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IN BRIEF

Tim Riordan Raaflaub
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Human Trafficking

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* defines “trafficking in persons” at Article 3:

- (a) “Trafficking in persons” shall mean 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.⁽¹⁾

Trafficking in persons is not the same as migrant smuggling. The key distinction is that smuggled migrants are usually free once they arrive at their intended destination, whereas trafficking victims may be held against their will and subject to forced labour or prostitution.

ESTIMATES OF HUMAN TRAFFICKING

Estimating the extent of unlawful activities is an inherently difficult task. Both the International Organization for Migration (IOM) and the Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, have emphasized the scarcity of data on trafficking.

The U.S. Department of State released the most recent *Trafficking in Persons Report* in June 2006. The report states that between 600,000 and 800,000 people are trafficked across transnational borders, or from one country to another, each year. When intra-country or “within country” estimates are included, the figure rises into the millions.

The 2006 *Trafficking in Persons Report* also indicates that “Canada is a source, transit, and destination country ...”⁽²⁾ Some 800 people are trafficked into this country each year, while an additional 1,500 to 2,200 are trafficked through Canada to the United States.

INTERNATIONAL LAW

The *United Nations Convention Against Transnational Organized Crime* (TOC) came into force on 29 September 2003. This convention was supplemented by two Protocols:

- 1) the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking Protocol), which came into force on 25 December 2003, and
- 2) the *Protocol Against the Smuggling of Migrants by Land, Sea, and Air* (the Smuggling Protocol), which came into force on 28 January 2004.

Christine Bruckert and Colette Parent describe the key provisions of the Trafficking Protocol as follows:

Under the protocol ... signatory countries must prevent and combat trafficking in persons by *undertaking* to criminalize the

organization of, assistance with or participation in the trafficking of individuals as defined in Article 3(a) ...⁽³⁾ They must also prevent and combat the problem by *endeavouring* to establish “measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.” ... It [the Trafficking Protocol] advocates information sharing between states and the training of experts involved in one capacity or another in the struggle against human trafficking.⁽⁴⁾

The Trafficking Protocol also contains other provisions addressing assistance and protection for victims; however, the burden on state parties to take action is more limited. Canada ratified the TOC Convention and both the Trafficking Protocol and the Smuggling Protocol in May 2002.

The *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* sets out measures intended to reduce international trafficking in children. Specifically, it provides that States Parties must criminalize trafficking offences against children, such as transferring a child's organs for profit, or engaging children in forced labour. Canada ratified this Optional Protocol in September 2005.⁽⁵⁾

CANADIAN LAW AND ANTI-TRAFFICKING ACTIVITIES

Canada has outlawed trafficking-related conduct. Key *Criminal Code* offences relevant to trafficking in persons include kidnapping, extortion, forcible confinement, conspiracy, the controlling or living off the avails of prostitution, as well as organized crime offences. In addition, Parliament enacted the *Immigration and Refugee Protection Act* (IRPA). Section 118 of this law, which took effect on 28 June 2002, provides that:

- (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.
- (2) For the purpose of subsection (1), “organize,” with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.⁽⁶⁾

The maximum penalty for this offence is life imprisonment, a fine of \$1,000,000, or both. The first-ever charges under section 118 were laid in April 2005, but are currently being challenged for vagueness.

Further, on 25 November 2005 these measures were strengthened through the enactment of *Criminal Code* reforms to specifically prohibit trafficking in persons, benefiting economically from trafficking, and withholding or destroying identity, immigration, or travel documents to facilitate trafficking.

In May 2006 the Department of Citizenship and Immigration announced a new policy to provide temporary resident permits to trafficked persons. Immigration officers may now grant temporary resident permits, for periods of up to 120 days, to these individuals.⁽⁷⁾

The federal Interdepartmental Working Group on Trafficking in Persons (IWGTIP), co-chaired by the departments of Justice and Foreign Affairs, coordinates federal activities to address trafficking. Recent activities by IWGTIP and its participating departments and agencies include:

- (1) producing and distributing an information booklet in 14 languages to warn potential trafficking victims,
- (2) organizing a professional training session on trafficking in persons for Canadian police, Crown prosecutors, immigration, customs and consular officials,
- (3) hosting the *Forum on Trafficking in Persons, Especially Youth, Children and Women*, to educate and increase public awareness about the situation of victims of trafficking, and explore community-driven prevention strategies, and
- (4) meeting with NGOs and academics to discuss a potential federal anti-trafficking strategy.

(1) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001), Article 3.

- (2) U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, June 2006, p. 86,
<http://www.state.gov/g/tip/rls/tiprpt/2006/>.
- (3) The definition of “trafficking in persons” is available at the beginning of this document.
- (4) Christine Bruckert and Colette Parent, *Trafficking In Human Beings and Organized Crime: A Literature Review*, Research and Evaluation Branch, Community, Contract and Aboriginal Policing Services Directorate, Royal Canadian Mounted Police, June 2002, p. 22.
- (5) Laura Barnett, *Trafficking in Persons*, PRB 06-24E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 July 2006,
<http://lpintrabp.parl.gc.ca/lopimages2/prbpubs/bp1000/prb0624-e.asp>.
- (6) *Immigration and Refugee Protection Act*, 2001, c. 27,
<http://laws.justice.gc.ca/en/i-2.5/text.html>.
- (7) Citizenship and Immigration Canada, Temporary Resident Permits policy, 26 May 2006, pp. 23-29,
<http://www.cic.gc.ca/manuals-guides/english/ip/ip01e.pdf>.