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Trafficking in Persons

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TRAFFICKING IN PERSONS

1 INTRODUCTION

Trafficking in persons has become one of the most pressing issues in global migration policy. The illegal transportation and harbouring of people for the purposes of forced service and other forms of exploitation is a violation of internationally and domestically recognized human rights. Organizations have arrived at different estimates concerning the extent of this global problem, partly because of differences in the interpretation of the term, but primarily because the clandestine nature of the crimes involved makes it difficult to produce accurate statistics.¹ Perhaps the most widely cited statistics on trafficking have been generated by the International Labour Office (ILO), which estimates that 20.9 million people were in forced labour globally at any given time between 2002 and 2011.² However, although the term “forced labour” encompasses trafficking in persons, the two concepts are not identical, and a more precise breakdown focussing specifically on the number of trafficked persons in the world is not available.³

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.

2 BACKGROUND

2.1 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,⁴ 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 large-scale transnational networks operated by organized criminal groups, with political and economic contacts in both source and destination countries, to small-scale operations that traffic only a few people at a time. A trafficker may also be one person, acting alone.

Individuals become involved with traffickers in a variety of ways. Many are duped into a new occupation or are deceived with seemingly legitimate employment contracts. 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. Many trafficked persons are kept subservient to their traffickers through the exploitation of drug dependencies and through threats that disobedience will result in family members being harmed or told of the individual's

involvement in sex work.⁵ What is clear and consistent is that trafficked persons are subjected to various forms of physical, sexual or emotional abuse.

While accurate data about the extent of trafficking is difficult to obtain, all agencies agree that the scope of the problem is significant, and that the profits rival those derived from arms and drug trafficking. In a recent report, the ILO estimates that illegal profits generated by the broader category of forced labour amount to US\$150.2 billion annually.⁶

2.2 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. In such a situation, the person being transported is consenting and 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 may be moved from one location to another. Trafficked persons do not necessarily cross borders.

However, trafficking and smuggling often do 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 and must work off an exorbitant debt upon arrival. This could also be the case of the migrant worker who is forced to operate in uncommonly exploitative conditions. It could also be the case of the migrant transported in unexpectedly harsh and exploitative conditions. In all these cases, human trafficking charges could be laid, even if the smuggled person had initially agreed to participate.

2.3 CANADIAN CONTEXT

As awareness of trafficking and its implications has grown, the portrait of what it represents in different countries has evolved. Today, Canada has been identified as “a source, transit and destination country” for trafficking in persons.⁷

2.3.1 INTERNATIONAL TRAFFICKING

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. Typical job offers for women include those in the entertainment industry, or as waitresses or nannies. (One recent example involved the allegations of a live-in Filipina nanny in Vancouver who claimed to be kept in the country illegally while working long hours for a low salary.⁸) Men often arrive for farm labour or construction work – one well-publicized case involved a family who recruited other Roma migrants from Hungary to work in highly exploitative conditions in the construction industry in Hamilton, Ontario.⁹

Although some trafficked persons may have been abducted outright, many enter of their own volition. The problem arises once they arrive at their destination, when these individuals are forced into exploitative situations involving the sex trade or other forms of labour.¹⁰ Individuals who have entered Canada illegally are particularly vulnerable to such exploitation, as they may avoid turning to the police for fear of deportation.

According to the Royal Canadian Mounted Police (RCMP) 2010 report, *Human Trafficking in Canada: A Threat Assessment*, persons trafficked into Canada from abroad arrive primarily from Asia or countries that were part of the former Soviet Union. Traffickers usually have ethnic ties with their associates and with the source countries of those they bring into Canada.¹¹

2.3.2 DOMESTIC TRAFFICKING

As perceptions of human trafficking evolve, the trafficking of Canadians within national borders has begun to receive increasing attention from law enforcement agencies – particularly trafficking connected with the sex trade. In the same way that individuals entering Canada may become part of exploitative work environments to escape dire conditions of poverty at home, some Canadians facing economic deprivation and lack of opportunity for education or employment in their home communities are also pushed into exploitative activities, particularly in the sex trade. Women from across Canada – many from poorer communities, a majority of them Indigenous women and girls – leave their homes to find themselves in the sex trade in urban areas. They may have been enticed by a person offering them a job, education or other opportunities; they may have left of their own accord and been picked up by individuals seeking out such vulnerable new arrivals. Other scenarios involve a “boyfriend” who convinces his partner to support them both through prostitution or exotic dancing. The 2010 RCMP threat assessment notes that those trafficked domestically are for the most part recruited by an acquaintance or through the Internet.¹²

Law enforcement agencies and service organizations are increasingly aware that trafficking of Canadians exists in major urban centres across the country, and that it is particularly significant among Indigenous women and girls.¹³ As of 2012, fully 90% of all human trafficking convictions in Canada were domestic in nature, involving Canadian citizens or permanent residents – a vast majority of whom were trafficked for the purposes of sexual exploitation.¹⁴

3 LEGISLATION

3.1 INTERNATIONAL LEGISLATION

3.1.1 THE UNITED NATIONS 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 attempts to deal with the problem are through the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (UN Trafficking Protocol). Adopted

by the UN General Assembly in November 2000, and ratified by Canada in May 2002, one of the primary goals of this protocol is to maintain a careful balance between law enforcement and victim protection.

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.¹⁵

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. 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 UN *Convention against Transnational Organized Crime* and its focus on border control.

Essentially, the UN 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 activities such as attempt, accessory and conspiracy.

At the same time, international attention to the issue of trafficking goes beyond deterrence and prevention to deal with victim protection. The status of trafficked persons 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.

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 source states agree to facilitate the repatriation of their own nationals.

3.1.2 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 the Traffic in Persons and of the 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. This position could not be reconciled with the law in Canada, where prostitution itself was legal and only activities associated with it were criminalized.

Beyond the 1949 convention, the UN *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 focusing on forced labour and minimum age for employment.¹⁶ 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 in order to combat international trafficking in children. It requires states that are parties to the protocol 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. Finally, the Council of Europe's *Convention on Action against Trafficking in Human Beings* came into force in February 2008. Canada has observer status at the Council of Europe and has not yet signalled an intention to sign this convention.

3.2 DOMESTIC LEGISLATION

3.2.1 CRIMINAL CODE

In Canada, a number of laws exist to combat and prevent trafficking in persons. Criminal law is covered in sections 279.01 to 279.04 of the *Criminal Code*, which specifically target trafficking in persons. These provisions first came into force in 2005 and have been revised in subsequent years.¹⁷ They essentially outline three prohibitions.

The first contains the global prohibition on trafficking in persons, defined as the recruitment, transport, transfer, receipt, holding, 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 (section 279.01, or section 279.011 in the case of children). Notably, the criminal offence of trafficking in persons does not require movement across an international border – or, in fact, any movement at all –

to be triggered, but prohibits any situation where a person is moved, concealed or otherwise controlled, and is forced to provide or offer to provide labour, a service, or an organ or tissue.¹⁸

As is the case with the UN Trafficking Protocol, a victim's consent is never a valid defence because of the exploitation that is inherent in the trafficking offence.¹⁹ 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.²⁰ The Department of Justice Canada also notes, "Exploitation need not have actually occurred. Evidence that exploitation is intended is sufficient."²¹ Section 279.04(2) lists the factors that a court may consider when determining whether exploitation was intended or has taken place. Finally, 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 punishable with a maximum of 14 years' imprisonment, or life imprisonment under aggravated circumstances (with a range of mandatory minimum sentences [MMS] depending on the circumstances).

Section 279.02 of the *Criminal Code* prohibits a person from receiving a financial or other material benefit from trafficking and carries a maximum penalty of 10 years' imprisonment (14 years' imprisonment for offences involving children, with an MMS of two years). This offence covers those who do not necessarily engage in actual recruitment or transportation, such as those who harbour a trafficked person for a fee, or an end "user" of a sexual service or other forced labour who is aware that the person was trafficked.²² 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 – 10 years' imprisonment for offences involving children, with an MMS of one year (section 279.03).

In 2012, Bill C-310 added the offences of trafficking in persons to the list of offences committed outside Canada for which Canadian citizens or permanent residents may be prosecuted in Canada through the extraterritoriality clause, section 7(4.11) of the *Criminal Code*.²³

In addition, the trafficking-related provisions in the *Criminal Code* ensure that trafficking may form the basis of a warrant to intercept private communications and to take bodily samples for DNA analysis, permit inclusion of the offender in the sex offender registry, and allow an individual to be labelled a dangerous or long-term offender (in the latter case, for offences involving children).

A number of witness protection provisions also apply to human trafficking offences. Some expand the ability to provide restitution to victims who are subjected to bodily or psychological harm, while others extend witness protection provisions to cover children who are testifying in trafficking cases. Judges may grant a peace bond or exclude the public from a courtroom when a witness under the age of 18 is testifying in proceedings where the accused is charged with any trafficking offence. Such

witnesses may also testify outside the courtroom or from behind a screen. In addition, the trafficking provisions have been added to the list of offences for which no record relating to a complainant or witness may be produced to an accused except according to a carefully defined process set out in the *Criminal Code*.

Beyond these amendments, a number of other 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.

As of January 2015, 85 cases involving 151 offenders had ended in convictions using these trafficking-specific and other more generic *Criminal Code* provisions.²⁴ According to a 2015 survey, sentences for convictions that included trafficking-specific offences range from three years and one day of probation to five and a half years in custody (net sentence after credit for time served).²⁵ Sentences handed down in 2014 for trafficking and generic related offences ranged from fines and community service to six and a half years' imprisonment.²⁶

3.2.2 IMMIGRATION AND REFUGEE PROTECTION ACT

In addition to 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 sentence is a fine of up to \$1 million or life imprisonment, or both. 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 degrading treatment, including sexual exploitation. As of late 2015, only three charges had ever been laid under section 118,²⁷ and the first conviction in June 2013, in the case of a nanny working in exploitative conditions, was set aside by the British Columbia Court of Appeal in March 2015. At the new trial the accused pleaded guilty to lesser charges.²⁸

Explicitly laying out the distinction between trafficking and smuggling, section 117 of the IRPA defines the offence of smuggling – to organize, induce, or assist one or more persons to come into Canada, knowing that it is illegal for them to do so. The maximum sentence for smuggling fewer 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.²⁹

Finally, section 122 outlines the additional offences of using travel documents to contravene the IRPA and the buying or selling of such travel documents. Section 123 sets the maximum sentence for these offences at 14 years' imprisonment.

The contention that a person has been trafficked has also arisen frequently as a potential ground for claiming refugee or protected person status in Canada. Currently, there is no consensus in the case law on the question of whether being trafficked is, in and of itself, grounds for claiming asylum in Canada. Rather, Immigration and Refugee Board of Canada decisions about whether valid claims have been established are grounded in the specific cases before it.

Finally, in the context of March 2012 amendments to the IRPA and in an effort to protect at-risk individuals,³⁰ the departments of Citizenship and Immigration and of Human Resources and Skills Development announced in July 2012 the implementation of policies that effectively prevent employers from hiring foreign temporary workers in industries linked to the sex trade.³¹

4 VICTIM PROTECTION SCHEME IN CANADA

4.1 CONTEXT

In contrast with strong attempts both in Canada and abroad to combat and prevent trafficking, 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 – in comparison with the immediate scourge of the traffickers themselves, victim protection is often seen as a secondary concern. Another reason for accorded less attention to victims' rights than to trafficking was raised during negotiations for the UN Trafficking Protocol: the argument was advanced that making special provisions for trafficked persons will merely encourage the industry. Those who support this argument raise concerns about border control and the need to limit factors that lead those caught up in this illegal form of migration to believe that the risks are worth taking.³²

However, recognizing trafficked persons as victims of crime, rather than as criminals themselves, is an important first step in uncovering trafficking networks and bringing the perpetrators to justice. Given the options of deportation, possible criminal proceedings because of their perceived status as illegal migrants or criminals, and potential retaliation from their traffickers, trafficked persons often choose to remain in their exploitative situations 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 of the destination country, 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. Individuals trafficked from abroad also fear retaliation against family members or persecution by their traffickers if returned to their home countries.³³

Regarding trafficking across borders, many advocates argue that “possession of regular residence status is a precondition to any effective victim protection strategy.”³⁴ Certainly, states that have opted to facilitate temporary or permanent residence permits for trafficked persons have noted an increased willingness of

trafficked persons to testify against their traffickers, as well as of non-governmental organizations (NGOs) to encourage such individuals to report to police.³⁵

International law and prevailing norms do not call for automatic permanent residency for trafficked persons, but do call for consideration to be given to such measures. The UN Trafficking Protocol looks to the provision of both social benefits and immigration status. Article 6 requires domestic legal or administrative systems to provide trafficked individuals with information on legal or administrative proceedings. Under the protocol, states parties must provide for the physical safety of such individuals within their borders and ensure that their domestic legal systems have measures to provide victims with the possibility of compensation for their experiences. Article 6 also 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.

4.2 CANADA'S APPROACH TO IMMIGRATION STATUS

Canada's early approach to trafficking in persons placed an emphasis on prevention and prosecution, while trafficked persons were generally treated as illegal immigrants or faced criminal charges, and were often deported.³⁶ 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 beginning to address issues of victim protection. For example, the *Criminal Code* now offers an expanded ability to seek restitution for trafficked persons who are subjected to bodily or psychological harm. It also provides for enhanced witness protection. In proceedings where the accused is charged with any trafficking offense and a person under 18 is called to testify, the judge has expanded abilities to exclude the public from the courtroom or to allow the witness to testify outside the courtroom or behind a screen so as not to see the accused.³⁷

Until May 2006, there was no systematic process in place to deal with the immigration status of internationally trafficked persons. Available were the generic categories open to all potential migrants, such as applications based on humanitarian and compassionate grounds, or refugee and immigration claims.³⁸

As awareness of the need to focus on human rights issues and victim protection grew, in May 2006 the Department of Citizenship and Immigration announced a new policy to provide temporary resident permits specifically for trafficked persons. This policy was updated in June 2007.³⁹ Working within the existing legislative framework, immigration officers may now issue temporary resident permits, valid for up to 180 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. They may also apply for a work permit at the same time, and are exempt from the processing fee usually charged for that.

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. This reflection period also allows trafficked persons to recover from physical or mental trauma, to escape the influence of the traffickers, to participate in an investigation or prosecution, and to take part in any other action the officer judges relevant. The trafficked person is not obliged to cooperate with an investigation in exchange for a temporary resident permit.

A trafficked person may be granted a permit for a longer period or a subsequent temporary resident permit once an immigration officer determines that it is not 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, and takes any other relevant factors into account. At some point, it may be possible for the trafficked person to obtain permanent residence status.

Between May 2006 and December 2013, Citizenship and Immigration Canada issued over 230 temporary resident permits to 102 potential victims of human trafficking. These figures include first-time permits and renewals.⁴⁰

Advocacy groups and NGOs providing services to trafficked persons laud this temporary permit regime; nevertheless, concerns remain. Organizations such as the Canadian Council for Refugees have reservations about the implementation of the permit regime, emphasizing inconsistent discretionary decision-making, the persistent link made between cooperation with law enforcement and the granting of permits, and restrictions on temporary resident permit applications for designated foreign nationals (a group which could include those trafficked into Canada by criminal organizations).⁴¹

4.3 CANADA'S APPROACH TO SOCIAL BENEFITS

The provision of social services and support for trafficked persons in Canada is ad hoc. Victim support and services fall primarily within provincial and territorial jurisdiction, and each jurisdiction has a different approach to service provision – although it is important to note that the federal Victims Fund does fund projects that provide services to trafficked persons.⁴² In general, trafficked persons have access to shelters, counselling, court assistance and other benefits, but such services are rarely tailored to the specific or potentially long-term needs of trafficked persons.⁴³ One such gap is the small number of beds for men offered by shelters for victims of abuse.

The situation for those trafficked from abroad is the most precarious. Illegal immigrants or those on temporary visas do not generally have access to provincial welfare payments and services. Legal aid plans also vary from jurisdiction to jurisdiction for various immigration proceedings, although trafficked persons generally have access to legal aid for immigration purposes. Foreign nationals facing criminal charges that could result in incarceration are usually eligible for coverage.⁴⁴

Regarding 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 short-term immigration status. Generally, a trafficked person who entered Canada surreptitiously would most often be considered ineligible for coverage.⁴⁵

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 also eligible to apply, but what is often minimal financial compensation for physical injuries rarely effectively addresses the trafficked person's predicament.

5 NATIONAL ACTION PLAN

In June 2012, the Government of Canada released a National Action Plan to Combat Human Trafficking in an effort to consolidate its ongoing initiatives in this area and to “introduce aggressive new initiatives to prevent human trafficking, identify victims, protect the most vulnerable, and prosecute perpetrators.”⁴⁶ A new entity, called the “Human Trafficking Taskforce” and helmed by Public Safety Canada, took the place of an earlier Interdepartmental Working Group on Trafficking in Persons that was co-chaired by Public Safety Canada and the Department of Justice Canada. The task force oversees implementation of the action plan, coordinates the federal government's response to trafficking issues and produces an annual report on progress.

As part of the action plan, the federal government pledged to invest \$6 million yearly in anti-trafficking initiatives, such as the RCMP's Human Trafficking National Coordination Centre, the Canada Border Services Agency's border services officer training/awareness programs, enhanced victim services from the Department of Justice Canada, and the Temporary Foreign Worker Program at what is now Employment and Social Development Canada.⁴⁷

To address prevention, the action plan places emphasis on training for front-line service providers, and on awareness campaigns, community assistance to identify at-risk individuals and locations, and the strengthening of child protection systems in Canadian international development programs aimed at youth.⁴⁸

In relation to victim protection, the action plan highlights the Department of Justice Canada's Victims Fund, which funds projects to improve services for trafficked persons, and underscores the need to identify and protect at-risk individuals, particularly through programs linked to what are now Immigration, Refugees and Citizenship Canada, and Employment and Social Development Canada.⁴⁹

On the subjects of the investigation and prosecution of traffickers, the action plan points to the establishment of a proactive integrated investigative team formed by the RCMP, the Canada Border Services Agency and local police; enhanced intelligence collection coordination and collaboration; and focused training for prosecutors and law enforcement officials.⁵⁰

Finally, with regards to partnership and knowledge, the action plan stresses engagement with civil society, all levels of government in Canada, international organizations and foreign governments.⁵¹

In 2015, Public Safety Canada released *National Action Plan to Combat Human Trafficking: 2013–2014 Annual Report on Progress*, its second annual report on the action plan, in which it emphasized the “living” nature of the plan and the government's on-going initiatives to continually enhance its anti-trafficking efforts.⁵²

The report noted, among other highlights, the establishment of the RCMP human trafficking enforcement team in December 2013. Based in Montréal, this team includes one officer from the Canada Border Services Agency and works closely with enforcement agencies in Quebec.⁵³

6 COMMENTARY ON 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 largely addressed by the implementation of the IRPA, amendments to the *Criminal Code* and policy changes to facilitate temporary resident permits. The United States Department of State's July 2015 *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 U.S. *Trafficking Victims Protection Act*). This report included the following summary:

The Government of Canada fully complies with the minimum standards for the elimination of trafficking. Canadian authorities maintained law enforcement and prosecution efforts against sex traffickers and increased protections for domestic workers employed in diplomatic households. Awareness and resources against sex trafficking were considerably greater than those against labor trafficking. Government funding for specialized services to trafficking victims was insufficient to meet victims' needs. Interagency coordination was uneven across the provinces and territories, as was national data collection on anti-trafficking efforts.⁵⁴

Despite praise for Canada's approach as a whole, then, some criticisms still exist. These often revolve around gaps in the victim protection scheme, the lack of national data collection and coordination of initiatives across the country, and the nature of the definition of trafficking in persons.⁵⁵

6.1 VICTIM PROTECTION

One frequently cited gap in the victim protection scheme has been the lack of an early identification procedure for trafficked persons. 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. This issue was identified as a priority in Canada's National Action Plan to Combat Human Trafficking. In recent years, screening tools and policy and procedure manuals have been developed and training programs have been implemented by the Department of Justice Canada Employment and Social Development Canada, the RCMP and the Canada Border Services Agency to help labour standard inspectors and immigration and law enforcement officials to identify victims and respond to their needs.⁵⁶ Various other government bodies have also carried out awareness-raising initiatives, and the action plan states that the government will "develop national and local diagnostic tools to assist with the identification of populations and places most at-risk of trafficking in Canada."⁵⁷

Another gap relates to the services offered to trafficked persons. Critics say that temporary resident permits and ad hoc NGO involvement are not enough – comprehensive services must be systematically offered to trafficked persons. A number of reports highlight the types of services that trafficked persons require, which 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- or long-term – including access to public health care, mental health care, detoxification and addiction recovery services); legal services (from immigration assistance to help with criminal proceedings); interpretation; transportation; long-term counselling; and economic services (access to welfare, employment, education and skills development, and language training).⁵⁸

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 and 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 Indigenous leaders. However, lack of funding for such organizations remains an obstacle. Funds currently being made available through the action plan are an indication that the government recognizes this as a problem, but a 2014 report on victim services noted that only \$500,000 of an almost \$8 million budget has been allocated for such services.⁵⁹

Due to issues of jurisdiction and practical complexity, another often neglected aspect of any victim protection scheme is the safe return of internationally 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 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 become a “revolving door” in which individuals again fall into the hands of traffickers or repeat their efforts to find a means of escaping oppressive conditions in the home community.⁶⁰

Finally, service providers are beginning to notice a gap with respect to the attention paid to trafficking for the purposes of labour versus trafficking for the purposes of sexual exploitation. Sexual exploitation is at the top of the agendas of many advocates, service providers, and government and enforcement agencies, while labour exploitation often goes unrecognized as a form of trafficking. Service providers who work with a wide range of trafficked persons are calling for increased monitoring of labour conditions for temporary foreign workers, focus on the specific needs of such trafficked persons, and further research into this growing phenomenon.⁶¹

6.2 OVERLAPPING OFFENCES AND BROAD DEFINITIONS

Concerns have also been expressed about the overall approach taken to combat trafficking in persons in Canada. Some argue that there is no need for a specific trafficking offence in the *Criminal Code*, given that the offence overlaps with pre-existing offences that deal with exploitation and abuse, such as abduction and confinement, various forms of physical harm, intimidation, and organized crime.⁶²

Related concerns revolve around the overly broad definition of “trafficking” and the approach taken to tackle the problem in Canada. Some 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.⁶³

Other commentators assert that using the term “trafficking” to refer in particular to the exploitation of vulnerable migrants and marginalized Canadians leaves open the possibility of ignoring the element of choice – the fact that some people agree to work in exploitative situations because the conditions could be better than those at home and in the other alternatives that may have been available to them.⁶⁴ It also ignores the fact that some situations become increasingly exploitative over time, particularly given the specific vulnerabilities of those involved.

From this perspective, many NGOs that provide services to trafficked persons question the usefulness of the trafficking framework, saying that it does not directly correspond to many individuals’ experiences. They underline that exploitation comes in different forms, and does not always correspond with the more extreme forms of violence and coercion that are traditionally associated with trafficking. These NGOs point to the need to understand the real experiences and choices involved and to focus on exploitation as it arises (whether this be with respect to lies about the money promised, working conditions, or outright violence) as well as its root causes, rather than emphasizing the broad and emotionally charged “victim of trafficking” framework.⁶⁵

Although these arguments tend to delve into the theoretical in ways that cannot be easily tackled through legislation, they raise legitimate perspectives that could 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. While trafficking includes the stereotype of a horrendous scourge to be eliminated – that of cowering victims to be rescued from behind locked doors – it at the same time involves people living a multiple of experiences.⁶⁶

7 CONCLUSION

Since Canada ratified the UN 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 U.S. Department of State report on trafficking in persons, and police and prosecutors in this country are increasingly using the *Criminal Code* as a tool to deal with trafficking.

And yet, gaps remain. Although the IRPA came into force more than a decade ago, it is important to note that very few prosecutions have been brought under that legislation. Despite efforts to develop a national framework to measure trafficking in persons, comprehensive data collection remains difficult. Services and benefits to trafficked persons are ad hoc and vary from province to province, while community groups that deal with trafficked persons complain of lack of funding. Listening carefully to the diversity of voices of those who work with individuals who are exploited for their labour and services across the country is proving to be an important next step in finding an effective solution for dealing with trafficking in persons in Canada.

NOTES

1. Lucie Ogradnik, [Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons](#), Crime and Justice Research Paper Series, Catalogue no. 85-561-M, No. 21, Canadian Centre for Justice Statistics, Statistics Canada, 2010, pp. 5–6 and 27; Nicole A. Barrett, [An Assessment of Sex Trafficking](#), Report prepared for the Canadian Women's Foundation, May 2013, pp. 5–13; and Ronald Weitzer, "New Directions in Research on Human Trafficking," *The Annals of the American Academy of Political and Social Science*, Vol. 653, May 2014.
2. International Labour Office [ILO], Special Action Programme to Combat Forced Labour, [ILO Global Estimate of Forced Labour: Results and methodology](#), 2012.
3. United Nations Office on Drugs and Crime, [Global Report on Trafficking in Persons](#), Vienna, November 2014, p. 30; and Royal Canadian Mounted Police [RCMP], [Human Trafficking in Canada: A Threat Assessment](#), 2010, p. 9. In the Canadian context, the RCMP estimated that 800 people were trafficked into Canada in 2005. However, in recent years, law enforcement and other federal government officials have become reluctant to provide a specific figure for the extent of trafficking in Canada.
4. "Children" refers to individuals who are under 18.
5. RCMP (2010), pp. 3 and 14.
6. ILO, [Profits and Poverty: The Economics of Forced Labour](#), 2014, p. 13. It should be remembered, however, that not all forced labour constitutes trafficking in persons.
7. United States Department of State, "Canada," [Trafficking in Persons Report: July 2015](#), p. 114.
8. However, an original conviction on the trafficking charges was set aside by the British Columbia Court of Appeal, and the accused pled guilty to lesser charges at the new trial in 2015: *R. v. Orr*, 2015 BCCA 88; and Keith Fraser, "[Vancouver man pleads guilty to lesser charge in nanny 'human trafficking' case](#)," *The Province* [Vancouver], 7 January 2016.
9. *R. v. Domotor, Domotor, and Kolompar*, [2012] OJ No 3630 (Ont SCJ). For a brief summary, see Department of Justice Canada, Federal/Provincial/Territorial Working Group on Trafficking in Persons, [A Handbook for Criminal Justice Practitioners on Trafficking in Persons](#), February 2015, pp. 108–109.
10. For further examples of international trafficking scenarios in Canada, see RCMP (2010). For international examples, see ILO, [A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005](#), Geneva, 2005, pp. 48–55.
11. RCMP (2010), pp. 1 and 12-8.

12. Ibid., p. 2.
13. Anette Sikka, *Trafficking of Aboriginal Women and Girls in Canada*, Aboriginal Policy Research Series, Institute on Governance, May 2009; Native Women's Association of Canada, [Sexual Exploitation and Trafficking of Aboriginal Women and Girls: Literature Review and Key Informant Interviews](#), Report commissioned by Canadian Women's Foundation, Task Force on Trafficking of Women and Girls in Canada, March 2014; and Red Willow Consulting Inc., Yvonne Boyer, Peggy Kampouris, [Trafficking of Aboriginal Women and Girls](#), Report prepared for Public Safety Canada, May 2014.
14. Government of Canada, [National Action Plan to Combat Human Trafficking](#), 2012, p. 8; and United States Department of State (2015), p. 115.
15. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, Annex II in United Nations, Office on Drugs and Crime, [United Nations Convention Against Transnational Organized Crime and the Protocols Thereto](#), 2004, art. 3.
16. See, for example, the 1930 ILO Convention No. 29 on Forced Labour and its 2014 Protocol, as well as the 1973 Convention No. 128 on Minimum Age.
17. See the following legislation: [An Act to amend the Criminal Code \(trafficking in persons\)](#), S.C. 2005, c. 43; [An Act to amend the Criminal Code \(minimum sentence for offences involving trafficking of persons under the age of eighteen years\)](#), S.C. 2010, c. 3; [An Act to amend the Criminal Code \(trafficking in persons\)](#), S.C. 2012, c. 15; and [An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other acts](#), S.C. 2014, c. 25. Discussion of the impact of [An Act to amend the Criminal Code \(exploitation and trafficking in persons\)](#), S.C. 2015, c. 16, which received Royal Assent in June 2015, is not included in the summary in this section of this publication, as its provisions have yet to come into force.
18. Department of Justice Canada, "Information Sheet for Law Enforcement," accessed 15 March 2011.
19. See [Criminal Code](#), R.S.C. 1985, C. C-46, ss. 279.01(2) and 279.011(2).
20. Matthew Taylor (Department of Justice Canada), "Canadian Perspectives on Human Trafficking," Delivered at the Pacific Northwest Conference on International Human Trafficking, Vancouver, 19 May 2005.
21. Department of Justice Canada, "Information Sheet for Law Enforcement." For a more detailed description of the application of these various provisions, see Department of Justice Canada, [A Handbook for Criminal Justice Practitioners on Trafficking in Persons](#), February 2015.
22. Department of Justice Canada, *Information Sheet for Law Enforcement*.
23. For example, a Canadian involved in a trafficking operation abroad can be prosecuted for that offence in Canada.
24. RCMP, Human Trafficking National Coordination Centre, *Fast Facts*, February 2015. One study concludes that fewer than 20 of these convictions fell under the specific trafficking offences: Hayli Millar and Tamara O'Doherty, [The Palermo Protocol and Canada: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada \(2002–2015\): Key Findings](#), 15 October 2015, pp. 34 and 41.
25. Millar and O'Doherty (2015), p. 50.
26. United States Department of State (2015), p. 114.
27. Millar and O'Doherty (2015), pp. 39 and 43.
28. *R. v. Orr*, and Fraser (2016).

29. An earlier version of this provision was struck down by the Supreme Court in 2015 as overly broad. See [R. v. Appulonappa](#), 2015 SCC 59.
30. [An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts](#), S.C. 2012, c. 1, ss. 206–207; Laura Barnett et al., [Legislative Summary of Bill C-10: An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts](#), Publication no. 41-1-C10-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 17 February 2012, pp. 143–151.
31. Employment and Social Development Canada, “[Government of Canada takes action to protect temporary foreign workers](#),” News release, 4 July 2012. See also Public Safety Canada, [National Action Plan to Combat Human Trafficking: 2013–2014 Annual Report on Progress](#), 2015, pp. 9–10.
32. Citizenship and Immigration Canada, *Trafficking in Persons: Canada–Europe Parliamentary Association*, 9 June 2003.
33. Olivera Simic, “[Victims of trafficking for forced prostitution: Protection mechanisms and the right to remain in the destination countries](#),” *Global Migration Perspectives*, No. 2, Global Commission on International Migration, July 2004, pp. 3–4.
34. *Ibid.*, p. 7.
35. University College of the Fraser Valley et al., [Human Trafficking: Reference Guide for Canadian Law Enforcement](#), University College of the Fraser Valley Press, Abbotsford, B.C., 2005, p. 44.
36. The Future Group, [Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims](#), March 2006, p. 14; and Jacqueline Oxman-Martinez, Jill Hanley and Fanny Gomez, “Canadian Policy on Human Trafficking: A Four-Year Analysis,” *International Migration*, Vol. 43, No. 5, 2005, pp. 13–17.
37. See [An Act to amend the Criminal Code \(protection of children and other vulnerable persons\) and the Canada Evidence Act](#), S.C. 2005, c. 32, which received Royal Assent in July 2005. By January 2006, the entire Act was in force.
38. The Future Group (2006), p. 14.
39. Immigration, Refugees and Citizenship Canada, [Temporary Resident Permits \(TRPs\): Considerations specific to victims of human trafficking](#).
40. Public Safety Canada (2015), p. 9. Five permits were issued in 2014: United States Department of State (2015), p. 115.

41. Canadian Council for Refugees, [Temporary Resident Permits: Limits to protection for trafficked persons](#), Montréal, June 2013; Samanta García Fialdini, Canadian Council for Refugees, [“Temporary Resident Permits,”](#) Presentation to the Human Trafficking Forum on Forced Labour, Toronto, 23 April 2013; and Bethany Hastie, [“The Protection of Internationally Trafficked Persons in Canada: Critical Gaps in Immigration Policy,”](#) McGill University – Hans & Tamar Oppenheimer Chair in Public International Law, 7 December 2012.

The term “designated foreign national” as it relates to human smuggling is described in section 20.1 of the *Immigration and Refugee Protection Act*. It applies to “persons who arrive in Canada as part of a group designated by the Minister as an ‘irregular arrival.’ Designated foreign nationals will be subject to a different detention regime than other refugee claimants and will face restrictions on applications different from other claimants” (Julie Béchar and Sandra Elgersma, [Legislative Summary of Bill C-31: An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act](#), Publication no. 41-1-C31-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 16 May 2012).

42. Public Safety Canada (2015), pp. 7–8. For example, the Department of Justice Canada’s Victims Fund has made up to \$500,000 available annually to projects that enhance services for trafficking in persons.
43. United States Department of State (2015), p. 115; Canadian Council for Refugees, [National Forum and Workshop on Trafficking: Forum and Workshop Report](#), February 2013, p. 6; Bethany Hastie, [“Canada’s National Action Plan to Combat Human Trafficking: Initial Reflections,”](#) McGill University – Hans & Tamar Oppenheimer Chair in Public International Law, 15 June 2012; Alexandra Ricard-Guay and Jill Hanley, [Frontline Responses to Human Trafficking in Canada: Coordinating Services for Victims](#), McGill University School of Social Work for the Committee of Action against Human Trafficking National and International, 2014, p. 44; and Public Safety Canada, [2012–2013 Human Trafficking Stakeholder Consultations: National Summary Report](#), 2013, p. 8.
44. Jacqueline Oxman-Martinez, Marie Lacroix and Jill Hanley, [Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector](#), Department of Justice Canada, August 2005, p. 24; and Ricard-Guay and Hanley (2014), p. 80.
45. Oxman-Martinez, Lacroix and Hanley (2005), p. 29; and Oxman-Martinez, Hanley and Gomez (2005), p. 16.
46. Government of Canada, *National Action Plan to Combat Human Trafficking* (2012), p. 9.
47. *Ibid.*, pp. 9–10.
48. *Ibid.*, pp. 11–12.
49. *Ibid.*, pp. 13–16.
50. *Ibid.*, pp. 17–18.
51. *Ibid.*, pp. 19–21.
52. Public Safety Canada (2015).
53. *Ibid.*, p. 11; Public Safety Canada, [“Minister Blaney Announces a Special RCMP Enforcement Team to Combat Human Trafficking,”](#) News release, 9 December 2013.
54. United States Department of State (2015), p. 114.

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55. See, for example, Nicole Barrett, [*An Exploration of Promising Practices in Response to Human Trafficking in Canada*](#), International Centre for Criminal Law Reform and Criminal Justice Policy, May 2010; and International Centre for Criminal Law Reform and Criminal Justice Policy, [*Towards Human Trafficking Prevention: National and International Expert Group Meetings – Final Report*](#), 31 May 2011.
56. Public Safety Canada (2015), p. 8; Ricard-Guay and Hanley (2014), pp. 21 and 92; and Department of Justice Canada (2015).
57. Government of Canada, *National Action Plan to Combat Human Trafficking* (2012), p. 12.
58. Oxman-Martinez, Lacroix and Hanley (2005); and Ricard-Guay and Hanley (2014), pp. 43–68.
59. Ricard-Guay and Hanley (2014), pp. 22, 114 and 123; and Public Safety Canada (2013), p. 8.
60. Oxman-Martinez, Lacroix and Hanley (2005), p. 17.
61. Ricard-Guay and Hanley (2014), pp. 28 and 94–95; and United States Department of State (2015), p. 115. For discussion of government action on this issue, see Public Safety Canada (2015), pp. 9–10.
62. This duplication was noted in House of Commons Justice and Human Rights Committee discussions with Department of Justice Canada officials concerning Bill C-49, An Act to amend the Criminal code (trafficking in persons) on 4 October 2005. See also Katrin Roots, “Trafficking or Pimping? An Analysis of Canada’s Human Trafficking Legislation and its Implications,” *Canadian Journal of Law and Society*, Vol. 28, No. 1, 2013, p. 21.
63. Ibid. See also discussion in Canadian Council for Refugees (2013), p. 13.
64. Canadian Council for Refugees, [*Trafficking in Women and Girls: Report of Meetings*](#), Fall 2003, p. 22.
65. Canadian Council for Refugees (2003); Pacific Northwest Conference on International Human Trafficking, Vancouver, 19 May 2005; Leslie Ann Jeffrey, “Canada and Migrant Sex Work: Challenging the ‘Foreign’ in Foreign Policy,” *Canadian Foreign Policy*, Vol. 12, No. 1, 2005, p. 33; Ricard-Guay and Hanley (2014), p. 39; and Millar and O’Doherty (2015), pp. 61–62.
66. For further discussion of this issue, see Ricard-Guay and Hanley (2014), pp. 35–41 and 133–134; and Millar and O’Doherty (2015), pp. 61–62.