

TRAFFICKING IN PERSONS

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TRAFFICKING IN PERSONS

INTRODUCTION

The United Nations estimates that 700,000 people are trafficked annually worldwide – this is a fluid figure that is difficult to pin down. Different organizations arrive at different estimates, partly because of differences in interpretation of the term, but primarily because of the extraordinarily clandestine nature of the activity being measured and the impossibility of arriving at concrete figures. Needless to say, the problem of trafficking in persons has become one of the most pressing topics in global migration policy today.

This paper will discuss the concept of trafficking in general terms and provide an overview of the legislative framework surrounding the issue at the international level and within the Canadian context. It will conclude with a discussion of potential gaps in Canadian legislation and policy with respect to trafficking in persons.

BACKGROUND

A. Definitions

The term “trafficking in persons” essentially refers to the recruitment, transportation and harbouring of a person for the purposes of forced service. The traditional images of victims of trafficking are of women and children forced into the sex industry; but trafficked persons also include men, women and children exploited through farm, domestic, or other labour. In some countries, children may be forced into work as beggars or child soldiers.

Trafficking can occur through a variety of means, from organized criminal groups that operate large-scale transnational networks with political and economic contacts in both sending and receiving countries, to small-scale operations that traffic only one or two people at a time. A trafficker could be one person, acting alone. Because of the clandestine nature of the activity, accurate data are difficult to obtain. While the United Nations (UN) estimates that

700,000 people are trafficked annually worldwide, other estimates are much higher. The UN also estimates that trafficking in persons generates annual global revenues approaching US\$10 billion.⁽¹⁾

Ultimately, individuals become involved with traffickers in a variety of different ways. Many are duped into a new profession, are deceived with seemingly legitimate employment contracts or enter into marriages abroad. Others may be abducted outright. Some may agree to forms of work without knowledge of the exploitative conditions they will be forced to work in. Some individuals may be put to work upon arrival at their destination, subject to debt bondage that can take years to repay. What is clear and consistent is that trafficked persons are subjected to various forms of physical, sexual or emotional abuse.

B. Smuggling Versus Trafficking

Within the trafficking framework, it is important to acknowledge the related issue of migrant smuggling – a concept that is often confused with trafficking in persons. Smuggling, or what some might call “facilitated migration,” involves taking someone across a border illegally for a fee. In such a situation, the person being transported pays the smuggler for this desired service. Upon arrival, the person may be simply deposited and have no further contact with the smuggler.

By contrast, trafficking in persons involves the use of deception, coercion or debt bondage for the purpose of exploiting people who are moved from one location to another.

However, trafficking and smuggling do often overlap. Frequently, smuggled migrants ultimately find themselves in exploitative situations similar to those of the trafficked person. This could be the case of those who are financially indebted to their smugglers for the transportation fee charged and must work off an exorbitant debt upon arrival. This could also be the case of the migrant sex worker who is forced to operate in unexpectedly exploitative conditions.

(1) Tim Riordan Raaflaub, *Human Trafficking*, PRB 04-25E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 9 January 2006, available at: <http://lopimages2.parl.gc.ca/lopimages2/prbpubs/inbrief1000/prb0425-e.asp>; Department of Justice, Backgrounder, “Trafficking in Persons: A Brief Description,” 25 November 2005, available at: http://canada.justice.gc.ca/en/news/nr/2005/doc_31486.html; Jacqueline Oxman-Martinez, Marie Lacroix, Jill Hanley, “Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector” Department of Justice Canada, August 2005, pp. 1-2, available at: <http://canada.justice.gc.ca/en/ps/rs/rep/2006/rr06-3/index.html>.

C. Canadian Context

At the national level, Canada has been dealing directly with the problem of smuggling and trafficking in persons since 152 Sri Lankan migrants were rescued off the east coast in 1986. Since that time, Canada has been identified as a source, destination and a transit country (often to the United States).⁽²⁾

1. Statistics

And yet, statistics are hard to ascertain. Estimates indicate that between 1,500 and 2,200 people are trafficked from Canada into the United States every year. The Royal Canadian Mounted Police (RCMP) estimates that 600 women and children are trafficked into Canada each year for the purposes of sexual exploitation, and that this number rises to 800 when broadened to include those trafficked into Canada for other forms of forced labour.⁽³⁾

However, law enforcement and other federal government officials emphasize that very few documented cases of trafficking in persons have actually come to light. Trafficking in persons is a clandestine activity, evidence of which often manages to elude the investigating authorities – evidence is largely anecdotal and is often provided by non-government organizations (NGOs) that provide services to trafficked persons.⁽⁴⁾ The few officially

(2) United States Department of State, *Trafficking in Persons Report*, June 2006, p. 86, available at: <http://www.state.gov/g/tip/rls/tiprpt/2006/>; Oxman-Martinez, Lacroix, Hanley, (2005), p. 2.

(3) Riordan (2006); Oxman-Martinez, Lacroix, Hanley, (2005), p. 2.

(4) Comments to this effect have been made by a number of individuals at conferences on the issue of trafficking in persons – for example, RCMP Constable Julie Meeks, “Human Trafficking” and the Sex Trade in Toronto Symposium, 24 March 2006. In testimony before the Standing Senate Committee on Human Rights on 15 May 2006, Brian Grant, Director General of International and Intergovernmental Relations at Citizenship and Immigration Canada had this exchange with Senator Jim Munson and Senator Raynell Andreychuk with respect to trafficking in children in Canada:

Mr. Grant: It is an issue that we are of course very vigilant about. There have been reports in the media. There have been reports from members of civil society. We follow up on those and ask for more information so either CIC or the RCMP can take steps. To date, there is no evidence of any cases of trafficking in children in Canada.

Senator Munson: Is there no evidence?

Mr. Grant: No evidence of any specific cases. As I say, though, we remain vigilant.

The Chairman, Senator Andreychuk: Have there been no cases of trafficking of children?

Mr. Grant: We have no evidence of trafficking in children. We have asked for further information to follow up on what are basically anecdotal reports, and no information has been provided to us.

documented cases that do exist are on the public record in the context of refugee claims made by trafficked persons before the Immigration and Refugee Board of Canada, and of investigations under the *Immigration and Refugee Protection Act* and the *Criminal Code*.

The overlap between international and intranational trafficking is another factor that muddies the data collection process. While some observers collect statistics on trafficking across borders, others look at the problem of trafficking within Canada as well. It is important to note that individuals can be trafficked both within Canada and into Canada. The trafficking definition requires a form of restricted or exploitative movement – this can include confinement, or international, interprovincial, inter-city, and even intra-city movement.

2. International Trafficking

In terms of exploitative movement across national borders, it is clear that internationally trafficked persons enter Canada through a variety of different means, both legal and illegal. Some arrive with papers for fake or real job offers, often for contract or seasonal work. Some of the most typical job offers for women include those in the entertainment industry, or as waitresses or nannies. Some women also enter legally as brides of Canadian men – as “mail-order brides,” or having married a Canadian man abroad. Children can also slip legally across the border accompanied by friends or relatives. Such children may be sold by their parents, or lured by friends through promises of a good education or job.

It is thought that most persons trafficked internationally enter the country illegally, either by being smuggled across the border or by arriving openly at a border with fake passports or work permits. Although some have been abducted outright, many trafficked persons enter of their own volition. The problem arises afterwards, when these individuals are forced into exploitative labour situations.⁽⁵⁾ Individuals who have entered Canada illegally are particularly vulnerable to such exploitation, as they may avoid turning to the police for fear of deportation

The RCMP has found that persons trafficked into Canada from abroad arrive primarily from Asia or countries of the former Soviet Union. As well, Winnipeg, Vancouver, Toronto and Montréal have been found to be the principal destination or transit points for individuals trafficked internally and from abroad.⁽⁶⁾

(5) For further examples of trafficking scenarios see International Labour Office, *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and the Rights at Work 2005*, pp. 48-55, available at: http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059.

(6) Oxman-Martinez, Lacroix, Hanley, (2005), pp. iii-2.

3. Intranational Trafficking

Trafficking of Canadians within national borders is an often neglected issue when dealing with studies and statistics on trafficking in persons – particularly trafficking in the context of the sex trade. In the same way that individuals entering Canada may enter exploitative work environments to escape dire conditions of poverty at home, Canadians facing economic deprivation and lack of opportunity for education or employment in their home communities are also pushed into exploitative industries, particularly the sex trade. Women from across Canada – many from poorer communities, a majority of them Aboriginal women and girls – leave their homes to enter the sex trade in urban areas. They may have been “lured” by a person offering them a job, education, or other opportunities; they may have left of their own volition and been picked up at a bus depot by individuals seeking out such vulnerable new arrivals. Other scenarios involve moving to the city with a “boyfriend” who convinces his partner to support them both through prostitution. No matter what the circumstances, it is clear that trafficking of Canadians within Canada exists, and that it is of particular significance to Aboriginal women and girls who move to urban areas to become involved in the sex trade.⁽⁷⁾

LEGISLATION

A. International Legislation

1. The Trafficking Protocol

The international community has condemned trafficking as an abhorrent form of modern-day slavery and a fundamental human rights abuse. Although a number of international instruments condemn trafficking in persons, the strongest attempt to deal with the problem is through the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *UN Convention Against Transnational Organized Crime*. Adopted by the UN General Assembly in November 2000, and ratified by Canada in May 2002, one of this Protocol’s primary goals is to maintain a careful balance between law enforcement and victim protection.

(7) *Ibid.*, pp. 2-13.

Article 3 of the Protocol defines trafficking in persons as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs[.]

This definition is intended to include a wide range of cases where individuals are exploited by organized criminal groups, or where there is an element of duress with a transnational aspect.⁽⁸⁾ The Protocol specifically provides that the consent of a person to exploitation is irrelevant if there has been any coercion or deception involved, or any benefit granted by the trafficker. Although the definition does not specifically require cross-border movement, this is clearly the focus of the Protocol, given its context within the *Convention Against Transnational Organized Crime* and its focus on border control.

Essentially, the Trafficking Protocol is an important model for national legislation, indicating conduct that should be sanctioned, the appropriate severity of punishment, and effective measures to combat and prevent trafficking. It outlines states' obligations to use domestic law to criminalize trafficking and corollary trafficking offences such as attempt, accessory and conspiracy.

However, international attention to the issue of trafficking goes beyond deterrence and prevention to deal with victim protection as well. The status of a trafficked person is often complex. Although some are universally recognized as victims – for example, children who are exploited through the sex trade – others can be perceived as illegal migrants or criminals. Women trafficked into the sex trade are sometimes seen as simply violating immigration or criminal laws relating to prostitution. Because of these perceptions, and because of threats from traffickers, many trafficked persons are reluctant to turn to the police for protection. The social stigma of prostitution is also a problem: women trafficked internationally who are returned to their home countries may be ostracized within their communities and families.

(8) United Nations Office on Drugs and Crime, “The Protocol to Prevent, Suppress and Punish Trafficking in Persons” (summary), available at: http://www.unodc.org/unodc/trafficking_protocol.html.

As a result of this complexity and the clear need to balance prevention strategies and criminal mechanisms for deterrence with a strong framework for victim protection, the Protocol:

- calls for states to protect trafficked persons from their traffickers and ensure confidentiality when such individuals come into contact with the authorities;
- encourages states to enact measures to ensure civil remedies for trafficked persons;
- encourages states to enact measures to ensure social benefits for trafficked persons; and
- emphasizes the importance of immigration status, by requiring states to consider laws that would allow trafficked persons to remain either temporarily or permanently in their country of destination in appropriate cases, and by ensuring that sending states agree to facilitate the repatriation of their own nationals.

2. Other Laws

A number of other international instruments also touch on the issue of trafficking in persons. One of the earliest of these within the modern international framework was the 1949 UN *Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others*. However, Canada never became a signatory to this Convention, as it went beyond condemning trafficking in persons to outlawing all forms of prostitution, whether voluntary or not. In 1949, and still today, this position cannot be reconciled with the law in Canada, where prostitution itself is legal and only activities associated with it are criminalized.

Beyond the 1949 Convention, the *Convention on the Elimination of All Forms of Discrimination Against Women*, to which Canada is a Party, deals with issues specific to the exploitation of women. The International Labour Organization also has a number of instruments touching on forced labour and minimum ages for employment. Finally, the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* outlines measures designed to enhance international cooperation to combat international trafficking in children. It requires States Parties to criminalize trafficking offences against children, including transferring a child's organ for profit, or the engagement of a child in forced labour. Canada ratified this Optional Protocol in September 2005.

B. Domestic Legislation

1. *Criminal Code*

In Canada, a number of laws exist to combat and prevent trafficking in persons. In terms of criminal law, Bill C-49⁽⁹⁾ came into force on 25 November 2005, adding sections 279.01 to 279.04 to the *Criminal Code* to specifically prohibit trafficking in persons in Canada. These new provisions outline three prohibitions.

The first⁽¹⁰⁾ contains the global prohibition on trafficking in persons, defined as the recruitment, transport, transfer, receipt, concealment or harbouring of a person, or the exercise of control, direction or influence over the movements of a person, for the purpose of exploitation. Key to this definition is the fact that the criminal offence of trafficking in persons does not require movement across an international border to be triggered, but prohibits any situation where a person is moved or concealed and is forced to provide or offer to provide labour, a service, or an organ or tissue.

As is the case with the UN Tracking Protocol, a victim's consent to trafficking is never a valid defence because of the exploitation that is inherent in the trafficking offence.⁽¹¹⁾ Exploitation is defined in section 279.04 as any situation where a person exploits another by causing him or her to provide, or offer to provide, labour or a service by engaging in conduct that could reasonably be expected to cause the other person to fear for his or her safety or the safety of someone known to the individual if he or she fails to comply. Thus, the trafficking offence does not require direct exploitation, but could include coercion to induce an offer of service.⁽¹²⁾ Exploitation also includes situations where, by means of deception or the use or threat of force, a person causes another to have an organ or tissue removed. This primary trafficking offence is

(9) S.C. 2005, c. 43.

(10) Section 279.01 (1) "Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable:

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case."

(11) Section 279.01 (2) "No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid."

(12) Matthew Taylor, Department of Justice, Pacific Northwest Conference on International Human Trafficking, Vancouver, 19 May 2005.

punishable with a maximum of 14 years imprisonment, or life imprisonment under aggravated circumstances.

Section 279.02 prohibits a person from benefiting economically from trafficking and carries a maximum penalty of 10 years' imprisonment. This offence covers those who do not necessarily engage in actual recruitment or transportation, such as those who harbour a victim of trafficking for a fee.⁽¹³⁾ Finally, the third prohibition outlaws the withholding or destroying of identity, immigration, or travel documents to facilitate trafficking in persons, and carries a maximum penalty of five years' imprisonment.

The amendments contained in Bill C-49 also ensure that trafficking may form the basis of a warrant to intercept private communications and to take bodily samples for DNA analysis, and permit inclusion of the offender in the sex offender registry. Passage of Bill C-49 expanded the ability to provide restitution to victims who are subjected to bodily or psychological harm.

Beyond these amendments, a number of generic provisions in the *Criminal Code* are used to combat trafficking in persons by targeting specific forms of exploitation and abuse that are inherent in trafficking. These include offences such as fraudulent documentation, prostitution-related offences, physical harm, abduction and confinement, intimidation, conspiracy, and organized crime.

2. Immigration and Refugee Protection Act

Outside the *Criminal Code*, the *Immigration and Refugee Protection Act* (IRPA) targets cross-border trafficking in persons. Section 118 of the IRPA defines the offence of trafficking – to knowingly organize one or more persons to come into Canada by means of abduction, fraud, deception, or the use of force or coercion. This offence includes the recruitment, transportation, receipt, and harbouring of such persons, and the maximum sentence is life imprisonment. For the purposes of sentencing, a court will consider aggravating factors, such as bodily harm or death; involvement of a criminal organization; whether the offence was committed for profit; and whether the trafficked person was subjected to humiliating or

(13) *Ibid.*

degrading treatment, including sexual exploitation. The first-ever charges under section 118 were laid in April 2005, but are currently being challenged for vagueness.⁽¹⁴⁾

Explicitly laying out the distinction between trafficking and smuggling, section 117 of the IRPA defines the offence of smuggling – to knowingly organize, induce, or assist one or more persons who do not possess a valid travel document to come into Canada. The maximum sentence for smuggling less than 10 people is 14 years' imprisonment, while that for smuggling 10 or more people is life imprisonment. Proceedings under section 117 may only be initiated with the consent of the Attorney General of Canada – this is seen as a protection for humanitarian organizations that “smuggle” refugee claimants into the country.

Finally, sections 122 and 123 outline the additional offence of using travel documents to contravene the IRPA, as well as the buying or selling of such travel documents. The maximum sentence for this offence is 14 years' imprisonment.

Beyond this criminal application of the IRPA, the concept of being trafficked has also arisen frequently as a potential ground for claiming refugee status in Canada. Currently, there is no consensus in the case law concerning whether being trafficked is, in and of itself, grounds for claiming refugee status. Rather, the decisions of the Immigration and Refugee Board of Canada are grounded in the context of the specific case to determine whether a valid refugee claim has been established.

3. Victim Protection Scheme

a. Some Context

In contrast with strong attempts to combat and prevent trafficking both in Canada and abroad, only a few countries have put in place specific measures to assist trafficked persons themselves. The particular issue of victim's rights is often sidelined within the larger struggle against organized crime. Next to the immediate scourge of the traffickers themselves, victim protection is often seen as a secondary concern. Another reason for approaching the issue from this perspective was raised during negotiations for the Trafficking Protocol, based on the argument that making special provisions for trafficked persons will merely encourage the

(14) Michael Ng, who ran a Vancouver massage parlour, is alleged to have deceived two women into coming to Canada and then forcing them into prostitution.

industry. This argument raises concerns about border control and the need to limit the pull factors for those caught up in this illegal form of migration.⁽¹⁵⁾

However, undertaking to recognize trafficked persons as victims of crime, rather than as criminals themselves, is an important first step crucial toward uncovering trafficking networks and bringing the perpetrators to justice. Faced with deportation, it is clear that trafficked persons often stand to lose more than they gain through cooperation with the justice system. Given the option of deportation, possible criminal proceedings because of their perceived status as illegal migrants or criminals, and potential retaliation from their traffickers, trafficked persons will often choose to remain in their exploitative situation rather than turn to the police. In addition, trafficked persons are usually extremely vulnerable – many have never left their home or country before and are entirely dependent on their trafficker. These individuals may not speak the language, may be unaware of the services and shelters available to victims of abuse, and may have an exaggerated fear of deportation or police – particularly if they come from countries where the police are assumed to be corrupt or implicated in trafficking rings. Such individuals also fear retaliation against family members or persecution by their traffickers if returned to their home country.⁽¹⁶⁾

Yet many advocates in this field argue that “possession of regular residence status is a precondition to any effective victim protection strategy.”⁽¹⁷⁾ Certainly, states that have opted to facilitate temporary or permanent residence permits for trafficked persons have noted enhanced cooperation with the authorities, in terms of trafficked persons testifying against their traffickers, as well as NGOs encouraging such individuals to report to police.⁽¹⁸⁾

International law and prevailing norms do not call for automatic permanent residency for trafficked persons, but do call for consideration to be given. The Trafficking Protocol looks to the provision of both social benefits and immigration status. Article 6 requires

(15) Citizenship and Immigration Canada, “Trafficking in Persons: Canada-Europe Parliamentary Association,” 9 June 2003.

(16) Olivera Simic, “Victims of Trafficking for Forced Prostitution: Protection Mechanisms and the Right to Remain in the Destination Countries,” *Global Migration Perspectives*, Global Commission on International Migration, July 2004, pp. 3-4, available at: <http://www.gcim.org/attachements/GMP%20No%202.pdf>.

(17) Simic, (2004), p. 7.

(18) Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report 2005, Council of Europe Treaty Series – No. 197, p. 51, available at: http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf; *Human Trafficking: Reference Guide for Canadian Law Enforcement* (Abbotsford: University College of the Fraser Valley Press, 2005), p. 44, available at: http://www.icclr.law.ubc.ca/Publications/Reports/human_trafficking_2005.pdf.

domestic legal or administrative systems to provide trafficked individuals with information on legal or administrative proceedings. States Parties must provide for the physical safety of such individuals within their borders and ensure that their domestic legal system has measures to provide victims with the possibility of compensation for their experiences. The Protocol encourages States Parties to enact measures to ensure victims' civil remedies and social benefits. Article 7 deals with immigration status, holding that States Parties must consider laws that would allow trafficked persons to remain, either temporarily or permanently, in appropriate cases.

b. Canada's Approach to Immigration Status

Canada's traditional approach to trafficking in persons has been to place an emphasis on prevention and prosecution. Trafficked persons have generally been treated as illegal immigrants or face criminal charges, and are often deported.⁽¹⁹⁾ As noted by some analysts, Canadian policy-makers "agreed that a crime and security lens was helpful in getting human trafficking onto the public agenda in the post-September 11 political context when sympathy for migrants was low."⁽²⁰⁾

In Canada, the 2005 amendments to the *Criminal Code* and the coming into force of the IRPA in 2002 built provisions into the legislative framework that specifically targeted the perpetrators of trafficking, while only indirectly addressing issues of victim protection. Through Bill C-49, the *Criminal Code* now offers an expanded ability to seek restitution for trafficked persons who are subjected to bodily or psychological harm. In conjunction with Bill C-2,⁽²¹⁾ it also provides for enhanced witness protection. A judge has expanded abilities to exclude the public from the courtroom where a witness is under 18 in proceedings where the accused is charged with any trafficking offence, and to allow a witness who is under 18 to testify outside the courtroom or behind a screen so as not to see the accused.

However, until May 2006 there was no systematic process in place to deal with the immigration status of internationally trafficked persons. What was available were the generic

(19) The Future Group, *Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims*, March 2006, p. 14, available at: <http://www.thefuturegroup.org/TFGhumantraffickingvictimsstudy.pdf>; Jacqueline Oxman-Martinez, Jill Hanley, Fanny Gomez, "Canadian Policy on Human Trafficking: A Four-Year Analysis," *International Migration*, Vol. 43, No. 5, 2005, pp. 13-17.

(20) Oxman-Martinez, Hanley, Gomez, (2005), p. 10.

(21) *Bill C-2, An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, received royal assent in July 2005 (S.C. 2005, c. 32). By January 2006, the entire Act was in force.

categories available to all potential migrants, such as applications based on humanitarian and compassionate grounds, or refugee and immigration claims.⁽²²⁾

Policy-makers in Canada began to notice this gap in discussions with NGOs and agreed that it was time to raise human rights issues and victim protection as an area of focus and concern.⁽²³⁾ In May 2006 the Department of Citizenship and Immigration announced a new policy to provide temporary resident permits specifically targeted towards trafficked persons.⁽²⁴⁾ Working within the existing legislative framework, immigration officers may now issue temporary resident permits, valid for up to 120 days, to trafficked persons. Recipients of such permits are exempt from the processing fee usually charged, and are eligible for medical and social counselling assistance and other health service benefits under the Interim Federal Health Program.

The purpose of these permits is to provide trafficked persons with a reflection period to consider their options (such as returning home or assisting in the investigation and criminal proceedings against the traffickers); to allow them to recover from physical or mental trauma; to allow them to escape the influence of the traffickers; to facilitate their participation in an investigation or prosecution; and for any other purpose the officer judges relevant. There is no obligation on the trafficked person to cooperate with an investigation in exchange for a temporary resident permit.

A trafficked person may also be granted a permit for longer period or a subsequent temporary resident permit once an immigration officer determines whether it is reasonably safe and possible for the individual to return and re-establish a life in his or her country of origin or last permanent residence, whether the individual is needed and willing to assist the authorities in an investigation or prosecution, and any other relevant factors. At some point, it may be possible for the trafficked person to obtain permanent residence status.

c. Canada's Approach to Social Benefits

Even though Canada has now established a scheme to provide immigration status to trafficked persons, provision of social services and support remain ad hoc. Victim support and

(22) The Future Group, (2006), p. 14.

(23) Oxman-Martinez, Hanley, Gomez, (2005), p. 10 + 14.

(24) Citizenship and Immigration Canada, Temporary Resident Permits policy, 26 May 2006, pp. 23-29, available at: <http://www.cic.gc.ca/manuals-guides/english/ip/ip01e.pdf>.

services fall primarily within provincial and territorial jurisdiction, but each jurisdiction has a different approach to service provision, which may or may not apply to trafficked persons. As well, trafficked persons generally receive front-line support from NGOs that do not necessarily receive direct funding from the federal government. Agencies have noted that the biggest obstacle to service provision at the grassroots level is financial.⁽²⁵⁾

Because service provision and social benefit legislation vary from province to province, health care, legal aid, housing and social assistance may or may not be available to trafficked persons, depending on where they are located. Certainly, illegal immigrants or those on temporary visas do not generally have access to provincial welfare. Legal aid plans also vary from jurisdiction to jurisdiction in terms of various immigration proceedings; however, with respect to criminal charges, foreign nationals facing charges that could result in incarceration are usually eligible for coverage.⁽²⁶⁾

In terms of health care, the *Canada Health Act* states that an individual must meet certain residency requirements to be eligible for provincial health insurance, thus effectively excluding illegal immigrants and others with only short-term immigration status. Generally, a trafficked person who entered Canada surreptitiously would most often be considered ineligible for coverage. It must be noted that Health Canada does offer limited support for undocumented migrants to gain access to health clinics, and has funded some small-scale projects providing services to trafficked women – particularly those in sex trade.⁽²⁷⁾

Finally, provincial victim compensation programs can provide financial compensation to victims who have suffered physical injury or property loss as a result of a crime. Foreign nationals are eligible to apply, but what is often minimal financial compensation for physical injuries rarely effectively addresses the trafficked person's predicament.

4. Federal Working Group

The final piece of the Canadian framework dealing with trafficking in persons is the federal Interdepartmental Working Group on Trafficking in Persons. This Working Group is

(25) The Future Group, p. 14; Oxman-Martinez, Hanley, Gomez, (2005), p. 16; US Department of State, p. 87; Oxman-Martinez, Lacroix, Hanley, p. 28. It should be noted that the federal Victims Fund program could be interpreted to include victims of trafficking within its mandate. Thus, NGOs may apply to this fund for funding to fill gaps in service delivery to trafficked persons.

(26) Oxman-Martinez, Lacroix, Hanley, (2005), p. 24.

(27) *Ibid.*, p. 29; Oxman-Martinez, Hanley, Gomez, p. 16.

co-chaired by the departments of Justice and Foreign Affairs and includes many other federal departments and agencies. Its mission is to coordinate federal efforts to address trafficking in persons and to develop a federal strategy, in keeping with Canada's international commitments. The Working Group reviews existing laws, policies and programs that may have an impact on trafficking, with a view to identifying best practices and areas for improvement.⁽²⁸⁾ It has already developed and distributed an anti-trafficking booklet, a pamphlet and a poster available in multiple languages to Canadian missions and NGOs abroad and within Canada to warn potential victims of the dangers of trafficking. Numerous conferences, seminars, and public outreach sessions have also been held to discuss best practices and research, and to raise awareness in communities.

Partners in this working group have taken on trafficking initiatives of their own. Status of Women Canada and the RCMP have funded a number of academic publications studying the scope of, and legislative framework surrounding, trafficking in persons in Canada. In September 2005, the RCMP also established a Human Trafficking National Coordination Centre, staffed by two RCMP officers and one analyst, assisted by six regional RCMP human trafficking coordinators. Housed in the immigration section, this Centre's role is to provide assistance to field investigators, as well as to work on education and awareness campaigns.

Citizenship and Immigration Canada has also negotiated a number of bilateral information-sharing agreements on illegal migration with the United States, the United Kingdom, Australia and the Netherlands, while also enhancing information-sharing between law enforcement jurisdictions within Canada.⁽²⁹⁾

CRITICISMS OF CANADA'S APPROACH TO TRAFFICKING IN PERSONS

Canada's approach to trafficking in persons is generally well-perceived in the international community and at home. Although a number of criticisms had been expressed, these have been addressed by the implementation of the IRPA, Bill C-49, and the May 2006 policy changes to facilitate temporary resident permits. On a broad scale, Canada is recognized as a relatively strong force in terms of the laws and resources in place to combat trafficking. The

(28) Department of Justice, Backgrounder (2005).

(29) Oxman-Martinez, Hanley, Gomez, (2005), p. 13

United States Department of State's June 2006 *Trafficking in Persons Report*, which summarizes and analyzes each country's efforts to deal with trafficking, ranks Canada as a "Tier 1" country (a country whose government fully complies with the minimal standards of the US *Trafficking Victims Protection Act*). Even before the implementation of the May 2006 policy, this report commented that:

The Government of Canada fully complies with the minimum standards for the elimination of trafficking. Over the last year, two new Canadian laws were passed to strengthen anti-trafficking and sexual exploitation legislation. Victim protection and services for victims are primarily the responsibility of provinces and territories, and protection and services for trafficking victims vary by province or territory. As such, some international organizations and NGOs have criticized the Government of Canada for lack of social services and refugee or immigration protection specifically tailored for trafficking victims; however, they have only been able to cite a few specific examples of these alleged problems. Although a government agency provides posters and pamphlets on trafficking, efforts should be made to increase public awareness campaigns in communities vulnerable to trafficking to inform potential victims of their rights or immigration options. In British Columbia – a key area for trafficking-related crimes – the RCMP, in collaboration with the Public Safety Ministry, is implementing a pilot project for victims of trafficking. Efforts should be made to expand this type of program.

Some criticisms of the Canadian approach to trafficking in persons still do exist. These revolve around gaps in the victim protection scheme, and the overly broad nature of the definition of trafficking in persons.

A. Victim Protection

One frequently cited gap in the victim protection scheme is the lack of an early identification procedure for victims of trafficking. Clearly, a prerequisite for victim protection is the ability of immigration and law enforcement officials to recognize trafficked persons and the tell-tale signs of trafficking. Currently in Canada, there is no formal process for the identification of trafficked persons. However, screening tools have been developed by the Department of Justice to help with identification, and numerous conferences and training

programs have been implemented to assist immigration and law enforcement officials with identification and to teach them how to be sensitive to victims' needs.⁽³⁰⁾

Another gap relates to the services offered to trafficked persons. Critics point out that temporary resident permits and ad hoc NGO involvement are not enough – comprehensive services must be systematically offered to trafficked persons. A report⁽³¹⁾ released by the Department of Justice notes that trafficked persons have varying experiences and needs, but that these needs generally include protection services (police or witness protection similar to that offered to victims of domestic violence); shelter (emergency shelter, assisted living, or independent housing); health services (short, medium term or long term – including access to public health care, mental health care, detoxification and addiction recovery services); long-term counseling; and economic services (access to welfare, employment, access to education and skill development, language training). As noted earlier, most of these services are offered at the provincial level in Canada, and accordingly exist at uneven levels across the country. Agencies that provide assistance to trafficked persons include those that focus on issues of poverty, the needs of immigrants, and female victims of various types of abuse and violence. Trafficked persons are referred to these agencies through settlement services, prison advocates, women's organizations and Aboriginal leaders. However, the Department of Justice report noted that lack of funding for such organizations remains a significant obstacle.

Due to issues of jurisdiction and practical complexity, another often neglected aspect of any victim protection scheme is the safe return of trafficked persons to their home or country of origin. Individuals returning home can face a wide variety of emotional and physical obstacles, ranging from ostracism in the home community (particularly for individuals involved in the sex trade) and threats from traffickers, to a mere repeat of the conditions of poverty that led to the initial need to leave. Advocates argue that ensuring the safe return of trafficked persons must involve an organized mechanism to oversee return and reintegration, possibly through the involvement of an NGO or an international organization such as the International Organization for Migration. These advocates also point to the need for retraining programs in order to facilitate this process by providing trafficked persons with viable alternatives. Such initiatives would go some way toward ensuring that the trafficking problem does not simply

(30) *Human Trafficking*, p. 35.

(31) Oxman-Martinez, Hanley, Lacroix (2005).

become a “revolving door” in which individuals again fall into the hands of traffickers or again seek a means of escaping oppressive conditions in the home community.⁽³²⁾

B. Broad Nature of Definitions and Overlap

Concerns have also been expressed with respect to the overall approach taken to combatting trafficking in persons in Canada. Some argue that there is no need for a specific trafficking offence in the *Criminal Code*, given its overlap with pre-existing offences that deal with exploitation and abuse, such as abduction and confinement, various forms of physical harm, intimidation, and organized crime. These critics point to the unnecessary duplication involved in the IRPA and *Criminal Code* offences.⁽³³⁾

Related concerns revolve around the overly broad nature of the trafficking definition and the approach taken to tackle the problem in Canada. These arguments are most prominent in advocacy circles dealing with issues of migration and prostitution, and they question whether looking at the problem from the perspective of “trafficking in persons” is useful at all. They note that a simple focus on exploitation is a more effective approach that is ultimately more understanding of the situation of those who are already marginalized and vulnerable in our society.

Certainly – as evidenced by confusion about the concepts of smuggling and trafficking, and as to whether trafficking includes intranational exploitation – defining and interpreting the term “trafficking” is an issue of major concern. The standard definition found in the Trafficking Protocol can be widely or narrowly interpreted. Some use it broadly to discuss the exploitation of vulnerable migrants and marginalized Canadians, placing emphasis on various forms of coercion, deception and exploitation in the workplace. This perspective, much like that adopted in the Canadian *Criminal Code*, leaves open the possibility of ignoring the issue of choice involved in the fact that some people may have accepted to work in exploitative situations because these conditions are at least better than those at home.⁽³⁴⁾ Advocacy groups such as Maggie’s, an organization run by and for sex workers, argue that the term trafficking has become overused in Canada such that it has become synonymous with sex work itself. They contend that

(32) *Ibid.*, p. 17.

(33) This duplication was noted in House of Commons Justice and Human Rights Committee discussions with Department of Justice officials concerning Bill C-49, 4 October 2005.

(34) Canadian Council for Refugees, *Trafficking in Women and Girls: Report of Meetings*, Fall 2003, p. 22, available at: <http://www.web.net/~cct/cctrtrafficking.PDF>.

such an approach implies tacit acceptance of the theory that prostitution is, in and of itself, exploitative, rather than recognizing the choices that individuals make with their lives. They point out that Canada's anti-trafficking laws have led to tighter borders and increased policing, pushing sex workers further underground and heightening their vulnerability.⁽³⁵⁾

Others interpret the issue of trafficking more narrowly, using the term to refer to migrants and marginalized Canadians who do not consent to the exploitative conditions under which they work, but who are forced to remain in such situations due to threats or violence. This view of extreme coercion – of women and children kidnapped, confined, and forced into prostitution – is part of the mythology that has been built into the traditional image of trafficking within the international community.⁽³⁶⁾

Finally, others question whether it is useful to use the trafficking framework at all because it does not correspond to many individuals' experiences. Concern is expressed that by applying the broad and emotionally charged term "victim of trafficking," the choices and experiences of the individuals involved are ignored, as is any investigation of the root causes of the actual exploitation.⁽³⁷⁾

Approaching the issue from the angle of trafficking for the purposes of prostitution, Leslie Jeffrey, at the University of New Brunswick, argues that a more constructive framework is to look at the issue as one revolving around illegal migration and migrant sex work. She points out that exploitation is not necessarily inherent in migrant sex work, and that many individuals who arrive in Canada know that they will be entering the sex industry, seeing it as a better situation than they have at home, even if it is not the "best" solution. Nonetheless, problems frequently arise because these women are often lied to about the money they will receive or the conditions under which they will work. Much like Maggie's, Jeffrey argues that the authorities should focus on the realities behind the situations of exploitation that do exist, rather than creating a mythology around "trafficking in persons" which simply provides an excuse to strengthen criminal and immigration laws, consequently worsening conditions in the sex trade by pushing it underground. Creating a negative mythology around trafficking creates "victims" and a perception that sex workers are inherently exploited, rather than attempting to empower the women involved and recognize the choices that they have made. Jeffrey argues

(35) "Human Trafficking" and the Sex Trade in Toronto Symposium, 24 March 2006.

(36) Canadian Council for Refugees, (2003).

(37) *Ibid.*

that by dealing with all such women as “victims of trafficking,” the government is unable to effectively address real problems of exploitation faced by migrant sex workers.⁽³⁸⁾

In a similar vein, a number of NGOs providing services to trafficked persons have expressed the view that Canada’s trafficking provisions are not practical and do not respond to the realities faced by individuals who are exploited for their labour and services in Canada. These organizations point to the fact that many women initially enter willingly into labour situations that are ultimately exploitative, and are consequently reluctant to voice their complaints. This fact is often forgotten in legislation that relies on clear forms of exploitation for effective prosecution.⁽³⁹⁾

These arguments carry some weight. Although they tend to delve into the theoretical in ways that cannot be easily tackled through legislation, they raise legitimate perspectives that should serve to influence how government, policy-makers, and researchers approach the problem of trafficking in persons. These criticisms illustrate the fact that trafficking is not a one-dimensional concept – a horrendous scourge to be eliminated, with cowering victims to be rescued from behind locked doors – but one that is made up of multiple experiences. That stereotype of a trafficking victim does exist, as does the migrant labourer who has made choices with his life, as does the live-in caregiver with a visa who is abused by her employers, as does the runaway teenager exploited by her peers, as does the sex worker who may or may not have chosen to be where she is. How policy-makers choose to define a concept has significant implications for the solutions that they choose to deal with it.

CONCLUSION

Since Canada ratified the Trafficking Protocol in 2002, significant progress has been made at the domestic level to prevent trafficking and to prosecute traffickers, as well as to protect those trafficked across and within Canadian borders. Canada is recognized as a “Tier 1” country in the annual US Department of State report on trafficking in persons. And yet, gaps remain. Although the legislation is still new, it is important to note that very few prosecutions have been undertaken under either under the IRPA or through the specific *Criminal Code*

(38) Leslie Ann Jeffrey, “Canada and Migrant Sex Work: Challenging the ‘Foreign’ in Foreign Policy,” *Canadian Foreign Policy*, Vol.12, No. 1, 2005, p. 33.

(39) Pacific Northwest Conference on International Human Trafficking, Vancouver, 19 May 2005.

provisions on trafficking. Data collection at the official level seems to be at somewhat of a standstill because of the extraordinarily clandestine nature of the activity, yet NGO service providers provide frequent anecdotal accounts of their interactions with trafficked persons. Beyond temporary resident permits, services and benefits to trafficked persons are ad hoc and vary from province to province, while those community groups that deal with trafficked persons at the grassroots level complain of lack of funding. Listening to the voices of those who work with individuals who are exploited for their labour and services across the country may be the next step in finding an effective solution for dealing with trafficking in persons in Canada.