| UAE | United Arab Emirates |
| UN | United Nations |
| MRP | Major Research Paper |
| GCC | Gulf Cooperation Council |
| LCP | Live-in Caregiver Program |
| NIEAP | Non-Immigrant Employment Authorization Program |
| IRPA | Immigration and Refugee Protection Act |
| TFWs | Temporary Foreign Workers |
| LMO | Labour Market Opinion |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |

Introduction

In war, the strong make slaves of the weak, and in peace, the rich make slaves of the poor. We must work to live, and they give us such mean wages that we die. We toil for them all day long, and they heap up gold in their coffers, and our children fade away before their time, and the faces of those we love become hard and evil. We tread out the grapes, and another drinks the wine. We sow the corn, and our own board is empty. We have chains, though no eye beholds them; and are slaves, though men call us free.

- Oscar Wilde, The Young King (1892)¹

The literature on migration studies and labour market inequality go hand in hand substantially and deals with issues that concern wage labour, the quality of life, citizenship statuses and more of migrant workers. The growing body of literature on this subject has made meaningful developments in explaining the consequences of being a migrant worker in foreign countries. Cases that will be critically examined later in this paper include Canada, China and the United Arab Emirates (UAE). Various government regulations also play a leading role in affecting the type of residence and labour standards these workers experience while working overseas. To bring together governments, employers and workers collectively, the International

¹ McGeehan, Nicholas, and Keane, David. *Enforcing migrant workers' rights in the United Arab Emirates*. (International Journal on Minority and Group Rights 15, no. 1 2008), pg. 1.

Labour Organization (ILO) was founded in 1919 as the first and oldest agency of the United Nations consisting of 187 member states.²

The ILO, as an international organization, plays a pivotal part in influencing national deliberations on improving social and labour rights. However, this organization can only do so much in terms of promoting and advancing legislation. Still, similar to much of the United Nations' agencies. The ILO does not have the direct means to implement any of its measures which is why it is often portrayed as an organization "lacking "teeth"... [where] the "teeth" of the ILO are in fact mainly in the web of actors sharing its values and objectives; its influence largely depends on them, on their strength or weakness, especially at the national level, where social and labour rights are actually implemented".³ Although the ILO as a part of the United Nations has been criticized too many times for being ineffective as an international organization, we can not argue that this organization did not, in fact, define and set the global standard for employment policies and international norms surrounding labour relations. The reviewed literature signifies that the international standards on employment rights established by the ILO are not reaching the benchmark of economic equality globally. This is why it is crucial to understand and familiarize ourselves with what the ILO truly stands for. Also, by examining how various countries support

² "Mission and Impact of the ILO", *International Labour Organization*, <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.html> (accessed June 20, 2020).

³ Kott and Droux, eds. *Globalizing Social Rights: the International Labour Organization and Beyond*, (Springer 2013): pg. Ix.

the international labour standards established by the ILO, it can reveal the level of impact the organization has.

Authors Sandrine Kott and Joelle Droux in their book, *Globalizing Social Rights: The International Labour Organization and Beyond* note that “a simple way of measuring the ILO’s influence has often been to count the number of countries which have ratified the Conventions.”⁴ . Nonetheless, this particular method still does not take into account what authorization may mean in local contexts of different states and the impact of the influence and support of these conventions and the ILO’s advancements of economic and working conditions for all workers. Today, there is an ever-growing need for international actors to advance the terms of employment on a global scale, especially when it comes to protecting migrant workers and their fundamental human rights in a foreign country. On the official website of the ILO under *Standards*, it is stated that “from its very inception, the ILO also resolved to protect "the interests of workers employed in countries other than their own" (ILO Constitution, 1919, Preamble, recital 2), and has pioneered the development of specific international standards for the governance of labour migration and protection of migrant workers.”⁵

The lack of labour safety and care for migrant workers eventually ends up weakening rights and security for all workers. Along with the international labour standards, migrant workers and “members of their families are protected by the nine UN core international human

⁴ Ibid, pg. 7.

⁵ “International Labour Standards on Labour Migration”, *International Labour Organization*, <https://www.ilo.org/global/topics/labour-migration/standards/lang--en/index.htm> (accessed June 20, 2020).

rights instruments, which apply to all persons irrespective of their nationality. One of these core instruments is the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* which was adopted by the UN General Assembly in 1990 and entered into force in 2003.”⁶ Despite all of these standards and mechanisms set in place to protect and monitor the rights of migrant workers, why are countries still not meeting the basic labour standards on employment rights for migrant workers? The growing structural income inequalities amongst workers, especially migrant workers, has disproportionately impacted racialized communities more than ever. This paper adopts a critical lens to make sense of the realities and complexities that exist in Canada for its migrant worker population.

Moving on, as aforementioned briefly, to uncover more information on the treatment of migrant workers, this paper also presents two case studies of China and the UAE in an effort to compare and contrast the differences in labour relations. The purpose of these two case studies alongside the analysis of what is going on in Canada is to understand the transformation and reforms that are needed to assure the governments’ commitment to workers’ rights globally. The case selections are relevant and appropriate, given the impact of migrant workers on the economies of China and the UAE. The UAE in 2012 had the “fifth-largest international migrant stock in the world with 7.8 million migrants (out of a total population of 9.2 million) which is approximately 80% of the resident population.”⁷ This major research paper (MRP) is divided

⁶ Ibid.

⁷ Froilan T. Malit Jr. and Youha Ali Al. “Labor Migration in the United Arab Emirates: Challenges and Responses”, *Migration Policy Institute*, <https://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses> (Retrieved June 21st, 2020)

into four entire chapters, including concluding remarks and possible directions for action after carefully conducting a critical appraisal of the approaches and various scholars studied throughout. As specified above, the main research question of this paper is, “Does Canada meet international standards on employment rights for migrant workers?”. Next, I will provide a quick description of what each chapter of this paper unpacks in regards to exploring the main research question.

To begin, the first chapter of this paper will start with two case studies which will investigate the notable changing dynamics of migration flows to the UAE and China in recent years. This development has increasingly subjected migrant workers to endless exploitation and continuous abuse. The studied literature in this chapter raises the case of fundamental conflicts involving migrant workers contributing to the rise of labour protests in China, new challenges to the global economy and more. The reality of migrant workers and their problems are manifold in China and the UAE as they are particularly vulnerable and more likely to face barriers in seeking a better life for themselves and their families. Apparent infringements of legal rights under the Labour Law passed in 1994 in China includes the “failure to sign a labour contract, working hours of over eight hours per day, denial of overtime pay and late payment.”⁸ However, this has

⁸ Wong, Linda. *Chinese Migrant Workers: Rights Attainment Deficits, Rights Consciousness and Personal Strategies*. (*The China Quarterly* 208, 2011): pg.76.

not stopped employers from treating migrant workers fairly and has resulted in workers becoming more and more rights conscious over the years.

Furthermore, the Chinese hukou (household registration) system in particular which has institutionally discriminated against migrant workers along with social exclusion and the market significantly limit migrant workers' life chances as explained later on in the chapter by author Shaohua Zhan.⁹ Moving onto the case of the UAE, in the following section - I will be discussing the horrible working conditions and restraints that are placed on Asian migrant workers who are brought to the UAE with the promise of a better life.

My analysis of the literature on these two case studies reveals that migrant workers in China and the UAE are members of a very vulnerable community who are exploited regularly and policed by the governments. In the second chapter of this paper, I will be examining the various labour policies that are in place and the evolution of these policies in Canada and internationally concerning income inequality. To that extent, I will also be comparing which national policies favour migrant workers more and how the state is more likely to meet and maintain the international standards on employment rights. This chapter will also identify the inconsistencies and problems in different policies that are presently in place and reforms that have been made to protect migrant worker rights. To conclude, the chapter will develop the

⁹ Zhan, Shaohua. *What determines migrant workers' life chances in contemporary China? Hukou, social exclusion, and the market.* (Modern China 37, no. 3 2011).

thesis that the current policies are not doing enough and are not enforced as well as they should be causing distress and growing harm for migrant workers.

The main finding in this chapter is that the reality of the struggles that migrant workers face continues to grow to a greater extent as globalization reaches its peak, and the states often overlook the struggles of migrant workers by poorly enforcing laws set in place to protect them. To explore further into the main research question in the context of Canadian labour standards and treatments of migrant workers, chapter three will be dedicated to a further case study of Canada where I will be looking at labour market disparities that exist here, focusing on the experiences of skilled immigrants, shifting my focus away from only the migrant worker category and discuss the role of credentials. For example, the existence of programs and consultants designed initially to recruit migrant workers to Canada.

However, the reality is that employers exploit and abuse the system to hire these workers at a fraction of the cost of labour and violate the international standards on employment rights for migrant workers which the government usually turns a blind eye to. The commonality in all three chapters so far is that the level of inequality is only on the rise amongst migrant worker populations in the world. Despite this, Canada remains a destination of choice for many new workers due to the popular narrative of being a welcoming country and an excellent place to live.

To continue, the final chapter, chapter four will be an accumulation of critically evaluating the literature that has been reviewed extensively in the previous chapters while

distinguishing amongst the different approaches and the “gold standard” of research in this subject. In this chapter, I will also be providing personal preferences and oppositions to the themes explored earlier while finally highlighting a few key issues that have appeared during the literature review. Lastly, the concluding paragraph of this chapter will shed some light on a few possible directions for action on existing labour policies that particularly favour migrant workers. A final evaluation of the research question will also be conducted while ending the paper by identifying the current limitations of specific labour inequality literature focusing on migrant workers worldwide.

Chapter 1: A Closer Look at China and the UAE

1:1 Obstacles faced by migrant workers in the UAE

The literature on migrant workers and international migration deals with several countries. In this chapter, I attempt to understand the local structure and growth of migrant labours in Arab countries, focusing on the UAE. Specifically, in this section, I wish to unravel how the historical treatment of migrant workers in the UAE continues to contribute to the treatment that currently prevails in the country. Unfortunately, the UAE is notoriously known for having the reputation of migrant labour exploitation, and the personal horror stories from migrant workers and their families are endless. The decision to become a migrant worker in a country like the UAE is not always easy and requires leaving your family and life behind for an extended time with the hope of earning a decent wage. In a case study published by the Samuel Centre for Social Connectedness in 2018 titled, *Working Abroad: A Case Study of Women Migrant Workers in the United Arab Emirates*, the author, Serunjogi Fauziat describes that “the influx of migrant workers in the UAE has led to a demographic profile development in which a few nationals sit at the top of the social hierarchy and below them a majority consisting of low wage migrant workers.”¹⁰ However, the treatment of all migrant workers are not the same as migrants from

¹⁰ Fauziat, Serunjogi. *Working Abroad: A Case Study of Women Migrant Workers in the United Arab Emirates* (Samuel Centre for Social Connectedness, 2018) pg. 19.

Western countries such as Canada and the UK are “in a far much better hierarchical position compared to migrant workers from developing countries because they are given relatively higher wages.”¹¹ A big problem in the UAE arises from the Kafala (sponsorship) system which has been criticized many times by different human rights organizations for promoting and allowing the existence of labour exploitation. This system emerged in the 1950s to initially regulate the “relationship between employers and migrant workers in many countries in West Asia. It remains the routine practice in the Gulf Cooperation Council (GCC) countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE), and also in the Arab states of Jordan and Lebanon.”¹² Under this system, a migrant worker is legally and solely dependent upon their employer for their sponsorship, residency and livelihood, which creates many problems and opens up a world full of possibilities in terms of utter exploitation.

Even though under this system, the “guest workers” which refers to migrant workers can only reside in the country for a limited amount of time to pursue temporary work overseas. In reality, due to the demand for labour that exists in the UAE, a vast number of “migrant workers may remain for years vulnerable in this situation living with the threat of unpaid wages, arrest, detention and ultimately deportation should they complain or leave.”¹³ Accordingly, it is imperative to realize that this system overall, fosters an environment for exploitation from the very beginning even before the migrant workers step foot into the UAE.

¹¹ Ibid, pg. 20.

¹² “Reform of the Kafala (Sponsorship) System”, *Migrant Forum in Asia*, <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf> (Retrieved June 22nd, 2020)

¹³ Ibid, pg. 1.

Due to the Kafala system, the migrant workers are powerless in terms of what they can do to help themselves even when situations get out of hand with their employers. For example, even taking legal actions against their employers can prove to be useless and problematic as local authorities are more likely to side with the employer and the local embassies can not force the employers to attend court hearings, a “lengthy legal process can leave the migrant worker reliant on the charity of fellow nationals having lost both accommodation and income.”¹⁴ Due to these harsh and punitive conditions that migrant workers face just to bring some justice, they shy away from it and silently endure the abuse for years. Migrant workers also face many limits on what they can do in the UAE based on their immigrant status. Unlike other immigrants to the UAE, migrant workers are usually ineligible for permanent residency status or citizenship, which generally leads them to become undocumented. These “undocumented workers are especially vulnerable to sexual and physical abuse and coercion to submit to poor living and working conditions as employers can threaten to report them to police.”¹⁵

The evidence of discrimination and abuse under the Kafala system can not be unnoticed as the international media continues to highlight the troubles faced by migrant workers, especially those who come from South Asian countries such as Bangladesh, India and Pakistan. This existing system allows for the vulnerable migrant workers to continue facing harsh living conditions along with lack of any sort of human rights. Academic studies focusing on the legal

¹⁴ “Reform of the Kafala (Sponsorship) System”, *Migrant Forum in Asia*, pg. 4

¹⁵ *Ibid*, pg. 5.

regulation of migrant workers in the UAE pretty much provide a consensus on what is going on. David Mednicoff's study of migrant labour in the Persian Gulf societies explores governmental postures and policies towards the rights and benefits for the non-citizen population.¹⁶ Mednicoff's analysis focuses on the cities of Doha, Qatar and Dubai, UAE because of the significant economic resources that have attracted a vast foreign labour market. Dubai is the most populated city in the UAE where "particular tensions around symbols of national solidarity such as restricting citizenship, bolstering religious identity and trumpeting developmental success"¹⁷ exist because of the majority of the non-citizen demographic. Similar to the authors who discussed the difference in treatment amongst Western and non-Western migrant workers above, Mednicoff also notes that "the most privileged professionals from other societies [particularly from the West], enjoy a superior level of status and wealth, albeit clearly lower than those of native citizens. The contrast with the poor, low-skilled non-Western population could hardly be more stark, with the result that privileged professionals have more leeway. Still, less real incentive, to advocate persistently on behalf of the larger underprivileged foreign population."¹⁸

The large lower-class workers face increasingly unjustified challenges and hardships in the UAE based on their country of origin and being categorized as lower-skilled workers mainly from Asia. Comparable to the literature reviewed, Mednicoff further explains that "non-native

¹⁶ Mednicoff, David, *The Legal Regulation of Migrant Workers, Politics and Identity in Qatar and the United Arab Emirates*, (Migrant labor in the Persian Gulf, 2012).

¹⁷ Ibid, pg. 192.

¹⁸ Ibid, pg. 197.

workers are not regarded as future citizens, but rather as individuals seeking chances for temporary enrichment in a favourable market climate”¹⁹ which is why there are not enough incentives for officials to protect them and they soon become insensitive to the sufferings and violations of rights of migrant workers. The government of the UAE has failed to protect its “non-citizen” population, but recently the state has indeed lessened some of the more outrageous concerns of international advocacy groups and migrant workers such as the case that “ sponsors of foreign workers cannot legally hold these workers’ passports, the Ministry of Interior can waive customary two-year limits on re-entry for workers who have been dismissed or have quit, and women can sponsor husbands on a work visa.”²⁰ These are just some small yet notable changes the state has put into place in the effort to reform the increasingly unjust system that migrant workers find themselves lost amongst.

To conclude his analysis of the UAE, Mednicoff argues that “UAE, consistent with its recent broad shift in legislation around *kefala* generally, has improved its enforcement mechanisms recently to help foreign workers’ severe problems.”²¹ Dominant beliefs in the case of exploitation of migrant workers in the UAE, however still maintains that the efforts being made by the government to protect them are not enough. Authors David Keane and Nicholas McGeehan also analyse the failure to protect migrant workers’ rights in the UAE, but they take

¹⁹ Ibid, pg. 202.

²⁰ Mednicoff, David, *The Legal Regulation of Migrant Workers, Politics and Identity in Qatar and the United Arab Emirates*, pg. 207.

²¹ Ibid, pg. 210.

an international outlook on it. The exploitation is facilitated further by the state's weak national laws.

In *Enforcing Migrant Workers' Rights in the United Arab Emirates* by McGeehan and Keane²², the authors further argue that the “UAE's exploitation of the relative economic weakness of its South Asian neighbours has led to a situation that can be characterised as bonded labour of migrant workers, a form of slavery as defined under international law.”²³ In this section, I will be investigating the experiences of South Asian migrant workers in the UAE because of the severity of the abuse and discrimination faced both from a domestic and an international perspective. The Ministry of Labour in the UAE is criticized heavily for only working in the best interests of the wealthy businesses and makes zero to no effort in enforcing the rules that exist in the interest of the workers. “Human Rights Watch note that:

the real test of a country's respect for workers' rights and compliance with international human rights law does not rest solely in the language contained in the country's laws; rather it rests equally in the government's serious enforcement of its laws regulating the conduct of employers, its creation of institutions that fairly resolve disputes between workers and employers, and its aggressive investigation and prosecution of employers who violate its laws.”²⁴

²² McGeehan, Nicholas, and Keane, David. *Enforcing migrant workers' rights in the United Arab Emirates*. (International Journal on Minority and Group Rights 15, no. 1 2008).

²³ Ibid, pg. 81.

²⁴ McGeehan, Nicholas, and Keane, David. *Enforcing migrant workers' rights in the United Arab Emirates*, pg. 86.

Laws and regulations are imposed to protect workers from being exploited; however, this is a rare case in the UAE as very few of these laws are adequately enforced by the Ministry of Labour. The quote by the Human Rights Watch above describes precisely that the government can implement harsh laws; however, the real test is the matter of enforcement. The examples of the abuse faced by migrant workers are facilitated by the government, which often turns a blind eye to these issues and is incapable of dealing with the severity. For example, “until 25 January 2005, there were only 80 labour inspectors employed to look after the interests of approximately 2,738,000 expatriate workers. On that date, an extra 50 labour inspectors were employed, meaning there are now 130 inspectors - one UAE national inspector for every 21,062 expatriate employees.”²⁵

Along with inadequate enforcement of national labour law in the UAE, which cripples migrant workers from appealing and filing complaints against their employers, the health and safety concerns are far too many. Workers continue to suffer from working long hours under the sun in poor and unsanitary conditions, and their problems seem to be only getting worse. Officials do not have the power to oblige private corporations to provide records of workplace injuries and safety procedures, allowing corporations to get away with a lot. The discrepancy between the reports of work-related injuries and relevant experiences of workers has expanded as less and fewer injuries, and deaths are being tracked despite being a legal requirement. In 2007, Human Rights Watch urged the UAE to “amend the UAE labour law to comply with international standards and explicitly protect workers' right to organise. The law should provide

²⁵ Ibid, pg. 91.

for the formation of independent unions free from employer and government interference.”²⁶ The international standards set out by the ILO, such as core ILO Conventions Nos. 87 and 98²⁷, however, have not been ratified by the UAE despite being their membership of the ILO. The ILO has attempted to discuss the issue of trade unions with UAE officials with little to no luck. The government’s rhetoric and the existence of labour issues are two different realities.

To support migrant workers and provide security to them, it is crucial that the UAE “sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force in 1993”²⁸ which will bind the country to international standards and emphasize the importance of human rights of all migrant workers; documented and undocumented. Many ILO reports refer to practices in the UAE being illegal and increasingly terrifying. This paper shed light on some serious issues of the exploitation of migrant workers, specifically South Asian menial labour workers. The authors confidently concluded that “the UAE government offers a smokescreen of legal regulation to cover the abuse of migrant workers taking place on its territory.”²⁹ Many examples of legislation that are designed to protect migrant workers failed to provide them with the ability to form unions to tackle collective issues. The ILO also should work closely with the UAE to accept the need for unions. McGeehan and Keane explain it the best in one sentence where they write, “the

²⁶ McGeehan, Nicholas, and Keane, David. *Enforcing migrant workers' rights in the United Arab Emirates*, pg. 94.

²⁷ Ibid.

²⁸ Ibid, pg. 96.

²⁹ McGeehan, Nicholas, and Keane, David. *Enforcing migrant workers' rights in the United Arab Emirates*, pg. 114.

involvement of the government in the system of exploitation is the reason why domestic UAE labour laws will never be effective. The government is deeply involved in the industry, and the line between private and public enterprise is so blurred that it must be considered non-existent.³⁰ Similarly, a medical study done by multiple authors on the growing rate of suicides and depression amongst South Asian migrant workers in the UAE in 2011 titled *Prevalence of Depression and Suicidal Behaviors Among Male Migrant Workers in the United Arab Emirates*, studied the poor conditions of the workforce which compromises many workers who are “low skilled, low paid, without job security, and live in labour camps, separated from their spouses and families for years, who often suffer from the “Dubai Syndrome” (stress, anxiety, a sense of deprivation) due to such separation.”³¹ Although further work needs to be done to accurately study the impact of labour migration and the unequal treatment of migrant workers in the UAE, a lot of information is still concealed in the official records concerning personal tragedies.

Lastly, the differences between Arab versus Asian migrant workers in the Gulf Cooperation Council (GCC) countries is studied by Andrzej Kapiszewski,³² who outlines that many problems arise in terms of employment opportunities especially to those who aren't Arab descent, “for years, many Indian, Pakistani, and Iranian traders and labourers used to go to the Gulf as a result of their long-time ties that their countries had maintained with the region

³⁰ Ibid, pg. 115.

³¹ Al-Maskari, Shah, R. Al-Sharhan, E. et. al. *Prevalence of Depression and Suicidal Behaviors Among Male Migrant Workers in the United Arab Emirates* (Journal of immigrant and minority health 13, no. 6 2011): pg. 1.

³² Kapiszewski, Andrzej. *Arab versus Asian migrant workers in the GCC countries*. (South Asian migration to gulf countries Routledge India, 2017).

(developed especially during the British presence in the Indian subcontinent).³³ The growing number of Asians continue to represent cheap labour in Arab countries and believe to be more “efficient, obedient, and manageable.”³⁴ Naturally, over time, the effectiveness of policies that were implemented to protect migrant workers, especially south Asian workers and women, declined. An interesting element of all this is “the dominance of foreigners has even been more pronounced in the workforce than in the total population. Non-nationals constituted a majority of the labour force in all the GCC countries, with the average for the year 2004 being close to 70 percent.”³⁵ The number of non-nationals in the GCC countries, especially in the UAE, calls for more attention and work to be done for them in terms of protection of human rights. For this sole reason and more, there needs to further research done to substantiate and increase the impact of labour migration of migrant workers in the UAE. To better explore the experiences of migrant workers more, I will now shift the focus to a broader context of Asia and study what is going on in China. The literature reviewed will be used to reveal common concerns and clarify what the Chinese government is doing to meet international standards on employment rights for migrant workers.

³³ Kapiszewski, Andrzej. *Arab versus Asian migrant workers in the GCC countries*, pg: 6.

³⁴ Ibid.

³⁵ Ibid, pg: 4.

1:2 Obstacles faced by migrant workers in China

Studies that have focused on labour migration in China significantly differs from the discussion about the UAE mentioned above. For context purposes, it is essential to understand how national policies and systems in China affect migrant workers. Interestingly, there has been a recent rise of labour protests amongst Chinese migrant workers, most of the collection actions “involve workers' conflict with management at the point of production, while simultaneously entailing labour organizing in dormitories and communities”³⁶ as explained by Chan and Ngai in 2009. Unlike the majority of the labour migration in the UAE, China is one of the most extensive countries in the world for internal migration according to the ILO.³⁷ This chapter sets out to analyze the realities and ramifications of the workers’ rights throughout the years. The first study is based on fieldwork in the town of Shenzhen between 2003 and 2007 where the authors researched “ migrant workers' working and social life in the town by participant observation, interviews and documentary research in dormitories, migrant communities and workers' centres”.

³⁸ The comparison of two cases of protests and labour strikes asks the question if there is a new working class in the making in China. An important thing to understand when studying the proletarianization of migrant workers in China is that “the specific process of proletarianization

³⁶ Chan, Chris King-Chi, and Pun Ngai. *The Making of a New Working Class? A Study of Collective Actions of Migrant Workers in South China*. (The China Quarterly, 2009): pg. 287.

³⁷ “Labour Migration in China and Mongolia” *International Labour Organization* <https://www.ilo.org/beijing/areas-of-work/labour-migration/lang--en/index.htm> (accessed on June 25th, 2020)

³⁸ Chan, Chris King-Chi, and Pun Ngai. *The Making of a New Working Class? A Study of Collective Actions of Migrant Workers in South China*, pg. 289.

of Chinese migrant workers is shaped by the spatial separation of production and reproduction of labour by China's household registration system and rural-urban chasm, and a spatial re-combination of these two dimensions by a dormitory labour regime."³⁹ The report explicitly set out to differentiate amongst the rise of protests and worker's struggles while demanding a "reasonable" wage rate. As mentioned in the introduction, some of the determining factors of migrant workers' quality of life in China is *hukou* referring to the household registration system, social exclusion and the market explored by Shaohua Zhan in 2011. Zhan explains that "the hukou system plays a major role in limiting migrant workers' life chances, and many of them see it as the major source of hardship for migrant workers living in cities."⁴⁰ The hukou system regulates population distribution and internal migration. Many migrant workers fall under the "rural residents" category with strict hukou rules. In Shijiazhuang, there was an experimental hukou reform where the government allows rural residents to migrate to small cities and become "urban" residents with more relaxed rules; however, many residents refused which took many by surprise. Why did migrant workers choose to be legally excluded in harsh geographic locations? Zhan argues that the answer lies within more than just the hukou system. According to her, "three mechanisms lead to social differentiation and inequality: the market, legal exclusion, and social exclusion."⁴¹

³⁹ Ibid, pg. 291.

⁴⁰ Zhan, Shaohua. *What determines migrant workers' life chances in contemporary China? Hukou, social exclusion, and the market.* (Modern China 37, no. 3 2011): pg. 244.

⁴¹ Zhan, Shaohua. *What determines migrant workers' life chances in contemporary China? Hukou, social exclusion, and the market.* (Modern China 37, no. 3 2011): pg. 247.

Scholars have usually focused solely on the hukou and failed to look beyond that. Relocating to big cities like Beijing and Chifeng in China transform many migrant workers' lives to face more discrimination and exclusion due to being a part of separate social networks and the lack of marketable skills and resources. Zhan explains her findings that "migrant workers lack two important types of resources: human capital, including education and marketable skills, and economic capital, including income and property. On average, migrant workers possess a level of education higher than other rural residents, but lower than urban workers."⁴²

It is hard for migrant workers in China to acquire marketable skills and change their hukou status, however, in many cases, "most migrant workers are young and full of aspirations; they strive to find better job opportunities and ascend the social ladder rather than languishing on society's bottom rung."⁴³ Zhan concludes her study by stating explicitly that she is not defending the hukou system. Instead, she believes that there are multiple other explanations for what determines a migrant worker's living conditions and rights instead of hukou.

Arguably, the findings of the previous study are not enough to understand the deprivation of rights of Chinese migrant workers and the implications for policy that exist in China, therefore, Wong's article on *Chinese Migrant Workers: Rights Attainment Deficits, Rights Consciousness and Personal Strategies* is studied next. Wong studies the private sector, employment and social rights and the birth of China's "new working class" to understand the

⁴² Ibid, pg. 268.

⁴³ Ibid, pg. 275.

implications. Necessary labour rights have been continuously curtailed such as the quality of work, state requirements of an eight-hour working day, labour contracts and more. Similar to the case of the UAE, “the wide-ranging rights deficits highlight the gap between implementation and intent that often mars policy-making in China. Despite state efforts to enhance the rule of law, curtail abuses and improve the situation of vulnerable groups, the record is rather poor.”⁴⁴

To further demonstrate the violation of labour standards, terrible working conditions and unstable wage payments with increasing violations, the wide-range of rights deficits highlight the failure to maintain justice for migrant workers. The government of China regards human rights primarily as “legal rights and interests” and that people are prone to regard rights as state-conferred.”⁴⁵ This becomes problematic because the notion of human rights getting tied up as being state deliberated instead of the Western idea of human rights which “emphasizes civil, political and social-economic rights, [whereas] state discourse is dominated by concerns for subsistence and development.”⁴⁶

Widespread concern for the denial of rights and the recent rise in collective protests in China concerning migrant workers reveals that although China may be more rights conscious in comparison to the UAE by demanding more rights and fairness from the state, the migrant workers still lack the protection of labour and human rights. It is worth noting that just a “decade

⁴⁴ Wong, Linda. *Chinese Migrant Workers: Rights Attainment Deficits, Rights Consciousness and Personal Strategies.*(*The China Quarterly* 208 2011): pg. 887.

⁴⁵ Ibid, pg. 888

⁴⁶ Ibid.

into the new millennium, collective protests have become more vociferous and numerous. Public anger at state failure and worsening corruption often lead to the accidental flaring up of violence and spontaneous incidents.”⁴⁷ This is possible due to the nature of internal migration flows and non-foreign working population, unlike the case of the UAE where non-Arab migrant workers face the most discrimination and inhumane violations of their rights. The underrepresentation and lack of support available for female migrant workers are also high in China. Zhao notes in their study about Chinese female finding academic positions in China, “while it is unanimous that women in rural areas are the most underprivileged demographic group, few studies focused on the experience of rural women in education, fewer have paid due attention to their voice.”⁴⁸ In the forthcoming chapter, I will attempt to distinguish between the different policies that exist in the two case studies and introduce what is relevant in the Canadian context to further analyze the main research question.

⁴⁷ Wong, Linda. *Chinese Migrant Workers: Rights Attainment Deficits, Rights Consciousness and Personal Strategies*. (*The China Quarterly* 208 2011): pg. 889..

⁴⁸ Zhao, Chenzi Feng, *Knock on the door: A feminist standpoint theory case study of internationally educated Chinese females finding academic positions in China* (2020): pg. 17.

Chapter 2: The Evolution and Progress of Labour Related Policies

Now that the case studies of China and the UAE have been outlined in detail and the experiences of migrant workers put in context, the paper proceeds closer to its central task of describing whether Canada is meeting international standards on employment rights for migrant workers or not. Thus, this chapter will briefly explore the regulations and policies that are currently in place which favour migrant workers and their rights in their respective countries. To better understand the relevance of protecting migrant workers in Canada, I will be starting off with a closer look at Canada. Migrant workers arrive in Canada with high hopes of finding a safe working environment. Under the National Occupational Classification (NOC) model in Canada, “the NOC system rates some 40,000 occupations on a matrix with ten different skill types (labelled 0 to 9) and four different skill levels (labelled A to D)”⁴⁹ where most migrant workers fall under the category of “lower-skilled worker” class. Merely having this label limits the migrant workers to specific jobs and individual employers who are listed on their work permit.

The “lower-skilled worker” category not only defines workers to different employers but also forces skilled workers such as live-in caregivers to deskill themselves. This is an unfortunate reality for many women who come from the Philippines under the “Live-in Caregiver Program (LCP)” to provide care for elderly persons in private homes, disabled persons and children.⁵⁰

⁴⁹ Faraday, Fay. *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, pg. 9

⁵⁰ *Ibid*, pg. 13.

An age-old program created in 1973 titled Canada's *Non-Immigrant Employment Authorization Program (NIEAP)* can be held responsible for creating the initial divide amongst immigrant and "non-immigrant" populations who were recruited to migrate to Canada. Author Nandita Sharma who has done extensive work in the field of immigrant and migrant workers in Canada, labour movements and more described this as no surprise. She explains that such rhetoric was created at "time when major realignments were underway within global capitalism" and when "people of colour from the South were for the first time able to enter Canada as permanent residents."⁵¹ Programs and policies such as the NIEAP have only created divides amongst working populations, specifically migrant workers from the start.

The racialization of the labour market in the context of migrant workers is also a phenomenon that took place in the early 70's in Canada. Professor Sharma explains that the term "immigrant" is closely associated with persons of colour, in turn creating a "us" versus "them" narrative has also had meaningful impacts on policies surrounding and experiences of migrant workers and immigrants overall. Sharma finds that "shortly after 1967 when explicit racialized entry criteria were eliminated for people of colour that the legal terms, 'immigrants' and 'Canadian' were ideologically re-framed as racialized social categories."⁵² Racialization in the migrant workforce has led to growing exploitation in turn of strengthening the Canadian market

⁵¹ Sharma, *Race, Class, Gender and the Making of Difference: The Social Organization of Migrant Workers in Canada*, pg. 7.

⁵² Sharma, *Immigrant And Migrant Workers In Canada: Labour Movements, Racism and The Expansion Of Globalization* (Canadian Woman Studies 21, 2002), pg. 22.

system for years. These structures enable the state to promote further inequality that has existed for years as Canadian citizens continue to enjoy “special entitlement” under the veil of the “ideological practices of racism, sexism and nationalism that help to neutralize structures of domination.”⁵³ Moreover, “the 1976 Immigration Act, which is closest in design and regulations to Canada’s current Immigration and Refugee Protection Act (IRPA), replaced explicit categories of prohibited persons with broader categories of persons excluded for reasons related to health, public safety, criminal activity and fraudulent immigration claims.”⁵⁴ The early beginnings of policies and acts concerning migrant workers and immigrants have proved to be nothing but problematic. Moving onto the temporary foreign workers (TFWs) who are increasingly filling up Canada’s labour force and immigration system, I will be studying the TFWs more closely.

According to a report published by *Statistics Canada*, “countries with low levels of economic development and social stability were the main sources of TFWs in the Live-in Caregiver Program, Seasonal Agricultural Workers Program, and Low-Skill Pilot. TFWs in all of these programs had a high tendency to stay longer or come back after leaving for a few months.”

⁵⁵ This statistic is important because it allows us to understand that the number of TFWs in the Canadian workforce is significant, therefore, the problems they face should also be researched

⁵³ Sharma, *Race, Class, Gender and the Making of Difference: The Social Organization of Migrant Workers in Canada*, pg. 12.

⁵⁴ Daley, Rachele, "Canada's Relationship with Women Migrant Sex Workers; Producing 'Vulnerable Migrant Workers' through "Protecting Workers from Abuse and Exploitation"" (2017). Pg. 8.

⁵⁵ Prokopenko and Hou. "How Temporary Were Canada's Temporary Foreign Workers?" (Statistics Canada= Statistique Canada, 2018). Pg.6.

deeper and brought more attention to. To conclude their report, authors Prokopenko and Hou also note that “Canada has historically relied on a steady inflow of permanent immigrants to meet demographic and labour market needs. Until recently, the use of TFWs has been small in scale and limited to particular industrial sectors and geographic regions.”⁵⁶ However, this is no longer the case as TFWs are gaining more importance in the overall labour migration to Canada. The general findings in the literature about existing policies that are tailored to migrant workers and TFWs have shown extensive changes and dramatic growth that has taken place. Authors Gross, and Schmitt assert that “there is ample evidence that large, persistent disparities exist across provincial labour markets in Canada. Several studies confirm that such persistence reflects different equilibria due to social program initiatives”⁵⁷ in their study of TFWs and labour market disparities in Canada.

Metcalf Foundation published a summary report titled *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* in 2012 where author Faraday explains the general requirements of employers before they are authorized to hire migrant workers. A Labour Market Opinion (LMO) authorizes them to begin this process. The LMO process has two functions. “First, it ensures that an employer can only hire a foreign national on temporary status when the employer is unable to hire a Canadian citizen or permanent resident. Second, it ensures that foreign nationals are not hired on terms that undermine prevailing wages and working conditions in Canada.”⁵⁸ However, there is a small loophole in the text that allows employers who fail to

⁵⁶ Prokopenko and Hou. “How Temporary Were Canada's Temporary Foreign Workers? ”: pg.26.

⁵⁷ Gross and Schmitt. "Temporary foreign workers and regional labour market disparities in Canada." (Canadian Public Policy 38, no. 2 2012): pg. 242.

⁵⁸ Faraday, Fay. *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, pg. 28.

provide wages and proper working conditions to justify that failure. “The failure can be justified if it resulted from a change in federal or provincial law; a change to provisions of a collective agreement; a dramatic change in economic conditions that directly affected the employer’s business provided that the measures are not disproportionately directed at foreign nationals; or errors made in good faith if compensation was subsequently provided to all foreign nationals who suffered a disadvantage.”⁵⁹ These failures automatically put the employer on a list of non-compliance and prohibits them from hiring migrant workers for two years; however, Faraday notes that there is not a single employer on this list as of the date of writing which was back in 2012.

Low unemployment rates in Canada signify that Canadian employers are currently hiring more TFWs while complaints from migrant workers who are already in Canada are growing. The treatment of newcomers as unimportant because of the category they fall under should not be tolerated. Instead, Canada should make an effort to implement policies and legislation that current and future migrant workers can benefit from. Conditions such as lengthy processing times to change employers and to apply for a new work permit prohibit migrant workers from working, are denied social assistance and may face barriers accessing Employment Insurance.⁶⁰ Hussain also notes in a policy recommendation submitted by the *Migrant Workers Alliance for Change* in 2019 that due to lengthy wait times between changing employers, “one consequence of these delays is that migrant workers feel they have no choice but to continue working under

⁵⁹ Faraday, Fay. *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, pg. 30.

⁶⁰ Hussain, Syed. “Temporary Foreign Workers Program in Canada: Migrant Worker Priorities 2019” (Migrant Workers Alliance for Change, 2019): pg. 5.

abusive conditions. For workers whose employment has ended through no fault of their own or who have chosen to leave abusive employers, many are compelled to engage in unauthorized and less protected work, such as beginning to work for a new employer while their work permits are still processing.”⁶¹ The lack of a system or proper regulations set in place allows migrant workers to continuously risk losing everything they come to Canada with.

Fudge, in her article, *Making Claims for Migrant Workers: Human Rights and Citizenship* points out that “The United Nations (UN) and the International Labour Organization (ILO) advocate a rights-based approach to managing temporary migration programs, which embodies the principle of progressive inclusion that derives from the basic idea of the universal protection of human rights.”⁶² The main idea here is that migrants should also enjoy the social connections, rights, and other essential benefits of the citizens in that country. However, that is not to say that the principles of state sovereignty are not unchecked. Fudge cautions that “when we turn to human rights instruments specifically designed to protect migrant workers, the conflict between the principle of progressive inclusion and that of state sovereignty is particularly sharp.”⁶³ Similar to the enforcement of legislation to protect migrant workers in the UAE, China, and Canada, “Not only do the international human rights instruments that are specifically designed for migrant workers contemplate a range of different migrant statuses that

⁶¹ Ibid.

⁶² Fudge, Judy. "Making claims for migrant workers: human rights and citizenship." (Citizenship Studies 18, no.1, 2014): pg. 33.

⁶³ Ibid, pg. 34.

correspond to different employment-related and residence-related rights, the mechanisms for enforcing them are weak.”⁶⁴

Referring to Hannah Arendt’s *Origins of Totalitarianism*, published in the late 1940s, which can be understood as a critique of human rights focusing on migrant workers and the stateless, it has led some authors like “Dauvergne and Marsden, to conclude that cosmopolitan or global citizenship is a better discourse than human rights for expressing the claims of migrant workers.”⁶⁵ This builds on another critical part of Arendt’s analysis of the exercise and enjoyment of rights in an international order based on state sovereignty. Author “Gibney acknowledges that these migrants ‘are rarely formally stateless and are, in many cases, not refugees, the problem is that they:

lack security, basic civil, political, and economic rights, and opportunities in the countries to which they have migrated. Their day to day experience may involve a kind of statelessness in the sense of an effective absence from state protection that is linked to their being outside the country of the citizenship.”⁶⁶

This builds on the understanding of what citizenship means in sovereign states and the formal regulations and protection associated with it. In summary, the most common issue that

⁶⁴ Ibid, pg.35.

⁶⁵ Ibid, pg. 36.

⁶⁶ Fudge, Judy. "Making claims for migrant workers: human rights and citizenship." (Citizenship Studies 18, no. 1 2014): pg. 37.

has been demonstrated previously is the failure to enforce legislation. The system has failed migrant workers because of the negligence and unequal treatments that follow based on their citizenship status. In the following chapter, I will be considering the subject of merits and credentials, which also plays a vital role in the Canadian labour market. Though the literature reviewed above acknowledges the nature of employment rights for migrant workers, it fails to shed light on the realm of institutions that also address the labour market and immigrants.

Chapter 3: The Role of Credentials

Having considered the implications of regulations faced by migrant workers and highlighting some of the issues they face daily in other places such as China, Canada and the UAE, this section will examine the role of credentials in the Canadian labour market. The ramification of the topic of this section will be later considered once the arguments and cases have been laid out. A person starts their journey to become an immigrant after becoming a migrant, this successfully takes place once a migrant is granted citizenship status allowing them residency in a country. Dr. Erin Tolley, in her policy brief, *The Skilled Worker Class: Selection criteria in the Immigration Refugee Protection Act* explains that since economic immigrants have not been very successful in integrating into the Canadian labour market, the human capital approach that governs immigration policy has been questioned.⁶⁷ Author Adamuti-Trache also points out that according to Statistics Canada, “recent LSIC data show that two years after arrival, only 63% of immigrants aged 25 to 44 (prime working age) were employed compared to 81% of the native-born Canadians.”⁶⁸ The distinctions between “native-born Canadians” and

⁶⁷ Tolley, Erin. “The skilled worker class. Selection criteria in the Immigration and Refugee Protection Act”. (Metropolis Policy Brief, 1. 2003).

⁶⁸ Adamuti-Trache, Maria. "Is the Glass Half Empty or Half Full?: Obstacles and Opportunities that Highly Educated Immigrants Encounter in the Segmented Canadian Labour Market." pg. 10.

immigrants will be further discussed below and why these differences matter in terms of the labour market.

The trends and policies surrounding immigrant skill underutilization in the Canadian labour market is also discussed by Jeffrey G. Reitz who explains that “although educational credentials among recent immigrants have been higher on average than those of Canada's native-born workforce and are rising, and even though recent immigrants' levels of fluency in one official language have not changed, the trends in immigrants' employment and earnings are downward.”⁶⁹ This suggests that the problem lies in the ability to not speak Canada’s official languages: English and French instead of focusing solely on the person’s skill sets and level of education. The problems only increase as more and more immigrants are racial minorities. How does this affect the labour market? Canada’s current immigration blueprint, in theory, empowers immigrants but in reality, ends up contradicting that intention. An analysis of integrating immigrants into the “the knowledge economy should take into account how organizational changes in the labour market and in the workplace are affecting immigrants.”⁷⁰ unter and Leiper in 1993 wrote that “there is a greater emphasis on credentials as they reflect specific skills that increase productivity”⁷¹ which is what plays into the examination of credentials in the labour market. Highly skilled occupations are left vacant even when there is an abundance of highly

⁶⁹ Reitz, Jeffrey G. "Immigrant Skill Utilization in the Canadian Labour Market: Implications of Human Capital Research." (Journal of International Migration and Integration, no. 3 2001): pg: 411.

⁷⁰ Ibid, pg. 415.

⁷¹ Ibid.

skilled immigrants who are increasingly having difficulties gaining entry to these knowledge occupations.

There are numerous cases that emphasize the glass-ceiling barriers that stop highly-skilled immigrants from reaching the top of an organization even if they are successful in gaining entry into professional fields. “These glass-ceiling barriers may be unfair and discriminatory, as a Canadian Human Rights Tribunal concluded in the widely publicized case of racial barriers in promotion from the professional ranks to senior management at Health Canada.”⁷² Reitz goes on to explain further that “when workers move from one country to another, skill transferability becomes crucial. These institutional requirements include access to accurate information about the skills reflected in credentials acquired from specific educational institutions in other countries; reliable information regarding the individuals' performance in acquiring their credentials; and the performance assessments of comparably qualified individuals in comparable local employment situations.”⁷³ Employers are also not given any real incentive to help highly-skilled immigrants seeking positions in order to utilize their skills fully. Many changes are required to shift the burden from immigrants working menial jobs despite being highly-skilled to work as professionals in their fields.

Social problems caused by high rates of poverty can lead to many negative impacts on the economy. Examples of these problems include “demands on the social safety net to increase.

⁷² Reitz, Jeffrey G. "Immigrant Skill Utilization in the Canadian Labour Market: Implications of Human Capital Research.": pg. 417.

⁷³ Ibid, pg. 419.

Although immigrants are known to be self-reliant and reluctant to take advantage of the social assistance for which they are eligible, high rates of poverty and social disadvantage will inevitably translate into high rates of social-service take-up.”⁷⁴ This can also lead to a false perception of native-born citizens to view immigrants as burdens on the economy and cause a spike in racism and more.

The government at the federal level has voiced concerns in matters related to skill utilization and development of the labour force, “for example, in 2002, Human Resources and Development Canada, in cooperation with Industry Canada, committed \$40 million over five years to the integration of immigrants into the labour market as part of Canada's Innovation Strategy.”⁷⁵ Yet more action and cooperation is needed from all levels of government, especially because provinces bear the responsibility of employment. Similar to Reitz, Yan Guo discusses the further challenges that are present for professional immigrants in Canada. Yan’s research dives into looking beyond language skills which were aforementioned as helping immigrants get more jobs. Many Canadian employers use a lack of English language skills as a reason for not employing immigrants despite their skill sets which can help us understand the rising level of unemployment. A study conducted by Yan supports this by showing “that skilled immigrants faced many challenges including communication skills, a perceived lack of Canadian experience, devaluation of international experience and credentials, and discrimination of employers.”⁷⁶

⁷⁴ Ibid, pg. 423.

⁷⁵ Reitz, Jeffrey G. "Immigrant Skill Utilization in the Canadian Labour Market: Implications of Human Capital Research.": pg. 423.

⁷⁶ Guo, Yan. "Beyond language skills: Challenges for professional immigrants in Canada." (2006).

Ferrer and Riddell of the University of British Columbia also analyze the role of credentials in Canada and introduce the “sheepskin effect” which refers to “wage gains associated with receipt of a degree or diploma – such as high school or university graduation – after controlling for educational inputs such as years of schooling or number of course credits. The magnitude of such effects is relevant to understanding the relationship between education and economic success as well as to the debate over human capital versus signaling/ screening theories of education.”⁷⁷ The increase in wages based on and associated with each year of schooling is consistent with human capital theory. To reach their main findings, they further explore the role of credentials where they conclude that there is “strong evidence of sheepskin effects – earnings gains associated with receipt of a degree, certificate, or diploma after controlling for years of completed schooling.”⁷⁸ The sheepskin effect does not, however, truly reflect in the case of highly skilled immigrant workers but on the native-born citizens who complete individual years of school and earn their degrees in Canada.

In a policy recommendation report by Alboim, Finnie and Meng, the discounting of immigrants’ skills in Canada is also studied extensively. The discounting of foreign schooling in relation to immigrants’ skills is apparent when the value of international university degrees is brought up. “A foreign degree appears, on average, to have a return worth less than one-third that of a degree obtained in Canada by the native-born (worth about 37 per cent in higher earnings as compared to a high school graduate, on average), unless it is held by a white immigrant, in which

⁷⁷ Ferrer, Ana M., and W. Craig Riddell. "The role of credentials in the Canadian labour market." (Canadian Journal of Economics 3002) pg. 880.

⁷⁸ Ibid, pg. 902.

case the return is comparable to what a native-born Canadian would receive. At the same time, white and nonwhite immigrants alike receive good returns to any university education obtained in this country, while members of visible minorities born in Canada do as well as white, native-born Canadians.”⁷⁹ This finding is particularly interesting in the sense that skin colour and country of origin is not mainly the only setback a highly-skilled immigrant can face but rather the question of if they received their education in a Canadian university or not. These results are compelling as they suggest that Canadian education on top of foreign university degrees transforms obtained degrees more valuable and credential.⁸⁰ This policy recommendation calls for the government to intervene and accurately assess the value of work experience and education earned in a foreign country. Many questions arise when determining the value of a degree obtained outside of Canada such as, “what, for example, is an engineering degree from, say, the University of Bangalore worth as compared to one obtained in Canada? The uncertainty surrounding this sort of information represents a cost that will tend to reduce the value of immigrants’ skills in this country.”⁸¹

Many other skills and competencies should also be taken into account when determining the level of expertise and qualifications of an immigrant person such as occupation competencies, language skills aside from just knowing Canada’s official languages and more. To

⁷⁹ Alboim, Naomi, Ross Finnie, and Ronald Meng. “The discounting of immigrants' skills in Canada: Evidence and policy recommendations. ” (IRPP, 2005): pg.14.

⁸⁰ Ibid.

⁸¹ Ibid.

conclude this lengthy policy recommendation, the authors suggest that other policy-makers also start to address issues that are identified in this paper and implement them throughout Canada.

Steven Wald and Tony Fang of York University discuss the subject of *overeducated* immigrants in the Canadian labour market by using data from the 1999 Workplace and Employee Survey. The consequences of being overeducated can contribute to the growing earning gaps between native-born Canadians and immigrants. There is substantial evidence that “many recent immigrants are especially prone to overeducation. Specifically, those in households where a language other than English or French is most often spoken are nearly ten percentage points more likely to be overeducated.”⁸² Now, the issues surrounding being overeducated and highly skilled, becomes a significant theme in the lives of immigrants seeking comfortable paying and higher positions, especially in the knowledge sector, as discussed above. Several studies have proven the fact that the worth of a Canadian higher-education outweighs foreign university degrees obtained by immigrants. Often, it becomes difficult for new immigrants to get back into the schooling system after completing years of schooling back home with the responsibility of taking care of a family and providing for them. This becomes an endless cycle of looking for menial level jobs to temporarily put food on the table while losing years of education and skills that were gained outside of Canada.

⁸² Wald, Steven, and Tony Fang. “Overeducated immigrants in the Canadian Labour Market: Evidence from the Workplace and Employee Survey.” (Canadian Public Policy 34, no. 4 2008): pg. 476.

In *The Skill Paradox: Explaining and Reducing Employment Discrimination Against Skilled Immigrants* by Dietz, Joshi, et al. published in 2015, the authors explain that “skill discounting becomes more costly to immigrant employees as they have more advanced education. It is one explanation for the skill paradox that employment rates for immigrants decrease more and more relative to those of comparable locals, as skill levels increase. This devaluation-based skill paradox can be considered as a labour market-wide phenomenon.”⁸³ Extending the previous research concerning overeducated and highly skilled immigrants, these authors seek to uncover another aspect of skill-related discrimination. Similar to the devaluation based skill paradox, another paradox that is worth mentioning is the threat-based skill paradox. To better explain what these two paradoxes are, the authors note that “the two forms of skill paradoxes differ in that the threat-based skill paradox requires a specific competitive situation between immigrants and locals, whereas the devaluation-based skill paradox refers to the generic devaluation of skills whether immigrants compete with locals or not.”⁸⁴

This study provides further evidence that employment discrimination against skilled immigrants in Western countries such as Canada is very real and immigrants who are highly qualified for a position are most likely to be evaluated “less favourably than are their local counterparts. This skill paradox ultimately results in the exclusion of immigrants from labour forces, ironically because these immigrants are so highly skilled and qualified.”⁸⁵

⁸³ Dietz, Joerg, Chetan Joshi, Victoria M. Esses, Leah K. Hamilton, and Fabrice Gabarrot. "The skill paradox: Explaining and reducing employment discrimination against skilled immigrants." (The International Journal of Human Resource Management 26, no. 10. 2015): pg. 1320.

⁸⁴ Ibid.

⁸⁵ Ibid.

Furthermore, to conclude this chapter, I will also briefly overview the term “Canadian experience” which can be confusing in the context of skilled immigrant employment. Melinda Young, Matthew Chin and Izumi Sakamoto, therefore, suggest the use of the term “tacit knowledge” in “*Canadian Experience, Employment Challenges, and Skilled Immigrants*”⁸⁶. From the start of seeking employment, immigrants face many unpleasant experiences in Canada which make it hard for them to “fit in”. Therefore, “some skilled immigrants deliberately take on forms of speaking and behaving that closely fit what they believe employers to be looking for.”⁸⁷ This also includes losing and toning down some cultural variations when looking for work in Canada. To concisely explain and think of the implicit dimension of Canadian experience, Polanyi (1996) explains that “tacit knowledge can only be acquired through experience, through “learning by doing” on the job or through contextual, relational, situated learning, such as practicums, internships, mentoring and on-the-job training.”⁸⁸ Many other definitions of tacit knowledge and the different types of knowledge also exist. To conclude, the authors investigate the search for employment in Canada and the “Canadian experience” by redirecting the term to be thought of as tacit knowledge. This knowledge provides a helpful way to think about what precisely the “Canadian experience” could be for new immigrants. To summarize, “the key point is that not everything about how to operate within a new workplace (and new cultural

⁸⁶ Sakamoto, Izumi, Matthew Chin, and Melina Young. "Canadian Experience," *Employment Challenges, and Skilled Immigrants A Close Look Through "Tacit Knowledge."* (Settlement of Newcomers to Canada, Canadian Social Work, 12, 2010).

⁸⁷ Ibid, pg. 147.

⁸⁸ Ibid.

environment) can be explained in words (codified knowledge). Some of this knowledge always remains tacit.”⁸⁹ Such discussion is relevant given the rapid transformation of the “Canadian experience” which immigrants are assimilating to rapidly. Understanding questions relating to this sort of knowledge will also allow employment agencies and such to develop strategies to better equip new immigrants in Canada. In the next chapter, I will be discussing the implications of the research conducted in this paper and the gaps in research that exists when studying migrant worker rights and the Canadian labour market while presenting the main approaches taken by the scholars discussed.

⁸⁹ Sakamoto, Izumi, Matthew Chin, and Melina Young. "Canadian Experience," *Employment Challenges, and Skilled Immigrants A Close Look Through "Tacit Knowledge."*: pg. 150.

Chapter Four: Implications and Conclusion

In this final chapter of the MRP, I will be critiquing some of the approaches taken in the literature review and case studies above. This paper has widely maintained the position that countries across the world are not meeting international standards on employment rights for migrant workers, whether it be in China, the UAE or Canada. Relevant research on core labour standards and the transformation of the ILO regime is described by Philip Alston. Adopted in 1998 by the ILO, the Declaration on Fundamental Principles and Rights at work was introduced as a soft law instrument.⁹⁰ Internationally, this Declaration was seen to be the “gold standard” for the international discourse of labour rights. However, Western countries such as the United States and more have not ratified any of these policies except specific conventions, most notably “No. 182 on Child Labour which it has ratified. But for the most part, the actual standards are neither invoked nor relied upon.”⁹¹ Hatton and Williamson in *What Fundamentals Drive World Migration?*⁹² discussed policies aimed at choosing migrants with the rise of immigration worldwide along with what economic and demographic fundamentals were at play. There is no

⁹⁰ Alston, Philip. “‘Core labour standards’ and the transformation of the international labour rights regime.” (European Journal of International Law 15, no. 3 2004).

⁹¹ Ibid, pg. 496.

⁹² Hatton, Timothy J., and Jeffrey G. Williamson. “What fundamentals drive world migration?.” (Poverty, international migration and asylum, Palgrave Macmillan, London, 2005).

doubt that immigration is one of the most significant elements to consider when studying a country's labour relations and employment rights, therefore, extensive studies are required which are not as dated as the literature reviewed in the paper. More research needs to be conducted into the lives of migrant workers and the implications of their struggles and pursuit to find proper work in a foreign country. In the wake of rising migration, the large agricultural migrant worker communities are often overlooked in comparison to the highly-skilled worker population.

International treaties such as the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW) was entered into force back in 2003 and acts as a crucial instrument "in fostering respect for migrants' human rights throughout the world."⁹³ This convention attempts to protect one of the world's most vulnerable groups of people. There are "several reasons to explain why migrants constitute a vulnerable category. The very fact of crossing borders in search of employment leads migrants to operate in a transnational legal sphere characterised by many loopholes."⁹⁴ Their vulnerability only intensifies with the sector of employment they choose, and despite all of the international conventions and declarations, their rights are still not being protected globally in individual states. The ratification process of international treaties concerning migration and employment rights is one of the reasons why there are still many obstacles faced by migrant workers.

⁹³ Pécoud, Antoine, and Paul De Guchteneire. "Migration, human rights and the United Nations: An Investigation into the Obstacles to the UN Convention on Migrant Workers' Rights." (*Windsor YB Access Just.* 24 2006): pg. 242.

⁹⁴ *Ibid*: pg. 244.

Today, even the “human rights approach” which is popularly advocated by the United Nations High Commissioner for Human Rights and the ILO is becoming slowly irrelevant into the integration process of increasing national policies. Petersmann notes that “The UN Development program and modern economics demonstrate that protection of human rights can make citizens not only ‘better democrats’ but also more effective ‘economic actors’, and that much of the poverty in less-developed countries is due to inadequate protection of legal security, property rights, and other human rights as incentives for savings, investments, and division of labour.”⁹⁵ The importance of creating a place where economic welfare goes hand in hand with the prevalence of human rights is key to a healthy and prospering economy. Although much of the literature on migrant workers and their rights talks about the lack of enforcement of policies and regulations by various states, there is almost no literature that has discussed *how* this can be done by different governments. Merely considering the benefits that migrant workers bring to a country and the need to treat them like human beings is not enough because that is evidently not being done.

Alongside the need to clearly characterize these concepts and solutions to the problem is necessary, there is also research required on how to *measure* the issues migrant workers face. This paper has identified some of the key themes relating to the treatment of migrant workers

⁹⁵ Petersmann, Ernst-Ulrich. "The ‘Human Rights Approach’ Advocated by the UN High Commissioner for Human Rights and by the International Labour Organization: Is It Relevant for WTO Law and Policy?." (Journal of International Economic Law 7, no. 3 2004): pg. 612.

and employment rights for international migrant workers. Canada presents a compelling case to examine migrant worker rights as it is perceived as a liberal and welcoming place internationally. However, many injustices are often pushed under the rug, and as a consequence of this, innocent migrant workers face hardships and prove to be victims of a never-ending process.

The paper called for more awareness and realization of the nature of migrant worker conditions and the international standards that exist. Conclusively, this paper also demonstrated the prominence of structural inequalities and maintained that Canada does not indeed meet international standards on employment rights for migrant workers due to several breaches and failure of implementation of policies. The existing literature reviewed, however, has indeed made significant contributions by shedding light onto serious problems faced by migrant workers in this field of study.

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